

# Fairness Contract

## Speech by Trevor Phillips, Monday 21 July 2008, QEI centre, London.

Good afternoon.

It's a little unnerving to see quite so many big players from the equalities world all gathered together, but I am delighted that you were able to come and I thank you for your presence. This is an important day for us at the Equality and Human Rights Commission, because it is the culmination of a great deal of hard work, so I'd like to start by extending my appreciation to all those among our staff who contributed their expertise in the production of the document that we're launching today: Fairness, A New Contract With The Public.

I would like to take a few moments to explain a little about why we invited you here today. In our mission statement we make it clear that the Equality and Human Rights Commission intends to work in a collaborative way, and to treat our partners seriously. So when we make this major statement of our ambitions for the future, and when we set out some new ideas about the way that we want to work, it seemed obvious to us that we should share it with you first, people who represent the most active elements in the equality field. And we wanted to hear your immediate thoughts, though as I'll go on to explain we envisage this being a pretty extended conversation.

On the face of it the biggest thing in our field at present is the set of proposals for a new Equality Act set out by Harriet Harman a fortnight or so ago. We think that the Secretary of State's ideas are bold and valuable. They are based on the four aims of a new outcomes-focused equality duty; greater transparency in both private and public sectors; a more effective use of public procurement; and a modern and incisive enforcement regime. They will form the basis of a Bill that

will, whatever amendments are made, be a step change in the legal framework for equality in this country. We intend to do everything we can to support the Secretary of State in developing the detail of the Bill and in getting the Bill through Parliament.

But, as valuable as this package might be it is our view that it isn't enough. One never wants to seem ungrateful to Ministers when they are travelling in the right direction; but sometimes things are important enough to say that we need to be travelling faster and that we need to be covering a far wider front.

Not everything can be solved by legislation, and as is well-known my own view is that too much of what we have is too bureaucratic and process driven; it may make the hearts of the box-tickers and the paper-shufflers leap to see yet another sub-clause demanding yet more wads of compliance letters but it doesn't do much for me; nor does it do much for the millions out there who look to us to improve the way that they live today.

The fact is that the challenge we face in instilling fairness in today's world is much greater than this Bill implies. What is proposed is ambitious, far-reaching and innovative. But it isn't ambitious enough, not far-reaching enough and not innovative enough.

And oddly, not joined up enough. For example whilst one arm of government is going full-tilt to put more power in the hands of citizens - as set out in the Empowerment White Paper last week - in the arena of equality where the voice of the people might be the most effective spur to action, we see little effort to unleash the power of the ordinary citizen's scrutiny and challenge.

Where a huge Companies Act is trying its best to bring order to the sometimes chaotic governance of private enterprise, neither competition policy nor the weight of shareholder pressure, is being brought to bear to improve the performance of the private sector on equality.

But there is a deeper set of reasons why we believe that we need a more ambitious approach right now.

There is first of all a positive reason. The existing set of laws has made a difference, and the campaigns of the past forty years have changed things.

The law has genuinely changed our culture for the better. In the past 30 years, the prevalence of crude, overt discrimination in some fields has diminished. We can't ever be complacent about prejudice - not everybody's attitudes have kept pace with the standards for behaviour towards one another set out in the law. Both low level and very serious incidents of discrimination, bullying, harassment and hate crime are still the experience of too many people. That's why this remains one of the Commission's first priorities - a determined attack on hate crime, and a clear focus on domestic violence and rape, using our enforcement of the public duty as a lever to improve the response of public services.

We've also learnt that individual retrospective legal remedy isn't enough. The advent of the equality duties were a signal that we had to tackle systemic failure and bias. And we've learnt that not all kinds of discrimination and inequality can be marshalled neatly into the categories which we've traditionally used. Those categories leave out too many people - children, carers, parents for example - and don't always help us to focus on the true cause of disadvantage. A black disabled colleague may need a prosthetic limb - but the failure of the NHS to supply one which is appropriate for her is neither purely a disability discrimination nor race discrimination case. It's a problem of institutional inertia and insensitivity which we need to find ways of anticipating and eliminating. That is why, among other reasons, we need a stronger more results-focussed public sector duty.

But we also can set out some less positive reasons for a more ambitious and comprehensive set of protections and practices.

Both social and economic trends are pushing our country towards the entrenchment of greater and more divisive inequality.

Let me remind you of three of the most important trends:

- First, the structure of the labour market: there are more service sector jobs and more jobs that need higher education qualifications and higher-level skills. The reality is a twin-track economy of skilled and unskilled work with less possibility of a cross-over between the two. Nine out of ten adults with a degree are in work, but only five out of ten adults with no qualifications are in work - and the gap between the two is growing wider not narrower.
- Second, changing household composition: the number of lone parents as a proportion of households has trebled in 35 years from 8 per cent to 24 per cent. Children living in lone parent and single earner households are

significantly more likely to live in poverty. Family change is the most likely cause of low income for women, in contrast to men who suffer most from changes in labour market circumstances.

