



Amicus Section

Unite the union Amicus Section response to the Discrimination Law Review – A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain

1. Introduction

1.1 This response is submitted by the Unite Amicus Section. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors

1.2 Although, the union welcomes the Government's proposals for the introduction of a Single Equality Act the union is very disappointed in the Green Paper. The union has long argued for the necessity of a strong, comprehensive and transparent Single Equality Act due to the complexity and inconsistencies in discrimination legislation in this country, to provide better progress on equality and to support the establishment of the CEHR in October 2007. However, as it stands, the Green Paper is a missed opportunity which does little to strengthen equality rights in this country or deal with the inconsistencies in discrimination legislation. In some areas, such as the public sector duties, the proposals threaten to weaken the current legislation. Unite Amicus is also concerned that only five pages of the document are devoted to the private sector with no reference to the not-for profit and voluntary sector with a focus on the "light touch" non regulatory approach, particularly as there are high incidences of discrimination and inequalities in pay in these sectors.

2. Executive Summary

2.1 The Green Paper is disappointing, in that without major improvements, it is going to be a missed opportunity to strengthen equality rights and deal with the inconsistencies in discrimination legislation in this country. In view of the union's concerns, and the delay that has already occurred in the

publishing of the paper the union asks that a draft Bill be prepared as a matter of urgency for full consultation. The union notes that the Government has not included a Single Equality Bill in its draft legislative programme for the next parliamentary session and would urge the Government to give greater priority to the Single Equality Act than it has to-date. Unite Amicus outlines our major concerns and priorities below in summary and in more detail in the full content of the response. As a trade union the main focus will be on the labour market.

2.2 The proposals on equal pay are totally inadequate, leading from a failure to acknowledge the causes of the gender pay gap and the lack of legislative measures to tackle the under-valuing of the jobs carried out predominately by women. Equal pay legislation is in need of radical reform if it is to have any impact on closing the gender pay gap. The union recommends that equal pay legislation should allow for the use of a hypothetical comparator.

2.3 All employers should be required to carry out compulsory equal pay audits and employers should be required to monitor and report on action that they are taking to address all inequalities.

2.4 The public sector equality duty should be extended to cover all grounds strands of equality and to the private, voluntary and not-for-profit sectors. Additionally, there should be no weakening of the current duties as proposed in the Green Paper.

2.5 The public sector duties should include a specific statutory duty that requires that account is taken of equality in the use of procurement. This would be an important lever to tackle inequalities in the private, not-for-profit and voluntary sectors.

2.6 Unions should be able to bring representative actions on equal pay and discrimination cases.

2.7 The introduction of statutory rights for trade union equality representatives.

2.8 There needs to be better enforcement of the legislation with tribunals able to recommend re-instatement or re-engagement and require the employer to take action in the workplace to address discrimination and inequality.

2.9 Measures to ensure that claims can be brought on more than one ground to address multiple discrimination.

2.10 The introduction of a “carer” ground to tackle discrimination in this area.

2.11 The Single Equality Act should include a purpose clause which makes a clear statement about its principles and objectives.

3. Harmonising and Simplifying the Law

3.1 In harmonising and simplifying the law all levels of protection should be levelled up and be consistent across all grounds. Additionally, the same levels of protection that are proposed for the public sector should be afforded to the private, not-for-profit and voluntary sectors. The focus of not “placing unnecessary burden on those who have to comply with it” is a reoccurring theme throughout the Green Paper, particularly in respect of the private sector where the majority of the union’s members work. Many employers do not prioritise equality in the workplace and are not convinced of the business case for diversity. The major focus of private sector companies is profit, with the public and voluntary sectors often under financial constraints. This focus takes precedence over the achievement of equality which in the short-term costs money and resources. Without a legal requirement to do so many employers will not take action.

3.2 The proposal is to retain the requirement for a real or hypothetical comparator in direct discrimination claims. There is an argument that the requirement for a comparator restricts the scope of discrimination legislation. Without the need for a comparator a claimant would still need to provide evidence that the cause of their discriminatory treatment was applicable under one of the prohibited grounds, but would not have to point to a comparator which. Removal of a need for a comparator would simplify the tribunal process, make discrimination law easier to understand and aid the resolution of multiple discrimination claims.

