

Women and Equalities Committee and Joint Committee on Human Rights

Oral evidence: Pre-appointment hearing for the
Chair of the Equality and Human Rights Commission
, HC 1

Wednesday 11 November 2020

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Members present: Harriet Harman (Chair); Caroline Nokes (Chair); Lord Brabazon of Tara; Ms Karen Buck; Joanna Cherry; Angela Crawley; Alex Davies-Jones; Lord Dubs; Peter Gibson; Kim Johnson; Baroness Ludford; Baroness Massey of Darwen; Kate Osborne; Bell Ribeiro-Addy; Nicola Richards; Lord Singh of Wimbledon.

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Witness

I: Baroness Falkner of Margravine, Government's preferred candidate for Chair of the Equality and Human Rights Commission.



Examination of witness

Witness: Baroness Falkner of Margravine.

Chair: Good afternoon and welcome, everybody, to this session. It is a combined session of the Women and Equalities Select Committee, which is chaired by Caroline Nokes and has Members of the House of Commons, and the Joint Committee on Human Rights, which is chaired by me, Harriet Harman, half of whose members are Members of the House of Commons and half of whose members are Members of the House of Lords. This is a pre-appointment hearing for the new chair of the Equality and Human Rights Commission.

To explain the procedure, the many appointments that the Government make to agencies to which it is the responsibility of the Government to appoint used to happen behind closed doors. Now there is a parliamentary part of the process, which is that the Government propose and choose their preferred candidate for the appointment, and there is then parliamentary input by virtue of any Select Committee that is relevant to the appointment having an opportunity to ask questions to the Government's preferred candidate. The Government's preferred candidate is Baroness Falkner of Margravine. Welcome to this session, Baroness Falkner. We are thereby able to ask questions.

After this session, each of the Committees—the Women and Equalities Committee and the Joint Committee on Human Rights—will produce a report on this session, which will be published and submitted to the Government. The Government will then decide whether to go ahead with the appointment. That is the process that we are engaging with this afternoon. Thank you to everybody who is participating in this.

Q1 **Caroline Nokes:** Thank you very much for coming along this afternoon, Baroness Falkner. You will of course be very aware of the crucial role the commission plays in both monitoring and, importantly, enforcing equality and human rights in Britain. Can you talk to us a little about why you felt that you were the best candidate for the role and about your experience and footprint in this area?

Baroness Falkner of Margravine: I have a fairly long track record of working on human rights and equalities. I say human rights first because that is where my professional life lay prior to entering Parliament. Since entering Parliament, I have engaged more with all of the other protected characteristics.

In my professional life, I was a policy officer for the Liberal Democrats and I concentrated on human rights abroad, mainly. I then went to work for the Commonwealth Secretariat, where I was responsible for its enforcement mechanism, so to speak, the Commonwealth Ministerial Action Group, which upheld the provisions of the Harare declaration on human rights, which was the Commonwealth's human rights tool. I was responsible for that in the political affairs division. I subsequently came into the House of Lords, where I worked on the team with the late



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Anthony Lester QC on the 2006 Equality Act and the 2010 Equality Act. If I remember correctly, I have served under Harriet Harman on the UN women's group as your vice-chair. Pauline Latham is here too; she will recall that as well.

My work has spread across a lot of the different areas that the protected characteristics policy issues cover. In that sense, I can scan the horizon fairly clearly, see the policy framework and, I hope, bring quite a lot to it.

Q2 **Caroline Nokes:** Much of your experience has been abroad, looking at human rights across the globe. How do you think that is going to translate into looking at equalities within Britain?

Baroness Falkner of Margravine: First, I do not segregate human rights and equalities. They have foundations and intersections that are interdependent on one another. You cannot really do human rights in the absence of equalities, because equality policy underpins human rights and, vice versa, human rights underpin equality.

As to my international background, very clearly, the United Kingdom helped to write the Universal Declaration of Human Rights and the European Convention on Human Rights, contested though they both were at the time. I will not go as far back as the Magna Carta, but throughout Britain's history our human rights and equalities traditions—the 17th century Bill of Rights and so on—have always been informed by what was happening at a universal level. I do not make that distinction.

Q3 **Caroline Nokes:** One of the important roles of the commission is about enforcement. It would be really interesting to get a sense of your experience of enforcement and any achievements you have had in your career to date with regard to that.

Baroness Falkner of Margravine: An example of enforcement is that I was essentially a trade unionist, as the vice-chair of the staff association of the Commonwealth Secretariat in the early 2000s. We brought a tribunal case against management, as good trade unionists do, and we won that. I have been very directly involved in enforcement from a victim's or plaintiff's point of view.

I do an awful lot of enforcement in another role that I hold, which is that I am a member of the Bank of England's enforcement decision-making committee. This is the Prudential Regulation Authority's body that is an avenue, where institutions are found to have violated financial services law, for people to come to a middle-level body before going to court to seek redress and to have their point of view heard. I am a member of a panel of six there, so we do enforcement on a daily basis. It is our bread and butter.

Q4 **Peter Gibson:** Baroness Falkner, you have been a Liberal Democrat Peer for the period between 2005 and 2019, and for much of that period as a Front Bencher. How will you overcome the risk of a perception of political partiality?



Baroness Falkner of Margravine: It is a very interesting question. Anyone who looks at my parliamentary record over the entire 16 years will see that I have frequently acted independently, even when I was a Lib Dem Front Bencher. I can provide examples of that, but it will take too long to go into.

