

By email to:

Baroness Kishwer Falkner
Chair, Equality and Human Rights Commission
ChairandCEO@equalityhumanrights.com

cc:

Professor Lesley Sawers, Scotland Commissioner, Equality and Human Rights
Commission
Lesley.Sawers@equalityhumanrights.com

John Wilkes, Head of Scotland, Equality and Human Rights Commission
John.wilkes@equalityhumanrights.com

11 February 2022

Dear Kishwer,

I am writing on behalf of all members of the Scottish Human Rights Commission, to seek a meeting between our Commission and you. It would be greatly appreciated if this meeting could take place before I demit office as Chair of the Commission on 11 March.

We are seeking this meeting because we have concerns about the current relationship between our two Commissions. As you know, this relationship is defined in statute by our respective founding legislation, and further defined in practice by the attached Memorandum of Understanding.

Given this framework, we are concerned about the process employed by your Commission in your recent intervention in Scotland in relation to gender recognition reform. Your public statements of January 2022 have the result that our policy positions on this topic no longer align. As you will be aware, paragraph 10 of our Memorandum of Understanding outlines what we should do in the event of diverging policy positions:

“Where the Commissions do not arrive at a common policy position, they will keep each other informed of their respective positions and, if appropriate, their reasoning.

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In particular they will make best efforts to notify each other prior to making public any such position or reasoning.”

We are concerned that this agreed and long-established way of working was not considered or adhered to in this instance.

We have specific concerns about your Commission’s change of position on the value of introducing legislation to reform gender recognition processes in Scotland, given this now diverges from both our own analysis of the human rights issues engaged, and our previous understanding of your own position. We would therefore welcome the opportunity to better understand the detailed rationale behind this change, and to discuss the boundaries and interrelationship between our respective mandates on this subject.

We are also concerned about possible policy divergence between our Commissions in relation to the UK Government’s proposals to replace the Human Rights Act, noting that we were unable to agree a common response to these in December 2021.

It is in everyone’s interests that our two Commissions are able to work together appropriately to protect and promote the human rights of everyone in Scotland. We would appreciate meeting at the earliest opportunity to review our current Memorandum of Understanding, and to discuss how we best move forward.

With best wishes,

Judith



Judith Robertson
Chair, Scottish Human Rights Commission

Dr Anna Black, Commissioner, Scottish Human Rights Commission

Jane-Claire Judson, Commissioner, Scottish Human Rights Commission

Dr Jacqueline Kinghan, Commissioner, Scottish Human Rights Commission

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