3.3 The union supports the extension of the legislation to prohibit discrimination on the basis of association with transsexual people, but do not agree that the Single Equality Act should largely retain the existing approach in relation to association and perception which Unite would argue should be harmonised upwards to cover all grounds to ensure consistency of protection. In particular, the union does not agree that extending protection to those who are perceived to be disabled, or associate with someone who is disabled, would significantly increase the duties and burdens on employers. In these circumstances there will not be a requirement to make a reasonable adjustment, but there would be a right to be protected against actions, e.g. harassment, based on prejudiced assumptions. The duty to make a reasonable adjustment only applies to disabled people themselves. Extending protection to associational discrimination in the case of disability would be of great benefit to carers and as the consultation states, the law may need to change anyway if the ECJ rules in favour of *Attridge v Coleman* where Ms Coleman has brought a claim of discrimination on the grounds that she suffered detrimental treatment by her employer because of caring for her disabled son.

3.4 The union welcomes the proposal to extend indirect discrimination to gender reassignment

3.5 The union supports the proposal to harmonise the definition of indirect discrimination across all protected grounds which will ensure consistency of protection across all the protected grounds.

3.6 The union agrees with the proposal to harmonise the objective justification test across all grounds, but this should be strengthened in line with EU case law and anti-discrimination directives to ensure that a discriminatory provision, criteria or practice can only be justified where it corresponds with a real need on the part of the employer, which is not in itself discriminatory, and where it is appropriate and necessary.

3.7 It is proposed that there should be a single objective test for disability discrimination; the union would support this, although as stated above the test needs to be strengthened. The current “material” and “substantial” test of disability discrimination in employment has made it easy for employers to justify disability related discrimination and the new test of justification will make it more difficult for employer to justify treating someone less favourably for a reason related to their disability.

3.8 The union is supportive of the proposal to introduce a genuine occupational requirement (GOR) test for all grounds, with the exception of disability where it is not necessary.

3.9 The union supports the TUC’s view that there is no need to retain many of the exemptions. In particular, the union believes that there is no justification for exemptions for religious organisations in the Sexual Orientation and Religion or Belief Regulations, the age-related National Minimum Wage Rates, statutory redundancy regulations, the terms and conditions exception for women on additional maternity leave and the immigration service. However, the union does support exemptions in respect of protection for Sikhs on construction sites and separate services for men and women for privacy or personal safety reasons.

4. Goods, facilities and services, and public functions

4.1 The union supports the proposal to harmonise the approach to the way goods, facilities and services and public functions provisions are structured across all protected grounds which will give clarity to the legislation. However, the union cannot support that differential treatment on exemptions between public authorities and private bodies. The example given of providing single sex services in health could equally apply to a private body or in the voluntary sector that provides single sex services, e.g. counselling for domestic violence. It would provide more clarity if exceptions were streamlined and defined as narrowly as possible in this area.

5. Equal Pay

5.1 Although the union agrees that equal pay provision should be included in the Single Equality Act, the chapter on equal pay is of great disappointment, because of the lack of proposals to strengthen the legislation,

the omission to acknowledge the under-valuing of the jobs that women do and misplaced assertions on methods to close the gender pay gap.

5.2 In 2001 the “Just Pay” Report was published which recommended mandatory equal pay reviews for all employers. The Government then commissioned the Kingsmill Review which recommended a voluntary approach to equal pay reviews, but that consideration should be given to mandatory equal pay reviews if the voluntary approach did not work. Amicus then provided evidence to the Women and Work Commission that the voluntary approach was, and is not working, which is also backed up by evidence from other trade unions and the EOC. EOC research published in 2006 found “that progress on equal pay reviews is stalling amongst large employers; that interest is waning significantly amongst smaller private sector employers: and that, whilst public sector progress is much better, much depends on the carrying through of existing plans”.¹ In the face of all this evidence the union is extremely disappointed that the Women and Work Commission Report did not recommend mandatory pay audits for all employers, but a new “light-touch tool” to assess a range of issues that contribute to the gender pay gap in the face of evidence produced.

5.3 The assertion in the consultation, “that the evidence does not support legislation mandating equal pay reviews. Equal pay reviews directly address only one of the causes of the gender pay gap – that of gender pay discrimination – and have had a relatively minor impact on the private sector in other countries and provinces where they are mandatory”, is not supported by any evidence to verify this claim. The union argues (as does the TUC, other trade unions and the EOC) that the only way that an organisation can be sure that they are addressing equal pay discrimination and have non discriminatory, transparent pay systems, is to carry out an equal pay audit, examine any differentials and then take action to close any pay gaps that are as a result of gender discrimination.

