



Two steps forward, one step back

How the Coalition is dismantling our equality infrastructure

What is happening to our equality infrastructure?

“[T]he Government’s new approach to tackling inequality [is] one that moves away from treating people as groups or ‘equality strands’ and instead recognises that we are a nation of 62 million individuals.”

Coalition Government’s Equality Strategy ‘Building a Fairer Britain’

Progress towards a society in which the dignity and worth of each individual is respected, no one is held back by prejudice or discrimination and everyone is given an equal opportunity to participate in society, depends upon the existence of a strong equality infrastructure. This means having:

- Comprehensive equality legislation with good access to justice for victims of discrimination and dissuasive sanctions for violations of the law.
- An independent and effective statutory equality body responsible for enforcing the law, raising awareness of individuals’ rights and promoting a culture of compliance.
- A strong civil society, which is capable of advocating on behalf of those most likely to suffer disadvantage or experience unequal treatment and which is given a voice in decision-making that affects those groups.

There was significant investment in our equality infrastructure between 1997 and 2010. The law expanded from just covering sex, race and disability discrimination to prohibit age, gender reassignment, sexual orientation and religion or belief discrimination too. The single Equality Act was introduced in 2010, further harmonising and strengthening the law. Positive duties were placed on public authorities requiring them to consider equality in all that they do and to involve and consult those from traditionally disadvantaged and under-represented groups. The Equality and Human Rights Commission was established, with a broader remit and stronger powers than any of the previous equality commissions. This was all supported by an active civil society working at grass roots level to raise awareness of equality rights, advocate on behalf of particular groups, and provide legal advice and representation.

Since it came to power, the Coalition Government has begun to unpick this infrastructure. Theresa May, Home Secretary and Minister for Equality, says that “Equality is at the heart of this Coalition Government”, but the approach is one which is blind to group-based disadvantage and perceives most regulatory interventions to protect individuals as unnecessary bureaucracy and burdens on business.

In the next year, important provisions in the Equality Act 2010 are likely to be repealed because they are considered “unnecessary or disproportionate burdens on business” and individuals who have suffered discrimination will face greater barriers to justice with the introduction of tribunal fees and less accessible advice and legal services.

The Public Sector Equality Duty, which has already been weakened by the Coalition Government, is to be reviewed again to meet the government’s “strong

desire to reduce unnecessary bureaucracy where it exists and consider alternatives to legislation”.

The Equality and Human Rights Commission faces massive budget and staffing cuts, changes to its statutory duties, the closure of its grants programmes and helpline, plus significantly more ministerial interference in how it carries out its functions in the future. It will also face another review of its performance in autumn 2013 with the potential transfer of its functions to other new or existing bodies.

Civil society organisations working to promote equality and support victims of discrimination at local level are struggling to survive and maintain their services because of the withdrawal of local authority funding, the loss of EHRC grant funding, and cuts to legal aid. Of course, this is at a time when the demand for advocacy, legal advice and other services from these organisations is rising.

The cumulative impact of these changes threatens to turn the clock back on equality. Women, people from black and minority ethnic or minority religious backgrounds, disabled people, young and older people, and LGB and T people still experience significant inequalities and many have suffered disproportionately as a result of austerity and public sector cuts. Without a strong equality infrastructure it will be even harder to challenge these inequalities and to reverse the setbacks in the years to come. That is why trade unions, working with partners from the voluntary and community sector, need to campaign to defend the infrastructure and consider ways to make it more effective and resilient to future attacks.

Weakening equality rights and blocking access to justice

“What competitive advantage is there for the country in denying victims of unfairness and discrimination access to justice?”

Professor Sir Bob Hepple QC¹

Repealing equality law

The Coalition Government has committed to slash “burdensome regulation” by the time it leaves office. In April 2011, it set up the Red Tape Challenge website challenging the public “to help cut unnecessary regulation”. One of the first Acts to feature on it was the Equality Act 2010. This landmark piece of legislation was barely a year old. It was the culmination of many years of campaigning by the TUC, trade unions and equal rights organisations for a comprehensive legal framework to support progress on equality. It had received cross-party support in parliament and the Coalition Government had only just taken the decision to implement it in October 2010 (albeit without the reference to the need to address socio-economic disadvantage and without the provisions enabling claims to be brought on a combination of two protected characteristics coming into force).

Over 7,000 responses were received to the Equality Act pages of the website (more than for any other piece of legislation featured) and those responses were overwhelmingly supportive of the Act.

However, in May 2012 in response to the Red Tape Challenge, the government launched consultations on repealing a number of important provisions, based on the flimsiest of evidence that they might impose unnecessary burdens on business.

Third party harassment

The Government has committed to repealing the protection from third party harassment. This makes an employer liable for repeated racist, sexist, homophobic or other prejudice-based harassment of staff by third parties like service users, customers or clients, where the employer has failed to take reasonable steps to protect them.

