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Equality Act 2010: Ending age discrimination in services, public functions and associations - a consultation

Thank you for the opportunity to comment on the above consultation. In providing my evidence, I would also like to give support to the evidence submitted by Children in Scotland, the national agency for voluntary, statutory and professional organisations and individuals working with children and their families. I share many of their concerns.

My office was established by the Commissioner for Children and Young People (Scotland) Act 2003 which lay out the general function of the Commissioner to “promote and safeguard the rights of children and young people.” In particular, the Commissioner must review law, policy and practice relating to the rights of children and young people with a view to assessing their adequacy and effectiveness. Specific regard must be had to any relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC). This responsibility is exercised towards all children and young people in Scotland who are under 18 years of age, or under 21 if they have been looked after by a local authority or in their care.

A key article from the UNCRC is article 2, the principle of non discrimination. Non discrimination has been identified by the Committee on the Rights of the Child as a general principle of fundamental importance and one which underpins the whole Convention.

Despite having ratified the UNCRC and thus committing itself to bringing its law, policy and practice in line with the Convention, the UK has been strongly criticised by the Committee on the Rights of the Child for failing to uphold children’s rights in a number of areas. In their 2008 report to the UN Committee on the Rights of the Child, the four UK Children’s Commissioners raised concerns relating to inequality and age discrimination which were duly noted by the Committee. In their Concluding Observations the Committee noted the lack of progress in promoting equality and urged the UK to make substantial improvements before the next reporting session in 2014.

I am continually struck by the numbers of children and young people who report age discrimination to my office through my Enquiries service. One generally associates such treatment with older people, yet there are countless instances where children and young people are treated differently or discriminated against simply because of how old they are.

Such examples include:

- Young people being moved on by the police in public places simply for being there;
 - Young people being issued with fixed penalty notices because they had questioned the police after being refused entry to a public park;
 - Restaurants refusing entry to under 10s;
- Shop signs restricting entry to no more than two school children

Nowhere is this discrimination more evident than in the continued use of the Mosquito device. The Mosquito uses young people's ability to hear high frequency noises, an ability which is reduced when people reach their mid-20s. Its use would not be tolerated for any other section of our society. Young people have a right to assemble and socialise with their friends, without being treated as criminals. The use of these devices illustrates the disrespect we have for young people and indiscriminately targets young people and babies alike.

Children and young people are also recipients of services provided by public authorities yet the difficulties experienced by under-18s in accessing age appropriate services are well documented. Two examples will help to illustrate this:

- A recent report in Scotland by the Long-term Conditions Alliance Scotland which drew on the experience of children and young people with disabilities and chronic illnesses report highlighted areas where services were inappropriate or insufficient, compared to other population groups. As Children in Scotland also note in their response, this was particularly true when young people suffered from a condition much more prevalent in the adult population. Their report notes a lack of age appropriate health services and settings for teenagers. This can result in adolescents being in children's wards or alongside much older people (often at a far progressed stage of illness).
- Age specific mental health services are continually raised as being problematic. The SNAP report raised concerns about young people in adult wards because there are no suitable places for them, noting that

"Current indications are that investment in and expansion of that highly specialised sector is urgently needed. Young people should be treated in the kind of developmentally appropriate settings which the specialist child & adolescent unit

offers, but they are often unable to access them at present, because of the limited bed numbers.”

The Ministerial comment to this consultation opens with the fine statement that “Equality is at the heart of this Coalition Government.” As Children’s Commissioner, this is something I very much welcome, yet it appears that those under 18 do not appear to have the same rights as older people and that equality on this occasion is poorly served.

The Equality Act 2010 excluded children and young people from legal protection from unfair discrimination on the grounds of age in services and public functions and the extended ban currently protects people aged 18 and over. The justification provided was that a child’s age “is closely related to his / her levels of development and that the principle of age discrimination legislation (that people should be treated the same) is rarely appropriate to the treatment of children”. The point is re-iterated in this consultation. Clearly services should be tailored to meet the needs of children, but this is no justification for imposing a blanket exclusion on all children and young people from the Act’s protections. It is certainly contrary to the principle of non discrimination and the Government’s claim to treat everyone equally. Indeed this point is made in the Equality Act 2010 with reference to the ‘general’ public sector duty, which specifies a public authority’s due regard to the need to advance equality of opportunity and requires public sector bodies to

“Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (s 149 (3) (b))”

The continued exclusion of children in services, public functions and associations is a sad indictment of the way our society currently views children. Evidence of age discrimination against under 18s is prevalent across the UK, yet continues to be ignored. The next report to the UN Committee of the Convention on the Rights of the Child is due in 2014 and the UK will be reporting on progress towards the full realisation of children’s rights and will be held to account by the Committee. I urge the Government to bring its law, policy and practice on age discrimination in line with this Convention and ensure that the commitment made at ratification is duly respected.

I would be more than happy to clarify or elaborate further on any of the points raised in my response.

Yours sincerely

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Scotland’s Commissioner

for Children and Young People