5.4. In evidence of the merits of equal pay reviews the union would cite the example of the finance sector which has the largest pay gap of any sector at 41% and has complicated and opaque pay systems. Many of the finance sector employers now carry out regular equal pay reviews in partnership with Unite Amicus. Unite Amicus launched its finance sector equal pay charter in 2006 which calls on finance sector employers to carry out regular equal pay reviews and take action on gender inequality at work in partnership with the union. A significant number of finance sector employers have signed the Charter. As a result of equal pay reviews finance sector employers are not only taking action to address pay discrimination, but are also working with the union to tackle one of the major causes of the gender pay gap in the finance sector, the clustering of women in the lower graded jobs. The statement in the consultation that “equal pay reviews directly address only one of the causes of the gender pay gap – that of gender pay discrimination” is not true. All the equal pay audits in the finance sector have revealed vertical and to

¹ Survey research which examines the extent of equal pay review activity amongst employers in Britain. Author: Lorna Adams, Katie Carter and Stefan Schäfer. Year published: 2006. ISBN:1 84206 171 2

some extent, horizontal gender segregation and Amicus union is working jointly with many finance sector employers to tackle this.

5.5 However, the union's experience in other sectors is not so positive with many employers in the manufacturing, print and not-for-profit and voluntary sectors taking no action to tackle gender equality despite union pressure to do so. A significant majority of employers in the private, not-for-profit and voluntary sectors are simply not going to take action unless they are compelled to do so by law through the requirement to carry out equal pay reviews and to take action on gender discrimination as a result of the reviews. The union also objects to the statement that "enforced equal pay reviews may also contravene better regulation principles as the costs to employers may be out of proportion to the scale of the problem they will address". This ignores the Government's EC law obligations to secure equal pay for equal value and puts business interests above women's right to equal pay.

5.6 The union is perplexed by the assertion that "evidence of increasing awareness of the right to equal pay, and women's willingness to assert that right, can be seen in the rise in equal pay claims. Between 1999 and 2006 equal pay claims accepted annually by employment tribunals rose from 590 to 17,268. This sends a clear message to employers about the need to ensure that their pay systems are not discriminatory". The consultation fails to mention that the rise in claims is due to multiple claims against local authorities who have had difficulty implementing non-discriminatory pay systems because of lack of funding from central government and with claims now spreading to the health sector. All local councils were required to have implemented new pay structures and reviews by 31 March 2007, but only 33% had done so by the end of 2006.² It is disingenuous for the consultation to claim that private sector employers have, or will be influenced, by the rise in equal pay claims in the public sector when they know that they have only a small risk of equal pay litigation and an interest in maintaining non-transparent pay systems which make it difficult to identify pay discrimination.

5.7 The consultation completely ignores the fact that one of the major reasons for the gender pay gap is the under-valuing of the jobs that women do and how equal pay legislation can be used to tackle this issue. Increasing the number of women in senior management and traditional male occupations is important and the union supports this. However, the Government must take into consideration that someone has still got to carry out what are currently under-valued and under-paid roles and men are unlikely to enter these jobs in large numbers because of the low pay. This will not change unless there is effective legislation to provide equal pay for work of equal value. A key method of doing this would be to allow the use of hypothetical comparators in equal pay claims. At present it is difficult for women in female dominated workplaces to claim equal pay as they are unable to identify an actual comparator. The ability to use an hypothetical comparator would overcome this hurdle. Unite Amicus also supports the TUC's view that it is untrue that actual comparators have been ruled necessary in ECJ case law. It would also

² Unblocking the route to equal pay in local Government, an LGE report, 2006

allow equal pay claims to be brought where a claimant's work has been rated as equivalent to her comparator under a job evaluation scheme, but they are no longer in the same employment because of public sector reorganisation or contracting out of the public sector

5.8 The union sees no argument for retaining the current differences between claims relating to contractual and non-contractual issues which will do nothing to reduce the complexity of the legislation with different time limits, defences and remedies. The view that it would obscure the links with current equal pay case law and the new approach would take more time to be resolved in the short term, is a consideration in any new legislation. The view has to be taken that it will simplify the legislation and the process in the longer term if the distinction was removed. The union also cannot agree that the employer may face "unlimited aggravated or exemplary damages, damages for injury to feelings and any other injury suffered by the claimant as a result of the discrimination". These damages would not be awarded unless there was deliberate discrimination by the employer and most awards for injury to feelings are very modest on average. ³

5.9 The union is not in a position to comment on the proposals to codify case law in relation to "with whom a comparison can be made; what can be compared (such as all terms of the contract of employment); and what constitutes a defence" because the consultation does not detail which principles it wishes to codify in complex and sometime contradictory case law. The union will comment on this when the draft Bill is published.

