

Consultation Response

Equality and Human Rights Commission Litigation Strategy

Ref: 3014

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The consultation seeks views on the Equality and Human Rights Commission's legal strategy.

Introduction

We welcome the publication of the draft strategy and the opportunity to comment on the proposals. As a member of the Equality and Diversity Forum, Age UK supports the response which the Forum has submitted to the Commission's consultation. We have some supplementary comments to make in response to the questions below.

4. Which of our litigation powers do you think might be most effective if used in partnership with you? Please give reasons for your choice and any relevant further comment on the exercise of these powers:

4.1) Issue judicial review proceedings

4.2) Power to intervene

4.2) Power to provide legal assistance

Age UK is rarely in a position to litigate ourselves or provide legal assistance but would be happy to work with the Commission on strategically significant cases involving older people.

5) We envisage that the new litigation strategy will build on the existing principles and criteria to set out a clear set of factors which will guide our decision-making process in relation to undertaking caseworks. In the boxes below, please provide feedback on the current principles and criteria, telling us not only what may or may not be of value in the current strategy but also what may be omitted.

5.1) In relation to the Commission's role as a National Human Rights Institution:

Age UK supports the principles and criteria in the EHRC's current litigation strategy. However, given the increasing difficulties which individuals face in funding cases, the introduction of tribunal fees and the increasing burden on the voluntary sector, we note the EHRC's crucial role in pursuing or supporting meritorious and significant equality and human rights cases that would not otherwise be brought in the future. Facilitating access to justice for poor or vulnerable individuals and groups should be a priority theme influencing the EHRC's legal work.

We draw attention particularly to principles (ii) prevent equality and human rights abuses and proactively tackle continuing equality and human rights abuses; (iv) where EHRC

uniquely placed to act or can act best in partnership; and (v) assess if non-litigation options are available.

We highlight the value of criteria aimed at securing better understanding of rights and obligations, challenging a decision, policy or practice which is significantly detrimental, improving policies and practices of a significant organisation or sector, improving public discourse and/or increasing respect for human rights, and improve/develop interpretation of domestic equality and/or human rights law.

5.2) In relation to the Commission's role as the National Equality Body:

See above.

6) Your views on the strategic priority issues listed under paragraph (c) in the current strategy are not sought as this list will not be included in the revised document. We are aiming to produce a revised strategy which is focused, concise, effective and reflects the limited level of Commission resource. The strategic priority issues which guide our litigation decisions will derive from the Commission's Strategic Plan, on which we are consulting separately and which we plan to review further in 2015.

Please list up to 3 legal issues which you consider most pressing in the areas of discrimination and/or human rights law. These will help to inform our litigation policy, our strategic plan and the Quinquennial Review, due for publication in autumn 2015.

In relation to older people, we suggest that the following three issues are pressing:

1. Age discrimination in employment: For people who lose their jobs in their 50s or 60s, it can be extremely difficult to return to work. Over 44 per cent of unemployed people aged 50–64 have been out of work for more than a year, rising to nearly 50 per cent among men. This rate is higher than for other age groups. This is because of various factors, for example age discrimination and inadequate back-to work support. It has a huge impact on people's lives. In addition, older people in work face ageist attitudes, inaccurate assumptions and stereotypes which can amount to indirect age discrimination.
2. Age discrimination in access to goods, facilities and services especially health: Research demonstrates that older people have poorer access to treatments for common health conditions. Treatment rates drop disproportionately for people aged 70–75 years in areas such as surgery; chemotherapy; and talking therapies (*Access all ages*, Age UK/Royal College of Surgeons, 2012, *Are older people receiving cancer drugs?*, NHS England, 2013, *The treatment of common mental disorders across age groups: Results from the 2007 adult psychiatric morbidity survey*, Cooper C, Bebbington P, McManus S, Meltzer H, Stewart R, Farrell M, et al., *Journal of Affective Disorders* 2010;127((1–3)):96–101).

3. Ensuring that all those receiving care and health services are treated with dignity and respect, that their private and family lives are respected and that they do not experience discrimination, whether because of their age or other factors.

7) Which are the 3 legal issues within the fields of discrimination or human rights where you believe a test case could most effectively be brought? Please give reasons for your choice and explain how a case might be brought.

1. Age discrimination in employment (see above), including forced retirement, flexible working for those with caring responsibilities
2. Age discrimination in access to services – e.g. hospital treatment (see above), financial services (see below)

8) Which provisions of the Equality Act 2010 are not working or need clarifying?

We welcome the ban on harmful age discrimination in the provision of goods and services and the Commission's Draft Age Supplement to the Statutory Code of Practice. However, we believe that there is insufficient awareness of the ban in practice (e.g. in relation to health and social care, see above) and urge the Commission to publicise its practical effects.

In addition, we note the ongoing problem of age discrimination in the financial services sector which restricts older people's access to essential products such as car insurance. Age UK research shows that blanket age limits persist in lending, travel and motor insurance. The limits in mortgage lending are having a particular impact at present as we are receiving reports from older people with interest only mortgages whose lenders are not prepared to extend their mortgages on maturity, even where the borrower believes they could support the payments. It is a major concern that the financial services sector has been exempted from the ban on age discrimination (Sch. 3, para. 20A(1)) and we believe that the breadth of this exemption should be clarified.

9) Are there issues arising out of the Human Rights Act 1998 where you believe the Commission is particularly well-placed to bring or support a challenge?

We welcome the Commission's reports on older people in care homes and older people and human rights in home care, its recent publication on human rights in action and its development of human rights resources for health and social care providers. We would particularly welcome the Commission's support for cases which develop jurisprudence on dignity, respect and the prohibition on age discrimination, whether relating to older people or across the age spectrum. We consider that this would be beneficial not only for the individuals or groups involved, but in promoting the value of human rights and equality more generally.

10) Is it likely that you may have cases which might be appropriate for referral to the Commission and, if so, would you be interested in making us aware of them?

Yes

11) Would you be interested in working with us in any other way? If so, please specify.

We would welcome the opportunity to work in partnership with the Commission on issues relating to older people and age discrimination, including by providing information on the key human rights and equality issues faced by older people on an ongoing basis.