

Women and Equalities Committee

Oral evidence: The work of the Equality and Human Rights Commission, HC 908

Wednesday 20 April 2022

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Members present: Caroline Nokes (Chair); Jackie Doyle-Price; Kim Johnson; Anum Qaisar and Bell Ribeiro-Addy.

Questions 153 to 195

Witnesses

I: Baroness Falkner, Chairwoman at Equality and Human Rights Commission; Marcial Boo, CEO at Equality and Human Rights Commission; and Melanie Field, Chief Strategy and Policy Officer at Equality and Human Rights Commission.

Written evidence from witnesses:



Examination of witnesses

Witnesses: Baroness Falkner, Marcial Boo and Melanie Field.

Chair: Welcome to the Women and Equalities Committee and our regular meeting with the Equality and Human Rights Commission. Can I thank our three witnesses for participating this afternoon? We have Baroness Falkner, the Chair of the Equality and Human Rights Commission, Marcial Boo, the CEO, and Melanie Field, the chief strategy and policy officer. We are going to start with questions from Bell Ribeiro-Addy.

Q153 **Bell Ribeiro-Addy:** Thank you very much, Chair. Thank you, panel. My questions are going to be mostly for Baroness Falkner, but my first one is actually for both Baroness Falkner and Marcial. The Commission seems to have changed its position on GRA reform since your appointment. Could you explain why? I will start with you, Baroness Falkner.

Baroness Falkner: First of all, can I say, Chairman, it is a real pleasure to be here again. We took note of your report—I think it was 21 December—on GRA reform and, of course, we have taken note of your previous reports. I know you do not want pre-prepared statements or anything like that, but I just wanted to say that we are very cognisant of your interest in this area, and we hope to have a very constructive discussion about it with you today.

You wanted me to cover the modification—which is the way I would like to put it—of our position. We have been looking at this issue. As you know, the Committee asked us several years ago to produce guidance on single space exemptions in the Equality Act and we were looking at that. We were looking at a number of related issues. The Scottish Government were looking at GRA reform.

When we started contemplating this last summer, the UK Government was likely to table a paper on conversion therapy. The question of whether there would be GRA reform coming forth from the Government proposals was a live one. We assessed, cumulatively, our different positions because the positions taken in Scotland have been different from those in England and Wales, and we decided as a board to have an overall look at it.

It transpired that we had never done so before. We had never looked at the several different issues that came together in the round and it took a little while to prepare, to thoroughly explore the issues and to do our research on it. We had, for the first time, a board discussion on 1 December in light of all of these things.

One of the other things that had happened in the interim was that we did consultation on our strategic plan—which I think was in September—and we were surprised by the saliency of the issue of sex and gender and the balance of rights issues of the public. We had more than 880 responses



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from individuals and organisations, and this issue had risen to number one on the agenda in our consultation responses.

It was very evident to us that the landscape had changed over the period of time, that we had had rather ad hoc positions on it developed in a very piecemeal manner, one by one, in response, usually, to a consultation or a draft Bill or a discussion about things. It struck us that we needed to reassess our views of the very sensitive and delicate issues of achieving a balance of rights, delivering on the facts of the Equality Act as the law is set out, and looking forward to the proposed Scotland reform and the conversion therapy reform, and that is what we did on 1 December.

It may interest you to know that the board was unanimous. We had a unanimous decision on where we wanted to go. Of course, if I am pre-empting you a little bit, let me say that also the board is a board comprising people who have been there for over a decade, so they had seen the entire panoply of our responses previously, but we all felt that we needed to land on the right place on this and stood behind our positions.

Q154 **Bell Ribeiro-Addy:** Thank you very much. Marcial, why would you say the EHRC's position has changed?

Marcial Boo: I would reiterate what Baroness Falkner has just said. As you know, I joined the EHRC in September. The conversation in December—that Baroness Falkner has referred to—was the first time that I had been party to those conversations. There was a very comprehensive conversation and, as has been said, there was unanimity at the board table also drawing on the advice of our statutory Scotland and Wales Committees and that is the position that we have been taking forward in the various responses that we have been making to different Governments' proposals since then.

Q155 **Bell Ribeiro-Addy:** Baroness Falkner, in your letter regarding Scotland's proposed reforms you said that "more detailed consideration was needed before the reforms could go ahead." Could you outline what you meant by that?

Baroness Falkner: We think the Scotland proposals are wide-ranging and with significant impact. They wished to reduce the minimum age from 18 to 16, to remove the requirement for a diagnosis of gender dysphoria, to reduce the time period in which an applicant must have lived in their acquired gender significantly from two years to three months, and to remove the need to provide evidence of this.

