

**Memorandum from Francesca Klug, Professorial Research Fellow<sup>1</sup>, and  
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## **Summary**

The Committee has asked for evidence regarding the structure, functions and powers of the proposed Commission for Equality and Human Rights (CEHR). In this submission we comment only on the proposed *national* human rights role of CEHR<sup>2</sup>, outlining in particular how the human rights powers proposed in the relevant papers produced for the CEHR Task Force might operate in practice. We also suggest five areas where these powers might be expanded or where they require further clarification. Our evidence concentrates on what, in our view, constitute the minimum requirements for CEHR effectively to promote a culture of respect for human rights as previously defined by the JCHR:

“A culture of respect for human rights would exist when there was a widely shared sense of entitlement to these rights, of personal responsibility and of respect for the rights of others, and when this influenced all our institutional policies and practices.

This would help create a more humane society, a more responsive government and better public services. It could help deepen and widen democracy by increasing the sense amongst individual men and women that they have a stake in the way in which they are governed.”<sup>3</sup>

## **Background**

The Human Rights Act (HRA) 1998 allows, for the first time, individuals directly to access the rights of the European Convention on Human Rights in domestic courts. As a form of “higher” law, the HRA applies across all areas of law, policy and practice and requires all public authorities to act compatibly with human rights, as a matter of legal duty. The HRA’s definition of public authority includes courts and tribunals, which must apply human rights in all cases, even where the parties do not raise them.

In contrast to the more limited access to justice provided by current anti-discrimination legislation in the UK,<sup>4</sup> and subject to current institutional

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<sup>1</sup> Francesca Klug is a member of the Government’s CEHR Task Force established to advise on developing the detail of the CEHR.

<sup>2</sup> We note, though we do not discuss in the body text, that the establishment of the Scottish Human Rights Commission will have major implications for the work of the CEHR in Scotland. This will require, as a minimal preliminary to ongoing co-operation, a Memorandum of Understanding between the two Commissions. Likewise the devolutionary settlement in Wales will require careful negotiation to ensure consistency of functions between CEHR and a sister human rights body there.

<sup>3</sup> JCHR, “The Case for A Human Rights Commission”, Sixth Report of Session 2002-3, Vol. I (HC Paper 67-1), p.86.

<sup>4</sup> i.e. under *inter alia* Race Relations Act 1976 and Race Relations Amendment Act 2000, Equal Pay Act 1970, Sex Discrimination Act 1975, Disability Discrimination Act 1995 and new employment regulations on sexual orientation, religion and age.

inadequacies of legal aid provision<sup>5</sup>, individuals can access their rights under the HRA in all UK courts and tribunals and in the course of any legal proceedings where they are relevant. What has been completely lacking, however, is any equivalent to the current statutory equalities Commissions<sup>6</sup>. These are not only charged with enforcing the relevant anti-discrimination legislation, but have a significant role in promoting and championing equality in their respective fields.

As discussed by the Joint Committee's previous report<sup>7</sup>, the absence of a Human Rights Commission has left a significant gap in protection. Despite a substantial impact on legal principles in the courts, and HRA's wide ambit, research by the Audit Commission and others demonstrates that many public authorities have still not introduced adequate systems to ensure compliance with the HRA, let alone applied its principles to extend 'good practice'.<sup>8</sup> In consequence, the "culture of understanding of rights and responsibilities"<sup>9</sup> HRA was intended to create is still not being adequately achieved.

To address these shortcomings, the Joint Committee concluded in favour of a new body actively to promote human rights. The Government adopted a similar stance shortly afterwards in announcing on 30 October 2003 its plan to establish a single equality body that would also provide "integrated institutional support for human rights and equality", to "cover the promotion of human rights together with its equality responsibilities".<sup>10</sup>

### **CEHR: Minimum human rights functions and powers required for building a "culture of human rights"**

We separate the duties and powers proposed in the Task Force papers<sup>11</sup> into three categories: A) Promoting Human Rights; B) Powers Supporting the Promotion of Human Rights; and C) Promoting Good Community Relations.

