

## **Report on key informant interviews: Working Paper 5**

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### **Introduction**

The research team undertook interviews with individuals from the public, private and voluntary sectors in Scotland in order to obtain their views on policy and practice priorities within the field of equality and human rights, the type of research which might be useful to undertake in Scotland and the need for a Scottish Centre for Research on Equality and Human Rights. The results of these interviews are summarised below, organised by sector, and an overview of common issues and key differences across all sectors is also provided. Further details of the interviews are provided in Working Paper 5. This section concludes with an account of other consultation and dissemination activities carried out during the course of the feasibility study.

### **Scottish governance context**

The emphasis throughout these interviews was on eliciting perspectives from a Scottish perspective, where there are specific issues facing organisations involved in implementing and managing equality and human rights policy. Scotland has a devolved governance structure and the Scotland Act places a specific requirement on MSPs and the Scottish Executive to ensure their actions respect human rights. At the same time, Scotland is governed through a mixture of ‘reserved’ and ‘devolved’ powers. Reserved issues are decided in Westminster and the devolved ones by the Scottish Parliament. One of the most important implications of combining equality and human rights within EHRC is that its remit will encompass both reserved (for example employment) and devolved (for example education) matters. In addition to the Scottish Equality and Human Rights Commissioner, a Chair of the Scottish Commission for Human Rights (SCHR) has been appointed. The SCHR will focus on devolved matters, and consultation with the EHRC is required under the Equality Act 2006.

### **Voluntary sector interviews**

Twelve phone interviews were conducted with representatives from the Scottish voluntary sector, including organisations operating on behalf of the main<sup>1</sup> equality strands identified in the 2006 Equality Act. The views of the following voluntary bodies were elicited: Scottish Council of Voluntary Organisations, Scottish Low Pay Unit, Glasgow Housing Association, Barnardos Scotland, Scottish Council of Jewish Communities, Scottish Interfaith Council, Help the Aged, LGBT Youth Scotland, Equality Network, Capability Scotland, Scottish Disability Equality Forum, and Nil By Mouth.

*Recent Policy Developments: mainstreaming and equality duties*

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<sup>1</sup> The ‘gender’ perspective was elicited through interviews with the Equal Opportunities Commission.

- The principle of mainstreaming is widely supported in the voluntary sector
- The new public sector duties on equality are positive in terms of encouraging ownership of the quality agenda.
- The new public sector duties are likely to be difficult to implement, especially in larger organisations
- It requires adequate leadership to secure culture change, monitor progress and ensure accountability

Respondents on the whole welcomed recent policy developments, in particular the trend towards mainstreaming and positive equality duties, as well as the increasingly explicit policy emphasis on human rights. Mainstreaming was understood to mean that ‘equality should be taken for granted in all aspects of work’. The concept was a familiar one to almost all of the interview informants, although there was less awareness in the children’s charity since its remit does not directly concern the main equality strands.

Responses suggest that in the voluntary sector mainstreaming is a widely supported principle, which captures the complexity and breadth of equality issues. As one informant put it, ‘effectiveness needs a holistic approach’. Mainstreaming was also praised for its capacity to raise awareness of equality issues like sexual orientation or age that have hitherto received rather less support, and to embed these issues in policy-making arenas. It has also created the opportunity to develop further legislation for specific groups. However, a number of problems were identified in relation to the issue of mainstreaming. It is highly complex to implement, largely because it relies on securing a significant culture change. In order to avoid the danger of equality becoming ‘nobody’s business’, mainstreaming requires training, monitoring and leadership, suggesting a continued role for equality specialists. Moreover, the larger the organisation and more complex its governance structure, the greater are difficulties of implementing equality strategies. In summary, all respondents supported the principle of mainstreaming, but felt that its implementation requires adequate resources, leadership and accountability.

#### *The Equality and Human Rights Commission*

- The creation of the EHRC was welcomed as signalling a more ‘holistic’ approach to equality
- The EHRC has greater potential capacity to identify ‘joined up’ issues and facilitate coordinated responses
- It is a practical means of centralising support for all equality strands
- It needs to be easily accessible to voluntary organisations
- It puts all equality strands on an equal footing
- Some fear a hierarchy of equalities will emerge
- There is a lack of clarity about the role of the SCHR
- The EHRC should carry out a publicity campaign to raise awareness about its work and dispel myths about human rights
- More locally available expertise in human rights is required
- There are concerns about whether it will be adequately resourced
- It requires a supportive infrastructure
- The distinctive governance structure in Scotland needs to be accommodated

Almost all of the organisations had some contact with one or more of the preceding Commissions. This took the form of joint research, tribunal referrals, providing training and information on best practice, and more recently joint meetings in preparation for the creation of the EHRC. The closest involvement was reported by the SCVO and those organisations whose remit specifically concerns the equality strand served by one of the three commissions. By contrast, two voluntary sector organisations reported virtually no contact with the Commissions.

Most respondents saw the creation of the EHRC as a natural development to reflect the widening of the equality agenda. Some saw it as a very positive move to create a statutory body to ensure compliance with legislation and regulation across all six main equality strands. One respondent commented: ‘it’s an opportunity to see equality in a holistic way. People have multiple identities and the forms or grounds of discrimination can be hard to disentangle.’ On a more practical level, many felt that it would be simpler to deal with one rather than several equality bodies. For example, the Scottish Low Pay Unit referred clients to the Citizen’s Advice Bureau if their case was not covered by one of the existing Commissions, and thought that the EHRC would be a more appropriate referral point.

