

QUESTIONS TO EHRC CHAIR-DESIGNATES

David Isaac pp. 1-6

Kisher Falkner pp. 7 -12

Mary-Ann Stephenson pp.12-23

Graphic summary of key themes by question word count and chair-designate p.24

Questioning by theme for cross-reference

Conflict of interest (Isaac only)

Race (all)

Large organisation experience (all)

Sex-based and transgender rights (Falkner and Stephenson only)

DAVID ISAAC

Note: Session lasted 1 hour 10 mins; 21 numbered questions.

Questions by members word count: 3,282

Conflict of interest word count: 2,243 (68%)

Race word count: 80 (2%)

Large organisation experience word count: 0

Sex-based and transgender rights word count: 0

Q1 Harriet Harman (Chair): On behalf of Maria, who chairs the Women and Equalities Committee, and me—I chair the Joint Committee on Human Rights—I welcome you to this joint session where we are putting questions to David Isaac. We would like to try, if possible, to take no more than an hour, with the first half-hour being to do with the breadth of experience you bring to this post and the second half-hour being about independence and freedom from conflict of interest, which is important in the post as well. Can we crack on with the first question to David on the first section, which is from Mims.

Q2 Mims Davies: Thank you, Chair. Mr Isaac, good afternoon. What do you feel that your experience brings in positives to this role?

Q3 Baroness Prosser: You probably know, David, that I was deputy chair of the Commission for Equality and Human Rights for six years, so it is within my heart that the organisation continues in a robust fashion. You have set out some of your background and experiences, all of which are impressive. Could you give us a little line on each of the areas for which the commission is responsible—gender, sexuality, religion and belief, et cetera? What would you see as the priority for those areas?

Q4 Ms Karen Buck: Do you have any thoughts on the breadth of the board, in particular in being able to cover all the different themes? One thing that strikes me in the area of religious and race discrimination is that there is, for example, no Muslim representation on the board. Do you have a thought about how we might make sure that the board and your work cover some of the areas that may not be as fully reflected as they might be?

Q5 Baroness Buscombe: Mr Isaac, in your application you emphasised the importance of the law—you have just mentioned it in your opening words, too—as a tool to protect and advance equality. How much should the EHRC focus on clarifying and enforcing the law, and how much should it work to change wider social attitudes on equality issues, in your view?

Baroness Buscombe: Yes; but it is about balance too.

Q6 Ruth Cadbury: On that last point, do you feel that in the last few years the EHRC has been sufficiently balanced? In your application you emphasised your skills in building consensus, for which clearly there is a role, but do you feel the EHRC has been sufficiently consensual or sufficiently challenging where needed

Q7 Mrs Flick Drummond: Could you tell me what your top three—key—priorities are? When you start, what would your top three be

Q8 The Chair: Before I bring in Ben, can I follow up a point you made in response to Ruth's question? Do you think that consensus can be overrated and that sometimes there is a need to have a row, and will you be prepared to have a row with government when you think, on behalf of your remit, that the Government have got it wrong? Will you be smoothing over and settling everybody down or will you ensure that the commission champions human rights and non-discrimination?

Q9 Ben Howlett: Following up on the response you gave to Flick Drummond's question, why do you think the Equality and Human Rights Commission is not respected at the moment?

Ben Howlett: In the first six or 12 months, what do you want to put in place to ensure that you turn that around quickly?

Q10 Mr Gavin Shuker: Your experience as chair of Stonewall obviously focused on your work around orientation, which is very impressive. There is a large range of protected characteristics, and what some people would want to know is your view about the interplay between them, because quite often they play out in tension. As an example of that, could you say a word or two about your assumptions, coming into the role, about freedom of religion and belief?

Mr Gavin Shuker: Do you think the courts are the best place to resolve it when protected characteristics come into tension?

Mr Gavin Shuker: Can I ask one very specific question? The organisation is doing some work on freedom of religion and belief at the moment—a major research project. Is it your view that that should go ahead and be published regardless of your chairship? You are not expecting to change the work plan.

Q11 Amanda Solloway: You mentioned a high level—it is quite powerful when you say “valued” and “respected”—and that you want to demonstrate tangible change. What would success look like to you?

Amanda Solloway: Do you have a couple of examples?

Q12 Mrs Maria Miller: Mr Isaac, you mentioned earlier the opportunities for the organisation to be able to make a real difference at a time when we are going to be considering a lot of issues around human rights; we have a new Women and Equalities Select Committee and we are doing our best to challenge a lot of these issues. You said you are willing to have a row on things that

matter. That is good to hear. How credible is it to have a senior partner of a law firm having a row with government when government business is given to your company

Mrs Maria Miller: The standards are very clear: not only actual conflicts but perceived conflicts need to be taken into account. What advice have you been given from either Sue Gray or indeed any other parts of government about that issue

Mrs Maria Miller: There is no conflict of interest in your professional regulatory obligations as a solicitor.

Q13 The Chair: That moves us to the second area that we all want to look at, which is the question of independence from government and the question of financial interests and freedom from potential conflict of interests. There are a number of things that are clear and on the public record on which we all agree, and which we could get out of the way. We all agree that independence from government is important, because sometimes the Equality and Human Rights Commission will have to challenge government, including taking them to court sometimes, or criticise them. We all agree on that. We agree that there has to be avoidance of conflict of interest; that is about the reality but also about the perception. We have to agree to avoid perceived conflicts of interests.

The Chair: We know that we need the Equality and Human Rights Commission to comply with what are called the Paris principles, as a human rights organisation, reaching a certain standard of independence from government. We also know, because you have just said it and because it is on the public record, that you are an equity partner at Pinsent Masons and that you plan, albeit not handling the work yourself, to continue to be an equity partner at Pinsent Masons, which—again this is in the public domain—has contracts with and does work on behalf of the Government, which it will continue to do and that will contribute to its income. You will then share in that income as an equity partner. How do you feel that you can be seen to be independent and not have a financial conflict of interest if you are personally benefiting financially by your relationship with a firm—being part of a firm—that is benefiting from government contracts?

Q14 The Chair: But as you say—I think it is a matter of public record—last year about 10 contracts with government, to the tune of about £5 million, came to your firm. As to the small share, do you think it is a problem that the amount of your income that will be dependent on being the chair of the Equality and Human Rights Commission is dwarfed by the amount of income you will get from being an equity partner for a firm that does work for government? The order of magnitude is an issue. If it is £500 per day for 100 days, which is about £50,000, for the Equality and Human Rights Commission, what is the balance between that—your income from the Equality and Human Rights Commission—and the amount you are going to get by being an equity partner in the firm? Is it double? Is it five times the amount?

The Chair: I do not mean the amount that is generated from government work, I mean the amount that you benefit from the firm—how much you get from the firm on an annual basis.

The Chair: Last year, the average for equity partners was £500,000. My concern is that if you have a very big financial vested interest and most of your income comes from a firm, which you are going to continue your relationship with, that acts on behalf of government, how can it be perceived that you are independent of government such that you would be prepared to challenge them where necessary, or that you do not have a financial conflict of interest?

The Chair: It is not about the amount your firm gets from government compared with non-government: it is the amount you get from the firm that does work for the Government.

The Chair: We appreciate that.

The Chair: Let me finish this line of thought. The point I am trying to get you to address is not the amount of money your firm gets from government—we know it is £5 million and that 7 Pre-Appointment Hearings: Chair of the Equality and Human Rights Commission might be peanuts as far as your overall firm is concerned—but that your income of £500,000 plus per year, as an equity partner, dwarfs your income from the Equality and Human Rights Commission, and that firm does work for the Government even though you yourself will not be doing that work. That is the issue I want you to address.