Since 2016-17, it is pretty evident, if you look at my record, that I have taken different policy positions from the Liberal Democrats on points, as I saw them, of principle and policy. I hope that I have an honourable track record of sitting on eight Select Committees—I have chaired one over four years—where it is impossible to do your job if you are highly partisan. All of you will know that when you sit on Select Committees, you have to sometimes swallow your biases, your prejudices or even your very long-held opinions in order to get consensus and to achieve the aims of what you are there to do.

For the last year and a half, I have been an independent Cross-Bencher. First I was a non-affiliated Peer. That is what you have to do in order to make your route into the Cross-Bench group—you have to serve a year out before you come into the Cross-Benchers, and I am delighted to be a member of the Cross-Benchers now. My voting record and my speaking record would speak to my independence and impartiality.

Q5 **Peter Gibson:** Are there any activities or interests that you will discontinue or that you think will be affected by taking up the role of chair?

Baroness Falkner of Margravine: My only concern was not to do with conflicts, because I cannot see any conflicts. I have consulted the Bank of England as to whether this role would be seen as a conflict. They are delighted that I am taking it up. The only thing that I was concerned about—I want to reassure you on this—is that I had quite a few advisory roles, and I have given several of those up in order to free up the time to dedicate to this hugely important and significant role, particularly at this time in our country's history.

Q6 **Lord Singh of Wimbledon:** I am a Cross-Bench Peer. Your predecessors have all had their own distinctive style and approach in leading the commission. How would you characterise what yours would be? Having listened to you and your contributions in the Chamber, I have a fairly good idea but it would be great to hear from you.

Baroness Falkner of Margravine: It is important to understand the governance of the Equality and Human Rights Commission. The reason the Acts wanted such a large body of up to 15 commissioners was precisely because they wanted people with skills and abilities across the wide range of protected characteristics, as well as the wide range of subsets of skills and knowledge that people bring to it.

Mine is a collegiate approach of calling on the skills and talents of everyone who is there and of great trust in the Public Appointments



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Commission to deliver the best possible people as commissioners. The people who have served with me on Select Committees or have been on the Select Committee that I chair would describe my leadership style as one that is, I hope, extremely open, accessible and approachable yet firm in keeping objectives and aims in my line of vision all the way through. That is what I hope I will be able to do.

I would have trepidation if I were sitting in this chair in 2007 when the three different commissions were being pulled together and there was quite a difficult transition period. Now the commission has been running for some time. It has had a tailored review as recently as 2018, which picked up quite a lot of issues. It has gone through a transformation programme. It has a very strong leadership team in the form of its chief executive and other members of the executive team. We have an experienced deputy chair, who is acting up as interim chair at the moment. The chairs of the three committees are also extremely experienced.

I am not coming into something to recast it entirely anew. That would not be my intention. My intention is to help it to refocus on its priorities and the priorities that Ministers in Parliament have, at a time of quite critical challenge in our country.

Q7 Chair: Can I follow up on the point that has been raised by Lord Singh and your response? Would you say that you are more in the role of administrator and managerial consensus-builder rather than fiery champion and controversy-stimulator?

Baroness Falkner of Margravine: In the last four years, I have had my share of controversy over the United Kingdom's exit from the EU. I know all about controversy. There is a significant difference between the three things that people want the commission to do. Some people want the commission to have huge credibility, which I could not agree with more. Other people want the commission to be a champion of the nine different areas where it works, and I intend to do that, but I do not intend to do that alone. The reason that the commission is as well resourced as it is with 14 or 15 commissioners is that we are a team of people who do that.

In terms of being a campaigner or an advocate, being an advocate for the policies that the Government should pursue or that Parliament should be aware of is a different thing from being a contrarian. No, I am not a contrarian.

Q8 Alex Davies-Jones: Good afternoon, Baroness Falkner. The commission strategy has a core aim of upholding the system of equality and human rights systems. What do you think has been the biggest achievement of the commission in this respect and why?

Baroness Falkner of Margravine: The commission has done a huge amount of work across these areas in its time. It would be difficult for me to pull out all the very important things that it has done. It depends on



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where you sit, really. If there is one protected characteristic that affects you more directly than another, you will naturally pick up on that one.

I think the commission uses its resources incredibly effectively in its enforcement role. I can give you a few statistics. It has undertaken 22 discrimination cases. It has taken up 34 strategic litigation cases. It has agreed six legally binding agreements with employers. It has—this is really important—achieved 100% compliance on gender pay gap reporting. It really depends on where you are sitting and which bits you want to concentrate on. I would argue that it operates well across its six priority domains and that it does so effectively, but it is inevitably, to some extent, a strategic body. It has to be very clear in picking up the bits of work that result in strategic read-across and, most importantly, that result in deterrence to others not to do those unlawful or illegal acts.

Q9 **Baroness Massey of Darwen:** I am a Labour Peer. You have talked about the commission earlier a couple of times. I now want to delve a little deeper into your comments and thoughts. What has been the biggest challenge for the commission in delivering on its strategic aims? What would be your biggest challenge? Secondly, what does the commission need to do to be more effective? That is an easy question for you.

Baroness Falkner of Margravine: The greatest challenge going forward is that the Covid pandemic has really exposed an awful lot of work that the commission was already working on. It has thrown into public light many of the inequalities that existed already. It has highlighted those in a very public way whereby people are much more concerned and aware of those inequalities than they were in the past. The biggest challenge for us, going forward, is a much larger work agenda.

More than that, a bigger challenge is the resources. As you know, when the commission was set up only 13 years ago, it had a budget of £70 million. Its current bid in this current spending review is £17.1 million. Even as long ago as when my predecessor took over, four years ago, it was £18.3 million. Successive cuts inevitably constrain your ability to do what you want to do and, therefore, require you to prioritise, which brings me neatly to the second part of your question.

