



## **POLICY BRIEFING**

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May 2007

UK

# **Carers and the Equality and Diversity Agenda**

With the launch of the Commission for Equalities and Human Rights (CEHR) in October and the growing prominence of equality and diversity issues, how do carers fit in? Do their concerns cut across all issues or do they suffer their own particular discrimination? Should public bodies and other organisations, including employers, be making carers part of their equality and diversity strategies?

The purpose of this briefing is to:

- set out the evidence of how carers are discriminated against
- set out the main laws around equality and human rights
- discuss what organisations can do to ensure that they are not discriminating against carers
- look at options for change to legislation

## **Carers and discrimination – the evidence and arguments**

### **Disability:**

- a) Carers in England and Wales are twice as likely to be permanently sick and disabled if they are providing substantial care (50 hours or more each week) compared with those who are not carers.<sup>1</sup>
- b) People with learning disabilities are increasingly providing a caring role as they get older and their parents do too.

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<sup>1</sup> Census 2001, Office for National Statistics

- c) People with disabilities are not perceived as being carers – they are seen as two distinct groups, and yet always have been one and the same group of people.
- d) Carers have to pay charges for things because the disabled person cannot travel alone or needs assistance e.g. entrance to a leisure attraction
- e) Carers can be teased, treated differently or bullied by others because someone they care for has a disability or chronic illness, e.g. schizophrenia
- f) The lack of access to goods and services means that carers have to provide more support when these services fall short.
- g) The support that carers provide to disabled people makes remaining in work more of a challenge than for those who do not have a caring responsibility. It also brings different challenges to caring for a non-disabled child.<sup>2</sup>

### **Age**

- a) The peak age for caring is between 55 and 59 when one in four people is a carer. So carers are more likely to be found in older cohorts of workers than among younger people.<sup>3</sup>
- b) Carers are more likely to give up work early in order to care and this is particularly true of workers just before retirement.<sup>4</sup>
- c) Because of the age profile, if a carer gives up work to care, they find it harder to return to work after a period of caring because of gaps on their CV. Many feel that no employers would want them because they are too old.
- d) Carers are most likely to be caring for older people.<sup>5</sup>

### **Sexual orientation: lesbians and gay men**

People who care and who are in a lesbian or gay relationship face additional barriers in accessing services because their relationship may not be recognised or the service offered may not be culturally acceptable. They may also face prejudice from service providers.

### **Religion or belief**

Carers are more likely to have a religion compared with people who are non-religious.<sup>6</sup>

The way that services are supplied to the family are not necessarily

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<sup>2</sup> Source, Barriers to work and care – needs clarifying

<sup>3</sup> Census 2001, Office for National Statistics

<sup>4</sup> Who Cares Wins: the social and business benefits of supporting working carers. Statistical analysis: evidence from the Census. Carers UK, 2006. Also Real Change not Short Change. Carers UK, 2007

<sup>5</sup> Census 2001, Office for National Statistics

<sup>6</sup> **Mike Hirst** – Hirst M (1999a), *The Risk of Informal Care: An Incidence Study*, Social Policy Research Unit, University of York. – is this the one??

religiously appropriate e.g. by not having care assistants who are the right sex. Some carers will not take advantage of the service unless the service provider gets this right.

**Race: Black and Minority Ethnic carers**

Young Bangladeshi and Pakistani men and women are three times more likely to combine work and care compared with their White British counterparts.<sup>7</sup>

The lack of information in the right languages and formats prevents these carers from accessing their rights.<sup>8</sup>

Services which are not culturally appropriate might mean that a carer does not take a break when others would be able to.

**Gender: Women and men**

Women have a 50:50 chance of providing care by the time they are 59.

Men have this chance by the time they are 74 years old.<sup>9</sup>

42% of men provide care compared with 58% of women<sup>10</sup>

Women are statistically more likely to provide substantial care<sup>11</sup>.

Women are more likely to give up work in order to care<sup>12</sup>.

