FAIRNESS FOR ALL:
A NEW COMMISSION ON EQUALITY AND HUMAN RIGHTS

Response from the British Humanist Association

1 Summary

1.1 The British Humanist Association welcomes the Government’s commitment to the creation of a Commission covering both equality and human rights, and the timely publication of the “Fairness for All” White Paper. We also commend the consultation process, and fully support many of the proposals and commitments given in the White Paper. The fact that our response – and this summary – gives greater attention to the issues that we believe still need to be addressed should be interpreted in this context.

1.2 The British Humanist Association identifies the following key issues as needing to be addressed, or given further consideration:

- the CEHR must be adequately resourced
- the draft Bill to establish the CEHR should be subject to full pre-legislative scrutiny
- the timetable for the CEHR must not be allowed to slip
- there is an urgent need for greater transitional support for the new equality strands and for transgender people, including the creation of a body created and funded to provide advice and support and to take strategic cases in the period before the CEHR is established
- there will also be a need for a secretariat and dedicated resources for the new strands in the steering group to manage the transition to the CEHR, and on the shadow board, when these are established
- we call for a firm commitment to introduce a Single Equality Act to simplify, harmonise and “level up” discrimination legislation in a Single Equality Act, and for that work to commence immediately
• we call for the existing duty on public sector bodies to promote equality of opportunity and good relations on race to be extended not only to disability and gender, but also to the three new equality strands, and to human rights

• the CEHR should have a duty to secure the protection of human rights, and the necessary enforcement powers: its human rights remit should not be limited to promotion, and the power to protect human rights should not be limited to circumstances where discrimination is being addressed

• combined discriminations and human rights cases must continue to be supported if the discrimination element of the case falls away

• the CEHR should have a duty to work with public authorities to develop policies that enhance respect for human rights in the delivery of public services, and support this with codes of practice

• the CEHR’s human rights remit should extend to international treaties, with a role in preparing reports on the UK’s compliance

• the CEHR should have the power to seek judicial review where it believes human rights are being violated

• the commitment to non-regression as regards the powers of the existing Commissions is welcomed, but does not seem to be supported in all sections of the White Paper: the effectiveness of the CEHR will depend on “levelling up” the powers of the existing Commissions

• the CEHR should have the power to take own name cases (but not hypothetical cases)

• the CEHR should be able to conduct general enquiries on its own initiative

• the CEHR should have the power to use coercive powers to obtain information, rather than being reliant on the Secretary of State

• the CEHR’s powers and core functions should also include:
  • bringing together work related to different aspects of equality, and also the use of human rights principles to address conflict between equality strands
  • monitoring / auditing performance and outcomes in relation to equality and human rights
  • regular reporting on individuals’ access to justice, including advice and representation on equality and human rights matters

• the CEHR must include children within its remit, and there is a need to consult with young people and their representatives. The relationship between the CEHR and the Children’s Commissioner will need to be defined

• there is a need for more work on identifying the CEHR’s stakeholders, partners and customers (which must include front line advisers and their organisations), and a duty to involve them (and report on their involvement) in developing the CEHR’s strategic plans
the voluntary sector should be considered a stakeholder, partner and key customer, and will require support in using human rights and equality principles in negotiating with the public sector and in policy and campaigning work

the NDPB model does not guarantee sufficient independence for an equality and human rights Commission: the CEHR should be directly accountable to Parliament and independent of both Parliament and Government, with annual reporting to both houses

we have concerns about reserved places on the Board for the disability strand and for Scotland and Wales

there is a need for more thought and greater clarity on regional and local work: the CRE’s local work with RECs needs to be extended by establishing equivalent regional bodies that cover all the equality strands and human rights

2 The British Humanist Association (BHA)

2.1 The BHA is the principal organisation representing the interests of the large and growing population of ethically concerned but non-religious people living in the UK. It exists to support and represent people who seek to live good and responsible lives without religious or superstitious beliefs. It is deeply committed to human rights, equality and social cohesion, and has a long history of active engagement in work for an open and inclusive society.

2.2 The BHA's policies are informed by its members, who include eminent authorities in many fields, and by other specialists and experts who share humanist values and concerns. These include a Humanist Philosophers' Group, a body composed of academic philosophers whose purpose is to promote a critical, rational and humanist approach to public and ethical issues.

2.3 The British Humanist Association supports individual freedom of belief and speech, and believes that the Government and official bodies should maintain a disinterested impartiality towards the many groups within society so long as they conform to the minimum conventions of the society. While we seek to promote the humanist life-stance as an alternative to (among others) religious beliefs, we do not seek any privilege in doing so. Correspondingly, we reject any claims others may make to privileged positions by virtue of their beliefs.

2.4 The BHA’s Executive Director is a member of the Commission for Equality and Human Rights Task Force, and has therefore contributed to Task Force discussions on the structure, functions and powers of the proposed CEHR.

2.5 The BHA has responded to previous Government consultations on equality issues and the proposed Commission, including to the “Equality and Diversity: Making it Happen” consultation on future structures for equality institutions, and to calls for evidence on the proposed Commission from the Joint Committee on Human Rights.