What the commission did rather well in March is that it pivoted away from its regular business plan, which had highlighted the six domains that it was going to work on after its transformation programme. It established a new business plan entirely, where it set out the aims that it wishes to achieve in this period in those domains, what it expects and its KPIs—key performance indicators—for getting there. It has demonstrated a level of agility that I am impressed by, looking at it from the outside, but it needs to keep up the momentum now that those inequalities are there. Its effectiveness will be measured by whether it can highlight, do strategic litigation around and advise the Government on the pressing issues that have been exposed.



In terms of effectiveness, the tailored review of 2018 required it to have fewer priorities, which it did do, and to explain its priorities, which it has done. Interestingly, in the tailored review, they also suggested that, when it decided that something should not be a priority, it should also explain why. That is going to be an interesting and challenging exercise. We are all covered by non-discrimination and equality issues. Everybody will want their choice of issue to be the one that the commission invests the greatest amount of effort in. Ultimately, it is a strategic organisation as well as a regulator. Those are the two things that it really needs to focus and concentrate on in terms of its effectiveness and delivering.

Q10 **Baroness Massey of Darwen:** How about you? In the midst of all this, which sounds like an enormous task, what will be your biggest challenge? How will you cope with it?

Baroness Falkner of Margravine: There are two or three immediate challenges that we have, which I hope to bring a fresh look to. One is the forthcoming—it was 2021, but is now 2022—*Is Britain Fairer?*, which is the review that we are required by statute to do. It is the overview of fairness, equality and human rights in the United Kingdom. That report will be incredibly important at this time, as is advising Ministers of the priorities that they may wish to take up in light of that.

Another priority for me will be this issue of whether we are focusing enough on racial equality. The Joint Committee on Human Rights report that was published today, on black people, equality and human rights, has some arguments in it that I wish to look at again. The third priority would be the spending review, which I have already mentioned and which is forthcoming. Then we also look forward to another tailored review in a couple of years' time. There is quite a lot on the table, but I have articulated the three that I need to have a clear look at.

Q11 **Nicola Richards:** The commission's budget has been reduced from a peak of over £70 million in 2007 to under £19 million in 2019. The tailored review in 2018 noted significant underspends. Do you believe that the EHRC has the right amount of resources?

Baroness Falkner of Margravine: It potentially has the right amount of resources to do what it is doing today. I would go so far as to say that what it is doing today, on its extremely limited resources, is delivering real value for money. In that sense, it has the right amount of resources. I have mentioned that, even four years ago, it had rather more significant resources than it does today. I will take this opportunity to point out that, even if we have a simple rollover budget of £17.1 million this coming year, that will be impacted by inflation, so in effect, that will be a cut to its budget.

Do I think the commission needs more resources going forward? If the commission were to do everything that your two Select Committees and the Government would wish it to do, I have to say that it probably would need enhanced resources.



Q12 Bell Ribeiro-Addy: I just want to point out a report from the Women and Equalities Committee on enforcing the Equality Act, the law and the role of the Equality and Human Rights Commission. In that report, the commission is said to lack organisational confidence to take enforcement action. Despite previous assurances that the commission would become a more muscular regulator, evidence from the report states that this has not been the case.

It perhaps might not be the most reliable source, but I was visiting a primary school in my constituency talking about Black History Month and I heard a great idea from a young man, who said, "I know—let's make racism illegal." I had to explain to them that racism is actually illegal. Obviously, they are unclear about why people are allowed to continue to perpetrate that. I see the Equality and Human Rights Commission as the police of equalities, if you would like to call it that. Do you agree with the findings of the report into the EHRC that it could be more proactive in taking enforcement action? How would you ensure that this enforcement action is taken against employers and organisations that breach the Equality Act—of which there are many—whichever they may be, including even the Government themselves?

Baroness Falkner of Margravine: The commission has several tools in its armoury. Now and more recently, it uses them more effectively than it might have done in the past. There are two areas where you could have another look to see what needs to be changed. One would be the public sector equality duty. You were talking about Governments, and that would imply a change to and strengthening of our statute. The commission can perhaps step up a little in terms of the public sector equality duty. Once I get my feet under the desk, if I do, I intend to have a look at that.

I think the commission has been unfairly criticised sometimes for not being a policeman, in the sense that it uses its enforcement powers, but in order to deliver value for money, its enforcement powers must be used where it can make a strategic difference. While you take up individual cases, you have to be very mindful of the deterrent effect of the individual cases that you are taking up. You are naturally more prone to take up the cases that will apply across a wider breadth of the problem, rather than the single extremely hard case that you are dealing with.

The legal directorate has changed and been reinforced. It is much more effective now than it used to be, but it is something that we need to look at again.

Q13 Lord Dubs: You said that you had already seen our report, which the Joint Committee on Human Rights produced. I am a member of it. It gives rise to this question. We were quite shocked when we learned in the course of our investigation that there were no black members on the commission at all. It does not say much for the diversity of the commission. I wonder whether you agree that it is a serious disadvantage for the commission to appear in this way. What can be done to ensure



that the board has more black members and is generally more diverse?

Baroness Falkner of Margravine: Lord Dubs, I am not sure if you have seen the announcement this morning of the appointment of new commissioners.

Lord Dubs: No.

Baroness Falkner of Margravine: I can report to both Committees that we now have an even more diverse set of commissioners. There is a black commissioner in the announcement this morning. In fact, it is someone you may well be familiar with: Lord Ribeiro, who is a leading surgeon. He has been appointed to the commission at this time by the Secretary of State, under a direct appointment exercising her powers under the Commissioner for Public Appointments guidance, particularly because we are focusing on health inequalities as a priority. He will bring a great deal of knowledge and information to that.

