RESPONSE TO

Fairness for All:
A New Commission for Equality and Human Rights

White Paper (CM 6185)

6 August 2004

The Runnymede Trust
Director: Michelynn Laflèche
Introduction

The Runnymede Trust is an independent social policy research agency. Our mandate is to promote a successful multi-ethnic Britain – a Britain where citizens and communities feel valued, enjoy equal opportunities to develop their talents, lead fulfilling lives and accept collective responsibility, all in a spirit of civic friendship, shared identity and a common sense of belonging. Founded in 1968, Runnymede has established and maintained a positive profile on the social and interpersonal benefits of living affirmatively within a society that is both multi-ethnic and culturally diverse; it continues to speak with a thoughtful and independent public voice on these issues today.

General remarks

The Runnymede Trust welcomes the opportunity to contribute to the debate on the proposed creation of a commission for equality and human rights. We have advocated the creation of a single equality body since the publication of our Report on the Future of Multi-Ethnic Britain (October 2000). However, in doing so there are several key criteria that we have also consistently argued needed to be met:

1. there should be a formal recognition that the principles of equality are indivisible
2. equality legislation should be harmonised to provide equal rights to equal treatment on all grounds (an upward levelling of protection, enforcement and promotion), for example, through a single equality act
3. there should be a full and demonstrable commitment to the principle of non-regression when devising a new structure and its enabling legislation
4. enforcement powers need to be clearly defined and recognised as the primary function of the body
5. the body must be demonstrably independent from government
These five points remain paramount in our view and inform our detailed response below. In addition, it should be recorded that the Director of the Runnymede Trust, who was responsible for drafting this response, was a member of the CEHR Taskforce. Our membership of the Taskforce was undertaken with serious purpose and in good faith. However, despite our participation in the Taskforce, we have serious reservations about some of the proposals contained in the White Paper. Many of the criticisms we make in this response had been made previously in the context of the Taskforce – either verbally during discussions or in writing in response to papers. There are two places in particular where this is noted in this response. Runnymede has also published two essays on the subject of equality in relation to the CEHR, which have been sent in hard copy along with this response.

We still strongly adhere to our original commitment to the idea of a single body, despite the reservations expressed above. Consequently, we submit this response in good faith as a means of advancing the debate and to help secure a progressive and effective commission.

Chapter 1: Vision

A wide range of policy proposals and aspirations for the CEHR are named in this section of the White Paper, along with a list of anticipated benefits. The general vision sets out admirable goals, with which we agree:

The Government believes that fairness for all is the basis for a health democracy, economic prosperity and the effective delivery of our public services. Equality and human rights therefore matter all of us, not just those who experience discrimination and unfair treatment. (Para 1.2)

However, we are concerned that nowhere does the White Paper explicitly state that a society that respects equality and human rights would be a better society. Instead, the language employed is that of self-interest and personal benefit and this, in our view, can only ever result in instrumental reasons for rejecting discrimination and therefore undermines making a universal moral claim about equality -- both economic prosperity and efficiency are entirely
possible within a framework of oppressive government and the vagueness of the term ‘healthy democracy’ is such that few in Britain could be expected to disagree. The vision for the CEHR should thus be rethought and redrafted to include normative arguments for equality as primary and explicitly recognise that discriminatory practices are morally wrong.

We welcome the commitment to maintain the existing powers of the existing equality Commissions, to be supplemented with a new duty to consult stakeholders on the CEHR’s strategic plan, the creation of regional arrangements to deliver the CEHR’s work, the power to promote human rights and undertake general inquiries and the power to promote good practice and enforce the law in the new areas of discrimination legislation (para 1.5). We also welcome the recognition for the ‘need to ensure that expertise and focus is maintained in each of the areas for which it has responsibility, and with each of the protected groups that will have an interest in its work’ (para 1.15).