3 Introduction

3.1 The BHA is firmly committed to the creation of a joint Human Rights and Equality Commission. The three existing equality Commissions (the CRE, EOC and DRC)
have had a crucial role in promotion and enforcement of the legislation in each of their respective areas, and there is no doubt that there is an equivalent need for institutional support for the three new strands of discrimination legislation and equality for transgender people, and for a human rights commission. We believe that a fully integrated CEHR will be the most effective way of promoting both equality and human rights. It may also be the best way of addressing divisions between the separate equality strands, and help to avoid the perceptions of a hierarchy of equality which are liable to result from the different levels of protection within discrimination law. We also believe that the inclusion of the human rights remit will enable the CEHR to be much more successful in promoting a holistic approach to equality and developing understanding of equality as an issue that benefits everyone, not just special interest groups – it will make a key contribution to the aim of mainstreaming equality and human rights. Finally, it will help to ensure that the equality agenda has an impact beyond employment issues, particularly in those areas where the law only covers employment and vocational training.

3.2 Thus, the BHA welcomes the Government’s commitment to establishing a Commission with a remit for both equality and human rights, and the publication of the White Paper.

3.3 We commend the Government’s approach to consultation on the proposed CEHR, in particular, the establishment of a Task Force with representatives of each of the six strands of discrimination legislation, human rights experts and other key stakeholders, and the wider consultation on the White Paper that is now taking place. We understand and accept that the consultation within the Task Force has had to focus on a somewhat restricted agenda, and have been pleased to note that many, if by no means all, the views expressed within the Task Force have informed the content of the White Paper. We feel this has been a genuine consultation process, and would recommend it as a model for future consultations on major initiatives.

3.4 However, some very important issues raised by the Task Force and in representations by individual organisations have not been taken on board, and this has almost certainly contributed to a lack of commitment to the CEHR and the White Paper in some circles. We are concerned about the restricted powers of the proposed Commission, in particular in relation to enforcement powers and to human rights as a whole, and feel that the White Paper is weak in a number of important areas. We very much hope that these issues will be taken on board in the preparation of the Bill to establish the CEHR.

3.5 As an issue of good practice on a complex matter, and also specifically because of the weaknesses in the White Paper, we consider it very important that the draft Bill to establish the CEHR be subject to full pre-legislative scrutiny.

3.6 The BHA believes that it is vitally important that the timetable for the establishment of the Commission is not allowed to slip. We have very serious concerns over the lack of any institutional support for the two new strands of discrimination legislation (religion or belief and sexual orientation) since the Employment Equality Regulations came into force in December 2003, and for transgender people, and also recognise the impact of uncertainty within the three existing equality Commissions. The complex issues relating to age discrimination add to the importance of the Commission being established by the end of 2006.
3.7 Believing in the importance of establishing a genuinely effective CEHR as soon as is possible, the BHA is extremely concerned about the Commission for Racial Equality’s statement that they “unequivocally reject” the proposals for the CEHR as laid out in the White Paper, and the possible impact of this decision on the process and timetable for establishing the new Commission. The BHA recognises the CRE’s commitment to making progress on race issues, and that, as constituted, it has a responsibility to prioritise race equality and race relations over other areas of equality and human rights. However, we deeply regret the CRE’s lack of vision for equality and human rights as a whole, and their lack of recognition of the huge benefits to race equality and race relations, as well as to other areas of equality and human rights, of delivering their agenda with the support of the other equality strands, or of the contribution they will be able to make towards developing equality and human rights for society as a whole. We also feel that the CRE’s statement demonstrates a lack of understanding of the issues for the other equality strands, and in particular the impact of any delay in establishing the CEHR on the new equality strands, which currently lack any institutional support, and on human rights for all. We believe that this lack of understanding demonstrates just how important working together and learning from the other strands will be. It will not be possible to mainstream equality and human rights unless the different interest groups work together.

3.8 We have also noted with great concern the CRE’s attempts to incorporate religious discrimination and hatred on grounds of religion or belief into their own remit, although they have no responsibility for this area, and their complete disregard in adopting this agenda for the fact that they are, in the process, actually discriminating on grounds of religion or belief. The fact that they have consulted quite widely with various religious groups, but excluded others and specifically the organisations representing people with non-religious beliefs from this process, also demonstrates a remarkable lack of understanding of the issues relating to religion or belief and human rights law. We do of course recognise the close links between racial discrimination and religious discrimination for certain ethnic and religious groups, and we agree with the CRE that religious discrimination is a very serious issue for Muslim and certain other minority ethnic and religious groups and must be addressed. We also share the belief that incitement to hatred on grounds of religion or belief must be addressed, although we reject the Public Order Act model for legislation on this issue. However, the CRE needs to recognise that their attempts to take over the lead on restricted parts of the religion or belief strand are very damaging to the religion or belief strand as a whole and to the important progress being made through cooperation and collaborative work between various faith groups and groups representing the non-religious. (This has included, for example, a joint briefing for the House of Lords on incitement to hatred on grounds of religion or belief by the British Humanist Association, British Muslim Research Council and Justice.) The problems resulting from the CRE’s approach to these issues once again demonstrate the need for mutual understanding and respect and joint working across the various equality strands and human rights of a kind that we believe would flourish within the CEHR.

3.9 While we understand the difficulties involved in making any commitments at this stage, we deeply regret the lack of any indication of the resources that will be available to the CEHR, and believe that this has contributed to a lack of confidence in the ability of the CEHR to deliver key objectives identified by a number of key stakeholders.
4 Vision

4.1 The BHA welcomes the broad definition of the vision and role of the CEHR in leading work on a fairer, more inclusive society. We agree that the CEHR must focus on outcomes (Fairness For All (FFA), para 1.6) and endorse the statement of the principles for the CEHR (FFA paras 1.31-1.38).