The commission now has four BAME—black and minority ethnic—commissioners, which is 30% of the pool. I think I am right in saying that it is higher than it ever has been before. It represents diversity across all the other protected characteristics as well—well, I would not say all, but most of them.

I know that these things are terribly important symbolically but they go beyond that. They go into people's lived experiences and that is why they are important. It is also really important to say that all commissioners are committed to the agenda of equality and human rights, every single one of them. I am confident about that. It does not concern me so much if we do not have exact representation of the nine protected characteristics among the 12 or 14 commissioners as long as everybody is across the policy issues that affect the communities of those nine protected characteristics. That has to be the more profoundly important thing: that we have a deep knowledge base that we can draw on as we come to our judgments and decisions.

Q14 **Lord Dubs:** I had not seen the appointments this morning. I apologise for that. Of course, having really committed commissioners is crucial but there is also the way in which the commission is perceived by the outside world. I am afraid that if there is a lack of diversity on the board, the commission will not have the credibility that it would otherwise have. That was our concern.

Baroness Falkner of Margravine: I hope the fact that there are five of us now who represent black and minority ethnic communities is reassuring. I do not think the personal should inform this role, but I myself represent four of the protected characteristics. We all bring to the table, through our rich backgrounds and knowledge, information and a depth of vision that will influence the commission as we go forward.

Q15 **Kate Osborne:** Britain is going through a period of significant upheaval as a result of both Brexit and the coronavirus pandemic. What specific



equality and human rights challenges does this bring for the commission's work?

Baroness Falkner of Margravine: I will pull up the business plan, which will enable me to give you a more focused answer. The commission has responded very quickly to the pandemic. I touched on that earlier. What the commission will do differently is to use its powers to examine compliance with the public sector equality duty. It is doing that more immediately in the context of the Windrush scandal. It is going to work with the Welsh Government in their implementation of the socioeconomic duty that they are embarking on as we commence this period. It is going to influence policy on the Human Rights Act, the Constitution, Democracy and Rights Commission and the judicial review consultation with the Ministry of Justice, which the Joint Committee on Human Rights has been taking evidence on recently.

It will work with the National Taskforce for Human Rights to develop proposals for a new human rights legal framework for Scotland. It will seek re-accreditation as a national human rights institution from the global alliance. When I say "we", this is of course subject to your approval that I become the chair, but I mean I, the commission and we interchangeably. We have recently published our report on the Labour Party.

What is new? We are going to publish *Is Britain Fairer?* in the context of this pandemic and the inequalities that it has thrown a light on. We are going to refresh our roadmap to race equality to learn the lessons from the pandemic and to address race inequality across Great Britain.

Finally, there is a programme of work to ensure action on the impact of the post-pandemic economic recovery to reduce disparities within and across the English regions as part of the levelling up agenda that the Government talk about. We will also deliver on the MOU—memorandum of understanding—that we have with the Scottish Funding Council to tackle significant inequalities in the higher education and further education sectors in Scotland.

We are embarked already on an inquiry into the disproportionate impact of Covid-19 on ethnic minorities with a particular focus, coming back to the economics, on insecure and lower-paid employment. There is quite a lot there in terms of a change to the business plan.

- Q16 **Ms Buck:** Good afternoon, Baroness Falkner. You have made reference, and there have been some questions about it already, to the report we published today from the Joint Committee on Human Rights on the issue of black people and human rights. You said that there were issues in there that you would want to look further into. The report was quite challenging about the role of the Equality and Human Rights Commission and the fact that it had not provided the leadership or won the trust of black people in this country. The polling evidence that we drew on was actually quite devastating in terms of the experience of black people and



equality and human rights. We recommended an independent body to take that cause forward. I wondered if you could tell us your views about that. Do you agree or disagree with that recommendation?

Baroness Falkner of Margravine: I was surprised to see that recommendation in there, to be candid. I recall the discussion in the early 2000s—Harriet Harman will remember it well—when we were thinking of integrating the different strands into a single commission. I recall very well that the Commission for Racial Equality was initially opposed to that but eventually came around.

I have spent my whole life, as a newcomer and a migrant to this country, and my whole service in public life wanting to integrate rather than segregate. My belief in integration leads me to a view that we are better off looking at the different strands in the round rather than having different oversight and regulatory bodies for the different protected characteristics.

In preparing for this meeting, I was trying to recall why we did not provide sufficient powers in the human rights area for more litigation in that regard. I will pick that up in a second. Let us remember that the commission is only 10 years old. In seeing whether racial equality needs a different champion, I can see the point of perhaps reassessing the commission's priorities in that regard, but I cannot see the point of recreating a different commission for racial equality. I am proud to say that the Commission for Racial Equality was set up Roy Jenkins when he was Home Secretary in 1976. 1976 is the year I arrived in the United Kingdom as a migrant. I recall this debate from that point onwards and I have to say that I would be opposed to segregation. My life's work has been about integration.

Having said that, picking up the point I wanted to come back to in terms of greater enforcement powers, the human rights angle that this report highlighted very clearly, and the perception you point out of black people thinking that their human rights are not represented in the same way that white people's human rights are represented, is enormously important. I see that clearly and there is a real body of work to be done in that regard. If I can remind you, when the Equality and Human Rights Commission was set up, it had the power to advertise and publicise its work to a greater extent than it does now.

Q17 **Ms Buck:** I wonder what you would put down as the reason why, 10 years on—we as a Committee have taken this evidence—there has been such a lack of confidence and trust in the leadership of the EHRC, as set out in our report.