The Ministers for Equality, Theresa May and Lynne Featherstone, say there is no real or perceived need for this protection. But third party harassment is a very real and common occurrence for staff working in sectors such as education, health, social care, hospitality, retail and bus and rail transport, as many trade unions know. For example: surveys by teaching unions suggest a third of teachers suffer prejudice-based harassment from students or parents on a regular basis;² a recent study of migrant care home workers found they were frequently subjected to

¹ TUC/EOR Discrimination Law Conference 2012

² E.g. see *The experience of prejudice-related bullying and harassment amongst teachers and headteachers in schools* (2011) available from:

www.nasuwat.org.uk/MemberSupport/NASUWATPublications/PrejudiceRelatedBullying/index.htm

racial abuse by residents;³ and 7 per cent of NHS staff have said they experience discrimination from patients and their family members.⁴

“There’s a resident that can say, ‘I don’t want black people. Don’t touch me. You are black. Go back to your country.’”

Female Zimbabwean care worker, referring to experiences of working in a residential home⁵

Tribunal powers to make recommendations

The Government is seeking to abolish the new extended power that enables employment tribunals to recommend that an employer who is found guilty of unlawful discrimination should take specific steps to prevent others suffering similar treatment.

As many trade unions know discrimination is often a consequence of a particular workplace culture, policy and/or practice and it is rare that an individual victim has the courage to stand up to that dominant culture or to be a lone voice criticising an employer’s policies or practice. Even fewer have the resilience and the financial, legal and emotional support to go to tribunal. Those that do, even when successful, find it a difficult and at times debilitating experience.⁶

So when a discrimination claim does succeed and there are others at similar risk of discrimination in a workplace, it makes absolute sense that the tribunal, which has spent many days hearing evidence and deliberating on what has occurred and why, should be able to make a recommendation that addresses the source of the problem so that others do not have to go through the same experience. Yet this government believes that such a recommendation is “not likely to serve a practical purpose or to be an appropriate or effective legal remedy”.⁷

³ Alessio Cangiano, Isabel Shutes, Sarah Spencer and George Leeson, *Migrant Care Workers in Ageing Societies: Research Findings in the United Kingdom*, COMPAS (June 2009)

⁴ National NHS Staff Survey 2011. The survey does not break down that discrimination into harassment and other forms of discrimination.
http://nhsstaffsurveys.com/cms/uploads/NHS%20staff%20survey%202011_nationalbriefing_final.pdf

⁵ Quote from Cangiano et al.

⁶ E.g. see Aston J, Hill D, Tackey N D, ‘The Experience of Claimants in Race Discrimination Employment Tribunal Cases’, DTI (April 2006)

⁷ Equality Act 2010, Consultation on Removing: (a) employment tribunals’ power to make wider recommendations in discrimination cases; and (b) the procedure for obtaining information, Government Equalities Office, (May 2012)

The power to make recommendations was recently used in a case of blatant pregnancy and maternity discrimination, which included the claimant being contacted by her maternity cover just two days after giving birth by C-section and while she was still in hospital, demanding help with a complicated work matter. HR and senior managers failed to recognise that such contact was wholly inappropriate and, in fact, began investigating a complaint against the claimant that she was unhelpful because she had failed to respond to such requests while on maternity leave. The tribunal was worried by the complete lack of understanding of statutory maternity rights and the company's own maternity policies. It was also concerned that others were likely to be at risk, given the significant number of women in the workplace. It therefore recommended that the whole HR team and senior managers should be trained on maternity rights.

Stone v Ramsay Health Care UK Operations Ltd ET/1400762/2011

Repeal of statutory discrimination questionnaires

The Government is proposing to repeal the statutory discrimination questionnaire procedure which enables an individual who suspects they have been discriminated against to seek information from their employer.

More than thirty years ago, legislators recognised how difficult it was for an individual to prove discrimination without access to information which the employer holds about how others were treated in the workplace. The questionnaire procedure formed part of the original Race Relations Act 1976 and Sex Discrimination Act 1975 and was incorporated into all other discrimination laws and eventually into s.138 of the Equality Act.

The importance of the questionnaires in ensuring justice for individuals has been recognised by the courts too. If an employer fails to respond or gives evasive answers to one of these questionnaires, a tribunal may take this failure or evasion into account and shift the burden of proof onto the employer, requiring them to prove that discrimination was not the reason for their treatment.

“Without the kind of information which individuals can only obtain through written questionnaires under s.138, in many cases it will be almost impossible to prove discrimination.”

*Discrimination Law Association*⁸

In trade unions' experience, these questionnaires have the added benefit that they often prompt early settlement of claims without the emotional and financial cost of a full tribunal claim.

⁸ DLA response to consultation on Equality Act 2010, Removing: (a) employment tribunals' power to make recommendations in discrimination cases; and (b) the procedure for obtaining information

A member with learning difficulties (and approximately 9 years' service) was dismissed for failure to interact sufficiently with customers and for not meeting checkout scanning targets at a major supermarket. We argued that the member was a disabled person who was dismissed without consideration of reasonable adjustments (such as relocating her to duties on the shopfloor where no customer interaction was required). [But the] decision to dismiss was upheld on appeal.

