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TAKEN BEFORE THE
JOINT COMMITTEE ON HUMAN RIGHTS
**EQUALITY AND HUMAN RIGHTS COMMISSION
PRE-APPOINTMENT HEARING**

TUESDAY 16 OCTOBER 2012

BARONESS O'NEILL OF BENGARVE

Evidence heard in Public

Questions 1 - 23

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Oral Evidence

Taken before the Joint Committee on Human Rights

on Tuesday 16 October 2012

Members present:

Dr Hywel Francis (Chairman)
 Baroness Berridge
 Baroness Kennedy of The Shaws
 Baroness Lister of Burtersett
 Baroness O'Loan
 Mr Virendra Sharma
 Mr Richard Shepherd

Examination of Witness

Witness: **Baroness O'Neill of Bengarve** examined.

Q1 The Chairman: Good morning and welcome to the Joint Committee on Human Rights and this pre-appointment hearing for the Chair of the Equality and Human Rights Commission. For the record, could you introduce yourself, please?

Baroness O'Neill of Bengarve: Good morning, Dr Francis. I am Onora O'Neill, Baroness O'Neill of Bengarve.

The Chairman: Thank you very much. The acoustics are not brilliant, so we will be trying to raise our voices to ensure that we can all hear one another. I begin by asking you a very straightforward question: why did you apply for this position and were you asked or encouraged to do so?

Baroness O'Neill of Bengarve: I received a letter encouraging me to do so, so my first thought was, "Are they aware of what I have written and the positions I have taken on human rights and on equality?" With my application, I therefore submitted a small sample of those writings.

The Chairman: Are you expecting to do other work alongside your work as the Chair, if you are appointed?

Baroness O'Neill of Bengarve: Certainly. It is a two-day-a-week post and I have plenty of other fish that I fry.

Q2 Baroness Kennedy of The Shaws: We probably can guess, but it is interesting always to hear what a candidate has got to say, Baroness O'Neill. I wanted, first of all, to say that I cannot stay for the whole of this morning's hearing and I will leave early. It is no discourtesy to you; it is just that this session was put into my diary after something else that I really have to attend, but I did want to be here to see you this morning. What do you see as being the skills that you bring to a role like this?

Baroness O'Neill of Bengarve: By trade, by training, I am a philosopher. I do a lot of political philosophy. I have written and thought about the arguments for various conceptions of human rights across some decades. I have also written on equality. I have the intellectual background. Curiously, I also have a lot of the practical background. I have chaired a

number of middle-sized organisations in the voluntary sector and on the cusp of public and private—in particular, Newnham College, Cambridge; the British Academy; and the Nuffield Foundation—with smaller budgets but not out of range, and I have a very strong commitment to good governance and good collegial relations. We can explore what lies below those, but I think those would be the headlines.

Baroness Kennedy of The Shaws: When we are looking at strengths, we are always looking also at what the underside of that might be. Where would you say you might feel that you had, perhaps, some weaknesses?

Baroness O'Neill of Bengarve: I would hope that another member of the board would have a forensic capacity with accounts. I have a fairly strong nose for what is going on, but I cannot claim to have a detailed grasp of accounting standards, and, in particular, I have probably a weak grasp of public sector accounting standards. I would see my job as ensuring that there was rigour and that this was carefully pursued in all matters.

Baroness Kennedy of The Shaws: One of the things about the Commission is that it brought together a number of different bodies, each of which autonomously had a great deal of their own identity—around race, around women's rights, around disability. It is not an easy organisation to chair because there inevitably are tensions about priorities and so on. It involves incredible people skills, and I just wondered what you felt about your ability to deal with those kinds of tensions inside an organisation.

Baroness O'Neill of Bengarve: I think I am pretty good at people skills. I have at least a reputation as a good listener and I do not make up my mind before I have conversations. I also communicate clearly, whether in writing or talking to people, and I have had plenty of experience of, I suppose, the two ends of that: having to give people news or information that they do not welcome and also letting others take credit for whatever institutions achieve. So I think I am reasonably sound on that.

Baroness Kennedy of The Shaws: One would say that probably managing a college in Cambridge involves many tensions. One of the things that does not arise and is not in your experience is dealing with issues of race. Cambridge is not well known for its embrace of the bigger race issues. You have certainly been dealing with issues around women over the years, but what about race? Do you feel that it is something that you really have experience in handling?

Baroness O'Neill of Bengarve: I had a good deal of contact with GEEMA, which is the Group to Encourage Ethnic Minority Applications, and I also listened rather carefully to undergraduates, who find, in some cases, that classifying themselves using our ethnic monitoring categories is something that they do not welcome and do not like. Some of the more confident would say they just falsify that information. Others say, "I do not like being pushed to take sides between my mum and my dad when I have to classify myself", and I believe we have to move on in this country and recognise that an awful lot of us have a racially or ethnically mixed background and that we must not, as it were, be forcing people to identify themselves in a set of categories that are obsolete. We have to monitor, but we have not, as it were, to impose institutional classifications on people.

Baroness Kennedy of The Shaws: What about on women? Do you feel that the issues on equality for women are more or less resolved now?

Baroness O'Neill of Bengarve: Some and not others. My own perception is that the difficulties that women have are often not merely because they are women. Women as such may have a fairly well protected position now. It is because they are, for example, women

and carers or women and very isolated. In general, the important thing is to look for the combination of circumstances that render people genuinely vulnerable to others. Of course, some of those are rather obvious—trafficked women, for example—but others are much less obvious. I suppose the frail elderly are a category who we cannot obviously distinguish in writing legislation, but the old as a whole are not disadvantaged the way the very frail are.