- Third, fundamental demographic shifts: there are already 9.4 million people in Britain over the age of 65 and that is expected to increase to 12.4 million by 2021. By 2026 the demand for informal care will nearly double. Britain's ethnic minority population is likely to continue to grow from 9 per cent today to 11 per cent by the end of the decade. The numbers of people living with a disability are also increasing and the rate of increase is accelerating - the largest growth is among children under 16.

These changes throw up new challenges, the most important of which is the likelihood of polarisation. In the long-term, they threaten both economic prosperity and social justice. Inequality - the gap between those who have access to prosperity and those that are shut out - has increased in the last decade. The divide between rich and poor has widened to its highest level for 40 years according to recent research by the Joseph Rowntree Foundation.

And these trends are about to be dramatically reinforced by the effect of an economic downturn.

For the past two decades, this country has like most of the developed West experienced pretty consistent growth. Our principal economic anxiety on the equality front has been the fact that the proceeds of that growth were not shared fairly. There were more jobs being created but the best and highest paid did not go the way of women or people from ethnic minorities.

There have been tremendous levels of investment in public services, yet disabled people or older people haven't benefited either from higher levels of support or greater strides towards truly independent living. The social sea-change that brought us civil partnerships hasn't benefited carers in the way it might have done.

And now we have a new worry. An economic slowdown, carrying with it a squeeze on investment and jobs is the true time-bomb lurking in our near future. We all know that it wouldn't take very much to turn the clock back on what equality law and policy has achieved in the past three decades.

A fall in employment rates would stop the advance of women into the workplace and put off the rise of women to the higher levels of the employment pyramid. All

experience shows that when the lay-offs start ethnic minorities are always first out of the door. And when employers are under pressure, without some other reason to do things differently, all the promised flexibility for parents and carers and the hoped for creativity in finding new ways of keeping the older worker engaged is going to go on hold.

In short, economic downturn won't just mean bad times on the petrol station forecourt. It could start to mean a society where women are forced back to the home and to the worst jobs; disabled people are excluded; and where social and ethnic divisions that we thought were slowly being healed are instead scarring our society. We worry about the threat of terrorism and we are right to do so.

But if we fear alienation and radicalisation perhaps we should invest less effort in finding ways of giving the state power to hold a few Muslims longer; and put that energy into finding ways of staving off the looming divisions caused by inequality and unfairness.

These trends are not temporary. They are a consequence of a change in the world economy that has brought prosperity yes, but that is fuelling inequality.

In a globalised economy the winners win bigger; and the losers lose more absolutely. We are in danger of creating greater divisions through the growth of an 'hour glass' economy where those who are already doing well race even faster ahead, while those at the bottom could be left further behind. Those who are successful should be applauded and rewarded because they bring wealth to the whole country. But what of those who are being left out of prosperity and who are being excluded from enjoying the benefits of globalisation? They have fewer chances to break out of poverty than ever before.

And for those of us who have been concerned by inequality defined by characteristics such as gender race and disability, we may now have to think again about our approach. Not least because the oldest predictor of unequal life chances - class - is on its way back as a powerful driver of outcomes.

The growth of 'vertical' inequality - of income, wealth, and power - is shaking public confidence in the fairness of the distribution of the rewards of economic success. In the recent British Social Attitudes survey, 76 per cent considered the gap between rich and poor in Britain to be too large. With every wealth gap comes a well-being gap - the resentment that builds when there is a growing divide

between the haves and the have nots. If we want to retain the dynamism of a market economy we must ensure that people aren't turned against it by unjustifiable unfairness. And the most evident injustice lies in disparities of wealth and income.

That is not to say that what you might call "horizontal inequality" doesn't matter. Divisions between different groups defined by faith, sexual orientation and ethnicity for example threatens the nurturing of good relations across the communities that make up our society. Hate crimes against learning disabled people are a blot on our society. And the inability felt by all too many to have their voices heard undermine the 'habits of solidarity' that bind us together as a country. But the overwhelming salience of class should still force us to make the closing of socio-economic gaps a priority.

What should we the Equality and Human rights Commission be doing about all this?

Well, we intend as set out in our business plan to pursue with vigour, the casework, guidance, and enforcement that you should expect from us. We'll work in a grown up and positive way with employers, but we won't hold back from investigation inquiry and enforcement where necessary. Our grants programme will expand its reach, and if resources allow, its size.

We will undertake more strategic litigation of the kind that recently opened the way to new rights for six million carers - the Sharon Coleman case. We'll continue to speak out boldly in defence of the fundamental values embodied in our Equality Act and the Human Rights Act on issues such as 42 days. And we'll break new ground in the way that we have done on questions like the balance between working life and parenthood and the sharing of the responsibility between mothers and fathers, or the way that we talk about immigration, for example.

But we think that as a new body we need to go beyond that in the face of the kind of challenge I've been describing; and today's document points towards some of the new directions that we hope to be taking.

Let me set out three and then say what we plan to do about them.

One : we need a new, more comprehensive account of inequality in our society, which goes beyond the confines of the single characteristic inequality - the so-called strand approach - to embrace other drivers of inequality such as status -

caring or having been incarcerated for example, or parenthood; and above all that recognises the power of socioeconomic status and the interaction between these dimensions. Put shortly what we want to base action upon is not a set of preset assumptions about inequality but evidence of the real sources of inequality.