We felt there was a great deal of ambiguity in their positions at the time. They required applicants to be ordinarily resident in Scotland or to have a Scottish birth certificate if they lived elsewhere in the United Kingdom to be eligible to apply for those. Of course, that will have implications on how a Scottish Gender Recognition Certificate is interpreted by the courts



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if the person wishes to assert their rights of a Scottish certificate in other courts in England and Wales.

They required applicants to make a statutory declaration, they required a three-month period of reflection, and they wanted to introduce a monitoring system to provide data on the number of applications. We looked at these, for us, significant wide-ranging changes and reforms. We also considered whether the implications would go beyond the borders of Scotland, and we think they might do.

We also heard increasing levels of concern that had been expressed by the legal community—the courts have been over this ground—academics, data users and campaigners about the potential impacts of removing the current criteria for obtaining a GRC and replacing it with a process based on an individual's personal understanding of their gender.

Basically, the concerns centre on unknown practical consequences for individuals and for society. They are not restricted to the individuals alone of extending the ability to change legal sex from a small defined group with a recognised medical condition who have demonstrated their commitment and ability to live in their acquired gender to a wider group who identifies as the opposite gender at a given point in time. Such potential consequences extend, as I have said, to the use of data, to the participation and drug testing in competitive sport, to measures to address barriers faced by women—something that had escalated in the response to our strategic plan—and practices within the criminal justice system which are increasingly debated in several of the pieces of legislation currently going through Parliament.

We considered all of these things and we came to the view that the established legal concept of gender, together with existing protections from gender reassignment discrimination for trans people and the ability for them to obtain legal recognition of their gender, provided for us, collectively, the right balanced legal framework for the protection of everyone, but really importantly—and I want to emphasise this point—that includes protecting trans people from discrimination and harassment and safeguarding their human rights.

Alongside debating these issues, as we did, we felt extremely concerned as a board about improvements for medical services for people with gender dysphoria, and we were particularly concerned about the excessive waiting times for them. We wrote to the Secretary of State for Health on 24 December to raise our concerns and I think we received a response on 30 March—so very recently—setting out the steps the Department is taking to resolve some of the issues.

We are considering further engagement with the Department on how we can make them deliver on what they say they are wishing to do. Finally, the UK Government also reduced the fee for obtaining a GRC from £140 to £5 and we have naturally welcomed that. Importantly, we welcome



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their commitment to digitise the process as well as their pilot programmes to bring some speed into the system.

Q156 **Chair:** Can I just ask a quick question on the earlier part of your response, not the later part? When you wrote to the Scottish Ministers saying that more detailed consideration was needed, what evidence in particular are you looking for?

Baroness Falkner: I have covered the evidence base to some extent but—

Chair: You said more consideration was needed. I would be really interested to know what sort of evidence you are looking for going forward so that you can know that that consideration has taken place.

Baroness Falkner: I will ask Melanie to pick this up in a second because she is the expert on the Scottish part, but essentially there were two from my perspective; the high-level view of this is that we have not seen a draft Bill. The Scottish Government had modified their position from a few years ago in light of the public concerns that they themselves heard on this. We also knew that the Scottish courts were looking at these issues in forthcoming court cases which were resolved in February.

Q157 **Chair:** Melanie, perhaps you could give us some detail of the evidence that you are looking for.

Melanie Field: What we would like is a more detailed understanding of what the practical implications of those legal changes will be. This goes back to the types of concerns that have been raised, as Baroness Falkner said, by lawyers, academics and data users, about a wider group of people being able to change their legal sex. It is fair to say that most of the concerns that have been expressed have been in relation to how that might impact on special services or protections for women.

Q158 **Chair:** Are you commissioning any specific work that will provide you with that evidence?

Melanie Field: Some of it is about understanding the legal consequences, but these are all areas where there is ongoing consideration. For example, we see quite a lot of coverage in relation to participation in sport. There has been quite recent guidance by the Sports Councils about the inclusion of trans people, particularly trans women in women's sport. We are keen to see how that guidance is working in practice because it was only issued in September.

Baroness Falkner: Finally, the Scottish Government, I think, has a Select Committee looking at it.

Q159 **Chair:** Will you be reviewing that?

Baroness Falkner: Yes.

Q160 **Bell Ribeiro-Addy:** On GRA reform, you have previously told us that it is



the Commission's duty to "simply enforce the law as we find it". In fact, you have said that on the operations of the EHRC overall. Do you think that your letter to the Scottish Government actually exceeds that?

Baroness Falkner: First of all, I would like to use this opportunity to correct myself, if I might. I should not have used the word "simply".

Q161 **Bell Ribeiro-Addy:** Just to enforce the law as you find it?