Q3 Baroness Lister of Burtersett: Good morning. You have made reference already to some of your philosophical writings about both equality and human rights. Would you like to tell us what is your vision for equality and human rights for this country?

Baroness O'Neill of Bengarve: The human rights documents are 60 years old. There is a lot of work going on around their possible revision at this stage, but I would say they articulate values that we think are important in public life, in civic life, everywhere. It is often to be remembered that human rights are rights for all human beings, and picking out certain categories is just a way of reminding ourselves that some people are, perhaps, vulnerable in particular ways or likely to have their rights squeezed in particular ways.

So the ideals that lie behind human rights I regard as absolutely fundamental, and I am not bothered by some of the blemishes on the 1948 Universal Declaration that made it apparently very focused on the developed world. But I would say that the European Convention is a very much superior and more nuanced document; it realises that you will always have the potential conflict between rights, so the way the different clauses are set up reminds us of the degree to which judgment may be needed. I have been thinking about the right of freedom of expression as expressed in the European Convention recently. So I am absolutely with those documents.

Their downstream implementation is sometimes marred, not merely by resistance but by over-enthusiasm. I will give you an example. A lot of people talk casually of a right to know. Well, you can have a right to be given information or receive information, but nobody else can make you know something, and I think that sort of sloppy speech does not do justice to the toughness and the importance of human rights arguments.

Baroness Lister of Burtersett: Thank you. How do you see the relationship between equalities and human rights?

Baroness O'Neill of Bengarve: I am not sure I find it useful to talk about a right to equality. Of course, it comes out as meaning a right to equal respect and equal opportunity, but it is not, so to speak, on a footing with other rights, and it is—what shall I say?—a context without which the very development of human rights would be impossible. My view is that some equalities are impossible: “Which of you by taking thought can add but one cubit to his stature?” Equality of height is not a possible aspiration. Equalities of other sorts are probably undesirable: if all our voices had the same timbre, imagine how difficult it would be for the people listening to this particular hearing. Other equalities are possible but not very important. Then there are important equalities, morally important equalities, of which I would put the right to equal respect for all persons absolutely at the top. So we have to distinguish among equalities. It is why I will always try to talk about equalities in the plural, because it is not just one thing.

Baroness Lister of Burtersett: Indeed, it is the Equalities and Human Rights Commission and there are certain equality groups. So in terms of the equality groups that are represented in that Commission, how do you see the particular relationship there?

Baroness O'Neill of Bengarve: I think it is an extremely delicate thing to get the relationship between groups that represent certain interests or certain groups of people right. I am very struck that there is a difference between a group being vociferous and it representing

people of very great vulnerability. My experience, on occasion, of working with patient support groups is that those who have family members with some of the most debilitating and difficult medical conditions are not in a position to be vociferous or active at all, because of what they are facing. I would regard it as very important not automatically to hear the voice of the groups that are well organised and well supported and have ample funds and high-powered communications operations at the expense of those that are different, and there are a lot of them. I am thinking about the people who are frail, isolated, and greatly vulnerable.

Baroness Lister of Burtersett: Thank you. In your opening answer you made reference to your writings and whether the people who had approached you knew what you had written about equality and human rights. Apparently, if your name is Googled next to “human rights”, what it brings up is your essay “The Dark Side of Human Rights”.

Baroness O’Neill of Bengarve: I hold my hand up.

Baroness Lister of Burtersett: Do you accept that your appointment might cause some legitimate anxieties in some quarters?

Baroness O’Neill of Bengarve: I hope that people read what I have written and not just the titles, but one can never trust that to happen. My view is that the dark side is the promulgation of rights without thinking about the counterpart duties, without which they are not a reality. That is why I said earlier I think that on some occasions the friends of human rights—the would-be friends—short-change it, because they do not address the practical questions. Who ought to do what for whom if this right is to be respected? It is that practical question that, to my mind, creates a reality of human rights. So, if you like, to cite, in a completely unpolitical way, a political figure, I thought Clement Attlee was about right at about the time of the drafting of the Universal Declaration when he said that obligations realised create rights.

Baroness Lister of Burtersett: If I could just follow on from that, do you think the EHRC in its work understands that and has that, or is that something that you would see yourself as changing in the way that it conceptualises human rights?

Baroness O’Neill of Bengarve: That would be an ambitious thing to say. An institution is always very complicated, with many voices, many concerns and many different intellectual and professional considerations to take account of. But I would hope to bring such intellectual rigour and clarity as I can to talking about rights and talking about equalities, and that, for me, would mean that, if you talk about rights, you also talk about what it takes to realise them, to achieve them, and, if you talk about equalities, you do not slip into the singular and talk about one big equality.

Q4 Mr Sharma: You already have mentioned something a few times, but I just want you to elaborate a little bit more on that. Have you expressed any public views on some of the issues that seem currently to be most concerning to the public? These include the role of the European Court of Human Rights, prisoners’ voting rights, the need for a bill of rights for the UK, extradition and deportation issues, freedom of religious expression, or you may choose many more.

Baroness O’Neill of Bengarve: I am trying hard to review whether I have ever expressed any public opinions on any of these. I am holding back on thinking about a bill of rights at the moment, because there is a certain amount of material being published and I want to read it and read its arguments before I take a view on that matter.

On prisoners' voting rights, I think, although I have not expressed it publicly, that it is very important for those who serve minor sentences to be reintegrated into society, and that may mean that one of the things one encourages them to do—though, alas, not all their fellow citizens who are not in prison do this—is to register to vote.

On others, I have tended to express public views only very publicly, namely in debates in the House of Lords, or where I thought I began to know and understand something about it. I try not to have free-floating opinions. That must make me very dull, but that is the way I go about it.