4.2 We acknowledge the progress that has already been made on equality, but also that there is still a great deal of work to be done if equality is to be meaningful for the whole of the population. There are some important gaps in the proposed powers of the CEHR as regards equality.

4.3 We also believe that although the Human Rights Act was an important step forward, progress on ensuring a human rights culture within public authorities has been slow. We regret that some of the steps that are planned with the creation of the CEHR were not taken earlier in relation to human rights – a crucial opportunity to begin work on making human rights meaningful throughout society was missed. Even now, we are concerned that the vision for the CEHR in relation to human rights still focuses mainly on promotion of a culture of respect for human rights (although this is, of course, important), with the CEHR having very restricted enforcement powers in relation to human rights.

4.4 In its responses to the earlier consultations, the BHA called for a single Commission for both Equality and Human Rights, and we endorse the statement of the benefits of a single Commission (FFA paras 1.14 – 1.17), and the recognition within the White Paper of the need for a single Commission to build on the work of the three existing Commissions, drive the change agenda forward across all six strands of discrimination legislation and human rights, and create a culture of equality and human rights. As noted in FFA para 1.4, a step change in how we promote, enforce and deliver equality and human rights is required to achieve a fair, prosperous and cohesive society for all.

4.5 The BHA welcomes the commitment in the White Paper to non-regression as regards the existing legislation and machinery, but we feel that considerably greater clarity is required on the commitment in FFA para 3.3 that the powers currently available to the existing Commissions will be retained, while the CEHR will be equipped with modern powers and duties to apply across all the equality strands. The three existing Commissions not only have different powers, but have been in existence for different periods and have reached different stages in their work, while the new strands will have no Commission until the CEHR is in place. The lack of clarity in the White Paper on the precise powers proposed for the CEHR exacerbates concerns within the existing Commissions and elsewhere that the CEHR may represent a step backwards. Similarly, the new strands, and indeed the existing Commissions, are concerned about a “hierarchy of equality” and a “hierarchy of powers” (see also below). The White paper implies that the CEHR’s powers and duties will not be identical across the six strands without any detailed explanation of these differences, and important questions about the impact on the effectiveness of the single Commission of having different powers and duties for each strand are not addressed. The BHA believes that the effectiveness of the CEHR will depend on these powers being “levelled up”.

4.6 Existing discrimination legislation provides considerably greater protection for some of the six strands than for others. The Government has indicated that one of the first tasks of the CEHR will be to review the legislative framework with the aim
of bringing forward a Single Equality Act.\textsuperscript{1} The BHA welcomes the commitment to rationalising this increasingly complex area of law, but is very concerned about the timescale that such statements imply. While the BHA does not necessarily share the belief, expressed by some, that the CEHR will be unable to function while the law is so complex and the protection provided by the law so different across the strands, we do think that it will require considerable resources to be diverted from other crucial work to the development of very detailed guidance and advice, etc, and that this will limit the effectiveness of the CEHR (see also para 6.9 below). The BHA would also welcome a firm commitment from the Government that the intention is to “level up” the legislation, not least by extending legislation on the new strands to cover education, goods and services as well as employment and vocational training.

4.7 There is a growing body of evidence of the impact of the duty on public sector bodies to promote equality of opportunity and good relations on race on the ability of the CRE to achieve progress on race equality and race relations, and the BHA welcomes the commitment to extend these duties to disability and gender. We are, however, concerned that doing this without an equivalent duty for the new strands further increases the differences between the new and established strands, lending strength to the idea of a “hierarchy of equality”. A legal requirement to act on three of the six strands will inevitably mean that these areas are given priority, and that issues relating to the remaining strands are neglected. We also believe that, in the light of the lack of progress made by public authorities on human rights, there should be a positive duty on public authorities to promote human rights. We do not believe that public authorities will progress from the existing “culture of minimal compliance” and succeed in mainstreaming human rights without a positive duty to promote human rights. A positive duty on public authorities to promote equality across all six strands of equality and human rights would go a long way towards achieving the step change in promotion, enforcement and delivery of equality and human rights that is required (FFA para 1.4). Such an extended public duty would not only enable the CEHR to achieve key outcomes, but would greatly simplify its work with public authorities.

4.8 We believe that the CEHR should have a duty to work with public authorities to help them to develop policies and practices to enhance respect for human rights in the delivery of public services, and should provide codes of practice on human rights to assist with this.

4.9 We support the approach outlined in FFA paras 1.28 – 1.30, including the commitment to carry forward the local race equality work carried out by the Race Equality Councils with a broad and inclusive approach as regards support for local initiatives. There is, however, a need for greater clarity on the future of the RECs and how local work across the various strands and human rights will be supported (see also para 9.3 below).

5 \textbf{Engaging and working with stakeholders}

5.1 The BHA welcomes the obligation to consult with stakeholders on a strategic plan (FFA para 2.10), believing that the active involvement of all the CEHR’s stakeholders is essential if the Commission is to be able to achieve its objectives.

