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Baroness O'Neill of Bengarve and Mark Hammond

Evidence heard in Public

Questions 1 - 27

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Members Present

Dr Hywel Francis (Chair)
Baroness Berridge
Mr Robert Buckland
Baroness Buscombe
Baroness Kennedy of The Shaws
Lord Lester of Herne Hill
Baroness Lister of Burtersett
Mr Virendra Sharma
Sarah Teather

Examination of Witnesses

Baroness O'Neill of Bengarve, Chair, Equality and Human Rights Commission, and **Mark Hammond**, Chief Executive, Equality and Human Rights Commission (EHRC)

Q1 The Chairman: Good morning and welcome to this session, which deals with the work of the Equality and Human Rights Commission. Will you introduce yourselves for the record, please?

Baroness O'Neill of Bengarve: I am Onora O'Neill, Baroness O'Neill, Cross-Bench Peer.

Mark Hammond: I am Mark Hammond, chief executive of the commission.

Baroness O'Neill of Bengarve: We also have Melanie Fields, director of corporate affairs, and Charles Hamilton, head of human rights.

The Chairman: But neither of those colleagues will be answering questions.

Baroness O'Neill of Bengarve: No, but they are here for us to refer to them if it would be useful.

Q2 The Chairman: May I begin by asking you about your new business plan. Does it reflect the reality of the changes to the commission since 2011-12 and the desire that you expressed before this Committee in October 2012 for greater clarity in the commission's role?

Baroness O'Neill of Bengarve: It reflects it in one very obvious and major respect; that is, the budget is less and therefore we can do less. Therefore, we have agreed some fairly tight standards that any work we do must meet. There are two sorts of work. There is the required work, which is of concern to this Committee and, most obviously, the monitoring work that feeds into the ICC process on examining the UK's national human rights institution—namely, this body.

There is, of course, a great deal of routine work but also a certain amount that is funded under programme funds. That has to be bid for and agreed by the Secretary of State in DCMS, or not agreed. As you may imagine, that sometimes takes a certain amount of time, sometimes some negotiation, and sometimes some enthusiasm. That is great, but could you do even more? There is sometimes a feeling that it does not accord with certain priorities. We are, as it were, under some discipline in the programme bids. I will ask Mark to augment that.

Mark Hammond: Very briefly, over the 12 months or so that the board has been in place, it has urged us to be—I think we have made some significant progress in this business plan—very clear in preparing and producing the work as to why the issue is one that we should be tackling and why the EHRC is the organisation, as opposed to anyone else that should be tackling it. Having done the piece of work that we have outlined, how will we know that it has succeeded? In a sense, this is all relatively straightforward business planning material. The business plan we produced for this financial year comes closer to meeting some of those objectives than plans we perhaps produced in the past.

Q3 The Chairman: At the pre-appointment hearing, you said that perhaps in the past, before your time, the commission was too ambitious. In this new era, do you think that, where you witnessed big changes in the past, you perhaps were doing too many things? Perhaps you are setting your sights too low.

Baroness O'Neill of Bengarve: I do not think so. We would sooner do good work than more work. Potentially, there is an indefinite number of issues that we could investigate. I suppose that, to use the slogan, we are trying to “work smart”, which means rather more of our work is partnership working. Probably the most obvious example that has been successful, and preceded my becoming chair, was the work on stop and search and the question of whether it was disproportionate.

That work, which was done by collaboration with certain police forces, revealed that stop and search was, in particular, pretty ineffective in police forces that greatly reduced the amount and that the “disproportionality”—namely, picking up ethnic minority youth—was totally unproductive. Reducing the amount did not lead to a rise in crime rates and did not lead to any fewer arrests. The reduction in scale of stop and search, which is a massive change, has worked much better by being done by this collaborative method.

It does not mean that we will be afraid of bringing a case against an institution where we think that there is a case for it. To give a much smaller example from our current business plan, the question has been raised of whether there is racial discrimination by letting agencies. Maybe there is or maybe there is not; I do not know the facts. The way of getting at that is probably, on the basis of the pretty murky evidence at hand, to engage with the professional—one may say quasi-professional—bodies and trade associations concerned and to push through that route. We are trying to be results-focused but it is perhaps less headline stuff sometimes. Mark may wish to give other examples.

The Chairman: Also at the hearing, you remarked on the considerable turnover in the commission in the period before you came in. You expressed the desire that there should be greater continuity and stability in the new, reformed commission. Do you think you have achieved that now?

Baroness O'Neill of Bengarve: I think we have. Some of it was achieved only fairly recently. I believe that this Committee had the chance to engage with our new chief legal officer, Rebecca Hilsenrath, a week or so ago. Although one senior appointment remains an interim appointment, that is not because we are dissatisfied with it but because that is what he was available for.

Q4 The Chairman: You now have a new framework document setting out your relationship with the Government, safeguarding your independence. In what particular ways does that document differ from the earlier one, which you inherited at the end of 2012?

Mark Hammond: I would make two points on this. In the new framework document with DCMS, as opposed to the previous version under the Home Office, we have secured, with its ready agreement, much clearer statements on the importance of the independent operation of the commission. The controls put in place under the framework document are for the purpose of delivering value for money and managing public money properly, as all public bodies should. The board has entered into that voluntarily, given our independent status, but with the clear understanding that that is what we as a responsible public body, not least with our history, should be doing.

The second part of that is in the controls that exist on things such as recruitment and various other areas of spend. We have secured some greater levels of delegation to our own decision-making from the department in recognition of the fact that, over the past two or three years, our own management of public money and the way in which we steward our resources has been demonstrably better.

