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Dear Kate,

Response from TAEN to “A Framework for Fairness – Proposals for a Single Equality Bill for Great Britain”

TAEN has submitted the full consultation reply on line. We have worked closely with our colleagues in Help the Aged and support their more extensive response on wider issues.

Given the many dimensions of the consultation, I thought it would be helpful to set out in summary the key points from TAEN’s perspective (which is of course focused on the grounds of age, especially in relation to employment and training).

1. Unifying statement of purpose

A statement of purpose at the beginning of a Single Equality Act would give the Act overall coherence. It would set out the objectives and goals of the Act and thus provide guidance to those seeking to interpret the Act, both Courts and Tribunals and employers and businesses. The Consultation document suggested a purpose clause for the equality duties; this should be extended to the Act as a whole. But it can of course only be a unifying statement if all grounds are treated with parity.

2. Age discrimination in goods, facilities and services (Chapter 10)

TAEN does not accept the premise of this chapter and its place in the Discrimination Law Review. The principle of the DLR and a Single Equality Act is to align legislation in one system with parity of treatment. It is the founding principle. It is not acceptable that the DLR should imply in Part 1 and 2 on “*Harmonising and Simplifying the Law*” and “*More Effective Law*” that it is doing those things when it is doing no such thing in respect of age. Part 3 on “*Modernising the Law*” is not an add on; it is a precondition for a Single Equality Act that treats all grounds equally.

The title of Chapter 9, “*Age Discrimination beyond the work place*” is misleading in that there is a large overlap between discrimination in employment and discrimination in goods, facilities and services. They are not separate soloed items. Age based rules on insurance, health, transport, for example, all influence the employment opportunities of both younger and

older workers. TAEN's help line has received many examples of barriers to employment based on age differentials in goods, facilities and services. We and the Employers Forum on Age both submitted evidence on this during the preparation of the Age Regulations and had concerns that lobbying from the insurance industry created a misleading impression in the Government consultations at the time.

3. Direct Discrimination on grounds of age (Chapter 2)

TAEN believes that the objective should be to align definitions, comparators and exemptions as closely as possible across all grounds.

In the preparatory work before the Age Regulations came into force an erroneous impression gained currency that age was somehow "different" from the other grounds because there were a number of potential justifications for direct discrimination on grounds of age which do not apply to other grounds. It is correct that a number of exemptions for public policy were built into the Regulations (many of them open to challenge, such as the Redundancy Payments, Minimum Wage, Government Training Funding and Default Retirement Age.) But in respect of the conduct of employers, employees and others it is misleading to suggest that age is significantly different from other grounds or that it is the only ground on which direct discrimination is justified: genuine occupational qualifications are an example of justification of direct discrimination on other grounds. In practice no one has yet thought of a good mainstream example (i.e. other than actors) of a GOR for age, whereas there is a significant list in respect of gender and race. The aim of the Single Equality Act. (Q1, Q6, and Q8 etc) should be to remove as many of these differences as possible.

4. Normal Retirement Age (Annex A simplifying exemptions)

While recognising that the NRA is due for review in 2011, we believe that the Single Equality Bill should be based on an assumption that the NRA will be removed. It is clearly inconsistent with a harmonised approach to equality of opportunity and is under legal challenge. The evidence on which the Government took the decision on the NRA in 2005 is now shown to have been based on ill-founded fears of change.

5. Age and disability (Chapter 2)

We support a vigorous approach to legal commitments in respect of disabled people. The current employment rate of disabled people, 50% of whom are over 50, is the greatest challenge of an inclusive labour market and realising the objective of an 80% employment rate (Q4 and 7)

6. Equal pay (Chapter 3)

Chapter 3 is entitled Equal Pay but in practice is about gender pay gaps. There are serious pay gaps in respect of other grounds, notably disability, race and age. The Single Equality Bill provides an opportunity to broaden the agenda on equality of pay. To date it has been perceived only as a gender issue. In practice it is a multiple grounds issue and the Bill should be drafted to address access to fair pay across all grounds. (Q21) You will see that we have drafted a cautious but nevertheless radical set of ideas in this area.

Firstly, we believe there are sound reasons for not immediately extending current equal pay law to other dimensions of inequality, particularly as there are strong criticisms of existing law. However, we argue that equal pay audits and an ability to deal with discriminatory policies and agreements by references to the Central Arbitration Committee would be beneficial. Should equal pay law be amended in the future, we believe that it should embrace other dimensions of inequality including age. We also believe that it is important that the different strands of equality are placed on the same level in this respect as quickly as possible and would hope that this is achieved in the near future and that the criticisms of the EOC, unions and gender campaigners are taken into account.

7. Parity of treatment across strands: public sector duties (Chapter 5)

We do not accept the premise of Chapter 5 or the questions on it that a duty covering race, disability and gender constitutes a *single duty*. A single or integrated duty is by definition a duty that covers *all* the grounds in a Single Equality Act. We ask that the whole approach of Chapter 3 is replaced in further work which should start from the premise that a Single Equality Act means just that- an act whose major components apply to all strands with parity of protection and treatment.

8. Multiple Discrimination

We support the inclusion within the law of cases based on multiple grounds. The details on this are set out in the Equality and Diversity Forum response.

9. Private and Public Sectors

We share the view set out in detail by others that the provisions on the private sector and on public sector procurement should be strengthening. We do not see any reasons in principle why there should be one law for the public sector and another for the private sector in relation to equality of opportunity. Individuals faced by barriers to opportunity are the same whether they happen to be connected with the public sector or the private sector.

10. Public funding of training

The application of the Age regulations to the public funding of training needs to be clarified before a Single Equality Act. This is a current example of lack of parity between the grounds. The Government has interpreted the situation to exempt itself from the Age Regulations which make it unlawful for training providers and other to discriminate in the terms and conditions of the provision of training on grounds of age. This situation does not exist for the other grounds and indeed would be regarded as unacceptable if it were proposed.

TAEN looks forward to participating in the further work of the DLR once the Consultation is completed.

Yours sincerely

Chris Ball
Chief Executive

