

# Women and Equalities Committee

## Oral evidence: Annual session with the Equality and Human Rights Commission, HC 783

Wednesday 27 October 2021

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Members present: Caroline Nokes (Chair); Philip Davies; Alex Davies-Jones; Kim Johnson; Bell Ribeiro-Addy.

Questions 1 - 152

### Witnesses

I: Baroness Falkner of Margravine, Chair, Equality and Human Rights Commission; Marcial Boo, Chief Executive Officer, Equality and Human Rights Commission

Written evidence from witnesses:



## Examination of Witnesses

Witnesses: Baroness Falkner of Margravine and Marcial Boo.

Q1 **Chair:** Good afternoon and welcome to this afternoon's session of the Women and Equalities Select Committee and our annual evidence session with the Equality and Human Rights Commission. Can I welcome our witnesses, Marcial Boo and Baroness Kishwer Falkner? Thank you very much for coming along this afternoon.

Can I start off with you, please, Mr Boo? Just run us through your strategic vision for the commission and how it has been informed by the strategic plan.

**Marcial Boo:** It is a great pleasure to be here. Thank you very much for inviting us. As you will know, I have been in post for a little over a month. I was absolutely delighted to see that the commission, under our chair, have been consulting on a new strategic plan. I very much look forward to implementing it. I am very happy to go into detail. I do not know quite what specific areas you would like to focus on initially, but I am very happy to talk about all of those.

Q2 **Chair:** I would be interested, from a practical perspective, in how you see the strategic plan working to make the commission a robust and effective enforcer.

**Baroness Falkner:** I have been involved in the strategic planning process, as you know, Madam Chair, since early this year. I think you want us to explain how we serve the people of our country better, and that is exactly the focus of our plan.

We want to deliver an enhanced model of regulation that makes full and effective use of our powers, from evidencing equality and human rights challenges, so that is the litigation and compliance part of it, through advising and influencing standards and public policy—part of that is fostering good relations, but also having our convening powers—and driving increased levels of compliance, including a greater focus on strategic litigation. I am very happy to explain what we mean by that. In devising the plan, the board was very mindful that the nine protected characteristics apply to everyone in the land. We all to some extent share a protected characteristic, as described in the Equality Act.

The second thing in the board's priority came out in the tailored review in 2018: that we were seen by our stakeholders as being somewhat slow, perhaps even, if I could use the word, slightly ploddy, and somewhat risk averse. We want to improve on delivery. Delivery is the focus of everything we do, including the internal transformation, which Marcial will talk about as we go on.

Q3 **Chair:** When you say "enhanced", and you referred to the commission as being perceived as slow, do you see speed of response as a key priority?



**Baroness Falkner:** It is credible, evidence-based speed of response. Where our evidence shows there is a problem, then, yes, we want to be more responsive. That does not mean we lower our evidence threshold or base. We want to be slightly more nimble in being able to take up, first of all, the wide range of disparities and discrimination that exists across the country. I can speak a little more about our consultation on the strategic plan if you would like me to tell you what we are finding in the early stages of that. We do not in any way act in haste, but we have a measured, considered response that is more timely, so that when we have evidence of a problem we move in in a more timely fashion, rather than having excessive rounds of deliberation before we get to what we are doing.

Q4 **Chair:** You used the word “nimble” there, and then you went on to talk about a wider spectrum, I think, of issues. Does “nimble” mean more, faster or better?

**Baroness Falkner:** “Agility”, I think, is the other word I would use—to be more agile. It means better. We always strive to be better, as we should, in the service of the people of this country.

Q5 **Chair:** And on a wider range of issues and faster?

**Baroness Falkner:** Yes. Our strategic plan focuses on six key areas, as you know. It is a thematic plan. We are not going to go across everything that we find, because it has to sit with our core aim in our annual plan. On the other hand, we are not saying that, if something pressing comes up that is not in our strategic plan, we are not going to do it because we feel our strategic plan is a straitjacket. It is not. There will still be deliberation, based on the three criteria of evidence, credibility, need, severity of the situation and so on.

**Chair:** That is four.

**Baroness Falkner:** That is four. There are probably two more, I think, and I will find them, if you give me a minute, among my notes. Sorry, I have found them now. Would you like them?

Q6 **Chair:** No, it is fine. Impartiality, of course, must be a key principle of the commission. Why was the recent impartiality training needed for your staff?

**Baroness Falkner:** We are a public body. We are funded by the taxpayer. We have an obligation as an independent regulator and a duty to fulfil our statutory functions in an impartial way. I do not think there is anyone in the country who would be satisfied, whether or not they agreed with whatever we were doing, if we were not impartial. People expect, when fairness is at the core of what we do, that we are impartial in our assessment and our judgment of fairness. Our credibility rests on a strict adherence to the principles of objectivity and impartiality.

**Chair:** Of course it does.



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**Baroness Falkner:** It is something I am very pleased to have initiated since I came in.

Q7 **Chair:** Was that in response to an identified problem, or was it just that in principle you felt you should do the training?

**Baroness Falkner:** I could not put my finger to a single identified problem. It was a wide-ranging response across the board, looking at several areas of work that we do and are engaged in, where we felt that possibly sometimes the balance had not been quite in the right place. The board welcomed the idea of impartiality training, by the way, for the board as well as staff. It is a good thing to be reminded occasionally of where objectivity and evidence lies.

Q8 **Chair:** Absolutely. You just said that the board felt the balance was not in the right place. Where was the balance?

**Baroness Falkner:** There were not any individual instances that I can tell you. There were some times when the board felt that there was not a balance in the right place. I can give you one example, and I am not going to go beyond that, if you will accept right now that I will not go beyond that. We were referenced negatively in some kinds of media and positively in other kinds of media. That is a pretty good benchmark.

It is the old BBC story: if we get enough criticisms from this side as well as this side, that means we are in the right place. We were getting more criticisms from a certain side than another, so we thought we were not in the right place. We want to apply that exact metric: that if we get criticisms we should find ourselves in the centre of that criticism, not on either end of the line, so to speak.

Q9 **Chair:** So your concern about impartiality was driven by the media?

**Baroness Falkner:** It was driven by complaints we received as well. It is one of the ways you have to be responsive. I am not going to suggest that one does not note what complainants are saying or, indeed, what we are reading about ourselves. That is where the public learn what we are doing.

Q10 **Philip Davies:** How much did that training cost?

**Baroness Falkner:** I cannot tell you right this minute, but I will ask someone to find out what the training cost. If I remember correctly it was not tens of thousands, but significantly less. I will have the answer for you in a minute.

Q11 **Philip Davies:** Can we see the training that your staff did?

**Marcial Boo:** I do not see any reason why not. I have done the training myself, since I joined the commission. It was conducted by our own director of HR, so I cannot believe that it was particularly expensive. I do not have the answer to that question. There were some slides. It elicited a conversation about objectivity, neutrality, the Nolan principles, all the



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kinds of things that you would absolutely expect a regulator to be talking about—both the staff within the organisation and on the board.

**Philip Davies:** You will let us have a look at your training, brilliant. Thank you.

Q12 **Chair:** Your metric of whether that training was successful or not will be whether you are being criticised equally by both sides of the media?

**Baroness Falkner:** No, whether what we produce appears to an informed person to be balanced, accurate and evidence based.

Q13 **Chair:** The decision to do the training was driven because you felt you were being criticised by one side of the media.

**Baroness Falkner:** No—well, criticised for what? You did not probe me on that. It depends on what you are criticised for. We were being criticised frequently for our evidence base. When I say “frequently”, this was not a frequent occurrence, but what I mean by “frequently” is that the majority of the criticism was related to our evidence base. As a law maker, you know that evidence can be quite selective.

Q14 **Chair:** If I remember correctly, when you came before us before your appointment, one of your objectives was to make the commission more visible, and yet that visibility in the media has driven you to question whether you needed impartiality training.

**Baroness Falkner:** No, I think you are reading too much into—

**Chair:** The answer you gave.

**Baroness Falkner:** —the answer I gave, but also the fact of the impartiality training. My concern was to be more visible in the media, with the simple objective that people should know who we are. People should come to us when they need to come to us. They should know there is a regulator that defends their equality and human rights. That was the objective, in terms of being more visible.

The impartiality training was something I thought we needed to undertake almost immediately when I came in. We looked at other organisations. It is some time ago; it preceded our visibility, if I can say that.

Q15 **Chair:** How have you measured your visibility?

**Baroness Falkner:** I have enormous numbers of statistics on that. If you give me a second while I find my numbers, in the last six months, from the beginning of this financial year, we have had 711 mentions since 1 April 2021. By my math that makes 120 mentions per day. Our newsletter is received by—

Q16 **Chair:** Sorry, you had 711 mentions in the last six months, and you make that 120 mentions a day.



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**Baroness Falkner:** Sorry, per month.

**Chair:** Thank you.

**Baroness Falkner:** Our newsletter is received by over 9,000 individuals, and anyone can sign up to our news website. We have 2 million individuals who have visited our website. We have 43,000 followers on Twitter. We receive 400 inquiries a month from individuals seeking information, advice or support. To me, that final criteria is the most important one.

Q17 **Chair:** How do those metrics measure up against the same period last year?

**Baroness Falkner:** I gave the metrics when I appeared before you at my confirmation hearing in November last year. Given that we are six months in, I do not think we have comparators yet, but at the end of the year we will be very happy to write to you and send you the comparators. I suspect it is higher, but I cannot say that definitively. Before the end of this session we will be able to tell you whether it is higher or not. Intuitively, I suspect it is rather higher.

Q18 **Chair:** Your objective was to be more visible and more credible, and you do not know whether you are more visible. How many more Twitter followers do you have?

**Baroness Falkner:** I pointed to the final metric: we receive 400 inquiries a month from individuals seeking information, advice or support. That is the key metric of our effectiveness, whether people know we are there, whether they contact us, in order to achieve information, advice or support. That is how we will measure, at the end of the day.

