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Global Alliance of National Human Rights Institutions (GANHRI")
Sub Committee on Accreditation ("SCA")
National Institutions and Regional Mechanisms Section
OHCHR
CH-1211 Geneva 10
Switzerland

Dear SCA

The UK's Equality and Human Rights Commission ("EHRC")

SCA's Accreditation Review, October 2022

1. Introduction

- 1.1 We act for Stonewall (the UK's largest charity promoting the rights of lesbian, gay, bisexual and trans people, registered in England and Wales under charity number 1101255), Disabled People Against Cuts ("DPAC") (an unincorporated association promoting the rights of disabled people) and Good Law Project Limited ("GLP") (a not-for-profit legal campaigning organisation).
- 1.2 In advance of the SCA's review of the EHRC's accreditation as a National Human Rights Institution ("NHRI") with A status, our clients wish to draw the SCA's attention to serious concerns that have arisen, or worsened, since the last review of the EHRC's status in 2015. They consider, with regret, that the EHRC is no longer sufficiently compliant with the Paris Principles¹ to justify its

¹ The United Nations Human Rights, 'Principles relating to the Status of National Institutions (The Paris Principles)', adopted December 1993, <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>

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retention of A status, in large part due to the failings of the UK Government to provide adequate statutory powers, independent appointments and sufficient funding.

- 1.3 We enclose Stonewall and DPAC's respective detailed submissions (each of which has a number of co-signatories). GLP supports these submissions, as well as the contents of this letter. We will in this letter (a) summarise the perceived failings that are common to both submissions, ordered in accordance with the relevant Paris Principles, and then (b) outline some of the consequences of those failings.

2. **Paris Principle A3: promotion and protection of human rights**

What is required

- 2.1 Principle A3 requires an NHRI, *inter alia*, to:
 - (a) submit to the Government "*opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights*" (item (a));
 - (b) "*promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation*" (item (b)); and
 - (c) "*publicize human rights and efforts to combat all forms of discrimination*" (item (g)).
- 2.2 The SCA's General Observation² 1.3 explains that, in practice, this means that NHRIs are required to "*review relevant national laws, regulations and policies to determine that they are compatible with the obligations arising from international human rights standards*".
- 2.3 General Observation 1.6 explains that "[i]n fulfilling its protection mandate, an NHRI must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow up activities to promote and advocate for the implementation [of] its recommendations and findings".
- 2.4 General Observation 1.11 explains that each NHRI should produce and disseminate an annual report "*on its national situation with regard to human rights in general, and on more specific matters*", and that "*it is preferable for the NHRI to have an explicit power to*

² GANHRI, 'General Observations of the SCA', adopted February 2018, https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf

or mere “*fashion*”). Among the 2020 appointees referred to in the Secretary of State’s speech, for example:

- (a) Baroness Falkner, the EHRC’s Chair and a member of the House of Lords, has spoken in support of anti-trans “gender critical” beliefs and appears to have liaised disproportionately with “gender critical” groups in her capacity as Chair;¹²
- (b) David Goodhart has described complaints of systemic racism as “*statistically naive*” and argued that “*white self-interest is not the same thing as racism*”;¹³
- (c) Jessica Butcher has argued that “*feminism, like other forms of identity politics, has become obsessed with female victimhood*” and argued that the most productive response to discrimination is not to “*go cry to someone about how you might have been gender-discriminated against*” (“someone”, perhaps, such as an equalities watchdog) but rather to show “*resilience*” and “*mould yourself, change yourself to the circumstances as required*”;¹⁴ and
- (d) Lord Ribeiro was appointed as an “*exceptional direct appointment*”, i.e. one made without competition or an open recruitment process, in order to fill a perceived “*skill set deficit*” relating to the Covid-19 pandemic.¹⁵ Our clients note that the use of similar direct appointment provisions by the Australian NHRI, the Australian Human Rights Commission, led to a decision on its accreditation status being deferred in March 2022.¹⁶

3.14 As the SCA noted in 2015, the appointment of EHRC commissioners is overseen by the Commissioner for Public Appointments. This is, however, an increasingly limited safeguard. The previous holder of the role, Peter Riddell, raised the alarm in October 2020 about the

¹² Pink News, ‘Cis women have the right to be ‘gender critical’ without being ‘abused’, says UK’s new equality chief’, 15 May 2021, <https://www.pinknews.co.uk/2021/05/15/baroness-falkner-equalities-human-rights-commission-gender-critical-trans/>; Vice World News, ‘Britain’s Equalities Watchdog Met Privately with Anti-Trans Groups’, 2 February 2022, <https://www.vice.com/en/article/wxdzwn/ehrc-trans-rights-leaked-emails>