We drafted and submitted a well-targeted Equality Act questionnaire early on and as soon it was received the respondent's solicitors contacted us to admit that they really did not want to answer the questions and sought to settle the case immediately.

Example from Usdaw legal department

Access to justice

This government's policies are making it even harder for individuals to enforce their equality rights. There is already widespread under-reporting of discrimination as individuals lack awareness of their rights and find it difficult to access advice. According to the Legal Services Research Centre, 62% of people faced with a discrimination problem did not know their rights and nearly 40% did nothing or tried and failed to get advice and so abandoned their case.⁹ Research for the EHRC in 2009 found "significant advice deserts" for discrimination law in parts of England, Scotland and Wales.¹⁰

These advice deserts are expanding as the impact of the closure of the EHRC's legal grants programme and cuts to legal aid are felt. Since 2009, the EHRC has provided £14m in grant funding to 285 frontline organisations including Citizen's Advice Bureaux, law centres, Race Equality Councils, and the Disability Law Service. This funding has supported specialist discrimination advice and casework as well as education and information on equality and human rights. Most of it has now ceased and the remainder will end in March 2013.

"The loss of the EHRC grants has had a devastating impact on Citizens Advice Bureaux' clients and our ability to deliver discrimination casework and representation in England - a recent survey showed it has been impossible for the majority to find alternative sources of funding and casework staff have been lost. The situation is set to get even worse from 1st April 2013 when Legal Services Commission employment contracts end, because the EHRC grants and LSC contracts were the primary sources of funding for this essential work. The notable exception is in Wales where the Welsh Government has stepped in with funding for 2012/13."

Citizen's Advice

⁹ Balmer et al, 'Knowledge, capability and the experience of rights problems', Legal Services Research Centre (March 2010)

¹⁰ Borland et al, 'Responding to discrimination: the geography and geometry of advice provision in England, Scotland and Wales, EHRC (July 2009)

When criticised about access to justice in relation to equality, the Government reiterates its commitment to keep discrimination law within the scope of legal aid. But with widespread cuts to the legal aid budget and the removal or partial removal of other areas of civil law like employment, housing and social welfare from the scope of legal aid from early 2013, it will be increasingly hard for individuals to find legal aid providers. Also, without those other areas of law being fully covered, many victims of discrimination will fall through the net. This is because individuals may initially present their problem as being about difficulties they are having with their employer, landlord or with a benefits claim, but may not recognise that what they have experienced is, in fact, discrimination.

“The discrimination category that remains under legal aid will not replace the work done previously by Law Centres with EHRC funding. If you’re discriminated against you’re just going to have to put up with it – unless of course you can afford thousands of pounds to pay for legal advice.”

Julie Bishop, Law Centres Federation¹¹

The Government is also placing great emphasis on the new Equality and Advisory Support Service which it has commissioned from a large private sector provider to replace the EHRC’s helpline from autumn 2012. The EASS will provide generic advice setting out an individual’s rights under discrimination law. It will not provide detailed legal advice on the individual’s case. It is assumed that individuals will be referred to the EASS from frontline organisations like trade unions, CABx, law centres and advocacy groups. However, unions and other frontline organisations are unlikely to want to refer vulnerable individuals onto a generic telephone advice service, particularly as they could be referred back if they need casework support. It also fails to recognise that, because of the cuts, many of the frontline advice providers may not be there in the future to make the referrals.

Chequebook justice

If an individual does make it to the point of complaining to a tribunal, from summer 2013 they will have to pay £250 to initiate a discrimination claim, £950 for a hearing and further fees for other tribunal services as the claim proceeds. If they are successful – and only 2 to 3% of discrimination claims are – they can apply for an order for the fee to be reimbursed by the employer, but this will not be automatic. And, if they want to appeal a tribunal’s judgement, it will cost a further £1,600 to go to the Employment Appeal Tribunal.

A remission scheme will give some individuals full exemption from fees. But this will only be for those claiming certain benefits or those with a very low household income (around NMW levels for a single person). Analysis for the TUC estimated that nearly three-quarters of claimants will have to pay at least some of the fees.

“[T]his is chequebook justice pure and simple. It is a profoundly regressive step... giving a green light to unscrupulous employers to discriminate at will.”

Brendan Barber, TUC General Secretary

¹¹ <http://legalvoice.org.uk/blog/what-about-our-clients/>

Threats to the public sector equality duty

“It is incumbent on every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any section of our communities.”

Lord Macpherson, Stephen Lawrence Inquiry 1999

A major change in the law

The racist murder of Stephen Lawrence and the findings of the Macpherson Inquiry into the Metropolitan Police Service’s failure to properly investigate and prosecute the crime led to a radical change in our equality law. Lord Macpherson concluded that “institutional racism” affected the MPS, which he defined as: “The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin”.