Baroness Kennedy of The Shaws: Can I pick up on one that is very hot, which is the issue of deportation or extradition, but particularly the issue of deportation to places where the standards of human rights protections are not very high? There are some people who take the view that our duty in those circumstances is to our citizenry and that we should deport anyway, hang the consequences for the individual. There are those who would argue that we have a duty in protecting our determination not to, in any way, encourage torture, and that we should, therefore, not deport to places where there might be torture. What is your view on that?

Baroness O'Neill of Bengarve: Torture, to my mind, is as close to being what is called, colloquially, an absolute as there is, so I would be very reluctant to deport to torture. I think, however, the unclarity of particular cases makes this quite a difficult one. If you say, "In such-and-such a polity there has been torture, but the Government offers that that polity or that state offers an undertaking not to torture," you have to operate on the basis of best judgment of cases. But I do not really want to come close to commenting on cases about which I do know too little.

Mr Sharma: I do not know whether it is appropriate or not; if not, just tell me—stop me. Recently, there have been many, many cases concerning the Tamils who are deported to Sri Lanka, and there is a general view from most political parties and individuals that there is torture against those people who are removed from here. Have you read it, heard it, made a view on it?

Baroness O'Neill of Bengarve: I have heard it, but it is not a subject on which I have spoken. But if there is substantive evidence that people who return to Sri Lanka are tortured, then I think those people should not be removed.

Q5 Baroness Berridge: Good morning. What do you think the EHRC does well and, conversely, what do you think it does not do well, and is there anything you would want to change about how it operates?

Baroness O'Neill of Bengarve: This Committee is on record as having taken a less than flattering view of the EHRC two and a half years ago. I would have thought that since then it has done some things that this Committee might applaud and, of course, it is only in the course of this appointments process that I have come to be aware of what it has done—and I do not think I am fully aware of what it has done—but it is now an institution that gets its accounts in on time and qualified. It is now an institution that uses much less public money. It is now an institution that has downsized itself in keeping with a 50% budget reduction. It has done a great deal; it is doing more.

Now, you may say, "Why would anyone wish to take over an institution whose heyday is the past?" I think perhaps it is because I have a slightly different conception of what a heyday can be. I think that the combination of good professionalism in the organisation and the removal of certain—what shall I call them?—open-ended duties to promote or celebrate certain things should enable us to have a human rights and equalities

monitoring body that meets very high standards. I cannot, of course, promise that can be delivered. That depends on many others and also on Government decisions on funding, but I have been given reassurances that the Government's intention is not abolition, which was not initially clear to me. Given that, I think it can be made to do a good job and to be a status-A international human rights monitoring organisation.

Baroness Berridge: You say it could do a good job. What, in your mind, is a good job for the EHRC?

Baroness O'Neill of Bengarve: I think a good job is, first of all, having high-quality evidence about where things are not working. Getting that evidence is not simple and, of course, it requires the contribution of many other people, but it has to be high-quality evidence and somebody has to do that however much they rely on intermediaries to collect evidence. I think I would be concerned to achieve rigour about that evidence and not to be using, as it were, the worst cases as if they were the standard cases but to be focusing on the worst cases of people whose human rights are, indeed, short-changed. I think of people too frail to feed themselves who turned out not to be being fed in certain nursing homes and hospitals, which, to my mind, is a very fundamental human rights violation.

Baroness Berridge: You talk about the frail, etc, but the hot topic in our Chamber that is coming on Friday, which Baroness Cox has put on the agenda, is about the issues around Sharia councils. Now, I am not asking you to take a view, but could you put some flesh on the bones as to what we would see the EHRC doing to help what is a very, very contentious issue be dealt with sensibly? Can you just help me with that? What would I see happening from an EHRC point of view?

Baroness O'Neill of Bengarve: This is the question about Sharia councils. I think my view about Sharia councils and the equivalent Jewish courts is that, fundamentally, they should function as mediation bodies. That is to say, there is no escaping the law of the land when it comes to the definition of, for example, marriage or divorce or theft or the rest. But if certain groups wish to use alternative procedures, provided these procedures are not themselves damaging—and that is a very important issue, because it must be the case that people who use these procedures genuinely choose to use them, say, to resolve marital difficulties and not that a community, as it were, pushes them into using these procedures rather than the state-provided procedures—yes, okay, but not substituting for the law of the land. There has to be a way of ensuring that anybody using those procedures does so knowing their strengths and limitations. I can entirely understand why someone might wish to keep marital issues within a religious context. That is no problem to me. What I find questionable is if some or more of the parties concerned are short-changed by that process.

Q6 Baroness O'Loan: Chair, before I ask my question of Baroness O'Neill, I just want to place on record the fact that she and I share an office with six other Peers. There are eight of us in the office, but we do share an office. Baroness O'Neill, what do you think is the greatest challenge you would face if you were to take up this post? I know you have articulated a number of challenges.

Baroness O'Neill of Bengarve: I think there is a very big gap between public expectation and real possibilities. It is what I was talking about, in a way, in talking about the inflationary rhetoric that goes on around human rights and around equalities. That is why I would hope that we could, in our public culture, develop a serious respect for the human rights of each and every individual and a form of respect that does not veil the duties that imposes on other people. I do not believe we shall have serious respect until and unless we are up front with one another that anybody's right is only as good as other people's duties.

Baroness O’Loan: You have talked a number of times about the need to ensure that articulation and recognition of rights does not veil the duties that are imposed on other people. Can you give us a concrete example of how that operates? You have talked repeatedly this morning now about the frail elderly in hospital, so could you articulate what that would mean?

