

**The Committee on the Administration of Justice (CAJ)**  
**45/47 Donegall Street, Belfast BT1 2FG**  
**Tel: (01232) 232394 Fax: (01232) 246706**



# **Equality**

## ***A Proposal In The Light Of Multi-Party Talks Agreement***

by

**Christopher McCrudden**  
**Reader in Law, Oxford University**  
**Fellow, Lincoln College, Oxford**

**May 1998**

**Submission No. S.68**  
**Price: £2.00**

**Submission No. S.68**  
**Price: £2.00**



**THE PROPOSED NEW STATUTORY DUTY ON THE PUBLIC SECTOR TO  
PROMOTE EQUALITY OF OPPORTUNITY, THE ESTABLISHMENT OF AN  
EQUALITY COMMISSION, AND THE AMALGAMATION OF THE EXISTING  
EQUALITY COMMISSIONS:**

**A PROPOSAL IN THE LIGHT OF THE MULTI-PARTY TALKS AGREEMENT**

by

Christopher McCrudden  
Reader in Law, Oxford University  
Fellow, Lincoln College, Oxford

**Summary of Proposals**

- The logic of the Multi-Party Talks Agreement, if agreed in the referendums, leads to the conclusion that several proposals in the White Paper, "Partnership for Equality" now need to be reassessed.
- The enforcement and monitoring of the equality of opportunity duty on the public sector should be carried out by establishing an effective internal monitoring and enforcement mechanism within the Northern Ireland Civil Service/Executive. This should be complemented with mechanisms for the increased public participation of those affected, and a role for the existing equality commissions.
- The proposed powers which the White Paper recommended for the Secretary of State to intervene where there is a breach of a the equality duty by a public body should be strengthened and clarified.
- Further research which assesses the issue of amalgamation of the existing equality commissions in the context of the mechanisms and reforms which are necessary for effectively delivering equality across *all* dimensions (including religion, gender, disability, and ethnic origin) is necessary.
- A study of the amalgamation of existing equality bodies should consider not only whether these bodies should be amalgamated into one equality commission, but also whether they should be amalgamated into a new Human Rights Commission.
- One of the ways in which this research might take place would be to task the new Human Rights Commission with this role, in the context of the study it will

be initiating under the terms of the Belfast Agreement to consider the terms of a new Bill of Rights for Northern Ireland.

- Any such further research should explicitly take into account the forthcoming IPPR research on the creation of a unified United Kingdom Human Rights Commission.
- Consideration should also be given, again possibly in the context of the Human Rights Commission's research into a Northern Ireland Bill of Rights, for harmonisation upwards of the different statutory obligations.
- Until this report is completed, separate Commissions should remain in existence for each area as at present. Separate budgets should remain for each Commission. Existing statutory mandates should continue, with separate legislation.
- However, the Commissions should establish an Office of Equality Commissions on a non-statutory basis, which would be given the task of co-ordinating the functions of the different Commissions to the greatest extent possible, consistent with their separate policy and legal responsibilities.
- A secretariat should be established within the Office of Equality Commissions, in part to co-ordinate responses to government departments on the exercise of the equality duty, and in part to act as a referral centre for public enquiries.
- There should also be provision made by the Commissions for common professional services to be set up in those areas in which the Commissions consider that this would be useful -- for example, administrative, financial, and statistical services provision.
- These common provisions should be funded by a contribution from each existing commission in proportion to their existing overall budgetary allocation.
- Consideration should also be given to bringing together the existing equality agencies in one building in central Belfast.

## **I. The Government's White Paper Proposals**

The proposals to create a new statutory duty on the public sector to promote equality of opportunity, to establish a new Equality Commission in Northern Ireland, and to amalgamate the existing equality agencies, were set out in the Government's White Paper, "Partnership for Equality" (Cm 3890), published in March 1998. This paper considers the implications for these proposals of the Multi-Party Talks Agreement ("the Agreement").

### *Statutory duty*

In the chapter of the White Paper dealing with the role of government in promoting equality of opportunity, the Government has proposed that there should be a new statutory framework which would supersede the PAFT administrative guidelines. There would be a statutory obligation on Northern Ireland public sector bodies (including District Councils and United Kingdom Departments operating in Northern Ireland) to secure that "consistent with their other responsibilities", their various functions "are carried out with due regard to the need to promote equality of opportunity in those areas covered by the current PAFT guidelines" (para 4.9).

