



briefing no 17

The Commission for Equalities and Human Rights

July 2006

policy briefing

INTRODUCTION

Eight years after the introduction of the Human Rights Act (HRA) and six years after its implementation, and the Government has taken the big step to establish a Human Rights Commission. The road was long and bumpy and led where not too many experts would have predicted i.e. the creation of a single body for equalities and human rights. This will not only host a human rights body, but also bring together the Commission for Racial Equalities (CRE), the Disabilities Rights Commission (DRC) and the Equal Opportunities Commission (EOC). A single Equalities Act is also being prepared to bring harmony and homogeneity to the equalities and human rights doctrines in the UK.

The establishment of the CEHR and the merging of the CRE with the new body has been met with a lot of scepticism and even severe criticism. Black and minority ethnic (BME) groups committed to working towards the elimination of discrimination were, and some of them still are, afraid that “hard won rights will be diluted with racial justice playing second fiddle to other competing inequalities”*.

The Equality Act has now gained royal assent, and the CEHR is due to start its work in October 2007. A Transition Team has been established to set up the Commission and present options for the strategic direction of its work. The Department for Trade and Industry was originally leading this initiative, but now the responsibility lies with the Department for Communities and Local Government (DCLG) and the Department for Constitutional Affairs (DCA). Given the considerable impact that the CEHR will have on the way equalities and human rights are applied in the UK, this briefing will summarise its main functions and inform you about the line ROTA will be taking over the next years. There is a momentum that should not be missed.

WHAT WILL THE CEHR DO?

The new Commission will inherit all the powers of the CRE, DRC and EOC as well as acquiring new powers. In particular, the Commission will:

- Provide information, advice and assistance on *equality, diversity, human rights* and *good relations* across the board.
- Conduct formal inquiries where there are persistent *inequalities, human rights* or *good relations* issues that need highlighting.
- Conduct formal investigations where there is evidence of unlawful discrimination.
- Issue guidance and good practice to public authorities, private employers, trade unions and VCS organisations to embrace equality and conform to their HRA obligations.
- Intervene in legal cases where *equality* and *human rights* arguments need to be made.
- Judicially review decisions that contravene *human rights* or *equality legislation*.
- Give strategic support to individuals with *anti-discrimination* claims.
- Monitor all hate crime and challenge prejudice against and stereotyping of particular groups including those from BME communities.
- Promote good relations through the use of its regional networks.
- Produce evidence-based policy recommendations and promote best practice.
- Provide grants to bodies working towards its objectives.
- Publish a 'state of the nation' report every three years showing where Britain is failing on *equality* and *human rights*.

The Commission will cover England, Scotland and Wales. In Scotland and Wales there will be statutory committees responsible for the work of the CEHR. The Commission will also have a regional presence and the plan is for these regional offices to work closely with the existing Race Equality Councils (RECs) and other local organisations delivering on the ground. There will be up to 15 Commissioners including a Chair, and a Commissioner for Scotland and a Commissioner for Wales.

SCEPTICISM

During the consultation process, the BME sector and the CRE expressed fears that discrimination faced by BME groups will not get the attention or the funding it deserves under the new arrangements particularly since the CRE will see its demise having served for 30 years. BME communities are also afraid that the work currently undertaken by local organisations, such as the RECs, will disappear.

According to the Equality Act, the Commission's powers and duties will allow it to operate generically, but also specifically as appropriate. There will be specific programmes of work for each group covered by the Commission including: *race, gender, disability* and *human rights*. From 2007, the new Commission will also be responsible for tackling discrimination in relation to *sexual orientation, age, religion* or *belief* – areas that are not covered by any of the existing Commissions. On the other hand, the necessary guarantees have been given to ensure that funding for the RECs will continue and that their work will be supported by the regional presence of the CEHR. There is also a plan to provide support, including financial, to the work of local equality groups, and include the newer areas that now fall within the remit of the CEHR.

HUMAN RIGHTS AND EQUALITY: PARTNERS REDISCOVERED

The scepticism that still lingers should not be underestimated. Most fears are the result of misunderstanding. Britain has the most advanced anti-discrimination legislation in the world, but still we witness serious cases of racism, stigma, prejudice and fear. Racial and cultural tensions can simmer under the surface, and the lack of respect generates homophobic behaviour, hate crime, terrorism. Undoubtedly, since the first anti-discrimination legislation forty years ago significant battles have been won. ROTA has witnessed some of these battles and will continue to be there. However, despite these achievements, patterns of deep-rooted inequality persist.