Baroness Falkner of Margravine: Part of the problem is that the EHRC is a strategic body reliant, in terms of its powers, on statute. That is a more complex thing to explain to the public as compared to, as Bell Ribeiro-Addy pointed out, a policeman. It is much easier to be visible as a policeman than it is to be visible as a body reliant on statute law,



litigation, enforcement powers and so on. If there were scope to have a better advertising, public awareness and educational budget in the commission's resources, that would be a means of tackling that.

- Q18 **Lord Brabazon of Tara:** I am a Conservative member of the Joint Committee on Human Rights. Baroness Falkner, you have already covered my question to some extent, related to the fact in our recent report that the majority of black opinion in this country believes that black people's human rights are not protected equally with those of white people. You have already spoken about that a bit. If you do agree, why do you think that is and what should be done about it?

Baroness Falkner of Margravine: It is a challenging one in the sense that perceptions are quite hard to shift. It takes just a few acts and a few newspaper headlines to embed a perception.

- Q19 **Chair:** Can I just butt in there? Lord Brabazon's question was not about the perception, because the perception is borne out by the polling. His question was whether you agree with the majority of black people in this country that their rights are not protected equally to white people's. Do you agree with them that their rights are not equally protected?

Baroness Falkner of Margravine: I am not sure that I know enough about it to be able to say whether I agree or disagree. Several reviews in the past, whether it is Windrush, the Lammy review on incarceration in prisons or the Angiolini review, show things that have gone wrong in terms of black people's human rights and where, perhaps, sufficient change in those problems is not visible. I would agree that, when you look at those problems, it is very clear that some rights of black people have not been protected. That is why the commission is concentrating in its work programme on some of those issues that I have just read out to the Committee.

As you will know, Chair, from your own time in Government, ultimately a non-departmental public body is there to advise Government on legislation. I hope that we will be extremely proactive in anticipating legislation and doing so, but it is for Government to implement the changes in statute.

- Q20 **Chair:** But the Equality and Human Rights Commission is not just an adviser to the Government, is it? It is a champion to press forward for equality and human rights. If you will forgive me, a lot of your answers so far have seemed much more administrative, managerial and strategic. I am not hearing a champion for all those people who want to see change and to see human rights advanced. Will you lead that? Will you champion that?

Baroness Falkner of Margravine: Yes, absolutely. There is no doubt about that. Every commissioner comes on board to do that. Of course I will lead that. But championing something is different, as I think Marcus Rashford would say to you if you asked him, to actually delivering the change. Of course the Equality and Human Rights Commission is there to



champion the rights of all of the protected characteristics, including this particular issue that we are talking about, the human rights of black people. You are absolutely right in that, but alongside championship comes credibility. Credibility is part of being a champion. The public gets enormously frustrated with talking heads who do not deliver. Delivery is actually really important. I am sorry if you think that my answers have been managerial but, if you are going to deliver, you need to have a focus on the managerial process aspects of what the commission is there to do.

[CAROLINE NOKES took the Chair.]

Q21 **Chair:** Harriet has to leave us, which puts me in the Chair. Could I follow up on something you just told us, Baroness Falkner? You were very clear that you felt championing was different from actually getting results. Do you not think that the commission has a very clear role in both, in that, while championing people's human rights, you also have to deliver through the enforcement mechanisms?

Baroness Falkner of Margravine: Indeed, absolutely. Therefore, the Acts set out general duties and specific duties, and the specific duties are very clearly related to enforcement.

Q22 **Baroness Ludford:** I am a Liberal Democrat peer and a member of the Joint Committee on Human Rights. As a quick comment, I would have thought that Marcus Rashford was not only a credible champion but has delivered results. Anyway, I will turn to my question.

The 20-year anniversary of the Human Rights Act is currently being marked and celebrated, as indeed is the 70th anniversary of the European Convention on Human Rights. The current Government were elected last year on a manifesto that included a proposal to update the Human Rights Act to ensure "a proper balance between the rights of individuals, our vital national security and effective government".

Do you think that there is currently an imbalance between these objectives? If so, how should it be remedied? Do you worry about a weakening of the Human Rights Act? I understand that we are expecting a review of the Human Rights Act imminently, so this is a very live issue.

Baroness Falkner of Margravine: The essential character of human rights, right from the outset, is that they are not limited in scope. They reflect society's views and are potentially exponential as society changes. You can add to your human rights agenda as you go forward. Balancing whether they come in the form of individual rights or not really depends on the specific rights.

I do not have a particular view on the Government's manifesto because I have not read the particular paragraph or chapter that you refer to. I do know about the review of administrative law that they are undertaking at the moment. We wait to see what they come up with. My understanding



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is that the Equality and Human Rights Commission has done a submission into the review.

Do I imagine that there will be a weakening of the Human Rights Act? It will be very difficult for them to do that while reconciling the protection of non-discrimination and equality. As I said, the two go hand in hand. If you were to weaken the human rights part of the agenda, you would commensurately be weakening the equality strand of the agenda as well.

Q23 **Baroness Ludford:** I realise that any candidate to chair the Equality and Human Rights Commission is in a slightly difficult place in commenting on a Government manifesto commitment. On the other hand, there has been a great deal of discussion in recent years about the intentions towards the Human Rights Act and, indeed, membership of the convention itself.

I was rather hoping that you would have some clearer and firmer views on the potential concerns about the position and solidity of the Human Rights Act. Our understanding is that not only is there this independent commission on administrative law and judicial review, but there is also going to be one about the Human Rights Act itself. It is going to loom quite large over the workings of the Equality and Human Rights Commission. I wonder if you have any further thoughts on the subject.

Baroness Falkner of Margravine: All I would say is that, as with most policy, I look to evidence. My understanding of the Government's position is that they have said they will not leave the European Convention on Human Rights; they will continue to remain as part of that. That part is quite clear as we stand today.