¹³ The Guardian, ‘Equalities campaigners criticise senior EHRC appointment’, 13 November 2020, <https://www.theguardian.com/society/2020/nov/13/campaigners-criticise-senior-ehrc-appointment-david-goodhart>

¹⁴ The Guardian, ‘New equalities commissioner attacked ‘modern feminism’ and #MeToo’, 22 November 2020, <https://www.theguardian.com/society/2020/nov/22/new-equalities-commissioner-attacked-modern-feminism-and-metoo>

¹⁵ The Commissioner for Public Appointments, ‘Exceptional Appointments made without a competition’, Undated, <https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/exceptional-appointments-made-without-competition/>

¹⁶ GANHRI ‘Report and Recommendations of the Virtual Session of the SCA’, 14-25 March 2022, https://ganhri.org/wp-content/uploads/2022/04/SCA-Report-March-2022_EN.pdf

table reports directly in the legislature rather than through the Executive and, in so doing, to promote action on them.”

The EHRC’s compliance

- 2.5 The SCA’s 2015 re-accreditation report³ raised a concern that *“the annual report of the EHRC is sent to the Secretary of State, who then lays it before Parliament”*, with no power for the EHRC to table reports in Parliament directly.
- 2.6 In 2018, a Tailored Review of the EHRC commissioned by Government identified the same issue, reporting that:⁴

“[t]he EHRC can brief parliamentarians or anyone else directly, but its statutory documents are laid in Parliament by the Secretary of State. While in practice these issues do not directly impinge on what the Commission can prioritise or issues it can champion, a different kind of independence could bolster the EHRC’s credentials as an NHRI and have potential practical benefits, including in relation to budget setting and Commissioner appointments.”
- 2.7 The position has not, however, changed. It is still the case that - as explained in the framework agreement that sets out the nature of the EHRC’s relationship with the Government Equalities Office (“GEO”) (its sponsor department in Government)⁵ - *“[t]he Minister for Women and Equalities will account for the EHRC’s business in Parliament.”*
- 2.8 Our clients consider this issue to be emblematic of the EHRC’s lack of actual and perceived independence from Government, which seems to have rendered it increasingly unwilling or unable to properly perform its “promotion” mandate (as detailed in the “Consequences” section below), while also undermining trust in the EHRC on the part of societally underrepresented groups.
- 2.9 The EHRC’s ability to perform its “protection” mandate is even more limited, not least because it does not have the power to investigate and/or provide legal assistance in human rights cases. As set out in

³ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, ‘Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), November 2015, <https://ganhri.org/wp-content/uploads/2019/11/SCA-FINAL-REPORT-NOVEMBER-2015-English.pdf>

⁴ HM Government, ‘Tailored Review of the EHRC’, November 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756905/EHRC-Tailored-Review-Nov18.pdf

⁵ Cabinet Office & EHRC, ‘Framework Document’, November 2019, <https://www.equalityhumanrights.com/sites/default/files/about-us-how-we-work-with-government-geo-framework.docx>

the EHRC's evidence to Parliament's Joint Committee on Human Rights in September 2020:

*"One key outstanding issue is that the Commission's equality and human rights enforcement powers are asymmetrical [...] There have been several instances where we have been unable to provide financial support for a meritorious and potentially strategic case because of this limitation on the cases we can fund. Similarly, although we have the power to undertake an investigation where we suspect an organisation has committed an unlawful act under the Equality Act 2010, this power does not extend to human rights breaches. The lack of an investigation power limits the Commission's ability to tackle suspected breaches of human rights law."*⁶ (emphasis added)

2.10 It also remains the case that, as noted by the SCA in 2015, "[t]he Law does not provide the EHRC with an explicit mandate to encourage ratification or accession to international human rights instruments."

2.11 Our clients consider that the legal framework around the EHRC has been designed, and maintained despite repeated criticism, to limit its effectiveness and independence.

3. Paris Principle B1: composition and guarantees of independence and pluralism

What is required

3.1 Principle B2 requires that NHRIs are established so as to "to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights."

3.2 The SCA's General Observation 1.8 states that "[t]he SCA interprets the reference to an election or other like process, together with the reference to broad participation, as requiring a clear, transparent, merit-based and participatory selection and appointment process. Such a process is fundamental in ensuring the independence and effectiveness of, and public confidence in, the NHRI" (emphasis added). It adds that the appointment process "should be under the control of an independent and credible body and involve open and fair consultation with NGOs and civil society."

⁶ Written evidence from the EHRC (RHR0023), September 2020, <https://committees.parliament.uk/writtenevidence/12267/html>

To make our society more equal, we need the equality debate to be led by facts not by fashion.”⁹ (emphasis added)

3.11 Former EHRC Chair David Isaac was alarmed by the speech:

“[The Secretary of State] says ‘I’ve appointed a new chair and these new commissioners’, and she doesn’t say ‘they’re going to do my bidding’, but it’s pretty implicit in what she’s saying that they are people who are supportive of her approach to equalities, which is a focus on white working-class people and the north of England and the levelling up agenda.

