

Women and Equalities Committee

Oral evidence: The work of the Equality and Human Rights Commission, HC 852

Wednesday 30 November 2022

Ordered by the House of Commons to be published on 30 November 2022.

Watch the meeting

Members present: Caroline Nokes (Chair); Elliot Colburn; Dame Caroline Dinanage; Carolyn Harris; Rachel Maclean; Anum Qaisar and Jamie Wallis

Questions 1 - 57

Witnesses

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

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witnesses

Witnesses: Baroness Falkner of Margravine, Marcial Boo and Melanie Field.

Chair: Good afternoon, and welcome to this afternoon's session of the Women and Equalities Committee. We are looking at the work of the Equality and Human Rights Commission. Can I thank our three witnesses for coming in to see us this afternoon? I am going to go straight into questions with the first one from Carolyn Harris, please.

Q1 Carolyn Harris: Thank you, Chair. I will forgo the preamble and get straight to the point. You told us you were assessing the evidence of our menopause report, and evidence from elsewhere, and how the EHRC can best help employers to understand and meet their legal obligations. How is that going?

Baroness Falkner of Margravine: We are talking to other regulators in that space, but can I introduce Melanie Field, who is our policy and strategy lead? Melanie will fill us in on that particular. We are trying to divide up to give you answers as quickly as possible.

Melanie Field: Thank you. Of course, you published your report in July and we wrote back saying that we were looking at all of this and how we could best help employers to understand their obligations. We have been talking, as our chairwoman said, to other regulators, including the Health and Safety Executive, about the types of materials or support that employers might find helpful. We are in the process of considering items for our business plan next year, because, obviously, at the time the Committee reported we had already set out our business plan for the current year. This is something we will be looking to pick up in the next business year.

We have also been looking at the broader issues facing women going through the menopause, so the question of access to appropriate advice and treatment. We really welcome the fact that the Government have published a women's health strategy and the establishment of the UK menopause taskforce. Those are other issues under our health and social care priority that we will be looking at under our business plan for next year.

Q2 Carolyn Harris: That is brilliant. As co-chair of the Government's taskforce on the menopause, it is really good to know that you are looking at what we are going to be doing, but it is not just that body which is doing work. This Committee has done a lot of work, I chair another group that is doing a lot of work, and there are a lot of media campaigns which are doing a lot of work. What I am saying is there is a lot of good practice out there and we really should not be reinventing the wheel. It would be really good if you were to actually talk to all of these organisations with a view to coming forward with amendments and suggestions which would reflect what we already know works and what we already know does not work. That would be really useful.



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Baroness Falkner, have you had any discussions with the Government about reforms of the Equality Act 2010?

Baroness Falkner of Margravine: We have written to Government extensively over several different aspects of Equality Act reform proposals and so on. We have several discrete areas where we have sought change. One is an area of the 2006 Act that we wish to expand—this is to do with the human rights mandate—and we have set out our priorities. We want to advocate for section 28(8) to be implemented. On the 2010 Act, we have also sought some changes. One is the ability to reference fines for institutions that are not adequately complying with the actions they need to do to reduce the gender pay gap.

In August we wrote to the then Secretary of State Liz Truss requesting a number of amendments to our framework document to strengthen existing safeguards on appointments to the board. We are working on a range of areas in terms of reform of the Equality Act or seeking some powers that already exist but have not been implemented and other clarifications on the Act.

Q3 **Carolyn Harris:** I am going to hand back to the Chair, but before I do so, can I just ask if you have met Dame Lesley Regan yet? She is the Government's menopause champion and has been in post for quite a few months now.

Baroness Falkner of Margravine: No, I do not believe we have.

Carolyn Harris: Okay, thank you.

Q4 **Chair:** Marcial, on the menopause issue, Melanie just referred to it being work for the next business plan. Did the slowness with which you got your budget this year push that back?

Marcial Boo: We published a business plan for this financial year. That is the business plan we are delivering. As Melanie says, obviously, through the year there are a lot of new things that come, events that take place, and action that we feel is necessary. In some cases, obviously, we can take action within the year, but if it is a big bit of work, we want to ensure it is scoped properly, it is planned properly and we talk to stakeholders. That is what we are planning in respect of work on the menopause. The EHRC board is considering the business plan for the next financial year in January, so in just a few weeks' time, and then we will let this Committee know about the work we are planning to do.

Q5 **Chair:** Baroness Falkner, taking you back to the Equality Act, and apologies if I got this wrong, you referenced areas of the Act that had not yet been enacted. Would you consider section 14 as one of the parts of the Equality Act that should be enacted?

Baroness Falkner of Margravine: Could we have Melanie take that, please?