However, in practice we cannot see how these can be met without at minimum a single equality act being put into place at the outset. For example, paragraph 1.16 lists nine benefits of a single body but provides no evidence for these claims. In our view, it will be almost impossible to be an ‘authoritative champion’ with the ability to take a ‘cross-cutting approach’, to ‘tackle discrimination on multiple grounds’ and ‘pursue a more coherent approach to enforcing discrimination legislation’ (to name only four of the nine benefits) when the legislation itself is incoherent and provides different levels of protection for different grounds. Further, the policy proposals appear to have been drafted without detailed consideration of their impact on race or other grounds; our concerns on this final point are detailed under our response to chapter 10.

Chapter 2: Engaging and working with stakeholders

Chapter 2 introduces the first formal consultation question: How can the CEHR ensure that all stakeholders have meaningful opportunities to shape its priorities and how it works?
The Runnymede Trust welcomes the proposed duty to consult stakeholders, placing the CEHR under an obligation to produce and consult on a strategic plan (para 2.10) and agrees that engagement with stakeholders will contribute to the effectiveness and credibility of the CEHR.

The proposed remit of the CEHR is wide and complex. Meaningful engagement will require a range of consultation formats and flexible structures. For instance, there will be a need for, particularly in the early years of any new body, strand specific consultations, and also policy and region specific consultations. A power to establish committees is necessary to enable these requirements and we welcome the inclusion of this power.

We assume, but would like reassurance on this point, that the CEHR will be subject to the specific race equality duties (and also the proposed disability and gender duties), which also require that it assess and consult on proposed policies. As such, a duty to consult on its strategic plan will have to be consistent with its race equality duties.

**Chapter 3: The functions of the CEHR**

The Runnymede Trust understands and acknowledges the stated need to ‘equip [the CEHR] with a strategic and balanced set of duties and powers’. We welcome the broad range of duties and powers proposed. However, our many specific concerns are detailed below.

We are concerned first and foremost that the duty to work towards the elimination of unlawful discrimination and harassment is listed fourth out of five ‘core function’ duties, compared to its first place ranking in the Race Relations Act, and that encouraging awareness and good practice on equality and diversity is listed first. While all duties may well have the same legal weight, the current presentation sends the wrong message in our view. This is a position that we have consistently argued over the last six months in relation to our role on the Taskforce and reflects key point number four listed in our general remarks above.
Encouraging awareness and good practice on equality and diversity [paras 3.6 to 3.8]
We welcome a broad general duty, such as this, but cannot understand why it is named as ‘encouraging’. Nor can we be sure of, as a result of the wording, the legal impact of the use of the word ‘promote’ in paragraphs 3.6 and 3.8. We would suggest that the duty be to ‘promote’ rather than to ‘encourage’ in order to be in line with other legal provisions proposed here and already in existence, not least the duty to eliminate unlawful discrimination and promote good relations between people of different racial groups.

Promoting awareness and understanding of human rights [paras 3.9 to 3.17]
We welcome the inclusion of a duty to promote awareness and understanding of human rights, but, in line with the JCHR’s recommendations, we believe that this duty should be expanded to ‘help secure the protection of human rights’ (JCHR 11th Report). We have further concerns about the limited legal framework proposed in chapter 4, which will be detailed further on in this response. This should be underpinned by a general statutory duty on public authorities to promote human rights.

Promoting equality of opportunity [paras 3.18 to 3.27]
We welcome a duty to promote equality of opportunity. In addition, the powers to provide general guidance on good practice in areas that discrimination law does not cover and to encourage good practice in the provision of goods and services to help prevent unfair treatment on grounds of sexual orientation, religion or belief and age are welcome in the absence of full protection under the law. This, however, from our point of view, demonstrates once again the need for harmonised legislation, i.e. via a single equality act.

We also welcome the role of the CEHR in relation to international agreements on equality and human rights as part of its broader awareness work.

Working towards eliminating unlawful discrimination and harassment [paras 3.28 to 3.30]
We welcome a duty toward eliminating unlawful discrimination and harassment. However, as has already been mentioned, we are disappointed and concerned that it is listed fourth out of
five duties, and believe that this sends a message that there is a lessening commitment to this duty.

We are also particularly concerned with the wording relating to support for ‘a number of cases with potential strategic impact’ and the implication this may have for support for individuals. This concern is detailed later in our response to chapter 7.