Q19 **Chair:** How does that compare with last year?

**Baroness Falkner:** We will try to find out for you. I am not sure that we had those metrics last year. This is all part of our transformation programme, to measure how we become better at delivery. I suspect a year into our transformation programme we will have better metrics for you than last year.

Q20 **Chair:** Was the commission not collecting metrics on how many inquiries it received, previously?

**Baroness Falkner:** Are they inquiries that are rightly directed to us? Inquiries can be inquiries about anything.

Q21 **Chair:** Well, you have used this figure of 400 per month. I am trying to establish whether that is higher or lower than 12 months ago. You yourself have said that is your key metric, and you do not know.

**Baroness Falkner:** I am unable to tell you today, here, but I will probably be able to tell you in about 30 minutes. Since we have, I think, about an hour left, I will be able to tell you before the close of the session.



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- Q22 **Chair:** I am not a huge fan of electronic communications in Committee, but there we go. The Social Mobility Commission comes under your remit. I think that is an exciting new appointment. Have you yet given any thought to how you are going to work, formally or informally, with the Social Mobility Commission?
- Baroness Falkner:** I do not believe it comes under our remit. I am slightly taken aback at that. I would love it to.
- Chair:** It comes under the remit of the Equality Hub.
- Baroness Falkner:** Yes, but that is not us. I do not run the Equality Hub, I am afraid. I run the Equality and Human Rights Commission.
- Q23 **Chair:** How are you going to work with the Social Mobility Commission?
- Baroness Falkner:** We look forward to working with the new chair, and we work at senior level already, regularly. We interact with the Equality Hub, the Government Equalities Office and the Social Mobility Commission on a regular basis. I have not yet had a meeting with the new chair of the Social Mobility Commission, but I believe it is under way. It is in the diary.
- Q24 **Chair:** Do you envisage a way of working together formally?
- Baroness Falkner:** We saw the recommendation of your Committee, I think in your levelling up paper, that the Equality and Human Rights Commission leads the work on communicating the need for a more effective civil society engagement. We will have to discuss with them how we operationalise that and the extent to which we can, within our remit and our resources. We are two separate organisations.
- Q25 **Chair:** Of course you are two separate organisations. I just wondered whether you had given any thought as to how a future formal relationship may lead to an MOU or some way of communal working that could be to everyone's benefit. Did you want to come in, Mr Boo? We have not heard much from you yet.
- Marcial Boo:** I certainly want to be working with all kinds of stakeholders, including the Social Mobility Commission, where there are interests that are aligned. I am absolutely sure that in this case there is an alignment of interests, and as the new chair gets her feet under the table she will identify the priorities for the commission. We will explore with them where there is an overlap in our interests or where we can work jointly together, whether it is on specific protected characteristics, in specific geographical areas or in specific policy areas. Then we will come up with a programme where we can work effectively together to take forward our shared objectives. I will be doing that with a range of other bodies, as you can imagine.
- Q26 **Chair:** I would be really interested to hear what other bodies. I would like to know a bit about your vision.



**Marcial Boo:** My vision is to deliver the strategic plan that we have consulted on. That is very clear about the priorities that we should take forward, in terms of focusing on, for example, health and social care, children and young people, fairness at work, et cetera. I will want to make sure that we are taking forward our legal statutory responsibilities as the regulator of the Equality Act, ensuring that employers and service providers up and down the country are adhering to the law, and using the whole range of powers that Parliament has given us to make sure that that happens. We have been given that power by Parliament to make sure that we are not only enforcing the Equality Act, but fostering good relations between different groups.

Q27 **Kim Johnson:** Good afternoon Baroness Falkner and Mr Boo. What has the commission learned from this pandemic about the Government's approach to addressing inequality?

**Baroness Falkner:** You are referring specifically, I take it, to Covid and our response during Covid.

**Kim Johnson:** Yes.

**Marcial Boo:** I understand that we have issued a lot of guidance to public bodies and private sector organisations, so they make sure that they are treating their staff fairly in their response to the pandemic, both through the period of furlough and now as people are returning to work. That will impact on different parts of the community in different ways, obviously. Each employer, each service provider, will need to assess for itself how what it is doing complies with equality and human rights legislation. We are there to provide that guidance to them.

Q28 **Kim Johnson:** What would be your opinion on the Government's approach to the race and gender pay gap and the reporting of it?

**Baroness Falkner:** The Government's approach to it—I am not clear.

**Kim Johnson:** At the beginning of the pandemic, the gender pay gap was stalled. The race pay gap has been very inconsistent. This is part of the equalities agenda, so I just wanted to be clear about your opinion on that and what needs to happen to move forward so that we have some accurate data.

**Baroness Falkner:** We recognised in the middle of the pandemic, particularly in the early months, that it was going to be extremely difficult for businesses to report. Therefore we suspended reporting. When we came back to look at it, because we are talking about businesses over 250 people, once people were operating with near normality, we decided to extend the period before we took enforcement action by six months. That closed on 4 October, earlier this month, and we have started to undertake enforcement action. We have sent letters to the businesses that have not reported as yet. They are still continuing to report, and we are in stages of different enforcement and compliance with different bodies.



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**Marcial Boo:** We wrote to 1,300 organisations to ask them to comply with the gender pay gap reporting. So far, 300 of them have replied to our letter and have reported, and the remainder have until 2 November to do that; otherwise, as our chair says, we will be moving on to the next phase of enforcement activity.

Q29 **Chair:** We just heard from Baroness Falkner that you are taking enforcement action, but that constitutes only a letter so far.

**Marcial Boo:** According to the procedure that everybody is aware of, they are given a 28-day grace period. We are in that period now. We have started the enforcement activity. A quarter of the employers have written back to us now.

Q30 **Chair:** Is that letter considered to be enforcement activity?

**Marcial Boo:** It is the beginning of the enforcement activity. It is putting people on notice that they need to comply with the law.

Q31 **Kim Johnson:** I just wanted to know where we are up to, in terms of the race pay gap. What is happening in terms of reporting?

**Baroness Falkner:** Forgive me, are you talking about the ethnic minority pay gap?

**Kim Johnson:** Yes.

**Baroness Falkner:** We had a debate on it on Tuesday night in the Lords. Your colleague, Lord Boateng, raised it. As you know, we, the EHRC, and the TUC and the CBI, wrote to the Chancellor of the Duchy of Lancaster some months ago about making a mandatory ethnicity pay gap requirement part of the law. We are awaiting the Government's response.

In the debate on Tuesday night, the Government highlighted the complexities of it. We accept some of the complexities. It has to be very nuanced because you will have, for example, geographical parts of the country where even for larger employers of 250 people it will be meaningless, because they will have very small numbers of ethnic minority staff. There are considerations when you have very small numbers. There are considerations of data privacy and anonymity. It is quite a nuanced debate.

It is interesting that it is the Department for Business looking at it. They are currently examining it. We have indicated to them that we are very happy to work with them to help to design it. What is unclear to us at the moment is whether we or BEIS would be the enforcement body.

It is fair to say that the response we got from Government was not that it is off the cards. The response we got from Government is that it is not in the "too difficult" box, but it is difficult and they are looking at it, and we hope there will be a response soon. As you knew, they did their consultation on that two years ago, roughly. We are all waiting, but I



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hope they will be able to find a way through. We are here to help them if they need us to do that.

Q32 **Chair:** To clarify, you said that you had written to the Chancellor of the Duchy of Lancaster some months ago. Do you know how many months?

**Baroness Falkner:** I can find that out and write to you, but it would not be very relevant because he directed us to the Secretary of State. The letter is in the public domain. Your Clerks should be able to find it. He directed us to the Secretary of State for Equalities, Liz Truss, and I think that is where it made its way to BEIS.

Q33 **Chair:** You just gave us the impression that you are waiting for a response, but you now expect the response from BEIS.

**Baroness Falkner:** The consultation—

**Chair:** I am not interested in the consultation. I am interested in how long it takes for a Government Department to respond to you.

**Baroness Falkner:** We did not write to BEIS, but I have discussed it with the Secretary of State for BEIS. I am aware, therefore, that they are looking at it.

Q34 **Chair:** There is a floating letter originally directed to the Chancellor of the Duchy of Lancaster that has not been replied to, or are you now saying it has been replied to, sort of?

**Baroness Falkner:** Well, I find your line of inquiry very interesting, because you seem to be more interested in the letter than the policy itself.

**Chair:** No, I am interested in the response.

**Baroness Falkner:** Our interest as a regulator is with the policy, not with who answered the letter.

Q35 **Chair:** I am interested in the quality of the response as to what Government Departments intend to do on this, Baroness.

**Baroness Falkner:** Precisely, and that is exactly our interest. Therefore, we are not interested in who replies to a letter. We are interested in the conversations we are having at the most senior levels, including, as I have just said, with the Secretary of State for BEIS, Mr Kwarteng.

Q36 **Chair:** I am really interested if Government Departments are not responding to you. That is what I want to get to the bottom of.

**Baroness Falkner:** They responded on Tuesday night—*Hansard*.

Q37 **Chair:** But not to your correspondence. What I want to establish is the mechanism by which the Equality and Human Rights Commission raises an issue with a Government Department and gets a policy response, not a debate in the Lords. That is quite separate to your work at the EHRC.



**Baroness Falkner:** I thought you were interested in the policy outcome, rather than the letter. We have had a response to the letter. We can send that on to you.

Q38 **Chair:** That is not what you said. With respect, that is not the impression I got from your first answer. You said you had written to the Chancellor of the Duchy of Lancaster some months ago and you were awaiting a response.

**Baroness Falkner:** No, we have had a response. Forgive me if I misled you there. That is not what I thought I said. I thought I said we were directed onwards, and that is where I was trying to tell you the policy discussion lies at the moment.

**Chair:** Thank you.

Q39 **Kim Johnson:** We know the pandemic has had a significant impact on people with protected characteristics. I want to know whether and how well the commission responded to those people with existing inequalities. I am particularly looking at the impact on east and south-east Asians, the rise in hate crime, the impact on people with disabilities. Maybe you could provide some feedback. That would be lovely.

