

Equality and Human Rights Commission

Response to the Tailored Review 2018

November 2018

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1 | Introduction

This document is the formal response of the Equality and Human Rights Commission ('the Commission') to the Government's Tailored Review ('the Review') of the Commission.

Reviews of all non-departmental public bodies take place at least once in the lifetime of a Parliament and focus on efficiency, effectiveness and governance.

The Review looked into how the Commission's structures and processes help us deliver our strategy, how we prioritise and how we demonstrate and communicate impact. The most fundamental question asked by every Tailored Review is, should the public body exist and in what form?

The final report delivers a clear message that the Commission fulfils a fundamental role in society and that it should continue to exist and carry out its functions.

The Review considered the three tests for whether a body should be at arm's length from Government.

We welcome its conclusion that the Commission met all three tests:

- delivery of a technical function requiring external expertise
- needing to be and be seen to be delivered with absolute political impartiality, and
- needing to be delivered independently to establish facts or figures with integrity.

The Review highlights a number of the Commission's successes and recognises many of the improvements that we have made. It mentions our good governance and accountability, progress in delivering efficiency savings, our strong international reputation, and the fact that stakeholders see us as independent of Government. In particular, we are proud that the Review observes that '[it] has found an organisation passionate about reducing inequality and enhancing the role of rights in society.'

The Review process is also designed to test and challenge and, as with other Tailored Reviews, some key areas for improvement are recommended – in particular, how we prioritise, how we show the impact of our work and how we influence and engage with our stakeholders.

2 | Response to the findings

2.1 Organisational improvement

We endorse the Review's emphasis on the importance of prioritisation, impact and external engagement, and acknowledge the scope for further progress in these areas.

We note that the Review suggests in places that a fundamental 'reset' is needed; we believe instead that the Commission's current approach to transformation is the right one and already under way. We do agree, however, that we need to go further and move faster to deliver our improvement plans.

The Commission has been through an immense amount of change in order to enable the delivery of improved effectiveness.

Our comprehensive re-structure, recruitment and development of new skills, and the organisation of our work around six 'domains' of life have all equipped us to maximise our impact.

We have increased the number of strategic legal interventions, from 27 in 2016/17 to 45 in 2017/18, as well as supporting 160 cases through our Legal Support Project.

We launched our first ever behaviour change campaign ('Working Forward'), leading to 347 employers, covering 1.67 million employees, signing our pledge to make their workplaces the best they can be for pregnant women and new mothers. We also worked with the Premier League to secure an additional 700 wheelchair-accessible spaces for disabled fans and achieved full compliance on gender pay gap reporting through close collaboration with Government.

[Our impact report](#), published separately, explains how a range of our activities has helped advance equality and human rights.

In the next part of this response, we explain how we will respond to the other recommendations in the Review – to further prioritise our work, enhance our enforcement role, measure and communicate our impact, and improve our relationships with stakeholders.

2.2 Prioritisation

The breadth of our remit and the size and reduction in our budget inevitably mean that we agree that we need to make some difficult choices about what we do and do not work on.

The Review encourages us to base our priorities on a clear view of the most challenging inequality and human rights issues facing our society and to articulate clearly what we intend to do about them – we agree.

Our [Measurement Framework](#) and [monitoring of Britain's fulfilment of UN Treaty obligations](#) enable us to look at evidence across the equality and human rights landscape and identify the most serious and pressing issues.

We have made available our report, [Is Britain Fairer? 2018](#) this autumn, along with specific versions for England, Scotland and Wales. For the first time these reports set out not only the major equality and human rights issues of the day but also our recommendations on the actions required by a range of actors to tackle them.

'Is Britain Fairer? 2018' will form the foundation for our new Strategic Plan, currently the subject of public consultation, which will set out clearly which recommendations and areas for action we believe we are uniquely best-placed to take forward.

The Review urges us to commit to no more than 10 major priorities in the Strategic Plan. The need to prioritise will mean us making some tough decisions about what we can achieve with our powers and resources.