My view is that an independent regulator shouldn’t be in a position where the governments of the day can actually influence the appointments of that body to support a particular ideology.”¹⁰

3.12 The EHRC itself, however, welcomed it, accepting the Secretary of State’s framing of the EHRC as having a passive supporting role (rather than an independent mandate) and aligning the EHRC with the Government’s “levelling up” agenda, which ignores issues of institutional and structural disadvantage:

“We agree with the Minister for Women and Equalities’ acknowledgement of the importance of socio-economic inequality, in her speech on 17th December 2020 [...] The Commission stands ready to support a renewed drive to identify and address the root causes of the barriers that hold people back from fulfilling their potential”¹¹ (emphasis added)

3.13 As our clients set out in their submissions, many of the appointments made to further this new agenda have been met with dismay across civil society. On crucial issues, the new commissioners often adhere to regressive views which align with the Government’s, but which are out of step with the vast majority of equalities and human rights bodies (whose views are dismissed as “groupthink”, “campaigning”

⁹ The Minister for Women and Equalities, Liz Truss, ‘Speech: Fight for Fairness’, published 17 December 2020, <https://www.gov.uk/government/speeches/fight-for-fairness>

¹⁰ The Guardian, ‘EHRC undermined by pressure support No 10 agenda, says ex-chair’, 18 January 2021, <https://www.theguardian.com/society/2021/jan/18/ehrc-undermined-pressure-support-no-10-agenda-david-isaac>

¹¹ The EHRC, ‘Inquiry Evidence: The role of the Government Equalities Office - embedding equalities across Government’, 2 March 2021, https://www.equalityhumanrights.com/sites/default/files/evidence_to_the_women_and_equalities_committee_inquiry_the_role_of_the_government_equalities_office_embedding_equalities_across_government.docx

- 3.9 In August 2020, the EHRC's outgoing Chair David Isaac departed because the Government wanted, he perceived, someone who "*is more like their agenda*".⁸
- 3.10 On 17 December 2020, having appointed a new Chair and several new commissioners, Liz Truss MP (the Minister for Women and Equalities, and the Secretary of State for Foreign, Commonwealth and Development Affairs) gave a speech that made it clear that she saw the EHRC as a vehicle for driving forward the Government's agenda and had made the appointments on that basis:

"Too often, the equality debate has been dominated by a small number of unrepresentative voices, and by those who believe people are defined by their protected characteristic, and not by their individual character.

This school of thought says that if you are not from an 'oppressed group' then you are not entitled to an opinion, and that this debate is not for you.

I wholeheartedly reject this approach.

[...] The best way to reduce unfairness in our society is through opening up opportunities for all.

This is the level playing field we should be talking about.

And we are going to make sure that this level playing field is properly enforced.

That is why I am appointing a new chair and a wide variety of commissioners to the Equality and Human Rights Commission to drive this agenda forward.

I am proud we have Baroness Kishwer Falkner, David Goodhart, Jessica Butcher, Su-Mei Thompson and Lord Ribeiro, all of whom are committed to equality and ready to challenge dangerous groupthink.

Under this new leadership, the EHRC will focus on enforcing fair treatment for all, rather than freelance campaigning.

⁸ The Guardian, 'David Isaac: Equalities chief bids farewell after four 'momentous' years', 8 August 2020, <https://www.theguardian.com/society/2020/aug/08/david-isaac-equalities-chief-bids-farewell-after-four-momentous-years>

- 3.3 General Observation 1.9 records that members of parliament “*should not in general be represented on*” the NHRI to avoid conflicts of interest.

The EHRC’s compliance

- 3.4 Concerns were raised regarding the EHRC’s compliance with this Principle in 2015, when the SCA said that, even though the oversight of the process by the Commissioner for Public Appointments provided some reassurance:

“[t]he SCA is of the view that the process currently enshrined in the Law is not sufficiently broad and transparent. In particular, it does not: require the advertisement of vacancies; establish clear and uniform criteria upon which the merit of eligible applicants is assessed; or promote broad consultation and / or participation in the application, screening, selection and appointment process.”