**Baroness Falkner:** Would you like me to give you some background information?

**Kim Johnson:** That would be perfect.

**Baroness Falkner:** We know that the differential rates of people affected who are from an ethnic minority background varied from the first wave to the second wave. I personally took a great interest in this, because I am supposedly in one of the high-risk areas, coming from a Pakistani background.

According to the Office for National Statistics, adjusting for location, measures of disadvantage, occupation, living arrangements and pre-existing health conditions, nevertheless the mortality risk in most ethnic minority groups had the most negative effects among black and south Asian groups. Black and south Asian groups remained at higher risk than white British people in the second wave, even after the adjustments.

Q40 **Kim Johnson:** How well do you think the commission responded to the impacts on those groups?

**Baroness Falkner:** We have published several reports. As you know, we engaged with three sub-Committee inquiries that this Committee carried out. We have separately published briefings for the Scottish Parliament and the Welsh Parliament, detailing the impact of the pandemic in devolved nations. We have done briefings on individual care in England and Wales, where we describe the key issues and set out the equality and human rights framework that should be applied.



We have done research: our report, *Is Britain Fairer?*, which is a series that we are required to do periodically. We have done legal challenges. We highlighted the lack of British Sign Language interpretation in No. 10 daily Covid-19 briefings, and supported a legal challenge from a registered blind person. Another research report tackled how coronavirus has affected equality and human rights. This was published in October 2020, and that is where we pointed out, to go to your original question, how some groups have had negative impacts and the impact has been more severe than others.

Internally, we adapted our approach to change our annual business plan, in order to focus more of our internal resources on Covid. We are retaining categories in our new strategic plan, continuing to look at health and social care, because we think the effects and the impact of the pandemic will continue for some time to come.

Q41 **Kim Johnson:** Just on your new strategic plan, do you think it will help you to respond to this kind of crisis in the future? We know the pandemic has impacted on the poor more significantly, and we know that socioeconomic status is not a protected characteristic. Has there been any thought about looking at those things? It is something that Liz Truss has been talking about, looking at those areas of disadvantage.

**Baroness Falkner:** You raise a really important point. What is interesting is that in Scotland and Wales the respective Governments are incorporating the socioeconomic duty into their data gathering, alongside their public sector equality duty. We are going to be looking quite closely at how their implementation is working out and how the data gathering exercise, implementation exercise, is going. We will see what lessons we can learn from that, particularly in terms of working on that with the Social Mobility Commission.

Q42 **Philip Davies:** It is my understanding that the EHRC identified increasing the diversity of your workforce as one of two key objectives in your 2019-22 strategic plan. What changes are you seeking in the diversity of your workforce?

**Marcial Boo:** My understanding is that whether we are measuring the diversity of the workforce by sex, race or disability, we have a greater proportion of people employed by the EHRC in those groups than in the general population. By that measure, we are more diverse, as an organisation, than the general population. Clearly, I do not know what was in the minds of my predecessors, but it is factually true that the EHRC is a diverse organisation now.

Q43 **Philip Davies:** So you are not seeking to increase the diversity of the workforce in your organisation. That is not now, under your regime, a part of your strategic plan.

**Baroness Falkner:** I think this was more part of the annual plan on the operational performance of the commission, rather than the strategic, outward-looking plan. We keep a good eye. The board receives quarterly



performance reports and assesses the data in those reports. As Marcial has said, we are ahead of the UK population on almost all the counts. It is kept under review. We are, of course, pleased to have very positive statistics to report in that area, and we continue to want to be an inclusive workplace. It is quite right that we are.

**Q44 Philip Davies:** When you say you are ahead, I am struggling with what that actually means. Of course, if you are ahead in some areas it means that other people are therefore behind, does it not, by definition? For example, just to give an illustration, 61% of your workforce are women and 39% are men. I take it from your comments, Baroness Falkner, that means you claim to be ahead on the diversity of your workforce. Of course, if you are a man, you might argue that you are behind on the diversity of your workforce.

Are you trying to say that you are not really interested in the proportion of men you employ, and that you are only interested in the proportion of women you employ, et cetera? Or do you genuinely want a diversity of workforce, irrespective of those things?

**Baroness Falkner:** You quite rightly pick up on one that is disproportionate. I was looking more at religion and belief, race and other statistics, but you are quite right to raise that.

There are two things at play here. One is that we, as you know, were brought together, as the Equality and Human Rights Commission, from several legacy commissions. We still have, in terms of the diversity of our workforce, in that particular statistic, people employed with us who were employed, for example, in the Equal Opportunities Commission, which would have had more women than men, because it specifically addressed the issue of sex disparities in the workforce. As older staff work their way through, there will inevitably be a rebalancing of the numbers on that particular statistic.

**Marcial Boo:** I assure you that I want the best people we can get working in the commission, and we will be as inclusive as possible to make sure we have good people in every single role, regardless of their background or any of their protected characteristics. As it happens and as you say, 61% to 62% of our staff are female. We have 14% who are ethnic minority, 18% who are disabled and 12% who have said that they are LGBT. All those proportions are above national figures. I am very pleased by that, because it means that people of all kinds of backgrounds feel able to apply for and get jobs at the Equality and Human Rights Commission. I hope and intend that that will carry on.

**Baroness Falkner:** As you will see from the composition of this Committee, women are overrepresented here as well. It is an interesting observation, which one cannot quite explain on any evidential base, that women seem to be very interested and/or expert in this particular area of work, as you can see reflected in this Committee.



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Q45 **Philip Davies:** Where an employer can justify that in their workplace, that would be a fine explanation for you, would it?

**Baroness Falkner:** No, it will not, because that will amount to sex discrimination.

Q46 **Philip Davies:** But it is fine for your organisation to say that.

**Baroness Falkner:** No, it is not fine for our organisation.

Q47 **Philip Davies:** Do you have a positive action plan in place to try to have greater gender diversity in your workforce? If not, why not? Presumably you would expect any other employer in the country to be doing more to make sure they have a better gender balance. If you expect that of other people, why would you not have one yourself?

**Baroness Falkner:** You can see it is being addressed.

**Philip Davies:** It is not being addressed. It has gone up.

**Baroness Falkner:** Our female chief executive has been replaced by a male chief executive.

Q48 **Philip Davies:** Over the last three years the proportion of your female workforce has gone up, not down, according to your own figures. It has not been addressed. If you want to go round lecturing employers all around the country that they need to have better gender diversity in their staff, why do you not have a positive action plan in your organisation to practise what you preach to everybody else?

**Marcial Boo:** I would say that diversity comes in many dimensions. Gender is one of those, as are ethnicity, disability, diversity of thought, diversity of background. I want the very best people in the job: people in the finance team who are finance experts; people in HR functions who are experts in HR. I will make sure that nobody in my organisation looks at their characteristics in order to employ them, but rather looks at the quality of their skills and their experience in order to do the best possible job. Of course we want to have a diverse workplace, and we have one.

Q49 **Philip Davies:** Right, so you are not interested in having better gender diversity. I think that is what I got from that. We will try another one. Why do you have so few young people working in your organisation?

**Marcial Boo:** I do not have the statistics to hand on that dimension, I am afraid.

**Philip Davies:** I do.

**Marcial Boo:** I have to say to you that, in the month I have been in post, I have met people of all ages in the organisation. I do not believe it is particularly skewed in one direction or another, although I am very happy to provide the details.



**Baroness Falkner:** One of the things I have been trying to explain, in terms of the characteristics of our workforce, is that when you inherit staff from disparate bodies that were involved in doing disparate equalities work, defending the rights of disparate groups, and you aggregate them into a single body, short of firing everyone who came from those people and starting afresh, you nevertheless continue.

The recruitment profile that you could fairly look at, if you were looking at the Equality and Human Rights Commission's workforce today, would be a recruitment profile when it was established, which was 2010, and onwards.

Like everybody else, employment law applies to us. We refresh our workforce intermittently, when vacancies arise. In fact, our workforce on the whole has been shrinking, rather than going up, since 2010. It is inevitable that, if the law of the land applies to you and you had legacy commissions' workforces, it will take some time before the workforce of the Equality and Human Rights Commission has the exact representation that you wish to see. That is the logical and rational explanation.

Q50 **Philip Davies:** On that logic, you would expect quite a few people in your organisation to be over 65 who still had not retired. According to your figures, you barely have anybody over 65 in your organisation at all—certainly none that is worth reporting. This is according to your workforce profiles, not mine; it is yours. You have nobody under the age of 25, virtually, or none worth registering on the scoresheet. It seems extraordinary to me that you have nobody over 65 and nobody under 25. That seems to be a problem for an organisation like the Equality and Human Rights Commission. I would have thought so; would you not?

**Baroness Falkner:** I am not clear how many people over 65 are represented in the general home civil service per se but, because our terms and conditions are similar, I expect the same figures would apply. I think on the whole, when you have relatively generous terms and conditions, that people tend to retire. It is what I think one sees across the civil service.

**Marcial Boo:** I was going to make a very similar point. Of course, we need to understand age diversity as part of our job. It is very, very important. That is exactly why in our new strategy we are focusing on children and young people, for example. Exactly as Baroness Falkner has just said, a lot of people, when they join the workforce, are approaching 25 already, and a lot of people over the age of 65 are retiring or have retired. I do not think it is particularly anomalous that we should find our own organisation reflecting the demography of the workforce. The most important thing is that, as an organisation, we understand and incorporate the needs of age, people of different ages, as well as the other protected characteristics, in the way we work.

Q51 **Philip Davies:** Kim mentioned pay gaps earlier, and the importance that you place on them. What are the pay gaps in your organisation?



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**Marcial Boo:** The gender pay gap is minus 0.4%, so women in the organisation are, on average, paid slightly more than men by the methodology of the gender pay gap. It is within half a percentage point, so it is not substantial.