\textsuperscript{1} e.g. in the speech by Rt. Hon. Jacqui Smith MP to the Equality and Diversity Forum Conference, 14 July 2004
5.2 We welcome in particular the emphasis on voluntary and community sector organisations, and the recognition that, in some sectors, organisations may not have the capacity to engage effectively, and will need support. If the CEHR is to be involved in capacity building in the voluntary and community sector, this will have major implications for the resources it requires (see also 10.5 below).

5.3 The BHA also commends the commitment to a partnership approach. The CEHR will clearly not have the capacity to deliver its broader objectives, for example in relation to community cohesion, on its own, and we believe that there may be perceptions in some areas of Government and elsewhere that, once the CEHR is in existence, their own initiatives in such areas will reduce in importance. The CEHR’s duty to work with partners must be mirrored by corresponding duties on key partners, with appropriate resourcing of the CEHR and of its partners.

5.4 The White Paper identifies some of the stakeholders and partners with which the Commission will need to work, but not others. For example the various inspectorates, e.g. the Audit Commission, must be considered partners and stakeholders, and indeed also customers of the CEHR and, given appropriate remits and resources, should be able to contribute a great deal to implementation of the equality and human rights agenda. The inspectorates will require substantial support from the CEHR for this task, and it will be important to learn from the CRE’s experience of working with them. We believe that there should be a requirement within the statutes of the various inspectorates that makes work on equality across all six strands and human rights a core function (see also paras 10.1 – 10.6, below).

5.5 The White Paper makes brief reference to the CEHR’s role in ensuring that the specific needs of children and young people are met, and to the Children Bill and proposed Children’s Commissioner (FFA para 7.44). We believe that the CEHR must include children within its remit, perhaps particularly in relation to their human rights, but also for what they can contribute on social cohesion, for example, and there is a need to consult with young people and their representatives (as key stakeholders and customers) before the draft Bill is produced. The relationship between the CEHR and the Children’s Commissioner will also need to be defined.

5.6 Question 1: How can the CEHR ensure that stakeholders make a meaningful contribution?

The BHA believes that this will require:

- More detailed identification of the CEHR’s stakeholders and partners, and clear definition of their respective relationships and roles
- The involvement of stakeholders and partners in the development of the CEHR’s strategic plan and more detailed work plans
- Appropriate powers to establish committees and working groups involving stakeholders and partners, with clear remits
- Adequate resources for both the CEHR itself and relevant stakeholder and partner groups/bodies
- A requirement to report on the involvement of stakeholders and partners, and on the outcomes of their involvement, including a requirement to demonstrate how stakeholder and partner views have informed the work of the CEHR
The functions of the CEHR

6.1 The BHA broadly endorses the core functions set out in FFA para 3.4, and the expectation that the CEHR will go beyond working with the groups that are specifically protected by discrimination law (FFA para 3.6). However, the latter needs to be expressed as a requirement, rather than as an assertion that the CEHR “will be able to”, particularly in the light of differences in the strands covered by legislation in different parts of the UK.

6.2 The core functions do not appear to be in any particular order: we suggest that “working towards the elimination of unlawful discrimination and harassment” should be listed first.

6.3 We believe that in addition to promoting human rights, the core functions of the CEHR should include a duty to secure the protection of human rights, and that its power to protect human rights should not be limited to circumstances where human rights are engaged in the context of discrimination. The CEHR’s approach to this work should, of course, be strategic, and we accept that the CEHR would not bring individual human rights cases.

6.4 We also believe that the CEHR’s human rights remit should not be restricted to the ECHR and Human Rights Act: the CEHR should also have regard to international treaties, and it should have a role in the preparation of reports on the UK’s compliance with international human rights instruments.

6.5 We welcome the statement in FFA para 3.7 that the CEHR will bring together work related to different aspects of equality, and the recognition of the complexity of individual and group identities. We believe this is so important that it should be stated as a core function of the CEHR.

6.6 The core functions of the CEHR, while covering both equality and human rights, do not cover the relationship between them. The use of human rights principles, as outlined in FFA para 3.8, should be stated as a core function.

6.7 The requirement to work across the equality strands and human rights must also inform decisions on the structure of the CEHR, since this will determine the ability to work collaboratively and achieve the required outcomes.

6.8 The CEHR’s duty to promote good relations among different communities (FFA paras 3.31 – 3.33) is rightly defined as a core function, and it is also right that the CEHR should contribute to wider objectives on social cohesion. The importance of working in partnership with Government Departments and others with equivalent duties should be emphasised.

6.9 The responsibility to keep relevant legislation under review is of great importance (FFA paras 3.5 and 3.34-3.38), and must be adequately resourced. The responsibility should extend beyond new legislation specifically on equality, to include the impact of any proposed legislation with possible intended or unintended consequences for equality, and indeed to reviewing existing legislation which is felt to have a negative impact on equality. We note that it is proposed that the JCHR retain responsibility for scrutiny of proposed legislation for compatibility with the Human Rights Act (FFA para 3.38). In view of the close links between equality and human rights, and the combined role of the CEHR, we believe that there will be a need for close collaboration, and that the relationship
6.10 We are pleased to note the Government’s intention to bring forward a Single Equality Act. However, and while recognising that the CEHR, once established could play a key role in developing such legislation, we remain deeply concerned that the CEHR will take on a promotion, support and enforcement role with a hierarchy of powers for the different strands, and an extremely complex body of law and regulation. The longer this situation continues, the greater the impact on the effectiveness of the CEHR, and on the level of resources required to fulfil its functions (see also paras 4.6 – 4.7 above). The CRE’s draft Statutory Code of Practice on Racial Equality in Employment illustrates the complexity of the law on race and, we believe, demonstrates the impossibility of providing simple and coherent guidance for employers across all six strands. At the same time, there are very difficult issues of interpretation of the Regulations on religion or belief, and a range of issues to be addressed on the interrelationship between race and religion or belief.