Finally, with this function’s focus on the need for the CEHR to be able to provide information, advice and guidance, the complexity of the law again raises concerns about how ‘effective’ and ‘efficient’ the CEHR can really be in the absence of harmonised legislation.

Promoting good relations among different communities [paras 3.31 to 3.33]
We welcome this duty, which has been a most useful duty in relation to race equality, particularly in relation to community cohesion. It is, however, also the duty least understood and will require a level of support that does not appear to be recognised in the White Paper. In addition, we are aware that not all equality strands believe that this duty will be beneficial to all strands equally. It may therefore be advisable to focus the duty on race and religion or belief in the first instance.

Keeping discrimination and human rights legislation under review [paras 3.34 to 3.38]
We are broadly in agreement with the proposals for keeping discrimination and human rights legislation under review. However, with the experience that the CEHR will develop on human rights, it would be regretful if they could not also be involved in the scrutiny of proposed new legislations for compatibility with the HRA, along with the JCHR.

A source of expertise on equality and human rights [paras 3.39 to 3.41]
This responsibility is welcome in principle, but highlights the need for a clear indication of the resource level that will be given to the CEHR. Research is expensive; training, education and outreach activities equally so; and funding projects the same! Without an indication of resources, it is difficult to respond meaningfully to this proposed function, other than in principle.
Indeed, the lack of information about level of resources hampers our ability to respond to the full range of proposals set out in chapter 3. The range of activities associated with the various duties and powers proposed is expansive and will be resource intensive. The ability of the CEHR to meet the operational principles defined in paragraphs 1.31 to 1.38 – leadership, partnership, work alongside the voluntary and community sectors, be open and transparent, strategic, effective and efficient – while attempting to meet the expansive list of duties and to be able to employ the related powers will be determined by the resourcing. We remain disappointed that the White Paper was published without this information available to the public for consideration.

Chapter 4: Tools to promote change

The Runnymede Trust broadly welcomes the range of powers proposed to enable the CEHR to take action to enforce the law. However, there are several areas of concern, detailed section by section below. It is necessary to recall here again that in paragraph 3.3 of the White Paper, an explicit commitment to retain the powers currently available to the existing Commissions was made, which we take to mean a commitment to the principle of non-regression. We support this principle, but fear that the vague wording of some of the powers detailed in chapter 4 go against it. Further, there are other areas where, after further consideration of the JCHR’s 11th Report, the government’s response to it and the JCHR’s 16th Report, the powers proposed here should be strengthened and/or new powers introduced, particularly in relation to human rights.

Specifically, in response to paragraph 4.2, we believe strongly that the CEHR should be given additional enforcement powers relating to human rights legislation. In particular, the CEHR should be able to support individual human rights complaints that raise issues of discrimination on one of the protected grounds which may not be covered by existing anti-discrimination, for example, racial discrimination in judicial proceedings (Articles 6 & 14 of the HRA).

General inquiries [paras 4.3 to 4.6]

We welcome the power to carry out general inquires and the extension of this power to the discrimination, equal opportunities, good relations and human rights parts of its remit. We also
welcome the broader base of the power which allows the CEHR to look at issues affecting two or more protected groups as well as focusing on one equality strand.

We are concerned, however, that a new test of ‘public interest’ appears to have been added (paragraph 4.3), which would not be consistent with the powers granted to the CRE in the Race Relations Act. We believe this new test should not be introduced.

The White Paper also explains that general inquiries will not target individual bodies (paragraph 4.5), however, there may well be cases where a general inquiry is required in a specific area where one individual body is the only relevant body to be investigated. Explicit recognition of this scenario and a guarantee that the CEHR will have the power to conduct a general inquiry in such cases should be made. Not to do so would be regressive.

Finally, paragraph 4.6 limits the power to apply for permission to compel third parties to provide certain information relevant to the inquiry to the Secretary of State. We believe that it should be assumed that the CEHR would act reasonably and lawfully and, therefore, that such a limitation should not be introduced.

**Codes of practice and guidance [paras 4.7 to 4.10]**

We agree with the proposals for a power to publish statutory codes of practice. The problems arising from different legal frameworks, however, become obvious here again, and the CEHR, in the absence of harmonised legislation, will have a very difficult task to produce such codes and distinguish between what is necessary to comply with the law and what is good practice going beyond the law in a manner that is truly user-friendly, particularly in relation to guidance that is cross-cutting or sector-based across strands.

