



## **The new Equality and Human Rights Commission: what will it do for our human rights?**

### **Introduction**

BIHR is a human rights organisation with a mission to strengthen human rights policy in the UK and support its implementation in practice. We have long called for a statutory body to protect and promote human rights for everyone in our society, especially those who are disadvantaged or facing discrimination. Indeed this was the main recommendation to come out of our report *Something for Everyone: The impact of the Human Rights Act* (published 2002).

We see the launch of the new Equality and Human Rights Commission (EHRC) on 1 October 2007, seven years after the introduction of the Human Rights Act, as an exciting opportunity to breathe fresh life into debates about the fundamental ideas of human rights and to develop concrete ways to put these into practice.

When the Human Rights Act came into force in 2000, the Government spoke of two ambitions: first, to give people in the UK the opportunity to pursue their own human rights claims in the courts here, rather than having to journey to Strasbourg; second, to stimulate a radical shift in our culture which would see people empowered to challenge public services that failed to treat them with basic fairness, dignity and respect. For the first time people were to have positive entitlements to have their basic rights protected, promoted and fulfilled – including protection from inhuman and degrading treatment; the right to have one's family life protected from undue interference by the state; and the right to life itself.

But critically it was a law whose main value was to be in its use outside the courtroom, by public bodies themselves who would be encouraged to put fundamental ideas like dignity, decency, respect, equality and autonomy or personal choice at the heart of their services and actions. The Rt Hon Jack Straw, who as Home Secretary took the Human Rights Act through Parliament, said at the time that human rights provided:

*'... an ethical language we can all recognise and sign up to ... a language which doesn't belong to any particular group or creed but to all of us. One that is based on principles of common humanity.'* (Jack Straw 1999).

There are signs that these ambitions are beginning to be realised. Some individuals have challenged the excesses of state power and there have been some positive changes to policy, practice and the law. But in the absence of a Commission with the legal powers and duties to promote and champion the Human Rights Act and human rights more generally it has been easy for myths to take hold and for a few specific legal cases concerning crime and terror to dominate and become the whole of the human rights 'story.

Since the Equality Act (2006) came into force, BIHR has focused on ensuring that the EHRC develops the potential to make full use of its human rights remit; to draw on human rights as the 'key ingredient' for the organisation as a whole and to see itself as part of a family of international statutory human rights bodies. BIHR has worked with the outgoing 'legacy' Commissions – the Disability Rights Commission, the Equal Opportunities Commission and the Commission for Racial Equality, by providing them with information, training sessions about human rights and through collaborative projects. We have also engaged in joint work with voluntary and community sector organisations (for example being part of a London-wide consultation exercise), developing human rights as a mechanism to engage with organisations otherwise left out of the process. We now look forward to sharing lessons from our work on poverty, health and social care, changing public attitudes and in other areas across the voluntary and community and public sectors to help the EHRC map existing practice and decide on its priorities.

### **What is the EHRC?**

The EHRC is a 'Non-Departmental Public Body' (NDPB)<sup>1</sup> with an overall purpose to reduce inequality, eliminate discrimination, strengthen good relations between people and protect human rights. It is a new organisation with responsibility for preventing discrimination and promoting equality in relation to six grounds: race, gender, disability, age, religion and belief and sexual orientation. Only the first three areas have 'legacy Commissions' – the Disability Rights Commission, the Equal Opportunities Commission and the Commission for Racial Equality – that are being merged into the new organisation. However, in the other three areas non-governmental organisations, charities and public bodies will have valuable expertise to share which we want to see the EHRC capitalise on from the outset.

Crucially, the EHRC also has responsibility for promoting and protecting human rights. As Baroness Cathy Ashton, Leader of the House of Lords and previously Human Rights Minister, has said, '*human rights must and will underpin everything that the EHRC does*' (BIHR conference, 2007).

### **What are the EHRC's human rights duties and powers?**

The EHRC has a general duty to 'encourage and support the development of a society in which there is respect for and protection of each individual's human rights.' In addition it also has the following specific human rights duties that are set out in Section 9 of the Equality Act:

- to promote understanding of the importance of human rights;
- to encourage good practice in relation to human rights;
- to promote awareness, understanding and protection of human rights; and
- to encourage public authorities to comply with section 6 of the Human Rights Act 1998.