Mrs Maria Miller: Could I ask for clarification—I am sorry to interrupt—on whether you discussed this issue with the Office of the Commissioner for Public Appointments and Sue Gray? Were you given advice on this issue? It is right to explore these things. Obviously, this is a matter that is open to everybody to know about. Is it an issue that you discussed with those two groups and what advice were you given?

Q15 Ben Howlett: Going back to some more of the specifics, you mentioned conflict procedures. Could you expand a little more on what sort of processes you would go through within Pinsent Masons to avoid some of those conflicts?

Ben Howlett: Would that be in line with the Paris principles as well?

Ben Howlett: Perfect. How do you feel that you would be able, personally, to deal with some of those issues of conflict of interest?

Ben Howlett: On the specific point about addressing conflicts of interest and the Paris principles, et cetera, when you are negotiating this with government prior to your official start date, what would you like to see that would really satisfy some of the particular points in the Paris principles?

Ben Howlett: In relation to information barriers, or Chinese walls being put in place from Pinsent Masons' point of view—obviously there is a very different contractual arrangement that you are trying to arrange with the EHRC—what sort of discussions have you had with Pinsent Masons to ensure that you are protected from the business end rather than the EHRC end?

Q16 Lord Woolf: These questions of perceived conflicts are difficult to deal with. Have you given any thought with your partners as to what should be done?

Lord Woolf: Yes. You acknowledge the difficulty that is involved. What do you see that difficulty as being?

Lord Woolf: Could I ask you to envisage this situation? Someone is seeking the help of the commission. They come to the commission, make an application and are disappointed by the extent to which the commission is prepared to help them. Do you think there is any risk that that person, knowing that you are a partner of the sort you are, would say, “I know why I have not been helped by the commission: it is because the chairman is actually in a firm of solicitors, and, directly or indirectly, his earnings from that firm are going to be affected by the amount of work the firm gets from the very department of government that he wants the commission to bring an action against”? That is what I am putting to you. How would you feel about that?

Lord Woolf: It is very difficult to redress, is it not? The fact is that your firm could continue to benefit from the government department that that person would want proceedings brought against.

Lord Woolf: If your firm paid you money that was derived from what it earned doing work for that department, could not the person, if they were of that sort of mind—where they see dangers of people not acting wholeheartedly for them—say, “He has an interest”, as long as you are being paid out of the profits of the whole firm?

The Chair: As a solicitor, David, you would not be able to receive both income that comes from acting for the Government and income from acting against the Government. As a solicitor, you would have to choose, would you not? But you are saying you can still be part of the partnership and receive the income, but you would then be acting potentially against the Government with your other hat, which is chair of the Equality and Human Rights Commission. As a solicitor, you would not be able to do that. You would have to choose to be either on the side of the Government or on the other side. If that conflict of interest is made very clear in relation to acting as a solicitor, why do you think that you do not have to keep to that standard when it is a question of a public appointment as chair of the Equality and Human Rights Commission?

Lord Woolf: People who know you would undoubtedly think that is the situation, but I am trying to think of the person who is very sensitive and frustrated about his claim. One way the position could perhaps be improved would be if, instead of you having a share of the profits, you had a fixed sum from the firm that is independent of the work it does for the Government. What you are proposing is to say, “I won’t do the work”. I am suggesting to you that that is not providing the protection. The protection is that your income will not be influenced by what your firm does—not what you do—for the Government.

The Chair: You have divested yourself of doing the work but you have not divested yourself of receiving the income. I would like to do that myself personally sometimes—divest myself of the work while continuing the income stream. I think that is Harry’s point: it is not just about doing the work; it is about benefiting from it. Can I bring Ruth in at this point?

Q17 Ruth Cadbury: Thank you very much. David, I have a local government background, so I am immersed in that culture. It is not just about what you or I think or what the Government or either of the Chairs think; it is what the person on the Clapham omnibus thinks. Whether we like it or not, this country has become very hair shirt about conflict of interest and takes a very literal view of what is and is not a conflict of interest. In my mind, what you are describing about your relationship—even what Harry suggested, the proposed semi-disconnection—still feels like something that will come back to hit not you or I but the EHRC. I want the EHRC to be as strong and as robust an organisation as it can be, and you are a very good candidate to be the chair, given what you bring with your skills, experience and so on. Even with that other solution, to the outsider—the Twitterati, who tend to define the debate—you are proposing that you are still going to be a partner of PM; you are still going to be part of that gang, that team, which is proposing to continue working for the Government. How far would you be prepared to go to make that disconnection so that no one could perceive that there might be a conflict of interest, rather than just not you or me?

Q18 Mims Davies: In terms of your peers—perhaps other people who might apply for this role with the kind of experience you have—and bearing in mind that perceived conflict of interest, is there a danger that anyone as qualified and experienced could find the same issue?

Mims Davies: Ironically, we are talking about a fairer society, giving opportunity, and one wonders if one could also talk oneself out of doing this when looking at it that way. Looking at the £50,000 versus the £500,000, clearly you would be doing this more for love than money, and one would guess that if you are looking for a career or gear change this is part of the process. I suppose taking a public appointment is difficult to do without experience of it.

Mims Davies: This is part of the gear change where perhaps your financial reimbursement would become more divergent as a whole, if I understand what you are saying.

Mims Davies: To make the point—if I may, Chair—because in the round it is not particularly well paid by comparison, you do not feel that would mean that you would not work as hard as anyone else who felt that £50,000 was good remuneration for 100 days a year.

Q19 Amanda Solloway: I have a couple of clarification points on what I think I am hearing. First, it seems as though the other partners are very satisfied with your ability to work independently for the EHRC. Is that right?

Amanda Solloway: My question is twofold. First, do you believe you can operate from an unbiased perspective—in other words, that no influence from PM will have any impact on you? Then, do you perceive that there might be overlaps?

Amanda Solloway: At no point would there ever be a communication between you and any other members of PM around the EHRC.

Q20 Maria Caulfield: Mr Isaac, I want to go over some old ground in relation to the nine protected characteristics, because, as members of the Women and Equalities Select Committee, that is what we are particularly concerned about. You obviously have substantial experience in that, and, as Mims said, you are someone with experience who is willing to do the job for a lot less than you are currently earning. How do you feel that having someone with legal experience—this relates to our evidence sessions in a number of inquiries that we are conducting at the moment—would benefit that role?

[Proceedings interrupted by Division bell]

The Chair: We can restart. We will move on from the discussion about independence from government and conflict of interest. We welcome your suggestion that you will go back to your partners and consider how you can put a complete firewall between the income that comes to you and the income that goes from the Government to your firm. That is a very helpful suggestion that you have made in response to the points that have been raised here. Moving on from that, we go to Ben, who has some further points.

Q21 Ben Howlett: I have a specific question in relation to disability. Given that the Disability Committee will lose its statutory status next year, what do you envisage that the work of the Equality and Human Rights Commission will be in order to pick up that area of work?

Ben Howlett: To put that into context, we have not reported anything in the Women and Equalities Select Committee yet, because the Lords are publishing their own report.

The Chair: That concludes the questioning session, David. Thank you very much for coming before us and answering in such a forthright manner. I apologise for the interference of the votes that have punctuated this session. Thank you very much.

BARONESS KISHWER FALKNER

Note: session lasted 1 hour 30 mins; 42 numbered questions.

