

**A Framework for Fairness:
Proposals for a Single Equality Bill for Great Britain
Summary of Response from Carers UK**

Introduction

Carers UK welcomes the Discrimination Law Review and the opportunity to respond to the consultation paper. However, we are disappointed that, while the paper addresses some issues about simplifying and streamlining the law, it fails to tackle the very real issue of the persistent discrimination faced by carers.

Recognition is the number one concern that carers highlight to us, both in their telephone calls and in their response to consultations, including our recent survey of 3,000 carers. They speak openly to us every day about the discrimination that they face and this comes in many forms, including from employers, public authorities and other service providers. In the light of this, we believe that there is a strong case for extending protection to carers against discrimination in the three areas of:

- 1 the proposed new **public sector equality duties**
- 2 discrimination in **employment**
- 3 discrimination in the provision of **goods, facilities and services**

1. Public sector equality duties

Carers UK welcomes the principle of replacing the existing three public sector duties (race, disability and gender) with a streamlined single duty and the extension of this duty to the strands of age, sexual orientation and religion or belief. However, we do have serious concerns that the paper's current proposals would exclude carers from this protection.

What do we think should happen?

- We believe that there is a strong case for **extending protection to carers** and that **Section 75 of the Northern Ireland Act 1998** provides a good precedent for this; it is not an untested duty, several positive outcomes have already been identified under its current review, and it also provides useful learning. We believe that a similar positive duty in the UK would roll out the positive impacts carers already experience when public authorities do take their needs into account.
- Cost wise, we do not believe that the inclusion of carers would be an unreasonable extra expense; as the consultation paper's Regulatory Impact Assessment recognises, there are likely to be economies of scale in revising the public sector duty as it already exists in

other forms. If a streamlined duty is introduced, any additional costs to public authorities are also likely to be offset by not having to implement separate strands as at present. Finally, there are also the likely longer term benefits of helping to embed equality in employment practices and service delivery and enabling public authority employers to achieve a more balanced workforce and strengthen their ability to recruit and retain staff.

2. Discrimination in employment

Carers are reporting discrimination in employment in many areas including: lack of access to work; problems in returning to work; lack of access to training at work; lack of access to higher level jobs; prejudice, harassment and negative attitudes in the workplace; and lack of flexibility from service providers which would help enable carers to work. While the right to request flexible working under the Work and Families Act is very helpful, this type of flexibility cannot cover the whole range of problems outlined above as:

- Carers' needs can be very different to those of parents since adult care packages (and those for disabled children) are more complex than childcare and there is also often more uncertainty about how their caring role will change in the future.
- The type of harassment and negative attitudes that carers report - which can force people out of work as much as inflexible working practices do - have less to do with flexibility than with the more fundamental issue of discrimination.

It is sometimes suggested that carers should be sufficiently protected via the **indirect discrimination** route. However this is a difficult vehicle to use as it involves complex stages for proving the definition, is untested in law and does not provide clarity for employers or employees. Relying on this form of protection would also lead to further inequalities as, eg, indirect sex discrimination would not protect unmarried men who are carers and indirect age discrimination would not protect younger carers who are often most at risk of social exclusion.

The "**discrimination by association**" route could also be seen as a possible solution for carers. Carers UK recognises the importance of Coleman v Attridge Law case, currently before the European Court of Justice, which is arguing that the EC Employment Directive applies to discrimination on grounds of the disability of someone associated with the employee. However, these grounds alone would not be entirely sufficient to protect carers since they would rely on the cared-for person proving that they were disabled. They would also not protect those caring for the significant numbers of people with undiagnosed conditions or who are not defined as disabled under existing law but who might require significant amounts of care, such as older people.

What do we think should happen?

- None of the above forms of redress recognise that the actual reason why carers are being discriminated against is **because** of their caring responsibilities. Carers UK believes that, instead, the legal position of carers should be made clear to both employers and employees by **extending protection from discrimination to carers**. We propose that there should be a new prohibited ground of discrimination against carers following the format of the Disability Discrimination Act as this is the most appropriate to the position of carers.