In terms of their intention to change the Human Rights Act, my understanding of that 2015 manifesto commitment, which was spelt out more clearly than the current one—the current one talks about a commission, but the 2015 one was slightly more expansive—is that they wish to substitute or change the Human Rights Act to put in place a British Bill of Rights. We need to see what a British Bill of Rights contains. You could end up with a statutory body with enhanced powers. That is where my hope would lie.

Q24 **Bell Ribeiro-Addy:** I just want to clarify, following on from Harriet Harman's question and the Chair's follow-up, who has the primary responsibility for enforcing equality. It almost seems as if the responsibility lies primarily with the Government. This seems a bit difficult given that the EHRC itself is meant to oversee and look at what the Government are doing to make sure that the Government themselves comply. I just want to understand your idea of who has the primary responsibility for enforcing equality throughout all our institutions.

Baroness Falkner of Margravine: Are you referring to the public sector equality duty?

Bell Ribeiro-Addy: No, I am just referring to enforcing equalities overall. It is the public sector equality duty and enforcing the Equality



Act.

Baroness Falkner of Margravine: The Equality and Human Rights Commission has overall responsibility. It is the national equality and human rights institution. The Scottish Human Rights Commission has slightly different responsibilities in Scotland, and the Northern Ireland Human Rights Commission is out of the remit of the EHRC.

Q25 **Joanna Cherry:** Good afternoon, Baroness Falkner. I was pleased to hear you talking about the possibility of greater enforcement powers for the EHRC. For human rights to be effective, they must be capable of being enforced. What should the EHRC's role be in assisting people to enforce their rights? Does it have the powers it needs to assist people in enforcing their human rights in particular?

Baroness Falkner of Margravine: Successive reports by the Joint Committee on Human Rights have covered the issue of adequate powers to assist in the enforcement of human rights. When the powers of the commission were being debated in 2005-06, it seemed to me at that time, because the Human Rights Act was relatively new and bedding in, that there was a general view that the specific duties of enforcement to do with equalities were more straightforward and, indeed, more pressing at the time, and that the human rights duties that do not include enforcement were perhaps the place that you would start, and as you went on and saw what the need was, you might revisit the statute. That is probably where we are. We probably need enforcement powers in terms of human rights and I think the commission would welcome them.

Q26 **Joanna Cherry:** The report that the Joint Committee published today found that very significantly high percentages of black people in the United Kingdom do not feel that their human rights are equally protected. Do you think it would be helpful if the commission had the power, as it has in relation to equality cases, to provide legal assistance to individuals in Human Rights Act cases?

Baroness Falkner of Margravine: Yes, I do, very much so.

Q27 **Joanna Cherry:** I was also really pleased to hear you say that you see human rights and equality as intertwined. You talked about the importance of all the commissioners supporting all the protected characteristics. Do you therefore agree that it is important that we look at each of the protected characteristics as equal and deserving of enforcement?

Baroness Falkner of Margravine: There has never been a hierarchy of rights. The reason the protected characteristics in statute have not been given hierarchy is that they are equal. If you are someone living within a protected characteristic and facing discrimination, it is extremely palpable and you naturally feel that that is a priority for you. Yes, I would agree with that.

Q28 **Joanna Cherry:** In your leadership role, would you have an approach to



test cases that would involve the interests of all protected characteristics being balanced? What I am getting at is that, in a test case, there might be a competition of rights between two different protected characteristics. Would you, in your leadership role, take the view that it was your duty to balance the interests of all protected characteristics?

Baroness Falkner of Margravine: I would be curious to know what the test case would look like because it is certainly a very interesting suggestion. The thing I would say about competing rights is that there are several different things that impact your decision making in that regard, apart from the fact that rights can be exponential and resources are finite. There will be an element of balancing proactive and reactive work in those rights. At one point, something may be more significant, matter more and have a greater impact. The impact is quite important.

You go where your evidence leads you and you find that, while you see equality and human rights as complementarities and not as substitutes, there is the issue of proportionality. Were you to find yourself in a position where you could have a test case that would highlight and bring redress in all the rights in one fell swoop, that would be fantastic. That should be embraced by the commission.

Q29 **Joanna Cherry:** I suppose what I am getting at, Baroness Falkner, is that, at the moment, there is a heated debate in the public sphere about potential competition between the rights of those with the protected characteristic of gender reassignment and the rights of those with the protected characteristic of sex in relation to single-sex spaces. I want to establish whether, in your view, it is the duty of the Equality and Human Rights Commission to approach all test cases with a fair balance between the interests of all protected characteristics rather than favouring one over the other.

Baroness Falkner of Margravine: As a principle, that is absolutely right. But, in its specificities, it would very much depend on the policy framework and the strategic aims of the particular case.

Q30 **Joanna Cherry:** Does it not come down in the end to what the Equality Act actually says and what the law is?

Baroness Falkner of Margravine: Yes, indeed, it does, which is why I referred to policy.

Q31 **Joanna Cherry:** Connected to that, would you agree with me that all guidance issued by the Equality and Human Rights Commission should be grounded in statute and case law? Sometimes policy can be removed from statute and case law. What underpins the rights of the Equality and Human Rights Commission should be the Equality Act and the Human Rights Act.

Baroness Falkner of Margravine: I agree.

Q32 **Kim Johnson:** Good afternoon, Baroness Falkner. As you know, Covid-



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19 and Black Lives Matter have shone a very bright light on racism. Can you tell us what your priorities will be for promoting equalities and tackling discrimination?

Baroness Falkner of Margravine: I have covered quite a lot of the business plan and the refocus on priorities. Presumably you do not want me to go over that ground again. Or would you like me to tell you a little more about that?