Baroness Falkner: I would say that our role is—as you have rightly pointed out because of my misuse of the word "simply"—to influence and advise as well as enforce the law. We do not believe that our advice, in response to the Scottish Government's proposals, went beyond our remit.

Q162 **Bell Ribeiro-Addy:** Going back to enforcing the law as you find it, would you not agree that it is also the EHRC's role to look at the law where it does not comply with equalities legislation and give directions in that way?

Baroness Falkner: Absolutely. That is very much part of our enforcement compliance mandate.

Q163 **Bell Ribeiro-Addy:** Which could then mean being oppositional in some ways to some laws that already exist?

Baroness Falkner: I am not sure I understand what you mean by that.

Q164 **Bell Ribeiro-Addy:** You are saying the job is to enforce the law as you find it. What if the law does not comply with current equalities law? Would the EHRC still insist that the law was enforced as you find it, or would it seek to make the point and suggest where it should be changed?

Baroness Falkner: When I used that expression about a year ago, I was talking about the Equality Act; I was not talking about law in the abstract. I was talking about our duties to do with the Equality Act—enforcement of the Act, providing advice, and influencing directions in which the Equality Act might go in the future. It was very much in keeping with the Equality Act; we do not have a remit beyond the Act. Are you suggesting that we are contradicting the Equality Act?

Bell Ribeiro-Addy: I am just asking a question.

Baroness Falkner: I am trying to understand what your question is. We do not believe that we are contradicting the Equality Act. We should not find ourselves in a position to be doing that and we would never knowingly allow ourselves to get into that position.

Q165 **Bell Ribeiro-Addy:** Would you be contradicting the Equality Act if you did not, in turn, point to another piece of legislation that did not comply with the Equality Act?

Baroness Falkner: Unless you can direct me to the piece of legislation, I am not sure.



Bell Ribeiro-Addy: There are numerous pieces of legislation—

Baroness Falkner: Would you have an answer to that, Marcial?

Marcial Boo: There are certainly, as you will know, bits of draft legislation that are going through the House where we absolutely do provide advice and briefing to parliamentarians so that they comply with equality legislation. For example, the Online Safety Bill was debated in the House yesterday. We are talking to Ofcom about that to ensure that we provide appropriate statutory advice on legislation that is going through the House so that it complies with not just equality, but also human rights considerations.

Q166 **Bell Ribeiro-Addy:** Thank you. Back to Baroness Falkner. Your submission to the UK Government's consultation on conversion therapy called for more research to be done. Could you explain what more research you thought was necessary?

Baroness Falkner: Yes. We completely concur with the UK Government's position that conversion therapy is harmful, and we absolutely stand shoulder to shoulder with them in supporting the end of such practices relating to both sexual orientation and being transgender.

We have supported an immediate ban on such practices. The impression that we had at the time when we looked at this was that the UK Government wanted to essentially fast-track a Bill in advance of the Safe To Be Me conference that was meant to be held in the summer. If it was going to be a carefully defined Bill on banning conversion therapy in relation to sexual orientation then we completely supported them in doing that.

On being transgender—as the consultation itself points out—the evidence of the prevalence and the nature of conversion therapy is less clear. The UK Government themselves recognised the need to carefully define terms so that we could be clear about what practices would be caught by the ban and what would not be. We came to the view that it would be helpful to see draft legislation consistent with what we were advocating in Scotland.

We recommended that Parliament conduct comprehensive scrutiny of the legislation in relation to being transgender because those are terms where there are legal ambiguities in terms of what is meant. The definitions were not available to us in the consultation document put out by the UK Government in order to ensure not only that harmful practices are prevented, but also that transgender people can receive the advice and support they need, including through better access to gender identity services.

Gender identity services, of course, are a relevant part of this discussion because we were also aware that the Cass Review was still underway. They have, unfortunately, only come up with an interim report as yet so



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it is going to be, I think, some months more before we see the final report, but that also had an input.

Again, what I am saying is these things were loosely defined. There were a lot of other factors that were coming into play, and we thought that pre-legislative scrutiny of a draft Bill would perhaps be the right way to go for both sides of the House to look at it and to then perhaps take the opportunity to look at things in the round and come up with a better way—not to just ban conversion therapy, but to end it, because it is one thing to ban something in law, but, as we know, law is frequently a blunt tool, and we were determined that we wanted to see an end to it.

Q167 **Bell Ribeiro-Addy:** Is the EHRC in support of the Government's U-turn on not having a blanket ban at the moment? Is that what you are saying?

Baroness Falkner: I am not sure I particularly want to get into the position of the Government. Marcial, perhaps you would like to come in here. Of course, we stand by what our response to the consultation was.