Questions by members word count: 2,879

Conflict of interest word count: 0

Race word count: 667 (23%)

Large organisation experience word count: 0

Sex-based and transgender rights word count: 116 (4%)

Q1 Caroline Nokes: Thank you very much for coming along this afternoon, Baroness Falkner. You will of course be very aware of the crucial role the commission plays in both monitoring and, importantly, enforcing equality and human rights in Britain. Can you talk to us a little about why you felt that you were the best candidate for the role and about your experience and footprint in this area?

Q2 Caroline Nokes: Much of your experience has been abroad, looking at human rights across the globe. How do you think that is going to translate into looking at equalities within Britain?

Q3 Caroline Nokes: One of the important roles of the commission is about enforcement. It would be really interesting to get a sense of your experience of enforcement and any achievements you have had in your career to date with regard to that.

Q4 Peter Gibson: Baroness Falkner, you have been a Liberal Democrat Peer for the period between 2005 and 2019, and for much of that period as a Front Bencher. How will you overcome the risk of a perception of political partiality?

Q5 Peter Gibson: Are there any activities or interests that you will discontinue or that you think will be affected by taking up the role of chair?

Q6 Lord Singh of Wimbledon: I am a Cross-Bench Peer. Your predecessors have all had their own distinctive style and approach in leading the commission. How would you characterise what yours would be? Having listened to you and your contributions in the Chamber, I have a fairly good idea but it would be great to hear from you.

Q7 Chair: Can I follow up on the point that has been raised by Lord Singh and your response? Would you say that you are more in the role of administrator and managerial consensus-builder rather than fiery champion and controversy-stimulator?

Q8 Alex Davies-Jones: Good afternoon, Baroness Falkner. The commission strategy has a core aim of upholding the system of equality and human rights systems. What do you think has been the biggest achievement of the commission in this respect and why?

Q9 Baroness Massey of Darwen: I am a Labour Peer. You have talked about the commission earlier a couple of times. I now want to delve a little deeper into your comments and thoughts. What has been the biggest challenge for the commission in delivering on its strategic aims? What would be your biggest challenge? Secondly, what does the commission need to do to be more effective? That is an easy question for you.

Q10 Baroness Massey of Darwen: How about you? In the midst of all this, which sounds like an enormous task, what will be your biggest challenge? How will you cope with it?

Q11 Nicola Richards: The commission's budget has been reduced from a peak of over £70 million in 2007 to under £19 million in 2019. The tailored review in 2018 noted significant underspends. Do you believe that the EHRC has the right amount of resources?

Q12 Bell Ribeiro-Addy: I just want to point out a report from the Women and Equalities Committee on enforcing the Equality Act, the law and the role of the Equality and Human Rights Commission. In that report, the commission is said to lack organisational confidence to take enforcement action. Despite previous assurances that the commission would become a more muscular regulator, evidence from the report states that this has not been the case.

It perhaps might not be the most reliable source, but I was visiting a primary school in my constituency talking about Black History Month and I heard a great idea from a young man, who said, "I know—let's make racism illegal." I had to explain to them that racism is actually illegal. Obviously, they are unclear about why people are allowed to continue to perpetrate that. I see the Equality and Human Rights Commission as the police of equalities, if you would like to call it that. Do you agree with the findings of the report into the EHRC that it could be more proactive in taking enforcement action? How would you ensure that this enforcement action is taken against employers and organisations that breach the Equality Act—of which there are many—whichever they may be, including even the Government themselves?

Q13 Lord Dubs: You said that you had already seen our report, which the Joint Committee on Human Rights produced. I am a member of it. It gives rise to this question. We were quite shocked when we learned in the course of our investigation that there were no black members on the commission at all. It does not say much for the diversity of the commission. I wonder whether you agree that it is a serious disadvantage for the commission to appear in this way. What can be done to ensure that the board has more black members and is generally more diverse?

Lord Dubs: No.

Q14 Lord Dubs: I had not seen the appointments this morning. I apologise for that. Of course, having really committed commissioners is crucial but there is also the way in which the commission is perceived by the outside world. I am afraid that if there is a lack of diversity on the board, the commission will not have the credibility that it would otherwise have. That was our concern.

Q15 Kate Osborne: Britain is going through a period of significant upheaval as a result of both Brexit and the coronavirus pandemic. What specific equality and human rights challenges does this bring for the commission's work?

Q16 Ms Buck: Good afternoon, Baroness Falkner. You have made reference, and there have been some questions about it already, to the report we published today from the Joint Committee on Human Rights on the issue of black people and human rights. You said that there were issues in there that you would want to look further into. The report was quite challenging about the role of the Equality and Human Rights Commission and the fact that it had not provided the leadership or won the trust of black people in this country. The polling evidence that we drew on was actually quite devastating in terms of the experience of black people and equality and human rights. We recommended an independent body to take that cause forward. I wondered if you could tell us your views about that. Do you agree or disagree with that recommendation?

Q17 Ms Buck: I wonder what you would put down as the reason why, 10 years on—we as a Committee have taken this evidence—there has been such a lack of confidence and trust in the leadership of the EHRC, as set out in our report.

Q18 Lord Brabazon of Tara: I am a Conservative member of the Joint Committee on Human Rights. Baroness Falkner, you have already covered my question to some extent, related to the fact in our recent report that the majority of black opinion in this country believes that black people's human rights are not protected equally with those of white people. You have already spoken about that a bit. If you do agree, why do you think that is and what should be done about it?

Q19 Chair: Can I just butt in there? Lord Brabazon's question was not about the perception, because the perception is borne out by the polling. His question was whether you agree with the majority of black people in this country that their rights are not protected equally to white people's. Do you agree with them that their rights are not equally protected?

Q20 Chair: But the Equality and Human Rights Commission is not just an adviser to the Government, is it? It is a champion to press forward for equality and human rights. If you will forgive me, a lot of your answers so far have seemed much more administrative, managerial and strategic. I am not hearing a champion for all those people who want to see change and to see human rights advanced. Will you lead that? Will you champion that?

Q21 Chair: Harriet has to leave us, which puts me in the Chair. Could I follow up on something you just told us, Baroness Falkner? You were very clear that you felt championing was different from actually getting results. Do you not think that the commission has a very clear role in both, in that, while championing people's human rights, you also have to deliver through the enforcement mechanisms?

Q22 Baroness Ludford: I am a Liberal Democrat peer and a member of the Joint Committee on Human Rights. As a quick comment, I would have thought that Marcus Rashford was not only a credible champion but has delivered results. Anyway, I will turn to my question.

The 20-year anniversary of the Human Rights Act is currently being marked and celebrated, as indeed is the 70th anniversary of the European Convention on Human Rights. The current Government were elected last year on a manifesto that included a proposal to update the Human Rights Act to ensure “a proper balance between the rights of individuals, our vital national security and effective government”.

Do you think that there is currently an imbalance between these objectives? If so, how should it be remedied? Do you worry about a weakening of the Human Rights Act? I understand that we are expecting a review of the Human Rights Act imminently, so this is a very live issue.

Q23 Baroness Ludford: I realise that any candidate to chair the Equality and Human Rights Commission is in a slightly difficult place in commenting on a Government manifesto commitment. On the other hand, there has been a great deal of discussion in recent years about the intentions towards the Human Rights Act and, indeed, membership of the convention itself.

I was rather hoping that you would have some clearer and firmer views on the potential concerns about the position and solidity of the Human Rights Act. Our understanding is that not only is there this independent commission on administrative law and judicial review, but there is also going to be one about the Human Rights Act itself. It is going to loom quite large over the

workings of the Equality and Human Rights Commission. I wonder if you have any further thoughts on the subject.