- 3.5 The SCA was also concerned that the Secretary of State was empowered to appoint members of the EHRC either because they had relevant experience or knowledge, or “*for some other special reason*”, a term which the SCA observed “*is not sufficiently defined in the law and may be open to abuse*”.
- 3.6 Our clients consider that the SCA’s concerns have proved prescient and the situation has worsened.
- 3.7 The EHRC has been seen as increasingly close to, and unwilling to criticise, the Government since 2015 (and in particular since the election of the current Prime Minister with a large Parliamentary majority in 2019). The appointment of EHRC commissioners who are broadly supportive of the Government and its agenda has been a crucial factor in that shift.
- 3.8 Such appointments have been a pattern across the UK public sector since 2019 in particular, with increasingly forceful Government interventions in appointments to key roles.⁷ The EHRC has been no exception.

⁷ See, for example, the attempt to install the former editor of the Daily Mail, Paul Dacre, as the Chair of Ofcom, the media regulator, reportedly at the Prime Minister’s behest. When he was deemed unappointable by a selection panel in May 2021, the Government ordered that the [process be re-run](#), allowing Mr Dacre to re-apply (though he dropped out following a public backlash). See also the recent recruitment process for a new Chair of the Charity Commission, during which the Secretary of State published an [article](#) announcing that he had “*instructed those leading the search*” to appoint a candidate who was willing to push back on “woke” charities. The Secretary of State’s first choice appointee dropped out before even starting the role after [revelations of past misconduct](#); its second choice was [rejected](#) by the Parliamentary Select Committee tasked with approving the Secretary of State’s nomination, but was installed regardless.

increasing difficulty of resisting pressure from Government to interfere in appointments to key public jobs, saying:

“There are, however, signs [...] that some at the centre of government want not only to have the final say but to tilt the competition system in their favour to appoint their allies. For instance, in recent months I have on a number of occasions had to resist, successfully so far, attempts by ministers to appoint people with clear party affiliations as Senior Independent Panel Members when that is expressly barred under the Code. There have also been attempts to stretch the Code by, for example, packing the composition of interview panels with allies.”¹⁷

- 3.15 Peter Riddell has since controversially been replaced by William Shawcross, who 17 civil society organisations (including Amnesty International, Liberty and the Runnymede Trust) had previously accused of having “expressed patently Islamophobic views” when he said that “Europe and Islam is one of the greatest, most terrifying problems of our future. I think all European countries have vastly, very quickly growing Islamic populations.”¹⁸
- 3.16 Accordingly, while the appointment process may have the outward appearance of some independence, it is being used in practice to appoint those that support the Government’s agenda on a range of issues. It is therefore unsurprising that the EHRC has failed to be even a critical friend to, let alone a significant thorn in the side of, a UK Government that is overtly hostile to human rights and civil liberties.

4. Paris Principle B2 - funding

What is required

- 4.1 Principle B2 requires that the NHRI shall have “adequate funding”.
- 4.2 General Observation 1.10 explains that this means an NHRI “must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities”, and that:

¹⁷ Letter from the Commissioner for Public Appointments Peter Riddell to Lord Jonathan Evans, 7 October 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932513/Peter_Riddell_to_Lord_Evans.docx.pdf

¹⁸ Amnesty International, ‘UK: NGOs Condemn appointment of William Shawcross and announce society-led review of Prevent’, 16 February 2021, <https://www.amnesty.org/en/latest/news/2021/02/uk-ngos-condemn-appointment-of-william-shawcross-and-announce-civil-society-led-review-of-prevent/>

“[w]hile the provision of “adequate funding” is determined in part by the national financial climate, States have the duty to protect the most vulnerable members of society, who are often the victims of human rights violations, even in times of severe resource constraints.”

The EHRC’s compliance

4.3 In 2015 the SCA recorded that:

“The EHRC has experienced a significant cut in its budget since 2010. The SCA acknowledges the EHRC’s report that most public bodies have experienced a cut in funding. However, the SCA notes that the EHRC has experienced a cut in funding, equivalent to approximately seventy percent (70%) of its 2010 budget. The SCA also notes that the number of staff have been reduced from 500 in 2010 to 204 in 2015 [...]

The SCA is concerned that the Secretary of State has significant discretion over the allocation of funds to the EHRC, and that this has the potential to impact on its effectiveness and independence.”

4.4 That situation has not improved. The 2018 Tailored Review of the EHRC recorded that:

“The EHRC’s budget has reduced from its peak of £70.3 million in 2007 to £18.3 million in 2018, following successive spending reviews. It will reduce to £17.6m in 2019. Staff numbers have reduced from 530 in 2010 to 179 in 2018. A comprehensive budget review of the Commission in 2012 identified funding of £17.1m per year as required for the EHRC to discharge its functions effectively [...] the EHRC has recently suggested that its budget should rise by 30 per cent, and it no longer agrees to £17.1m as the base amount to fulfil the EHRC’s statutory duties.”¹⁹

4.5 The EHRC’s response to the Tailored Review agreed that “[t]he breadth of our remit and the size and reduction in our budget inevitably mean that we agree that we need to make some difficult choices about what we do and do not work on.”²⁰

