



Women and Equalities Committee

Oral evidence: Equality and Human Rights Commission, HC 599

Tuesday 24 November 2015

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Members present: Mrs Maria Miller (Chair), Ruth Cadbury, Mims Davies, Jo Churchill, Angela Crawley, Mrs Flick Drummond, Ben Howlett., Jess Phillips.

Questions [1-35]

Witnesses: **Baroness O'Neill of Bengarve**, Chair, and **Rebecca Hilsenrath**, Chief Legal Officer and Chief Executive, EHRC, gave evidence.

Q1 Chair: Thank you so much for joining us this morning. Just to remind you, we are not being broadcast this morning but we are being webcast so that other people can be party to our discussions. Thank you both for coming in to talk to the Committee. We are really keen to have an ongoing dialogue with you. I do not think I need to introduce the members of the Committee, but could you introduce yourselves? Then the usual format: we will have a series of questions that different members of the Committee are keen to ask. I believe we have about an hour and a quarter of your time, if that is okay.

Baroness O'Neill of Bengarve: I am Onora O'Neill. I am a cross-bencher. By trade, I am a philosopher. I have been Chair of the Equality and Human Rights Commission since the end of 2012 and I shall step down in March 2016.

Rebecca Hilsenrath: I am Rebecca Hilsenrath. I have been the Chief Legal Officer of the Commission since March 2014. I have now taken on the additional role of Chief Executive Officer.

Chair: Thank you.

Q2 Ben Howlett: Thank you very much for coming today. I have a question about your strategy, to set the scene. My first question relates to how you think you fit with other organisations that promote a fairer and more equal Britain.

Baroness O'Neill of Bengarve: That is a very good question because, of course, there are lots of things we do not do. In particular, we are not, like some equality commissions, an ombudsman service. We have a different relationship to particular cases. We have a number of different powers that we use, we hope, appropriately and affordably, including supporting

or taking on certain legal cases that we hope are going to clarify the law in an area where it needs clarification. We have quite a good success rate on those cases.

We also work by conducting inquiries and I have to say that, particularly with a reduced budget, which, like all public sector bodies, we have, we have spent a lot of time trying to achieve results more economically by what we call partnership working. It is sometimes a slightly adversarial partnership, but that amounts to working with the organisation that we hope will somewhat change its approach, be it the Gangmasters Licensing Authority, the police service, the cleaning sector or other bodies. It is a relatively effective way of working if you can get that body on side and be helpful in explaining what their legal responsibilities are and how they might achieve them. We often find that initial hostility is replaced by some enthusiasm.

Rebecca Hilsenrath: I can comment on a small thing following on from that. As Baroness O'Neill has said, the key issue is about our unique statutory powers, which are not held by other organisations working in the area. What is important to us in terms of stakeholder engagement is a dialogue that identifies where different organisations have different roles to play. For example, this has come up particularly in relation to the current consultation on our forthcoming strategic plan, which I am sure we will come back to. That has been about sitting around the table with a number of stakeholder groups that have come back to us on particular issues and said, "Perhaps this is an issue where other people are active. That is an issue where you have unique powers and we would expect you to use them". It is a dialogue and it is very important to understand what different people's contributions look like, and we are very sensitive to that.

Q3 Ben Howlett: Coming on to those unique statutory powers, I was doing some brainstorming before this to work out what organisations in the public sector do very similar things. There is the JCHR, the Ministry of Justice, the Government Equalities Office and government departments as well. What makes you different in terms of those unique statutory powers?

Baroness O'Neill of Bengarve: Each of them has a different range of powers. I suppose you could say it is an untidy landscape. I would have thought that what makes us unique is not that we are a regulator in the conventional sense, because we are not. We do not issue regulations and we do not fine people if they fail to comply with regulations. We also do not, like many regulators, charge those who are meant to live by the regulations.

What we do ranges from clarifying the legal requirements, particularly for SMEs, for which a good deal of legislation is a bit obscure. We know what it is like when it leaves this place. There are a lot of organisations out there that feel they are being required to comply with more than is tolerable and more than is manageable. If one can manage to get it down to a relatively easy format and work with them, that is helpful. That even goes for some rather big and well-resourced organisations. For example, on the stop-and-search work that we did, we worked with the College of Policing and, at a certain point, handed over. Continuing to try to keep to better and less mindlessly extravagant ways of using stop and search is now their responsibility. We do not hang onto things forever. That is just an example. I am afraid it will be somewhat bits and pieces.

Some of it, of course, falls outside the wide span of interests of this Committee, because we are also the national human rights institution, so we do, as part of our core statutory

function, a lot of monitoring of UK compliance with the international treaties to which the UK is a signatory. It subsequently forms the basis for the cross-examination of Government in Geneva. We do a lot of directly human rights work. For example, we have a stream of work at present on the adequacy of the legal protection of the right to freedom of religion and belief, which, I have to say, is a muddled and tangled frontier with a lot of people very unclear on what is required and what is not required.

On equalities, we would always be aware of looking at the range of protected characteristics under the Equality Act. We realise that sometimes some of those characteristics are held by the whole population, like age, sometimes half the population, like gender, and sometimes a very small section of the population, like pregnancy or transgender. So very different sizes of populations are affected by these. We will always be looking at all those.

When we compose our strategic plan and then the business plan for each year, we will want to be pretty astringent in deciding what the most significant piece of work is we could do, under a variety of headings. We might, for example, look at disability and then within disability we will look particularly at some things. Access to transport is a pretty key one in some contexts.

Q4 Ben Howlett: While we are on that point, in relation to strategic objectives, you have obviously announced your strategic objectives for 2015-16. What progress have you made on those? Following on from that, what work do you need to do in order to develop a new strategic plan?

Baroness O'Neill of Bengarve: I am going to hand over to Rebecca in a moment, but a major piece of work we have done in preparation was to publish a report, which perhaps the Committee has received, called "Is Britain Fairer?", which is simply a look at the data. It is not a diagnosis of why certain inequalities are as they are. It is a very major collection of gaps, in the sense in which one talks about pay gaps, without a judgment of, "This one was due to unfair discrimination", "This one was due to inadvertence" or whatever it might be. There will be different stories about cases, but that seems to us a very basic thing.

