

## **Royal College of Midwives Annual Conference**

**Manchester Central, Friday 27 November**

**Speech by Trevor Phillips**

**Making Equality a Reality for Expectant Mothers and their Families**

I am here to represent the Equality and Human Rights Commission. Our brief is simple, yet ambitious: to make Britain a fairer place for every one of its 60 million inhabitants.

It is a privilege to speak to an audience like you who time and again have shown their commitment to dignity and respect for all; not just in principle, but in practice.

When others criticise the impact of migration on the NHS, the RCM is swift to set the record straight. As Cathy Warwick put it, without the many midwives born outside the UK, NHS maternity care would be 'on its knees.'

I feel this personally. I came from the Caribbean and my sister wanted to be a nurse. She later qualified as a midwife. We would do well to remember that people come here to serve and help raise our standards, not just as willing hands.

The RCM is the first to defend their members when colleagues – or patients, for that matter – treat them badly.

At heart, in fact, the RCM and the Equality and Human Rights Commission share many fundamental values, and for that reason alone we should, I believe, be partners.

But there's another reason too.

Gender in the profession has been controversial. For 20 years men have been practising as midwives. Reading mumsnet, I know that the majority of women attended by male midwives are more than happy with the service they receive: and it's the quality of care, not the person delivering it, which matters.

But the fact remains that midwifery has long been and still is a largely female profession. Historically, it is one of the rare jobs that have conferred status and power primarily on women: it is a place where women have been respected for their skills, abilities, and intellect. As such, it carries a banner for female professionals.

This gives the RCM a unique role – and responsibility. Few organisations can speak with more authority on behalf of professional women. Your voice should carry extra weight in debate about many of today's social changes.

When you talk about work-life balance, or flexible working, decision-makers should be listening.

When it comes to more complex issues: questions of body image, the debate about being 'too posh to push' – I would like to see the media listening to you more than perhaps some of our more glamorous commentators.

And when you say that the trend towards elective C-sections has gone too far; when you say the pressure to change shape immediately after pregnancy is not just oppressive to women, but beginning to distort the ideas of what a woman can be – that message should be heard loud and clear.

And so I'm here, in part, simply to acknowledge your role as a place which talks good sense about women in matters of health and their role in society: and to recommit the Equality and Human Rights Commission to listening closely to your ideas on the whole range of our work.

But I also hope that we will be able to make common cause on debates that will shape the future of the NHS in particular.

In the New Year, for example, the Council for Health Regulatory Excellence plans to examine best practice in eliminating discriminatory behaviour across the sector. The RCM has unique insights to share about potential solutions. You can play a leading part in making health services a discrimination-free zone for patients and staff alike.

Or take the 'National Fitness to Practice Regulations.' The Commission thinks that the 'health indicators' - which call for medical practitioners to conform to what most people would acknowledge is a vague notion of mental and physical health - are both ineffective and unfair. Rather than protecting patients, they lead to the loss of disabled staff who make a significant contribution.

But the main topic I want to address today is a different reform. It affects not just your profession, but the whole country. It is the Equality Bill currently before parliament, the most far-reaching piece of equality law for a generation.

When we say equality we don't just mean sameness, it's more fundamental than that. When you meet parents or family before a birth, they can be consumed by anxiety. After a healthy birth you see relief,

but also hope. Hope that their children will experience a freer and healthier life than their own. Today many are trapped by the accident of birth. If you are women you will on average earn £300,000 less than your brothers over your working career. If disabled or from an ethnic minority you are less likely to be in work. If you are a boy and born to Afro Caribbean parents, you are more likely to go to prison than further education. This is wrong, this is what lies at the heart of our work and this is what drives us.

The Equalities Minister Harriet Harman has said that this is a “good bill, a timely bill and a strong bill.” By and large the Commission agrees.

Whatever its imperfections, the Bill represents a huge step forward.

In essence it does two things. First, it is an exercise in consolidation.

Equality law has built up over the years, layer by layer. It’s like an archaeological site. If you want to understand it, and all the 160 statutes you don’t need a lawyer: you need Time Team.

The new bill will put in one place and in a common language all your rights and responsibilities, whether you are an employee, a consumer or a big organisation.

Where current interpretation is contested, it spells the law out in black and white. Take an issue which you will be discussing here,

breastfeeding in public. You will know far better than I do the overwhelming evidence of the benefits to mother and baby. Yet women doing the most natural thing in the world in their local cafe or library are still sometimes told: stop it or get out. Others hesitate for fear of an adverse reaction. The Bill will establish once and for all that public breastfeeding is protected by law.

This piece of legislation is, however, far more than just an exercise in consolidation and clarification. It introduces significant new measures that will help make Britain a fairer place.

For example - the Bill introduces, for the first time in British law, a duty on strategic authorities to consider socio-economic disadvantage.

In the 21<sup>st</sup> century, socio-economic background, what we used to call class in the old days, is still one of the most pervasive and pernicious causes of disadvantage. Even today, if you know a child's postcode at birth you have a reasonable chance of guessing their eventual lot in life. We in the Commission believe that no-one's destiny should be determined by their origins: and so we are strongly in favour of the duty. The duty means that strategic authorities will have to monitor the extent to which their services are meeting the needs of people from poorer backgrounds. If there was a problem – let's say, for example, if it turned out that a smaller proportion of women from a particular area were getting their first check-up before 12 weeks – then the authority would have to take steps to put it right.

You will know far better than I do the innovative ways this might be achieved: a strong and visible presence in health centres, more visits to community groups - different ideas come forward every week.