Melanie Field: There are a number of provisions, as you will be aware, that have not been commenced or implemented in the 2010 Equality Act. We have, in the context of menopause, been looking at whether commencement of section 14 might assist women in that circumstance. Most of the tribunal cases that have been argued have been on the basis of disability. I think it is questionable whether a combined age and sex discrimination claim might provide a remedy, but we need to have more discussions. The Discrimination Law Association recommended that that might be a solution in this case. That is something we are looking at, having further discussions with legal practitioners who can tell us what the obstacles are to bringing these cases.

Q6 Dame Caroline Dinenage: Very quickly, to bring us back to the original answer about the potential reforms to the Equality Act and your most recent comments, Melanie, if the Government did decide to reform the Act, to what extent would you be involved in that? Would you be able to influence which bits were going to be reformed? Would you be able to stop bits being reformed that you felt did not warrant it? What sorts of powers do you have in that respect?

Melanie Field: We have a statutory duty to advise on the effectiveness of the Equality Act and on the effects of potential legislative changes on both equality and human rights. We have an advisory role but, obviously, we do not have a decision-making role because we are independent of Government.

Baroness Falkner of Margravine: After writing to the then Minister for Women and Equalities, she did recommend that we open discussions with the Cabinet Office, which we are undergoing at the moment.

Q7 Rachel Maclean: I have some questions about your three-year strategic plan, and this is the first time I have questioned you on this Committee so I hope you will forgive me if I am covering things that perhaps have been covered in previous sessions. You have a strategic plan, which I understand you have published. Obviously, you have to look across all the nine protected characteristics. How did you decide your six priority areas in your strategic plan? You cover workplace, children and young people, health and social care, and so on. How did you come up with those areas?

Baroness Falkner of Margravine: We had a public consultation, as we are required to do, between August and September 2021. We published a draft strategic plan and used an online survey to gather feedback. We also proactively engaged with stakeholder groups to dig a little bit deeper. We examined data and evidence, drew on published intelligence, case law, feedback from stakeholders and our own historical work, which aligned with our powers. We were gratified by the high level of engagement that we got, with 880 responses. Interestingly, a large number were from individuals. We normally tend to get them from organisations, but it was very gratifying, and we built on that and identified the six areas.



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Q8 **Rachel Maclean:** Fantastic. As well as that, did you look at the legal cases that you have been supporting? Did you look at complaints that had been lodged with your organisation? Did you take that into account and, if so, how?

Baroness Falkner of Margravine: Yes, indeed. We examined our own data, cases that had come to the equality advisory service, litigation, published intelligence, think-tanks and other organisations that collate data, and case law, particularly where we felt there were a higher number of breaches of the Equality Act. Occasionally, you have to look at what is happening on the ground to determine to what extent a problem that you thought did not exist two or three years ago is coming to the fore.

Q9 **Rachel Maclean:** I get that. You said, I think, that you plan to be quite agile because you need to, obviously, align to developments in the country.

Baroness Falkner of Margravine: Yes.

Q10 **Rachel Maclean:** With the nine protected characteristics, do you have a sense of how much time has been taken up by each one? Do you track your data in that way?

Baroness Falkner of Margravine: Marcial, would you like to pick that up?

Marcial Boo: Yes, we definitely do that. I would say we probably spend a little bit more resource on disability issues than some of the other protected characteristics. As a rule of thumb, we spend about 10% of our resource, our time, on the protected characteristics of sex, race and age, and a bit more on disability. It is also important to note that many of the issues that we deal with cover more than one protected characteristic. If we are dealing with digital exclusion, for example, or vulnerable people in one setting or another, they may both have the characteristic of age and disability, and obviously sex as well. We make sure that we cover all the protected characteristics we are responsible for.

Baroness Falkner of Margravine: Would you like me to give you a bit more granular detail?

Rachel Maclean: Yes, if you can.

Baroness Falkner of Margravine: For example, in terms of our regulatory activity in the last year—I am talking about 2022—in our legal casework we have done about 30% on disability, 10% on sex, 10% on race, roughly 20% on human rights, roughly 10% on religion belief, another 10% on disability related to human rights, and so on. We try to keep quite detailed figures, but we can never be 100% sure of our accuracy because cases are also ongoing. There is work already ongoing and there is quite a lot that, until it is complete, cannot come into the data.



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Q11 **Rachel Maclean:** Yes, I understand that. Do you publish that breakdown anywhere on your website?

Marcial Boo: No, we do not because of the difficulty of having ongoing cases with sometimes three or four protected characteristics. In our annual report we do report very comprehensively on all the work we have done in the previous financial year, including by protected characteristic.