So far, the vision of equalities has been guided by our anti-discrimination laws, which created a tendency to assume that if we act in a way that does not discriminate on the grounds covered by their articles, then equality has been achieved. It is time that we see equality from a new prism and that is as maximising opportunities for individuals to achieve their potential. Equality under human rights law goes beyond mere anti-discrimination; it encompasses dignity, fairness and respect in a democratic and inclusive society where every individual matters. Under this vision, therefore, it is not sufficient to ensure no-one is discriminated against.

This human rights vision of equality** has been embraced by most European countries, the Council of Europe and the European Court of Human Rights (EcrHR), and included in Protocol 12 of the European Convention on Human Rights (ECHR). Although the HRA incorporates the ECHR, the UK has not ratified this Protocol yet, and therefore does not accept a free standing right to equality. UK cases, however, are being taken to the EcrHR, which, through its jurisprudence, has given a detailed, practical significance to the human rights vision of equality. Take for example the case of 19 year old Zahid Mubarek, who was killed by his racist cellmate in Feltham Young Offenders' Institution in 2000. His family convinced the Law Lords to order the Home Secretary to hold a public inquiry into Zahid's murder by using Article 2 of the ECHR, which protects the right to life. Following this case, the Prison Service introduced changes to its policy and procedures relating to cell-sharing and anti-racism.

The establishment of the CEHR provides an opportunity to develop and implement a new equalities and human rights attitude that will go beyond tackling individual instances of discrimination and form the foundation of a new framework to challenge persistent patterns of race discrimination, inequality and promote and protect diversity, good relations and human rights.

ROTA has been observing the latest policy and legislative changes in the field of equalities and human rights in the UK, and believes that there is a momentum which should not be missed. With the Equalities Review and the Discrimination Law Review being carried out, the BME VCS has serious challenges to face. The new Commissioners will be tasked to identify the regional policy priorities that will inform the future work of the Commission. It is vital that the BME VCS is included in this process. The GLA was given reassurances by the responsible Minister that BME organisations will be included in the setting up of the CEHR and its policy priorities. In addition, the

option for a Racial Committee is still open and the BME VCS will be consulted on it.

As a London focused BME policy organisation, ROTA is particularly interested in the development of the Commission's regional presence and policy priorities. These should reflect the specific characteristics of London and its population, level of diversity, its unique governance role and the statutory equality duties of the Mayor***. The regional presence would help to ensure a regional focus on London appropriate to its special characteristics and it will need to address community cohesion and the reconciliation of different operational arrangements for race compared with other equality strands. There needs to be an analysis of current equality and human rights work at borough, sub-region or pan London levels. Finally, the regional presence should build on existing arrangements such as the GLA Act 1999, which introduced a "positive legal duty [for the GLA] to promote equal opportunities for all persons ..."

ROTA'S PLANS

ROTA has made one of its chief policy priorities the establishment of the CEHR and the setting up of its regional and policy presence. As a leading social policy think-tank devoted to issues that affect BME communities in London we will be informing our members about the current issues facing the Commission, ensuring BME representation in the development of policy. We are also taking a proactive role in the development of the Single Equality Act, which we believe will create a common legal framework that will make it simpler and easier for the human rights vision of equality to be delivered to BME groups.

We will continue to contribute to the debate by consulting with our members of BME London organisations and inform London's strategic decision-makers about issues affecting the BME voluntary sector and the communities it serves, making government policy more accessible to London's BME organisations. This is the first policy briefing of a series of others that will be informing you about all the latest developments in relation to the CEHR and the Single Equality Bill. This is an open call to join this process and inform us of any thoughts or reservations that you may have about the matters raised in this issue.

REFERENCES

* www.blacklondon.org.uk/news/blfpolicyupdate-cehr.htm

** See Helen Wildbore (2006) "Human rights and equality" *Runnymede's Quarterly Bulletin*.

*** See GLA (26 June 2006) *Discussion paper for CEHR: a regional presence*.

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