Despite overall support for the creation of the EHRC, a number of specific concerns were expressed. Many felt there was a lack of clarity about procedure during the transitional phase from three separate commissions to a single statutory body. Furthermore, it was feared that hierarchies might emerge in the treatment of different strands. Some expressed concern that the newer strands might fare less well because they lacked the same body of knowledge and experience, campaigning tradition or infrastructure as gender, race and disability. Conversely, others felt that ground already covered in relation to the ‘older’ strands could be lost as specific issues become diluted in a single equality approach. For example, representatives of disability charities expressed concern that this strand may be pushed off the agenda as it reaches the end of its period of being a ‘fashionable equality issue’.

As noted above, the EHRC deals with both human rights and equality matters and some respondents felt that covering both fields would be very challenging in terms of the knowledge base required. It was felt that the EHRC must engage in a sustained and effective awareness-raising campaign, not only to publicise its activities but also to counter the ‘Daily Mail effect’ - the stigma with which human rights have come to be associated. As one informant put it, ‘people need to know how human rights affects them, that it’s not just all about immigrants and asylum seekers’. Secondly, there is currently a lack of expertise on the ground in relation to human rights. Local and regional delivery by the EHRC will be ineffective unless this situation is remedied.

Finally, several people questioned whether the resources of the EHRC would be adequate to meet its broad remit. It was observed that in order to operate effectively and on the basis of sound evidence, this new body requires a solid infrastructure. In the Scottish context this would mean building capacity in the voluntary sector, for example, setting up and funding advice and information services rather than relying solely on existing Citizens Advice Bureaux to support the work of a single equality body.

## *The Equalities Review*

- An unprecedented amount of information and data on equality was gathered in the consultation process
- The Scottish Voluntary sector was closely involved in the consultation process
- The Final Report falls short of expectations
- It does not adequately address the Scottish context in LGBT issues
- The capability approach creates the rationale for a more proactive, empowering policy strategy
- Social class should have been included as a strand in its own right, placing more emphasis on the importance of poverty
- There is much support for the 'scorecard' system
- Some of the research underpinning the Review is partial, inadequate or anglocentric

Respondents were asked to comment on the utility of the Equalities Review and to discuss any contribution made by their organisation. Many of the organisations represented by the interviewees were directly involved in the consultation process associated with The Equalities Review. These include the disability and faith-based charities, LGBT Youth, Help the Aged (though not its Scottish wing), the Low Pay Unit and the SCVO. Other bodies were represented by the Voluntary Sector Equalities and Human Rights Coalition, which was also involved in consultation with The Equalities Review Panel. Respondents' comments thus suggest that considerable effort was made to incorporate the views and perspectives of Scotland. Through this process a range of issues relating to Scotland were raised, including LGBT young people's experiences in Scottish schools, devolution, data collection, information and advice infrastructure, and community development. However, Nil By Mouth, an organisation concerned with the issue of sectarianism, was not involved in the consultation. However, the Equalities Review does point to the need for better information about sectarianism and how it is dealt with in the courts.

Most respondents had a reasonably positive view of the final report, with comments like 'it seems to be heading in the right direction', 'it seems sensible', 'it's much improved on the interim report', or 'it's too early to say'. Others expressed a number of specific reservations. LGBT Youth was directly involved in meetings with The Equalities Review Panel. Nevertheless, the respondent from this organisation felt that the report did not reflect this involvement, and failed to adequately address the Scottish context. Similarly, the main companion report on LGBT issues was criticised as being too anglocentric and inadequate in its treatment of hate crimes. It was suggested that good quality Scottish-based research like 'First Out' (2002-03) and Scottish Social Attitudes Survey (2006) should have been mentioned. In relation to disability, the report was seen to add very little except for highlighting the issue of disability and poverty. The capability approach that informed the Review was seen as a means of providing the rationale for a more empowering and proactive policy strategy. However, several respondents felt that omitting social class as a strand in its own right was a serious flaw: 'there are some inequalities and breaches of human rights that are directly a result of class inequalities and have nothing to do with any of the other strands.'

Initial responses from older people's charities suggest broad support for the Review. However it was felt that the situation in Scotland is distinctive because of a number of legal, demographic, geographic and political differences. Consequently, there is considerable support for a Scotland-based Older Person's Commissioner as exists in Wales. Other issues that were felt to be underrepresented in the Report include those affecting women: their barriers to employment, domestic violence, and gender inequality in the criminal justice system. One respondent gave the following example: 'recent research shows that women (as perpetrators of crime) are treated more harshly when cases go to court. They're far more likely to be sent to prison, and when in prison face a quite different set of issues from men. For example, mothers' separation from children and attitudes associated with mothers and crime. They're also far more prone to self-harm.'

Several respondents liked the idea introduced in the report of a national framework for measuring and monitoring equality through a ten point 'scorecard' system. This was praised for being specific, holistic and for capturing the importance of issues like 'disapproval'. However, respondents also expressed concerns about how it could actually be implemented, and what data sources would be used to measure it, since 'its potential usefulness stands or falls on how it's measured'. Several people felt that the final report was an improvement on the interim version, in particular by having a less overtly economic agenda.

A final criticism of the report concerns the methods of data collection used to compile the evidence. Specifically, census and other survey data were criticised for using problematic categories of colour and ethnicity (some of which will be amended in the 2011 census). For example, 'white as an amalgam category misses the diversity and complexity of ethnic make-up in Britain'.