**Baroness Falkner:** The national figure, as you know, is rather higher.

Q52 **Philip Davies:** Yes, that is on gender pay gaps. Of course you are using the median figure, even though the Office for National Statistics says that the mean figure is a better guide. I notice you use the figure that you want to use. Pay gaps do not just involve gender. What about the ethnicity pay gap in your organisation?

**Marcial Boo:** I do not have the figures for the ethnicity pay gap, I am afraid.

Q53 **Philip Davies:** It is rather bizarre, is it not? We were just hearing a second ago from Baroness Falkner that you were discussing how to strengthen the law in this regard. You would think that if this was such an important issue, to go around strengthening the law on the ethnicity pay gap for every other organisation around the country, you would have a bit of a grasp of what was going on in your own organisation, would you not? At least you would think, at first base, you would know what was going on in your own organisation. You are saying that it is so important, you have no idea what it is in your own organisation.

**Baroness Falkner:** I suspect it exists, and certainly, in terms of the operational performance metrics that we now use, we are looking at that in compiling the data.

Q54 **Philip Davies:** You are obviously not looking at it. You do not know what it is.

**Baroness Falkner:** We do not have the data as yet.

Q55 **Philip Davies:** I have the data. It is here. I have it in front of me. Your organisation produces the data. I have your data for your average ethnicity pay gap. Do not say you do not have it. I have it.

**Baroness Falkner:** What I am referring to is our current state. You want the current figures. At the moment we are down somewhat, in terms of our workforce. We are down in terms of numbers. We are at 178 at the moment. Our normal full-time workforce is 210 roughly, so we are in a state of flux. We, like others, have been affected by the pandemic, and our data is also being compiled as we speak. When we have the figures, we will send them to you.

**Philip Davies:** I have the figures.

**Marcial Boo:** Mr Davies, I want to assure you that, like you, I want the Equality and Human Rights Commission to be an exemplar employer. That is the goal. We need to make sure we have the data to report to this Committee, quite rightly, but beyond the figures, which we are very



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happy to report, I believe we share the goal that this organisation is representative of the people in the communities we are working with and that we can walk the talk, in terms of our employment practices. We have the same goal that I understand you to be talking about, which is about this organisation meeting the standards that we set others.

**Q56 Philip Davies:** I have no problem with your figures. Your figures are very good. Actually, you are one of the best organisations at producing the figures. What I find extraordinary is that you do not know what they are, in your own organisation, on a subject so important that you want to increase the law.

Let me help you out, seeing that you are struggling. For the ethnicity pay gap in your organisation, the mean figure is 6.3%, according to the figures you published. I then want to ask you about bonuses, because you pay bonuses, and actually the ethnicity pay gap in bonus pay is even higher than the pay gap in hourly pay. In that sense, why are you entrenching an ethnicity pay gap in the way that you pay bonuses to your staff?

**Baroness Falkner:** Forgive me. I am not clear which year you are quoting these figures from.

**Philip Davies:** These are the latest figures that we have available. This is from 31 March 2020, the end of that year. These are the latest figures you have published.

**Baroness Falkner:** Yes, that is right, because we have not published new figures. What I am trying to say to you is that our headcount is lower at the moment. We are still compiling the data, so it would not be accurate.

**Q57 Philip Davies:** These are the latest figures you have published. I cannot work on anything better than the latest figures you have published, which you are unaware of. What I want to know is why you do not know the latest figures you have published.

**Baroness Falkner:** We will write to you and send you the information.

**Q58 Philip Davies:** I do not need you to write to me. I have the figures. All I want to know is why you do not know the latest figures you have published on something that is so important to you that you want to strengthen the law for everybody else.

**Baroness Falkner:** We last published in 2020. We are now in October 2021. I would assume you would be interested in the current figures.

**Q59 Philip Davies:** Baroness Falkner, you might be able to waffle your way out of things in other settings, but you cannot waffle your way out of the fact that you do not know these figures—the latest figures you have published. I think that is pretty appalling. Let us try you on another one. Let us try you on the disability pay gap in your own organisation. Can you tell me what that is?



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**Marcial Boo:** I am very sorry that I do not have those figures to hand either.

Q60 **Philip Davies:** You should not have to have them to hand. You should be all over them like a rash.

**Marcial Boo:** Yes, I do not disagree with you about that. I do not have the figures to hand, and I apologise for that. That does not take away our aspiration to make sure that this organisation is representative and an exemplar employer. I accept that you have those figures, and quite understandably so. I do not, and I am very sorry about that, but I am trying to respond to the point that I think we are actually in the same place about making sure that the organisation is doing the very best it can to be representative of the communities that we are working within and doing an effective job.

Q61 **Chair:** If your last published figures were March 2020, why was there no publication in March 2021?

**Baroness Falkner:** Our figures were published in our annual report and accounts that were laid before Parliament. The last figures that we had were in that document, and I am sorry I do not have access to it right now.

Q62 **Chair:** What was the date of that document?

**Baroness Falkner:** It was completed in April. I am not sure when it was laid before Parliament, but I think it would have been May, potentially.

Q63 **Chair:** That would have given the figures for March 2021?

**Baroness Falkner:** For the workforce.

**Chair:** The gender pay gap and the ethnicity pay gap.

Q64 **Philip Davies:** Good luck finding them. Obviously you cannot find them because you do not know what they are. The figures you quoted to me for the gender pay gap were absolutely right. They were the figures I have—the latest ones that we have available. You are quoting the figures I have as the latest figures, too—so answers on a postcard. We will look forward to getting them.

The point I am making, and this is what I really want to get across, is that, if you want to go round lecturing everybody else about what they should be doing on pay gaps, I think it is rather important that you should know, not having figures to hand but off the top of your head, what the figures are in your own organisation. That is the point I am making. If you cannot eliminate your pay gaps, how on earth do you expect anyone else to do it? That is the point I am making.

**Baroness Falkner:** You make a fair point. All I would say is, one, that our respective officials had discussions about the areas the Committee would be discussing with us today and that was not highlighted or we would have brought them, naturally. When you ask me why I do not have



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them off the top of my head, it is because I look at the national figure, in the terms of the law, and the law requires organisations that have 250 staff or more, not smaller organisation, and we are a smaller organisation. I thought that the gender pay gap discussion today would be about the application of the law. Forgive me, and I assure you that we will send you the figures as soon as we get back.

Q65 **Philip Davies:** What an extraordinary answer, especially given that you have—correct me if I am wrong—over 200 employees.

**Baroness Falkner:** The legal requirement is 250.

Q66 **Philip Davies:** I know, but it is not as if you have five or 10.

**Baroness Falkner:** Currently we have 178.

Q67 **Philip Davies:** You are almost at the legal limit. To try to say, “Actually, it does not matter what our figures are because we are under 250”—

**Baroness Falkner:** You are putting words into my mouth. I did not say that.

Q68 **Philip Davies:** No, I am not; I am not putting any words into your mouth. “Therefore, I do not really need to know what my figures are in my own organisation because we are under the legal figure.” That is one of the most extraordinary answers I have ever heard in this Committee.

**Baroness Falkner:** What I am trying to say is that, first of all, we have 178 staff currently. Secondly, our understanding was that this particular issue would not be discussed today. Therefore, I apologise to you for not having had those figures at the top of my head.

Q69 **Philip Davies:** You are missing the point. I am saying you should know these anyway.

**Baroness Falkner:** That is right—off the top of my head.

Q70 **Philip Davies:** You should not have to do some keenie swotting before a Committee meeting to know these figures.

**Baroness Falkner:** Mr Davies, I am terribly sorry I fall below the standards you expect of me. I will try to do better.

**Philip Davies:** You certainly do fall below the standards I expect, and that I suspect most of your employees expect as well.

**Baroness Falkner:** My apologies.

Q71 **Philip Davies:** How on earth can the employees of the Equality and Human Rights Commission have any confidence that you are going to eliminate those pay gaps in your organisation if you do not even know what they are?

**Marcial Boo:** I would say it is my responsibility to take forward these operational matters. I would not expect every member of our board to have all these figures, because I would take it as my responsibility to



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make sure this is in place. I absolutely agree with you that if we, as an organisation, are out there talking to public service providers or employers about how they should comply with the Equality Act, we need to walk the talk. I absolutely expect that of the organisation I am now leading, and I guarantee to you that I will make sure it happens in practice.

**Q72 Chair:** We have heard from Baroness Falkner that you are—I paraphrase—understaffed or light on staff. You normally run at about 210 and you are at about 170. Is there a recruitment programme and, if so, what are you doing as part of that recruitment programme to address your differential pay gaps?

**Marcial Boo:** We have some vacancies at the moment—about 20. I think this is completely normal and in line with many other organisations, in terms of the proportion. There is a lot of talk in the HR press about a lot of people now choosing to change jobs, as we hopefully emerge from the pandemic, and that is no different for us. Some people have left the organisation. We are in the process of recruiting more.

We are making sure that our recruitment practice is inclusive and diverse, that we cast the net wide, that we employ people from different parts of the country, of different backgrounds, and that we find the best people for the jobs. I am confident that our recruitment practices are aligned with the way they should be.

**Q73 Chair:** One factor that impacts salaries of different groups of people is the requirement as part of the application process to reveal what your previous salary was. Does the Equality and Human Rights Commission ask job applicants to indicate what their previous salary was? That can sometimes bake in differential pay gaps.

**Marcial Boo:** I do not know, but I do not believe that is the case.

**Q74 Philip Davies:** Your predecessors abolished the role of the disability commissioner, which Lord Shinkwin, I believe, was about to be appointed to when it was abolished. Given that in your 2021 whistleblowing report the highest proportion of issues relating to the treatment of staff involved disability discrimination, harassment or failure to make reasonable adjustments, can you clarify whether there are any plans to reconsider the decision to abolish the disability commissioner?

**Baroness Falkner:** By law we are required to have one member of the board who has a disability and is certified disabled. We currently do and, as we go forward, we will continue to follow that. In terms of the board recruitment process, in our next round of advertising we will actively be seeking to recruit a disabled commissioner.