**Third Party Interventions [paras 4.11 to 4.13]**

We commend the proposal to put beyond doubt the CEHR’s capacity to seek leave to intervene in support of the full breadth of its remit – on both equality and human rights.
Challenging discrimination

**Strategic enforcement of discrimination legislation [paras 4.14 to 4.15]**

We fully agree that the CEHR should be able to use law enforcement powers to eliminate discrimination. We are very concerned, as noted earlier, that the phrasing of paragraph 4.15 suggests limited support for individual cases, which would appear to be a reduction in the current powers of the CRE (i.e. RRA, s66). While we accept the general argument of the need to be strategic, a formal limit (either numerical or as a result of resource allocation) of what kind of cases, how many and/or when they might be supported, should not be included in the enabling legislation.

**Supporting cases [paras 4.16 to 4.17]**

Further to our point made above, it must be recognised that the identification of individual cases which would raise a question of principle, affect large numbers of people and/or flag up the need for legislative change are not easily and certainly not always identifiable as such at the outset. The CEHR will need to take on a significant number and range of individual cases simply to encounter such ‘strategic’ cases. Limiting the number, by whatever means, of cases the CEHR can undertake will therefore be detrimental to individuals themselves, to the ability of the CEHR to meet its strategic objectives and, finally, would be a regression on existing powers.

Individuals: may not have other options for support; support is sparse in some areas of the country; quality of support is variable at best; and, with reducing levels of legal aid for civil cases, many people will be unable not only to meet the expenses of bringing proceedings but also to find the skilled advice and assistance that they will need to conduct a discrimination case.

CEHR: will be unable to effectively and efficiently identify ‘strategic’ cases; case support and litigation is valuable in its own right and in the outcomes for individuals; it also helps in form and build expertise for other functions (provision of guidance, information, advice etc).
Regression: this appears to be a regression on existing powers. The
government should be reminded that not only have they made a commitment to
a principle of non-regression, they are bound in the case of race to non-
regression under Article 6 of the Race Directive.

**Combined discrimination and human rights cases [paras 4.18 to 4.19]**

This section introduces the second formal consultation question: Should the CEHR be
able to continue support for cases which have drawn on both discrimination and human
rights arguments, after the discrimination element of the case has fallen away?

We fully agree that this should be so and strongly urge the government to ensure that in
combined discrimination and human rights cases where the equality argument has
fallen away, support for the human rights argument be continued.

In addition, we also believe that the CEHR should be able to support the whole of a
case where discrimination occurs in a context where other legislation or common law
may apply, for example under the Employment Rights Act 1996.

**Settling disputes [paras 4.20 to 4.22]**

We welcome the proposals for use of conciliation, however, having considered the
arguments of the JCHR, we agree with the JCHR that the CEHR should be able to
support ADR approaches arising across the full range of its responsibilities, meaning
including human rights.

**Investigation and enforcement powers**

**Named investigations [paras 4.24 to 4.30]**

Named investigations have been a very important power in relation to tackling racial
discrimination. We have concerns that the wording of this section appears to limit the
powers that would be available to the CEHR compared to those available to the CRE
currently.
For instance, paragraph 4.24 states that named investigations are a tool for ‘occasional use’, which seems to imply that this tool has been overused in the past, which is patently not the case, and that there will now be limits on when, why and/or how often for the new commission.

Also, paragraph 4.28 states that the CEHR ‘might also issue wider recommendations’ following an investigation, with use of the word ‘might appearing to suggest that the government is unsure if this will be included in the power or not. It should be.

Finally, the criteria for undertaking an investigation also appear to have been tightened compared to the existing criteria – where the White paper states ‘the CEHR must have reasonable suspicion that an unlawful act of discrimination or harassment has taken place’ compared to article 48(1) of the RRA which states that ‘the Commission may if they think fit, and shall if required by the Secretary of State, conduct a formal investigation for any purpose connected with the carrying out of those duties [referring back to duties named in article 43(1)]. The wording in the White Paper, therefore, would, in our view, be seen as a regression of existing powers, which the government has stated it would not do and, in the case of race at least, must not do under the Race Directive.