#### *Human Rights and the Scottish Commission for Human Rights*

- Incorporating HR into the equality agenda is strongly supported
- It broadens the agenda to allow children's rights to be incorporated
- It creates a framework for resolving competing equality issues
- The balance between reserved and devolved powers must be carefully managed
- The tribunal system associated with HR must not jeopardise recent developments in equality duties
- There is confusion about the role, and fears about the effectiveness of a separate Scottish Commission for Human Rights.

Respondents were asked to comment on the implications of combining equality and human rights in the same commission. They were also asked their views on the creation of a separate the Scottish Commission for Human Rights. Although many people expressed doubts about the creation of a separate HR commission, all those interviewed strongly welcomed the new emphasis on human rights in the equality agenda. One person commented: 'setting the equality strategy in the context of a human rights framework is the single most important thing to come from it [the EHRC]'.

This development was seen to be a positive step forward because human rights are at the core of all equality issues. One informant commented on the value of a strategy based on the Human Rights Act ‘because it treats all equality issues equally’. Incorporating human rights brings a broader perspective to the equality agenda and also provides a framework to resolve conflicts between competing groups (for example the tension between religion and gay rights in relation to adoption). It also has the potential to fill in gaps left in the equality legislation. Furthermore, this step was praised because it widens the equality agenda sufficiently to allow children’s rights to be included. ‘Human rights’ is also a more accessible concept for young people and resonates well with some recent work to develop an LGBT Youth Charter of Rights.

A potential problem identified with this development is that human rights are underpinned by a tribunal system which places too much responsibility on the individual to secure their rights for themselves. This runs counter to the trend in recent equality policy creating more institutional responsibilities to promote equality. Moreover, in the devolved Scottish context careful attention will be needed to balance devolved and reserved powers. In particular, several respondents expressed confusion about the role of the Scottish HR Chair and expressed doubts about the decision not to simply have one overall organisation in Scotland. In particular, some feared that Scotland could be left in a weaker position due to confusion over remits and responsibilities.

#### *Comparing the Equality Strands: policy, practice and future need*

- Race, Gender and Disability have the highest profile and the most robust legislation compared with the remaining three
- Specific issues requiring further legislative protection include: domestic violence, hate crimes, transgender rights, male rape, abuse of the elderly in residential care
- Children themselves are quite well protected but their rights are badly protected under existing legislation
- There is a need to attend to intersectional issues. Such a holistic approach may also address the problem of ‘single issue fatigue’

Respondents were asked to comment on the relative attention currently given to the six main equality strands (as identified in the Equality Act 2006) in relation to legislation, statutory support and general public awareness.

**Race:** Most agreed that gender and race were the equality areas that had the most robust and long-standing policy support, and that this was largely matched by public awareness of these issues. Each has had anti-discrimination legislation and statutory bodies in place for around 30 years. There are comparatively good levels of awareness about this issue and people are quite clear about their responsibilities. Tensions continue to arise, however, in relation to asylum seekers and new lines of discrimination drawn in relation to particular groups (for example migrant workers).

**Gender:** People are less well aware of the gender equality duty which is the most recent to come into force. Like race, this strand is relatively well developed – largely because of sustained lobbying by the women’s movement. Specific issues that remain

in need of further protection include: transgender rights, domestic violence (including same sex domestic abuse and violence towards men) and women in the criminal justice system.

**Disability:** This was felt to be the strand that most closely matched gender and race in attracting legislative support, even though developments in this area are more recent. However, the respondent from the Housing Association felt that considerably more ground needed to be covered before disability was adequately supported. The most significant recent development for this strand was the Disability Equality Duty, although it is too soon to assess its effects. As with race and gender, the legislation was felt to be far ahead of implementation and attitude changes. As one informant commented, legislation serves not only as a judicial instrument but also ‘has an important role in creating a general consensus on what we aspire to as a society’.

**Age:** It was observed that although ageing is an issue that affects everyone, age-related inequalities are compounded by entrenched attitudes. People tend to accept what happens to them as they get older as an inevitable fact of ageing; few see their age as potential grounds for discrimination. Age discrimination in employment is one of the few instruments of law that exists for this group and it is largely unenforceable. Other age-related legislation exists to protect vulnerable adults. There are no statutory protections in place to prevent the widespread and increasing incidents of abuse of elderly people living in residential care homes. There is insufficient understanding that private sector organisations take on equality and human rights responsibilities when they run care homes because they are performing a public function.

**Sexual orientation:** Among the problems associated with sexual orientation as an equality strand is that this group is invisible unless individuals declare themselves, but they are often unwilling to do so because of the stigma this may attract. This group potentially faces the greatest difficulty in attracting popular support because the issue is seen by some as a matter of choice. LGBT groups and individuals may be directly discriminated against by people who align themselves with another equality strand, in particular members of particular faith groups. People in same sex relationships cannot get married – the legislation on civil partnerships deliberately removed the term marriage as the only way of avoiding a House of Lords veto. As a result, while legal parity is created, a cultural distinction is drawn and thus a new form of discrimination created through legislation. Legislative protection for this group is also lacking in the area of hate crimes and male rape.

**Religion and belief:** This is a strand with complex links to race, particular in relation to Judaism and Sikhism. Gaining public support for equality in this area has become especially problematic recently because of misunderstanding and fear in relation to fundamental Islam and terrorism. There has been some recent progress by Strathclyde Police in implementing Section 74 (Religious Aggravated Crime). The Scottish Executive has recently mounted a campaign to raise awareness about sectarianism, although this tends to get submerged under the rather bland message of ‘respecting diversity’. Targeted campaigns are needed to focus on specific issues. Current diversity training used in mainstreaming strategies makes no mention of sectarianism. The most pressing need for this group is to develop better understanding of how sectarianism is embedded and naturalised through sectarian language, which is ‘the first visible part of the chain of prejudice’. The Scottish Executive should consult

directly with expert members of faith (or other minority) groups when creating educational ‘toolkits’ in order to avoid misrepresentation and inaccuracies.

