



Equality and Diversity Forum

A network of national organisations committed to progress on age, disability, gender, race, religion and belief, sexual orientation, and broader equality issues.

Equality and Diversity: Making it Happen

Response from the Equality and Diversity Forum to the Government consultation paper on the Single Equality Body

February 2003

The Equality and Diversity Forum is a network of national organisations, statutory and non-statutory, with a significant interest in one or more of the six equality strands. It has been meeting to share information and ideas and to develop understanding across the strands since January 2002. Its work is also informed by the participation of a number of observer organisations, and a list of its members and observers, and a statement of shared principles, is attached.

The Forum has contributed to the review of equality in Great Britain since it was announced by the Government in May 2002. It commissioned a research paper by Dr Clare Collins on the issues raised by the proposal for a Single Equality Body, which has been widely debated. It is commissioning a further paper on the ways in which a positive duty to promote equality might be applicable beyond race equality. It has received some initial core funding from the Nuffield Foundation.

Within the Forum, there are differing views on aspects of the proposals in *Making it Happen*. There is, however, a consensus on many of the issues and it is on those aspects that we focus in this response.

The Vision

We warmly welcome and endorse the vision of an inclusive, equal society where everyone is treated with respect and there is equal opportunity for all (paras 1.1 – 1.2), and recognition that up-to-date institutional support for equality legislation is fundamental to achieving that vision. **This vision should be used as the yardstick** to evaluate the proposals for structures and legislation, to see if they are capable of delivering those outcomes. There are aspects of the current proposals which do not yet meet that vision.

If there is to be a new equality body it would itself need a clear statement of its vision and values, and the outcomes for which it is working. Experience of other new bodies and the transition to them is that this clarity is needed from the outset and that it needs to be communicated persuasively to the public. The vision set out in *Making it Happen* does not yet have that clarity. For instance, **the paper emphasises the role of a**

future body in relation to employment to the near exclusion of the equally important role in relation to discrimination in goods and services.

Secondly, the **potential role of a new equality body in relation to promoting good community relations (one of the CRE's core functions) is not explicit**, nor any consideration of the relevance of this function in relation to the other five strands.

We are concerned that, in both cases, this reflects the understandable importance that the DTI attaches to employment issues but **reflects the lack of institutional machinery in central government for joining up policy making** on age, disability, gender, race, religion and belief, and sexual orientation issues.

Coherence and simplicity

We support the Government's stated intention, in its legislative reforms, to make the equality legislation more coherent and easier to use (Para 2.9). This is vital for employers and service providers, for advice givers and for members of the public. In making the legislation easier to implement, it would make it more effective. **We therefore are very concerned that the Government is not yet willing to move towards consistent legislation; nor even to extend the remit of the proposed regulations on age, religion and belief, and sexual orientation to provide equivalent provisions to those on race, gender and disability.**

We believe firmly that the Government's goals of an inclusive equality agenda and simpler, more coherent approach could most effectively be delivered by bringing the numerous pieces of equality legislation together within a single Act, with equivalent provisions across the six strands. This would enable an SEB to provide the same level of protection to individuals regardless of their age, race, gender, disability, religion and belief or sexual orientation. **We are concerned that, in the absence of a level playing field, any new body would be built on a hierarchy of inequality which would foster divisions between the strands rather than the trust and cross-working which would be vital to the organisation's success.**

It is our view that the scope for addressing issues across the six strands is one of the strongest arguments for moving towards a single equality approach. It is based on recognition that each individual has characteristics which relate to several of the strands of equality and that it is often not possible effectively to address discrimination associated with one strand in isolation.

While each strand has certain issues which are unique and need to be addressed separately, much of the diversity agenda is common across the various strands and should be dealt with "in the round" (para 3.3 and 3.4). **In the Forum we have found that the various groups mutually reinforce rather than compete with each other.** The experience of the existing Commissions when dealing with common issues of race and gender also illustrate this. This approach could apply to a single equality body if the legislation on which it were based, **and** the organisational structure devised, fostered that approach.