¹⁹ HM Government, ‘Tailored Review of the EHRC’, November 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756905/EHRC-Tailored-Review-Nov18.pdf

²⁰ EHRC, ‘Response to the government’s Tailored Review of the EHRC 2018’, 19 November 2018, <https://equalityhumanrights.com/en/publication-download/response-governments-tailored-review-equality-and-human-rights-commission-2018>

- 4.6 Departing in 2020, the EHRC's then-Chair David Isaac was interviewed by the Guardian, which reported as follows:

*"He points out that the entire commission - an umbrella organisation set up to protect the rights of marginalised sectors of society including disabled people, BAME communities, women and LGBTQ+ groups - now has a budget of just £17m, a fraction of the £70m it had at its peak and £2m less than the Commission for Racial Equality alone was allocated in 2006." "Inevitably it means we can do less," Isaac said."*²¹

- 4.7 Nonetheless, the EHRC's estimated budget for 2021-2022 remained £17.1m - a substantial real-terms cut compared with even 2018 given wage rises and inflation.²²
- 4.8 The EHRC's pay gap reporting data shows that its number of staff in 2021 was 198 (fewer than the 204 reported to the SCA in 2015).²³
- 4.9 The EHRC's March 2021 submission to an inquiry into the role of the GEO explained that current Departmental arrangements were exacerbating its budget problems:

*"The main existing challenge is that the Minister for Women and Equalities role is not located within the same department as her officials. This presents practical but important difficulties [...] in particular in relation to the arrangements for settling our budget where the Minister for Women and Equalities has statutory responsibility for providing the Commission with a budget sufficient to enable us to perform our statutory functions, but our budget is allocated by the Department in which the GEO sits" [16]*²⁴

- 4.10 Minutes from the EHRC's February 2022 Board Meeting show ongoing problems in this regard:

²¹ The Guardian, 'David Isaac: Equalities chief bids farewell after four 'momentous' years', 8 August 2020, <https://www.theguardian.com/society/2020/aug/08/david-isaac-equalities-chief-bids-farewell-after-four-momentous-years>

²² EHRC, 'Business plan 2021 to 2022, last updated 30 March 2022, <https://www.equalityhumanrights.com/en/what-we-do/business-plan-2021-2022#budget>

²³ EHRC, 'Our pay gap data', first published 15 August 2017, <https://www.equalityhumanrights.com/en/publication-download/our-pay-gap-data>

²⁴ EHRC, 'Inquiry Evidence: The role of the Government Equalities Office - embedding equalities across Government', 2 March 2021, https://www.equalityhumanrights.com/sites/default/files/evidence_to_the_women_and_equalities_committee_inquiry_the_role_of_the_government_equalities_office_embedding_equalities_across_government.docx

“The Chairwoman expressed the Board’s concern that the delays in receiving our 2022-23 budget from the Cabinet Office would impact adversely on our ability to deliver our programme of work, including a heightened risk of an underspend at year-end due to the inevitable slow start to spending at the beginning of the year in the absence of a budget. The Government Equalities Office apologised to the Board and insisted that it was doing what it could to expedite matters.”

- 4.11 It is impossible not to conclude that the EHRC is being prevented from fulfilling the role of an effective A-status NHRI by inadequate Government funding.

5. Paris Principle C: Methods of Operation

What is required

- 5.1 NHRIs are required to (*inter alia*) “develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas”.
- 5.2 General Observation 1.5 explains that this requires them to “develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights”.

The EHRC’s compliance

- 5.3 Given the failures outline above, and the extent to which the EHRC is now, like the Government, substantially out of step with mainstream civil society organisations in its stance on equality and human rights, it is unsurprising that a huge number of such organisations - of which our clients are just three - have lost faith in the EHRC, its desire to work with them constructively (or at all), and its ability to hold the Government to account.
- 5.4 The EHRC has, in any event, long been discouraged by Government from prioritising collaboration with civil society organisations over working with the private sector and with Government itself. In its 2012 response to a consultation on EHRC reform, for example, Government had written that “we expect the EHRC to work with, and through, a wide range of partners, and in particular to strengthen its links across Government, the business sector and the

voluntary and community sector, in order to make it more effective and responsive."²⁵

- 5.5 The 2018 Tailored Review, which consulted with 80 stakeholder groups, noted that "[i]n the UK there is a long tradition of rights activism and the EHRC has an extensive and vibrant stakeholder base [...] in most circumstances it can draw on the support of others to be more than the sum of its parts." It concluded, however, that the EHRC:

"is not seen as a robust regulator or enforcer of the law, its impact is not always explained or measured, its influence and engagement with stakeholders is often not effective [...] The Review has found a supportive group of stakeholders, who are committed to the concept of the EHRC but question the effectiveness of the organisation. They see the Commission in practice as an information provider first and an enforcer and agent of change second."