We have struck a balance with the department, recognising that we have a very clear and transparent responsibility for what we do with public money, which is entirely correct. Like other organisations, we have now earned the right to make some of those decisions ourselves because we have demonstrated a quality of financial control. The NAO, for

example, has now downgraded us from high-risk to low-risk in terms of financial accounting, which is two notches in its system and clear public recognition of the progress that the organisation has made in the past couple of years.

Q5 Mr Buckland: There has been, shall we say, a bit of churn with regard to sponsoring departments for the commission over the past few years. First, how important are stability and continuity when it comes to the sponsoring department? Secondly, how do you feel about where you currently sit with regard to the structure of government, particularly with reference to the recent division between equalities and women at ministerial level?

Baroness O'Neill of Bengarve: There are a lot of issues under that heading. Let me start by saying that my personal top priority, which is one that is very remote for me to be able to influence, is this machinery of government issue. It did the organisation no good whatever to have the number of shifts that it had in sponsoring department or sub-division of sponsoring department across a number of years. One of our longest-standing members of staff tells me that there have been eight shifts, some of them to and fro, so to speak. Stability is of the utmost importance. That said, in many respects, DCMS is quite a comfortable place for us to be. That may seem odd in that we are not a cultural, sporting or media body. But DCMS is a department of state with a good understanding of the reasons why arm's-length bodies need some independence. Therefore, it is respectful of the importance of not controlling. We also receive quite a lot of support from the FCO, for which the A-status of the national human rights institution matters and which is very conscious that should not be too much reach-in—I do not say the present framework document is perfection—but that we need to have an A-status human rights institution in order to take the stand that the FCO takes in terms of British soft power.

However, the wider question you raise is what can be done about this. It is pretty difficult for the list to be changed in any way without total agreement by many parties. One of the

reasons that we would like to have a clearer—for the moment I will call it a dotted—reporting line to this Committee is that we think that that would strengthen our independence and make it clear that we have a direct line to Parliament through this Committee. That is informal at present but we are very grateful to be here today for this meeting and to make the case. How it would be done in greater depth is a matter for discussion, but the double answer to your question, Mr Buckland, is that we are not discontent with our present reporting line but we recognise that there is some tension between it and the Belgrade and Paris principles, and that there is some risk to the A-status.

Q6 Mr Buckland: I was going to ask a later question but as Baroness O'Neill has come on to it, perhaps I should ask a supplementary that will cover the later question that I was going to ask. The direct link here would be the Culture, Media and Sport Committee but so far there has not been a significant interface with that committee. How do you propose to try to remedy that?

Baroness O'Neill of Bengarve: That would not be a particularly appropriate link. Among other reasons, the membership of the committee is of course very focused on culture, media and sport. The reason that we are comfortable in the department is to do with its formal recognition of the importance of arm's-length bodies not being micromanaged from a department of state. Of course, that goes for the heritage bodies in very strong ways. We have, as it were, substantive things to discuss with this Committee. There is no obviously committee on equalities. This is not a simple issue to resolve.

The Chairman: Baroness Lister, you wanted to ask a supplementary.

Baroness Lister of Burtersett: It was more part of Mr Buckland's question. Just the end, I think, fell off, which concerned the recent division of ministerial responsibilities for women and equalities. Does that have any implications for the commission's work?

Baroness O'Neill of Bengarve: I will mention one implication, which is that I go to see a remarkable number of Ministers. We are told that the Government Equalities Office in DCMS is supporting all of them, but the diary is peppered. As you know, with anything that is multi-dimensional, you can cut the cake in various ways. Of course, there is some difference between issues of women's employment, progression and promotion on the one hand and other issues that might fall under a completely different department; for example, women's participation in sport. So it may be reasonable that we find ourselves going to see a number of Ministers. We hope they are as joined-up as could be but we do not yet know.

Q7 Lord Lester of Herne Hill: I should like to ask you some questions about the growth duty and the power of the employment tribunals to make general recommendations, all under the heading of, "Is this a threat to your category-A independent status and does it in any way blunt your law enforcement function in dealing with discrimination?" Taking the growth duty first, do you regard the existence of that in the Deregulation Bill as potentially problematic in terms of your independence and capacity to deal with discrimination cases?

Baroness O'Neill of Bengarve: I am going to say potentially, because we are having continuing conversations on this, and have done for more than six months. It is not yet resolved. I will ask Mark Hammond to fill in the detail.

Mark Hammond: Indeed, Lord Lester. As Onora says, it is exactly that. The potential for it to have some impact has concerned us from the start. I should stress that colleagues in the Government Equalities Office and BIS have been working with us very constructively in looking at options around this. There is no sense that we are in, as it were, an active dispute with them. For us, it comes down to a couple of issues. As you will appreciate, a very large number of our functions would not be caught by the duty as framed anyway, which is specifically around the regulatory activities. We do have such activities but they are certainly not all that we do, by any means. The board stressed very clearly in the business plan

introduction our commitment to working constructively with all types of business and ensuring that decisions we take and measures we put in place are looked at for their impact on business. In substance, we have made a very clear public commitment to do what the duty is directed at. We therefore come to the conclusion that with regard to the threat that it could have to perceptions of our independence and A-status, the quite small coverage that it would have on our regulatory role against that risk and the commitment we have made to do the things in substance are quite a strong argument for leaving it out.

Lord Lester of Herne Hill: With regard to taking away the power of the employment tribunal to make a general recommendation about the change in practice—as I understand it, this is not a legally required recommendation; it is only a recommendation—have you found that power useful in practice, do you see it as potentially useful or are you happy to see it abolished?

Mark Hammond: We have given evidence to both the Joint Committee and the Commons Bill Committee to the effect that we do not see the case for removing this current power from the tribunals, for the reasons you outlined. It is not used greatly; it is fairly sparing. We have not seen any evidence that in itself it imposes significant costs on businesses of any size. I do not think we have seen any numbers that suggest it has a detrimental impact. What we are aware of, at least anecdotally, is that where it is dealing with issues of general application, it has the potential to actually save costs to business by not re-running the same issues and the same problems. At the moment, and in the evidence that we have given to the Bill Committees on this, we have argued, I hope clearly, that we do not think a case has been made that it imposes costs on business that justify its removal—rather the reverse.