Kim Johnson: In light of what we have been talking about, the published report and some of the challenges that you are going to face, maybe you could focus on that a little, please.

Baroness Falkner of Margravine: Are you referring to the report about the enforcement role of the Equality and Human Rights Commission?

Kim Johnson: I was referring to the report that has been published today in terms of black people, equalities and how they feel that the Equality and Human Rights Commission is not meeting the needs of black people in this country at the moment.

Baroness Falkner of Margravine: Sorry, that is a different report. It is the JCHR report that we have been discussing already. Yes, it is a hard-hitting report that merits taking a long look at. It will be one of our priorities if I am confirmed in this role and take over on 1 December. I suspect that the commission will be working on it as of now.

There are several things that came up in the report. There was the issue that the commission does not seem to have grassroots credibility and visibility, and that the former commission was a champion of that and worked specifically on that. If we were able to get the additional resource, which your report recommends this morning, there are several things that would be priorities. We would invest more in our work on the levelling up agenda, working with regional and local authorities to address local disparities that affect BAME communities across the United Kingdom, including in the north. That would be quite significant.

The commission should undertake more section 28 projects, taking on more frontline casework in relation to a particular strategic objective or to raise awareness of the regulated space to drive compliance. Again, this would be really important to BAME communities. Most importantly, the commission would be able to hold more inquiries to shine a light on the entrenched inequalities that Covid has exposed, which are extremely relevant to the strategic plan and the pandemic.

Another option, and this is quite a significant one on my wish list, could be to reinstate a grants programme to fund civil society projects that align with the strategic plan. I hope that gives you an indication.

Q33 **Kim Johnson:** It does give an indication. Thank you. Touching on what Joanna Cherry has just been talking about—hierarchy of equalities and identity politics—your predecessor, David Isaac, said when he left his



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role, "The commission has faced, and will continue to face, some challenging issues where different rights are perceived to collide". Will you take a different approach to balancing competing interests and, if so, how?

Baroness Falkner of Margravine: All work around rights is a balancing project. No human rights are absolute. Take free speech, for example: there is no such thing as unfettered free speech. All rights are a balancing project. If the implication is that that has not been done to date, I would find that alarming; but if the implication is that one should be absolutely even-handed in taking up all rights, you lose your strategic focus. Your strategic focus as a regulator is to take up cases where there is a significant problem and where the case would change the strategic framework under which the bodies at which the case is directed operate.

How long is a piece of string? That question comes to mind. In general, all protected characteristics should be seen as individually worthy of the commission pursuing them to deliver for those people. I am not sure what I can say beyond that.

Q34 **Kim Johnson:** Would you agree with David's statement that the EHRC will face, and has faced, some challenges with those competing demands from the different protected characteristics?

Baroness Falkner of Margravine: I do not think I know the organisation well enough at this point. I would be able to give you a more adequate answer in about a year.

Q35 **Angela Crawley:** Thank you for joining us. I want to turn specifically to a question with regard to the previous Women and Equalities Committee, which indicated that it felt that the burden of enforcement needs to shift away from the individual facing discrimination towards a more strategic approach in how it worked with its partners and regulators to create change across sectors. I appreciate that you have touched on this already but would you like to elaborate on how you intend to go about this in your capacity as chair?

Baroness Falkner of Margravine: Is this about enforcement action?

Angela Crawley: Yes.

Baroness Falkner of Margravine: There are a couple of things that the commission could do more rigorously. One that your Committee mentioned in the past is to employ the use of data, particularly the Race Disparity Audit data that has now been collated and, indeed, the Government's new inquiry into racial inequality that is currently under way. The commission would be well advised to have a very deep dive into the data to see where it can pick up substantive pieces of programme work to carry out in that regard.

One thing that was picked up earlier is that your Committee thinks that the volume, transparency and publicity of enforcement work is not



coming out where it is using its enforcement powers. The commission has taken a look at that and is reviewing how it might do that in a more coherent, outward-facing way.

Q36 Angela Crawley: One criticism that the commission has had, rightly or wrongly, is that it has been perceived as somewhat toothless in its execution. The tailored review of the commission in 2018 said that it should “reset its vision to focus on the use of its unique powers as an enforcer and regulator of equality law”. Stakeholders have described the commission as being timid in using its powers. Do you recognise that description?

Baroness Falkner of Margravine: I read that with some interest. If you are already in the equality and human rights family, so to speak, you are very aware of what the commission is doing. As Ms Ribeiro-Addy said, if you are out there as a member of the public and if this is not on your normal radar or in your normal line of vision, you do not notice it. If anything, the commission has got a lot better at that.

I hope I am not repeating myself but, in its annual report, it gave the figures for the number of press and media reports that it had in the last year. I think the number was 1,874 mentions in that particular reporting year, of which 97.1% were positive or neutral, which is quite an extraordinary positive success rate. Almost all the media coverage in the reporting of the Labour Party antisemitism investigation over the last couple of weeks was neutral, factual or positive.

It depends on the constituency that the commission is speaking to. If you are from the constituency where it has taken enforcement action at a given time, you might notice it. If you are not from that constituency, you may not. Perhaps, if there is a criticism here, it is that the commission needs to be more visible in publicising its work. It is certainly something that I intend to look at.

Q37 Angela Crawley: My final question is with regard to the focus on the research in *Is Britain Fairer?* One argument is that this report has overshadowed the use of the commission’s enforcement powers. If that is an accurate description, how will you prioritise which powers to use going forward in your capacity as chair?

