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Discrimination Law Review Team  
Women and Equality Unit  
Department for Communities and Local Government  
Ashdown House  
123 Victoria Street  
London  
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Dear Kate,

**Re: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain - A Consultation Paper**

Children in Scotland welcomes the opportunity to contribute to the consultation on the **Discrimination Law Review**, *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*. We have over 450 members, including all the major children's organisations and professional associations, as well as 80% of Scotland's local authorities.

Children in Scotland welcomes the intention behind the Discrimination Law Review, i.e., to streamline and harmonise equality legislation in Great Britain. However, we have concerns about how this could affect children, fathers, and the additional support needs tribunals in Scotland.

British discrimination law does not presently cover age discrimination beyond the workplace or place any duties on public authorities to have due regard for the need to promote age equality or good relations between persons of different ages. The proposals in the Review state that '*[It] is almost always appropriate to treat children of different ages in ways which meet their particular needs and stage of development*' as the explanation for children and young people being excluded from any new protection from negative age discrimination. Children in Scotland does not agree with this position. The argument made for excluding children and young people also applies to older people, yet the Review includes proposals to ensure that older people (rightly) continue to receive age-appropriate services. Children also merit this kind of regard and fair treatment.

We believe that discrimination is a learned behaviour, either by example or by experience. Condoning discrimination against children on the basis of age does not provide the best (or even a fair) foundation for an anti-discriminatory culture in later years. As a signatory to the UNCRC, Great Britain should take the rights of children as seriously and should incorporate children's rights as comprehensively as it does the rights of older adults in this proposal.

This Review, for example, is an ideal opportunity to address the service transition problems that young people so often experience as they “age out” of children’s services. It is common for them either to be dropped from needed service provision altogether or to be assigned to adult services that are neither designed nor equipped to deal successfully with their age-specific concerns and needs. It is simply not acceptable that some young people fail to receive necessary treatment, care, services, and support because of their age. And yet, the Review has not embraced this opportunity.

The Review also presents a welcome opportunity to positively support the development of *intergenerational* relationships/activities/programmes. People of all ages could and should be able to benefit from governmental policies and programmes that encourage intergenerational relationships and joint activities, rather than continuing the modern tendency toward age segregation in learning, working and cultural/leisure activities. Nevertheless, the Review does not robustly endorse an intergenerational ethic or specific supportive policies and practices.

Chapter 11 of the Review deals directly with pregnancy and maternity. Children in Scotland welcomes the continued emphasis on support for the mother and family during and after the birth of a child. However, two aspects of the Review cause us concern. First, it proposes prohibiting ‘*less favourable treatment of a woman on grounds of pregnancy and maternity*’ – particularly in the field of goods and services, but excludes schools from this provision. Less favourable treatment by schools will not prevent teenage pregnancy, but it will limit the capacity of that young mother to meet her own potential as well as better provide for her child in later years. The rationale for excluding schools from such discrimination is unclear and, therefore, unconvincing.

Secondly, Chapter 11 does not reflect the principles of the new Britain-wide Gender Equality Duty (GED). The Review’s proposals routinely refer to mothers, but not to fathers. This set of proposals should include fathers at the same time as extending paternity rights. For better or worse – and whether present or absent, it is clear that fathers exert a powerful influence on the well-being of their children. To ignore or minimise the involvement of fathers in pregnancy and maternity services is to place an additional burden upon mothers and to contribute to a self-fulfilling negative prophecy about the active support of fathers. Under the terms of the Gender Equality Duty, excluding or ignoring fathers may be both discriminatory and unwise.

There may be circumstances where single sex services are justifiable and appropriate. However, requiring public authorities to consider fathers and the wider family when delivering services is essential to improving the effectiveness of those services and, in many cases, improving child well-being, too. A father’s involvement in his child’s life should begin as early as possible. This proposal is remiss in failing to explicitly include fathers. Breastfeeding services are an example of why and when involving fathers is appropriate. This service may be delivered directly to the mother but breastfeeding is more likely to continue past the minimum recommended period if fathers understand and support the mother. Service delivery has a role to play in encouraging this response.