In 2002, a positive duty was placed on public authorities, requiring them to have “due regard” to the need to prevent unlawful race discrimination, to promote racial equality and to foster good relations in all that they do. It meant organisations had to take a proactive and collective approach rather than merely reacting to individual complaints of discrimination when they occurred and if they could be proved.

“The Bill is one of the most significant steps that the Government will take on race equality in Britain ... The Bill will create a positive duty on all public authorities to promote race equality. It will be a major change in law.... The public services must recognise that it is no good simply paying lip-service to race equality: they must ensure that race equality is at the heart of their organisation’s considerations when providing services – it should be part of the mainstream of policy consideration.”

Mike O’Brien MP, then Parliamentary Under-Secretary of State for the Home Department, introducing the Race Relations Amendment Act 2000

Importantly, the duty meant that organisations had to consider the impact a decision, policy or practice would have on race equality before taking action and it encouraged engagement with those from disadvantaged or under-represented groups who were affected by a public authority’s services or employment practices or policies.

Similar duties on gender and disability followed and, in the Equality Act 2010, a single Public Sector Equality Duty (PSED) was created which took effect in April 2011. It covered not only race, disability and gender but sexual orientation, age, religion or belief and gender reassignment as well.

While the Coalition implemented the new PSED, there was clearly some unease about it as immediately it sought to dilute its impact. This may have had something to do with the fact that the Government and local authorities were facing a growing number of legal challenges to decisions to cut public spending because of their failure to properly consider the impact on equality.

In the successful challenge to Michael Gove’s decision to cut the Building Schools for the Future programme, the judge said that the lack of any evidence to show that equality was taken into account was “glaring and very telling” and that he was “simply not satisfied that any regard was had to the relevant duties at all, let alone rigorous regard”. Gove was also criticised for his failure to consult the claimants, who if they had been consulted “would have been able (if they wished) to highlight... special equality considerations to him”.

R (Luton Borough Council and ors) v Secretary of State for Education [2011] EWHC 217 (Admin)

Diluting the specific duties

The initial set of specific duties to support the PSED was ditched just before the duty was due to take effect in April 2011 and a “policy review” was announced by Theresa May “to strip out unnecessary process requirements”.¹²

The final set of specific duties was extremely weak. Just two specific duties remained: a requirement to publish some equality information and a requirement to publish at least one equality objective. Important specific duties related to engagement and the analysis of equality impact were lost (even though both are generally considered necessary to show “due regard”).¹³

The omission of any specific duty on engagement was a particular loss for disabled people who had previously benefited from a strong specific duty to involve disabled people under the former disability equality duty.

“The involvement of disabled people has enabled public authorities to make informed decisions about policies and services that meet real need rather than perceived need. We have no confidence that it will happen on an adequate basis without a specific requirement on public authorities.”

RADAR response to specific duties’ dilution

No statutory code of practice

The new PSED was to be supported by a statutory code of practice prepared by the EHRC, as the previous duties had been. Without detailed specific duties to guide public authorities and the courts on what the PSED required, the code was expected to be of even greater value and significance than the earlier codes.

However, in spring 2012, it became apparent that the Government was blocking that too. It was left to the EHRC to announce on its website that “[t]he Government... feels that further statutory guidance may place too much of a burden on public bodies.” The EHRC’s hands were tied as it relies upon the Secretary of State to lay a code before parliament for it to become statutory.

¹² For Welsh and Scottish public authorities detailed specific duties were introduced by devolved administrations.

¹³ See TUC Equality Duty Toolkit for further guidance at www.tuc.org.uk/equality/tuc-20159-f0.cfm

“[R]ather than creating a regulatory burden, statutory codes have a valuable role to play in making clearer to everyone what is and is not needed in order to comply with the Equality Act.”

EHRC

Review of the whole PSED

Then, in May 2012, as part of the response to the Red Tape Challenge, the government announced that it would be “looking again” at the whole PSED – the specific duties and the general “due regard” duty on the face of the Equality Act – as it has a “strong desire to reduce unnecessary bureaucracy where it exists and consider alternatives to legislation”.

It is understood that a review group is being established that will mainly comprise senior leaders from public authorities – the very people who are meant to be held to account by the duty.

In July 2012, Brendan Barber wrote to Theresa May asking for trade union involvement in this review. She responded: “I want to be made aware of compelling evidence of where the duty is making a difference and I am certain trade unions will have insight and evidence that will benefit the review”. In autumn 2012, the TUC will co-ordinate evidence and input from unions.

If the PSED goes, years of positive progress in mainstreaming equality in many public authorities may go with it. Research on the impact of the race duty found that it had produced positive benefits in the majority of public authorities. Four-fifths said it had moved race equality beyond HR and had helped them identify priorities for action. 76% said it had increased senior management commitment, while others mentioned better community relations, improved communication and workforce representation, and raised awareness of race equality.¹⁴

We will also lose a key tool for ensuring the voices and concerns of those who are often marginalised are considered at a formative stage. The PSED has not just been used in a litigious way to hold public bodies to account, trade unions and others have increasingly used it within their campaigning and bargaining strategies.

