

Help the Aged

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2nd December 2004

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Help the Aged in N Ireland

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Dear Sir or Madam:

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Re: Single Equality Bill Consultation

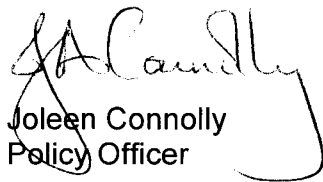
Please accept our sincere apologies for the late submission of this response due to staffing issues. Help the Aged welcome the opportunity to have our say on this issue and I hope that you will take our comments on board.

The work of Help the Aged is about facilitating and enabling older people to remain in control of their lives. We work through a partnership approach with older people as equal partners. In addition, we also work with other agencies through an age sector approach to influence future policies. The work is aimed towards practical services as well as campaigning and lobbying on a range of issues. Older people are directly involved in this work. As an organisation we are committed to combating poverty, promoting quality in care, reducing isolation and defeating ageism.

Help the Aged welcome the ultimate aim to harmonise anti-discrimination law as far as is practicable and the extension into other areas particularly age.

We would like to be kept informed of the progress of the consultation and look forward to any feedback arising from our response.

Yours sincerely,


Joleen Connolly
Policy Officer

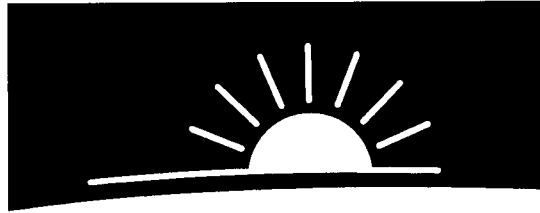


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Working for a future where older people
are highly valued, have lives that are richer,
and voices that are heard.

Patron: HRH The Prince of Wales
Chairman: Mrs Jo Connell
Director General: Michael Lake CBE



Help the Aged

Response to “A Single Equality Bill for Northern Ireland”

November 2004

Help the Aged welcomes the introduction of the of the Single Equality Bill Consultation. We welcome the ultimate aim to harmonise anti-discrimination law as far as is practicable and the extension into other areas particularly age.

Older people represent a significant portion of the population in Northern Ireland, 261, 511 people are of pensionable age. This figure rises to 484, 070 if people over 50 are included. People of pensionable age in Northern Ireland make up 20% of the population and that figure is set to raise to 26% in 2023.

Given the significant proportion of the population that older represent currently and will represent in the future it is timely that proposed legislation will encompass their rights in law.

The Single Equality Bill is important for older people as they have remained marginalised while other groups in society have seen their rights formalised in law the public agenda adjusted accordingly. Within this context, Help the Aged, which has been campaigning against Age Discrimination for many years, welcomes the introduction of a Single Equality Bill for Northern Ireland and the commitment to extend it into areas such as age.

We also welcome the commitment within the document to ensure that there is not a reduction in the protection offered by current laws.

Prohibiting Discrimination and Duties to Promote Equality of opportunity

Help the Aged welcomes the approach by OFMDFM and the Equality Commission to have non-discrimination equality law as principles, standards and a means of redress in the background, but also to take a more positive, proactive role promoting equality of opportunity. One argument for this type of approach is perhaps employment. Whilst it is important to have legislation to prohibit age discrimination it is not enough on its own. It is also important to have practices that proactively encourage equality of opportunity.

Purposes and Principles

Help the Aged welcome the purposes and principles set out in this chapter we feel that they are a sound base upon which to build a Single Equality Bill. Having participated in the initial consultation of the Single Equality bill we feel that these principles reflect our suggestions from our previous response.

Grounds

Help the Aged welcomes the inclusion of age in the grounds of the bill and feel that this is a landmark move. The rights of older people must be enshrined in law and the proposed bill allows for that to happen.

Help the Aged sees the introduction of the Single Equality Bill as essential in the work of addressing the prejudice which is manifested in society towards older people in a variety of areas including employment and goods and services

Help the Aged also welcomes the extension of grounds to include disability. Many older people suffer from disabling conditions and limiting longstanding illnesses.

Help the Aged also feel that carers rights should be incorporated in to the grounds of the bill. Whilst many older people are cared for by family and friends a large number of older people who are carers for grandchildren is significant and make a substantial contribution to our society.