6.11 The BHA considers it essential not only to have a firm commitment to introduce a Single Equality Act to simplify, harmonise and “level up” discrimination legislation across the board, but that work on developing this legislation should begin immediately. There seems to be no reason why this work should not take place during the transition to the CEHR, in consultation with the existing Commissions, representatives of the new strands and other stakeholders, and those involved in managing the transition.

6.12 We agree that the CEHR needs to be a centre of excellence and expertise on equality and human rights, and that it should carry out training, educational and outreach activities (FFA paras 3.39 - 3.41). It will be essential to develop expertise in relation to the new strands equivalent to that found within the existing Commissions, and to develop expertise in cross-strand issues and equality and human rights issues. This will require considerable resources. In dealing with potential clashes of rights between strands, the CEHR should engage the relevant voluntary organisations with a view to developing agreed protocols. The BHA welcomes the power to make financial grants.

6.13 We believe that auditing / monitoring performance and outcomes in relation to equality and human rights should be defined as a duty and core function of the CEHR. The CEHR should have a duty to audit its own performance and the outcomes of its work, but also to audit progress on equality and human rights in both public and private sector bodies, and indeed to monitor progress in society as a whole.

7 Tools to promote change (legal powers of enforcement)

7.1 The BHA’s most serious concerns about the White Paper relate to the limited powers of enforcement envisaged for the CEHR. It is recognised that some of the additional powers discussed within the CEHR Task Force have been included in the White Paper, but we believe there are still significant gaps.

7.2 The BHA broadly welcomes the proposed powers in respect of:

- General inquiries into issues of public interest (FFA paras 4.3 – 4.6). However, the CEHR should be able to conduct general enquiries on its own initiative: if only the Secretary of State can initiate inquiries, the
independence of the CEHR will be compromised

- The ability to obtain information (FFA para 4.6). However, we believe that the CEHR should itself have the power to use coercive powers to obtain information, rather than being reliant on the Secretary of State
- Statutory Codes of Practice (FFA paras 4.7 – 4.10)
- Third party interventions (FFA paras 4.11 -4.13)
- Direct case support for individual cases (FFA paras 4.16 – 4.17), but see paras 7.3 – 7.4, below)
- Provision of conciliation services in relation to goods, facilities, services and education (FFA paras 4.20 – 4.22). We endorse the proposal that conciliation be delivered by an independent provider, and also that ACAS continue to provide conciliation services in relation to employment
- Named investigations (FFA paras 4.24 – 4.30), including the power to require information, but the CEHR should be empowered to conduct named investigations in relation to abuses of human rights, as well as discrimination.
- Non-discrimination notices
- Application for court injunctions
- Binding agreements in lieu of enforcement.

7.3 There is good evidence that the legal cases undertaken by the existing Commissions and others have played a crucial role in moving the equality agenda forwards, and that in many cases this progress would not have been achieved without the legal action.

7.4 The BHA has very serious concerns about the definition of the strategic cases that the CEHR would be able to support, and whether this vital function will be adequately resourced. We are equally concerned about the ability of individuals to obtain appropriate support from other sources, and that individuals may often be left without support for important cases, including some that may turn out to be of strategic importance. It is well known that it sometimes often only becomes apparent that a case is of strategic importance part way through the legal process. If support cannot be provided by the CEHR, and there are no viable alternatives, the outcome is likely to be that those in greatest need of support are unable to obtain support from any source. In these circumstances, we think that the CEHR should have a duty regularly to report on individuals’ access to justice, including advice and representation, on equality and human rights matters.

7.5 We accept that the CEHR should not support individual cases under the Human Rights Act, but in order to ensure that strategic human rights cases receive support, we recommend that a memorandum of understanding to cover the criteria for strategic funding of human rights cases be developed with the Legal Services Commission.

7.6 The BHA believes that the CEHR should also have the power to seek judicial review where it has reason to believe that policies, actions or omissions have
resulted or are likely to result in violations of ECHR rights. A commission with the purpose of promoting and enforcing human rights must be able to act to prevent abuses of human rights. We appreciate that this would require an amendment to the Human Rights Act.

7.7 The White Paper promises no reduction of the powers of the existing Commissions, but it does appear to remove some existing powers, for example to take cases relating to discriminatory advertisements. We believe the CEHR must have the power to take own name cases, including in situations where serious or persistent discrimination has been identified but no individual is willing to bring a case. We agree that the CEHR should not take hypothetical cases.

7.8 **Question 2: We would welcome views on whether the CEHR should be able to continue support for cases which have drawn on both discrimination and human rights arguments, after the discrimination element of the case has fallen away.**

The BHA considers it essential that combined cases continue to be supported if the discrimination element falls away: abandoning such cases would be unacceptable, not least because it would undermine perceptions of the Government’s and the CEHR’s commitment to human rights.