In reviewing the responses and arguments of several organisations and bodies while preparing this response, we are persuaded by that of the Discrimination Law Association on this matter of named investigations. We therefore believe that the DRC Act, Section 3 and Schedule 3 should be the starting point in drafting the investigation powers of the CEHR. This has the benefit of removing the unnecessary distinction between general and named investigations; in our view, as a body whose primary role is law enforcement, it is essential that the enabling legislation facilitates and does not inhibit in carrying out that role to maximum effectiveness.
Issuing non-discrimination notices [paras 4.31 to 4.32]
We welcome this power, which we think will be a step forward for race equality cases, among others. However, we would argue that the procedure must be very tight and not allow scope for the respondent to drag it out for extended periods of time without any obligation to do anything.

Application for court injunctions [para 4.33]
We agree with this proposal and believe that this power is potentially very useful, though currently rarely used. We hope the CEHR will take appropriate advantage of this power as there are clearly numerous examples of organisations that persist in unlawful practices despite losing cases and paying out remedies. Indeed, not to do so might possibly be interpreted as a failure by the UK to meet the requirements of the Race Directive to have sanctions that are effective, proportionate and dissuasive.

Binding agreements in lieu of enforcement [paras 4.35 to 4.39]
We welcome this power and the proposals for enforcing binding agreements fully, which again is a step forward for race equality in our view – a power which the CRE had sought in its second and third reviews of the RRA, but was not granted.

Powers proposed that are not being pursued [paras 4.40 to 4.43]
We regret that the government has elected not to pursue representative actions within its proposals. Such actions do fall within the scope of the Race Directive, although they are optional. We have been made aware of cases where an individual is reluctant to bring a claim but the issues involved would meet the criteria of a ‘strategic’ case, in which case the CEHR should be able to bring action on the individual’s behalf. We urge the government to reconsider this.

General remarks on powers
We are concerned that there is no mention of the CRE’s exclusive power (RRA s.63 (1-5)) to bring legal proceedings for contravention of RRA s.29-31, which makes it unlawful to publish discriminatory advertisements or to instruct or put pressure on a person to discriminate.
Chapter 5: Governance of the CEHR

Governance of the commission will be vitally important, as is pointed out in the White Paper, and therefore these arrangements must be fully thought out and considered in advance of being set out in statute.

We do not support the proposal to establish the CEHR as a NDPB and do not agree that that would be the best means of establishing the CEHR ‘as a voice that is independent of the government of the day’.

We have considered the JCHR’s 11th Report, the government’s response to that report and the JCHR’s 16th Report and are broadly in agreement with the JCHR’s continued call for a commission that is fully and demonstrably independent of the executive and parliament, accountable to parliament, funded independently of direct ministerial control and meets the criteria set out in the Paris Principles.

With this as our basic position, it should be noted and understood that we do not agree with the elements of the proposals in this chapter on governance that identify the role of the Secretary of State and/or a single government Department as primary.

The Chair [para 5.3]

We would be supportive of any recruitment and appointment method that met the requirements for independence and accountability set out by the JCHR in its 11th and 16th Reports. Further detail is therefore required on this proposal before we can offer a meaningful position.

The Board and Committees [paras 5.4 to 5.18]

We support the proposal for the inclusion of the Chief Executive on the Board, but believe that the minimum number of commissioners should be 15, rather than 10 – the collective experience and expertise that must be present on the Board, the need for commissioners with a special responsibility for Wales and Scotland, and the proposal for one commissioner who has or has
had a disability, warrants a larger number of commissioners than minimum number that is proposed.

We are mainly in agreement with the delineation of the key roles of the Board.

We agree broadly with the core skills identified for the Board, but would like to see an amendment to paragraph 5.7 as follows: ‘a sound understanding of, and commitment to promoting equality, good relations and human rights and a sound understanding and experience of equality and human rights law.’