One issue that was also raised at a Help the Aged Consultation event with older people was that the Single Equality Bill must tackle difficult questions about vulnerable adults and ensure that they are offered adequate protection and ensuring their rights are safeguarded

Help the Aged is also keen to see that Socio Economic Status is included as one of the grounds within the bill. Whilst a person may be treated unfairly because of their age or their gender it is important not to overlook of the most significant cause of inequity in Northern Ireland, which is socio-economic disadvantage. It is folly to consider that proposed New TSN, the Anti-poverty strategy will address these problems and neutralise the need for this area to be covered in the Single Equality Bill.

Help the Aged is also in favour of equal pay being included as a ground. Unequal pay leads to even more inequities in income in later life. Given the fact that women's earnings still remain on average substantially lower than men's (almost 20% lower). It must also be noted that women live longer than men – failure to address unequal pay and the pensions situation is condemning many older women to a life of abject poverty with its corollary of poor health.

Scope

There is an overwhelming need to avoid generating a hierarchy of coverage among different types of disadvantage, while allowing for the drafting of simple clear legislation. Current inconsistencies within equality legislation must be addressed including social protection, social advantages, education, access to education and employment. To a great extent the scope of the Single Equality Bill has already been mandated by the EU Frameworks Directive (2000) and the EU Race Directive (200). Help the Aged is of the opinion that the provisions required by these directives, which includes goods, facilities and services, should also be covered within the Single Equality Bill.

Help the Aged encourages OFMDFM and the NI Assembly, once devolution has been restored to end the debate over mandatory retirement ages through the SEB. Help the Aged through wide consultation with older peoples groups and organisations as part of the Ageing in an inclusive society found that this was an area that older people felt very strongly about. The loss of valuable experience and input to the economy through

compulsory retirement ages has an effect of the fabric of Northern Ireland Society as well as the economy.

The EU Framework Directive (para 14) states clearly that “the directive shall be without prejudice to national provisions laying down retirement ages”. NI does not have a national retirement age and therefore cannot now impose one. In its statement to the Select Committee on Employment (February 2001) it was the UK Government’s interpretation that, the setting of compulsory retirement ages by individual employers as a condition of employment will not be allowable under article 4 of the Directive and that it would not be possible for employers to “objectively justify” such an action under the directive.

Help the Aged urges the NI Assembly once it is reinstated, to incorporate this approach into the Single Equality Bill leading the way for the rest of the UK as it has done thus far.

While it is a commonly held myth that people in Northern Ireland must retire once reaching a pensionable age (60/75), this is an arbitrary application, justified only in contract of employment. Help the Aged affirms the responsibility on the NI Executive and the NI Assembly to inform employers that they cannot impose this discriminatory policy. To ensure clarity and affirmation the Single Equality must include this within the legislation.

Definitions of Discrimination

Discrimination is experienced both directly and indirectly.

Help the Aged have contributed to the NI Human Rights Equality Working Group and would like to see the definitions outlined here reflected in the Single Equality Bill.

Direct discrimination shall be taken to occur when a person has suffered, will or would suffer disadvantage on the basis of race or ethnic origin, colour, sex, marital or family

status, language, religion or believe, political or other opinion, possession of a criminal or political conviction, national or social origin, birth, disability, Age, sexual orientation, or other status.

The areas in which older people experience direct discrimination on the grounds of Age are screening programmes for health conditions, insurance and benefits (specifically the mobility component of Disability Living Allowance).

Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put any person at a disadvantage by virtue of their status as [for listing see direct discrimination] unless that provision, criterion or practice is objectively justified by a necessary aim, and the means of achieving that aim are appropriate and proportionate.

Indirect discrimination is experienced in key areas of life such as employment where people over 50 are more likely to lose their job than a younger person and in health care. In the latter domain older people with long-term chronic conditions such as Alzheimers are means tested for their care, services of particular importance to older people such as chiropody are always the first to experience cuts in funding and less research is done into treatments for long term conditions which disproportionately affect older people.

Help the Aged concurs with the Equality Commission's view of direct discrimination. Discrimination should not just be based on a strictly comparative basis.

Exceptions

Help the Aged are of the view that exemptions should be specific and as limited as possible so not to undermine the general principle of equality and non-discrimination.

We accept that it may be necessary that certain jobs may only be undertaken by certain people particularly within previously disadvantaged or Section 75 groups.

Goods Facilities and Services

Help the Aged believe that the Equality Bill should be extended to Goods Facilities and Service

Older people need and deserve a level playing field. They will continue to be disadvantaged, and the success of measures to do away with age discrimination in employment and other areas will inevitably be hindered, unless the single equality bill covers good facilities and services. The inclusion of Goods, facilities and services will allow older people equal and fair access to disability benefits, insurance, learning and skills policies and practice, improved rights for adults with caring responsibilities, and volunteering, as well as other goods and services such as health care.

