

The Role of Equality and Human Rights Bodies and the Case for Synergy

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May I begin by congratulating the Irish Government for giving this attention to the protection of fundamental rights during your Presidency; and for being ahead of the game in recognising the need to address not only the rise in xenophobia against foreigners and ethnic minorities but the read across to other forms of hostility such as homophobia. We do need effective strategies across Europe to tackle discrimination and foster respect for the dignity of each and every individual, whoever they may be.

National Human Rights Institutions (NHRIs) and Equality Bodies have a key role to play in that strategy, which is why there has been a rapid growth in their numbers across the globe in the past twenty years – integrated bodies as in Canada and Australia and the separate institutions that have been more common over here.

The International and European human rights machinery is fundamental to securing the bottom line in human rights protection – monitoring compliance with international standards and providing remedies for some of those whose rights have been infringed. But it is our national institutions that are best placed to recognise emerging and systemic problems, and to engage consistently over time with their government and public, private and civil society stakeholders to find solutions.

Across Europe, we have more than 30 equality bodies and 17 accredited NHRIs, with just a handful that currently combine both roles, including Denmark, the Netherlands, Poland and Great Britain. In a number of states, as here in Ireland, the process of integrating functions is underway or, as in Greece and Slovenia I believe, discussions on future machinery have begun.

There are many potential forms of linkage short of merger – from mutual exchange of ideas through joint interventions - as the European network of national equality institutions, Equinet, in its own recent study made clear.¹ But the trend is to go further, to bring them together in some form, under one roof.

The development of integrated institutions is driven, in part, by recognition that we do need more effective interventions if we are to protect the most vulnerable in our societies and past gains are not to be lost. But cutting costs is also a driver

and this causes concern that enhancing effectiveness may not be governments' primary consideration. Stakeholders need to be reassured.

Among existing bodies there are differing remits, powers, structures and institutional relationships with government (some close, some with greater independence). Their establishment was often greeted with high hopes and expectations that have sometimes, but not always, been met.

So even if today there was no economic driver for reform it would be time to take stock. To ask: what are the strengths of our existing institutions, and their limitations? What is it that makes them effective, or holds them back? Is it a matter of powers, structure, strategy or good management; or ensuring the right balance between operational independence and accountability? Or is it the domestic political context in which they work that most enables or constrains what they can achieve?

And then we come to the particular question which exercises us today: are they more effective as separate bodies, addressing human rights over here and equality issues over there – or brought together in a single institution?

This is the question that is now being considered in a number of Member States; and which Ireland is in the process of resolving – bringing its Human Rights Commission and Equality Authority into a single Human Rights and Equality Commission, to start operation later this year.

With so many questions across Europe on whether this is the right move, all eyes will now be on Ireland to see whether you succeed in creating an effective model that others can follow. We wish you luck!

So what can you and we all learn from the experience of those bodies that have combined these functions, and from those that have not?

In essence, that there is strong evidence for merger – and not a little against!

I have looked at this most closely in relation to the six human rights and equality bodies in the UK and Ireland, with Professor Colin Harvey at Queen's University, Belfast. He, like me, has been a Commissioner on one of the bodies - in my case the Commission for Racial Equality, in his the Northern Ireland Human Rights Commission. So you could say that we know something of what we are talking about – or that we are not entirely impartial!ⁱⁱ

There is also a wider study by Colm O'Cinneide and Neil Crowther at University College London, looking at the integration of functions across the EU, which is not published yet; but emerging findings were discussed at a conference in March with the Director of the EU Fundamental Rights Agency and other distinguished participants.ⁱⁱⁱ

I am drawing on these and earlier studies in suggesting some arguments for and against bringing human rights and equality functions together – though my conclusion, on where the balance lies, is my own.

I suggest the evidence points to five core strengths of an integrated model:

1. Equality and Non discrimination are core human rights, central to the international and European human rights standards and to their development in the aftermath of the horrors of the Second World War. So any work to promote public awareness of those standards and their historic importance must highlight the centrality of addressing discrimination. At the same time we know that we cannot address racism, gender violence, disability hate crime or homophobia without a cultural shift towards respect for human dignity, regardless of identity. So immediately we have an overlap in these mandates, human rights and equality, which we cannot ignore.
2. More immediately for the day to day work of these bodies, experience of discrimination is so often linked to other infringements – to degrading treatment, denial of the right to family life or education, for instance - that discrimination cannot effectively be addressed in isolation. Two separate institutions can work together of course, conducting an Inquiry or taking a test case, but we know how difficult that can be in practice – with separate mandates, budgets, priorities and timescales.

The strongest argument for a single institution is its capacity to deal, in each case, with the reality of the situation on the ground, in all its complexity, having within its tool kit the full range of levers necessary to secure justice and prevent the abuse happening again.

3. Third, an institution with a broad human rights and equality mandate, protecting the rights of all, has greater capacity to secure public support for its work; and to build solidarity in civil society among those who, through the institution's integrated focus, begin to see the synergies between the issues they themselves are tackling and those of the group next door. It is also so much more convenient for employers who want advice and for individuals in need of help to have a 'one stop shop' they can approach, and that means they are more likely in practice to do so.
4. Fourth, there can be some clear benefits in size and profile – a larger body on the institutional landscape, undertaking more activity, can attract greater media coverage; be better known among the public; carry greater weight in its dealings with government, employers and service providers. Offering greater career prospects, it may find it easier to attract and retain staff, who together have a greater range of expertise, than a small body with a handful of staff can ever expect to do.

