

## PROFORMA FOR EHRC REFORM CONSULTATION RESPONSES

**The consultation closes on 15 June 2011.** Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

### Contact details:

Please supply details of who has completed this response.

Response completed by (name):

Position in organisation (if appropriate):

Name of organisation (if appropriate):

Address:

Contact phone number:

Contact e-mail address:

Date:

### Confidentiality

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential. If you wish your response to remain confidential, please tick this box and say why. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

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Please say why

In what capacity are you responding (please tick if appropriate)?

As an individual

On behalf of an organisation

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Other (please specify)

**Note:**

- In addition to the completed proforma, you can also send other supporting information if you so wish.

Completed forms should be e-mailed to the following address:-

[EHRC.reform@geo.gsi.gov.uk](mailto:EHRC.reform@geo.gsi.gov.uk)

If you are posting the form please send to:-

EHRC Reform Consultation Responses  
C/O Louise Sutton  
Government Equalities Office  
Zone G10, 9<sup>th</sup> Floor Eland House  
Bressenden Place  
London SW1E 5DU

Thank you for completing this response form.

**EHRC's core functions**

**PROPOSAL ONE – Repealing the General Duty**

**Question 1: Do you agree that Section 3 should be repealed?**

Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

Section 3 gives the Commission a vast range of powers that lack legal clarity and should never have been given to a 'quango' in the first place.

The lack of legal clarity also means that the Commission is virtually immune from any Judicial Review based on Ultra Vires, as almost any action could be justified under the vague language of section 3.

When the Commission's powers were debated in the House of Lords on 6 July 2005 and 19 October 2005, it was clear that there was a problem with giving the Commission powers to "create a society". Although this language was ultimately removed, we do not feel that the new language—now found in Section 3— was ever sufficiently precise. As Lady O'Cathain said in 2005: "The fact remains that the Commission is being given a huge overarching mandate in relation to the whole of society." (HL Debs., Col 781, 19 Oct 2005).

We agree that Section 3 ought to be repealed in order to remove its "huge overarching mandate".

**PROPOSAL TWO – Amending the equalities duties at section 8 to clarify EHRC’s core equality functions**

**Question 2: Do you agree that remodelling the duties at s.8 of the Equality Act 2006 to mirror the role and functions set out in para 1.9 of chapter 1 will help to focus EHRC on its core functions as an equality regulator? If not, what do you think EHRC’s core functions should be?**

Please place a cross in the appropriate box

Agree  Disagree  Unsure

Please explain why -

We agree that the core duties of the Commission ought to be clarified.

However, we disagree about what these core duties should be. It is our view that the Commission has acted in a hostile and biased manner since its conception in its treatment of Christians and Christian organizations.

For example:

- 1. The Commission intervened against faith based adoption agencies.** The Commission argued, *inter alia*, that the Church’s beliefs about marriage were “non-core beliefs”. (See *Catholic Care (Diocese Of Leeds) v. The Charity Commission for England and Wales* [2010] EWHC 520 (Ch)).

Furthermore, once the High Court sent the case back to the Charity Commission, the EHRC again intervened again by making an **unsolicited submission** to the Charity Commission “regarding [the Commission’s] view on human rights law and [Catholic Care’s] case as presented in the High Court.” Given that the Charity Commission had the judgment of the High Court which set out the relevant law in detail, it is not clear why the ECHR felt it needed to make further submissions – at the taxpayer’s expense.

- 2. The Commission intervened against Christian foster carers.** (See *Johns v. Derby City Council* [2011] EWHC 375 (Admin)). The Commission made some extraordinary statements in its submissions, including a warning that children could become “infected” with Christian beliefs—something that the Commission referred to as a “drafting error” when it came to light. Although the Commission was meant to outline all of the relevant law to the judges in a non-biased way, it devoted **12 pages** of submissions to outlining the legal protections afforded to sexual orientation and **2 lines** referring to the legal protections afforded to religion.
- 3. The Commission acted against Christian guest house owners.** (See *Hall and Preddy v Bull and Bull*, 18 January 2011, Case No. 9BS02095). Given

that the Commission has a duty to protect the rights of Christians as much as it does homosexuals, it is questionable as to why it chose to come down so heavily on one side rather than the other.