It was published within the last month and has, I suspect, identified some of the things on which our next business plan is going to have to focus. For example, many people were rather surprised about the finding that educational attainment was lagging in particular for poor white boys and poor black boys. It was not boys generally, but it was poor white and poor black boys, whereas Asian boys were doing rather well. There has been a lot of progress, by the way. It is not all a gloomy story, but this sort of analysis has enabled us to see where there are problems.

Rebecca Hilsenrath: Let me just follow on from that. I want to give you one answer that slightly joins together your last two questions and then move on to our strategic objectives. In terms of our unique role, which is different from the various government departments that you mentioned, it is that we are an independent national expert body. We have that bird's eye view, which is distinct from government, of equality across the piece. We think that is missing in government because equality is quite divided up as a brief and there is a lack of joined-up cohesion sometimes about where that policy is owned. We have a statutory mandate to advise government; we work with them on an effective basis, we believe.

I say that because one of the things that I think we have achieved over the last three years of our strategic plan is that we have significantly shored up that that reputation and influence. We recently had a letter from the Minister for Women and Equalities, from which I can quote that she believes we are “A strong and well-regarded organisation acknowledged nationally as a source of expert advice”. That is both who we think we are, from your earlier question, and also something about what we think we have achieved over the last three years in terms of our strategic objectives.

On progress across the piece, I will give you some ideas of what we think we have achieved. I am more than happy to write to you with more details. If you look at it in terms of quantity, we have simply covered a lot of ground numerically. We have produced 30 parliamentary briefings, including more than 200 recommendations in terms of improving government policy. Baroness O’Neill has already mentioned “Is Britain Fairer?” which is the biggest ever review of equality and human rights. We have carried out more than 100 strategic legal actions, with about 80% success rate.

Chair: We might come onto some of this in later questioning, so can I ask you to hold your horses there? I think we have some particular questions around effectiveness.

Rebecca Hilsenrath: Absolutely; I am more than happy to do that.

Q5 Ben Howlett: There was one last question. It feeds on from my earlier question in relation to where you think you fit with other organisations. It does seem sometimes that there is a bit of a lack of clarity. That is why I am going down this line of questioning. Is it naturally the responsibility of the GEO to provide the policy and you are there to provide the regulatory advice, for example? “Is Britain Fairer?” as a report—an excellent report, may I say?—specifically looked at the issue but did not provide the policy answer to the problem. Do you think there is a divergence between the EHRC and the GEO? How would you make it clearer?

Baroness O’Neill of Bengarve: Your Chair knows a great deal about this. Let me be tactful. As a national human rights institution and a national equalities body, we are required to be, to a considerable degree, at arm’s-length and independent of Government. Last week, we were both being cross-examined by video conference on our status as a national human rights institution, so there is an outward-facing and international responsibility there. It is, therefore, quite different from GEO, which is within a Government department. Indeed, one may say, in its fairly short life, it has been in a number of Government departments—it has moved around.

The way we coordinate with the GEO is that we have, as you will remember, Chair, a framework document. I cannot pretend this framework document is the most brilliant piece of drafting ever achieved, but it does define the way of working so that we do not take direction from GEO. We are, in financial terms, highly accountable and, indeed, I am pleased to say we have been congratulated both on our accounts and on the way in which that side is organised altogether. We now have good governance and good accounts. We do not do things because GEO says “Do this” or “Do that”. That seems to me to be an adequate arrangement. It works.

There are those who would say international human rights institutions and even national equality bodies ought to be independent of Governments and ought to report to

Parliaments. This is actually defined in a document, known as the Paris Principles, for human rights institutions. We are therefore very keen to report in this sort of way to Parliament. Reporting on substance, it seems to me, is much better done by talking to a Committee that focuses on that domain of problems and cannot be done as a matter of reporting up to a Government department without undermining independence. In that respect, you can see GEO and the Commission have quite a different function, but I think the framework document enables us not to tread on one another's toes.

Q6 Ruth Cadbury: Obviously, we are an equalities committee so that is our focus. I wondered whether it was possible to explain what proportion of your resources is spent on equalities and what proportion is spent on human rights. I accept there is a strong overlap between those two areas.

Baroness O'Neill of Bengarve: You gave the answer. It would be very difficult to decompose the budget to say which bit was equalities and which was human rights, because of the constant interaction. Nevertheless, it is very important to have the two in mind. There are some countries, even within the Council of Europe, that separate their equalities bodies and their human rights bodies. That is actually what we have done in Northern Ireland. I have to say, I do not think it is any easier. One sometimes thinks that it would be simpler to separate, but the fact is you cannot pursue equalities in ways that disrespect or violate human rights. In the way in which you protect, respect and realise human rights, you have to take account of the impact on equalities. I would say we are on the whole content that the two sets of responsibilities are brought together in one body.

Rebecca Hilsenrath: The only thing I would add is that there is great strength in being able to look at our work through both lenses, not only because of the overlap but because they hope to inform each other. We do have elements of work that focus on particular strands and particular aspects of human rights or equalities, but most of what we do overlaps and it would be very difficult to disentangle it.

Q7 Mrs Drummond: You touched on some of this, but in which areas do you think you are most effective?

Baroness O'Neill of Bengarve: "Effective" means very different things for different sorts of work. Sometimes, I think you are most effective when you engage with quite a demanding institution and actually persuade them to change practice. For example, for us it was a very great boon that after we had worked on stop and search, which was, as they say, disproportionate, meaning that there were more people from ethnic minorities being stopped and searched, the reality of it was that a huge amount of stopping and searching was being done, all of it at public expense and at the expense of not having those police officers do other things. It was unproductive in that when it was reduced by a huge proportion, over half, there was no rise in crime and no fall in conviction rates. To us, it was a very welcome thing when the Home Secretary picked that up. I hope it will get embedded that stopping and searching is not something you should do for the sake of it or for the sake of ticking the boxes.