Q8 Baroness Lister of Burtersett: I just want to go back to the category-A status point. The Government have given the impression that they are trying to find a way of applying the

duty to the commission without threatening your category-A status. We have not been able to see what that way might be. Can you see a way that might be compatible?

Baroness O'Neill of Bengarve: We have tended to agree with this Committee that, prima facie, it would indeed threaten the A-status. Therefore, it would be proposed that we come under the duty with respect to very specific functions. The debate between us and government at this stage is over how specific it would have to be and whether it is worth the candle when you get to that degree of specificity. The point is well taken and it is the terrain of the argument.

Q9 Lord Lester of Herne Hill: I should perhaps declare an interest in that I have advised previous equality agencies about their powers and am very familiar with what was going on. I want to ask about your in-house expertise now, especially your capacity to deal with your core legal duties, not only in promoting and protecting human rights but in combating unlawful discrimination. You have had these major reductions in budget. Could you tell us how, institutionally, you are now placed, in terms of your in-house expertise, to tackle those core functions?

Mark Hammond: Thank you, Lord Lester. It is a very important question and one that, in the course of implementing the necessary budget reductions, we tried to address clearly with the help of our previous chief legal officer and now with Rebecca's assistance. Proportionately, our legal expertise has declined slightly less than the overall staff numbers. That is, we have given priority to retaining legal expertise, as opposed to some other areas, partly because we have made significant progress in the back-office services. What Rebecca and I talked about when she came into post, and what she is having meetings on this week, is that she will be reviewing the broad legal and litigation strategy that the commission pursues, bringing it to our board immediately after the summer for it to look at. On the back of that,

we will be making sure that we have built a legal function that is best placed to deliver that within our resources.

Lord Lester of Herne Hill: For the record, could you tell us who Rebecca is?

Mark Hammond: I beg your pardon. Rebecca is our chief legal officer. I think she was with the Committee last week. She has settled into her role very quickly. There is a clear plan, which she and I have pulled together and with which Onora is very familiar, to make sure that we have agreed with the board what our legal strategy is; to make sure that we know what we are trying to do; and to then build the form around that function within our resources. There is some capacity for us to increase our legal resources within the budget planning that we have but, again, we do not want to take decisions on that until we are very clear on what we are trying to deliver. It is something that I and the senior management team, with our chief legal officer, reflect on and take extremely seriously in our planning.

Q10 Lord Lester of Herne Hill: How many members of the commission's staff are on secondment from government departments and are you free to seek expertise—whether seconded or permanent staff—from external to the Civil Service, or is there a presumption that you will recruit from within that pool?

Mark Hammond: I shall have to come back to the clerk on the exact number of secondees. It is not a large number. It is certainly significantly smaller than it used to be, as of course is our number of interim staff, which, as you will be aware, was completely out of proportion at various stages of the commission's existence but is now a handful.

In terms of the processes, we have a clear set of recruitment protocols. All jobs should first be advertised internally, then within the Civil Service system for those who have been declared surplus by their own departments, then to the broader Civil Service, and then to the outside world. Those can be done simultaneously at times and can be short-circuited if we are looking for particular skills.

We have not had any significant problems with our sponsor department in going through that process. If we do not find the right skills and the right people from within the Civil Service recruitment cycles, we are free to go outside and seek those skills as we need to.

Lord Lester of Herne Hill: If I could just correct an impression that my question might have created, I was not implying that it was a bad thing to recruit from the mainstream Civil Service. Indeed, in my experience, one of the problems in the past has been persuading high-flying civil servants, such as your director of corporate affairs, to leave the comfort of the Civil Service for a more uncomfortable job with the commission.

Mark Hammond: I entirely understand, Lord Lester—that is absolutely fine.

Baroness O'Neill of Bengarve: I should say that, in our experience, the one down side of these arrangements is that a recruitment process can be extremely long.

Baroness Buscombe: I am interested to know what your total head count is now, compared to what it was.

Mark Hammond: Our full-time equivalence is now around 192.

Baroness Buscombe: And it was?

Mark Hammond: When I arrived at the commission, it was around 430. That has come down over the past three years. I think there was an all-time high of around 550 when the commission opened its doors.

Q11 The Chairman: Baroness O'Neill, from your earlier remark about the seemingly long process that you have to go through with these different groups, do I take it that you think it somehow hampers your independence?

Baroness O'Neill of Bengarve: No, I do not think so because we are not obliged to take somebody if they do not meet the job specification. It is rather that, when no one applies—or only people whose qualifications are not appropriate apply—we can then find that, for

not very senior positions in particular, it takes us three or four months to recruit because of the cycles that must be gone through.

However, for senior positions we find a very different approach. For example, for the post of chief legal officer we had permission from the start to recruit from outwith the Civil Service. That was very valuable to us. We were not able to do it fast but it was very valuable and it succeeded.

Q12 Baroness Berridge: Your first strategic priority is to promote fair access to employment for all. You are probably aware that, within the media and society generally, there has been growing comment on the use of unpaid internships. Within the legal profession, which I come from, comments were recently made by Baroness Hale at a lecture in east London about the effect on the legal profession. Will you be looking at whether unpaid internships are a barrier to the progression of certain disadvantaged groups into the workplace, and might also be indirectly discriminatory?

Baroness O'Neill of Bengarve: We do not have internships on the list at the moment, as it were, but it is quite conceivable that they will get there. We have been more concerned about the progression and promotion of those within employment. As you will be aware, in some ways the picture at university level and among the employed is rather different as to which groups do well and less well. However, it is a fair point and we will think about it. In some ways, it is difficult to see how employment law could be directly relevant, precisely because of the non-employed status of such people.