Obligations in respect of categories where there are already existing statutory obligations (such as race, sex, religion/politics, and disability) "may be stronger ... than for other categories" (para. 4.9). The White Paper also suggests that "a statutory obligation might extend to the promotion of good relations between people of different religious beliefs and political opinions, and people of different racial groups" (para 4.9).

The White Paper proposes that each public body might be required to adopt a statutory scheme setting out "how it proposed to take regard of its new statutory obligations in its day-to-day work" (para 4.10). Such a scheme, it says, "might include", "arrangements for the appraisal of policies ...; arrangements for consultation on policies; access to services by the public; arrangements for monitoring the uptake of services; the training of staff on the new statutory obligations; the impact of any grant schemes administered by the public body; a timetable for giving effect to the scheme; arrangements for publicising the scheme" (para 4.10). The proposals envisage, however, that the details of statutory schemes might vary considerably, "depending on the nature of a public body's responsibilities" (para 4.10).

### *New unified equality commission*

Following this section on a proposed new legal duty on public bodies to promote equality of opportunity, the Government proposed, subject to public

consultation, to create a new unified statutory authority bringing together the existing Northern Ireland equality agencies: the Fair Employment Commission, the Equal Opportunities Commission, the Commission for Racial Equality and the Northern Ireland Disability Council (or Disability Rights Commission, if established in the future).

It appears from the context to be fairly clear that the major reason in favour of the establishment of such a unified Equality Commission is the need to find some institutional mechanism for the monitoring and enforcement of the proposed statutory duty on public bodies to promote equality of opportunity. The reason given for the establishment of a body external to the civil service for carrying out these functions is stated to be the need for external assistance to enable the public bodies to implement the duty effectively. ("It is doubtful whether public sector bodies would have the expertise to implement effectively these proposals without external assistance." (para. 4.11)). But since the necessary expertise is already to some extent present in the existing equality agencies, and a new equality body set up solely to monitor and enforce the new public sector duty "could not hope to duplicate this expertise" (para 4.12), "[t]he most rational organisation solution would be the creation of a unified Equality Commission, bringing together the existing statutory bodies" (para 4.12). The "main purpose" of the amalgamation would be to enable their work to be greatly extended into a new area, a positive engagement with the public sector to promote equality of opportunity in a broad sense" (para 4.12).

The White Paper envisages a unified Equality Commission possibly operating "on the basis of separate directorates for Fair Employment, gender, race and possibly (subject to decisions on a Disability Rights Commission) disability" (para 4.13). Other directorates could implement the new functions associated with the new public sector equality duty: setting standards for statutory schemes, validating specific schemes, monitoring their implementation and investigating complaints that schemes had not been appropriately applied by public bodies" (para. 4.11). If complaints were upheld by the new Equality Commission, "the Secretary of State might exercise statutory enforcement powers" (para. 4.11).

## II. Some Background Information

To appreciate fully the details of these proposals, it is suggested that some knowledge of the background to two (previously) separate issues will be useful. The first issue is what should replace the PAFT system. The second issue is whether a unified equality commission is worthy of support.

### *Replacing PAFT*

Prior to the White Paper, a different model for the replacement of PAFT had been widely publicised and discussed. In brief, this involved replacing PAFT with: a statutory obligation to promote equality of opportunity; a strong mechanism within the Northern Ireland civil service to monitor and enforce this obligation; and a set of proposals to enable a high degree of engagement by those outside government to contribute to the assessment and development of equality issues within government, including the participation by those affected by policy proposals, and the statutory equality agencies. It received extensive support across the range of groups most affected. It was also taken up by the Standing Advisory Commission on Human Rights and became one of the central recommendations on a revised role for government in promoting equality of opportunity in the future. It is the SACHR report to which the White Paper formally responds. The SACHR proposals on the replacement of PAFT, with the major exception of the proposal that there should be a statutory duty on public bodies to promote equality of opportunity, are largely rejected.

