

COMMISSION FOR VICTIMS AND SURVIVORS RESPONSE TO OFMDFM PROPOSALS TO EXTEND AGE DISCRIMINATION LEGISLATION (AGE GOODS, FACILITIES, SERVICES)

The Commission for Victims and Survivors for Northern Ireland (the Commission) was established in June 2008 under the Victims and Survivors (Northern Ireland) Order 2006, as amended by the Commission for Victims and Survivors Act (2008).

The Commission is a Non-Departmental Public Body of the Office of the First Minister and deputy First Minister (OFMDFM). The principal aim of the Commission is to promote awareness of the interests of victims and survivors of the conflict. It has a number of statutory duties that include:

- Promoting an awareness of matters relating to the interests of victims and survivors and of the need to safeguard those interests;
- Keeping under review the adequacy and effectiveness of law and practice affecting the interests of victims and survivors;
- Keeping under review the adequacy and effectiveness of services provided for the victims and survivors by bodies or persons;
- Advising the Secretary of State, the Executive Committee of the Assembly and any Body or person providing services for victims and survivors on matters concerning the interests of victims and survivors;
- Ensuring that the views of victims and survivors are sought concerning the exercise of the Commission's functions; and
- Making arrangements for a forum for consultation and discussion with victims and survivors.¹

In November 2009, OFMDFM introduced a ten-year strategy for victims and survivors. This strategy identified a new infrastructure for dealing with victim and survivor issues that included the Commission for Victims and Survivors, the Victims and Survivors Forum and the Victims and Survivors Service. These three bodies are now operational and work closely with OFMDFM in meeting the needs of victims and survivors.

¹ The functions of the Commission relate to those set out in the Victims and Survivors (Northern Ireland) Order 2006 as amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008.

The Commission is pleased to have the opportunity to provide a response to the Department's proposals.

The Commission acknowledges the Department's intention to prohibit and eradicate unjustifiable or harmful age discrimination against those aged 16 years and over in the provision of goods, facilities and services, charities, premises, education, public functions, and private clubs and associations, while recognising that there are occasions where it is justifiable and right to treat people differently on the basis of age. This intention reflects the Programme for Government 2011-15 commitment to extend age discrimination legislation to the provision of goods, facilities and services.

The Commission believes that reform of the law is necessary to address the gap in equality legislation considering the current lack of protection from age discrimination outside employment and vocational training contexts.

Proposed age scope

The Commission recognises the Department's intention to protect against age discrimination to those aged 16 and over. This represents a positive opportunity for Northern Ireland as age discrimination legislation currently in place in both Great Britain and the Republic of Ireland excludes those under the age of 18.

However, the Commission understands that there will be concern and disappointment that those under 16 are not included. This position been voiced by the Equality Commission for Northern Ireland and Northern Ireland Commissioner for Children and Young People. The Commission echoes the concerns of both organisations and believes that protection against age discrimination should apply to people of all ages, including children and young people.

Definition of service providers

The Commission agrees with how the Department have defined the concept of a 'service provider'.

Public functions

The Commission welcomes the Department's overall intention to ensure that people are treated fairly in the exercise of public functions.

Alongside this principle it is essential that public authorities are clear about their responsibilities and are aware when it is permitted to treat people differently on the grounds of age. The Commission believes that clear guidelines and advice should be available for those exercising public functions. These guidelines should detail that they should not directly or indirectly discriminate on grounds of age unless this behaviour can be objectively justified, it amounts to positive action or is a requirement under other legislation.

Exceptions

The Commission recognises that there are certain circumstances in which it is justifiable to treat people differently because of their age.

The Commission would hope that any approach is practical and cognisant of how people of different ages live, their differing needs, and how service providers operate, in order to avoid any future legislation having unintended consequences or disproportionate burdens on service providers, particularly in the voluntary and community sectors.

It is reasonable and realistic that age-based treatment can be justified in particular circumstances. Many activities and support programmes victims and survivors avail of are targeted at specific age groups or feature trans-generational approaches. The Commission therefore agrees with the Department's proposal that any future age discrimination legislation should include a provision for an objective justification test. An objective justification test is an established concept in equality law and enables service providers to continue with age-based practices that are not covered by another general provision or specific exception under any future legislation.