Baroness O’Neill of Bengarve: Yes, it is a very good example, is it not, because what makes one feel puzzled is why there are frail elderly who do not get fed although there are nurses in the hospital whose tasks include that; why does it happen? I have worried about this quite a lot, and when you talk with staff—and I have the greatest respect and sympathy—they will often say, “We were short staffed; there were not enough of us.” Recently, when I chaired a committee for the King’s Fund on the safety of maternity services specifically in England, we heard repeatedly of staffing shortages. When you got down to it, yes, there were shortages, but the deficiencies were more about communication than about mere shortages. Communication sounds such a flabby word, but doing it and getting it right—and communication, in my book, is listening as well as telling—is very hard.

So, with the frail elderly, if the way in which things are organised does not enable the staff to take long enough to communicate with patients, I think we have problems. Of course it might, indeed, be that they would ask one patient to help another; nothing can be more useful for self-respect or friendliness between people. On this, I have written also a lot on accountability over the years, and I think we have, as a society, gone for tick-box cultures in a way that sometimes has led the accountability to dominate performance of the primary tasks for which people were being held to account. To my knowledge, this has certainly happened in the educational world, but I think it has happened more broadly.

Baroness O’Loan: When you talk about those duties that follow the rights, you are talking about—and I think this is profoundly important and I do not want to put words into your mouth—the obligations that the Convention, for example, places on the state.

Baroness O’Neill of Bengarve: Not quite, because that is the burden of the piece whose title comes up when Googled. If you read the Conventions, they place a duty on states, but it is not the duty to meet the rights. It is a second-order duty to see that there are institutions and structures that meet the rights, and I think that gap is part of our problem. It was very easy for the richer societies, as it were, heavily influenced by the construction of welfare states, to think it meant state obligations. That is not what it says in the 1966 Conventions and I do not think it is what is fundamental; it is that they be delivered. The tick-box culture, to some extent, and, I suppose, the enormous amount of control of professional performance of a very detailed sort in the schools, in the hospitals, in social work and so on, has sometimes worked to the detriment of the relationship between those who have a duty to care for others and actually doing that caring.

Baroness O’Loan: I just want to clarify your understanding of what the state is then in this context, because, say, in European law terms, the state is much wider than the Government of the country. We are talking about institutions created to deliver services and to deliver them in a human-rights compliant manner. Could you clarify what you mean by “the state”?

Baroness O’Neill of Bengarve: Well, on the way those organisations are constructed and how they operate, it is, as it were, not enough to have a blueprint that, if it could be followed, would deliver the services. It has to be something that people in their real lives can deliver. I am sure that all of you watching a new Bill as it appears in front of us sometimes think, with chilling feet, “Oh dear, can people comply with this? Is it not too complex? Can

we get the amendments in that will make it do a good job as opposed to having all these high-falutin' intentions?"

I will give you an example from our part of the world; we both come from Northern Ireland. We sometimes use a phrase there that Baroness O'Loan will be very familiar with: "shared-out future" as opposed to "shared future". One of the ways in which the Good Friday Agreement and the St Andrews Agreement have operated is to encourage a conception that what we are aiming towards is a future in which each, in this case, religious community gets a proportionate share of whatever it may be—housing or jobs. I do not think that is really a good enough goal for a society that is committed to human rights and equalities. It may be an interim stage—it may be a necessary stage in Northern Ireland—but we should not have allowed the setting up of procedures that fuel rather than reduce, for example, residential segregation.

Q7 The Chairman: Baroness O'Neill, in the context of the significant reductions in staffing levels of the EHRC, have you thought about the challenge of devolution and how you are going to continue to meet that challenge, particularly where there has been a significant presence of the EHRC, particularly in Wales?

Baroness O'Neill of Bengarve: There is, to some extent, a separate structure in Wales, Scotland and Northern Ireland, and, indeed, two of the Commissioners who are continuing are the Commissioners for Wales and Scotland. I have heard good things about the procedures in the devolved administrations. I certainly know nothing much about them at this stage. I think the question that people might raise is, "Well, how about the English regions?" and I am very concerned that we not be a South East England-focused body, because I do not think that would do justice to the remit or the realities at all. I understand that regional offices were not really so much offices as a presence in the offices of other institutions, but it is something that concerns me: that we take account of the diversity of English regions; that we take account of the very different ways that human rights difficulties may be felt, for example, in remote communities.

Q8 Baroness Kennedy of The Shaws: This is the moment when I am going to have to depart. However, when Mr Sharma asked his question about Baroness O'Neill's views on matters that are current in debate, I think we glided over the role of the European Court of Human Rights. Can you envisage at any stage our, perhaps, cutting free from the European Court of Human Rights and really operating a human rights culture and regime here in Britain independent of the European Court? Is that something you would contemplate?

Baroness O'Neill of Bengarve: It is imaginable, but I think that the prior and sensible step is surely—and I gather it is ongoing; you will know much more about it than I do—some reform of the European Court and some, as it were, measures that will give swifter justice.

Baroness Kennedy of The Shaws: But do you feel any particular animus towards the way in which the Court currently works or the role that it plays?

Baroness O'Neill of Bengarve: My understanding is that, statistically, the European Court has overturned very few UK judgments and, like any court, it may, in some cases, have got things wrong. That is conceivable.

Baroness Kennedy of The Shaws: Would you see it as part of your role to attempt to assist the public in Britain to understand the relationship between the British courts and the European Court?