- 5.6 The EHRC's response to the Tailored Review said that it was *"committed to deepening our relationships with all our stakeholders to bring improved intelligence from these discussions back into the Commission and to ensure that everything we do is informed by their expertise and feedback."* That commitment has not, in our clients' experience, materialised.

6. Consequences

- 6.1 The above failings - namely, the inadequate legal powers, the lack of a robustly independent appointments process, insufficient funding, and the failure to work effectively with civil society organisations - have had a marked impact on the EHRC's ability (and/or desire) to effectively and independently perform its protection and promotion mandates. The real world impacts of that failure are detailed in our clients' submissions (and the submissions of other groups we have seen); a few key examples are summarised below.

Trans rights

- 6.2 As Stonewall's submission explains, the Government has, since 2019 in particular, repeatedly denigrated trans rights - often by framing them as being antithetical to women's rights - in a way that has met no meaningful opposition from the EHRC. Instead, several of the

²⁵ HM Government, 'Building a fairer Britain: Report of the EHRC, Response to the Consultation', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85308/EHRC-consultation-response.pdf

current commissioners have personally endorsed the Government's "gender critical" framing of the issue, and the EHRC has consistently failed to respond to attacks by the Government on trans people's rights that are at odds with both domestic equality legislation and international human rights standards.

- 6.3 For example, as set out in more detail by Stonewall, the EHRC (like the Government) had previously supported reform of the Gender Recognition Act ("GRA") to allow self-identification. When the Government changed course in around 2020 to oppose reform, so did the EHRC.
- 6.4 Giving evidence on GRA reform to the Women and Equalities' Select Committee in 2020, the EHRC's Chair (Baroness Falkner) was reluctant to set out an EHRC position independent of the Government's, saying:

"The Government have indicated that they are not moving to change legislation, therefore nothing has changed and there is very little that we find we would wish to say on this [...] we feel that a lot of the ground that you may wish to cover is ground better covered by Government than by a regulator, whose duty it is simply to enforce the law as we find it" [68] (emphasis added).²⁶

- 6.5 The Select Committee was critical of the EHRC Chair's interpretation of the scope of the EHRC's duty:

"We appreciate that the Equality and Human Rights Commission has a core function as an enforcer. It also, however, has a responsibility to provide information, influence policy and be a catalyst for change. In our view, the Commission has neglected to adequately fulfil these functions in relation to Gender Recognition Act reform. It is a matter of deep regret that the Government and its public bodies have chosen to evade Parliamentary scrutiny on this contentious subject" [73].

- 6.6 On 26 January 2022 the EHRC advocated for the exclusion of trans people from the Government's proposed ban on conversion therapy²⁷ (advice commissioned by GLP concludes that this is likely to be a breach of the Human Rights Act).

²⁶ The House of Commons Women and Equalities Committee, 'Reform of the Gender Recognition Act', (Third Report of Session 2021-22), 21 December 2021, <https://committees.parliament.uk/publications/8329/documents/84728/default/>

²⁷ EHRC, 'Response submitted to UK Government consultation: Banning conversion therapy', January 2022, <https://www.equalityhumanrights.com/sites/default/files/consultation-response-banning-conversion-therapy-26-january-2022.docx>

- 6.7 Equally worryingly, in April 2022 the EHRC published guidance advocating for the exclusion of trans people from single-sex spaces.²⁸

Disabled people's rights

- 6.8 As DPAC's submission sets out, DPAC has for years been asking the EHRC to investigate discrimination against disabled people in the Government's social security system, which has led to the death of many recipients, and immeasurable harm to many others. In October 2019 the EHRC said it was considering what it could do to address the issue.²⁹ In June 2020 it said it was unable to undertake an inquiry due to the pandemic.³⁰ In April 2022, the EHRC announced that it had agreed an "action plan" with DWP which is "*focused on resolving issues for DWP customers, and offers a fast, effective means of redress, and helps to avoid lengthy investigations.*"³¹ DPAC's position remains that a proper, transparent investigation is required if the systemic failings at the DWP are to be meaningfully understood and addressed.
- 6.9 DPAC considers it likely that the decision to scrap the EHRC's designated disability commissioner in 2017,³² and its decision to dissolve its Disability Advisory Committee in March 2022,³³ are partly responsible for this inaction.
- 6.10 When the latter decision was announced, the EHRC recognised that the Committee's work had been "*invaluable*", and quoted the Committee's former Chair explaining that she looked forward "*to detailed discussions with the Commission on how they plan to engage disabled people effectively over the next Strategic Plan period - from April 2022 onwards - in line with their clear commitment to engaging early, at formative stages of their work, and in an ongoing way, and to involving diverse disabled people with*

