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Joint Committee on Human
Rights

Equality and Human Rights Commission

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*Report, together with formal minutes and oral
and written evidence*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Summary

The report of the EHRC's major human rights inquiry, which was published in June 2009, included numerous recommendations aimed at the Commission itself. We agree with the report's broad conclusions. As several of our previous inquiries have also found, embedding a culture of human rights in public authorities in the UK would drive service improvements which would benefit ordinary people. The Commission has a major role to play in leading this process. Our concern is with whether the EHRC is doing enough to devise and disseminate a culture of respect for human rights in public authorities, the main aim our predecessors identified for the Commission in their 2003 report on the case for a UK human rights commission.

The EHRC published a short human rights strategy in November 2009, in part as a response to the report of its human rights inquiry. In our view, it is too vague. We recommend that a more detailed version be launched later in 2010, after public consultation. We also recommend that the next human rights strategy should be more clearly related to the strategic objectives set out in the EHRC's overall strategy.

Although the EHRC cannot possibly have been expected to transform the way in which public services are delivered within the first two or three years of its existence, the report of the EHRC's human rights inquiry shows that the Commission had not begun systematically to address this issue. The publication of a human rights strategy is evidence that the EHRC is seeking to approach its responsibilities for human rights matters on a more systematic basis than hitherto; but, in our view, the Commission is not yet fulfilling the human rights mandate set out in the Equality Act.

We were also concerned to hear allegations made by a number of former commissioners, who resigned in 2009, about the way in which the body was led by Trevor Phillips. These included suggestions, which are contested by continuing commissioners, that:

- the board of commissioners was not functioning as a corporate body;
- commissioners felt intimidated if they held the Chair to account for his actions; and
- perceived conflicts of interest between Mr Phillips' involvement with a private consultancy firm and his position as Chair of the EHRC had not been adequately dealt with.

We also noted that the Commission's accounts for 2006-08 had been qualified by the Comptroller and Auditor General.

In our view, Mr Phillips' reappointment in 2009 should have been subject to open competition. The Minister for Women and Equality's decision to reappoint Mr Phillips without any parliamentary involvement could undermine the perceived independence of the Commission and put its accreditation as a national human rights institution at risk.

We welcome the fact that Mr Phillips has now relinquished his controlling share in the Equate consultancy but regret that it took him so long to act on the advice he was given.

We are concerned that the EHRC continues to operate without a chief executive. This is

unacceptable, particularly as there would seem to be no prospect of an appointment being made until much later in 2010.

In our view, the Commission's credibility across the political spectrum would be enhanced if it included at least one commissioner with links to the Conservative Party.

1 Introduction

1. The launch of the Equality and Human Rights Commission (EHRC) in October 2007 was an important landmark in the development of the UK's human rights framework. Our predecessors laid the groundwork for the EHRC with an inquiry into the case for a human rights commission in March 2003. They said "a human rights commission, probing, questioning and encouraging public bodies, could have a real impact in driving forward the development of a culture of respect for human rights."¹ In scrutinising the legislation which established the Commission, the Committee said:²

The appearance in precise legislative form of the intention to create the [EHRC] represents the most important milestone reached so far in establishing the institutional support which is needed to achieve wider implementation of the Human Rights Act and respect for human rights, particularly within public authorities. With its vision of the achievement of a fairer and more equal society, the Bill is the most important legislative measure for the advancement of human rights in this country since the Human Rights Act itself

2. The EHRC is a non-departmental public body, required to encourage and support 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; and
- there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.³

3. In relation to human rights, the EHRC must:

- promote understanding of the importance of human rights;
- encourage good practice in relation to human rights;
- promote awareness, understanding and protection of human rights; and
- encourage public authorities to comply with section 6 of the Human Rights Act 1998, which makes it unlawful for public authorities to act in a way which is incompatible with European Convention rights.⁴

1 Fourth Report, Session 2002-03, *The Case for a Human Rights Commission*, HL Paper 67-I, HC 489-I (hereafter *Case for a Human Rights Commission*) paragraph 239.

2 Sixteenth Report, Session 2004-05, *Equality Bill*, HL 98, HC 497 (hereafter *Equality Bill*) paragraph 5.

3 Section 3, Equality Act 2006.

4 Section 9, Equality Act 2006.

4. Bearing in mind that equality is itself a human right recognised in all of the major human rights treaties, we have taken a strong interest in a good deal of the EHRC's work, inviting the Commission to submit its views to our inquiries and other scrutiny work, and occasionally addressing recommendations to the Commission. When we heard oral evidence from Trevor Phillips, the Chair of the EHRC, in October 2008, we intended this to be the first in a series of annual opportunities to discuss significant human rights issues and the EHRC's work.

5. Regrettably, the EHRC's work during 2009 was overshadowed by disputes between a number of commissioners and Mr Phillips which attracted considerable media interest. In addition, the EHRC's annual accounts for 2006–08 were qualified by the Comptroller and Auditor General, raising questions about the EHRC's management and alleged conflicts of interest involving Mr Phillips. The resignation of the EHRC's chief executive, Nicola Brewer, on her appointment as UK High Commissioner in South Africa, added to the organisation's difficulties and there were suggestions that the working relationship between Dr Brewer and Mr Phillips had been problematic.⁵

6. Consequently, we decided to use our annual oral evidence session with the Chair of the EHRC to discuss the various problems of leadership and management which had emerged into public view during the year, and the extent to which the EHRC had fulfilled our and our predecessor's vision of what a human rights and equality commission should be. We were also able to discuss the EHRC's human rights strategy, which was published on 10 November, the day of our oral evidence with Mr Phillips and the three colleagues who accompanied him. Whilst we did not issue terms of reference, as it was originally intended just to hold oral evidence sessions, an announcement was issued of an "annual evidence session with the Chair of the EHRC to discuss the work of the Commission during the last year. The Committee will also hear from four former EHRC Commissioners". The four former EHRC commissioners gave evidence, principally to discuss why they had resigned, on 20 October 2009. On 28 October, the Committee requested "short written contributions about the work of the Commission" by 5 November and Mr Phillips gave evidence on 10 November. Rt Hon Harriet Harman MP, who has ministerial responsibility for the EHRC, and Jonathan Rees, the Director-General of the Government Equalities Office, gave evidence on 15 December. We received written evidence from several former commissioners, Dr Brewer and a number of NGOs which have dealings with the EHRC. We are grateful for all of the information and evidence we received and we record our thanks to the EHRC which dealt quickly and thoroughly with our various requests for information and documents.

7. Our work covered two broad themes: the EHRC's record to date as a national human rights institution; and the governance and leadership of the EHRC under Mr Phillips' chairmanship. We comment on the EHRC's human rights work as a critical friend of the Commission, sharing its ambition to foster a human rights culture in the UK. Our views can be found in the next chapter. We have found it difficult to get to the bottom of all the disputes between the commissioners who resigned and Mr Phillips: in some cases, there would appear to be irreconcilable differences of view about relatively straightforward matters. Having heard both sides of the story, and given all concerned the opportunity to

5 See paragraph 63.

comment on the principal evidence we received, we offer our impressions of what has gone wrong in chapter 3.

2 The EHRC's human rights work

Introduction

8. The EHRC formally came into existence on 18 April 2006, following the enactment of the Equality Act 2006. Trevor Phillips was appointed as Chair of the Commission on 11 September 2006. Twelve other commissioners were appointed on 4 December 2006 and further appointments were made in 2007.⁶ Nicola Brewer took up her appointment as chief executive in March 2007. The Commission assumed its new powers and took on the responsibilities of the Commission for Racial Equality (CRE), the Equal Opportunities Commission and the Disability Rights Commission on 1 October 2007.

9. The organisation's formal launch also marked the beginning of a six-month "build-up phase", in which it sought to build a credible and independent Commission and identify strategic priorities for future work. The EHRC was accredited by the UN as a national human rights institution in January 2009.⁷ A strategic plan for 2009-12 was published in June 2009 which identified five strategic priorities for the organisation:

- "secure and implement an effective legislative and regulatory framework for equality and human rights;
- create a fairer Britain, with equal life chances and access to services for all;
- build a society without prejudice, promote good relations and foster a vibrant equality and human rights culture;
- promote understanding and awareness of rights and duties – deliver timely and accurate advice and guidance to individuals and employers; and
- build an authoritative and responsive organisation."

Key performance indicators were specified for each priority.

10. The EHRC launched an inquiry in April 2008 to "assess progress towards the effectiveness and enjoyment of a culture of respect for human rights in Great Britain" and "consider how the human rights framework might best be developed and used".⁸ The inquiry was described as "a crucial part of the Commission's developing strategy on human rights".⁹ It involved three research projects, a national survey of public perceptions of human rights, and written and oral evidence from nearly 3,000 people.¹⁰ The inquiry's

6 EHRC 22, section 4.

7 *Our human rights strategy and programme of action 2009-12*, EHRC, Nov 09 (hereafter *Human rights strategy*) p4. National human rights institutions are seen by the international human rights monitoring bodies as being of particular importance in the national implementation of human rights standards agreed amongst states at the international level (the Paris Principles). There is a formal system of accreditation of national human rights institutions and a minimum set of criteria, including independence from Government, which an institution must fulfil in order to be recognised as such.

8 *Human Rights Inquiry: Report of the Equality and Human Rights Commission*, June 09 (hereafter *Human rights inquiry*) p13.

9 *Ibid*, p12.

10 *Ibid*, p15.

report was published in June 2009. Its recommendations included 15 aimed at the Commission itself, including to:

- assume a leadership role in raising public awareness of the importance of human rights and the Human Rights Act;
- produce updated guidance on human rights and legal developments related to the Human Rights Act;
- use every available opportunity to explain publicly the purpose, value and benefits of human rights and the Human Rights Act to our society; and
- assist public authorities to develop mechanisms to integrate positive obligations under the Human Rights Act with their work on public sector duties.¹¹

11. Neither the strategic plan nor the report of the human rights inquiry recommended that the Commission should produce a stand-alone human rights strategy. The strategy published on 10 November 2009 is discussed below.¹²

12. Writing in the *Guardian* in September 2009, Mr Phillips summarised the main achievements of the EHRC since its launch:¹³

300 legal actions, new rights for six million carers, better access to banks for disabled people ... forcing the government to guarantee proper protection for soldiers on the front line ... £10m distributed to grassroots groups fighting everyday discrimination and prejudice ... guidance for small businesses facing recession, so far taken up by over 100,000 users ... [and] the threat of judicial review – our “nuclear option” against the government’s illiberal proposals on pre-charge detention.

A fuller summary of the EHRC’s work to date was published by the Commission in October 2009.¹⁴

Human rights vision

13. Our predecessor Committee concluded in 2003 that “there was an unmet need for citizens to be assisted in understanding what their rights are, how these rights must be balanced with those of others, and how to assert their rights without necessarily having recourse to litigations”.¹⁵ It was concerned that the development of a human rights culture “may ... have been in retreat” since the “highwater mark” of the coming into effect of the Human Rights Act in 2000.¹⁶ Consequently, it concluded that:

A commission would give human rights a focus, resources and a degree of institutional stability not found recently in central government. This would provide a

11 Ibid, pp144, 146 and 148-49.

12 See paragraph 21.

13 *Guardian*, 5 Sep 09.

14 *Two Years Making Changes*, EHRC, October 2009.

15 *Case for a Human Rights Commission*, paragraph 93.

16 Ibid, paragraph 94.

base from which there might be a realistic chance of devising and disseminating a more credible culture of respect for human rights in public authorities.¹⁷

It was largely on this basis that the Committee recommended the establishment of a national human rights commission.

14. In our view, this vision of what a national human rights institution can achieve in the UK remains as valid today as it did in 2003. We have undertaken several inquiries during this Parliament into how a human rights based approach to service delivery can deliver real benefits to service users – for example in healthcare for older people and services for adults with learning disabilities.¹⁸ In general we have found isolated examples of good practice amidst a general reluctance on the part of public authorities to regard human rights as anything more than a set of minimum legal standards. We remain far from embedding a culture of respect for human rights in the UK public sector.

15. The EHRC’s human rights inquiry reached essentially the same conclusion. It found that “much remains to be done to give effect to the internationally agreed standards and values to which everyone is entitled” but expressed the view that adopting a human rights approach “should facilitate rapid improvement in public services”.¹⁹ **We agree with the main findings of the EHRC’s human rights inquiry. As several of our previous inquiries have concluded, embedding a culture of human rights in public authorities in the UK would drive service improvements which would benefit people who use them. The Commission has a major role to play in leading this process. Our concern is with whether the EHRC is doing enough to devise and disseminate a culture of respect for human rights in public authorities, the main aim our predecessors identified for the Commission.**

Assessments of the EHRC’s human rights work

16. We received memoranda from several NGOs which drew attention to positive achievements of the EHRC. Race on the Agenda, for example, noted that the EHRC’s involvement in legal cases had “made a significant contribution to equality and human rights”.²⁰ It also commented on the “real leadership” the Commission had shown on the Equality Bill.²¹ The Public and Commercial Services Union (PCS) praised some of the EHRC’s reports²² and the British Institute of Human Rights welcomed the EHRC’s June 2009 human rights report and said that it was “vital that the EHRC uses the momentum of the report to further develop and improve its approach to and work on human rights”.²³ The Equality and Diversity Forum listed what it considered “real achievements” including new research on “relatively neglected topics” such as discrimination against Gypsies and

17 Ibid, paragraph 96.

18 Eighteenth Report, Session 2005-06, *The Human Rights of Older People in Healthcare*, HL Paper 156-I, HC 378-I and Seventh Report, Session 2007-08, *A Life Like Any Other? Human Rights of Adults with Learning Disabilities*, HL Paper 40-I, HC 73-I.

19 *Human rights inquiry*, p150.

20 Ev 93, paragraph 3.1.

21 Ev 94, paragraph 4.1.

22 Ev 90, paragraph 7.

23 Ev 73, paragraph 3.

Travellers as well as “a thoughtful approach” to policy issues such as how HIV is addressed in the EHRC’s disability work.²⁴

17. A number of critical notes were also sounded, however. Race on the Agenda said “very little has been done by the Commission to promote good relations through the social dimension of equality and human rights”.²⁵ It criticised the resources devoted to “collecting evidence that was already available” during the EHRC’s human rights inquiry.²⁶ The Equality and Diversity Forum expressed concern that the human rights inquiry was “the only visible work EHRC has done that is explicitly concerned with fulfilling its duty to promote respect for human rights”.²⁷ PCS listed human rights debates from which it said the Commission was absent due to a “failure to communicate its role effectively”.²⁸ Lord Low of Dalston complained that briefings for parliamentarians on disability issues had “almost completely dried up” and said:

At times one has almost been tempted to think of the EHRC as a failing organisation.²⁹

Liberty said:

We have ... watched the turbulent history of the EHRC with some disappointment ... The EHRC has a vital statutory duty [to defend human rights] and notwithstanding considerable staffing and other resources, this is a duty which it is yet to fulfil.³⁰

18. Professor Klug argued that the EHRC was “not providing us with a credible vision of what human rights are, how they can add value in everyday life” and asked “why is the Commission not addressing some of the misinformation on human rights”?³¹ Ben Summerskill stated that “the Commission has not got a sense of itself as a human rights commission” and that, given its level of funding, the EHRC “should be doing significantly more”.³² Baroness Campbell said “the Commission’s human rights work was marginalised due to the Chair’s constant consistent lack of appreciation of the importance and effectiveness of the Human Rights Act”.³³

19. Professor Klug served as a member of the human rights inquiry team during 2008–09 and suggested that the work was “almost entirely” aimed at promoting human rights *within* the EHRC.³⁴ Sir Bert Massie argued that “there was nothing in the human rights report about the Commission that we could not have done earlier” and suggested that the

24 Ev 76, paragraph 5.

25 Ev 93, paragraph 3.2.

26 Ev 94, paragraph 3.10.

27 Ev 76, paragraph 6.

28 Ev 90, paragraph 10.

29 Ev 86.

30 Ev 86, paragraphs 2-3.

31 Q8.

32 Qq 6, 24.

33 Ev 70.

34 Q45.

inquiry had been “set up to delay things”.³⁵ Dame (now Baroness) Nuala O’Loan chaired the inquiry and said the report:

identified the areas in which significant activity is required, most particularly of the Commission itself. It will be important that the momentum is not lost, and that the Commission does not shy away from the work which is required. The governance processes and the ethos of the Commission will be fundamental to its ability to deliver on its statutory remit. My experience was that there was a need for development in these areas, if the EHRC is to function effectively as a national human rights commission.³⁶

20. Trevor Phillips and John Wadham, the EHRC’s Group Director Legal, strongly defended the EHRC’s record of human rights work. Mr Phillips described the human rights report as “important” and argued that the inquiry process contributed to the EHRC’s accreditation as a national human rights institution.³⁷ He said:

I think that a balanced account of what we have done would say that we have done a great deal. We would have liked to have done more ... We have written and published a simple guide to human rights called *Ours to Own*. We have campaigned on a series of issues and we have ... pursued a number of key cases, for example the *Jason Smith* case which guaranteed protection for our troops on the frontline.³⁸

Mr Wadham said “we are delivering on our remit” and cited interventions in legal cases, scrutiny of Government policy in relation to international human rights treaties, and other policy work in support of his assertion.³⁹

Human rights strategy

21. The human rights strategy is intended to show how the EHRC will use its powers to discharge its human rights duties in the 2009-12 period and also responds to the recommendations of the human rights inquiry.⁴⁰ It identified five key outcomes which the Commission wishes to achieve by 2012:

- no regression in law from the levels of human rights protection and mechanisms for enforcement under the Human Rights Act and other ratified human rights treaties;
- widespread awareness and accurate understanding of human rights at all levels of society, including how they can be used by individuals and applied by public, private and voluntary organisations;
- human rights mainstreamed into the work of at least five of the most significant regulators, inspectorates and complaints handling bodies;

35 Q46.

36 Ev 87.

37 Qq171-88.

38 Q171.

39 Qq 173, 175.

40 *Human rights strategy*, p3.

- to have developed a credible and widely utilised measurement framework for human rights and to have reported against this framework in the Commission’s triennial report to Parliament about the state of equalities and human rights in the UK; and
- to have clearly influenced the concluding observations of the bodies monitoring compliance with the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention Against Torture and the UN Convention on the Rights of Persons with Disabilities.⁴¹

22. At the heart of the strategy lies a human rights programme for 2009–12 consisting of 46 items of work. Some of these are expressed in very general terms: for example, “we will identify and promote good practice in the public sector” and “we will build business and public awareness of the key human rights issues in the private sector”. Others reflect work which is already underway, such as the commitment to respond to the Government’s Bill of Rights and Responsibilities Green Paper, which was published in March 2009. Some of the commitments – such as the EHRC’s sponsorship of *Guardian* newspaper roundtables to explore the findings of the human rights inquiry – are likely to make a relatively minor contribution to the strategy’s overall aims.

23. The strategy contains few indications of timescales, milestones or measures of success or effectiveness. It is also unclear how the strategy relates to the EHRC’s overall strategy for 2009–12: the two strategies appear to be unconnected and it is hard to see how they feed into each other. We note that several human rights objectives and key deliverables which were included in the overall strategy for 2009–12, such as the mapping of legal advice provision on human rights issues in order to identify service gaps and reference to ensuring greater respect for human rights in the prison system, are not mentioned in the human rights strategy.

24. We asked why it had taken so long since the EHRC was set up to publish such a vague list of human rights work priorities. Mr Phillips suggested that the decision to proceed with a long inquiry into human rights priorities before a strategy was drawn up was due to the need to ensure that the board worked together on this issue.⁴² Mr Wadham said that the inquiry had been necessary to tap a “rich seam of evidence” about the desirability of embedding human rights in public sector work, which was now reflected in the strategy.⁴³ He argued that the strategy built on the recommendations of the human rights inquiry and “sets out our overall high level vision of the future about what we are going to do”.⁴⁴

Conclusion

25. Kay Carberry, a continuing EHRC commissioner, asserted that the Commission has been responsible for a “great list of achievements”.⁴⁵ We do not fully share this view. We have sometimes been frustrated at the EHRC’s lack of engagement in major human rights

41 Ibid, p6.

42 Q189.

43 Qq 189-90.

44 Q187.

45 Ibid.

debates. We heard nothing from the Commission on policing and protest, for example, an issue with which we were engaged for a calendar year from June 2008 and which was the subject of considerable public debate, particularly after the G20 protests in April 2009. We were also critical of the evidence we received from the EHRC during our business and human rights inquiry, because it was limited to equality matters, indicating a broader failure to integrate effectively equality and human rights work.⁴⁶

26. As we indicated earlier, a key role for the EHRC is to drive the creation of a human rights culture in the UK public sector. This will inevitably be a long process: the EHRC cannot possibly have been expected to transform the way in which public services are delivered within the first two or three years of its existence. In our view, however, the report of the EHRC's human rights inquiry shows that the Commission had not begun systematically to address this issue. **The publication of a human rights strategy is evidence that the EHRC is seeking to approach its responsibilities for human rights matters on a more systematic basis than hitherto; but, in our view, the Commission is not yet fulfilling the human rights mandate set out in the Equality Act.**

27. We note that the Human Rights Minister, Michael Wills MP, is also sympathetic to this point of view. He told us on 1 December 2009 that:

I do not think [the EHRC] are doing enough to promote human rights and the Human Rights Act.⁴⁷

He also criticised the EHRC's human rights strategy as being "too full of aspiration and too light on what I would call concrete goals that can be delivered within a specified time frame".⁴⁸ **These are strong criticisms from the Minister specifically charged with overseeing human rights across Government and we entirely agree with him.**

28. Recently, we have noticed signs of improved performance by the EHRC. We received a helpful memorandum in response to our call for evidence on our legislative scrutiny priorities and the EHRC has been more active than before in commenting on current human rights issues, such as the retention of DNA information by the police and allegations that the UK has been complicit in the torture of terrorism suspects overseas. We welcome these signs that the EHRC is getting its house in order and becoming a more consistent and authoritative contributor to debates on human rights matters. **There is a long way for the EHRC to go, however, and an important next step will be for the human rights strategy to be redrafted to make it, as the Minister said, less aspirational and more concrete.** The Commission could also usefully engage with the public in asking what its views are on human rights priorities, which would help raise the EHRC's profile and target its work on the most important issues. **We recommend that the EHRC redraft its human rights strategy so that it is more focused and includes timescales, milestones and indicators of success. A revised strategy should clarify how a stand alone human rights strategy relates to the EHRC's overall strategy for 2009-12. The Commission should ask for public views on the existing strategy now and aim to launch its revised strategy later in 2010.**

46 First Report, 2009-10, *Any of our business? Human Rights and the UK private sector*, HI Paper 5-1, HC 64-1, chapter 9, especially paragraph 280.

47 Second Report, 2009-10, *Work of the Committee in 2008-09* (hereafter *Annual Report 2008-09*) Q (2.12.09) 18.

48 *Ibid*, Qq (2.12.09) 30-34.

3 Governance and leadership

Leadership of the Commission

Resignations of Commissioners

29. Six commissioners resigned, or announced their intention to resign, from the EHRC board during 2009. Nicola Brewer, who served as a commissioner by virtue of her position as chief executive, is discussed below. The other commissioners were Baroness Campbell, Professor Kay Hampton, Professor Francesca Klug,⁴⁹ Sir Bert Massie and Ben Summerskill. All contributed evidence to our inquiry.

30. Kay Hampton resigned shortly after Dr Brewer left. She said that she was “terribly unhappy” about “governance, mainly conflicts of interest, the manner in which the board was being run, the inability for board members to participate fully in discussions” and perceptions of the Chair’s role in the engagement of former staff of the CRE who had taken redundancy packages.⁵⁰

31. Baroness Campbell announced her resignation on 17 July. Her memorandum refers to “a divisive culture” on the board; unease about the direction of travel; policy being made by Trevor Phillips “on the hoof”;⁵¹ and potential conflicts of interest between Mr Phillips’ private work and his role as Chair. She said:

Having worked with Trevor Phillips for nearly three years, I am convinced that he is a man of many talents, able to engage with some people (namely politicians and the media) in a way that few others can. However, I finally came to the conclusion that these skills came at too high a price for the EHRC which was being held back by a disempowered Board and a lack of cohesive direction. Eventually I came to believe that Trevor Phillips’ conduct and approach towards governance was severely damaging to the EHRC.⁵²

32. Sir Bert Massie wrote in the *Guardian* in March 2009 that:

There is an anxiety that the Commission is not performing as well as it might do. I am concerned that the work has not been going as fast as it might do. There is a general unease about the direction of the Commission and how it is going.⁵³

He resigned on 18 July 2009 and told us that “the straw that broke the camel’s back was the reappointment of the Chairman”. Corporate governance was his main concern, including the relationship between the Chair and the chief executive and the functioning of the board:

49 Professor Klug is a specialist adviser to the Committee but has not undertaken any work for us since 2005-06.

50 Q1. And see paragraph 70.

51 Also see Qq 15-17, 98-106 and Ev 64.

52 Ev 69.

53 *Guardian*, 27 March 2009.

Our skills were not being used, our expertise was not being used and we could not influence the agenda.⁵⁴

33. Francesca Klug resigned on the same day as Sir Bert but told us she had been considering her position since October 2008.⁵⁵ Her concerns also related to corporate governance:

The difficulty in having any substantial influence on governance or strategy ... lack of knowledge about crucial policy decisions the Commission was taking until shortly before they were publicly announced; problems in communicating with each other on the board in an open and transparent way; the perceived conflicts of interest concerning the Chairman's private equality consultancy ... significant expenditure on external consultants despite our extensive staff numbers.⁵⁶

She went on to say:

There was an atmosphere that I experienced of intimidation sometimes in holding the Chair to account. There would be those commissioners who would fiercely oppose you if you raised your voice ... to disagree with what the Chair had said and that sense of being strongly reprimanded I think did create some atmosphere of intimidation.⁵⁷

34. Finally, Ben Summerskill announced his intention to resign on 23 July 2009. He told us that "as chairman of the Commission's Audit Committee I simply felt unable to offer appropriate assurance to the National Audit Office that the Commission was being led with probity".⁵⁸

Other perspectives

35. In addition to the evidence we received from the former commissioners, some of the NGOs from whom we received evidence also commented on the leadership of the Commission. The European Network Against Racism referred to "closed, cliquy, manipulative" leadership and Race on the Agenda expressed concerns about the resignations of the former commissioners and what it regarded as a lack of leadership in the wake of the organisation's internal difficulties.⁵⁹

36. Other commissioners took issue with criticisms of how the board operated. Jeannie Drake said "I certainly never felt personally intimidated. I never felt I could not articulate what I wanted to articulate".⁶⁰ Kay Carberry described the evidence from the former commissioners as "very far from my own experience":

54 Q1.

55 Also see Ev 87.

56 Q1.

57 Q19. Also see Ev 70.

58 Q1.

59 Ev 85 and Ev 94, paragraph 3.13.

60 Q60.

The impression that was somehow given of a cowed bunch of individuals who were unable to express a view and were unable to challenge the Chair, either because they were intimidated or because they were part of some mysterious inner circle that I have never come across, is ... demeaning to a group of independent and strong minded people.⁶¹

She went on to say that “there was not perhaps widespread dissatisfaction with the style of chairing” and that lack of challenge of the Chair was “because we had confidence in the way the Commission’s business was being conducted”.⁶²

37. Mr Phillips said that the picture painted by the former commissioners of how the board operated was “not one that I recognise” and he drew attention to the fact that the majority of commissioners had not resigned or expressed similar views.⁶³ He described board meetings as “pretty open”:

there are arguments, there are passions but, frankly, I think that is part of the role of the Commission.⁶⁴

In his view, the board operated by consensus:

The only point in the last three years on which the board has divided formally on a vote was over an issue of policy ... I happened to think that was one of the best debates and the best moments for the board where we argued out a major issue ... One side won. I happened not to be on the winning side.⁶⁵

38. Harriet Harman MP and Jonathan Rees were aware of the difficulties between EHRC board members.⁶⁶ Ms Harman said that there were “a number of complex reasons” for these problems which “[did] not necessarily fall within the responsibility of any one individual”.⁶⁷ She suggested that the difficulties were an inevitable consequence of merging the previously independent equality commissions and drew a comparison with trade union mergers:

There are always different cultures in different organisations. When they are brought together there is difficulty and the process takes time.⁶⁸

While there is no doubt that this is true, the Committee did not seek evidence about the establishment of the EHRC and the difficulty involved in bringing different strands of equality work and three separate commissions together to form a single human rights

61 Q19

62 Q19.

63 Qq59, 90.

64 Q59.

65 Q60.

66 Qq208, 240.

67 Q212.

68 Q210.

commission. Sir Bert Massie had made his concerns about this risk clear before the Commission was created.⁶⁹

39. We did not fully consider the extent to which tensions between previous organisations contributed to the EHRC's problems of governance. Clearly the Commission Board did not become a cohesive and effective whole. A contributing factor may have been the complexity of bringing together legacy commissions, adding new strands, and having an overarching responsibility for human rights.

Deloitte review

40. The EHRC commissioned Deloitte to review the functioning of its board in 2008. The EHRC published the final report of the review at our request:⁷⁰ we were also able to review a presentation to the board on “emerging thinking” which has not been made public.

41. Deloitte identified the following “organisational challenges” for the Board to address and made recommendations in relation to each of them:

The Board does not operate against clear, consistently understood roles and a common purposes.

The size of the Board makes it cumbersome and the composition of the Board is not ideal.

There a number of cultural and behavioural barriers weakening the Board's ability to perform.

The Board does not plan and prepare for Board meetings effectively.

There is a lack of clarity as to how relationships should work between the Board/SMT/staff.⁷¹

We discuss later recommendations from this report relating to the respective roles and responsibilities of the Chair and chief executive as well as to the size and composition of the board.⁷² Many of the other recommendations related to best practice in running board meetings. Mr Rees described the review as “sensible” and said there was “clear evidence of significant improvement in the way the board operates”.⁷³

42. A set of recommendations relating to reviewing and enhancing the role of the Chair and redefining the role of the Deputy Chair as a “senior independent role, responsible for assuring the effective working of the Board” has not yet been implemented and is awaiting a “second phase of the Board Effectiveness work programme”.⁷⁴ The recommendations

69 Speech at Northampton University, 16 Oct 2006, www2.northampton.ac.uk/pls/portal/url/ITEM/202A1274135F0AF5E0440003BA7723F7.

70 *Board Effectiveness Review: Recommendations Report*, Deloitte for EHRC, 18 December 2008, http://www.equalityhumanrights.com/uploaded_files/OurJob/annual_board_review_2009_new_redacted_2.pdf (hereafter *Deloitte report*).

71 *Ibid*, p5.

72 See paragraphs 49-52 and 62-66.

73 Qq 239-40.

74 See *Deloitte report*, Appendix G, pp23-24.

relating to Mr Phillips included “Chair to provide effective leadership for the organisation” and “ensure Chair leads by example and encourages everyone to actively participate, listen attentively, pose questions ... strive for consensus ... encourage creative and challenging discussions and respond with respect and courtesy”.⁷⁵ Mr Phillips said he took these recommendations “very seriously”.⁷⁶

43. Professor Hampton and Professor Klug both suggested that the early findings of the Deloitte review had been critical of Trevor Phillips and that the final report did not reflect these findings but “moved into another kind of discussion, which was process issues like the size [of the board]”.⁷⁷ Mr Phillips disputed this:

The principal recommendations were about the roles and responsibilities, and clarifying those, about the size of the board, and some issues of process. There were many recommendations which Deloitte themselves said were out of scope, which they did not think were of the first order, and the board itself discussed this ... This is not a report which I wrote ... it was a report which was written independently and was discussed by the board and the recommendations were agreed by the board.⁷⁸

44. The Deloitte report states that its suggested design criteria and recommendations were assessed and refined at a meeting in November involving “a subset of the Board, Senior Management Team and the Commissioner’s Office”.⁷⁹ We asked for the minutes of this meeting so we could better understand how the findings reported in the “emerging thinking” paper presented to the board in October had developed into the recommendations in the final report but were informed that no minutes exist.⁸⁰

Conclusion

45. There were clearly tensions and difficulties between a significant minority of EHRC board members and the Chair during 2008 and 2009, culminating in the resignations last year. In his oral evidence, Mr Phillips gave the impression that the resignations had come as a surprise: he did not recognise their description of the board and instead described meetings in which robust debate and effective, friendly challenge of the chair were the norm. It is difficult to square these conflicting accounts but a close reading of the Deloitte report provides some support for the view that problems with the functioning of the Board stemmed from Mr Phillips’ leadership style. Deloitte made specific recommendations about Mr Phillips’s leadership which ended up in an appendix at the back report, without any published plan for implementation. Furthermore, Mr Phillips’ suggestion that it was significant that the majority of commissioners did not resign is not in itself an answer to the criticisms made by those who resigned.

75 Ibid, Appendix G, p23.

76 Q121.

77 Qq 27, 36. Also see Sir Bert Massie, Ev 89, paragraph 10.

78 Q120.

79 *Deloitte report*, Appendix G, p4.

80 Email from Ellie Rose, EHRC, to the Commons Clerk, 14 December 2009: “We would like to confirm that no notes or minutes were taken by the Commission at the special working session on the Deloitte recommendations on 17 November 2008. Deloitte will have incorporated the outcomes of the discussions into their report”.

46. Ms Harman suggested that tensions were inevitable during the EHRC's formative years because of cultural clashes between the different equality strands. We do not doubt that merging organisations to create a new body with a controversial remit at the heart of political debate was a difficult task. Organisational problems and tensions were inevitable but we are not persuaded that the EHRC's implosion in 2009 was unavoidable.

47. When we asked Mr Phillips what, with hindsight, he would have done differently, he said:

I think I would have sought more time to create the Commission. That was something I should have thought more about ... That would have given me more time to work with Commissioners, to get to know them better, to bring them together more.⁸¹

Looking in from the outside, we concur with the view that it would have been desirable for Mr Phillips to devote more time to working with commissioners to help bring the best out of them. The EHRC would undoubtedly have benefited if the talents of those commissioners who resigned had been fully exploited.

48. We are not convinced, however, that the Commission's difficulties would have been significantly less if the launch date had been postponed, as Nicola Brewer suggested. **In our view, merging three equality bodies and developing a strong corporate board for the new body, making use of the expertise and talents of all commissioners, are challenging tasks and we conclude that in the early years of the EHRC's existence this was not done successfully, for which the Chair must bear responsibility.**

The new EHRC board

49. The appointment of EHRC commissioners is governed by Schedule 1 of the Equality Act 2006. No fewer than 10 and no more than 15 commissioners may be appointed and, in addition, the chief executive is a commissioner by virtue of his or her position.⁸² The process for appointing commissioners is led by the Government Equalities Office and is based on open competition.⁸³ The appointment of eight new commissioners was formally announced on 19 November 2009.⁸⁴ In addition to Trevor Phillips (see below) three existing commissioners were reappointed and three more continued in post.⁸⁵

50. The size of the board was an issue identified by the Deloitte review of the board's effectiveness, which reported in December 2008.⁸⁶ It recommended that the number of board members should be reduced to between 10 and 12, in order to help the board operate more cohesively and consensually.⁸⁷ The board accepted this recommendation,

81 Q128.

82 In addition, the 2006 Act provided for the appointment of 3 transitional commissioners, whose terms ended on 30 September 2009.

83 Ev 78-79.

84 Stephen Alambritis, Ann Beynon, Professor Geraldine Van Bueren, Merel Hussein Ece, Jean Irvine, Angela Mason, Michael Smith and Simon Woolley.

85 Kay Carberry, Baroness Greengross and Baroness Prosser were re-appointed. The terms of Morag Alexander, Joel Edwards and Maeve Sherlock have not yet expired and they continued as commissioners.

86 See paragraph 40.

87 *Deloitte report*, p9.

although not unanimously.⁸⁸ Mr Phillips mentioned the reduction in the size of the board in his *Guardian* article on 5 September 2009⁸⁹ but, in the event, the recommendation was not implemented. The Minister said that there were good arguments to retain a larger number of commissioners, suggesting that a larger number was necessary to ensure that commissioners were as broadly representative as possible.⁹⁰ The announcement of the membership of the new board explicitly commented on the relevant experience of each appointee, for example in relation to race, business, and human rights.⁹¹

51. In one respect, however, the Commission remains notably lacking in diversity. Eight Commissioners have links to the Labour Party,⁹² one is an active Liberal Democrat,⁹³ but none has links with the Conservative Party. Trevor Phillips had previously told us that Commissioners were “too narrow both culturally and politically” and the Deloitte report concluded that board representation from across the political spectrum would be desirable.⁹⁴ Ms Harman acknowledged that a political balance was necessary in some organisations but “here there was a different brief, namely a commitment to equality ... particular perspectives and experience were needed and these were the people who fitted that requirement”.⁹⁵ Both the Minister and Mr Rees emphasised that none of those involved in the selection process were made aware of the party affiliations of candidates, although Mr Rees acknowledged that in some cases these would have been obvious.⁹⁶

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

Reappointment of Mr Phillips

53. Trevor Phillips was invited by Harriet Harman MP, the Minister for Equalities, to “consider making himself available to be reappointed to the post of Chair” in autumn 2008.⁹⁷ Mr Phillips received a “satisfactory appraisal” from Jonathan Rees, Director-

88 Qq169-70 and see Ev 70.

89 See paragraph 54.

90 Q241.

91 “Harman: New EHRC Commissioners Appointed”, GEO, 19 Nov 2009.

92 Stephen Alambritis, Ann Benyon, Kay Carberry, Angela Mason, Trevor Phillips, Baroness Prosser and Michael Smith.

93 Meral Hussein Ece.

94 Second Report, Session 2007-08, *The Work of the Committee in 2007-08* (hereafter *Annual Report 2007-08*) Q (14.10.08) 7 and *Deloitte report*, p9.

95 Q243.

96 Qq243-45.

97 EHRC board minutes. 18 Sep 08 (http://www.equalityhumanrights.com/uploaded_files/OurJob/17th_meeting_18-09-08.doc) and Qq213-14.

General of the Government Equalities Office, in November 2008,⁹⁸ and Mr Phillips' reappointment was formally announced on 15 July 2009. Mr Rees described the reappointment procedure as "a perfectly normal process" which was laid out in the guidance of the Office of the Commissioner for Public Appointments.⁹⁹

54. In an article in the *Guardian* on 5 September 2009 which responded to the EHRC's internal difficulties, Trevor Phillips noted that the EHRC board was in the process of being reconstituted and said: "all our non-execs have to compete with other talented people for reappointment by the minister for equalities." The chair and deputy chair of the EHRC were reappointed without there being an open competition. Ms Harman said "I thought that it was important that the chair and vice-chair should be reappointed for the sake of continuity", particularly in view of the departure during the year of the chief executive.¹⁰⁰

55. Continuity of leadership, which was cited by the Minister as the reason for her decision to reappoint Mr Phillips without an open competition, is an important consideration but should have been outweighed by the need to demonstrate publicly that the EHRC was being led by the most talented people available.

56. Our predecessors argued that the EHRC's governance structure should model that of the National Audit Office and the Electoral Commission, to enhance the organisation's independence from Government. They recommended that the Chair of the Commission should be defined in statute as an officer of Parliament and that commissioners should be recommended for appointment by a statutory committee which would include parliamentary representatives.¹⁰¹ We agree with their view. Independence from Government is an important aspect of the Paris Principles, to which national human rights institutions must adhere.¹⁰² **In our view, the reappointment of the Chair and Deputy Chair of the EHRC should on this occasion have been subject to open competition, to help restore confidence in the organisation and its leadership following the well-publicised difficulties the EHRC faced in 2009.**

57. The Minister's decision simply to reappoint Mr Phillips without any parliamentary involvement could undermine the perceived independence of the Commission and put its accreditation as a national human rights institution at risk.

58. We were disappointed that Michael Wills MP, the Human Rights Minister at the Ministry of Justice, had not been involved in the reappointment of Mr Phillips or in the other appointments and reappointments to the EHRC board.¹⁰³ Mr Rees acknowledged that "we did not specifically consult him when it came to reappointment" but said that "all departments were consulted about [Mr Phillips'] performance ... we knew the departmental and ministerial views".¹⁰⁴ In relation to all of the appointments and reappointments, Ms Harman said "a formal consultation process was not required or

98 Q216.

99 Q216 and see www.publicappointmentscommissioner.org/web-resources/resources/29508538572.pdf.

100 Q230.

101 Sixteenth Report, 2003-04, *Commission for Equality and Human Rights: The Government's White Paper*, HL Paper 156, HC 998, paragraph 50 and *Equality Bill*, paragraph 29.

102 See footnote 7.

103 *Annual Report 2008-09*, Qq (2.12.09) 30-34.

104 Q226.

undertaken with other ministers, but in addition to having discussions with ministers in my department I had discussions with ministers outside the department as well”.¹⁰⁵ **Although our strong preference remains for the appointment of EHRC commissioners to be taken out of the hands of ministers, we regret that the Human Rights Minister was not more closely involved in the decision to reappoint the Chair on this occasion. If Ministers are to decide who should Chair the EHRC, the Human Rights Minister should be involved.**

59. The post of EHRC chair was, at our request, added to the list of posts subject to a select committee pre-appointment hearing.¹⁰⁶ Such hearings do not take place in relation to reappointments¹⁰⁷ and, as a result, Parliament was not involved in Mr Phillips’ reappointment nor given notification of the reappointment decision. **We recommend that the appropriate select committees should be informed by the Government whenever the holder of a post subject to pre-appointment hearings is reappointed.**

Terms and conditions

60. The EHRC helpfully provided us with Mr Phillips’ letter of appointment in 2006, which set out his terms and conditions.¹⁰⁸ We understand that no such letter is available at the moment for Mr Phillips’ reappointment, but Mr Rees said he had been reappointed for three years from 2009 and would continue to work for three and a half days per week for an annual salary of £112,000.¹⁰⁹

61. Before October 2007, Mr Phillips worked full-time for the EHRC but since then he has worked for three and a half days per week.¹¹⁰ We were sent correspondence between Government departments obtained under the Freedom of Information Act 2000 by a journalist, Mira Bar-Hillel, which suggested that Mr Phillips asked to work four days per week.¹¹¹ A civil servant in the Cabinet Office’s Propriety and Ethics division wrote that it was:

not clear whether the current Chair is working on a full-time basis. If this is the case, I think we would query this. On average, non-exec Chairs (of large public bodies) probably serve 2/3 days per week. This should be sufficient. More than this risks creating conflict between the Chair and CEO as it can encourage the Chair to become involved in the day-to-day management of the body (which is, of course, the responsibility of the CEO).¹¹²

Mr Phillips said that he had been asked by the Government to work four days per week,¹¹³ but Mr Rees denied this.¹¹⁴ Mr Phillips has subsequently explained that:

¹⁰⁵ Q227.

¹⁰⁶ Liaison Committee, First Report, 2007-08, *Pre-appointment hearings by select committees*, pp20-21.

¹⁰⁷ Cabinet Office, *Pre-Appointment Hearings by Select Committees: Guidance for Departments*, Aug 09, paragraph 2.3.

¹⁰⁸ Ev 79-82.

¹⁰⁹ Q234.

¹¹⁰ Ibid.

¹¹¹ Ev 82-85.

¹¹² Ev 83.

¹¹³ Q160.

In advance of my reappointment in July, I did have discussions as to whether the requirements of the post would entail my giving further time to commission work. In the event Ministers asked me to continue on a 3½ day a week basis which I was happy to do.¹¹⁵

The position of chief executive

62. Nicola Brewer was appointed as chief executive in March 2007, having previously been a senior civil servant at the Foreign and Commonwealth Office. She announced her resignation on 20 March 2009 in order to take up the position of UK High Commissioner in South Africa, leaving her post in May 2009.

63. Some of the former EHRC commissioners suggested that there had been tensions between Dr Brewer and Mr Phillips. Sir Bert Massie, for example, said that “it was known that the Chairman and chief executive did not have the most cordial of relationships”.¹¹⁶ Kay Hampton said:

I have been through two other occasions where chief executives could not take the interference in the behaviour of the Chairman and had resigned and I could see it happening again in the Commission, so when this chief executive resigned I decided that it was time for me to go.¹¹⁷

64. Clarifying roles and responsibilities was a central theme of the Deloitte review of the EHRC board.¹¹⁸ The Corporate Governance Code of Practice and Conduct, agreed in May 2009, specifies eleven aspects of the role of Chair and ten aspects of the role of Chief Executive.¹¹⁹ This new arrangement has yet to be put to the test, however, because the EHRC has operated without a chief executive since Dr Brewer’s departure. Neil Kinghan has served as interim director-general on a temporary contract in her place. Initially appointed until the end of January 2010 we now understand that he is under contract until the end of September 2010.¹²⁰ Mr Kinghan is paid £1,000 per day and works four days per week.¹²¹

65. Mr Rees told us that the post of chief executive was advertised in summer 2009. No indication of salary was given at that time, but he thought that candidates would expect to earn a salary similar to that earned by Dr Brewer, around £185,000 per annum plus bonus. The recruitment competition reached a late stage, with three potential candidates identified, when it was suspended following the announcement in December’s Pre-Budget Report that most public sector salaries over £150,000 would from now on require the

114 Qq 236-37.

115 Ev 63.

116 Q1, also see Ev 88, paragraph 8.

117 Q1.

118 *Deloitte report*, p7 and Appendix H.

119 Paragraphs 9.2 and 11.2 (http://www.equalityhumanrights.com/uploaded_files/OurJob/corporate_governance_code_of_practice_and_conduct.pdf).

120 Public Accounts Committee, oral evidence 2 Dec 09, HC124-i, (hereafter *PAC oral evidence*) Q80 and email from Ellie Rose, EHRC, to the Commons Clerk, 27 January 2010.

121 Q256 and *PAC oral evidence* Q67.

approval of the Cabinet Secretary. A review of senior salaries, to be undertaken by Professor Bill Cockburn, was announced at the same time and is due to report at the time of the 2010 Budget. Ms Harman said that a decision on the salary to be offered to the chief executive of the EHRC would be taken in the light of the outcome of the Cockburn review.¹²² Ms Harman said that “the likely scenario is that the commission will have a new chief executive at a considerably lower level of pay than the old chief executive, which is cognisant of the times and is the right approach to take”.¹²³

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

Qualification of the EHRC’s accounts

67. The Comptroller and Auditor General qualified the EHRC accounts for the period from 18 April 2006 to 31 March 2008, issuing a short report on the reasons for his decision.¹²⁴ He drew attention to the employment as contractors by the EHRC of seven staff who had received voluntary early severance and voluntary early retirement payments from the former CRE on the basis that they would not transfer to the new body. The engagement of these staff by the EHRC required Treasury permission, which was not forthcoming.

68. This issue was examined by the Committee of Public Accounts in oral evidence with Messrs Phillips, Rees and Kinghan on 2 December 2009. Trevor Phillips said:

When we had to open our doors on 1 October 2007, we were desperately short of senior management. I think we were starting with fewer than half of our director level staff. The Chief Executive and I discussed how we would fill the skills gap, and amongst the things she wanted to do was to bring back some of the senior officers who had worked for the legacy commissions and who had worked on the transition team into the new Commission. This was not, as far as I knew, a novel arrangement ... the manner in which we did it, I regret to say, caused our accounts to be qualified.¹²⁵

69. In her memorandum to us, Nicola Brewer said:

I did not re-hire the ex members of the CRE brought into the transition team before my arrival, but, like other members of that team, left them in place until 1 October

122 Qq 256-75.

123 Q273.

124 C&AG report on the qualification of the Equality and Human Rights Commission’s accounts, 18 June 2008, available at http://www.nao.org.uk/publications/0809/ehrc_accounts.aspx.

125 PAC oral evidence, Q5.

2007. I then re-engaged the ex members of the CRE in the transition team for a temporary period because there was no-one else to fill those important jobs and the EHRC was still being 'built up'.¹²⁶

She went on to state that the Treasury's refusal to agree to the re-engagement of the former CRE staff was "contrary to previous expectation",¹²⁷ a point subsequently disputed by Jonathan Rees who suggested that the difficulty lay in the rates of pay being offered to the re-engaged staff.¹²⁸ Dr Brewer also said that she realised in May 2007 that the EHRC would not be ready for a full launch in October 2007 and that she had discussed delaying the launch date with Trevor Phillips. She wrote that "it was concluded that 're-phasing' the programme – essentially, continuing to build up the EHRC after its 'soft' launch in October – was the better option".¹²⁹ Mr Phillips has since conceded that delaying the launch of the EHRC might have been preferable.¹³⁰

70. The re-engagement of the former CRE staff was raised with us by the former commissioners, particularly in memoranda submitted by Professor Hampton.¹³¹ She alleged that "at least 5 of the CRE staff concerned joined the transition team after Trevor took over as chair" and that we and the Committee of Public Accounts had been misled on this issue.¹³² The thrust of her argument was that Mr Phillips had ensured that certain CRE staff to whom he was close had been moved to the transition team and then the EHRC without due process being followed and that this had led to the qualification of the organisation's accounts. She also made several other allegations relating to the management of the CRE and the setting up of the EHRC which, in her view, established "a pattern of autocratic leadership style, poor governance and questionable practices" on the part of Mr Phillips. In addition, as we have previously noted, Ben Summerskill announced his intention to resign as a commissioner because, as Chair of the EHRC's Audit and Risk Committee, he did not think the Commission was being led with probity.¹³³

71. Professor Hampton's allegations have been responded to in detail by several of the people to whom they relate. We have published the memoranda with this report, subject to limited redaction where sensitive personal information is involved.¹³⁴ Mr Phillips said:

Staff were brought across in equal numbers from each of the legacy commissions to work in the transition team, on the basis of the needs of the (then) CEHR. Responsibility for transferring staff to the transition team lay with the sponsoring department [the Department for Communities and Local Government], not the EHRC. However, it is misleading to suggest that staff were brought into the transition team without due process; most posts were filled through open internal

126 Ev 67, paragraph 5.

127 Ibid, paragraph 12.

128 Ev 65 and see *PAC oral evidence*, Q9.

129 Ev 67, paragraph 10.

130 *PAC oral evidence*, Qq16, 49 also see Q13.

131 See also Sir Bert Massie, Ev 88, paragraph 7.

132 Ev 54.

133 See paragraph 34.

134 Ev 54-66.

recruitment processes, a process which had not been in place prior to my appointment, but which I insisted upon from the start.

There is a suggestion that staff who worked closely with me at the CRE were brought into the new Commission at my request. However, as Dr Brewer clearly states in her letter, these appointments were made by her as Chief Executive, not by me. I repeat the points I made in the oral evidence session, I did not decide who should transfer to the new Commission.¹³⁵

72. The precise circumstances in which the EHRC came to engage staff who had benefited from severance and early retirement payments from former commissions, on the basis that they would not work for the EHRC, without Treasury permission, are set out in the National Audit Office report and are currently the subject of an inquiry by the Committee of Public Accounts. We await the report of our sister committee with interest. At the very least, this episode has demonstrated that appropriate procedures for controlling expenditure were not in place in 2007 and we note that Mr Rees told us that improvements have now been made.¹³⁶

The Equate consultancy

73. A further concern was that some of the former CRE staff re-engaged by the EHRC were involved with Dignity Management Consultants, an external consultancy with links to Equate, a consultancy firm with which Mr Phillips was connected.¹³⁷ Mr Phillips explained that he had set up Equate when he had become Chair of the EHRC but that it had done only one piece of work and he had stood down as a director on 1 October 2008 and “subsequently reduced my interest in it to something which I think is negligible actually”.¹³⁸ Dignity was one of several individuals and firms to which Equate would sometimes refer work.¹³⁹ Mr Phillips said he had received advice from Dr Brewer, the EHRC’s lawyers and his own lawyers about the potential conflict of interest between chairing the EHRC and his involvement with Equate and that his decision to reduce his interest in Equate “was the effect of my own consideration”.¹⁴⁰

74. We also asked Mr Phillips about references on his website to the Equate consultancy. He said

“I have to confess the website set up in my name is not one I look at all. If it still has that connection [to Equate] ... then I will look at it now”.¹⁴¹

75. Dr Brewer told us that “on several occasions over the second half of 2008, my advice to the Chair was to stand down from the company; periodically after that we continued to

135 Ev 64.

136 Q239.

137 Qq147, 150.

138 Qq 140, 142, 144.

139 Q150.

140 Qq 141, 143.

141 Q145.

discuss implementation of his decision as it affected the Equate website”.¹⁴² Mr Rees said that the “issue of Trevor’s consultancy work with Equate” arose in June 2008 and:

At that stage, I wrote to the chief executive and chair of the Commission’s audit and risk committee, Mr Summerskill, to ensure that their processes were in hand ... we all agreed that the best way forward in this case was to refer it to the Cabinet Office and the director of propriety and ethics. She had a discussion with Mr Phillips and the conclusion was that in this case the best way forward was for Mr Phillips to step down from his controlling share in Equate. That has happened.¹⁴³

76. We welcome the fact that Mr Phillips has now relinquished his controlling share in the Equate consultancy. It would appear, however, that it took some time before Mr Phillips was persuaded to take the action necessary to address the perception of a conflict of interest caused by his involvement with Equate. We regret that he did not terminate his involvement with Equate when the issue was first raised by Dr Brewer.