5.10 One of the key methods to simplify equal pay legislation would be to allow trade unions to take representative actions in the Employment Tribunals, mainly on equal pay, but also in other areas of systematic discrimination at work. Therefore, it is disappointing that this is not proposed in the consultation. Representative actions would provide better access to justice speed up the tribunal process and would save costs to all parties involved.

5.11 The union also believes that there could be a role for the CAC in intervening on equal pay cases. Until 1986 there was provision for discriminatory pay structures to be referred to the CAC by a union, employer or the Secretary of State and the CAC could order a remedy for the disadvantaged group. However, this cannot be at the expense of compromising individuals' rights to make claims in the Employment Tribunals. To do so would compromise individual rights under EU law and open trade unions to damage claims against them from members. Consideration also needs to be given to the fact that if the CAC was given a role in arbitrating on equal pay that there is a risk of the development of two conflicting strands of case law, as the ET does not create a precedent for the CAC and vice-versa.

5.12 The union cannot support equal pay moratoriums. It is questionable whether this is permissible under EU legislation as it compromises individual

³ EOR 167, Discrimination Law Review, 2007

rights. Additionally it has the potential to expose unions to litigation from members.

6. A Purpose Clause

6.1 The consultation rejects the proposal that the Act should include a purpose clause despite recommending it for the single equality duty. The union cannot agree that a purpose clause would cause confusion and purpose clauses have proved effective in other countries. By setting out the goals and underlying the aims of the legislation this will add clarity (not confusion) and give guidance to the courts, tribunals and others. The union would recommend that the Government gives consideration to the purpose clause that has been drafted by the statutory agencies.

7. Balancing Measures

7.1 The union would support the extension of the concept of reasonable adjustment to transsexual people. This would allow adjustments to be made by the employer, such as attending medical appointments, dress codes and the use of same sex facilities. However, the union is not convinced that the concept should be extended to other areas. The provision would only apply if an individual could prove that they had a typical characteristic associated with the protected ground. Additionally, if employers had to make reasonable adjustments on other grounds this may distract from employers removing barriers to employing disabled people.

7.2 The union agrees with the consultation's view that in some areas progress on equality is too slow and that unnecessary barriers should be removed to equality of opportunity. The 2002 revision to the EC Treaty, Article 141(4) widened the scope for positive action (or balancing measures as it is referred to in the consultation). The Equalities Review also concluded that there was a case for positive action measures that are currently not permissible under UK law. However, the proposal to "allow proportionate action to be taken, but only do what is necessary to make a difference to address a real problem" is too narrow and it should be framed as a means of achieving equality goals, to end disadvantage and achieve equality in practice. However, the proposals are too vague at present to make further comment at this stage.

7.3 The CEHR will have an important role in developing and consulting on Code of Practice and guidance for the Single Equality Act. However, the union does not support the CEHR having a role in approving positive action programmes as it will not have the resources to do so. Clear guidance in this area should ensure that employers are clear about permitted positive action in the workplace. The union would also reiterate as in responses to previous consultations that it is vital that the CEHR is adequately funded and resourced if it is going to carry out its role effectively.

7.4 The union supports the proposal to continue the legislation to allow positive measures to increase the number of women candidates and MPs in

parliament. The EOC estimates that at the current rate of progress it will take 200 years to achieve equal numbers of women and men in Parliament so there is an obvious need for action in this area. The union also supports the extension of this provision beyond gender.

8. Public Sector Duties

8.1 The union are supportive that there should be a single equality duty with a clear purpose statement, but that this should be extended to cover all the protected grounds and not be restricted to race, gender and disability. There is a danger that public authorities will focus on these three strands whilst ignoring inequalities in other areas which also require action. This is not appropriate if the Single Equality Act is to achieve its aims of clearer and more streamlined legislation and better outcomes for those who experience disadvantage. A single equality duty for all sectors should not exclude small employers, but the Government should give consideration to giving financial assistance to smaller employers to implement the duty and ensure that there is specific guidance and advice available to this group of employers.