We support the proposal that the Board reflect the communities that it serves and the proposal that the Board members will contribute to a collective understanding of, and approach to, key areas of interest and sectors that the CEHR will serve. We believe that the proposals for committees outlined in paragraphs 5.14 to 5.18, which appear to include a power to establish committees with an advisory function and/or with delegated decision making functions, will enable the CEHR to address strand specific issues as and when needed and engage a broader range of stakeholders in its work.

**Accountability and independence [paras 5.19 to 5.20]**
We do not agree with the establishment of the CEHR as an NDPB. We share the view of the JCHR on this matter.

**Funding [paras 5.21 to 5.22]**
We do not agree with the proposal for funding through grant aid provided by the Secretary of State. We share the view of the JCHR on this matter.

In addition, the Runnymede Trust, other race equality organisations and other community and equality organisations have repeatedly called for clarification on the intended resourcing for the CEHR. It is regrettable that the White Paper did not offer sufficient clarification on this point, which has been taken by many organisations to be a sign of intent towards economic
rationalisation and lack of commitment to proper resourcing – despite what government might have intended and has said since.

We believe that resourcing must be sufficient to: avoid competition between advocates of different strands; respond to matters that arise unexpectedly; and, provide consistent resources for work with a longer time scale – in other words, there needs to be a recognition that law enforcement often makes demands over a number of years and rarely fits into neat annual budgeting.

We welcome that the CEHR will be empowered to charge for services it considers appropriate, but are concerned that this may impact disproportionately and negatively on individuals, those facing discrimination and voluntary sector organisations providing equality services. We would like clarification on this point.

**Chapter 6: Promoting good relations**

This chapter introduces the third formal consultation question: What other areas of activity should the CEHR support at local level to further its overall mission to promote good relations between different communities?

We welcome and support the proposal that the CEHR maintain the good relations duty with respect to race, which has proven vital to race equality and community cohesion work over recent years, and the intention to extend such a duty to the other strands, particularly as regards religion and belief.

**Promoting good relations between different communities [paras 6.4 to 6.5]**

We also welcome and are in agreement with the clear description of a good relations function detailed in paragraphs 6.4 and 6.5.
Grant-giving powers to support local organisations [paras 6.6 to 6.11]
We welcome the powers to award grants to other organisations, however, would not like to see this capacity restricted to only those operating at local level – some organisations with a regional and national remit are and can conduct good work that has local impact, for instance.

We are pleased to note the assurance that the CEHR will continue to support race equality work specifically and that current levels of support for such work will be protected, as detailed in paragraph 6.8. As with our previous concern, however, there appears to be a limiting of this function to provide support to only local level voluntary sector organisations, which is not the case within the current powers of the CRE. Additionally, we are assuming that this means race equality and good race relations work and seek reassurance on this point.

Delivering strategically [paras 6.12 to 6.14]
Our main comments on this refer to regional presence and are included under chapter 8.

Chapter 7: Supporting key customers

This chapter introduces the fourth formal consultation question, seeking comments on the strategies for working with individuals, businesses and the public sector that are set out in this chapter.

Before responding to the proposals themselves in this chapter, we feel obliged to raise concerns about the language employed. As noted in our response to chapter 1, we are deeply unhappy with the use of purely instrumental arguments for rejecting discrimination; the unfortunate title of this chapter reinforces this further – ‘Supporting key customers’ suggests that we all choose and then purchase a form of equality and human rights, a view in stark contrast to the notion of democratic citizens whose rights are universally protected as a matter of first principle.

In direct response to the proposals contained in chapter 7, there are two general concerns that we wish to raise.
First, while it is desirable to have cooperative and supportive relationships with the public, private and voluntary sectors, again this chapter introduces detail on the information and advice services it is intended to provide that raise questions of how it could possibly achieve these within a context of limited resources and the existing complex and differentiated legal frameworks. Despite the claim that partnerships with other organisations will resolve this tension, there is little to indicate exactly how these will be built and to what degree the CEHR will also be carrying out similar activities. Expectations are raised of an all-singing and dancing CEHR which are not feasible.

Second, as Runnymede has raised several times already, there is little indication of the kind of support that the voluntary sector will require (proposals in chapter 6 notwithstanding); indeed, the introductory paragraphs (7.1 to 7.6) leave one with the sense that the voluntary sector is seen as an extension of government to some degree.

