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## **Diversity: Opportunity or Threat for Gender Equality Policy in the UK?**

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Diversity is a relatively new idea for EU and UK equality policy and legislation. At EU level, the key measure was Article 13 of the EU Treaty of Amsterdam, which was signed by the EU Member States in 1997 and took effect in 1999. This gave the EU a mandate to require Member States to protect their citizens from discrimination not only on grounds of sex, but also of racial or ethnic origin, religion or belief, disability, age or sexual orientation. The UK had earlier introduced equality legislation on race (1965, 1968, 1976), sex (1975) and disability (1995). But the EU Directives arising from Article 13 have stimulated new legislation in the UK together with substantial rethinking of Government policy on equalities and institutional structures.

It is widely recognised that the concept of diversity has the potential to advance equality. Feminist theorists of gender have suggested that diversity may offer a new approach to gender equality, by celebrating and respecting the multiple forms of difference that an individual may experience, for example in terms of gender and ethnicity (for example Squires, 1999). However, the concept has various origins which in turn generate different meanings with implications for policymaking. For example, it has been seen as a way to increase social cohesion in increasingly pluralist societies (McGhee, 2006), and as a human resources management strategy (Thomas, 1990), both of which position diversity as a social problem (and hence something to be managed) as well as something to be celebrated and recognised. The US discourse on diversity, which emphasizes management issues, has been influential in the development and implementation of diversity in the UK, and in the wider European context. However, Bronchain (2003) has suggested that the functional definition of diversity as a management tool may detract from its use in anti-discrimination policies.

The first section of the paper discusses gender equality and the concept of diversity: in particular how the diversity discourse maps onto the long-standing distinction made in the gender debate between women's needs for the same treatment as men in some contexts if they are to achieve equality, but different treatment in other contexts (Council of Europe, 1998). The paper goes on to discuss the emergence of diversity in relation to policy developments at the EU and UK levels. The recent

decision in the UK to introduce equality and diversity legislation has been influenced by developments at the EU level. Therefore, the second section starts with a brief discussion of these developments. It also explores the lessons that EU ‘gender mainstreaming’ may hold for the way that the new policy focus on diversity could affect gender. Mainstreaming is a different approach from diversity, but it too has the potential to address disadvantage (the aim of same treatment policies) without denying difference (Rees, 1998). Mainstreaming also aims to take gender equality out of ‘the ghetto’ and make it part and parcel of policymaking on all issues, but thereby raises the spectre that a specific and systematic focus on gender will be lost (Lewis, 2006). And, like diversity, mainstreaming has strong links to the priority attached to economic policymaking (Perrons, 2005). Our focus in this section and in the following one on the UK case is more on the policy approach than on the concepts *per se*; for as Daly (2005) demonstrated in her account of ‘mainstreaming’ gender equality in EU Member States, the policy reality may be far removed from the expectations derived from theory.

For the UK, our main focus in the third section of the paper is on the development of policy that will bring forth a single equalities body – the Commission for Equality and Human Rights (CEHR). From autumn 2007, the CEHR is due to take over the current roles of the Equal Opportunities Commission (EOC) founded in 1975 and the Disability Rights Commission (DRC), founded in 2000. It will later absorb the Commission for Racial Equality (CRE), founded in 1976. The establishment of a new, single equalities body in the UK linked equality and diversity together (Cabinet Office et al., 2001; DTI, 2002). Thus we focus on exploring just one set of conceptual and institutional relationships, equality and diversity, and the implications for gender equality of bundling them together in the new approach to securing equality.<sup>1</sup> In the UK, equality and diversity were twinned together at an early stage in the policy debate (Cabinet Office et al., 2001; DTI, 2002), with human rights being brought under the same roof only in 2003, after the Joint Parliamentary Committee on Human Rights recommended ‘the establishment of an integrated human rights and equality commission’ (HL, 2003: Summary). Indeed, the powers accorded to the CEHR on human rights are less strong than those on equality and diversity (WEU, 2004a). For these reasons (and for reasons of space), the paper does not discuss human rights, except insofar as they affect our central argument.