It is not, by the way, confined to the professions. I am conscious that the organic movement has its own version of this.

Baroness Kennedy of The Shaws: This is really a supplementary question related to that. I saw in a letter written by a Member of the House of Lords to a newspaper something about zero-hours contracts, showing that they often led to people—unawares—not being

able to contribute significantly to a proper pension. There are pension deficits to which people have never been alerted in relation to zero-hours contracts, which may have equality issues attached to them. Has that come to the attention of the commission?

Baroness O'Neill of Bengarve: Again, that is not something that we have had in front of the board. I do not know whether work has been done on that but it is potentially an issue.

Q13 Baroness Lister of Burtersett: You referred earlier to one of the subsections of your second priority, which concerns tackling discriminatory practices by letting agents. How does this relate to provisions in the Immigration Bill, in terms of the new duties on landlords?

Baroness O'Neill of Bengarve: I do not think it relates particularly closely to the Immigration Bill. The discriminatory practices—if it is substantiated that they exist—are being directed towards people, some of whom might be immigrants but many of whom would not be.

Baroness Lister of Burtersett: In our report, we recommended that your commission should work closely with the Government on this issue because of the concerns about potential racial discrimination.

Mark Hammond: As Onora said, we are doing this piece of work with the various trade bodies and CLG, as the department responsible for housing, which also goes into its responsibilities under the Immigration Bill. Clearly, this is all just a scenario at the moment because we do not know exactly how it will work out. It has been suggested that if landlords have a requirement to check the immigration status of potential tenants, that could lead to problems of people choosing not to have that requirement by the choices they make about which people to let to. As I say, this is all just a scenario at this stage. We have discussed this with the CLG officials we are working with on the letting agents project and we are very conscious that we need to see whether that will cause problems in practice. Officials are

very cognisant of the potential problem that could arise and wish to do what they can to avoid it when it comes to the practicalities of it. It is on the radar but at the moment it is a sort of “what if” rather than a specific piece of work. But the work that we are doing on the lettings gives us the right sort of networks to talk to people more fully about it.

The Chairman: We have three short supplementaries from Sarah Teather, Lord Lester and Mr Sharma.

Q14 Sarah Teather: This is an issue that particularly interests me because I think the allegation originally arose from an investigative piece that was done in my own constituency. A television investigation with some undercover cameras was done in Dollis Hill. My constituency is the most ethnically diverse in the country. The allegations are pretty sensitive. They relate to the fact that Asian businesses in particular were discriminating against Caribbean and African potential tenants. It is pretty explosive stuff. I was interested in Baroness O'Neill's remark at the beginning about working through the different professional bodies. I cannot quite work out how you are going to get at the detail of this just by working through professional bodies. There are an awful lot of independent estate agents that are not regulated. Perhaps you might say a bit more about that, because I am not sure how you are going to get at the detail of this.

Baroness O'Neill of Bengarve: You have put your finger on where the difficulty lies. I said professional and quasi-professional; I am not sure it is even quasi-professional in this area.

Sarah Teather: No, they are family businesses.

Baroness O'Neill of Bengarve: The mystery shopper technique is obviously one that we are not financed to undertake on a grand scale.

Lord Lester of Herne Hill: Perhaps I may suggest that the most cost-effective way of dealing with this is not indirectly through professional associations but taking up an individual

case in a county court and reminding people of the obligations of estate agents and letting agents.

Baroness O'Neill of Bengarve: We would not hesitate to do that were we able to spot the case.

Lord Lester of Herne Hill: Or you could bring the enforcement proceedings on your own without a victim.

Q15 Mr Sharma: My apologies for coming late. There is a fear, after listening to the debates and reading in the media, that in order to discriminate—and I am using the word very carefully—an agency feels that it does not want to let a property to a particular group, it can use those techniques. If that situation arises, where does the organisation stand on that?

Baroness O'Neill of Bengarve: In any case of unlawful discrimination you have to establish the basis on which the decision was made, and that can be difficult. It is the basis of the decision rather than who got the flat in the end. Letting agents correctly have a number of issues in mind, including whether the person can produce the deposit and all sorts of other things. If they are doing it on the basis of assumptions about a person's background, that is unlawful.

Q16 Baroness Kennedy of The Shaws: This is another of those hot issues. I see in the commission's business plan that you are looking at religion and belief in the light of current legislation and so forth. A number of questions come out of this. Can you give us some detail as to what will be involved in your work on religion and belief? Baroness Hale—again, we are speaking about one of the leading members of our Supreme Court, who often raises some of these complex and difficult issues in the public domain—gave a lecture recently at Yale on religion and sexual orientation and the clash of equality rights. The clash of equality rights in relation to religion is often around gender or sexuality—we know the issues we are

talking about. It was interesting because she raised the concept of reasonable accommodation and I wondered if that had entered into any of your discussions about how you have conversations with religious groupings. In addition, religious groups often complain that the commission has more or less ignored religion and belief, and I wondered how you were intending to engage with that perception because it certainly is there. The other thing is that the Foreign Office has been encouraging its staff to learn about how religion and belief affect people's attitudes to things like human rights. The Wolfson Foundation has been brought in to assist it in considering those issues and I wondered if you had thought of doing a similar sort of thing at the commission.