We note that the Government will include a positive duty in the new Disability Bill and wants to learn from the experience of the Race Relations (Amendment) Act before extending the provisions across the other strands. But this need not lead to extensive

further delay. The Commission for Racial Equality will be publishing in May 2003 its findings on the response of public authorities to the duty to promote race equality in its first year of implementation. There will also be an evaluation by the Equality Commission (NI) of its S75 powers. We agree that the Government should learn from the experience of these two provisions before finalising the precise form that a public duty would take in relation to the additional strands. The specific duties, under a general duty to promote equality, may differ. But this need not prevent the Government indicating that it is committed in principle to the introduction of equivalent powers across the six strands.

We would urge the Government to consult this year on the form that the public duty should take in relation to the remaining strands and to indicate how, and on what timescale, it will build provision for a general duty, and specific duties, where appropriate, into the equality legislation and future mandate of a single equality body.

We are thus not convinced that the current proposals for legislation, and for a single equality body, would have the effect either of coherence or simplicity and would urge the Government to reconsider.

Functions and Powers

We welcome the statement that the functions and powers of the current Commissions would remain central (para 3.5) and that *Making it Happen* draws attention to the fact that these include powers to undertake investigations and enforcement action where needed.

We are concerned, however, that the emphasis on provision of guidance on good practice to business is not matched by an equal emphasis on provision of guidance to providers of goods and services. **The importance of services, not least public services, should be strongly reflected in the actual remit of any future SEB.**

We have set out our views on the need for a public duty, above.

We assume that the omission of reference to an SEB role in relation to promoting good race relations was simply an oversight. However, this begs the question whether an SEB should retain the role merely in relation to race relations or **whether a responsibility to promote community relations should be interpreted more widely**. More thought needs to be given to the relevance of this function to any Single Equality Body and the form it might take. In particular, the role of the Race Equality Councils needs to be considered – the relationship they might have with an SEB and whether their role should be expanded, as is already happening in some cases, to address not only race but the broader equality issues.

At local level a further issue is the **access (or lack of it) of marginalised and disadvantaged communities to the equality agenda**. A future SEB could have a developmental role, working in partnership with others, to target resources and capacity building to such communities to reduce barriers to access to equality of opportunity.

Making it happen suggests that more emphasis on certain functions would be needed in a new SEB than currently is found in the existing commissions (para 3.6). We agree with the emphasis placed on raising awareness, on promoting equality across the strands as well as amongst specific target groups; on improving the evidence base for policy

making; on mainstreaming equality across all six strands into policies and practices; and the need for more guidance to employers and service providers on their equality obligations.

Point 5 proposes a more flexible approach to enforcement with greater emphasis on conciliation and dispute resolution. We support this emphasis and are committed to maximum progress through dispute resolution rather than resort to legal process. But **the list on page 10 is deficient in not making it clear that the emphasis on dispute resolution is not intended to detract from the continuing use, where necessary, of enforcement powers.**

We believe that a further part of an **SEB's enforcement role will be to support individual cases, particularly where they develop case law.** This has been an important role for the existing commissions. For example, individual cases have established that sexual harassment and detrimental treatment on grounds of pregnancy are sex discrimination. An SEB should have the power to take cases without a named victim. Areas of legal uncertainty can become apparent over time and they cause confusion for employers, advisers and individuals. It is not always practical or desirable to let confusion persist until an individual brings a suitable case to test the issues in a tribunal. So it would be **preferable for an SEB to be able to take a case in its own name.**

In addition to a power to conduct formal investigations, where the outcome can be enforcement action, any new SEB should be able to undertake general investigations, leading to recommendations for change. The Human Rights and Equality Commission in Australia has found this strategy, in which evidence is collected through hearings and research, to be a powerful way to raise public awareness of a need for reform and to deliver outcomes. **We therefore recommend that an SEB should have the power to conduct general investigations, including the right of access to people and information.**

Making it Happen does not address the role of an SEB in addressing discrimination in goods and services in relation to the new strands. **We cannot over-emphasise the importance we attach to a Single Equality Act which provides protection from discrimination in provision of goods and services for the new strands.** If, however, the Government establishes an SEB prior to such legislation, this should not prevent the SEB having a mandate and resources to promote good practice on equality in goods and services, for instance in the NHS, in criminal justice agencies and in education. Nor should it prevent the Government announcing a timetable for the introduction of legislation on goods and services.