Furthermore, the Commission's decision to appeal the County Court decision in an attempt to squeeze more money out of the Christians was a serious "error of judgment" – as the Commission put it. In fact, the homosexual couple who originally brought the case said on radio that the Commission's decision to seek more money upset them more than the Christian's actions in the first place.

Hence, we are concerned about how the Commission has used its powers thus far to "address non-compliance" and "enforce the law". We believe the Commission has acted in a biased manner, and seemingly with impunity, committing "errors of judgment" and "drafting errors" when the public learns of its hostility towards Christians.

**Given that the Commission has such a poor track record towards Christians in such a short period of time, we suggest that its powers should be restricted in order to prevent it "taking sides" in the future.**

We believe that the Commission should only be given the power to bring or support legal cases in the areas laid out by Council Directive 2000/43/EC and Council Directive 2004/113/EC. This would remove the Commission's enforcement role in relation to sexual orientation and religion or belief. As these areas are particularly controversial and often in opposition to one another, removing the Commission's enforcement powers in these areas would prevent further biased interventions in the future.

**Question 3: Do you agree with our proposal to amend the section 12 duty so that it:**

**a) specifies the aims and outcomes which EHRC is required to monitor progress against; and**

**b) requires a report every five rather than three years, to tie into the Parliamentary cycle and enable reports to capture meaningful change over time?**

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Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

We agree that if the Commission is to produce a lengthy report, every five years is better than every three.

However, we hope that the next report will be of more benefit than the Commission's first "Triennial Review". In its first review, entitled "How Fair is Britain?", the Commission failed to even define fairness, but seemed to suggest that its view of fairness was making everybody the same.

Furthermore, the report focussed on **equality of outcomes rather than equality of opportunity** and failed to explain or engage with data that contradicted its conclusions. (For further information, please see: "Difference, Inequality and Unfairness: The Fallacies, Errors and Confusions in the Equality and Human Rights Commission Report, How Fair is Britain?", *Civitas* (Prof. Peter Saunders), October 2010.)

Therefore, if the Government proposes that the Commission ought to monitor "progress towards a fairer society", we hope that some discussion will be had as to what constitutes "fairness" and "equality". We suggest that the Government and the Commission should focus on equality of opportunity, not equality of outcome.

## PROPOSAL THREE – Supporting the EHRC to enhance its focus on human rights

**Question 4: Do you agree that the proposals to focus the Commission on its core functions, as well as the measures set out in Chapter 3 to increase the Commission’s accountability for the its performance, will help the Commission fulfil its human rights remit? If not, what further changes do you suggest?**

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Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

We agree that narrowing the overall breadth of the Commission’s remit will increase its accountability and hopefully enhance its performance.

**PROPOSAL FOUR – Removing the Commission’s good relations duty (section 10)**

**Question 5: Do you agree that we should remove the Commission’s good relations function, and the associated power at section 19? If not, why not?**

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Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

The Commission has a poor track record on how it has spent taxpayer’s money and we believe its powers should be reduced. Therefore we agree that the Commission’s “good relations” duty should be removed.



EHRC's Non-core activities

**PROPOSAL FIVE – Repealing the Commission's power to make provision for conciliation services**

**Question 6: Do you think the Government should repeal the Commission's power to make provision for conciliation services, as part of the process of focussing the Commission on its core functions?**

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Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

At an average cost of £5,000 per case in 2009-10, the Commission's conciliation services are remarkably expensive. As the consultation rightly points out, the National Mediation Helpline provides an effective service at a tenth of the cost.

We therefore agree that the Commission's powers to provide conciliation services should be removed.

## PROPOSAL SIX – A new system for equality information, advice and support

**Question 7: Do you agree with the proposals set out to provide a new system of information, advice and support? If not, what changes to the system would you recommend?**

Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

We agree that a new system is required as the Commission's current system has clearly been ineffective.