The new institutional arrangements for the pursuit of gender equality give added reason to ask whether the focus on gender equality might not be ‘diluted’ in some way within a single equality body, especially, some would argue, in the absence of serious effort to strengthen and reshape the democratic process to ensure that more voices are heard.<sup>ii</sup> In addition, there is the fundamental issue of the way in which the concept of diversity implies a focus on the individual rather than the group, something that the creation of the UK single equalities body has sought to address within a human rights framework and through the statutory duty to promote good relations between and within groups (Equality Act, 2006: Section 10). It is argued strongly by many commentators and policymakers that the concept of diversity can provide the necessary means to consider the multiple and interacting inequalities experienced by individuals that cut across the different equality ‘strands’, but in contrast to its duties and enforcement powers on discrimination against individuals, the extent to which the CEHR will be able to take up the social challenges posed by group inequalities, particularly unequal power, is limited.<sup>iii</sup>

The final section identifies the synergy and tensions between gender equality and diversity that have been exposed by developments in the UK so far. It suggests that different emphases are being presented by different actors in the policy development process. For example, the message coming from the Equalities Review (an independent inquiry set up by Government in 2005) is rather different from that propounded by the Government’s White Paper setting up the CEHR and from the Equality Act itself. In particular, there is profound tension between the new equality body’s enforcement and promotional powers, and between the type of discrimination that the law empowers the CEHR to combat and the way in which the Equalities Review has begun to define inequality. Attending to the specificities of different forms of equality within a single framework poses considerable difficulties. The paper concludes that whatever the emphasis, UK policy development so far suggests that the theoretical promise that diversity holds for gender equality may well be more than is realised.

### **Gender equality and the diversity discourse**

The diversity discourse holds out the promise of reconciling some of the fundamental tensions that have challenged progress towards gender equality. A long-term central issue for gender theory is the so-called ‘Wollstonecraft dilemma’ (Pateman, 1989), whereby the advancement of gender equality is

trapped between understandings of 'sameness' and 'difference'. Lister summarises the dilemma clearly in relation to citizenship:

*Women's exclusion from citizenship has, both historically and today, elicited two main responses, either to demand inclusion on the same terms as men, as equal, supposedly 'gender neutral', citizens, or to press the case for the recasting of citizenship's premises so as to accommodate women's particular interests and acknowledge them as 'gender differentiated' citizens. (Lister, 2003: 93)*

Neither of these positions is sufficient by itself to achieve gender equality. Furthermore, both tend to assume a male norm, and while as Squires (1999) points out, equal treatment does not have to mean *same* treatment, in practice this has often been so. Treating everyone in the same way does not protect women from oppression in societies where differences and inequalities exist (Phillips, 1992, 2001). Other feminist criticisms charge that the liberal ideal of equality is abstract and formal, neglects the role of care, fails to recognise the private sphere and consequently is not able to challenge fundamental sources of gender inequalities (Pateman, 1988; Nussbaum, 1999). On the other hand, the construction of separate gender identities, where 'sex is a difference, a distinction' (MacKinnon, 1998: 296) has also been challenged. The recognition of difference, for example by compensating women for carework, may end up reinforcing traditional gender divisions. In short, Scott (1992: 765) describes these binary positions as presenting an 'impossible choice'.

The concept of diversity offers the possibility to overcome many of these problems, by moving the discussion beyond the equality/difference dichotomy. Even at the individual level, both the equality and difference positions have increasingly had to recognise the problem of constructing men and women as homogenous groups. As Rhode (1998), among others, has pointed out, an emphasis on women's differences from men has obscured women's differences from each other, for example in respect of race or class. Phillips (1992: 20) has identified the need to think about 'a plurality of many differences, so that equality becomes compatible with diversity'. Not all women or men are the same and strategies to address 'women's political social and economic disadvantage' require a range of policy measures to capture differences between people (Lister 2003). In contrast to being a 'man' or

a 'woman', diversity allows for a heterogeneous understanding of identity and the components that comprise it.