77. We note that Mr Phillips’ website (www.trevorphillips.eu) begins by stating that “Trevor Phillips is the co-founder of the Equate Organisation, the social change consultancy” and includes a link to the Equate website, which is currently closed for reconstruction. **We again suggest to Mr Phillips that his personal website should be amended to remove references to the Equate consultancy.**

Departmental responsibility

78. Departmental responsibility for the EHRC rests with the Government Equalities Office, a free-standing ministerial department currently headed by Harriet Harman MP, which was set up in 2007. Prior to that, during the establishment of the EHRC, ministerial responsibility rested at different times with several departments, including the Department for Communities and Local Government. Trevor Phillips told us in 2008 that there had been four different sponsor units for the EHRC, but “we are okay where we are right now”.¹⁴⁴ He went on to suggest that it would be more helpful if the Government included a Minister for Equality and Human Rights, rather than the current situation in which ministerial responsibility is split between the GEO and the Ministry of Justice.¹⁴⁵

79. Ms Harman said the EHRC had been “itinerant” but “we have a strong and self-confident Government Equalities Office which puts a very high priority on liaising with the [EHRC]”. Although the GEO was small, it did “not ... lack reach across Whitehall”.¹⁴⁶ Mr Rees emphasised the extent to which the GEO worked closely with other relevant departments, including the Ministry of Justice.¹⁴⁷

80. In our view, equality is a human right and the division between Government departments in responsibility for equality and human rights matters is illogical. We have

¹⁴² Ev 68, paragraph 14.

¹⁴³ Q250.

¹⁴⁴ *Annual Report 2007-08*, Q (14.10.08) 28.

¹⁴⁵ *Ibid*, Q (14.10.08) 30.

¹⁴⁶ Qq222, 225.

¹⁴⁷ Q222.

already noted an example of a key decision affecting human rights policy-making in the UK – the reappointment of Mr Phillips – being made without the involvement of the Human Rights Minister. Although the EHRC’s sponsoring department is one of the smallest, it has a wide reach across Whitehall. Impact and reach are essential for the sponsoring department. There are other potential candidate departments to sponsor EHRC: Communities and Local Government which has responsibility for race equality and community cohesion is one; Work and Pensions, responsible for disability and older people, is another; Justice, responsible for human rights, has a strong claim. However in the first two of these departments, equality and human rights risk being second order issues. The last poses the risk that human rights are seen as the preserve of the law and restricted to legal argument. The Government Equalities Office is at present best placed to ensure that a human rights culture is embedded throughout government and all public bodies and a Minister for Equality and Human Rights should be located there.

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

4 Conclusion

82. It is regrettable that our first report into the work of the EHRC since the body was set up should have to refer to the resignation of a number of highly-respected commissioners who have made serious allegations about the way in which the organisation is led. These events have damaged the reputation and standing of the EHRC at a time when it needs to establish its credibility and show members of all political parties, and the public at large, why the UK needs a dynamic and effective human rights institution.

83. Although there are recent signs of improvement, we are very disappointed to conclude that the EHRC has so far failed to fulfil its human rights mandate and that its current human rights strategy is in need of substantial enhancement.

84. We previously recommended that the UK needed a national human rights institution to help advance human rights and develop a human rights culture, throughout our public services and beyond. We remain absolutely committed to this vision, but the EHRC now needs to deliver.

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

Conclusions and recommendations

Human rights vision

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

Human rights strategy

2. The publication of a human rights strategy is evidence that the EHRC is seeking to approach its responsibilities for human rights matters on a more systematic basis than hitherto; but, in our view, the Commission is not yet fulfilling the human rights mandate set out in the Equality Act. (Paragraph 26)
3. We agree entirely with the strong criticisms of the human rights Minister that the EHRC's human rights strategy is "too full of aspiration and too light on what I would call concrete goals that can be delivered within a specified time frame". (Paragraph 27)
4. An important next step will be for the human rights strategy to be redrafted to make it, as the Minister said, less aspirational and more concrete. We recommend that the EHRC redraft its human rights strategy so that it is more focused and includes timescales, milestones and indicators of success. A revised strategy should clarify how a stand alone human rights strategy relates to the EHRC's overall strategy for 2009-12. The Commission should ask for public views on the existing strategy now and aim to launch its revised strategy later in 2010. (Paragraph 28)

Leadership of the Commission

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

The new EHRC board

6. We have no strong view on the size of the EHRC board and can see the advantages of a larger board, if it can be led effectively. We are concerned, however, that the Minister has not taken action to broaden the political background of commissioners, in line with the Deloitte recommendation. The EHRC operates in a political environment, dealing with issues which are often the focus of national debate. Commissioners should include people affiliated to all of the main parties, as well as

those without party affiliations. In our view, the Commission's credibility across the political spectrum would be enhanced if it included at least one commissioner with links to the Conservative Party. (Paragraph 52)

Reappointment of Mr Phillips

7. In our view, the reappointment of the Chair and Deputy Chair of the EHRC should on this occasion have been subject to open competition, to help restore confidence in the organisation and its leadership following the well-publicised difficulties the EHRC faced in 2009. The Minister's decision simply to reappoint Mr Phillips without any parliamentary involvement could undermine the perceived independence of the Commission and put its accreditation as a national human rights institution at risk. (Paragraphs 56 and 57)
8. Although our strong preference remains for the appointment of EHRC commissioners to be taken out of the hands of ministers, we regret that the Human Rights Minister was not more closely involved in the decision to reappoint the Chair on this occasion. If Ministers are to decide who should Chair the EHRC, the Human Rights Minister should be involved. (Paragraph 58)
9. We recommend that the appropriate select committees should be informed by the Government whenever the holder of a post subject to pre-appointment hearings is reappointed. (Paragraph 59)

The position of chief executive

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

The Equate consultancy

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

Departmental responsibility

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

Conclusion

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

Formal Minutes

Tuesday 2 March 2010

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	Dr Evan Harris MP
Lord Dubs	Fiona Mactaggart MP
Baroness Falkner of Margravine	Mr Virendra Sharma MP
Lord Morris of Handsworth	Mr Edward Timpson MP
The Earl of Onslow	

Draft Report (*Equality and Human Rights Commission*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 85 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Thirteenth Report of the Committee to each House.

Ordered, That the Chairman make the Report to the House of Commons and that Lord Dubs make the Report to the House of Lords.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 10 February and 20 October in the last session of Parliament and on 24 November, 15 December, 12 January and 26 January.

[Adjourned till Tuesday 9 March at 1.30pm.]

Witnesses

Tuesday 20 October 2009

Page

Professor Kay Hampton, Professor Francesca Klug OBE, Sir Bert Massie CBE and **Ben Summerskill OBE**, former Equality and Human Rights Commission Commissioners

Ev 1

Tuesday 10 November 2009

Trevor Phillips OBE, Chair, **Kay Carberry CBE**, Commissioner, **Jeannie Drake CBE**, Commissioner and **John Wadham**, Group Director, Legal, Equality and Human Rights Commission

Ev 19

Tuesday 15 December 2009

Rt Hon Harriet Harman QC MP, Leader of the House of Commons, Lord Privy Seal and Minister for Equality and Women and **Jonathan Rees**, Director-General, Government Equalities Office

Ev 40

List of written evidence

1	Letter from the Chair of the Committee to Trevor Phillips OBE, Chair, EHRC, dated 5 November 2008	Ev 52
2	Letter from Trevor Phillips OBE, Chair, EHRC, dated 26 January 2009	Ev 52
3	Letter from Trevor Phillips OBE, Chair, EHRC, dated 22 October 2009	Ev 53
4	Letter from the Chair to Trevor Phillips, dated 2 November 2009	Ev 54
5	Letter from Professor Kay Hampton, dated 11 November 2009	Ev 54
6	Email from Professor Kay Hampton, dated 10 December 2009	Ev 56
7	Letter to Trevor Phillips OBE, Chair, EHRC, dated 16 December 2009	Ev 58
8	Letter from Neil Kinghan, Interim Director-General, EHRC, dated 6 Jan 2010	Ev 58
9	Letter from Neil Kinghan, Interim Director-General, EHRC, dated 6 Jan 2010	Ev 58
10	Letter from Farzana Hakim, dated 13 January 2010	Ev 59
11	Letter from Colleen Harris, dated 13 January 2010	Ev 61
12	Letter from Trevor Phillips OBE, Chair, EHRC, dated 19 January 2010	Ev 63
13	Letter from Jonathan Rees, Director-General, Government Equalities Office, dated 20 February 2010	Ev 65
14	Letter to Jonathan Rees, Director-General, Government Equalities Office from Peter Housden, Permanent Secretary, Department for Communities and Local Government, dated 20 February 2010	Ev 65
15	Letter to Trevor Phillips OBE, Chair, EHRC, dated 17 November 2009	Ev 66
16	Letter from Trevor Phillips OBE, Chair, EHRC, dated 24 November 2010	Ev 66
17	Letter to Dr Nicola Brewer, High Commissioner, British High Commission, dated 17 November 2009	Ev 66
18	Dr Nicola Brewer, High Commissioner, British High Commission	Ev 66
19	Baroness Campbell of Surbiton DBE	Ev 68

20	British Humanist Association	Ev 71
21	British Institute of Human Rights	Ev 72
22	Equality and Diversity Forum (EDF)	Ev 75
23	Equality and Human Rights Commission (appointment of commissioners)	Ev 78
24	Trevor Phillips' appointment letter, dated 14 November 2006, supplied to the Committee by the EHRC	Ev 79
25	Correspondence supplied to <i>Evening Standard</i> journalist Mira Bar-Hillel by the Government Equalities Office in response to a Freedom of Information request	Ev 82
26	European Network Against Racism (ENAR)	Ev 85
27	Liberty	Ev 86
28	Lord Low of Dalston	Ev 86
29	Baroness Nuala O'Loan	Ev 87
30	Sir Bert Massie CBE	Ev 87
31	Public and Commercial Services Union	Ev 90
32	Race on the Agenda	Ev 92

List of unprinted evidence

The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Emails from Ellie Rose, Head of Parliamentary Affairs, EHRC, to the Commons Clerk of the Committee dated 14 December 2009 and 27 January 2010.

Oral evidence

Taken before the Joint Committee on Human Rights

on Tuesday 20 October 2009

Members present:

Mr Andrew Dismore, in the Chair

Lester of Herne Hill, L
Morris of Handsworth, L
Onslow, E

Dr Evan Harris
Mr Richard Shepherd
Mr Edward Timpson

Witnesses: **Professor Kay Hampton, Professor Francesca Klug OBE, Sir Bert Massie CBE and Ben Summerskill OBE**, examined.

Q1 Chairman: Good afternoon everybody and welcome to this evidence session of the Joint Committee on Human Rights on the work of the Equality and Human Rights Commission. We are joined by Professor Kay Hampton, Professor Francesca Klug, Sir Bert Massie and Ben Summerskill. Welcome to you all. Does anybody want to make any opening remarks or shall we go straight in? Perhaps I can start with you, Kay, and I am going to ask the same question of everybody. Can you explain why you decided to resign from the Commission?

Professor Hampton: Yes I suppose more than any of my colleagues around the table today I worked closely with Trevor for longer, for four years at the Commission for Racial Equality first and then at the Human Rights Commission. It reached the stage where we were terribly unhappy, particularly myself, in terms of some of the issues relating to governance, mainly conflicts of interest, the manner in which the board was being run, the inability for board members to participate fully in the discussions. It culminated really for me, the most important aspect, was the reappointment of ex-CRE staff who had taken redundancy packages. It was something I had actually challenged him on 18 months prior to resigning, in fact while I was at the Commission for Racial Equality, and he continued to deny any knowledge of it which I thought at that stage was terribly unprofessional of somebody to be the Chairman of an organisation that needed to lead by example. Whether we like it or not, whether there is a real conflict of interest or not, I think public perception is very important when you are running a Commission like that, and everybody looks to the reputation of the Commission by its leadership and I was terribly unhappy with the leadership. I have been through two other occasions where chief executives could not take the interference in the behaviour of the Chairman and had resigned and I could see it had happening again in the Commission, so when this Chief Executive resigned I decided that it was time for me to go. My own credibility was on the line. People were asking me questions about the body which I could not defend any longer, so that is why I resigned when I did.

Mr Summerskill: I should just say first of all that I was and remain completely committed to the vision of the Commission and I know that some of the

people here have been supportive of that over a number of years. The key reason in the end why I resigned was that as chairman of the Commission's Audit Committee I simply felt unable to offer appropriate assurance to the National Audit Office that the Commission was being led with probity. My understanding is that the National Audit Office were understanding of my having taken that view, having worked quite closely with them over the last couple of years. The bottom line is that from my perspective it comes down to leadership, although I would absolutely stress that I do not regard this as an issue of personalities. I think the reason, certainly from my perspective, I am completely concerned about leadership and I am often quite managerialist is precisely because I think it is important that public bodies deliver what they were set up to deliver.

Professor Klug: It is hard for me not to reflect sitting here with all of you the long journey that I have personally been on in this with many others, including some people notably in this room, to try and persuade the Government that we needed a Human Rights Commission, and subsequently to work with Ben on the taskforce and steering group to help develop its powers, duties and strategic visions. I have to say in this entire long journey I never believed the time would come when I would be sitting before you answering your questions as to why I have resigned, so it is a very sad day for me. It is also the very first time I have spoken about this publicly. All of us were very concerned, as Ben has just said, not to damage the body because we all believe strongly in the original vision for it and there are many, many principled and hard-working Commissioners and staff who we are very mindful of when giving this evidence today, but most recently the Chairman has been himself speculating publicly about why we resigned. I think just a couple of weeks ago there was a report about what he said at the Tory Party conference and if that report is accurate I feel that it is necessary to put the record straight. The Chairman does not need to speculate as to why we have resigned; we all raised the issues we are raising before you many times and I personally first told him I was minded to resign in October 2008 at a private meeting where I went over a number of issues. Subsequently I repeated this at other one-to-one meetings and various aspects of it at the board and

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really the only reason why I personally did not resign sooner was because I made a commitment to the remarkable chair of the Human Rights Inquiry, Nuala O'Loan, who I understand has also written to you with evidence, that I would not resign until we had finished the inquiry which in the end stretched over into July. Also I have to say at moments when I considered resigning friends, I would say, as well as colleagues on the board persuaded me at various times to keep to that commitment. I think maybe it would be helpful if I just read out a paragraph from a letter I sent to the Chairman subsequent to resigning where I set out all the issues that I had raised with him and at the board previously in one place, given that I am mindful of time. "The difficulty in having any substantial influence or governance or strategy as a Commissioner whilst rightly being held accountable for such matters; lack of knowledge about crucial policy decisions the Commission was taking until shortly before they were publicly announced; problems in communicating with each other on the board in an open and transparent way; the perceived conflict of interest concerning the Chairman's private equality consultancy," and, as Ben said, this is not a question of personalities in any way; just a question of appropriate behaviour in public life, as I understand it and as has been advised to me—"Significant expenditure on external consultants despite our extensive staff numbers." I asked for figures for this many times as a member of the Audit Committee, as Ben will concur, and I was never able to be given a full account. "Along with other matters of probity, and, above all, the fundamental steps that I perceive to be necessary to begin to fulfil our human rights mandate." I know we are going to come on to that. I feel that there was a culture that we all contributed to, and I do not exempt myself from this but it is one I felt very uncomfortable about, which is a kind of culture of averting one's eyes. As Tom Paine famously said: "A long habit of not thinking a thing wrong can give it a superficial appearance of being right." As I see it, the kind of issues I raised do bring to bear the Nolan principles of selflessness, accountability, honesty, integrity and openness. The bottom line for me, frankly, is if the Chairman, who has many, many talents (there is no question about that) had decided to perhaps use those talents elsewhere, as he advised many of us he would when we were appointed that this would be for one term, I personally would have had no difficulty or problem with reapplying to be a Commissioner because I felt there was a lot more work to be done.

Sir Bert Massie: I agree with my colleagues and their reasons. For me it was also a long decision. The straw that broke the camel's back was the reappointment of the Chairman. At that point I felt I could do nothing for the Commission and it was a waste of my time staying. I was anxious from the beginning about the disability programme and the human rights programme but that is not the real issue over which I resigned. The issue over which I resigned was corporate governance. When this Commission was first mooted I was not an

enthusiastic supporter of it at the Disability Rights Commission, and that is on the record, but the Disability Rights Commission decided as the debate unfolded that we would support it. The Commission collectively asked me to go on as a transitional Commissioner. When I went on as a Commissioner I went there not to destroy it and not to be difficult but to try and make it work. Parliament had given us the Disability Committee and there had been concessions and we thought this Commission could at least deal with human rights in a way the DRC could never have done and there could be a real plus for disabled people as well as for others. I went in very positively. Very early on the first governance document we received was a long document called Standing Orders and essentially it asked us to give all of the powers of the Commissioners to the Chairman, so I objected and there was a running battle over months, in fact, the final governance document was only agreed in May this year, trying to get the power balance right within the Commission so the Commissioners could actually play their role. I found it extremely disturbing that we could not function as Commissioners. Our skills were not being used, our expertise was not being used and we could not influence the agenda. Then certain other issues happened which distressed me enormously. It was known that the Chairman and Chief Executive did not have the most cordial of relationships. We thought we had to have some investigation to try and get the thing operating and a number of us wanted an internal group set up to try to get this right. Instead we went out to external consultants. I said what their report would say before they wrote it. When they reported at the end of 2008 they reported exactly what we had predicted. It had missed all the big issues and picked out issues that were not that critical and it was entirely predictable, so again we could not improve governance. When the Chief Executive left, the process proposed to replace the Chief Executive met no standards of public life at all, so there was another battle to get the post advertised correctly externally, et cetera. That eventually happened but we should not have been having those battles. I was there to promote human rights and to promote equality. I cannot tell you how much energy I squandered travelling back from Liverpool to London all the time for simple issues of corporate governance which were so basic. There was speculation during the summer that a new Chairman might be appointed and I was encouraged by that. When that proved to be false, I just thought there is nothing more I can do. I have tried everything to turn this into a solid organisation which can serve the people for whom it was created. I felt at that point I could no longer even pretend to be doing that so I resigned.

Q2 Chairman: I think you have all given a pretty clear picture about your concerns over governance and financial probity and those issues, but I would like to try and move on a bit and look at the direction of travel of the Commission which is really what I think we are concerned about. If I can start with you,

Bert, in March you wrote that you were concerned about the direction of travel at the EHRC and that work was not going as fast as it could do. Can you tell us what you meant by that?

Sir Bert Massie: Yes, I had raised all these issues internally of course and when I raised them internally I was ignored. I got the Chairman's attention if I raised them externally which is where that quote comes from. You should not have to operate in that way. The Commission really has been very sluggish. If you look at what it has been successful at, it has done quite a lot on sexual discrimination and on gender issues and has done some good work there. If you look at disability, which clearly was one of my interests, the Disability Rights Commission bequeathed it a full disability agenda most of which has not been followed forward. I said time after time we needed to put more resources into disability instead of just one or two people. Admittedly some of the legal team were doing some, et cetera, but we were not developing policy and we were not following things through. In fact, this work was being downgraded. I will give you one example of this. One of the requirements of the current legislation which was passed in the Equality Bill is that things should be accessible to disabled people including websites. Early in the Commission's existence I was asked to write an article for them on accessible websites because nobody else in the Commission knew anything about it. That is fine; I wrote an article. In the article I wrote: "For people who break this rule the Commission will enforce the law." I had a week's argument to get the Commission to accept that sentence that the Commission would enforce the law. I was told this was softly-softly, we are not here to enforce the law. This is from an equality commission. I could not even put in an article. Eventually I said I will publish this article myself and I will make the point that this is the bit you could not read previously, so of course the Commission then accepted it. I should not have been having that battle. There is so much the Commission could have been doing. There are some excellent people at the Commission.

Q3 Earl of Onslow: Can I interrupt on that. You said you had a week's argument to include the sentence to enforce the law. With whom were you arguing? Were you arguing with the Chairman?

Sir Bert Massie: I was arguing with a senior member of staff. This was not the Chairman, it was a senior member of staff who was reflecting the view of the Commission that it should be softly-softly, and I was saying Parliament has passed a law, the DRC have done work on it; we should be enforcing it. You can look right through on disability where there are weaknesses. The Commission did one good report prepared mostly by Baroness Campbell called "From safety net to springboard". You will be pushed to find any publicity for this at all. It was done and it was dismissed. It was a good piece of work, a human rights approach to social care, exactly what the Commission should be doing and

exactly what the Commission should be pushing. It would help the country. Forget it. We have published it; we now forget it. So it was the frustration that I could not get resources allocated to disability or to human rights. Resource was always going elsewhere. If you look back now the Commission had been going in shadow form for a year and in full form for two years. Whenever I went public and criticised them on disability activity publicly, there was a flurry of disability activity and since I resigned there has been another flurry. It will not last. It is just a show.

Q4 Lord Lester of Herne Hill: I want to explore whether that is fair because you are suggesting that the Commission has been reluctant to enforce the law. Can you give any real example of actual cases where an attempt was made to do so? I ask the question because of course the Commission has supported a number of important test cases all the way through.

Sir Bert Massie: Indeed.

Q5 Lord Lester of Herne Hill: I should declare an interest as I was instructed by them in a case on age discrimination, so I just wonder where this is coming from. I can understand you had an argument with a member of staff but in terms of actual facts about the situation, could you explain it to us?

Sir Bert Massie: Yes indeed I can, Lord Lester. I was a member of the Legal Committee of the Commission and we did take quite a lot of legal cases. My point is you do not enforce the law by simply waiting for people to come to you and take a case. You see where the law is not being exercised and you initiate things and that is what we were not doing. We were reacting but we were not initiating. We all know the Government is doing a lot on websites now and as an equality commission it should be pushing for access. It was just one issue. There was a whole range of issues where when I go round talking to various people they all say, "What is happening?" There is no enthusiasm for it any more. There are people on the payroll of the Commission who are good and it could be retrieved and the Commission could yet deliver its function, but certainly on disability it has not and I felt that very strongly.

Q6 Chairman: We can come back to some of the points about the direct approach. What I am trying to get at the moment is a general picture of the direction of travel and whether it is moving in the right direction or it is moving fast enough. We will come back to some of the detail about the underlying strategic approach. Francesca, do you want to comment on the direction of travel and whether it is moving fast enough? Are there any particular examples you can give?

Professor Klug: One of the ways that the Commission expresses its mission is the use of the word "fairness". I know that there has been a lot of discussion both externally and internally about that term. I think it is a fine value and it is also sometimes extremely appropriate as a communication tool. I

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must say communication skills were well-represented in the body at the leadership level and quite often that would be perhaps a dominant concern. I cannot argue with the fact that fairness is a term that most people connect with, but I do not think it is a substitute for strong policy and I do not think it is a substitute for standards or indeed law enforcement. I would agree with Lord Lester—and I was also a member of the Legal Committee with Bert—that from the inside it felt to me like we had a reasonable legal strategy and were taking some hard and important cases and intervening in human rights cases where we had no other powers other than judicial review. I have to say that was not the feedback I used to get from lawyer friends of mine. Wherever I would go I would sometimes wish to put a brown envelope on my head because I would be lobbied so hard about this. However, from the inside I would concur with Lord Lester. Taking the legal enforcement powers aside, I am not sure that we have managed to communicate with the British people what we actually stand for. If I look back on the mission that you set out in this Committee for the body, and I did prepare for this evidence session, and if there is time I would be glad to read some of it out, I do not think we have communicated that championing of the values of equality and human rights as well as responding slightly haphazardly to particular issues at particular times. There are areas like gender equality where I think we have done quite well, but I do not think we are coming across with the holistic message we were set up to do. The Commission is a regulator. I agree with that description and it is a regulator first and foremost. I think those of us who spent many years trying to build a vision for the body saw it as a body with the powers for smart regulation, not just, as Bert said, hard-headed regulation responding to individuals coming for legal support but regulation that means that we encourage public authorities, and indeed private bodies where appropriate, to understand what it is they need to do to comply with and indeed champion and understand, the value of equality and human rights in all its myriad forms. We have hardly begun that work and fairness is sometimes a substitute or a euphemism for definite standards of equality and human rights which we have not done a great deal to enhance, in my personal opinion.

Mr Summerskill: In response to the direction of travel question, I do not have a difficulty saying that I think the direction of travel is correct. The issue is whether we are travelling via the stopping train or the inter-city. The reason that matters to me—and I am sorry if I make another managerial observation—is I do believe very strongly that a public body with a budget of more than £60 million a year should be doing significantly more. In my day job we have a rule which may not be known to public servants of being prepared to look anyone in the face who has made a donation to our charity and explain exactly what we have done with their money, whether it be £5 or £20,000, and my worry at the Commission is that that sort of focus on delivery has not existed. My clear view—and I am crystal clear

about this—is that at the end of the day if there is not sufficient capability at the very top of the Commission then you will not deliver the Commission's priorities and objectives. People can say that the chair of a FTSE 100 company is merely a part-time factotum. The bottom line is it is the chair of a FTSE 100 company who sets the direction of travel but also is clear about the speed at which an organisation is expected to deliver. That sort of impetus has been missing in the Commission's two-year history.

Professor Hampton: I have to say this was one of the most unique experiences of my life in terms of being a non-executive because, as far as I am concerned, there is nothing wrong with the structure. I disagree totally with Harriet Harman that we got the structure wrong. There were colleagues of mine who dedicated almost three years of their time coming from Scotland, Wales and all over the country to advise on the structure of this body. It is almost like blaming the tools really. There is nothing wrong with the structure. There is nothing wrong with the staff. We inherited very highly skilled staff from three of the previous bodies and then employed even more. The whole idea was to learn from the existing three Commissions and to build on the best. As a transition Commissioner I was brought in to ensure that the 40-odd years of work that we did at the Commission for Racial Equality was carried on. Love it or hate it, and we were not perfect all the time, we made some real, phenomenal movement in a direction that is unprecedented in any other European country. I feel really saddened that we now have this body that has at its head somebody who was fundamentally opposed to it, not because of some of the reasons that Bert gave where maybe our areas of work would not be promoted or anything like that, but here was somebody who actively held back the race sector for which I am really a champion in many ways and discouraged them from becoming part of the discussions in the three years preceding because he did not quite get human rights. He could not understand how human rights could achieve everybody's equality because equality is fundamental to human rights. To get somebody like that to lead on this body, first of all, somebody who was so negative to the body and its formation, and who did not understand human rights, is almost like getting a lawyer to do surgical operations in a theatre. You would not get somebody who is not qualified to do the job in any other business. Why equality? It reinforces the idea that anything goes and you can get second-best for equality and human rights because it is a side issue. To some of us it is very central to society. Fundamentally what you need in an organisation like that is somebody to lead it who is credible and somebody who is knowledgeable as well. Later on we will talk about why in Scotland the Scottish Human Rights Commission, which came into being long after the Equality and Human Rights Commission, has achieved so much more. If you talk about the direction of travel, it is confused, it is inconsistent, because you have got somebody in the leadership who sets people on a pathway, makes

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huge sound bites and statements in newspapers and the media which have no fundamental substance at the bottom and two weeks later contradicts that position and says something else. What you really need in a leadership position is somebody to have a vision and to have concrete practical outcomes that people can relate to. I do not think we have had that and that is why I think that after some two years or so we have not really tackled the meat of what an organisation like that should be doing. That is nothing to do with the structure, I want to reinforce, nor the staff; it is to do with the person that is leading from the front. All the skills around the board were not used because the board was effectively isolated and it was almost a one-person show really.

Q7 Chairman: I would like to go back to something that Francesca referred to and that is the board acting as a regulator and to probe that with you. We have heard criticisms from Lord Ouseley and Katherine Rake of the Fawcett Society that the EHRC has been too timid and it has acted as a regulator rather than a campaigning body. I suppose the first question is: is it an either/or, a regulator or a campaigning body, or can it be both? What is your response to the criticism that it has been too timid in its approach? Obviously we have heard about the hundreds of legal cases and all the rest of it, but I get the impression that you are all a bit concerned about the low profile of the Commission and it not engaging the public.

Professor Klug: I am not concerned about the low profile. In fact, I was very often concerned about the over-high profile because I thought the Commission was chasing headlines and sometimes headlines which I was very ashamed to be associated with. I remember a speech on the anniversary of Enoch Powell's "rivers of blood" speech which was something like: "Commission says there is a Cold War" and that was in a speech that was talking about concerns people had about the number of Eastern Europeans coming into this country. I know there was nothing in that speech by the Chairman that led directly to what the headlines suggested, but it was not difficult to see, as someone even without the communication expertise of the Chairman, that that was the kind of headline that could be transferred from what was said in the speech.

Q8 Chairman: Was it spin?

Professor Klug: I have no idea if that headline was spin. I have to say a lot of Commissioners would speculate about whether it was, which I am afraid is a reflection of the fact that people did not have confidence in whether we were on top of our own board and our own direction of travel. My concern was not that there was too little exposure but there was too much, and I have noted some improvement in that, and I feel the exposure that the Commission is getting now is much more focused on concrete, discrete policy areas. Indeed there was such an issue today. I feel nevertheless the real problem for the body—and I think Kay Hampton just referred to it—is lack of consistency. I do not think there was

any clarity about what exactly we were trying to say. A human rights commission, and after all a human rights commission has a very specific meaning, it is not just any old NDPB, with the greatest respect to all other NDPBs, but it has a meaning in UN terms. The Commission obtained that status at the UN and sought to do so. Part of the Paris Principles which established human rights commissions require it to champion human rights standards and values. I think the word "champion" is an appropriate word rather than "campaign". A statutory body, a human rights commission, an NDPB, is not a campaigning body, but it is a body that both regulates and is entitled to champion the values it regulates. Indeed, if you look at the mandate of the body it has a statutory duty to do so, for example not just to promote human rights but to promote the importance of human rights. I do not know whether you are going to go on to ask me about the human rights inquiry that I was the lead Commissioner so I will not say much about it now but I will say this: virtually every single witness at the Inquiry Panel Hearings—and we spoke to over 150—repeated the same evidence to us. These people varied from the usual suspects of human rights lawyers to the Executive Managing Editor of the *Daily Mail*. They all said why is the Equality and Human Rights Commission not providing us with a credible vision of what human rights are, how they can add value in everyday life, and why is the Commission not addressing some of the misinformation on human rights (and this included the Executive Managing Editor of the *Daily Mail*) that sometimes newspapers are forced to print because there is no reliable resource for them to go to to correct it. I think that the timidity lies in that kind of area of having a principal sense of what the Commission is there to do and saying it boldly, but I distinguish that from campaigning as such.

Q9 Chairman: I think that probably reflects my attitude to the inquiry as well. I will ask the others to come in on that point. I just want to deal with this point about whether there is a juxtaposition between campaigning or championing, which I think is a better word, and regulation, or whether you can do both. Can we have short answers and then we will bring in the others.

Sir Bert Massie: May I say that I think first of all that this is a regulator, but any commission like this is also a major adviser to the government of the day and therefore it needs to ensure that it takes on board all the facts and all the opinions before it provides the advice. Because the Commission had not developed effective relationships with stakeholders, and in many cases was not respected by stakeholders, it was not getting fed into it the sort of advice, the sort of wisdom, the views—you may want to disagree with them—which would have enabled the Commission to give the most effective advice to government, not as a campaigner like charities doing campaigning with a big flag, but actually saying, "You, Government, are getting advice from a lot of supporters. We have analysed

that. This is the advice we give you". It might be a compromise, or whatever but it should be knowledgeable. Unfortunately, in my time, it did not achieve that, and it could have done.

Mr Summerskill: I think it is perfectly proper for a non-departmental public body to champion issues in a way that builds alliances across the piece. I think the fact that our Chair has, by his own admission and indeed on a number of public platforms, been an active member of one political party has not necessarily contributed to building those relations across the piece. The other thing I would just say briefly as a coda to what Francesca has said is that I do regard it as slightly regrettable that we are even in a position where a number of staff, indeed the Commissioners, are wondering if a piece of work has been published by the Commission today simply in order to distract from the deliberations of your committee, and that is a token of the way in which the body has been run very much as if it is some sort of party policies operation. I mean no offence to anyone who belongs to a political party, but there is a time and a place for that sort of activity.

Professor Hampton: It is not unique to have regulatory powers and to champion promotional and educational elements; that is nothing unique and should not present a challenge of one or the other. Most specialist bodies are established to be regulators but also to monitor performance of bodies and so on. It is not a unique skill; the CRE (Commission for Racial Equality) had that power for ages. I think most of the traditional bodies had the power. If you look, taking the sector of race for example, at just how bad things have become since the demise of the Commission for Racial Equality, then, even though I am not a champion of wielding regulatory powers all the time, I think it has its place in maintaining a momentum. Of course the heart of human rights principles is that you negotiate, you educate, you promote, and, if all else fails, then you use the law. I do not think that we even got to the stage to be measured on our performance in terms of whether we did either of the tasks effectively because, as far as I am concerned, we are operating in the dark. We have a strategic plan with no supporting policies. It is hard to balance that and that balancing act has not happened. People are judging the performance of the organisation incorrectly because of the way in which it has been portraying itself publicly. Although on record there might be a number of test cases that have been taken, and so on, I think fundamentally that bridging the transfer period has not happened where some sectors of the population have been very used to having one-to-one support and representation in court support and so on. That was suddenly taken away and suddenly there was a new policy under the guise of modernising that now we are just going to take test cases, but you are left with a huge gap without encouraging people towards other alternative solutions to their problems. I think that is why there is this feeling amongst the general public that the EHRC is more timid and is not performing its function as a regulator. The people who depend

on the CRE for legal support, legal advice and representation just do not have that any more and there is nothing in place. My understanding was that it was the duty of that body and that they would set in place work with the legal services community and so on to provide that kind of support before rushing on to take this more strategic approach of taking on test cases, which, by the way, I do not think is a bad idea. That is all part of progress but you have to prepare people from what they were used to having as protection for what they have now.

Q10 Earl of Onslow: This question of whether you are a regulator or a campaigner, surely this is something which should be settled right at the highest level? You should have had a board meeting chaired by the Chairman who would have said, "How do we proceed with our procedures?" On this committee I am in a minority on one or two things but, once the committee has decided, I will go along loyally with what it does. I would expect a board to do that. What has gone wrong? Why has that not happened? This is right at the top. Everything flows from the decision. Was it never discussed at board level or what?

Professor Klug: Can I be slightly impertinent in my answer?

Q11 Earl of Onslow: You can be as impertinent as you like. You can dance cartwheels on the floor if you wish to, I do not mind.

Professor Klug: I think it is an excellent question. Some of you will remember that for a short while I worked as a special adviser to this committee and I had the privilege sometimes of sitting in on your deliberations. My short answer to your question, Lord Onslow, is that we never, in my experience at the board, were able to conduct discussions among ourselves of the quality that you routinely do. I am afraid that I found our discussions at the board extremely unsatisfactory. I think I can speak for all five of us. I say five because of course Baroness Campbell has also resigned and I know she will be providing you with written evidence; I spoke to her this morning and she was happy for me to put that on the record. I think we were very frustrated at the lack of capacity of the board to have frank, open, transparent and in-depth discussions. I have never felt so managed in my life, or at least since I was very much younger than I am now, as my experience on this board. Some of us, including Commissioners who have not resigned—and I hope they will not mind me saying this—would argue very strongly for a little time when we could talk among ourselves, as I know you do every time you meet. It was like a spectator sport; we would have as many people sitting round the room, staff, listening to us as we would ourselves, minimally as many, sometimes more, so that you never built a coherent, corporate body. I understand that since we have resigned that proposal which I asked and asked for—and I do not think it was an enormous amount to ask for and other Commissioners asked for it too—has been

implemented, I am glad to say. My impertinence is to say that we never did discuss issues in the way that I was able to watch you discuss them.

Q12 Earl of Onslow: I have one tiny supplementary. Did somebody say to the Chairman, “We must have this discussion and this must be brought up at board level? At the next board meeting I am going to put it on the agenda?” If not, why not?

Professor Klug: My answer to that would be that I do not think we expressed it in those terms. I do not know what my colleagues would say. I do think at the beginning, when some of us still had the fight in us, we did quite often ask to discuss fundamentally what we are there to do, how do we do it, how do we get policy on difficult issues. We had an informal meeting on this We were going to discuss it and we never did.

Q13 Earl of Onslow: You could have put it on a board meeting agenda, could you not?

Professor Klug: I stand accused, rightly, of not being able to fulfil the obligations of a Commissioner as I understand them, and that is why I felt I had to resign.

Q14 Chairman: To put it bluntly, you were not the Commission; you were a collection of individuals with no corporate identity?

Professor Klug: Yes, one-to-one conversations—and I think it is called sofa government when it is in Number 10—was very much the style, absolutely. That meant of course that if you perhaps had less access to the Chair, for whatever reason, you were obviously disadvantaged in your capacity to influence, yes.

Sir Bert Massie: There was also a case I remember when the Chairman agreed to put something on the agenda, at my request. At the next meeting it was not on there. It was this sense of frustration that the normal rules of running a corporate body did not seem to apply.

Q15 Dr Harris: I just wanted to take you back to something that was said about announcements from the Commission being reported—and I have to say I accept that the press will take liberties, but let us say fair reporting or not totally unreasonably reporting—or being seen to be Commission policy or the views of the Commissioners as a whole when it was not. I have two examples. I thought perhaps Professor Hampton might like to deal with the assertion that multiculturalism was a bad thing essentially that we read about in the papers following a speech. To someone like me who has been involved in this for a while, not in a professional or expert a way as you, can it find it difficult then to find your political opponents saying, “I told you so”; even they are saying that multiculturalism is not a bad thing. The point is to ask perhaps Francesca this. When the Chief Executive gave a speech about women in business, and I checked the speech and it seemed to be fair reporting, I found that women’s rights in the business world were actually bad for

women because it just meant that businesses would pull back somewhat on equality or at least maternity rights and so forth because of the effect it was having on recruitment. I would assume something that controversial would be approved. I would be interested to know if those sorts of things were approved in advance by the Commission.

Professor Hampton: Those were months of torture almost. This is my full-time job. I am an academic who has studied race inside out and I do an objective analysis of the situation. What I found difficult to put my name to were these wild statements that were being made with no evidence to support them. That was just one thing. The other was something I commented on last night: “Just because somehow we are better than Europe, racism is not a problem in this country.” There were other statements like, “We are better off now and institutional racism is no longer a problem in the Met”. There were lots of these one-liners that were put out there. The multiculturalism one offended a large sector of people because in Scotland in fact nobody even wanted to turn an arm.

Q16 Dr Harris: I do not want to discuss the merits of it because it is not appropriate here necessarily. We can do that possibly in the next witness session. Was it approved by the Commission or did it just come as a surprise?

Professor Hampton: It came as a surprise, as did most of the statements that appeared because we did not get an opportunity to discuss it. We never got to see what the Chair was really going to say in his speeches either. Although we would have a bit of discussion, for example on marking the *Rivers of Blood* speech that we did, and we cannot seem to remember the title because it was so annoying, we were called together tokenly to discuss our views, and then a paper appeared that did not reflect any of our views. At times when we did put the pressure on, and you have asked why we could not put down agenda items, we did not even know what the agenda was going to be because we were not functioning like a proper Commission where we could say that we would like to have a discussion on this or that issue. We sat there and were told what the Chair was going to do.

Q17 Chairman: To follow up on this, Professor Hampton, you said what the position was before the event, that these statements were being made. If I were to make a statement with which the committee did not agree, at the next meeting I would be hauled over the coals by the committee. Mostly that does not happen, or not very often. After this statement about multiculturalism—and I certainly agree with Evan that it causes a lot of local difficulties as politicians—did you or could you hold the Chair to account for his speech? Did you discuss it in the board meetings? How did you follow up on it?

Sir Bert Massie: There were numerous discussions about policies that were announced which had not been discussed at the Commission meeting by the Commissioners as our collective view. They were

basically just brushed aside. Eventually, we got round to getting an email the day before something controversial was being said. I can understand in a complex Commission it is not going to be practical for every single policy to be vetted by every Commissioner; that is not going to happen. Big issues really should be, and there were lots of big issues on which speeches were made; I do not know exactly what percentage of Commissioners but certainly a significant percentage of Commissioners disagreed. That is not the same as disagreeing when you have had a discussion like the situation the Earl of Onslow was suggesting. You have a discussion, somebody out-argues you, you are out-voted; that is fine. That is democracy. When you have not even had the discussion, then it is more difficult to sign up to and that happened time and time again. We could not fulfil our role as Commissioners because a lot of these complaints we were making, and they were being made by myself and colleagues, were just not taken seriously.

Professor Klug: May I put on the record something I could not remember earlier. The headline was: "Equality Chief warns of race cold war". The extract from the speech is: "However, we will have seen the emergence of a kind of cold war in some parts of the country where very separate communities exist side by side", et cetera. I have to say that we had not discussed that. If we had, I personally would have objected to that.

Q18 Chairman: The Chief Executive, not the Chairman, which is why it is interesting.

Professor Klug: We did not discuss that. There were some sub-groups and I think there was some discussion of the policy in the Better Working Group, if you like, that was set up, but it was not discussed as a board to my knowledge. If I am wrong about this, please correct me, colleagues. What I do remember is that when the Chief Executive was reported as saying similar comments earlier, and she actually did deny that she had said them as reported, there was a considerable discussion, frankly, at the board about it, and Commissioners expressed their views very strongly in opposition. I remember noting at the time, and I am going to be exceedingly frank with you—which I am in the mood to be having not spoken publicly, privately, on or off the record about any of this before now—very graphically that there was a different mood in the board when we were holding the Chief Executive to account than the Chair. I felt very uncomfortable about this because I felt the same issues were at stake. Indeed, I remember saying—

Q19 Dr Harris: They are both Commissioners, are they not?

Professor Klug: Yes, both Commissioners. I said that in both case we felt we had not been sufficiently consulted and in both cases that we were uncomfortable with the press reporting and felt that some of the comments made were quite obviously going to lead to that reporting, even if that clearly was not intended by the speaker. There was less of a

feeling of discomfort in holding the Chief Executive to account, in my opinion—I wonder if my colleagues would concur with this—than there was for the Chair. I think there was an atmosphere that I experienced of intimidation sometimes in holding the Chair to account. There would be those Commissioners who would fiercely oppose you if you raised your voice—I mean just raised the issue of, not raised your voice as in argued—to disagree with what the Chair said and that sense of being reprimanded I think did create some atmosphere of intimidation. I do not know whether my colleagues would concur with that.

Professor Hampton: I would concur. I have seen behaviour in the CRE and I have seen it continuing in the Equality and Human Rights Commission. People were isolated if they asked a question. The place was run like a political institution. Equality and human rights should be apolitical as far as I am concerned; it should be a cross-party issue. Basically, it was run like a political organisation. There was an inner circle and people were vying to be in the inner circle and some would not dare challenge the Chair, which is their duty representing the public interest, as far as I am concerned. When we did challenge the Chair, we were either ignored, isolated or it was as though we had not spoken. The interesting thing is that the nature of the way the minutes were edited is remarkable because you would make some really significant points and, as Bert said, you would come up the next week and say, "But I said this and it is a serious point I want recorded" but it was edited out of the minutes. If you ask me, the whole thing was a circus.

Q20 Dr Harris: I have read your minutes and I only saw that raised once or twice, say an issue by Bert, if I may call you that. I did not see it anywhere else, I have to say.

Mr Summerskill: If I may just add a brief observation on this, I think sometimes these situations were exacerbated, and this does go back to the issue that has been raised about being a champion or a campaigner. I think sometimes they were exacerbated to some extent by the fact that the Chair had actually brought in a communications director, a very distinguished journalist, on an extraordinarily high salary, in my view, and I say that as a former journalist. The approach to most of their work seemed to be to try and spin things into stories or controversies and my sense is that that is not the right approach for a statutory Commission whose job, in some sense is not to participate in a ding-dong over issues but actually to try and build consensus right across the political and public domain. The problem is that if everything is turned into a story to be spun, then inevitably it is presented to journalists—and I can say that from experience—in a way that is likely to be controversial rather than necessarily to be consensual.

Q21 Mr Timpson: It is concerning to hear that certainly Kay has taken the view it was run like a political organisation. Although you have said there

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was nothing wrong with the structure, I wonder whether we need to be looking at the process of appointment? Could I therefore ask you when we are looking at the credibility of the Commission whether it would be better if the appointments of the Chairman and/or Chief Executive of the Commission were either approved or vetoed by this committee as part of a pre-appointment process in a meaningful way that would ensure that there was public confidence in that appointment?

Professor Hampton: Absolutely, and I think that is part of the reason why we are all at this stage. Whilst you could say to the public that we are in a teething period and this is a new organisation and we are finding ourselves, and whatever excuses have been made for its failure, that does not distract from the fact that somebody has not performed. If I am assessed on my performance at the university and I perform so badly, I would be demoted, not promoted. To reappoint somebody about whom we warned senior officials in government as to our unhappiness is not something that has just happened. We did not just go to the press. We actually spoke, we followed all due governance regulations in terms of who we are. None of us are amateurs at this; we have sat on several bodies. We did not want to make this a public issue and create problems. This is playing into the hands of those who are sceptical of public authorities and quangoes, if you like. We wanted to avoid that at all costs. We told senior officials about some of our concerns and about the danger of reappointing the Chair. Despite that, they did it and we felt absolutely helpless to do anything as Commissioners. This is why we are here. We fully appreciate that you have taken this seriously to see what went wrong. I do think that we should all be assessed on what that body needs as an accumulation of skills and not to which political party you have an allegiance. I am in it for the issue and the cause rather than playing politics. Some of the inconsistencies in the statements that were made were purely driven by politics, if you ask me. Something could be favourable on one day and suddenly it became unfashionable in the name of modernisation. When we did challenge it, it was a case of us being politically naïve or traditionalists, these kinds of accusations. To answer your question directly, yes, I think there should be a higher level of scrutiny, particularly of the Chair and the Deputy Chair. These are very highly paid posts. I am absolutely gob-smacked—and I was going to leave as Transition Commissioner anyway—that my fellow Commissioners were asked to re-apply for their jobs. I have no objection to that—best man for the job. Why were not the Chair and the Deputy Chair asked to re-apply for their jobs and assessed in the same way? This is an equality organisation we are talking about. Where is the equality there?

Q22 Lord Morris of Handsworth: To follow up with a question, you gave an unqualified “yes” to the principle of some sort of parliamentary committee scrutiny. This of course is a committee with a totally

different remit in the context of its role. What, in your view, would be the appropriate parliamentary committee to oversee the Commission’s work and indeed to look at issues around appointing the Chair, say?

Professor Hampton: I can only draw on what I thought was a very good model in Scotland. I was appointed by a panel that represented all the political parties, the whole spectrum—the SNP, the Liberals and everybody—who sat there and ensured that the responses in terms of why we are doing it, what qualities we brought and what we will add had nothing to do with political affiliation but was to do with how much we have to contribute both representing the public interest, value for money but also with an insight into the direction and progress and providing proper leadership. I cannot give you an answer as to what sort of model we should have but it should certainly be one that represents a broad spectrum of the political parties, so that everybody is convinced that the people appointed are not going to swing to one side or the other, that they are actually going to take a balanced view. If you are going to do it in terms of political allegiance, then I think you are going along the wrong route. This issue needs to have a neutral observer. One of the fundamental roles of the Human Rights Commission for me is to include people who can stand back. A recent example of that was in Scotland when we had the Libyan issue, which was very politically charged. The Human Rights Commission actually stood back and gave a balanced view on what should be done, not taking a political view or getting involved in all the international debate about it, but looking at the rights of people and at the principles under which it was done. That is the role of a body like this, not one that delivers the Government’s job for it. I think the Government needs to address all these policies. A lot of the work that is credited to the EHRC as having achieved, for example pensions and women’s rights, should have been done a long time ago anyway. We should be doing something much more concrete to develop a culture of human rights in this country.

Chairman: I should say that DCLG committee has the right to conduct pre-appointment hearings for the Chair but not for re-appointment, though of course it is not a full confirmation hearing like you have in the States, as we saw with the spat earlier in the week with the Children’s Committee.

Q23 Earl of Onslow: The fact that they took no notice of what they said is neither here nor there.

Mr Summerskill: May I say, in response to Mr Timpson’s point, one thing? As someone who works daily with more than 100 public companies, one of the things that I have felt, in terms of representation on the Commission, was missing was big business and employers. There is no representative of the CBI, there has been no representative of the Federation of Small Businesses. I hope that ministers in future might take that into account when making appointments. The way in which appointments are made is critically important. I am

certainly aware that Trevor, as Chair, has a least twice to my certain knowledge interfered inappropriately in the appointment of Commissioners—once successfully and once unsuccessfully—in order to promote the candidacy of either inappropriate or less well qualified personal friends of his. I do think when it comes to the appointment of the Chair that it is perfectly proper that that should be scrutinised by a committee such as this. Indeed, I am in no doubt that the Director General responsible for the Government's Equalities Office will have made a recommendation to ministers about whether to re-appoint. You might want to ask him what that recommendation was.

Q24 Chairman: Can I pick up one point. Are the Commissioners there as representatives of particular interest groups or pressure groups or are you there because of your skills, knowledge and experience, with a view to creating a corporate function?

Mr Summerskill: We are categorically, and the recruitment process—without boring anyone to death with job descriptions and person specification—did make that clear at a very early stage.

Professor Klug: If I may add, it is worth noting that the International Co-ordinating Committee of the United Nations, which gave the Commission accreditation A status, did, I believe, raise queries about the means of appointment of Chairs and Commissioners. Although it is not an absolute hard-and-fast requirement that Chairs and Commissioners are verified by a parliamentary body or some other independent body, it is very much preferred by the UN, and I suspect they will be watching now how the body moves from here. I do think, frankly, that the bottom line is that it is not acting as a human rights commission. There is no-one to hold it to account to do so—no internal body. The body primarily reports to the GEO, the Government Equality Office, which does not have responsibility for human rights. I think the Ministry of Justice tries to input into that process. Certainly as the lead Commissioner on the human rights inquiry I was never brought in in any shape or form to account for our performance on human rights to any government body via the Commission. So I think there is a whole layer of lack of accountability in terms of this being a Human Rights Commission that unfortunately has had very significant results. When the Chair wrote to the Minister for Equality, he accounted for our work so far—and I think this was in June of this year—and there was barely any mention of human rights except in the most token sense. The report was several pages long and I think it referred to the plain guide that we produced and a single case. So there is no real internal sense I cannot stress this enough I think all my colleagues would nod in agreement with this and bear me out: the Commission has not got a sense of itself as a Human Rights Commission, just not at all. We are at the very beginning of a baseline here, and I think the lack of accountability has contributed to that enormously.

Sir Bert Massie: I agree with all of that and may I make another point? I have been sitting on quangoes of one sort or another for about 30 years and this is the first time I have known the entire body being asked to step down. Normally if you are reasonably competent, you get a second term automatically. You have to apply for a third term under the Nolan principles. Some people have suggested that part of the reason for this, and I do not know whether it is right, is that the new Commission might be even more general, that there might not be an effective Commission at all. I think that needs to be watched. I am sure ministers will put in the right people. We need a strong Commission. This is an important body. It would be a pity if only people with whom the Chairman felt comfortable were able to succeed to be Commissioners.

Q25 Chairman: Your fear is that it is going to end up as a smaller Commission of “yes” people and toadies?

Sir Bert Massie: There is a danger of that. I do not think there needs to be a smaller Commission, as came out of the Deloitte's study. When I chaired the Disability Rights Commission of 15 people, it was just run collegiately. We never had any of these battles. We could operate as a group. It is not about numbers; it is about leadership and chairmanship.