- Cost wise, from our evidence, anti-discrimination measures in employment provide more benefits to the employer than costs (*Source: Who Cares Wins: A report for Carers UK by Centre for Social Inclusion, Sheffield Hallam University, 2006*). In terms of Exchequer receipts there are the benefits of additional tax, and for the broader economy, a more skilled workforce.

3. Discrimination in goods and services

Carers are reporting discrimination in accessing goods and services in many areas including lack of access to: alternative care services, education and training, childcare services, medical services, transport, quality housing, leisure facilities and affordable legal advice and services. As in the case of employment, we do not believe that current protection is adequate as:

- Taking the indirect discrimination route is highly complex and untested in law.
- Evidence suggests that the Human Rights Act 1998, which should ensure that public bodies take account of individuals' rights when providing services, is not providing adequate protection in practice. Indeed, Carers UK believes there are several articles of the Act where carers' rights may be being violated including: a right to life; a right to be free from inhuman or degrading treatment; and a right to respect for private and family life. In addition, the Act only covers public bodies so does not protect people working in, or receiving goods and services from, the private and not for profit sectors.

What do we think should happen?

- As in employment, despite reports of widespread discrimination in this area, there is currently no recognition in law that the reason carers are facing problems in accessing some kinds of services is *because* of their caring responsibilities. We therefore believe that the legal position of carers should be made clear to both employers and employees by means of an ***extension of protection from discrimination to carers***. As in the Disability Discrimination Act, we believe that there should be a duty to make "reasonable adjustments" in relation to the carer. We also believe that there should be a specific prohibition against harassment in relation to goods and services.
- Cost wise, there is likely to be some initial outlay for providers in adapting their services to make them more responsive. However, this should also have the positive effect of driving services to be more efficient and cost effective, particularly if facing increased competition. There are also advantages in simplifying and clarifying the grounds of discrimination in reducing the number of cases coming to court out of ignorance and hence saving money for service providers and claimants. This would be particularly helpful in the area of discrimination in services which is often less well understood than employment.

Concluding comments

We believe there is a very strong case for extending protection to carers against discrimination in the three key areas of:

- 1 the proposed new single ***public sector equality duty***
- 2 discrimination in ***employment***
- 3 discrimination in the provision of ***goods, facilities and services***

We believe that serious consideration should be given to **all** these three areas because:

- Each measure would be less effective without the others. The public sector duty needs to be implemented along with anti-discrimination protection to ensure that it is underpinned and discrimination law would also be less effective without the driving force of the duty to effect culture change and a positive promotion of equality.
- This would provide the most practical and effective way of tackling discrimination while also providing the most **clarity** for carers, employers and service providers alike.
- Anti discrimination policy for carers has been **tried and tested** by the best employers and service providers and is in many ways a less onerous and challenging area of discrimination to implement than some of the other diversity strands. It should not be a difficult issue to address in practice and it would have tangible and long lasting benefits.
- This recognises the existence of **multiple discrimination** which has been cited as one of the rationales for the establishment of the CEHR. Many carers face discrimination on a number of grounds and cannot be easily pigeon-holed into any one category; a new protection for carers would be helpful in linking multiple forms of discrimination and incentivising good practice.
- This would recognise the **realities of people's lives** - by 2034 one in three of us is expected to take up caring responsibilities at some point in our lives. It is at such times of our lives - when we are in most need of accessing flexible employment and services – that the issue of protection against discrimination is at its most relevant.

We recognise the unprecedented steps that the Government has taken to support carers over the last 10 years. We believe that the Discrimination Law Review should build on this and take this **historic opportunity** – with the unique timing afforded by the current review of the Prime Minister's Strategy for Carers, the recent announcement of a Standing Commission on Carers and the launch of the CEHR – to give proper consideration to addressing the daily and widespread discrimination that is faced by carers.

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