Marcial Boo: Indeed. Obviously, it is for the Government to decide what approach it takes but, as Baroness Falkner has said, we are absolutely clear in our response that we want to not only ban conversion therapy, but to end it all together. All we were asking was for the Government to publish a draft Bill and to define its terms and for those to be scrutinised by Parliament so that the impact of the legislation is clear to all parties.

Q168 **Bell Ribeiro-Addy:** Does the EHRC support a blanket ban on conversion therapy?

Baroness Falkner: An end to conversion therapy.

Marcial Boo: Yes, a ban and an end.

Bell Ribeiro-Addy: A ban and an end. Okay, that is absolutely fine, thank you.

Baroness Falkner: A ban and an end to what? To conversion therapy for whom?

Q169 **Bell Ribeiro-Addy:** For everybody, but in particular, given the Government's U-turn, for LGBT+ people.

Baroness Falkner: We definitely support an end to the practice for both sexual orientation and being transgender, but we would like to have a clearer definition of where the Government want to go with it.

Q170 **Bell Ribeiro-Addy:** Finally, how do you anticipate that the new guidance on single and separate sex service provision will reduce conflict or confusion over the operation of the exception?

Baroness Falkner: I will hand over to Melanie in a minute, but I will just give you the overview. Of course, it was this Committee that first suggested that we undertake this piece of work years ago. We are very sorry that it has taken so long to come about, but the pandemic diverted



us, and we worked quite a lot—as did the Committee—on pandemic-related issues. We were wanting it to be, as your predecessor Committee had recommended, a practical guide to help service providers make decisions about single sex exemptions in the Equality Act and, therefore, single sex spaces.

We are here to provide clarity on the law, and we recognise that it is a very sensitive area. It is important that service users and service providers land in the right place on this, and we are ready to help them. After a great deal of consultation, which is one of the reasons it has taken us some time to do it, we have published the guidance and we are here to stand by and help service providers and to foster good relations. We recognise our duty to foster good relations which is also a sensitive area. Are there detailed questions on the guidance itself?

Q171 **Bell Ribeiro-Addy:** Before we go to Melanie, I just wanted to talk about how it is going to reduce conflict and confusion. How have stakeholders responded so far? You mentioned stakeholders: how have they responded so far to the guidance?

Marcial Boo: I am happy to reply. Obviously, we have lots of different stakeholders and we have had different responses from different stakeholders, but the ones that we were targeting this guidance at are the service providers who wanted help from the statutory equality regulator on how to understand equality law in respect of single-sex services and the exemptions that are available in law.

Those stakeholders have been very welcoming of the guidance because they have said that it is clear, it provides helpful examples, and that it will enable them in their own organisations, in their own context in the different parts of the country, to come up with policies and procedures to ensure that they are being fair to everyone—to all of their users—in ensuring that they are complying with the law. Those stakeholders have been very receptive.

In other stakeholder communities the response has been different, as you will be aware, and obviously we are wanting to work with all of our stakeholder groups, whether they are civil society organisations or Government or statutory bodies of other kinds, including regulators, to ensure that all of those stakeholder interests have an opportunity to discuss the guidance and other related issues with us.

Bell Ribeiro-Addy: Thank you very much. Back over to Melanie.

Melanie Field: Our hope for the guidance is that it will reduce confusion and conflict by providing clarity about how the law actually works and provides, not only for single sex services and spaces but also for trans people to be treated appropriately in relation to those services by setting out the law in a practical way with examples.



Hopefully, as Marcial has said, service providers are finding it useful in understanding what they can do and what they need to do. One of the most important things in the guidance is the strong encouragement for service providers to think about what their policy is and make that clear because it is really important that service users can be confident that a service is appropriate for them. That is important for all women when they are wanting to access services: that they can be confident they are going to get the service that they need.

Q172 Chair: Marcial, can I just take you back to your response about stakeholders? Priority five of your three-year plan is about bringing groups together. Clearly, there will be stakeholders with conflicting interests and views. What have you done specifically since publishing that guidance to try to bring stakeholders together?

Marcial Boo: We are tackling that in three different ways and, as you know, this is a three-year strategy that we have launched. The first way is to work with children, young people, schools, universities and colleges so that we can help the next generation to be tolerant and to understand equality and difference so that this country as a whole can have better relations between different groups who identify in different ways. That is the first way. We have started working with Ofsted, Ofqual and the Office for Students, the three main regulatory bodies, and we are working through the existing system to work with children and young people on that front.

The second way is in sports and community activities where we recognise that it is a powerful way to bring people together from different backgrounds, and they share a common interest in a particular sport or social activity. We started off working with cricket, partly because of the issues that arose in Yorkshire County Cricket Club last year, and, previously, working with the England and Wales Cricket Board particularly. That is the second area where we are wanting to work together.