“Just as the law played a role in changing public attitudes to the acceptability of discrimination, in my view, the PSEDs – if emphasised by trade unions and others and used creatively – can, over time, play a normative role in mainstreaming the idea that a decision which does not specifically address ‘the needs’ to promote equality of opportunity and substantive equality, and to foster good relations between different groups in society, is a bad decision.”¹⁵

Helen Mountfield QC

¹⁴ *The Public Sector Equality Duties: Making an Impact*, Schneider-Ross (November 2007)

¹⁵ TUC/EOR Discrimination Law Conference 2012

Future of the Equality and Human Rights Commission

“The independence and/or effectiveness of [equality] bodies can be undermined when the nature of their work is not properly understood and they may be viewed with a degree of hostility or deemed in some way politically inconvenient.”

Opinion of the Council of Europe’s Commissioner for Human Rights on national structures promoting equality (March 2011)

Role of equality bodies

According to the Council of Europe’s Commissioner for Human Rights, national equality bodies potentially play a number of valuable roles. They can:

- Enable people to exercise their rights under anti-discrimination legislation.
- Support employers, service providers and policymakers to develop effective equality policies and practices.
- Mobilise a wide range of stakeholders such as trade unions and civil society to take action to promote equality and combat discrimination.
- Contribute to a culture of rights within society which recognises the value of strong equal treatment legislation.
- Develop an essential knowledge base about issues of discrimination and inequality within society.

According to the Commissioner, there are two core indicators against which to assess national equality bodies – **independence** and **effectiveness**.

Independence requires freedom to allocate their resources, appoint staff, determine their own priorities and exercise their powers as they see fit. The legal structure and accountability processes for such bodies are key factors in determining their independence.

To be **effective**, national bodies must be able to use their functions and powers in a way that ensures an impact on discrimination and inequality. The level of resources available to these bodies is an essential determinant of effectiveness.

The Coalition Government is undermining both the independence and effectiveness of our national equality and human rights body, the Equality and Human Rights Commission.

Cuts to the EHRC

The Government began by slashing the budget for the EHRC. By 2014/15, it will have lost 62% of its funding and 72% of its staffing compared to when it was established in 2007. This will make the EHRC almost the size of the former Disability Rights Commission – just one of the equality commissions it replaced – despite having much wider responsibilities for equality based on age, disability, gender, gender reassignment, race, religion or belief, sexual orientation as well as being our national human rights institution.

“[I]ts ability to use effectively even its restricted powers will be compromised by severe cuts in its annual budget... the Commission will be grossly under-resourced.”

Professor Sir Bob Hepple QC¹⁶

Executive power to amend or abolish the EHRC

The EHRC was included in the Government’s Public Bodies Bill – the vehicle through which the Government gained extraordinary powers to modify or abolish a wide variety of non-departmental public bodies without proper parliamentary debate. For a body like the EHRC, which has a role in standing up to the Government on behalf of individuals and assessing the Government’s record on creating a society in which rights are respected and no-one is held back by discrimination or prejudice, this has serious implications.

For example, the future EHRC is likely to think twice before undertaking formal investigations of the kind the former Commission for Racial Equality undertook into racism in the prison service and the Crown Prosecution Service, knowing that the Home Secretary could fairly swiftly lay secondary legislation to modify its functions or abolish it.

“How can an organisation hold the Government to account if that Government, without even proper parliamentary scrutiny, can turn round and punish that public body by reducing its powers?”

Baroness Meacher, House of Lords’ second reading on Public Bodies Bill

Reform of its duties and functions

In 2011, the Coalition Government published a consultation on reforming the EHRC, setting out how it intended to initially use the powers given to it under the Public Bodies Bill. It proposed: changes to the EHRC’s statutory duties and functions as set out in the Equality Act 2006; the ending of its grants funding; and changes to accountability processes so the Government can exert tighter control over its finances and performance. It also announced the closure of the EHRC’s helpline and its replacement by a new service commissioned by the Government from the private sector.

In May 2012, the Government announced its response to the consultation. Despite opposition from the majority of consultation respondents, it proceeded with the repeal of the general duty in section 3 of Equality Act 2006, which established the EHRC. This requires the EHRC to encourage and support a society based on freedom from prejudice and discrimination, individual human rights, respect for the dignity and worth of each individual, equal opportunity to participate in society, and mutual respect between groups based on understanding and valuing diversity and shared respect for human rights.