#### **A. Duty to Promote human rights**

Promotion is the primary competence required of national human rights commissions by the Paris Principles<sup>12</sup>. All existing UK commissions, both human rights and equalities, are charged with the duty. Indeed, the practice of these bodies over recent years demonstrate how broad the range of activities achievable within the promotion remit can be.

To aid transparency, we draw out seven distinct functions CEHR could undertake under the broad statutory duty to promote human rights.

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<sup>5</sup> See e.g. documents at <http://www.lag.org.uk/Templates/Internal.asp?NodeID=88869> (last visited 30.03.04).

<sup>6</sup> Commission for Racial Equality, Equal Opportunities Commission, and Disability Rights Commission.

<sup>7</sup> See footnote 2 above.

<sup>8</sup> District Audit, "The Human Rights Act: A Bulletin for Public Bodies" (District Audit, 2002).

<sup>9</sup> JCHR, "The Case for A Human Rights Commission", (footnote 2 above), p..5.

<sup>10</sup> Written Statement Secretary of State for Trade and Industry (HC Col 18WS, 30 Oct 2003).

<sup>11</sup> CEHR/TF/08/002, CEHR/TF/11/001.

<sup>12</sup> UN Doc. A/RES/48/134 (20 December 1993).

## 1. “Smart compliance”: driving up public authority standards

Studies to date have shown that public sector implementation of HRA is still patchy at best. For example, the Audit Commission’s most recent report found serious, persistent deficiencies at the local government level, with most bodies lacking a dedicated human rights strategy, arrangements for on-going monitoring and for ensuring contractors’ compliance. Less than half had even completed a human rights audit of policies.<sup>13</sup>

To address this performance gap, under its duty to promote human rights, CEHR could:

- i. **Develop sector-specific baseline compliance guidance**  
Drawing on the broad principles established by HRA jurisprudence and case law, CEHR could develop accessible and authoritative guidance materials and “human rights toolkits” (e.g. on procedures for investigating injuries in residential care settings). To minimise duplication, where appropriate CEHR might agree joint guidance in liaison with other oversight or leadership bodies (e.g. ACPO, LGA);
- ii. **Follow up new decisions with Priority Action Bulletins**  
CEHR could respond swiftly to court decisions in areas of priority concern by distributing advice electronically via networks of relevant public authorities (e.g. to prison governors following the decision on mother and baby units,<sup>14</sup> or to the Royal College of Nursing in light of the judgment in the ‘manual handling’ case<sup>15</sup>);
- iii. **Devise tools to assist in mainstreaming human rights as a framework for decision making**  
CEHR could provide “route-maps” for systematic inclusion of established human rights principles, for example, of proportionality and necessity, in policy and decision-making processes, alongside equality requirements, as best practice;
- iv. **Harness the multiplier effect: integrating human rights into inspection standards**  
The CEHR Task Force recommended that CEHR adopt a “partnership approach”, by working with inspectorates, such as the Audit Commission and OFSTED<sup>16</sup>, so taking advantage of existing regulatory systems to channel human rights guidance to service providers. CEHR could, for example, devise human rights criteria to supplement partner-bodies’ performance assessment frameworks (as the Audit Commission has already started to do), and produce corresponding

<sup>13</sup> Audit Commission, “Human Rights: Improving Public Service Delivery”, (Audit Commission, 2003).

<sup>14</sup> *R(P) v Home Secretary; R(Q) v Home Secretary* (2001) 1 WLR 2002.

<sup>15</sup> *R (X, Y) v East Sussex County Council, Disability Rights Commission (Interested Party)* [2003] EWHC 167 (Admin).