**Q75 Philip Davies:** That is not the question I asked, though. I asked whether you were going to appoint a disability commissioner with specific responsibility for disability. That is the question I am asking. That is what Lord Shinkwin was originally appointed as, but 36 hours before the first



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board meeting he was informed that the role he had just been appointed to had been made redundant. My point is this: given that you have, in the whistleblowing report, such a high proportion of complaints related to that, will you review and reverse that decision and once again appoint a commissioner with specific responsibility for disability?

**Baroness Falkner:** This is one I think you need to put to the Secretary of State, because we do not make commissioner appointments. It is the Secretary of State who does.

Q76 **Philip Davies:** Interestingly, when I raised this with the Ministers, they said that the decision was made by the previous board of the Equality and Human Rights Commission. While we get into the niceties of all that, can we at least find out where you stand on this? Would you be supportive of the reintroduction of a commissioner with specific responsibility for disability? We will get your view on it and then we can work out the mechanics of it at a later date. I would like to know whether you are in favour of reintroducing that role.

**Baroness Falkner:** I can see the attraction of doing that, but I can also see the clamour for each protected characteristic to have a commissioner responsible for that. All our commissioners are fairly expert across the range of equality protected characteristics. They all have expertise, sometimes specifically in different areas, but a general, high-level and fairly good grasp of equality law. On the whole, although I can see the pull and importance of having a commissioner specifically for disabilities, I could see the demand for all the other protected characteristics to be covered in the commissioner appointments. In general, I do not think that is a good idea.

Q77 **Philip Davies:** Okay, so you do not want to see that. What are you going to do to tackle this problem of all these complaints you are getting about disability discrimination?

**Baroness Falkner:** As far as I understand, we are not involved in any current litigation at all, in terms of staff, are we?

**Marcial Boo:** We have had no grievances from our own staff, if that is the point. In terms of addressing concerns about disability, that is absolutely core to the work we will be doing over the coming period of time. The next time we appear before this Committee, I expect we will have a draft business plan. We will be able to talk about some of the specifics that we will be doing to address concerns about disability, as we have, I know, over the past few years, particularly in the area of transport, on which many people with disabilities have contacted us and we have taken action on their behalf, including litigating against transport companies.

Q78 **Philip Davies:** I am sorry to have taken up so much time, but I have one final question. This is about the recent report of the University of Sussex professor, Kathleen Stock, being targeted and branded a transphobe, with demands that she resign. Baroness Falkner, you wrote



to *The Times* to denounce the bullying behaviour, which I commend you for. Could you share more broadly what work, if any, the EHRC is undertaking to protect independent, lawfully held views and academic freedom of speech?

**Baroness Falkner:** We will challenge suppression of academic freedom of speech wherever we see it and wherever we find it. It was a measure of our agility that we were discussing earlier that I thought it was important to intervene early and in a timely fashion. Marcial also wrote to the vice-chancellor of Sussex University, offering our advice and support should they need it.

Academic freedom is fundamental to the workings of a university, but it is incredibly important for the proper workings of a democracy. We are second to none in defending that, but—I say this advisedly—we are not the principal regulator of this space. I think your questions should be directed to the Office for Students. We came in, as you would expect us to, but I was surprised that we were the only people speaking in that space. As I recall, the Office for Students did not seem to say very much. I hope the Education Select Committee will be looking at the issue of academic freedom. The final point is that we await the forthcoming Bill in that area.

Q79 **Bell Ribeiro-Addy:** Following on from some of the questions we have just heard, just for my curiosity, why do you pay bonuses?

**Marcial Boo:** We have a system of team bonuses at the moment. I am exploring with my colleagues exactly how they will be paid in the financial year that we are now in. I think it is slightly unusual in the public sector context to have bonuses. I do not have chapter and verse, I am afraid, but they are team bonuses, as I understand, rather than individual bonuses.

Q80 **Bell Ribeiro-Addy:** Baroness Falkner, you commented on the level of the workforce currently being at 178 when you have capacity for 250. Does that include the redundancies you are due to make soon? Given those redundancies, what level do you expect staffing to be at?

**Marcial Boo:** Can I just clarify straightaway that we are not intending to make any redundancies? For the record, that is not on the cards. Secondly, our nominal headcount is about 200, rather than 250. When we say 178, we are just slightly under our nominal headcount at the moment. I would say 10% is within normal margins for vacancies.

Q81 **Bell Ribeiro-Addy:** So there are not going to be any redundancies. Will there be any restructuring?

**Marcial Boo:** I have already done a bit of that in the time I have been around, in order to create a regulatory function—a hub or network within the organisation that is focusing on our regulatory activities—so we can make sure that, in line with the strategic plan we have been consulting on, we are focused on enforcing and promoting the Equality Act.



**Q82 Bell Ribeiro-Addy:** I know in the past the EHRC has been accused of targeting both BAME and disabled staff during these restructures. I know that in 2017, when the commission selected 12 staff for compulsory redundancies, two were white British and eight were from a black, Asian or minority ethnic background, four of whom were Muslim and six of whom were disabled. If this restructure goes ahead, there is a concern that there will be more redundancies. What steps are the EHRC going to take to ensure that, given what happened before, BAME and disabled people have a semblance of job security?

**Marcial Boo:** Can I just reiterate that there will not be redundancies, to put that on record again? Staff at our organisation may well see this session, and I want to reassure them that we value them all. Obviously I was not around for what happened in 2017, so I cannot comment on that, but I can absolutely say that I value every single member of my team. We have established networks of people from a Caribbean or African background and of people who are LGBT, so that we have, in addition to other staff groups and our contact with the union, all kinds of ways in which we can get feedback from everybody in the organisation so people feel included and can participate in the work of the organisation and its success.

**Q83 Bell Ribeiro-Addy:** While I have your attention, Mr Boo, I know that in your first week you were reported as having spoken to staff more generally and concluded that you do not see any issues regarding staff opinions on handling of internal race relations, and that you felt staff were able to raise these concerns of race. However, if some staff have expressed uncertainty in airing their concerns, how confident are you in the efficacy of that investigation?

**Marcial Boo:** I am not entirely sure what you are referring to. In the time that I have been in post, I have been to all the offices of the commission. I have spoken to a whole range of staff. Some people are still working from home, and I have not met everybody in person, but I have spoken online to everybody who wants to participate in these meetings. I am very, very keen to talk to people from all kinds of backgrounds, including those from ethnic minority backgrounds, to make sure that any concerns they have about the way we work as an organisation are heard and that, as appropriate, we can address the concerns they are raising.

We are conducting our annual staff survey next month. We are expecting the findings in January. I will be setting up an action plan on the back of that, depending on what colleagues tell me. All of this is completely in line with good employment practice and I am very, very happy in due course, as we go through, to talk to you about specifics.

**Q84 Bell Ribeiro-Addy:** I refer to things that have been reported by whistle blowers and such, and others who have perhaps had disputes within the organisation. More specifically, a direct quote from one is that the EHRC has created a "toxic space" when it comes to race. Some staff members



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or former staff members have said that dissent towards the commission's attitudes towards race, both internally and externally, is widespread. For some of the staff, they felt the only option available to them was to leave. What do you make of this accusation? Do you think that questions about the commission's attitude towards internal race relations make it difficult for you to fulfil your aims within law?

**Baroness Falkner:** You are probably referring to some reporting in *The Guardian* about a former employee.

**Bell Ribeiro-Addy:** Yes, and past employees. There was particularly one who had her name published, but I will come to that. I will let you answer the question.

**Baroness Falkner:** I am not aware of anything general. I am very happy to talk about the particular issue that was recently reported in *The Guardian*. Is that the one you are referring to?

**Bell Ribeiro-Addy:** That is the one I am referring to.

**Baroness Falkner:** Naturally, we are sorry to see a staff member leave in unhappy circumstances. Generally, they leave for career progression and build on the work they have done in the commission, and that is why they get progressed, in terms of their career. It is extremely unfortunate.

It is not appropriate for us to comment on a single employee, so I will pick up the broad points. The general allegation was that we were not prioritising the protected characteristic of race. We strongly rebut that. That is simply wrong. It is not true. Race is one of our significant workstreams currently and in our next strategic plan.

This particular complaint was about political ideology. It is not our role, and this goes back to the impartiality training, to develop or promote particular political theories on racism. We are a regulator, tasked by statute with enforcing and upholding the law of the land. We necessarily work through concepts that have legal meaning, rather than concepts that are not defined in law. For example, I think she was referring to systemic, structural and institutional racism and critical race theory. These are not defined in law.

Our mandate is to concentrate on eliminating race discrimination through using our powers of compliance, enforcement and litigation. That is where our current work is focused. I cannot divulge it to the Committee today, but we are doing a particular stream of work on litigation and race that we will be announcing shortly.

Q85 **Bell Ribeiro-Addy:** Just to be clear, you are saying that the commission does not look into systemic racism because you do not believe it exists within a legal framework.

**Baroness Falkner:** It is not that we do not believe it exists within a legal framework. As you know, despite the Macpherson report's important work on institutional racism, which is a concept we understand, explore



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and work with, it is not defined in law. It is not a legal concept. All I am trying to say is that political theory is extremely interesting, but it is not our role to interpret political theories.

**Q86 Bell Ribeiro-Addy:** By that definition alone, do other forms of discrimination also not have a basis in law?

**Baroness Falkner:** The Equality Act sets our remit, and it is contained in the Act and it is contained in judicial judgments and precedents set by the courts.

**Q87 Bell Ribeiro-Addy:** Going back to this particular incident, I know that the former employee's email was leaked to *The Guardian*, and her name and markers that identified her were omitted, but the following day a blog, Guido Fawkes, published a story identifying the author of the email, clearly putting her name out there. It is our understanding that the EHRC is carrying out an investigation into the leaking of the letter but there is no commitment to investigate how the leak got to the blog, despite an ongoing police investigation. Given the commission's stance on whistleblowing, even though this was against you in some way, could you explain why the commission is not going to investigate the leak of an employee's—past or present—details to an online blog?