Professor Klug: Could I just put something else on the record, if I may, quickly. Bert has just referred to the Deloitte report, which has been quoted many times by the Chair in the last couple of months. These were the external consultants who reviewed the way we work after some of us expressed concern at a private board meeting about governance issues and in particular about the perceived conflict of interest of the Chair's private consultancy on equality and diversity. This consultation happened and there was a report at the end of it from Deloitte's, which said: reduce the size of the board to approximately 10 to 12 by not replacing transitional Commissioners or any others that leave as appropriate. It did not suggest, and it was not agreed by the board, that that meant that everybody should have to re-apply for their posts. I personally did not agree that the board should be reduced further and I asked for it to be minuted. I had private email correspondence with the Chair who concurred that I did not agree with this recommendation. There was a tendency at board meetings just to say “this has been unanimously agreed”. You had to fight hard to be heard. I wanted it minuted that I disagreed. I am not sure that it ever came out in the minutes but the Chair concurred that I did not agree. I simply did not agree because I thought there was nothing to say here because the three transition Commissioners will be leaving. If other people go, we should then discuss it. Yes, you could argue the toss over the ideal size of the board, of course you can. I am open to persuasion that this board could have benefited from being smaller, but it seemed to be entirely missing the point of what was wrong with our body. The idea that all these problems we have brought to you today

came down to the size of the board frankly was risible as far as I was concerned, and I wanted that noted.

Q26 Chairman: Lord Lester has been very patient but you have just raised this consultant's report. Was the purpose of the consultant's report basically to do what we are doing today, which is to look into these corporate governance issues and make recommendations?

Professor Klug: Yes.

Mr Summerskill: At rather greater cost, if I might say.

Q27 Chairman: I am sure. Were the terms of reference agreed by the board in advance?

Professor Hampton: Some of us were in the sub-group that went off to a fancy place to discuss the findings. I have to say that when we saw a record of the findings, and each of us was interviewed privately, it seemed that some of our colleagues, and I am sorry to say this, are happy to express their feelings on a one-to-one basis but when it comes to a collective answer, I have a fear—and that in itself tells you a lot—about speaking honestly about what they feel. That was a remarkable finding: 98 per cent of the board said that they had a problem with the leadership and the Chair. By the time that report was edited, it revealed nothing of what we saw in an earlier version.

Professor Klug: We were not given anything to take away. It was only on the screen.

Professor Hampton: What you had is that sterilised version, which simply focused on the structure and distracted from the core.

Q28 Chairman: Going back to my earlier question, were the terms of reference agreed by the Board—yes or no?

Professor Hampton: Yes.

Q29 Chairman: The next question: was the report fully published?

Professor Hampton: No.

Q30 Chairman: The next question: how were the consultants selected?

Professor Klug: We never had anything to do with that.

Q31 Chairman: Has the final report ever been published at all?

Professor Klug: Not to my knowledge.

Q32 Chairman: Has it been published to the board?

Professor Klug: Yes.

Q33 Chairman: Is that the full report or a summary?

Professor Klug: That is a summary.

Mr Summerskill: That is a summary. There were certainly things that were summarised at the meeting with the consultants and never fully shared.

Professor Klug: Certainly the survey that Kay referred to that we were shown on the screen, and I cannot remember the figures, showed considerable and surprising unanimity in terms of what we were set up to do. What was very surprising to me was the concern about leadership. That has never been published or given to any of us.

Q34 Chairman: That is not reflected in the document from which you have just been quoting?

Professor Klug: I do not think so.

Professor Hampton: The irony was that that was the purpose of the inquiry because we had all expressed a kind of discomfort with the accusations of conflict of interest and how it was damaging the board and the work of the Commission. That is why we had the inquiry, and then it turned into something like trying to say that the board was dysfunctional, which was really a unique transformation from where we started off to where we ended up.

Chairman: It sounds dysfunctional. The reason for it is another matter, is it not?

Q35 Earl of Onslow: Have I got this right, and I may be being a bit thick here. The board did not discuss the terms of reference properly—is that right?

Professor Hampton: Yes.

Q36 Earl of Onslow: Surely, it should have said, and this is what we do here: "These are the recommended terms of reference. Do you agree?" and you go through them item by item and if people have points, you discuss them and amend them or drop them, as the case may be. That is what we do with reports. Do you not do that at all?

Professor Klug: The terms of reference as far as I recall were discussed. I do not think we had any problem with them. The review was going fine, as we were trying to describe. We were all privately interviewed. We felt we were making progress. We then had a very important private meeting, and it was absolutely correct that it was private; I would not have wished in a million years to be discussing it with you or anybody else at that point. We thought this was an opportunity if you like, in the nicest sense of the word, to have it out, because as far as I am concerned we were all people who had mutual respect for each other; we all came from the same stable; and we all believed in the same ends. Let us talk about what is going wrong. Unfortunately, at this meeting one senior member said they did not recognise anything that was on the screen, even though there was significant statistical evidence of what people were saying. There were no names given—80 per cent felt this, 70 per cent felt that. People felt intimidated when it was said by a senior member that they did not recognise anything and we never had the discussion. Then we come back to the board and we get a report like this, which did not, as far as I remember—and I have not re-read every word, I am afraid—touch on that survey of our views, so that it moved into another kind of discussion, which was process, issues like the size, which is why I asked for my objection to the size issue to be minuted. Yes,

we could have a discussion about the size of the board but it was risible that this was what was wrong. In fact I think we benefited by having such a cross nature of skills and experiences.

Earl of Onslow: It sounds to me like a totally dysfunctional organisation.

Q37 Chairman: I think we need to move on. At the risk of making policy on the hoof and announcing it on behalf of the committee, we will need to call for the terms of reference, the slide show that you had, and the reports and working papers.

Mr Summerskill: To answer briefly Lord Onslow, if I remember correctly, the terms of reference were not things that anyone would dissent from. The issue was that if you are saying we will have an overall review of governance, the implication or the assumption was that this would lead to a review of various capabilities and that would not necessary be made explicit in the terms themselves. It was when one started to delving or drilling down that you got the sense of what people regarded as one of the causes of the dysfunction.

Professor Klug: I do not think personally that it was dysfunctional. I would like to go on the record as saying that. I think it was hierarchical, unaccountable and untransparent. You can have a very hierarchical controlled board which is not dysfunctional, if you like. It does function but it just functions without Commissioners participating as expected of them, when they are taking money from the public purse. That is my personal view.

Lord Lester of Herne Hill: I should declare a few interests. First of all, 35 years ago I invented the system we are now talking about in four months. Secondly, over that 35 years I have advised the equality agencies in the past. Thirdly, I have been on this committee with Baroness Prashar in seeking to create it, she wanting a single Commission and I wanting two. We finished up with what we have. For the purpose of my questions, I want to assume that everything you said before is accurate and that what you really say is that the Chair should not have been appointed or re-appointed and that most of the problems are to do with him, I suppose including the loss of the Chief Executive, Nicola Brewer. Let us assume all that is correct. I want to assume also that there will be a change of government at some time after the next election. What I would like you to think about is whether Professor Hansen is really correct when she says that there is nothing wrong with the structure. What I want to do for the purpose of my question is to ask you to think of the next government who, having read your evidence, will say to themselves “why are we spending £70 million on this lot, why should we go on in this way?” I really want you to think about structure because I am thinking of the future and not the present and not the past.

Chairman: Hypothetically.

Q38 Lord Lester of Herne Hill: The question is: Is it sensible to have a structure in which there is a part-time Chair, and you have already answered about his

appointment, in which you have Commissioners at all rather than a fully professional body with qualified people who act as law enforcers, regulators and public advocates? Is it really sensible to have people like yourselves in these positions rather than having, like the Financial Services Authority, a body without Commissioners at all? I ask the question because the reason you are here is because Roy Jenkins decided 35 years ago that the law required people like you to make it legitimate, but, 35 years later, do we still need to have a bunch of Commissioners rather than properly qualified professionals to run the agency?

Professor Hampton: If I may answer that, I think it is absolutely essential because you run into exactly the same difficulties you are having now, even though we have Commissioners, if you do not have Commissioners. The idea for that kind of model means that you will collectively from different backgrounds and aspects and knowledge bases set a strategic direction for the body, but most importantly you are representing the public interest from a wide spectrum of people. If you get one person as the Chair or one business person, it becomes a one-man show. What we are describing here today, and we are playing around with words—functionality and dysfunctionality—is a system that has been proved to work internationally and nationally and is working in Scotland, by the way, and it has worked in the past. When that system breaks down it is because of the people and their malfunction in the organisation. I do not think we should disintegrate the whole system because we have 40 individuals in that system. Yes, 35 years ago you may have come upon this, and your question is: is it right in a modern organisation? I think it is absolutely because that prevents one person, as it were, becoming far too powerful in their own right in directing an organisation in terms of their own personal vision. I will stand by my point that there is nothing wrong with the structure. How the governance is operating and how the business is being done, how decisions are being made, how inclusive it is, whether it is using the skills around the table, those are the issues we need to deal with, the process rather than the structure.

Q39 Lord Lester of Herne Hill: May I ask you a follow-up, and I know others will want to come in? If that is right, given that the statute that sets you up built in independence, built in merit appointments of the Chair and all of you, and given that your job is to provide safeguards so that it does not become a dictatorship run by one person, why have you not been able collectively and individually to stand up to the Chair whose conduct you disapprove of and make sure, without resigning, that you would do what you were there to do, which is to be watching over him and in the interests of everybody? I am only putting it in that hostile way because it seems to me a fair question to ask you.

Professor Hampton: Absolutely, and that is why I started off earlier by saying this is a unique situation because in any other organisation there would have

been a vote of no confidence in the Chair, but you have to understand the behaviour patterns. How can I put it gently? People for some reason, highly powerful people, felt unable to challenge some of the actions. Some of us who did it were regarded as being difficult. There were also issues of interest that were played about with. On the surface, you were superficially being promised—do not worry, I will take care of that. I think that is where sometimes personal interests became entangled with public interest; people forgot. I said publicly, in fact I wrote an article about it, that people once they get into positions like that tend to forget what they were employed to do in the first place, and that is to hold people accountable and make sure the business is done properly. Yes, from that point of view we failed as a board.

Q40 Lord Lester of Herne Hill: Now you have a new government with all four of you in and they say, “How do you stop this happening again and why is it valuable to keep the Commission as it now is?” You need to have answers to that question, perhaps now or hereafter. We will have another government coming in fairly soon. There is bound to be another government.

Sir Bert Massie: Whatever, there are some very basic issues here. The Disability Rights Commission I think was universally agreed to be successful and it was exactly the same model. It was about the leadership. The Disability Rights Commission did a great deal on the needs of people with learning disabilities guided by people with learning disabilities. With respect to lawyers, smart lawyers could not have brought us that. It was brought to us by people with learning disabilities; it was the people who were facing the discrimination every day who came to us, and they were actually Commissioners, and operated collegiately. The structure can work; it worked with the DRC with a large board. I dare say it was chaired properly. The reason why we could not hold the Chair to account is that the Chair reminded us, and accurately, how well positioned and connected he was. We had nowhere to go. He would boast about his political connections. Here was a very powerful guy, very powerfully politically connected. Eventually, you got the people here and Baroness Campbell, all of whom are serious people, not people who will just walk out. We know about corporate responsibility; we know about following the vote, but we just felt we had nowhere to go. When the Chair was re-appointed, we all felt great sadness. We had to resign and my case I had to resign and make it clear that this is why I was resigning, that this was bad decision. The issue before about whether the Chair should be subject to ratification here or elsewhere might also be extended to the Commissioners.

Mr Summerskill: If I may, I will try to answer each of those points relatively briefly. If I were being asked to advise a future government, first, I think I would actually resolve the issue of whether the Chair is part-time. In fact for most of the Commission’s history the Chair has been working three and a half

days a week, which is an extremely odd place between being an executive Chair and being a part-time Chair. My recommendation, if asked, would be that it is appropriate for public bodies to have a part-time Chair for a small amount of time on the same model that has works successfully in much of the private sector. The second reason that I would say that both yourself and Lord Jenkins of Hillhead were right 35 years ago is that, at the end of the day, any body needs to have scrutiny of some sort, and Commissioners, whether they are nominally Commissioners or board members, do have the capacity to offer that scrutiny. I think the view, although again you must ask them, of the National Audit Office would be that at least on some of the very thorny issues of the Chairs of various conflicts of interest over the last couple of years the Commission, and certainly its audit committee, have offered some degree of scrutiny and protection that would not have been there if that had not existed. Thirdly, on the issue of why did we not make things happen, at the end of the day, and this is something I have personally wrestled with, I do believe ultimately if you are sitting on a board, whether of a public company or a public body, if you cannot make it happen, that is the point at which you say, “I am terribly sorry, I will not cling on to this”, and it is right and proper to step down. The fact that both the independent members of the Commission’s audit committee have come to that conclusion simultaneously without any consultation I think suggests the care that was given to many people arriving at that final point.

Professor Klug: Of course they are professionals exactly as Lord Lester suggested, and they resigned as well.

Mr Summerskill: They are professional auditors; that is their function.

Q41 Lord Lester of Herne Hill: You are not suggesting to us that it is like Humpty Dumpty and you cannot put the pieces together again. You are suggesting to us that it would still be possible to have a Commission that could fulfil the mandate.

Mr Summerskill: Categorically, yes.

Professor Klug: Yes. I think it was a very fair question, if there is time for me to answer it. I would like to say, Lord Lester, your judgment all those years ago was impeccable as ever, I think.

Q42 Lord Lester of Herne Hill: I am not so sure.

Professor Klug: I have tried to play it through in my head, and I think all the problems that we analyse, if there is any truth in them, point in the direction that a strong Commission is absolutely essential and that this function does not stay in the hands of one person. If you think of our roles as ambassadors, it is crucial that the idea of equality and human rights is not seen as the product of one person. In fact, too often it is described as such outside, externally. I think that is unfortunate. It is very important if people in our society are going to own this idea, that they see it championed by a wider group than one human being. On that level, I think it is crucial. I

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think Commissioners provide a link with the grass roots. Some of us do that better than others. I probably do not do that as well as others do, but it is a crucial link to people out there who are really suffering, who feel really vulnerable, that Commissioners are able to bring their issues to the table, not always with great comfort, I have to say. I do remember, and I will say this, being told directly by a senior member of the board, “Why is it that people speak to you about what is wrong? What is it about you that people speak to you about what is wrong?” I remember being really discomfited by that statement because I thought that our job as Commissioners was to bring these concerns to the board, rather than externally. The third function, of course, as you say, of Commissioners is to hold the Chair to account. I stand before you saying that I personally feel a sense of failure that we were not able to deal with this without coming to you here publicly today. I regret deeply that we have had to do this and welcome the opportunity that you have given us. I am extremely mindful that a future government may come in—I hope not and I do not think it is inevitable at all because I think that all parties have expressed support for this body when it was set up, and I believe that is sincere—and that we could contribute by this evidence to a desire to try to reduce the body. However, at the end of the day, we were not able to do our job as Commissioners internally; we tried and tried. It feels to me that today I am finally doing the job that I was paid by the public purse to do, and that is to hold this body and this Chair to account. One final point about why we were not successful: I cannot answer this and all I can say is that if we were being unanimous as a board, I think we could have done it. We were not unanimous. There will be Commissioners who will disagree with us. I am afraid there are also Commissioners who agree with many, not all, of the things we are saying, who did not feel comfortable to speak out. I cannot explain to you why but I can only tell you, if I am believed at all, that that is the case, and there were many.

Q43 Lord Morris of Handsworth: May I say that the conversation we have had so far has really coalesced around the Chair, and of course all of us here have observed this debate over, for me anyway, decades and have been part of it. I am never persuaded that an organisation is just about one individual. We are very fortunate to have your presence this afternoon; you are the people who have been so strong that you have taken the walk. I am wondering whether or not, if we had the same people who have stayed on as Commissioners what the story would be. Despite what you have indicated about the inner group and the outer group, the fact of the matter is that you all carried the same degree of responsibility. I have seen no evidence that people from whom we have not heard are any less committed to the cause. I am just wondering whether or not we should be stepping back and looking at this, following Lord Lester’s comments about structure and whether or not the inherent problems that the Commission faces and

the experience are inherent in the merger itself. We have put a series of interests together, discriminatory interests, where everyone started from different positions. It was said earlier that here we have a chairperson who opposed the merger in the first instance and then blessed it and was charged with the responsibility of implementing the new mandate. Would you suggest to us that we should be talking to a wider group of Commissioners in order to get all aspects of the conversation, so that we can make a value judgment about whether it is a failure of leadership or a failure of structure within the overall context of the statutory limits you have.

Mr Summerskill: May I say clearly and re-state as much evidence as possible? One thing I certainly would remain crystal clear about, and I think many others would too, is that in plain English terms the function of the Commission is to determine how all sorts of different communities rub along together in 21st century Britain. My own view, without being critical of the way that the CRE, the DLC and the EOC were established, is that in some sense there was occasionally some self-indulgence there and that you would have these commissions producing recommendations for the public domain that were actually at odds with each other. The EOC would say that all women should work and the CRE would say we must respect Muslim families who do not want their wives to work. It seems to me that if you are spending £60—£70 million of public money on a function of this sort, then you ought to be requiring the people who come up with those recommendations to sit in one place all together and agree their recommendations for the wider public domain, rather than sitting in separate ivory towers coming up with recommendations for the other 60 million people in Britain that may be at odds with each other. I genuinely believe, and I will say this briefly but it is something I have wrestled with, that there are people out there who are capable enough to lead the Commission in the way it needs to be led. I do not subscribe to the counsel of despair that his is just such a difficult job that no one could do it.

Q44 Lord Lester of Herne Hill: On that last point, just suppose that, say, Nicola Brewer, a professional, was a professional Chair and Chief Executive, and the rest of you were the Commissioners performing all the valuable things that you do, would that not meet many of your concerns because you would have somebody there who was not political but was running the organisation from a professional point of view? That would not be a radical change but it would require a different kind of leadership.

Mr Summerskill: I do not disagree with that, although I would say that you might well end up with people who looked a bit like us in some way or another because we all have professional backgrounds around equality as well as management and leadership. Certainly, having a Chair who was not either political or indeed overtly and admittedly party political, I think would have made the job of the Commission and Commissioners much easier.

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Sir Bert Massie: Before the Commission was established, there was quite a lot of debate about the characteristics of the Chair, with no name in mind at the time. We were basically down two options. One was a Chair from the equality or the human rights field, who would be an activist in some sense, or you could simply have a professional change manager; you could just bring in a manager because the skills in equality or human rights would be in the rest of the Commission. You could therefore appoint somebody who was not an expert in the field but had intelligence, had good chair skills and could get a collegiate Commission operating. Going back to Lord Morris's point, my background was clearly in disability, and there was I think an assumption when I went on to the Commission that all I would talk about would be disability. In fact I did not speak much about disability at all; I spoke mostly about corporate governance. I thought if we got that right, we would get an awful lot of other things right. I was impressed by the fact that people were prepared to leave their shields outside when they went in; they would look across strands. It was not fractionalised in that "I represent the gay community", "I represent black people"; it was not that sort of discussion. What I think is lacking and has been lacking is the ability to build up expertise amongst the staff that caters for the strands. The Commission has not done a great deal on sexuality; it has not done a great deal on age. You need bodies inside the Commission that have that expertise, not to create silos, not to create little commissions within the Commission. You need the expertise so that you can either do some things which are strand-based—and a lot of the work has been strand-based, a lot of the equal pay stuff is strand-based, today's press release was strand-based—but you could then bring those strands together for some good thematic work. If, for example, we could really get a "respect" agenda going and you could really do something about bullying, overnight you would get rid of homophobic bullying, bullying against people with learning disabilities, people with physical disabilities. An anti-bullying agenda would help us all. It was not a case of people trying to draw back into a strand. What the Commission does not have and has not built up is sufficient strand expertise. That is because it started up by aligning itself and saying "We must be non-strand specific". In fact, it would have succeeded better had it done strand and extra strand thematic work and then it could have gone ahead on two fronts quite successfully.

Professor Klug: Is there time for me briefly to respond to the strands, if I may, that have just emerged? One is the strand-based nature of the body; another is talking to a wider group of Commissioners than ourselves; the third is having a professional Chair. I would like quickly to respond to each of those, if I may. I agree with Bert's description; I think there was remarkably little dissent or tension between us on the issue of strands, but there is a capacity issue for the body and I think I should just tell you that the capacity of the body to function as a human rights commission is close to

zero. There is almost no human rights capacity within the 500 plus staff. The Chair of the human rights inquiry and myself had to do a tremendous amount of work, I think Bert who was very involved in on panel of the Human Rights Inquiry along with Dr Neil Wooding would tell you that sometimes we had to act in lieu of staff. There is a reliance on consultants as good as they are; there is a lack of human rights capacity in the body that may be being slightly addressed now. That meant that the body could not take advantage of the fact that it could approach issues from the human rights point of view and use human rights standards to look at issues like bullying and care homes and hospitals. It did not do any direct work with any public bodies in trying to implement human rights standards in my time there and make sure that the rights come to life. The inquiry basically took up almost all the human rights capacity in the Commission other than enforcement of cases. That leads me on to say something about the staff. I want to answer this question about what kind of body it is by mentioning the staff because of course the board is only, if you like, the body that has to hold the Commission accountable and the body that is the first public face of the Commission, but actually its real strength and power and lies within the staff. There are some tremendous staff in the Equality and Human Rights Commission. I think that they partly look to Commissioners to be able to express some of their concerns, not that we have the full breadth and understanding of them. If you took away the layer of Commissioners and professionalised the whole body, you would be talking about a management structure that in my view lacked soul, and also lacked the opportunity for staff who feel committed and passionate but that perhaps the body has not taken the direction they would expect, given its clear mandate. Without Commissioners to be able to express some of those concerns, they would have really nowhere to go. For that reason, I do not think it would be a progressive step to have, if you like, a professional Chair, although I do think there is work to be done to look at the relationship between the Chair and the Chief Executive. It is not a unique model by any means; it is standard in human rights commissions around the world, but there does need to be an opportunity for Commissioners to feel that they understand their role more—we had a half a day's training each I think—and to know where to go, without feeling we are being disloyal, which was a commonly used word, if we feel that there are genuine problems we wish to raise and wish to have resolved without having to go public like this.

Q45 Chairman: I suppose that begs the question, the point you make about human rights and its low profile to put it as neatly as I can, to what extent was the human rights inquiry concerned with promoting human rights within the organisation?

Professor Klug: It was almost entirely about that, Chairman, but not all of the evidence. We had some wonderful evidence about things going on around the country and some marvellous discussions and

dealing with some significant sceptics on human rights, but the overwhelming message we had from the evidence is: what are you doing? Therefore, we did spend over a year basically having an internal discussion, in my view, about what we should be doing. I personally wanted us to get on and do it, but this was an example of where one was not able to have an impact.

Q46 Chairman: I suppose that is the answer to the recommendation that the Commission should assume a leadership role in raising public awareness of the importance of human rights and the Human Rights Act. The answer is what you have just given us, that it did not have the capacity to do so.

Sir Bert Massie: There was nothing in the human rights report about the Commission that we could not have done a year earlier, quite honestly. I have the sense when working with board members, and as Francesca said we had to work quite hard on it for a number of reasons, that it was a bit like the old royal commission. It had been set up to delay doing things. I think now it is a credible report. It does give the Commission at least a steer on what it should be doing. My anxiety is that, despite one or two staff who were on the ball on human rights, the Commission is not taking us seriously. My worry about this goes back to something I said earlier. The equality agenda can do a lot for disabled people; it can do a lot more than it is doing, but the human rights agenda can do so much more. The human rights agenda sets a level which no service should fall below. If we can get that human rights culture really embedded in the country, disabled people's life opportunities in this country would rocket. The Commission is the only body out there to do that at the moment.

Q47 Chairman: We are trying too but you have more money than we have. It is a pity that you have not been able to do some of the things that we would like to see you do. Indeed, we have made recommendations to that effect in our own reports.

Professor Klug: May I say that I put on the record at the time that I personally was very worried about the inquiry distracting us from getting on and doing the work. I felt that you had done an inquiry; the Minister of Justice had done an inquiry; the Home Office had done an inquiry. There was enough evidence. Marvellous organisations like the BIHR had done an inquiry and there were some fantastic staff who desperately wanted to get on and do some real human rights work. Some of the marvellous staff worked for the inquiry but there was no capacity-building while I was there to enable them to do that work, to integrate it, say, with the work on public sector duties. If one raised an issue like that, as I did sometimes, it was simply ignored. There is not a sense of itself as being a Human Rights Commission.

Q48 Lord Morris of Handsworth: Last year, Trevor Phillips told us that the Commissioners were narrow,

both culturally and politically, and, in particular, lacked active supporters of the Conservative Party. Do you agree and what difference has this made?

Sir Bert Massie: Can I perhaps tackle that? I think the political persuasion of any particular member is irrelevant, quite honestly. We have been fortunate in this field that there has been support from across the political spectrum. What a Commission does need—and Ben was referring to this earlier—is a broad range of interests round the table. From the start, there should certainly have been business interests round the table. There was one person with business interests but there should have been many more. There could have been interests from other parts of society. Looking back on it, I know that in the Disabilities Rights Commission, with the support of ministers, I had a whole range of people from day one. I had business people and the Deputy Chair had been the Personnel Director of Ford Europe. You will know him, John Hougham, who went on to ACAS. That meant that I as a Chair, with all my limitations, and I have lots of limitations—you have probably noticed many of them—had someone else there who could fill that gap. That was about the collective representation of the board. What I wanted and what I got on that board was that I hardly ever heard a view outside the Commission that we had not heard previously inside the Commission, expressed different ways with different strengths of feeling, sure, but someone inside had raised the basic view. That gave me a solidness, I think. When the new Commission is being put together, I do not think I would say there should be so many trade unionists or Labour people, Conservatives or Lib Dems or whatever. You need to look at the interests of society which are affected by the issues and make sure you have a rounded board.

Q49 Dr Harris: This question of party politics, the first time it has been raised by us in these questions was by Bill now, but it was raised by you *en passant* and directly in earlier answers a number of times. When people are appointed to any Chair in a primary care trust board it states the information in the press release and indeed in their declaration of interests which exists on their website for the non-executive directors, and your declaration of interests does not appear on the EHRC website; it lists there party political activity for information. It is not an implication that they act in that way, nor would it be an implication that you act in that way. I raised formally in a session here about a year ago, and informally, this question of why it is said that the EHRC happens to be populated by probably a majority of Commissioners who are members of the Labour Party. You may or may not agree with the Labour Party; it may not influence their actions.

Professor Klug: Some may not even vote for them on occasions

Q50 Dr Harris: Francesca, since I have raised this with you informally as well, is not reasonable if primary care trusts specify this information on the website that the public ought to know that this NDPB is clear about that as well?

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Professor Klug: I have no personal objection, as long as it is not a misleading piece of information. Speaking for myself, I have no hesitation in saying that I have been a member of the Labour Party; that has lapsed.

Q51 Chairman: Have you resigned?

Professor Klug: I have not been active as a member of the Labour Party for donkey's years and it is virtually irrelevant, frankly, to my views on human rights where I am afraid I have had to disagree with this Government on many occasions very profoundly. The issue for me is that this body should not be run as party political.

Q52 Dr Harris: I understand that. I am making a slightly separate point.

Professor Klug: I do not think I have much more to say.

Q53 Chairman: It is to do with openness, is it not, really?

Mr Summerskill: I am alive to the sensitivities of this because I remember having been a school governor and having helped turn around a primary school in Lambeth, I was sacked I think in 2002. The explanation that I was given was that I was not a member of the Liberal Democrat Party. I can understand that these things happen.

Q54 Dr Harris: I wondered what your approach was!

Mr Summerskill: If I may come back to Lord Morris's question, in fairness, the very fact that it was put like that may tell us a little bit more about the person who said it than about the culture of the Commission in general. I can say that as far as I am concerned, since May 2003 when I was appointed to my current day job, I have abided by Part 4.4 of the Civil Service Management Code and have engaged in absolutely no political activity of any sort whatsoever, but I do think if you have a Chair who says "We ought to have people who are explicitly Conservative" in some sense that is an expression of his view that we ought to have political activists.

Q55 Lord Morris of Handsworth: In fairness, let us not take it out of context. It is right that we should say to you, because we were here and perhaps you were not, we were talking about a much broader case for the Commission in terms of the wider constituency that might support it. I have one last question which does in fact put the issue and the statements that I have just made which Trevor Phillips told us in context. Let me give it to you now because it rounds it up. Last year we questioned whether someone like Joel Edwards, who leads the Evangelical Alliance, which is an organisation that has historically opposed equal treatment for gay people, should have been appointed as a Commissioner. Having served alongside him, we are asking you what your view is. I make that point because of the previous comments about the Commission being narrow and whatever; it comes

within that wider context of our conversation last year. In this instance, given the organisation Joel Edwards leads and the policy position it takes on certain matters, what is your view, having worked with him?

Mr Summerskill: If you are asking me that—

Q56 Lord Morris of Handsworth: Not you personally. It is a question to yourselves as Commissioners.

Professor Klug: Personally, I would not be comfortable saying anything against any other fellow Commissioner, for whom I have the most high regard, respect and affection. I think Joel played a very credible role on the Commission,

Q57 Lord Morris of Handsworth: It is a question about whether they addressed the wider issues facing the Commission. It is not personal.

Professor Klug: I think he did. I thought it was quite a remarkable board. I found it a complete privilege to be on this board. If we were only able to use our collective strengths more, I think we would have achieved a lot.

Professor Hampton: I am very outspoken in my views, so I am not going to be polite. This is not personal against individuals but generally I would feel very uncomfortable to have somebody who openly makes anti-equality statements sitting on a board like that. I would think that is inappropriate. You have got to lead by example. You are promoting a message of equality and human rights and yet you have within your fabric somebody who holds very strong opinions and, dare I say, the same issue is going on about the BNP, especially in the run-up to their right to appear on public television. Yes, they have a right but we have organisations like this that ensure that the presentations that people make public do not have an impact on good relations. I think that is the issue we miss in terms of balance. That is what an organisation like ours should be doing, balancing people's rights and responsibilities and understanding the full remit in terms of the impact of their behaviour. From my perspective, if you ask me the question, no, I strongly believe that I would not want anybody, if you take away the individual you mention, who uses strong racist statements being a board member, even though it may be legitimate for them to express their views on any issue. The whole idea is that we are supposed to be promoting a culture where we do not have a hierarchy. Fundamental to human rights is that you do not have a hierarchy of people's rights. You treat those rights as even and equal. These are the sorts of things that I found fascinating and about which we never had discussions because it was too sensitive to do so because certain people had very strong views. For me, the very first day we said that we ought to be dealing with issues like how we advise the public when they have a tension between religion and sexuality in terms of their beliefs and what have you, what sort of guidance are we going to give people. We never really had those discussions, and that is

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what we lost, because people were sensitive to certain issues. I could be highly religious but that should not come into my discussion and the advice that I give.

Mr Summerskill: May I answer the question, I hope very directly, and I do not want to refer to Joel specifically; you can speak to him. I think he has expressed the view that his views have changed since he was exposed to a number of people from backgrounds he had not necessarily come across before. I would say, and this comes back to what I said earlier on about the way the Commission works, that my own view is that there should clearly be people of different viewpoints and perspectives sitting on the Commission because if the Commission is there to try and resolve tensions between wider communities, it ought to be role-modelling that itself.

Q58 Mr Timpson: Kay, you mentioned earlier your involvement as a Scottish Human Rights Commissioner and how you have drawn from that experience to try and influence the shape and working of the committee here. Now that you are down to that single role again and you cannot influence it from the inside, what do you think the EHRC could learn from the Scottish model? I think you touched on it briefly earlier. Perhaps you could give us some specific examples of how it has worked well in Scotland that could work well here.

Professor Hampton: I think that every new body that is formed needs to be underpinned by basic values and principles. You do not have to invent them; they are reflected in the human rights law. That is one of the things we miserably failed to do in the EHRC, to have a collective ownership of the fundamental principles enshrined in human rights law. What is even more scary for me is that this body now has category A status, which it could lose very easily. First of all, it is not established in terms of Paris principles; it is supported by a sponsor department. To go back to the earlier point, if you have a cross-parliamentary group scrutinising its activities, holding it accountable, it would work better, and that is what we have in Scotland. We have a structure with a cross-party group. We are a parliamentary body rather than a sponsored departmental government body. I think that is a critical point here that should not be missed if you want to learn from lessons. That means that we do not owe any allegiance to anybody who is paying our salary technically. We are a parliamentary body. The second thing is that we have a remarkable Chair, if I may say so, in the sense that he is internationally renowned; he knows human rights, not only from a local national perspective but he brings that richness of knowing what human rights really looks like. He can represent us on an international stage without any embarrassment to the government because he understands how to do this. The very first thing he did was not just to take five months and 25 consultations to write a strategic plan; that was his

task. He got his Commissioners together; he drafted a strategic plan literally in a weekend. I daresay we had a retreat. We then put that to a wide range of bodies, physically going to areas in Scotland and engaging with people asking, "Have we got it right? Is that what you established us for? Can you hold us accountable on this?" It has been brave enough to say, "You need to hold us accountable to this plan". Soon after that we are now busy in a year doing fundamental policy so that we have a public position that will give guidance on a practical level. The whole idea of having a Human Rights Commission is to bring human rights home and making it real and reflecting it in the institutions. The way we are doing it is by taking a strong role in advising bodies on how to get it right. We are working closely with the institutions, public and private sector and the voluntary sector, and showing them. They are already doing human rights but we are encouraging them to do that. We did a large piece of work with a state hospital showing them how to balance rights and responsibilities. As you can imagine, there are mental health issues, abuse on patients because patients have rights as well, and abuse on staff. That was a very good example. We chose issues and the education process was by doing. You can go blue in the face and say that human rights is a good thing and they will always think about the person who wants his last supper. We decided to choose issues like care of the elderly, mental health and bringing home social and economic rights in terms of poverty, which cut across a whole spectrum of organisations and, as Bert sets, set that minimum standard, so that even in traditional areas of inequality you are bringing up the standard collectively. You are not creating a situation of favouritism or taking from one and giving to another. We have done these practical things so that year on year we can tell the public what we have done and, by the way, we only get £10 million, not £70 million. We have done a great deal of work. By the way, we did not want to be part of the inquiry on human rights because we decided that we already know what human rights means. Instead, we decided to do a mapping exercise to identify which are the most vulnerable groups in society and how we can set out our priorities and address those. We talk about businessmen. This was done in a very businesslike way. We all know how to run a business; you do not need a businessman to tell you how to do that. As Mr Been said, if you know what you are doing, the job is easy. To put somebody in there who does not have a clue is really a problem.

Chairman: Thank you very much. We have gone way over time, I am afraid, and we are going to have to draw the session to a conclusion. I think you have painted a pretty bleak picture of what has been going on but, at the same time, I think there is hope with the basic structures there. It is broken but it is fixable I think is the general message that is coming out of this. We will have to reflect on what you have told us and decide what we are going to try to help take the organisation forward. Thank you.

Tuesday 10 November 2009

Members present:

Mr Andrew Dismore, in the Chair

Bowness, L
Dubs, L
Lester of Herne Hill, L
Morris of Handsworth, L
Onslow, E

Dr Evan Harris
Mr Virendra Sharma
Mr Edward Timpson

Witnesses: **Mr Trevor Phillips OBE**, Chair of Commissioners, **Ms Kay Carberry CBE**, Commissioner, **Ms Jeannie Drake CBE**, Commissioner, and **Mr John Wadham**, Group Director Legal, EHRC, gave evidence.

Q59 Chairman: Good afternoon. This is a session of the Joint Select Committee on Human Rights looking at the work of the Equality and Human Rights Commission. We are joined by Trevor Phillips OBE, Chair of the Commission, John Wadham who is the Group Legal Director, Kay Carberry, who is one of the Commissioners, and Jeanie Drake who is also one of the Commissioners. Welcome to you all. I presume, Trevor, that you have seen the evidence that was given to us by four former Commissioners at the last evidence session we held, which did raise some matters of pretty grave concern to us. I think we would like to start with some of the things that came out of that session, and in particular the Commissioners told us that board meetings were extremely unsatisfactory; Commissioners could not influence the agenda; and the Commission was run like a one-man show. Do you recognise this description of the board?

Mr Phillips: Thank you for inviting us to speak to you, Chairman. Because I will not get the chance to do this this afternoon, may I just register formally our thanks to the committee for its visit to our offices, which we very much appreciated. The picture that you have just painted of our board is not one that I recognise. Let me start by saying that we are a Commission that has been in business now for two years. The board was a new one at the time it came into being. During the three years that we have been together I think that the board has developed its ways of working. I would be the last to say that it was perfect at the beginning or indeed at this point but I would make a general point, and my colleagues Jeannie Drake and Kay Carberry would be better placed to talk about this than I would, that I think that the board, by and large, is pretty open. I think that the issues that we deal with are extremely difficult. Many of them are divisive. They are ones about which there are real passions—discrimination, social justice, human rights, the balance between different levels of rights—and those are argued out around our table. In that situation of course there are arguments, there are passions, but, frankly, I think that is part of the role of the Commission. A tranquil Commission where everybody sat and agreed I do not think would be doing its job.

Q60 Chairman: Could you give some specific examples where individual board members have shaped the Commission's agenda or persuaded you to change your mind?

Mr Phillips: We tended to operate by consensus. I think that on almost all of the big issues the board eventually came to a single mind, which is why earlier on this year we were able to agree a three-year strategy, which I think you have seen or certainly that has been sent to the committee. We were able to agree a business plan, and that was agreed unanimously amongst all the Commissioners, including those who appeared before you previously, without any dissent. The only point in the last three years on which the board has divided formally on a vote was over an issue of policy, and my colleagues again may want to offer their views on it. I happened to think that was one of the best debates and the best moments for the board where we argued out a major issue. In the end, the only way we could decide where the board went was by voting on it. One side won. I happened not to be on other winning side but that seemed to me an extremely appropriate way to do things.

Ms Carberry: May I say, first of all, the former Commissioners who spoke to you a couple of weeks ago are some of the people I respect most in the world, and I have to take at face value their account of their experience on the Commission. I also have to say it was very far from my own experience. The impression that was somehow given of a cowed bunch of individuals who were unable to express a view and were unable to challenge the Chair, either because they were intimidated or because they were part of some mysterious inner circle that I have never come across, is partly demeaning to a group of independent and strong minded people. I also offer another explanation, and that is that we felt that we were indeed able to make our points when we needed to make our points, and there was not perhaps widespread dissatisfaction with the style of chairing. That may be an explanation of why there was not more overt challenging of the Chair. Some of us felt that it was not on most occasions necessary because we had confidence in the way that the Commission's business was being conducted.

Ms Drake: Like Kay, I want to pay respect to my fellow Commissioners because obviously they have outstanding credentials as campaigners on equality and human rights issues, and certainly influenced me in debates that took place but, like Kay, I probably saw things in a slightly different light. I certainly never felt personally intimidated. I never felt I could

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not articulate what I wanted to articulate. I went into the new Commission I think expecting big challenges and complexities, that here we had a young organisation that is evolving and it would take time to get to a mature steady state and achieving everything that we desire to achieve. We were merging three existing commissions that had differing degrees of support for the concept of a unitary EHRC; we were bringing three different cultures together; and we had new strands where we had not perhaps built up the expertise in those strands with people wanting to engage in those. We had to get through a speed of transition; we had to build up capacity and capability against a background of stakeholders demanding visible action from the Commission. We had to determine our identity as a regulator. We had a very exciting remit, but it was equally going to be a very contentious remit. So, it was inevitable there would be robust debate and there would be robust debates amongst people with very strong opinions. I think when you look at those challenges that the Commission had to deal with over a very short period of time, then we were going to be robust; we were going to be focused on problems; and we had to get ourselves, and I think the Commission is getting itself, to a stronger and stronger position, but this is a young organisation that is evolving. I genuinely did not feel that I could not raise issues, and I did raise issues and I did not always win my point and sometimes I did win my point.

Q61 Chairman: Could I raise some of the governance issues which I would normally expect to go to a board in these circumstances? Did the board discuss the reasons why Dr Brewer decided to resign as Chief Executive and the arrangements for her replacement?

Mr Phillips: The answer to the first part is no because the reasons were rather clear. Dr Brewer is a career diplomat. She had been in the Foreign Office before she came to us. I was thrilled actually when she took the post, but I think there was never really any doubt that she would, like any chief executive, want to move on to somewhere else. When she was offered the post in South Africa, and I think I would have been the first person in the Commission that she told, I do not think there could be anything but pleasure really for somebody who would have got in her career a dream posting. So there was not an issue for the Commissioners to discuss. The question of how we then dealt with the fact that she had to leave by a particular point was an issue for the Commissioners; how did we deal with the interim because we could not possibly recruit a full-time chief executive in the period that was available to us? So there was a discussion amongst the Commissioners about how we dealt with that and, as with most other things, we eventually agreed to a process, which is what we followed.

Q62 Chairman: So the only reason she decided to resign was because she was offered the appointment as High Commissioner in South Africa?

Mr Phillips: That is the reason that I know and that is the reason that she gave the board.

Q63 Chairman: This was never referred to the board? There was no discussion about any other aspects relating to the relationship with her?

Mr Phillips: That is a different point. We discussed, as you will know, over a period right from the first year of the board's operation, how the board operated. One aspect of that was the relationship between the board and senior management, a part of which of course is always the relationship between the Chair and the Chief Executive. Again as you will know from the papers which you have received, we commissioned the independent exercise done by Deloitte. There are a number of points raised, a number of recommendations, which we have since adopted in relation to that. That was not in relation to the Chief Executive's departure. We started that conversation long before that was even on the horizon.

Q64 Chairman: I do find it surprising that Dr Brewer only resigned because of an appointment in South Africa because I assume when she took the job on she would take it on for the normal period of anybody holding a position like that, which would be similar to a posting in the Foreign Office, which would be for three or four years. It does seem rather peculiar that she would decide to resign so soon into her career with the EHRC.

Mr Phillips: I am afraid I cannot speak for Dr Brewer on this. All I can say is that when she told me of the offer that she had been made, she told it to me with some regret, but actually with a great deal of pleasure, which I shared. My view is that if somebody gets an opportunity that is as great for them as this one was to her, I do not think that one should be grouchy about it. She wanted to do this job.

Q65 Chairman: Did the board discuss the redeployment of former CRE staff who had taken redundancy pay? I know that is the subject of a PAC inquiry.

Mr Phillips: When it was drawn to our attention eventually by the Chief Executive and the Audit and Risk Committee, which is the appropriate way for something like this to be brought to the attention of the board, yes, we did discuss it.

Q66 Chairman: How soon after the appointment?

Mr Phillips: I think this actually came to our attention at the beginning of 2008.

Q67 Chairman: The discussion was in the board in 2008?

Mr Phillips: You will have to forgive me. So that you have the proper information, I will just need to check when and where we dealt with this specific point of what date it came before the board. I beg your pardon, it was early 2009. I was made aware of this by the Chief Executive because she had been in correspondence with our sponsor unit on this matter and in relation to the Treasury. It was raised at our

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Audit and Risk Committee, which is the committee of the board that is responsible for drawing the board's attention to these kinds of issues. I do not sit on it for obvious reasons but this came up in early 2009. It came to the board a little later than that this year.

Q68 Chairman: When were the staff members from the CRE appointed?

Mr Phillips: The situation you are describing is the re-contracting of a number of individuals who had previously worked for the CRE at the start of the Commission's life, which was October 2007.

Q69 Chairman: So it was two years later?

Mr Phillips: About 15 or 16 months when it came to the board.

Q70 Chairman: Was it rather surprising that it took so long?

Mr Phillips: With hindsight, yes, but of course the problem is you cannot know what you do not know. I think the board in retrospect would say that we did not have the procedures or perhaps the Audit and Risk Committee was not as alert to this as it might have been but certainly you are right in your implication that we should have seen it faster; we have learnt from the lesson and are trying to tighten up the way that we operate so that these kinds of things come through Audit and Risk to the Board more quickly.

Q71 Chairman: Presumably you knew they had received redundancy payments from the CRE before they were appointed?

Mr Phillips: I did not.

Q72 Chairman: You did not?

Mr Phillips: No. This is not a matter that I would have dealt with as Chair. What I did know was that at the beginning of our time, in October 2007, the Commission had only ten of its complement of 25 directors and the Chief Executive said to me, "We have to get people in if we are going to get started on 1 October". There is a discussion to be had about whether we should have asked for more time, as others in similar situations have done, and I am frankly very happy to hold up my hands because that was more my responsibility than anybody else's, to say that perhaps we should have thought about that again. What the Chief Executive said to me was that she needed to make sure that we had the right number of people with the right level of skills to get us open, and this was one of the ways that she wanted to approach it.

Q73 Lord Lester of Herne Hill: Is the position that you brought three people from the CRE into the transition team. It was not advertised or anything like that. You brought them in and Dr Brewer as your Chief Executive insisted that they should end their temporary engagement before the start. Is it also not true that there were rather difficult courses of dealing between you and the Chief Executive on

these matters and matters like conflicts of interest throughout the time that she and you were working together?

Mr Phillips: On the factual matter, the answer is no. I have never actually employed anybody at the Commission because that is not my role, other than the Chief Executive. All staff are employed by the Chief Executive and management.

Q74 Lord Lester of Herne Hill: But you brought them in before she was there, did you not?

Mr Phillips: No. In the transition period, the Programme Director was responsible for those hirings.

Q75 Lord Lester of Herne Hill: But you brought them from the CRE before she came and she then insisted that they should leave and she also raised other matters where she was in conflict with you about, for example, conflicts of interest. That is true, is it not?

Mr Phillips: You are asking two separate questions. I want to get to the second one but, just to deal with the first, I as Chair of the organisation in the normal way as Chair do not employ people, have never employed people; I have never been on a recruitment panel; I have never undertaken recruitment for the Commission other than that of the Chief Executive. It is not my role. I do not have the competence or the authority to do it.

Q76 Chairman: I think we are straying in to PAC territory now.

Mr Phillips: May I just answer Lord Lester's other point? On the issues of conflicts of interest, which I am sure we will return to, I had one particular issue about work that I did outside the Commission. I took advice from a number of sources, in particular the Commission's own lawyers, and the Chief Executive I think certainly offered me some personal advice but was also part of the conversation with the Commission's lawyers, and I took action on that on the advice of a number of people.

Q77 Dr Harris: Ms Carberry, you described earlier that you thought that what some of the former Commissioners have said or the fact that they have said it was demeaning to them. How else do people who have concerns say what they are, without saying what they are? Should they, if they do that, run the risk of having an adjective like that being directed at them by someone who simply disagrees with them? Why not just take issue with what they say?

Ms Carberry: I am very glad that you ask that because perhaps I was not clear. I was saying that their implication that the rest of us were too cowed and intimidated to challenge the Chair was demeaning to the rest of us. I was not casting aspersions on them.

Q78 Dr Harris: You can speak for your self, can you not? You were not cowed?

Ms Carberry: I was very careful to say how much I respect them and how much I take what they said at face value but, after all, if you are the Deputy Chair,

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there are ten Commissioners who did not chose to resign. Of course they can speak for themselves but, speaking for myself, I felt that if I needed to make my arguments and if my arguments were in conflict with the position of the Chair, I was perfectly able to do that. The example that Trevor gave of the one occasion when an argument was pushed so far that there needed to be a vote was actually initiated by me where I did not agree with something.

Q79 Dr Harris: I do not have a problem with that.

Ms Carberry: I am not denigrating the Commissioners who resigned.

Q80 Dr Harris: Let me be more specific in my question. You said you were not cowed. Are you speaking for yourself or for the other ten or a number of the other ten? In other words, might there be a third group, those who did not give evidence and yourself and Ms Drake who said that you certainly did not feel cowed? Might there be other people for whom you cannot speak?

Ms Carberry: Yes, on the Commission there might well be. I can only speak for myself.

Q81 Dr Harris: So she may not have been talking about you and any of the Commissioners who said some Commissioners felt cowed? Can I just clarify, because you have supported the Chairman here, which is fine, it is your right to do: are there any conflicts of interest that you have in respect of your support for the Chairman, you or Ms Drake, that you might wish to mention now in respect of that? Can you think of any? I give you the chance.

Ms Carberry: No, I cannot think of any. I am not sure what you might be suggesting but I cannot think of any.

Ms Drake: I do not believe I have any conflicts of interest but as regard the question, strictly speaking, I am not currently a Commissioner because I was an EOC transition Commissioner and my period of office ceased at the end of September. That would have happened anyway. That was a period of appointment for three months. I have expressed an interest in continuing to do work with the Commission. You asked me the straight question, so I have given you the straight answer.

Q82 Dr Harris: Who will decide whether you do continue to have that paid post?

Ms Drake: I presume that is the GEO and the Secretary of State.

Q83 Dr Harris: I thought there was a selection panel of which the Chair was a member? Am I wrong about that?

Ms Drake: But the decision rests with the Secretary of State.

Q84 Dr Harris: I just want to clarify whether for either of you in your continuing appointment as Commissioners in any way in your opinion—the Chairman can answer for himself in a minute—the Chairman has any say in that?

Ms Drake: No. I am absolutely fully aware of standards in public life and my responsibility. I hold other public appointments, and the issue of probity in my conduct and my integrity is very important to me, so I will answer the questions with absolute honesty. You asked me a very direct question and I have given you a very direct answer. I can give you absolute assurance that that does not influence in any way how I would respond to this committee or in any way in which I would discharge myself in any public role.

Q85 Dr Harris: No, I was not suggesting that anything would, but for the sake of appearances it is important to have that on the record.

Ms Drake: Absolutely and I have given the answer.

Q86 Dr Harris: I want to give Ms Carberry a chance to respond.

Ms Carberry: Just as a matter of record, my term of office is coming to an end. Together with other Commissioners, I have the option or not to reapply for a further term, and I have reapplied for a further term. The Chairman was one of the members of the panel that interviewed me. He was one I think of four or five people on the panel, just for the record.

Q87 Dr Harris: But you have not yet heard the outcome of that?

Ms Carberry: No.

Mr Phillips: May I just read into the record the fact here? The appointment of board members is a matter for the Secretary of State under the Equality Act 2006. The process is led by the GEO, and that means in fact that the panel is chaired by the Director General, GEO, and they have appointed the Public Appointments Commission to manage the process. There was an advertisement in *The Sunday Times*. The panel interviews have recently concluded. I am one of a number of people on the appointments panel. The others include Jonathan Rees, who is Director General of GEO, who is the Chair; Sue Owen who is the Director General of Welfare and Wellbeing at DWP, and Sheila Hewitt who is the independent assessor from OCPA, and the recommendations from the appointments panel will be put to the Ministers. The decision here will be entirely that of Ministers. I have been through this process twice before as Chair of this board, and indeed previously as Chair of the CRE. For what it is worth, I can tell you that Ministers will listen to the Chair of the relevant commission, but I know that they listen to other voices and, in the end, my experience is always that this is a ministerial decision.

Q88 Dr Harris: So you have an influence but it is in no way decisive?

Mr Phillips: I think it is appropriate to the Chair of this body.

Q89 Dr Harris: I am not arguing appropriateness. Mr Phillips, you mentioned that you thought there was generally a consensus on the Commission but we heard in our evidence previously that Professors

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Klug and Hampton spoke of a culture of intimidation, Ben Summerskill talked about the clique that the Chair surrounded himself with, Sir Bert Massie among other things referred to items that were agreed for the agenda which would be withdrawn and how he had to travel back and forth from Liverpool raising governance issues which were never addressed. In her submission now, Baroness Campbell seems to reinforce this picture. She says: "Later on towards the end of my time at the HRC, I can honestly say quite a number of Commissioners felt intimidated by the divisive culture that was allowed to fester." "I realised how problematic many Commissioners found it to challenge the Chair on his personal conduct, even when it was our duty to do so." "The Chair surrounded himself with a few like-minded people who shared his view style and this became difficult to intercept." Then finally, "I would liken his style to that of a newsroom with cliques and an 'in crowd'. Unfortunately, this meant that those with an alternative view were isolated or treated with indifference. The culture was very exclusive and opposite to the kind of culture an equality and human rights body should be role modelling." Can all those people, for whom it is said there is great respect, be in some way delusional about that? Do you recognise that that was their experience and why is it that those people, who are very senior in their professions, would appear to be so easily intimidated, or is there in fact a real problem here that you need to recognise?

Mr Phillips: First let me join my colleagues in saying that I recognise that the individuals to whom you refer are distinguished in their field but they were also distinguished members of our board, which I think one of your witnesses previously described as a remarkable board, an assessment with which I agree. I think that all of these people are experienced people who, frankly, were not in my recollection that shy in putting forward their views. I think one of the early criticisms that some of my colleagues made was that our meetings went on slightly too long because it is my habit to allow anybody who wants to come in to discuss things to come into the discussion.