In the third area, there are particular issues with sex, gender and gender reassignment, as we have been discussing, where we also want to create spaces for people to discuss these really important issues in a way where together we can find ways to implement the existing law and to discuss areas of difference so that, as a society, we can help to resolve some of these issues.

In that regard, we are talking to organisations such as the Fawcett Society, Stonewall, other think-tanks and stakeholder groups with an interest specifically in that topic so that over time—and this is obviously not going to happen overnight—we can create some common ground where there is clarity among relevant stakeholders about what the law currently says and from that shared understanding of the law there can then be debates in this place and elsewhere on how changes, if any, might take place.



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Q173 **Chair:** Baroness, can I just take you back to your response about the evidence that you were looking for from the Scottish Government on GRA reform? I think you specifically said that there was no draft Bill.

Baroness Falkner: I think there was a draft Bill in 2018.

Chair: 2019. You said there was not—

Baroness Falkner: Yes, but from conversations that we had, it appeared to us that they were reviewing some of the provisions in that Bill. For example, I think the age in that Bill was 16, and they changed the age in that Bill. I am sorry, I am not across that. Melanie, you would be.

Melanie Field: Their original proposal was to reduce the age to 16, though we understood that there was consideration of not doing that and leaving the age at 18 again.

Q174 **Chair:** The Baroness said very specifically in her response that the reduction in age to 16 was included.

Melanie Field: That is included in the Bill that has been brought before the Scottish Parliament now, so we—

Q175 **Chair:** Was that in the draft Bill or not?

Melanie Field: We understand that the Scottish Government are still proposing to reduce the age to 16. There was a period when we thought that they were going to leave it at 18, because of the change in the age of marriage to 18.

Chair: Thank you for that. Kim.

Q176 **Kim Johnson:** Good afternoon, Panel. Baroness Falkner, you have alluded to the fact that some groups are receptive to the work that you have done around GRA, but we will all be aware that some groups responded quite negatively, with trans and non-binary believing that the EHRC ignored their experiences.

In light of that it would be interesting to know how you intend to rebuild relationships with the LGBT community, given the fallout in terms of the letter to the Scottish Government and response regarding conversion therapy?

Baroness Falkner: Indeed, we are very conscious of our duty to foster good relations between groups, and in fact it is part of our strategic plan. Perhaps I can turn to Marcial to fill in the work that is already underway in that regard.

Marcial Boo: You are absolutely right. We need to demonstrate to all of our stakeholders that we take our responsibilities seriously in respect of nine different protected characteristics, which include gender reassignment.



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In our business plan for this coming year, we have made clear that we want to make sure that trans people, but LGBT people in general, have fair access to health services; particularly, as Baroness Falkner has already alluded to, gender identity services. We have already engaged with the Department of Health and Social Care and asked them to make sure that the unacceptably long waiting times that many trans people experience at the moment for gender identity services is reduced. They have written back to us less than two weeks ago and we are going to follow up with them at official level to make sure that that is followed through. It is not fair that trans people, LGBT people in general, have to wait so long.

As I mentioned, we are also reaching out to many civil society organisations that are championing and advocating for the rights of the LGBT community—Stonewall in particular—to find areas where we, as the statutory equality regulator, and these organisations share common ground, notwithstanding differences on certain issues.

Together, we can make sure that people are treated fairly when they are at work, applying for jobs, or when they are accessing public services and other services too. In many other areas, I am confident that with goodwill on all sides we can find common ground and make sure that we are doing our job to enforce the Equality Act.

Q177 **Kim Johnson:** Thank you, Marcial. I am just picking up on Stonewall, because they have suggested that that there needs to be a review of EHRC as a human rights organisation—where would you sit in terms of that, and how would you respond to that comment from Stonewall?

Marcel Boo: As you may know, Stonewall wrote to the United Nations asking for a special review of our national human rights status. They decided not to conduct that review when requested, but this will happen in due course as part of the United Nations' normal schedule of reviews. But I go back to what I said earlier: I am very keen to reach out to all interested parties representing all protected characteristics, to make sure that where we have common ground we are assiduously and fearlessly taking forward our responsibilities.

Baroness Falkner: It was deeply unfortunate that we arrived at a position where this was the case, and I myself wrote a piece in the media suggesting that none of us was going to achieve a better Equality and Human Rights Framework if groups felt that if we did not agree with their campaigning stances, they would rather that we were not funded, or rather that we did not exist, or that we were inadequate—not fit for purpose.

That would be a very bad place to get to, therefore it is important to contextualise that the United Nations have looked at this twice—they looked at it on the back of a complaint in October and again in March. It is worth reading to you the actual text of the United Nations response.



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Q178 **Chair:** I am not sure that it is, because the wind up—

Baroness Falkner: It is two sentences.