Help the Aged supports the Equality Commission's view that examples of Goods, facilities and services should be set out in the Single Equality Bill and we believe that they should be backed up by a Code of Practice or guidance.

Help the Aged is also of the view that there should not be a distinction between GFS which are provided private and those that are provided by a public body. By ensuring that no distinction is made the bill would cover things such as benefits as well as insurance services and would also provide protection for the older person in the instances of services contracted to a private company by a public body.

Addressing under Representation in Employment

Help the Aged has discussed the issue of older people and employment with older people throughout Northern Ireland as part of the Promoting Social Inclusion “Ageing in an Inclusive Society.”

The way in which older people feel that under-representation in employment should be tackled is by removing discriminatory practices and creating equality of opportunity by introducing practices and providing the right conditions for older people to work in.

Many older people believe mandatory retirement ages are discriminatory and should be abolished. Retirement should be based solely upon an assessment of an employee's competency and ability to do the job, informed by each employee's financial security and personal choice. The proposal to allow individual employers set a default retirement age of 70 after which employees could not claim unfair dismissal would, we believe, be a retrograde step. It would serve to perpetuate negative stereotypes about older workers, reinforce the perception that age is relevant in employment decisions, and militate against the kind of culture change the Government is seeking to encourage. It would also encourage employers to see the decade or so before 70 as a kind of fallow period during which training and promotion were less relevant for older workers.

Measures such as flexible time and part-time hours may go some way to allowing some older people to stay on at work.

Help the Aged believe in order to tackle under representation of older people in Employment and promote equality of opportunity employment advertisements must be prohibited from using to use Age discriminatory and Age exclusionary language. The Single Equality Bill should make provision to render it unlawful to publish an advertisement indicating an intention to discriminate, or which could reasonable be taken to indicate an intention to discriminate.

The Single Equality Bill should establish a Code of Practice for Employers regarding promotion of equality of opportunity in the workplace for groups covered under the grounds of the bill.

Equality monitoring procedures currently in place for race and religion should also be extended to include other grounds.

We welcome the proposals in the Consultation document to review employment practices and to set goals and timetables.

Equality Commission for Northern Ireland Functions and Powers

Help the Aged believe that in the context of a Single Equality Bill being established for Northern Ireland the Equality Commissions role and duties must be updated to reflect this.

Help the Aged accepts that the formation of a Single Equality Commission should eventually be the goal, the initial phases of the new Single Equality Commission should, we believe, include intermediate directorates. These directorates should be devoted specifically to the new categories, like Age, covered by the Single Equality Bill. This would allow newer areas of anti-discrimination and equality law to become more fully developed. The newer covered groups would have a change to formulate their own unique concerns before their eventual merger within the Single Equality Commission.

We believe that not only could the age directorate carry out its duties in relation to the Single Equality Bill but could also play a role overseeing the implementation of the governments strategy on Promoting Social Inclusion for Older People.

Tribunals and Courts

The key issue of any equality legislation is how best the victim can bring the case to justice that would be easily accessible, cheap, quick, efficient and effective.

Thus, Help the Aged would encourage the establishment of a new specialised Equality Tribunal to hear all cases of Age discrimination including that under goods, facilities and services. We concur with the Equality Commission, that a specialised Equality Tribunal would have more experience in applying equity principles than the current County Court system.

A harmonised Equality Tribunal system is essential for the effective adjudication of claims by those who face multiple discrimination. For example, where an older woman feels she has been disadvantaged on the grounds of gender and Age she would be able to have her particular claims adjudicated within the same tribunal using the one set of procedures. This not only simplifies the process for all involved but also discourages the compartmentalisation of identity that can so often be fostered by discrimination proceedings.

Help the Aged also believe that organisations such as the Equality Commission, Trade Union's and other groups should be able to represent clients and that legal aid should be available to ensure full and effective promotion of equality.

Conclusion

Help the Aged believe that opportunities offered by the SEB should be extended to protection of Age Discrimination in areas of goods, facilities and services as found in section 75 of the 1998 Northern Ireland Act. Help the Aged also called for the abolition of mandatory retirement ages through the SEB with a dedicated Age Directorate within the Equality Commission to allow the development of policy, practice and legislation to bring age discrimination to the same level of attention as race, gender, disability and religion.

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