Understandings of inequalities and how they are perpetuated have been broadened by the idea of 'intersectionality', which has crucially played into the diversity discourse (and indeed into thinking about human rights (Yuval Davis, 2006). Thus, 'Black Woman' experiences discrimination in a different way from 'White Woman'. Indeed, the concept of intersectionality is particularly relevant for gender, as disadvantage is often the result of multiple and intersecting factors (Fredman, 2005).<sup>iv</sup> Feminist conceptualisations of diversity have important points of contact with those developed in relation to other equality strands, even though central policy problems for each group differ. For example, issues of identity, difference and integration are often discussed in the context of multiculturalism and ethnicity as well as gender (for example Okin et al., 1999). 'Racial' equality has also had to engage with issues of difference and group identity to be weighed against the equal (same) treatment of individuals. However, as Crenshaw (1989) has noted, the results of multiple discrimination do not amount to a simple addition, but rather are qualitatively different.

In fact, as we shall see later, the conceptualization of diversity in UK Government policy draws heavily on its roots in socio-political changes in the US during the 1980s and 1990s. The concept of diversity in the US emerged primarily in response to concerns that women and ethnic minorities would constitute a greater number of new entrants in the workforce than 'White' men. Thomas (1991) argued that three interacting trends elevated the need for diversity: the global market was becoming intensely competitive, the make-up of the US workforce had changed, and individuals wanted to celebrate their different identities rather than assimilate into mainstream culture. Additionally, the Reagan Administration reduced its commitment to formal equality measures. In contrast to affirmative action programmes on behalf of disadvantaged groups, diversity offered an approach that recognized differences at the individual level without being contentious (Agocs and Burr, 1996) and was perceived to be politically palatable:

*It was hard to find anyone who liked affirmative action or who was for quotas. On the other hand, it was equally hard to find anyone who was against diversity and inclusion. (Thomas and Gabarro, 1999: 59)*

Thus in this approach, the concept of diversity was tied substantively to employment and to the need for employers to maximise the potential of each individual to fulfil organisational goals (Kandola, Fullerton et al., 1994). Indeed, while diversity speaks to long-standing concerns about cross-cutting inequalities, it tends to be tied to the level of individual opportunity and experience. This is problematic for the practice of anti-discrimination and equal opportunities legislation, particularly in the UK, which has emphasised individual rights and redress more than the positive action that may be necessary to address group inequalities. There is also the issue of which discourse on diversity – that emanating from the race and ethnicity literature or from feminist literature – will prove more influential with policy-makers.

## **The EU Level**

### *Principles underlying the development of gender equality policy*

Over time the definitions and understanding of gender equality at EU level have shifted. The original 1957 Treaty of Rome contained a commitment to equal pay for women. However, EU action to implement gender equality was not significant until the 1970s. Although EU policy was initially informed by an interpretation of equality that came close to same treatment with men as the norm, in the 1980s it was broadened to include the pursuit of equality based on difference via positive action policies (Hoskyns, 2000). The EU's remit was restricted to economic and employment matters which meant that the concept of equality applied tended to be narrow and to use the male experience as the reference point. Women and men were often treated as homogeneous groups, and, in addition, implementation by Member States was piecemeal (for example Pillinger, 1992; Rossilli, 1997; Lombardo, 2003; Walby, 2004).

In the second half of the 1990s, the EU adopted a policy of mainstreaming gender, which it described as an approach to 'promote equality between women and men in all ... activities and policies at all levels' (EU, 1996a: Introduction). In the same way that diversity seeks to recast the same-difference dichotomy, the transformative aspiration of gender mainstreaming also requires a re-conceptualisation of policies and, above all, processes. Rees (1998) has argued that gender mainstreaming has the scope to transform policy and to move beyond the narrow definitions

prescribed by equal opportunities. It further has the potential to extend gender equality policy beyond the limited remit of employment. Squires (2005: 370) suggests that mainstreaming is a transformative approach that is capable of taking 'us beyond the classic opposition between equality of opportunity and equality of outcome, as embodied in equal treatment and positive action, by focusing on the structural reproduction of gender inequality and aiming to transform the policy process such that gender bias is eliminated'. Others are less optimistic about its substantive practical application (for example, Nott, 1999), and gender mainstreaming has been further obstructed by the limited guidance available for governments on implementation (Mazey 2000). Mainstreaming aspires to cross *all* policy fields, but in practice, the agenda seems to reflect a more 'integrationist' approach which involves gender being inserted into existing frameworks (Lombardo, 2005). This risks dilution by other policy priorities. Daly (2005: 440) concludes that 'mainstreaming has won the "style battle" but is often adopted for instrumental reasons such as 'satisfying (usually EU) constraints tied to the allocation of funding'. Indeed, Stratigaki, (2005: 180) describes it as 'rhetoric devoid of substance'.

