

## **ADCS consultation response**

**A framework for fairness: The Government's ideas for a law about equality. Ideas from the Discrimination Law Review**

### **Response from the Association of Directors of Children's Services, (ADCS) to *A framework for fairness: the Government's ideas for a law about equality. Ideas from the Discrimination Law Review***

The Association of Directors of Children's Services is pleased to submit this consultation response. ADCS is the national leadership organisation in England for directors of children's services appointed under the provisions of the *Children Act 2004* and for other children's services professional in leadership roles. The Association provides a national voice as a champion for children, with local and central government, and with the public

#### **Consultation Process and timing**

The document on page 4 asserts "The Government wants to take forward these proposals on a participative basis with the full involvement of all those who an interest in this area and comments from all are welcome". Given the timing of the consultation period, principally over the school summer holidays and the lack of advance warning that such proposals were to be made this objective cannot be said to have been met.

At the Gender Equality Duty training, run by the then Equal Opportunities Commission for schools and local authorities in March 2007, no mention was made that a Single Equality Duty was to be proposed. Participants there were angry about the haste and lack of warning for schools of the Gender Equality Duty. This anger could have been managed far better if the Law Review had been mentioned then. Likewise at the Disability Equality Duty training for schools and local authorities run in the Government Office regions by the DCSF in February and July 2007, no mention was made of the Single Equality Duty. Yet by the July training date *A Framework for Fairness* had already been published.

Bearing in mind that the consultation is largely over the summer holidays, there has been no effective opportunity for local authorities to consult with schools, young people and the Teacher Professional Associations.

We also feel the consultation document itself is far too long at over 180 pages; it is also wordy, unnecessarily legal in its phrasing and far from readable. The length and writing style could have been forgiven had the summary been a précis of the main points. Instead the summary is merely a list of the questions posed.

#### **Simplifying and Unifying the Law**

It is agreed that the different strands of legislation need to be unified and simplified.

In terms of requiring a comparator, it is agreed that too much rests on identifying an appropriate comparator.

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Balancing Measures: Whilst it is agreed that "same treatment" perpetuates disadvantage, we feel it would be difficult to legislate as to when it is acceptable to treat someone differently. It is agreed that the Commission for Equality and Human Rights should play an important role in issuing guidance and Codes of Practice.

It is agreed that the definition of indirect discrimination should be harmonised to cover all the inequalities, but disagree that disability should be explicitly excluded.

## **Political Representation**

It is interesting to note that the document (4.57) refers to gender and ethnic minority imbalances in Parliament, but does not comment on disability and sexual orientation.

## **Public Sector Duties - determining scope of legislation and procurement**

It is agreed that there is confusion about what "public authorities" the three existing duties apply to e.g. Children's Centres, Extended Services and services commissioned by a public authority but delivered by other providers. As the NHS, local authorities and schools are increasingly commissioners of services, it is vital that the Single Equality Duty applies to the procurement functions of the public sector, not least to help influence and drive change in other sectors. It is interesting to note, for example, that the recently published "Mini Guide to Procurement for Schools" (DfES) referred to EU Directives but failed to refer to the three Equality Duties in the section on legal compliance.

## **Requirement for Equality Schemes**

The lack of reference to written Equality Schemes in "A Framework for Fairness" appears to be a response to the criticism that public authorities have to spend more time in "proving how they are meeting the duty than actually producing real outcomes that make a difference to individuals' day to day experiences" (5.9). However, it is surely too soon to comment on the impact of the Disability and Gender Duties. In retrospect, it seems illogical that the Gender Duty was rushed through in March and April, given this Review was about to report on its findings.

We are concerned that the Review proposes a weakening of the content of the duty for public authorities. At present public authorities have to consider equality in everything they do, this Review proposes only requiring public authorities to set equality objectives and take "necessary and proportionate" action to achieve these: a much narrower requirement. The proposals also appear to remove the requirement to consult and involve representatives of service users, community members and relevant staff in developing equality schemes, another vital element of effective strategic planning. If there are no written schemes how will public authorities be judged on their performance? The proposals would remove a base-line standard against which public

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authorities measure themselves, and against which inspectorates, the Commission for Equality and Human Rights and members of the public can assess compliance.

We are particularly concerned about the comment “Our proposed approach would therefore mean that the law would no longer specifically require, for example, employment monitoring of racial groups”. Without such data collection and monitoring it will be impossible for organisations and others to judge progress.

We are concerned that there is no obligation to conduct impact assessments, despite evidence from both Northern Ireland and the UK that such assessments have aided authorities to identify and avoid adverse impacts in developing and implementing their policies.

Although *A Framework for Fairness* recognises the important role of public authorities in overcoming disadvantage and securing greater equality, it is difficult to see how the actual proposals will achieve these aims. We are concerned that the lack of clarity and prescription puts the onus on each public authority to interpret the principles and practice in their own way, which could result in a loss of momentum and reduced commitment. There is also a danger with tight Spending Reviews and finite budgets that activities not prescribed in statute will not be funded.

We are also concerned that the timing of this consultation may detract, in particular, schools from the actions they are planning in relation to their Disability and Gender Equality Duties. The current phasing of the implementation of the new duties – race, followed by disability, then gender - means that organisations can respond in a planned and considered way. Whilst the implementation of the existing duties has posed a significant challenge for public authorities, we are concerned that watering down current obligations will result in less action and fewer real equality outcomes. Although this Review proposes waiting three years, smaller public authorities such as schools, may just not bother in the interim.

## **Enforcement**

Anti-discrimination legislation is only as good as the enforcement that accompanies it. A Single Equality Duty needs to deliver an improved framework of enforcement, with a workable tribunal system for all types of discrimination cases and improved penalties so that they deter discrimination – it is hard to see how this will be achieved.

Representative actions should be extended and allowed across all the equalities, so that third parties can take actions on behalf of groups of people. This would mean that the responsibility of combating discrimination did not rest solely on individuals, by definition, individuals in vulnerable positions, and would then allow outcomes to apply to groups, not merely an individual. We also believe that protection should be extended to third parties by association. For example, at the moment the parent or carer of a disabled child can

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request flexible working hours to accommodate their responsibilities, however, if this is considered and refused by the Employer, the parent has no further come back other than an Employment Tribunal route for constructive dismissal were they forced to give up their job.

Currently discrimination cases about employment are heard in Employment Tribunals but all others (e.g. provision of goods and services) go to the County Courts, where there are significant costs to lodge cases and at every subsequent stage. These costs are a barrier to people taking cases. Far more thought needs to be given to putting in place a workable tribunal system for all types of discrimination.

There is an assumption in *A Framework for Fairness* that the private sector will regulate itself and that promotion of information on best practice is sufficient. Whilst self-regulation is desirable it will only be effective if backed by powerful deterrents in the form of penalties.

#### **Extending the duty to age, sexual orientation, religion and belief (5.60)**

It is agreed that this extension is necessary.