It is remarkable that the National Audit Office did not give a clean audit opinion to the Commission's accounts for 2008-09 due to its irregular spending and lack of effective financial and management controls.

Although examples of wasted taxpayer money abound—the Commission paid £629,276 in severance packages to officials of the legacy commissions who were then re-hired by the Commission on generous consultancy packages—it was the Commission's utter failure to properly oversee its grants and funding programme (some organisations that received grants ceased to exist and had not accounted for the money they were given) that led to the qualified accounts.

Furthermore, in the NAO's opinion, the financial controls at the Commission were so weak that problems are likely to have continued beyond the 2008-09 reporting period.

However, without being given more details about the Government's intended replacement, we cannot say whether we think this will be a better use of taxpayer's money.

**Question 8 What should a new citizen - focused, cost effective information and generalist advice service look like?**

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Please explain -

**Question 9: How can government best provide public education on discrimination and human rights, targeted on the most disadvantaged groups?**

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Please explain -

We are concerned about what the Government and the Commission mean by “the most disadvantaged groups”.

The Commission’s 750 page Triennial report did not mention a single case about the discrimination against and marginalisation of Christians in the UK, despite new cases hitting the headlines on an almost weekly basis.

Therefore, if the Commission is given a wide discretion to divert funds to the areas that it perceives to be the most disadvantaged, there is a concern that it will continue to fund the causes and cases that it wishes, at the expense of others.

A careful look at its grants programme and its interventions in legal cases reveal that the Commission is more interested in some causes than others. Sometimes—as was the case in *Catholic Care*, *the Johns* and *the Bulls*—this is in direct opposition to the cause of Christians – who are as equally protected in equality law as others.

**Question 10: Is there anything that distinguishes discrimination cases from other cases eligible for civil legal aid that would justify further public funding for support?**

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Please explain-

No.

**Question 11: Do you agree with the proposal for the Air Transport Users Council (AUC), part of the Civil Aviation Authority (CAA), to provide the complaints handling service for disabled passengers in the future? If not, why not?**

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Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

## PROPOSAL SEVEN: Supporting Social Action

**Question 12: How could the new Government funding stream most effectively support civil society organisations to promote equalities, human rights and tackle discrimination?**

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Please explain -

We hope that if a new scheme does come into operation, it will provide funding to faith based organizations without requiring those same organizations to remove or hide their religious ethos.

Faith based organizations work best when they are allowed to maintain the ethos that leads to such good work in the first place.

A sad result of recent equality legislation is that it has led to the closure of faith based adoption agencies and grants being withdrawn from other religious organizations.

Many Christian organizations are recognized as doing fantastic work in their local communities and would welcome government funding to continue this work. However, they should not have to become “secularized” in order to access this money, nor should they be forced to promote or condone behaviour that is contrary to their core beliefs.

The Archbishop of York said in his speech regarding the Equality Act (Sexual Orientation) Regulations 2007:

"It now seems to me that a legal sausage machine is being created by these regulations, requiring many of us to go through it and come out at the other end, sanitized, and with our consciences surgically removed. The freedom of a good and magnanimous conscience and the voluntary association for the common good cannot be made subject to legislation, however well-meaning."

Having seen the legislation referred to effectively close down faith based organizations by the removal of government grants, we are concerned that a future government grants programme will continue to require faith based organizations to have their corporate consciences “surgically removed” in order to access public money.

**Achieving greater value for money and accountability**

**Question 13: Do you agree with our legislative proposals to increase the Commission's transparency, accountability, and value for money?**

Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

As stated above and as highlighted by the Government, the Commission's use of public money has been remarkably poor since its very conception.

We agree that the Commission should be more transparent and accountable and represent better value for money and hope that the proposed changes achieve these aims.



**Our approach to reform & next steps**

**Question 14: Do you agree with our approach of legislative and non-legislative reform?**

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Please place a cross in the appropriate box

Agree  Disagree  Not sure

Please explain why -

More information is required from the Government.