**Marcial Boo:** We conducted an investigation into the leak of the email. We spoke to all members of staff who had forwarded the email to people outside the commission. The first publication was in *The Guardian*, as you rightly said. We suspect the blog picked it up from that source, rather than from us, because there is no evidence whatsoever that any of our current members of staff sent the email to anybody outside their own family members. We have no evidence to pursue that any further.

We have, of course, reminded staff of their professional responsibilities. It is important that people behave professionally, in line with our code of conduct; that is absolutely essential. That is the process we have undergone. Key, obviously, is making sure that, in the organisation as a whole, those staff who are currently employed feel it is an inclusive, supportive and respectful place to work. I will do everything within my power to make sure they feel that and that that is the case.

**Q88 Bell Ribeiro-Addy:** Baroness Falkner, how regularly do you meet with the Minister for Women and Equalities?

**Baroness Falkner:** The framework document requires us to have quarterly meetings.

**Q89 Bell Ribeiro-Addy:** So you meet with her quarterly. Are there no additional meetings?

**Baroness Falkner:** I do not believe we have additional meetings, but I suspect that if I wished to have an additional meeting with her I would be able to obtain it. I find quarterly meetings are adequate at this point in time because we build up to an agenda of outstanding matters. We cover



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the ground over the previous 90 days fairly comprehensively and look forward.

**Q90** **Bell Ribeiro-Addy:** The commission was criticised by race and equality campaigners and experts earlier this year for your quite positive response to the Commission on Race and Ethnic Disparities report. Do you think there are lessons you could learn about that? Were staff within the EHRC actually consulted on the commission's response?

**Baroness Falkner:** The commission did not really respond. We have not responded. We are awaiting the Government response, which I understand is forthcoming, and we will respond once we see the Government's response. We are hopeful that the recommendations of the Commission on Race and Ethnic Disparities will be taken forward and that the EHRC will be tasked with further work in that area.

**Q91** **Bell Ribeiro-Addy:** You offered no response to it at all—no welcome, no comment on it?

**Baroness Falkner:** We commented on it. We did not do a response. I wrote a brief blog, saying that these were important areas, that the disparities highlighted were extremely important and gave us further information and data on where things are still continuing to go wrong, and that we noted that we would be one of the bodies that would be involved in taking the work forward.

**Q92** **Bell Ribeiro-Addy:** Coming from the head of the organisation, it was considered a response, although I understand it is not a formal response. The question is how you feel about the negative response to your response. Do you think there are any lessons to be learned? Did you consult any staff in the EHRC before making such a response?

**Baroness Falkner:** As chair of the organisation, I would not dream of making a response without consulting staff, so I did. My answer is straightforward and it is yes, I did. I do not think it is for me to comment on criticism of a Government report of the criticism of me commenting on a Government report. That takes us back to Alice and rabbit holes, and other distractions that are not particularly pertinent to the important work that will need to be done to take forward the recommendations of the CRED report.

**Q93** **Bell Ribeiro-Addy:** Your very clear guidance is that equality impact assessments should be published on every piece of legislation, whereas the Government say they should not routinely be made public. What conversations have you had with Ministers about this? Do you agree that, by not publishing such equality impact assessments, they are in fact circumventing the law? If they continue not to publish equality impact assessments, what action do you intend to take?

**Baroness Falkner:** I am going to ask Marcial to answer that.



**Marcial Boo:** It is the right thing to do, to ask Government Departments to publish equality impact assessments. It is an important tool that we use and want to use, to make sure that every policymaker considers the Equality Act and the protected characteristics when they are coming up with new proposals, whether it is in a Green Paper or in draft legislation. We want to make sure that is the case.

As you are aware, some Government Departments do it better than others. I will look to make contact with Government Departments where we feel they have not produced or published equality impact assessments, and make sure that they have taken into consideration equality and human rights issues in the proposals they are drafting. That will need to happen case by case but, in general, it is an important tool.

**Baroness Falkner:** The important thing, to me, about equality impact assessments is not so much that they are published, but that the relevant Government Department takes their findings seriously, and adapts and adjusts its proposed policy to take into account whatever they are finding in the equality impact assessments. I see that as the principle that underlies equality impact assessments.

Q94 **Bell Ribeiro-Addy:** Do you agree that they should be carried out?

**Baroness Falkner:** Yes.

Q95 **Bell Ribeiro-Addy:** And you agree that it has been put down in law that they should carry them out. What powers do you have to take action against Departments that do not carry them out and do not publish them? Do you have no powers or would you not use those powers?

**Baroness Falkner:** We do not have any powers.

Q96 **Bell Ribeiro-Addy:** How exactly would you hold the Government to account on whether or not they do this? I understand what you are saying about it being more important that they actually do it and consider, but how on earth do we hold them to account if we cannot see their working out?

**Baroness Falkner:** There are several ways in which we interact with Government. If you are talking specifically about legislation, which is what is in consideration here, we attempt to work upstream with Government in the development of legislation. We meet when a Bill is being drafted. We continue to engage with the civil service in the drafting of that Bill. We are aware, generally, before a Bill is published as to what is in it, and we point out the equality implications of that on a regular basis.

Should the Government of the day decide not to take on board our assessments, we brief parliamentarians and publish parliamentary briefings to tell you of our concerns in that regard, and we hope that you will be able to take that forward through amendments to legislation, in both Houses.



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Q97 **Bell Ribeiro-Addy:** At no point in time could you actually take action on any Government Department? I suppose this comes down to whether you are there to advise the Government or to hold the Government to account. It was my belief that the Equality and Human Rights Commission is actually meant to hold the Government to account, but in order to do that you would have to have some power to—I do not want to use the word “sanction”.

**Baroness Falkner:** Indeed, the powers that we have at the moment are when a Bill becomes an Act and is then implemented. That is the stage at which we can do litigation.

Q98 **Bell Ribeiro-Addy:** Do you consider that you might do that in a case where it is clear that the equality impact assessment either has not been correctly carried out or does not meet the needs of equalities legislation as it stands? Is that something you would be willing to do? I have never seen that action taken, and it is clear to me that there are many different pieces of legislation that do not meet equalities standards.

**Baroness Falkner:** We have enforcement against Government Departments on a regular basis. We undertake enforcement on a regular basis: Windrush and the Home Office, the Department of Health and Social Care. There are a host of Government Departments that we take action against, and we will continue to do that. That is part of our powers to do. In advance of a policy proposal becoming an Act of Parliament, all we can do is advise. Our accountability does not come in at that stage. It comes in post the law of the land being developed.

Q99 **Bell Ribeiro-Addy:** The examples you just gave were on Windrush, which was not a piece of legalisation, and health and social care more generally—so action against Departments in that respect. I was wondering what actions you could actually take on Acts, in the way you said you can, whether or not you will be able to do that, and whether or not you have, or should or would, in the event that a piece of legislation is passed that clearly does not meet our equalities laws.

**Baroness Falkner:** My understanding in 18 years of being a parliamentarian is that Parliament is sovereign.

Q100 **Bell Ribeiro-Addy:** So the Equality and Human Rights Commission cannot hold the Government to account on an Act?

**Baroness Falkner:** We hold the Government to account all the time. I do not think we could challenge a Bill in its entirety, as law passed by Parliament. We could challenge the workings of an Act, which is where the discrimination happened against the Windrush generation.

Q101 **Chair:** Which Act did you challenge?

**Baroness Falkner:** It is the Equality Act.

Q102 **Chair:** No, you said you challenged the Act, so it would have been a specific immigration Act that you were challenging.



**Baroness Falkner:** We were using the Equality Act to say that this group of people had been discriminated against. We do not challenge Acts in their entirety. We cannot do that. If the policy implementation of a particular Act does not comply with equality and human rights, we use equality and human rights legislation to challenge it.

Q103 **Bell Ribeiro-Addy:** I understand. Again, going back to your example of Windrush and the victims of that particular scandal, the Equality and Human Rights Commission did not necessarily speak out about that until the scandal had been exposed, so it was not the Equality and Human Rights Commission doing the tackling in that case. I am just trying to understand the mechanism and the extent to which you are willing to go to hold the Government to account on Acts as they pass, before they actually have an effect on people.

For example, today we have had the Budget. I have not seen the equality impact assessments on the Budget, but say you saw that and you saw that there were issues. What action could and would you take to prevent people's equality needs being trampled on as a result of this particular piece of legislation?

**Marcial Boo:** I want to make sure that the Equality and Human Rights Commission is doing its job effectively to uphold the Equality Act. As new proposals come forward, whether in Parliament here or in the Governments of Scotland and Wales, we need to take a view about whether there is a risk that any of the measures in the Bill may impact on equality in one way or another. If we judge that might be the case, we have a choice about how we engage with policymakers and parliamentarians to make sure our concerns are addressed. That may be, at that stage of the process, in having conversations at official or ministerial level, with people in Government Departments. It may be in providing briefings to this House so that those concerns can be addressed in debate. That is at that stage in the process.

Once the UK Parliament has passed legislation, we move into a different phase of potential enforcement activity, if we judge that there are risks in the legislation that might manifest. If they do, again, we will take action, whether with a Government Department or with service providers, as we judge appropriate, case by case. The key thing for us is to remain focused on the Equality Act, making sure that we are upholding all the measures that we have been tasked by Parliament to uphold.

Q104 **Chair:** There seems to be a bit of a difference of opinion between you. Would your life be made easier if equality impact assessments were made available to you, yes or no?

**Baroness Falkner:** Indeed, yes.

Q105 **Chair:** So they should be published?

**Baroness Falkner:** Yes, they should be. Transparency is always—



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Q106 **Chair:** I feel that might be slightly different from an answer you gave earlier.

**Baroness Falkner:** The point I was making is that, in our understanding, the Government are not legally obliged to publish them.