Prioritisation will allow us to implement more sophisticated strategies to bring about change in fewer areas – using the full range of our powers to address the different factors that contribute to a particular problem, devoting more resources to it and working in a sustained way over a longer period to bring about meaningful change.

We will prioritise those issues which act as a gateway to other opportunities (such as transport and technology), issues where there are particular barriers to individuals' ability to seek redress (such as education), and issues which we know are likely to grow during the life of the Strategic Plan.

Our priorities will reflect our dual remit as a National Equality Body and a National Human Rights Institution (NHRI), fulfilling the 'Paris Principles'.

2.3 Our unique functions and enforcement role

The Review urges us to ensure that we prioritise our work around our unique functions to have the greatest impact.

We welcome this recommendation and, when deciding which equality and human rights issues should be included within our next Strategic Plan, we will focus on those which we, given our unique powers, are best placed to address.

Parliament gave us a particular set of duties and powers to enable us to develop and deliver effective strategies for driving change – from identifying, highlighting and exploring the challenges and solutions, through influencing legislative and policy change, promoting compliance with equality and human rights law, and holding to account those who fail to comply with their responsibilities.

We also welcome the Review's acknowledgement that our 'enforcement' role includes the range of activities that can improve compliance with equality law, from effective influence and 'nudge' through to legal action. We also agree that 'enforcement' does not refer exclusively to litigation in the courts but to pre-enforcement work too.

What makes us unique – and what allows us to have most impact on inequalities and human rights abuses – is our ability to use our full range of powers in conjunction with each other to achieve broad and sustainable change that improves people's life chances. A single legal case can have an impact for one individual or group of individuals.

However, when we couple that with use of our range of powers, for example provision of advice and guidance, inquiries and investigations, policy-influencing, communications and UN human rights treaty monitoring, we know we can drive lasting changes in society.

The Commission was established by Parliament to act as a strategic enforcer of equality law. Parliament did not intend the Commission to litigate extensively on behalf of individuals except in cases which test important areas of the law or are likely to have a significant wider impact.

We have already significantly stepped up our formal enforcement activities, and our key performance indicators commit us to an increase in legal action in this financial year. We are on target to meet our goal the year. Our Strategic Plan will also place compliance and enforcement at the heart of our strategy for defending equality and

human rights and will devote more of our resources to these activities to address breaches of the law.

We will identify those areas of life where individuals face barriers – such as accessing justice. We will also connect with frontline agencies proactively to seek out cases, use our inquiry powers more frequently to expose inequalities and human rights abuses which would otherwise remain hidden, compel information to show causes and solutions, and require action to address these issues. Indeed this year we will carry out at least two inquiries.

We are confident that we can deliver longer-term and widespread impact by targeting these activities on the key inequalities and human rights abuses identified in our Strategic Plan.

2.4 Measuring and communicating impact

The Review recognises the validity of the new plans and frameworks we have put in place to improve measurement and to understand our impact but it also concludes that we need to do more to embed these in everything that we do.

We are well positioned to move to that part of the process, having received assurances on our impact model by our internal auditors.

We will ensure that at the start of each programme of work we identify proposed changes, the ways we plan to achieve them, and how we will measure our impact. We will then monitor and record that impact throughout delivery, using the measures identified at the start of the project, with a view to reporting on the impact at the end based on an overall assessment of success.

For example, we have already commissioned a research project to examine the impact of our enforcement powers to inform decision-making about the use of our powers in the future. We are also investing in a case management system to improve how we record and measure the outcomes of all of our compliance and enforcement work.

We are already committed to identifying the impact of every intervention and our new impact model is a critical tool in giving our work an impact focus and the first step in better impact measurement.

Planning for impact and evaluation at an early stage in the project planning process provides the opportunity to baseline, track the right metrics, conduct robust evaluation and incorporate any lessons learned in our future work.

2.5 Stakeholder engagement

The Review suggests that the Commission has more to do to be effective in our work to engage and influence key stakeholders, including Government departments, civil society organisations and business.