The EU's employment strategy is a prime example of the way that gender mainstreaming can dilute the application of gender policies and also serves to point to the potential threat posed by the diversity agenda. This dilution happened in two stages. The 1993 Maastricht Treaty extended the EU's remit (or 'competence') into social policy, enabling it to adopt measures on childcare (EU, 1992) parental leave (EU, 1996b) and part-time working (EU, 1997). The Treaty of Amsterdam extended this social remit very substantially. But whereas before 1997 the EU's action outside the economic and employment sphere had been constrained by its remit, from the late 1990s the EU *voluntarily* accorded top policy priority to economic and employment policies: not least in reaction to the challenges posed by globalisation. These policies were embodied in the European Employment Strategy (EES) and the Lisbon Process (EU, 1998; EU, 2000). The first way in which this diluted gender equality was by making social policy, and particularly gender policy, a handmaiden of economic and employment policy (Lewis, 2006: 421). Prioritising labour market participation meant that substantive issues associated with gender equality were demoted (Rubery, Grimshaw et al., 2003). From 1998, the EES guidelines had contained an equal opportunities pillar. But in 2003 – in the second stage of the dilution of gender equality in the EES - this disappeared as gender equality became a 'horizontal principle' to be mainstreamed across all policy fields (Lewis 2006: 430). The almost complete absence of any discussion of gender in the mid-term report on the Lisbon Strategy

by Wim Kok (Kok and High Level Group, 2004) showed how mainstreaming could amount to sidelining.

The issue of mainstreaming continues to be debated (for example, Walby, 2005) There are signs that the EU is now adopting a ‘dual approach of gender equality based on gender mainstreaming (the promotion of gender equality in all policy areas and activities) *and* specific measures’ (EU, 2006a: 2, our italics). This suggests that despite gender mainstreaming being firmly established on the EU’s agenda, it has not been able to fundamentally transform the way that gender is approached within the EU, despite aspirations that it would challenge the ‘unequal power relationship’ between women and men (Council of Europe, 1998: paragraph I.1). The UK has committed itself to gender mainstreaming since 1998 through the Women and Equality Unit (WEU, 2003), the branch of the UK civil service that is also responsible for diversity; indeed, the UK Government’s approach to equality and diversity has incorporated the idea of mainstreaming.

### *Diversity*

The EU traces the roots of its current ‘For Diversity against Discrimination’ campaign back to its creation when ‘one of its most pressing missions was to reconcile a continent divided by nationalistic and ethnic conflicts’ (EU, 2005: 4). However, it was only with adoption of Article 13 of the 1997 Amsterdam Treaty that the EU’s remit was broadened to include groups other than women and migrant workers in its equality and anti-discrimination policy and to apply its equality remit to a broad range of activities (that is, outside the employment/economic domain).

*Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.* (EU, 2002)

The main new Directives require Member States to ‘take appropriate action’ as envisaged by the new Article 13. The Race Equality Directive (2000/43/EC) has been described as ‘one of the most significant pieces of social legislation recently adopted by the European Union’ (Bell, 2002: 384).

The Framework Directive (2000/78/EC) combats discrimination on grounds of religion or belief, disability, age or sexual orientation. These new Directives have added new concepts and applications of discrimination (Waddington and Bell, 2001) and broadened the way equality is to be conceptualized and implemented across all dimensions. Gender inequality is mainly tackled under a separate stream because it has historically been covered by separate EU legislation. Indeed, the EU is undecided about ‘strengthening the integrated approach to anti-discrimination’ to include ‘sex’, insisting that this ‘should not replace the particular focus on specific institutional arrangements and initiatives targeting all forms of gender discrimination as this is part of the existing gender mainstreaming approach’ (EU, 2004: 20).