¹⁶ ‘Enforcing Equality Law: Two Steps Forward and Two Steps Backward for Reflexive Regulation’ ILJ (December 2011)

“By repealing section 3 of the Equality Act 2006, the Commission will cease to be an agent of social change harnessing the law and its powers to address entrenched inequalities. ... With the changes proposed to the Commission and with a further weakened (or repealed) PSED, both the law and the role of the Commission risk being returned to the failed model of compensation for individual victims of past discrimination which existed before the Stephen Lawrence Inquiry.”

Neil Crowther, former Director of Human Rights and Disability Rights at EHRC

The government also set about repealing the EHRC’s good relations duty, again despite the majority of respondents not supporting this course of action. This duty originated from the CRE where it was used as the basis for important and effective work to improve race relations. This included: guidance on tackling political extremism; the Kick Racism out of Football campaign; and work done to improve social cohesion following the riots and troubles in Northern cities in 2001.

The good relations duty was recognised to have relevance for other protected characteristics as well, which is why it was included in the Equality Act 2006 that created the EHRC (e.g. in encouraging greater acceptance of lesbian and gay people in all walks of life, ensuring the full participation of disabled people in public life, and greater respect for the rights of children and older people).

Without this duty the EHRC will be focused primarily on regulating the vertical relationships between organisations and individuals, rather than being able to undertake initiatives aimed at positively influencing wider public attitudes and improving relations between individuals and groups.

Less support and contact with victims of discrimination

The EHRC’s grants programme has been brought to an end by this Government and its helpline, which has dealt with over 40,000 calls a year (a significant proportion from disabled people suffering discrimination in employment) will close and be replaced by a new Equality and Advisory Support Service commissioned by the Government from the private sector. In addition, the regional offices of the EHRC are being closed in response to budget cuts.

These changes make the EHRC less accessible to victims of discrimination and could negatively impact on the effectiveness of its policy and strategic litigation functions, particularly if the new EASS does not get the referrals from frontline organisations, intelligence is not properly shared with the EHRC and if the EASS lacks the expertise to identify and pass on potentially important strategic cases for the EHRC’s legal team to pursue.

If these functions are impaired this will be a significant loss. For example, it has been estimated that by the early 1990s, the former Equal Opportunities Commission was responsible for about one third of all the referrals to the European Court of Justice on equal pay and equal treatment, resulting in a number of landmark judgements that positively advanced the law. Similarly, the Coleman case, which established the principle that treating carers of disabled people less favourably than others in similar situations is direct disability discrimination, was initially identified by the former Disability Rights

Commission helpline and passed onto the DRC legal team and subsequently the EHRC's lawyers to pursue.

Tighter financial and performance controls

The government initially proposed making legislative changes to the EHRC so that it was more accountable to government. However, it has since decided such legislative changes, which the majority of consultation respondents opposed, are unnecessary. This is because it is achieving what it set out to achieve – tighter control over the EHRC – through other means, in particular, a new Framework Document governing the relationship between the EHRC and its sponsoring department, the Home Office.

The Minister shall have regard to the desirability of ensuring that the Commission is under as few constraints as reasonably possible in determining –

- (a) its activities*
- (b) its timetables, and*
- (c) its priorities.*

Equality Act 2006, Part 4, s.42(3)

The new Framework Document appears to pay little heed to Part 4, s.42 of the Equality Act 2006. It imposes the following requirements, among others, on the EHRC:

- In setting its strategic plan and annual business plan, the EHRC must have regard to an open letter, which the Home Secretary and Minister for Equality will send to the EHRC Chair each November, and will set out what the government's key relevant priorities and concerns are for that year.
- The EHRC is required to send all near final versions of external communications to the Home Office at least 48 hours prior to their release.
- All spend on advertising and marketing by the EHRC must be agreed in advance with the Home Office. (Will the powerful advertising campaigns we saw by the CRE in the 1990s or the EOC on equal pay happen in the future?)
- The EHRC must seek to fill all vacancies from within the civil service and must seek Home Office approval for any external recruitment.

Zero-based budget review

A 'zero-based budget review' of the EHRC's activities will also be carried out to inform the Home Secretary and Minister for Equality's decisions about its future funding. The outline for this review again reveals a lack of understanding on the part of Government of the distinct role and the necessity for independence of the EHRC. It states it will examine the EHRC's current spending, including identifying whether there are "any clear gaps in activity that could/should be done

in support of the Government's Equality Strategy and human rights agenda”
[emphasis added].

The review will also take account of the wider institutional landscape within which the EHRC operates, “including what functions are or might be carried out by Government Equalities Office (GEO) or other bodies or vice versa”.

The Government Equalities Office shares a budget allocation with the EHRC and it appears to be increasingly competing with it for a role and resources (e.g. the GEO has produced its own guidance to the Equality Act and PSED while refusing to take steps to make the EHRC guidance statutory). This raises further doubts about the GEO/Home Office's ability to act as an effective sponsor department for an independent EHRC.

