



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Age Discrimination Legislation relating to Goods,
Facilities and Services:
Children's Law Centre

2 April 2014

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Alex Attwood
Ms Megan Fearon
Mr Stephen Moutray

Witnesses:

Ms Paddy Kelly	Children's Law Centre
Ms Natalie Whelehan	Children's Law Centre

The Chairperson: We welcome to the Committee Paddy Kelly, who is the director of the Children's Law Centre (CLC), and policy officer Natalie Whelehan. Obviously, you listened to the previous session. Paddy, it is over to you to give your opening thoughts.

Ms Paddy Kelly (Children's Law Centre): I thank the Committee for the opportunity to give evidence today. The Committee will find that a lot of our evidence is reflective of the evidence that you heard from Robin and the three commissions. We would also like to welcome the Northern Ireland Executive's commitment in the Programme for Government to extend age discrimination legislation to the provision of goods, facilities and services (GFS).

The Children's Law Centre is a children's rights organisation that was founded on the principles that are enshrined in the UN Convention on the Rights of the Child (UNCRC), including that children shall not be discriminated against and shall have equal access to protection. The Children's Law Centre wishes to see age discrimination legislation being introduced in Northern Ireland which includes children and young people in its scope so that all children in this jurisdiction are protected from discrimination in accessing GFS.

CLC operates a free phone advice line for children and young people and their parents, which deals with over 2,000 issues a year. We have a young people's group — youth@clc — that informs our work. One of the issues which young people consistently raise with us is the negative treatment that they receive in society generally in accessing services, in shops and in the media. Various pieces of research have shown that the tone of the majority of media coverage of children is negative, that the vast majority of children feel that they are represented as antisocial in the media and that this leads to older persons respecting them less.

In 2008, following examination of the UK Government's compliance with the UNCRC, the Committee on the Rights of the Child raised concerns about the general climate of intolerance and negative public attitudes towards children, including in the media. It noted that that may often be the underlying cause of further infringement of their rights. The Committee recommended that the state takes urgent measures to address the intolerance and inappropriate characterisation of children in society, including in the media.

The proposed introduction of age discrimination GFS legislation has the potential to address the climate of intolerance and negativity that surrounds young people if children and young people are included in the legislation. The proposed legislation would prohibit age discrimination in the provision of GFS, such as health and social care, retail services and public transport. We believe that it would send a strong message to all children and young people that they deserve equal protection from discrimination and are valued by decision-makers in society.

We believe that the inclusion of under-18s within the scope of the age discrimination legislation has real potential to create cultural change in the way children are viewed in society, which, from our experience from working with and for children and their parents, is urgently needed.

The UNCRC is a set of legally binding minimum standards and obligations in respect of all aspects of children's lives, which the Government have ratified. The UK Government are signatories of the UNCRC. As a devolved Administration, the Northern Ireland Executive are obliged to deliver all the rights contained in the convention. Legislative and policy development in Northern Ireland should be taken forward in compliance with the UNCRC. One of the four overarching principles of the UNCRC affords to all children the right to protection from discrimination. The inclusion of children and young people within the scope of future age discrimination GFS legislation would be in compliance with the Government's obligations under the UNCRC and would be a response to the Committee's recommendations that the Government take urgent action to address negative age discrimination against children, referencing the clear opportunities to mainstream children's right to non-discrimination into anti-discrimination law.

Based on CLC's experience, the exclusion of children from protections in the age discrimination GFS legislation will, we believe, entrench a hierarchy of inequalities, with children and young people at the bottom. Ironically, the introduction of age discrimination legislation which excludes children will, in itself, discriminate on the basis of age. No other age group has had to justify why it should enjoy the protection of what is recognised as a fundamental human right. Protection from discrimination is a fundamental human right. None of the human rights treaties includes a minimum age requirement for protection from discrimination in the exercise of rights.

Children and young people in this jurisdiction are already covered with regard to accessing goods, facilities and services, including on the basis of disability, race, sex and sexual orientation. Given that children already enjoy that protection on other grounds, CLC does not believe that there is any evidential or legal justification for the exclusion of under-18s from the scope of age discrimination GFS legislation.

Protection against age discrimination already applies in respect of employment. We further note that the inclusion of children under other heads of discrimination has not led to excessive litigation by children.

We note article 14 of the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, provides the right to protection from discrimination in the enjoyment of all other convention rights. It does not place an age range on protection from discrimination. The convention rights apply to everyone, and article 14 covers "other status", which includes protection from discrimination on the basis of age.