Baroness Falkner of Margravine: I am not quite sure I understand the question so if I am too vague, do bring me back. The commission’s enforcement powers in terms of equalities are now much better used than they were when the tailored review was written in 2018. I have already repeated for the Committee the extent to which it is undertaking its enforcement powers: 22 discrimination cases, 34 strategic litigation cases, six legally binding agreements with employers, 15 section 23 agreements, and so on. It has pivoted to a greater use of enforcement powers than it had done in the past.



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In terms of human rights actions, we have covered that ground just now. If it had the power to take up individual cases, that would be extremely welcome, but that is not to say that it is not capable of being a muscular champion of human rights—a champion rather than a regulator, because it does not have the powers of regulation, but it can champion human rights. I would argue that it does so but, again, it is a vast field and resources are finite.

Q38 **Angela Crawley:** Perhaps I could take the opportunity to ask one last question. I appreciate that there is a breadth of responsibilities that the commission has and that you are undertaking a huge challenge going forward in many respects, but what is your ambition going forward to really transform the Equality and Human Rights Commission into a body that people know about, that they understanding exactly what it does and that really achieves something? That is something that we all across the board want to see and would support you in doing.

Baroness Falkner of Margravine: I would take my lead from the commission's remit, which is that it should be a clear and strong upholder of equality and human rights and that it should use its very unique enforcement powers. We are exceptional in the United Kingdom for having a national human rights body that has those enforcement powers. I would hope that we would have a razor-sharp focus on delivery.

Having read this morning's report and the former report on the enforcement role of the Equality and Human Rights Commission, there are three things that come out. "Nobody knows what you are doing". "You are not doing what we want you to do in terms of enforcement; you are not doing what you should be doing". "Why are we not hearing more of it?" Those three things are all things where there has been a change but that is not to say that there is any complacency. I look forward to the final bedding down of the transformation programme, which is now complete, and to moving forward in order to refresh and renew the commission to do those three things better than it does at the moment.

Q39 **Chair:** Will moving forward in that way involve a better and more dynamic relationship with Parliament?

Baroness Falkner of Margravine: Yes, I would hope so, not least because I have frequently sat where you are sitting, Chair, on these sorts of Committees and wondered why the reports that we write seem to go unheeded. Yes, absolutely, the governance and framework document requires a minimum of an annual meeting with the Secretary of State and quarterly meetings with the Equalities Minister. I know that regular meetings with your Committee are on the schedule. I am meeting the Equality Ministers again this week. Regular meetings are on the schedule with the Joint Committee on Human Rights.

All I would say to you is that I am enormously committed to seeing Parliament as a friend of the commission. Parliament champions us. It is our champion as a commission. Parliament best carries forward our



advice in terms of what we might do. You are the people who will be able to amplify our asks, so to speak, and to help us attain delivery. I see that as profoundly important.

Q40 Baroness Ludford: If you are appointed, Baroness Falkner, how would you judge in two years' time whether you had been successful? What would success look like? What would the criteria and the benchmark be?

Baroness Falkner of Margravine: Success would potentially look like three things. Our report, *Is Britain Fairer?*, should have an analysis in it of concrete, credible proposals to change people's lives. If we achieved a greater focus on delivery, I would be extremely happy with that.

I would wish for a more cohesive and strategic view, on the back of the Covid crisis and the inequalities it has thrown up, of where the state of equality and human rights lies in the country, and to be able to inform Parliament, the Government and the country at large to a greater extent than we currently do, in terms of the research focus, of where the need for change is.

The final thing is to become a more visible champion, as I have been asked several times today, of people's equality and human rights concerns. Two years is potentially too short a time at this point of upheaval so I would rather stick to the four-year programme and duration of the appointment, if I am appointed. If we could achieve that in four years and have a cohesive, agile commission capable of reaction with speed, but also with muscle and force, I would see that as a huge development.

Q41 Baroness Ludford: I just wonder if I could tempt you to make it a little more personal. Could you personalise that a little more, without being too egotistical? You talked about what would be an achievement of the EHRC but what would your personal value added and metrics of success be?

Baroness Falkner of Margravine: The commission has gone through quite a lot of upheaval in the last couple of years, as has the country at large, if I might say so. My personal win would be to leave the commission in a better place than I found it. That means a commission that is cohesive and focused. I would want to make it more visible as well as credible. I put a lot of store by credibility. It would be terribly important to me that it is credible with its stakeholders. If I were to leave it in a stronger position in that regard, with a budget that enables it to carry out what its functions are, I would be content, in humility, with what I might have achieved.

Chair: Thank you for that answer. Following on from that, I am going to bring in Alex Davies-Jones to ask one final question where I hope we might hear a little more about your personal ambition as opposed to just some management aspiration.

Q42 Alex Davies-Jones: Can I ask why you want this role? What is it that drives the fire in your belly when you wake up in the morning to want to



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be in this position?

Baroness Falkner of Margravine: I am looking at the screen and I think Lord Dubs has left. As other members of the House of Lords who are on the Joint Committee on Human Rights will know, I have spent my 16 years in Parliament as a champion of human rights and equality. I had the privilege of serving on the Joint Committee on Human Rights for several years between 2006 and 2010.

What gives me a fire in my belly? It is injustice and discrimination. As I said, I represent four protected characteristics. I arrived in this country in 1976, the year of the Race Relations Act. The motivation to improve people's lives is what made me become a political activist back in 1985. It has kept me active in politics all the way through. It was a passion for policy. Why do all of you in the room care about policy? You care about policy because it makes changes to people's lives. A desire to help improve people's lives is what makes me get up in the morning.

Chair: May I take this opportunity to thank you for your evidence this afternoon, Baroness Falkner? I am sure that it has been incredibly enlightening for us all.