Q12 **Rachel Maclean:** Clearly, you are driven by some reactive work and the fact that cases are being lodged. You said you were spending most of your time on disability, sex, race and age, but to what extent are you able to be proactive and take a horizon-scanning look to get a sense of and really know whether that is actually where the need is? That is what is driving you, but there could be another protected characteristic somewhere in the list. I cannot remember what the others are, but there are five others.

Chair: Maternity.

Rachel Maclean: Is maternity a protected characteristic?

Marcial Boo: Yes.

Q13 **Rachel Maclean:** Thank you. It may be that that one is being neglected somehow. How would you ensure or know that you really are allocating the resources equally?

Marcial Boo: We do this in a number of ways. First of all, we set out a business plan for the year that is public, that people can comment on and, indeed, we engage with all kinds of stakeholders, including civil society, all the time, every week. We get very direct feedback if there are stakeholder groups that believe we are not focusing on issues that are of importance to them. That is one thing.

Secondly, internally, we have mechanisms for drawing in intelligence from case law, from Parliament, from the media, from international good practice and from academia on the kinds of issues that are emerging. Obviously, through covid some new issues came up and now we have the cost of living crisis, too. All of this is a dynamic process which enables us to ensure we are assessing the right things. Obviously, as I have mentioned, we are going to be having a new business plan for the next financial year and that is a further opportunity for us to take stock and make sure we are using our resources effectively.

Q14 **Rachel Maclean:** In terms of your strategy, then, how are you going to measure your success, and how are your stakeholders going to be able to measure your success?

Baroness Falkner of Margravine: We are very aware that the Committee in its report of 2019 wished us to be more agile and able to see more clearly where our impact was. We are attempting quite hard to disaggregate where we are successful or not, and to measure our impact.



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I can give you examples of some of the things we have done over the last seven months of this current year.

We published hair discrimination guidance on 27 October 2022, which was long requested. Our inquiry into the treatment and experience of low-paid ethnic minority workers in health and social care was published in June. We launched a formal investigation into Pontins, which was about discrimination against Gypsies, Romany and Travellers. We launched our sexual harassment prevention toolkit in UK hospitality in April. Also, in April we published guidance for single-sex providers on the single-sex exemptions of the Equality Act, which was quite singular and a significant piece of work.

We monitor Government Departments on the public sector equality duty. In that context, we signed a section 23 agreement with the Home Office in April to monitor the hostile environment. We are working with the Department for Work and Pensions on reasonable adjustments for people with learning difficulties and autism. We also undertake high-level, high-profile enforcement work. I could go on, but I do not know what level of detail you would like.

Q15 Rachel Maclean: You have given me a really good flavour and I think we would all agree that it is really positive. What I am trying to get to is how do we all know that that is a success? What is your top-line goal? What are your KPIs, and how do we know you are reaching them or where there are any gaps?

Baroness Falkner of Margravine: I will allow Marcial to come in in a minute, but if I can just give you an overview. In terms of real-world demonstrable impact, clearly, those things I have just told you about are the real-world demonstrable impact things that capture the media, but attribution of impact is quite hard given the very wide range of responsibilities we have. Our successful legal cases are one area where we can see, with a very clear line of vision, real tangible change for individuals. For example, we felt there was a need to do more work on race, so earlier this year we established our race legal support fund. We have the data on the number of cases that are currently open and so on. Marcial, would you like to fill in the gaps there?

Marcial Boo: Thank you. Yes, helping others to create a fairer society in Britain is the impact that we want to achieve and our goal. Clearly, that is quite a hard thing to measure. The responsibility given to us by Parliament is to set the regulatory environment that will ensure that all those with responsibilities—duty bearers in the jargon: employers and public bodies—understand equality law and put it into practice. Regardless of the sector they are in, they know that there is an equality watchdog, that we are prepared to take action, and help them to comply with the law. Obviously, the way in which we measure that is at an individual level, with the specific pieces of work that Kishwer has mentioned. We make sure that other people in the relevant sectors know



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about hair discrimination guidance and litigation cases so that they themselves can comply with the law.

We had 235 separate media mentions in the case of hair discrimination guidance, including in the United States. We have that guidance in all schools so that they can take stock of their policies and ensure that they are complying with the law. The same is the case on individual litigation on race discrimination and other matters. We are working with the England and Wales Cricket Board and also with the Yorkshire county cricket club, for example, to ensure that collectively, with those bodies, we stamp racism out of cricket. Whether in respect of cricket or in schools, the goal is to make the country fairer, but to do this we need to work with others, including providers of services and employers, to make sure that happens.