There are a great number of examples of age discrimination being suffered by children and young people. They include refusal of entry to public services, difficulties in using public transport, 16- and 17-year-olds paying adult fares, problems in accessing accommodation and the use of high-frequency mosquito devices which are used to deter children from areas but which are heard by all children, including babies.

CLC provides a legal representation service for children and young people and their parents and carers, and we have experience of dealing with cases where age discrimination has been suffered by children in accessing goods, facilities and services. We employ a child and adolescent mental health solicitor who, in addition to providing free legal advice and assistance to children with mental health

needs, represents in 90% of applications to the mental health tribunal involving children. The scale of the needs for child and adolescent mental health services (CAMHS) in this jurisdiction is overwhelming. Over 20% of children suffer significant mental health problems before they reach the age of 18, and that comprises the most common form of disability in childhood.

Statistics relating to the allocation of resources to CAMHS in Northern Ireland do not reflect that need, and we believe that that points to age discrimination in resource allocation. In Northern Ireland, in 2012-13, only £19 million was allocated to CAMHS. That equates to only 7.9% of the total mental health expenditure for that period. That is despite the fact that children and young people under 18 represent nearly one quarter of the Northern Ireland population. Investment in child and adolescent mental health services is not proportionate to the size of the child population with mental health difficulties or the scale of the need within that population. There is no reasonable justification for that differential in spend.

There is no forensic inpatient paediatric psychiatric provision in Northern Ireland, and only limited inpatient adolescent facilities. Children continue to be able to access age-appropriate services, with a significant number of mentally ill children and young people routinely being detained in adult wards. We believe that that is a result of the limited capacity in the regional children's unit, which is a result of age discrimination in resource allocation.

CLC employs a barrister to provide free advice and representation at special educational needs tribunals. She has extensive experience of advocating for children and their parents, including children who are being denied access to services in education because of resources being allocated not on the needs of the child but on age criteria, such as occupational therapy not being provided to older children and one-to-one literacy support not being available to children. In some cases, the age of the child has been used to determine the allocation of resources, rather than the needs of the child being met. Children who need additional services to access education should have their access to support determined on the grounds of need, but the reality, in some cases, is that they cannot access vital services and are being treated less favourably because of their age.

We note that it is often parents who approach us for help so that their children can access vital services. It is our experience that parents are supportive of their children having protection from all forms of discrimination. They would be able to more easily access services if children were covered under GFS age discrimination legislation. We encourage greater involvement of parents and their advocates in this debate.

As the legislation will apply to service providers, there will be no scope for children to litigate against their parents under the legislation. Also, we envisage and support that it would be justifiable, under the legislation, that parental consent would be required in certain circumstances, as is the case currently. Various pieces of legislation vest the right to make decisions about children's lives with their parents. For instance, the right to choose which school a child attends is vested in the parent by virtue of the Education (Northern Ireland) Order 1997 under the open enrolment arrangements. The CLC considers that such pieces of legislation will be exceptions under the age discrimination GFS legislation and the current position will be retained.

Further, the draft EU Commission directive on the provision of goods and services 2008 proposes to ban discrimination on a number of grounds, including age. Discussion and negotiations are ongoing regarding the directive and there is no agreed date for its adoption yet. However, the draft directive clearly illustrates the intention of the EU Commission for the needs of children and young people to be protected in accessing goods, facilities and services. If that directive is adopted, the UK Government and its devolved Administrations will be required to extend their legal frameworks to address age discrimination in GFS to children and young people within two years of the directive's adoption.

The CLC is anxious to support OFMDFM in respect of any challenge it might have in taking forward the legislation. To assist, the CLC wishes to know the nature of those challenges. To date, we have been unable to ascertain any rational basis for the proposed exclusion of children on the grounds of age in the proposed age discrimination GFS legislation. The CLC has also been unable to ascertain, in the event of children being included in the legislation, what the unintended consequences that, OFMDFM fears, will impact adversely either on their best interests or on those of the parents or carers. Further, the CLC has not been informed of the details of assumed legislative and drafting challenges presented by the inclusion of children. The CLC will be very supportive of this Committee in seeking clarification and details from OFMDFM in respect of those assumed challenges.

Given the arguments that we have made for the inclusion of children and young people within the scope of the age discrimination GFS legislation, we believe that there is an imperative, in their best interests, to include children and young people within the scope of age discrimination GFS legislation.