**Children:** Although not one of the six main equality strands, the question of children’s rights potentially intersects with each of the other strands. Under existing policy instruments the protection of children’s rights is limited and indirect. The Children Act, however, provides a good legislative framework. There is currently a draft Children’s Services Consultation Bill, but this is felt to be unhelpful and opaque. One of the main problems with it is a recurrent issue in children’s rights legislation: the emphasis tends to be not on protection and rights but on control. There is nothing comparable to the UN Convention that enshrines children’s rights. Legislation talks about protecting children and young people but that is a very different issue from protecting their rights. The incorporation of HR into the Equality Strategy thus opens up the possibility of including children’s rights and thus moving beyond the restrictive control model.

It is clear that some strands of equality have a less robust framework of legislative and attitudinal support. However, one informant commented that it is also important to attend to overlapping issues - for some the intersection of multiple identities creates significant dilemmas and areas of need. Moreover, there is a need for a more holistic approach to equality and human rights, given the tendency towards ‘single issue fatigue’.

#### *Equal Opportunities Policy*

- The larger voluntary organisations have a more extensive equal opportunities strategy
- Voluntary organisations have played a key role in promoting mainstreaming
- Public sector organisations are ill-prepared for a Single Equality Duty
- The Scottish private sector has a large number of SMEs. These tend to be the most unaware or disinterested in equal opportunity issues
- The private sector can be a pioneer but is motivated by economic incentives rather than mandatory instruments

Respondents were asked to comment on their organisation’s equal opportunities policy, and on their perceptions of current practice in the public and private sectors. Most respondents were highly reflexive about this issue and quite critical of their own practice. Many felt that they were particularly attentive to the needs of their main client base but less aware of the needs of others. Several of the organisations were too small (comprising one or two staff members) to require a written policy or standardised procedure. The larger organisations all had a written policy, monitoring systems, and staff training procedures. In some cases these matters are administered by a human resources division or an Equal Opportunities specialist. Among the most highly developed equality systems was that of the Glasgow Housing Association. This large organisation has an Equality Action Plan and a wide range of strategies and policies, which are constantly under review. Staff members are regularly given training in these. Like most of the voluntary organisations represented here, the GHA’s Equality Policy has been compiled from various existing policy strategies and attempts to promote a culture of mainstreaming. Unlike most of the organisations, the



GHA's policy includes a definition of Equality and Diversity, and it has a legal team that monitors human rights policy developments.

When asked to compare practice across sectors, most respondents felt that the public sector probably has better practice than the private sector, although not all felt that the voluntary sector was necessarily far ahead of the rest. Nevertheless, the SCVO has done a great deal to develop best practice models over the last few years, pushing the mainstreaming agenda. One particular challenge in the public sector was the rapid implementation of various equality duties. The requirements on public authorities to develop separate equality duties are extensive and yet it is anticipated that a single Equality Duty will be developed by 2010 or 2011. It is felt that because of the focus on separate strategies, the public sector is not currently doing enough to anticipate its arrival. In the private sector there was seen to be a big distinction between large and small companies. SMEs are thought to operate the worst practice, and yet they are account for the bulk of this sector in Scotland, and employ large numbers of minority ethnic workers. Conversely, the private sector can also be pioneers in this field if there are sufficient (economic) incentives, like recognising the value of the pink pound. When companies chose to address a specific form of inequality they can often produce more effective results than in the other sectors because they have better resources at their disposal. However, in order to promote better practice in this sector a different strategy may be required. Rather than relying solely on mandatory measures, the economic benefits of equality policies need to be made clear: 'they will do it if they think it's a matter of corporate responsibility or in the spirit of competitiveness'.

#### *Scotland and Devolved Governance*

- The governance structure in Scotland generally facilitates progress in equality
- Reserved powers can impede progressive equality legislation on devolved matters

Respondents were asked to comment on the implications of devolution for their work on equality and human rights. Many respondents agreed that cross-sectoral work in developing the equality agenda in Scotland is made easier because of the comparative accessibility of politicians and civil servants. There is some scepticism about the reliance on focus groups to guide policy without adequate scrutiny of how these are composed and run.

In many ways the Scottish Parliament provides a better environment to support the equality agenda. The Scotland Act is clear about the underlying principles and the absence of a House of Lords means that legislation relating to particular equality strands, such as sexual orientation, have a smoother passage into statute. However, as noted above, a problem lies in the tension between reserved and devolved powers, whereby devolved issues tend to be governed by reserved powers. For example, Scotland has some of the most progressive homelessness legislation in Europe but this is often impeded by reserved English issues. Moreover, certain areas of equality legislation like sexual orientation tend to be governed by party political considerations. The definition of 'public authority' used in legislation in the delivery of services is considered too narrow to adequately protect the human rights of all elderly people in residential care. Overall however, respondents felt that the devolved

governance context in Scotland has facilitated rather than hindered the equality agenda.