Whilst the Directives were welcomed for recognizing and legislating in new areas where inequalities exist – such as religion and belief, sexual orientation and age – there was scepticism about their potential impact. It has been argued that a hierarchy of equality has been created where race equality is perceived to have priority (Waddington and Bell, 2001). Definitions are at times ambiguous and confusing (Guild, 2000). A more specific concern for gender equality is that consistent definitions for different areas of inequality have been adopted because this approach was perceived to be most practical (McCrudden, 2005). This implies that inequalities are similar and are perpetuated in similar ways. The ‘one size fits all’ approach has been criticized for its implicit assumptions that inequalities are equivalent: ‘Different inequalities are dissimilar because they are differently framed to be relevant as policy problems. This does, and should, affect the way political strategies are designed to address them’ (Verloo, 2006: 221). The central policy preoccupations of different groups are very different. Thus, for example, while the issue of assimilation versus multiculturalism has been crucial to debates on race and ethnicity, the relationship between paid and unpaid work has been crucial for gender equality. Another vital question is whether the new framework is in fact adequate for recognizing and addressing multiple inequalities – something that is central to the concept of diversity, and a point discussed in the EU Green Paper (EU, 2004; see also Fredman, 2005).

## **The UK's Commission for Equality and Human Rights**

### *The state of play*

Despite such concerns, the EU Directives provided the impetus towards the establishment of the UK's CEHR, which is scheduled to be operational by 2007. In the UK, the opt-out from the Maastricht Treaty's Social Chapter and the Conservative Government's hands-off attitude towards gender issues meant that it was only after New Labour's election victory in 1997 that significant change in gender policy could be expected. The change of Government in the UK coincided with the adoption of the Treaty of Amsterdam and the European Employment Strategy. After the gender policy vacuum under the Conservatives, feminist hopes ran high: as the Equal Opportunities Commission optimistically stated, 'in 1997, one day [election day] changed the way we work' (EOC, 1998: 4).

Legislation already existed to combat discrimination on grounds of race, sex and disability in the UK. The three related Commissions dealing with these groups are now being bundled together into the CEHR. The post-Amsterdam EU Directives have necessitated new legislation to combat discrimination on grounds of sexual orientation, religion and belief, and age. Consideration of the further move towards a single equalities body was initiated by a consultation paper, *Towards Equality and Diversity* (Cabinet Office et al., 2001). Between 2002 and 2005, equality, diversity and later human rights were the subject of further consultation including a 2002 follow-up to the 2001 document entitled *Equality and Diversity: Making it Happen* (DTI, 2002), the 2003 report from the Human Rights joint committee of both Houses of Parliament (HL, 2003), and the findings of a Taskforce that both fed into the White Paper (DTI et al., 2004) and contributed to the policy process after it was published (WEU, 2004b). The CEHR was established under the 2006 Equality Act.

Although much still remains unclear in terms of the actual working of the CEHR, the 2006 Equality Act lists three main sets of duties centering on equality and diversity, human rights, and the promotion of 'good relations' between different groups, a duty hitherto confined to the Commission for Racial Equality (Equality Act, 2006: paragraphs 8-10). As Baroness Catherine Ashton, the Minister for Human Rights, put it late in 2006, the CEHR will pursue 'equality, diversity and human

rights as central values of our society...' while the Government stated that 'people and institutions will now have a single point of contact on equality and human rights issues...often the things that work to remove barriers for one group of people will work elsewhere' (CEHR, 2006). This way of thinking about the CEHR thus assumes not only that the concepts of equality, diversity and human rights are compatible with each other but also that progress in each will reinforce progress in all. It also assumes that, institutionally, action on behalf of individuals in each group that is potentially subject to discrimination (and/or on behalf of individual members of each group) will not detract from action on behalf of others.