Thank you for allowing us the time to present today.

The Chairperson: Thank you very much indeed. Can you tell me why you think there has been such a long delay in the legislation coming out of OFMDFM?

Ms P Kelly: I think that OFMDFM civil servants and administration would be in a better position to give details, but we have been following the debate quite closely, obviously, given our concern that children and young people should be included. I think that some people are concerned about the issues we have highlighted: the challenges legislatively, the unforeseen consequences, and especially the issue of undermining parental consent and rights. I think that they are genuinely struggling to address those issues, and are, maybe, having difficulty in doing so.

The Chairperson: And yet, the panel that addressed us previously seemed to have no difficulty, never mind little difficulty, in addressing those concerns.

Ms P Kelly: And I think that the Children's Law Centre would support the information that that panel gave to the Committee. What I am saying is that I think that the concerns are genuine. I understand the concern, but I think that there are potential resolutions to them, both legislatively and in, for example, the issue about parental rights being undermined. For example, if the exceptions in relation to determining what school a child should go to are retained, and I think it is very clear that they would be under the proposals —

The Chairperson: But, if I heard you correctly, Paddy, you were suggesting that the officials are struggling to address those concerns, whereas the panel did not have a difficulty. So, why should the officials not be able to address those concerns in the way the commissioners and the lawyer did?

Ms P Kelly: I think that I will defer to the officials and let them explain that.

The Chairperson: OK. You say that you are following the debate. Are you also pushing the Department to get on with it and get to the next vital stage of consulting?

Ms P Kelly: Yes, we have been engaging not just with the commissions that presented here today but with OFMDFM and the two parties in that Department. We have correspondence going back to September 2012 with officials in OFMDFM, from whom we sought clarification as to where the process was, and to whom we offered support on the issues we raised about legislative difficulties and unforeseen circumstances. We met special advisers in OFMDFM. Most recently, we met Sinn Féin, at its request, in relation to that issue. We have engaged with both commissions and have been party to a sectoral grouping that the two commissions have convened to address the issue and try to encourage OFMDFM to move forward. We are very open to continuing that engagement and giving any support that we can. We have provided case studies to OFMDFM and the commissions, some of which we have highlighted today, to help demonstrate the need for the legislation.

The Chairperson: Do you sense any tension between FM and DFM in terms of extending the discriminatory legislation to younger people?

Ms P Kelly: You would need to ask FM and DFM themselves in relation to that.

The Chairperson: I cannot ask them if they know whether you have sensed anything; I can only ask you if you have sensed any tension.

Ms P Kelly: Our job is to deal in facts and evidence. We have presented and engaged with them. We have made our case to them. I do not think it would be appropriate for me to comment in relation to the workings of OFMDFM.

Mr Moutray: Thank you for the presentation. What are your thoughts on the delay in getting a European directive on that issue?

Ms P Kelly: To be honest, Stephen, I do not have the detailed knowledge. Robin would probably be the man best placed for that, but, in my experience of watching the time frame of European directives coming forward, there does tend to be quite a prolonged process before they are introduced. Beyond that observation, and following the debate and discussion around it, I do not have any more insight into the actual reason.

Mr Moutray: There was a directive proposal in 2008, but it seems to have stalled. I am just wondering if you know anything about it.

Ms Natalie Whelehan (Children's Law Centre): Just that discussions and negotiations are ongoing and that that is the intention of the directive. There has been no date given for any decision, but I think it is fairly common to have delay in European directives being taken forward.

Mr Moutray: So, the Executive are not that far behind. *[Laughter.]*

The Chairperson: A marvellous defence.

Mr Attwood: Thank you for your evidence. It corroborates what your colleagues said in the earlier evidence session. First, has the UN made any comment on the failure to legislate in respect of young people, age discrimination and goods, facilities and services, given the international obligations that London and Belfast have? Has it made any comment that there is a matter that needs to get attended to? Secondly, when you were talking about the nature of the challenges, which you said were genuine, you also said that you had been, "Unable to identify any rational basis for concerns". I think that is right. I do not think there is any rational basis, so why are the concerns genuine?