The EHRC will also have a duty to monitor the effectiveness of the Human Rights Act, and to monitor progress in achieving a society in which there is respect for and protection of human rights. Significantly, while the rights contained in the Human Rights Act are given a special prominence, the duties of the EHRC also relate to

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<sup>1</sup> A Non-Departmental Public Body is: 'a body which has a role in the processes of national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers.' (Cabinet Office)

‘other human rights’, including economic, social and cultural rights, as defined in international human rights treaties. There is clear legal recognition of the need to put human rights at the heart of its work, with the Equality Act requiring the EHRC to take human rights into account in its work on equality and diversity and good relations.

In addition to the above duties, the EHRC also has a range of powers in relation to human rights. These include:

- Providing support for individuals including information, assistance and advice (but not legal advice or representation)<sup>2</sup>
- Providing education and training
- Undertaking research
- Undertaking inquiries
- Providing grants

The EHRC will operate in England, Scotland and Wales; in Scotland it will work alongside the Scottish Commission for Human Rights. It will not operate in Northern Ireland, where the Northern Ireland Human Rights Commission was established in 1999. The EHRC’s board will initially consist of 12 Commissioners, led by a Chair (Trevor Phillips) and Deputy Chair (Margaret Prosser), all of whom have now been appointed. They will be supported by a staff team (led by Chief Executive Nicola Brewer) based in Manchester, with a significant presence in London. They will also have offices in Glasgow and Cardiff, and a regional presence throughout Great Britain.

### **Why does the EHRC matter?**

Discrimination, inequalities and human rights concerns are not ‘yesterday’s news’ – they remain part of everyday life for many people and at the heart of some of the most serious challenges for our society, such as how we can combine increasing diversity with peacefulness and tolerance within and between individuals and groups. The persistent gender pay gap; the challenges of balancing caring responsibilities with work, leisure and family life; the failure of public services to fully meet the wishes of disabled or older people to live independent lives; the horrifying treatment of some people with learning disabilities by fellow citizens; and tensions between people of different races or religious beliefs are all contemporary issues. They are also areas where equalities and human rights ideas, laws, frameworks and practice are relevant and have the potential to make a practical difference.

Traditional approaches that ‘box’ people by one part of their identity such as their race, gender or faith no longer match up to the reality of people’s identities or the shape of their lives. And whilst challenging discrimination or human rights abuses after the event through litigation remains a vital tool, it is not enough to achieve the systematic and cultural changes that will mean real progress towards a more equal and cohesive society.

In this context the EHRC is a milestone in stimulating fresh thinking and practice. It could spearhead the transformation of equality and human rights from minority into

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<sup>2</sup> The CEHR will be able to provide legal support for cutting-edge discrimination cases. If human rights points are brought up, those can be part of the case. However, the CEHR does not have the power to support individuals taking cases under the Human Rights Act if they do not have a discrimination point under one of the pieces of discrimination legislation.

majority concerns whilst sharpening its focus on the most entrenched and harmful areas of discrimination, inequality and human rights abuses. It could help people to see these issues as part of the solution to society's biggest challenges: increasing diversity; larger numbers of people living alone; demographic change that will fundamentally alter the patterns of all of our lives when it comes to work; caring; and later life. For the first time, the EHRC will be an organisation with the potential to offer 'something for everyone', reflected in its broad remit covering gender, race, disability, religion and belief, age, and sexual orientation and human rights. Whilst some organisations have voiced concerns that the focus on their area will be diluted, others have welcomed the joined up nature of the EHRC's work. Above all there is an opportunity for the EHRC to move to the next stage and to focus efforts on the positive promotion of equality and human rights to achieve a lasting change in the way that all of our institutions conduct themselves.