Q16 **Chair:** Can I just interject? Kishwer, you referenced the media. When you came before us for the pre-appointment hearing, you suggested that media reports would be an example of the commission getting better at being visible, in many ways trumpeting its successes. Marcial, you just referenced, was it 75 media—

Marcial Boo: Two hundred and thirty-five.

Chair: Oh, 235, sorry—a huge number of media reports around hair guidance. Can you just explain to me how the media reporting is going and whether you have seen any trends of favourable or unfavourable reporting of the EHRC in the media?

Marcial Boo: Yes, the hair discrimination guidance had 80% positive feedback from media and social media, which is really exceptional. More generally, as you would expect from a regulator, the balance of comments is more neutral. There are sometimes negative comments and sometimes positive, largely there are a bunch of neutral comments in the middle, which is quite normal for regulatory bodies because we are rule setters.

Q17 **Chair:** Some people like them, some people do not. Is the number of overall mentions going up or down?

Marcial Boo: We have had 2 million hits on the website in the last year.

Q18 **Chair:** Media mentions?

Marcial Boo: That is not media mentions. We work in a space, as do you, where we are constantly in the media. In some cases, we have had particular spikes in media mentions.

Chair: Hair discrimination guidance, 235.

Marcial Boo: The hair discrimination guidance was a spike. We also had a spike in media mentions when we published the single-sex services guidance. We need to step back from the month-by-month mentions and take a look at the general trend.



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Q19 **Chair:** Is that why it has dropped off the annual report?

Marcial Boo: No, it is not for that reason.

Q20 **Chair:** Why has it dropped off the annual report?

Marcial Boo: I do not know. I have the annual report here but I do not know what was in previous versions. We monitor our media mentions and we have a new website which is launching early in the new year. This is completely grist to the mill in terms of making sure that we know who is looking at our website, who is picking up our stories and who is actioning the recommendations. As I mentioned earlier, we need to cut through to those people who need to take action to improve fairness.

Q21 **Chair:** Should the number of media mentions be in your annual report?

Marcial Boo: I am very happy for it to be.

Chair: Okay. I am trying to get to the bottom of why it used to be and now it is not. You do not know.

Baroness Falkner of Margravine: I have statistics here. As an interesting overall metric, since December 2020, when I came in, our social media channels have gained more than 18,000 followers, so we are up to around 100,000. Overall engagement, which is quite an important metric and measured in comments, likes and shares, relative to just looking at something, has increased from 0.75 to 2.2. The industry standard is that between 1 and 5 is considered a very good engagement rate.

Q22 **Chair:** The world does not necessarily run on Twitter. What about mainstream media?

Baroness Falkner of Margravine: We have had a great deal of response in the mainstream media to our single-sex spaces guidance and our Afro hair guidance, frequently front page or front cover as well as on television and so on. The topicality of the issue is what tends to get picked up, but yes, we have been gratified by our media coverage.

More generally I want to make the point that being visible is not a goal in and of itself. The reason we wish to be visible is so that people know that we exist, that people know that we are there for them and that we can help. Our efforts in terms of the media and publicity are all directed to the aim that people know there is an equality regulator that defends equality and human rights and that we are there.

Q23 **Rachel Maclean:** Why have trade payables in your accounts—outstanding payable invoices on your books—more than doubled since the end of the last financial year?

Marcial Boo: This is in the annual report for 2021-22?

Rachel Maclean: It is the latest one that we have sight of, yes. I am comparing it with the previous financial year and the figure has doubled.



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Marcial Boo: I have the annual report here but I am afraid I do not have the previous financial year so I cannot compare those two figures right now. I can absolutely assure this Committee that we manage our finances completely in line with managing public money. We are audited by the National Audit Office, of course. We publish all the figures in our annual reports and, as accounting officer, I sign them off and have no concerns about the way that we manage public money and I have confidence that everything is above board this financial year in respect of that specific question that you asked. I know that we are again spending our money in line with the objectives that we have been given, our statutory responsibilities, this financial year. I am happy to subsequently answer any specific questions if you have them.

Q24 **Rachel Maclean:** Okay. Obviously, this is a one-line item, but this is really about the money that you need to pay to the people that are supplying you with goods and services. The number is a lot higher and the trend is quite significant: it represents a doubling. I wondered if you had any thoughts about what the underlying reason for that would be.

Baroness Falkner of Margravine: We had to move quite swiftly with the impact of covid. Our IT systems were quite old and we had to move very swiftly to homeworking in that period. We had not anticipated a global pandemic and our IT team was incredibly stretched. It could have been related to this fact and transferring over the financial systems entirely to homeworking, which probably made a difference.

I wonder if I could pick up a point about very slow budget delegations. It may not be related to this particular point, but there is an overall problem on budget delegations.