Future threats to close or remove functions

At the same time as announcing its response to the consultation on reform of the EHRC, the Government also said that it would be appointing a new chair in September 2012 and smaller board of commissioners “with stronger business skills and experience” from December 2012. In autumn 2013, the EHRC's progress will be reviewed again. The new chair and board will have less than a year in position, dealing with substantial challenges like the ongoing workforce and budget reductions. If sufficient progress has not been made (it is not clear against what parameters this will be judged and by whom), the Government says it will implement more substantial reform which could mean “more fundamental, structural changes to the EHRC's remit including some functions being done elsewhere, or splitting its responsibilities between new or existing bodies”.

Can EHRC retain its NHRI status?

As well as the EHRC being our national equality body, it is also recognised as a national human rights institution by the UN and was awarded the highest ‘A’ status in 2009.

In December 2010, Rosslyn Noonan, the UN's International Co-ordinating Committee chair emphasised the importance of its independence in retaining its ‘A’ status in a letter to the Home Secretary about the proposed reform of the EHRC. She emphasised the importance of it having sufficient funding and it not being subject to financial control that might compromise its independence. On both counts it seems the EHRC's ‘A’ status could be reviewed.

“Independence is essential to the integrity and credibility of NHRI's which have a critical role in ensuring that the State's in which they work comply with human rights obligations... the EHRC should not be considered an agent of the Crown, nor its staff civil servants”.

Rosslyn Noonan, Chair of UN International Co-ordinating Committee

Civil society voices struggling to be heard

“The active involvement of civil society and in particular those affected by injustices and their organisations, is essential in order to come to grips with discrimination and inequality and realise the necessary changes in society.”

Equinet, the European network of equality bodies

Civil society has long held a crucial role in holding the Government to account and providing a voice to those whose voices are rarely heard by decision makers. Much of our equality legislation came about because of trade unions and other civil society organisations campaigning against discrimination and for legal rights that ensured equal treatment for all.

In order to ensure those rights become a meaningful reality and society does change as a result, civil society needs to continue to actively campaign and advocate on behalf of the disadvantaged and discriminated against, it needs to retain its independent voice and it needs to be engaged by the Government and policymakers in decisions that affect those it represents.

The election of the Coalition Government has heralded a new era for civil society with significant challenges. Not only has the austerity agenda had a devastating impact on the voluntary sector, but there is a sense that third sector organisations no longer have that “place at the decision making table” and their legitimacy as stakeholders is challenged.

Civil society and austerity

One of the cornerstones of the Conservative election campaign in 2010 was the nebulous concept of the “Big Society”. The rhetoric suggested a growth in voluntary action and charitable giving. Yet the reality for much of the voluntary sector has been drastic funding cuts, increased competition for funding, a reduction in services to individuals, and in many cases, complete closure.

An NCVO cuts mapping initiative¹⁷ gives some insight into the scale of the cuts faced by voluntary sector organisations. In 2011-12, some 494 cuts were posted amounting to £75,388,854. According to research¹⁸ based on Freedom of Information requests carried out by the False Economy website in 2011, charities face net funding reductions of more than £110 million in that year.

Professor Sylvia Walby and Jude Towers analysed the False Economy data in relation to the violence against women sector¹⁹, which is one of the government’s stated equality priorities in its Equality Strategy, and found that:

The effect on local services is both dramatic and uneven across localities.

¹⁷ <http://voluntarysectorcuts.org.uk/>

¹⁸ <http://falseeconomy.org.uk/blog/exclusive-more-than-2000-charities-and-community-groups-face-cuts>

¹⁹ <http://www.trustforlondon.org.uk/VAWG%20Full%20report.pdf>

- Local authorities cut funding for domestic violence and sexual violence services by 31%, from £7.8 million to £5.4 million, between 2010/11 to 2011/12.
- Organisations with smaller budgets from local authorities faced more substantial cuts: among those with local authority funding of less than £20,000 the average cut was 70% compared to 29% for those receiving over £100,000.

Many small, specialist services such as organisations like Galop, which provides support to LGBT victims of violence and abuse, including domestic and sexual abuse, and hate crime, have faced particular difficulties in retaining existing statutory funding because they are relatively small or provide services to individuals in more than one local authority area.

“Galop’s clients are spread across London’s many boroughs, and have particular and specialist needs. The cuts in funding to cross-borough work in London have been devastating to organisations such as ours, leading us to have to significantly reduce our service provision, and threatening the future of the organisation.”

Galop

Cuts to the EHRC grants programme have compounded the funding crisis and forced Race Equality Councils, women’s centres, and organisations providing support to disabled people and LGB and T people to significantly reduce their services, if not close their doors altogether.²⁰

Over the past 2 years race equality organisations have witnessed significant changes that have reduced the impact of the EHRC. Additionally there has been a lack of guidance on the implementation of the Equality Act 2010 particularly the Public Sector Equality Duty. This has been coupled with severely reduced resources for the voluntary sector, local community and advocacy groups. There is increasing demand, interest and need among these communities and groups in seeking support and guidance that will help them to not only hold public authorities to account but to offer effective support within the communities they represent.