<sup>16</sup> The Commission for Healthcare Audit and Inspection, Mental Health Act Commission, and Health and Safety Executive might also be potential partners.

advice. These inspection bodies' reports would then provide feedback on levels of human rights compliance, and key challenges and successes, in discrete, identifiable areas;

v. **Produce focussed training materials**

In liaison with stakeholders, CEHR could develop training aids on the application of human rights standards in challenging circumstances, to be made available for widespread use (e.g. on acceptable standards of interim accommodation for persons with disabilities pending re-housing<sup>17</sup>);

vi. **Build up human rights resource banks**

CEHR could provide, or stimulate others to provide, the most relevant resources and materials (e.g. internet-accessible database of cases and standards<sup>18</sup>).

With respect to all these activities, CEHR would also be able to:

vii. **Address private bodies performing public functions**

As confirmed in the leading *Leonard Cheshire* case, private bodies under contract to public authorities may be required to undertake responsibility for fulfilling the same human rights standards as the public bodies commissioning their services.<sup>19</sup> In this light, CEHR should be able both to assist private providers of care and other public services, and to safeguard individuals' human rights, by offering appropriately oriented advice and guidance.

viii. **Integrate guidance on human rights into equalities materials**

Dovetailing human rights with resources relating to equalities duties and good practice, wherever relevant, will support a deeper, practically salient understanding amongst target bodies of the interdependencies between the two.

## **2. Promoting good practice and awareness on equality, diversity and human rights**

As part of an integrated work programme on promoting equalities, diversity and human rights, the Task Force papers have identified the need for CEHR to move from bare compliance with the HRA to promoting good human rights practice "to help lever up the delivery of public services...based on greater awareness of the Convention rights, the operation of the Human Rights Act, and the UK's broader obligations".<sup>20</sup>

This work could fall into two main areas:

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<sup>17</sup> See e.g. *R(Bernard) v Enfield London Borough Council* [2002] EWHC 2282 (Admin).

<sup>18</sup> The Human Rights Act Research Project provided a basic resource on these lines (accessible via <http://www.doughtystreet.co.uk/>), and the Scottish Executive is now taking similar steps.

<sup>19</sup> *R (Heather & others) v Leonard Cheshire Foundation* [2002] EWCA Civ 366 (para. 34).

<sup>20</sup> CEHR/TF/08/002, p.2 (at para. 2).

**i) Public authorities: wider human rights best practice standards**

CEHR could:

- a) Promote, as best practice, steps to combat discrimination and unfair treatment breaching human rights concerning people in the new strand categories of age, sexual orientation and religious belief, in relation to goods, facilities and services
- b) Use broader international human rights materials, such as those emanating from the UN and Council of Europe bodies, to put further “flesh on the bones” of ECHR standards where these have been less well articulated in European Court of Human Rights decisions (by using UN Convention on the Rights of the Child to interpret children’s human rights, for example); and
- c) In relation to rights which, although specifically addressed in the ECHR, are further protected under other international instruments to which the UK is a party, such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and UN treaties on race and gender discrimination.<sup>21</sup>

**ii) Human rights in civil society: private and voluntary sectors**

CEHR should offer guidance to bodies clearly lying outside HRA 1998’s direct application, but who seek to adopt human rights standards as a matter of best practice in the field,

- a) in their dealings with the public, as service providers; and/or
- b) internally, with regard to employment practice;
- c) as a reference point in community relations programmes.

### **3. Human rights monitoring**

As an integral aspect of its promotional role, CEHR will need to engage in continuing assessment and evaluation of success in implementing human rights. Priorities in this area could, for example, include:

- assessing performance on key risks for vulnerable groups
- measuring progress on contract compliance
- ascertaining levels of follow-up to important judgments.

Without question CEHR would also need to undertake regular and probing evaluation of the effectiveness of its own programmes and working methods.

### **4. Public education and raising awareness on equality, diversity and human rights.**

Under the Paris Principles, a national human rights body is expressly required:

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<sup>21</sup> Starting with, although not limited to, the Convention on the Elimination of All Forms of Racial Discrimination, and Convention on the Elimination of All Forms of Discrimination against Women.