Q24 Bell Ribeiro-Addy: I just want to clarify, following on from Harriet Harman's question and the Chair's follow-up, who has the primary responsibility for enforcing equality. It almost seems as if the responsibility lies primarily with the Government. This seems a bit difficult given that the EHRC itself is meant to oversee and look at what the Government are doing to make sure that the Government themselves comply. I just want to understand your idea of who has the primary responsibility for enforcing equality throughout all our institutions.

Bell Ribeiro-Addy: No, I am just referring to enforcing equalities overall. It is the public sector equality duty and enforcing the Equality Act.

Q25 Joanna Cherry: Good afternoon, Baroness Falkner. I was pleased to hear you talking about the possibility of greater enforcement powers for the EHRC. For human rights to be effective, they must be capable of being enforced. What should the EHRC's role be in assisting people to enforce their rights? Does it have the powers it needs to assist people in enforcing their human rights in particular?

Q26 Joanna Cherry: The report that the Joint Committee published today found that very significantly high percentages of black people in the United Kingdom do not feel that their human rights are equally protected. Do you think it would be helpful if the commission had the power, as it has in relation to equality cases, to provide legal assistance to individuals in Human Rights Act cases?

Q27 Joanna Cherry: I was also really pleased to hear you say that you see human rights and equality as intertwined. You talked about the importance of all the commissioners supporting all the protected characteristics. Do you therefore agree that it is important that we look at each of the protected characteristics as equal and deserving of enforcement?

Q28 Joanna Cherry: In your leadership role, would you have an approach to test cases that would involve the interests of all protected characteristics being balanced? What I am getting at is that, in a test case, there might be a competition of rights between two different protected characteristics. Would you, in your leadership role, take the view that it was your duty to balance the interests of all protected characteristics?

Q29 Joanna Cherry: I suppose what I am getting at, Baroness Falkner, is that, at the moment, there is a heated debate in the public sphere about potential competition between the rights of those with the protected characteristic of gender reassignment and the rights of those with the protected characteristic of sex in relation to single-sex spaces. I want to establish whether, in your view, it is the duty of the Equality and Human Rights Commission to approach all test cases with a fair balance between the interests of all protected characteristics rather than favouring one over the other.

Q30 Joanna Cherry: Does it not come down in the end to what the Equality Act actually says and what the law is?

Q31 Joanna Cherry: Connected to that, would you agree with me that all guidance issued by the Equality and Human Rights Commission should be grounded in statute and case law? Sometimes policy can be removed from statute and case law. What underpins the rights of the Equality and Human Rights Commission should be the Equality Act and the Human Rights Act.

Q32 Kim Johnson: Good afternoon, Baroness Falkner. As you know, Covid-19 and Black Lives Matter have shone a very bright light on racism. Can you tell us what your priorities will be for promoting equalities and tackling discrimination?

Kim Johnson: In light of what we have been talking about, the published report and some of the challenges that you are going to face, maybe you could focus on that a little, please.

Kim Johnson: I was referring to the report that has been published today in terms of black people, equalities and how they feel that the Equality and Human Rights Commission is not meeting the needs of black people in this country at the moment.

Q33 Kim Johnson: It does give an indication. Thank you. Touching on what Joanna Cherry has just been talking about—hierarchy of equalities and identity politics—your predecessor, David Isaac, said when he left his role, “The commission has faced, and will continue to face, some challenging issues where different rights are perceived to collide”. Will you take a different approach to balancing competing interests and, if so, how?

Q34 Kim Johnson: Would you agree with David’s statement that the EHRC will face, and has faced, some challenges with those competing demands from the different protected characteristics?

Q35 Angela Crawley: Thank you for joining us. I want to turn specifically to a question with regard to the previous Women and Equalities Committee, which indicated that it felt that the burden of enforcement needs to shift away from the individual facing discrimination towards a more strategic approach in how it worked with its partners and regulators to create change across sectors. I appreciate that you have touched on this already but would you like to elaborate on how you intend to go about this in your capacity as chair?

Angela Crawley: Yes.

Q36 Angela Crawley: One criticism that the commission has had, rightly or wrongly, is that it has been perceived as somewhat toothless in its execution. The tailored review of the commission in 2018 said that it should “reset its vision to focus on the use of its unique powers as an enforcer and regulator of equality law”. Stakeholders have described the commission as being timid in using its powers. Do you recognise that description?

Q37 Angela Crawley: My final question is with regard to the focus on the research in *Is Britain Fairer?* One argument is that this report has overshadowed the use of the commission’s enforcement powers. If that is an accurate description, how will you prioritise which powers to use going forward in your capacity as chair?

Q38 Angela Crawley: Perhaps I could take the opportunity to ask one last question. I appreciate that there is a breadth of responsibilities that the commission has and that you are undertaking a huge challenge going forward in many respects, but what is your ambition going forward to really transform the Equality and Human Rights Commission into a body that people know about, that they understand exactly what it does and that really achieves something? That is something that we all across the board want to see and would support you in doing.

Q39 Chair: Will moving forward in that way involve a better and more dynamic relationship with Parliament?

Q40 Baroness Ludford: If you are appointed, Baroness Falkner, how would you judge in two years' time whether you had been successful? What would success look like? What would the criteria and the benchmark be?

Q41 Baroness Ludford: I just wonder if I could tempt you to make it a little more personal. Could you personalise that a little more, without being too egotistical? You talked about what would be an achievement of the EHRC but what would your personal value added and metrics of success be?

Chair: Thank you for that answer. Following on from that, I am going to bring in Alex Davies-Jones to ask one final question where I hope we might hear a little more about your personal ambition as opposed to just some management aspiration.

Q42 Alex Davies-Jones: Can I ask why you want this role? What is it that drives the fire in your belly when you wake up in the morning to want to be in this position?

Chair: May I take this opportunity to thank you for your evidence this afternoon, Baroness Falkner? I am sure that it has been incredibly enlightening for us all.

DR MARY-ANN STEPHENSON

Note: Session lasted 2 hours; 34 numbered questions.

Questions by members word count: 6,357

Conflict of interest word count: 0

Race word count: 435 (7%)

Large organisation experience word count: 285 (5%)

Sex-based and transgender rights word count: 2,115 (33%)

Q1 The Chair: Order, order. I am David Alton, Lord Alton of Liverpool. I am an independent Cross-Bench Peer, and I have the privilege of chairing the Joint Committee of the House of Commons and House of Lords on Human Rights. I am sitting alongside my colleague Sarah Owen, who is the Chair of the Women and Equalities Committee in the House of Commons, who does a terrific job. Today, our two Committees are meeting together, and we are doing so because it is our duty, laid on us by Parliament, to examine the credentials of someone who will be appointed to become the chair of the Equality and Human Rights Commission. This is a pre appointment hearing. It is also the third time that the hearing has been conducted jointly between our two Select Committees.

The session is for the JCHR and the Women and Equalities Committee to assure themselves of the quality of the Government's decision to choose Dr Stephenson as their preferred candidate for the EHRC chair, and that it is the right one. Key considerations include the openness, rigour and integrity of the recruitment process; the suitability of the candidate's skills and experience; and assurance that the candidate has been chosen on merit. After the meeting, the two Committees would usually agree a report setting out their views. The Committee's views are not binding on the Government, but the Secretary of State is expected to consider any relevant observations before proceeding with the appointment.

It might be helpful for the Committee, and for members of the public who are here, to know how we are going to proceed. Our questions will be broken down into eight separate sections. First, we will look at the suitability of the candidate's knowledge and experience. We will move on to broad equalities remit and the Equality Act. Then we will talk about the human rights remit, the role as equality law regulator and enforcer, and then the relationship with government and Parliament. Then there are things about vacancies on the board; biological sex-based rights and transgender rights; and then something on equality and human rights implications on artificial intelligence.