Baroness O'Neill of Bengarve: I hope that we are allowed as many chapters to our answers as there are to Baroness Kennedy's question because we have quite a lot to say on this front. We, too, have a programme of work, which is not the same as the Wolfson programme of work, except that Mark Hammond is involved in both of them; the other in a personal capacity. So we are very well aware of the Wolfson Foundation one and of the one that we are undertaking. Ours will focus reasonably closely on the areas where we believe a number of court decisions have left people extremely confused about what is and is not permitted or required in employment, and perhaps in education as well. We have been working towards that. It is a fairly slow-burn process but you will be aware of the four cases that led to a set of decisions which people interpret as in some cases discriminatory against Christians, in particular because in two cases people were not permitted to wear a cross at work, one of which was then reversed on appeal and one of which was not. That has led to a lot of confusion. We hope to make some progress towards clarifying that. Of course, there are many positions that are compatible with these decisions. They do not, as it were, give you any principled view.

With regard to Baroness Hale's thoughts, I always have to think carefully whether I am saying reasonable accommodation or reasonable adjustment. Reasonable accommodation is a time-honoured way of dealing with some religious needs of employees—for example, different people will get Friday off or Sunday off or Saturday off as the case may be—but it is not on the same legal footing as the reasonable adjustments, when it comes to disability discrimination, that employers or schools must make. In that respect, reasonable accommodation is on a looser footing. Perhaps Mark would like to supplement that, because it is such an important question.

Mark Hammond: I will give a slightly robust answer, because I think that over the past 18 months we have had an extremely strong story to tell on the religion or belief aspects of our responsibilities. We have done a number of pieces of work. We held a series of dialogues with 50 or 60 faith groups and representatives, which we published the results of, to help shape the future strategy. We published the guidance for employers on the four Strasbourg cases, which is one of the most downloaded pieces of guidance in our system. With regard to the two ends of the piece of work in the current business plan that you mentioned, we are about to issue a call for evidence for a very widespread piece of inquiry work around whether those with religion or belief, or indeed secular or humanist views, can bring to us examples of ways in which they feel that in public services, employment or education they have been discriminated against in some way. We want to try to get a really strong scoping of the scale and the granularity of the issues and problems. This is a fairly major call for evidence that will run over several months. Alongside that, with Onora, we have a very high-level Friends of the Chair group that meets regularly. That includes some of the leading faith figures in the country from different faiths and some of the leading academics.

Baroness Kennedy of The Shaws: I am terribly disappointed that I am not a friend of the Chair.

Baroness O'Neill of Bengarve: You are in private life.

Mark Hammond: It is not all the friends of the Chair, it is just a selection of the friends of the Chair—he said, trying to dig his way out of that particular hole. We are working with them in a fairly loose way to understand at the strategic level how the issues identified by the bottom-up work can then be shaped. This is an 18-month piece of work. Some time towards the autumn of 2015 we expect to issue a report. If we decide on the basis of all that work that there are changes that could be made to the legal frameworks, as the NHRI we will be recommending those. This is one of our bigger pieces of work.

In terms of contacts, as I say, we have tremendous contacts now with some of those leading individuals. I was talking to the director who runs this for me earlier this week. In the past month we have met the Mormons, the Evangelical Alliance, the Board of Deputies and Charles Wookey from Vincent Nichols's office. We now have an extremely good story to tell.

Baroness Kennedy of The Shaws: That is so important because human rights are so rooted in belief systems. Most human rights are absolutely working with the grain of religious belief systems.

Mark Hammond: As you say, we started this work some time ago before veils, halal and kosher. As you will be well aware, none of those issues is going away. The complexities and confusions are not being resolved and we certainly want to make a very strong contribution in trying to do so.

Baroness O'Neill of Bengarve: We have of course worked with UUK on segregated seating in university contexts.

The Chairman: We need to make progress but there are two supplementaries from Baroness Berridge and Baroness Buscombe. Baroness Berridge might want to mention her all-party group.

Q17 Baroness Berridge: I chair the All-Party Group on International Freedom of Religion or Belief. There is another side to this coin, which sometimes is looked at as the ECHR here and the religious groups there. In terms of engagement with the rights of women, we have received evidence from women's groups within religious communities generally. There seems to be a whole area of confusion around the boundary of religious freedom. That interplay may be in the family law system. You may be aware of the clear comments made by Tom Winsor about the criminal justice system and the police not being called in various communities, which sometimes are religious communities exercising their own informal justice. This is quite a complex piece of work, which gets played out often in the education system through the *Daily Mail*. We need a comprehensive piece of work on this to understand these edges, particularly because often it is women's rights that are sacrificed.

I know that it is complex but is that something you would look at to help us all understand those boundaries?

Baroness O'Neill of Bengarve: I think we would agree that that is very important. Of course, somewhat on a rapid-response basis, we intervened with UUK on gender segregation in university contexts. I hope that we have clarified matters there. I think the guidance will reflect it.

As you rightly spotted, there are some difficult boundary lines here. One that we have been concerned about is that it may be one story if you have a religious ceremony to have traditional patterns of seating, but you then cannot say, "Now, we are going on to a seminar, do keep your chairs". There are difficulties but we have worked with it and we are about to sign off on that.

The Chairman: At the risk of losing any friends I have on this Committee, perhaps I may ask my colleagues to be brief in their supplementaries.

Q18 Baroness Buscombe: I will be very brief. Following on from Lady Berridge, I am concerned that this is such important work, are you really going to dig deep enough to get the truth? If I may be so bold, in talking to religious leaders about the treatment of women, and about girls in schools and in the home, this goes much deeper than university. Are you really going to ask the awkward questions and demand the truth about how girls are treated in the name of religion?

Baroness O'Neill of Bengarve: We will not be able to ask all of them with sufficient persistence to get everything but we will target what we do.

Baroness Buscombe: To some degree, we have already touched on the question I am going to ask first. Going back to the commission's budget, about two-thirds of your budget, some £11.1 million, is spent on maintaining core functions and one-third, some £5.9 million, on your three strategic priorities for additional work in 2014-15. We understand that that is identical to last year, in which case does this balance of funding within your budget give you sufficient flexibility?