Men and women make different decisions about care. Men are more likely to receive personal care services. Although women might want a different service e.g. help with the garden, and this would have as much benefit in helping them to live independently, because this is not provided by some social services/work departments they end up with no service.<sup>13</sup>

Three-quarters of Carer's Allowance claimants are women.<sup>14</sup>

## **There are two main sets of laws around equality:**

**1. The first are the duties on public bodies to promote equality between people in the following areas:**

**Race - the Race Equality Duty which came into force in 2001**

**Disability - the Disability Equality Duty which came into force in December 2006**

**Gender - the Gender Equality Duty which came into force in April 2007**

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<sup>7</sup> Who Cares Wins: the social and business benefits of supporting working carers. Statistical analysis: evidence from the Census. Carers UK, 2006

<sup>8</sup> Evidence?

<sup>9</sup> It Could be You: A Report on the Chances of Becoming a Carer. Carers UK, 2001

<sup>10</sup> Census 2001, Office for National Statistics

<sup>11</sup> can't find source

<sup>12</sup> can't find source

<sup>13</sup> can't find source

<sup>14</sup> DWP Quarterly Statistical Summary, February 2007.

These laws include a duty to promote equality both in employment and in the provision of goods and services.

**2. The second are anti-discrimination laws applying to all employers in the following areas:**

**Race – Race Relations Act: covers employment and goods and services**

**Disability – Disability Discrimination Act: covers employment and goods and services**

**Gender – Sex Discrimination Act: covers employment and goods and services**

**Age – Employment Equality (Age) Regulations: cover employment only**

**Sexual orientation – Employment Equality (Sexual Orientation) Regulations: cover employment and (from April 2007) goods and services**

**Religion or belief - Employment Equality (Religion or Belief) Regulations: cover employment and (from April 2007) goods and services**

### **Carers and human rights**

**Carers, like everyone else in the UK, are entitled to rely on the protection of the Human Rights Act 1998 which should ensure that public bodies take account of their human rights when they provide services. However, a recent report commissioned by Carers UK, “Whose rights are they anyway? Carers and the Human Rights Act” (2006) suggests that there are several articles of the Human Rights Act where carer’s rights may be being violated. These include:**

A right to life (Article 2). This may seem extreme but Carers UK research has uncovered carers who have to delay urgent medical treatment because of inadequate support.

A right to be free from inhuman or degrading treatment (Article 3). Carers rely heavily on public services for funds, practical support and breaks yet many are pushed to the brink of physical and mental collapse because of the lack of support they receive.

A right to respect for private and family life (Article 8). Public bodies need to balance and consider the rights of everyone affected by their services, which includes respecting people’s private and family lives.

In the area of mental health services, the implications of the Act are potentially particularly significant for the rights of individuals and their carers, e.g. in relation to the procedures under the Mental Health Act 1983 for admission to, treatment in and discharge from hospital.

In summary, public bodies - including local authority services, hospitals and other NHS organisations - must take account of the Act's provisions in carrying out their work. This means that they should demonstrate that they have fully and properly considered a carer's needs before making any decisions about what services they can and can't provide. An assumption that the family will provide care, but without necessarily having the knowledge, support or understanding about how to do this (and without providing the family with choice or understanding the impact that it will have on all of their lives) is both directly discriminatory against carers and is also a violation of their human rights.

### **How do carers fit into this framework?**

Carers UK believes that there are strong arguments for both employers and public bodies to look at carers within their equalities and diversity strategies because they suffer discrimination and because employers and public bodies need to positively promote equality. Private sector employers don't 'need' to, but we think they should.

### **Direct and indirect discrimination – the explanation**

**Direct discrimination** is where someone is treated less favourably than another person because of their gender, age, disability, etc. However, the equalities laws do not include carers, therefore it is still lawful to directly discriminate against carers – something that carers feel is fundamentally wrong. However, carers are protected, in part, by the Human Rights Act 1998, discussed above, but this only applies to public bodies, not to employers in the private sector.

**Indirect discrimination** is where a rule that is applied equally to all impacts on one group more than others. So, full-time working is indirectly discriminatory because carers have the majority of responsibility for the care of disabled or chronically ill people. Indirect discrimination is a higher test than direct discrimination. Within existing law, only indirect discrimination will apply to carers and only where they are women, disabled, gay or lesbian, of a different age profile to non-carers or are from a different racial group or religion to non-carers.