### **Equality and human rights: two sides of the same coin?**

Historically in the UK, work on equality and human rights has developed on largely separate tracks. This has not been the case internationally, for example in South Africa, where equality and human rights are seen as 'two sides of the same coin' and as the unifying framework capable of building a new post-apartheid society. However, in recent years work in the UK on equality and human rights has begun to be integrated. This has been recognised in major policy and law reform initiatives such as the recent Equalities Review whose framework for defining and measuring equality pivots on a set of core capabilities based on international human rights standards, spanning the full set of civil, political, economic, social and cultural rights. In addition we have the Discrimination Law Review, which is to herald a Single Equality Act. If this is revised it has the opportunity to draw on human rights to found a much more ambitious version of equality.

Public authorities and voluntary and community organisations are beginning to pioneer the practical use of human rights in new and existing equalities projects. For example, a number of NHS Trusts participating in the 'Human Rights in Healthcare' project (a collaboration between the Department of Health and BIHR) are experimenting with 'human rights based approaches' to deliver on their existing equalities objectives. Over the past year BIHR has received an increasing number of requests for human rights consultancy, training and other support from equality teams in public authorities and voluntary sector organisations looking to incorporate human rights in their core work. Public sector workers have cited the challenges of reaching everyone in their neighbourhood from the most affluent to the most disadvantaged or of making public engagement a real rather than a 'paper' exercise. Human rights have the potential to make a difference in these areas and we believe that there is a clear role for the EHRC to map and then support and pioneer further joined up work on human rights and equality.

### **Stimulating a public debate about human rights**

The lack of an authoritative statutory body to promote human rights has meant that the misleading and negative portrayal of human rights in some of the media has often been left unchallenged. Human rights have become a convenient scapegoat for all of society's ills. In BIHR's experience, negative perceptions surrounding human rights tend to change once people are given basic information about human rights and the opportunity to explore their key features and practical value. If people are to be given the opportunity to have an inclusive and practical debate about human rights

and what they mean to them, the EHRC will need to provide basic information about what human rights are about and how they relate to people's everyday lives.

BIHR will be launching a programme of work ('Changing the Face of Human Rights') to help promote a participative, national debate about human rights for people in Britain. We look forward to working with the EHRC and a wide range of other partners to broaden the debate to encompass the full range of internationally recognised human rights. In particular we think that such a debate should include the everyday issues about housing, income and education and other public services which are consistently raised by the public as of major concern and where economic and social rights have the potential to 'bite'.

### **Human rights: the scaffolding of the EHRC?**

A key challenge facing the EHRC is how to work across what have been, until now, the separate equality 'strands' of disability, gender, race, age, religion and belief and sexual orientation. It is often said that human rights offer a unifying framework within which all of these issues can be addressed. But what does this mean in practice?

Fundamentally a human rights approach to equality is broad and ambitious – going 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. But what matters is how this right translates into action 'on the ground'. 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. This broader approach to equalities and discrimination has a range of key benefits:

#### ***A more holistic approach***

The human rights perspective is not about choosing a group or 'strand' for someone, or trying to simplify a problem down to one particular cause. Human rights look at the human being first and foremost, and the way they are being treated, and work backwards from there to work out the nature of any discrimination. This is particularly helpful when trying to reach people who are discriminated against for more than one reason and do not fit neatly into any one equality 'strand' – for example an older, disabled black woman or a poorer white man in his 50s with low skills being denied the opportunity to work.

#### ***Greater protection against discrimination***

The Human Rights Act prohibits discrimination on any grounds, not just the groups that are covered by existing equalities legislation. This means that human rights can reach people who may otherwise fall through the gaps. They help us take action for people who often do not get equal treatment, but fall outside the established areas of equality such as carers, asylum seekers or homeless people.

### ***Challenging universally bad treatment***

Equality means very little in an older people's care home or a mental health ward (for example) where everyone is being treated equally badly. Human rights address this kind of situation by providing minimum standards below which public authorities must not fall. They provide fixed standards against which to judge poor treatment, such as the ban on inhuman or degrading treatment, rather than looking at whether someone is being treated badly in relation to others before a remedy is available.