Ms Whelehan: The UN committee, in its last examination of the UK Government in 2008, made recommendations around media representation of young people and the need for legislative reform to address the negative perception of young people in the media, but also recognised the opportunity based on the UK Government's report to the committee, which stated that they were going to bring forward their legislation under the Equality Act. They recognised that as an opportunity to mainstream children's rights into non-discrimination and anti-discrimination law, and actually urged the UK Government, as a signatory to the CRC, to take that forward on behalf of the UK. Obviously, that did not happen in GB in relation to the age GFS legislation. We are very alert to the fact that the UK Government are going to be examined again by the committee in 2016 — the date is possibly in July. We will be leading for the NGO sector in the NGO report, and this is an issue that we will raise.

Mr Attwood: NGOs representing younger people?

Ms Whelehan: Yes.

Mr Attwood: In Britain and Northern Ireland?

Ms Whelehan: We are going to take forward the Northern Ireland report for the NGOs. We are going to facilitate a group of young people to do their own report to the committee as well, and this is going to be an issue. As Paddy said in our presentation, one of the big issues raised with us is the negative portrayal of young people and how they believe they are viewed. For us, one of the big issues is that not to legislate in a way that includes children and young people sends a really negative message to them about how they are valued in society. I think that is one of the big concerns here.

The United Nations will examine the UK Government again in 2016 and will look at its concluding observations in 2008 and 2002. It will ask why those have not been acted upon. We have an opportunity now to provide a response, which, for one reason or another, GB did not take. We absolutely should.

Mr Attwood: Does the UN have any penalty that it can impose, beyond expressing concern, in the event that, in 2016, certainly in London, legislation will not be in place? It may be in place here, although the odds of that, as indicated earlier, are lengthening.

Ms Whelehan: There is no penalty as such, other than to express concern, make concluding observations and request that Governments take those issues more seriously.

It is interesting that an optional protocol has been taken forward, which will allow individual children to take complaints against individual member states. Obviously, it has not been ratified by the UK Government yet, so is not applicable here; young people under the age of 18 here cannot take complaints against a member state for breaches of the CRC. However, the protocol is gathering momentum, and lots of member states are ratifying it. We will call on the UK Government, as the signatory, to ratify. We are moving towards sanctions, but possibly not very heavy sanctions. The UK Government signed up to this. They have made a commitment to the CRC. We want to see that delivered. There is reference to the CRC in the Programme for Government and in all the strategies that impact on children's lives in Northern Ireland. This is the opportunity to give effect to that.

Mr Attwood: Paddy, you said that the concerns in OFMDFM have no rational basis, but you can understand them.

Ms P Kelly: I think that the concerns are genuinely motivated on the basis that most parents are acting in the best interests of their child. There is a concern that the legislation, maybe without drilling down into it, may appear to undermine parental rights and usurp parental decision-making. The concerns are well-motivated, in that they are about protecting children and young people and the role that parents have in nurturing and supporting their children and young people. However, they are not rational when you look at the evidence and the legislative potential for drafting, which obviously would contain exceptions to protect that decision-making for parents and, going forward, an objective justification when necessary in relation to parental consent. So, I think that the concerns are genuine and well-motivated, but that, when you begin to explore the technicalities around the drafting, which Robin has highlighted, those concerns can be assuaged. They can both sit together.

Mr Lyttle: Thank you very much for your presentation. There are some really useful and key points for us to take away from it. I am picking up that you think that the exclusion of under-18s could be incompatible with section 75 of the Northern Ireland Act, the UNCRC comments of October 2008, and seems to fly in the face of all human rights conventions relating to children and young people, and that all discrimination legislation appears to include some form of exemptions and can indeed include quite a lot. The conclusion, I suppose, is to get on with it.

Ms P Kelly: Like our colleagues earlier, we would like to see the legislation progress and come onto the statute book within the mandate, provided it covers children and young people without, as a generality, too many exceptions. We would welcome a consultation exercise, provided that the consultation document was genuine, included children and young people, and did not start off with the premise of excluding them. For example, there is no way that an initial consultation could go out on the premise that it excluded older people. The consultation needs to be open and genuine, starting on the premise that all ages are covered. It needs to be open for engagement across the board, from the financial sector to older people and from parents to everybody else. Of course, it needs to be child-friendly as well.

Ms Whelehan: Given the concerns raised about the potential impact on parental rights, I think that there is a need to involve parents more in the debate. What are the views of the organisations that speak on behalf of parents? A consultation is really the only way to start that discussion in a meaningful way, to see whether those concerns are the concerns of parents. The children are our clients, but, the majority of the time, it is parents who come to us to access services for their children. We have had absolutely no experience of parents saying they would be nervous about their rights being undermined by giving children rights. That has never been our experience. I would really like to hear more from parents.