Race on the Agenda (ROTA)

Civil society – an independent voice?

In the context of dwindling funding and the government encouraging the voluntary sector to play a role in delivering public services, the competition for contracts or sub-contracts is exerting an ever increasing influence on the work that charitable organisations do. A survey by the Charity Commission found that only a quarter of charities providing public services agreed that they are free to make decisions without pressure.²¹

²⁰http://www.civilsociety.co.uk/finance/news/content/12445/ehrc_cuts_will_decimate_local_equality_services_warns_voice4change

²¹ ‘Stand and Deliver: The Future for Charities Delivering Public Services’ Charity Commission
Two steps forward, one step back

A recent report from Equality South West on the challenges facing BME organisations in the region also highlights the conflicts of interest many voluntary organisations face in trying to challenge public authorities for non-compliance under the PSED when they are seeking contracts and funding from them.

Commissioning risks *“reducing independent organisations to the status of sub-contractors ... and in the process blunting their willingness and ability to criticise authority or fight for social justice”*²²

Andy Benson, NCIA

Disengaging civil society

As well as the challenges to funding and independence, civil society is finding it increasingly difficult to be heard and get a place at the table with the Government and policymakers. The loss of the specific duty on engagement in the PSED and further threats to the PSED are likely to weaken public authorities’ willingness to listen to and address the concerns of organisations representing those who are disadvantaged or who have faced particular barriers in accessing public services or being able to participate in public life.

The Government also disbanded the Women’s National Commission soon after taking office, which for over 40 years had provided an independent, direct voice to government on women’s issues. The WNC had over 670 partners from the UK’s women’s sector and organisations seeking to promote women’s equality, representing the voices of around 8 million women in total. It had a proven track record in reaching out to some of the most marginalised groups of women who really struggled to have their voices heard by politicians and policymakers.

“Partners and commentators will look back on today’s announcement and consider this move to be a mistake. The Commission’s unique, four nations’ remit and proven track record in reaching marginalised women who would not otherwise have access to government is unlikely to be replicated. This fully inclusive and nationally cohesive voice for women could be silenced altogether by this move.”

Baroness Joyce Gould, Chair of WNC in response to announcement of its closure.

The WNC was replaced by a Women’s Engagement Newsletter, a top-down form of e-mail communication informing subscribers about government initiatives, and by a Women’s Business Council, composed of senior businesswomen and men – not people who generally struggle to get the ear of government.

“Equalities issues are no longer seen as a priority by government. We are seeing attacks to the structures that support equality, such as the EHRC and the closure of the Women’s National Commission, as well as to important legislation that protects the rights of the most vulnerable.”

Women's organisations in particular are facing crisis or even closure. In this time of uncertainty, our voices are being increasingly marginalised and we are not part of the consultation process when key decisions are being made which affect women's lives.

The Women's Resource Centre has been replaced as a partner of the Office for Civil Society and in representing the equalities sector, by large generic bodies which do not have the same historic understanding and expertise around the needs of vital women's charities.

Such changes are made in the name of austerity, with the idea that bigger is better, and with no understanding of the value of specialist services and ignoring our expertise and understanding of women's issues. On this basis, the specific evidence based recommendations we can make in the policy making process are ignored, and already vulnerable communities are further marginalised."

Vivienne Hayes – Women's Resource Centre

Trade unions' concerns about equality at work

Trade unions are, of course, a part of civil society too and are facing growing challenges in getting employers to engage on equality issues at work. The TUC Equality Audit 2012 found that a majority of unions believe it has got harder to get employers to address equality at work since the Coalition Government came to power.

"In the face of austerity, companies see equality as an easy target." CWU

"The coalition policies... and so-called Red Tape Challenge is undermining fairness, equality and rights of workers." UNISON

"Employers feel more supported with the Coalition Government to attack workers' rights. Also, many employers are focused elsewhere and they do not see equality as a priority." Unite

"... employers are feeling confident, even 'gung ho', in challenging the trade union role in the workplace". GMB

TUC fundraising appeal for the Stephen Lawrence Charitable Trust

One organisation that has lost its public funding since the Coalition Government took office is the Stephen Lawrence Charitable Trust, which Doreen Lawrence established, to support young people from disadvantaged backgrounds enter the professional world by offering mentoring and bursaries.

In a recent interview in the Guardian, Doreen described the impact the loss of funding was having "We had 15 full-time staff; we're now down to three, including myself. We get donations from ordinary people. But it's really hard, it's really hard. How long is it going to be able to survive? If we're still here this time next year, it will be because of a miracle."

The TUC have consistently supported this campaign and Stephen's legacy through the fight to tackle institutional racism in the workplace and in wider society. Doreen Lawrence visited and spoke at to the 2012 TUC Black Workers' Conference.

The TUC has a fundraising appeal to support the Stephen Lawrence Charitable Trust. To contribute, please visit: www.justgiving.com/TUCslct