### ***A practical framework for balancing competing rights***

Human rights provide an effective and practical way forward for dealing with conflicts that may arise between different groups. Through an equalities lens, we might say that gay people and people with certain religious views have the right not to be discriminated against. But human rights have a ready made mechanism for balancing those rights and coming to a solution that enables us to live alongside each other.

### ***Addressing disempowerment***

The language of rights is fundamentally empowering – rights belong to everyone and are not 'given' by those in power. Human rights therefore provide a vision where people have the power themselves to challenge inequality and bring about change. An example of this working in practice is the way disabled people have used human rights to underpin their own independent living and start to claim power and control for themselves. There are significant links between human rights and the agendas on citizen empowerment and personalisation of services that have yet to be capitalised on.

### ***Making a difference internally***

Human rights do not just have an impact on the externally-facing work of organisations. In BIHR's experience of working with a range of organisations, we have come across widespread enthusiasm for using a human rights based approach to an organisation's way of working 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. Feedback suggests that they can be a way to get over the perception that equalities are about other people which can limit engagement (for example where white staff are fearful of engaging in a debate about issues relating to black or minority ethnic groups) and are therefore not to be prioritised.

### ***Reaching everyone in the UK***

Human rights belong to everyone – they are not only relevant to particular groups of interest or identity. In other places this has been used to stimulate action to bring divided groups together. The EHRC has an opportunity to develop new practice that sees the use of human ideas with groups as a starting point for discussion and greater cohesion.

### ***Great expectations – what are organisations looking to the EHRC to achieve in relation to human rights?***

BIHR sees human rights as something for everyone in society and is committed to taking the ideas, laws and practice 'beyond the courtroom' to a very wide range of groups and especially those whose focus is tackling inequality and disadvantage. As a voluntary sector organisation we collaborate with many of the voluntary and community sector organisations that the EHRC will need to reach as well as taking

forward pioneering work in the public sector. A range of key themes and challenges for the EHRC to take forward have emerged from events we have been involved with, including our recent conference 'Human rights visions of equality':

- The EHRC should avoid working in 'strands' and should integrate human rights and equality both internally and externally
- Positive communications activity by the EHRC is important so that key stakeholder groups, particularly the public sector, are influenced, although delegates said that this task should not lie with the EHRC alone. Positive, sophisticated and targeted messages could make a real difference to the outcomes achieved by the EHRC
- The EHRC will play an important role in ensuring that debate about human rights is practical and 'real', reflecting the fact that there is far more consensus about the basics we should all share than about theoretical frameworks. It should also play a key role in clarifying what 'human rights based approaches' look like in practice
- There are concerns over the EHRC's legal powers and duties in relation to human rights. It is unfortunate that the EHRC cannot provide legal assistance for individual human rights cases that do not have an equality dimension
- The division of responsibility between the Ministry of Justice, as the human rights lead within Whitehall, and the EHRC needs to be clarified

### **Further information**

The report from BIHR's conference 'Human rights visions of equality' contains recommendations from delegates on taking forward work on equality and human rights, including a number of recommendations specifically for the EHRC. This report can be downloaded from BIHR's website, [www.bihr.org.uk](http://www.bihr.org.uk). The report includes a transcript of BIHR Director Katie Ghose's speech at the conference, which explores the changing relationship between human rights and equality.

Report from BIHR and NCVO's consultative roundtable 'Human Rights and the Voluntary and Community Sector':

<http://www.bihr.org/downloads/NCVO.pdf>

Report from a free consultation event with London's voluntary and community sector to discuss their relationship with the EHRC and suggest key regional priorities, organised by Race on the Agenda, the London Civic Forum, the London Voluntary Services Council and BIHR:

[http://www.bihr.org/downloads/cehr\\_report\\_2006.pdf](http://www.bihr.org/downloads/cehr_report_2006.pdf)

'Human Rights in Healthcare – a Framework for Local Action' – produced as part of the 'Human Rights in Healthcare' project in collaboration with the Department of Health and 5 NHS Trusts:

<http://www.bihr.org/development/health.html>

'From Principles to Practice' – BIHR's programme of work to build the human rights capacity of the voluntary and community sector:

<http://www.bihr.org/development/practice.html>

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