We cannot always guarantee that, however. Let me give you an example of where we had a resounding result in court but we have not been able to do anything. We intervened in the *Stott* case. Mr Stott was quite seriously disabled. He and his wife made all the

necessary arrangements for a flight. These arrangements were not observed. When they were in the air he had some medical need and it was all very unhappy, embarrassing and difficult for him, and it should not have happened. However, when you are in the air, the Montreal Convention is the international treaty that governs what is done, so what we have by way of legislation does not go up there. I do not know how this is going to be dealt with, but I suspect the workaround would have to be to get UK carriers, or carriers who fly into the UK, to accept that they have a responsibility towards disabled people when they are travelling, even when they have taken off.

Rebecca Hilsenrath: Could I just follow up on that? Looking at the way we organise our work inside the Commission, we have particular strengths in particular ways of working, and using particular statutory powers. We have touched on our strategic litigation, which is carried out by our legal directorate. I mentioned statistics earlier in terms of having had about 100 cases taken forward at about an 80% success rate.

Each of those individually has a significant impact in the particular field that you are looking at a decision. We are only looking at strategic cases where there is a real impact in terms of the clarification of the law and where the result is felt. I am aware we are short of time, but we are talking about a range of cases, from looking at a clarification of the public sector equality duty all the way through to cases across various different protected strands. We are obviously more than happy to write to you with more detail. It is just about understanding that it is the strategic impact of those cases.

Baroness O'Neill of Bengarve: You may think we got it wrong with the *Stott* case because we could not have strategic impact, but what we got was that the court said, “This is really unacceptable, but because of the Montreal Convention we cannot find in favour of Mr Stott”.

Q8 Mrs Drummond: Do you consider that one of your failures, or that you should be able to influence in other ways and become adaptable?

Baroness O'Neill of Bengarve: It is horses for courses. With that particular one, it is only going to be by agreement between the carriers—the people who fly planes—or possibly by legislation. I suspect not legislation, because “the Convention rules, okay” when you are outside territorial airspace. That is probably the wrong phrase, but you see what I mean.

Rebecca Hilsenrath: It was a case in which the House of Lords expressed considerable regret that we were not successful. It has led us to quite a lot of work outside the courts in terms of looking at our travel passport work under the Convention.

Can I just also add that there are other ways in which we think we are very effective? I mentioned guidance earlier. We produce a lot of guidance across the piece. We have about 2 million downloads of those from our website. We have a specialist Inquiries and Investigations unit, which was responsible for developing and implementing expertise in both inquiries and investigations under the Equality Act. We are currently conducting an investigation into the Metropolitan Police in relation to potentially discriminatory employment practices. We have conducted inquiries into a range of areas, from women on boards, where we are currently looking at how women are appointed onto boards. We are happy to come back and talk about that at greater length. We are looking at disability harassment.

We are looking at a range of areas where we can look at real impact in terms of where recommendations have been made and taken forward. Most recently, we did an inquiry into adult deaths in custody. It was very well received earlier this year, in February. We were working with Ministers and that was carried out across three sectors: the police, prisons and health. We are working with regulators within those sectors to look at carrying out recommendations.

In terms of what impact looks like, we could also talk about where we are able to have a voice in the media, which brings influence to bear on developments across various different sectors. A recent example of that was where the Premier League agreed that it would bring all its clubs to meet accessible stadium requirements. A lot of that was because work we were doing with clubs, in conversation with them, enabled them to move forward and make that announcement.

Q9 Mrs Drummond: How are measuring your effectiveness? Are you actually including stakeholders as well?

Baroness O'Neill of Bengarve: That is a good question and there is not a simple answer. As you can see, it is multi-dimensional and there is no single unit. It is not like having a bottom line, where you can say, "In this period our profit was X amount", because, after all, you have a whole plurality of human rights, the nine public sector equality duties and, out there, you have an enormous, rich range of institutions that are—and in some cases are not—meeting their responsibilities with respect to human rights and equalities.

I am afraid we have to present a narrative, but there are things we would not leave out in any time period. Although they have made great progress, we regard women and equalities issues as something that will always be on the agenda while there is need. For example, we have dealt a lot with pregnancy and maternity discrimination in employment and possibly by service providers this year. If I had to hazard a guess, I think at some point we will have to look at women and retirement. That is to say, where the shape of a working life is different, you need to think about the different ways it may end up that some groups of women—and some groups of men—get squeezed by the institutions we have. I am afraid we cannot give a nice answer that, "We have seen the graph going up smoothly".

Q10 Chair: Can I just bring you back to Flick's point? It is really important. As an organisation, you deal with a lot of external organisations and you deliver a lot of information. However, do you monitor whether you are effective in what you do? You talked about guidance and the investigation units. Do you ask the people you deal with whether what you do is effective?

Rebecca Hilsenrath: That is a key part of how we work. We maintain engagement with stakeholders across a large range of sectors, both geographical and in terms of areas of work. As an example, in terms of developing our next strategic plan, we held an open board meeting last week to which we invited our strategic reference group. We are holding a number of consultations going forward. I know am telling you things you are aware of, but, looking back, we have three statutory committees—for Wales, Scotland and disability. The committee members in those areas are very fully engaged in quite a strategic and systematic process of engaging with stakeholders geographically and across different sectors. The Wales Committee actually moves around Wales, as the Scotland Committee moves around

Scotland. The Disability Committee has been moving around the country, holding meetings with different groups.

Looking at the organisation across specialities, the legal department, for example, has a very distinct legal stakeholder policy that it uses to engage with the legal, advice and NGO sectors to identify key issues arising. It went out to have very detailed conversations with all those people a couple of years ago and it is consulting on its strategic litigation policy. I could go on, but it is actually very much embedded in the way we work.

Baroness O'Neill of Bengarve: We have one gap here, which I am sure the Chair knows about. It is the telephone helpline. You will remember the telephone helpline is no longer with the Commission and has been contracted out by GEO to EASS. We would say we are not getting sufficient feedback from that contracted-out helpline about where the shoe is pinching members of the public.

Q11 Chair: Again, we are going to come onto that in a subsequent question. Can I press one more time? I am not sure we have an answer to Flick's question. You have done a great report. It is really good and it is really interesting. It is great, but are you going to go out and ask people whether they think it has actually delivered incremental value in terms of understanding the equalities landscape in Britain? Would you do that as part of your work? That is just an example. I am trying to get an impression of whether you ask people whether they think what you do is effective as opposed to engaging with stakeholders to ask them their views on the sorts of things you should be involved in. The two things are quite different.