8 **The governance of the CEHR (including funding)**

8.1 The BHA believes that a Commission with a remit for human rights must be, and be seen to be, independent of Government. We do not believe that the traditional non-departmental public body model would provide sufficient guarantees of independence for a Commission that covers human rights as well as equality.

8.2 We therefore support a model similar to that of the Parliamentary Commissioner for Administration, the National Audit Office and the Electoral Commission. The CEHR should be directly accountable to Parliament, and independent of both Parliament and Government. Parliament, rather than a ministerial department, should set the CEHR’s budget, and the Chair should be appointed as an “Officer of Parliament”. There should be a statutory committee to approve and oversee the CEHR’s budget and strategic plan, and the CEHR should make an annual report covering activities under all six strands and human rights, and cross-strand and cross-equality and human rights activities, to both Houses, with a committee of both Houses established to scrutinise these reports. The relationship between this committee and the JCHR would need to be defined. We note that it has been suggested that the JCHR should take on responsibilities for equality as well as human rights and carry out this function, and this may be a viable alternative.

8.3 Subject to the recommendation in para 8.2 above, we broadly agree with the description of the Board (FFA paras 5.4 – 5.13). We would emphasise the importance of the Board developing its own identity and common culture, rather than being a collection of separate interests (FFA para 5.5). We recognise the particular concerns of the DRC and other organisations representing the interests of people with disabilities, and understand the reasons for proposing a statutory requirement to ensure that one member of the board has or has had a disability. We agree that an exception to the general principle should be made for disability when the CEHR is established, but think that this should be time limited and that a Government undertaking is all that is required rather than a statutory provision. In the longer term, we believe that an obligation to have due regard to the importance of ensuring a broad range of experience and expertise in the issues that fall within
the CEHR’s remit and the communities it serves, combined with the power to establish committees and working groups on appropriate issues, should be sufficient to meet the needs of all stakeholders.

8.4 We note that the Government has accepted the suggestion that “transition” Commissioners from the CRE, DRC and EOC should be appointed for a single term. We endorse this proposal. We also believe, however, that if “transition” Commissioners are appointed from the existing Commissions, there should also be “transition” Commissioners from each of the new strands. If this is not done, it will reinforce the reality and perceptions of a hierarchy of equality.

8.5 We also recognise the importance of expertise relating to Scotland and Wales, and an appropriate relationship, including reporting, with Commissions in Scotland and Wales and the Scottish Parliament and National Assembly for Wales. However, we have concerns about the proposal to appoint two individuals with special knowledge of Scotland and Wales respectively, which undermines the principle outlined in FFA para 5.5, and would point out the complications that would arise if devolution is, at some time in the future, extended to English regions. We feel that it should be possible to meet the requirements relating to Scotland and Wales by the principle of “due regard” and a requirement that appropriate knowledge and expertise is included within the CEHR, and we are not convinced that this expertise needs necessarily to be at Board level (see also para 12.1 below).

8.6 We agree that the Chief Executive should be a member of the Commission.

8.7 As regards funding, we have already noted that the CEHR’s budget should be set by Parliament, to protect it from the vagaries of Departmental budgets and avoid dependence on a particular Department. The White Paper says nothing about the scale of funding required by the CEHR to achieve the ambitious objectives and functions described. While there should be economies of scale, with a combined Commission able to avoid some of the duplication in the work of the existing Commissions, the core functions of the CEHR go well beyond the current remits of the existing Commissions, and additional resources will inevitably be required for the new equality strands and human rights work. We are concerned that there may be an expectation that the budget of the CEHR could be lower than the combined budgets of the existing Commissions, with the process being seen as a “merger”, and the consequent implications that this may be a cost cutting exercise, with insufficient regard for the addition roles and functions of the new body.

9 Promoting good relations

9.1 The BHA welcomes the proposed statutory duty to promote good relations, which builds on the existing role of the CRE (FFA para 6.3), and the emphasis on delivering strategically (FFA paras 6.12 – 6.14)

9.2 Similarly, we welcome the extension of the current Section 44 local grant making powers of the CRE to the CEHR as a whole (FFA paras 6.6-6.10), but this must be adequately resourced.

9.3 We also welcome the commitment to continue to support local race equality work through the network of RECs, but feel that there is insufficient clarity about how local work relating to the other strands will be supported. We note that FFA para 6.6 anticipates supporting “local projects delivered by voluntary or community organisations with robust systems of accountability and transparency” but have
very serious doubts as to whether this capacity actually exists. There must also be serious concerns about the fact that many of the best resourced voluntary and community organisations only work with particular communities, and some have a poor record on equality. In particular, we observe that while there is an obvious need to work on good relations between different faiths and non-religious belief groups, the issues will be particularly difficult if there is an intention to fund local faith communities to implement equality work, and we do not believe that local interfaith networks or multi-faith groups, if they exclude certain (e.g. non-religious) beliefs from membership as many do, should be funded or accepted as partners in such work either. We do not believe that it will be possible in practice to implement the necessary local equality work without establishing the equivalent of the RECs with a remit across the whole area of equality.

9.4 There are obvious resource implications in this, which must be addressed. The pro-active conflict prevention and resolution role of the CEHR will already impact on the resource requirements of the CEHR, and the extension of this work to the regional and local level has very significant resource implications.

9.5 Question 3: What other areas of activity should the CEHR support at local level to further its overall mission to promote good relations between different communities?