Baroness O'Neill of Bengarve: One of my ambitions for the EHRC would be that it should communicate in plain English. However, I do not think that is at all easy in these areas

and I think that some of the duties to communicate, promulgate and celebrate are being removed or are likely to be removed, and I, on the whole, think that is a good thing. An open-ended remit is often a remit that cannot be very accurately met.

Q9 Mr Sharma: I have a straight question: do you agree with the priorities set out in the EHRC's latest strategic plan or will you be seeking to encourage a change of direction in future?

Baroness O'Neill of Bengarve: I think there are a lot of levels at which that has to be answered. One thing that I need to understand very much better, as I think any incoming chair would, is the framework document between the Government Equalities Office and the EHRC. The number of different requirements in that document is very large. I am answering this rather at a, as it were, structural more than operational level. I think one has to be clear about that.

The conundrum—and I may be going on to a topic that you wanted to come on to subsequently—is if the EHRC is to be an A-status human rights monitoring body, it has, to a degree, to be independent of Government. Of course, it is tax-funded and there is a degree to which it is not. The present relationship with Ministers is highly complex, with some very specific exemptions and exceptions in the framework document, which are intended, I think, to ensure that Government cannot intervene if the EHRC had reasons to investigate some branch of Government in some matter. That is the, as it were, crunch that sits there however you organise it. I would want to understand, better than I do now, how the framework document is constructed, and I would see it as a responsibility to make sure that, as that document evolves, it is going to enable the UK to put forward a case for its human rights monitoring body to be a status-A body. I think that is important in itself for our reputation and, indeed, for the UK's soft power, so all ways we need that. The document is sufficiently complex that I have not yet been able to make a judgment that the particular exemptions on ministerial reaching that it contains are the right exemptions with the right shape and the right limits, but I do think that is something that will need to be explored. That might not quite have been what you were thinking about, but it seems to me to be the most general issue that lies there.

Mr Sharma: Just very briefly, suppose, once you are in the position, you have gone through the document, you look for advice, and you find that you disagree fundamentally or in a middle way with the document on the priorities that are already set. Would you be willing to change the direction of the organisation?

Baroness O'Neill of Bengarve: I see a difference between a framework document and a work plan, and a work plan, it seems to me, is regularly subject to revision—has to be subject to revision and has to be subject to agreement. We are talking about a situation with a reducing budget and a somewhat changing remit. It would be unsurprising if the work plan, or the strategic plan, which is what I think it is more elegantly called, does not have to adjust to reflect that reality.

Q10 The Chairman: Baroness O'Neill, at the outset you said that you were approached to apply for the post. Could you tell us by whom?

Baroness O'Neill of Bengarve: By the head-hunters. I know not what lies behind that.

Q11 Baroness O'Loan: Baroness O'Neill, can I ask you whether you are supportive of the rationale behind the Government's reform of the Commission?

Baroness O'Neill of Bengarve: Again, there is a lot of detail in there, as you know. I suspect that, looking back, we will see that the Commission has had various phases. There was, as it were, a phase that involved the integration of previous organisations and quite large funding. There has then been a phase of very rapid downsizing, so that the budget and the headcount are both down 50% on what they were. I think, beyond that, one has to, as it were, start talking detail. Some reductions reflect the removal of responsibilities. For example, the telephone helpline has been outsourced. I would want to know that there is quality control on the advice that is coming through that helpline and also that people know how to find it. It seems to me that, given the EHRC has run that helpline for a time, it is likely to find many inquiries coming on the assumption that is where the helpline is, but it is not, and that means some staff time has to be used to redirect people to the helpline.

Less controversial is that the grant programme was removed. I do not think it is essential to EHRC to be making grants.

There is the question of research, and I have to say I have in mind here only research that piggybacks on the genuine article. I have, but it is not immediately relevant to this context, some views about the research spend of government departments not always meeting the highest standards for the relevant research. So I would hope we could meet high standards and that we could use pretty good shortcuts, which I and others can identify, to know where there is robust research and where there is not robust research.

Baroness O'Loan: You have talked to us about the reform process, and you have talked about the downsizing, effectively, of the Commission and closure of offices and that sort of thing, but the reform process is not complete yet and already we know that there are serious difficulties with staff and morale. So my question is: what would you do about that if you were appointed?

Baroness O'Neill of Bengarve: Look, nobody's morale is going to be at all good when they have lost, are losing or are about to lose their job. It is a painful process. I have to say it is much more painful for senior staff than for an incoming chair, and I do not underestimate what a difficult task that has been. There is, I gather, further downsizing to come. Beyond that, it depends very much on decisions that will be made by the new sponsor Department, DCMS, and by the Government Equalities Office. I would, of course, hope that they take a realistic view of funding what is to be done and not frills, and that is a debate to be had. I would hope to establish a good atmosphere. I would hope to listen well. I do not think that is best done by an incoming chair going around meeting and greeting those who are in a severance process. I respect those people and they have to be dealt with properly. One thing that the EHRC must do is conduct all of these processes in an exemplary way.

Q12 Baroness Berridge: I appreciate the integrity of the process that you are stepping into as it has begun, but on a number of occasions now the Committee has received representations that, if the current process goes ahead, you will end up with a workforce that does not exemplify what you stand for. In a sense, what we are being told is that you will end up with hardly anybody who is not white. You will end up with hardly anybody, post-Paralympics, who is disabled. So is that a concern for you and is it a concern that most of that will happen, it appears, at the bottom end of the Commission?

Baroness O'Neill of Bengarve: I have not seen the statistics. I do know that the rumour that is going around that the closure of the regions would have a disproportionate impact on minority staff is incorrect. The minority staff are more concentrated in London.