Chair: Okay, quickly because we are about to vote, which will cause the meeting to be suspended.

Baroness Falkner: “Based on the information received and after deliberations, the Ganhri Sub-Committee on Accreditation has decided NOT to initiate a special review of the Equality and Human Rights Commission of Great Britain.” I would appeal, through you and the Committee. to now move forward, for us all to work together. It does not help the people of Britain, who are desperately in need of a good, active and proactive legislator on their behalf, for one protected characteristic group to wish to see its demise, and we need to move beyond that. I and the Board are absolutely determined to work with the team to ensure that happens.

I believe Marcial already has meetings with some of these groups in the diary. We want to start afresh, but it must be on the basis of good faith.

Q179 **Kim Johnson:** But do you understand how people would feel aggrieved because of the stance? Anyway, I will draw a line under it now, because you have mentioned the need for the organisation to work with more than one group.

Disability is one of those organisations as well, and there has been some fallout in terms of your decision regarding the Disability Advisory Committee, and I just wanted to know what discussion you are having in terms of extending the term of that group.

Marcial Boo: Thank you very much for that. I have found out that the Disability Advisory Committee was established in 2018-19 for one year only. It was due to be a single year and was extended until the end of the strategy period, which ended in March. We are reconvening with those members in July—and others as well—because we do not just want to have the same people at the table. We want to broaden our engagement with other disabled people's organisations to discuss the new strategy about how best we can engage with disabled people and disabled people's organisations for the coming three years.

I would just like to make clear that we are absolutely steadfast in championing the rights of disabled people. Only yesterday we announced publicly that we are taking action against the Department for Work and Pensions, who have failed to make sufficient reasonable adjustments for people with mental health issues. We are supporting litigation for with people with visual impairments, a deaf child in school and we are also taking other action with other Government Departments and other employers. I am absolutely clear that over the coming three years with disabled people and disabled people's organisations, we are going to be addressing the issues of concern to them so that they are not disadvantaged or prejudiced in society.



Q180 Kim Johnson: When looking at that, Marcial, can you just maybe clarify whether intersectionality will be considered in terms of looking at some of those issues, because not all disabled people are white, there is black LGBT as well—so making sure there is a cross-section to ensure that there is a diverse group of people who are being consulted on some of those issues.

One final point: you have talked about the DWP, and I just wanted to clarify, as an organisation, what enforcement do you have in terms of public sector equality duty across the whole of the public sector? As parliamentarians, we know that Equality Impact Assessments have been—or not—undertaken on certain pieces of major legislation. I just wanted to be clear about the role and remit that you have in terms of those enforcement practices.

Marcial Boo: Absolutely. On the first part of the question, yes. I met a representative of the black disabled community only a couple of weeks ago, where we talked about intersectionality to make sure that the needs of disabled people from various backgrounds are addressed, so I can provide assurance on that point.

In terms of our duties to enforce the law in Government Departments, also yes. Whether it is a lack of equality impact assessment or a failure to consider wider equality issues, as Government Departments are legally obliged to under the Equality Act, we will pursue that. Obviously, we will have to judge the measures that we take case by case, and that might range from meetings, briefings, a letter or a public statement through to the legal powers that Parliament has given us to take action, including legally binding agreements, which is what we will be putting in place with the Department for Work and Pensions.

Baroness Falkner: Can I just give you a concrete example of exactly that point you are making and the importance of it? We have been working with the Cabinet Office on disability workforce reporting and have recommended that any mandatory reporting—this covers the intersectionality point directly—reflect the complexity across different impairment types and a full evaluation of the current voluntary reporting framework, of which ethnicity and race is an integral part.

Kim Johnson: Those are all my questions. Thank you, panel.

Q181 Chair: Can I just pick up something that the Baroness said? I think you referred to the Commission as being a legislator in one of your earlier responses. We will, of course, check the transcript to see whether you did, but presumably you would like to correct that?

Marcial Boo: Yeah, I think you meant “regulator”; that was the word that was—

Chair: Yes, I was just checking that.

Baroness Falkner: Did I garble it?



Chair: No, you said “legislator”. Jackie.

Q182 **Jackie Doyle-Price:** Thank you, Chair. Just coming back to this issue of improving the conversation. As you say, the response to what were actually very sensible observations about getting the law right was deeply unfortunate. I was pleased to hear that you explicitly said today that you want to see conversion therapy of all types ended.

Of course, there are any number of route maps to achieving that goal, to articulate again the fact that the issues were issues of definition, and actually the term “trans” can cover any multitude of combinations, as you are aware. But, just taking those principles, the desire to end conversion therapy, the desire for single sex spaces where people want them, the desire to treat trans people appropriately where those services exist—from an outcome perspective, I do not think many people would disagree with that.