**Supporting individuals [paras 7.7 to 7.20]**

We welcome the general intent outlined in the White Paper to provide information, advice and guidance on rights and remedies open to individuals across the full range of discrimination law and the explicit mention of plans to use a variety of strategies to tackle discrimination – including mainstreaming equality and human rights in public services, promoting good practice to employers and service providers, supported by public education and awareness work, along with multiple communication methods. We also welcome the idea of establishing a second tier-support service for front-line advisers in partner organisations.

However, the proposals on how this will be achieved are not detailed in the White Paper, and the question of resources required to undertake this level of support must be raised again. As the White Paper acknowledges in paragraph 7.16, availability of advice providers is patchy and of variable quality. The resources needed to develop this idea of second-tier support services will be substantial, which does not appear to be acknowledged in the White Paper.

We are gravely concerned, as pointed out earlier (see our response on chapter 4), that direct case support is envisaged to be limited, and the criteria for selecting cases have effectively
been narrowed. We do not espouse the government’s proposals in this regard, nor is there evidence to sustain its claim that direct case support will overwhelm the CEHR if left more flexible and open (para 7.20). We believe that the Commission should be given discretion to determine how many or how much of its resources are used for direct case support and the criteria restored to the existing higher standard.

**Supporting businesses [paras 7.21 to 7.34]**

Paragraphs 7.23 to 7.31 provide an indication of the wide range of support activities aimed at businesses to be undertaken by the CEHR. While in principle all of these are to be welcomed, in practice it is not viable. The resources required to carry out these activities will, again, be enormous. Furthermore, exactly how the CEHR will be able to provide the high quality advice and information, differentiating between compliance and good practice in a coherent, effective and efficient manner – regardless of how many intermediaries may be involved or working in partnership – remains a serious challenge in the absence of coherent, joined-up legislation. There is also little information contained in the proposals as to the level of one-to-one advice or consultations services that will be made available (or not) to businesses – this must be clarified with urgency.

**The CEHR’s regulatory role [paras 7.32 to 7.34]**

The Runnymede Trust is very concerned about the way in which this section is presented and the message that it sends.

First, we have consistently argued that there is no evidence to support claims from businesses that the existing Commissions have misused their advice-giving role in order to bring enforcement action on individual businesses as is implied in paragraph 7.32. It is regrettable that the government elected to continue to use this example in the White Paper, and it will most certainly send a message (in fact, it already has) to individuals and others that business is being treated with an unjustifiably soft touch.

Second, the language of ‘rogue’ firms is unhelpful, inaccurate and misleading (para 7.34) – in the experiences of the existing Commissions, trades unions and others
supporting discrimination cases, particularly employment related cases, the persistence of discrimination is not restricted to a few wilfully non-compliant firms, but is widespread and must be tackled with this in mind. After all, the reason we have and continue to require law in this area is because discrimination occurs. Indeed, even the business-led taskforce on race equality and employment (established by the IPPR, with their report published 7 July 2004) concluded that if progress has not been made on race equality in three years time, the government should legislate.

**Supporting the public sector [paras 7.35 to 7.65]**

We welcome the delineation of the broad range of activities that will be aimed at the public sector, with particular reference to human rights as well as discrimination. However, as with support for individuals and the private sector, we are concerned about resourcing implications and how these will be practically resolved. We also welcome the focus on the value of the positive duties in relation to outcomes in this section of the White Paper, as well as the commitment to regional delivery.

**Public sector duties [paras 7.56 to 7.62]**

The Runnymede Trust welcomes the proposals for new public sector duties. We believe, however, as stated previously in this response, that there should also be a statutory (positive) duty on the public sector to promote human rights.

**Chapter 8: Regional arrangements of the CEHR**

Chapter 8 introduces the fifth formal consultation question: What other activities should the CEHR carry out at regional level? Is the mixed approach – contracts, partnerships and co-location – an appropriate way to develop the CEHR’s regional presence?