### *Research Gaps*

Most informants agreed there is a pressing need for more research in a number of areas:

- There is a need for more qualitative, experiential research investigating attitudes and forms of discrimination – particularly in neglected or less well-developed areas (LGBT, traveller communities, ageing, sectarianism)
- Greater consultation with communities is required to generate reliable information in awareness-raising and ‘myth-busting’ strategies (for example, to disentangle religion and race)

There is also a need for:

- secondary analysis of existing data (e.g. ethnic monitoring data collected annually by local authorities which currently sits unused)
- research on attitudes and the causes of discrimination across the different strands in order to develop a ‘common discourse of equality’
- research among school age informants (currently neglected in LGBT qualitative research)
- investigation of cross-cutting issues (either tensions between strands or complex forms of discrimination)
- a central ‘knowledge hub’ database for all current data and research evidence on equalities issues

### **Public sector interviews**

Twelve interviews were conducted with public sector bodies representing a range of perspectives on equality and human rights. Some were directly involved in recent policy developments in this area, with responsibility for their implementation in the Scottish context, while others represent very large public authorities (like the NHS). Individuals from the following organisations were interviewed: EHRC, EOC, DRC, CRE, Scottish Parliament Corporate Body (SPCB), Equality Forward (representing further and higher education), the Convention of Scottish Local Authorities (COSLA), and the Scottish Executive Human Rights Unit. Interviews with the following organisations were also conducted, Strathclyde Police<sup>2</sup>, CBI Scotland, the Scottish branch of the TUC and NHS Scotland.

### *Recent Policy Developments: mainstreaming and equality duties*

- Mainstreaming is laudable because it embeds equality in organisational cultures
- A more unified approach to equality is supported but some fear existing progress in individual strands may be undermined (e.g. disability)

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<sup>2</sup> The interviewee from Strathclyde Police stressed that all the views expressed were their own, rather than those of the Police Force.

- Definitions of equality can be unhelpfully restrictive: the emphasis should be on difference
- Equality training is problematic – of variable quality and unregulated

There is widespread recognition that mainstreaming is an important aspect of the policy agenda in Scotland. Most of the organisations represented have been involved more or less directly in the formulation and implementation of the equality duties and thus a more proactive, ‘culture change’ policy approach to equality in line with the principle of mainstreaming. Moreover, most informants were supportive of a more unified cross-strand approach to equality. However, there are some fears about losing ground in particular in the area of race, gender and disability. The representative of Equality Forward observed that the issue of equality training is particularly problematic. It is unregulated and despite considerable variation in quality, most people are reluctant to express criticism for fear of appearing ‘non-PC’. In particular, much equality training tends to alienate men.

### *The Equality and Human Rights Commission*

- The decision to include human rights in the EHRC remit came from England
- The EOC welcomes the wider focus on discrimination *and* human rights which the EHRC will bring to its work
- The EHRC will offer a means of attending to intersectional issues
- The EHRC may help improve relations with local authorities and thus improve practice
- The EHRC needs to promote the added value and relevance of its agenda in order to: a) combat ‘equality fatigue’, and b) offer reassurance that it will not undermine existing anti-discrimination policy
- The EHRC must clarify the meaning and practical implications of human rights
- To be effective, the EHRC will need appropriate powers of enforcement and monitoring
- Priority areas for the EHRC in Scotland include: Scottish patterns of poverty and social exclusion, sectarianism, immigration, and rural issues
- By introducing a human rights framework to equality agenda this helps ensure people are treated not just fairly but also well

Human rights had not been prominent in the work of the EOC, which focused on the duties arising from the Sex Discrimination Act. Work with female prisoners, for example, was based on discrimination rather than human rights. The creation of the EHRC would therefore bring a wider focus to its work, allowing human rights issues to be considered. This was a welcome development.

The respondent from the DRC observed that the EHRC offered a valuable means of attending to intersectional issues that involved more than one strand, although it would require appropriate powers of enforcement in order to ensure that equality was embedded in the policy and practices of organisations. At the same time, he commented that it was important that single strand issues, like access for disabled people, was not overlooked.

Interviewees from the equality commissions were quite critical of local authorities' delivery of equality, although it was recognised that communication with COSLA and with local authorities had not been good. Within the Further and Higher Education sectors, where there was a problem of 'equality fatigue'. The EHRC would need to promote its direct relevance to individuals in this sector. Moreover, it would need to allay fears that ground will be lost in areas like disability and race equality.

A number of policy and organisational priority areas were identified by the EHRC's Transition Programme Manager for Scotland. These include focussed work on the specific equality issues facing rural areas; the human rights issues surrounding immigration from EU accession states; and work on the patterns of poverty peculiar to Scotland. Tackling sectarianism would also be a priority issue, as well as the more general analysis of complex issues that involve both human rights and equality, and involve matters that are reserved and devolved. The EHRC incorporates a human rights framework, which is needed to 'ensure people are not only treated fairly, but are also treated well'. The EHRC has also cultivated valuable links with international human rights institutions like the UN Office for Human Rights.

### *The Equalities Review*

- The Review received a mixed response from policy sector informants
- The Review is too anglocentric and has too little attention to poverty
- The Review is in danger of creating a 'hierarchy of oppressions'
- The capability approach underemphasizes structural factors limiting individual choices
- The Review is praised for its focus on mainstreaming

Respondents expressed a number of reservations about The Equalities Review. Several people were concerned that the evidence base for Scotland was inadequate, with too little treatment of Scottish issues. Moreover, one informant feared that the Review appears to suggest a 'hierarchy of oppressions', whereby the issues of certain groups (or strands of equality) could be treated more seriously than others. It was suggested that the capability approach was chosen as the conceptual framework for the Review as a useful means of moving the policy debate away from sterile and unhelpful arguments about equality of opportunity versus equality of outcome. However, its emphasis on individual freedoms and choices carries with it a danger of ignoring the important structural, material and institutional barriers (including poverty), that produce inequality and social exclusion.