²⁸ EHRC, 'Guidance: Separate and single-sex service providers: a guide on the Equality Act sex and gender reassignment exceptions', April 2022, <https://www.equalityhumanrights.com/sites/default/files/guidance-separate-and-single-sex-service-providers-equality-act-sex-and-gender-reassignment-exceptions.pdf>

²⁹ Disability News Service, 'Equality watchdog 'considering action' on benefits discrimination', 31 October 2019, <https://www.disabilitynewsservice.com/equality-watchdog-considering-action-on-benefits-discrimination/>

³⁰ Disability News Service, 'EHRC failed to consult its own disabled advisers before snubbing DWP deaths probe', 2 July 2020, <https://www.disabilitynewsservice.com/ehrc-failed-to-consult-its-own-disabled-advisers-before-snubbing-dwp-deaths-probe/>

³¹ EHRC, 'EHRC taking action to improve the treatment of disabled benefit claimants', 19 April 2022, <https://www.equalityhumanrights.com/en/our-work/news/ehrc-taking-action-improve-treatment-disabled-benefit-claimants>

³² Disability News Service, 'New disabled commission 'astounded and offended' by EHRC treatment', 29 June 2017, <https://www.disabilitynewsservice.com/new-disabled-commissioner-astounded-and-offended-by-ehrc-treatment/>

³³ Disability News Service, 'New concerns over equality watchdog as it scraps disability committee', 3 March 2022, <https://www.disabilitynewsservice.com/new-concerns-over-equality-watchdog-as-it-scraps-disability-committee/>

a wide range of experience and expertise."³⁴ DPAC does not believe that that kind of engagement has happened, and considers it likely that the lack of input from disabled people in its decision-making has led the EHRC to deprioritise disabled people's rights, and in some cases to adopt approaches which are actively damaging to them.

- 6.11 This was illustrated by the EHRC's only notable intervention in this area in recent months - an announcement on Twitter on 7 May 2022 that long covid should not be treated as a disability, a stance which was met with confusion and dismay by disability activists.³⁵ Two days later the EHRC posted a clarifying statement which confirmed that it was possible for long covid to amount to a disability;³⁶ this confusing back and forth could likely have been avoided had the voices of disabled people been considered before the tweet was issued rather than afterwards.

Racism

- 6.12 A 2020 report on *"Black people, racism and human rights"* by Parliament's Joint Committee on Human Rights found that the EHRC *"has been unable to adequately provide leadership and gain trust in tackling racial inequality in the protection and promotion of human rights"*.³⁷ The report added that:

"A question that has arisen in our inquiry is whose job is it to ensure that the recommendations that have been made in the numerous reports relating to racism and human rights are implemented? [...] It might be reasonably argued that the [EHRC] as the body with statutory responsibility for protecting human rights, including for Black people, and reducing inequalities, including racial equality, should be taking a lead in this regard. It is clear that the EHRC does see itself as having such a role" [91]

- 6.13 The report identified the drastic reduction in funding as a key cause of the EHRC's reduced ambition, quoting David Lammy MP's submission that:

³⁴ EHRC, 'Statement on our Disability Advisory Committee', 9 March 2022, <https://www.equalityhumanrights.com/en/our-work/news/statement-our-disability-advisory-committee>

³⁵ EHRC Tweet, 7 May 2022, https://twitter.com/EHRC/status/1522912810963021838?s=20&t=BzNH4HxpfY8BeiIDth_w

³⁶ EHRC, 'EHRC statement on 'long Covid', disability and the Equality Act', 9 May 2022, <https://www.equalityhumanrights.com/en/our-work/news/ehrc-statement-%E2%80%98long-covid%E2%80%99-disability-and-equality-act>

³⁷ House of Commons and House of Lords, Joint Committee on Human Rights, 'Black people, racism and human rights', (Eleventh Report of Session 2019-21), 11 November 2020, <https://committees.parliament.uk/publications/3376/documents/32359/default/>

"it has turned out to be a mistake to get rid of the Commission for Racial Equality. We now have the Equality and Human Rights Commission. Its budget and staff have been substantially cut, and there is a widespread view that, unfortunately, it has not been able to do what the old CRE was able to do in relation to race and the grass-roots connections that the CRE had" [93]