The Runnymede Trust supports the proposals for a regional presence for the CEHR in the nine English regions, Scotland and Wales, and the range of partners identified in 8.8, though not exhaustive, is the right starting point. Resourcing to support these activities raises concerns again, however.
The proposals detailed in paragraph 8.13 for flexible and innovative means of establishing a presence – collocation, contracts and partnerships – are acceptable, however, the independence (perceived and actual) must be maintained and each individual arrangement should consider this issue carefully. While we agree in principle with the idea that the ‘regional presence be strategic and flexible, respecting and recognising the experience and expertise of others and understanding regional needs’ (para 8.14), we would argue strongly that such arrangements must also be in direct relationship to a defined national strategy and ensure that the needs of all groups facing discrimination, regardless of their size in any one region, are able to be met. Furthermore, the roles of the REC’s, diversity centres and other race equality organisations need to be included from the outset.

Chapter 9: The Scottish and Welsh dimensions

The Runnymede Trust supports the proposal to establish offices, establish committees with delegated powers and an advisory role, appoint to the CEHR Board one Board member with special knowledge of Scotland and one with special knowledge of Wales detailed in paragraph 9.4, given the context of devolution.

Issues of resourcing again must be raised: for example, resources in Scotland to cover the additional equality strands under the Scotland Act 1988, and in Wales to meet the requirement of providing a full bilingual service, which have not been addressed in the White Paper.

Finally, we believe that there is a need for Memorandums of Understanding between the CEHR and all of the bodies named in paragraphs 9.11 and 9.12, given the context of devolution.

Chapter 10: Preparing the way

The Runnymede Trust is gravely concerned that there is currently no institutional or case support for the new strands and that the White Paper does not make proposals for such support prior to the establishment of the CEHR. Since a main argument put forward for the establishment of the CEHR with urgency was that such institutional support does not currently
exist, it is baffling as to why this is not addressed in the White Paper. We urge the government to make arrangements now that will offer immediate support, including resources for advice and legal representation for individuals, on the grounds of religion or belief and sexual orientation.

We agree it is essential that the existing Commissions and representatives of the new strands work closely together between now and the establishment of the CEHR, to develop a shared understanding and identify opportunities for adding value to existing arrangements. Building on the experience of the existing Commissions is obviously a requirement and we support the proposal for three transition commissioners as noted in paragraph 10.11.

We agree with the proposals for specific arrangements for disability and the establishment of a disability committee. Runnymede has, however, raised questions as to the impact and message of establishing such a committee on the other strands, particularly race. Different but equally valid arguments for the establishment of a committee on race (and indeed all strands) can be made – that the existing race legislation did not have the defined provisions for representation in the case of race, as it does in the case of disability, is a reflection of the times and possibly lobby power. Certainly, calls for such representation have been made consistently by many race equality organisations and representatives of various communities. While we agree broadly in principle with the vision of the CEHR, we also have heard and acknowledge the concerns expressed by many race equality organisations who fear that a hierarchy of equalities will emerge unless there is specific representation – a committee being one such model.

Indeed, while we agree with the principle behind the creation of a single body to work in a cross-strand, cross-sector way, the wording of the White Paper is in danger of oversimplifying such an approach. As the Discrimination Law Association has argued in its response:

"Discrimination on different grounds is experienced differently, often takes different forms and can have different origins. Different areas of law or social policy have greater impact on some strands than others, for example policing is highly relevant to race and, more recently, religion, but less relevant to disability, while transport policies may affect
disabled people more than people within other groups. A single commission must be able to address the specific needs of each of the equality grounds, and listen to and learn from the experience of relevant groups. Different legal, promotional and investigatory strategies may have to be adopted for different grounds at different times. Fundamentally, a single equality commission must continuously guard against operating on the basis of an identikit model of discrimination; that is seriously inaccurate and dangerously misleading.

It is our view the White Paper does not sufficiently recognise this, something which needs to be addressed with urgency.

**Chapter 11: The road to implementation**

The Runnymede Trust notes the transition process and timetable as detailed in paragraph 11.1. Our main concerns with this are that no arrangements are proposed to support the new strands; no reference is made to special arrangements to meet the complex demands of devolution; nor is reference made to the length of appointment of the proposed transition commissioners. These matters require urgent clarification.