Ms Fearon: Picking up on what you said earlier, Paddy, it is very true that no other age group has to demand or ask for equal rights from all the other age groups. That is an interesting point. I am sure that, from the good work that you are doing with kids and organisations day and daily, you have your own compelling evidence as to where children and young people are discriminated against on the basis of age, whether that is in health, social services or education.

I am wary that this could be a worrying step backwards in how we view children as rights bearers. Do you have any comments on that?

Ms P Kelly: We concur totally with that position. This is a fundamental human right that children should enjoy with all other citizens. There is no justification for excluding children and young people from this. They should not have to argue for inclusion, in the same way as older people should not have to argue for inclusion in age discrimination legislation and women and men should not have to argue for inclusion in sex discrimination legislation. Their exclusion flies in the face of the very concept of the universality of human rights.

Children are rights holders and are entitled to the protection of age discrimination legislation, and their inclusion will benefit all of us. It will certainly benefit children and young people, but it will also benefit parents. I echo what Natalie said: had age discrimination legislation been on the books, it would have been easier for us to help more children who had approached us to access services. We have to use other legislation that may not be as straightforward when advocating for children and young people. However, if there was age discrimination legislation that applied to spend on mental health services, that would begin to address the inequality that is so glaring when you look at the total deficit of spend on child and adolescent mental health services (CAMHS) here.

The Chairperson: You will have heard Michael Wardlow making the point that this, if we go ahead with it, will not be a panacea. One of the examples is that, although it would not be right and would contravene the legislation's provisions, a young person might still be put in an adult ward because of resource issues. How mature is the conversation and debate among young people as to the likely impact and the, if you like, imperfection of the legislation should it be passed? Is it recognised that it will not be a panacea?

Ms P Kelly: If there is a differential in spend based on age and that can be objectively justified, that will begin to address the issue. However, such differentials need to be justified. Nobody is saying that there is an infinite amount of money for health services, but there has to be equality in the decision-making on how money is spent. There is age discrimination in relation to the spend on mental health services that cannot be objectively justified. If the legislation goes through, it will strengthen the position from which to engage in the debate on the equality of spend in mental health.

The Chairperson: Putting that right could take time because there may need to be a reallocation of resources and an application of those resources over a period of time. That would be the case if you were building new wards in hospitals.

Ms P Kelly: That could be the case, but at least you would have a framework with the age discrimination legislation to engage in that debate.

The amount of spend is still very minimal, but have seen an increase of nearly 300% in that spend over a short period of time. So, where there is a focus on the issue and a commitment, there can be significant change over a short period of time. Age discrimination and GFS legislation would help focus minds and bring about that change more quickly.

The Chairperson: Do young people understand that it will not be a click-your-fingers panacea and that everything will not change overnight?

Ms P Kelly: In our experience, young people are exceedingly pragmatic and realistic, maybe more so than adults sometimes.

Ms Whelehan: From the provision of services point of view, to echo what Robin Allen said, we have major concerns about the allocation of resources being based on arbitrary age limits as opposed to individual need. That is where we are coming from: we want to see resources allocated to meet individual needs to progress the lives of children and young people and to achieve better outcomes. That is what we hope this legislation will do. It may take time, and it certainly will not be the answer to all of our problems, but it will be a step in the right direction.

The Chairperson: In your address, Paddy, you said that you felt that the tone of the media towards young people was, by and large, negative. Does that cover radio, television, local daily papers and local weekly papers?

Ms P Kelly: Yes.

The Chairperson: Have you taken steps to address that?

Ms P Kelly: We argued, for example, for the BBC to be designated for the purposes of section 75. That would have made it more difficult for it to engage in some of the rhetoric in which it has engaged in relation to children and young people. Unfortunately, we were unsuccessful in that instance. We also engaged with the previous chief commissioner in the Equality Commission to progress that matter.

We have been raising the issue of age generally, which has been widely recognised. The Youth Justice Review, for example, referenced the demonisation of children and young people. So, it is ongoing work that we have been working on with the body politic through particular reviews and by trying to engage with those who may be able to hold the media to account. We have engaged directly with some of your previous colleagues in the media. Regrettably, that was not very successful, because it is difficult to hold them to account.

The Chairperson: That is interesting. Paddy and Natalie, thank you very much.