Certainly, those outcomes should be ones that unite everybody who wants to get to a sensible place here. All of us involved in this debate really have to tackle head on the fact that there is a conflict of rights here, and perhaps one of the reasons we have reached this position in the conversation is because that we have avoided that in the desire to be kind, nice and inclusive. We just have not grappled with those very difficult issues, and that is down to people here.

Frankly, we give you the job to do based on the law. Against that perspective, you are responsible for regulating under the Equality Act, gender reassignment is treated very separate to sex and to sexuality. Has the way that our political discourse develops around these issues put you in the firing line, and do we need to go back and look at that? To you, Kishwer.

Baroness Falkner: When you say “we”, you mean Parliament?

Jackie Doyle-Price: Parliament—yes, absolutely.

Baroness Falkner: Thank you. Yes, absolutely, there has been a slow-burn toxicity developing in this space, and the discourse around the debate is one of the reasons we felt last year that we needed to look at all of these things in the round to be able to come to a considered view, because the different nations of the United Kingdom were found to be moving in different directions—different segments of society, campaigners saying “no debate”, and shutting down debate. There were instances of academics losing their jobs, the courts increasingly addressing these issues where really these are issues more for society than the letter of the law. Of course, the courts have determined the fine letter of the law but in contradictory ways. Even in Scotland alone we have had two contradictory rulings that do not necessarily clarify the space.

When you say, “Is there a role for Parliament?” I personally would imagine there is. There are difficult pieces of legislation, and even non-



difficult pieces of legislation, but pieces of legislation that have a very wide impact. The reason why you have periodic post-legislative scrutiny of Bills in Parliament is for precisely that reason, and it is worth Parliament thinking through whether it wants to do post-legislative scrutiny here—it is for you to determine that.

Q183 **Jackie Doyle-Price:** Following on from that, we used to talk about lesbians and gay men up until very recently, and now we talk about LGBT. Those are two very different concepts, one conflating gender with sexuality. Sometimes it makes perfect sense; at other times it becomes a bit more complex.

I think we have made that shift without any real parliamentary scrutiny, and now you, as the regulator, are finding that at the sharp end. From that position, when was the tipping point that those issues came together, from your perspective?

Baroness Falkner: I must confess, when I had my nomination hearings—which was November 2020, I think—I was asked only a single, rather subtle, question. There were two Select Committees in which I appeared to go through my nomination hearing, so there were a large number of people in the room, and—*[Interruption.]*

Chair: Order. We are going to have to suspend the meeting, as we have a Division. Order. We will come back on the dot at four o'clock. We think there is only one vote.

Sitting suspended.

On resuming—

Chair: Thank you for coming back so promptly. We will now continue.

Q184 **Jackie Doyle-Price:** The question was in relation to LGBT and your confirmation hearing.

Baroness Falkner: I think your question was: when did we think that this debate started getting so heated?

Jackie Doyle-Price: Yes.

Baroness Falkner: I was giving the example that in October or November 2020, when I had my confirmation hearing with two Select Committees, there was only one question asked on the issue of sex, I think it was—literally the one question in nearly two hours of questioning.

When I took up post, it was with four other commissioners—there were several of us that were new to the heat in that debate—and I think it is fair to say that we were pretty taken aback. That is why we asked the team to give us further information last year on how those policy positions had been arrived at and so on, and really discovered that it had been pretty ad hoc.



Jackie Doyle-Price: Thank you. I will leave it there, Chair.

Q185 **Chair:** When coming up with those policy positions, did you listen to the protected characteristic lead's views on that?

Baroness Falkner: I think that is for the Executive to answer.

Marcial Boo: Yes, the term that you are using—protected characteristic lead—is an internal term that we had assigned to certain individuals to think about some of these protected characteristic groups on behalf of the organisation. Just to clarify for other people, it is a label that we assigned to certain individuals inside the organisation, and the answer to your question is, yes, we did.

Q186 **Chair:** Does that make it any less valid because it is a label that is inside the organisation?

Marcial Boo: No, I am just clarifying for those people who may hear the term “protected characteristic lead” and not understand exactly what we are referring to, but yes, of course we have people with expertise in the organisation and we listen to their views.

Q187 **Chair:** Thank you. I think the Baroness spoke at one point about what the organisation is funded for. Marcial, how is it going with the budget?

Marcial Boo: If you are referring to last year's budget—

Chair: This year's budget. Has that been set yet?

Marcial Boo: We have not got a budget for the financial year that we are currently in. As you know, we are now a couple of weeks into the financial year and, unfortunately, we do not have a budget.

Q188 **Chair:** Has the Cabinet Office given you any timescale?

Marcel Boo: No.