Education and promotional work would be obvious candidates, but we recognise that there will be widely differing proposals for CEHR support across all the equality strands. With restricted resources it will be essential to develop clear criteria for assessing individual projects, and the capacity and suitability of the organisations involved, and high standards of monitoring and reporting are equally important. The sharing of learning from projects implemented at local level will help to establish and revise these criteria in the light of experience, and this would be a key role for the CEHR.

We would suggest that the aim of promoting equality and good relations across all strands may best be served by focusing on activities that relate to several strands, for example religion or belief, sexual orientation and transsexuals, and activities that encourage different groups that have little contact to work together.

10 Supporting key customers

10.1 This section of the White Paper is ambitious, but rightly so. If the CEHR cannot provide adequate support to the key customers identified, it will be unable to achieve the objectives identified for it. The creation of the CEHR will inevitably raise expectations, and an important task will be to ensure that customers understand the role and functions of the CEHR and what they can expect of it.

10.2 Individuals and front line advisers

The BHA warmly welcomes the proposed second tier support service for front line advisers (FFA para 7.15), but believe that front line advisers and their organisations should themselves be identified as key customers of the CEHR.

The CEHR will be crucial in ensuring that accurate advice, guidance and support is available to those who advise individuals. However we have concerns about the implications of this approach on the quality of the advice provided to individuals, and the practical difficulties of implementing quality assurance procedures. The CEHR will need to ensure that its support extends to enabling advisers to give
appropriate advice and support in cases of multiple discrimination, and in combined equality and human rights cases.

The provision of advice on human rights issues is important, and we are very concerned that there is only passing reference to human rights in this section.

As the White Paper observes (FFA para 7.16), there are serious concerns about the patchy nature and variable quality of information and advice. We think that the CEHR should have a role in identifying gaps in provision and ensuring that these are addressed. This may sometimes be by providing training, but the CEHR should also be able, and have the necessary resources, to fund local provision, at least in the short term while a local advice service is established. As noted in para 7.4, above, we believe that the CEHR should regularly report on access to justice, advice and representation.

It must be recognised that the reputation and credibility of the CEHR will be very dependent on the advice and support individuals receive.

10.3 Business

There is a clear demand from businesses, large and small, for a “joined up” approach. We do not believe that businesses of any size will ever be able to cope effectively with the complexity of current discrimination law, without harmonisation across all the strands but, in the meantime, we welcome the commitment to an active role with business, promoting the commercial case for action on diversity, case studies and responding to business concerns.

It will be important to distinguish very clearly between the CEHR’s promotion and enforcement roles, but we firmly believe that, with the appropriate expertise, the CEHR should come to be seen as a valued partner.

10.4 Public sector

The public sector will clearly be a key customer of the CEHR, and will require a “joined up” approach covering all equality strands and, of course, human rights. With public services increasingly contracted out to private and voluntary sector providers, these organisations also become key customers for support on human rights as well as equality. As noted above (para 4.7), we welcome the extension of the positive duty to disability and now gender (FFA para 7.58), and believe that this should be further extended to cover the remaining equality strands and also human rights, believing this to be an essential prerequisite for the step change in promotion, enforcement and delivery of equality and human rights that the White Paper calls for (FFA para 1.4).

As noted in para 5.4 above, the various inspectorates also need to be recognised as both key customers and partners of the CEHR in mainstreaming equality and human rights across the public sector.

We mention in passing that the issue about the definition of the meaning of “public authority” when public services are provided by organisations in the private or voluntary sector must be addressed as a matter of urgency. The positive duty should extend to voluntary and private organisations contracted by public authorities to deliver their services or fulfil other public functions.
10.5 **Voluntary sector**

We are disappointed to note that the voluntary sector seems to be seen as neither a key partner nor a key customer for the CEHR, and that its role is perceived as limited to the promotion of good relations. This is a serious omission. We believe that the voluntary sector also has a crucial role in the development of a culture of equality and human rights, but that it will need the support of the CEHR is achieving this. As identified in the JCHR Eleventh Report, there is a role for the CEHR to work in partnership with the voluntary sector to enable voluntary groups to use human rights principles in negotiations with public authorities and in policy and campaigning work and that the voluntary sector could contribute a great deal to the development of a human rights culture through its interactions with public authorities. We believe that, with support, the voluntary sector could be equally influential on equality issues.

10.6 **Question 4: We would welcome comments on the strategies for working with individuals, businesses and the public sector that are set out in this chapter**

Once again, the CEHR’s ability to meet the expectations of its key customers will depend on the resources available to it. It is not at all clear from this section of the White Paper what services the CEHR will be able to provide: guidance at a national level, or a signposting service, or face to face consultancy. Expectations will inevitably be high, and it will be important to define the CEHR’s remit very carefully, and then also ensure that the Commission is resourced to achieve its agreed objectives.

11 **Regional arrangements of the CEHR**

11.1 We welcome the commitment to ensure that the CEHR has a presence in each of the nine English regions, but feel that considerably greater clarity is required on the role of the CEHR in the regions. This chapter is one of the weakest in the White Paper. It is all very well to speak of flexibility and sensitivity, but it seems to us that much more work is required in defining how the CEHR will work in the regions. This must be clarified before the CEHR is established, in order to ensure that appropriate levels of resourcing are allocated for this work.