However, a new court case, *Law Attridge v Coleman*, will test the disability discrimination laws. Sharon Coleman is arguing that she's been discriminated against by her employer because of her disabled child. If her case is successful, it will change the way that the law applies to carers in employment and the way goods and services are provided.

### **Unfair dismissal**

Although employers can discriminate against carers, they have to be very careful that they do not discriminate indirectly. They also have to ensure that they do not harbour prejudices about carers that might lead to an unfair dismissal case being brought before them. If the employer makes

an unfair decision about your ability to work, then carers could argue that they had a case for unfair dismissal.

## What should organisations do to ensure that they are not discriminating against carers?

As demonstrated above, there is increasing evidence to demonstrate that carers are clearly part and parcel of the discrimination agenda.

Organisations need to satisfy themselves that they are not discriminating, either directly or indirectly, against carers.

Public authorities need to audit their equality and diversity policies to see how carers would fare under their new strategies and duties to promote equality.

Public authorities should also ensure that they comply with the Human Rights Act when providing services, including respecting the rights of carers.

Local authorities need to consider whether their community care assessment policies discriminate against women in particular by not offering equivalent support to bathing and washing.

Social care services should ensure that they respect the rights of carers. The General Social Care Council Standards for practitioners, for example, state that "As a social care worker, you must protect the rights and promote the interests of carers". This includes "Promoting equal opportunities for carers and respecting diversity and different cultures and values".

Service providers need to look at whether their services need to be more flexible to fit around work.

All employers, whether public, private or voluntary sector, should have good equal opportunities policies that include carers. Carers UK has already demonstrated in its work on carers and employment through its ACE National partnership, that this is good business sense, but that it also protects the employer from discriminating against carers either directly or indirectly.

All employers should ensure that their policies tackle prejudice about carers in the workplace to prevent any unfair dismissal cases on the grounds of caring responsibilities.

The Government's current Discrimination Law Review must introduce duties to prevent discrimination against carers and promote equality between those caring and those without caring responsibilities.

The Commission for Equality and Human Rights needs to consider a cross-cutting review on carers as one of its earliest priorities including an investigation into whether the Human Rights Act is being correctly applied

## Where is the issue going next?

The Government has carried out an Equalities Review with a view to

informing the new agenda for the Commission for Equality and Human Rights and has recognised that some carers face multiple forms of discrimination. The Government will also shortly be consulting on its current Discrimination Law Review with a view to providing a new Single Equalities Act.

### Options for change to legislation

There are several different options for change in relation to carers – all of which would be possible:

New laws to outlaw discrimination by association with disability. This would recognise that carers face discrimination because they are looking after someone with chronic illness or a disability. A case *Attridge Law v Coleman*, is currently going through the European Courts on this basis. Successful case law can be built up based on discrimination by association, but, in Carers UK's view, primary legislation is more effective to achieve better clarity and coverage and to show that carers rights are seen as important.

New laws to place a positive duty on public bodies to promote equality between those with caring responsibilities and those without. This provision already exists in Northern Ireland under section 75 of their Equalities Act.

New laws, to apply to all employers, which would prevent discrimination on the basis of caring responsibilities, along the lines of other existing anti-discrimination legislation.

d) Or, to cover all of the above, an overarching duty to prevent discrimination against those with caring responsibilities. This would cover service delivery in the public sector, employment, the provision of goods and services, etc.

The key issues that are under discussion are how far discrimination faced by carers stretches:

- in employment
- in goods and services
- in the policies and practices of public bodies

Trevor Phillips, Chair of the new CEHR, has publicly said that carers will be an issue that will be looked at by the new CEHR. He addressed the All Party Parliamentary Group on Carers in Westminster on 24<sup>th</sup> April 2007 on Equalities where he confirmed that carers would be a key part of the CEHR agenda.

Carers UK will be responding in full to these forthcoming debates and will

be providing further briefings.

**Further resources:**

Whose rights are they anyway? Carers and the human rights act, Carers UK, 2006.

All Carers UK policy and research publications can be found under:  
<http://www.carersuk.org/Policyandpractice/PolicyResources>

Carers UK runs training courses for professionals on the Human Rights Act, carers' legislation and good practice around supporting working carers. To find out more visit:  
<http://www.carersuk.org/Policyandpractice/Training>

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