Rebecca Hilsenrath: We do ask them. The quick and simple answer is, yes, we ask stakeholders whether we think they are effective. We carried out a survey of stakeholders earlier this year or last year exactly on that point. "Is Britain Fairer?" is not about policy; it is about outcome. It is looking at specific—

Chair: No, we understand that. Jess, did you want to come in?

Jess Phillips: I do not know whether you said it on purpose, but it is not whether they are better because of you, or they think they are better because of you—

Chair: Yes, I think it was a slip of the tongue.

Q12 Jess Phillips: Yes, it may have been a slip of the tongue. Do your stakeholders, so people who might have used that, think that it made a difference in their work?

Rebecca Hilsenrath: Yes. I am not about to provide you with statistics.

Jess Phillips: No, I would not expect you to.

Rebecca Hilsenrath: In terms of something like "Is Britain Fairer?" we have had a lot of feedback from people to the effect that it was extremely useful for them. I will give you a very recent example. That was some research on pregnancy and maternity. We have only released the interim product; the final one is to come next month. A large number of our stakeholder groups have said that this was the most definitive and helpful bit of information on pregnancy and maternity discrimination they have come across for a long time, and they are using it in their work.

Q13 Jess Phillips: I do not doubt it, as somebody who has used pieces of your literature many times to make a point. I wonder if you specifically do a task where you gather that information. I get brilliant feedback saying that I am a great MP, obviously, but I ask the specific question as well.

Rebecca Hilsenrath: Maybe this is obvious to you, but I want to make it clear that we do not do anything without working with stakeholders. Baroness O'Neill referred earlier to partnership work. Any project, even as far as the drawing board, has been through discussions with relevant stakeholders. We ask, "Is this going to be of help to you? Can you help us make it better? Is it going to answer—"

Chair: It might be helpful if you could write to us on the feedback you get from stakeholders.

Jess Phillips: And the mechanism for collecting it.

Chair: Yes. I do not think anybody is suggesting that you are not working with stakeholders; it is about whether there is feedback on the quality of the work you are doing across your various responsibilities.

Baroness O'Neill of Bengarve: One of the things that makes it difficult to give a simple answer here is that stakeholders come in many sizes and shapes. For example, sometimes we are talking about a disability organisation with a large membership or we are talking about a large group of SMEs; sometimes we would be talking about individual people, like Mr Stott, who were in some way short-changed and brought a case. However, the individual cases will be relatively few compared with the problems we hope they will illuminate and, to some extent, improve. It is horses for courses. We have to do different sorts of stakeholder work depending on whether it is, for example, a trade association, a police force, members of the public or a disability charity.

Chair: I am very conscious of the time. Do you mind if we move on?

Q14 Mims Davies: I wanted to pick up on the issues you have had regarding the changes in funding and, obviously, at the same time, having your workforce halved. How have you balanced those two challenges?

Baroness O'Neill of Bengarve: It is a moving story, probably in both senses. The previous Comprehensive Spending Review was the one that produced the very big cut. The organisation was large, perhaps partly because it represented the amalgamation of three previous commissions, so there was scope for some consolidation. This predates my time, but that enormous decrease in headcount, whereby we went down from 500 to 200, represents that Comprehensive Spending Review.

Like all other departments and public-sector bodies, we have been asked to produce scenarios for a 25% and a 40% further cut for the Spending Review that will be announced tomorrow and we have done that. Our view is if a 40% cut came about, it would make it very difficult to deliver our range of statutory functions. That is just talking about the statutory functions. The 25% or thereabouts cut scenario is more manageable, but difficult. There is no denying it is difficult. We would expect that we have not been cut disproportionately, and we think we have a good story to tell about more effective ways of working, moving to cheaper officers and other things.

The numbers are a little bit misleading because, of course, separate from the main budget there is the fact that, with the removal of the helpline, not really the budget but the function was removed so we do not have to spend money on that. There will be one or two other things that have also changed.

Rebecca Hilsenrath: The grants programme.

Baroness O'Neill of Bengarve: Yes, we do not have the grants programme. Chair, I remember discussing that with you when I was first Chair of the Commission. We had a grants programme and Government decided it was not an appropriate use of money, so we do not have a grants programme. That is probably not something we are seeking to regain. We have access to programme money for which we bid, which is then a matter of negotiation with Ministers on whether a particular piece of work will be funded out of the programme money. On the whole, agreement has been reached and the work has been done.

Q15 Mims Davies: Thank you. That is very helpful. In terms of the collaborative and partnership working you have been doing, how much have the funding issues pushed that to the fore or was that a natural way of improving things going forward?

Baroness O'Neill of Bengarve: That is a tremendously good question. The answer is probably that it is an effective way of working. Getting people on side and getting them to collaborate is probably more likely to get different ways of working to stick. However, on the other hand, we do not have much option. There are different models for equalities bodies in parts of Europe. Some of them, in effect, work as an ombudsman and they take only individual cases. That is a different sort of model. It is a conceivable model, but we can probably get more value for public money by working with the relevant institutions rather than being a complaints body.

Rebecca Hilsenrath: I obviously was not here at the point the cuts were made, but I would say that we work effectively. Any public body has to accept that they have to bear their share of cuts at the moment. We have had to make hard decisions about what we do, what we do not do and where we focus. In large part, that has been a good discipline. We regard ourselves as a strategic body, as we have said, and not only a frontline agency. That has forced us to be very focused on what strategic means and what criteria mean. As Baroness O'Neill says, we find effective ways of working. When you look at our strategic litigation, that actually belies the huge amount of work that goes into issues that come to us that do not make it as far as the court room because we have spent a lot of time persuading and influencing. That of course is far more cost-effective than actually going to court. Then, in terms of partnership working, an example of that is the RIO forum—regulators, inspectors and ombudsmen. We set that up to achieve through others where we have had a range of helpful interventions, where we have actually worked with other regulators who are able to take on our agenda and have real impact beyond what we would be able to achieve on our own.

Q16 Mims Davies: Is there anything particularly stark that has been a direct impact of the restructuring? Is there anything that is particularly clear that would have happened only because of the restructuring?

Rebecca Hilsenrath: Are you talking about efficiency or are you talking about problem?