Alongside the CEHR, there are several other linked equality initiatives underway in the UK, notably the Discrimination Law Review (DLR) and Equalities Review, announced by the Cabinet Office and DTI in 2005.<sup>v</sup> The aim of the DLR is to harmonise the current anti-discrimination legislative framework and to introduce a Single Equality Act (WEU, 2006), but it has not yet reported. However, harmonisation represents a major challenge: there are currently 117 equality measures in force: 36 acts, 50 statutory instruments, 14 codes and 17 EC Directives (Hepple, 2006). The 'Equalities Review' is an independent enquiry led by Trevor Phillips, the Chair of the Commission for Racial Equality, who has also been appointed as the first Chair of the CEHR. It is exploring the underlying causes of discrimination and has already published an Interim Report<sup>vi</sup> as a consultation document (Equalities Review, 2006).

### *The CEHR and gender equality*

The European Commission has recognised that the main thrust of action to promote gender equality action at the EU level will take place in a separate institutional and policy strand (EU, 2006b). Although the EU may in future take action faster or more forcefully on, say, race discrimination than on sex and gender, it is clear that a specific focus on the latter will not be lost by being bundled together with other dimensions of diversity. With the bundling of the Equal Opportunities Commission into the CEHR, there appears to be more risk in the UK of sex and gender discrimination being lost.

Indeed, the implications for gender equality in the UK of the new Article 13 and the Directives and UK Government action it generated are hard to determine. The ongoing policy reviews provide an

opportunity to lobby for change. The Fawcett Society, aiming to capitalise on this potential, has published a paper calling, inter alia, for the following: simplification of gender equality legislation through harmonising existing sex equality legislation under a single equality act; ensuring that legislation is enforced more effectively; introducing a new protected ground for discrimination in the proposed Single Equality Act of family and caring status; and addressing the current imbalances of the legal system that places much of the onus on the individual for seeking redress (Bellamy and Cameron, 2006).

The creation of the CEHR has been welcomed by the EOC, primarily because of the possibility it offers to consider the multiple disadvantages that an individual might suffer. Early in the debate, a paper prepared by Sandra Fredman for the EOC argued that the merging of equality strands into a single equality body would be advantageous because it has the potential to address cumulative discrimination more effectively and resolve competing tensions between equality strands (that is the different groups represented by the old equality bodies) as they arise (Fredman, 2002). In addition, research carried out for the EOC showed that for black and minority women multiple identities were particularly important (Mirza and Sheridan, 2003). But there are also doubts. In its most recent annual report, the EOC emphasises its intention to draw up a gender manifesto for the next ten years to influence the agenda of the CEHR to ensure that it is informed by ‘a strong gender legacy’ (EOC, 2006: 2).

There are also ambiguities about meanings, and tensions in the broader framework that is emerging, particularly between equality, diversity and the overarching framework of human rights, and between a focus on individual and group equalities, especially in the context of the different powers and duties ascribed to the CEHR in relation to individuals and groups.

In a Standing Committee debate in the House of Commons on the Equality Bill on 29 November 2005, Meg Munn (the Minister for Women and Equality) outlined what the Government meant by equality and diversity in the context of the CEHR:

*We have a more sophisticated understanding of concepts such as equality and diversity today. By equality, we mean equal treatment or opportunity for two people who can be compared on*

*grounds of, say, race or gender. Diversity, on the other hand, borrows from human rights principles. It recognizes the sometimes unique needs of individuals and when fair opportunity or treatment cannot be determined through comparison with another individual. (HC, 2005: col. 48)*

*Of particular note are the definitions of diversity and equality. Diversity means recognizing that each individual is different and that specific action may be required to achieve equality. Equality, on the other hand, means recognizing that groups of individuals may experience different treatment when compared with other individuals because of particular attributes that they have and that this comparison may define the action necessary to achieve equality. (HC, 2005: col. 49)*

These definitions signal the tensions in thinking about the position of individuals and groups which underlie the establishment of the single equalities body and which it will need to resolve before it becomes operational.