Two: we need to engage people and organisations beyond the equality specialists in a way that we haven't done previously. But we shouldn't just be doing so in order to prove that we are open and like our stakeholders. No, we should be engaging them in order to give them power, to share the authority that we carry and to enable them - you - to become scrutineers, challengers and regulators too.

Three, we need to ensure that equality policy becomes impervious to political or economic circumstance. We have a founding ambition - that people's destinies should cease to be determined by their origins. We want to see that ambition pursued whatever the colour of government and whatever the economic situation.

So our Fairness Contract goes beyond legislation to set out our vision for achieving a more equal Britain.

We believe our approach to equality now needs an overhaul. It is time that we went beyond the anti-discrimination movement to the pro-fairness movement.

That will lie at the heart of our three year strategy on which we'll begin consultation in the autumn. We began our discussions as a Board on this last week, and though it is far too early to set out what I think our three year priorities will be, what I can say for certain is that the Board does not intend to be trapped by our current level of understanding of inequality. Nor will we be confined by the fact that the range of data that we have available to us on the subtleties of disadvantage is so lacking.

We will be talking to you about how we can begin to paint a richer, more complex picture of the way that inequality works - not for the sake of it - but to ensure that we focus our resources more specifically and more powerfully on the particular areas that most need transformation.

However we won't just be concerned with measurement and legislation. We also need to consider what part people play in changing their own situation. We propose a new contract with the public on fairness - a contract between the state and the individual, but also crucially between the individuals who make up our

society. And to give that contract force we propose that we should embrace the most innovative developments in regulation, which do not leave the process of scrutiny, challenge and sanction solely in the hands of remote bureaucrats but use the tool of citizen power to enforce action and exert continuous pressure towards greater fairness and equality. We should harness Edmund Burke's 'little platoons' to drive change.

How is this put into action? Well, imagine a public authority providing services locally - when, for example, the gap between men and women, disabled and non-disabled, Asian and white becomes too great, citizens should be able to act. We envisage three basic steps to forcing change.

First - transparency. We need data on how public sector organisations are performing and how they are serving the public. The data, which should be sophisticated and smart demonstrating how organisations are serving the public, should be published.

Next, organisations should have the opportunity to explain the reasons for any disparities and inequalities that are apparent - justification.

At that stage if the public remain dissatisfied, they could by way of a local referendum or petition with a specified number of signatures, demand that inequalities in the services reported are tackled. This could be in a local hospital, a local school or a service provided by the local authority. For example, in the area of domestic violence as we pointed out last November, the patchiness of services should be challenged and the women who are underserved should take the police and service providers to task

The role of the Equality and Human Rights Commission in this is, as I have said, to play a supporting role to the public. Rather than getting into the driving seat we want to direct the traffic. Providing information on how other comparable authorities have done better. Putting people in touch with each other. And our partners and stakeholders have a critical role here in marshalling and mobilising the voice of the excluded and marginalised, to make citizens' power another way of tackling entrenched inequality.

We want to be a new kind of regulator, not one that sits back and waits to go to court or waits for complaints to come in, but one that works with people to take action.

To make citizens' power work, we need to create a new consensus on fairness and forge a culture where we all understand that it is part of our values as a nation, part of what binds us together and maintains good relations - and moreover we need to secure our advances so they cannot be reversed.

To achieve all this, we need to lock equality into our basic constitution and ensure that it is never subordinated to other desirable ends, for example, personal choice. We know now that school choice will always trump the impact of parents choice operating a certain way on equality.

This is why we are proposing that the new Equality Bill should go a step further, and incorporate a constitutional guarantee of equality. This would guard against judicial decisions like the recent ruling in the case of *Lewisham vs Malcolm* on comparators which has made it almost impossible to claim disability-related discrimination. A constitutional guarantee of equality would also be a powerful public declaration of what people can expect from public authorities and the state. It would be another step, along with the public duties, towards institutions being compelled to comply with basic principles of fairness, rather than wronged individuals seeking retrospective remedies.

And it would lock in equality to the core of our polity. To protect a national consensus on equality for generations to come we need to make it a value that is neutral to the political environment; a value that people affiliate with regardless of whether they tend towards the left or the right.

Let me describe in concrete terms what that means. Just as the NHS's founding principle of universal health care, free at the point of delivery has not been eroded by political change; and the BBC's mission to educate entertain and inform has not significantly been interfered over the past eight decades, we want equality to become an enduring British value, and its institutional heart to survive in the law, long after the Commission has been forgotten.

The mission of the equalities movement has long been to move equality from the margins to the mainstream. The Equality Bill has the potential to help us achieve that, finally; to make fairness a principle that the whole nation signs up to at a cultural level and a constitutional level. Our role at the Commission is to create and to protect a national consensus on fairness, to help people manage change, as well as to understand the future - new technologies, genetics, science, global communications all present new challenges to us. At the heart of this is ensuring

that the divisions in our society do not grow but reduce. That is why a new fairness guarantee with the public matters to all of us so much and why we think this should lie at the heart of a new contract for fairness.