We are committed to deepening our relationships with all our stakeholders to bring improved intelligence from these discussions back into the Commission and to ensure that everything we do is informed by their expertise and feedback. We will continue to share our expertise and work alongside stakeholders to effect change, particularly where others are better placed to achieve impact.

We will develop a refreshed stakeholder strategy, which will take into account the recommendations of the Review.

We are already making changes to strengthen our strategic approach to stakeholder engagement and supporting staff to develop their skills in this area will be a priority in our new Capability Strategy.

2.6 The Commission's governance, independence and powers

We are pleased that the Review found no areas for improvement on corporate governance and accountability.

We also welcome the fact that the Review acknowledged and addressed some of the issues raised at our last NHRI reaccreditation, in terms of how we relate to Parliament and our budget arrangements. In particular, the Review referenced our calls for a separate budget line and for the minimum term for Commissioners to be three years.

The Review, however, concluded that the Commission should continue to report to Government rather than to Parliament.

In view of the other recommendations of the Review we do accept that now is not the right time to push for this particular change. We are nevertheless keen to encourage the Government to consider this question at some relevant point in the future.

The Review recommends that we work with the Government Equalities Office (GEO) to set out a case for our new budget settlement, based on priorities we set, our effectiveness and impact. It is important to ensure that this is interpreted consistently with the Commission's formal independence from Government – and that the Equality Act 2006 requires the Secretary of State to 'pay to the Commission such sums as appear to the Secretary of State reasonably sufficient for the purpose of enabling the Commission to perform its functions'.

We are pleased that the Review opens the door to meaningful discussions on our role in respect of the public helpline. If control of the operation of the helpline is returned to the Commission we believe it would help us secure better intelligence about discrimination and human rights and improve our 'pipeline' of casework and enforcement matters.

The Review could have gone further in considering the case for the Commission to have additional enforcement powers that could enhance our impact, including new powers to enforce against breaches of human rights as recommended by the Joint Committee on Human Rights.

We welcome the recommendation of the Review that these issues should be reconsidered in due course.

3 | Annex A: Recommendation implementation checklist

Where the table below indicates that the Commission is working through options, final decisions will be subject to our established processes, including Board approval where appropriate.

3.1 Effectiveness and functions: vision and mission for the next decade

Recommendation	Owner	Update
<p>1. The Commission should use the opportunity of its 10-year anniversary to reset and focus its vision on its unique functions, to enforce the law and regulate across the most challenging rights and equality issues, continuing what it has begun informally through its public statements. This should be the anchor for its next Strategic Plan.</p>	<p>Equality and Human Rights Commission</p>	<p>Our new vision will shortly be launched and will be the anchor of our next Strategic Plan. Our Strategic Plan will explain how the Commission effects change using our unique combination of levers.</p>

3.2 Prioritisation and decision making

Recommendation	Owner	Update
<p>2. The Commission should show it has fundamentally changed its approach to strategic and in-year prioritisation to deliver against its unique powers. At a minimum, the Commission should aim to articulate the top c. 10 or fewer outcomes they want to achieve. They should consider setting out what their major delivery priority is for any given year – in terms of enforcement and regulation.</p>	<p>Equality and Human Rights Commission</p>	<p>The Commission's next Strategic Plan, on which we are consulting this year, will demonstrate our new approach to prioritisation and focus on a small number of long-term, large-scale programmes, targeting those equality and human rights problems that are best addressed through use of our unique powers.</p> <p>The Strategic Plan has been issued in draft for consultation, with the final Strategic Plan due for publication by the end of March 2019.</p> <p>Certain areas of work cannot be de-prioritised; for example, the Commission has a duty under the Equality Act 2006 to monitor the effectiveness of the legal framework.</p>
<p>3. Is Britain Fairer? and the Strategic Plan should say clearly what the Commission's view is on the greatest issues of inequality, how it intends to address these issues using its unique powers and how the Commission will demonstrate impact. This should also</p>	<p>Equality and Human Rights Commission</p>	<p>Our Is Britain Fairer? report outlines the most significant equality and human rights issues of the day, with specific versions to reflect the different contexts in England, Scotland and Wales. Informed by this, our Strategic Plan will be clear about which issues the Commission is best placed to tackle, the impact we are seeking to have and our approach to achieving that impact. Our impact model</p>