Chapter 7 is directly relevant to Children in Scotland’s work relating to Scotland’s Additional Support for Learning Act (which has a significantly broader definition of who has the right to additional support than is the case in traditional ‘special needs’ education law and policy). We manage the national hotline and ASL advisory service – called Enquire – on behalf of the Scottish Executive. This has given us a very detailed understanding of what is (and is not) working as the ASL Act nears the second anniversary of its implementation.

The ASL Act incorporates a Tribunal system. However, Tribunals always should be a last resort, rather than a preferred first option. We understand the virtues in the Review's proposal to extend the scope of the Additional Support Needs Tribunals to include 'disability discrimination' school cases. Parents, in particular, need and would welcome a simpler, clearer pathway to follow when disputes arise. Bringing the various mechanisms for parental complaints under one roof could be a positive development for parents and their children. However, unless the Review's proposed reforms are implemented well, they could exacerbate an already difficult situation.

Disability cases are more 'legal' by nature. Conversely, the tribunal system in Scotland was set up with the express purpose of not being overly legalistic. It was meant to be open, accessible and non-intimidating for parents. Including disability discrimination cases in the Scottish ASL Tribunal system may increase the necessity for lawyers -- and more formal, lengthy and expensive legal processes in the system as a whole. This would be unhelpful to parents.

Because we think that disputes should be resolved as quickly, fairly and amicably as possible, Children in Scotland runs the largest ASL mediation service in our nation (called Resolve). The effectiveness of mediation ultimately impacts upon the workload of the Tribunal system. When successful, mediation services bring about a resolution that is speedier and mutually beneficial to all parties, while keeping the child as the focus. Using mediation also results in a less costly, lower-key way of dealing with disputes that can de-escalate conflict and avoid Tribunals altogether.

Local authorities, parents, carers and young people need to be aware of all the options open to them before going to the Tribunal stage, with an emphasis on the option of mediation. The offer of independent mediation to parents, carers and young people is a *statutory duty* in the Additional Support for Learning Act. And yet, mediation is not robustly encouraged within this part of the overall Review. Children in Scotland thinks that the option of mediation should be explicitly endorsed in the final version of the Review.

Children in Scotland also operated a successful independent advocacy pilot project. Advocacy is a right under the ASL Act, but (unlike mediation) not a statutory duty. Despite excellent reviews, the service has not received on-going funding. However, it highlighted the need for high quality, affordable (preferably free) independent advocates. We expect that this need will dramatically increase if disability discrimination comes within the remit of the ASL Act's Tribunal system.

The increased workload, and the often complex nature of discrimination cases could also slow down the Tribunal system. This would be unhelpful and sometimes damaging. Specifically, we are aware of the damage that can happen to the relationship between parents and education authorities during the adversarial process inherent to the Tribunal system. A slower system also is a problem for students. Children excluded from school (as well as from school trips or external activities) on the basis of a disability need to receive an outcome from the Tribunal as quickly as possible. Issues about the fast-tracking of complaints (e.g., if, when and, how ) are needed, too.

Finally, Children in Scotland encourages the Review to revisit the issue of Tribunal outcomes. Put simply, allowing compensation for gender and race discrimination *but not for disability discrimination* seems, in itself, discriminatory.

We would be happy to answer any questions relating to the points raised above.

Yours sincerely

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**Children in Scotland** is Scotland's national agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies, services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents over 450 members, including all major voluntary, statutory and private children's agencies, professional organisations, as well as many other smaller community groups and children's services. It is linked with similar agencies in other parts of the UK and the European Union.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Executive, local authorities and practitioners. It services a number of groups such as: the Cross Party Parliamentary Group on Children and Young People; the National Children's Voluntary Forum; the National Early Years Forum, the Rural Advisory Group and the Additional Support Needs Network. Children in Scotland hosts Enquire, the national advice service for additional support for learning.