### *Amalgamating the equality commissions*

The possibility of an amalgamation of the statutory equality commissions has a longer history. In brief, a proposal to this effect was first made by government in the Consultation Paper on the revision of the fair employment legislation in the mid-1980s. The suggestion that the Fair Employment Agency (as it then was) should be amalgamated with the Equal Opportunities Commission (those were the only two bodies then in existence), received a hostile response from many commentators. The proposal was not endorsed by SACHR in its 1987 report on fair employment; instead, it was recommended that the issue be kept under review. SACHR again considered the issue in the context of its most recent report on fair employment, and again concluded that the equality agencies should not be amalgamated but that the issue should again be kept under review.

In Britain, the issue was publicised separately in the context of the incorporation into UK law of the European Convention on Human Rights (ECHR), when Independent Public Policy Research (IPPR), a think tank close to the Labour Party, announced prior to the General Election that it was minded to recommend

the amalgamation of the British CRE and EOC into a British Human Rights Commission. Following the victory of the Labour Party in the General Election and the decision to incorporate the European Convention on Human Rights, the issue of a Human Rights Commission was considered within government in the context of the drafting of the Human Rights Bill, but the Government announced that a decision had been taken not to establish such a body for the time being, pending further consultation with the statutory commissions. IPPR is continuing its research on the issue and will be publishing its sustained analysis of the issue in July, after further extensive consultations on the issue.



### **III. The Multi-Party Talks Agreement**

A new element has been introduced into discussion of these issues by the conclusions of the multi-party talks resulting in the Agreement of April 10th 1998. There are several elements of the Agreement which will impact on the proposals under consideration, if the Agreement is supported in the referendums in May.

#### *New Human Rights Commission*

A new Northern Ireland Human Rights Commission will be established, with membership from Northern Ireland "reflecting the community balance". This "will be established by Westminster legislation, independent of Government, with an extended and enhanced role beyond that currently exercised by the Standing Advisory Commission on Human Rights, to include keeping under review the adequacy and effectiveness of laws and practices, making recommendations to Government as necessary; providing information and promoting awareness of human rights; considering draft legislation referred to them by the new Assembly; and, in appropriate cases, bringing court proceedings or providing assistance to individuals doing so." No reference is made in the Agreement to the relationship, if any, between the Commission and other mechanisms established specifically to deal with equality issues, although equality and non-discrimination are already established issues of human rights domestically and internationally.

#### *New Bill of Rights*

The new Human Rights Commission is tasked specifically with advising "on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. Among the issues for consideration by the Commission will be (...) a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors." In this respect, the Agreement keeps open the possibility that a Northern Ireland Bill of Rights could include the concept of "indirect discrimination" in any new anti-discrimination duty applying to the actions of public bodies in Northern Ireland, an idea which was rejected in the earlier White Paper. In this respect the White Paper has been superseded.

#### *Equality duty on public authorities*

The Agreement notes that "[s]ubject to the outcome of public consultation underway, the British Government intends, as a particular priority, to create a

statutory obligation on public authorities in Northern Ireland to carry out all their functions with due regard to the need to promote equality of opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependants; and sexual orientation." This is a relatively straightforward reflection of the White Paper proposal.

#### *Impact assessment*

Under the Agreement, "[p]ublic bodies [will] be required to draw up statutory schemes showing how they would implement this obligation." In particular, it should be noted, public authorities will be required to assess the impact of their policies on affected communities. As part of the equality duty to be imposed on public bodies, they will be required to include "arrangements for policy appraisal, including an assessment of impact on relevant categories ... " In this respect the Agreement goes much further than the White Paper.

#### *Equality duty on the members of the Northern Ireland Executive*

Mainstreaming has been put into effect in another novel way through the provisions governing Ministers in the new Executive Authority. The Pledge of Office requires Ministers "to serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination". This was not included in the White Paper.

Ministers must also comply with the Ministerial Code of Conduct that requires them to "operate in a way conducive to promoting good community relations and equality of treatment". This was not included in the White Paper.

Northern Ireland Departments, following the obligations on their Ministers, will presumably also be obliged to implement the Pledge and the Code. No reference was made to such a responsibility on the part of Departments in the White Paper.

#### *Equality issues and the Northern Ireland Assembly*

The Agreement additionally creates "arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and any Bill of Rights for Northern Ireland". The Assembly "may appoint a special Committee to examine and report on whether a measure or proposal for legislation is in conformity with equality requirements, including the ECHR/Bill of Rights". This was not included in the White Paper.