Q25 **Rachel Maclean:** What do you mean by budget delegation?

Baroness Falkner of Margravine: For both this annual report planning period and the last, we have not had a formal budget delegation yet and we are now in November.

Q26 **Rachel Maclean:** This is the settlement from central Government to you?

Baroness Falkner of Margravine: That is right. As you would expect it to do, it inevitably impacts on your work because it creates a level of uncertainty, particularly when the media is consistently full of public sector cuts, more churn and more change. It has been for many years now, and it is deeply unhelpful. In an ideal situation, you would want a three-year delegation with some assurity.

Q27 **Chair:** Can I just interject on that? I am absolutely on your side when it comes to the budget and the length of time it took the Government to settle that. This is a question for Marcial: did that prevent you from paying your suppliers?

Marcial Boo: No.



Chair: Thank you.

Q28 **Rachel Maclean:** I would be grateful if you could write to us with the specific analysis of your supplier payments, explaining why they have been particularly slow, because actually you have a good record of paying your invoices in previous years.

Marcial Boo: Yes, I am very happy to do that and to bring the figures up to date for this financial year in so far as I am able to do so.

Rachel Maclean: Thank you very much. Those are all my questions, Chair.

Q29 **Anum Qaisar:** I thank the panel for joining us. In 2015 the Sub-Committee on Accreditation raised the control that the Secretary of State has over the EHRC's budget. What has the Government said about the SCA's new recommendation about the budget and the continued problems with the budget?

Marcial Boo: Yes, you are absolutely right, the Sub-Committee on Accreditation of GANHRI, the UN Global Alliance of National Human Rights Institutions, has again recommended that we have greater financial autonomy. That is something that we ourselves wish for. We want, at the very least, a separate identifiable budget line in the Cabinet Office accounts. The Paris principles of national human rights institutions are that many report directly to their Parliaments rather than parts of Government. Our statute sets us up to be part of Government, but we would like to have a separate line listed in the accounts so that what is paid to the Equality and Human Rights Commission and how it changes over time is visible. We have made that point repeatedly to Government, both prior to the most recent recommendations and since. Indeed, I raised them myself to Alex Chisholm, who is the permanent secretary of the Cabinet Office, and he gave me some assurance that this would be looked at.

Q30 **Anum Qaisar:** Are you convinced by that assurance?

Marcial Boo: We will have to wait and see. I am very much hoping that some of the problems that we experienced in our financial delegation this financial year, which the Chair is well aware of, will not be experienced in the next financial year. I also got that assurance from Alex Chisholm. Obviously, we still have four months before the next financial year, and I am very much hoping that some of these financial issues will be resolved before then.

Q31 **Anum Qaisar:** What conversations have you had with Government Ministers?

Baroness Falkner of Margravine: I do not think I have had a meeting with a Secretary of State without raising the issue of our budget. We have also written to Government Ministers. We wrote to Liz Truss when she was the Minister for Women and Equalities about the



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constraints we face and what we may be able to do were we to have additional funding. We have also had a discussion with the current Minister for Women and Equalities, Kemi Badenoch, who was essentially the owner of the report "Inclusive Britain" from the Commission on Race and Ethnic Disparities. One of the leading recommendations in that was that we should undertake some work in respect of that report. We understood that if we undertook work there would be funding coming with that, but we have not yet received it yet.

Q32 **Chair:** You said "yet", are you expecting it?

Baroness Falkner of Margravine: Yes, we understood that there would be a dedicated sum of money for that work.

Chair: Okay, thank you.

Q33 **Anum Qaisar:** The EHRC has been told to take visible and clear steps to strengthen your working relationship with civil society organisations. Why did the UN have to tell you that you have to strengthen your working relationship with civil society?

Baroness Falkner of Margravine: We have engaged, continue to engage, and will continue to consider civil society stakeholders as an absolutely vital part of our engagement. The reason that it came up in terms of the UN, which is your specific question, is that the Sub-Committee on Accreditation received a complaint from us, requesting that the UN carry out a special review. That was in February 2022. The SCA considered that request and concluded that, "Based on the information received and after deliberations, the GANHRI Sub-Committee on Accreditation has decided not to initiate a special review of the EHRC of Great Britain." They made that determination on 22 March 2022. We had our normal re-accreditation session, which was delayed by a year, in October this year as we expected. They agreed that we were fully compliant with the Paris principles and reconfirmed our A status as a national human rights institution after that. They made a series of recommendations on our independence, on our mandate, on addressing human rights, on co-operation with civil society, pluralism and diversity on our board, our selection and appointment process, the dismissal of commissioners and financial autonomy. It was one of nine recommendations that were made.