The Government's first consultation document on equality and diversity noted the importance of the EU Directives outlawing discrimination on grounds of race, sexual orientation, religion and belief, disability and age, and made a primarily business case for implementing them. Gender equality was not considered in this document (Cabinet Office et al., 2001). Indeed, there has been more reference to the framing of diversity in thinking about race and ethnicity than about gender. In its second Consultation Paper, issued in 2002 the Labour Government stressed the extent to which 'people are increasingly looking for equal treatment that respects the many facets of their identities' (DTI, 2002: paragraph 3.4) and the need to go beyond the concerns of individual groups in order to 'mainstream' equality 'across a broad front' (DTI, 2002: paragraph 3.6). While the different needs of the different '[equality] strands' were acknowledged, the focus was firmly on reducing discrimination against individuals, with, again, a strong statement as to the importance of such a 'diversity agenda' (DTI, 2002: paragraph 2.1) to businesses, a preoccupation that remained in the 2004 White Paper:

*In some public services and private sector firms, the business case for diversity is well understood. Recognising the different needs of potential customers, and the value in treating*

*individuals with dignity and respect, has already begun to bring real benefits – in broadening markets, customer satisfaction and employee retention ... The CEHR will play an important role in widening understanding and appreciation of the benefits that diversity can bring, and work with organisations to help realise these. (DTI et al., 2004: 19)*

The Government Taskforce on the CEHR, which met during 2003/04, also addressed the key issue of individuals and groups, resolving the problem mainly by reference to the CEHR's overarching human rights framework: 'Human rights principles offer a framework for addressing conflicts between rights of individuals and those of groups...and enhance community cohesion between groups' (WEU, 2004b: Summary of Discussions up to 1.4.04: 5-6). Similarly, the 2004 White Paper described human rights as providing the 'language we can all share' (DTI et al., 2004: paragraph 1.10) and the basic values and fairness for all individuals that would serve to promote community cohesion. Human rights were thus seen as providing the universal standards which would allow the CEHR to 'be able to respond to the complexity of individual and group identities which are rarely defined by a single feature' (DTI et al., 2004: paragraph 3.7).

Most recently, the Interim Report of the Equalities Review has tried to re-think the basis for promoting equality within the new institutional framework of the CEHR. The Report sees persistent inequalities in terms of 'vulnerabilities' that are distinguished by membership of a particular group, and 'trigger episodes' that may occur in the life of the individual (for example unemployment). The Report uses a 'capabilities approach' to address inequality, suggesting that everyone should possess a 'basic minimum set of capabilities ...in order to play a proper, autonomous part in society' (Equalities Review, 2006: 8). As Lewis and Giullari (2005) have pointed out, this approach, derived from the work of Amartya Sen (1999), also tends to take the individual rather than the group as its focus. While it is possible to use the capabilities approach to argue for major structural reforms to enable the 'real choices' of individuals - and the Report argues for the removal of unfair penalties associated with group membership - the approach is largely untried in terms of policy implementation. Indeed it is difficult to see how enforcement powers that combat inequality based on discrimination experienced by the individual could be used to combat inequality deriving from social exclusion and disadvantage. In the context of equal opportunities legislation, such a framing of

equality puts at risk an appreciation of the importance of the substantive nature of particular forms of inequality.

Thus the CEHR must grapple with how in practice to continue to balance a focus on the individual and on the group, and with how to promote understanding of the specific nature of inequality in any particular group. The challenges listed in the Interim Report of the Equalities Review mainly concern education and race/ethnicity, only three out of eleven mention women and only one relates mainly to gender (Equalities Review, 2006: 62). It is true that the Report says that it will consider the position of women in relation to the labour market more fully in its final report (Equalities Review, 2006: 48). But its consideration of gender inequality so far is negligible compared to inequality deriving from race, poverty or social exclusion. The precarious status of gender in relation to other types of inequality was highlighted when as late as 2004, the Equal Opportunities Commission and others found it necessary to ‘make a strong case for expanding the remit of the CEHR to include those with caring and family responsibilities, and covering employment regulations on flexible working, part time workers, parental leave and maternity/paternity rights’ (WEU, 2004a: paragraph 43).