Mims Davies: Both, really. I am talking about adding value, where perhaps those could not have been foreseen unless you were forced into it. I was going to ask you about the preparatory work you have done for the Spending Review, but it appears you have been very much doing that.

Rebecca Hilsenrath: We mentioned this before, but in terms of challenges we would like to comment on the EASS helpline, which we lost. We are looking at a lack of access to the data, material and referrals that would allow us to maximise our strategic litigation powers. We know that helpline is not yielding the sorts of strategic referrals we would expect to find. I had a really helpful, interesting conversation with the Northern Ireland Equality Commission, which runs an in-house helpline. I know you are looking at completely different demographics, but they get about 3,000 calls a year. That translates into, very roughly, about 300 applications for assistance. That translates into about 100 cases. Those are very broad-brush figures. That is not what we are getting from EASS.

If you look at our strategic litigation figures, they have dropped in recent years, despite a lot of effort from us, as I was saying beforehand, to network with key stakeholders through our legal stakeholder policy. Those are very important powers. When we talk to stakeholders—again, this is coming back to the previous conversation—we hear again and again from people that they want us to use those powers, because we have them and they do not. We want to use them; we are desperate to use them to help our partners in the sector. However, it is about getting the intelligence, which we are not getting from EASS. If we have one big ask, it is about looking at getting that power back and that funding back so the function can be run in a more effective, joined-up way so that we are able to utilise our strategic litigation powers fully.

Baroness O'Neill of Bengarve: That is or could be how we learn about individuals. Otherwise, we are mainly meeting stakeholder organisations or the rare litigant whose case rises to the top, like Mr Stott.

Q17 Jo Churchill: You will have to help me, because I am quite simple here. You said that if you were cut by 40%, which would take you down to about 120 people and just under a £16 million budget, that would mean you felt unable to fulfil your statutory range of requirements. If that was the worst-case scenario, what happens? Secondly, am I right in thinking that what you are actually asking for is for these strategic referrals to come back in-house, which would mean a need for an increased budget rather than a decreased budget, in order for the transfer of information so that you could ascertain which lines of inquiry or which problems are most pertinent?

Baroness O'Neill of Bengarve: Very good question. It is not that we are longing to run a telephone helpline. It is that we are longing to have the information a telephone helpline can develop. If it had been outsourced to an organisation that succeeded in getting the information back to us, that would be delightful. That is not the way it is. We do not get adequate, detailed and actionable information from them.

Q18 Chair: What is stopping that happening?

Rebecca Hilsenrath: It is to do with the way it is run. It is to do with the actual operation and, we suspect, some of the guidance that is given to the people who are running it. This is

not a unilateral view from us; it is something that is felt across the sector. I did not want you to think we were raising a negative.

Q19 Jo Churchill: No, I was just trying to drill down. Whether it is £16 million or £26 million, that is a great deal of taxpayers' money and I wanted to understand—

Rebecca Hilsenrath: Can I come back to both your points to disentangle them? The issue about the helpline is not a budgetary one. It is already funded by the Government; it is just managed elsewhere. We are not even necessarily saying that we would take it in-house, but we think we should be involved in the contractual control of what happens. The Government are required to fund the helpline under EU directives. It is not a money question. It is a “how” and a “who” not a “whether”.

That is completely separate from the 25%/40% question. By the way, the EASS helpline is not responsible for 25-40% of our budget. We are not talking about that magnitude. Just to clarify that, at the moment we have a budget of about £17 million. We have access to another £6.5 million of discretionary funding, which is given to us for specific projects. What we have asked for is that the cuts, between 25% and 40% or whatever, should fall on discretionary programme funding.

Depending on the size of the cuts, that would help us because the core funding we have at £17 million is not about what we do, but how we do it. It is about being able to plan and being able to develop staff who are attached to us permanently. Obviously, discretionary funding has to be managed in a completely different, unplanned way. We do not what the cut will be, but if it were to be less than £6.5 million, we would ask for the remainder of the discretionary programme funding to be repatriated for those reasons because it helps us to plan more effectively, instead of spending quite a lot of time bidding for further funding and looking at managing staffing around that.

Chair: I feel like I want to move the conversation on from funding to other areas, because, whilst I know the Spending Review is tomorrow, we are also looking at some of the strategic issues.

Q20 Jo Churchill: I want to go on to accountability in particular. This one is quite short and sharp. Who are you accountable to currently?

Baroness O'Neill of Bengarve: Ultimately, we are accountable to Parliament. That is to say that our reports and our accounts go to the Secretary of State, who lays them before Parliament. That is quite important, because of the international agreements, like the Paris Principles, particularly on the human rights side. It is very important that Parliament is the last line. We have had a certain amount of questioning on whether the fact we have a sponsor department impairs our independence. We think that the framework document I mentioned secures a different outcome.

I would say that the relationship with GEO is that we are very much held to account on process and budget, and that is right. However, they do not direct us to do particular pieces of work or to desist from pieces of work. That is important. Because we have very recently been transferred—not between Secretaries of State, but GEO has been transferred to the Department for Education—it means that the framework document between the

Commission and DCMS that established the working relationships and necessary bits of independence will have to be reworked with DfE now, and we are beginning that

Rebecca Hilsenrath: It is worth just adding that we would welcome an enhanced relationship with this Committee as a channel for that accountability to Parliament.

Baroness O'Neill of Bengarve: If I could just elaborate on that a little bit, I think the relationship we have developed, informal though it be, with the Joint Committee on Human Rights has meant that we have a parliamentary context in which we report on our human rights work. We would be quite keen to report on the substance of our equalities work here. It has not been the case until now that there was a suitable Committee for us to do that. When I say “account”, I am not meaning the budget and the accounts, because that, as is perfectly familiar, goes through the Public Accounts Committee and so on. The narrative about what we do, why we do it and how we do it, it seems to me, is in part something this Committee might be interested in.

Q21 Jo Churchill: When last year you referred to that clearer reporting line, that would probably be what you are referring to, that there is a better fit for that.