The Assembly "shall then consider the report of the Committee and can determine the matter in accordance with the cross-community consent procedure". It would be open to the new Northern Assembly to consider

bringing together its responsibilities for these matters into a dedicated Department of Equality. This was not included in the White Paper.

Moreover, an individual “may be removed from office following a decision of the Assembly taken on a cross-community basis,... for failure to meet his or her responsibilities including, inter alia, those set out in the Pledge of Office” which includes the duty of equality and impartiality. This was not included in the White Paper.

#### *Participation by civil society and transparency*

The Agreement positively embraces the diversity of political activity outside formal government, rather than attempting to side-line it. The direct participation of affected communities is encouraged by providing for enhanced consultation rights, and greater access to information on the part of those affected by policy proposals. The participation of civil society in a Civic Assembly is a reflection of this. More concretely, as part of the equality duty to be imposed on public bodies, public bodies will be required to include “arrangements for (...) public consultation, *public access to information* and services, monitoring and timetables.” The features emphasised are stronger than those included in the White Paper.

The Ministerial Code of Conduct requires Ministers to “be accountable to users of services ...” and to “ensure all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that Departments and their staff conduct their dealings with the public in an open and responsible way”. This was not included in the White Paper.

#### *Equality Commission*

The Agreement notes that the British Government proposes to create “a new statutory Equality Commission to replace the Fair Employment Commission, the Equal Opportunities Commission (NI), the Commission for Racial Equality (NI) and the Disability Council. Such a unified Commission will advise on, validate and monitor the statutory equality obligation and will investigate complaints of default.” But keen readers of the Agreement will note that this proposal has not been agreed by the negotiating parties or by the Irish Government, and is “subject to the outcome of public consultation currently underway”.

#### *Role of British Irish Intergovernmental Conference*

The British-Irish Intergovernmental Conference is given significant human rights responsibilities. Strand Three provides that “In recognition of the Irish Government's special interest in Northern Ireland and of the extent to which

issues of mutual concern arise in relation to Northern Ireland, there will be regular and frequent meetings of the Conference concerned with non-devolved Northern Ireland matters, on which the Irish Government may put forward views and proposals. These meetings, to be co-chaired by the Minister for Foreign Affairs and the Secretary of State for Northern Ireland, would also deal with all-island and cross-border co-operation on non-devolved issues. The Conference ... will address ... the areas of rights ... in Northern Ireland (unless and until responsibility is devolved to a Northern Ireland administration)...."

#### *Impact of the Agreement on the White Paper*

In light of the Agreement, and taking into account the background to these proposals, how should we assess the White Paper proposals on the statutory duty, the establishment of an Equality Commission, and amalgamation? In general, we can say that the White Paper's proposals have been overtaken by several aspects of the Agreement. The next section will consider the statutory duty and the implementation mechanism in the light of these developments, and proposes measures which adequately take these events into account.

#### **IV. The Statutory Duty and Implementation Mechanisms Reconsidered**

The changes in the nature of the equality duty incorporated in the Agreement are important improvements, as are the additional mechanisms for ensuring mainstreaming of equality by way of the duties on Ministers, and proofing by the Assembly. They constitute an important recognition of some of the deficiencies of the White Paper's proposals. The main issue, however, remains how to ensure that the equality of opportunity obligation becomes successfully integrated into day to day policy making, particularly within the Northern Ireland Departments. Whilst the Agreement is notably silent about how this should be achieved, the implications of the approach taken are clear, and differ from those assumptions which underpinned the White Paper.

An assumption in the White Paper which underpinned giving the task of monitoring the duty to an external body appears to have been that public bodies would thereby be relieved of the perceived burden arising from PAFT. But the Agreement has now made it clear that this will not be the case. It has proposed a structure which enables the Assembly to create mechanisms to proof future legislation and other proposals for conformity with equality requirements. The Assembly committee charged with this task is likely in the first instance to ask the Department responsible for an assessment of the policy under discussion, and so Departments will in any event have to have internal mechanisms which are able to respond to these requests. This is particularly the case given that Ministers are required by their pledge of office to fulfill equality requirements in the operation of their functions.