Q107 **Chair:** We are back to the legal question. Fine, but you would like to see them published. It would make the commission's life easier if they were published, because you would not then have to carry out a mini-EIA of your own to establish whether there is an equality impact.

**Baroness Falkner:** Yes, that is right. It is just that we cannot force the Government to publish them.

**Chair:** No, none of us can force them. We try very hard and eventually FOI them, and then they have to.

Q108 **Bell Ribeiro-Addy:** It was just nailing down that question, because I think Mr Boo explained quite well what you could do at the final stage. At the final stage, once it has come into force, what can you actually do? What powers does the Equality and Human Rights Commission have once the Act has been passed—I would not say “to hold the Government to account”—I suppose in the same way that you have at times with other organisations, if you have felt the need to? What is the extent of what you can do to the Government to make them comply?

**Baroness Falkner:** To use the judicial process.

Q109 **Bell Ribeiro-Addy:** I was going to say, “have you ever,” but of course you have not. Would you ever?

**Baroness Falkner:** Use the Equality Act to get legal clarity on discrimination, yes. We do that as routine.

Q110 **Bell Ribeiro-Addy:** You take enforcement action against the Government.

**Baroness Falkner:** Different Government Departments, yes.

Q111 **Chair:** I am very briefly going to take you back to one of Mr Davies's questions about workforce. Please correct me if I misinterpreted this, Baroness Falkner, but I got the impression that in your response to Mr Davies you said you are more interested in religion than gender. That was the general gist of something you said. I wondered how that balance played out.

**Baroness Falkner:** Forgive me, I do not believe I said that.

Q112 **Chair:** Okay, we might check the transcript. I will take it at face value that you are equally interested in religion as you are in gender.

**Baroness Falkner:** All the nine protected characteristics.

**Chair:** Equal balance.



**Baroness Falkner:** Through our complaints system and through people who write to us, we get a feel for people's preoccupations of the moment. For example, in response to our consultation, we have three standout things that the public are most concerned about. Sex was the No. 1 priority, disability was the No. 2 priority, and age discrimination was the third priority.

Q113 **Chair:** Are people's preoccupations, which is your word, the same as priorities?

**Baroness Falkner:** Do they impact our priorities?

**Chair:** No, are they the same as priorities? Let us use the example of Kathleen Stock, where people might become very preoccupied with issues around gender, but is that necessarily the same as a priority?

**Baroness Falkner:** In all those three areas, our new strategic plan is right on the button. It is sex rather than gender in this case.

Q114 **Chair:** I was deliberately saying "gender" to give you an example.

**Baroness Falkner:** They are our priorities, yes. All three are part of our strategic plan and strategic priorities.

Q115 **Chair:** When you are considering which civil society groups you engage with, do you look at what you described as people's preoccupations—the things that they have brought to your attention? Do you look to be informed by those when choosing which groups you are going to engage with?

**Baroness Falkner:** We have a statutory duty to foster good relations between people who share protected characteristics, and we take that duty extremely seriously. It is part of our new strategic plan.

**Chair:** That was not the question.

**Baroness Falkner:** I was just going to come to give you the answer. We engage with all civil society groups that operate in the space of protected characteristics.

Q116 **Chair:** Do you engage with them equally?

**Baroness Falkner:** Certainly, yes.

Q117 **Chair:** Would you engage as regularly and as in depth with groups that were perhaps campaigning around age discrimination as you would with those that were engaging with you about gender—very specifically gender, not sex? Would you give them equal priority?

**Baroness Falkner:** We would certainly expect to do that, and that is exactly what Marcial has been doing since he came into post.

**Marcial Boo:** I have certainly been meeting representatives of civil society from all kinds of protected characteristics. Just as with this Committee, where, from time to time, you focus on different issues, so



will we, because there are sometimes issues that are particularly important for us to address. It might be on race; it might be on gender. I am absolutely sure it will ebb and flow, but within a broad framework of wanting to engage with civil society from all kinds of backgrounds and interests.

Q118 **Chair:** Baroness Falkner, to address the question I asked specifically of you, how are you working, or are you working, to engage with those preoccupations about which the public are writing to you in a more intense way than those issues that perhaps people are not engaging with you on?

**Baroness Falkner:** We are guided by our strategic areas of focus. We identify strategic areas of focus. We do not rule out taking action beyond those six areas, but on the whole our annual business plan and our three-year strategic plan determine our priorities.

Q119 **Chair:** Your priorities could well be different from the priorities that were evidenced to you by perhaps a letter writing campaign, an email campaign or some sort of clicktivism that suddenly became the No. 1 priority of the public to contact you about. Would that knock your strategic plan off course?

**Baroness Falkner:** I do not think it would knock it off course because our strategic plan, and our particular one this time, is extremely wide and capable of being adapted. The headings, if I can just share them with you, are extremely wide.

**Chair:** I am more interested in asking about the groups that you are engaging with than listening to the strategic plan again.

**Baroness Falkner:** Most policy areas that come in fit into one or other area of the strategic plan.

Q120 **Chair:** What civil society groups are you funding?

**Marcial Boo:** I do not have the list to hand, but it will be a range of organisations. Each one will be tasked with a specific job, to support the activities of an organisation that is objective, impartial and neutral.

Q121 **Chair:** How do you choose them? How do you select them?

**Marcial Boo:** There is a procurement process that is in line with *Managing Public Money*.

Q122 **Chair:** How do you choose the balance of issue groups—civil society groups? How would you decide that you wished to fund and support a group perhaps working with religious minorities as opposed to one that is working on ageism?

**Marcial Boo:** Again, as we have said, it would have to align with our strategy. In this case, we are focusing on children and young people, health and social care. If there are specific civil society organisations that we believe have expertise, which can help us to understand the issues



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that are at play and to do something to enforce the Equality Act, that is what we will do, but it will only be in order for us to deliver our objectives as an organisation.

Q123 **Chair:** How do you strike a balance when there are particularly contentious areas? For example, how would you strike a balance between those groups working to support the rights of women as opposed to groups campaigning around issues related to gender? Do you ever have to make that choice?

**Baroness Falkner:** We do not make the choice. We see people as and when an issue comes up, and we see all sides of that debate.

Q124 **Chair:** Do you meet groups equally?

**Baroness Falkner:** Yes.

Q125 **Chair:** Are you prepared to publish the groups you have met over the last year?

**Baroness Falkner:** As a general principle, we would not be publishing meetings we have with groups, no.

Q126 **Chair:** That does not appear in your annual report?

**Baroness Falkner:** No.

Q127 **Chair:** If we wished to scrutinise that balance, to understand which groups you were meeting with as a priority, how would we access that information if you are not prepared to publish it?

**Baroness Falkner:** We would need to know a little more about your interest in that. All we can say to you at this point is that, in the two examples you have given, we meet both sides of that debate. In fact, Marcial had a recent meeting with one side of the debate, and before Marcial came on board I had a meeting with another side of that debate. It is exactly 50:50.

Q128 **Chair:** It is exactly 50:50, but not both of you meeting both?

**Marcial Boo:** I have only been in post for a few weeks.

**Chair:** I do get that.

**Marcial Boo:** I apologise that I have not yet met all stakeholder groups. The important thing, from my point of view, is that the organisation is respected and authoritative on the issues that we are here to regulate. That means we play fair with organisations, whatever their campaigning approach and whatever issues they are most concerned about; that we are open to discuss issues with them as appropriate; and that we are seen to be fair-minded.

Q129 **Chair:** How can you be seen to be fair-minded if you are not publishing which groups you are meeting with?



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**Baroness Falkner:** The ultimate judgment rests with the board. I do not want to explain what Marcial meant by “seen to be fair,” but my terminology would be that we are fair.

**Chair:** But not transparent.

**Baroness Falkner:** I do not believe transparency is enhanced by tick-boxing which organisation we have met, irrespective of whether it was or was not a substantive meeting or whether anything was or was not achieved. We could spend our entire time in meetings but just going through it for form. We prefer substance to form, as an organisation, because the point of meetings is to be more informed about the policy implications. That is the point of the meeting. There is no point in meeting people to have a cup of tea.

If we are going to be informed about the policy implications of what we are doing, the board needs to be assured that we have all points of view before us on those policy implications. The board ultimately owns the final judgment in that regard.

Q130 **Chair:** The board decides who you will meet?

**Baroness Falkner:** No, the board decides what the policy implications are of the various points of view that are put to us.

Q131 **Chair:** Do the board get informed about the meetings you have not had, those you have rejected?

**Baroness Falkner:** The board is not particularly interested in meetings where there was no substance. I cannot see where you are going with the meetings per se. We can have meetings per se. In fact, in that case, I meet, not least in my other roles, many other organisations that operate in the same space. The point of meetings is to inform us of the policy implications that the particular advocacy group promotes.

Q132 **Chair:** How do you make a decision on whether an advocacy group is worthy of a meeting?

**Baroness Falkner:** By evaluating the space in which they work, the positions they are taking, whether, as Marcial pointed out, they are credible, authoritative and operate on the basis of research that holds up, and their understanding of the law.

Q133 **Chair:** How are the decisions about who is credible and authoritative, and who is not, communicated to the board?

**Marcial Boo:** I report to the board all the meetings I have had with stakeholders. I am not inclined to say no to anybody who wants to have a meeting with the EHRC because I am very keen to learn about the perspectives of all kinds of people who are campaigning in all kinds of areas of the protected characteristics.



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Clearly, there will be some longstanding, high-profile organisations that have credibility in civil society. I have met some of those organisations already. There will be other, smaller organisations campaigning on specific areas that I am sure I will meet in due course. I will report all those meetings to the board.

Q134 **Chair:** It is basically done on reputation, longstanding and size?

**Marcial Boo:** I am sure you also make assessments when you meet organisations in this capacity and in others. You know some of them will have a lot of value to add to a particular policy issue, and you want to hear their views. I am in exactly the same position. There are other organisations that may or may not. We all make a judgment about how important those meetings might be and whether they should be scheduled immediately or in a month's time.

