



Prison Reform Trust

Response to 'Building a fairer Britain: Reform of the Equality and Human Rights Commission EHRC'

The Prison Reform Trust works to create a fair and decent prison system. We do this by looking at how prisons are working, giving information to prisoners, staff and people outside and by asking the government and officials to make changes. Our advice and information service responds to around 5,000 requests for help a year. Through this work we are aware of the difficulties many people have when experiencing discrimination or trying to access their basic rights in prison.

We welcome the opportunity to respond to this consultation.

General concerns

We have some general concerns about the impact of the proposed reforms of the EHRC. If the proposals go ahead, the nature and remit of the EHRC will be fundamentally altered and its powers potentially curtailed. We believe that the EHRC, as a relatively new organisation, is still bedding in but has already helped to create a fairer Britain in the last three years.

Human rights

Although the consultation describes the human rights remit as being maintained, in reality the proposals undermine and restrict this function. The measures appear to be putting human rights into a discrete area of work, rather than appreciating that human rights are fundamental to all aspects of equalities work. We would hope that a human rights approach would be integrated across all aspects of the EHRC.

Further, this review provides an opportunity to strengthen the EHRC's human rights function by amending section 9 to create a duty to enforce human rights legislation, mirroring the duty to enforce equality legislation at section 8. This would go some way to ensuring that the human rights function of the Commission is fully integrated within its work, and that it can become a nationally respected human rights institution as contemplated by the consultation document.

Independence of EHRC

It is appropriate to expect a public body to provide good value for money and to have a level of accountability and transparency regarding spending. However, we are concerned that the proposals as they stand will impinge on the constitutional and operational independence that the EHRC needs to carry out its role.

Information provision role

The EHRC is a source of credible evidence and research on discrimination and human rights. We believe that five years (rather than three) between each Parliamentary Report is too long a time. The EHRC reports have proved to be a unique source of information, and been able to shine a spotlight on concerns such as the overrepresentation of black men at different stages in the criminal justice system, The information collated has already had a positive impact on the criminal justice system, for instance the EHRC has worked with the police around their use of stop and search.

Removing the general duty

The general duty is fundamental to the work of the EHRC and its role in creating a fairer Britain. If the government remove this duty, as planned, it is difficult to see how the EHRC will be able to carry out its function.

Prisons, as our most hidden public service particularly benefit from the work of the EHRC. For example, the EHRC (formerly the CRE) have had a significant impact on race relations in prisons and in particular in supporting the Prison Service to tackle overt racism more effectively. In 2003, the Commission for Racial Equality (CRE) and HM Prison Service jointly established an action plan on race relations. The aim was to follow up a CRE investigation into race relations and to ensure compliance with the Race Relations (Amendment) Act 2000, which placed public agencies (including prisons) under the obligation to promote race equality

The Prison Service has made much progress in reducing direct racial discrimination. However, the more difficult challenge of identifying the sources of covert and institutional racism and devising effective solutions which are specifically tailored to address these forms of racism remain.

The prison service cannot make further progress without recourse to expert advice. The particular difficulty the prison service faces in this area clearly demonstrates the importance of changing attitudes and increasing cultural awareness through education. Training in diversity and cultural awareness is vital. Yet, this is less likely to happen without an expert body with a general duty to support prison service staff in this area.

This is not about taking legal action. It is about supporting prison managers to recognise the damage that can be caused by structural and covert racism. The general duty enables the EHRC to take this kind of action.

We are hopeful that the improvements that we have seen for BME prisoners, partly as a result of EHRC action, will be mirrored and rolled out for other sections of the prison population.

The Prison Reform Trust's No One Knows programme highlighted the unmet needs of people with learning disabilities and difficulties in the justice system. Currently, public authorities (of which prisons are one) have a positive obligation to take active

steps to safeguard rights. This means not violating people's human rights, as well as 'going the extra mile' to ensure that breaches of human rights are prevented – even if these are not their direct responsibility. So, for example, one prisoner behaving towards another in a way which breaches their human rights remains the responsibility of the prison service. Prison staff are the only way to guarantee a prisoner's human rights in this situation and it is difficult for them to do so unless they have accurate information, training and support.

Good relations duty

This is another area with particular resonance for prisons. Victimisation, bullying and harassment are more likely in an environment where autonomy has been removed and people are deprived of liberty and personal resources.

Under the new Equality Act, prison managers have a duty to promote and support good relations in their prison. This is a positive and proactive duty that could enable prisons to become fairer and more decent.

We accept that the good relations duty is not easily understood. However, as the government recognises, the difficulties that create inequality and prejudice cannot be tackled by legislation alone. Government has a public education role on equality and the EHRC are ideally placed to carry this out.

The proposals as set out will limit the EHRC's capacity in this area. Restricting the EHRC's role in monitoring the public sector duty regarding good relations is counterproductive. It will mean that the EHRC cannot provide the advice needed to public sector bodies

Restricting the role of the EHRC to monitoring the public sector duty only means that non legal and more effective methods of operating would not happen and the private sector would not be able to access advice and guidance from the EHRC. The good relations remit should therefore be clarified and defined, rather than abolished.

Mediation and conciliation

As previously stated, legislation alone is not enough to tackle behaviour and attitudes. The nature of equalities work, and the emotional impact that differential treatment has on individuals, means it is particularly appropriate to use mediation and conciliation in discrimination cases.

In addition, government policy is moving towards mediation and conciliation in other areas of law (for instance divorce and family law) where the emphasis is on encouraging people to communicate and connect to resolve matters.

Mediation and conciliation are more economical and less time consuming than legal action and restricting the availability of these services would be counter-productive.

Advice services

The advice and information function of the EHRC is fundamental. The proposals as they stand will have a negative impact on the availability of advice, information and other support for vulnerable people. We know that many vulnerable groups are disproportionately represented in our prisons, including people with mental health difficulties, learning disability and difficulties and physical difficulties. In addition, people from BME communities are over represented. Many people in prison have already experienced an accumulation of disadvantage and discrimination.

The advice and information function currently provides a unique and valuable service for individual groups and public sector organisations that need information about their legal rights or their obligations. It is a national resource and the only expert source of free advice in this area. The proposed change, coupled with the existing and proposed changes to the legal aid system, will impact most on people who are experiencing discrimination, many of whom are already excluded.

We are also concerned that the process of commissioning a service, with the additional on costs of running a competitive tender, will swallow up costs that could go directly to service provision.

We are also concerned about the emphasis on the service being citizens focused rather than rights focused. We are not sure what implications this may have for prisoners and would ask for clarification of this. For instance, are convicted prisoners, who are currently unable to vote in breach of the European Convention on Human Rights, citizens? Are people without UK passports, currently 14% of the prison population, citizens? Are children citizens? The point of human rights is that they protect everyone, regardless of their legal or immigration status.

Virtually no information is provided about the new service that will replace the EHRC's advice and information function and it is not clear why this is considered likely to be more effective given the EHRC's ongoing remit as the national centre of expertise on equality and human rights.

Grants schemes

There is no information about the new funding stream, so it is impossible to comment on this. However, we are concerned about the impact of stopping the grants programme to the VCS. These grants have enabled organisations to support vulnerable individuals and hold public services to account, often without needing to take legal action.