Like it or not, therefore, the Departments will be drawn into these issues in a significant way. It is much better to make a virtue out of necessity and have strong central co-ordination of these issues within the civil service. This is not to say that external disciplines are unnecessary, only that they are not a substitute for strong internal disciplines. The appropriate way to bring equality into the heart of Northern Ireland Government is to allocate clear responsibility within the Northern Ireland Civil Service to ensure that this is carried out. As the White Paper itself recognises in the context of its discussion on the new Targeting Social Need initiative, a clearly designated central unit to coordinate and supervise the new duty is necessary. It is clear that equality issues need to be able to be represented at the highest level in both civil servants' meetings, and at meetings of the Executive Authority.

One proposal which surfaced in the Agreement is the creation of a Department of Equality (an issue considered below), and that seems a worthwhile suggestion to pursue. Irrespective of whether this particular mechanism is adopted, it is clear that the Agreement requires a re-thinking of the assumptions behind the

approach to the implementation of the equality duty proposed in the White Paper. The White Paper proposals fall far short of the logic of the Agreement.

## **V. A Unified Equality Commission Reconsidered**

In light of this, we can now turn to consider the issues raised by the proposed creation of the new Equality Commission. I suggest that the arguments in favour of amalgamation should be seriously considered, but that these are not convincing at this time. The question of whether or not to amalgamate does not raise a question of principle. Rather, the issue should be assessed from the perspective of practicality and effectiveness: would an amalgamated equality commission effectively deliver the results which are envisaged in the White Paper and in the statutory mandates of the various existing commissions?

The greatest apparent strength of the Government's proposals is the apparent inevitability of amalgamation of the existing commissions, once the decision had been made to have the principal mechanism for the monitoring and enforcement of the new statutory equality duty outside the civil service and central government departments. Once that principle is accepted, then the creation of a commission to monitor and enforce the duty seems inevitable. The creation of yet another separate commission simply to monitor and enforce the equality duty seems unlikely, not only for the reasons given by the government itself (duplication of expertise), but also because of the more practical political point that it would be unpopular in a government committed to reducing the number of such quangos. Hence the logic of amalgamating the existing agencies into one: not only does it not add to the sum total of quangos in existence, it actually reduces their number.

We have seen that earlier proposals envisaged, instead, a combination of a strong internal civil service mechanism, together with the external discipline of the separate equality commissions and participation in policy formulation by the affected communities. It is noteworthy that these approaches are not even mentioned, let alone considered in detail. Now, added to these options, are the proposals to have the Assembly play a role in "proofing" proposals to ensure consistency with equality requirements.

We can, therefore, only speculate on the reasons why a strong internal mechanism was apparently rejected. One reason may have been that it was thought that it could lead to administrative problems, so-called "administrative gridlock", within the civil service. But it is unclear why having a body external to the civil service is likely to lessen that "gridlock" in any significant way, indeed in some ways it may actually increase administrative problems, since it adds an extra layer of bureaucratic decision-making, creating an extra barrier between the citizen and the parts of the administration which actually take the decisions, contrary to the thrust of the Agreement. Also, since (ultimately) it is the Secretary of State who remains responsible (under the White Paper proposals) for disciplining departments and other public bodies which breach the equality

of opportunity duty, the Equality Commission would be an extra layer of bureaucracy between the Department and the Secretary of State.

Another possible reason for rejecting the need for a strengthened internal civil service mechanism is the argument that it would take up too much civil service time, and involve too many civil servants. But to the extent that the monitoring, etc. will need to be done by *someone*, it seems likely that (to the extent that extra staff are needed) they will need to be recruited whether the job is done inside or outside the civil service. What is worrying about the argument that too much staff time would be taken up is the apparent contradiction between this assumption (that substantial extra staff would be needed) and the announcement which accompanied the White Paper that there was a possibility of job losses in the existing equality commissions on amalgamation. If the proposed new equality commission is to be given the monitoring and enforcing role regarding the equality of opportunity duty, why are fewer staff necessary, rather than more staff, unless it is assumed that the burden of enforcing the new duty will not be substantial on staff time? But if this is the case, why would it be an intolerable burden on civil service staff time if an internal mechanism was established?