Q34 **Anum Qaisar:** When you are strengthening, or looking to strengthen your working relationship with civil society, what does that look like to you?

Baroness Falkner of Margravine: We continue to engage with all civil society groups, irrespective of either their public criticisms or public support of us, and we do so in an even-handed manner. Melanie and Marcial have certain scheduled meetings in their diaries, and I come into those meetings, depending on the saliency of the issue to be discussed, as and when I can. It is a regular strong two-way conversation and sometimes those are difficult conversations. One of the issues you will



appreciate is that when you cover nine protected characteristics—many of which are contested or where there are balance of rights issues that come into play—you will have different civil society organisations trying to pull and tug you in different directions. We are very clear that we are not an advocacy group or a lobbyist; we are a regulator. We work with all our stakeholders, including Government Ministers and Committees, without fear or favour. That is what the public would expect and that is what we do.

Q35 Anum Qaisar: Thank you. One last question from me. There appears to be tension between the EHRC's enabling law, the UK's constitutional and legislative landscape and the Paris principle B1 on composition and guarantees of independence and pluralism. To what extent do you think that the Sub-Committee on Accreditation's concerns are valid, and what are you doing to avoid these issues being repeatedly raised by the SCA at each accreditation?

Marcial Boo: You make a very valid point. Some of the national human rights institutions in other countries are set up in a different way. In general, public bodies in this country are set up by statute, mostly, but not always, as an arm's length body of Government with an independently appointed board, and mechanisms to ensure that those processes are fair and scrutinised by the public appointments commission and so on. That is the way that we ensure that there are appropriate processes in place to ensure that board members—not just of the EHRC, but all public bodies, all regulators, and particularly those that have a degree of independence, as we do—are appointed through a proper process in this country.

Some of that is not consistent with the way that other human rights commissioners in other countries are set up. They may report directly to Parliament, maybe as the sole person, a commissioner, rather than a public body as we are. The Sub-Committee on Accreditation therefore asks us about this to assure themselves that we are properly independent and properly accountable democratically, as we are. In order to supplement the legislation, we have a framework agreement in place with Government that vouches for the independence of the appointment process and the kinds of issues that the SCA have raised with us. We have explained the UK's processes to them and I think that gave them sufficient assurance to reaccredit us with the A status, as Kishwer has said.

Q36 Anum Qaisar: When you come up for re-accreditation, do you believe that the SCA will continue to ask this or do you think they are now going to avoid that conversation?

Marcial Boo: They have asked for this repeatedly, and they may ask about this in five years' time when we are re-accredited again. In the meantime, one of the things that we will be doing is talking to them, explaining the legislative processes here in the UK and the safeguards that are in place in statute to preserve our independence, and the



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appointments process. I am sure they will understand the way we do things here to make sure that we are genuinely an independent body.

Baroness Falkner of Margravine: I wonder if I could build on that, because this is an ongoing thing. We have a different public appointment system from some other countries where the board is a full-time executive board, which was never envisaged in the Equality Act 2006.

We changed our framework document—it was amended in 2018 following a tailored review of our effectiveness—to include provision for the chair to agree the selection criteria required for appointment of commissioners, and indeed the chair is the senior independent member on the selection panel along with one further independent member. We have gone with the Government Equalities Office, and we have gone as far as it is possible to go under UK current law, to try and satisfy the Sub-Committee on Accreditation's concerns about our independence.

Q37 **Chair:** Thank you. We probably have about 10 minutes more and that is all. Can I ask quickly, with regard to the budget, is there anything that you would have done if your budget had been set earlier that you have not been able to do?

Baroness Falkner of Margravine: One of the things that we have been asked about in previous discussions was underspends/overspends. Planning is extremely difficult to do.

Q38 **Chair:** Is there no activity that you would have otherwise done?

Baroness Falkner of Margravine: No, there are activities. I will just—

Q39 **Chair:** No, please do not list them. We do not have time for that. I just wanted to check, so that was a no to that one. Marcial, big staff turnover. Do you have happy staff?

Marcial Boo: Our annual staff survey closed a couple of days ago. We had an 84% response rate, so I will be able to tell you very soon, in the new year. The turnover has started to go down. We have a turnover of about 1% a month now, which is absolutely within the normal range, but we did lose a number of staff earlier in the year. I will find out whether I have happy staff very soon, but I know that I have very motivated and committed staff who are dedicated to doing the job that we have been given, and they are very enthusiastic about doing so.

Q40 **Chair:** Were there any particular roles or grades that stood out as being affected in the turnovers?