### *Human Rights and the Scottish Commission for Human Rights*

- Scottish human rights issues have mainly involved prisons
- There is much confusion and misperception about human rights
- Human Rights have been neglected in FE and HE in Scotland
- There is considerable scepticism about the decision to have two bodies operating in Scotland (the SCHR and EHRC Scotland)
- Addressing human rights issues will be a new challenge for local government
- There is a need for more research on Scottish human rights issues

Human rights actions in Scotland have tended to involve prisoners, although the issue now lies at the heart of all policy making, since all legislation must be assessed with regard to its implications for human rights.

The human rights agenda has been largely neglected in relation to tertiary education in Scotland. A number of controversial human rights issues require further investigation. These include: students' claims (thought to be groundless) that plagiarism checks breach their human rights and the place of human rights versus public protection in relation to enrolment procedures (for example, registered sex offenders applying to participate in photography courses). Some of the issues that arise in this area stem from misunderstandings about the meaning of human rights.

Several respondents feared that complications could arise as a result of having two Commissions operating in Scotland. As one informant observed, it would be better to have one organisation that had a full remit to engage in devolved matters.

The COSLA informant explained that human rights had not been a prominent issue for local government, since it tended to concern arenas that impact upon the relationship between the citizen and state. Notable examples are asylum and criminal justice – areas where human rights cases have reached media attention. Guidance for local authorities on human rights legislation will be issued in the future, although COSLA would prefer to see human rights as part of the equality agenda. This viewpoint echoes that of the DRC representative, who felt that understanding the complex interaction of equality and human rights was essential, rather than treating them as separate issues. Having a separate Scottish Commission for Human Rights suggested a particular focus on Scottish issues. This implies a need for more research on human rights issues in the Scottish context.

#### *Comparing the Equality Strands: policy, practice and future need*

Scotland has a tradition of comparatively good inter-strand cooperation, in particular under the auspices of the Equalities Coordinating Group. Nevertheless, it is recognised that the strands of gender, race (and more recently disability) have made more progress in terms of legislation than the 'newer' strands. This progress has been reinforced by the implementation of public sector duties in the fields of race, disability and gender. However, the Scottish Parliament has tended to adopt a much more overarching view of equality in producing legislation. Furthermore, the Scotland Act has a broader definition of equality than that used in Westminster, allowing it to encompass additional issues in relation to political opinion and religious belief.

#### *Implementing Equality and Human Rights Policy*

##### Human Rights:

- There is more awareness of human rights in the public sector
- Human rights obligations come into play when private sector organisations perform public sector functions
- Scottish Executive staff receive human rights training

##### Equal Opportunity:

- The public sector equality duties are praised for their emphasis on culture change but they are too bureaucratic
- SMEs typically have the worst practice – they are especially numerous in Scotland
- The private sector can be a model of best practice if equality is seen to be profitable

Awareness and understanding of human rights issues is more developed in the public sector than in other sectors. This is because only states – and their apparatuses (public sector bodies) – can breach human rights. Human rights are thus designed to mediate the relationship between the citizen and the state. Other sectors are only implicated in human rights issues when they are performing public sector functions and thus acting on behalf of the state. Privately run residential care homes (for the elderly or the vulnerable) provide a clear example of this scenario. The activities of such institutions warrant close scrutiny.

It is generally agreed that despite recent developments with mainstreaming and equality duties, the public sector could make improvements, particularly in implementation. Progress has been hampered by the excess of paperwork these duties require; they are too bureaucratic – as one person expressed it ‘in the public sector it is recognised that there is a need to achieve change rather than achieve paperwork’. The police are cited as models of best practice in the public sector. In the voluntary sector, some organisations can be identified as ‘brand leaders’, whereas the practice of some churches of excluding LGBT people from employment may be regarded as exemplifying worst practice. In the private sector, SMEs have a poor record of compliance with equality and human rights legislation, although this is often because of ignorance rather than a conscious policy of discrimination. It was observed that in order to reach these organisations, the business case for equality had to be made. However, the private sector could also provide ‘shining examples of best practice’, for example some large banks had ‘gold standard’ equality policies and practices.

### *Research Gaps*

Informants suggested that research was needed in the following areas:

- The operation and interaction of human rights legislation and equality
- Research that focuses on Scottish equality and human rights issues
- A centralised resource of thinking, statistics and research on equality and human rights (including a role for maintaining links across a range of stakeholders)
- Research with practical applications like how to promote equality more effectively and the impact of existing policy techniques like benchmarking
- Explorative research into specific strands to uncover knowledge gaps

### **Private sector interviews**

Nine informants from the Scottish private sector were interviewed, including companies from the retail (supermarket and motor trade), agriculture, transport, and manufacturing sectors. Five of the companies operate in Scotland, the other two are international businesses, one with a head office in East Scotland, the other in London.

Twelve other companies were approached (representing housing, finance, tourism and defence) but were not willing to participate in the research.

There was generally quite low engagement with the Equality Act (2006) or the HRA (1998) probably because businesses believed they did not need to comply with either Act. There was quite a strong message from some companies that they would do the minimum required to avoid legal action, because to do more would impact adversely on their profit margins.

*Recent Policy Developments: mainstreaming, equality duties and the Equality and Human Rights Commission*

- ♣ The principle of mainstreaming was widely supported in the private sector because it reduced the number of agencies companies had to deal with. Therefore it was envisaged that compliance with legislation would be simpler.
- ♣ There is no interest in how the EHRC will be set up, funded or how it will deliver services. There was no concern that a group's rights could be diluted by the move to a single equality body.
- ♣ The rise of Human Rights as an issue was problematic for some.
- ♣ Companies mostly relied on legal teams for information about equality demonstrating a bureaucratic and anti-litigious model.