11.2 The White Paper acknowledges the contribution of the RECs in work on race equality, but seems unwilling to accept that equivalent resources are required across the equality strands and human rights. We believe that the Government should be prepared to commit the resources that will be required to enable effective implementation of the CEHR’s roles and functions across England, as well as in Scotland and Wales. We do not believe that the existing capacity in any region of England is sufficient to enable the CEHR to be effective without the allocation of the resources to allow a significant regional presence, ideally in the form of regional “equality and human rights councils” (equivalent to the RECs but with a remit across the equality strands and human rights).

11.3 **Question 5: What other activities should the CEHR carry out at a Regional level? Is the mixed approach – contracts, partnerships and co-location – an appropriate way to develop the CEHR’s regional presence?**

A mixed approach will be helpful, but should be part of or additional to the regional “equality and human rights councils” identified in FFA para 11.2, above.
12 The Scottish and Welsh dimensions

12.1 The BHA’s doubts about reserved places on the CEHR Board for Scottish and Welsh representatives (para 8.5 above) should not be interpreted as a failure to recognise the importance of responding to the particular needs of Scotland and Wales in the context of devolution. We accept the need for offices of the CEHR in Scotland and Wales, and Scotland and Wales committees, and recognise the importance of reporting on the CEHR’s activities to the Scottish Parliament and National Assembly for Wales. The budgets for CEHR work in Scotland and Wales should be agreed in consultation with the Scotland and Wales Committees. We agree that a Memorandum of Understanding between the CEHR and the Scottish Human Rights Committee and the various Commissions in Wales should be put in place.

13 Preparing the way & the road to implementation

13.1 The BHA is pleased to note that the White Paper acknowledges the need for particular effort to incorporate the new strands (FFA para 10.3-10.7). We welcome the announcement in June 2004 on further funding for awareness raising and promotion of the new regulations on sexual orientation and religion and belief, but do not consider this sufficient support for the new strands. The BHA has not applied for funding for awareness-raising activities on the implications of the Employment Equality (Religion or Belief) Regulations specifically for those with non-religious beliefs partly because of resourcing issues, even with external funding, and partly because of the lack of clarity about how these Regulations will be interpreted in the courts. If the principal organisation representing the interests of the large and growing population of ethically concerned but non-religious people living in the UK is unable to provide awareness-raising and promotional materials, this implies a serious lack of provision which must be addressed.

13.2 Among other concerns, the BHA fears that the lack of institutional support until the end of 2006 at the earliest could result in “bad case law”, which could take years to rectify, and we believe that funding must be made available for strategic cases. We also note that the equivalent of the Age Advisory Group and Age Task Force was not established for the religion or belief strand and consider this to have been an unfortunate omission with potentially serious outcomes. We believe that the lack of adequate resources for the religion or belief strand in particular will disadvantage this strand throughout the transition period, and this in turn, if not addressed, may well lead to inadequate resourcing for the strand within the CEHR itself. This is particularly important when the CRE, with all its resources, has a particular interest in some but not all aspects of the religion or belief strand, and in the light of the very unequal legal protection for various groups who may be covered by legislation on both race and religion of belief, e.g. Muslims of Asian origin. This inequality of protection is likely to result in distorted statistics when evaluating the need for support and how the Religion or Belief Regulations are working, as individuals discriminated against on grounds of either or both race and religion or belief take their cases forward under race legislation. If this distortion is not recognised, this is likely to perpetuate inadequate resourcing of the religion or belief strand within the CEHR.

13.3 We call for the provision of a secretariat and dedicated resources for the representatives of the new strands in the steering group to be established to manage the planning and implementation of the “key milestones” towards the establishment of the CEHR, and also in the shadow CEHR when that is
13.4 We also believe that the Government must create and resource a body to provide advice to the public and private sectors and to individuals, and to take strategic cases relating to the new strands, until the CEHR is established. For the reasons stated in paras 3.7, 3.8 and 13.1 above, we do not believe that it would be appropriate to give this remit to the CRE, although we do recognise that the proposed body will need to work closely with the CRE on certain aspects of religion or belief discrimination. As soon as the shadow CEHR board is established, it should take on responsibility for this body and the work it does.

13.5 We are in agreement with the specific arrangements for disability (FFA paras 10.15 - 10.19) to ensure no regression from the DDA, including the review period and description of its role (but not the long term requirement that one Commissioner must have or have had a disability, as noted in para 8.3 above). However, it will also be important to ensure that these arrangements do not bring into question the level of commitment to other strands. The commitment to this in FFA para 10.21 is welcomed, as is the requirement that the disability committee itself ensures that its activities offer benefits to the wider work of the CEHR, and contributes to cross-strand work (FFA para 10.20).

13.6 As noted earlier, it is vital that the Bill to establish the CEHR is enacted as soon as possible. Any delays will have serious implications.

13.7 We agree with the processes described for the establishment of the shadow CEHR, including the appointment of “transition commissioners” from the CRE, DRC and EOC. However, this must be balanced by an appropriate input from the new strands. The expertise within the existing Commissions must be harnessed for the CEHR, and continuity is important, but the inequalities between the existing Commissions and the new strands must be addressed during the transition period. It will not be enough to rely on the very inadequate resources of existing new strand organisations, especially in the area of religion or belief. The White Paper’s reliance on these resources, with the addition of a limited amount of funding that is restricted to promotional and awareness-raising activities, is a very serious weakness (see also para 13.1 above).

British Humanist Association
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