Q90 Dr Harris: I do not want to talk about the length of meetings. I want you to come to the point I put.

Mr Phillips: I think that words like delusional and so on seem to me extremist, certainly not in any way applicable to anybody involved in this discussion. I can certainly accept that some Commissioners may have felt differently to others but it is worth saying that, as you say, there are a number of Commissioners, in this case four, who have come before you and made their feelings known, but there is another dozen who, as far as I am aware, did not express themselves in the same terms and did not feel that in the same way. May I finish my answer?

Dr Harris: Baroness Campbell has associated herself with the evidence given by the other four, so there are five.

Q91 Chairman: Let Trevor finish his answer and then you can ask your question again.

Mr Phillips: The only point I was going to make is that all of us have sat together for the best part of three years. We have worked together. We have delivered what I think is extremely good work, getting the Commission up and running in a very short time, extremely important strategic cases, compliance actions, establishing ourselves as a national human rights institution, delivering human rights inquiries, talking about strategy, and I could go on. It seems to me that everybody, including those who appeared before you a couple of weeks back, made an extremely important contribution to all of that. The picture of a board which was divided and where people could not speak, and so on, really is not one that I personally recognise. That is not to say I do not believe that anybody could interpret it in another way; it simply is not a picture I recognise.

Q92 Dr Harris: Is that not part of the problem that they are making? Baroness Campbell, and I am sorry I tried to interrupt you before, says: "I agree with the oral evidence given to the Committee by my fellow former Commissioners on 23rd October 2009." She said that she had worked with you for nearly three years, is convinced you are a man of many talents, able to engage with some people in a way that few other people can, namely politicians and the media in particular. She says, "However, I finally came to the conclusion that these skills came at too high a price for the EHRC which was being held back by a disempowered Board and a lack of cohesive direction. Eventually I came to believe that Trevor Phillips's conduct and approach towards governance were severely damaging to the EHRC." If you do not recognise that, do you not think you should have done, given that you have five Commissioners who feel very strongly, strongly enough to break ranks, if you like, and say what they have said? They did make it clear it was painful to them to say it.

Mr Phillips: I honestly cannot comment on what four former colleagues and one still a colleague, Commissioner Summerskill who is still a Commissioner, say in these terms. What I will say is that I really regret it if people felt that way. I wish that either in our closed sessions or in the board, if this was the way that people felt, they had expressed it. It seems to me that most members of the board never had any trouble in disagreeing with each other or indeed with me. If you look at our minutes, if you talk to most of my colleagues, I think you will see that there is a mixture of feelings about the way that we operate and we learnt. That is one reason, by the way, why we commissioned, after a year, the Deloitte study because we wanted an independent judgment about how we were operating. That did come forward with some assessments of both our strengths but also our weaknesses, which we have worked very hard to try and put right.

Q93 Dr Harris: Other colleagues will come on to talk about Deloitte. The situation we are in is that although you may say that the remainder have not

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said anything, if you are in the position that you are in, on the salary you are on, with the responsibility you have and the nature of the beast which is about equality and human rights, to have five “dissident” Commissioners making such strong criticisms, which I know must be painful if you did not see them coming about the way you chaired it, does that not make your position untenable for the benefit of the concept and the Commission itself? Did you give it pause for thought?

Mr Phillips: All my colleagues’ comments give me pause for thought regularly. Actually, I think we are pretty honest with each other. Let me first say that of course this is painful. Of course none of this is pleasant, more importantly, not because it reflects on me personally but because it distracts from the very important and much of it successful work that the Commission is doing. That is what I think is actually the thing that I most regret here. If I could find a way of that not happening, if I could have acted differently or can now act differently to ensure that does not happen, you can be sure that will be at the top of my personal agenda. May I just make one other point? It would be easier to respond to your question if you could give a particular example of a particular thing that I might have done differently or the board might have done differently to answer these general assertions. I am not using the term “general assertions” to suggest that they are not true. I am simply saying that unless they are concrete, it is rather had to respond to them.

Q94 Earl of Onslow: Mr Phillips, I find it very odd that Ms Carberry said that she did not see widespread disagreement. How many members of a board have to resign before you recognise widespread disagreement? Five members of a board plus the chief executive going does not give me the impression of harmonious, happy, harp playing, sanctimonious happiness in this world at all. It just reminds me of a sack full of alley cats not getting on. Which is it?

Ms Carberry: It has not been paradise but, as I said, there are ten Commissioners aside from the Chair who are still around the table, who have not resigned. I think, Chairman, you have had the benefit of the documentation linked to the Deloitte’s governance. There was one interesting reported comment from one of the board’s meetings in the context of that study, which was that it is interesting that you can have completely different narratives of the same shared experience.

Q95 Earl of Onslow: With respect, your answer is waffle. How many members of a board have to resign? Is it 15 resign and one remains? Does that show there is widespread dissatisfaction? Is it 12, six or five or none? I cannot recognise a body which says five plus its chief executive have resigned and then you say that there is no widespread disagreement. That simply bears no relationship to perceived reality at all.

Ms Carberry: I am giving you an account of my own subjective perceived reality as somebody who has attended a great many meetings and taken part in a

great many Commission activities over the three years and that is all I can do. All I have claimed to do as I have sat here is speak for myself. On Dr Harris’s question about the Chair’s position and whether it was still tenable, I would think that the Chair’s position was untenable if the Commission had not achieved anything over the last three years. I think that the record speaks for itself that there is a range of work, and I will not take up your time by going into the great list of achievements that are obvious and are in the public domain already. Had we been a dysfunctional organisation, an organisation in disarray, an organisation where widespread dissatisfaction was infecting the work of the Commission, that would be a very serious matter, but I would contend that the record of the Commission’s work suggests that that was not the case.

Q96 Earl of Onslow: Further to that, I see it says: “Do all Commissioners rigorously hold the Chair to account for what he says and does?” We were given in the evidence that we heard that the Chairman did things without reference to the Board. When I asked the people concerned were these things not discussed at board meetings, why did you not put them on the agenda, they said that on occasions they had asked for them to go on the agenda and they had not gone on the agenda. In my experience of chairing anything, which I very occasionally do, I try to ask anybody who wants things on the agenda that it should be put on the agenda, and it always does go on the agenda because that is what boards are for; it is to discuss things and not for the Chairman to go off and do things without board approval. In the evidence there were lots of those incidents and that is not a satisfactory way of running a board. Would you agree or not?

Mr Phillips: I utterly and completely agree with you, Lord Onslow. I would be interested to know what the actual item was that was asked for and not placed on the board agenda.

Q97 Earl of Onslow: I accept that I only received my papers about ten minutes before I came, so I have not re-read them in great detail, but I do remember with distinct clarity raising this point with the four people who gave us evidence and they said that was the case. You are saying it is not the case. Am I right in saying that?

Mr Phillips: I remember reading that piece of evidence and I think you quite rightly asked exactly the same question that I have just asked: was there a particular issue that any of the people concerned wanted discussed. I do not recall, in receiving the evidence, anybody saying there was a particular thing they wanted to debate—support for a particular case, the way we ran a particular issue, a financial matter. I do not recall anybody identifying such a matter. I completely agree with you that part of the value of a board is that matters that board members want raised should be raised. I think that from time to time the volume of business can be such that a topic that somebody would like on this month, including me, does not get there and we might

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discuss it the following month, unless it is so urgent, in which case what I tend to do is to say to the board as a whole, “How would you like to deal with this?” and, generally speaking, we reach an agreement about how we do it.

Q98 Chairman: One of the issues that came up in the previous evidence and indeed in Baroness Campbell’s evidence to us is the concern that major policy statements and speeches have been made by you without prior discussion in the board; for example, the speech you made on the anniversary of the *Rivers of Blood* speech when you talked about the emergence of a kind of cold war in parts of the country, which some people took exception to, and the announcement that institutional racism was not longer a problem, which somebody else took exception to. Were these policy statements discussed in the board beforehand?

Mr Phillips: May I first say that in your question you are referring to two quite separate speeches?

Q99 Chairman: I am, yes.

Mr Phillips: On the first one, I think that Professor Klug pointed out to you that this idea of a cold war was not an expression used by me, and I believe she said in her evidence that it is not an implication that could be taken from my speech.

Q100 Chairman: We have the quotes.

Mr Phillips: What did I say?

Q101 Chairman: “We have seen the emergence of a kind of cold war in some parts of the country, where very separate communities exist side by side . . . with poor communication across racial or religious lines.”

Mr Phillips: The way it was reported I think is what Professor Klug was referring to, that I did not suggest that this was something that had divided the country. I was talking about particular areas. The other point you make about the speech I made on the tenth anniversary of the Macpherson Report, which was January this year, actually is an interesting example because we went to some lengths on that particular occasion to make sure that what I said was, first of all, evidenced and, secondly, discussed amongst the board. In relation to the first point, we published a research report in the middle of January, which would have been done independently, commissioned by the EHRC, which looked at the performance of police forces in the ten years since Macpherson, and we published that separately from the speech, but the speech was based on that. In relation to what I then said, we discussed the idea I think in the autumn of last year.

Q102 Chairman: Which one is that?

Mr Phillips: This is the Macpherson speech, tenth anniversary. In December, we set aside a period, I think about an hour or an hour and a quarter, for the board to discuss that speech, which we then did. A draft, or at least a paper which was based on that discussion, a series of internal staff discussions, plus some external discussions with Members of

Parliament, took place in December and January. We circulated that paper to board members. Some of them responded. In fact, I remember Professor Klug herself was one of the people who did respond, and indeed she was the only board member, when we circulated the draft of the speech as it was finally delivered and the press release, who did respond with some comments, which we then incorporated. That speech was pretty thoroughly discussed before I delivered it.

Q103 Chairman: So Baroness Campbell is wrong when she says she was concerned that this policy was made on the hoof, with little or no reference to Commissioners?

Mr Phillips: I do not think in my view that that is a description of the way that we have operated.

Q104 Chairman: And the first speech, the Enoch Powell 40th anniversary of the “Rivers of Blood” speech?

Mr Phillips: You are quite right—it is a year and a half ago—I think I did use the words “cold war” but certainly not in the way it was reported.

Q105 Chairman: The question is not what you said; that is a separate debate altogether. The issue is whether there was consultation with the board before making such a speech?

Mr Phillips: On other Powell speech, yes, we discussed that; we discussed the idea of doing it at all because I myself had some doubts. The board discussed it, senior staff discussed it; and I think a view was taken that this was an important moment for the Commission to make a statement.

Chairman: So when Professor Klug says, “I have to say we had not discussed that. If we had, I personally would have objected to that”, she is wrong?

Q106 Dr Harris: She is referring to the quote, “However, we have seen the emergency of a kind of cold war in some parts of the country where very separate communities exist side by side” et cetera, which the Chairman read out.

Mr Phillips: She may be referring to specific words and that may be true, that we did not talk about those specific words.

Q107 Earl of Onslow: Coming back to my question, I have found the bit in the evidence. It is on page 18 of the evidence. “My answer to that would be that I do not think we expressed it in those terms. I do not know what my colleagues would say. I do think at the beginning, when some of us still had the fight in us, we did quite often ask to discuss fundamentally what we are there to do, how do we do it, how do we get policy on difficult issues. We had a private meeting once. We were going to do it and we never did.” In other words, there is somebody asking for a strategic policy board meeting discussion and it appears that it never took place.

Mr Phillips: My colleagues can speak for themselves on this.

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Q108 Earl of Onslow: No, Chairman. You must answer the question.

Mr Phillips: I am going to respond to you. The principal strategic duty of the board is to produce a strategic plan, which we did earlier on this year. We discussed that strategic plan in drafts in December, January, we set aside a day to discuss it in February, and we agreed the final plan in March. So there were four separate occasions on which we discussed the single most important strategic document that the Commission produced.

Q109 Earl of Onslow: You discussed the document but did you discuss what your plan was before you got a document or did you say “Can we have a document to tell us what to do?”

Mr Phillips: No, no, we discussed what the priorities of the Commissioners were, first of all in a rather open way; we asked the executive to come back with some proposals, which they did in January. We decided we needed a longer time to discuss that, so we set aside a specific time, I think it was the best part of a day in February, in which all board members participated. Then we discussed the final document in March because we had to present it to the Secretary of State by the end of the financial year.

Q110 Lord Lester of Herne Hill: I ought to declare a professional interest first. I should have done that before. I had the privilege of advising and acting for the EOC, the CRE and the present Commission. I want to turn to the Deloitte report, if I may, because one of the points made by the five resigning Commissioners is that the criticisms that Deloitte made were sanitised—a short way of putting it. We asked you to provide some material, which you kindly have. My understanding is that there were two meetings; one on 29 October 2008 and one on 24 November 2008. You provided some of the background material to us, which I have looked at. What background material was provided for the board meeting, the first of those two, on 29 October, because we have not seen that?

Mr Phillips: I am afraid I cannot bring that to mind immediately. What we supplied to you I think is all the documentation we had.

Q111 Lord Lester of Herne Hill: Can I help you with your memory?

Mr Phillips: Yes, of course.

Q112 Lord Lester of Herne Hill: Was there material that was quite critical of the board that was part of the material discussed on 29 October that we have not seen?

Mr Phillips: I do not have that material with me.

Q113 Lord Lester of Herne Hill: Do you remember not the material but the criticism? Was there material that came to that first meeting from Deloitte, to use your own language, that talks about weaknesses? You said that there was an independent assessment that referred to weaknesses.

Mr Phillips: On 29 October?

Q114 Lord Lester of Herne Hill: Yes. Was there material at that first meeting on 29 October which drew attention to weaknesses? We have not seen it. I am just asking the question.

Mr Phillips: Yes. Deloitte first did a series of interviews with board members and stakeholders and they set out what they thought were some of the comments about the weaknesses, strengths, opportunities and so on of the board. I think you have some of those.

Q115 Lord Lester of Herne Hill: We have. I am not asking you about what we have. I am asking you about what we do not have, if you follow.

Mr Phillips: That is what was supplied to that meeting.

Q116 Lord Lester of Herne Hill: I understand you will not remember now but can you please check and if I am right, can you supply the written background material that was provided to the first of those two meetings.

Mr Phillips: On 29 October?

Q117 Lord Lester of Herne Hill: On 29 October?

Mr Phillips: It is what you have. What is called the “As is analysis: Perceptions from EHRC”. That is the material.

Mr Wadham: If I can help, there may be other material that we have not supplied but we have tried to find all of the material that was available and provide it to the committee. I cannot guarantee that, looking backwards, there was not something missing but, as far as we can tell, the position is that you have everything. Obviously we can look again to see whether there is any other information but we went back in our own archives, and obviously to Deloitte as well.

Q118 Lord Lester of Herne Hill: That is fine. If you would look again, I would be grateful. The real question is this: were the criticisms about weaknesses in the Commission discussed by the board and, if so, when?

Mr Phillips: They were. They were discussed on that occasion. They were discussed subsequently. It is worth saying that you will see from the material supplied for 29 October that Deloitte I think at that point had not finished their interviews, so it was partial, but I would not make a big point of that. I think we are saying they had heard. We had asked them for a warts and all presentation to us, so all of those issues were discussed by the board. The only caveat I would put is that as I recall it some board members said that they felt that the views that were attributed to them were not quite what they thought they had said, so I think one has to treat this with a little bit of care. That is all.

Q119 Lord Lester of Herne Hill: What would you say then about the points made by the five resigning Commissioners effectively that the warts were removed from the picture by the time that the Deloitte final report was produced?

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Mr Phillips: I would say that is not my interpretation of what happened. The final report that came to the board, which set out what Deloitte thought we had to do to become in essence a better board, I thought set out pretty clearly some of the issues that we were trying to get right. It gave us some very clear recommendations about better preparation for boards, relations between boards and SMT and so on. It is worth perhaps putting on record that the final report that was presented to the board was adopted by the board unanimously and the board asked the Deputy Chair, Baronesses Prosser, to take charge of the process of implementing the recommendations of the Deloitte's review. As I said right at the outset, this is not a board in which everybody went into the room and everybody agreed about everything. I personally would think that would be the wrong way to carry on. We did debate things; there were different views. We then tried to work those through and, generally speaking, as on this case, we reached a consensus. I want to be absolutely clear that I am not trying to present the EHRC board as though we all came into the room, we all agreed about everything, it was all swimming, there were no robust debates. Let me assure you that there were and there were disagreements.

Lord Lester of Herne Hill: Can you think of any reason why the five resigning Commissioners should have had the impression that the Deloitte's report was sanitised in the course of your deliberations? Can you think of any reason?

Q120 Chairman: Can I put the question more specifically, Trevor? Basically the point that they were making I think is this, that recommendations were aimed at improving the performance of the Chair, i.e. you, but downgraded in the final version of the report. Looking at the report, we see in Appendix G recommendations about chairing of board meetings, and this is put into the second phase of the work programme with no timetable to implement them. It is a confidential document at the moment, so I will not go through the detail, but there does seem to be something of a downgrading of recommendations in relation to your role compared to the original discussion.

Mr Phillips: I do not think that is true actually. I think the principal issues were not about the management of the board meeting. The principal recommendations were about the roles and responsibilities, and clarifying those, about the size of the board, and some issues of process. There were many recommendations which Deloitte themselves said were out of scope, which they did not think were of the first order, and the board itself discussed this. I must, in a way, reiterate this point. This is not a report which I wrote or the Chief Executive wrote; it was a report which was written independently and was discussed by the board and the recommendations were agreed by the board.

Q121 Chairman: I think we ought to pull this one paragraph out of the document. This is a recommendation from the document about chairing the board: "Ensure Chair leads by example and

encourages everyone to actively participate, listen attentively, pose questions to achieve clarification and shared meaning, strive for consensus on decision-making, encourage creative and challenging discussions and respond with respect and courtesy." The inference is that was a problem that already existed that needed addressing, which chimes with the complaints of the previous Commissioners who we heard from a couple of weeks ago. If there was not a problem why did you have that recommendation?

Mr Phillips: It was a view that was taken by Deloitte's. Let me be absolutely clear: I took that very seriously. If that was a perception, whether or not I thought it was true, and unless you want to get into the detail of it here it does not matter whether I thought it was true, it was something that I had to respond to, which I have tried to since then. My colleagues may have a view about that. If I may say, the point is Deloitte's made that a point of further recommendation for further implementation and the board agreed. That was the status of it.

Q122 Chairman: Is there any reason why this document cannot now be made public?

Mr Phillips: I think this is a document that was for internal consumption by the board. I would not want to make it public without the permission of the board itself.

Q123 Chairman: Perhaps you might put that to the board because I think this is quite an important document, having read it myself, in terms of the issues that arose. This is where the evidence has taken us. When we started our discussions with the previous Commissioners we did not expect to end up where we are now with the questions we are putting to you at the moment. This is quite an important document to inform that particular discussion and debate.

Mr Phillips: If I may say so, Chairman, if that is true then it is worth making reference to the whole of the document because, as you will also know, in the same section there were references to the board, individual board members' behaviour and responsibilities, the chief executive and the senior management team. You have picked out some references to the Chair's contribution, but if we are putting this on the record it is perhaps worth saying this is a lengthy report, most of which does not refer to the Chair.

Q124 Chairman: That is why I think it would be very helpful if the document could be put in the public domain.

Ms Drake: I am just getting a bit concerned. We did meet as a board to discuss the results of the Deloitte review and like any board—I have done these in other organisations—that does a review of itself and its operation, there was robust debate. People were expressing what they felt strongly about, what they thought they could improve. I am not denying that sort of robust debate took place. I would have expressed my own strong views. That is not unusual, that happens in boards, and I am quite happy to

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confirm to questions that we had that robust debate and people were articulating what they were unhappy about. Then you go from there to say, “How does that inform how we should improve? What are the actions we take? How do we as a board ensure, with the executive, that we sustain momentum to delivering those improvements and changes?” You are absolutely right, that process did happen, we were all robust in articulating our views, we were trying to capture how that meant we should improve. My point is not to deny that there was robust debate or people had differing opinions, but that we were in an evolutionary process and what I felt was not being recognised was some of the very positive things that the EHRC was achieving, even though I absolutely recognise that there was plenty of scope for improvement as there is in any new organisation. If you look at the recommendations that come out of here, there were recommendations for everybody. There were recommendations for how the board conducted itself and that the Chair should be assessed for his performance more systematically. We were addressing these issues and it was down to us to make sure we sustained the momentum for delivering those improvements.

Chairman: There was apparently a meeting on 17 November, a special working session with Commissioners, senior management and staff to explore the Deloitte issue and it would be very helpful to have the minutes of that meeting and any other record of that meeting to inform our further consideration of the issues.

Earl of Onslow: Just looking at the first paragraph, in here it says—I will paraphrase—

Chairman: No you will not, Lord Onslow.

Q125 Lord Morris of Handsworth: I wonder whether I could shift the emphasis of conversation to the question of leadership, about which we heard a lot of evidence from the four former Commissioners. They repeatedly expressed concerns that their skills and expertise had not been fully utilised. You may or may not agree and might think it is perception or reality. Their perception might well represent their reality. The key question is, looking back do you regret that you failed to bring the best out of your team?

Mr Phillips: The way I would respond to that, Lord Morris, is to say that I do think the Commissioners’ capabilities could have been better utilised. There are reasons why we did not get there as quickly as we might have done. First of all, to be absolutely honest, it was speed, just trying to get things done. Bearing in mind the Commissioners are part-time, 20 days a year, there are limits to how much we and the senior staff could ask them to do when you bear in mind that we have six or eight Commission meetings a year, plus if you are on the legal committee, for example, that is another seven or eight half days, and we are using up the time of Commissioners very, very quickly. In the current round of appointments we have asked the Government to think again about that quantum of time because that is a very fair point. We have some very skilled, capable, experienced people and we

could and should take advantage of their capabilities. Referring back to what my colleagues have said and we have just been discussing in relation to the Deloitte’s report, I would also say we had to find ways with a very large board to work together and take advantage of the capabilities of board members. For example, now we have had a little bit more time to work this through we are a year into a programme by which we have given board members the role of sponsoring particular projects. Jeannie is responsible for a very successful project called Working Better, which is about flexibility at work. Doing more of that is giving Commissioners more scope to exercise leadership and be spokespeople for the Commission, which I think is also important.

Q126 Lord Morris of Handsworth: Looking back to the last point you made about giving the Commissioners more responsibility to speak out, what would you do differently?

Mr Phillips: There are many things I would do differently, but in response to your particular question one of the things we are thinking about now is identifying Commission leads in particular areas, for example gender, race, disability, so there is an identifiable Commission voice and also a Commission with whom stakeholders can identify.

Q127 Lord Morris of Handsworth: With respect, Trevor, the criticisms which were evidenced before us were largely not so much about structure but leadership, and leadership in the context of the Chair. In the light of the experience of the resignations, from a leadership perspective from the Chair what, if anything, would you do differently?

Mr Phillips: I am sorry, I am trying to understand exactly what you are asking. What would I do differently in relation to?

Q128 Lord Morris of Handsworth: In the context of your leadership because a large portion of the criticisms that have been evidenced to us was about criticising the leadership, the Chair. That is the evidence we have got. You have talked about changes in terms of Commissioners taking lead responsibility and other possible changes that can be made. What I am asking you is what would you do differently within the context of your own leadership of the Commission in order to get the best out of the Commissioners?

Mr Phillips: I think I would say two things. First of all, I want to return to a point I made very early on in this session. I think I would have sought more time to create the Commission. That was something I should have thought more about. We discussed it as a board and decided we should not delay, but if I were looking back with perfect hindsight I would say we needed more time. Why is this important in the context of the question you have asked me? That would have given me more time to work with the Commissioners, to get to know them better, to bring them together more, because we did not have enough time in that set-up period to work as closely and to get to know each other as well as we would

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have liked. Personally, perhaps I ought to have paid more attention to that than I did. If I understand the question you are asking me, that is one of the kinds of things I would have done.

Q129 Chairman: What do you understand your role to be as a non-executive Chair in relation to the chief executive?

Mr Phillips: My job as the non-executive Chair is first of all to lead the board, to make sure the board is discussing the right things, making the right decisions at the right time, that the board is holding the executive to account or it is carrying out our decisions as a board and, thirdly, I guess to my part, a leading part I guess, in being an ambassador and spokesperson for the Commission. It is not my role to manage the operations of the Commission.

Q130 Chairman: Do you have a job description?

Mr Phillips: Yes, I do.

Q131 Chairman: Did you agree a job description with Dr Brewer, the chief executive, and the Department?

Mr Phillips: I have a job description which is agreed with the Department.

Q132 Chairman: With the Department?

Mr Phillips: Yes.

Q133 Chairman: Perhaps we could see a copy of that.

Mr Phillips: Yes.

Q134 Chairman: But it was not agreed with Dr Brewer?

Mr Phillips: I was appointed before Dr Brewer was appointed.

Q135 Chairman: Are you aware of the Nolan Committee principles?

Mr Phillips: Yes.

Q136 Chairman: Do you think that you have worked within those principles throughout your time on the board?

Mr Phillips: As best as I could, yes.

Q137 Lord Lester of Herne Hill: Could I ask about conflicts of interest? You are the co-founder of the Equate Organisation consultancy.

Mr Phillips: Correct.

Q138 Lord Lester of Herne Hill: I think you are a majority shareholder?

Mr Phillips: I am not now. I was as at the beginning but I am not now.

Q139 Lord Lester of Herne Hill: Dr Brewer, the chief executive, it seems from what we have read, repeatedly tried to persuade you to stand down from the Equate consultancy to remove the perceived conflict of interest between your function as Chair of the Commission and your private financial interest. Is that correct?

Mr Phillips: No.

Q140 Lord Lester of Herne Hill: It is not correct?

Mr Phillips: No, it is not correct. I set up that consultancy when I moved to the Equality and Human Rights Commission for the simple reason that I was a part-time Chair working three to three and a half days a week and I wanted to be clear about how I dealt with anything I did in the rest of my week. Before I accepted the appointment I wrote to the Permanent Secretary at CLG asking his advice and permission to do so. He wrote back to me saying that such activity was permissible and as a result of that I then set up this company to make sure that anything I did was done transparently and it would be done through that company. That was the idea of it but in practice it actually did very little.

Q141 Lord Lester of Herne Hill: You did not hear my question, I think. My question was whether it was right that the chief executive repeatedly sought to persuade you to remove the perceived conflict of interest and you said that is not right, but are you sure about that?

Mr Phillips: The chief executive gave me advice about this, as did the Commission's own lawyers and, indeed, my own lawyers.

Q142 Lord Lester of Herne Hill: What was their advice?

Mr Phillips: That there would be a perceived conflict of interest. As a result I stood down as a director of that company on 1 October 2008 and subsequently reduced my interest in it to something which I think is negligible actually.

Q143 Lord Lester of Herne Hill: That was the effect of the advice that she, among others, had given you. That is right, is it not?

Mr Phillips: It was the effect of my own consideration. I took the advice, but in the end you have to make these decisions for yourself. That seemed to me to be the right thing to do here.

Q144 Lord Lester of Herne Hill: Why did it take so long?

Mr Phillips: To stand down? Actually, the truth is that we set up that company and it did one task but within months I came to the conclusion that it was effectively not doing what I had hoped it would do, which was to ensure transparency, but simply caused more difficulties both for the Commission—this is the most important thing—and for my colleagues, and that was why I stood down.

Q145 Lord Lester of Herne Hill: I wonder if you can explain this. On your own website it still shows you both as Chair of the Commission and also as connected with the Equate Organisation and when one looks at the Equate Organisation on the website it says it is no longer accessible because it is under reconstruction. Something seems to be odd about the web. Can you try to explain that to me?

Mr Phillips: I cannot explain it to you. I have to confess the website set up in my name is not one I look at at all. If it still has that connection in that way then I will look at it now.

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Q146 Lord Lester of Herne Hill: Did the Cabinet Office give legal advice on the propriety of the apparent conflict before you stepped down?

Mr Phillips: They gave some advice on the perception, that there was a perception of conflict. There was at no point any advice that said there was an actual conflict, not least because, as I said, before I took up the post I sought advice in writing, I received advice from the Permanent Secretary in writing and at no point did anyone say to me that this was not something that one should do. It is worth saying that it was not by any means a novel arrangement.

Q147 Lord Lester of Herne Hill: I must be careful not to stray into PAC territory so it may be that I will be stopped from asking this question. Of the three people you brought from the CRE, two of them are now in another consultancy with close links with Equate, are they not?

Mr Phillips: No. There are two things. One is, if I may say, Lord Lester, you keep saying that I “brought” people from the CRE with me, and I just have to emphasise not in fact nor in spirit is that the case.

Q148 Lord Lester of Herne Hill: That is not quite right. Forget about the legalism, one of them was your special adviser at the CRE, was she not?

Mr Phillips: No, she was not. She was my special adviser for about a year and a half and then she became a director of the CRE. She was brought into the transition team by the programme director prior to Nicola Brewer taking over as chief executive and then subsequently rehired by Nicola Brewer.

Q149 Lord Lester of Herne Hill: The three of them are close to you. You would not have let them be brought over unless you wanted them to be there, would you?

Mr Phillips: Honestly, Lord Lester, this was not my call. It was a judgment that was made by the chief executive. She asked me about a couple of the individuals, she asked my opinions about them, but it was her call and I did not ask for anybody to be, as you put it, “brought over”. There was no reason for me to do so.

Q150 Lord Lester of Herne Hill: Two of them at least founded and are still active in the Dignity Management Consultancy which has links with Equate, is that not right?

Mr Phillips: No, it does not. At one point what Equate did, because there were many things which I did not want to do which people would ask Equate to do, was we said we would refer people. There was no business relationship, no remuneration involved, simply we would refer. There were a number of other individuals and companies for whom that was true. For a year and a bit now I have not been part of that at all for the reasons that we have discussed.

Chairman: I think we are now getting into PAC territory.

Q151 Mr Timpson: Mr Phillips, in *The Guardian* newspaper you wrote an article on 5 September where, amongst other things, you acknowledged the importance of public confidence in the Commission in the carrying out of its work. To that end, do you think it is helpful that for your reappointment, unlike Commissioners, which you also acknowledge in the same article, you did not have to compete with other talented people?

Mr Phillips: I think that is a matter for the Secretary of State.

Q152 Mr Timpson: I am asking for your opinion. We have talked about perception a lot and we need to be clear from your perception you feel that the way you have been reappointed gives as much public confidence that the Commission needs.

Mr Phillips: All I can say to you is that really is a matter for the Secretary of State, the Government, and not for me. I would have been happy to undergo any process that I was asked to undergo.

Q153 Mr Timpson: Do you think it would have been better for public confidence in the Commission if you had gone through an open competition and been selected through that process rather than just being nodded through by a minister?

Mr Phillips: I do not think the process involved was nodding through.

Q154 Mr Timpson: That is the perception of some people.

Mr Phillips: Well it might be, but I can tell you I went through, as all public officials have to now, a pretty rigorous appraisal done by the civil servants and then signed off by ministers. There was, as you put it, no nodding through. Whether, in effect, re-advertising the post would have increased public confidence or not, I do not know. That was not an option that was raised with me.

Q155 Mr Timpson: You honestly do not know whether it would have raised public confidence? Surely if there had been an open competition and you had been seen to have been chosen as still being the best person for the job that must improve public confidence, must it not?

Mr Phillips: There are many ways in which one could do that. For example, I know that this Committee has discussed the question of whether appointees to public bodies should appear in front of a parliamentary committee and there are other ways in which you can do that. I am simply saying that I do not think it is my place to make a choice between those.

Q156 Mr Timpson: In your article you allude to the competition for Commissioners’ places. I take it from that you think that is the right process for Commissioners to be appointed or reappointed?

Mr Phillips: I was explaining what I thought was the Secretary of State’s train of thinking on reappointments about the Commissioners.

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Q157 Mr Timpson: Do you not have a view on what is the best way to appoint a Commissioner?

Mr Phillips: I think the way we appointed Commissioners previously and the way we are appointing Commissioners now is completely in line with the appropriate principles, it is overseen by GO, validated by OCPA, and this seems to me to be the right way to do this.

Q158 Lord Dubs: You have partly answered the question I am about to put to you. In Scotland they do things somewhat differently. The Chair of the Scottish Human Rights Commission is appointed by and reports to the Scottish Parliament and is accountable to Parliament, not the Government. How would you feel about such a model?

Mr Phillips: If that was what Parliament decided I would be completely happy to go along with that model. If I may venture a personal opinion—

Q159 Lord Dubs: Yes, please.

Mr Phillips: I am in favour of public appointees like myself being scrutinised by parliamentary committees in that way. I must stress that is a personal opinion, it is not a Commission view; it is not anything else.

Q160 Mr Sharma: When you were appointed there were some queries as to why you are working almost full-time, five days or less. Normal practice in other major organisations is that non-executive chairs work for two or three days. Why will you be working four days per week for the Commission? What about a conflict with permanent staff, particularly with the chief executive?

Mr Phillips: I do not think there is anything that says the number of days you work leads to more or less conflict. That is partly a function of the clarity of job roles, and sometimes of personalities perhaps. In my particular case the Government has asked me to do this on a four day a week basis because they think that is what it needs to be an effective Chair, and I think that is probably true at this time. I do not think, and I frankly hope, it will be true forever and certainly not true for my successor.

Q161 Mr Sharma: Generally it is felt if you are working full-time, or near full-time, not you personally but whoever is in the position, you may get involved in the day-to-day running of the organisation which is in direct conflict with the chief executive officer. Do you see that there is any conflict like that?

Mr Phillips: To be honest, that is not a function of the length of time you work, it is a function of whether you decide you want to do that. I want to be absolutely clear, that is not what I regard as my function. The board has enough work in representing the Commission, in setting strategic direction, in trying to work with stakeholders without wanting to get involved in operations. That is certainly not what I think my role is and not what I am fitted for.

Q162 Chairman: We have had provided to us under FOI an email of 13 November from the Propriety and Ethics Cabinet Office and it says this: “On average non-exec chairs of large public bodies probably serve two to three days a week. This should be sufficient. More than this risks creating conflict between the chair and the CEO as it can encourage the chair to become involved in the day-to-day management of the body which is of course the responsibility of the CEO.” Would you disagree with that?

Mr Phillips: I would not disagree with that, but I would say in our particular case, given the age of the body and the weight of work that we have to carry out, some of which you have raised, there is far more than I think can be done by a six day a week chief executive and six day a week Chair. If I may come back to Lord Morris’ point, that is one of the reasons that I think we have to engage the Commissioners more than we were able to do at the beginning.

Q163 Chairman: Is this not getting to the stage now of having a dog and barking yourself? We discussed the role of the chief executive earlier on, which is a more strategic oversight role, rather than doing the work yourself.

Mr Wadham: I was reappointed as the full-time Deputy Chair of the Independent Police Complaints Commission, as was the Chair of the Independent Police Complaints Commission, Nick Hardwick. We were both reappointed without any process and maybe that was wrong, but that was the case, apart from the appraisal that Trevor has mentioned. In my experience it was very simple, at least at a theoretical level, to decide what the job of the chief executive was and what the jobs of the chair and deputy chair were. We had a chief executive in terms of running the organisation as opposed to dealing with issues of leadership, and in some cases with the Independent Police Complaints Commission taking responsibility for the supervision and oversight of particularly significant investigations including, of course, the investigation into the shooting in Stockwell, whereas obviously the executive had a key role in relation to sending out the investigators picking up the shell cases, et cetera, and providing the evidence that led to the Metropolitan Police being convicted of a health and safety breach. I do not think you can say it is inevitable that a chair of a non-departmental public body can never be full-time. As I say, that is an example and it worked well. There are criticisms of the IPCC but I do not think they are connected with the role of the board as opposed to the role of the executive. I have done it from the other side and it seemed to work quite well.

Q164 Chairman: So you would also disagree with the Propriety and Ethics section of the Cabinet Office?

Mr Wadham: I know that the Cabinet Office were consulted because I was involved in that process in relation to setting up the Independent Police Complaints Commission. They took the view in that case it was sensible to take forward the arrangements

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that I have just outlined. There is no reason why it cannot be successful, and I think it is, in relation to the Equality and Human Rights Commission.

Q165 Lord Lester of Herne Hill: Although that is true and, for example, the Equal Opportunities Commission is a good example where one remembers full-time chair, full-time chief executive, does not everything then depend upon having a chair who is able to delegate properly and give the chief executive, someone of great quality, a real role properly so there is a separation of powers between them rather than what some may say has happened in this case?

Mr Wadham: I am sure that is the right approach. Maybe it is above my pay grade but it has worked at the Equality and Human Rights Commission too.

Q166 Chairman: While we are on pay grades, the Propriety and Ethics Cabinet Office suggests that remuneration is towards the top end of levels offered to chairs of NDPBs. Do you think you are worth more than the Prime Minister, Trevor?

Mr Phillips: I am not paid more than the Prime Minister.

Q167 Chairman: You are pro rata.

Mr Phillips: No, I am not. The figure that I am paid is £160,000 pro rata.

Q168 Chairman: Pro rata that is more.

Mr Phillips: No, I am not paid £160,000. At the moment I am paid four-fifths of £160,000. My full-time salary is quite a lot less than that of the Prime Minister, and I think that is right.

Q169 Mr Sharma: Baroness Campbell disagreed with the decision to reduce the size of the board and it has been said that the board of EHRC Commissioners was too large and desperate to provide good governance: "I do not agree. I believe that the cultural and political breadth of Commissioners was a strength and not a barrier". Why do you think the Commission will benefit from having fewer members?

Mr Phillips: My colleagues may contribute to this. I did not feel immensely strongly about this, but this was one of the outcomes of the Deloitte's exercise. The board itself, when it received the recommendation from Deloitte's that the board would function better if there were ten to 12 members rather than, as it was then, 17, agreed that. I was essentially detailed by the board to transmit that view to the Secretary of State, which was what I did.

Q170 Chairman: Before we go on, I think Kay has to leave.

Ms Carberry: Thank you very much for allowing me to leave early. If I could just comment on that question. I agree with Baroness Campbell. I was one of the Commissioners who thought there was a strong case for leaving the board as it was, but we were in a minority and, as with some of the other points that were made during the course of that

Deloitte's review, what emerged was a consensus so, like others, I had to accept what was the majority view. That was what happened on that particular recommendation.

Chairman: Thank you, Kay. I think we would like to go on to talk about some human rights issues now.

Q171 Mr Sharma: We have received very disappointing statements where previous Commissioners have said that the first two years have been a disappointment in various respects. Liberty wrote to say that the EHRC has failed to fulfil its duty to promote and protect human rights. Do Liberty and your former colleagues have grounds to be disappointed by the Commission's performance?

Mr Phillips: I think that a balanced account of what we have done would say that we have done a great deal. We would have liked to have done more. Let me start by saying three of the things that we think are most important have been the human rights inquiry which we conducted, which took evidence from nearly 3,000 people, the largest piece of work of its kind, and if I may say so I hoped would add to the body of work which this Committee has done. I am not simply saying this to flatter the Committee, but until we came along and did that this Committee, as far as I was concerned, was the only body that was doing work of that level in this country. The strategy which we have released today is important. The accreditation as a human rights institution is extremely important, bearing in mind that people perhaps often forget when we talk about human rights work we are also talking about the enforcement and carrying out of the seven treaties to which the United Kingdom Government is party. We have submitted shadow reports on all of that. We have written and published a simple guide to human rights called *Ours to Own*. We have campaigned on a series of issues and we have—John may say a few words about this—pursued a number of key cases, for example the *Jason Smith* case which guaranteed protection for our troops on the frontline, and the *Coleman* case and so on. All of us, of course, would have liked to have done more but it would be unfair to ignore the many things that the Commission has done, and when I talk about the Commission I am now not talking about me or the board, I am talking about our staff who have done tremendous work and shown leadership. It would be unfair simply to dismiss that work as—to use your word—"disappointing".

Q172 Mr Sharma: The comments that I have just made, one was attributed to an external organisation—Liberty—but your former colleagues also told us a month ago that the EHRC simply was not operating as a human rights commission. Let me ask, is this a problem that you recognise? If you do, is it being addressed, or do you think they were simply wrong?

Mr Phillips: I do not think it is a legitimate assessment. Let me ask John to respond to that.

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Mr Wadham: I worked for Liberty for 13 years man and boy and I am sure that if I was working there now I would be asking the Equality and Human Rights Commission to do more, and internally a lot of us are trying to do more.

Q173 Lord Morris of Handsworth: Forget what Liberty says, I am asking do you recognise the allegation that the Commission is not operating as a human rights commission?

Mr Wadham: No, I do not. What I recognise is frustration on behalf of members of the board and the staff in trying to ensure that the Commission that was set up new from the three previous legacy commissions has taken time to deliver on human rights as well as on equalities. When we inherited the work from the legacy commissions we were in a very important case in October 2007 in the European Court of Justice relating to a case about disability and carers. It was a very important case. That had taken years to get to that point. Not surprisingly, we did not have a series of human rights initiatives and we have now. Trevor has already mentioned the human rights inquiry, which is important, but there are many other examples which we have described in the document we published today including, for instance, we have intervened in more cases in the Appeal Courts than any other organisation ever in the existence of the United Kingdom. That is a pretty proud boast and you may say perhaps we should be doing something else. In fact, we are doing other things. There are issues about ensuring that both internally and with the United Nations and the other processes all of the human rights treaties are properly recognised in this country and we hold the Government to account in relation to those treaties. We have commented on a number of issues, including, in the views of some people perhaps too aggressively, in relation to the proposal to extend detention for suspects of terrorism to 42 days. We threatened to take legal proceedings against the Government and some people, Lord Lester particularly, were a bit anxious about that proposal, but we did do so. We have raised questions about the way in which profiles following DNA tests are taken and retained. We have written to the Association of Chief Police Officers saying that their actions are unlawful. We have been concerned about a number of other issues. As I say, we are doing the best we can so far. We and Francesca Klug, who I have known since 1999, would like the Commission to have already done more. My job, at least on the legal side of it, is to do as much as we possibly can and I think we are doing a good job. This strategy that we have published today demonstrates how we are going to take that job further.

Q174 Lord Morris of Handsworth: Can I take it that the Commission welcomes all emphasis, from whatever source, on human rights?

Mr Phillips: Of course.

Q175 Lord Morris of Handsworth: You do not think any of it is counterproductive?

Mr Wadham: We have discussed with our NGO colleagues some of the issues that the Commission should be dealing with and we will continue to do so. I hope that we will continue to have a dialogue with those groups of people and the Ministry of Justice and others. I hope that we are open and listening to what other people think we should do and will take those into account when we take action and deliver on our remit. We are delivering on our remit. Personally, I would like us to do more and hope we will continue to do more and today is a very important step in the direction of that future.

Mr Phillips: May I add one point to this, Lord Morris? Sometimes some of the work that we do which, if you like, looks like pure equality work is actually human rights work. I will give two examples. One, we published in the summer what we call the Equality Measurement Framework which most people now say is a groundbreaking piece of work that will help all of us assess how we are doing on equality, but it is based entirely on a human rights framework, that is to say equality of what. It is entirely based on human rights. A lot of people in the human rights sphere have been very excited, and I use that word because that is the word they have used to me, by the way in which this begins to bring together the spheres of equality and human rights rather than making them rivals. On particular issues, for example work we have done on protecting women who have suffered violence, it looks at some level like public sector equality duty kind of work but underpinning it is that local authorities have an obligation to protect women's human rights under Articles 2, 3 and 8. We have tried to bring the human rights framework to bear on what we do on equality.

Q176 Dr Harris: Mr Wadham, you said that you have taken more legal cases than any other organisation before you. What are you comparing yourself with? Was there another overarching human rights commission that was comparable to you with your funding and your breadth, or is it just you have done more than any of the individual commissions on their own?

Mr Wadham: I was including within that the human rights NGOs that also intervene. Of course we have more resources and you may say that is not much of a success but, in fact, I think it is a considerable success.

Q177 Dr Harris: It would only be noteworthy if you were doing less than a barely funded NGO, would it not? It is not noteworthy to say you are doing more than an NGO when that is your job.

Mr Wadham: I said that we were doing more than all of the other NGOs combined. Or I did not say that, but I am now saying that. I am sorry if I did not make that clear.

Q178 Dr Harris: That is helpful. We do quite a bit of human rights work on this Committee. To what extent do you have a work stream when the Government publishes a Bill to say, "We are going to give of our expertise to this Committee", or when we publish a report you are going to respond to it saying

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where you agree or disagree, whether it be on a Bill or a big theme? Do you have a work stream to do that?

Mr Wadham: We have done that work sporadically. We should do it more consistently, and I hope that we will do so now we are in a better position to make decisions about priorities. We do examine Bills for compliance with the conventions, not as consistently in relation to the Bills that you choose, that is true, and we should do more of that work.

Q179 Dr Harris: I do not know, you may not want to duplicate so that is not a criticism.

Mr Wadham: We would not want to duplicate.

Mr Phillips: As a matter of principle I think the board's position is we should, as far as it is possible, be in partnership with this Committee to promote the value of human rights legislation, human rights instruments and the principles of human rights.

Q180 Dr Harris: I think if we were an equalities committee of Parliament the impression is that you would be all over us, which is not a bad thing, but we are human rights and, therefore, we do not see much of you.

Mr Phillips: If I may interrupt you. I would be very distressed if that were the case or anything we did indicated that. I would be keen to hear if that were the case. That is why at the very beginning of this session the first thing I said was to thank the Committee for coming to visit us because that is the nature of the relationship that we would like to build with this Committee.

Q181 Dr Harris: I just want to ask about this report today. I find it surprising, given that one of the criticisms was that there is a bit of unnecessary spin in the Commission, that this report would be published today when you are here before us. Mr Phillips, I guess it is your responsibility. Is it a random happenstance that the human rights reporters might be writing about your important report rather than about this session today?

Mr Wadham: We decided to publish this today because we have been working on our proposal on human rights since the human rights inquiry reported and it seemed convenient to us to want to talk to you about human rights issues and that is clearly what we are doing.

Q182 Chairman: Why could it not be published yesterday so that we would have a chance to properly consider it and the press would have had a chance to analyse it and decide whether we are asking the right questions or not? Why today?

Mr Wadham: We did try to publish it a couple of days ago and there have been some delays in relation to the process. I would have liked to have got the report to you earlier.

Q183 Chairman: Also when we had the Commissioners here before you published a document that day as well, did you not?

Mr Wadham: Sorry, I do not understand that.

Mr Phillips: Forgive me, I have forgotten exactly what it was we published on that day. There was no particular connection. If, Chairman, you are asking a specific question, there is no attempt to deflect attention from this session.

Lord Lester of Herne Hill: I have read the document.

Q184 Dr Harris: I am not going to talk about the document, you will have a chance in a moment. It seems to outsiders that you might be seeking to bury bad news, whether that is this appearance or the report. The same allegation can be made in a sense about the 42 days because that had already had a lot of publicity and was likely not to succeed very well in Parliament. There are a whole load of other human rights issues in counter-terrorism on which, speaking for myself, I recognise this Committee has issued as strong recommendations as the one that the public understands and yet it is seen that the Commission came in on something that was the most public, whereas one might argue that you should seek to raise the profile and importance of things that are somewhat below the radar in media and parliamentary terms.

Mr Wadham: As we have said it would be good if we could have done more and will continue to do more. In fact, in relation to that we were also very concerned, as were others, about the provisions relating to inquests and coroners in the context of secret inquests which we made statements about and produced briefings on. That is not the only time that we have intervened in the debate around the balance between protecting people from terrorism and human rights. In the future I hope that we can do more of that.

Mr Phillips: On the 42 days, I would say one of the reasons for us to be interested in that was because we believed we could do something about it. We are not simply here to offer commentaries on issues. That was important to us because we felt we could have an impact on that situation.

Q185 Dr Harris: I agree that case could be made. I have got one more question. Baroness Campbell in her written evidence says that she considers "the Commission's human rights remit was marginalised due to the Chair's consistent lack of appreciation of the importance and effectiveness of the Human Rights Act". Her view is: "He believed that emphasis on human rights was counterproductive due to widespread media hostility to the concept". Do you have a view that it is counterproductive because of media hostility to be dealing with human rights? Why do you think she said that?

Mr Phillips: I cannot possibly tell you why she said that because actually my view is exactly the reverse. I think at the heart of our human rights strategy the most important thing for us is to make human rights, the Human Rights Act, the conventions that this country has signed up to, relevant to the people of this country because I think they are. That is why in the work that we have done, which is published in both the strategy and the inquiry, we have done surveys to show that four out of five British people

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believe that there should be a human rights framework, human rights legislation. We believe strongly in supporting and promoting human rights.

Q186 Dr Harris: Have you had strong words to say in public about the proposal to abolish the Human Rights Act?

Mr Phillips: You will see in our document published today that we set out five principles, the first of which is the idea that whatever different political forces do and, as you know, there are different views floating about the place, there should be no regression from the current position. We are absolutely clearly about that. If I may be straight with you, we are not going to get into an argument with one political party or another. What we have done is set out very clearly where we stand and anybody who wants to deal with human rights, the Bill of Rights and so on, has to start from that place with us.

Q187 Chairman: Can we carry on with the document you published today because I have read it and it did not take me all that long I have to say. Apart from the specific commitment you have just mentioned, which is very welcome, it is a pretty vague document. There is a full page or so of recommendations but they are not very specific, there are no timescales for achieving them, no measurable milestones or benchmarks, no methods of measuring success or outcomes. A lot of it is just quite general verbiage with motherhood and apple pie commitments rather than very specific proposals. Are you happy with the document?

Mr Wadham: I am sorry that it has not worked for you. The development of our human rights strategy is important for the Commission. It sets out a vision for us for the future. It mirrors the Commission's overall three-year strategy which could not include as much detail on human rights as we would have wanted because the human rights inquiry did not report at the time we had to produce the strategy. We have set out the details in there and elsewhere of some of the things we have done. This sets out our overall high level vision for the future about what we are going to do, including the point that Trevor just made particularly on page 20 which will be a key issue, I guess, in the debates from now until the election about what kinds of human rights mechanisms we have here and, secondly, all of the political parties have policies towards developing some kind of Bill of Rights, and we would hope that will be a key part of our work in ensuring protection at the level that currently exists with the Human Rights Act.

Q188 Chairman: From the inquiry that you had that took a year, and I gave evidence to it as you know, one of the recommendations was that the EHRC "will assume a leadership role in raising public awareness of the importance of human rights and the Human Rights Act". Is that not blindingly obvious to start with? Why did you need an inquiry to come to that conclusion? You lost a year in getting to where you are now.

Mr Phillips: First of all, and let me pay tribute to Dame Nuala O'Loan and Professor Klug, that was not the only thing the inquiry produced. Personally, I thought the inquiry process itself was extremely important. They brought nearly 3,000 people into a debate about human rights. In the human rights inquiry report they set out examples of the way that human rights affect ordinary people. They made proposals for what the Commission should do as well as what Government should do. There were many things other than simply saying that the Commission should assume leadership. I do not think there is anything wrong with asserting that though and saying to the board, "We think that is what you ought to do". May I just make one other point. As in three of the protected grounds in the Equality Act we were starting pretty much from a standing start here. Part of what we had to do was to draw all of those who had been working on human rights, the British Institute of Human Rights, this Committee and so on, to work with us. We had to establish an evidence base. We had to try to make sure that we had skills. We devoted some effort to establishing ourselves as a national human rights institution which is not, as you will know, a simple task of writing a letter and then you get the status. We had to work for that. If I may say, I would completely concede that all of us would have liked to have done more but there was a great deal of work done by our people on this and I would not want that to be forgotten in this discussion.

Q189 Lord Lester of Herne Hill: What I do not understand is why the document you published today could not have been published within the first year of the Commission's life. I do not understand that. John Wadham and I could have done this document, I reckon, in about a week. There is nothing in this document, I believe, that is novel, surprising or really measurable. I simply do not accept, and I want you to understand that, the answer you gave just now. There is a lack of energy and a great deal of lethargy about this and I really am very sorry. Why could this not have been published without a human rights inquiry at the very beginning and then by all means have your inquiries later if you want to?

Mr Phillips: John may say something about this. There are many things in which that could be said to be true but, as the Committee said to me at some length earlier on, it is important that the board moves on this together. This was what the board decided it wanted to do. If we were working as individuals you might well be right, but we are not.