Mark Hammond: That is an interesting question. One of the exercises that we did in the business planning for the board last September was to do the breakdown around what one might call the core functions and around continuing work where it was important that we finished an inquiry or followed through a piece of work, as well as on the headroom on which the board could make new choices. From memory, that was about 10%, which is not necessarily as high as we would like but it was the first time that we had been able to identify for the board exactly what that headroom was and therefore the choices that it could make about launching new pieces of work.

We have also agreed to have clearer sunset clauses in pieces of work so that we do not have inquiries that simply run and run, and that we have end points. For example, as part of the new strategy, one piece of work that we are doing this year with the College of Policing

is to help it write the protocol around stop and search, building on the Home Secretary's announcement. In a way, one can say that one has reached an end point.

Baroness Buscombe: So it is more focused on outcomes. As Lady O'Neill, said, what you can do in quantity terms is less than was done before, but in quality terms you have now an opportunity to produce more focused pieces of work that can have better outcomes.

Mark Hammond: That is an excellent answer.

Baroness Buscombe: I am just thinking it through in terms of what Lady O'Neill said, which was very helpful.

Mark Hammond: Exactly. To make one small point, the distinction between core functions and statutory priorities is not absolute. We spend just over £1 million on assisting individual cases of discrimination. What is important in the legal strategy is that we are directing the choices of which cases accord with the strategic priorities that the board sets. It is a grey line, not a black and white line.

Baroness Buscombe: That is very helpful. As you have already explained, approval is sought from the Culture Secretary on programme funds. Obviously, that is an ongoing process. That covers it.

Q19 The Chairman: May I ask a short supplementary under this heading, prompted by information that we have received from the Northern Ireland Human Rights Commission? It has concerns, which we share, about its work in terms of its future funding. Do you have similar problems and concerns about your work? Have you had discussions with the Northern Ireland Human Rights Commission? I understand that your category-A status could be jeopardised as a result of seeming undermining of its work.

Baroness O'Neill of Bengarve: I saw the Northern Ireland Human Rights Commission before you yesterday. I also went to see it in the autumn. I am very concerned about it. As you realise, for the purpose of the A status we are brigaded with it and the Scottish Human

Rights Commission. I realise that what it is facing is a proportionate cut but it is such a small body that it is very difficult to see how it can function with this cut. Therefore, this bears on the UK having an A status national human rights institution in this composite form.

This is a serious threat. I discussed the reasons why it went far wider than its own ability to function in that it also bears on FCO objectives and priorities. It bears on many other things. It is very difficult for us to do directly helpful things because the legislation under which it functions is different. The Belfast agreement set it up in a separate form.

I think that the Northern Ireland Human Rights Commission is still very important. Along with many Northern Irish Peers, I was very concerned about the powers to devolve the accounting line for the Northern Irish commission either to OFM-DFM or the Assembly at Stormont. I have no remedies and I have considerable worries.

The Chairman: Do you share with me a concern on two fronts: first, the particular circumstances of Northern Ireland and their role in that; and secondly, the commission's unique role in relation to the Foreign and Commonwealth Office in helping post-conflict situations in other parts of the world?

Baroness O'Neill of Bengarve: I did suggest that it goes and talks to the FCO because, as you may imagine, it is not quite so easy for it to meet Ministers or senior officials in London as it might be for the UK commission. It needs to alert the MoJ and the FCO to the predicament it is finding itself pushed towards.

The Chairman: For the record, this Committee is agreed that we should write a letter to the Foreign and Commonwealth Office, the Ministry of Justice and the Northern Ireland Office.

Q20 Lord Lester of Herne Hill: Although you rightly say that there is a different legislative framework in Northern Ireland, of course the Human Rights Act applies to the whole of the UK and the devolution legislation incorporates the convention rights and limits

the powers of the devolved bodies. Is it not correct, therefore, that the Northern Ireland Human Rights Commission is directly within your—and our—remit in the sense that we are all concerned with the protection of human rights in the UK, partly in accordance with the European standards?

Baroness O'Neill of Bengarve: Of course you are right that there is no difference in the human rights that are to be protected. The difference is that in Wales and Scotland we have the Wales Committee and the Scotland Committee of the Equality and Human Rights Commission. We work very directly with them and have a hand in agreeing their budgets. We do not have that relationship to the Northern Ireland Human Rights Commission. It would be difficult to establish it because there is also a separate Northern Ireland equalities commission. In that respect, there is a separation that we do not have. It is not beyond the wit of man and woman to see a way through this but a way needs to be found.

The Chairman: Again, for the record, we will be looking at all these matters in our inquiry on devolution and the Human Rights Act and the Equality Act.

Q21 Baroness Kennedy of The Shaws: I was interested in the expression you used when you said that you and the commission in Northern Ireland and Scotland are part of a “brigade”, but when it comes to attendance at an international forum, for example, is it automatically assumed that it will be the commission based here in London that will attend? How do you deal with those complexities of the wider remit and the fact that Scotland has its own commission? How does that relationship work? What do you do about UN meetings, for example—who goes? Just to tie it together, are we expecting the development of a separate Welsh human rights commission, given the work that is being done by the Silk commission?

Baroness O'Neill of Bengarve: I think that the Silk commission will fall short of that recommendation. It is really about the devolution of policing and criminal justice, which

would be a separate matter. But one could imagine many ways in which our ragged devolution settlement could be tidied, if that is where we get to. On who attends ICC meetings, a year ago in Geneva I went with several members of our staff. It was also attended by the chair of the Scottish Human Rights Commission, the then chair of the Northern Ireland Human Rights Commission—Professor Michael O’Flaherty, whom I am sure you know—and of course the Republic of Ireland chair. These islands were very well represented and it was clear to me that the ROI and Northern Ireland bodies worked very closely together. As you also know, we are awaiting the appointment of a new chair to the Northern Ireland Human Rights Commission, and indeed then of new commissioners, so I am not really able to answer how things might be this year. I will also note that I am not sure that they have the air fares.