Let me introduce our candidate today. Our witness, Dr Mary-Ann Stephenson, is the Government's preferred candidate for the post of chair of the Equality and Human Rights Commission. In a moment, I will invite her to introduce herself before inviting members of both Committees to put their questions to her. Dr Stephenson has 30 years' experience in equality and human rights, predominantly in women's rights. She has led the Women's Budget Group since 2017 and was a commissioner on the Women's National Commission and director of the Fawcett Society. She has been a freelance equality and human rights consultant in the UK and overseas. She has a PhD in equality law, and she has lectured on related topics.

I would like to begin the questions before inviting in some of my colleagues. In addition to your role at the Women's Budget Group, Dr Stephenson, you hold three board-level positions. Can

you tell us whether you intend to continue in any of those roles? If so, how can you assure us that you will avoid any perception of conflicts of interest with your position as EHRC chair? How do you intend to manage your time between the EHRC and other roles? The time commitment of the EHRC role is roughly two days a week. Do you see that as sufficient to be able to do the job effectively?

The Chair: That is a very helpful reply. Thank you. That was the curtain raiser for the beginning of our proceedings.

Q2 Baroness Kennedy of The Shaws: It is really very nice to see you here and to have the opportunity to hear about your life's work. Obviously, you are well known to many of us who have worked in the field of women's rights, and you have been involved in important work on that over the years: particularly, I remember the Fawcett Society and some work you did for the British Council overseas. Could you describe to us which skills and experience you have developed over the years that you feel will help you to manage a complicated organisation such as the one that you are likely to be—or might well be—appointed to? Where do you think there might be gaps in your own experience, and how might those be filled? It is better to be frank about areas where you feel you absolutely have the complex set of skills that will be needed but also to recognise areas where you perhaps might have to fill the gaps.

Baroness Kennedy of The Shaws: You have missed out on the thing that I raised early on. I was suggesting, as I have had the experience myself, recognising that some roles might involve things where there might be gaps in one's own experience. Where are there gaps in your experience?

Baroness Kennedy of The Shaws: I remember that, when the EHRC was created, there was a discussion about the fact that there was a whole set of organisations and entities, such as an equalities commission which dealt with women's issues, a race relations organisation for the whole business of race and one for the business of disability. What about those areas? Do you have experience of dealing with disability?

The Chair: We must not pre-empt those questions. Thank you for raising this, because these are very important questions about the nature and make-up of the board. Baroness Kennedy has flagged a very helpful question. I turn now to Rebecca Paul, Member of Parliament for Reigate. After that, we will hear from Kirith Entwistle, Member of Parliament.

Q3 Rebecca Paul: Thank you, Dr Stephenson, for your time today. I have a follow-on question to build on what Baroness Kennedy already asked about. I think you recognise that you have not had a role that is commensurate in size and budget before. What will you do to address the skills and expertise that you need to do that? Have you got a plan of action to make sure that you develop those skills as quickly as possible?

The Chair: Never be afraid to ask for help or advice: that is pretty good advice in life. I turn now to Kirith Entwistle, Member of Parliament for Bolton North East. After that, we will hear from my colleague Baroness Lawrence.

Q4 Kirith Entwistle: You are probably aware that we are approaching the 15th anniversary of the Equality Act. How effective do you think it is today? What do you think will be the key challenges to its effectiveness over the next decade?

Q5 Baroness Lawrence of Clarendon: Thank you for being here. In the last decade, we have seen the Windrush scandal, and some racial and ethnic minority groups continue to experience

disproportionality and poorer outcomes, for example in employment, income and health. As chair of the EHRC, what will be your priorities in tackling racial discrimination?

Baroness Lawrence of Clarendon: Could I follow up on that? The Windrush scandal is completely different from what you were describing just now. The scandal has been going on for the past seven years, I think, and people are still suffering. Things have not happened around supporting them and looking at how this scandal has affected them and their family. This scandal is completely different from the stuff that you have said to us. How would you prioritise that area and looking at this scandal, which has been going on for over seven years?

Baroness Lawrence of Clarendon: To follow on from that, would you challenge the Government on the length of time it has taken for them to address issues around the scandal?

Peter Swallow: Dr Stephenson, can we draw out from your answer to that question that you would like to see the EHRC doing more thematic inquiries into specific issues?

The Chair: We turn now to Mr Afzal Khan, who is the Member of Parliament for Manchester Rusholme. After that, if there are no supplementaries, we will turn to Alex Brewer.

Q6 Afzal Khan: Dr Stephenson, we have seen a sharp increase in Islamophobia and anti-Muslim incidents. How will you ensure that Islamophobia is addressed as part of your work tackling racial discrimination?

The Chair: I ought to turn to my Co-Chair for today's proceedings, who is the Chair of the Women and Equalities Commission. Sarah, the Floor is yours.

Q7 Sarah Owen: Thank you very much, Chair. Thank you for being here; I cannot imagine that this kind of job interview happens very often, so you have my sympathies, particularly in this heat. It is to follow the questions from my colleagues Baroness Lawrence and Afzal Khan. Last summer we saw horrific riots, racism and Islamophobia lead to violence on our streets in many parts of the country. You talked about the EHRC being able to be proactive on that. I would like some specific examples of how you would lead the EHRC to build trust in some of the communities where trust has broken down between institutions—particularly for black and Muslim communities. We will go on to talk about some of the other communities where trust in the EHRC as a defender of their rights has really broken down.

Sarah Owen: That was my question: how do you plan to do it? I understand that you say that you want to go out and engage but, at the moment, some organisations in the communities that I have just spoken about will not engage with the EHRC in its current position, because trust has broken down to that extent. What are you proactively going to do? Do you have any examples of where you have done that previously?

The Chair: I should like to give the floor to Alex Brewer, who is Member of Parliament for North East Hampshire. After that, we will be hearing from David Burton-Sampson.

Q8 Alex Brewer: The EHRC warned in 2023 that the UK needed to do a lot more to ensure that disabled people are treated with, "dignity, respect and fairness". How will you use the equality framework and the commission's powers to achieve this?

Alex Brewer: Just to follow up on that, we know that obviously there are many barriers for disabled people. People with learning disabilities seem to be very much at the bottom of the pile. We know, for example, that only 6% are in any kind of paid employment, despite many more wanting to be, and that this figure has not changed in a long time. Do you see any way

forward in the soft power or more structured routes for the EHRC to help promote the rights of people with learning disabilities?

The Chair: Before we leave this important question on disability, I know that my colleague, Rachel Taylor, who is Member of Parliament for North Warwickshire and Bedworth, has a question for you on this point. Then we will move on to the last question in this section from Mr Burton Sampson.

Q9 Rachel Taylor: Just focusing on what my colleague, Alex Brewer, said about dignity and respect for disabled people, we have seen huge increases in hate crime against them. I am aware that you were a member of the Coventry police and crime board for four years, so perhaps you would like to say a little about how you think the EHRC could help with a reduction in that sort of hate crime. It is a subject close to my heart as I put forward an amendment on hate crime laws just a week or so ago in Parliament.

The Chair: Mr Burton-Sampson is going to complete this section. He is the Member of Parliament for Southend West and Leigh.

Q10 David Burton-Sampson: How concerned are you about the backlash against equality, diversity and inclusion in the UK, in part driven by President Trump's action against DEI in the US? We are already, for example, seeing companies rowing back on the DEI agenda or shrinking it down. Pride organisations are losing sponsors and having to close down their organisation for the year. How concerned are you?