“To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs”.<sup>22</sup>

In addition to its intrinsic importance, public education work has obvious instrumental value in promoting access to human rights, and laying the fundamental foundations for stronger community relations.<sup>23</sup>

CEHR Task Force papers envisage national initiatives to promote equality, diversity and human rights. These could include campaigns that promote respect for diversity and difference as a fundamental human right.

## **5. Capacity building at the local level**

CEHR could again seek to exploit the “multiplier effect” by partnership working with networks of agencies who already operate locally to provide advice and assistance, for example Citizens Advice Bureaux, and Community Legal Services partnerships. This will be vital to increasing access to rights, given the unavoidable limits on CEHR’s central capacity to provide these services.

Linked to its community relations remit, CEHR might also provide financial project support for the human rights dimensions of initiatives undertaken by RECs or equivalent.<sup>24</sup>

## **6. Human rights education in schools**

CEHR would make an important contribution to sustaining progress and long-term public support for its remit as a whole by promoting human rights education in schools. If successful, as well as accomplishing the crucial goal of enhancing children’s ability to advocate and access their rights, this endeavour would equip tomorrow’s generation with the basic framework of principles to understand the needs and benefits of ensuring dignity for all, an inclusive society, tackling discrimination, and sound community relations.

CEHR’s first step towards this goal could be to support human rights in the Citizenship curriculum.

## **7. First stop public advice and assistance**

Finally, CEHR would need to provide a “first port of call” general advice service for public inquiries relating to human rights. The main purpose here would be to provide immediate basic information and advice in an integrated facility covering both equality and human rights. On the experience of current equality commissions, the most efficient vehicles for this service might be a

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<sup>22</sup> See footnote 10, above.

<sup>23</sup> See Section C below.

<sup>24</sup> See Section C below.

user-friendly website, telephone helplines, and accessible human rights information, including on local advice agencies and legal service providers who are able to provide case support for potential human rights cases.

## **B) Powers supporting the promotion of human rights**

The powers in this section are likely to be given separate statutory underpinning in the legislation establishing CEHR, while those above flow automatically from the primary duty of promotion. In other submissions to the Joint Committee, some of the following powers may be labelled with different headings, for example litigation or enforcement powers. On our view, though, the extent of these powers may be more fully appreciated once they are also understood as functioning in support of human rights promotion.

### **1. Duty to keep HRA 1998 under review**

Like the current equality commissions, the CEHR should have the duty to keep its guiding legislation under review, including HRA 1998 as well as equality statutes. In our view, what distinguishes the purpose of this role from that of *monitoring* HRA compliance described above, is that it should enable CEHR additionally to “think outside the box” of HRA 1998, and allow it to assess the adequacy of protection for human rights in the UK.

This duty should therefore embrace:

- Advising ministers as necessary e.g. on Departmental responses to Declarations of Incompatibility in the courts, or on policy or legislative changes necessary to comply with domestic or international human rights judgements, or the reports of UN monitoring bodies;
- Consulting and commenting on further protection supplementing ECHR and other human rights treaties signed by the UK, for example accession to individual petition mechanisms, and ratifying additional protocols;
- Commenting on UK derogations and reservations to international human rights treaties;
- Liaising with other international human rights bodies to pool experience on strengths and weaknesses of national human rights protection frameworks (for example, CEHR could contribute to current developments towards a UN Treaty on the Human Rights of Persons with Disabilities, and discussions of the existing UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities<sup>25</sup>)

Pre-legislative scrutiny for compliance with the HRA, the Task Force papers suggest, should remain with the Joint Committee.<sup>26</sup> While the Paris Principles require national human rights bodies “to promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments”, this function is more than adequately served by current arrangements. There should, however, be a reserve power

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<sup>25</sup> [http://www.un.org/esa/socdev/enable/dissre\)\).htm](http://www.un.org/esa/socdev/enable/dissre)).htm) (last visited 30 January 2004).