8.2 For the same reasons the single equality duty should also apply to the private, not-for-profit and voluntary sectors. 80% of workers are employed in the private sector⁴ and equality cannot be achieved without more effective legislation that will compel employers to take action in this area. The positive duties are important because they require employers to take action on equality as opposed to discrimination legislation which confers the right to take an employment tribunal claim after the discrimination has taken place. There is also a blurring between the public and the private/voluntary sectors with the contracting out of public sector jobs which has had a disproportionate impact on women and black and ethnic minorities.⁵

8.3 The union has major concerns with the proposal that appears to suggest a more limited general duty as there is no mention of the need to eliminate unlawful discrimination and harassment with the focus on the need to promote equality. This would be a regressive measure – all elements of the existing duties must be maintained and the union opposes any reduction in their scope. They are a means of tackling institutional racism as identified in the MacPherson Report which led to the introduction of the race equality duty. The general duty should also make it clear that action needs to be taken and lessons should be learned from the race equality duty which has been criticised for its focus on process instead of outcomes. There should be an express requirement to involve those affected by the inequality and trade unions when developing equality schemes in employment issues.

8.4 The union agrees that a single equality duty would be more effective if public authorities are required to prioritise equality outcomes, that action should be proportionate to its size and the impact of the inequality identified. However, this can be made clear in the Code of Practice and guidance. The

⁴ ONS Statistics website on Public and Private Sector employment

⁵ Poor Returns: Winners and Losers in the Job Market, 2007, Warwick Institute for Employment Research and Procurement and Fair Employment Report 2003, Mayor of London

current proposals will give too much discretion to public authorities to act in a limited number of areas and would not lead to the mainstreaming of equality. The duty should require goals to be identified and action to be taken to progress towards these goals.

8.5 Of particular concern is the complete absence in the consultation of the requirement for public authorities to carry out equality impact assessments. Authorities must assess the policies and functions which impact on equality. It is necessary for authorities to carry out impact assessments to identify the priorities for action. Without this there is a danger that only certain areas of inequality will be tackled and decisions will be made that are not backed up by evidence.

8.6 The consultation is alarming in its proposal to give more flexibility to public authorities by the removal of the specific duties to be replaced with four key guiding principles. The union cannot support this as without specific duties the general duties would be difficult to enforce. There must be a specific requirement to monitor, gather evidence and to produce an equality scheme which sets out the public authority's equality goals and obligations. Without this it is difficult to see how workers, trade unions and the general public will be able to hold the authority to account. Minimum standards must be set down in statute to deliver and enforce the general duty.

8.7 The union sees no argument for not applying the single public sector equality duty to all public authorities and that smaller organisations such as schools or small NHS trusts would not be covered the requirements. It would seriously dilute the impact of the duty. Small public authorities can have a big impact on equality in the community in which they operate. For instance, schools must play a big role in tackling inequalities, such as homophobic and racist bullying. As authorities are only required to take action that is proportionate to their size and their nature the argument for excluding smaller organisations does not stand up to scrutiny.

8.8 It is necessary to have proper enforcement mechanisms if the single equality duty is to be carried out properly by authorities in practice. The suggestion that the CEHR should be the sole body responsible for enforcement is unworkable as it simply will not have the resources to carry out this role efficiently and effectively. Multiple enforcement mechanisms are required with trade unions and individuals able to enforce both the general and specific equality duties by taking judicial review action. Public sector inspectorates should also be required to monitor compliance as part of their routine performance assessments.

9. The Private, Not-for-Profit and Voluntary Sectors

9.1 It is important that public sector procurement is used as a lever to promote equality in the private, not-for-profit and voluntary sectors as recommended in the Equalities Review. Public authorities spend billions of pounds annually on contracts for goods, facilities and services from organisations which employ many workers in this country. It cannot be right

that public money should be spent on organisations which have discriminatory policies and practices. Embedding equality in public procurement would have the advantage of ensuring high quality services, allow all businesses to compete on an equal footing, spread best practice on equality and avoid the race to the bottom. A Single Equality Act must, therefore, place a specific duty on public bodies to embed equality into their procurement activities as few authorities have prioritised equality in their procurement processes to-date. ⁶ Minimum equality standards are necessary which should be properly enforced and organisations should be banned from tendering for public contracts if they are in serious breach of discrimination law.