Baroness O'Neill of Bengarve: There is a difference between financial accountability and substantive accountability. The accountability for the quality of work you do is not going, frankly, to interest the Public Accounts Committee very much. They would notice if it were completely flaky, but they are interested in something else. I have spent quite a lot of time thinking about how we secure accountability for the substance of what goes on and how we get feedback on our priorities there, at a very high level. The Joint Committee on Human Rights has been helpful to the Commission. They were perhaps particularly helpful in a previous incarnation, where one of the criticisms was that the Commission was not doing enough work on human rights, and the Joint Committee on Human Rights kicked it. We do quite a lot of work on human rights over and above the core statutory duties to report on treaty compliance. We do a fair range now. That is not the issue. However, it is nevertheless good to be made to stand up and explain why you did it, how you did it and what effect it had.

Q22 Jo Churchill: That has rather answered two of my other questions, which were: in a perfect world, who would you be accountable to, and, going forward, how do you see the working relationship with this Committee? What changes in the current form of accountability would you like to see being worked through?

Baroness O'Neill of Bengarve: I was sketching a splitting of financial accountability from substantive accountability on equalities and human rights. In some ways, it is never going to end up neatly and tidily in one place. If we did end up in one place, that place would probably ask another group to look at this or that aspect. A perfectly workable relationship would be an annual fixture where we talk about what work we have been doing on equalities in front of this Committee and what work we have been doing on human rights in front of the Joint Committee on Human Rights, and where GEO and the Public Accounts Committee retain the financial oversight.

Q23 Jo Churchill: I will ask a question from earlier, if I may. I would like to know whether you believe, in the nine years you have been in existence, that Britain is fairer and whether that has been down, in part, to the Commission. Also, on the 200 recommendations and

2 million pieces of guidance, Baroness, you mentioned earlier that SMEs feel overburdened. The production of 2 million pieces of guidance largely affecting the employment sector—as somebody who ran a small business, I am concerned that the information gets fed back down to stakeholders. Perhaps they become espoused theories rather than theories in action.

Baroness O'Neill of Bengarve: I could not agree with you more. The accountability revolution of the last 20 or 30 years has produced too much. Can we blame people for ending up ticking boxes or shutting their eyes? We certainly do not wish to add to that. However, in that context, it can be useful if somebody provides, as we do, non-statutory but rather simpler guidance. We do have feedback from SMEs saying, “Yes, that was useful. Now I know how to manage it”. For example, on our pregnancy and maternity work, it was rather useful to gain a picture that most SMEs manage pregnancy and maternity leave quite well, but there is a minority of about 11% that do not manage it well, where people feel under pressure not to go to prenatal appointments and the rest of it. There is considerable value in finding out the facts from the places where the shoe pinches.

Rebecca Hilsenrath: In relation to “Is Britain Fairer?” it is not a binary answer. We would say that in some places it has become fairer and in some places the report highlights challenges. I could pick out a few. You may have seen from the report that, for example, we have highlighted some of the impact for younger people. We have seen quite significant income drops for the youngest age group, between 16 and 24. We have seen educational attainment rise, but we have seen gaps widen, for example, with poor white boys doing particularly badly.

Coming from the report, we have seen, I believe, that you are now more likely to go to university if you are from a minority ethnic background, but that statistic is reversed if you are talking about Russell Group universities. We are talking about women achieving higher, particularly at degree level, but that has not translated into employment statistics. We are seeing a Britain that is more tolerant about LGBT issues, but there are worrying issues of intolerance in relation to religion and belief. That is just sketchy headlines. We see it as being, very much, a lot to celebrate and a lot of work to do.

“Is Britain Fairer?” does not comment on causes, so I am not about to take the credit for that for the Commission. It is very important that it looks at outcomes. What it will do now is say, “Well, here are the key challenges we have identified”. It may look at some of them and say, “Well, actually the cause is too complex. It may not be worth addressing in a particular way”. It may not be something that we should be addressing. One of the important things we would be doing is looking at the key challenges and saying, “Actually, that is for somebody else to do”. Part of our work may be working with that person, flagging it up to them, asking them what steps they are going to take to address whatever issue it is.

Jo Churchill: For example, the attainment of young white boys would naturally sit with the Department for Education.

Rebecca Hilsenrath: I agree.

Q24 Chair: Can I press my imaginary pause button before we go into that particular detail? Can I just pick up on a point that Baroness O'Neill very kindly offered in terms of a regular meeting with this Committee? The Committee would find that useful. Given the importance

that is put on the autonomy and independence of your organisation and the importance of reporting to Parliament, that would be useful for you as well. I note that you did say in your response that you are ultimately accountable to Parliament. This is a direct way of being accountable to Parliament.

Baroness O'Neill of Bengarve: That is perfect, yes.

Q25 Chair: Maybe I could suggest that, outside this meeting, we draft a heads of agreement as to what a meeting like that might look like, because it would be important for this group to agree in advance the metrics by which we would assess the effectiveness of the organisation. In our scrutiny function for Parliament, we need to make sure we are looking at like-for-like, year-on-year to see the progress you are making in the effectiveness of the work you do. Can I suggest that, perhaps separately, we have a conversation and an exchange of letters on that?

Baroness O'Neill of Bengarve: I am very happy to do so. You may want to look at metrics or you may want to consider a deep dive on a given occasion into a particular area in which equalities and inequalities look troubling.

Chair: Thank you. That is excellent. In the interests of time, if we could move to Ruth's set of questions I would be most grateful.

Q26 Ruth Cadbury: Around "Is Britain Fairer?" you have mentioned this surprising fact about white working-class boys and low achievement a couple of times already. We have been working on that issue and we have known about it in Hounslow for at least 10 years, if not longer, and we have been running strategies and putting equalities resources into that area, because it is the single biggest group of low achievers in Hounslow, other London Boroughs and metropolitan areas in this country. I have a question about time lag. Is there a challenge in the fact that the data was collected in 2013 but the report was released this year? Do you feel you have the full data set? Are there some other data sets you would have liked to be included?

Baroness O'Neill of Bengarve: I am going to hand this one to Rebecca. It was, indeed, a particular problem that some data sets, not all, went up to 2013 and not more recently.

Rebecca Hilsenrath: First, I endorse the fact you agree with our findings. We did not set out to be surprising. In fact, one of the biggest positives has been the number of people who have agreed with much of what we said. That is important in terms of coherence and having a consistent basis to go forward. We would be really interested to hear from you separately about what your experience has been in looking at strategies in Hounslow.