It is unclear how well the private sector understood the concept of mainstreaming, however the creation of a single commission was seen as an advantage to businesses. The EHRC was expected to offer comprehensive guidance on all equality issues by most interviewees as it would allow them to reduce the number of consultations they do, to ensure they comply with relevant legislation. There was little recognition that a single commission might help improve equality and reduce discrimination, only that it would make their jobs easier in keeping up with legislation.

There was approval for the way the human rights agenda has impacted on some aspects of business, for example the right to work free of abuse intimidation. But four companies related human rights to health and safety issues, remarking that they had gone too far and interfered with common sense and productivity. The issue seemed to be about the disproportionate amount of energy focussed on protecting the rights of a minority of employees, and so the HRA (1998) is clearly interpreted here as relating only to minority groups rather than a model of freedom for all. One respondent commented that their work to establish equality and non-discrimination was based on avoiding legal action rather than due to a meaningful shift in attitude towards equality for all.

Most companies used other organisations to help them keep informed rather than employ someone in-house to monitor legislative developments and their related duties, for example SEDEX (Supplier of Ethical Data Exchange, the Royal Bank of Scotland Employment Advice Line or the CIPD (Chartered Institute of Personnel and Development).

*Human Rights and the Scottish Commission for Human Rights*

- ♣ Some companies were able to distinguish between human rights and equality, others used the terms inter-changeably.
- ♣ There was little understanding of the role of the Scottish Commissioners.
- ♣ There was hesitation around human rights, three companies argued that it potentially interfered with profit margins and reflected a society that was too politically correct.

There was some indication that the distinction between human rights and equality was not well engaged with by the respondents with the notable exception of one transport provider and the trade union.

Most respondents saw no value in having Scottish Commission for Human Rights or a Scottish Equality and Human Rights Commissioner. There was little understanding among the respondents about what the Scottish EHRC would do, or how it could benefit their organisations.

Although some companies applauded the rise in awareness of equality and human rights, three companies were concerned that legislation was going too far, and that this reflected our society which had in their opinion, become obsessed with political correctness. These companies argued that the success of their business was based on profit, and some equal opportunities exercises (promotion and training) were a waste of time and funds. This principle was allied to issues around health and safety which were considered by interviewees to challenge common sense and divert attention from getting the job done. One company said that an individual's identity (i.e. where it coincides with one of the equality strands) should always be secondary to their professional identity while at work.

*Comparing the Equality Strands: policy, practice and future need*

- ♣ Most companies had policies covering race, gender and disability
- ♣ All respondents were aware of the current Disability Rights Commission, the Equal Opportunities Commission and the Commission for Racial Equality
- ♣ Three companies had policies specifically covering age, two covering sexual orientation and two covering religion
- ♣ Though not all strands had policies specifically relating to them, there was awareness of the six strands from all respondents. All companies had at least, a general equal opportunities policy.
- ♣ Three out of the nine companies offered their staff training on equal opportunities. All three had staff dealing directly with the public, and in one of these companies, only those dealing with the public received training.
- ♣ One company who did not offer training argued that they did not want to raise awareness about rights which could impact adversely on productivity.

Each organisation demonstrated a good understanding of their duties to offer equality on the grounds of race, gender and disability. With respect to disability, there was evidence from most companies that they used some positive action, for example guaranteeing an interview to disabled candidates who met the minimum requirements. One company reported that they had not had a disabled applicant, and so had never had to look at a specific policy in this area, but also argued that the majority of posts in that organisation required physical and manual labour. It is unclear whether the



company's advertising culture restricted disabled applicants, or whether disabled people were not considering this source of employment.

There was some confusion about the idea of religion or sexual orientation and about the ethics of finding this information out about an employee or customer. As no positive response could be associated with this knowledge, it was generally felt that this knowledge should not be required, to do so would be an invasion of privacy.

Only three of the nine companies interviewed reported that staff were given training on equal opportunities. All three companies had staff who dealt directly with the public. A fourth company that dealt with the public reported that they didn't offer the training. One of the companies that did offer training only targeted staff that had direct dealings with the consumer. One of the interviewees representing the manufacturing sector reported that they would not want to offer equality training because it would encourage discontent and complaints from staff members once they were aware that their rights were not upheld by working practices. Another two companies that reported that equal opportunities training was not offered, claimed that there was no need, that they met best practice standards already.

#### *Scotland and Devolved Governance*

- ♣ Scottish devolution was supported or not on a personal and individual basis
- ♣ No respondent felt that Scottish devolution had impact on their response to the HRA or the Equality Act.

One respondent in particular from the agricultural sector personally disagreed with devolution and so reported that his company had a British identity, but felt that this did not impact on the way business was run. Although transport is a devolved issue, both of the companies from the transport sector did not think that devolution had any impact on their business. One company has always and continues to operate only in Scotland and so sees no tension between Westminster and Holyrood. The second company works with transport networks in the rest of the UK to offer a unified standard of service and feels that this overcomes any potential tension.

#### *Activities for a Scottish Centre for Research on Equality and Human Rights*

- ♣ A Scottish research centre was considered outwith the interest of most companies
- ♣ One company and a trade union did generate some interest in research, but were not sure how it fitted in with our remit

Most companies did not easily engage with the idea of a Scottish research centre, as they thought the geographical focus (of Scotland) would minimise our value to them. Most companies expressed an interest in being on a mailing list, or receiving e-mail bulletins about developments within the centre.