Thus any new SEB should, at the very minimum, have a responsibility to promote good practice on discrimination in relation to goods and services, even if the legislation did not during the first stage prohibit discrimination in goods and services for the new strands. **The SEB should be required to monitor the situation in goods and services in relation to the new strands and to keep under review the effectiveness of existing law and policy in this respect.** It should advise the Government, if it finds evidence that any reform in law and policy is necessary.

We agree with the proposal (para 9.18) that the **promotion and enforcement functions should be in the same body and not separated into two distinct structures.** Each would be weakened without association and access to the other. Moreover, an

enforcement function located in a separate body would lack the capacity to adopt alternative, promotion and guidance strategies when more appropriate. It would judge itself by effective enforcement alone. We recognise the challenges inherent in combining a promotional and enforcement role. The management of any new body should consider **internal structural arrangements for managing advice/promotion and enforcement roles distinctly to provide greater reassurance to employers and others who seek advice.**

A new SEB should be an enabling body, not seeking to provide all of the necessary advice and guidance services itself. It should be committed to working with partners, including non-governmental bodies, where those services can be provided more effectively, particularly at a local level, by external bodies. **Where an SEB provides guidance to other organisations, and it is appropriate for it to charge for its advice, it should be allowed to do so and thus to increase the resources at its disposal.**

Options for future structure

Forum members agree that a single equality body could be a desirable objective if established with the powers and structure it would need to be effective.

The organisations taking part in the Forum do so because they believe – and have experienced as members of the Forum during the past 12 months – that there can be considerable mutual benefit in a cross-strand approach. They also recognise that the different strands are at different stages of evolution and have differing needs from any new institutional arrangements.

The Forum accepts that each strand can not be fitted into a single equality structure in an identical way, certainly in the short term. If the launch of a new structure is to succeed and win the confidence of all strands it will need flexibility.

Our response to the options on structure cannot be separated from what we have said about powers of enforcement across all the strands. **All Members of the Forum believe strongly that the effectiveness of an SEB would be seriously undermined if there are three strands which have no statutory powers in relation to goods and services**, and only one strand with a positive duty to promote equality. Not only would this create a divisive hierarchy and be confusing to employers, service providers and the public, as we have suggested; but it would inevitably mean that the new body was distracted in its early years by the need to make the case to Government for legislative reform, at a time when Government would not wish to provide additional time on the parliamentary agenda for further equality legislation.

We believe that the first step is therefore that the Government should reconsider its position on powers for all strands, and should provide the additional powers needed within any legislation establishing new institutional arrangements. The level of integration of functions for all or some of strands must depend a lot on progress towards single equality legislation (moves towards integration of legal functions will be difficult if each strand is governed by different and differing laws).

Secondly, we suggest that there would need to be flexibility in any proposed structure. It will be essential to have specialist expertise, profile and visibility for each strand. Whereas an integrated functional structure might be most appropriate for some

strands and functions, greater autonomy would be necessary for others and recognition of this is essential for some organisations. Thus, while some Forum members favour an integrated structure, others such as the Disability Rights Commission want a structure which provides for a distinct, powerful presence on disability, with executive powers in key areas such as policy and legal strategy. There is a range of views on the extent to which the structure should be determined in the legislation or be developed by the commissioners and chief executive of the new body, once in existence.

We believe that there are a range of options for initial moves that need to be worked on in coming months. This consultation ending on February 21st is the start of a process, not the conclusion.

The further consultation and drafting of legislation will take time. **It appears that there is no possibility that the new body would be established until at least three years after the regulations on sexual orientation and religion and belief have come into force. For the new strands, this is entirely unacceptable.** Employers and employees need an authoritative source of advice on the regulations. We therefore make specific proposals in relation to the transitional arrangements.

Transitional arrangements for the new strands

Making it Happen states that the existing powers of the existing commissions would not be replicated before an SEB is established, so that there will be no institutional provision in respect of religion and sexual orientation from end 2003 (para 10.4). It does not address what will happen in relation to age from 2006.