9.2 Only five pages of the consultation are devoted to the private sector with complete lack of reference to the not-for-profit and voluntary sectors. The union agrees that there is a business case for diversity, but that is not sufficient to compel many employers in these sectors to take action on equality. Tackling inequalities at work cost employers' money, time and resources. Our experience is that equality is often a side issue and is not prioritised by many employers. The voluntary approach is not working and legislation is now required. If the voluntary approach was working we would not have a persistent gender pay gap (which is higher in the private sector), high unemployment amongst certain BME groups and the disabled and discrimination in both treatment and pay for many groups of workers. It cannot be left to the market and voluntary action by employers if we are to make progress on equality at work when the private sector employs 80% of the workforce in this country. In reality the focus on not putting regulatory burdens on business means that discrimination will continue which the Government claims it is committed to tackling.

9.3 The union cannot support the light touch "equality check tool". The very employers who are discriminating against workers are unlikely to use this tool and if they do would find it very easy to hide discriminatory pay, policies and practices. The union has already made the argument for mandatory equal pay reviews for all sectors in our response to the section on equal pay. Ideally this should be extended beyond gender to age, race and disability to eliminate unjustifiable pay discrimination on all these grounds. At the very minimum all employers should be required to monitor and report on action they are taking to address inequalities. This has proved successful in both the US and Northern Ireland.

9.4 The union would support the introduction of a voluntary equality standard scheme which would require employers to involve trade unions and employees in its development and implementation. This would need to be assessed independently and be of an accredited standard. But legislation is not required to introduce this so it is not relevant in the introduction of a Single Equality Act.

9.5 The union supports the introduction of statutory rights for equality representatives, particularly as a means of progressing on equality in the

⁶ Local Government Information Unit Briefing, Discrimination Law Review, 2007

private, not-for-profit and voluntary sectors. This will ensure that employers will give sufficient facility time for equality representatives to be trained and carry out their role effectively. Amicus Unite has submitted a bid to the Government's union modernisation fund to develop equality representatives in Unite Amicus and embed them in our industrial structures. This will build on the success of our Disability Champions @ Work Project. Amicus decided that it needed to take action to address disability discrimination at work which affects so many of our members, so the Disability Champions @ Work project was set up in 2003 with the help of start-up funding from the European Year of Disabled People. It was to be one of the most successful projects to have been supported during that year and the project has been extended and is building on that success. The project involves identifying and training representatives and shop stewards to deal effectively with disability issues and to become Disability Champions in their workplaces. The aim is to encourage better employment opportunities and fairer treatment for disabled employees. All Disability Champions are trained on the implications of the Disability Discrimination Act, the Government funding available for adjustments for disabled people at work and on how to audit their workplace to ensure that their employer is complying with the "two ticks, positive about disabled people" standard. This project now has nearly 600 Disability Champions throughout the country, of which over 100 are Amicus Unite members. who are making a real difference to the working lives of disabled people and are spreading the word to promote the role so that the union can train more Champions. The project is due to complete at the end of 2007. This project is an example of what can be achieved, but the further development of equality representatives would be greatly enhanced by statutory backing.

10. Effective Dispute Resolution

10.1 The union is disappointed in the section on dispute resolution work which has been transferred to the Dispute Resolution Review (DRR). The union supports the TUC's view that as this consultation has closed the DRR is not the right forum for promoting access to justice, providing appropriate remedies and ensuring better enforcement of discrimination laws.

10.2 The union has already made the case for representative actions in our response in the section on equal pay and in the union's submission to the DRR. Tribunals also need wider powers to make recommendations, including reinstatement or reengagement, particularly for disabled people and to make formal recommendations to employers, beyond the individual claimant, to take action to end discriminatory policies and practices. This would help employers progress on equality issues, comply with the law and avoid future claims.

10.3 The consultation's failure to recommend measures to tackle multiple discrimination is disappointing. The Equalities Review identified many instances of multiple discrimination, the obvious example being the disadvantage suffered by Pakistani and Bangladeshi women. A Single Equality Act must allow discrimination claims to be brought on a combination

of grounds which would provide much better access to justice and awards that reflect multiple discrimination. As already stated, previously removing the express requirement for a comparator would also help resolve multiple discrimination claims.