Of course this kind of good practice happens already. But the duty will mean that it will need to be applied more consistently, and in the light of proper evidence. No strategic authority will have the right to be ignorant about the experience of the poorest people they serve.

In fact, the socio-economic duty illustrates in a nutshell the major philosophical thrust of the Bill: a shift from individual redress to institutional reform.

What I mean by this is that for forty years, the central principle of British equality law has been individual redress. If you have been hard done by – overlooked for a job, denied service in a shop - because you happen to be a woman, or Asian, or Christian, then the law has given you the option to seek justice in a civil court. This principle has enabled tens of thousands of men and women to demand fairness. It has prompted firms both public and private to put their house in order, at least to some extent, cracking down on the most visible manifestations of prejudice.

This, coupled with a wider change in public attitudes, means that quite simply we're in a different place to where we were as recently as 30 or even 20 years ago.

But there is a problem. It has always depended on the individual who has found themselves in difficulty to take the initiative to go to court and find the money. It is very hard. People shouldn't have to be heroes to seek justice.

And injustice and disadvantage persist. However you measure the full-time gender pay gap between men and women, it has never dipped into single digits. Half of children of Bangladeshi or Pakistani background grow up in poverty.

For the most part, these instances of disadvantage are not due to intentional or conscious discrimination. Few teachers or employers are deliberately setting out to be mean or unreasonable. Rather, disadvantage stems from assumptions and practices at the very heart of the way institutions work. Sometimes they are so deeply buried that you don't even see them unless you end up on the wrong end: why should it be that we have lower expectations of certain pupils because of their accent, or gender, or skin colour? Why should it be assumed that a part-time job can't be as responsible as a full-time one?

Individual redress is not the right tool for rooting out this systemic bias. What's needed is a considered and thoughtful re-examination of the practices and processes that tilt the tables in favour of some, and to the disadvantage of others.

It is just such a re-examination of public services that is called for by the Race Relations Amendment Act 2000. Subsequent acts of parliament have introduced public sector duties relative to gender and disability. These duties have been in force for a handful of years, and in many places they have begun to prompt real change. But we think this approach needs to deliver far more.

The Equality Bill brings all the existing duties together into a single public sector duty, and it extends their scope to cover age, sexual orientation and religion or belief.

In simple terms, it will require public authorities to treat every individual equitably and decently, no matter what their background or personal circumstances. Instead of waiting for problems to arise, authorities will need to anticipate and forestall them.

Thinking about your profession in particular, the single public sector duty will reinforce the legal case for the caring and thoughtful things that the vast majority of you already do:

Providing information in a clear and accessible form to women who may not have English as a first language will become a requirement.

Giving disabled mothers-to-be the opportunity to make their own choices on the same basis as anyone else will become a requirement.

Giving a high-quality service to all expectant mothers and their families, whether they are living with a man, with a woman, or on their own will become a requirement.

The duty will also put a new emphasis on the importance of evidence. We will be looking to authorities to properly understand the people they serve. How many mothers are disabled? How many are single?

Collecting the data is not just some bureaucratic exercise – we need to make sure that different needs and experiences are seen and acknowledged. It is a vital step towards ensuring the decent treatment everyone deserves.

Extending protection is not the only positive reform to the duty. The Bill is also an opportunity to give the Commission, as a regulator, a better way of holding public authorities to account.

We need to fundamentally change the way they look and tackle disadvantage.

In the past, our predecessor commissions (and I put my hand up as a chair of one of those bodies) set too much store by what might be called the 'bureaucratic theory of change.' What we wanted from authorities –

and what we could test them for – was a strategy setting out their plans for ending unfairness. As a test, it has some merits: if nothing else, it's easy to point and say 'you don't have an equality strategy, therefore you haven't taken this seriously.' If you do, then at least you are paying attention.

But in fact the bureaucratic theory has a major failing. It doesn't take into proper account what really matters: change for the better. Currently you could, in theory, make decisions which did nothing at all to promote fairness and equality, but as long as you had followed the right formalities in making the decision you would be immune to censure. That's clearly perverse. Instead of asking 'have you got a document?' we want to be able to ask 'have things got better?' with reference to hard facts. Is there an increase in the proportion of mothers breastfeeding at 6 months? Are more women getting access to maternity services in their first trimester?

Our ability to ask the right questions is the first issue on the agenda for our discussions with government on the bill. With parliamentary time increasingly precious, we are realistic that efforts to perfect the bill must not stand in the way of getting it passed – but we think it's vital to sort this point out.

As businesses and public services prepare for the bill coming into law, the Commission is here to help. We are a modern regulator. We will use every tool in the box- including compliance and enforcement action – but they are a last resort, rather than the first reaction. First and foremost we want to provide advice, support and encouragement.

In that spirit we have already begun drafting statutory codes and non-statutory guidance on the Bill. With the non-statutory guidance in particular, we want advice to be accessible, authoritative, and easy to use. We have been involving the eventual users of the guidance in its design and drafting from the start. I wanted to thank the RCM who are helping us review the guidance before it goes out to formal consultation and I'm immensely grateful for your input.

My final thought is this. The Equality Bill is wide in its scope and ambitious in its aims. But ultimately what it challenges us all to achieve is not beyond our power or wit. It calls for thoughtful, imaginative provision of services: services that treat individuals as individuals. Few public servants have a more intimate understanding of how this can be done than midwives. I hope very much that the Commission can continue talking to and learning from the RCM in the months to come.