The Commission recognises that in some cases it may be necessary for those who provide goods, facilities and services to discriminate in order to comply with a requirement of another piece of law. For example, age-based state benefits, restrictions on the sale of certain goods or concessions. The Commission therefore agrees with the Department's proposal that any future age discrimination legislation should include an exception for statutory authorities in this regard.

Positive action

The Commission is pleased that the Department recognises that there are circumstances where it may be appropriate to allow special treatment for people of particular age groups; particularly due to social or economic disadvantage.

The findings from the Commission's *Towards a Better Future* research examined the trans-generational legacy of the Troubles through an understanding of the impact of conflict-legacy issues on children and young people.² It is also well documented that many victims and survivors are part of an ageing population. As explained in our comments regarding exceptions, many victims and survivors groups deliver targeted programmes to meet the needs of particular age groups impacted by the Troubles. The Commission believes that positive action enables providers to target their services and meet needs without being vulnerable to claims of discrimination by people outside of that particular age group.

The Commission therefore agrees with the proposal that service providers should be allowed to take positive action where those actions are a proportionate means of achieving the aim of overcoming disadvantage or in meeting the different needs of a particular age group.

Charities

The Commission agrees with the Department's proposal to include an exception in any future legislation to allow charities to continue to operate for the benefit of persons or causes relating to one age group more than another.

Care within the family

Support for those who provide care to someone who was injured as a result of a conflict-related incident continues to be an important element of service delivery to victims and survivors.³ There are also many carers across our society delivering personal care services without financial or other support. The Commission recognises the valuable role that families perform and recommend that any future legislation should include an exception for care within the family to ensure that there

² CVSNI (2015) *Towards a Better Future: The Trans-generational Impact of the Troubles on Mental Health*, Belfast: CVSNI.

³ The Support for Carers scheme, administered by the Victims and Survivors Service, provides assistance for those who provide care for 35 hours or more.

is legal certainty that any age-based treatment within this context should not amount to discriminatory behaviour.

Private clubs and associations

The Commission acknowledges that some private clubs or associations may restrict membership in order to respond to a particular age group's needs and experiences. The Commission therefore agrees with the Department that age-based treatment can be fair as it takes proportionate steps to encourage membership among under-represented age-groups, to help overcome disadvantage, or to meet the particular needs of their membership. For victims and survivors groups any exception would facilitate the ongoing work of targeted programmes or resources aimed at children and young people and would also acknowledge the ageing population of victims and survivors.

Equality Impact Assessment

The Commission is pleased that the Department has requested further information and evidence that may advance and enhance an assessment of the impact on each of the Section 75 groups.

In order to obtain an understanding of the needs victim and survivors the Commission would recommend referring to the *Comprehensive Needs Assessment*. The research report informed Government of the services required to improve the quality of life of victims and survivors and contains detailed information relating to health and wellbeing and social support.⁴ The Commission would also highlight our recent *Towards a Better Future* research as an insight into the trans-generational impact of the Troubles. The study examined the nature and extent of the conflict's legacy on the lives of children and young people.⁵

Age specific statistics relating to victims and survivors accessing support may be helpful to the Department. If required, these could be made available from the Victims and Survivors Service.⁶

⁴ CVSNI (2012) *Comprehensive Needs Assessment*, Belfast: CVSNI.

⁵ CVSNI (2015) *Towards a Better Future: The Trans-generational Impact of the Troubles on Mental Health*, Belfast: CVSNI.

⁶ The Victims and Survivors Service provides direct support to individuals impacted by conflict-related incidents through the Individual Needs Programme. They also fund victims and survivors groups through the Victims Support Programme.

Enforcement provisions

The Commission believes that it is essential that those affected by any future legislation are aware of their rights and responsibilities and can challenge unfair treatment and practices if they occur. In order for any legislation to work, the delivery of information, communication and advice to Ministers needs to be managed appropriately and effectively. The Commission therefore agrees that the Equality Commission for Northern Ireland should have the same duties and powers in relation to any future legislation as it currently has in other areas under equality legislation.

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