Mr Wadham: Some of the things that we all have to do may not seem to be very innovative, novel or exciting but they are the things that are set out here. If you find them a little bland it may well be because there is a hill to climb in relation to people in this country understanding what the importance of human rights protections are. In specific terms in relation to the Human Rights Act our inquiry demonstrated that more than 80 per cent of people do believe there should be mechanisms and law to protect human rights. Nevertheless, there are still

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some issues: we have a major political party who want to abolish the Human Rights Act, so it is clearly controversial, and collectively we have not persuaded everyone that the Human Rights Act should be here to stay.

Q190 Chairman: This is precisely Lord Lester's point. This document could have been written in the first week of the Commission. I have read it. I could have written it and I am not a human rights expert like Lord Lester or you, I am a lay chairman, as it were, in this respect. One of your recommendations is: "We will engage fully with the work of the Joint Parliamentary Committee on Human Rights". That is very welcome but it is not exactly rocket science, is it? These recommendations are very general aspirations that do not require a great deal of research, development or a year's thinking about, they can be put together in a week or two as Lord Lester says.

Mr Wadham: The reason that the board chose to start with the inquiry was because there is a rich seam of evidence in the inquiry, not just about the fact that human rights are good but also that human rights when embedded in the public sector work and deliver more for the public sector as well as for individuals.

Q191 Chairman: We knew that anyway. We knew that from the work that we and many other bodies done. Effectively you duplicated work that had already been done instead of just picking it up and running with it when you started.

Mr Wadham: I do not think we duplicated. This is a much more detailed and evidence based contribution than other people have been able to make so far. As Trevor says, Nuala O'Loan, Bert Massie, Francesca Klug and other Commissioners were involved in that process. The board collectively took that direction and we are now in a better position than we would have been. I hope that helps us to ensure that the Human Rights Act and its mechanisms are protected from any undermining by whichever government might be in place. We have taken some steps forward. The board agreed the recommendations from the human rights inquiry without any amendments whatsoever and some of those include increasing the work of the Commission itself. For instance, both in terms of whether the Commission should be able to fund and assist people in human rights cases, which it currently is not able to do so, and, secondly, the issue about the extent to which there should be a parallel human rights duty that is equivalent to the equality duties which are going through this House in relation to the Equality Bill.

Q192 Chairman: Have you got enough staff working on this? I understand that you have got two senior members of staff working on human rights issues, albeit one for a limited period, and you have obviously got staff working on cases, but is that the sum total of the human rights capacity of the organisation?

Mr Wadham: No, it is not. We have experts across the Commission now on human rights who are identified as such. As Trevor has said already, much of the work the Commission does internally and externally is sometimes labelled as equality. For instance, the work that we have done in relation to what we call the map of gaps, which is about ensuring that women subject to violence have resources in their local areas, in many countries a human rights commission would be doing that work. Sometimes that is regarded as an equality basis and sometimes it is regarded as a human rights basis. This would not be acceptable, but if we could restructure a lot of the work that we currently label as "equality" as "human rights" you would then see, not surprisingly, probably 50 per cent of the work of the Commission is in fact human rights because equality is a fundamental human right. I do not accept that. Of course it is true that we could do more and I would like us to do more and I hope we continue to improve and deliver more in the future.

Mr Phillips: Can I add one point in relation to what you have just said. We also fund other organisations. We have funded work by BIHR and we fund work by Liberty. Coming back to Dr Harris' point about duplication, we do not see the need to do things where others are better placed at this point to do them.

Q193 Lord Lester of Herne Hill: I am dismayed, John, by what you said just now because what you were saying, as I understand it, was you would like to see power to assist individual human rights cases as with equality cases and you would like to see a general human rights duty capable of being enforced. Are you aware that during the passage of the last Equality Bill there was consent right across all three parties in the House of Lords and I think the House of Commons that we did not want your Commission to be submerged having to deal with thousands of individual human rights cases and, therefore, that your power be carefully restricted only to doing judicial review or important issues? Secondly, the idea of a general human rights duty was rejected. Would it not be more convincing if your Commission concentrated on its existing powers and in some document indicating the kinds of practices, procedures and rules that you want to change rather than dealing with generality or seeking further powers before you demonstrate you can use your existing powers properly?

Mr Wadham: I understand why you say that, Lord Lester. That was a recommendation that came from the human rights inquiry which included, of course, Dame Nuala O'Loan, Francesca Klug, Bert Massie and others, and it was agreed by the board wholeheartedly with all of the other recommendations. I understand your concerns. One of our difficulties in relation to our specific remit to fund cases is although we can intervene and although we have our own powers to take in our own name, there are some strategic cases which I think it would be very sensible for us to support. I realise that would mean we would attract others whose cases we would not want to support and in the past

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I thought the balance was as it should be in the Equality Act but, I am afraid to say, I have changed my mind since that point. Secondly, in relation to the human rights duty, one of the key issues that came out of our inquiry was the extent to which those in the public sector did not recognise human rights. In fact, if you look at the written evidence given to the inquiry you will find that when we asked the question, “What processes do you have in place to ensure human rights is embedded?”, although the first sentence of that answer concerned human rights, the rest of it was all about equality, partly because we and the previous commissions have been successful in getting the message embedded. We have not done that with human rights. If we do not have a human rights duty and only rely on litigation to get public sector organisations to understand the issues we will not succeed in the long-term. I think a public sector duty for human rights is a useful parallel to the equality duty.

Q194 Lord Lester of Herne Hill: There is a public sector duty, is there not, in s.6 of the Human Rights Act?

Mr Wadham: I do not think that is quite correct. I do not know whether it is sensible for us to argue that point.

Mr Phillips: You rightly raised the question about why this particular strategy, why did it take so long and so on. This seems to me to be rather a good example. It is fair to say I would have started where you started, Lord Lester, but it is quite difficult to go through an inquiry where you take evidence from 3,000 people who are experts and they tell you they think you should be doing something different and then simply ignore it.

Q195 Lord Lester of Herne Hill: I did not say that.

Mr Phillips: It may not be so difficult for you but our board would find that quite hard. To me, that is one of the reasons why it was worth going through the process of the human rights inquiry before settling on what may seem to you, as experts, rather self-evident propositions.

Q196 Lord Dubs: Can we turn to the concept of “fairness”, please? There have been some criticisms of the Commission, for example by Baroness Campbell, that you focused on “fairness” rather than equality. If that is the case, what do you mean by “fairness” and why not talk about equality instead? Are these differences of substance or are they simply semantic points?

Mr Phillips: They are differences of substance. I am interested to hear this. This is not a debate that was particularly strongly contested around the board table. I do not recall this being a matter of argument. We published a document about 12 months ago which was called *Fairness* which sets out in summary the view of the Commission that fairness is a way of bringing together the equality, human rights and good relations components of our work. I know there are lots of arguments about whether this is cosmetic and so on, but I would say this: our equality work should not be just about outcomes or

discrimination, it is also about process and the way things are arrived at. We can have perfect equality but in the complete absence of a human rights culture. Where we use the word “fairness”, what we are trying to do is bring together these different concepts. In a sense, we think our Commission has been charged with the duty of trying, if you like, to create equality plus, and that is what we mean when we say “fairness”. As I say, we set this out in some detail a year and a bit ago and in practice we do not think that there has been much dispute about this.

Q197 Mr Sharma: A former colleague of yours, Baroness Campbell, has expressed concerns about disability issues which are not sufficiently promoted. It has been suggested that the Commission is not making progress on disability. Why is this?

Mr Phillips: I do not think that is right. I can share some facts with you. Let me start by saying that we have as one of our statutory committees a disability committee which plays an active and full role in the work of the Commission. Cases which touch on disability and, indeed, on human rights go before that committee to consider whether we should pursue them or not. They also have an extremely powerful role in advising on enforcement and compliance action. For example, tomorrow when the disability committee meets I know that they will be considering issues to do with safety and security and it is my expectation that they will make some proposals for what the Commission should do which I suspect the board will adopt. The first point I want to make is there is a very active committee which Baroness Campbell herself created, recruited to and led very successfully until last year, at which point she handed over to the current chair of that committee, Alun Davies. We have an internal lever which makes sure that we are not backsliding. There are a whole series of things in relation to conventions, the Mental Health Act, elements within the Equality Bill which we have campaigned for, cases such as *Coleman* and the case we took in relation to the Crown Prosecution Service which we can go through, plus the work that we have done to establish the Commission as a UK complaints handling body responsible for dealing with complaints from air passengers, plus intervening in cases like the Liverpool taxi case where we have been very successful. In summary, what I would say is the Commission has funded about 38 legal cases on behalf of individuals which is 43 per cent of our legal casework, so it is actually a large proportion of all the work that we do; we have funded over 200 conciliation cases; undertaken 14 legal enforcement cases, which is about 30 per cent of our formal enforcement work; and we have taken about 100 pre-enforcement and compliance actions in relation to disability. I think that is a pretty substantial body of work. Let me say that of course we want to do more and there are big issues. The social care report, which Baroness Campbell herself led, was a terrifically good piece of work. Personally, I was disappointed that it did not get more attention.

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Q198 Chairman: Is this *From Safety Net to Springboard*?

Mr Phillips: Yes. Personally, I was disappointed that did not get more attention, but in the end it is not the attention in the newspapers that matters; it is, was it a good piece of work, does it guide us well, and I think that will. The work that we launched on 29 April, which was launched by me and our Minister, Maria Eagle, on the issue of safety is a great platform for us to begin to tackle the issues of hate crime and it will be part of what we use to promote our work on the *Pilkington* case. There is a lot that we have done on disability. We are working with the ODI and others. There are things that perhaps we have not been able to trumpet as much as we could have done. One of the things I was very proud of was the work that our disability committee colleagues did to ensure that disabled people were not excluded from the Paralympic Games after rulings a couple of years ago. That was done by our Commission and it has made a difference in that area to real people. I am completely at one with Jane, we would like to do more, but I do not think that means we have not done a lot.

Q199 Chairman: I am going to put to you what Sir Bert Massie told us. He referred to the report from Baroness Campbell and he said that it was done and it was dismissed.

Mr Phillips: What was done and dismissed?

Q200 Chairman: The report that you have referred to, *From Safety Net to Springboard*. Then he went on to say: "I could not get resources allocated to disability or to human rights. Resource was always going elsewhere. Whenever I went public and criticised them on disability activity publicly there was a flurry of disability activity and since I have resigned there has been another flurry. It will not last, it is just a show".

Mr Wadham: I think the statistics that Trevor has read out would suggest rather than that account, the account is that we may have done more on disability than we have on the other equality strands. That seems to be the evidence from our statistics. Maybe we should have done more on everything, but that seems to be the case.

Q201 Chairman: He concedes you took a lot of legal cases, but he goes on to say: "My point is you do not enforce the law by simply waiting for people to come to you and take a case, you see where the law is not being exercised and you initiate things and that is what we were not doing. We were reacting but we were initiating".

Mr Wadham: I am afraid that does not accord with the statistics that Trevor has gone through. They are not just about cases; they are about enforcement actions, taking a serious approach to the Discrimination Act and the disability equality duty.

Mr Phillips: We have put considerable resources, for example, into marketing our role in relation to airline complaints, which is a big transport issue. As I said, a third of our legal enforcement cases are related to disability. There are many more where we

have essentially taken pre-enforcement action and the target, if I can put it this way, has given up before we have had to go into formal legal mode. I do not think it is fair to say that the Commission has been sitting waiting; we have been very active on this front.

Q202 Dr Harris: I want to ask you about a couple of Equality Bill issues, mainly because we have had some evidence from the British Humanist Association submitted to this inquiry, and I declare an interest as Vice-President of the British Humanist Association. They feel that the view of the non-religious within the religious strand is not taken on board as much as it could be. They are not specific about whether that is due to an absence of expertise in the Commission, they just feel that is a concern. I wonder whether you feel there might be something in that and that might be an area of work you could look at.

Mr Phillips: We sit around the table with the British Humanist Association and the Secular Society on a pretty regular basis. I do myself. Once again, if I may say so, it is possible to make a general assertion but it is almost impossible to answer it unless we know what it is that we might have done that we did not do.

Q203 Dr Harris: The BHA is very concerned about the Census question and EHRC staff have supported them in that concern but have not taken it any further. In the Census asking, "What is your religion?" prejudices the answer and is discriminatory against them. They are disappointed that you have praised the Scouts and Guides for their inclusivity, for example, when they specifically exclude people when they might be the only youth club in town getting public funding and they can exclude the non-religious. They find it hard to understand why you say nothing about additional segregation created by religious discrimination for over-subscribed faith schools, of course not the only reason for segregation in communities but it cannot help, and the discrimination against teachers on the basis of their religion, and I could go on but I will not. Those are some of the specifics. Again, I would invite you to consider whether you might look into that and consider whether there is something that could be looked at.

Mr Phillips: They are good partners to us and, of course, we will always look into these issues. On some of the earlier points you went through, perhaps I can just remind you that we have funded the BHA's work.

Q204 Dr Harris: You have not succeeded in silencing them though.

Mr Phillips: Silencing them! If I may say so, I do not think that is relevant.

Dr Harris: I am not sure how relevant it is to my specifics.

Q205 Chairman: Let us just get an answer to Evan's specific points and then we will draw the meeting to a close.

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Mr Phillips: We fund the BHA. You have raised a question about whether I praise the Scouts and Guides. It seems to me entirely possible to say Scouts and Guides are good organisations without having to sign up to a religious posture. They are two of the largest youth organisations in the country and from where I stand I think they do rather good work.

Q206 Dr Harris: He is misquoting me. I said the EHRC praises Scouts and Guides for their inclusivity, not for whether they do good work.

Mr Phillips: It is also true that in some respects they probably are extremely inclusive. I have to say if the criticism is that we must now take agin the Scouts and Guides that puts us in a very difficult position.

The issue of religion and segregation, you and I have debated this and I think we are not particularly far apart. If you wanted to be a little more specific about what you would like to see the Commission say and do I am very much open to hearing that because it is central to our good relations mandate that all causes of division should be tackled.

Q207 Chairman: That is a good place to end the session. Thank you for all coming. It has been a long and gruelling afternoon for everybody, I think.

Mr Phillips: May I just say thank you for the time you have devoted to this and the courtesy with which we have been treated.

Chairman: Thank you.

Tuesday 15 December 2009

Members present:

Mr Andrew Dismore, in the Chair

Dubs L
Falkner of Margravine B
Lester of Herne Hill L
Morris of Handsworth L
Onslow E

Dr Evan Harris
Fiona Mactaggart
Mr Virendra Sharma

Witnesses: **Rt Hon Harriet Harman QC MP**, Leader of the House of Commons, Lord Privy Seal and Minister for Equality and Women, and **Mr Jonathan Rees**, Director-General, Government Equalities Office, gave evidence.

Q208 Chairman: Welcome to another of the evidence sessions of the Joint Select committee on Human Rights which is looking at the work and governance of the Equality and Human Rights Commission. We are joined this afternoon by Ms Harriet Harman QC, Leader of the House of Commons, Lord Privy Seal and Minister for Equality and Women, and by Mr Jonathan Rees, Director-General of the Government Equalities Office. Ms Harman, do you want to make any opening remarks?

Ms Harman: No.

Q209 Chairman: Perhaps I may start by raising with you the dissatisfaction that quite a few of the commissioners have expressed about the leadership and governance of the EHRC in our evidence sessions with them. Were you aware of this dissatisfaction?

Ms Harman: Yes.

Q210 Chairman: What do you do about it?

Ms Harman: I believe we are now able to go forward positively on this important agenda with the reappointment of the chair, vice-chair and some of the existing commissioners which arose out of the bringing together of different strands, requiring greater visibility and engagement with stakeholders and greater clarity about the future work programme of the commission. I have been aware of the issues raised but I think the important matter is that it is now on a firm footing going forward. I am confident that is the case.

Q211 Chairman: Did you see these problems as a clash of personalities with a strong chair, or is there more to it?

Ms Harman: There were some issues around the way the equality commission was set up. It is right that employers should not have to deal with five different commissions for each different strand and an overarching human rights strand. It is right that we should not have five HQs, IT directors, HR directors and legal departments. I believe that to bring it together was the right thing. When one does that there are always difficulties with a new model that incorporates different organisations, but there is particular sensitivity in relation to the quest for equality and it was important to have greater visibility of each of the strands without making it a

disaggregated organisation. I believe that balance has been struck. When one brings together disparate organisations it is difficult to work out how best to make the situation work together. Seeing Lord Morris here reminds me of trade union mergers. There are always different cultures in different organisations. When they are brought together there is difficulty and the process takes time. It does not make the objective wrong but it means it takes a while to sort things out.

Q212 Chairman: I do not believe any of us would seriously question the decision to merge the various disparate bodies that existed before. It was right to do it. The real issue is whether we have the right person to chair it and the right governance mechanisms behind it. Evidence we have received from a variety of commissioners, not just from the four who came here to give direct evidence but also correspondence, and others including NGOs say broadly the same thing: Trevor has many talents but he is not suited to leading such a large, complex organisation and as a result the EHRC is not as functional as it should be in doing its job. How do you explain the fact that many people from different walks of life and backgrounds, who are important in their own right and have led their own organisations of some size, all come to the same conclusions?

Ms Harman: It is a large, complex organisation and it will always be challenging. I would be surprised if there was ever a time when the leadership of the Equality and Human Rights Commission was not controversial. By its nature it is a controversial position, but I am confident about Trevor doing the job. I was certain about my reappointment of him and feel confident about that. The nature of equality organisations is unlike that of the Army for example. They look to find space and voice and to make change and therefore each organisation within the voluntary sector has the same kind of issues. Those issues are present within the different commissions. It does not mean one should not try to be united in finding a way forward, but there is a certain amount of inevitability about it as well as a need to address a number of issues, recognising that a person who is disabled and fiercely concerned about equality for disabled people might well not have a similar passionate depth of feelings about race equality. One is bringing together strands which intellectually have

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the same conceptual background but it is not necessarily the same for the individuals who experience it. The problems are not caused by the same things and the solutions are not the same. When one brings them together it is a difficult job, but I have confidence in Trevor continuing to do it.

Q213 Chairman: One heard from half a dozen people from different backgrounds and different aspects of the equality agenda. One of the key tasks was to meld them into a group on the board that could work in a cross-cutting way. The criticism seems to be that far from achieving that we have ended up with groups becoming ever more disparate and feeling left out of the “cliquey” way in which it is operating. Surely, the job of the chair is to pull it all together, not push things apart as the evidence we have suggests?

Ms Harman: I do not accept that was what Trevor did. I am aware of the situation that arose. There were a number of complex reasons for it which do not necessarily fall within the responsibility of any one individual. The important point now is to feel confidence in the chair, deputy chair and the new board and focus on the policy agenda. The Equality Bill is coming through and there is the important issue of how the “disability” duty is put into effect by public authorities. I think it is important for the equality movement and commission, which does not own the whole agenda—it is just an important part of the wide equality movement—to look outward to the challenges and battles to be faced and won and the problems that need to be solved and focus on the task that makes a difference to people’s lives and to try to move beyond an inward-looking organisation. We have evidence about financial services and gender pay equality; we have the work they did in the case of the BNP, taking them to court and making them change their constitution; and we have their work in bringing forward disability. They will now be dealing with the failure of local authorities to provide support for women and victims of sexual offences. That agenda will make a difference to people’s lives. I am confident that all of them are focused and getting on with it. One must address internal organisational issues and if necessary make changes, but at the end of the day the organisation is about people out there, not those on the board or the people leading it or working for it. They are all part of a big cause.

Q214 Chairman: Turning to Trevor’s reappointment, the board minutes of the EHRC of 18 September record that you met Trevor in the autumn of 2008 and “invited him to consider making himself available to be reappointed to the post of chair.” Is that correct?

Ms Harman: I certainly approached the position on the basis that were he to be appraised as eligible for reappointment I would expect to consider that as the first option. The answer is probably yes, but I would have to look up the dates and everything.

Q215 Chairman: Why did you do that instead of going through the formal process?

Ms Harman: I think that a formal process of appraisal to determine whether or not somebody is eligible for reappointment is undertaken by the Cabinet Office. If the person is eligible for reappointment the decision for the minister is whether the individual will be reappointed or not reappointed and go to a different mode. Obviously, I would want to know whether Trevor wanted to be reappointed because it would colour what we did. Therefore, to ask him whether he wanted to be reappointed was a perfectly reasonable question, but I did not fetter my own discretion; I did not write to say that it was a deal but basically indicated the direction in which I was leaning. Obviously, there are proper processes to be followed, critically the appraisal. I cannot remember what stage the appraisal had reached by that stage or whether or not by then it had been done.

Q216 Chairman: My understanding it had not been done by then and it was Mr Rees who was doing it.

Ms Harman: It would have been subject to that. There was no way I would have been on a different track from the normal processes. It is the responsibility of officials to advise me on what I can and cannot do within the processes and it is my responsibility to stay within them.

Q217 Chairman: If the appraisal had come to the conclusion that Mr Phillips was not suitable for reappointment you would not have reappointed him?

Ms Harman: No. If somebody is not suitable I do not think you can. I suppose he could have reapplied.

Mr Rees: He could have reapplied. What you are discussing is a perfectly normal process. About a year out from Trevor’s appointment coming to an end the minister had a discussion as to whether or not he was interested in seeking a second term. We then had an appraisal discussion, which took place in November 2008. If that appraisal had been unsatisfactory it would have meant he could not be reappointed. That appraisal was satisfactory. That meant he was eligible for the minister to decide to reappoint him. As the minister has just said, that does not mean it is an automatic process; that is when the discussion takes place. All of that is laid out in the OCPA guidance which was recently republished in August 2009.

Q218 Chairman: Were you aware of some of the undercurrents within the board when the appraisal was done?

Mr Rees: Yes.

Q219 Lord Morris of Handsworth: Minister, we recently heard evidence from Michael Wills, Human Rights Minister. He told us that the EHRC was not doing enough to promote human rights and the Human Rights Act. Do you agree with that?

Ms Harman: I think we could all be doing more on human rights and the Act. I include in that the government, civil service, all public authorities and the commission. However, I make two points: first,

the Equality and Human Rights Commission is only a few years old and is relatively new; second, the Human Rights Act has been in force since 1998.

Q220 Chairman: It was passed in 1998 and came into force in 2000.

Ms Harman: Although before that the European convention was justiciable in the European courts it was still quite a recent phenomenon in our domestic law. I am sure Lord Lester will remind me that it has very deep roots in the past, but I believe that it is still finding its way forward. It is very important. Should any of us say that everybody is doing enough? No. Our default position should be that we are not doing enough to explain it, ensure it is implemented by everybody and taken into account, is made mainstream and more popular than it currently is and is not surrounded by mythology and misunderstanding. All of that is very important. We all have a part to play in that.

Q221 Lord Morris of Handsworth: Assuming what you say is correct and we should all be doing more, what specifically should the commission be doing to promote the Human Rights Act?

Ms Harman: Perhaps I should have said that the only people who could not possibly be doing more by definition is this Committee. But it is not for me to tell the commission what it should be doing in future; it is an independent organisation and is not a department which delivers a ministerial agenda.

Q222 Lord Morris of Handsworth: I accept that, but you have just told us we could all be doing more. You mentioned the commission in particular. You must have a view about precisely what more it should be doing. If you can tell us please do so.

Ms Harman: I did not arrive at that position and then think about the commission in particular. I thought that was the position in general. I do not say it about the commission in particular; I say it about everybody. But that does not mean I have necessarily mapped out what everybody should be doing. I just feel that, generally speaking, more could be done, and I am sure it will be in future. In a way it is both harder and easier in relation to human rights than for an individual strand within the commission, for example race or gender. It is more complex, overarching and harder for people to come to grips with, but I am sure that the commission will be taking it forward.

Q223 Lord Lester of Herne Hill: I believe it was the Equality Act 2006 which set up the commission's structure and the human rights bit of it. After it was set up the Ministry of Justice refused to take departmental responsibility for the commission. Instead, we have Mr Rees's office. Was it not a problem from the beginning that no mainstream government department was willing to give parentage to what became a kind of orphan in Whitehall and, looking back on it, there was a problem about the way the machinery of government operated after the Equality Act became law?

Ms Harman: I think it had been itinerant and moved from place to place, always with the idea of finding a better place for it. There were always good reasons for moving it but each time you do that there are problems about it being in a new place. But we have a strong and self-confident Government Equalities Office which puts a very high priority on liaising with the Equality and Human Rights Commission. There is a strong ministerial team working together with the Government Equalities Office and commission. With hindsight there might or might not have been different ways to do things, but in a way that is not my focus which is: have we got it right now? Are we all committed? Do we believe in what we are doing? Are we excited about the prospects of the future direction? Are we ready to get into battle on important issues that will improve people's lives? In the past when I was not in the Cabinet issues of machinery of government were not my speciality. I do not know whether my colleague wants to add something.

Mr Rees: I am not sure I accept the premise of Lord Lester's question. The Ministry of Justice takes a close interest in the workings of the EHRC. It so happens that it is the Government Equalities Office that sponsors it. Ministers work very closely with the Ministry of Justice on sponsorship. Maria Eagle talks regularly to Michael Wills about these issues. As to where one leaves responsibility—this is the point about machinery of government—the key is that the different departments work effectively and closely together. For instance, I work closely with officials in the Ministry of Justice as the human rights champion; in turn they work closely with my department on the group we have set up to help oversee the work of the EHRC. Therefore, I am not sure I accept the premise that EHRC or the human rights responsibilities in government are an orphan.

Q224 Lord Lester of Herne Hill: To explain the premise, I was an independent unpaid adviser to the Ministry of Justice at the time and tried unsuccessfully to deal with the problem. The premise is that the permanent secretaries and government as a whole were unwilling to take major departmental responsibility at the time. Had they done so a lot of the subsequent problems might have been dealt with; instead, we have a rather curious and unique situation at the moment.

Ms Harman: At the moment?

Q225 Lord Lester of Herne Hill: This Committee raised all of this at the time. Trevor Phillips did not want a major government department to be in charge. I raised it within the MoJ and the permanent secretary said they did not want to take responsibility for it; they had enough problems. The trouble is that subsequently he did not have a major government department taking responsibility for it as with the equality agencies previously.

Ms Harman: There is not a major government department taking responsibility for it now.

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Q226 Lord Lester of Herne Hill: Exactly.

Ms Harman: The Government Equalities Office is a small department but I do not think we lack reach across Whitehall. Even if Whitehall does not want to be reached by us we definitely work across all the different departments and I believe make a difference. It may be that some other organisational structure could also make a difference. I believe that it feels self-confident and purposeful.

Q227 Lord Morris of Handsworth: You have told us about the process of reappointing Mr Phillips as chair of the commission including the appraisal. Why did you not ask the Human Rights Minister what he thought about Mr Phillips' performance?

Ms Harman: I had discussions with a number of ministers over a period of time and was well aware of the different views but also was fully cognisant of the need for me to shoulder the responsibility for what was my decision.

Mr Rees: To be clear, all departments were consulted about performance. As I said in answer to Lord Lester, we have an inter-ministerial and inter-departmental group which look at overall performance. I do not believe we were in any doubt about the views of either individual ministers or departments. As Michael Wills said to you in evidence, we did not specifically consult him when it came to reappointment. We knew the departmental and ministerial views, so there was no need for that to be done; indeed, the legislation does not require it. The legislation requires it in the case of Wales and Scotland and in both cases that was what we did.

Q228 Lord Morris of Handsworth: Can we look at the process of appointment of members? We would like you to explain why the minister responsible for human rights across government had no role whatsoever in the appointment of members of the EHRC.

Ms Harman: I think it is because ultimately I had responsibility for it. But that is not to say we did not have discussions. A formal consultation process was not required or undertaken with other ministers, but in addition to having discussions with ministers in my department I had discussions with ministers outside the department as well. There is a great range of things to be taken into account and ultimately one must make a judgment.

Q229 Lord Morris of Handsworth: To what extent did you assess the EHRC's performance as a human rights institution when deciding to reappoint Mr Phillips?

Ms Harman: How did I assess it?

Q230 Lord Morris of Handsworth: To what extent did you assess the commission's performance as a human rights institution when you were deciding to appoint Mr Phillips?

Ms Harman: My approach was to think of all the things that depend on the commission taking them forward and whether or not Trevor had the right qualities to lead a very big and important organisation. I therefore did not disaggregate it in

that way, but obviously I am very well aware of the importance of the human rights concept overarching the whole organisation as its name implies. I did not do a disaggregated tick chart.

Q231 Lord Morris of Handsworth: Obviously, we have noted that other commissioners recently appointed had to reapply for their positions and face competition from other candidates. Can you say why the chair was not subject to the same principles of open competition?

Ms Harman: Bearing in mind where we are with the importance of the Equality and Human Rights Commission, particularly at a time when the Equality Bill is going through Parliament, not to have continuity of leadership with the loss of the chair when the chief executive had left was a factor in my mind. But I do not think that meant we could not look for a fresh approach on the board. I thought it was important that the chair and vice-chair should be reappointed for the sake of continuity. I think that the considerations which apply to the chair and vice-chair are different from those that apply to the rest of the board.

Q232 Baroness Falkner of Margravine: In light of what you have just said it appears you were both aware of the problems well articulated in the media over a period of time. One would have thought that with something as important as the Equality Bill going forward you would have indicated a desire to put the commission on a stronger footing by having a clean sweep. Instead of doing that in the view of many observers and interested parties in effect you have created a situation where it is evident you have decided not to deal with the inherent problems that have come to light but to continue as before. That seems odd in light of what you have said about the importance of the Equalities Bill and projecting to the public a different approach.

Ms Harman: If you look at the chair, deputy chair and all the people we now have on the commission I am confident that they will go from strength to strength. Obviously, you take a more pessimistic view about it and believe I have made the wrong decision, but that is not my view. I look at the commission. I know the people who have been appointed. I can see the work programme that is very important and I shall give the leadership of the commission and the board my full support. I believe there is a clear agenda to be taken forward. I will not always agree with Trevor and what the board does, but I am confident that they will be carrying out the very important task that is needed.

Q233 Lord Morris of Handsworth: All of us have had the benefit of hindsight. We see an institution that, quite frankly, is somewhat damaged. With that hindsight do you not think it would have been preferable for the chair to be appointed through the mechanism of open competition?

Ms Harman: No. We all know that the merged organisation has had a difficult start. There are a number of reasons for that, but I have confidence in Trevor. I have reappointed him. I believe that the

organisation will go from strength to strength. To acknowledge that it had a difficult start does not necessarily mean one makes it better by not reappointing the chair. That might be the view of some people but it was not mine.

Q234 Lord Morris of Handsworth: Do you not think the commission has been damaged as a result of recent events and the exodus of a number of good people?

Ms Harman: The commission has had a difficult start, but one thing that makes me more confident about the future is the work that is already under way and the important role the organisation will play in drawing up guidance on the equality commission and the vexed process of trying to get business and trade unions to work out together how to measure employer by employer the gender pay gap. I am confident that that it has the board and leadership to take those things forward. There comes a point at which it is important, acknowledging the difficult start, to make an assessment of whether or not the organisation is on track. There is now no reason why it should not be completely on track with the new board coming on stream. I feel confident about it. I believe that in two years' time we will see whether or not that is the case, but I feel confident about it. I will help to make it happen to the extent that does not interfere with its independence.

Q235 Mr Sharma: Can you confirm the terms of Mr Phillips' reappointment? For how long has he been reappointed? Can he be reappointed again? How many days per week does he work? What is he being paid?

Ms Harman: I shall ask my colleague to respond with those details. I have a great deal of confidence in Trevor. It was not just a default option. I have seen his work over a number of decades, as anybody who knows and cares about equality will also have done. I have a good deal of confidence in Trevor; he has my total backing. My colleague will deal with the terms and conditions that are obviously important to the Committee. I do not want the Committee to be in any doubt that I am confident about the decision I have taken.

Mr Rees: He was appointed for three years from September 2009. Can he be reappointed again? The answer is: no. Under OCPA rules one is allowed two appointments. He could reapply in open competition but he could not be reappointed again without a fresh competition. How many days a week does he work? For the first year until the commission went live he worked full time, and ever since October 2007 he has been working three-and-a-half days a week. If you read the transcript of the last session there was some confusion about whether it was three-and-a-half or four days. I think he replied to somebody who asked whether he worked four days without picking up that he worked three-and-a-half days. Finally, he is paid pro rata £112,000 a year based on a salary of £160,000 for a five-day week. If my mathematics are right, that is the result of dividing 160 by seven over 10.

Q236 Mr Sharma: There have been exchanges between the Cabinet Office and other officials querying why Trevor Phillips should work for four days per week as a non-executive chair of the EHRC. Can you explain why this is necessary? Mr Phillips said that the government asked him to work for four days per week. Can you confirm that?

Mr Rees: Let me start by saying that the term "non-executive chair" often bandied around does not apply in the public sector; it is not a term we recognise. Trevor is the chair of the organisation. There is at the moment an interim director-general. I have had discussions with Trevor about what the right time commitment is. The conclusion was that we would stay at three-and-a-half days a week. We did ask the Cabinet Office—I believe it has been released under freedom of information—about the practice among other chairs and chief executives. You will find that there is a variety of practice across Whitehall. I have been in an NDPB; I have sponsored lots of NDPBs. A commitment of three or three-and-a-half days a week is not unusual for chairs of bodies as new as this with this range of responsibilities. It is perfectly fair to say that with a body in steady state—I think the evidence you have received from two sessions so far is that it is not quite in steady state—you might expect to see the chair reducing the time commitment. We had that discussion and we do not think this is the right time to do it.

Q237 Chairman: Did you ask him to work four days?

Mr Rees: No.

Q238 Chairman: So, when Mr Phillips says that the government asked him to work four days that is not right?

Mr Rees: We had a discussion in which we considered whether or not it would make sense for him to work four or five days. That was in the context of the chief executive having resigned rather suddenly for an excellent new job. We did not ask him to work four days a week.

Q239 Mr Sharma: Do you share the concerns of the Cabinet Office that when a non-executive chairman works four days a week there is an increased likelihood of conflict with senior management? How do you intend to monitor this?

Mr Rees: I think there is difficulty in every new organisation working out the respective roles of the chairman and chief executive. That was one of the things I discussed with both the chair and chief executive when she was there. I am aware that there were tensions and clearly one of the issues going forward was to make sure the new commission team, both the board and executive, worked effectively together.

Q240 Baroness Falkner of Margravine: I should like to move to the Deloitte report. You will be aware that the report makes strong criticisms about the way the board operated and was chaired; there was confusion between the executive and non-executive roles; there was lack of team spirit and a collegiate

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ethos in decision-making. In your experience was this typical? You have referred to your extensive experience in non-departmental public bodies and other boards. Was it typical of boards or something that you took very seriously when you were appraising Mr Phillips and thinking ahead, or were they just teething problems that you were confident would be overcome?

Mr Rees: The Deloitte report was commissioned by the EHRC itself. Obviously, we spoke to the consultants who conducted that report. I also spoke to the chair, deputy chair and chief executive after the report. We took the view that it was sensible for the commission to review how it was working as a board. There is a range of recommendations in the Deloitte review which are for the commission to take forward. A number of them are really practical issues which I have seen before. For example, the quality of the papers that go to the commission is not good enough. As someone who must be able to read all those papers I have to say that is correct and it has improved. We were particularly concerned about the quality of the financial information going to the commission's board, and that has improved significantly over the past six months. The answer is that it was right for the commission to do that review and I think it has acted on many of the recommendations in the Deloitte report.

Q241 Baroness Falkner of Margravine: Some of the bigger issues—I shall highlight them for you—were significant and serious: a lack of clarity in how relationships should work between board, senior management team and staff; and lack of planning and preparation for board meetings. That is a serious governance issue. There are several others but we have limited time today and cannot go into all of them. I take you back to my earlier question. You say that the EHRC itself commissioned Deloitte to come in and have a look at it. The implication of what you are saying is that it was therefore aware of the need to act, but the EHRC commissioned Deloitte to come in only after disagreements internally that we are aware of as to whether or not it wanted an external reviewer or it should hammer out some of the issues internally. Do you believe that dysfunctionality at this level is something to be left to the *ancien régime* just to muddle on with?

Mr Rees: The starting point is that obviously as the sponsoring department we were well aware there were issues about how well the board was operating. Obviously, it was my job to speak to individual commissioners and therefore I was aware there were tensions. I believe the question you ask is: was this unique? The answer is no. I have seen lots of other organisations where one has the same sort of teething issues. The question for the commission, which we welcome, is whether it addressed it seriously. What I have tried to say is that a year on from the Deloitte report there is clear evidence of significant improvement in the way the board operates. We have a new team that has not had its first board meeting; it is to meet on Thursday. One of the reasons we appointed the new team—in no way

is it a reflection on some of the old team—is that these are people with huge experience of governance. We believe that the progress made in the past year will be built on. As the minister said, we believe that looking forward there is a much stronger base on which to build.

Q242 Baroness Falkner of Margravine: Minister, you will be familiar with the recommendations of Deloitte one of which was that the board was too large and should be reduced to around 10 to 12 members. You have reduced the number of appointed commissioners from 15 to 14. Why did you decide not to follow the line recommended by the report and go for a significantly smaller board that perhaps could have been more cohesive?

Ms Harman: Obviously, there are arguments for having a smaller, cohesive board but there are also arguments for a board of the size we have. If you look at all the individuals appointed to the board you will see why we came out where we did. We have on the board people with a range of abilities and fields of expertise. I believe all of them are necessary. As to the issue about having greater focus on governance, a number of the new commissioners bring that with them. That was in mind when the selection process for the commissioners was undertaken. Therefore, we hope that by the appointment of these people we have contributed to addressing the problems touched on in the Deloitte report and elsewhere. But this is not a science. If you look at the people on the board you will see that they come from Scotland, Wales and England; we have LGBT; we have trade union and business experience; we have people whose experience has come from organisations concerned with gender and race. We have a good range on the board. I do not think the fact we have 15 rather than 11 or 12 is a show-stopper. I would not like to work out which one of these I would not have. I do not know whether if you look at the list you can suggest to me which one we can manage without. I believe they will all contribute and work together as a team. The equalities and human rights project is a contested one; it is trying to find a way forward. There are lots of people who detract from it because they do not want to see it succeed. I and my team of civil servants and ministers want it to succeed and everything we do is not because we cannot be bothered; we are focused on trying to make the right decisions so it can succeed. There is sometimes a difference of view, but that is what we try to enable it to do but unfortunately others still try to hatchet it down.

Q243 Baroness Falkner of Margravine: You have challenged me to try to identify which one of those we would rather not have.

Ms Harman: I had better withdraw that challenge because it is invidious for any of the persons you might pick on.

Q244 Baroness Falkner of Margravine: I am extremely relieved. Rightly, as the responsible minister you place a great deal of store on each individual contributing to the success of the

collective. I also share your view that some of these issues meet resistance and the overall agenda is one that is contested. There is not much between us in that regard. But I have a sense of unease with that kind of emphasis on different people for the reason that when you look closely at the membership of the commission you find eight people with links to the Labour Party, one Liberal Democrat and no member with any apparent links that we know of to the Conservative Party. What this means to someone like me, perhaps wearing a veil of ignorance, leaving aside any partisanship that I might have, is that only those of the same ideological creed, or “only people like us”, can push forward this agenda. When one has a highly partisan commission of one particular inclination it gives the impression that the work of that body and its objectives are capable of delivery by only one political creed. Michael Wills told us last week that the broader the political base of independent bodies like the EHRC the better.

Ms Harman: Sometimes when putting together a body to take forward a particular function one has to pay regard to political balance. For example, on the Electoral Commission there is representation of the different political parties; on the BAME task force we have women councillors from each of the three main political parties and also from Respect and the Greens. We had to achieve a political balance. Here there was a different brief, namely a commitment to equality. The process is an arm’s length one. I did not see the people who replied, though I am told about 650 did so, and I did not see who got onto the long list; I did not see who got onto the short list. I do not know whether your figures are right; I am not in a position to confirm or deny them, but if that is the way it has turned out there should not be any inference in the way you have drawn it. Particular perspectives and experience were needed and these were the people who fitted that requirement.

Mr Rees: Under paragraph 5.50 of the OCPA rules which I have here it states very clearly: “Monitoring forms including the political activity questionnaire must form no part of the selection process and must not therefore be made available to sift or selection panels or any other person involved in the appointments process.” It is true that the board of the commission that has emerged has on it a number of people who have actively supported the Labour Party and one is a Lib Dem councillor, but neither ministers nor officials involved in the process knows people’s party allegiances. The commission is, in the words of Michael Wills, party-political blind.

Q245 Dr Harris: It must be hard for even the most non-party-political appointments committee member not to realise that he might have an allegiance to the party whose whip he takes. That cannot be right, can it?

Mr Rees: That is a fair point. In the case of some people their political allegiance will be clear from their CVs. We did not interview either Margaret or Trevor for reasons you know. For lots of people it is not clear what their party political allegiance is. From your own party Meral Hussein, one of the new

commissioners, clearly said that she was a Liberal Democrat councillor so that was evident to the people on the panel.

Q246 Dr Harris: I did not want to allow you to give the impression that because the monitoring forms were not there people were unaware of political allegiance. I want to ask about the issue of conflict of interest. Minister, were you concerned that Mr Phillips’ involvement with the Equate consultancy conflicted with his position as chairman of the EHRC at any point?

Ms Harman: I know there were issues around that. There were discussions between Trevor and the Cabinet Office and a resolution was reached. I imagine that that is not unusual. I was concerned that it should be resolved in a satisfactory way. These things needed to be resolved and they were.

Q247 Dr Harris: But you yourself were concerned that there was a conflict of interest, or a perceived conflict, and it was damaging?

Ms Harman: Once there was a perception of conflict of interest I was concerned that it should be resolved and the processes would be gone through to resolve it. Those were the processes that took place.

Q248 Dr Harris: You do not seem to be that concerned.

Ms Harman: Because they are resolved. I have other things to make me lie awake at night.

Q249 Dr Harris: But what you have is a dysfunctional commission and a legacy of unhappiness. You may think that everything in the past is resolved, but if it has ongoing ramifications I do not think you can say it does not matter. For example, the chief executive of the commission, Nicola Brewer, who is now a high commissioner—a diplomat worthy of that appointment—has said that on several occasions during the second half of 2008 her advice to the chair was he should stand down from the company. Are you concerned that the chair did not take advice, not given gratuitously—she had no axe to grind—from an apparently independent chief executive on several occasions that he should stand down from that consultancy?

Ms Harman: I believe he took advice of the Cabinet Office as to what was necessary to resolve the issue.

Q250 Dr Harris: Are you saying that you believe the chief executive got it wrong? Is that why she left?

Ms Harman: I do not know whether what she said was the same as the Cabinet Office response. Possibly they both said the same thing, in which case it was resolved.

Q251 Dr Harris: Should you not know? Should you not be concerned that the Cabinet Office is apparently saying it is fine and he should carry on performing this role, which some people say amount to a conflict of interest and clearly gives that perception to the chief executive and the five commissioners who resigned? It was not just a *Daily Mail* thing. The chief executive and five

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commissioners said this was a perceived or actual conflict of interest and you appear unconcerned that there was a conflict of advice on the subject.

Ms Harman: I did not say I was unconcerned. I was concerned that it was resolved and it has been and some changes were made. I do not believe that it was just a matter of taking advice that nothing needed to be done. There are clear pathways to be followed here and they were followed.

Mr Rees: I am not sure I recognise your account. The issue of Trevor's consultancy work with Equate arose in June 2008. At that stage I wrote both to the chief executive and chair of the commission's audit and risk committee, Mr Summerskill, to ensure that their processes were in hand. I also discussed it with the chief executive. As the minister said, we all agreed that the best way forward in this case was to refer it to the Cabinet Office and the director of propriety and ethics. She had a discussion with Mr Phillips and the conclusion was that in this case the best way forward was for Mr Phillips to step down from his controlling share in Equate. That has happened. Equate has done no more work in the past 14 or 16 months, so in that sense the issue is resolved. It is the case that the chief executive, Cabinet Office and ourselves all took the view that in this case that was the right way forward. I do not believe there was any difference between any of the people advising on this issue.

Q252 Dr Harris: Is it right that you appraise Trevor Phillips?

Mr Rees: I give him an annual appraisal in line with Cabinet Office guidelines.

Q253 Dr Harris: Are you on first name terms with all the people you appraise or is it just a special case for him?

Mr Rees: I am on first name terms with all the people I appraise; that is the way most organisations now work.

Q254 Dr Harris: You do not believe that civil service detachment from people in respect of whom one has oversight is wise?

Mr Rees: I think it would be extremely odd if I did not address by first name those people I see on a daily basis.

Ms Harman: Even if you call somebody by their first name it does not mean you do not have a very keen appreciation of your role. Although I contribute to Mr Rees's appraisal I can see that he has a completely clear view about his role in relation to the Equality and Human Rights Commission, so the fact he calls him "Trevor" does not imply that somehow it is unprofessional.

Q255 Dr Harris: I move on to your role. In an earlier question it was put that you had chosen to reappoint him in the knowledge that a number of commissioners had serious concerns, that there was a fuss, if I may call it that, about his conflict of interest, and until the PAC report there was a cloud still hanging over the issue of the reappointment of people who had taken redundancy. Regardless of

whether you were legally obliged to consult, do you think it was politically wise to ignore or seemingly disregard all those factors and just reappoint an old political ally? Does it not look bad?

Ms Harman: I did not ignore or disregard any factors. I was cognisant of all the factors and took all of them into account and then made a decision. The decision I made might not be one that others agreed with, but it was my judgment. It is not true to say that I just did not take things into account or did not know what was going on. People who took account of and knew the same things might have made a different decision, but this is a question of judgment and that was my judgment.

Dr Harris: Since then you have said you support him 100%. Are you sure it is wise to say that in view of the PAC inquiry and this one? Does it not put you in a difficult position? Would it not be wise to say that obviously he has your support but you would have no hesitation in asking him to resign if you were persuaded by the scrutiny of Parliament, of which I would hope you would have some cognisance, that that was the best thing to do, or are we wasting our time in this questioning and making a report because you give him 100% support come what may?

Chairman: We have not formed a view one way or the other, so do not assume that we have.

Q256 Dr Harris: I am not saying that we have formed a view, but if we did have a view would you consider it?

Ms Harman: I am strongly committed to the organisation and I believe that its role is very important. There are lots of people who do not agree with that role and do not think that it should even exist. I regard it as my responsibility as minister to champion the organisation. If you are championing an organisation that you believe is an important one for the future of this country and you have reappointed the chair you give that person your full backing to do that job. I am happy to acknowledge all the things that I took into account, but having been reappointed he is entitled to my full support and, looking to the future, I back him to get on with a very important job. I have said that sometimes we will disagree about things.

Q257 Chairman: I believe we are going over ground we covered before Dr Harris arrived. I turn to another issue: the interim chief executive. The first chief executive, Nicola Brewer, left in May and she has not been replaced. Her interim successor, Neil Kingham, told the PAC the other week that he was being paid £1,000 per day until the end of January which, in round terms, works out at £¼ million a year pro rata and is rather more than the Prime Minister earns. Bearing in mind what the Prime Minister has said about high earnings in the public sector do you think that is an acceptable situation? By that time we had had an interim chief executive for the best part of nine months being paid a huge amount of money.

Mr Rees: Neil works four days a week and gets paid only for the days he works.

Q258 Chairman: The point is the same pro rata.

Mr Rees: I am sorry. I was dealing with your question which implied that he worked 250 working days. That said, the Committee of Public Accounts has asked for the information which we shall provide. A thousand pounds a day is a lot of money, certainly to many civil servants, but that was the rate considered appropriate by the EHRC and it is within their discretion to pay that amount. Obviously, we are in the process of finding a full-time chief executive. That process is taking longer than we would have wished.

Q259 Chairman: Why is it taking so long?

Mr Rees: Because of the issues to which you have alluded over the salaries which are now appropriate for the chief executives of public bodies. Therefore, in light of recent announcements the commission has taken the view that it is better to suspend the process it started.

Q260 Chairman: The EHRC is paying somebody £1,000 which pro rata is £¼ million a year because there is an argument over what the chief executive should be paid. Is the suggestion that the chief executive is to be paid more than £¼ million a year or less? If it is less what is the point of keeping on this person at £¼ million a year?

Ms Harman: Because there are a number of processes under way. I was not the responsible minister when the previous chief executive was appointed in March 2007. At the time this vacancy came to be refilled there was keen concern about the public finances and top pay in the Civil Service. This is an equality body and therefore it makes sense for the commission to be keenly aware of it and to have an interim arrangement. There are always different arrangements for a temporary appointment rather than a permanent one. I would not expect them to be making a permanent arrangement based on the same rate as applied to the previous chief executive. William Cockburn is carrying out a review of appropriate pay for people at the top and therefore it makes sense to make the appointment and decide on pay in the light of the review.

Q261 Chairman: But that review is a relatively recent phenomenon. If we take this as the last month we have had an interim arrangement in place for six months. Is it the intention to pay the new person more or less than the previous full-time permanent chief executive?

Ms Harman: Less.

Q262 Chairman: Less than you are now paying the interim one?

Ms Harman: When somebody works on a temporary basis it is a wholly different arrangement; it is a short-term contract.

Q263 Chairman: I still do not understand why it is taking so long. If you started the process in May when the previous incumbent decided to leave why are we still so far down the track irrespective of the relatively recent arguments about civil service pay?

That vacancy has existed for six months. Have people been interviewed in that period or applied for the job? Has it been advertised?

Mr Rees: The job was advertised in the summer. The previous chief executive had a salary of £185,000 plus bonus which was not one for which we were responsible. It was agreed by a previous ministerial and official team. As we got close to the position where a decision could be taken no salary was suggested in the advertisement but there was probably a legitimate expectation on the part of some of the people who applied for it that the salary would be considerably more than now seems likely to be the case. That was why the commission decided to suspend the competition. People had been interviewed and we were reaching the last stages. The commission will now have to decide in light of the announcement how it goes forward.

Q264 Chairman: People applied for the job?

Mr Rees: Yes.

Q265 Chairman: And one or more of them would have been satisfactory from your perspective.

Mr Rees: There was a formal panel process which agreed that there were three candidates who would have been suitable for the job were it possible to agree on terms.

Q266 Chairman: None of those people was prepared to work for what the commission was prepared to pay?

Mr Rees: In the final stages of that competition new announcements were made about pay and it was agreed by the commission that that competition should be suspended.

Q267 Chairman: It is a straightforward question, so please let us have a straightforward answer. None of those people was prepared to work for what you were prepared to pay.

Ms Harman: That implies that what the commission was prepared to pay was established. As I have explained, there is a review and reconsideration under way. Therefore, it makes sense for the commission to make a decision informed by that judgment. I believe that is the right thing to do.

Q268 Chairman: When will the decision about what the EHRC is to pay be made?

Ms Harman: In due course when Cockburn has reported.

Q269 Chairman: When will that be?

Ms Harman: I am confident that Neil Kingham who is the acting director-general is doing the work necessary to take it forward.

Chairman: I am sure he is doing a very good job at £1,000 a day or £¼ million a year, but I am sure he would all like to see somebody engaged at a lower rate of pay.

Dr Harris: Trevor could do it during the other one-and-a-half days.

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Q270 Chairman: Perhaps we could be informed when the commission will make up its mind about the rate of pay for this job. You had three candidates all of whom would have been acceptable but the commission did not make a formal offer. Presumably, they may have found other work by now; we do not know, but when will we know the rate of pay for this job? If you say that will be known when the Cockburn report comes out, when will that be? You must have a rough timetable for that, surely.

Ms Harman: I do not want to provide a rough timetable if one has not already been given. Perhaps I may write to you about it. It is important to make a permanent appointment at a pay rate which is recognised to be fair and proportionate. What the previous chief executive was paid would not be considered to be that in my view. Strictly speaking, it is a matter for the commission. I have discussed it with Trevor and he agrees. Therefore, with the acting chief executive carrying on we need to find a way forward. There must be a big re-think about these top jobs. It is because of that consideration that we have an interim arrangement that is more costly.

Q271 Chairman: If you employ somebody at, say, half what you pay the present chap you can get someone for two years instead of one at that rate, could you not? The problem here is that you are throwing a lot of money at the problem; there is no sign of an end to it; you have no idea when the rate of pay is to be set, never mind when you start to re-advertise the job. The interim arrangement will probably be in place for 15 months before you get anybody in place, if you do.

Mr Rees: What we have said is that the current interim arrangements run until the end of January.

Q272 Chairman: Then what?

Mr Rees: It is then the commission's responsibility to propose to us how it would like to continue the arrangements. It has not made that proposition yet, but when it does we shall be happy to share the details with you.

Q273 Chairman: That is six weeks ago, is it not? Have you been talking to the commission about what it will do?