Recommendation	Owner	Update
<p>explain what the Commission will not focus on in any given year, and why. This should then be summarised so it can be used effectively by the Board, Prioritisation Group and Delivery Group, and stakeholders.</p>		<p>will help us to identify the impact we wish to have, and our theory of change approach will help us to identify which combination of our levers will be most effective in achieving change for any particular issue.</p> <p>The way that we plan for and measure impact is exemplified by the impact model for our planned inquiry into reasonable adjustments for disabled people in the criminal justice system. The model sets out, firstly, the ‘intermediate’ changes that the Commission can help effect, in order to secure our aim – including raising awareness amongst policy makers of the challenges facing disabled defendants, and system-wide changes to policy, guidance or resource decisions. We then set out our success measures against these intermediate changes – such as the publication of relevant policies or guidance by the public bodies concerned. Finally, the impact model sets out the activities that will secure the intermediate changes, and the output measures that will demonstrate delivery of those activities – including research, and legal action to enforce compliance with the Public Sector Equality Duty (PSED).</p>

Recommendation	Owner	Update
<p>4. The Commission should cease to produce its Business Plan in its current form as it contains too many priorities and lacks clarity. It should be replaced with a short report on priorities and impact (both achieved and planned) sent directly and in parallel to Ministers and the Women and Equalities Select Committees and the Joint Committee on Human Rights, and put on its website, at the start of each financial year.</p>	<p>Equality and Human Rights Commission</p>	<p>We welcome the recommendation that we should issue a new report on priorities and impact directly and in parallel to Ministers and the relevant Select Committees. This helps to address a key theme of the recommendations of the Sub-Committee on Accreditation in respect of the Commission reporting more directly to Parliament.</p>

3.3 Impact and influence

Recommendation	Owner	Update
<p>5. The Commission should refresh and clarify its approach to regulation and consider the skills needed in the organisation to deliver against this. This partly means ensuring the work the Commission chooses has a clear approach to achieve outcomes with organisations in breach or potential breach of the law. It also means refreshing its communications, engagement and influencing approach to ensure its work and its approach is understood by key stakeholders.</p>	<p>Equality and Human Rights Commission</p>	<p>We are developing an overarching organisational theory of change which sets out our vision of how we use our statutory powers (and associated levers) in an integrated manner to achieve different types of impact, including in relation to public and private organisations in breach/potential breach of the law. This will ensure that we prioritise enforcement in its broadest sense from effective influence and behaviour change, guidance and Codes of Practice to help support organisations to comply with the law, through to investigations and litigation, when that is the most effective means of bringing about change. This will be underpinned by a new, more proactive strategy on compliance and enforcement.</p> <p>We will ensure our Theory of Change is communicated to stakeholders via our Strategic Plan, website and face-to-face engagement. From our recent skills audit, we know that our staff have mixed levels of confidence in leading stakeholder engagement. This will be a priority in</p>

Recommendation	Owner	Update
		<p>our new Capability Strategy (which includes our learning and development plans).</p>
<p>6. The Commission should make a clear assessment across domains and protected characteristics to identify where it can have impact, and where others are already undertaking activity that the Commission could support or partner with. This should be part of how the Commission explain and justify their priorities. This should consider how the Commission can influence through a wide range of potential partners including legislators, the media, public relations companies, employers, Government departments and so forth.</p>	<p>Equality and Human Rights Commission</p>	<p>Our Strategic Plan will be clear about which areas for action we intend to take forward. In deciding which issues to prioritise in our Strategic Plan, we will identify those on which we can, in light of our unique tools, have most impact. We agree that in developing our theory of change on each issue, we must consider how we can influence and work with others to bring about the change we seek.</p> <p>We will continue to develop our influencing role and our approach to partnership with other organisations, taking advantage of opportunities offered through consultations on the development of our Strategic Plan and Is Britain Fairer? reports. We will work to better inform and listen to our stakeholders, bringing intelligence from discussions back into the organisation to support our prioritisation of issues. Preparations for our new Strategic Plan, to be published in March 2019, will be a key locus of this development.</p> <p>In particular, an essential part of our approach will be to support existing oversight mechanisms, such as</p>