It is essential to have people who have experience of the various grounds of discrimination that it is the purpose of the legislation to address, and that, of course, is why there are particular requirements for the Disability Commissioner and the Disability

Committee, and I think that is right. Regarding disability, however, I would be the first to say—in keeping with what I said about vulnerability—that not everybody who has something that classifies them as disabled needs special treatment, and I think that the important thing is not to not argue from generalities but to make sure that systems engage with the people who really need them.

Baroness Berridge: I appreciate you are in this process, but one of the important things at the end of it is monitoring what has happened in your cohort group, the group who have left the organisation, because this is a concern. I have heard evidence from the NHS about what is happening. Is there monitoring of the group that ends up losing employment? Can you assure us that there will be robust statistics to show what has happened within those groups?

Baroness O'Neill of Bengarve: I cannot assure you, because this is not the sort of thing that you get told on three extremely short visits to the headquarters very late in the appointments process, but I will raise that matter.

Baroness O'Loan: I just wanted to come back to this, because I think, Baroness O'Neill, you have talked very coherently about the external dynamics of downsizing and the impact of that and the responsibilities of Government, etc. You have talked about establishing a good atmosphere and listening well, but beyond that, I think internally within the Commission, in order for the Commission to deliver as best it can on the resources allocated by Government, there is a very serious need to address the morale issues inside the Commission. So my question to you is: how will you go about that process?

Baroness O'Neill of Bengarve: I would not live there, but when I am there I would be very available. I will put it another way, because this perhaps shows you something of my style. I have been the chair, effectively, of a number of organisations with high levels of disagreement within them, let us say, and I think that taking people seriously and listening to what they have to say is very important in this. But on the other hand, you do not improve morale by turning life into a staff meeting, and I would also expect—and from what I have seen this is also their attitude—that the senior management team, who have been carrying this unpleasant set of tasks, would take a similarly positive attitude. I would do my best to ensure that they did.

Q13 Baroness O'Loan: Thank you very much. I will now come on to the next area, which is an area you have also talked about, which is the fact that the Commission will have fewer powers and duties, and you have identified areas that are being removed from its remit. What will you do to maintain the standing and the impact of the Commission following that reform? The second element of that is: is two days a week enough to carry out that task?

Baroness O'Neill of Bengarve: It might not be. I am willing to give it more initially. We will see. I have to say: how long is a piece of string; how long is a day? I expect days to be long. I also expect this work to be dispersed. It is not a matter of going in on Monday and Tuesday and then heading for this place on Wednesday, Thursday and Friday and home on Saturday and Sunday. So I expect to be highly available. Like everyone, I work electronically. Like most of us, alas, I am not a great respecter of weekends.

Baroness O'Loan: Can I take you back to the first part of that question, which was: what will you do to maintain the standing and impact of the Commission following all the reforms?

Baroness O'Neill of Bengarve: One of the things that I think is important—and it may be easier for a Commission that no longer has the duties to promote and celebrate in the

same way—is to have a work programme with very clear priorities in it and, as you work through it with certain milestones, to spend a good deal of time at the start of any inquiry or any monitoring in thinking clearly about who needs to hear the message and how that message gets rolled out to the people for whom it might be helpful. Now, I have banged my shins for years enough in Westminster, and even, to some extent, though never a civil servant, in Whitehall, to know that there are all sorts of obstacles that you encounter along the way. My view would be that sometimes you would find that, though a particular topic might be one that greatly needed investigation, it was very difficult to get the agreement, the coalition, the external acceptance of that in order to make an effective intervention. So the general watchword would be that focus is useful for achieving impact, and sometimes a focus on the thing that you think is really important cannot be done tomorrow.

Q14 Baroness Lister of Burtersett: Concerns have been expressed in the past, not least by our predecessor Committee, about the relatively low profile accorded to human rights by the Commission and also about how it has dealt with the many competing legitimate demands upon it from different equality groups. So how will you approach these issues, and are you afraid that perhaps the significantly reduced size of the Commission will have implications for maintaining the expertise necessary to perform the full range of your remaining functions?

Baroness O'Neill of Bengarve: Expertise is, as you well know, widely dispersed in our society, and I think if you do not have it you go and get it. The Commission itself will be smaller. As I am sure you know, the turnover of Commissioners is very large at this point. There are advertisements out for the appointment of six new Commissioners. One of the things I would be looking at if offered the post—and I already have my diary blocked in for short-listing and interviews—is that the new appointments represent a good range of competence, of expertise, of geography and of background. So I am looking to be very, if you like, stern on the nature of those appointments. Is small better? Not always. Is small possible or smaller possible? I hope so. There are no guarantees in this life, but I hope so.

Baroness Lister of Burtersett: If I can come back on that, in a sense each group says, “Our interests are not adequately represented,” partly because of coming from separate commissions. How do you deal with that?

Baroness O'Neill of Bengarve: I think that might be partly the past. It was definitely, as I understand it, a legacy issue in the early years of the Commission that the separate prior commissions had been used to looking in different directions. Because I believe you have to set priorities in any effective organisation, it follows that not everybody’s pet project can be the top priority. The process for setting priorities must be fair and well communicated, and, where there is something urgent, it is very often the primary responsibility of other bodies, remembering that, after all, we have a great deal of legislation in place that can be used and that some of the worst cases we read about are cases for which there exist remedies at present.

However, something I am very mindful of is that people do not like using available legal remedies. If you look at Hazel Genn’s two books *Paths to Justice* and *Paths to Justice Scotland*, the evidence was that of people who had what was called a “justiciable event” in their lives—and these were not all human rights or equality issues—93% and 95% in Scotland and England respectively did not take the available legal remedies. I believe that means we need, going forward, to think much more about the sorts of remedies that people will feel they can grip and can use. That is, I suppose, saying in the end that culture matters as well as law.