Q135 **Chair:** Ministers are required to be transparent about their meetings. Should you be?

**Baroness Falkner:** Alas, we are not Ministers.

Q136 **Chair:** That was not the question. Should you be more transparent?

**Baroness Falkner:** About who we are meeting?

**Chair:** Yes, absolutely.

**Baroness Falkner:** No, because it will become a box-ticking exercise.

**Chair:** That is a very sad attitude.

Q137 **Alex Davies-Jones:** Just on that final point, you do not publish a list of organisations or people with whom you have met. If those people or organisations wanted to advertise or promote that they had met with you, do you tell them not to do so?

**Baroness Falkner:** No, I do not think we would ever suggest to organisations that they could not say that they had met us. That would be quite extraordinary.

Q138 **Alex Davies-Jones:** In your eminent role as the EHRC do you think that by being transparent, publishing meetings with organisations and individuals, and saying that you are meeting with those people, you could help remove some of the toxicity and discourse that exists at the moment, especially around sex and gender?

**Baroness Falkner:** We meet organisations and, in that example, we meet organisations on both sides of that debate. There are organisations beyond the principal ones in that debate. There are secondary organisations, smaller organisations, organisations that might lie generally in that camp but are not completely committed to the advocacy that another organisation might be doing.



It is a matter of judgment, but there will always be organisations that would look at a published list and say, “I was not represented there”; “This is my point of view, and it was not evident in the people they met”; or, “That organisation does not speak for me”. You would run that risk endlessly because there would be people saying, “They do not speak for me. She does not speak for me. He does not speak for me.”

That is what I mean about it becoming a meaningless box-ticking exercise. Ministers have far greater resources at their disposal to determine whom they meet, and they are advised as to whom they meet. We have to make that judgment ourselves. We apply the basic principle of fairness and listen to all sides of the debate. We apply that constantly in the judgments we make.

- Q139 **Alex Davies-Jones:** Baroness Falkner, with all due respect, it does not become just a tick-box exercise because you are listening to everybody’s view, and are being open and transparent by inviting those views, which you, having the eminent role in all this, should be hearing.

**Baroness Falkner:** What I am trying to say is that we will never achieve 100% satisfaction. One could have meetings for form. You have to think of resources, time and whether you have the capability to be properly briefed across the entire spectrum. In some areas of policy, there are larger players with policy positions that are fairly well known, and in other areas there are very disparate positions.

The better way for us to understand what civil society is doing is to use our convening powers to bring people together. We attempt to do that on a regular basis. One thing we are gleaning from our consultation is how to advance our interactions.

- Q140 **Alex Davies-Jones:** In 2019, this Committee recommended that you reduce the burden away from individual complainants having to take a case. Your legal caseload suggests, however, that most of your cases are still legal assistance. Does this mean that the burden has not yet shifted from individual complainants?

**Baroness Falkner:** Strategic litigation is essentially about potentially taking an organisation or a single complainant, but seeing whether it will have a sector-wide impact, or whether it will clarify the law across a theme that has been contested or where the law is not very clear. We make a judgment on whether it is appropriate to take forward the case of a single complainant, an entire organisation or a group of people. It really depends on the merits of the case, but we prefer to do strategic litigation.

In one area—and I said there is going to be a forthcoming announcement—we are looking to do more litigation. We will be defining how we do that.

**Marcial Boo:** This is a really important question, which I welcome. As an organisation, we are fortunate to have quite strong regulatory powers, including our power to litigate. We clearly need to be judicious in the way



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we exercise that power, exactly as the chair has just said, and that is why we tend to choose issues of a strategic nature where we can have the most impact with the resources we have.

We clearly want to work well with the legal profession so that we are aware of cases and can exercise that power really effectively. Those in the legal profession, after all, are likely to be the frontline, so they will hear of cases of potential discrimination. If we are working effectively with them, we can join quickly in order to take action where we judge that there may be a risk of discrimination. It is clearly an area where we want to invest more of our time to make sure that our powers are used effectively.

Q141 **Alex Davies-Jones:** What is your assessment of overall compliance with the public sector equality duty at the moment?

**Marcial Boo:** I am afraid I have not yet reached a view on that, but it is clearly another important tool that we have as a regulator to make sure that public services are compliant with equality law. We will absolutely make sure, as part of our work programme for the next year and beyond, that the public sector equality duty is used effectively in practice, so that public organisations are mindful of their responsibilities under the Equality Act and are actually demonstrating how they are putting it into practice.

**Baroness Falkner:** One of the problems is that the objectives are often based on tacit knowledge of inequalities rather than robust data. It is sometimes easier in the public sector to go for the low-hanging fruit rather than tackle the deeply problematic areas. We are trying to push public bodies to have evidence-based, strategic and, most importantly, outcome-focused objectives.

Q142 **Alex Davies-Jones:** You said you were going to push them. How will you use enforcement action to ensure it happens?

**Marcial Boo:** It comes back to the answer we gave to an earlier question. We have a range of tools and we will intervene at different stages, depending on our judgment about how we can be most effective. It could be upstream action, as the chair has mentioned, or it could be enforcement action downstream. We have a range of tools and will use all of them to make sure that we are taking forward our responsibilities.

**Baroness Falkner:** We believe that these bodies should define objectives and set up action plans, and then we can monitor the progress as we go along. That would strengthen the impact in terms of the outcomes that I mentioned earlier.

Q143 **Alex Davies-Jones:** Will you be evaluating the usefulness of the range of tools at your disposal? One of the concerns of this Committee, which we have raised before, is that you do not use your teeth enough, necessarily, when it comes to enforcement action. Far be it from me to reduce the impact of a letter, but sometimes more is needed. Will you be



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evaluating that?

**Baroness Falkner:** Yes, it is constantly under review. The board gets a report on it every quarter.

Q144 **Alex Davies-Jones:** Would you be willing to share that report with the Committee?

**Marcial Boo:** I am very happy to inform this Committee on how we are enforcing the Equality Act, yes. At this moment, I would just like to say how much I enjoyed reading the 2019 report from this Committee on enforcing the Equality Act. I thought it was absolutely spot on. I, with the chair and the board, will be making sure that we take that forward.

Q145 **Alex Davies-Jones:** Thank you, both. You told the Committee, again in 2019, that you would be providing guidance to service providers on the operation of single-sex exemptions under the Equality Act. You have recently told the media that this will now be published in January. Can you give any update on this and any indication to the Committee?

**Baroness Falkner:** Now?

**Alex Davies-Jones:** Yes.

**Baroness Falkner:** Our target is to publish this in January 2022.

Q146 **Alex Davies-Jones:** You cannot give us any indication of what the guidance will entail?

**Baroness Falkner:** No, I am afraid not. Not at this stage.

Q147 **Alex Davies-Jones:** Do you think the delay in producing the guidance has contributed to the confusion among service providers and some of the negative discourse that we are seeing around this issue?

**Baroness Falkner:** I am not sure it was the delay, necessarily. I am not sure the delay was in our hands. As you know, your report came out. We were looking at it. We were looking to do it, and then we were caught in the middle of the pandemic. We changed our annual business plan to focus on health inequalities in the health and social care sector and the impact of Covid. We submitted three pieces of evidence to your sub-Committee alone, on three of your reports, and so on.

Our workstream was quite interrupted, but now we are back to business as usual, to some extent, we are moving with haste. We are going to publish this in terms of the normal timescale that we take to do this stuff. It is a priority and we are doing it as a priority.

Q148 **Alex Davies-Jones:** Will it be done in January? Can you commit to that timeframe?

**Baroness Falkner:** Yes.

Q149 **Kim Johnson:** Picking up on the public sector equality duty, there have been some issues with schools excluding kids because of afro hair



discrimination. Do you think schools are not complying with the public sector equality duty while undertaking these kinds of actions? What needs to happen?

**Marcial Boo:** Thank you very much for your letter drawing this to our attention. As I wrote to you yesterday, we have taken action against schools in support of pupils who have felt discriminated against, or have actually been discriminated against, due to the hair policies in their school. We have published guidance, as I have shared with you, to encourage schools and, indeed, all employers, because there is an example of a case that we took against an airline, to make sure that they do not discriminate against anybody because of their hair or other issues that could be protected. We will absolutely take action.

Q150 **Kim Johnson:** The EHRC is a national human rights institution and it reports on seven UN treaties. Can you tell us how you prioritise your work monitoring multiple international treaties?

**Baroness Falkner:** Most international treaties, particularly UN treaties, have periodic reviews. In that sense, we can anticipate quintennial reviews. We can anticipate when it is likely to happen, but the UN, like other bodies, has been delayed in carrying out its reviews due to the global pandemic. There is a bit of uncertainty at the moment about where we are on that.

In the last six months, in other words this financial year, we have had one response to an Office of the United Nations High Commissioner for Human Rights consultation and five submissions on the 47th and 48th session of the United Nations Human Rights Council.

Q151 **Kim Johnson:** What are your thoughts on the Government's proposals to remove key human rights protections?

**Baroness Falkner:** We await the Government's formal response with interest. The United Kingdom is seen in the vanguard of defending human rights and it would be extremely concerning if they resiled from their high standards to date.

Q152 **Kim Johnson:** What strategies can you use to encourage the Government to comply with its international obligations in the absence of being able to use court action?

**Baroness Falkner:** Are we still referring to United Nations treaties?

**Kim Johnson:** International treaties, yes.

**Baroness Falkner:** We raise them with Government when we have our discussions with Government.

**Marcial Boo:** We also publish a human rights tracker on our website, which assesses human rights obligations by the UK Government and the Welsh Government. We are very open and transparent about our assessment of these matters.



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**Baroness Falkner:** I think we are the first national human rights organisation to have this monitoring mechanism publicly and extremely transparently available.

**Chair:** Can I take this opportunity to thank our two witnesses for their contributions this afternoon? It has been very much appreciated.