The principal reason given in the White Paper for why an internal mechanism should not be the primary approach is equally unconvincing. This is, it will be remembered, that the expertise on these issues currently lies outside the civil service. While it may be the case that the expertise on *equality* lies outside the civil service (itself a fairly worrying admission), it is not necessarily the case that expertise on other areas of policy lies outside the civil service. The idea of mainstreaming is the integration of equality issues with just these areas of policy expertise. To the extent that policy advice in substantive areas, such as transportation, or economic development remains within the civil service that is precisely the place where equality issues should also be considered in the course of developing that policy advice. To the extent that expertise on equality is missing, it should be bought in, or developed through intensive re-training of existing staff. Indeed, this is precisely what private employers have had to do in integrating fair employment and equal opportunities issues into their employment decision-making. Why should the public service not be able to do likewise, more generally?

If the arguments in the previous paragraphs are correct, then the case for a new external body falls and with it a central argument for amalgamation. There are, however, other possible arguments in favour of amalgamation, not spelled out in the White Paper, but powerful nevertheless.

One that is frequently heard is that there is a duplication of effort in some respects by the various equality bodies, particularly in having in-house professional services which are in practice common to all the equality bodies:



administrative services, financial services, and statistical expertise. It could be argued that the common provision of such services could lead both to more efficient (and hence less expensive) provision of such services, but also (potentially) the better provision of such services on the grounds of economy of scale.

This argument appears much more convincing than those considered in the previous paragraphs. But it does not require the amalgamation of the existing policy-making and strategic functions of the Commissions. The logic of the "common provisions" argument is limited to ensuring that there should be efficient and effective means of communication between the existing commissions and co-ordination where possible. This might mean, for example, that the existing commissions should be housed together, or at least in close proximity, and that each should contribute to a common fund which would provide central services to each of the commissions, and these points are further developed below.

A different argument is that some equality agendas may gain in strength from being associated with other equality agendas. Two separable arguments recur. The first is that equality and non-discrimination are indivisible and that it strengthens each dimension of equality ideologically for it to be seen as part of a wider, broader movement. The second is that it strengthens those dimensions of equality which do not have the political priority of some other dimensions of equality for them to be associated with these dimensions. In the Northern Ireland context, it is sometimes said, for example, that the movement against disability discrimination might have stronger political weight if it were associated with fair employment, which is perceived to be given greater political priority at the present time, and therefore benefit from greater financial resources.

This argument has something to be said for it. But there are three points which inject a degree of caution in accepting the argument without reservation. The first is that the argument assumes a relative degree of harmony in the allocation of resources within the amalgamated commission. To the extent that the distribution of scarce resources involves tensions and conflicts, this cannot be guaranteed – indeed, experience from other countries has shown that commissions with broad remits of the type proposed are not infrequently riven with in-fighting between the different "constituencies". If this happens, any benefits gained by amalgamation may be offset by the disadvantages. This problem might be lessened by the preservation of individual budgets, and separate policy-making functions for each area within the proposed commission.

The second point is that part of the strength of the existing Commissions, particularly the CRE and the EOC in Northern Ireland, is the extent to which

they are perceived as serving the needs of a specific group in Northern Ireland society: in the case of the EOC, women; in the case of the CRE, ethnic minorities. This identification with the organisation is a source of strength in the inevitable political disputes that arise, over funding for example. If these Commissions are seen as being submerged in some larger entity, there is a danger that this source of strength may be lost.

The third point is that the logic of the argument goes much further than has been so far contemplated in the White Paper. Why should the logic of amalgamation stop at the creation of an *equality* commission? Why should not all the jurisdictions be merged within a unified, all-embracing Human Rights Commission? The argument has been made, for example, that treating equality for women as part of the human rights agenda gives it a greater legitimacy and strength than it might otherwise have. The proposed creation of a new Human Rights Commission in the Agreement may provide the basis for just such a development, a point I return to subsequently.

A final argument in favour of amalgamation is that, particularly from the point of view of employers, a "one stop shop" is desirable where advice can be obtained and co-ordinated. This, it is said, saves time, money, and aggravation. It also avoids the perception that potentially inconsistent signals being sent on similar issues by different agencies. A similar argument, it is said, obtains in the context of victims of discrimination: it is not infrequent, it might be said, that a complainant comes to an equality body with a relatively broad sense of grievance which spans several possible areas of discrimination (for example, a complaint by an Afro-Caribbean woman) and it would be useful to be able to handle these issues in a co-ordinated way, dealing with the allegations in a way which recognises the overlapping nature of the jurisdictions involved. In the context of the implementation and monitoring of the public sector equality duty, it also appears to be part of the Government's thinking that a one-stop shop would be useful for public bodies.