There is a slight division between quantitative and qualitative data. Most of the quantitative data sets that were available to us ran from 2008-2013. We last carried out this piece of work in 2010, and that had the same issue. We are looking very much at five years on from that report. In terms of qualitative data, we were actually able to take much more recent material from 2013 onwards. We are happy that it is an up-to-date report, but we have been quite specific and clear about what the limitations of that evidence-gathering looked like.

I am coming back to the point you made, Chair, about the whole issue of attainment gaps. It is one of the eight key challenges that came out of IBF that we have adopted for our consultation and our strategic plan. It is an area that we are looking into. The biggest key

issue we have identified is that there are complex causes and there is a big question around what the Department for Education's role is. We are simply at the stage of saying, "This is a key challenge. What value can we add? Is it a conversation for the Department for Education?" Our conversation with stakeholders at our open board meetings highlighted that although we were saying, "Is this issue something that is for the Department for Education?" some of those around the table said, "Nobody else is speaking for poor white boys. It is not easy to step back if there is no specific voice". It is very helpful to hear that there is work going on that perhaps is not known across the piece. That is a conversation we would like to pick up with you.

Q27 Ruth Cadbury: I cannot believe Hounslow is unique. That work will have been known about in education circles. I do not think we were a particular beacon; we were doing what needed to be done based on the data we had. That data are there instantly through the school statistics. How are the findings of the report going to influence your next strategic plan?

Rebecca Hilsenrath: I would say it is core to our current consultation on the strategic plan, but it will not be responsible for the totality of it. It is extremely influential. Our strategic plan consultation identifies four overarching strategic objectives and then it looks at eight challenges from "Is Britain Fairer?" where we have identified a number of sub-issues we might take forward under each of those. We are also looking at the UK overseas, which does not come out of "Is Britain Fairer?", which is entirely domestic. We also obviously want to maintain the ability to be reactive and to look at other issues coming forward. The balance is that this is a seminal and really important piece of work. We would not be doing it if we were not going to be looking at work coming out of that going forward, but we will not be wholly restricted to it.

Baroness O'Neill of Bengarve: We hope that very large numbers of other organisations will find, "Okay, those are the data. That is surprising". Of course, there are things underneath the surface of the data, like very big regional differences, which are quite important.

Rebecca Hilsenrath: I would also add that, in addition to "Is Britain Fairer?" which I hope you have all seen, we are imminently publishing "Is Wales Fairer?" There will also be "Is Scotland Fairer?" and "Is Britain Fairer?" We will also be looking at producing shorter papers on specific protected characteristics in order to be able to disaggregate some of what is in "Is Britain Fairer?" to a more targeted place. We hope that will also be particularly helpful in supporting the work of partner organisations going forward.

Q28 Ruth Cadbury: Sorry, did I miss whether you answered the question around any data gaps?

Rebecca Hilsenrath: Data gaps are one of the key challenges that came out of "Is Britain Fairer?" I am really glad you picked that one up.

Ruth Cadbury: Are there any in particular?

Rebecca Hilsenrath: There are kinds of data gap. We feel there is a lack, for example, of intersectionality data coming out in various places. In addition to that, there are very specific groups that we think run the risk of being invisible. One is transgender, which I know you are aware of through your own work. Another, in some instances, is Gypsy and Traveller

groups. What we are looking at in various places is a need to ensure that data, going forward, are more robust. We will be looking at our measurement framework. One of the key things that will be about is reviewing it and making sure that we are able to populate it as we go along, so that in five years' time we are already going to be in a strong place for the next report we do. Even in advance of that, we are aware that evidence is going to be extremely important to everything we do, as it is of course for you.

Q29 Jess Phillips: Just picking up on some of those points, I recognise that there is a strong need to build evidence for the report. I feel a certain amount of frustration, however, leading on a little bit from what Ruth has said about knowing this for a long time. I wonder what the Commission's role in advising people what to do about it is. In some of the activities—I will come on to talk about the litigation, and maybe that changes it—how do you pull the levers of change, rather than just pointing out that there is a problem?

Baroness O'Neill of Bengarve: That, of course, is always the frustration. Deeply entrenched social trends get documented again and again and again—documentation may be better or worse, but they do it—but the levers of change are actually quite difficult. The reaction we have had, to a surprising extent, is, “Oh, quite a lot of things have changed since the previous report”. I do not really have a preconception myself, but I suppose we are not going to succeed in changing everything in one five-year period. However, to assemble the documentation in one place and note, as it were, where and whom the shoe is pinching is quite important.

The next thing is how do you act for change? That is where it is the various powers we have—I often think they are quite slender weapons to use, if weapons they are. Yes, they do achieve some change, and the more concrete the problem you address, the more address you might see in a five-year period. If it is about disabled access to banking, for example, which is still quite a serious issue, you might see quite a lot of change in a five-year period. If it is children of a certain background thinking, “School is not for me”, that is very recalcitrant and you have to think of a much more nuanced and collaborative way around it.

Rebecca Hilsenrath: “Is Britain Fairer?” provides us with a platform for a really constructive dialogue at this point. We were really pleased by its reception. In fact, yesterday we held a meeting with a number of Government departments, which came to our offices as part of our strategic-plan consultation. What was notable to me was that they had obviously read “Is Britain Fairer?” We had sent it to them ahead of the meeting. Some of them were very proactive in saying, “We can understand that you are interested in the place we are interested in. Are you able to work with us? We think you will add a very helpful dimension and perspective to what we are already looking at”. We hope that will be a very fruitful place in order to look at developing partnerships and shared working.

Q30 Jess Phillips: Specifically around strategic litigation, there was a comment made earlier—I cannot remember by whom specifically—that you look only at strategic cases. I do not really know what that means and how you pick out these cases. Could you give us a brief understanding of how you decide which cases you take and which you do not?

Rebecca Hilsenrath: We have a strategic litigation policy I referred to a few minutes ago, which was developed last year in consultation with stakeholders in the legal and advice sector. It is available on our website, and I am more than happy to send it to you after this

session. In essence, it identifies various criteria that we will take into account in determining whether to take the case forward.