Mr Rees: Obviously we have been but I am not going to talk about it publicly today.

Q274 Chairman: Do you not believe we should be informed about what the likely scenario will be?

Ms Harman: The likely scenario is that the commission will have a new chief executive at a considerably lower level of pay than the old chief executive, which is cognisant of the times and is the right approach to take. In the mean time we carry on with the temporary arrangements that have lasted longer than was at first anticipated. Stepping back from it, is it right to take a fresh look at the pay rate? I believe that it is. If it means that the commission carries on with the interim chief executive/director-general for a bit longer I do not believe the commission should be hung out to dry because of it.

Q275 Chairman: I want to ask about the three candidates who were potentially acceptable. I do not ask who they are. There has been some suggestion in the evidence we have received that Trevor Phillips has difficulty getting on with chief executives. I am not talking just about the EHRC; there is also evidence about the appointment of chief executive at the CRE. Did Trevor Phillips have anything to say about the three candidates? Was he prepared to work with any of them or did he express a preference that he would not like to work with any of them?

Ms Harman: I think you are barking up the wrong tree if you believe that lying behind what we have said about pay is an issue about Trevor being unable to work with the people who have been put forward. That is not the case. I would not come along and say that the whole delay was caused by the issue of pay if there was something else lurking around as an issue. It was not.

Q276 Chairman: I am pleased to hear that, but I should like to learn from Mr Rees whether Trevor was aware of the three applicants' names and had any particular concerns about any of them?

Mr Rees: To explain the process, the commission employed a head hunter. There was a public advertisement which took place before the summer. Following that there was a process whereby the head hunters whittled them down to a short list of 12. There was then a panel of which I was part which Trevor chaired. A number of independents were on that panel. The panel interviewed six candidates. Of those we concluded that three were acceptable. That normal public appointments process had been going on at the same time as the emergence of a totally different climate on pay for people in the public sector. Those two coincided and now we are working out the best way forward.

Ms Harman: I think the commission should be given credit for doing that. It is trying to do the right thing here and not be held over a barrel because of the temporary arrangements that it has entered into. I think that would be perverse. It is taking a good step forward in asking the difficult question: is this to be perceived as a reasonable rate of pay? We have talked a lot about perception. What do we think about the rate of pay of the previous chief executive? I think the commission should be commended for taking that view and lots of other organisations in the public sector should do likewise. I hope the Committee will not hang it out to dry over the temporary arrangements it is making for a very good acting director-general who has stepped in at this time to provide continuity and stability and make sure the organisation is going forward strongly. For the longer term we need something that is good value.

Q277 Earl of Onslow: Minister, you appointed somebody as chairman of the board knowing that he had a conflict of interest, that five commissioners had resigned, that Deloitte had reported on this matter—it is about the most damning report I have ever read—and that the board was dysfunctional. You have not found a new chief executive; you do

not know the pay rate, and when asked just now you said you thought you might write about it. That does not exactly give the impression of a minister who is totally on top of her job, does it?

Ms Harman: I think I am on top of my job. I suspect you would not agree with the way I am doing it, but please do not say I am not on top of the job because I come to a different view. You have thrown out a whole load of allegations about Trevor whom I have appointed. I can say that I have appointed somebody who is deeply committed to the equality movement across the piece, who is highly intelligent, who has a long-standing record in this area and who is a great public communicator. Perhaps his single fault is that he will not necessarily always agree with me but nobody is perfect. That is why I have appointed him. I do not think it is right for you to throw out suggestions about conflicts of interest when that issue has been resolved. I do not agree that I am not on top of my job. I do not know what it would take to be on top of the job.

Q278 Baroness Falkner of Margravine: I want to go back one step to the appointment of the interim chief executive. You have elaborated on the process of appointing the next chief executive. Can you tell us what process was followed and when the appointment of the interim chief executive was made?

Mr Rees: I believe that it came as a surprise to the chair of the commission when Dr Brewer told him that she had got the job.

Q279 Baroness Falkner of Margravine: Presumably, that was in April.

Mr Rees: I think she told him slightly earlier.

Q280 Baroness Falkner of Margravine: She left in May.

Mr Rees: She left formally in May. It was clear that we would not be able to run a process to appoint a full-time chief executive before she left.

Q281 Baroness Falkner of Margravine: I understood all of that.

Mr Rees: I am going to answer your question. It was then decided that there would be a process for the appointment of an interim chief executive/director-general. That process consisted of inviting a number of head hunters to ask people whether they would be interested. A panel was set up to look at the list of people brought together and then there was an objective interview process. All of that happened and Mr Kinghan was believed to be the best candidate.

Q282 Baroness Falkner of Margravine: I presume that the panel set up comprised the remaining rump of commissioners who had not yet resigned. There is no remuneration and appointments committee within the commission, is there?

Mr Rees: Those are two slightly separate issues. There is a remuneration committee but the decision

about the appointment of chief executive under the statute is one for the commission to make with the approval of the Secretary of State/Lord Privy Seal. The panel had two commission members, the chair, deputy chair and myself as representative of the Secretary of State.

Q283 Lord Dubs: I want to move away from people and deal with policy issues. The EHRC has focused on the concept of fairness. In the past we have traditionally used the word “equality”. They are not quite the same. Would you care to comment on that?

Ms Harman: Most of the time I use the word “equality”. I often say that to ensure equality is only right and fair. Sometimes they are interchangeable and sometimes they mean very different things. I am aware of the intellectual debate about the difference in the meaning of those two words. I do not think there is anything wrong with that debate, but I am quite content to leave it to others to have that debate and get on with tackling discrimination and working towards equality or fairness, whatever you think it is. I know there was a big rumpus about whether or not it was fairness or equality but it was not something about which I felt I could spend a massive amount of time thinking about.

Q284 Lord Dubs: In relation to the Equality Bill, which after all is something on which you spend a lot of time, the EHRC is in a somewhat unusual position in that it is lobbying the government to amend it—it wants some changes—while at the same time it has been asked by you or the government to prepare guidance on how it can be implemented. On the one hand it is lobbying to change the Bill; on the other hand it is being asked to give guidance on how to make it effective. Is there any difficulty in those two roles?

Ms Harman: That is quite usual. One finds that the police make representations to the Home Office about what they believe the law should be. Once the law is in being they will put it into practice. I do not believe that is particularly unusual.

Earl of Onslow: Minister, I return to the “fairness” point. Without making a value judgment I note that in the United States where there is no maternity leave there is a greater number of women in senior executive roles than in countries with maternity leave. That may be fairer but it is less equal. How do get round that one?

Chairman: Minister, it is completely irrelevant to this inquiry so do not feel that you have to answer it.

Q285 Earl of Onslow: It is not irrelevant. I am interested to hear what the minister says.

Ms Harman: To give a 30-second answer, in this country we want to see women and men at the top of organisations. We also want mothers and fathers to have sufficient time off with their children. We should aim to ensure that the next generation has enough of their parents’ time and that women are

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not penalised in the labour market for doing the very important job of bringing up children. That is what happens currently. We need to make the employment market more family-friendly and enable fathers as

well as mothers to spend more time with their children when they are young. Just because we have not done it yet does not mean it is impossible.

Chairman: Thank you very much.

Written evidence

Letter from the Chair of the Committee to Trevor Philips OBE, Chair of the Equality and Human Rights Commission, dated 5 November 2008

Thank you for appearing before the Committee last month. As we indicated at the time, we had further questions of interest which we did not have time to ask. Consequently, I would be grateful if you could send us a memorandum dealing with the following matters:

- the nature of your engagement with the Fundamental Rights Agency (Q4);
- recognition of the EHRC as a national human rights institution: could you let us know what progress is being made on this;
- what work you are doing to follow-up the concluding observations of UN human rights institutions, such as the UNCRC, CEDAW and the Universal Periodic Review; and
- whether you are pressing the Government to sign up to Optional Protocols to international treaties which provide for an individual right to petition.

Letter and memorandum from Mr Trevor Phillips, Chair of the Equality and Human Rights Commission, dated 26 January 2009

Thank you for the opportunity to address the Joint Committee on Human Rights (JCHR) in October 2008. In response to your letter on 5 November 2008 please see attached a memorandum addressing your questions.

I apologise for the delay in responding and look forward to developing our relationship with the JCHR.

1. NHRI ACCREDITATION STATUS

1.1 The Commission applied for ICC “A” status NHRI accreditation in September 2008. We are delighted to say that in January 2009, the Commission was awarded with “A” status National Human Rights Institution (NHRI) accreditation by the International Coordinating Committee (ICC) of NHRIs. As you are aware, achieving “A” status means the Commission is compliant with the Paris Principles, a key component of which is demonstrating independence from the government.

1.2 This will be a powerful tool for the Commission in its work to promote and protect human rights in Great Britain. More specifically, “A” status will allow the EHRC to actively and fully participate in the Human Rights Council of the United Nations, including the right to make written statements relevant to the Council’s programme of work as well as making oral interventions in periodic meetings of the Human Rights Council and UN Treaty examinations.

1.3 As an accredited National Human Rights Institution with an international remit, the Commission will continue to monitor the government’s compliance with the treaty obligations and work to ensure signature and ratification of further instruments such as the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The EHRC looks forward to using its influence as an “A” status NHRI for the three Treaty examinations in 2009—International Convention on the Elimination of All Forms of Racial Discrimination (CERD), UN Convention against Torture and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

2. THE COMMISSION’S ENGAGEMENT WITH THE FUNDAMENTAL RIGHTS AGENCY (FRA)

2.1 The Commission and the FRA both share a mandate to promote and protect fundamental rights. The Commission views the FRA as one its key international stakeholders and as an accredited “A” status NHRI, it will have a different relationship with the FRA from that of civil society. The FRA is obliged (in the Regulation setting up the FRA) to work with NHRIs in a distinct way. The EHRC participated in the first meeting between the FRA and NHRIs in April 2008.

2.2 Since it came into operation in October 2008, the Commission has developed a close working relationship with the FRA. The CEO of EHRC met with Anastasia Crickely, the new Chair of the FRA in January 2008. As the former Chair of the European Monitoring Centre Against Racism and Xenophobia (EUMC), the FRA’s “legacy Agency”, the CRE engaged with the E UMC and Ms. Crickely relatively closely. This relationship has continued at the EHRC. The CEO and Chair of the EHRC plan to meet with the Morten Kjaerum, the new Director of the FRA, in early 2009.

2.3 At an operational level, EHRC staff have spoken at FRA events on data collection (from a race perspective) in October and November 2007. The EHRC also contributed to the FRA consultation on discrimination on the grounds of sexual orientation in January 2008. The Commission looks forward to working with the FRA particularly on the newer grounds—age, sexual orientation and religion, where the FRA can assist us to develop our expertise.

3. ENGAGEMENT WITH THE UNITED NATIONS TREATY MONITORING SYSTEM

3.1 In 2008, the Commission engaged extensively with the United Nations Human Rights Treaty Bodies through submitting parallel reports and attending the Treaty examination for CEDAW, ICCPR and CRC.

3.2 As a follow up to the Commission's shadow report to CEDAW, the EHRC is sponsoring a CEDAW capacity building workshop in partnership with the Women's Resource Centre (WRC). This event will bring together grassroots women's organisations from across the UK and show how the NGO sector can use CEDAW as a tool to influence gender equality policy.

3.3 The Commission has carried out extensive advocacy work to try to ensure that the government ratifies the UN Convention on the Rights of Persons with Disabilities (and its Optional Protocol) at the earliest opportunity and that the rights are fully and effectively implemented in the UK. The Commission has called on the government to ratify the Convention with either no or minimal reservations and that the Optional Protocol providing the right to individual petition is acceded to. Furthermore, the EHRC has written to the relevant government departments requesting details of their reservations.

3.4 In its written and oral submissions to the United Nations' examinations of the UK government under the ICCPR in July 2008, the Commission called on the government to accede to the Optional Protocol on Individual Petition.

3.5 The last major review by Government of the UK's position under various international human rights instruments took place in 2002–03 and the EHRC will avail of any opportunity to participate in any repeat of that exercise, which had rather limited outcomes in that, for example, only two individual rights of petition (under CEDAW) were lodged. The Commission will explore, in consultation with other human rights bodies, the scope for further such ratifications. A European Convention protocol abolishing the death penalty, and a commitment to ratify the Optional Protocol to the Convention against Torture, were the only other significant advances, and in due course the EHRC will consider its position on all the instruments where the UK position remained unchanged.

3.6 The Commission has called on the government to sign and ratify relevant optional protocols to the ECHR which the government has to date refused to do so: optional protocol 12 (the freestanding right to non-discrimination, as well as optional protocols 4 and 7). The combination of such ratification and incorporation via the Human Rights Act would give significant enhanced protection—similar to that provided by the ICCPR.

**Letter from Mr Trevor Philips OBE, Chair of the Equality and Human Rights Commission,
dated 22 October 2009**

I am writing in respect of your kind invitation to appear before the Joint Committee on 10 November. I am very much looking forward to it. However, in order to ensure that the Committee gains the greatest possible insight into our work, I wanted to clarify with you exactly what areas you and your colleagues hope to address.

In your original invitation, your officials referred to the “work of the Commission”, of which there is a substantial amount; we would be more than happy to spend the session setting out what we have done since we last spoke to you and what we plan to do in the next three years. However, I note from my officers' report of your session earlier this week that the Committee devoted very little time to these matters, focussing instead on what I believe your witnesses referred to as matters of “leadership and governance”; in substance on the way the Board works, and I gather, on the action and performance of the other Board members. In general, as a Board we are collegiate and operate under codes of conduct that discourage us from discussing private matters. Nonetheless, we try to ensure that all members have a chance to speak for themselves. I am not aware that invitations to attend were extended to any Commissioners other than those who appeared before you. I have been asked by other Board members if I might arrange with you for them to appear alongside Margaret and myself. It would seem that in this case, it would be helpful; we are all used to speaking openly and I think that such a free exchange of views would enhance your inquiries. I would, of course, be entirely content if you wished to speak to the other Board members in my absence.

I trust that you will agree to this suggestion, and that you will let me know in good time. I would like to let my colleagues know that they too will be welcome to the session. If you would like to reserve part of the session to consider the work of the Commission, or to do so at some other time I am at your convenience.

Letter from the Chair of the Committee to Mr Trevor Philips OBE, Chair of the Equality and Human Rights Commission, dated 2 November 2009

Thank you for your letter of 22 October, which the Joint Committee discussed at its meeting last Tuesday.

We are content for you to appear alongside other Commissioners when you give oral evidence on 10 November, subject to there being no more than four witnesses in total on the panel. I would be grateful if you could ensure that the names of witnesses appearing with you are communicated to the Committee staff as soon as possible.

The oral evidence session is intended to focus on the work of the Commission, particularly in relation to its human rights mandate. One of the issues the Committee will wish to address is whether the Commission is meeting its human rights mandate and fulfilling the hopes and expectations of those organisations such as the Joint Committee which called for the establishment of a national human rights institution in the UK. In this context, I expect that the Committee will have questions about your role as Chair of Commissioners. The Committee staff will be able to provide your staff with a more detailed briefing on the issues which are likely to be raised towards the end of this week.

During their oral evidence on 20 October, the former EHRC Commissioners mentioned a review by Deloitte of the way that the Commission operates. It was suggested that Commissioners were shown an initial version of the report which included the results of a survey of board members' views of your role and that this finding was omitted from the final version of the report (Qq25–37). I would be grateful if you could send us:

- the terms of reference for the work undertaken by Deloitte;
- a copy of the presentation referred to by Professor Hampton at Q27;
- the final version of the report;
- and the minutes of any sub-committee or board level discussions of Deloitte's findings.

Letter from Professor Kay Hampton to the Chair of the Committee, dated 11 November 2009

First, I would like to express my personal gratitude to you for restoring my faith in democracy! The excellent way in which you chaired the above committee yesterday gave me confidence that at long last there are MPs and Peers committed enough to get to the bottom of this issue and to restore confidence in Human Rights and the EHRC. It is the first time, since these matters were raised, that I feel encouraged to share more.

As you mentioned yesterday, this has been very difficult for my fellow colleagues and myself. This is not something we have done before and hopefully will never have to do again.

Having listened to Trevor's evidence yesterday, I feel more determined than ever to assist your committee in any way I can so that he is held to account. I am especially concerned that he was less than economical with the truth in some instances and I hope that the material I am enclosing will shed some light on some key matters that he claimed to be unaware of.

The Information may or may not assist you in your report preparation and you might wish to it share with the PAC—apart from that I feel this should be treated with confidence. The information I am sending you may be of value for two reasons: i) in establishing a pattern of autocratic leadership style, poor governance and questionable practices ii) in understanding the specific history relating to the reappointment of the named CRE staff who took redundancy payments and reapplied for consultancy work. They all left the CRE (either fulltime or part-time) with Trevor Phillips and before Nicola Brewer came into post.

In effect there are several questions that still need to be asked, which in my view go beyond Trevor's leadership style to the more substantive issue of concern—much of which only came to my attention after he took up his post as Chair of EHRC and I as Chair of CRE.

For the record, I shared all my concerns with senior officials at DCLG when I was Chair of the CRE. I was unfortunately unable to secure the co-operation or assistance of the senior official [***] who was frankly obstructive. I have reason to believe that many letters and emails I sent him did not reach Ministers.

On my arrival at the CRE in January 2007 (three months after I was appointed as Trevor did not leave until December 2006) I met with Helen Judge, another senior official at the DCLG and she indicated that there were three outstanding matters that she wished me to resolve, ASAP, as one in particular was dragging on for a while (recommendations from an Audit report)
These were as follows:

1. IMMEDIATE IMPLEMENTATION OF THE RECOMMENDATIONS OF AN INTERNAL AUDIT REPORT (THIS WAS NOT THE FIRST CONDUCTED DURING THE TIME TREVOR WAS IN POST)

*****¹

2. THE APPOINTMENT OF TWO DEPUTY CHAIRS AND A CEO: MARCH 2007

Both Trevor Phillips (although no longer Chair) and [*****] insisted that we appoint two Deputy chairs and a Chief Executive at substantial costs despite the fact that the normal work of the CRE was winding down by this time and the CRE was preparing for a merger. It should be understood that after the premature departure of two CEOs under Trevor's Chairmanship of the CRE, Trevor took on the role of chair and accounting officer for over two years and during that time resisted the appointment of a CEO. I sat on at least three panels in attempts to appoint CEOs and some high quality applicants were turned down because the chair "felt" he could not work with any of selected applicants. It was therefore surprising when the Chair suggested that we appoint Maxine Ayton (who was previously considered by the Chair inappropriate to appoint as CEO). We eventually appointed Maxine Ayton as CEO (now Director of Dignity-sister company to Equate) and two Deputies, one given a contract without open competition. [*****] in DCLG approved formally and Trevor Phillips fully supported.

3. AGREEING A BUDGET FOR APRIL 2007–OCTOBER 2007

In addressing the budget, I became concerned about three key issues:

First the mass "secondment" to the EHRC Transition Team of the entire Chair support team without any transparent employment process or risk assessment of the impact of their departure on CRE work. In fact, there were no vacancies advertised on the transition team, no open competition (as was required to allow staff from all three commissions to have a fair chance at applying) and no interviews, let alone job descriptions for the staff that left.

A significant number of staff left with their IT equipment, furniture etc. This meant that we had to recruit an entirely new office team to support the Chair's office and Communication Directorate at the CRE. Any attempt to question this was brushed aside by the interim CEO (Maxine Ayton), Trevor Phillips, [*****] and the Director of Finance. I raised this matter with the Board and established a small group to investigate. Trevor intervened and stopped CRE Commissioners from investigating this matter any further and [*****] supported this intervention.

Although the Financial Report attached indicates that some were seconded for up to three or four days, there was no evidence that these staff did other than work exclusively for the EHRC.

Needless to say, I raised this concern with CRE commissioners and with staff several times, and also with the DCLG. In the end, I was wrongly accused of "interfering" in operational matters (I am well aware of the boundaries between executive and non-executive roles) and was instructed by [*****] to delegate oversight of Financial matters to a Deputy Chair (Julia Chain).

I attach correspondence, which relates to these matters [not printed]. [*****] insisted that if the matter were exposed it would be damaging for ministers and the EHRC as Trevor had recently been appointed as Chair. Ultimately, I made the decision to focus on external matters and delegated non-executive, financial oversight to the newly appointed Vice Chair, Julia Chain, who then chaired the finance committee.

I was later to discover that Trevor had previously given Julia Chain consultancy work for the CRE without any discussion at Board level. She was effectively paid £3,000 per day (private sector rates) to chair a CRE investigation panel. In any, given month she would work three days a week and often claimed £9,000 per month. When I questioned the CEO, the Legal Director and Julia, the latter indicated that Trevor had approved the work and this had nothing to do with me. Despite an obvious conflict of interest, there was yet again no transparent process in allocating the contract. While I was there I was not able to track any paperwork on this and we were told at a board meeting that proof of the contract was passed on to DCLG.

My purpose in revealing this information is to illustrate that the leadership style, governance and probity issues we raised in evidence to your Committee, in breach of the Nolan Principles as we understand them, reflect a pattern of leadership which, in my experience, date back to the period when Trevor Phillips was Chair of the CRE. As you will note, despite my considerable experience as a non-executive, I was unable to resolve any of these issues due to the support given to Trevor from Officials at DCLG.

It is difficult to understand how Trevor Phillips can deny any involvement in, or even knowledge of, the reappointment of the staff concerned when in fact they formed part of the team who literally "walked out" of the CRE with Trevor when he took up his post at the EHRC. Further in his evidence, Trevor denied that Faz Hakim was his special advisor. For the record, Trevor indicated to me the first time we met (before he even took up the appointment at CRE) that he intended to appoint Faz Hakim as his special advisor to work closely with him. It is true that she held the title of Special Advisor for some 18 months. After which, I clearly recall Trevor informing myself and the other deputy (Sarah Spencer) that he intended to make Faz a Director (of external affairs). There was no advertisement of the post, no interviews, just an announcement—strangely, despite the unhappiness amongst staff, no one actually questioned Trevor on the impropriety. In

¹ Redacted to protect privacy of an individual.

other cases we were told in advance of any interview process whom to expect to be appointed. Colleen Harris (the new Communication Director he appointed), for example, was paid a salary that far exceeded the top end of the Directors' Scale. I am not sure who in DCLG approved this and why.

Finally, When Trevor arrived at the EHRC, he did not have a designated budget at the EHRC and the CRE subsequently subsidised his Travel expenses-for a period of time. We initially paid for his chauffeur driven car (which he continued to use during my period at the EHRC) and staff who were "seconded" to the transition team continued to claim expenses from the CRE for a period. Again, any attempt to raise this was met with barriers at the DCLG. I have not seen, nor approved, the CRE final accounts but they must make interesting reading. In addition to the reappointment of staff who received redundancy pay, some £66,000 went unaccounted for from the CRE budget.

With so many questions remaining unanswered and the other concerns raised in relation to Trevor's behaviour, I felt I had no choice but to leave when Nicola Brewer resigned as she was the only one, in my view, who was likely to have succeeded in preventing a repeat of the circumstances I witnessed at the CRE.

For Clarity:

The DCLG went through several restructures and changes during this time and several ministerial changes, Ruth Kelly, MP appointed me as Chair, Meg Munn, MP, soon replaced her. I shared my concerns with Peter Housden, the then Director General, Equalities, and B Follett, MP (who was an Equality minister for a short time).

More recently, after I heard of Trevor's reappointment, I shared information and concerns with Maria Eagle.

I was also informally interviewed by staff within DCLG who, after my complaints to Maria Eagle, called me in for an "informal Chat". It turned out that one of them wrote the audit report concerning [****] so understood well what I was referring to but indicated that they were unable to locate paper work relating to this period to verify my claims.

I am attaching, also, my letter of resignation and an email exchange between Trevor and I, which reflects how he tried to persuade me to sign a version of a note, which he intended to send around to EHRC Commissioners [not printed]. He was very keen to ensure that my departure was not linked with Nicola Brewer and also to give the impression that he and I were on friendly terms when I left. I refused to sign it. I had told him on a number of occasions leading up to my departure of my unhappiness with the way the Board was led and Chaired. It was an open secret that relations between the Chief Executive and the Chair were very strained. It is hard to believe that any Board members were unaware of that, at least to some degree. Yet there was no agenda item at the Board to discuss her premature departure when she left. An attempt to discuss the reasons for this by one or two Commissioners was closed down by the Chair, seemingly to the discomfort of the Chief Executive. I am confident that my fellow Commissioners who resigned, and were present at that Board, will be able to corroborate this.

I trust that you will come back to me should you require points of clarification.

Thanks once again for your commitment to address this matter

November 2009

Email from Professor Kay Hampton to the Chair of the Committee, dated 10 December 2009

Dear Andrew

I hope this finds you well. I meant to write to you immediately after the EHRC gave evidence to the PAC but was caught up with demands at the university. As will not surprise you, I was disappointed with the manner in which the PAC hearing was conducted as I feel that although members asked certain relevant questions, these were nevertheless not very probing and seemed to miss the main point of what happened.

The material I shared with you shows clearly that at least five of the CRE staff concerned joined the transition team after Trevor took over as chair and despite this he indicated at PAC that they were already on the Transition team when he arrived at the EHRC. He specifically stated to the PAC that the Transition Team were already in place when he arrived. This is obviously a crucial point. Trevor took up post in November (2006), the staff left the CRE between December 2006 and January 2009 (just as I took over the Chair at CRE). This was before Nicola took up post as CEO. Indeed, I questioned the process (the fact that there wasn't one) that was followed to appoint these staff simply because they were still being paid for by the CRE. Moreover, having taken the redundancy package, even if they were appropriately appointed, as I understand it they had signed a contract that disqualified them from applying for any post that might be advertised by EHRC.

This was an issue I subsequently personally raised with DCLG senior officers. I understand that Peter Housden (who was the DCLG Senior Officer) refused to approve the transfer of these staff as at least two were Directors at the CRE and this would have had an impact on the CRE's work during the merger period. Despite this and with no official approval, the staff nevertheless left. One staff member concerned (the

director of Communications) actually called a number of transition staff together on day one and briefed them on what Trevor's expectations were. Trevor who made the request, initially refused to move across to the EHRC until their transfer was approved and although he took up post in November, stayed at the CRE till December, which meant that I only officially took up my post in January.

Trevor was so desperate to take his entire "team" across that he was at one time being paid as chair of CRE and EHRC- an Officer from DCLG raised this with me as she felt unable to finalise my contract. I discussed this with Trevor as requested by the Officer. In effect because of this delay, I was forced to re-negotiate my original secondment contract with the university (ie: start date from 1 November to 1 January). I find it hard to believe that there is no recollection of this at DCLG given their anxiety to move him physically across and his insistence that he would not move over without his team or a "chairs" budget. Despite their (CLG) refusal to approve the move of the staff, the staff still went across to the transition team on a part-time basis without following any employment process. It was this situation that I questioned and the then interim CEO (who is now one of the Director's of Dignity) accused me of meddling and "bullying".

Notwithstanding this, It would appear to me that the changes in staff due to several restructures within DCLG is being used as an excuse not to get to the bottom of this situation.

Moreover, it seemed to me that Neil Kingham also withheld information to the PAC by not declaring that he was, if I am not mistaken, the Programme Director at the time but even if this was not the case, he was definitely a senior member of the Transition team. He had to be fully aware of the fact that five additional staff joined this team without following any due process. Ironically, Neil is an associate of Dignity and was previously in DCLG!

I am not sure why are the PAC found it so difficult to piece the evidence together despite having the paperwork, (which I understand was sent to them by yourself upon my request) that could have shown inconsistencies in what Neil and Trevor said when questioned about the staff? Their emphasis was on the staff shortage at the Transition team but as we all know, this was not a random group of staff—every single member worked directly with Trevor and were members of the Chair's support team whom he handpicked at the CRE (within months of arriving at CRE, Trevor replaced many of the key directors and replaced at least two directors post with the individuals concerned). There were presumably others with similar skills in the other Commissions but, just as obviously, given they were employed as consultants there would have been a wider pool of staff to draw from who were not necessarily still employed by any of the previous Commissions.

Faz Hakim, for example, one of the staff implicated, was brought into the CRE by Trevor as Special Advisor soon after he arrived from the GLA and without any transparent process and was subsequently appointed a Director to a post that did not appear in the CRE staff structure prior to this. Sarah Spencer and I (who were deputies at the time) were merely informed and not allowed to question this decision. So Trevor indicating that he does not get involved in the appointment of staff just does not add up. Indeed, Trevor brought across his PA from GLA when he came as Chair of CRE displacing the previous post-holder within the CRE and when he appointed Faz Hakim, displaced yet again another post holder. Both were transferred to other posts without any choice in the matter.

I feel obliged to write this in the interest of the future sustainability of human rights work in Britain. I am of the belief that this pattern of behavior is likely to continue as long as Trevor is Chair of EHRC. As I write, I have been made aware that at least two Senior Directors within the EHRC are applying for Jobs elsewhere. I have seen this before and fear that the best skilled will leave thus weakening the organization even further. I realize this sounds rather negative, however, having seen first-hand how Trevor systematically dismantled the CRE and caused anxiety amongst the race sector; and then proceeded to do the same at EHRC, I feel it necessary to impress upon you how dependent we are on your report making the desired impact. It seems to me that only a full scale inquiry of his activities from 2006 to date will really get to the bottom of this issue, but realize that this might not be possible.

I may be wrong but I heard that Trevor will appear on 15th at JHRC with Harriet and I remain hopeful that these questions will be raised again.

Kind Regards,

Kay

PS: Feel free to use this information as you see fit. However as a whistle blower, I do feel vulnerable and hope that I will be effectively protected.

PPS I should also mention that as far as I can tell the Deloitte report on the EHRC website does not include the slides with figures about the responses of interviews with Board Members on leadership and corporate governance issues that we referred to in our evidence to your inquiry.

Letter from the Chair of the Committee to Mr Trevor Phillips, Chair of the Equality and Human Rights Commission, dated 16 December 2009

I am sure you will be aware that the Committee heard oral evidence from Harriet Harman MP and Mr Jonathan Rees of the Government Equalities Office on the EHRC yesterday. We will send you the transcript of the session when it is available and would like to offer you the opportunity to comment on any of the points which arose.

We would be particularly grateful if you could clarify your response to Q160, when you gave oral evidence last month, where you said that the Government had asked you to work a four-day week as chair of the Commission. Mr Rees categorically denied that this was the case.

I am also enclosing memoranda we have received in recent weeks from Professor Kay Hampton, Sir Bert Massie, Baroness Campbell and Nicola Brewer. Again, the Committee wishes to give you the opportunity to comment on any of the points made in these papers.

It would be helpful if we could receive your reply by Monday 11 January.

I am grateful for the prompt answers we have received to our previous letters and requests for information. The Committee's current intention is to consider a draft Report on the EHRC before the February recess.

Letter to the Chair of the Committee from Mr Neil Kinghan, Interim Director-General, Equality and Human Rights Commission, dated 6 January 2010

Thank you for your letter of 16 December to Trevor Phillips with the enclosed memorandum from Baroness Campbell and additional correspondence from Dr Brewer, Sir Bert Massie and Professor Hampton. Trevor is away at the moment and I understand that your Clerk has kindly agreed to extend the deadline for the detailed response to your letter to 18 January.

Trevor will wish to respond to the question you raise about his working week and the Commission will be happy to respond to the points raised in the letters from Baroness Campbell and Nicola Brewer.

The Commission is however, seriously concerned about the content of the letters from Professor Kay Hampton. We believe that her letters contain unfounded and highly defamatory allegations about a number of individuals and that their publication would harm the reputations of those individuals.

The letters allege that Trevor Phillips and I misled the Parliamentary Committees to whom we gave evidence; they make serious allegations about [*****], a former employee of the Commission for Racial Equality and one of those re-engaged by the EHRC; and they refer by name to a number of other individuals. I will write separately to you regarding the allegation made against myself in relation to my evidence to the Public Accounts Committee and I am sure that Trevor will also write to you on his return regarding comments made about his evidence to your committee.

The Commission has a duty of care to those who have worked for it and we have therefore sent copies of Professor Hampton's letters to [*****], Colleen Harris and Faz Hakim so that they should be aware of the allegations and references to them, before possible publication. We have advised them that the letters are subject to parliamentary privilege and should not be disclosed by them.

It may well be that they will write separately to the Committee with their observations on the letters from Professor Hampton.

The letters also refer extensively to the work of the transition team which set up the Equality and Human Rights Commission and to the Commission for Racial Equality. For most of its existence, the transition team was the responsibility of the sponsoring Government Department. It will not be for the Equality and Human Rights Commission to comment on these issues nor on the allegations made about the Commission for Racial Equality.

The Commission understands and shares the Committee's commitment to transparency on the issues raised by your Inquiry. But we would be very concerned about the implications for the individuals concerned of publication of the unfounded, and defamatory allegations made in Professor Hampton's letters. We will let you have a response by the agreed date of 18 January on the issues raised in the other correspondence.

I am copy this letter to Edward Leigh MP and Jonathan Rees (GEO).

Letter to the Chair of the Committee from Mr Neil Kinghan, Interim Director-General, Equality and Human Rights Commission, dated 6 January 2010

I have written to you today on behalf of the Equality and Human Rights Commission in response to your letter of 16 December to Trevor Phillips. You sent us copies of a number of letters about the Commission from former members of the Commission, including two from Professor Kay Hampton.

Professor Hampton's letters make a number of allegations about Trevor Phillips and other named individuals to whom we have now sent copies and who may wish to respond directly to you.

Professor Hampton also makes a number of disingenuous allegations about me which are untrue and defamatory. She says:

“... Moreover, it seemed to me that Neil Kinghan also withheld information to the Public Accounts Committee by not declaring that he was, if I am not mistaken, the Programme Director at the time but even if this was not the case, he was definitely a senior member of the Transition Team. He had to be fully aware of the fact that five additional staff joined this team without following any due process. Ironically, Neil is an associate of Dignity and was previously in Department for Communities and Local Government.”

It is absolutely untrue and highly defamatory to say that I “withheld information” about my role in the Transition Team which set up the EHRC. I held the post of Shadow Operations Director (Finance), on a job-share basis, between May and September 2007. This did not come up in the oral evidence I gave to the Public Accounts Committee on 2 December but the Committee had been briefed on my role, with my knowledge, by the National Audit Office. I was never Programme Director of the Transition Team.

The five former employees of the Commission for Racial Equality who worked for the transition team and were subsequently re-engaged by the EHRC had all joined the team before I arrived. I had no responsibility for the terms and conditions on which they were employed, nor any responsibility for the discussions with the Sponsor Department about their re-engagement after 1 October 2007. As you will have seen from the letter you have received from Nicola Brewer, she asked her newly appointed Group Director for Corporate Management to lead on these discussions on her behalf.

I was an advisor to Dignity Management Consultancy and did two days work for them between October 2007 and April 2009. I declared this interest to the EHRC interview selection panel and I resigned from Dignity on the day I was appointed as Interim Director General of the Commission. It is true that I worked for the Department of Communities and Local Government.

It is a serious matter to be accused of withholding information from a Parliamentary Committee. The allegation is totally without foundation and I ask that you do not give it any public currency by publishing it with your report.

I am copy this letter to Edward Leigh MP and Jonathan Rees (GEO).

Letter to the Chair of the Committee from Farzana Hakim, dated 13 January 2010

RE: MEMORANDA SUBMITTED BY KAY HAMPTON REGARDING THE EHRC

I understand that Kay Hampton has submitted two memoranda to the JCHR in its inquiry into the work of the Equality and Human Rights Commission, which mention me by name. As there are some considerable inaccuracies in these memoranda, I thought it was important that I should address these in writing to the committee.

There are a number of inaccuracies throughout the memoranda, however I shall limit my comments to those that mention me by name or concern the team or functions that I managed.

1. *Memorandum entitled “RE: Evidence given by Trevor Phillips, Kay Carberry, Jeanie Drake and John Wadham: 10 November 2009”*

(a) page 1 para 4. Kay alleges that all those named “left the CRE with Trevor Phillips and before Nicola Brewer came into post”.

For my part, I was seconded to the EHRC for three to four days a week but not for some months after Trevor Phillips had left. I had not left the CRE, was still being paid by them and still had a team of people at the CRE that I worked with on a close day to day basis.

(b) Page 3, para 2. Kay alleges that there was a “mass ‘secondment’ to the EHRC transition team of the entire Chair support team without any transparent employment process or risk assessment of the impact of their departure on CRE work.”

The facts of the matter are that the Chair’s pa and private secretary moved over to the Transition team as secondees with Trevor Phillips. It would have been impossible for him to do his job without them. I stayed at the CRE full time for three to four months and ensured that Kay had a warm welcome when she took over as Chair, for example by buying her flowers at my own expense and holding a small event where the office staff could welcome her. I made sure that there were provisions made for staff to cover the work of those who had moved over and as soon as Kay arrived, discussions were held with her regarding whether she would like to recruit her own pa and private secretary. I thought this was a better way to handle things rather than make any presumptions. I also thought that given that these staff would work very closely with Kay, she would want to be involved in their appointment.

(c) Page 3, para 3. Kay alleges “that an entirely new office team to support the Chair’s office..” had to be recruited. Two new members of staff had to be recruited (see point b above).

I am not aware that staff took their IT equipment with them but were given new equipment to use at the EHRC. If staff were seconded on a part time basis as I was, we used our CRE equipment as well as the EHRC equipment to ensure we could keep on doing both roles to the best of our abilities. Any equipment from either the CRE or the EHRC was given back once I left.

(d) Page 4, para 1. Kay alleges that “there was no evidence that these staff did other than work exclusively for the EHRC”.

In fact I ensured that I went back to the CRE as much as possible, attending meetings of the Senior management team and of course keeping in touch via email and telephone. As time wore on and the launch of the EHRC came closer, I think it is understandable that I spent more time at the EHRC. At this point I gave my deputy increased responsibilities to deal with issues in my absence. By this point, the priority had become to ensure that there was a smooth transition from one body to another. This involved setting up joint meetings with staff from all three commissions to begin planning for the launch, building up personal relationships between the three teams rather than waiting for Day 1 before people had a chance to meet or work together.

(e) page 4, para 6. Kay alleges that Trevor Phillips was involved in the re-appointment of staff who had “literally walked out of the CRE with Trevor”.

As clarified in point (b) above, only the Chairs pa and private secretary moved over to the EHRC. Neither of them applied for or took redundancy as they were seconded to the EHRC by the CRE - this had been agreed by the CRE.

(f) Page 4, para 6 and page 5, para 1. Kay alleges that Trevor denied I was his special adviser and that I was inappropriately made into a Director.

I have never held the post of special adviser. In 2003, I applied to an external advertisement in the *Guardian* for the post of Principal Adviser to the Chair of the CRE, which after submitting an application form and interviews, I was appointed to. I held this post for two years during which time the department I managed had expanded to over 15 people and there was no place for the issues we covered—stakeholder management, parliamentary and political engagement, European work and the Commissioners office to input into the main organisation. The HR department went through a formal process of job re-evaluation and decided that I was covering the duties of a Director and that my job title should be amended. This was agreed by the senior management team as the correct body to discuss staffing matters and I was assimilated into the post. I would happily have gone through an appointment process for this but was told that as I had been doing the job for some time, it would actually be unfair on me.

(g) page 4 para 6. Kay alleges it was “difficult to understand how Trevor Phillips can deny any involvement of reappointment of staff.”

Trevor was in no way involved in my being asked to stay on as a consultant to the EHRC for a limited period until a replacement had been appointed. I was asked to do this by the Chief Executive to help the EHRC despite the fact that I had made it clear that I wanted to leave by taking the redundancy package. There was no equivalent post holder in any of the other commissions, otherwise I am sure they would have been asked. Trevor stated that he was disappointed that I had decided to leave but played no part in my reappointment as a consultant.

I only decided to stay on as a consultant firstly to help out the EHRC and the Chief Executive as if I had left there would have been no-one to oversee the running of the Commissioners office. At that time this meant the administration of Commission meetings, setting up processes to deal with commissioners and Chairs correspondence and invitations and their own internal communication, just as the Commission was in its early stages.

Secondly I had been assured by the Chief Executive that my reappointment had been cleared by the Government Equalities Office as it was time limited and very specific.

I stayed in this consultants role for two months, after which a Director of the Commissioners office had been appointed and was in place. I took this work on at a competitive but reduced rate compared to other consultants working in the transition team.

2. Response to allegations made in letter headed “Dear Andrew” following the PAC hearing.

(a) page 1, para 2. There is a clear confusion here between secondments to the transition team from the CRE before the EHRC was formally constituted and reappointments made on a temporary basis after the CRE had ceased to exist.

Before Trevor Phillips arrived at the EHRC there was no process for seconding staff however very quickly one was instituted where secondments were advertised to all three commissions. This was a rule that Trevor Phillips enacted in the interests of transparency and equality of opportunity. Before this process was implemented a number of staff from the EOC, DRC and other equality and Human Rights bodies had already been seconded to the transition team, without any transparent process. There were also large numbers of consultants working there on very large consultancy fees.

I applied for a position and underwent an interview to assess my areas of expertise before I was assigned to any task in the transition team as did any staff that were appointed. I was seconded from the CRE on a part time basis on my existing salary, which as I understand it could claim the money back from the transition team. In the course of my time at the transition team I appointed a number of staff from the EOC and DRC to work with me in the interests of creating a smooth transition and to facilitate working and trust between commission staff before the EHRC actually launched.

(b) page 3, para 1. Again there is clear confusion here between the process for secondments, which I have addressed above in (2a) and the process for appointments of consultants which I outline in (1g).

(c) page 3, para 2. Kay falsely alleges that I was brought into the CRE without any transparent process, displacing a post holder.

In fact I applied for the post of Principal Adviser to the Chair which was advertised in the Guardian Newspaper and went through a full and thorough selection process. This was a new post as I understand it so there was no staff member to be displaced. I have dealt with the false allegations regarding my being made a Director in point (1f) above.

I hope these comments on the false allegations made against me help the Committee in their work. If the false allegations are to be published then I would request that any comments relating to them should also be published as they are clearly damaging and defamatory. I would be grateful if the committee could inform me of their decision, I have included all my contact details below.

Letter to the Chair of the Committee from Colleen Harris, dated 13 January 2010

Thank you for the opportunity to respond to the letters/documents from Professor Kay Hampton sent to the Equality and Human Rights Committee which make mention of my time at the Commission for Racial Equality (CRE) and the Equality and Human Rights Commission (EHRC).

Please forgive the detailed response, but as Professor Hampton makes various accusations and insinuations regarding my employment at the CRE and EHRC I feel it necessary to offer clarification and facts as appropriate.

For your background information and to set the context please note that I worked in the Government Information and Communications arm of the Civil Service for 26 years before moving to the CRE. I had an unblemished and celebrated career starting in the British Museum and Natural History Museum, and then working across Government departments including the Home Office, Cabinet Office, Department of Transport, Department for the Environment Transport and the Regions and the Office for the Deputy Prime Minister (ODPM). I was the first Black Senior Press Officer posted to the Prime Minister's Office and the first Black member of the Royal Household when I was appointed Deputy Press Secretary and then Press Secretary to HRH The Prince of Wales, Prince William and Prince Harry. A position I held for three years.

I am delighted with my achievements including my time at the CRE. Successive appraisals along with increasing responsibilities and promotions reflect the opinions of those for whom I have worked.

I shall deal with each point as set out in Kay Hampton's documents:

MY SALARY AT THE CRE

When I moved to the CRE (which was well documented in the media) I took up the post on secondment and my parent department, the ODPM, guaranteed my existing salary. This is not unusual in public service and for the record I did not ask for, nor receive, a pay rise or cost living increase in salary during my entire posting to the CRE.

MY POST IN THE TRANSITION TEAM—COMMUNICATIONS LEAD

The Transition Team's Communications Lead post was advertised in the Transition Team's Newsletter that went to all staff in the three Equality bodies and other relevant organisations. I applied for the post and was invited to an interview with the then Director-General of the Transition Team and subsequently offered the post. This was an entirely fair and open process.

It was agreed by the CRE's then CEO that I would continue to work as Director of Communications at the CRE and work part-time as the Communications Lead in the Transition Team. As far as I know this was agreed by all concerned.

My salary was paid for by the CRE. This was the case for all staff from the three Equality Commissions working in the Transition team. Each Equality Commission was to recoup the salary costs direct from the Transition Team. These arrangements were agreed by the Transition Board.

FURNITURE AND IT EQUIPMENT

Whilst in post at the EHRC I kept my CRE mobile phone so that the media, stakeholders and staff could continue to contact me. This was necessary as I was managing a 24 hour media service in two organisations (CRE and EHRC). I was also issued with a Transition Team mobile phone which was for the use of all Communications staff in the Transition Team. With the agreement of the CEO at the CRE and the DG of the Transition team, I continued to use my CRE mobile phone for all my work calls—both CRE and EHRC.

On leaving the EHRC I returned my mobile phone to the IT manager at the CRE. I retained the number as this is a number I had brought with me from my previous post at St James's Palace. It is known to all my professional contacts including media, Ministers and Government officials. My husband paid for all the transfer arrangements and will provide proof if required.

I did not take any furniture from the CRE to the EHRC. Desk, chairs and other sundries were provided by the Transition Team.

I did not take any IT equipment from the CRE to the EHRC. Computers were provided by the Transition Team.

On my departure both offices were left containing all items issued.

REDUNDANCY

I did not take a redundancy package.

Before joining the Transition team I made it clear that I would be leaving the Civil Service when the new EHRC was launched in September 2007.

I applied for and was offered an early retirement package which I accepted.

The Chair and CEO of the EHRC did not succeed in appointing a new Director of Communications before the new Commission was due to open its doors. The selected candidate could not take up the post for several months after my agreed leaving date. The CEO asked me to stay on for at least three months to cover the post. I initially declined as my pension had been agreed and I also had plans for private sector work beyond the Commission.

The CEO made a strong case and persuaded me to take up her offer. She confirmed that all necessary permissions and paper work had been sought and agreed. It was stated to me that my pension would not be affected if I accepted the contract under these circumstances. This was confirmed to me in a conversation with a senior official from the Department for Communities and Local Government (DCLG).

It was also confirmed to me in an email from Norma Wood the then Head of the Transition Team.

On this understanding I agreed to cover the Communications post for three months until the new Director of Communications was in place.

I left after one month in the post (to the dismay of the CEO) for personal reasons.

CONSULTANCY FEES

The CEO and the DCLG agreed to pay competitive consultancy rates in line with other consultants in the Transition Team and DCLG.

DAY ONE BRIEFING BY COMMUNICATIONS DIRECTOR

Professor Hampton states that I called a staff briefing with all of the Transition Team staff on Day One of the new Commission. I have no recollection of any such event or meeting. In fact I was not in the office on Day one.

DIGNITY MANAGEMENT CONSULTANCY

I was one of the founding Directors of Dignity Management Consultancy (Dignity). Dignity does not have, nor ever has had, a contract with, by or from Equate, the EHRC or the CRE.

The Chair of the CRE and the Chair of the EHRC is not involved, nor ever has been involved, with Dignity Management Consultancy.

As much of Professor Hampton's commentary appears defamatory I would be grateful to know if and when any of this information is likely to be published and also to have confirmation that my response would be published alongside.

Please do not hesitate to get in touch should you require any further information.

Letter to the Chair of the Committee from Mr Trevor Phillips OBE, Chair of the Equality and Human Rights Commission, dated 19 January 2010

Thank you for your letter of 16 December with the enclosed memorandum from Baroness Campbell and additional correspondence from Dr Brewer, Sir Bert Massie and Professor Hampton. My thanks also for agreeing to extend the deadline for our response to your letter to 18 January.

Several points in the correspondence relate to the Commission for Racial Equality (CRE) or to the management of the transition team by the sponsoring department (which at this time was the Department for Communities and Local Government) and are not for the Equality and Human Rights Commission to address.

A substantial number of Professor Hampton's comments relate to the CRE during the period after I had left and during which she herself was the Chair of that body. I played no role in the CRE's governance during this time other than, shortly before I left, to recommend to the sponsoring department that they should actively consider Professor Hampton's merits as my successor. Even had I wished to, I could not, for example, have influenced the number and appointment of Deputy Chairs, as this would have been a matter for the new Chair and the sponsoring department. However, as she points out, Professor Hampton was asked by the Department for Communities and Local Government and (I understood) by the CRE Board, to stand aside from certain of her responsibilities for part of her term of office. So you may also wish to consult with her Deputies, Julia Chain and Khurshid Ahmed, to whom the Board delegated responsibility for those matters.

I should also make the point that many of the allegations related to the CRE were, we understand, subject to investigation by the National Audit Office and the Government Equalities Office. The CRE's accounts were audited by the National Audit Office with no qualifications and we understand that no action was deemed necessary by the NAO.

You asked me to clarify the apparent discrepancy between my evidence and that of the Government Equalities Office in relation to the number of days per week I work at the Commission. In advance of my reappointment in July, I did have discussions as to whether the requirements of the post would entail my giving further time to Commission work. In the event Ministers asked me to continue on a 3½ day a week basis which I was happy to do.

I will address points from each of the former Commissioners in sequence. As I have said all along, I regretted the resignations of these Commissioners, who after all were active members of our Board for virtually the whole of its life. The Equality and Human Rights Commission is grateful for their contributions during the first two years of our operation; I am of course also grateful to the majority of Commissioners who completed their term in December.

BARONESS CAMPBELL'S SUBMISSION

Baroness Campbell makes a number of comments about the operation of the Board. As I said to the Committee, we have now put into place many new measures to improve governance procedures. We commissioned Deloitte to conduct a review after our first year (as did at least one of our predecessors), many of the recommendations of which have been implemented. We have adopted a new governance code and the newly appointed Commissioners are all taking part in a formal induction process this week.

In the normal course of events I met Commissioners one-to-one to discuss both specific issues as well as to review the Commission's progress generally. In meetings with Baroness Campbell it was clear that she and I simply held different opinions on how best to carry out the role of chair of a Non-Departmental Public Body. I fully respected that she had herself been the chair of a small NDPB and I considered her advice valuable. However, it would be surprising if every chair of every NDPB worked in exactly the same way, given the diversity of such bodies.

Baroness Campbell also refers to the funding of the Disability Committee.

Decisions about funding allocation are always difficult and I share Baroness Campbell's frustration that more money cannot be found for some key work streams. However, in common with other areas of the Commission's work, the budget allocated to the Disability Committee was discussed and agreed by the Board and through the business planning processes. It is worth noting that no one on the Board or Disability Committee ever voted against the Disability Committee's budget allocation. Baroness Campbell was herself chair of the Disability Committee at the time the budget allocation was made and neither she nor the Committee requested more funding. I would be happy to provide minutes of the relevant meetings, if necessary.

£200,000 was allocated to the Disability Committee in 2008–09. In addition, having a Director-level lead for disability made this strand unique in the Commission and properly reflected the Commission's statutory responsibilities in this area. Disability-related issues form a major part of other work: our helpline takes almost 50% of its calls on this issue, we have published several reports on disability and launched a major inquiry into disability-related harassment. We have enclosed a copy of our strand-specific business plan that details ongoing and future work, for your information.

Baroness Campbell also claims that I “made ‘policy on the hoof’ with little or no reference to Commissioners” and specifically that I “announced that institutional racism was no longer a problem in Britain (which goes against all evidence)”.

This is incorrect. The Commission’s work around the tenth anniversary of the Macpherson Inquiry and policy position on “institutional racism” was discussed by staff and then a paper presented to the Board, which debated the issue at length. Finally the speech in question was circulated to all Board members for final comments. Our records show that Commissioner Professor Francesca Klug was the sole Commissioner to contribute comments on the speech.

In addition, I did not announce in my speech that institutional racism was no longer a problem. While acknowledging a debate about how productive the use of the term “institutional racism” had been, I specifically stated:

“Let me be clear, I am not saying that institutional racism as it was described in the Stephen Lawrence Inquiry report has been ob/iterated. Public institutions are not now exonerated with a single sweep. Our mission has not been achieved.”

The full speech is available on the Commission’s website.

PROFESSOR HAMPTON’S SUBMISSION

I would now like to move on to address a number of the points made in the two letters submitted by Professor Hampton. As I have said, many allegations relate to the CRE or to the government, and the GEO may also wish to comment on these submissions. In addition, many claims relate to the personal conduct or employment of individuals who are no longer connected with the EHRC, in particular [*****], Faz Hakim and Colleen Harris. As you know, we sent copies of Professor Hampton’s letter to them and we have received copies of their responses to you. As I have suggested above, you may also wish to consult with Julia Chain and Khurshid Ahmed to whom Professor Hampton delegated much of her responsibility whilst Chair of the CRE.