11. Modernising the Law

11.1 The union supports the removal of list of the capacities in “normal day-to-day activities” as required under the Disability Discrimination Act. This would remove the burden on claimants of the requirement to marry their impairment with one of the list of capacities and allow a broader interpretation of where an impairment has a substantial and adverse effect.

11.2 The consultation document argues that parents already benefit from a number of legal rights and that it is not necessary for the introduction of a protected ground for carers in the Single Equality Act. Unite rejects this assertion and argues that it is vital that carers are included in the Act if it is to reflect the reality of workers’ lives with many now having to combine caring with work in the face of inflexibility from their employers. The Sex Discrimination Act does not provide sufficient protection. There are too many hurdles for women to overcome in bringing an indirect sexual discrimination claim in this area and it is difficult for men with caring responsibilities to bring a direct discrimination claim unless they can identify a female carer who had received more favourable treatment. This is particularly difficult in a male dominated workplace. An express protection for carers against suffering a detriment, discrimination or harassment has the potential to bring about a culture change in workplaces and enable men to take a greater role in caring responsibilities. Carers would also need to be included in the single equality duty. The right to request under the Flexible Working Regulations should also be extended to cover all workers.

11.3 The union does not support the removal of the protection for married persons and civil partners in a Single Equality Act which would be a retrograde step. It would be better for protection to be afforded regardless of marital or civil partnership status which would extend protection to single, divorced or separated or widowed people.

11.4 The consultation suggests that it is not necessary to extend protection to cover genetic predisposition. The union does not agree, as although discrimination on this ground is not widespread, it has the potential to become an issue as technology and techniques for genetic screening advance and more people take advantage of this screening.

12. Age discrimination beyond the workplace

12.1 The union is disappointed in the approach that the consultation has taken in its apparent reluctance to extend the age discrimination provisions to goods, facilities and services despite clear evidence of widespread

discrimination in this area, particularly in health services and care.⁷ Additionally, it would simplify the legislation if protection was provided in goods, facilities and services across all grounds including age.

13. Gender Reassignment

13.1 Transsexual people should be afforded the same protection as other protected groups in respect of facilities, goods, services and public functions so the union welcomes proposals to implement these regulations by 21 December 2007.

13.2 The union sees no reason to delay the protection of transsexual people against indirect discrimination until the implementation of the Single Equality Bill. It would be a simple exercise to introduce this at the same time as the extension of protection in the provision of goods, facilities and services.

13.3 The union sees no argument for excluding school pupils and education in schools on the grounds of gender reassignment. Many transsexual people realise that they are of the wrong gender from a very early age. They are vulnerable to bullying and harassment at school and they should be protected against this. Education in this area would also greatly assist in reducing the incidences of bullying and harassment.

13.4 The union cannot envisage any circumstances when it would be permissible for organised religions to treat people differently on the grounds of gender reassignment. To allow an exemption in this area will allow prejudiced assumptions and discrimination to continue against transsexual people.

13.5 The existing definition of gender reassignment should be changed to cover "gender identity and expression" and the restriction of "under medical supervision" should be removed. Additionally, the law needs to be extended to protection on the grounds of perception to "knows or perceives them to be planning to undergo, undergoing or having undergone gender reassignment".

14. Pregnancy and maternity

14.1 The union supports the proposal to extend protection to pregnancy and maternity in the provisions of goods, facilities, services and public functions. However, despite the fact that education is outside the scope of the Gender Directive the union cannot support the view it is neither necessary nor appropriate to prohibit discrimination on the grounds of pregnancy and maternity in respect of school pupils. The fact that the Government is seeking to reduce the levels of teenage pregnancy is irrelevant in this respect. Is the consultation really saying that young, vulnerable girls and women should not be protected against discrimination, harassment and victimisation whilst in education because they are pregnant or mothers of babies? It seems entirely appropriate and necessary that they are protected.

⁷ Help the Aged Website 2007

15. Improving access to and use of premises for disabled people

15.1 The union supports the proposal for requiring disability related alterations to the common parts of let residential premises which will improve the access of disabled people to these premises.

16. Harassment

16.1 The union supports the extension of specific protection against harassment to be extended beyond non employment situations for religion or belief, sexual orientation, age and disability

The union would welcome the opportunity to discuss the issues contained in this response further.

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