All Members of the Forum are concerned and surprised that the Government has made no commitment to provision for guidance to employers during the crucial preparatory period prior to the legislation coming into force, other than to the preparation of written guidance by ACAS. Nor is there provision of advice for individuals from December 2003, and subsequently for age if an SEB is not up and running by 2006. nor during an interim period.

We strongly suggest that a strategy be devised and resources allocated, first, to ensure that the 43,000 public service employers and 1.1 million private sector employers are fully aware of the new provisions *and* have access to guidance appropriate to their enterprise; and second, to ensure that advice is similarly available to members of the public. It must not be left to unsupported individuals bringing cases to Employment Tribunals.

We urge the Government to establish of a Task Force across the new strands, following the model of the earlier Disability Rights Task Force, with the following mandate:

- to advise on an appropriate strategy in relation to implementation of the proposed regulations on sexual orientation and religion and belief, including provision of advice to individuals, and to monitor implementation
- to advise on draft legislation to strengthen the provisions on the new strands, including age, by 2006
- to advise on the optimal arrangements for the new strands in a future single equality body

Resources

We note that the Government recognises that a new SEB would “need to be properly resourced” (para 7.8). There is no further discussion in *Making it Happen* on what this may mean in practice.. The Forum believes that taking on the roles of legal process, research, guidance and support for the new strands represents an increased task which should not be underestimated. **This must be reflected in adequate resource levels which will be a key to effective outcomes.**

We believe that there should be an accounting system which is **open and transparent on resource allocation**. We recognise that this is not straightforward in an organisation that may have a mix of functions and strands.

Relationship with Government

We note the Government’s objective that an SEB should have maximum independence consistent with accountability (para 7.8). There is no further discussion in *Making it Happen* of what this means. We believe that the positioning and perceptions of an SEB in relation to Government, employers, unions, the general public and others will be particularly important, because of the breadth of its responsibilities.

Sponsorship by any one Whitehall Department will clearly present difficulties, when the range of employment and service issues to be covered by the SEB is so wide and no single department covers those issues nor has contact with all the relevant stakeholders.

The Equality agenda is also very closely linked with the social inclusion programmes. **Whichever department were chosen as the parent department for an SEB, inter-departmental arrangements would be necessary to ensure that one aspect of the SEB’s work, such as employment, were not dominant to the exclusion of its work, for instance, on public services.**

There is also a concern that an SEB could, in practice, find that its parent department was involved to too great an extent in its day to day operation. **A memorandum of agreement should be reached between the department and SEB at the outset on an appropriate working relationship to preclude that happening. The SEB should also have a closer relationship to Parliament than the existing commissions**, advising and reporting to relevant Standing and Select Committees on a regular basis.

Human Rights

The Forum welcomes the recognition in *Making it Happen* that equality and human rights are complementary and that this has implications for any institutional support arrangements. We regret that, despite the commitment made when the SEB feasibility study was set up in May 2002 that it would include consideration of the need for arrangements for promoting and protecting human rights, *Making it Happen* neither includes consideration of these arrangements nor invites comments from those responding to the consultation paper. While many respondents may have views on this issue, the Government is thus unlikely to hear them.

The Forum recognises that equality and many of the broader human rights issues are closely connected. It notes that the existing commissions can already address the wider human rights dimension of some individual discrimination cases, raising arguments under the Human Rights Act as well as under the discrimination legislation, and that the SEB will therefore be able to do so. **We suggest that an SEB should equally be allowed to address related human rights issues in its guidance, promotion and investigation functions.** If the SEB were not allowed to do so, its ability to protect the groups covered by the six strands will be constrained; and members of the public out-with the six strands would not come within its protection. **Promotion and protection of human rights need not be a '7th strand' but be mainstreamed through the mandate, powers and responsibilities of the commission.**

Consultation

We welcome the Minister's commitment to consultation and working in partnership.

We attach importance to the feedback on the Consultation and clarification of how the Government has taken responses on board. *Making it happen* does include a short summary of the responses it received to the earlier consultation paper (para 5.3) but there has been no clarification of the Governments' views on the many detailed responses it received. We hope that on this occasion it will be possible for the Government to make public its response to the substantive points put forward.

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