David Burton-Sampson: Are you able to give an example or two of some practices that you think have not worked in the past within organisations?

The Chair: Baroness Kennedy would like to ask a supplementary. We will then complete this section and move on.

Q11 Baroness Kennedy of The Shaws: Let us be very clear. Underneath this is the whole issue of the Trump Administration's response to what they saw as wokeness and this whole business of wokeness having been introduced into our society as a concept. Certain sections of our society want to run with that in order to attack the very efforts that have been made to counter discrimination. How are you going to challenge this business of the EHRC being seen as just another woke entity?

The Chair: I spoke too soon because at least one of my other colleagues asked whether she can ask a supplementary question as well; I would not want to stop her. I turn to Juliet Campbell, the Member of Parliament for Broxtowe.

Q12 Juliet Campbell: Thank you. Mine is quite a small question. For me, the case for EDI has already been made. How would you go about promoting and strengthening EDI rather than allowing it to be rolled back and diluted, as is the threat?

The Chair: That completes our questions on the broad equalities remit and the Equality Act. We will now move on to the third tranche of questions; they are about human rights. I invite my colleague, Alex Sobel, the Member of Parliament for Leeds Central, to kick off for us. After that, we will hear from Afzal Khan again.

Q13 Alex Sobel: I shall start by coming back to something you said in response to the first question—that you take an intersectional approach at the Women's Budget Group. Are you intending to bring that approach with you to the EHRC? Do you think that the EHRC currently

strikes the right balance between equality and human rights work? I want also to seek your opinion on Protocol 12 to the European Convention on Human Rights because it expands the scope of non discrimination and the general prohibition of discrimination and, in many ways, encapsulates that intersection between human rights and equalities.

The Chair: There will certainly be a lot of work on Protocol 12; it is something that the JCHR is very interested in

The Chair: There you are; thank you for that. I turn now to Mr Khan. After him, we will hear from my colleague, Lord Dholakia.

Q14 Afzal Khan: What is your view of the commission's recent approach to inquiries into human rights issues?

Afzal Khan: Basically, from the outside looking in, how do you see the way in which it has been handling things?

Afzal Khan: Let us assume that you are in the position. Would you like to see more human rights inquiries? If so, how would you choose which human rights issues to focus on?

The Chair: A lot of us, in preparing for today's hearing, were shocked to see the reduction in the number of staff working for the commission and the reduction in its budget. You raise an important point about what you are able to do with what you have, but it is not ideal. I turn to Lord Dholakia to complete this section, then we will go back to Alex Brewer.

Q15 Lord Dholakia: Can I take you up on the issue of international human rights treaties? The EHRC's role includes promoting and monitoring UK compliance with international human rights treaties. What is your view on how effective the commission has been in this work and what should be its priority in this area?

The Chair: It is not an easy environment. My colleague Dr Peter Swallow, Member of Parliament for Bracknell, has a supplementary for you before we move on.

Q16 Peter Swallow: Thank you, Dr Stephenson; you have opened up the window to my follow-up, which is to ask you specifically about not the EHRC but the ECHR. I get those two confused every day. You are aware that the Lord Chancellor recently spoke in front of the Committee of Ministers in Strasbourg about the ECHR. To quote her, "The European Convention on Human Rights is one of the great achievements of post war politics. It has endured because it has evolved. Now, it must do so again". Obviously the work around any reforms to the ECHR would be for politicians, but your prospective role as the chair of the EHRC involves monitoring our compliance with the ECHR. Do you have any observations on the work that the Lord Chancellor is proposing to undergo?

The Chair: It is easier to destroy than to build. In this 75th anniversary year of the European Convention on Human Rights, as we celebrate the work of Eleanor Roosevelt and others in creating the universal declaration and its 30 articles, it is important that our generation take those things seriously. So this is music to my ears.

The Chair: That takes us on from the human rights remit to the role of equality law regulator and enforcer. I turn to Alex Brewer again for the first question. After that, we will be hearing from Sarah Owen.

Q17 Alex Brewer: What specific skills and experience can you draw on to inform your approach as equality law regulator and enforcer?

Alex Brewer: Do you think that the EHRC has it right at the moment or that its approach to equality law enforcement could change? If so, how?

The Chair: In addition to being the Chair of the Women and Equalities Committee, Sarah Owen is the Member of Parliament for Luton North. She will now take us back to something that was raised earlier on about resources.

Q18 Sarah Owen: Yes. Before I do that, I want to have another go at the question from my colleague, Alex, specifically around enforcement. One area of our lives that we all use is completely void of any kind of enforcement at all at the moment: social media and the internet, where we see much of the spread of racism, hatred and bullying and the abuse of people with protected characteristics. Would you be prepared to change the EHRC's approach to be much more robust with those social media companies that fail to protect their users from racism, sexism, misogyny and all of the other issues that we see every day?

Sarah Owen: Okay. That would be a change of approach, but thank you. On this, as the Chair mentioned, there have been staffing and resource issues at the EHRC. That is not something new; they will not come as a surprise to you when you get in—if you get in—because they are something that the outgoing chair has raised with me directly. It is about long-term and long-standing vacancies, including in commissioner posts. You are going to have to fight for resources from this Government. How prepared are you to go to the Government and to Ministers and say, “We need more resources for the broad remit that we have”?

The Chair: Thank you very much indeed; that is very helpful. That completes our section on the role of equality law regulator and enforcer. We shall now move on to relationships with government and Parliament. It is now the turn of the Member of Parliament for Harrogate and Knaresborough, Tom Gordon.

Q19 Tom Gordon: How would you characterise the current relationship between the commission and the Government? How would you like to see that relationship evolve, if at all?

Tom Gordon: Thank you for that but, to push a little further, a lot of the answers that you have given have talked about how you would need to be in the position to understand the machinations underneath. What is your current perception of that relationship? I assume that, as part of your preparation in advance of today, you have done a lot of reading around and involvement in all sorts of things. Where do you think that relationship is currently at, and how achievable do you think it will be to move it forward to where you would want it to be?

Tom Gordon: Building on the point that Sarah Owen mentioned earlier, in terms of finance and resources, should the commission have a greater degree of financial independence and more control over the appointment of commissioners?

The Chair: That is permitted. If you think that now is the moment when you would like to say it, please do so.

The Chair: It is very helpful for us to hear that because, of course, it is the Secretary of State who will fill those gaps in the end, but the two committees have views about these things. I do not want to speak out of turn, but I think that both committees are anxious about the gaps that there have been on the commission and the failure, therefore, to represent some of those

protected characteristics properly. The sooner we can make common cause on that, if you are appointed, the better it will be. Thank you, Mr Gordon. That takes us to Juliet Campbell, who will ask the last question in this section.

Q20 Juliet Campbell: Dr Stephenson, can you tell us a little more about how you think our committee should measure the success of the EHRC and your potential term as chair?

The Chair: Thank you very much. That brings us to the end of the section on relationships with government and Parliament. We have just touched on vacancies on the board. I know that Ms Campbell would like to ask you something further on that; we will then hear from Catherine Fookes MP.

Q21 Juliet Campbell: Thank you. A couple of people have spoken about the vacancies on the board. It is noticeable that there have been periods of high turnover among the commissioners; indeed, there are currently unfilled vacancies on the board. Do you think that steps are necessary to make the role of EHRC commissioner more appealing and attractive to a more diverse range of people?

Juliet Campbell: My follow-up question to that is: what steps do you intend to take to ensure an inclusive and collegiate approach on the board?