Marcial Boo: I do not think so. Part of what we saw is consistent with many organisations. There was the so-called "great resignation" that we experienced alongside others as everybody emerged from covid. Certainly, opportunities opened up in central Government when people could go back to work. We have, like many organisations, some younger members of the workforce who have taken up opportunities. Many of the



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people who left have gone on to promotion or to further their careers, and I am very happy that that is the case.

Q41 **Chair:** Will you share with us the findings of your staff survey when it is available?

Marcial Boo: We will publish a summary of the survey on the website, and I am very happy to share that with you.

Q42 **Chair:** How is recruitment?

Marcial Boo: Recruitment is very strong. We have no problem whatsoever in recruiting high-calibre people to the organisation.

Q43 **Chair:** Why the high usage of agency staff, then?

Marcial Boo: I do not think it is so high.

Chair: Okay.

Baroness Falkner of Margravine: I think you will find that most arm's length bodies are experiencing higher turnover, particularly of more junior staff. In our cohort, the numbers are slightly higher for younger people than for people who have been with us for a while, and that is generally given the tight labour market, the high inflation turnout and the inability of public sector staff to achieve very high pay settlements that make working in the private sector and other sectors more attractive.

Q44 **Elliot Colburn:** Regarding the commission's approach to enforcement, why so much emphasis on supporting individuals with cases rather than formally initiating cases yourself?

Marcial Boo: We do both. Sometimes it is evident in an individual case that we can intervene and make a difference to a whole sector. We hear about an individual case such as that of Ruby Williams, who was excluded from school because of her Afro hair. We supported that case. It has led in due course to producing hair discrimination guidance for a whole sector. Sometimes that one case enables us to make a change in respect of the whole sector. Sometimes we can intervene ourselves, too.

Q45 **Elliot Colburn:** Do you think it is more effective to initiate cases yourself in order to bring about systemic change, or do you find it is just as doable by intervening in a case?

Marcial Boo: We have a range of regulatory tools, and it is our job to make sure that we are using the most effective tool for the job. Sometimes that is a "soft tool" like some information or guidance, all the way through to the power to initiate judicial reviews. Clearly, if we take those hard actions, it takes a lot of time, it takes a lot of money, and we have to be really sure that it is the most effective way for us to intervene. My job is to make sure that, with the budget that we have, we have the maximum bang for buck.

Q46 **Elliot Colburn:** Thank you. In regard to the legal support scheme, a few



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very quick questions. You have established a specific fund for race discrimination cases. The question is, why? Has the Government provided any additional funding to support this, and is legal support scheme funding available on cases of other types of discrimination as well?

Baroness Falkner of Margravine: We would love to do other special initiatives through these kinds of funds, but we do not have the resources at this point in time. Why did we decide this? We decided to do this particular area because the data and evidence showed us that race discrimination was creeping upwards, and we thought it was important to tackle that.

Q47 **Elliot Colburn:** Why not LGBT hate crime, for example, which has also risen?

Baroness Falkner of Margravine: We are looking across at our next annual plan to see what we can do with our constrained resources. There is also disability. Disability has also gone up, so you are quite right to mention LGBT hate crime as well. At different times, you seem to get a spike. If you are choosing to intervene, that makes your funding go further than if you took cases yourself alone. Intervention has strategic impact. It gives you huge strategic impact, particularly if it is where the lessons will cover an entire sector.

We keep that under review constantly. The race legal support fund has been incredibly successful. I have figures here. We have had 46 applications to the fund as yet, and we are thinking of opening that up so that we can open this scheme to unrepresented individuals to access it directly. That will accelerate the decision making for individuals, and of course they get advice through the equality support scheme.

Q48 **Elliot Colburn:** Thank you. A final question from me around enforcing the gender pay gap. What action has the commission taken since reports that 28 organisations have not reported their gender pay gap data? What action is the commission taking against those organisations?

Marcial Boo: All 28 now have reported, or we have ruled them out as out of scope. The fact that we published those 28 names ensured 100% compliance. I am very pleased that regulatory intervention enabled those 28 organisations either to submit their figures or we assessed that they were below the scope of the organisation size.

Q49 **Elliot Colburn:** Excellent news. Is the EHRC going to play a part in the Government's current review of gender pay gap reporting conditions? If so, what changes would the commission like to see?

Baroness Falkner of Margravine: We are being consulted upon. I do not know which one of you wants to pick that up.

Melanie Field: We are talking to Government about their review. We are also planning for ourselves in our next business plan to do some research into the effectiveness of gender pay gap reporting as an intervention in



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terms of reducing the pay gap. We have already made the case to Government that the ability for us to impose fines on non-reporters might be a useful addition to our regulatory tools.