Baroness Kennedy of The Shaws: Do you have any inclination towards there being a reassertion of one overall, overarching commission or are you happy that it is devolved in this way?

Baroness O’Neill of Bengarve: I think it is laborious that there is such a lack of parallel between the different devolutions. We notice that in a fairly day-to-day way. I would say, for example, that our Wales Committee is probably on the whole very concerned about equality issues and less so about human rights issues. That probably reflects the different legal situation, where there is no separate legal system for Wales as there is for Scotland. Northern Ireland is different again. I have no crystal ball but the complexity is unhelpful.

Q22 Baroness Berridge: Can you say something about how the commission might develop its working relationships in light of the changing devolutionary settlement? In the event of a no vote in Scotland, do you intend to agree some kind of concordat with the Scottish Government?

Baroness O'Neill of Bengarve: We have not gone there. I am not sure it is for us to go there anticipating it. I personally would particularly like to see clarity about the referendum question—“Should Scotland be an independent state?” or “Should Scotland be an independent country?”, which in my view it is and has been for a long time, with its own legal and education systems. But those are personal views. I find it very hard to know, and this Committee will no doubt be involved, should there be a yes vote and should it be interpreted as a question about an independent state, who then represents the rest of the UK in the subsequent negotiations? It cannot be the Government of the UK who are the Government of Scotland. I feel that is above my pay grade. It might be in this Committee’s consideration because I know the subject that you are turning your minds to.

Lord Lester of Herne Hill: It is being dealt with by the Constitution Committee at the moment in a report that will be published very shortly.

Baroness O'Neill of Bengarve: I am looking forward to it.

Q23 Baroness Lister of Burtersett: As you will be aware, the All-Party Parliamentary Group against Anti-Semitism has expressed concern that the commission has neglected its responsibilities for promoting the need for good relations during election campaigns and has not pursued some of the good practices carried out by the former CRE around raising awareness and education. As you will also be aware, there was quite a lot of criticism of the commission in the debate on that report in Westminster Hall last week. What is your response to that criticism, and how do you propose to respond to the findings in the report?

Mark Hammond: I will be unhelpful and then helpful—I hope. Our analysis and the understanding we have with government, as Helen Grant expressed in the debate, is that we do not have responsibilities relating to electoral conduct. One would search in vain in our founding statute for such responsibilities. Of course, Parliament chose to remove our good relations duty in the legislation last year. We have to understand what the limitations of our

responsibilities and powers would be in this context. I have met the chair of the APPG and colleagues, and last week met the support team, to talk about this. We have very readily agreed to go to the meeting that the Minister Helen Grant is having with the MPs in a few weeks' time. The board examined the APPG's report and proposals that staff had prepared internally for the commission as to work that we could do within our powers on this issue, and the board chose at the time not to include it as a priority, as Onora has explained, with the resources that we have going into 2014-15. We will be looking again, as we should in the light of the views that MPs expressed in the Westminster Hall debate, and the board will certainly have an opportunity to take another look at this issue before the meeting the Minister is hosting in a few weeks' time.

Q24 Lord Lester of Herne Hill: The business plan refers very briefly to a litigation strategy being considered. Can you give us a sense of the factors that will be taken into account in that review?

Baroness O'Neill of Bengarve: I am not sure that I can list all seven so I will ask Mark to answer. There are seven factors.

Mark Hammond: Are there? I am afraid I do not have them in my head. To give a broader overview, it is not that we do not have a litigation endorsement strategy. The commission has one which previous boards have agreed and we continue to work to it. Just to park the fact that we do not work in the dark, there is a strategy on which choices are made. As I touched on earlier, with our new legal officer and the team, and in consultation with the board, we very much want to be clear as to why we would take legal action as opposed to any other form of action that we can take. There are often choices. What sorts of cases should we be taking? For example, we clearly wish to give a preference to cases that will have some strategic and broader impact, and cases that would substantially clarify a point of

law. In a sense, at that stage, the decision is fine either way because it is the clarification that we are searching for.

As you can imagine, we are asked to intervene or to support significantly more cases than we have the resources to do, so we need clear criteria that the board has looked at and endorsed the sort of cases we take. Currently, we set ourselves a target of “winning 70% of the cases that we support”. I am not sure what that target says because the very nature of what we are trying to do in supporting strategic and important clarification cases means that almost certainly some of them will be lost. You probably should lose some of them because if you are taking only cases that you are going to win, the law is probably relatively clear on the point.

We want to weigh all those issues up with the CLO and discuss with the board as we develop the strategy to make sure that the resources we have on cases are making the greatest possible impact.

Lord Lester of Herne Hill: Are you going to take into account the fact that the power to use judicial review in human rights cases ought not to be used politically but should be used—as I think I persuaded the Labour Government at the time—to deal with abuses of power by public authorities rather than acting as though you are an NGO?

Mark Hammond: We have no wish, as the chair and board have stressed to us in the past year, to be acting as some sort of organisation that has a lobbying agenda. As I have said to staff quite a lot over recent months, it is not that we have an agenda and use the law to pursue it, our agenda is the law.

Lord Lester of Herne Hill: This partly goes back to the religious questions. To what extent are you taking account of Strasbourg judgments under the European Convention on Human Rights in so far as they affect the UK and for that matter UK court judgments

involving those matters? We of course deal with some of that ourselves but is that a matter that you will take into account in your litigation strategy?