Q15 Baroness Berridge: You have talked about the process of the coming together and each group saying, “We want more focus”, but the external picture is that there has been a

lot of argument through the press about the different protected characteristics and when they come into conflict with one another. You mentioned just now available legal remedies. In this area—and I am looking particularly at religious groups—they have gone to the courts and we have this playing out in a very public way through the media. Some of the statements from the EHRC have been construed to mean, or may mean, in fact, that there is a hierarchy amongst the protected characteristics. Now, could you comment on whether all protected characteristics are going to be equal and also how you see that role going forward? You have quite a public battle going on. Do you think that is a good thing—I do not want to load my question here—and how do you see that being mediated?

Baroness O’Neill of Bengarve: There is bound to be public, let alone media, misunderstanding of what a protected characteristic can be. Having a protected characteristic is not, in all circumstances, having a privilege or a priority in some matter; it is that it has to be taken properly into account, and I do not think that one would be able to find—and I am sure lawyers would not seek to find—some generic way in which, for example, racial issues always triumph over religious or gender issues. They must all be taken into account. But there is no algorithm for saying, “In general, religion must win,” or, “In general, race must win.” That is, I think, the wrong way to look at it. That is why, at the end, in court cases we do have judges, because judgment must be exercised and they have to take account of all the characteristics. I do not think a failure to prioritise this characteristic is wrong if it is done in order to give serious priority to some other protected characteristic.

By the way, there are many characteristics of people that are not labelled “protected” under this legislation, some of which are very fundamental to the lives human beings lead. Frailty is one I have used again and again, because I take it very seriously, but I also think remoteness and isolation put people in very different situations, and that can be remoteness at the top of a tower block, isolation at the top of a tower block, or isolation at the end of a lane in hilly countryside. There are many forms of remoteness that render people particularly vulnerable.

Q16 Baroness O’Loan: Baroness O’Neill, could I just take you back to your reference to the fact that people do not like using available legal remedies? Appreciating, as you obviously do, the need to recognise options for alternative dispute resolution and the fact that people have the right to make a choice, nevertheless do you think it is simply that they do not like using available remedies or could it be something to do with the fact that available remedies, whilst they are available, may not be accessible and possible or maybe just not timely, as they should be in European law?

Baroness O’Neill of Bengarve: I think it is multiple factors. If I remember Genn and Paterson’s book, the one on Scotland, it had to do with everything from not wanting to be public about it—not wanting to have to confront the other party to some issue—to feeling things had got out of hand. When I read those books, my hero at the end, by the way, was the citizens advice bureaux for the degree to which they forestall the need for litigation.

Q17 Baroness O’Loan: Thank you for that. Sorry, you were interrupted there. Is there anything else you wanted to say there? No, okay. The question I am going to ask you now follows on to some degree from some of the earlier questions that I have asked you, but it is about the public perception of the Commission’s work and of human rights more generally. Some of the debates that occur in the public domain are not, if you like, predicated on as much reasoning and philosophy, perhaps, as they might be. Do you think there is a chance to inject some of your own philosophical approach into those debates?

Baroness O’Neill of Bengarve: It is a temptation I am always trying to resist, but not always successfully. Let me put it this way. I think there are junctures at which improving

the arguments is helpful in public life. To give a human rights example, in my opinion, most of the debate since the phone hacking scandal broke, and we have seen people disputing the relative weight of rights to freedom of expression and rights to privacy, has been pretty futile, because people did not clarify—and I mean among that leading journalists, and even some politicians—which conception of freedom of expression they had in mind. They did not look at the arguments and, therefore, they could not find a way, other than blunt assertion, to justify certain limitations and not other limitations. I have said this in my evidence to the Leveson Inquiry and I shall say some of it again in a debate in our House on media standards and media regulation, which I am introducing next week.

Q18 Baroness Lister of Burtersett: Baroness O'Neill, some of your writings touch upon the distinction between what you describe as liberty rights and those rights that connect with goods and services. Do you think that those who support strengthening social, economic and cultural rights might perhaps feel a bit anxious about your appointment and, if so, what would you do to allay those anxieties?

Baroness O'Neill of Bengarve: Well, again, if they do not read, they will certainly feel a bit anxious, because I think I am only drawing attention to realities. There was a reason why in 1966 there were two Conventions, not one. There is a difference between the economic, cultural and social rights and the rights of the person, civil rights, and the difference is, roughly speaking, that we know a lot more about who has the obligation or obligations that make a reality of personal and civil rights, because everybody and every institution has those obligations. The liberty rights, as they are sometimes called—that may not be the best term—are the ones where it is easy to see who carries the can. If even one person gags somebody, that violates their right to freedom of expression, by which I do not mean that I think the right to freedom of expression trumps all other rights, far from it, but it is clear enough who has the obligations.

With the famous right to food or the even more famous and surprising right to health, which makes it sound as though as soon as you have a cold your human rights have been violated, there is a very different structure required. In a way, that was why the Conventions had to be promulgated, because you need much more structure for institutions that deliver economic, social and cultural rights, and the people who hold the duty are not even defined in some cases until you have the structures.

Baroness Lister of Burtersett: It may be you have written about this but I have not seen it. What is your view on the notion of the indivisibility of the different kinds of rights?

Baroness O'Neill of Bengarve: It is a very elegant phrase, it is not? One of the reasons for talking about them in the plural is, if you read any of the international reports on the success and failure in various jurisdictions, one sees that they are divisible. There are countries that are disastrous on freedom of expression but reasonably good on market freedoms. Some people admire such countries. I think they may have problems ahead of them, but of course they are divisible. What shall I say? It is a flag to wave. It is not the truth about the way things are.