5. And finally we cannot in today's climate overlook the fact that a single body can be more cost effective: one building, shared services - one human resources department, one media team. In theory, if that money is not clawed back into some dark recess of the government's Treasury, it can be spent on extending the protection of the rights of vulnerable people – a strategic use of resources in straightened times.

So - five good reasons of principle and practice to establish a single human rights and equality institution. But there are also some reasons to hesitate to take that step.

1. The EU and domestic legal frameworks on human rights and equality with which these bodies have to work are often, in practice, very different – differing legal powers, remedies for victims, target audiences, means of promoting good practice, monitoring performance and enforcing compliance.
2. As a result, where two separate bodies already exist, one dealing with human rights, the other with equality, staff can have very different expertise, working cultures, and priorities. Some are used to working in silos, focusing on their one specialist issue, and that can take time to change. And we should not underestimate the disruption of the merger process itself. As one of our interviewees told us, 'Mergers are horrible affairs!'
3. Thirdly, in trying to deal with its new, broad mandate, tackling those complex agendas that the body can now address, embracing many kinds of abuse, it may lose sight of the detail, and with it the depth of staff expertise, that characterised its earlier work. If originally a human rights body, as was the case in Denmark, the challenge is to keep a focus on equality. If, on the other hand, human rights is added to an institution with a strong record on equality, as in Britain, the challenge is how to fit human rights into its agenda. 'Human rights' was not, as one staff member told our study, its 'default position'.
4. And finally, our newly integrated body faces an outside world that is anything but joined up: separate government departments, separate communities of expertise among lawyers, professionals and practitioners; and civil society groups that still focus on race, or gender, or disability, or 'human rights' and understandably lobby for priority for *their* issue – mitigating against the coherent, strategic approach the integrated body needs to take. Equality groups may not see the added value that human rights can bring. One interviewee told us: 'there are fears of agendas being diverted, fear that equality might be one minor value in wider human rights'. Some groups may not even feel entirely sympathetic to other parts of the equality agenda: those working on homophobia, gender and religious discrimination, for instance, do not always agree.

For these practical and political reasons, integrating human rights and equality functions has in practice proved a more difficult process than many, including myself, anticipated. Thinking back to the many hours (months!) of discussion that proceeded the establishment of the Equality and Human Rights Commission in Britain, and then considering its performance since it opened its doors in 2007, we were right in anticipating the strength that would come from being able to move beyond the silos: its capacity to address the discrimination faced by Gypsies and Travellers alongside their right to family life; or the degrading treatment of older people in care institutions alongside their right to freedom from age discrimination.

With hindsight, however, we failed to recognise sufficiently the legacy of differing working practices, the asymmetry of powers, and the sheer disruption of merging institutions. We talked a lot about structures and little about the ways in which the day to day working practices of the merging bodies would need to change. The vision was right; the challenge only in making that vision a reality and that will not happen overnight. Had we known what we know now from the experience of merged bodies we might have avoided some of those teething problems – and those planning future mergers, as here in Ireland, can benefit from that experience.

So, to finish, what lessons might a government contemplating such a move take from this?

First, a need to anticipate the barriers to integrated working practices – internally and externally – and manage that process of change, with transparency, consultation and training, to take staff and stakeholders with them on a journey to a new way of working – with a common language and common vision - not expect all that to follow automatically when the structural and budget decisions have been taken.

Second, that adjustment will be considerably eased by harmonising, where feasible, the domestic legal frameworks – so that the institution is using the same tools to address differing forms of discrimination, for instance; and, as here in Ireland, an innovative duty to promote human rights could sit alongside a duty on public bodies to promote equality.

And finally, two lessons that emerged from my study with Colin Harvey that apply to the performance of integrated and separate institutions alike:

- that the domestic political context in which these institutions operate, largely beyond their own control, can greatly hinder, or facilitate, their capacity to protect rights - so governments have an ongoing responsibility to smooth the way for them to do the job they were set up to do; and

- lastly this, that beyond any discussion on remit, structures, powers and resources, there is considerable scope for the leadership of the organisation - providing vision, strategic direction and effective management of staff and resources – to have a pivotal impact on performance.

Europe's human rights and equality bodies could take some comfort from the fact that it is those factors – leadership and good management - that are, for the most part, within their control.

ⁱ Equinet (2011) *Equality Bodies and National Human Rights Institutions, Making the Link to Maximise Impact. An Equinet Perspective.*

ⁱⁱ Harvey and Spencer (2012) 'Advancing Human Rights and Equality: Assessing the Role of Commissions in the United Kingdom and Ireland', Fordham International Law Journal 35 (6); Spencer and Harvey (2013) 'Context, Institution or Accountability? Exploring the factors that shape the performance of national human rights and equality bodies', Policy and Politics (published in advance online)

ⁱⁱⁱ *Bridging the Divide – integrating the functions of national human rights institutions and national equality bodies in the European Union*, 15 March 2013, UCL Faculty of Laws.