#### **Common themes**

The interview informants represent a diverse range of perspectives on equality and human rights issues. For some, pursuing developments in these areas is the very substance of their work, while for others these are vaguely understood issues that

represent an externally imposed problem to be dealt with. Despite these contrasting perspectives a number of common themes emerged from the interviews. These are summarised under the main topic headings.

#### *Recent Policy Developments: mainstreaming and equality duties*

- Mainstreaming is widely supported for contrasting reasons. It appeals to the voluntary and policy sectors on moral and practical grounds – seen as the best means to achieve culture change. It appeals to the private sector because a single approach to equality is perceived as simpler than a multi-strand policy.

#### *The Equality and Human Rights Commission*

- There is widespread support for the EHRC. The private sector and voluntary sector see it as a ‘one stop shop’. The policy and voluntary sectors see it as a means of addressing complex, cross-strand issues, introducing a human rights framework to policy, and providing support for the newer, more neglected strands of equality
- Representatives of the ‘older’ strands fear the issues they represent will be diluted
- Many people are concerned that the EHRC should receive adequate resource to build a solid infrastructure and to ensure a smooth transitional phase
- The EHRC needs to engage in a high visibility publicity campaign, explaining the relevance of policy, promoting its activities, and dispelling myths about human rights

#### *The Equalities Review*

- There is greater awareness of the Review in the public and voluntary sectors
- Most responses are critical
- PROS: the emphasis on mainstreaming and the ten-point scorecard
- CONS: too anglocentric, too little use of Scottish data, too little attention to poverty, little mention of sectarianism
- The Review bases its conceptualisation of equality on the capability approach. This attracts praise and criticism. For some this provides a welcome focus on empowering individuals, while for others this creates the opportunity to overlook the importance of structural factors in creating disadvantage

#### *Human Rights and the Scottish Commission for Human Rights*

- There is much misunderstanding and confusion in relation to human rights
- There is a danger that human rights is too closely associated with an individualistic litigation culture
- Most voluntary sector and policy sector informants welcome its inclusion in the equality policy agenda – some see it as crucially important
- There is scepticism about how two separate commissions (EHRC and SCHR) will operate in Scotland
- There is need for more research into the complex interaction of equality and human rights issues

- There was hesitation around human rights from the private sector, three companies argued that it potentially interfered with profit margins and reflected a society that was too politically correct

#### *Comparing the Equality Strands: policy, practice and future need*

- All sectors agree that race, gender and disability have the greatest legislative support, and the highest levels of popular awareness
- Among the ‘older’ race has thus far been given greater weighting in public services like health and police
- Among the three newer strands the private sector pays more attention to issues surrounding age, including retirement and pensions
- The legislation concerning age is not thought to be wholly effective
- Strand-specific issues requiring attention include: domestic violence, hate crimes, transgender rights, male rape, workplace youth discrimination, abuse of the elderly in residential care
- Many respondents acknowledged the problem of ‘equality/single issue fatigue’. Some private sector respondents felt that equality agenda had gone too far. In the words of one informant ‘a person’s individual identity should always be secondary to their professional identity when at work’

#### *Equal Opportunities Policy*

- While practice varies, these are in place in all sectors
- The private sector operates a minimalist, anti-litigious model
- Only private sector companies that had direct dealings with the public offered their staff equality training
- The voluntary sector adopts the most ambitious model of workplace equality
- Some of the private sector companies felt that equality legislation interfered with profit margins
- The policy and voluntary sectors agree that the private sector could be pioneers of best practice, but that this requires the economic arguments for equality are clearly articulated
- SMEs are the worst ‘equal opportunity offenders’. This is a significant issue in Scotland given the especially large number of SMEs

#### *Scotland and Devolved Governance*

- Private sector companies had little interest in the implications of devolved governance since they tend to assign responsibility for equality policy to their in-house (often legal) experts
- The main challenges identified by the voluntary and policy sectors are:
  - Developing competence in managing issues that cut across devolved and reserved matters
  - Responding to the recent change of government (SNP did not include equality in their manifesto although many representatives of the newer strands – esp. LGBT - feel optimistic about receiving better support)
  - There is inadequate data and research on Scottish equality issues
  - There are concerns that the EHRC and SCHR should work closely together

### *Activities for a Scottish Centre for Research on Equalities and Human Rights*

Among the private sector informants there was little support for a Scottish research centre on equalities and human rights, since this was felt to narrow the focus too much. By contrast, there was almost universal support for such a research centre from the public sector (including policy makers) and voluntary sector.

Most respondents involved in developing or implementing policy expressed a desire to see the creation of a central knowledge resource on issues and research relating to equality and human rights. Existing research tends to be housed in strand-specific databases and resources. Most respondents felt that in order to facilitate a more coordinated approach to equality and human rights, it would be useful if all research were held in one place.

A number of gaps in existing knowledge and research were also identified. Suggested areas for future research are:

- Patterns of poverty specific to Scotland
- Experiences and forms of social exclusion in rural areas
- Sectarianism
- Traveller and gypsy communities (survey data and qualitative research on experiences of education)
- Women and criminal justice
- LGBT and: school education; tensions with other equality agendas
- In relation to all strands: investigation of multiple identities (intersectional issues)
- Intersections between human rights and equality issues

Informants also wished to see the following activities:

- Awareness training and research oriented to practical implementation issues
- Opportunities to form networks oriented to the equality and human rights in Scotland