- 6.14 A former (2009-2012) EHRC Commissioner, Lord Woolley, endorsed that view, linking the withdrawal of funding to the EHRC's diminishing independence: *"It has been death by a thousand cuts, and it is a shadow of itself. It is almost frightened of its own shadow, frankly, and as a result there is little or no enforcement"* [93].
- 6.15 When the Government published a report it had commissioned into racism in the UK in March 2021, the UN Working Group of Experts on People of African Descent said that it *"categorically rejects and condemns"* the report's findings, which tried to *"normalise white supremacy"*.³⁸ The EHRC, however, welcomed the report with striking deference to the Government, saying that the report *"rightly identifies the varied causes of disparities"*.³⁹ Responding to the criticism, Baroness Falkner said that she would *"urge people to get beyond the narrative and look at the proposals [...] [the report's authors] are good people"*.⁴⁰

Islamophobia

- 6.16 The EHRC has been criticised for declining to conduct an inquiry into widely reported Islamophobia in the governing Conservative Party, even after the Muslim Council of Britain submitted (in March 2020) a dossier detailing over 300 cases of Islamophobia in the Party⁴¹ - despite having undertaken an inquiry into allegations of antisemitism in the opposition Labour Party (published in October 2020). There is no obvious difference between the allegations against the two parties beyond the nature of the discrimination and the fact the Conservative Party is in power.

³⁸ Sky News, 'Race report commissioned by government an attempt to normalise white supremacy', UN human rights experts claim', 19 April 2021, <https://news.sky.com/story/race-report-commissioned-by-government-an-attempt-to-normalise-white-supremacy-un-human-rights-experts-claim-12280262>

³⁹ EHRC, 'EHRC Chair responds to report from Commission on Race and Ethnic Disparities', 31 March 2021, <https://www.equalityhumanrights.com/en/our-work/news/ehrc-chair-responds-report-commission-race-and-ethnic-disparities>

⁴⁰ Pink News, 'Cis women have the right to be 'gender critical' without being 'abused', says UK's new equality chief', 15 May 2021, <https://www.pinknews.co.uk/2021/05/15/baroness-falkner-equalities-human-rights-commission-gender-critical-trans/>

⁴¹ Muslim Council of Britain, 'MCB submits new dossier of Conservative Islamophobia to EHRC, with evidence of over 300 individuals', 5 March 2020, <https://mcb.org.uk/general/mcb-submits-new-dossier-of-conservative-islamophobia-to-ehrc-with-evidence-of-over-300-individuals/>

Broader attacks on human rights

- 6.17 DPAC's submission sets out a number of recent Government proposals that have been met with dismay by the majority of organisations concerned with civil liberties and human rights in the UK - including proposals (published in December 2021) to repeal the Human Rights Act and replace it with a "Bill of Rights".⁴² The Law Society of England and Wales said in December 2021 that the proposals would "*make life easier for government at great cost to the nation, eroding our rights, placing the UK outside the international community and on a collision course with the European Court of Human Rights*" through "*the creation of a class of acceptable human rights abuses*".⁴³
- 6.18 The EHRC's response, however, has been strikingly lacklustre. On 9 March 2022 it put out a statement quoting Baroness Falkner as follows:

*"We welcome the government's proposals to maintain human rights protections, including by remaining part of the European Convention on Human Rights. But we question other proposals where evidence for change is lacking, and will oppose any changes that risk reducing or weakening human rights in Britain."*⁴⁴

- 6.19 In the face of the most serious threat to UK human rights protections since its inception, the EHRC merely says that it "*will oppose*" the final proposals if the Government does what it says it intends to, rather than actively setting out the case against them while the Government consultation is ongoing. Our clients believe that the EHRC's promotion and protection mandates require it to robustly oppose the proposals now, rather than waiting until it is too late.

7. Conclusion

- 7.1 Our clients believe emphatically in the need for a robust and independent body to defend equality and human rights in the UK. It is with substantial regret that they have concluded that the EHRC - having been systematically reshaped and underfunded by the

⁴² Ministry of Justice Consultation, 'Human Rights Act Reform: A Modern Bill of Rights', 14 December 2021, <https://www.gov.uk/government/consultations/human-rights-act-reform-a-modern-bill-of-rights>

⁴³ The Law Society, 'Reason, not rhetoric, must underpin review of human rights rules', 17 December 2021, <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/reason-not-rhetoric-must-underpin-review-of-human-rights-rules#:~:text=%E2%80%9CThe%20so%2Dcalled%20Bill%20of,European%20Court%20of%20Human%20Rights.>

⁴⁴ EHRC, 'Human Rights Act reforms 'lack evidence and risk reducing protections'', 9 March 2022, <https://www.equalityhumanrights.com/en/our-work/news/human-rights-act-reforms-%E2%80%98lack-evidence-and-risk-reducing-protections%E2%80%99>

Government for over a decade, and in particular since 2019 - is no longer such an organisation, failing as it does to comply with a number of the Paris Principles. They accordingly respectfully submit that it should not retain its A status.

Yours faithfully



Bindmans LLP