The Chair: We have one other question on the board; Catherine Fookes, who is the Member of Parliament for Monmouthshire, is going to ask it.

Q22 Catherine Fookes: I want to say before we start that our paths have crossed before in a professional capacity; it is lovely to see you here, Mary-Ann. I want to follow up on vacancies for commissioners and try to pin you down a bit more. What range of additional knowledge do you think is required by the commissioners? What opinions are missing and what would be most helpful in your role as chair? I am particularly interested in a Welsh commissioner being appointed ASAP, obviously. You have touched on all the recruitment issues, but what additional knowledge is needed to supplement your own and that of other board members?

Catherine Fookes: Do you not think that we need some people with lived experience of some of the protected characteristics that you are talking about?

Catherine Fookes: In terms of the actual board, there is something that I want to raise around conflicts of interest. It says in the code of conduct: “The Accounting Officer must ensure that mechanisms are in place to avoid or manage conflicts of interest” on the board. How will you manage conflicts of interest that may arise due to the beliefs of people on the board, things that people have said previously and that kind of thing? How will you manage those conflicts of interest? That can be really difficult

The Chair: Dr Swallow has one more supplementary to ask before we move on to the next group.

Q23 Peter Swallow: Thank you so much, Dr Stephenson. I want to ask you a specific question that I know that many of those watching will want to know the answer to, given your responses on wanting to see a broader range of commissioners. I ask this with the caveat that I am really aware that it is a reductive view to suggest that, just because somebody potentially has a particular experience or perspective, they are able to talk about only a specific aspect of our incredibly diverse society. The obvious question that will come up, given the challenges facing

the EHRC at the moment and given your answers to some of the questions today, is: would you welcome a trans commissioner being appointed to the EHRC?

The Chair: Thank you. We are going to move on to precisely that range of questions. This is the penultimate group, and it is on biological sex based rights and transgender rights. The first question in this group comes from Mr Burton-Sampson, then we will go back to Dr Swallow.

Q24 David Burton-Sampson: The updated EHRC code of practice, following the Supreme Court's judgment on the meaning of "sex" in the Equality Act, will likely be enforced soon after you take over as chair, if you are successful. To what extent do you foresee explaining and enforcing the updated code being the initial focus of your tenure as chair?

Q25 Peter Swallow: I think you touched on this in a previous answer, Dr Stephenson, but it is important that we set it out. Again, you will be aware that it is a question that many of those watching have concerns about. You will be aware that both of our committees have received hundreds of letters and emails from transgender people and organisations concerned about your appointment, specifically referring to a couple of open letters that you have signed, to appearances alongside women's organisations, and to an apparent personal donation to a legal case brought by a particular activist. You are aware of the claims that I am referring to. I think it would be really helpful to hear you set out your response to the concerns that have been raised to our committees.

The Chair: Just before you answer, Dr Stephenson—I am sorry to interrupt—but I am told that the legal case that Dr Swallow mentioned is sub judice, so we cannot go into it. But we can certainly answer the general question that Dr Swallow put.

The Chair: Thank you for your transparency and candour in answering that. I am sure that both committees are grateful to you for that. I want to bring in Rachel Taylor and, after that, we will hear from Rosie Duffield.

Q26 Rachel Taylor: Until it was raised by colleagues of mine, I noted that you had not mentioned the LGBT community in any of your answers. Given the discussions and debates around the recent judgment of the Supreme Court and the correspondence that my colleague Dr Swallow mentioned, can you describe the specific steps and actions that you will take to gain the trust of the trans community, if you were to be successful in this role?

Rachel Taylor: Obviously, how those intersectionality issues impact on lesbians and trans women is important. I want to move on. The Supreme Court noted that the EHRC's interim guidance or statement went beyond what the law required. How will you ensure that future guidance accurately reflects legal obligations rather than policy preferences? Is there a danger that the EHRC makes the same mistake again, or even in the other direction? How would you mitigate that risk?

Rachel Taylor: I have one final question. You have spoken passionately about your desire to uphold freedom of speech. Is it appropriate for people on social media to suggest that women or trans women entering toilets should be photographed or videoed, or is that something you would publicly distance yourself from?

Correction in Hansard: Rachel Taylor mistakenly refers to the Supreme Court. The reference should have been to comments made by former Supreme Court justice, Lord Sumption.

The Chair: We would all agree with you about toxicity and the danger of using insensitive language. I am grateful to you for the tone and manner in which you are answering these complex, difficult and challenging questions. My colleague, the Member of Parliament for Canterbury, Rosie Duffield, has the floor now.

Q27 Rosie Duffield: Mary-Ann, first, I have been asked to declare an interest. As chair of the Women's Parliamentary Labour Party, you would often be invited into briefings when there were big fiscal events or the Budget was coming up. Given that women are always disproportionately disadvantaged by austerity measures—things like the welfare Bill are obviously in that same vein—is that the kind of work, given your great experience in that area, that you hope to push through in your new role?

Rosie Duffield: To go back to the Supreme Court judgment, given that women are almost 52% of the population, how would the EHRC keep and gain the trust of women's rights groups like For Women Scotland, who brought that Supreme Court judgment and won. Of course that was about clarifying the law. Would the EHRC work to include those women in conversations as well?

The Chair: I turn now to Lord Dholakia and Baroness Kennedy for the last questions, but we may also hear from Sarah Owen.

Q28 Lord Dholakia: I wish to follow up a question asked by Dr Swallow and Rachael Taylor. We receive a large number of letters, and so must you, from the trans community. It has no confidence in the way in which the matter has been dealt with. What would you be doing to build that link with this community?

Q29 Baroness Kennedy of The Shaws: If you do not mind, I am going to call you Mary-Ann. I just want to say this to you. I count myself as a strong feminist as you do, in that my life's work has been around trying to secure justice for women as well as others. The founding premise from which I have operated is common humanity. That sense of common humanity refers to the idea that all human beings are fundamentally the same. Their experiences of pain and suffering, of yearnings to love and be loved and of needs and wants are not very different. We see that as bringing people of different races together, and people with disabilities together with able-bodied people—all those things. One of the things that the Supreme Court was saying is that the law sometimes has to be tempered with human rights and common humanity. While the court was saying something about sex, only women who have uteruses are going to have uterine cancer and only women who have ovaries are likely to have ovarian cancer. So there are certain services that one would want to make sure are available on a sex-based nature. Going back to common humanity, what do you say to a woman who has been a trans woman and has lived as such for 20 or 30 years, who says, "What do I do when I am trying to get home from work now and I go to Waterloo station and am caught short because I am a woman of a certain age? What do I do when I cannot use the women's toilet? Yet, there I am, dressed as an ageing woman". What is your answer to that woman? What do you think about what Rachel raised—that there are people now wanting to police those places, wanting to photograph and harass people who are going there? The whole purpose of the common humanity that underpinned human rights law was to create a template against which law, which is never perfect, could be tested and that we should be promoting compassion in society, reducing division and fostering resilience. Is that going to inform the way in which you chair this body—that sense of common humanity?

Baroness Kennedy of The Shaws: And it underpinned feminism in its early days.

Baroness Kennedy of The Shaws: When resources are so limited, what do you do about the absence of toilets of the kind that you are describing in Waterloo station, when somebody is presented with that dilemma? What do you do, and how do you deal with the ugliness of people photographing trans women going in?

Baroness Kennedy of The Shaws: And we are thinking about trying to build a society that is based on compassion and humanity.

The Chair: I know that Sarah Owen would like to come on this point as well, and that Rebecca Paul would like to add a further supplementary. I am keen for the committee to move on then, because we want to hear also from Catherine Fookes.