<sup>26</sup> With reference to Westminster legislation; separate arrangements will be put in place for the devolved legislatures.

for CEHR to assume this role, in the event the current select committee structure is altered by a future parliament.

### **3. Research on human rights**

The CEHR Task Force papers support a power to undertake and commission research, to enable CEHR to become a national centre of expertise in human rights and equality. This would facilitate, for example:

- Better understanding of the interrelation between discrimination and other human rights abuses;
- Investigation of disparities in human rights, e.g. across strands and other social groups, or on geographical bases;
- Development of human rights indices;
- Better awareness inside and outside government of emerging or underreported issues.

### **4. Human rights investigations**

General investigations, as shown by UK equality bodies in their respective fields, can be a powerful lever for highlighting persisting problems and concerns, and pinpointing and raising awareness about their underlying causes. With a focus on promotion and partnership, and working to redress poor practice where it is found to exist, CEHR could use this power, for example, to:

- Launch investigations into specific sectors of priority concern;
- Develop recommendations addressed to a range of parties e.g. service providers, government and others, for improved policy and practice;
- Focus strategically on issues linked to equality.

As to powers over evidence, CEHR should have the same powers in conducting human rights general investigations as those intended for comparable inquiries on equality issues. Importantly this would include a right of access to people and documents. Whilst this power of access is currently subject to the agreement of the Secretary of State, the principle of independence would suggest that an alternative safeguard be considered: the enforcement of the South African Human Rights Commission's power over evidence, for example, is subject to consultation with the Attorney-General.<sup>27</sup>

While we address the separate question of "named investigations" further in our concluding section, we note here our view that there would probably be scope during a general investigations to identify bodies failing to observe required practice in specific areas. For example, if, in the course of investigating the use of "Do Not Resuscitate" notices, individual hospitals were found in breach of standards required to protect the right to life, CEHR would be under a positive duty to act on this finding.

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<sup>27</sup> No. 54 of 1994, Human Rights Commission Act 1994, s9(2)(b).



## 5. Strategic intervention as third party in human rights cases

In the context of a limited central capacity itself to assist in individual cases, an *express* power to *apply* to the courts for permission to intervene in cases of broader human rights significance is an imperative asset. A human rights issue of major importance to the public or particular sectors of the community may not be appreciated as such by the parties to a case. Conversely, a party may be actively seeking a result with significant human rights ramifications which it would be helpful for a strategic body to elucidate.

In such cases, CEHR, will have expertise and experience to offer the court to assist it in making an informed, balanced adjudication. Existing commissions, notably the Disability Rights Commission<sup>28</sup> and Northern Ireland Human Rights Commission<sup>29</sup>, have already demonstrated the significant public benefit of strategic interventions in selective cases.

Intervening is widely viewed as a more cost effective avenue to promote human rights in the courts than assistance throughout individual cases. However, as the cost is nevertheless not negligible, it is envisaged that the Commissioners would wish to use CEHR's valuable resources to exercise this power only where it was clearly necessary to clarify the law, or assist the courts with evidence or perspectives otherwise unavailable to them. There is therefore no convincing argument to limit further, by express statutory provision, the circumstances in which this power can be applied.

### **C. Promoting good community relations**

In his statement to the House of Lords announcing the government's intention to establish CEHR, the Secretary of State for Constitutional Affairs, Lord Falconer, proposed that one of the functions of the new body should be:

"Promoting community cohesion through providing support to local initiatives to promote dialogue and understanding between different communities and groups, where relevant drawing upon the balance between rights and responsibilities contained in the Human Rights Act."<sup>30</sup>

The Task Force papers envisage that the CRE's existing duty to promote "good relations between persons of different racial groups" will be rolled forward and extended in some form to cover all the strands and beyond. The papers note that "good relations and equality are two sides of the same coin; equality could not be achieved where there was mistrust and hostility".<sup>31</sup>

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<sup>28</sup> See e.g. *R (X, Y) v East Sussex County Council, Disability Rights Commission (Interested Party)* [2003] EWHC 167 (Admin); also Disability Rights Commission's submission to this inquiry.