Baroness Lister of Burtersett: Is it an ideal?

Baroness O'Neill of Bengarve: If we have them all, we do not need to argue about whether they are divisible or indivisible. That would be a splendid destination. But in the world we are living in, I think we probably do have to think about there being a plurality of human rights. Indeed, I do not see that we would be taking the international documents or the national documents seriously unless we thought there were a plurality. We do also have to

realise that cases pit the way in which one right can be respected against the way another right can be respected, and that is the difficult task of the judges very frequently.

Q19 Baroness Berridge: Just to follow on before I ask the required question, you say it is for judges to decide upon, and it seems to me that you are envisaging a lot of these conflicts, so to speak, ending up in a judicial context. I am just wondering, in relation to my previous question, whether any process before that or any consideration of introducing a concept like they have in Canada of reasonable accommodation could avoid a lot of this going to court. Would that not be preferable?

Baroness O'Neill of Bengarve: Yes, it would be preferable. The fact that, in the end, judges have to make a decision and say, "In this case"—but of course they always try to create as narrow a precedent as they can around the case—"we have to give priority to this one", is regrettable. I think the better situation is indeed where there are ways for people to resolve issues that are genuinely available to them. That is why I referred to these empirical studies on what people do, or rather what they do not do. I suppose the interesting figure that emerged was, in addition to the only 5% in England and 7% in Scotland who took available legal remedies, what they did in the other cases. In 50% of cases they did what they referred to as "lumping it"—putting up with it—and we have to remember that. Of the other cases, the 40%-odd, there was more willingness to use certain types of structures than others. People were quite willing to make consumer complaints, for example, but they were quite unwilling sometimes to confront what they thought were unfair decisions by school admissions policies. I suspect that we need to think about that sort of intermediate structure. The great difficulty is that as soon as one person proposes an intermediate structure, as you will know, another wishes to garnish it with the full panoply of adversarial process.

Baroness Berridge: Do you think the Commission has been out of touch with significant elements of public opinion over the last few years?

Baroness O'Neill of Bengarve: I think that is likely, but I do not know and I suppose that it is quite difficult to penetrate to public opinion as opposed to media representation of public opinion, which is a fairly different matter. There are, of course—although they have to be paid for and, in my view, they are not an outstanding source of information—many public opinion polls, but they tend to be commissioned for particular purposes by particular bodies, and the questions they ask, even if honestly answered, may not reveal a range of things.

Q20 Baroness Berridge: What do you believe to be the main lessons that can be drawn from how the EHRC has operated to date on how best to garner public opinion and support for what, hopefully, will be your organisation, bearing in mind there is a lot playing in the media to do with the role of the Court and our sovereignty?

Baroness O'Neill of Bengarve: I mentioned plain English before, but one thing that is very useful is to make it absolutely clear what you do not do and what the legislation does not permit you to do. I think one of the things an institution with so grand a name as this one could usefully do is to make it very clear on the front of the website what they cannot do, otherwise people are bound to sense mainly disappointment.

Q21 Baroness O'Loan: Baroness O'Neill, a very simple question: do you believe that you will need a particularly strong public profile to do this job? I am just looking at your statement that you are familiar with those issues and that you are also aware that unpleasantness may follow the taking of a particular stance or leadership. How will you cope with some of the demonisation that may occur from time to time?

Baroness O'Neill of Bengarve: I am aware of it and I have to say some members of my family said, "Do not touch this." I think I have a reasonably tough skin and I do not lose my temper.

Baroness Lister of Burtersett: You clearly have very well thought-out views about equalities, human rights. They may not always accord with the official views of the Commission. How would you feel if you were having to justify in a media situation something that you yourself have reservations about?

Baroness O'Neill of Bengarve: Any of us who has led an institution has experience of that, unless, of course, they were a dictator to their institution. I never have been.

Q22 Mr Shepherd: It is the boy who is late with his homework and all the rest of it, but I see that the EHRC vision, as set out by GatenbySanderson, has that the EHRC "is committed to the vision of a modern Britain where everyone is treated with dignity and respect, and we all have an equal chance to succeed". I have emphasised the word "equal". I thought that was the sort of language that you were pointing out to us as not very helpful.

Baroness O'Neill of Bengarve: Not at all helpful, no. It is positively misleading. I do not know if you are coming to the end; there is one topic I would like to raise.

Q23 The Chairman: There is one final question, but perhaps you can raise that once I have asked it. Baroness O'Neill, let us assume that you are appointed and in six months' time, say, you come back to this Committee to speak about your work. What would you like to have achieved in that period of six months and how would you measure that?

Baroness O'Neill of Bengarve: I would like to have achieved much greater clarity about what lies beneath the strategic plan and the reasons why one piece of work is being put ahead of another. I would like to be able to say that there is clarity about our location and budget going forward. That depends, of course, upon Government.

It leads very naturally into the point I wanted to raise with this Committee. The ICC expects that status-A national human rights monitoring bodies will report to Parliament. This body, at present, although it comes before this Committee, reports to Ministers. You could argue that in a parliamentary system where Ministers are accountable to Parliament, that does not matter. I think it may matter, and one of the things that I would greatly welcome is this Committee choosing to take an energetic role with respect to the Commission.

The Chairman: Well, that is a very challenging point on which to end. I am most grateful to you for a very helpful session. I hope you have found it worthwhile as well. We are now moving into private session, so once I call "order, order", I would like the room to be cleared. Thank you very much for your attendance.

Baroness O'Neill of Bengarve: Thank you, Dr Francis.