Q30 Sarah Owen: You talked in an earlier answer about how the Supreme Court ruling helps us on how we understand the law, but I am intrigued as to how you understand the law and how that works alongside human rights. Baroness Falkner came to the Women and Equalities Committee not so long ago, and during that exchange of questions and answers—similar questions to those that you have faced in this session—she alluded to Article 8 of the Human Rights Act not applying for trans women and them not having a right to private life, particularly when it came to the issue of having to use toilets in a workplace, for example. Is that your reading of it? If it is not, how are we going to get that balance right?

Sarah Owen: Is that for both trans women and trans men?

Q31 Rebecca Paul: Thank you for your very helpful answers on that front. Earlier—and this leads on from the questions that have just come up—you made the important point that, if only there had been more dialogue 10 years ago, we would not find ourselves in the difficult and almost toxic situation that we are in on these kinds of questions. Actually, it is really important to recognise the limitations of the EHRC. For example, would you agree with me—and what would you do to support this, if you do agree—that it is really important that the groups out there that support the trans community are lobbying for the services that are needed? If we look at all the things and services that women have needed, and that disabled people have needed, groups have worked really hard, for years and years, to secure the services needed. What more can we do to make sure that those groups that say they represent the interests of trans people are lobbying for those services? We all want to see those appropriate services, as you say.

The Chair: So it is about rebuilding trust and having respect for one another. I know that that is the point that Catherine Fookes wants to ask you about—when you have those conflicts between one group and another, what you do about it.

Q32 Catherine Fookes: Thank you, Chair, but first of all I would like to bring you back and give you one more opportunity to address Baroness Kennedy's excellent points. I feel a bit disappointed that, given your statement about Article 8 and the right to a private life, you cannot seem to condemn the thought that people might take photos of possibly trans men and trans women using toilets

Catherine Fookes: Thank you; that was all I wanted to hear. To go on to the trust point and strengthening the public's trust in the EHRC if you are indeed appointed, I know that there is a lot to do to rebuild that trust. I have heard from some of the organisations that came to the Q&A sessions on the draft statutory code of practice that they felt incredibly uncomfortable. The space was very dominated by those who supported the Supreme Court ruling and people felt really uncomfortable. If you are appointed, what steps will you support the commission in taking

to ensure that all people's rights and freedoms are upheld in building that trust—for everybody, including the trans community?

Q33 Peter Swallow: There is a specific point here; this is where the question of Article 8 and trans people's privacy came up in the Women and Equalities Select Committee briefing. My question is about the draft guidance and the proposed changes to Chapter 2, which set out the circumstances in which it would, according to the draft code of practice, be appropriate to ask a trans person to identify themselves as trans and, in effect, to out themselves as a trans person. I understand the Supreme Court judgment's position on single-sex spaces; you have set out your support for that. Single-sex spaces are in the Equality Act, of course, but I could not see in either the Equality Act or the Supreme Court guidance any requirement for that to be underpinned by a process of trans people having to out themselves. I know that trans people have been very concerned about this particular bit of the guidance. I am not asking you to pre-empt the consultation that has rightly been going on, of course, but I want to encourage you to set out your thoughts on this briefly. I am not asking you to respond specifically to the guidance; I am asking you to respond to trans people's fears and concerns about it. Do you understand where those fears and concerns are coming from?

Peter Swallow: If you come in and we get the final code of practice before you take up your position as chair, but you find that there are significant issues when it is being implemented or you feel that the process was not handled in a fair way—such as in listening to both sides, as you set out—would you feel empowered to take a second look?

Q34 The Chair: Thank you, Dr Stephenson. You will be relieved to know that that completes the seventh section of our questions to you, and that there is only one question in the eighth section, which I shall put it to you. You will know that the Joint Committee on Human Rights carries out both legislative inquiries—we recently conducted one on the Mental Health Bill and one on the borders Bill—and thematic inquiries. At the moment, we are doing an inquiry into supply chain transparency and modern day slavery, as well as one on transnational repression. It is no secret that the committee has been thinking seriously about artificial intelligence and human rights. My suspicion is that, later on in the year, we will spend quite a lot of our time on that question. To what extent do emerging technologies, in particular artificial intelligence, pose a threat to equality and human rights? Do you see the role of the EHRC evolving in that area?

The Chair: And it is about being ahead of the game.

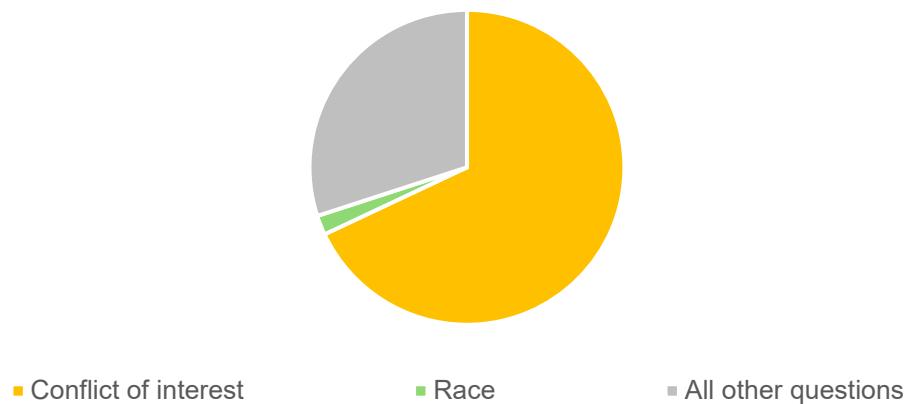
The Chair: You were asked earlier on about thinking thematically. From time to time, we must have that bigger picture in mind.

The Chair: Dr Stephenson, thank you very much for joining our two committees this afternoon and for answering the questions both patiently and with wisdom from your background and experience. I think that we have all been very impressed by your answers. It will now be up to the committee to consider what you have said and to consider our own recommendations, but I thank you. I also thank those members of the public who have been observing us here and who have watched online. I am happy to bring the proceedings to a close

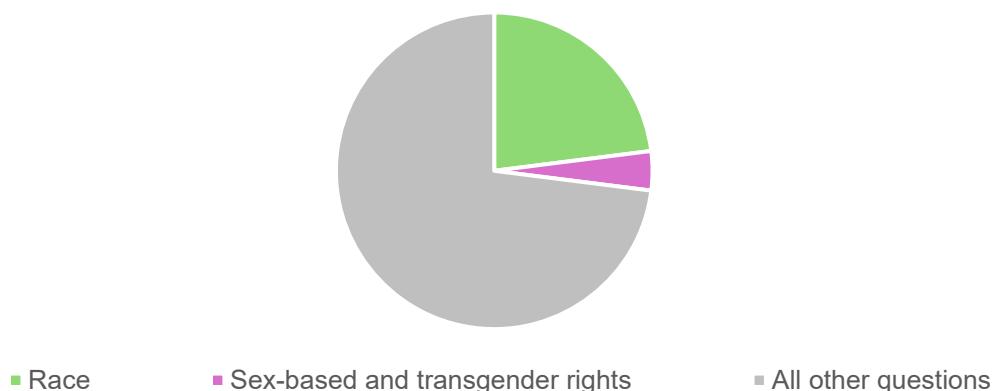
Note: Taken from the published uncorrected transcript, which notes “Any public use of, or reference to, the contents should make clear that neither Members nor witnesses have had the opportunity to correct the record.”

Committee questions by subject area and EHRC chair-designate (%)

David Issacs



Baroness Falkner



Dr Mary-Ann Stephenson