Q189 **Chair:** Is there anything that this Committee can do constructively to help with that? It is wholly unsatisfactory that the Government should think so little of the EHRC that your budget for the year has not yet been set.

Baroness Falkner: I am very grateful for your attention to this. Incredibly, it is an existential issue for us. We were talking earlier about our NHRI accreditation—the routine accreditation that will take place in October 2022.

One of the key foundational aspects of the Paris principles in deciding whether a national human rights institution is independent is whether it has the funding to undertake its role. A Government review 10 years ago, in 2012, concluded that the EHRC required a minimum of £17.1 million in order to carry out its statutory duties. The current budget has now dropped—the last year's budget was 17.1 and that is without accounting for inflation of 27% over the last 10 years since that decision was made.



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Essentially, we are not even at that statutory minimum that the review concluded was the absolute baseline for us to be able to cover the protected characteristics—

Q190 **Chair:** Can I ask how the budget works? Do you ask the Cabinet Office for a figure, or do they offer you one?

Marcial Boo: As you know, statutorily, we are an arm's length body of the Cabinet Office and, as with all arm's length bodies, we are asked to put in our budget requests. Essentially, we said we are happy to have the same amount of money this year that we had last year. We did that before Christmas in line with the normal financial management cycle. I understand that the spending review settlement was agreed months ago, and so it is a matter for the Cabinet Office to determine our settlement, and we are still awaiting it.

Q191 **Chair:** Still waiting, and you have recently published your three-year plan. Going forward, how is this budget uncertainty going to impact your ability to deliver that?

Marcial Boo: I hope it will not over the three years because I am expecting to get a budget. The National Audit Office are obviously concerned about this because they have a statutory duty to audit us to make sure we are going concern. I am confident that in the long term it will be okay, but in the short term it is impacting on my decisions as an accounting officer, because I am accountable to Parliament for £17 million last year. I need to make sure I am spending public money properly, and, obviously, I need to know how much money I have to spend in order to do that.

Chair: Thank you.

Baroness Falkner: Could I also add something about the Government's response on 17 March to the CRED Report?

Chair: The Commission on Race and Ethnic Disparities—

Baroness Falkner: No, the title of the response.

Q192 **Chair:** "Inclusive Britain"?

Baroness Falkner: "Inclusive Britain". The number one recommendation from CRED was that we be funded to do specific work on race disparities. The Government's response as recently as only six weeks ago in "Inclusive Britain" was that they wished to invest in us specifically in order to carry out some of that work, but—

Q193 **Chair:** They are not investing?

Marcial Boo: We have yet to hear the conclusion, and obviously we have been making representations both at official level and ministerially, and I am sure that there are conversations taking place in Whitehall, but we have to see the white smoke coming out of the chimney.



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Q194 **Chair:** Thank you. Can I talk to you a bit about media coverage, the impact that the Commission has on the wider public awareness of you? In previous sessions I think we have asked specifically about not just media reporting but the number of inquiries you receive from the public, how many you investigate, and, in a previous hearing, the Baroness indicated that she regarded that as the most important figure. Could you tell me what your figures are for inquiries over the course of the last three years?

Marcial Boo: There was a 37% increase in inquiries in the last year. If we are counting not just the inquiries that come directly to us but also through the inquiry service that used to be part of the Equality and Human Rights Commission but is now outsourced, there were actually 52,000 inquiries in the last 12 months, including both the 3,000 or so that came directly to us and the 50,000 that went to this service that we refer people to. If we are including in the round because all of these are inquiries about the Equality Act and discrimination and harassment, that was about 52,000 inquiries in the last year.

Obviously, those inquiries come in all shapes and sizes—as you will know from the inquiries that come into your constituency offices. We assess them all and, in some cases, we triage them and send them through for potential financial support of their litigation—allegations of harassment of one kind or another—and we follow them up.

Q195 **Chair:** How do you triage them? What are the triggers that make something worthy of financial support?

Marcial Boo: As you know, in December we launched a Race Legal Support Fund where we went out explicitly to say to communities across Britain that we have up to £250,000 to support legal action. Those cases have so far come in via solicitors or legal professionals of one kind or another, although we are now opening that up to individuals to come directly to us.

Part of an answer to your question is that if it is coming from a firm of solicitors for example, then that means that that passes directly through to our Legal Team. In other cases, there are inquiries that are alerting us to potential discrimination which we assess on the merits of the case—*[Interruption.]*

Chair: Thank you. I am sorry, that is another Division, and I am conscious that if we suspend for another 15 minutes you will have to go as it is bang on 4 o'clock, so I will call the meeting to a close in a moment. Could I please ask that we find another date to bring you back? There is a whole raft of questions we have not managed to get to in the time allotted because of the Divisions.