<sup>29</sup> See <http://www.nihrc.org/> for full details of the Northern Ireland Human Rights Commission's interventions to date (last visited 29.03.04).

<sup>30</sup> HL 30 Oct 2003 Col WA56.

<sup>31</sup> Draft summary of Task Force discussions.

As we described in a paper we provided to aid the Task Force's discussion of 'good relations'<sup>32</sup>, human rights principles can assist CEHR to provide a common ethical language and important balancing framework to guide the understanding and operation of this proposed duty. In situations where rights conflict and views may be polarised, a human rights approach can be used to ensure fairness and due respect for the human rights of all parties concerned.

This view was further reflected in the relevant Task Force paper: "Because they do not belong to any group, class or religion, but rely instead on considerations of basic humanity and dignity, [human rights] can be used to promote common language in communities where this is missing."<sup>33</sup>

The Task Force Papers suggest that the main vehicle for taking the 'good relations' duty forward would be through the use of the CEHR's grant making power to award grants to voluntary organisations to support local cross community work. This should build on the current framework of the CRE for making grants to the voluntary sector, under which Race Equality Councils (RECs) are the primary recipients but other organisations are funded too. Some cross-strand work is supported already, and the expectation is that this would expand over time to include tackling multiple discrimination and facilitating dialogue between different communities using human rights principles. However this should not preclude RECs continuing to focus on race equality alone.

## **Conclusion: Proposals for further clarification or expanded powers**

As stated at the outset, we think the functions above would enable CEHR to fulfil the promotion and education functions that have been identified as the most pressing deficiency in human rights protection at present. In conclusion we identify five remaining areas discussed by the Task Force which require clarification or expansion and which the Joint Committee could therefore usefully consider further

### **1. "Named" formal investigations**

It is currently anticipated that CEHR will not, in relation to human rights, have the power to conduct formal investigations into named individual bodies where it suspects a breach of the law. The CRE, EOC and DRC all have this power under current anti-discrimination legislation.

We accept that there could be significant theoretical and legal difficulties to overcome in 'reading across' the full extent of this power to human rights. This is particularly the case given the high threshold of human rights violations established by the courts, and the open-texture of human rights legislation. In

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<sup>32</sup> "Human rights: a framework for resolving disputes in the community?", Claire O'Brien and Francesca Klug (February 2004), accessible at [http://www.lse.ac.uk/Depts/human-rights/Research/Human\\_Rights\\_Futures.htm](http://www.lse.ac.uk/Depts/human-rights/Research/Human_Rights_Futures.htm).

<sup>33</sup> CEHR/TF/08/002, p.11 at para.55.

addition most human rights abuses involve public sector bodies which are anyway more easily identifiable, even within a general investigation.

Despite this limit, we take the view that the human rights remit in relation to named formal investigations could be expanded in two important ways:

- CEHR should be able to make human rights recommendations in its reports following named formal investigations into breaches of equality laws. Such recommendations would be non-binding, without the route for follow-up by court enforcement action. Nonetheless, they could provide important advice, for example, in the form of a detailed compliance risk assessment.
- It is widely maintained that the Disability Rights Commission is empowered by the Disability Rights Commission Act<sup>34</sup> to undertake general named party investigations without suspicion of an unlawful act. This power, if carried across to all strands in CEHR, could arguably incorporate recourse to human rights issues without raising some of the difficulties of threshold and precision raised above. This might conceivably offer a path to stimulate increased use of named investigations in future, on a consensual basis, as a device for developing new working models for sector-wide best practice.

The precise legal position on these issues is however still uncertain, and would benefit from the Committee's further exploration.