Mark Hammond: We certainly will. Increasingly, we need to look at the European Court of Justice and fundamental rights issues which are starting to intrude on some of the case law in issues as well. For example, we are doing a piece of work that will be published very quickly to respond to some issues that have been raised around the lawfulness of all-women shortlists and women on boards. We have talked to BIS Ministers about producing a very short and clear piece about what the legal framework allows employers to do as options. Part of the research and work we have been doing on that is looking at Strasbourg cases from outside the UK which have set important and interesting precedents in some instances. We want to make sure that all that information is readily available to people.

Q25 Baroness Berridge: Have you taken into account in this new strategy that one of the bases on which people perceive your stance on religion or belief was based on the cases on which you chose to intervene and that often, you, perhaps inadvertently, pitted yourself on the other side? Is that being taken into account because that strategy created some of the sensitivity around the issue and the commission's involvement?

Baroness O'Neill of Bengarve: Let me give a double-barrelled answer to that. First, although, as we described at the beginning of this meeting, the commission has undergone considerable turnover in size, funding, staffing, commissioners and the rest of it, the strategy that we are following was agreed in 2012. The strategy cannot reflect any recent considerations because it was agreed then. The business plan reflects much more recent considerations. It takes issues of religion and belief appropriately seriously. It seems to me that unclarity about Article 9 rights is extremely damaging to everybody. We have quite a lot of that unclarity in this country. A year hence we shall be agreeing a new strategic plan which will, I hope, give due attention to religion and belief issues. There are ways in which the fact

that you intervene in a particular case may make you appear to be taking a side but it is not really like that. I think of a recent case that we lost about a disabled passenger on an aircraft whose needs were not attended to. It turned out that the Montreal convention governed the matter and that once the plane was airside nothing could be said. We will have to think about workarounds to prevent a disability discrimination airside.

Q26 Baroness Kennedy of The Shaws: My concern is around the media and human rights, which I can see from your expression that you share. I just wondered whether the commission regarded it as a priority that the public debate about human rights and the media is accurate and well informed. It seems to me that that is so often the problem. Can you give us any recent examples of where the commission has stepped in to the public debate to correct misrepresentations about human rights or the effect of a particular judgment? For example, the prisoner voting thing, which people seem to think means that rapists and mass murderers are going to be given the vote, was never part of the decision of the European Court of Human Rights and it could be resolved simply by a very low-level set of prisoners being allowed to apply for postal votes. As to the sex offenders register, our Supreme Court made a decision that was really about giving someone the right to review, whereas it was presented in the press quite differently and as if sex offenders were being given the freedom of the city. Have you engaged in any of this and gone public on it?

Baroness O'Neill of Bengarve: It is a Sisyphean task for all of us, pushing this boulder up the mountain. The disrepute into which human rights have come in our public culture is extraordinary. It is very obvious that the enemies of human rights are constantly putting certain cases as examples of what human rights do. What to do about it is the question. My own very simple thing is that I say, to the point where everyone around me is bored, that human rights are for everybody. They are not just for the most disreputable scoundrels. It is very important in public education to remind people how much they depend on all sorts of

things, such as the right to a fair trial or of freedom of expression. Every single one might be of importance to any one of us any day of our lives. It is not to be idealistic about human rights—as you know, I have plenty of critical remarks to make about the human rights culture. I will say this: the friends of human rights could do a very much better job of changing public views if they took that as their aim rather than the ever larger extension of an individual right. In my view, you cannot take human rights one right at a time. It is the set of rights held by everybody that is important.

Baroness Kennedy of The Shaws: Can you give us examples of the commission standing up and saying, “That is wrong”, when the press write something up in a completely inaccurate way? Have you ever challenged it?

Baroness O'Neill of Bengarve: We have a communications strategy, fairly newly agreed and very much designed to help get a better public discourse on human rights. I have to say that the idea that we should, as it were, take on the media makes me quail in that I do not think that direct strategy is likely to be particularly helpful. They do not have to publish what we say and they can publish what they choose. I would not be using, merely because it is ineffective, the strategy of saying, “You were wrong about this, this and this”. It is not because I think they were right. I fear that we have to use broader cultural means to get back to a position where people remember that the European Convention on Human Rights was actually drafted by a British jurist, Sir David Maxwell-Fyfe; that it is a great document; that it is part of our Council of Europe obligations; and that it is not part of the EU. I wish that that could be said again and again when we see human rights being rubbished as though they were an invention of the Commission in Brussels.

Q27 Baroness Buscombe: This is one of the reasons why I think UKIP has gained huge ground. People have confused human rights with being an issue of the EU in Brussels. I agree with Lady O'Neill that there is a set of human rights issues but the trouble is that when

something impacts on the individual tangibly, they see it as one issue and that is the way that the press tend to interpret it. For example, if some Travellers happen to move on to their land, they see that as an issue where they feel that they are impacted upon as an individual.

The Chairman: Can we get to the question please?

Baroness Buscombe: My question is: rather than trying to take on the press, which is a task and a half, is this possibly an area where engagement with and support of DCMS, notwithstanding the need to be essentially independent—

The Chairman: Question, question!

Baroness Buscombe:—is this an area where engagement with government to try to educate on the question of human rights could be a possible solution?

Baroness O'Neill of Bengarve: It is not just the commission's responsibility. To get sanity and objectivity into public discourse about human rights is a very high political priority in this country. It is one that I pursue wearing other hats—I have to watch rather carefully which hat I am wearing. That is very important and I take it that the same is the case for every member of this Committee.

Baroness Lister of Burtersett: I was going to press for a clear answer to Baroness Kennedy's question, which is what she did so I do not need to ask that.

The Chairman: Thank you very much, Baroness O'Neill and Mr Hammond, for on the whole—virtually until the end, and I apologise for what became sometimes long statements instead of supplementary questions—giving us concise answers. There are a number of other questions that we would like to ask and we will do so in the form of a letter. Thank you very much.