Q50 **Chair:** Does the commission have a particular view on ethnicity pay gap reporting? Has that mood changed?

Baroness Falkner of Margravine: Yes. You recommended that in your report some time ago. We wrote to the Chancellor of the Duchy of Lancaster at a certain point in time, along with the CBI and the TUC—a combined effort of the three of us—and they have indicated that they are not open to an ethnicity pay gap, but they are prepared to support projects that are voluntary at the moment.

Q51 **Chair:** I hope they would not be open to an ethnicity pay gap, as you put it. There is quite a lot of work going on with the FTSE 100 at the moment, trying to encourage companies there to support. Do you think the muscle of the EHRC can be brought to bear on others?

Baroness Falkner of Margravine: We have an MoU with the FCA. We engage with the Financial Conduct Authority and other institutions. If there were institutions for which it would be tangibly possible, the larger institutions—as most City institutions are, and because they have high levels of diversity on the whole—would be a good place to start, and absolutely they should be doing it.

Q52 **Chair:** Thank you. Can I ask quickly what effect the pandemic had on the number of strategic litigation cases that were opened monthly? Do you think you are now back to normal?

Marcial Boo: It did decline during the pandemic. The numbers showed that it declined marginally. We are taking on strategic litigation cases now. As I have mentioned before, we have a range of regulatory tools, and it is really important for us to deploy the right one in the right circumstance. Sometimes that is strategic litigation; sometimes it is opening an inquiry; sometimes it is publishing guidance. Rather than focusing on individual actions we are taking, I want to make sure that in the round the organisation is effective and deploying the right tools at the right time.

Q53 **Chair:** Thank you. Going back to the staffing issues, you indicated that it was predominantly younger staff that were leaving and seeking opportunities in the private sector, and nobody is going to blame them in the slightest for that. Could you give us an indication at what sort of grades staff were leaving and what their salary level would be?

Baroness Falkner of Margravine: Can I just clarify? I did not say it was a majority. I said we saw in the figures some increase. You wanted to know which group it was, and that particular group has a slightly higher rate than others.



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Marcial Boo: I do not think there is any particular age group or part of the organisation that is experiencing higher or lower turnover. We had some really valued colleagues of our legal team leave early in the year, some other people from the communications team, and others on an ongoing basis. I want to make sure that we have really high-performing colleagues in all the functions, whether it is finance or HR or policy or legal. As I said, we get really high-calibre applications for the jobs that we advertise.

Q54 **Anum Qaisar:** I am confused now. Baroness Falkner, you said that you believe it is maybe some of the younger staff. Marcial, you said there is no indication. What is it?

My second question is, you earlier indicated there was a report that you had just done, or you asked your staff how happy they are. I might have missed the answer. Will you share that with the Committee? Is that going to be public?

Baroness Falkner of Margravine: It is not public. This is our pulse survey, is it?

Marcial Boo: No, it is the annual staff survey that all public sector organisations, including the civil service, do every year, more or less at this time. The main audience is internal, so that I get confidential feedback from my colleagues about all aspects of work at the Equality and Human Rights Commission, so that we can make changes to improve things.

We publish some of the summary data in the annual report, so I have no problem at all in sharing that high-level data with you, including engagement scores and things along those lines. The survey, like all public bodies, has been conducted for internal purposes to make sure that I, in my role, and the board, make the improvements to the organisation that are needed and that we carry on doing the good things that staff welcome.

Baroness Falkner of Margravine: In the context of our staff, we have the deputy chair of EHRC who chairs the people and workspace committee. We have several other commissioners, including the Wales commissioner, who also sits on that committee, and the board reviews corporate data on a regular basis, so we are well across what is happening at corporate level and have oversight of it.

Q55 **Anum Qaisar:** What are the salary bandings for more junior members of staff?

Marcial Boo: The salary bandings are aligned with those of the civil service. In the civil service, they have certain job titles. We use different ones. We talk about associates and principals, but they are broadly aligned because we have to comply with managing public money and the guidance that comes from the Treasury. We are subject to the pay remit from Government alongside all other public bodies. The pay and



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conditions that we give to our own staff are broadly aligned with those of the civil service.

Q56 **Chair:** Final question—the bell is going to go—if I am a junior member of staff or indeed a senior member of your legal team, do I have clear routes to air any concerns that I have about the organisation? How would they go about doing that? Is it well communicated to them?

Marcial Boo: Yes and yes. We have guidance and policies in line with all other organisations. We have complaint processes and grievance processes.

Q57 **Chair:** Do you have an anti-bullying policy?

Marcial Boo: We have all of that.

Chair: Thank you. Apologies that we are going to have to rush off and bring this meeting to a close very abruptly, but that is the Division bell.