However, the problem with this argument is that the benefits of such a one-stop shop are largely illusory in the absence of a much greater amalgamation of the various different statutory provisions. At the moment there are considerable differences in requirements between fair employment, race and gender, and disability in terms of UK law; when the implications of Community law are taken into account, even the apparent similarities between race and gender legislation become significant. Even with regard to the public sector equality duty, the White Paper recognises, as we have seen, that obligations may be stronger where there are already existing statutory obligations than where there are none. There is a strong case for "harmonising upwards" all these various requirements, but this has been ruled out in the White Paper, at least for the time being, and so the benefits of amalgamation under this argument are few.

## VI. A Way Forward

In light of this discussion, I suggest the following way forward on the issues discussed. These suggestions build on the logic of the approach taken in the Agreement to mainstreaming the equality of opportunity duty in the public sector, and to the role of the proposed Human Rights Commission.

The enforcement and monitoring of the equality of opportunity duty on the public sector should be carried out by establishing an effective internal monitoring and enforcement mechanism within the NI Civil Service/Executive. This should be complemented by mechanisms for increased public participation and a role for the existing equality commissions. The proposed powers which the White Paper recommended for the Secretary of State to intervene where there is a breach of a the equality duty by a public body should be strengthened and clarified.

Particular consideration might be given in this context to the proposition in the Agreement that a Department of Equality might be established within the Northern Ireland Executive. There are several useful functions which such a department might fulfill but, in the context of the present discussion, perhaps the most important would be to take over the functions that the White Paper allocates to the proposed Equality Commission in relation to the public sector equality duty. Placing these responsibilities in a new Department of Equality, with its own permanent secretary and Minister, would indicate the political importance of equality. As important, it would place those with responsibility for equality issues in the permanent secretaries' and Ministers' meetings as of right, a vital issue if equality is now to be at the heart of government.

The terms of reference of the SACHR report were restricted to issues involving equality between the two communities in Northern Ireland defined in religious terms. It was not tasked with investigating the mechanisms and reforms which are necessary for effectively delivering equality across other dimensions, such as gender, disability, and ethnic origin. Further research which assesses the effect of amalgamation of the existing commissions in this context is necessary before a decision is reached on whether the amalgamation of existing equality bodies into one equality body, and/or into a new Human Rights Commission should take place.

One of the ways in which this research might take place would be to task the new Human Rights Commission itself with this role, in the context of the study it will be initiating under the terms of the Agreement to consider the terms of a new Bill of Rights for Northern Ireland. Any such further research and consultation should explicitly be required to take into account the forthcoming IPPR research on the creation of a unified United Kingdom Human Rights

Commission. Consideration should also be given, again possibly in the context of the Human Rights Commission's research into a Northern Ireland Bill of Rights, for harmonisation upwards of the different statutory obligations.

Until this report is completed, the following arrangements should be put in place. Separate Commissions should remain in existence for each area as at present. Separate budgets should remain for each Commission. Existing statutory mandates should continue, with separate legislation.

However, the Commissions should establish an Office of Equality Commissions on a non-statutory basis, which would be given the task of co-ordinating the functions of the different Commissions to the greatest extent possible, consistent with their separate policy and legal responsibilities. A secretariat should be established within the Office of Equality Commissions, in part to co-ordinate responses to government departments on the exercise of the equality duty, and in part to act as a referral centre for public enquiries. There should also be provision made by the Commissions for common professional services to be set up in those areas in which the Commissions consider that this would be useful -- for example, administrative, financial, and statistical services provision. These common provisions should be funded by a contribution from each existing commission in proportion to their existing overall budgetary allocation. Consideration should also be given to bringing together the existing equality agencies in one building in central Belfast.

1 May 1998

**Committee on the Administration of Justice  
45-47 Donegall Street  
Belfast BT1 2FG**

*Extra copies of this document can be obtained from the above address  
A publications catalogue and details of CAJ membership  
are also available on request from the above address*