You have also received a separate letter from Neil Kinghan (dated 6 January 2010) addressing the allegations that relate to him.

I believe however, it would be useful to alert the Committee to a number of inaccuracies in Professor Hampton’s statements.

Professor Hampton is critical of the arrangements to bring staff into the transition team, particularly those from the Chair’s office at the CRE.

Staff were brought across in equal numbers from each of the legacy commissions to work in the transition team, on the basis of the needs of the (then) CEHR. Responsibility for transferring staff to the transition team lay with the sponsoring department, not the EHRC. However, it is misleading to suggest that staff were brought into the transition team without due process; most posts were filled through open internal recruitment processes, a process which had not been in place prior to my appointment, but which I insisted upon from the start.

There is a suggestion that staff who worked closely with me at the CRE were brought into the new Commission at my request. However, as Dr Brewer clearly states in her letter, these appointments were made by her as Chief Executive, not by me. I repeat the points I made in the oral evidence session, I did not decide who should transfer to the new Commission. Staff under consideration here include several members of the legal team and a graphic designer, with whom I had little day-to-day contact. It was the Chief Executive who decided on their re-engagement, as she says.

When I moved over to act as Chair of the new Commission, it was agreed with the transition team and with DCLG that my Personal Assistant and Private Secretary would also be seconded from the CRE to continue to work with me. The individuals concerned were not amongst the CRE staff who were later engaged by the CEO.

Professor Hampton repeats several allegations about events which took place at the CRE several years ago, and which we understand she has made previously to the Government Equalities Office and the National Audit Office. We understand that these allegations raised with the GEO and NAO were investigated by both bodies. The CRE’s accounts were agreed by the National Audit Office with no qualifications.

Professor Hampton goes on to suggest the Board was unable to discuss Dr Brewer’s resignation from the Commission when she had accepted the post of High Commissioner to South Africa. However, Board minutes (which we would be happy to provide) demonstrate that Dr Brewer’s departure was discussed by the Board in March 2009, immediately after Dr Brewer informed the Commission about her decision. The Board, naturally, held a full discussion on interim arrangements and on the process to appoint a new CEO, and delegated responsibility for this process to a panel of its members.

Finally, Professor Hampton is correct that the materials published on our website on the Commission’s internal review by Deloitte do not include a PowerPoint presentation used by Deloitte for a board discussion. This material was a working presentation used to stimulate discussion with the Commissioners and the Senior Management Team, and was only shared by Deloitte with the Commission in confidence.

This is normal practice in projects such as this and the material was never intended to be included in any formal report to EHRC. The Board has recently discussed the decision not to publish these slides once again, and they agreed they should remain confidential. Thus, the Board would be grateful if this presentation, which was shared with the committee on a confidential basis, should remain so.

SIR BERT MASSIE'S SUBMISSION

Finally, to turn to the submission from Sir Bert Massie.

Sir Bert says that Commissioners' requests to discuss the Commission's policy on smacking children were ignored. This is not right. Policy on smacking was discussed at Board on 21 May 2009 and by the Disability Committee (of which Sir Bert was a member) on 8 July 2009. The relevant minutes can again be provided on request.

He suggests there were insufficient opportunities for Board members to guide the Commission's policy. However, by way of example, the Board discussed our most critical document—the Commission's three year strategic plan—on four separate occasions:

- December 2008—Board discussion on three year strategy.
- January 2009—Board discussion on three year strategy.
- February 2009—Board away day on three year strategy.
- March 2009—Board meeting to agree on three year strategy.

I have addressed many of the points made in the correspondence you sent me. I hope that I have clearly explained why there are a number of allegations which are unfounded. If you wish to pursue any of them further, please let me know.

Letter to the Chair of the Committee from Mr Jonathan Rees, Director-General, Government Equalities Office, dated 19 January 2010

The Equality and Human Rights Commission have shared with me your letter of 16 December 2009 to Trevor Phillips enclosing correspondence from a number of former Commissioners. As Trevor said in his reply to you yesterday, some of the points raised in this correspondence relate to this Department's responsibilities and also to that of our predecessor on equality matters, the Department of Communities and Local Government. Serious allegations are also made by Dr Hampton against a serving civil servant. It would therefore be very helpful if the Committee could send us a full set of the relevant papers with all the enclosures to help us determine the most appropriate response.

Pending a final assessment of her evidence, I should also like to make an initial comment on the letter from Dr Brewer which EHRC has shared with me. In paragraph 12, Dr Brewer quotes from a minute sent on 26 September 2007 from the GEO to the EHRC. As she says, this note makes clear that the Department was not in principle against re-engagements of essential staff to help with the EHRC's transition. I made this clear when I gave evidence to the Public Accounts Committee on 2 December (the reference is at Q9 and my response).

However the Department's note of that date goes on to say:

“CEHR will have to ensure that the rates being offered are not disproportionately higher than the market rate and can be defended within public sector pay guidance. On that basis, we cannot endorse the proposed rates based on the information provided so far”.

This remained the Department's position over the next 18 months which is why we could not support the case for retrospective approval to the Treasury in January 2009. The exchanges from the PAC hearing cover this point in more detail.

I hope this is helpful.

Letter from Peter Housden, Permanent Secretary, Department for Communities and Local Government to Jonathan Rees, Director General, Government Equalities Office, dated 20 February 2010

Kay Hampton correspondence with Joint Committee on Human Rights

We discussed the appropriate way of handling the allegations made by Kay Hampton in her correspondence to the Joint Committee of which we had indirectly become aware. The allegations against CLG generally and against at least one named official specifically were potentially serious, albeit having been raised in this way some three years after the period in question.

Accordingly we conducted a thorough review and gave the named officials an opportunity to comment on the allegations. Having considered the contemporaneous record and the recollections of those involved, we are satisfied that the allegations are unfounded. Indeed, our review demonstrated that faced with a

challenging situation the CLG officials worked professionally and with commitment to ensure the Commission for Racial Equality was a well run organisation capable of making as smooth as possible a transition to the Equality and Human Rights Commission.

I would be grateful if you would draw this letter to the attention of the Joint Committee and ask that they publish it alongside the Kay Hampton memoranda.

Letter from the Chair of the Committee to Mr Trevor Phillips OBE, Chair of the Equality and Human Rights Commission, dated 17 November 2009

EHRC'S CONDUCT IN RELATION TO THE BRITISH NATIONAL PARTY

I have enclosed a letter, sent to me in strict confidence, which raises very serious issues about the conduct of a EHRC Director in relation to the BNP.

We would like to give you the opportunity to respond in writing to the allegations made in the letter.

Letter from Mr Trevor Phillips OBE, Chair of the Equality and Human Rights Commission, dated 24 November 2009

EHRC'S CONDUCT IN RELATION TO THE BRITISH NATIONALIST PARTY

Thank you for your letter of 17 November with a copy of an anonymous letter you have received.

Unfortunately, this anonymous letter has been sent to a range of people and organisations, including the BNP itself. The Commission's response to the main issue in the letter is as follows:

"It is not, and has never been, the policy of the Equality and Human Rights Commission (EHRC) to encourage anyone to join or attempt to join the British Nationalist Party. Further the EHRC has never authorised anyone to issue any such instructions. If any such unauthorised instructions have been given to staff as far as we are aware no one has acted on it;

Any such activity by any member of staff which is alleged to be contrary to this position will be investigated in accordance with the EHRC's internal procedures."

The allegations made in the letter are the subject of an internal investigation within the Commission, instigated by the Interim Director-General, Neil Kinghan. Neil has also put in place an inquiry into the anonymous letter itself.

Any further action within the Commission will follow the completion of these inquiries.

Letter from the Chair of the Committee to Dr Nicola Brewer, High Commissioner, British High Commission, South Africa, dated 17 November 2009

THE WORK OF THE EQUALITY AND HUMAN RIGHTS COMMISSION

As you are aware, the Joint Committee on Human Rights has been conducting an inquiry into the work of the Equality and Human Rights Commission (EHRC). We have heard oral evidence from four of the former EHRC Commissioners who resigned from the Commission earlier this year. We also heard oral evidence from the Chair of the Commission, Trevor Phillips, on 10 November.

Much of the evidence has been about the governance of the EHRC and the background to the resignations, including your own [see, in particular, Qs 61–64]. I have enclosed transcripts of both evidence sessions and would like to give you the opportunity to submit written evidence to the Committee.

Memorandum submitted by Dr Nicola Brewer, High Commissioner, British High Commission, South Africa

1. Thank you for your letter of 17 November, enclosing transcripts of evidence sessions the Joint Committee on Human Rights has held as part of its inquiry into the work of the EHRC, and giving me the opportunity to submit written evidence to the Committee.

2. I will limit my evidence to points of fact related to questions asked by the Committee, and focus mainly on the sequence of events related to the temporary re-engagement of former CRE staff.

3. I took up my appointment as CEO in March 2007, as the EHRC's (then called the CEHR) first employee, seven months before the launch in October 2007. The Chair and most Board members had been appointed several months earlier. A CEHR transition team had been in place for some time, with several recent changes or additions. There was a relatively new Programme Director, appointed by the new Chair; and several senior staff from the CRE had been moved into important jobs in the transition team.

4. An “Early Exit Scheme”, making provision for redundancy payments to staff from the three former Commissions (CRE, EOC and DRC) who did not want to transfer to the EHRC, had been agreed with the then sponsor department (DCLG) shortly before I arrived. The transition team had designed, and agreed with the unions and sponsor team, a (complicated) “assimilation” process for matching staff from the former Commissions into new roles in the EHRC.

5. I took over the transition team on arrival. After three months, I replaced the Programme Director heading the transition team with one recruited through the Office of Government Commerce. In terms of additional senior appointments, I brought in HR and finance expertise to a job shared position as Shadow Operations Director, and recruited the EHRC’s senior management team. With the exception of changing the terms of the contract for one ex-CRE staff member, by written agreement with the Principle Accounting Office in the then sponsor Department (DCLG), I did not re-hire the ex members of the CRE brought into the transition team before my arrival, but, like other members of that team, left them in place until 1 October 2007. I then re-engaged the ex members of the CRE in the transition team for a temporary period because there was no one else to fill those important jobs and the EHRC was still being “built up”. (I explain the re-phasing of the transition programme in paragraph 10 below.)

6. As Accounting Officer, I knew that this re-engagement process would be novel and contentious and therefore require the approval of the sponsor department and HMT. I instructed my new Director General Corporate Affairs to lead on this, as my Shadow Operations Director (HR) had successfully done in the case of the revised contract for one ex CRE staff member. There were a number of changes of sponsor department and Principle Accounting Officer (PAO) for the EHRC between June 2007 and early 2008, from DCLG to DWP, back to DCLG and then to the GEO. The first Director General of the GEO, appointed PAO for the EHRC, arrived in February 2008.

7. The EHRC and the GEO have a comprehensive chronology of the emails, letters and meetings between the EHRC and the sponsor unit about the re-engagements, both pre and post dating the 1 October 2007 launch.

8. Before 1 October 2007, I discussed with the Chair the re-engagements of the three former CRE staff who worked most closely with him. We had detailed discussions about one re-engagement in particular, including at one meeting with myself, the Chair and the individual concerned, at her request, after she had decided to apply for the Early Exit Scheme. At that meeting in September 2007, we discussed several potential options for the individual to remain with the EHRC. I set out which of those potential options would require explicit approval by the sponsor department, and how likely or unlikely I considered that approval. The Chair and I also discussed the possibility of re-payment of the redundancy money, without the individual concerned present.

9. These discussions took place shortly before the EHRC launched on 1 October 2007, the date from which the temporary re-engagements took effect. All of the temporary re-engagements were made to fill essential positions in the EHRC to which I had not had time to recruit permanent staff, and to which staff transferring from the three former Commissions were not “matched”. The re-engagements were to cover only the six month “build up” period from 1 October 2007 to 31 March 2008.

10. I introduced this “re-phasing” of the transition programme in May 2007 when I realised that the transition team was not ready for a full launch of the EHRC in October. I used the Office of Government Commerce “Gateway Review” which took place in May 2007 to test my judgement of the programme’s state of preparedness. They confirmed it, rating the programme with 11 “Red” recommendations, ie ones on which immediate action needed to be taken. I raised with the Chair the alternative option of delaying the launch date itself, citing an example of a recent public sector merger which had done exactly that after the late appointment of the Chair and CEO. It was concluded that “re-phasing” the programme—essentially, continuing to build up the EHRC after its “soft” launch in October—was the better option. The re-phasing recognised that a great deal to establish the EHRC as a fully operational organisation remained to be done after October 2007, including recruiting a high percentage of staff at Director level and some at Director General level. The three key former CRE staff were temporarily re-engaged to fill positions at these levels.

11. Throughout the autumn and winter of 2007 and early spring of 2008 I expected a successful resolution to the exchanges with the sponsor unit about the temporary re-engagements, as the chronology mentioned earlier evidences. During that time, one of the temporarily re-engaged former CRE staff members applied for, and won through an advertised competition, a temporary job share position as Political Adviser to the Chair and CEO; the end date for that temporary position was also 31 March 2008.

12. I raised the issue of the re-engagements with the Audit and Risk Committee (ARC) and the EHRC Board when it emerged that approval for the re-engagements was unlikely to be granted, and highlighted the implications for potential qualification of our accounts. This refusal was contrary to previous expectation, for example a minute dated 26 September 2007 from the sponsor team had noted that “senior managers have already agreed in principle that CEHR can retain essential staff on a casual basis to help with the transition”. I drew attention to that GEO minute in a detailed letter to the GEO on 25 March 2009 in response to notification that HMT had not granted approval.

13. It is my recollection that the three former members of the CRE, in view of the important positions they filled, continued to attend some Board meetings during the “build up” phrase of the EHRC, ie between October 2007 and March 2008; the Board records would be able to confirm this. One of the three resigned in the autumn of 2007; the other two remained with the ERHC until 31 March 2008.

14. On the separate issue of the perceived conflict of interest related to the company Equate, a way to address this was agreed with the Cabinet Office. I can confirm that, on several occasions over the second half of 2008, my advice to the Chair was to stand down from the company; periodically after that we continued to discuss implementation of his decision as it affected the Equate website.

December 2009

Memorandum submitted by Baroness Campbell of Surbiton DBE

EVIDENCE TO THE JCHR ON MATTERS CONCERNING THE EHRC

Thank you for allowing me to give written (rather than oral) evidence to the Committee on the work of the EHRC and my reasons for resigning as an EHRC Commissioner. This accommodation is much appreciated.

I agree with the oral evidence given to the Committee by fellow former Commissioners on 23 October 2009. My aim is to provide further detail, together with personal observations and remarks. In this memorandum, I have commented on EHRC Governance, leadership style, organisational culture and the barriers experienced by the Statutory Disability Committee in carrying out its functions.

I ask the JCHR to recognise my wholehearted commitment to the concept of an overarching, inclusive, equality and human rights commission. I was and am fully committed to bringing disability rights together with other groups and individuals campaigning for equality and human rights. I attach a lecture I gave to Cambridge University, which sets out my views, especially on how disabled people could work collaboratively without diluting the specificity of our particular accommodation and adjustments [not printed].

“ I begin to realise the ambition laid out by our forebears during the International Year of Disabled Persons in 1981 who said:

‘As we gain equal rights, so we have equal responsibilities. It is our duty to take part in the building of society’

So by the time Government merged all the gender, race and disability equality commissions together into the Equality and Human Rights Commission last year, many disabled people like me felt ready to join forces with other groups, other movements; ready to move on to the next phase of our liberation as multifaceted human beings contributing to the broad enterprise of equality and human rights for all.” (University of Cambridge, St John’s College, 29/4/2008)

I want to make my position clear because on several occasions since my resignation it has been suggested that “the two Commissioners from the DRC were never reconciled to working within a joint Commission, preferring and bemoaning the loss the legacy body”. This is not true.

It is right to say that the culture of the EHRC was very different from that of the DRC. There were valid reasons for this, not least the fact that the EHRC brought together many people who had not previously known one another and with only limited knowledge of each others’ skills and experience. I was unhappy that more was not done to bring Commissioners together to learn from one another and to support us working together as a cohesive group. However I, like other commissioners, was determined to demonstrate my commitment to making the EHRC a successful enterprise and therefore minimised/underplayed any challenges.

As the first Chair of the statutory Disability Committee, I had frequent meetings with Trevor Phillips at which I set out the resources needed for that Committee to meet its Statutory obligations. At such meetings my concerns were apparently listened to. Remedial action, like more human resources with knowledge of disability specificity to help the Statutory Disability Committee to fulfil its remit was promised, but it never materialized. This occurred several times.

On reflection, I and others probably held back too often and for too long with regard to a range of growing problems which needed to be addressed by the Chair and Board of Commissioners. However, it was hard to challenge initially because we really understood the difficulties of “start up” (*eg bringing three established Commissions together along with three new equality strands, all with their different organisational structures and cultures.*) and wanted to give this complex body all the support we could muster. Then, when it became clear that difficult issues needed to be tackled, there was a distinct lack of mutual support amongst Commissioners for this to happen. If one complained, one was made to feel disloyal to the corporate enterprise and the Chair or “stuck in the legacy Commission past”.

Later on, towards the end of my time at the EHRC, I can honestly say quite a number of Commissioners felt intimidated by the divisive culture that was allowed to fester. (You will have already been given examples of this by my Commissioner colleagues at the oral session). Inclusive it was not. It was not an atmosphere

in which people, who like me, are committed to collaborative working, flourish. It was more suited to those who enjoy the cut and thrust of a political culture of inner and outer circles and caucusing. It was a culture indulged and encouraged by the Chair.

I was very perplexed that Trevor Phillips appeared unconcerned about potential conflicts of interest between his private work and role as EHRC Chair. When we discussed this at a board meeting I was alarmed that he was unable to see the blatant breach of Nolan principles. The majority of Commissioners were fully aware of his conflict of interest, as most of us had experience of running public bodies. I realised how problematic many Commissioners found it to challenge the Chair on his personal conduct, even when it was our duty to do so.

After about 15 months, I was very uneasy about the direction of travel of the EHRC under the leadership of Trevor Phillips. However, I and others were aware that high profile resignations would damage the EHRC. I continued to hope that he would come to value and work with the board of Commissioners in a more inclusive way.

I was extremely concerned that Trevor Philips was happy to make EHRC policy on the hoof, with little or no reference to Commissioners. For example, he announced that institutional racism was no longer a problem in Britain (which goes against all evidence). I believe his long experience as a journalist, convinced him of the need to be seen to be riding the news agenda. He responded to stories as they happened, rather than taking a more considered view after consultation with colleagues and stakeholders. I would liken his style to that of a newsroom, with cliques and an “in crowd”. Unfortunately, this meant that those with an alternative view were isolated or treated with indifference. The culture was very exclusive and opposite to the kind of culture an equality and human rights body should be role modelling. The desire to remain inside his circle meant that different views were often not aired.

Having worked with Trevor Philips for nearly three years, I am convinced that he is a man of many talents, able to engage with some people (namely politicians and the media) in a way that few others can.

However, I finally came to the conclusion that these skills came at too high a price for the EHRC which was being held back by a disempowered Board and a lack of cohesive direction. Eventually I came to believe that Trevor Philip’s conduct and approach towards governance were severely damaging to the EHRC. You might think that one man cannot be bigger than the institution. That is true, but the Chair surrounded himself with a few like-minded people who shared his view and style and this became difficult to intercept.

Aware that things were unlikely to change I made my concerns known in the way and sequence expected of a responsible Board member. I made formal representations, firstly in one-to-one conversations with the Chair. There were several such occasions, although I gather he has subsequently claimed not to have been aware of my deep concerns. This is puzzling, not least because we had a full and frank discussion during my 2008 appraisal in response to my comments on the appraisal form:

“1. Has the past year been good/bad/satisfactory or otherwise for you, and why?”

My experience as an EHRC Commissioner and Chair of the DC has been something of a roller coaster with high points and low points throughout the period. In many ways this is inevitable at the beginning of such a complex and extraordinary organisation whose task was to synthesise three Commissions and three new dimensions into one, bringing inevitable challenges. There are a number of different ways to manage this challenge and I personally would have liked to have seen more advanced cross-fertilization of equality issues across the piece. In addition, more active involvement from leaders (including commissioners) in stakeholder activities would have been welcome; the absence of this communication has left a slight feeling of “them and us”. Also, I have been frustrated by the lack of resources available to the Disability Committee, as well as sometimes being exasperated by a lack of interest / enthusiasm to engage disability issues within the mainstream (eg, better working, the nature of exclusion and segregation etc).” (16/02/2009)

When things did not improve I expressed my concerns to the Vice Chair, Baroness Margaret Prosser. I spoke to Baroness Prosser on two occasions (at the beginning of the year and later, just after the Board discussion on the Chair’s conflict of interest). Only when it was clear that nothing was being resolved did I take my concerns outside the Board. I wanted to make sure I was being punctilious about governance. I did not take this action lightly but remember thinking about those of the boards of Enron and the Royal Bank of Scotland, who did not speak out when they should have done so. I discussed the situation firstly with officials in the Government Equality Office and the responsible Minister, Maria Eagle MP (late April). I even had a meeting with the Cabinet Secretary (5 May). Each time I was assured that my concerns were valid and well understood. I was told that re-appointment of the Chair was in doubt and each time, I was asked to postpone my decision until that decision had been made. I made clear to all that I would have to resign if Trevor Phillips were to be granted a second term. Accordingly, I submitted my resignation to the Rt Hon Harriet Harman QC MP upon his reappointment (16 July).

 OVERARCHING CONCERNS FOR THE EHRC NOW AND IN THE FUTURE

I had and continue to have concerns about the direction of the EHRC and its level of activity. In particular, I consider the concept of “fairness”, which has no legal standing, has been wrongly used as an excuse to justify the lack of progress on equality. Its continued use needs to be re-evaluated.

I was also greatly alarmed that the helpline was not seen as a priority over new media (interactive Internet access). Research has shown that poor and disabled people in particular rely on access to telephone contact as they have limited or low take-up of new media.

I consider the Commission’s Human Rights remit was marginalised due to the Chair’s constant consistent lack of appreciation of the importance and effectiveness of the Human Rights Act. He believed that emphasis on human rights was counter-productive due to widespread media hostility to the concept. Regardless of his personal views, the Commission was statutorily charged with promoting human rights and the HRA. I took the opposite view to the Chair’s scepticism of the HRA, believing that human rights wrap around the equality agenda and that the concepts of privacy, a right to a private life, etc. can be readily understood and applied in many areas of life, eg in care home provision, health service priorities.

It has been said that the board of EHRC Commissioners was too large and disparate to provide good governance. I do not agree. I was never in favour of the type of Board review conducted nor did I agree with its major finding on the size of the Board. I believe the cultural and political breadth of Commissioners was its strength not a barrier. It is true that most members were people with a professional interest in promoting equality and had similar socio-economic backgrounds. The problem was that they were unfamiliar with one another and for the best of reasons, often reluctant to say something that might demonstrate ignorance or cause offence. We did not “gel” as a group of people despite all having similar aims and aspirations. Very little work was done to facilitate our development as a team. On the rare occasions we came together to discuss difficult and complex equality issues or overarching strategy, I felt we were “managed”. Much of the time was spent receiving presentations from external organisations, rather than relying on the wisdom and collective knowledge around the board table. (I believe this is a common way of “managing a difficult Board” i.e. one perceived to be less than compliant with what the chair wants).

Eventually, a combination of the Chair’s leadership style and the lack of cohesion between Commissioners meant we became polarized into two groups: those willing to challenge him and those not. It was made very clear that all wanted the best for the Commission and some saw not challenging Trevor as the way of achieving this, since he had assumed the role of the voice of the Commission. However, by the time I left he was definitely not speaking for the board (the first amongst equals he was not). I believe the same issues would have arisen whatever the cultural and political breadth of the Commission.

It has been suggested that the EHRC board could never work cohesively because of fundamental ethical differences between some strands/groups and others. It is true that, on occasions we exchanged, deeply held opposing views to one another. The appointment of Joel Edwards as a commissioner was a challenge to many of us. However, I see one of the roles of the Commission is to find accommodations between those with different beliefs and opinions. For example, there were fundamental differences of opinion expressed in a debate about whether or not late abortion on grounds of disability raised equality issues. Interestingly, this was one of only two satisfactory debates amongst Commissioners. (The other concerned freedom -v- incitement to hatred). Both times Commissioners shared their knowledge and wisdom in an environment of learning and respect. We made huge gains by this approach. Joel Edwards contributed to this process admirably.

Finally, I want to take this opportunity to raise my concerns about the EHRC’s focus on disability issues. These are unrelated to my resignation and that of Sir Bert Massie. I believe that achieving disability equality is not just about changing hearts and minds. It is also about practical considerations of building design, etc. These require specialist knowledge in order to produce good guidance. The EHRC’s desire to avoid silos meant that particular skills and expertise of experienced staff were not appreciated or valued. This remains an on-going problem and is part of the reason why many disabled people are disappointed by the EHRC’s lack of profile or progress on disability.

This is not for want of trying by key individuals. I would like to pay particular tribute to Neil Crowther, the Disability Programme Director. He has worked well beyond the call of duty to produce tangible products and achieve gains in disability equality and human rights. He was the only dedicated policy support to the Disability Committee. It was the Disability Committee that produced the first integrated report on Care and Support in the UK. Issues of gender, race, age and disability were interwoven throughout. It was heralded as a significant backdrop to the Government’s Care and Support Green Paper. Unfortunately, Trevor Phillips did not share this enthusiasm, perceiving it as not a headline grabbing issue. If he had used his considerable communication skills to promote the report, the EHRC and its integrated stakeholder communities would have benefited exponentially.

If I consider Board duties and related activities alone, my experience of being an EHRC Commissioner for nearly three years was pretty negative. What kept me going was the genuine pleasure I had from working alongside and being in the company of many talented staff and Commissioners from other equality dimensions who were passionate about our work. In addition, I gained enormously from being part of a body with a strong Human Rights remit, set by the government and endorsed internationally. It lent great depth and breadth to our conversations at board level and with stakeholders. We were fortunate to be

inspired, by one or two Commissioners and several staff, to imbed human rights principles into the strategic plan and the EHRC's fundamental principles. However, I felt the Chair's leadership on our Human Rights role was very weak and I remain frustrated that we were not facilitated to further develop this culture.

Please do not believe that I am not in favour of supporting the current concept of a single EHRC. I have not given up on it and I truly believe that, with a different leadership, (one which does not distort governance) we could be telling a very different story.

November 2009

Memorandum submitted by the British Humanist Association

ABOUT THE BRITISH HUMANIST ASSOCIATION (BHA)

1. The BHA is the national charity representing the interests of the large and growing population of ethically concerned non-religious people living in the UK. It exists to support and represent such people, who seek to live good lives without religious or superstitious beliefs.

2. The BHA is committed to equality, human rights and democracy, and has a long history of active engagement in work for an open and inclusive society, and an end to irrelevant discrimination of all sorts. As a member organisation of both the Equality and Diversity Forum (EDF) and the Discrimination Law Association, the BHA has worked with other organisations to advance equal treatment on every ground. Our Chief Executive served on the Commission for Equality and Human Rights Steering Group and the Reference Group for the Equalities Review and Discrimination Law Review.

INTRODUCTION

3. We welcome this opportunity to make a short submission to the JCHR on the Equality and Human Rights Commission (EHRC), as part of the Committee's investigation into the work of the EHRC. We focus particularly on our direct experience working with the EHRC since its inception.

4. In general, we fully support the EHRC's remit and believe it essential to have an equality and human rights watchdog, which protects and promotes equality and human rights using both statutory and non-statutory means. It is our hope that the EHRC continues to develop to become a champion of equality across the board, with human rights underpinning and guiding all its work.

OUR CONCERNS WITH THE WORK OF THE EHRC

5. We do not consider that, to date, the EHRC has sufficiently fulfilled its responsibilities as regards the non-religious element of the religion or belief equality strand.

6. The BHA was closely involved with the Task Force and Steering Group (on which the BHA CEO was a member) and undertook detailed work with the Transition Team in the run up to the creation of the EHRC. This work, however, stopped practically one day to the next when the EHRC team took over. It was very clear that the EHRC team had no interest at all in continuing that work, and even refused to publish research commissioned by the Transition Team on religion and belief.

KNOWLEDGE OF RELIGION OR BELIEF

7. We have a serious, ongoing concern about the lack of expertise at the EHRC on non-religious belief issues. We believe there is a view at the EHRC that having a number of non-religious staff is sufficient to provide the Commission with knowledge about non-religious equality and human rights issues. Being non-religious is not the same as being an expert on equality issues relating to non-religious people. Indeed, that sort of claim would never be made on other protected grounds such as race or gender. Should the EHRC move towards having individual commissioners for each protected ground, we are not reassured that the Commissioner with responsibility for religion or belief would understand the issues and law from the non-religious perspective.

8. There are some people in the EHRC, especially in legal and policy areas, who do have a good understanding of religion or belief as an equality area, and do take on board issues around non-religious belief, but this somehow doesn't translate into action by the EHRC.

9. We do not believe that the Commission is dealing well with issues around LGBT and "faith". They have taken a very weak and muddled approach, including a research and practice focus on "balancing of rights", as well as other (we consider) misguided ideas that are not based in human rights law or practice.

NEED FOR RESEARCH

10. There is an urgent need to do some good work on human rights and religion or belief to make sure that the EHRC's work is firmly grounded in human rights and equality principles, so that they can put out consistent messages.

11. When the EHRC does commission research on religion, they do not seem to specify the inclusion of non-religious beliefs, eg a current project running since early 2009 using seminars of experts—we only became aware of it via the EDF a few weeks ago, despite clearly being the experts on non-religious belief issues.

FAILURE TO SUPPORT NON-RELIGIOUS ISSUES

12. EHRC has not got to grips with religion or belief as an equality strand—despite our best efforts—they often ignore or seem to misunderstand the non-religious element of the strand and therefore their responsibilities. For example:

- The EHRC take an opposing line on all the BHA's suggestions for amendments to the Equality Bill, which we are convinced would end some unjust discrimination against non-religious people and increase equality for non-religious people in the UK. The EHRC acknowledges discrimination against certain religious groups, while ignoring the non-religious.
- We did not get any support on our work on the Census, which is clearly discriminatory against non-religious people. When this came up we tried to working with EHRC staff, but while interested they would not take it up as an issue, so in the end we gave up. The EHRC team only seemed interested in LGBT issues.
- The EHRC refuse to look into admissions into faith schools which is by far the thing that most disadvantages non-religious people in the UK—and Commissioners (eg Margaret Prosser) sometimes speak in favour of faith schools.
- The EHRC were extremely slow to intervene in the JFS case, only doing so when it reached the Supreme Court. While they are taking a firm line against discrimination on ethnic grounds (which we support), they also make the non-essential point that the state cannot interfere in religion.
- The EHRC praises scouts and guides for their inclusivity when they explicitly discriminate against atheists, and refusing to take up the clause that permits that discrimination in the 2006 Equality Act, also in the current Equality Bill, allowing this discrimination to continue.

November 2009

Memorandum submitted by the British Institute of Human Rights (BIHR)

1. The British Institute of Human Rights (BIHR) is an independent national human rights charity. We focus on the value of human rights ideas, laws and practice to tackle inequality and promote social justice. We have three main aims: (i) to lead the development of a fresh and ambitious vision of human rights that encompasses the full range of internationally recognised rights and is relevant to everyone in the UK, especially the most marginalised people; (ii) to build the capacity of other organisations to develop their own human rights practice that helps them deliver more effective services and campaigns; and (iii) to influence people with power to make this broader vision of human rights an integral part of their policies and plans. We do a range of policy, research and influencing activities and we develop and deliver practical human rights supports (including information, consultancy and training) for voluntary, community and public sector organisations. BIHR is a member of the Equality and Diversity Forum (EDF) and the following comments supplement the evidence submitted by the EDF.

BIHR AND THE EHRC

2. In 2002 BIHR produced a seminal research report titled "Something for Everyone: The Impact of the Human Rights Act and the Need for a Human Rights Commission"² which called for the creation of an independent body capable of effectively promoting and protecting human rights. We therefore strongly supported the creation of the Equality and Human Rights Commission (EHRC)³ and since it opened have worked hard to help the organisation find practical ways to move forward its human rights agenda. We have received funds from the EHRC both under its interim grants scheme and currently receive funds in relation to other projects. BIHR believes that a Commission which uses its powers and duties to the full has huge potential to protect and promote the human rights of everyone in Britain, and particularly those who are in vulnerable situations, are marginalised or disadvantaged. We will continue to challenge and support the EHRC to ensure that it realises this potential.

² Available from http://www.bihar.org.uk/sites/default/files/something_for_everyone_sum.pdf Jenny Watson was commissioned to research and write this report, funded by Comic Relief.

³ The Equality Act 2005

3. BIHR believes that human rights offer “something for everyone”, but are of particular value to those in vulnerable situations. Human rights enable all of us to challenge discrimination or poor treatment without recourse to legal action, which only becomes necessary as a last resort. We specialise therefore in working “beyond the courtroom” in seeking the realisation of human rights for everyone. We work at a range of levels, involving those responsible for designing and delivering services, policies and laws and individuals and groups who use and are affected by these. As the principles and frameworks of the Human Rights Act (HRA) bed down we are beginning to see evidence emerge of the positive differences human rights can make to the lives of individuals and benefits to organisational approaches. BIHR has been at the forefront of much of this practice, the main catalyst for the practical application of human rights by individuals and voluntary and public bodies in service delivery and design, in influencing and campaigning. As the pioneers of human rights practice in Britain, BIHR welcomed the EHRC Human Rights Inquiry (HRI) report which gave some examples of how people and public services are beginning to use human rights and the Human Rights Act to demand better treatment and improve policies and practice.⁴ It is vital that the EHRC uses the momentum of the report to further develop and improve its approach to and work on human rights. It should as a top priority to develop and adopt a robust methodology for putting human rights principles into practice (“human rights based approaches”) which can be used inside and outside the EHRC. Below we set out some key ways in which this work can be taken forward.

HUMAN RIGHTS AS THE EHRC’S UNDERPINNING FRAMEWORK

4. Section 9 of the Equality Act 2005 provides for human rights principles to underpin all of the Commission’s work and gives the EHRC distinctive duties in relation to human rights. It is vital that the EHRC takes a human rights approach to equality, ensuring that the potential of a human rights framework is utilised and is not seen as an additional “strand”. Human rights provides the scaffolding to bring together the separate equality strands. In particular, human rights provide an effective and practical way forward for dealing with conflicts that may arise between different groups. For example, through an anti-discrimination lens, gay people and people with certain religious views have the right not to be discriminated against, but there is little guidance on how the rights of both can be resolved in a situation where they may be seen to be competing. Human rights already has a ready made mechanism for coming to a solution that enables us to live alongside each other. The concept of proportionality (ie “not using a sledgehammer to crack a nut”) helps to ensure a fair process for balancing those rights.

5. This will be particularly important with the forthcoming Single Equality Duty under the current Equality Bill, which creates a positive equality duty across all equality strands. This brings important opportunities for the EHRC to demonstrate its commitment to considering human rights as its underpinning framework. For example, adopting for the inclusion of a human rights framework in the Single Equality Duty as the Equality Bill passes through Parliament, and importantly, ensuring that a human rights framework is advocated as tool throughout the guidance it has to produce on how to implement the provisions of the Equality Bill when it passes into law.

6. BIHR has consistently called on the EHRC to identify human rights as its underpinning framework, for example we noted in the EHRC’s recent consultation on its strategic priorities that it was essential for the strategic plan to explicitly acknowledge human rights as cutting across all the strategic priorities and to develop a comprehensive human rights strategy to set make this clear. We therefore welcome the expected publication of the EHRC’s human rights strategy on the 10 November 2009, and the opportunities this will provide to increase the EHRC’s work on and engagement with human rights.

BUILDING A NEW VISION OF EQUALITY

7. The EHRC has a key role in informing, educating and leading the debate on the relationship between human rights and equality. Historically in the UK work on equality and human rights has developed on largely separate tracks, and often the relationship between the two is not well understood and sometimes seen as controversial. This is at odds with many other countries in the world, and in the international frameworks, where equality and human rights are seen as “two sides of the same coin” and as a unified framework. In recent years work in the UK on equality and human rights has begun to be integrated, and we welcome for example the fact that the EHRC’s recently launched Equalities Measurement Framework draws on a set of core capabilities based on international human rights standards, spanning the full set of civil, political, economic, social and cultural rights.

8. The EHRC must continue to develop this work, using a human rights approach to equality which is broad and ambitious and goes beyond anti-discrimination to encompass fairness of treatment, dignity, respect and access to all the fundamental rights which enable people to play their part in our democracy. In practical terms this means looking at equalities issues through a “human rights lens”, asking which human rights principles and standards are relevant to a situation and then how they can be practically applied. For example, the right to be protected from inhuman or degrading treatment clearly applies to an older person suffering from malnutrition on a hospital ward.

⁴ BIHR submitted a response to the EHRC call for evidence for the HRI (July 2008). BIHR was also commissioned by the EHRC to hold a consultation event with frontline third sector organisations to gather evidence for the HRI (July 2008). A report of the findings was produced and submitted to the EHRC. For further information visit <http://www.bihar.org.uk/policy/bihar%E2%80%99s-work-on-the-equality-and-human-rights-commission>

9. What matters is how a human rights approach to equality translates into action “on the ground”. There is a risk of organisations paying lip service to human rights, for example, by talking the language of dignity and respect without developing robust approaches (as have developed over decades in equalities) which draw on the power of human rights to deliver real accountability in hospitals, schools or other public places. Importantly, human rights has a significant “legal bite” outside of the courtroom, enabling all of us to challenge discrimination or poor treatment, to change policy and practice, without recourse to legal action,⁵ which only becomes necessary as a last resort. Where a group of people are routinely stigmatised and receive unequal access to or poorer services (for example black men with mental health problems), we need to look at which rights are engaged and whether action can then be taken to radically reform the services they are offered. These are the kinds of lessons that need to be communicated by the EHRC through its powers to develop statutory and non-statutory guidance, advice and information, and its broader promotion powers to communicate what this vision or approach to equality looks like and the real and practical benefits it can bring.

ROBUST ADVOCATE FOR HUMAN RIGHTS

10. It is vital that as a national human rights body, the EHRC is a robust advocate for human right. This is all the more important in the current climate where there has been a lack of widespread public education on human rights, negative, often hostile and inaccurate reporting of human rights in some sections of the media and a politicisation of human rights. The EHRC must be a strong advocate for and defender of human rights both at home and abroad. Weakening the UK’s domestic protection will not only damage our domestic situation; its effects will reverberate around the world. The knock-on effects will be felt first in Europe and on the European framework—a regional treaty globally aspired to. If other European countries with poor human rights records see the UK reducing its protection, there is no reason for them to take the European Convention on Human Rights (ECHR) or other parts of the European human rights system seriously. The dangers are particularly acute in the context of European enlargement, sending a signal to new and potential member states that whilst signing up to the ECHR is a requirement of membership that these rights can be “opted out” of in domestic realities. This could have a detrimental impact on the rights of groups and individuals that are considered “unpopular” and/or marginalised, such as LGBT communities and women. In the UK and elsewhere, disadvantaged groups far too rarely enter public discourse, and are least likely to see the inside of a courtroom. Yet these are the groups most at risk of human rights abuses and infringements if national and international human rights protection systems are damaged.

11. The EHRC is a National Human Rights Institution recently accredited with the United Nations and it now needs to demonstrate how it will fully match up to this acknowledgement. BIHR was pleased to participate in the EHRC “parallel event” at a recent session of the UK Human Rights Council, entitled “Putting People First: the story of Human Rights in Britain”, which gave the opportunity to discuss and share the findings from their Human Rights Inquiry report with an international audience. Internationally, the EHRC therefore has a key role as an advocate for human rights, both in promoting good practice from the UK and in translating lessons from other countries and international standards into its work in the UK.

12. Within the UK the EHRC has a vital role in rebutting widespread myths and misconceptions about the Human Rights Act showing how human rights can change society for the better. Demonstrating how human rights are relevant to people’s lives will help them to take ownership of the Human Rights Act and understand how it relates not only to individuals’ lives but can be a positive force for wider change in our institutions and society. The EHRC should therefore ensure that its communications, information provision, media and public affairs work, seeks to place the EHRC as a key leader in human debates.

STAKEHOLDER ENGAGEMENT

13. BIHR believes that stakeholder engagement is a key area where adopting a human rights approach can have an important, demonstrable and positive impact both on the work of the EHRC and on the way it is seen to work externally. As a provider of human rights services and support to a range of voluntary and community sector organisations, we know that many stakeholders do not feel significantly engaged with the EHRC, particularly around policy development. However, we also know that human rights is both a practical way of engaging these groups on the whole of the EHRC’s remit and that there is interest and enthusiasm for such an approach.⁶ A human rights approach, which emphasises empowerment and participation, including recognising the most marginalised, is a more substantive process than current Cabinet Office guidelines on consultation. By using a human rights approach the EHRC can increase opportunities to meaningfully engage with organisations and individuals, drawing on the expertise of those working in the VCS and individuals who are “experts by experience”. For example, the Care Quality Commission has taken a human rights approach to its stakeholder engagement strategy “Voices into

⁵ See for example BIHR’s unique publication “The Human Rights Act: Changing Live” (2008), now in its second edition, which contains more than 30 case studies showing how ordinary people going about their day-to-day lives are benefiting from the Human Rights Act without resorting to the courts. Available here: <http://www.bihr.org.uk/policy/the-human-rights-act-%E2%80%93-changing-lives>

⁶ This has been demonstrated, for example, in the national needs-scoping consultation we conducted with over 150 third sector organisations as part of our Principles to Practice programme, supported under the EHRC’s interim grants scheme, which works to build the ability and skills of a range of third sector organisations to use human rights and the Human Rights Act in their everyday work.

Action”, which sets out how it will involve the people who use care services in everything they do and ensure that care services respond to what people tell them.⁷ Again, this is an area where the EHRC could enliven its engagement strategy by drawing on human rights and human rights approaches, which strongly emphasise participation.

SUPPORTING PRACTICAL WORK ON HUMAN RIGHTS

14. BIHR believes it is important that, in taking forward the work of the Human Rights Inquiry (HRI) the EHRC needs to take the pockets of good practice on implementing human rights and commit to scaling them up. Public authorities and voluntary and community organisations are beginning to pioneer the practical use of human rights in new and existing projects, stimulated in most cases by BIHR’s initiative, support or formal partnership. Many of these were highlighted in the HRI report, such as the Department of Health and BIHR’s “Human Rights in Healthcare” project.⁸ There is a clear role for the EHRC to map, support and scale up further work on putting human rights into practice. This kind of work needs to be promoted and taken forward by the EHRC, to demonstrate how human rights can add practical value to work on equalities and encourage others to build their own good practice. It is also key evidence for the EHRC to be able to explicitly and robustly speak out about the value and relevance of human rights for people in everyday life (see paragraph 12).

INTERNAL CAPACITY

15. Whilst there will always be need for technical expertise on human rights (and we note, for example the vital work of the EHRC legal / legal policy team) for human rights to truly be the underpinning framework, the EHRC needs to ensure that staff across the whole organisation understand what human rights are and why and how they are relevant to their work. This is vital to ensuring human rights is not seen as a separate strand but rather as a cross-cutting issue and framework across the entire organisation’s policies, working methods, strategies and action plans, practices, services and its external affairs work. This is an opportunity for the EHRC to put into practice the message that human rights are for everyone and that you do not need to be a human rights specialist to be able to put rights into practice. In BIHR’s experience of working with a range of organisations, we have come across widespread enthusiasm for using a human rights approach as a unifying way to bring staff together internally. This approach enhances the idea that human rights are for everyone, staff, clients and service users alike. This could therefore have significant internal benefits, particularly as the EHRC is still a relatively new body, working on a newly combined and extended mandate as compared to the legacy Commissions.

November 2009

Memorandum submitted by the Equality and Diversity Forum (EDF)

1. The Equality and Diversity Forum (EDF) is a network of national non-governmental organisations working on equality and broader human rights. Our members include organisations such as Liberty, the British Institute of Human Rights and Justice as well as specialist equality organisations working across the equality spectrum and agencies such as Citizens Advice and the Law Centres Federation. A list of our member organisations is attached. We welcome this opportunity to make a brief submission to the Joint Committee on Human Rights in relation to its work on the Equality and Human Rights Commission (ERHC).

2. The EDF strongly supports the EHRC’s remit: we think it is outstandingly important that Britain should have a statutory body concerned with promoting and protecting equality and broader human rights. Our ambition for the EHRC is of an organisation that offers vision and leadership, acting as a champion for equality and broader human rights and enforcing the law effectively when necessary. Among with many others, we called for the EHRC to be created and were closely involved in work to ensure that it had clear equality and human rights duties together with appropriate powers and resources.

3. We share a view that equality and broader human rights are indivisible. We therefore do not agree with those who have argued that the EHRC’s problems result from it having an unworkable remit. Indeed, there is already recognition by the EHRC of the benefits of this combined remit. For example, earlier this year Baroness Jane Campbell made a speech on the EHRC’s behalf that addressed the issue of how organisations should react when older people receiving social care refuse to be cared for by migrant workers on grounds of the workers’ race. She argued that a practical human rights approach could help to ensure that the rights of migrant workers not to face race discrimination and the rights of older people to appropriate care were considered and balanced in a proportionate and fair way.

⁷ Available here: www.cqc.org.uk/getinvolved/involvingthepublic.cfm

⁸ For more information on the “Human rights in Healthcare” Project see www.bih.org/development/health.html

4. Some of our member organisations have had more contact with the EHRC than others and there are a range of views and emphases amongst our members about EHRC's performance to date. However, there are some common themes and concerns.

5. We recognise that although the EHRC is still a relatively new body it has some real achievements to its name. For example, the EHRC has commissioned and published a substantial quantity of research, including some work on relatively neglected topics such as the discrimination and disadvantage facing Gypsies and Travellers. We are aware of some significant EHRC legal interventions and of its support for some important legal cases. Some stakeholders comment on a thoughtful approach to policy issues in their field, such as how HIV is addressed in the EHRC's disability work. We also know from our experience that the EHRC has many dedicated and hard working staff who have engaged with us and our members. However, we have a number of very significant concerns both about EHRC's performance to date and about whether it is in a position to address some of its current weaknesses. We have shared these concerns with EHRC both in meetings and in writing and will be meeting its Chair and Vice Chair shortly to discuss the situation. Our main concerns are set out below.

COVERAGE OF REMIT AND LEADERSHIP ON DIFFICULT ISSUES

6. Although we greatly value the EHRC's Inquiry into the use of human rights frameworks in the public sector, we are concerned that this appears to be almost the only visible work EHRC has done that is explicitly concerned with fulfilling its duty to promote respect for human rights⁹. We would have hoped that two years after its launch the EHRC would have a more substantial record of championing human rights by, for example, combating myths about the Human Rights Act, providing advice and guidance for public bodies and giving strong, visible leadership in creating a human rights culture in Britain. For example, we would have hoped to see evidence of the EHRC challenging public bodies, including government departments, when current or proposed policies do not fulfil Britain's obligations under international human rights standards. We are also very keen to see EHRC offer leadership in debates about how any bill of rights (something currently being proposed by both the Government and the Conservative Party) should be developed. We think it essential that any such bill must build on rather than weaken the substantive protection and enforcement mechanisms of the Human Rights Act. We note the statement on EHRC's website expressing a similar view and look forward to EHRC advocating this 'HRA plus' view clearly.

7. We are also concerned that little work has been done that meets some other aspects of the EHRC's remit. For example, little work appears to have been done concerned with religion or belief or, until very recently, with sexual orientation. We are also concerned that the EHRC does not appear yet to have developed a principled approach to the way in which the different aspects of the EHRC's remit might operate together. There is the potential for different equality rights to be seen as in conflict with one another at times—particularly rights associated with religion or belief, sexual orientation, gender and gender identity—and it was hoped that the EHRC would play a leading role in thinking through how these potential conflicts might be addressed, using a human rights framework.

COMMISSIONERS

8. We were alarmed by the resignations of a number of respected figures from the EHRC's Board of Commissioners in the summer, by the consequent loss of expertise and by the concerns the resigning commissioners raised about the way in which the EHRC has been led. These have damaged the organisation's reputation and consequently its ability to influence others. The concerns that have been raised about the propriety of parts of the EHRC's operations have also harmed its credibility as a regulator and law enforcer.

STAKEHOLDER ENGAGEMENT

9. Many stakeholders feel that the EHRC takes too little account of their views and rarely engages with them when it is developing policy, and that this limits the EHRC's effectiveness. Although in general the EHRC appears committed to formal consultation following Cabinet Office guidelines, there are few opportunities to engage meaningfully with the organisation when it is forming its approach to issues or for the expertise of staff in NGOs to contribute to policy development. For example, so far as we are aware the EHRC did not consult with leading human rights NGOs when formulating its approach to proposals for a Bill of Rights and any related proposals to amend or repeal the Human Rights Act. Some regional stakeholders report finding it difficult to engage with the EHRC within their region.

DECISION MAKING AND OPERATIONS

10. There appear to be difficulties reaching decisions within the organisation. In many instances, members of staff indicate that no decision has been taken about the EHRC's view on an issue, which makes it very difficult for those who wish to work with EHRC on that issue to do so. In contrast, other decisions appear

⁹ We are aware that other EHRC work, such as the equalities monitoring framework based on the "capabilities" approach, draws on human rights thinking and principles but this has not to date been part of a coherent programme of human rights work.

to be taken almost off the cuff, with staff being unaware of the organisation's policy line or the thinking behind it until it receives media coverage. We have found it difficult to get a response to enquiries regarding what stance the EHRC takes on some important but contentious issues, such as whether the physical punishment of children should remain lawful.

11. There are some significant operational weaknesses in EHRC's performance. It appears to have struggled to get some of its core functions, such as its website, to work properly. Some of EDF's members who have been involved in EHRC's grant making process have expressed significant concerns about it, questioning the complexity and efficiency of the process and whether it is likely to result in a strategic application of funds. Many stakeholders report great difficulty in identifying who within the organisation is responsible for work on a particular topic and there is still no information about the organisational structure or who does what on the EHRC's website.

CONCLUSION

12. The EHRC is an indispensable part of the realisation of a human rights culture in Britain. As an independent organisation it has a vital role in the effective implementation and enforcement of equality and human rights legislation. However, it has not yet realised its full potential. For the EHRC to become a truly authoritative organisation, it needs to have a coherent human rights strategy, to embed human rights throughout its work, and to show strong and engaged leadership.

EDF MEMBERS

Advice UK

Age Concern and Help the Aged

Board of Deputies of British Jews

British Humanist Association

British Institute of Human Rights

Children's Rights Alliance for England (CRAE)

Citizens Advice

Discrimination Law Association

End Violence Against Women Campaign

Equality Challenge Unit

EREN—The English Regions Equality and Human Rights Network

Fawcett Society

Forum Against Islamophobia and Racism

Institute for Public Policy Research (IPPR)

JUSTICE

Law Centres Federation

Liberty

Mind

National AIDS Trust

Policy Research Institute on Ageing and Ethnicity

Press for Change

Race on the Agenda (ROTA)

RADAR

Refugee Council

RNIB

RNID

Runnymede Trust

Scope

Stonewall

The Age and Employment Network (TAEN)

Trades Union Congress (TUC)*

UKREN (UK Race in Europe Network)

Unite the Union (Amicus section)

Women's Budget Group

Women's Resource Centre

* As the TUC has given its own evidence to the Joint Committee it is not a party to this submission [no evidence was received from the TUC].

November 2009

Memorandum submitted by the Equality and Human Rights Commission

PROCESS FOR APPOINTMENTS TO THE EQUALITY AND HUMAN RIGHTS COMMISSION

This note outlines the process for appointing members of the board when the Commission was established in 2007 and the current process for appointing Commissioners to begin in November or December 2009. A table follows setting out the specific times of tenure for current and outgoing Commissioners.

1. STATUTORY BASIS TO APPOINTMENTS

Under the Equality Act 2006, which established the EHRC, the Secretary of State shall appoint not less than 10 or more than 15 individuals as members of the Commission (to be known as Commissioners).

The Commissioners must include a Commissioner who is or who has been a disabled person, a Commissioner for Scotland and a Commissioner for Wales.

The Secretary of State must also appoint a Chair and one or more Commissioners as Deputy Chair (who are all also Commissioners as well).