Obviously, you are aware that there are a vast number of potential cases in this field. You may also be aware that I gave evidence to the Justice Committee a week ago in relation to employment tribunal fees. A very key area of our work is around looking at access to justice and effective implementation of remedies under the Equality Act. We are interested in that place in a more strategic way—what is the best way of addressing that? It is not an in-house solution. Our litigation powers are not there to be used as a frontline agency. Simply because of our resources, we could not even begin to have an impact on that place.

What happens is that, when a case is referred to us either by a lawyer or through EASS, we have an internal group that meets to look at that. It is open, but membership is drawn from across the Commission. We look at people from policy, communications and legal, and so on and so forth. They will look at its merits against the criteria we set out in our policy. Those we take on will, broadly speaking, be about clarifying the law. Sometimes it will be about the nature of the organisations involved, if they are sufficiently large, and their functions might have a particular impact. It would be about the nature of the life chances involved and the likelihood of change and so on and so forth.

However, it is important not to leave the area without coming back to that point about access to justice. That is a key part of our work, both in previous years and under the strategic plan we are consulting on. We are looking at whether we can have an impact in seeking more powers, which we have already flagged up with all political parties. We are addressing the Civil Justice Council forum in a couple of weeks to see what their views are on what role we can play in that place.

Q31 Jess Phillips: Obviously, you have to take a strategic view on resources. Could you highlight what you could have done before that you cannot do now? Has that made you less effective or, potentially, more effective and targeted, with specific regard to litigation?

Rebecca Hilsenrath: I was not here. We had three times as many resources, but three times as much litigation is still not a frontline agency. We were never going to be in a place where we could pick up every discrimination case under the Equality Act. We would always have had to have a filter system. In a sense, the more resource you have, the lower you can set the bar. However, in this instance, I come back to our comments about EASS and Northern Ireland. It is about the efficiency of the provision of material rather than exactly how you pick the cases.

Baroness O'Neill of Bengarve: Sometimes litigation does not succeed in clarifying the law, or at least certainly not in clarifying public understanding of the law. That is one of the reasons why, under our human rights responsibilities, we are looking at the legal protection of rights to freedom of religion and belief, because a set of much-publicised cases—I am sure you have all read them—have led people to be very confused about what is and is not permitted. It may be that that is an area where, having clearly seen that cases are not going to do the requisite clarification, we would make a recommendation for some form of legislation to clarify. I will give it to you in a very short form. Interpreting that phrase, “freedom of religion and belief”, is clearly meant to cover humanism and other world-orienting views. Some of our lower courts have decided that anti-fox hunting is a religion but pro-fox hunting

is not. That is not clarifying for the public when the courts do something like that. We are on the case there, but it is a rather slower operation.

Jess Phillips: I am glad the courts are wasting their time on stuff like that.

Rebecca Hilsenrath: It is a place where we are able to have more impact because of the breadth of our remit. I will give you an example. We intervened in a case called *Moore & Coates*, which was about the lawfulness of the Secretary of State's policy of recovering all applications in the greenbelt for Gypsy and Traveller sites. The essence of our arguments was around the public sector equality duty. Our intervention was sufficiently effective that large parts of it were, in effect, cut and pasted into the decision, although I probably should not say that in this place. That was a specific case within the planning space, particularly in relation to Gypsies and Travellers. However, in actual fact, of course, it has a very broad impact in terms of clarifying the strength of obligations under the public sector equality duty, and looking at what good compliance looks like. We are extremely pleased with the result, and it was what would define as the essence of strategic litigation.

Q32 Jess Phillips: With regard to your litigation, you would say that you are effective.

Rebecca Hilsenrath: Yes.

Jess Phillips: You think it is an effective arm.

Baroness O'Neill of Bengarve: It is effective, but not every case is effective. If you win every case you bring, you are not being bold enough. You have to judge what your risk appetite is, and sometimes you take up cases you lose, irritatingly.

Q33 Chair: We want to touch on the telephone line again. We have gone through quite a lot of that. Is there anything else you wanted to say?

Jess Phillips: No, it is just trying to understand how one targets it and, potentially, what gets turned away. That is potentially what I still do not quite have a handle on.

Baroness O'Neill of Bengarve: It is a very, very tough series of filters. It has to be, because resource is what it is.

Rebecca Hilsenrath: As I say, it is about the nature of the issue. Is it going to clarify the law? We are always profoundly sympathetic to the issue, but is it just another piece of discrimination that is not going to have any impact beyond the actual individual in the case? We also look at the defendant. There was a comment made earlier about small and medium-sized enterprises. We would be loth to take a case where it was felt to be disproportionate in terms of the individual organisation that was defending the action as well. In a sense, it is a science, but there are quite a broad number of factors that come into play. The important thing is to say that we do consider this with a team drawn from across disciplines in the committee.

Q34 Chair: Can I ask a final question on the telephone line? I am a little confused. If it is simply the guidance to operators that is standing in the way of your accessing the information you need to get your strategic referrals, why can you not change that guidance?

Rebecca Hilsenrath: It is not our guidance and we do not run it.

Chair: You can ask the people who do.

Rebecca Hilsenrath: We do. We have a very focused conversation with them. We meet them on a very regular basis.

Chair: Who is that?

Rebecca Hilsenrath: It is the Equality Advisory and Support Service.

Chair: Who is that commissioned by?

Rebecca Hilsenrath: It was commissioned by GEO.

Q35 Chair: Why can you not ask GEO to change the guidance?

Rebecca Hilsenrath: We do. We have concerns about the skills of those who are actually operating the helpline and we have concerns about their understanding of the area in which they are working and the nature of the pathway of the cases they take. We are frequently referred cases that are simply inappropriate for us to take on. That is after a very significant amount of dialogue and discourse with them. It is a frustration echoed by a number of other people working in the field, including Citizens Advice, the EPF and a broad range of stakeholders. This is not actually just about us being negative.

Chair: That is helpful. I am so sorry that we have overrun. I know you are both people with very busy diaries. I apologise for running over by about eight minutes. On behalf of the Committee, I thank you for your time this morning. That was incredibly helpful. We will follow up on the pieces of work we have indicated in liaison with your offices, if that is okay. Thank you again.

Baroness O'Neill of Bengarve: Thank you.