Recommendation	Owner	Update
		regulators, inspectorates or ombudsmen to incorporate equality and human rights in the standards that they set, in how they assess compliance and how they tackle problems in a particular sector.
7. All publications should describe how the specific piece of work will achieve impact, be it next steps in enforcement or otherwise. This is to continue with the Commission's commitment to embed impact in its work, and signal to stakeholders how the Commission intends to act.	Equality and Human Rights Commission	As part of embedding our impact model, we will work towards including the intended impact of our interventions, the success measures and how we intend to achieve the impact in all relevant documents.

3.4 Gathering intelligence and providing advice

Recommendation	Owner	Update
<p>8. The Commission should set out a plan to reset its approach to intelligence gathering capability to ensure it has genuine intelligence from the front line. Outreach across England is particularly important and the Commission should aim to replicate success of the Scotland and Wales Committee in England, for example through creation of an England Committee, with Commissioners given specific responsibilities to convene different interest groups.</p>	<p>Equality and Human Rights Commission</p>	<p>We will work to better inform and listen to our stakeholders, bringing intelligence from discussions back into the organisation to support our prioritisation of issues. Preparations for our new Strategic Plan will be a key locus of this development.</p> <p>We are in the process of developing an England and England regions strategy. A key aspect of that work is exploring how best to develop a structured approach to stakeholder engagement with representatives from across the regions and domains. The nature of the landscape in England, with a huge range of diverse stakeholders across geographical and domain areas from city mayors to Local Enterprise Hubs to local authorities, means that a committee akin to Wales or Scotland is unlikely to provide us with the representative group we need.</p> <p>We are therefore considering the best way to ensure that we have ongoing external input that is reflective of the breadth of voices across the regions. We are considering a rolling programme of stakeholder engagement, as well</p>

Recommendation	Owner	Update
		<p>as exploring whether there might be merit in setting up an English regions network, which would provide greater agility and flexibility than a formal committee.</p> <p>We are very aware of the need to ensure that we monitor the effectiveness of our England strategy and will be looking at options including establishing a Commissioner Working Group, led by our Deputy Chair, to oversee the implementation of the strategy and evaluate impact.</p>
<p>9. The helpline should not be the long-term solution to advice provision and evidence gathering. The Commission, in partnership with the GEO, should plan a broader user-focused, multi-channel, approach to advice provision, and assess what the right level of helpline provision should be within this and how much of this should be done by the Commission directly. Current helpline arrangements could be extended or continued while new plans are developed.</p>	<p>Equality and Human Rights Commission / GEO</p>	<p>We welcome the opportunity for meaningful discussions with GEO about the role of the helpline and how much advice and helpline provision should be done by the Commission directly.</p> <p>We are preparing for these discussions in conjunction with the development of our compliance and enforcement strategy as we consider that control of the operation of the helpline would enable us to secure better intelligence about discrimination and human rights ‘on the ground’ – to improve our ‘pipeline’ of casework and enforcement matters.</p>

Recommendation	Owner	Update
10. As part of the Commission's delivery of its commitments to prioritisation and impact, the Commission website should be refreshed as the public face of this new approach.	Equality and Human Rights Commission	We refreshed our website in 2016 – leading to an increase in user satisfaction – and will do so again at the start of the new Strategic Plan period in 2019. We will ensure that our approach to prioritisation and impact is clear to users of our website.