## **2. Power to take judicial review cases in its own name**

Where it otherwise has sufficient interest, and CEHR applies for judicial review on non-HRA public law grounds (for example in promoting its equality remit) CEHR will of course be able to raise grounds under HRA in addition<sup>35</sup>. However, two obstacles stand in the way of CEHR directly seeking judicial review on human rights grounds alone: Art 34 ECHR, and section 7 HRA 1998, Art 34's equivalent at the domestic level.

There are strategic arguments to be made in favour of allowing CEHR to apply for judicial review under the HRA without a victim – particularly as CEHR will lack the power to assist in free-standing HRA cases. This could be achieved, for example, by a clause which provided that “notwithstanding section 7 HRA 1998”, CEHR could apply for judicial review under the HRA.

Clarification of fundamental legal principles can be achieved through judicial review which can in the long run deter potential litigants from recourse to the courts. As with third party interventions, resource considerations suggest that this power would only be used by Commissioners when the public interest is significant. The pros and cons of this argument would clearly benefit from further assessment.

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<sup>34</sup> Under Disability Rights Commission Act 1999, Sections 3 & 4, and Schedule 3.

<sup>35</sup> *Re NIHRC's Application*, 9 October 2000 (unreported decision of Northern Ireland High Court, *per* Kerr J).

### **3. Power to continue cases with a human rights dimension.**

There was considerable support within the Task Force for CEHR to be empowered to continue to support cases brought under equalities legislation which also cite human rights grounds, should the equality argument fail during the course of the proceedings (for example at appeal). In recognising that safeguards would inevitably be introduced to ensure that such cases fell within the statutory definitions of equality established by the relevant legislation, there was also broad recognition that the number of cases involved would, in all likelihood, be very small.

If only to maintain the credibility of the organisation, it seems important that CEHR is granted this power (otherwise CEHR would be duty bound to abandon a claimant whom it was supporting, before her case's completion, for the sole reason that she sought to vindicate human rights). It would then be a strategic decision for the Commissioners to decide whether to maintain support in such cases.

### **4. Conciliation (ADR)**

There was an inconclusive discussion within the Task Force about whether the CEHR should have the power to sponsor an 'offsite' conciliation service (for non- employment disputes) and whether such an 'arms-length' service should include human rights cases. Although there would be no *duty* for such a service to extend to human rights, it seems sensible, in the spirit of encouraging strategies which do not rely on recourse to the courts, to confer on CEHR the *power* to do so if this is judged advisable by the Commissioners. At the very least CEHR could have a duty to promote access to alternatives to litigation in disputes.

### **5. Definition of human rights**

The Task Force papers suggest that "the legal framework of the HRA" should apply where the CEHR uses "statutory powers." In its promotional and public education work, the papers indicate, CEHR should also "take account" of the UK's obligations under international human rights treaties.

This distinction could lead to confusion. In some parts of its remit, most notably its compliance work, CEHR will clearly need to focus on the HRA as the rights it protects are the only ones directly accessible in domestic law. Elsewhere in its remit, however, there will be greater benefit if CEHR can refer to the UK's wider international human rights obligations under treaties to which it is party. Indeed, this would reflect the intention and practice of section 2 HRA 1998, through which the courts now frequently cite wider human rights treaties, such as the UN Convention on the Rights of the Child (CRC), in interpreting the rights under the ECHR. So, to illustrate, in a general enquiry, CEHR may want to point to issues on which a given sector fails to comply with

the HRA, and to other areas where it could incorporate good practice as established under the CRC.

We therefore suggest that human rights should be given a broad definition under CEHR's founding legislation, referring to the full ambit of the UK's international obligations. Any restriction of this definition to the HRA should be made more precise than referring simply to 'statutory functions'; and might be limited to third party interventions, or any free standing power to apply for judicial review. This last issue would also benefit from the Committee's further consideration, to preclude litigation over an uncertain definition of human rights in CEHR's founding statute.

**30 March 2004**