In fact, the CEHR’s powers to take remedial action will be based on the individual: the Taskforce on the CEHR, which sat during 2004, early rejected the case for class actions (WEU, 2004b, 10 June: paragraph 28) and the White paper (DTI et al., 2004) confirmed this approach, which has characterised previous equal opportunities legislation in the UK. Diversity also focuses on the claims of the individual. Nevertheless, the White Paper recommended that when deciding *which* individual cases brought under discrimination legislation to support, the CEHR should ‘pay particular attention to whether they ...affect large numbers of people’ (DTI et al., 2004: paragraph 4.16). In the event, the Government backtracked on this in its response to the consultation, deciding not to impose statutory restrictions on the CEHR’s decisions (WEU, 2004a: Section VIII). However, in its duty to promote equality, it seems that the CEHR will have more scope to take on board issues of discrimination experienced by groups, although its scope for ‘positive action’ in this regard is unclear.

## **Conclusion**

Diversity has a number of dimensions that leave the meaning of the word somewhat ambiguous. This is problematic when it is twinned with equality as one of the three pillars underpinning the CEHR. Those interested in promoting gender equality are not alone in fearing ‘dilution’. The Commission for Racial Equality opposed the setting up of the CEHR, fearing that many of its specific concerns and initiatives would get lost. Indeed, the whole issue of equality legislation is now entirely differently ‘nested’ in respect of principles and institutional structures. In terms of principles, the overarching human rights framework is intended to provide a universal basis for the equal treatment of individuals across different groups. But it is not yet clear precisely how the balance between the consideration to be accorded to group inequalities and the manifestation of multiple inequalities in the lives of individuals is to be handled. Removing barriers to equality for groups is a different task from tackling the wide variety of multiple discrimination at the individual level, and both are difficult to define.

There are many ways in which the CEHR and the new focus on diversity threaten gender equality: by losing sex and gender in the diversity bundle, by privileging other dimensions of inequality over sex and gender; by diminishing the importance of group inequalities that is essential to understanding systemic gender inequalities; and by linking diversity strongly to human resource management and business priorities, which risks passing over the crucial relationship between paid and unpaid work that underpins so much gender inequality. The danger, as in the case of ‘gender mainstreaming’, lies more in the policy approach and practice than in the theory per se (see also Daly, 2005). The concept of diversity has nevertheless tended to strengthen the focus on the individual - maximising the potential of the individual is seen as a means to social cohesion and economic success. But gender equality policy necessarily involves the difficult task of addressing unequal power relationships between men and women, which in turn justifies the use of positive action. In a sense, the diversity and equality agenda plays down the issue of conflict, in a manner similar to the human resources approach to diversity. Nor is it clear that the overarching framework of human rights will be able to address this issue. As Kymlicka (1995: 4), a leading theorist of multiculturalism, has argued: ‘it has become increasingly clear that [group] minority rights cannot be subsumed under the category of human rights’.

Despite linking equality, diversity and human rights – which a priori might be expected to increase the social justice grounds for promoting gender and sex equality – the evidence in the latest documents suggests that the threat of dilution may be stronger now than when the CEHR was first proposed. If this turns out to be the case, then continued progress towards gender equality in the UK will depend on the extent to which it continues to be promoted and addressed as an independent policy strand.

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<sup>i</sup> The precise meaning of equality in the new arrangements is unclear, but it is likely that equal opportunities will continue to be a strong focus.

<sup>ii</sup> Squires (2005) and McGhee (2006) stressed the importance of radical reform of the democratic process in relation to equality policy.

<sup>iii</sup> Daly (2005) made a similar point about the importance of an understanding of group power to any approach to equal opportunities policies.

<sup>iv</sup> Thus, ‘White’ or ‘Black Caribbean’ women demonstrate high levels of economic activity (over 70%), in contrast to Pakistani and Bangladeshi women who have relatively low levels at 28% and 19% respectively (Dale, Lindley et al, 2006). Factors such as gender stereotypes and different constructions of motherhood interact differently for different women. Furthermore, as Yuval-Davis (2006) pointed out, intersectionality can be located at different levels, e.g. the social and the political.

<sup>v</sup> The DLR and the Equalities Review have since transferred to the Department for Communities and Local Government (WEU, 2006).

<sup>vi</sup> Full report expected in 2007.

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