3.5 Functions

Recommendation	Owner	Update
<p>11. The Commission should resolve issues of effectiveness and impact before changes to functions are considered. Once the ongoing transformation is embedded and improvements to effectiveness can be demonstrated, the Government should consider the Commission's powers taking into account the context of European Union exit.</p>	<p>Equality and Human Rights Commission / Government</p>	<p>While the Review has not taken the opportunity to fully assess the benefits of enhancing the Commission's powers to increase our effectiveness and impact – in particular, to strengthen our investigation powers and to enhance our powers in respect of enforcing human rights – we are pleased that this will be re-examined in future. We would encourage the Government to consider making Orders under section 28 of the Equality Act 2006 which would enable us to support certain non-Equality Act cases.</p>

3.6 Efficiency

Recommendation	Owner	Update
<p>12. In preparation for the expected 2019 spending review, the Commission and GEO should work together to set out a case for a new budget settlement, based on priorities the Commission sets, effectiveness and impact, with the Commission's budget reviewed as a standalone line of expenditure. In doing so, a new case should be made for the split between programme and administration classification.</p>	<p>Equality and Human Rights Commission / GEO</p>	<p>We would stress that the Equality Act 2006 requires the Secretary of State to 'pay to the Commission such sums as appear to the Secretary of State reasonably sufficient for the purpose of enabling the Commission to perform its functions'. It is essential that this recommendation is implemented consistently with the Commission's formal and de facto independence, including our ability to decide how best to use our powers to achieve impact.</p>
<p>13. Before the end of the current lease for its London office in 2023, the Commission should explore a range of options for the future of its London operations.</p>	<p>Equality and Human Rights Commission</p>	<p>During the 2018 strategic planning round we will develop a Strategic Workforce Plan and a complementary Location Strategy for the Commission. This will cover the staff numbers, skills and grade mix we need to deliver our strategic objectives, as well as options for where our people are based. As part of this work we will evaluate options for our presence in London.</p>

Recommendation	Owner	Update
14. As part of a future budget bid the Commission should set out cost/benefit analysis of implementation of shared service solutions, against retaining these functions in house.	Equality and Human Rights Commission	We are satisfied that our current blend of Civil Service shared services and in house corporate services is efficient and effective. We will continue to keep this approach under review as we move into the next spending round.

3.7 Governance and accountability

Recommendation	Owner	Update
15. The GEO sponsorship team should ensure the Commission is supported in making the relevant finance, human resources and communications contacts to smooth administrative issues following machinery of Government changes.	GEO	We welcome the Review's recognition that machinery of Government changes can have an adverse impact on the Commission. We agree with the Women and Equalities Committee that the GEO should have a permanent departmental home in Government.
16. A senior representative from the GEO should be invited to attend Commission Board meetings as an observer.	Equality and Human Rights Commission	We are happy to extend a standing invitation to Board meetings.
17. Based on the Commission's revised approach to prioritisation and impact, Key Performance Indicators (KPIs) for monitoring the Commission's work should be updated.	Equality and Human Rights Commission	We are in the process of updating our KPIs with a greater focus on outcomes.
18. To meet NHRI accreditation best practice, Commissioner tenure should continue to be a minimum of three years for future appointments, unless there	Government	We are pleased that the recent de facto practice of appointing Commissioners for a minimum of three years is recommended to continue.

Recommendation	Owner	Update
are exceptional circumstances, for instance to fill a shorter-term skills gap.		
19. The Chair's active role in the selection process and chairing of selection panel should be outlined in the framework document.	Equality and Human Rights Commission / GEO	We welcome the recognition of the need to improve the Commissioner appointments process and to ensure the Chair has an active role in selection.
20. The approach to longlisting and selecting Commissioners on the basis of skills gaps and achieving a balance of expertise across characteristics should be continued.	Government	We welcome this approach.

3.8 Form

Recommendation	Owner	Update
21. The Commission should remain as a non-departmental public body.	Not applicable	We accept that now is not the right time to make this change (given our current focus on delivering continued improvement and pressures on the Parliamentary timetable), but we would encourage the Government to consider whether our status should be changed to that of a Parliamentary Body when legislative time allows.