Under the provisions of the Act in appointing Commissioners the Secretary of State shall:

- appoint an individual only if the Secretary of State thinks that the individual:
 - has experience or knowledge relating to a relevant matter, or
 - is suitable for appointment for some other special reason, and
 - have regard to the desirability of the Commissioners together having experience and knowledge relating to the relevant matters (this is defined as discrimination on the grounds of age, disability, gender, gender re-assignment, race, religion or belief, sexual orientation and human rights).

2. THE PROCESS FOR APPOINTING COMMISSIONERS IN 2007

Joel Edwards and Maeve Sherlock were recruited as part of an open recruitment exercise in November 2007.

The Commissioners in place already were: Trevor Philips (Chair); Baroness Margaret Prosser (Deputy Chair); Kay Allen; Baroness Jane Campbell DBE; Kay Carberry; Baroness Sally Greengross OBE; Francesca Klug; Ziauddin Sardar; Ben Summerskill; Dr Neil Wooding (Wales Commissioner); Morag Alexander (Scotland Commissioner); Jeannie Drake (Transition Commissioner); Professor Kay Hampton (Transition Commissioner) and Sir Bert Massie CBE (Transition Commissioner).

The process for appointing the board was led by the sponsor department (the Department for Communities and Local Government) who appointed an external body, Rockpool's Executive Search Agency, to conduct a thorough transparent public appointments process.

The recruitment panel included:

- Susan Scholefield, Communities Department Director General, Equalities (Chair of panel);
- Trevor Phillips, Chair of the (then) CEHR;
- Margaret Prosser, Deputy Chair of CEHR; and
- John Churchill, the Independent Assessor nominated by OCPA.

The appointments panel's recommendations were put to ministers who made the decision about the appointments made.

3. CURRENT PROCESS FOR APPOINTING COMMISSIONERS

Appointments to the Commission are now led by the Government Equalities Office, and it has appointed the Public Appointments Commission to conduct the process.

For the current appointments an advertisement has been placed in the Sunday Times. Shortlisting was undertaken by the appointment panel and interviews are currently taking place.

The recruitment panel included:

- Jonathan Rees, Director General, GEO (chair of panel);
- Trevor Phillips, EHRC Chair;
- Sue Owen, Director General Welfare and Wellbeing DWP; and
- Sheila Hewitt, independent assessor.

The recommendations from the appointments panel will be put to ministers who will make the decision about the appointments made.

This is the consistent process followed by all Non-Departmental Public Bodies (NDPBs).

4. COMMISSIONER APPOINTMENT DATES

<i>Commissioners</i>	<i>Dates</i>
Trevor Phillips	3 Years (11.9.06—10.9.09)
Margaret Prosser	3 Years (4.12.06—3.12.09)
Nicola Brewer (Resigned as CEO and left Commission's employment on 13 May)	Ex-officio Cmmr by virtue of holding post of Chief Executive. Apptd 1.3.07. No expiry date specified in contract, but period of unpaid leave from FCO is 5 years.
Morag Alexander	3 Years (29.3.07—28.3.10)
Kay Allen	3 Years (4.12.06—3.12.09)
Jane Campbell	3 Years (4.12.06—3.12.09)
Kay Carberry	3 Years (4.12.06—3.12.09)
Jeannie Drake	3 Years (4.12.06—30.9.09) TC
Joel Edwards	3 Years (1.11.07—31.10.10)
Sally Greengross	3 Years (4.12.06—3.12.09)
Kay Hampton (Resigned April 2009)	3 Years (4.12.06—30.9.09) TC
Francesca Klug	3 Years (4.12.06—3.12.09)
Bert Massie	3 Years (4.12.06—30.9.09) TC
Ziauddin Sardar	3 Years (4.12.06—3.12.09)
Maeve Sherlock	3 Years (1.11.07—31.10.10)
Ben Summerskill	3 Years (4.12.06—3.12.09)
Neil Wooding	3 Years (4.12.06—3.12.09)

TC = Transitional Commissioner

November 2009

Trevor Phillips' appointment letter, dated 14 November 2006, supplied to the Committee by the Equality and Human Rights Commission

TERMS AND CONDITIONS FOR APPOINTMENT AS COMMISSIONER AND AS CHAIR OF THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS DUTIES

The duties of the CEHR will be set out in the Corporate Plan and the Business Plan agreed on a yearly basis. Your key responsibilities as Chair of the CEHR are set out in Annex A to this letter. These may be subject to change by mutual agreement as the organisation develops.

PERIOD OF APPOINTMENT

Your appointment as Commissioner and as Chair of the CEHR is for a period of three years beginning on 11 September 2006 and ending on 10 September 2009. Appointees may be reappointed for a further term subject to a satisfactory appraisal and agreement on both sides.

TERMINATION OF APPOINTMENT

The appointment can be terminated early by either party by giving at least three months notice in writing. Should the CEHR be dissolved, restructured or wound up during the period of your appointment, your appointment would, of course, cease with effect from that dissolution or such other date as is specified in any relevant legislation. In order to maintain high standards in public life, appointments made by the Secretary of State may be terminated in the event that an appointee is convicted of a criminal offence, and/or where the Secretary of State believes that the appointee's conduct means that he is no longer a suitable person for the office of Chair of the CEHR. In addition the Secretary of State may remove you from office as Chair and terminate the appointment for the reasons set out in paragraph 3 of Schedule 1 to the Equality Act 2006 by giving summary notice in writing.

REMUNERATION

You will be paid on a pro rata basis related to a full time annual remuneration of £160,000. Initially you will work on a full-time basis with the expectation that this time commitment will reduce to 12 days per month once the CEHR becomes operational, expected to be in October 2007. This remuneration will be paid monthly.

All of it is taxable and it is the responsibility of the Department to apply PAYE deductions in respect of income tax and National Insurance, unless instructed to the contrary by the Inland Revenue or the Contribution Agency. If appropriate, it will be for you to arrange authorisation of the non-application of PAYE or National Insurance.

ABATEMENT

Where members of public boards are in receipt of other payments from the public sector, abatement rules apply. These are explained in Annex B.

PENSIONS

This appointment will be pensionable, so long as a minimum time input of 2 days per week is maintained. The public appointments central team will write to you separately about pension arrangements.

EXPENSES AND SUBSISTENCE

As a member of the CEHR you will be entitled to claim expenses and subsistence. We would anticipate that this would cover:

- Travel expenses to and from home to the meeting venue.
- Travel and subsistence expenses incurred as part of the work of the board away from the normal venue.
- Dependent Care costs.
- Particular travelling costs and other related costs associated to disabled members.

ANNUAL LEAVE/SICK LEAVE/SPECIAL LEAVE

Employment law rights for paid time off in respect of annual leave, sick leave and special leave (including paternity) do not apply.

MEMBERS LIABILITY

If legal proceedings are brought against you by a third party, the Department for Communities and Local Government will meet any civil liability which is incurred in the execution of your functions, unless you acted recklessly and provided that you have acted honestly and in good faith.

INJURY BENEFITS

Should you suffer injury or contract a disease which is directly attributable to your appointment and which leads to impairment of your earning capacity, you (or, if the injury or disease leads to death, your dependents) may be eligible for special compensation benefits. In such circumstances it should be reported to the Department whereupon consideration to the award of benefits will be given.

CONDUCT

All Board members have a duty regarding conduct, propriety and confidentiality. You will be required as a condition of your appointment to abide by the CEHR's Board Code of Practice when adopted. Until then you will be required to abide by the interim CEHR Board Code of Practice which will be given to you shortly.

ATTENDANCE

Members of the CEHR are expected to attend Commission meetings regularly. The appointment may be terminated, without notice, if attendance becomes so erratic as to interfere with the good running of the CEHR.

GIFTS AND HOSPITALITY

All members are expected to ensure that acceptance of gifts and hospitality can stand up to public scrutiny. Gifts should be declined wherever possible, and any offers should be reported to the Head of the CEHR Sponsorship team in DCLG until such time as the Chief Executive to the CEHR is appointed. Where it would be ungracious or otherwise difficult not to accept, you should inform the Head of the CEHR Sponsorship team (and the Chief Executive once appointed) of the gift, the estimated value and the donor.

Members must take personal responsibility to ensure that a record is placed in the hospitality register of the CEHR. Similarly, care should be taken that no extravagance is involved with working lunches and other social occasions.

CONFLICTS OF INTEREST

You must declare any personal or business interests to the Chief Executive of the CEHR, which may, or may be perceived to, influence your judgement in performing your functions.

These interests will be included in a register of interests maintained by the CEHR and you must ensure that your entries are kept up to date. Should a particular matter give rise to a conflict of interest you are required to inform the Chief Executive in advance and withdraw from discussions or consideration of the matter. You are also encouraged to register your own non-pecuniary interests and interests of close family members and persons living in the same household, which are closely related to the activities of the CEHR by reporting them to the Chief Executive to be included in the register of interests for the CEHR.

You must inform the Secretary of State in advance of any new appointments which may impinge on your duties as a member and Chair of the CEHR. Some examples of potential, real or perceived, conflicts of interest are:

- You seek to influence Government policy to knowingly further the interests of any individual, or a firm or company you work for or in which you or a partner/or a friend have an interest.
- You are a director of a building supplies firm and the board to which you will be appointed conducts regular procurement exercises for building materials. You could benefit personally from decisions taken by the board.
- You are a manager in a voluntary organisation, whose funding applications are considered by the board to which you will be appointed. **The body for which you work could benefit financially from decisions taken by the board.**
- You have, in the past, contributed significant funds to the political party to which the appointing Minister belongs. **Your appointment could be viewed as a reward for past favours.**
- You and a senior official who was on the selection Panel are both members of an organisation, whose membership is kept secret. **Your appointment could be viewed as the “old boy network” in operation.**
- In other words, no one should use, or give the appearance of using, their public position to further their private interests. This is an area of particular importance, as it is of considerable concern to the public and receives a lot of media attention.

POLITICAL ACTIVITY

You may not occupy paid party political posts or hold particularly sensitive or high roles in a political party nor serve as an officer carrying executive duties in any political party. Subject to the foregoing, you are free to engage in political activities provided that you are conscious of your general public responsibilities and exercise a proper discretion, particularly with regard to the work of the CEHR.

You are expected to inform the Secretary of State of any intention to accept a prominent position in any political party and to understand that the appointment may be terminated if the Secretary of State feels that the positions are incompatible.

If you accept a nomination for election to the House of Commons etc then you will resign the appointment.

You are free to maintain association with Trade Unions, Co-operative Societies, trade associations and similar associations to the extent that such associations do not conflict directly with the interests of the CEHR.

If you are doubtful about the application of these rules or about the propriety of any political activity, you should seek guidance from the Secretary of State. The foregoing rules apply equally to political activity on behalf of any of the political parties.

BANKRUPTCY

You may be removed from office before the end of the term of appointment if you have been made the subject of a bankruptcy order.

OFFICIAL SECRETS ACT

The provisions of the Official Secrets Act 1911 to 1989 apply to members of the CEHR. Unauthorised disclosure of any information gained in the course of this appointment, or its use by you or others for personal gain or advancement, could result in the appointment being terminated early or criminal prosecution.

NDPB CODE OF PRACTICE

You will be given a copy of the CEHR's Board Code of Practice to which members must adhere.

BUSINESS APPOINTMENTS

You will need to clear with the Department, in advance, any appointment or employment to be taken up within three months of leaving the CEHR.

DISCLOSURE OF INFORMATION

The Department is required to comply with the provision of HM Treasury's Resource Accounts Manual. Your post has been designated as one in respect of which the Department is required to disclose in its annual accounts details of your remuneration, including the monetary value of any taxable benefits in kind, and pension. The Department may require the disclosure of additional information in the event that the provisions of the Resource Accounting Manual are amended. It is a condition attached to your post that you agree to the disclosure described above.

PERFORMANCE ASSESSMENT

The performance of individual members and the Board of CEHR will be evaluated annually.

Correspondence supplied to *Evening Standard* journalist Mira Bar-Hillel by the Government Equalities Office in response a Freedom of Information request

From: [REDACTION]
Sent: Friday, November 14, 2008 9:27 AM
To: [REDACTION]
Cc: [REDACTION]; [REDACTION]
Subject: FW: Remuneration—options to HMT.doc
[REDACTION]

Helpful points from HMT and Cab Office.

[REDACTION]

EHRC Sponsorship Team
Government Equalities Office
5th Floor, Zone E8
Eland House
Bressenden Place
LONDON SW1E 5DU

Telephone: [REDACTION]
Fax: [REDACTION]

<http://www.equalities.gov.uk>

From: [REDACTION]
Sent: Friday, November 14, 2008 9:23 AM
To: [REDACTION]
Cc: [REDACTION]; [REDACTION]
Subject: RE: Remuneration—options to HMT.doc
[REDACTION]

Thank you for your helpful comments.

The Chair is going through an appraisal with our DG and this along with new objectives will be presented to our Ministers.

Separately, we are looking at re-appointment and follow OCPA guidance. We are also planning a recruitment campaign for Commissioners including that for the Chair in parallel in case this is not successful.

The Chair is currently serving three days a week (salary is pro rata) and following his decision to resign from Equate has asked to be re-appointed serving four days a week. We will pass your comments to our DG about potential conflict of interest with the CEO so that future objectives can be written in such a way to make it clear what the Chair is responsible for.

Regards

[REDACTION]

EHRC Sponsorship Team
Government Equalities Office
5th Floor, Zone E8
Eland House
Bressenden Place
LONDON SW1E 5DU

Telephone: [REDACTION]

Fax: [REDACTION]

<http://www.equalities.gov.uk>

From: [REDACTION]

Sent: Thursday, November 13, 2008 6:04 PM

To: [REDACTION]

Cc: [REDACTION]; [REDACTION]

Subject: FW: Remuneration—options to HMT.doc

[REDACTION]

Thanks for sight of this.

[REDACTION]

We've no objections to the proposed 2%. This is a matter for GEO (and HMT as appropriate). The proposed future remuneration for the Chair is also a matter for your and your Ministers—although I would note that £170–£180K is towards the top end of levels of remuneration offered to Chairs of NDPBs.

On the question of re-appointment, there should, of course, be no expectation or presumption that serving Chairs/members of NDPBs will automatically be re-appointed. This is a decision for Ministers. And, if Ministers are minded to re-appoint, you must—in line with OCPA rules—undertake a proper performance appraisal to ensure that the post-holder is performing satisfactorily.

It's also not clear whether the current Chair is serving on a full-time basis. If this is the case, I think we would query this. On average, non-exec Chairs (of large public bodies) probably serve 2–3 days a week. This should be sufficient. More than this risks creating conflict between the Chair and CEO as it can encourage the Chair to become involved in the day-to-day management of the body (which is, of course, the responsibility of the CEO).

Happy to discuss.

[REDACTION]

Propriety and Ethics

Cabinet Office

[REDACTION]

-----Original Message-----

From: [REDACTION]

Sent: 13 November 2008 17:18

To: [REDACTION]

Cc: [REDACTION]; [REDACTION]; [REDACTION]; [REDACTION]; [REDACTION];

[REDACTION]; [REDACTION]

Subject: FW: Remuneration—options to HMT.doc

[REDACTION]

Thank you for keeping us informed. I think a 2% increase sounds very sensible! However, public appointments are the responsibility of Cabinet Office not HMT. I've copied in [REDACTION] who can point you in the direction of the necessary guidance and advise as required. He should also be able to help on the matter of the Chair's re-appointment.

[REDACTION].

Thanks

[REDACTION]
[REDACTION]

-----Original Message-----

From: [REDACTION]
Sent: 13 November 2008 16:31
To: [REDACTION]; [REDACTION]
Cc: [REDACTION]; [REDACTION]; [REDACTION]
Subject: Remuneration—options to HMT.doc

<Remuneration—options to HMT.doc> Hi Bill/David

I would be grateful for your views on the attached proposal. Our Director General will be in discussion with our Ministers about the remuneration for the Chair of the EHRC and you asked to be kept informed of any proposed changes.

Regards

[REDACTION]

Mobile: [REDACTION]

From: [REDACTION]
Sent: 22 June 2009 10:02
To: [REDACTION] @cabinet-office.x.gsi.gov.uk
Cc: [REDACTION]; [REDACTION]; [REDACTION]
Subject: RE: Trevor Phillips

[REDACTION],

Ministers can choose to re-appoint Trevor without putting it out to open competition (OCA allows for this). This is the last term he can be reappointed for.

Regards,

[REDACTION]

[REDACTION]
EHRC Sponsorship Team/
GEO [REDACTION]
 [REDACTION]

Sent: Friday, June 19, 2009 4:15 PM
To: [REDACTION]
Cc: [REDACTION]; [REDACTION]
Subject: RE: Trevor Phillips

Thanks [REDACTION].

So the Ministers could choose to re-appoint TP without putting it out to open competition?

How many terms could they do that for? (ie just this once, or indefinitely?)

[REDACTION]
[REDACTION], Government Equalities Office
T[REDACTION] M [REDACTION]

BB [REDACTION]

-----Original Message-----

From: [REDACTION]
Sent: 18 June 2009 17:31
To: [REDACTION]
Cc: [REDACTION]; [REDACTION]
Subject: Trevor Phillips

[REDACTION],

In answer to your questions:

Ministers can choose either to re-appoint Trevor or to go out to competition for a new Chair.

What is the process for the re-appointment?

For reappointment of TP, Ministers simply need to decide whether to reappoint him or not based on his performance (his appraisal was carried out by Jonathan).

Will it be open and transparent—advertises etc. Will anyone be able to apply?

Recruitment of a new Chair will be based on fair and open competition. Adverts will be placed in broadsheet newspapers and anyone can apply.

Or could Ministers just choose to re-appoint? (implication that this is a closed shop)

Ministers can choose to reappoint, based on his performance appraisal review.

What is the duration of TP's existing term?

TP's existing term is three years (Sept 06–Sept 09)

And what will be the duration of the new term? (three years?)

Duration of new term will be four years although this has not been confirmed.

Regards,

[REDACTION]

[REDACTION]

EHRC Sponsorship Team/
GEO [REDACTION]
Government Equalities Office
9th Floor/G10, Eland House
Bressenden Place

 [REDACTION]

<http://www.equalities.gov.uk/>

Memorandum submitted by the European Network Against Racism (ENAR)

I write as a founding member of the Equality & Diversity Forum (EDF), a former Commissioner at the Commission for Racial Equality (CRE) and the Equal Opportunities Commission (EOC), and as a member of both the Taskforce and the Steering Group that helped to construct the Commission for Equality & Human Rights (CEHR—now EHRC). Having watched the recent evidence to your Committee from recently resigned Commissioners at the EHRC, I would like to make the following points:

- (1) I do not feel the problem lies primarily with the structure of the Commission. The structure is not perfect (eg, I have always maintained that it should be accountable to Parliament and not to a Government Department), but it is structurally one of the most inclusive and robust equality/human rights commission anywhere. The inclusivity and representation elements of the Commission are in my view critical to its credibility with those whom it hopes to serve.
- (2) I do feel quite strongly that the problem lies with the leadership style. Listening to the evidence brought back many sorrowful memories of my time at the CRE. What the EHRC requires is the consultative collegiate style leadership that I have witnessed at the EDF, under two chairs at the EOC, and at the Taskforce and Steering Group that helped give birth to the EHRC—not the closed, cliquish and manipulative type of leadership I witnessed at the CRE, and now seems to be the case at the EHRC.
- (3) With the right leadership, I am confident that the EHRC, with its generous but much needed powers and resources, can flourish—and help to create a greater Britain where all people are treated with dignity and equality, thus promoting good relations between people and communities resulting in greater cohesion in society, and thereby a country we can all be proud of. The work of the EHRC is critical and needs to be given every chance of success possible.

I hope the above is helpful to your deliberations, and wish you well in your work.

Mohammed Aziz
Chair

November 2009

Memorandum submitted by Liberty

ABOUT LIBERTY

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

LIBERTY POLICY

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

1. In the context of recent and imminent oral evidence from former and continuing members of the Equality and Human Rights Commission (EHRC) respectively, the Joint Committee on Human Rights (JCHR) has invited short written contributions about the work of this body.

2. Regrettably, on this occasion, a short contribution will more than suffice. As this country's domestic campaign for fundamental rights and freedoms, Liberty looked forward to the establishment of a Human Rights Commission for many years. We have therefore watched the turbulent infancy of the EHRC with some disappointment.

3. We hope that previous submissions to the JCHR and other public interventions will have demonstrated Liberty's commitment to defending human rights in Britain. Such defence is extremely difficult unless those precious values are better understood by the people they ought to protect. The EHRC has a vital statutory duty in this regard and notwithstanding considerable staffing and other resources¹⁰, this is a duty which it is yet to fulfil.

November 2009

Memorandum submitted by Lord Low of Dalston

You have asked for short submissions for your inquiry into the work of the EHRC. You will find that they don't come much shorter than this. I don't have a lot to say, but I do have a perspective on the work of the EHRC, having been active in disability organisations for a long time, a member of the National Disability Council 1996–2000, a Disability Rights Commissioner 2000–02, Chair of RNIB 2000–09, Vice-President of the Disability Alliance 1999– and President of SKILL 2008–.

I am aware that the EHRC has not been a happy organisation and the leaders of the Disability Committee have found it difficult to get a sympathetic hearing for their agenda within the Commission. Much of this is put down to the management style of the Chairman but most of this is anecdotal, and I realise is not hard evidence. What is more concrete and incontrovertible, is that as a Parliamentarian I have witnessed a dramatic transformation in the level of briefing we have received as a result of the transition from the DRC to the EHRC. The DRC would send us a constant stream of substantial, well-researched briefings—maybe at the rate of two or three a month—on matters of moment to disabled people, which assisted us materially to keep disability to the fore in Parliament. With the advent of the EHRC, this has slowed to a trickle and almost completely dried up. If we get anything at all, this is often only as a result of proactive requests. This has been disappointing, and is certainly not to the advantage of disabled people in Parliament. At times one has almost been tempted to think of the EHRC as a failing organisation.

I think some of this may stem from the EHRC's determination to approach equality in a holistic, cross-strand fashion. There is certainly merit in this approach but it is a mistake to set up a rigid antithesis between a holistic and a strand-based approach. A desire to approach equality holistically should not be at the expense of a proper focus on the specific strands of the equality agenda, such as disability, when that is called for.

November 2009

¹⁰ Liberty is currently in receipt of 45,821 pound per annum (until Spring 2011) from the EHRC's substantial grant funding programme. This grant goes towards our public advice and litigation functions and makes up approximately 3.1% of our annual turnover.

Memorandum submitted by Baroness Nuala O’Loan

INTRODUCTION

I have noted that the Joint Committee is taking evidence on the work of the Equality and Human Rights Commission. I had the privilege and the responsibility of chairing the Commission’s recent Human Rights Inquiry. I am grateful for the opportunity to submit this brief written evidence.

It is internationally recognised that the creation of the United Nations Declaration of Human Rights, over 60 years ago and, particularly for Europe, the development of the subsequent European Convention on Human Rights marked a very clear determination on the parts of the signatory states to ensure that the protection of human rights would be fundamental to the governance of those states. The United Kingdom played a leading role in this work in Europe, a role of which we are justly proud.

The creation of the Equality and Human Rights Commission under the Human Rights Act provided a vehicle for the delivery of much of the State’s compliance with its obligations to promote and protect human rights, even though the Act did not give effect to the Convention in its entirety. Part of the role of the Commission is to develop among the people an understanding of all the protections and responsibilities which are afforded to and required of every person. The existence of the Commission, with its human rights remit, is a profound statement of the commitment of the United Kingdom to the protection of fundamental human rights. It also gives credence to the reputation of the United Kingdom as a nation which seeks to recognise, respect and protect human rights, thus enabling the State to speak with authority on such matters in the wider international community.

The Commission is still in its infancy—whilst the Legacy Commissions on Disability, Equality, Race provided a foundation for much of its work, the Commission has yet to develop properly its programme for the delivery of its statutory human rights remit. The Human Rights Inquiry Report provides the basis for the development of such a programme. It identified significant areas of achievement with much good practice amongst public and third sector bodies, which brings identifiable benefits not only to public service users, but also to service providers in terms, inter alia, of enhanced efficiency, with the associated resource savings, and increased staff morale. It also identified the areas in which significant activity is required, most particularly of the Commission itself. It will be important that the momentum is not lost, and that the Commission does not shy away from the work which is required. The governance processes and the ethos of the Commission will be fundamental to its ability to deliver on its statutory remit. My experience was that there was a need for development in these areas, if the EHRC is to function effectively as a national human rights commission.

Key to the early work of the Commission in the area of human rights has been the work of those Commissioners who had prior experience of the work of equality and human rights. During the period of conduct of the Human Rights Inquiry three Commissioners acted on behalf of the Commission, bringing a wealth of experience to the Inquiry. Professor Francesca Klug, the lead Commissioner, Sir Bert Massie and Dr Neil Wooding each played a most important role in this developmental exercise, which the whole Commission had determined as being necessary. Professor Klug and Sir Bert Massie have now resigned from the Commission.

The difficulties within the Commission have been much discussed in the media. On a number of occasions, starting in the summer of 2008, I sought to persuade Professor Klug and Sir Bert Massie (whom I was aware were actively considering resigning) to remain with the Commission, notwithstanding the difficulties which they were experiencing as Commissioners, until the work of the Inquiry was completed in July. This they did.

It will be necessary if the Commission is to fulfil its statutory remit, that it enhances the human rights understanding and experience of those who work within it. Much remains to be done to enable compliance with the Commission’s existing statutory duty, in terms of human rights.

There are those who have talked, in various contexts, of the repeal of the Human Rights Act. Given the limited range of rights which are currently protected in the United Kingdom, repeal of the Act would be very damaging, not only to those who most need the protection afforded by the Act, but also to the global reputation of the United Kingdom.

October 2009

Memorandum submitted by Sir Bert Massie

1. I watched the podcast of the session you held with Trevor Philips and his colleagues from EHRC. It demonstrated a serious attempt to discover the truth without fear or favour. However, I thought some of the replies your Committee received were somewhat less than full and others strained credibility. Some of the points were minor and others were, in my opinion, rather more profound.

2. First, a trivial point. Mr Philips argues that he was criticised for letting meetings go on too long and that this was an example of his desire to include people. I was one of those who made such a criticism but the meetings were not long because of inclusive debate but because they often started late and then half an hour or more was consumed by a “review of the political situation”, which largely comprised of a monologue

by Mr Philips in which he made plain how well politically connected he was. For some of us knowing when a meeting is to end is important. I travelled by rail from Liverpool. For each journey I had to book in advance and reserve one of the few places suitable to enable me to travel in a wheelchair. Railtrack staff were told of my travel arrangements so they could meet me and fit the portable ramp to the train. If I missed the train on which I was booked the whole arrangement unravelled and could leave me stranded in London until a train with a vacant "wheelchair space" became available. All that other disabled people and I needed to know was when a meeting would finish so we could arrange our travel. A good chairman can include people and finish on time.

3. Mr Philips and John Wadham argued that the Commission had a good record on disability and quoted the number of legal cases taken relating to disability. I have visited equality commissions in other countries and it is common ground that a high proportion of cases are disability related. The Commissions in Northern Ireland and Australia show a similar picture, but in the UK little was done to change the climate so discrimination did not take place in the first place. I was appointed as the Transitional Commissioner from the Disability Rights Commission following a unanimous request from the then DRC Commissioners that I should assume the role. When I resigned I thought it right to explain my action to those people who had asked me to undertake the role. I attach a copy of the e-mail that I sent to the former DRC Commissioners. (Annex 1)

4. You will note that I accept the good work the ERHC had done on disability but the Disability Committee was starved of resources and staff. It was never able to do much more. I understand the current chairman has indicated his desire to resign. I am still in touch with a large number of disability organisations and to my regret the most common view expressed is that the ERHC has not been an effective replacement for the DRC. This is not a bid to restore the DRC but for ERHC to appreciate that while there is an important role for cross strand work there is also a need to appreciate that strand specific work is an essential part of the work the Commission should undertake.

5. Mr Philips stressed that the appointment of Commissioners was solely a matter for the Secretary of State. This is correct in theory but in my experience does not reflect how things are done. When I was appointed chair of the DRC, the Minister, Margaret Hodge, made it clear to me the balance of Commissioners she would expect to appoint. As her view matched mine this caused no difficulty but there was debate over individuals. In these discussions my views as chair of the DRC were given a great deal of weight. It is inconceivable that the Secretary of State would appoint people as Commissioners without taking account of Mr Philip's opinion. He is a key player and people who have his approval would have a far greater chance of appointment than those he opposed. Those who wish to be appointed would know this. As chair he is a key player and his views are bound to influence appointments although the final decisions are those of the Secretary of State.

6. Senior posts such as the chair of ERHC normally need to be approved by the Prime Minister. I assume advice was offered to the PM. During an informal conversation with the Secretary of State I informed her that if Mr Philips was re-appointed there would be resignations. And so it came to pass. I assume she also sought advice.

7. Mr Philips denies any involvement in the appointment of the former CRE staff. This strains credibility, especially since it is widely known that many of them worked exceedingly closely with Mr Philips in his role as chair of the CRE and subsequently at ERHC. It is true that the roles of chair and CEO are separate but at the end of the day the chair is responsible for the affairs of an organisation of which he is chair. That cannot be delegated. If he did not know (which I do not accept) he should have done. At the DRC I had a weekly meeting with the CEO to ensure that problems were being addressed and work progressing. I would have expected to have been informed of an inflow of senior staff. There is a difference between delegation and abdication of responsibility.

8. It was clear as early as late Spring of 2008 that there were significant problems with corporate governance and conflicts of interest. These were being openly discussed in national newspapers. There was an unsatisfactory attempt at a Board meeting to resolve them. As a result the Deputy Chair of ERHC, Baroness Prosser, proposed external consultants be appointed to review governance. It was common currency amongst many of us that the major problem was the poor relationship between the CEO and the Chair, and the chair's conflicts of interest. I was not convinced that the appointment of external consultants would assist and I made my view known to Baroness Prosser.

9. My main points were as follows:

- I was very critical of the governance arrangements that the ERHC put into place in its early days. Frankly, I thought they were clearly based on those of the CRE which were known not to work. The main fault, among many, was they gave too much power to the chair.
- I was concerned that the conflict of interest issue was being presented to the Board as one that concerned Commissioners conflicts of interest or the Board's as a whole, when the issue that had been exposed in the media was concerned specifically with Trevor Philips and his private work. Mr Philips and the media team had presented attacks which had appeared in the press on this issue as being an attack on all commissioners. I did not accept that interpretation.
- When I chaired the DRC, on a salary much lower than Mr Philips I did no private work and gave my spare time to charities which I did free of charge. I took the view that Mr Philips should make

- his company Equate dormant until he ended his term of office as chair. He should not, as I had heard suggested, become a full time chair so an increase in salary could be justified and he would not need an income from his consultancy. That would have made Nicola Brewer's job as CEO just about impossible as Mr Philips would become in all but name an executive chair. This was not where his skills lay.
- From my private conversations with some (not all) commissioners I told to Baroness Prosser that there was huge dissatisfaction with the way in which Mr Philips chaired the Commission and the way in which he sought to divide and rule commissioners. His style does did promote loyalty. His handling of the conflict of interest issue had increased this alienation. As far as I could judge, commissioners had a clearer idea of probity than Mr Philips displayed yet we were all being tarred by the same brush. I took the view that her suggested way forward of a review of the Board might be in danger, albeit inadvertently, of leading to a review of commissioners rather than the chair.
 - I advised her that to my mind, a good chair achieves a number of things. The first was to get the board to be collegiate and to trust each other and the chair. Mr Philips had failed to achieve the trust of many commissioners, in my view. This was reflected in the view that some commissioners has which was that policy was determined by the chair and not collectively. That was a governance issue.
 - A chair should hire, support and guide the CEO and, if necessary fire and hire a new CEO. The conflict of interests issue put her, as accounting officer, in a difficult position. I advised that Nicola Brewer was in an intolerable position and as a Commission we needed to protect her.
 - A third role of the chair was to represent the organisation externally. In many respects, I said, Trevor did this well, far better than I could ever do, but his high profile meant he needed to be beyond reproof.
 - I proposed that we set up an internal working party that could get to the core of the issues. Mr Philips should not be a member of it but should agree in advance to accept its conclusions if backed by the Board. I suggested Baroness Prosser should chair it. In his role as chair of the Audit Committee, Ben Summerskill should be a member. Depending on how many should be on it, I suggested Baroness Campbell be a member and perhaps Jeannie Drake, Kay Hampton, and myself. I suggested that this group should review all the governance arrangements but especially the role of the chair and conflicts of interest.

10. Instead of the internal review I proposed, Deloitte's were appointed. I regret that the outcome was much as I had predicted. When the Deloitte's report was discussed at a Commission meeting I expressed great dissatisfaction with it as it failed to deal with the main issues. I was not part of the group that saw the full version and I was referring to the sanitised version. It is inaccurate to suggest that all commissioners supported this report.

11. Things came to a head when Nicola Brewer resigned. It might be true that being the High Commissioner in Cape Town is the dream Foreign Office post, as Mr Philips asserted. I am unable to judge. Mr Philips arranged a telephone meeting with Commissioners to inform us of the news and to read out a prepared statement that was being issued and in which he spoke of his friendship with Mrs Brewer. It was clearly for public consumption but seemed to me to be inaccurate. There was little point in arguing and I remained silent.

12. I was concerned that the events at the CRE would be repeated at ERHC with an attempt by Mr Philips to appoint an interim CEO who was his friend or with whom he was identified as working very closely. I was unable to attend the next Commission meeting but I knew that Mr Philips favoured an internal appointment as interim CEO but this would not be discussed with commissioners. In a bid to open up debate I sent an e-mail to a number of Commissioners so they were aware of my views. Baroness Campbell read out the e-mail in full at the meeting. A copy of the e-mail is attached. (Annex 2)

13. I later heard that Mr Philips, without consulting Commissioners, proposed to appoint the Group Director Communications as interim CEO. I could have no confidence that such an appointment would serve the ERHC well and I opposed it. My e-mail to the former DRC Commissioners refers to this. Subsequently an open competition for an interim CEO was held and although I was disappointed with the outcome the person appointed was a credible candidate and he informed us at the first meeting he attended that he had resigned as consultant to one of the consultancies formed by the some of the staff who had joined the ERHC from the CRE and are the subject of the PAC inquiry.

14. I appreciate that this whole sorry business can be difficult to disentangle but I hope this note and the attachments put some of the images into focus. At all points I and others tried to address issues internally within ERHC and then externally with Ministers before taking the painful steps of speaking publically to your Committee. In one capacity or another I have been a member of public bodies for almost thirty years under different governments but I have never witnessed the chairmanship and governance I experienced at ERHC.

Memorandum submitted by the Public and Commercial Services Union

INTRODUCTION

1. The Public and Commercial Services union is the largest trade union in the civil service with 300,000 members working in government departments, non departmental public bodies and related areas.

2. PCS has 360 members in the Equality and Human Rights Commission, comprising over 85% of permanent staff below director level.

3. Our members include policy officers, lawyers, caseworkers, advisers, information officers, administrators, regional officers, ICT and communications staff. They are all highly committed to using their expertise and experience to ensure that the Commission achieves the goals with which it has been tasked as a robust, authoritative body that can deliver its remit.

4. PCS published our own vision for the future of the Commission for Equality and Human Rights (now EHRC) in 2006, "*What Price Equality*". This was produced following consultation with our members at the three legacy commissions and stakeholders such as the TUC. We believe that the arguments we made then are still highly relevant. For example:

- The new body must be equipped to achieve the goals with which it has been tasked, to use its enforcement powers effectively, to run high profile campaigns, and to work with employers on good practice development. It must also have national and regional structures able to deliver local advice provision and work with communities to promote equality.
- The Commission cannot be fully effective without harmonising the legislation.

EHRC DIRECTION OF TRAVEL

5. In the last quarter of the 20th century, a variety of equality legislation was enacted in response to pressure from the women's movement, anti racists, LGBT and disability rights campaigners. Yet women in Britain are still paid an average of 17% less than men and less than one in twenty rapes are reported. Raunch culture is rife, homophobia is widespread, hate crimes perpetrated on disabled people are on the increase, Islamophobia has become commonplace and a recent Panorama programme has demonstrated the extent to which racism continues to blight society.

6. We believe that the light touch approach adopted by the Commissions' leadership has weakened EHRC's enforcement ability at a time that a strong authoritative enforcer is needed more than ever. The notion of "fairness" is vague and too open to interpretation. It undermines the EHRC's ability to tackle discrimination effectively by promoting equality as something non-negotiable.

7. PCS recognises that there have been good EHRC initiatives such as its report which completely undermined racist lies about immigrants jumping housing queues. However, there have been too many missed opportunities to tackle issues such as Islamophobia, the rise of racist attacks in communities where far right political parties have gained ground, the impact of the Welfare Reform Bill on disabled people and single parents, and a failure to demand mandatory equal pay audits in the Equality Bill.

HUMAN RIGHTS

8. Whilst we acknowledge the groundwork laid by the Human Rights inquiry, we believe the EHRC could play a more active role in helping negotiate difficult areas where rights come into conflict. For example the right of the leader of the BNP to appear on BBC's Question Time against the rights of vulnerable minorities. It could also have produced modules for schools to help students discuss the impact on the safety, dignity and respect of women in a rising culture of lap-dancing and porn.

9. We are also concerned about what action has been taking concerning the following issues:

- What guidance has been produced for public bodies, parliamentarians, the media and educational bodies to promote human rights?
- What tools have been produced for public bodies to help them meet their human rights obligations?
- Where is the system to rebut misinformation about human rights? This should be a central plank of the EHRC's educational and promotional role, and crucial in relation to the media who shape the public's perception of human rights.

10. PCS believe that the Commission's failure to communicate its role effectively is reflected in its absence from key human rights debates. For example:

- Police collecting data on "domestic extremists".
- The rise of surveillance society (ID cards, CCTV).
- Detention of asylum seeking children.
- Rendition, use of torture.
- Increasingly sophisticated information on people's genetic make-up.

11. PCS believe that using human rights arguments are key to making progress on tackling discrimination and that the Commission has missed opportunities to do this. When promoting flexible working and equal pay for example, this should also be fashioned into a broader narrative about socio-economic rights such as keeping women in poverty has human rights implications for their children who grow up in poverty.

PCS CONCERNS

12. PCS believe that the EHRC should be above reproach as a government funded body. The budget cut and recent revelations regarding the Commission's financial and operational failings could have a detrimental impact on EHRC's unique statutory role, service delivery, capacity building and its essential grants programme for voluntary bodies.

13. Now that a budget cut has been announced, we are concerned as to how the Commission will maintain ongoing essential work programmes such as the flagship Codes of Practice & Guidance project.

14. PCS is particularly concerned that the EHRC appears to be losing touch with the real experiences of ordinary people. The recent BBC TV Panorama programme on racial harassment and news reports of stop & search targeting young black men both belie EHRC statements that having neighbours of a different ethnic origin is no longer an issue in modern Britain, or that the police should no longer be accused of institutional racism.

HELPLINE CUTS AND WORKING IN PARTNERSHIP WITH COMMUNITIES

15. We believe that two internal issues are contributing to the Commission appearing out of step with the reality of ordinary people's lives. These are:

- (i) Working in partnership with communities—We are concerned that the EHRC regional hubs with small groups of staff working with local partners in the community are given too low a profile. There are not even contact details or the important role this service plays in terms of human rights on the EHRC website.
- (ii) Helpline cuts—This important function is now at risk because of job cuts with posts cut from 115 to 65. This is an essential public advice service on human rights and all six equality strands. It should provide the key interface with the public feeding in to all areas of the Commission's work. A recent report by the Department for Business, Innovation and Skills shows that more than 20% of the working population still do not their employment rights.¹ We are concerned that the cuts mean that the EHRC will become more out of touch because without this interface with people with direct experience of racism and discrimination it will not be able to identify strategic cases and emerging issues used for investigations and policy development. PCS's alternative proposals to the cuts were rejected.

16. PCS believes the helpline cuts should be reversed. They are a false economy in terms of service delivery. Stakeholders and service users were not consulted, and no equality impact assessment was carried out until after the restructuring proposals were completed. We are concerned that two years after the Commission was set up, the public launch to promote and advertise this service is still being delayed.

17. Calls continue to increase, to a large extent because of the impact of the recession—a point recognised by ministers who have in past months emphasised the need for individuals and employers to be more aware of their legal rights and duties when redundancies are contemplated.

18. Since job cuts have been introduced, the helpline has been increasingly run as a regimented call centre operation. Callers are waiting in queues of up to an hour, and if they request a call back are allowed limited scope to specify a time. If the helpline adviser does not reach the caller at the first attempt, they are under instruction not to leave a message or call again. In Scotland and Wales, helpline teams do not have the capacity to advise in any detail on devolved issues.

LAW ENFORCEMENT

19. PCS believes that the 450 EHRC compliance and enforcement actions since October 2007 is a very low number for a statutory body charged with enforcement in six different strands. The Commission should intervene earlier, and be more proactive, rather than waiting for cases to arrive.

20. We would like to see the legal interventions made on behalf of the EHRC by prominent QCs followed up by expert seminars for in-house lawyers who can then develop the skills necessary to make these interventions in the future.

21. We would like to know the following:

- How much funding for compliance and enforcement will the Commission be allocating in 2009, 2010 and 2011?
- What are the Commission's plans to strengthen the Equality Bill?

- Does it plan to demand mandatory equal pay audits?
- What are its plans to make recommendations on agency workers, the Policing and Crime Bill (particularly regarding trafficked women), the Child Poverty Bill, treaty reports such as CERD and the employment of members of the BNP and other fascist organisations as public servants.

THE EHRC AS AN EMPLOYER

22. In October 2009, the EHRC launched a new “Workplace Report” into how a range of UK organisations have established equality policies. However, despite assurances to PCS from the Chair that the EHRC would be an exemplar employer, the findings of this report have not so far been reflected internally.

23. A revolving door of human resource consultants has resulted in no policies on recruitment, performance appraisal, dignity at work, flexible working, supporting carers or reasonable adjustments. We are concerned that work has only just commenced on developing these policies.

24. PCS is also concerned at the growing number of internal grievances and fifteen employment tribunal claims involving bullying, unfair treatment and discrimination.

25. We believe a lack of equality/human rights expertise at management level has resulted in staff being micro-managed.

26. The recently published equality scheme report identifies worrying gender, race and disability pay gaps. We believe that, rather than consulting externally, the EHRC should approach the union as we can bring our expertise to carry out a joint equal pay audit with associated action plans. It is concerning that over 20 staff have been waiting for two years to appeal the grading of their post, and over 30 are not yet matched to a permanent EHRC post.

27. This year’s staff survey report, which has been placed in the House of Commons library, shows low morale and stress levels to be unacceptably high.

28. According to a written answer to a parliamentary question on 19 October, the EHRC spent over £6 million on interim staff during 2008–09. Most of this was spent on consultants. Meanwhile, the internal talent with years of experience advising external organisations on best practice has been overlooked. We understand that the EHRC is now reducing its use of consultants, but we question how it will maintain continuity of delivery and transfer of knowledge when handing over to in-house staff who to date have been largely excluded from this work.

29. PCS believe that there is a serious reputational risk of the statutory body responsible for enforcing and promoting human rights falling short of the standard it expects other employers to comply with. These problems will persist unless staff concerns are addressed and in-house talent is nurtured, valued and developed.

REFERENCE

ⁱ “The Fair Treatment at Work Report”, The Department for Business, Innovation and Skills—27 October 2009

November 2009

Memorandum submitted by Race on the Agenda (ROTA)

1. ABOUT THIS SUBMISSION

1.1 Race on the Agenda (ROTA) is one of Britain’s leading social policy think-tanks focusing exclusively on issues that affect Britain’s Black, Asian and minority ethnic (BAME) communities. ROTA aims to increase the capacity of BAME organisations and strengthen the voice of BAME communities through increased civic engagement and participation in society.

1.2 We welcome the opportunity to make a brief submission to the Joint Committee on Human Rights in relation to its work on the Equality and Human Rights Commission (EHRC). We would welcome the opportunity to provide additional written or oral evidence to the JCHR. We are also happy to share the evidence that was used to write this submission, most of the references can be found on ROTA’s website www.rota.org.uk.

2. OPENING STATEMENT

2.1 ROTA warmly welcomed the Equality Bill 2006 which established the EHRC. We championed the Commission amongst BAME groups and the organisations that we have set up to serve them. This was not an easy task since right from the beginning BAME communities expressed serious concerns about the establishment of a single body. We organised workshops, conferences and delivered research projects that helped increase awareness amongst our BAME members and argued that EHRC has the potential to provide legislative, institutional and policy tools to tackle persistent inequalities such as those faced by

Britain's BAME communities. ROTa also hopes that through the Commission a culture of respect for equality and dignity is created and mainstreamed in providers of public services (whether public, private or voluntary) and in society.

2.2 ROTa has some concerns about the work of the Commission but remain hopeful that with the right support and partnerships, the EHRC can indeed provide the means for creating and protecting a culture of respect and human rights for all. We will continue to work with the Commission and broker relationships between its staff and BAME groups and communities.

3. STRENGTHS AND GAPS OF THE EHRC

3.1 Despite being in operation for a short period of time, the Commission has made several achievements that made a significant contribution to equality and human rights in the UK. In our view, these achievements mainly relate to the legal as opposed to the social dimension of equality and human rights. Several legal cases, such as the latest success against the BNP, help increase confidence amongst communities and provide a feeling of fairness and retribution. This sense of fairness is not to be underestimated. Under the Equality Act 2006, the EHRC has a specific mandate under good relations and human rights. We believe that the jurisprudence that they helped develop over the last two years makes a significant contribution to good relations.

3.2 However, ROTa has evidence to believe that very little has been done by the Commission to promote good relations through the social dimension of equality and human rights. In an evidence based report we prepared for the EHRC we said: "The majority of interviewees believed that both the underlying principles of the Human Rights Act (freedom, respect, dignity, equality—FRED) and legal components of human rights are relevant to community cohesion policy although when engaged are encountered with several challenges" Gavrielides (2009) *The new politics of community cohesion*, Policy and Politics Journal.

3.3 Our report also said: "The FRED component is faced with difficulties of misunderstanding, public awareness, misleading and inaccurate media coverage, political manipulation and ignorance. According to participants, human rights are generally seen by the public to be about individual entitlements. This makes them less relevant to community cohesion which is perceived to be a problem for the community and not of individual rights" (Gavrielides 2009).

3.4 Our report also said: "The FRED component was also thought to be hindered by lack of political leadership and poor communication strategies by EHRC. Misleading media coverage is left unchallenged while the use of human rights legislation and the value of human rights principles is not explained. Political leaders were thought to be consciously avoiding discussions about human rights and that only rarely there is discussion about their value for community cohesion" (Gavrielides 2009).

3.5 Findings from our research concluded that "the absence of a statutory body charged with promoting human rights and translating the lessons of law into effective practice and policy was also seen as a challenge. The establishment of the EHRC, therefore, was quoted as a unique opportunity to help bring about social changes through levers such as human rights law" (Gavrielides 2009).

3.6 The report was dismissed by the EHRC and was never published although it was commissioned as part of the EHRC research publications series. However, the findings were presented and published in Policy and Politics, a refereed, academic journal.

3.7 ROTa also remains concerned with the level and methods of engagement of communities in setting up the strategies and priorities for the Commission. For example, the EHRC Interim Grants Programme was introduced without adequate or proper consultation. We had hoped that the consultation for the three year Grants programme would improve, but from our experience the methods that were used did not allow small, locally based organisations such as those working with BAME and other marginalised communities to participate. The consultation was largely internet based or expected participants to feed into it by attending events. No engagement or support was provided to infrastructure organisations that represent small groups within the equality third sector.

3.8 ROTa have also raised several concerns in relation to EHRC's compliance with the Compact. For example, the decision to delay its grants programme did not take into account the nature of voluntary organisations some of which were forced to shut down their projects as they were unable to continue them for the delayed (unfunded) period. No consultation or advance warning was given that would have allowed these projects to seek alternative means of funding.

3.9 We also have evidence to prove that the EHRC has engaged in funding activities that were not properly/legally commissioned. These discrepancies referred to the tendering process, but also the timescales that all commissioned services have to follow. We also have evidence to show that these breaches led to the shutting down of voluntary organisations/projects.

3.10 ROTa continues to remain concerned with the EHRC's approach to human rights. In our submission to the consultation for the Terms of Reference of the Human Rights Inquiry we said: "To conclude, the Inquiry is timely and necessary, but should focus on taking the debate forward and avoid going over evidence that is already available. The Inquiry could benefit from Terms of Reference that are narrow, focused and realistic and aim to produce evidence that will enable public authorities to mainstream human rights. There is clearly a failure of public service providers to respect, protect and promote human rights.

No additional evidence is needed. The Inquiry should look into what can be done to convince public authorities, and effectively help them to cascade human rights both as legal instruments and as values in their services". We hold the belief that a considerable amount of resources have gone into collecting evidence that was already available. We hoped that this amount of resources would be dedicated to making a real improvement on the ground and testing human rights in practice. We acknowledge the value of EHRC having its own evidence base but we still wait to see work that makes a real difference in people's lives including human rights education, improving customer services in the public sector and providing capacity building support to voluntary and public sector services providers and organisations.

3.11 ROTa also wrote to the EHRC Research Unit expressing concerns in relation to the procurement process they adopt for contracting out research services. The timescales for the tendering process as well as for the delivery of research projects are so tight that it makes it almost impossible for groups and organisations in the Third Sector to participate. For example the Call for Proposals for the three research projects that were commissioned for the EHRC Human Rights Inquiry was made on 21 April and the deadline for bids was 1 May (eight working days). The draft final report for each project was 31 July. As a BAME policy infrastructure organisation, ROTa is well aware that many BAME groups and organisations working in the Third Sector would have been keen to bid for these projects either individually or after forming consortiums with other organisations. However, we are also aware of the time constraints put on them by limitations in resources and staff. Therefore, we believe that as it stands most of the Call for Proposals for research projects are directed solely to large organisations mainly from the private sector and academia.

3.12 In December 2006, ROTa with London Voluntary Service Council, the British Institute of Human Rights and London Civic Forum carried out a consultation project on the relationship of the EHRC and the Third Sector. One of the recommendations for the Commission was to be as inclusive as possible in its procurement procedures, respecting the limitations placed upon non-profit companies and consortia. We are disappointed that this recommendation has not been considered.

3.13 ROTa and our members are deeply concerned with the recent resignations of highly respected Commissioners. We were also deeply disappointed to hear about concerns in relation to the EHRC's audited accounts for the last financial year. We do not think that an adequate explanation has been given to communities in relation to these matters that have been widely covered in public media. No reassurances have been communicated from the EHRC in terms of a way forward. We also remain concerned with the failure of the Commission to recruit a Chief Executive. Too much pressure and unfair media scrutiny and emphasis has been put on the EHRC's current Chair whose role is not to take control of the Commission's operational matters but of its leadership and strategy.

4. THE WAY FORWARD

4.1 The EHRC has shown real leadership in relation to the work carried out on the Single Equality Bill. We were very impressed with the work that has been done in coordinating priorities and speaking to key stakeholders. We appreciate the support that has been given particularly in relation to keeping race on the agenda and reassuring BAME communities that the Race Relations Act is not being diluted but strengthened. We believe that this level of engagement and support should continue for other matters at national, regional and local level.

4.2 More work and a stronger presence need to be developed by the EHRC at regional and local levels.

4.3 Better and stronger partnerships with the equalities third sector need to be developed. ROTa has enjoyed a close and constructive relationship with the EHRC. We have been critical of the Commission's work and vice-versa. More constructive, critical partnerships need to be encouraged.

4.4 ROTa has been in existence since 1984 and was a key partner of the Commission for Racial Equality (CRE). We believe that one of the CRE's strengths was its strong links with BAME communities and BAME organisations. This is a legacy and a strength that the EHRC should adopt. Moreover, the CRE report "A lot done, a lot to do" (2007) highlighted cross-equalities issues such as those faced by BAME Young People. These have not been taken on sufficiently by the EHRC despite its wider remit. We do not think that honouring this legacy is an impossible task, particularly since a number of CRE staff now work at the EHRC and have already established links and relationships with the BAME third sector.

4.5 More transparency and accountability is expected from the EHRC which is seen by the equalities sector as the UK's equality and human rights champion. Two years after opening its doors should be enough for internal challenges to be resolved. More leadership and an authoritative voice are needed. The Commission has strong advocates in the equalities field who are willing to act as critical friends and a broker of relationships.

November 2009