



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: Commissioner for Children and Young
People; Commissioner for Older People; Equality
Commission for Northern Ireland; Mr Robin Allen QC

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 Alex Maskey
Ms Bronwyn McGahan
Mr Stephen Moutray

Witnesses:

Mr Robin Allen QC	Cloisters Chambers
Dr Michael Wardlow	Equality Commission for Northern Ireland
Mrs Patricia Lewsley-Mooney	Northern Ireland Commissioner for Children and Young People
Ms Emer Boyle	Office of the Commissioner for Older People

The Chairperson: We will now receive a briefing on age discrimination legislation related to goods and services from the Northern Ireland Commissioner for Children and Young People, the Equality Commission and the Commissioner for Older People. Commitment 38 in the Programme for Government 2011-15 is:

"extend age discrimination legislation to the provision of goods, facilities and services".

For the record, "GFS" will be our shorthand for goods, facilities and services.

The most recent departmental correspondence is dated 18 February, and it advises that Ministers are still considering aspects of the legislation and it would be premature for officials to appear before the Committee at this time. However, officials will discuss the potential implications of age GFS legislation with other Departments over the next few weeks. In the circumstances, it is proposed that the appearance of officials be deferred until discussions with Departments have been completed, which is likely to be towards the end of April 2014.

The panel also includes Mr Robin Allen QC, who is head of Cloisters in London and specialises in employment, equality, discrimination, human rights, public law and local authority work. Cloisters was commissioned by the Northern Ireland Commissioner for Children and Young People (NICCY) and the Equality Commission to provide legal advice as part of their project, which they entitled 'Strengthening

Protection for Children and Young People against Discrimination outside of the Workplace — Making the Case for Reform'.

We welcome to the Committee Patricia Lewsley-Mooney, Commissioner for Children and Young People; Michael Wardlow, Chief Commissioner of the Equality Commission; Emer Boyle, head of legal policy at the Office of the Commissioner for Older People; and Mr Robin Allen QC. You are all very welcome. Thank you very much indeed for attending. We would like to move to opening remarks. Michael, will you begin?

Dr Michael Wardlow (Equality Commission for Northern Ireland): Yes. Thanks very much for this opportunity. We, the three commissions, have come together today to represent a view on the inclusion of children and young people in the legislation. I think that this is the first formal occasion, certainly in my two years in post, that the three commissions have come together to make a point about legislation at this level. That is because, although we have colleagues who represent sectors, we are representing the broad equality legislation, so we are not here simply to represent those sectors. We are here because we believe that this is an opportunity to address the one gap where there are grounds on which there could still be discrimination, and that is age.

We are simply going to take three minutes each because, you will be relieved to know, we are not going to go through the briefings you have in detail. Our presentation is simply at the high level. Robin will speak to the legal issues that were raised in his very detailed work with his colleague Dee. I think that you have a summary of that, so you are aware of the background to it, and, hopefully, Robin will address some of those issues. Claire Keatinge, the Commissioner for Older People, is not in the country. We had hoped that we would have Evelyn Hoy, the chief executive, but she has been taken ill and is in hospital. Emer has very gallantly stepped in and is taking forward the presentation on behalf of the Commissioner for Older People. I thank her very much for doing that.

The Chairperson: Yes, thank you.

Dr Wardlow: I just want to make three or four brief points. The first thing to say is that human rights are universal. Therefore, fundamentally, equality applies to all ages. We do not see that there is any precedent to say, "Let us have legislation with a cut-off point at 18", any more than it would be acceptable in any other form of legislation to have an age restriction. So, why should there be an age restriction on goods, facilities and services? It ties into European law and the other issues in our presentation.

We recognise that children and young people are in stages of development. Between the ages of 10 and 21, there are about 30 different stages that you pass through, none of which say, "I am an adult from here on in." We recognise that. So, why pick 18 as a transition age? Whether it is 16 or 18, the question for us is that this should be cradle to grave. Children and young people are protected, but we argue that special protection is better than no protection.

The commitment that the Executive and Assembly have is to improving the lives and the lot of young people. We believe that this plays into that. We have made cases, and there are specifics around how, in some cases, children and young people receive poor provision in health and social care and poor provision in education, and we can fill those out if that is necessary. However, more than that, this says something to children and young people about who they are and what they are. They are not the future: they are here; they are the present. We are not advocating for them or standing with them. We are actually saying that this is about building their confidence, saying that they matter and that we are concerned about their well-being. By offering protection that only starts at 18, there is a mixed message going out.

Although section 75 does not apply to the Assembly, it helps to dictate the parameters within which public bodies should take decisions about how they follow policy implementation. In other words, it is about good practice. We suggest, therefore, that, if you are looking at section 75 in its broadest if not legalistic sense, to exclude children and young people when it is one of the protected groups — age — seems to set that apart.

There are some concerns that we are aware of, and Robin will address some of those, but I will say from the outset that the legislation, if it goes through, will not set children against parents. It will not see children divorcing parents or children taking cases to court. This is about empowering parents and families, and there will be more of that from Patricia and Robin. People have asked, "What about parity? What about us taking this on?" If you followed the debate in GB, there was not a lot of time for

discussing the issue about children and young people. There was an ageing population. By 2018, older people will outnumber younger people. That is not the case here. We have one of the youngest populations in Europe.

The second thing is the power of the grey pound. There was a very strong argument about money and spending power. Why should money be something that dictates whether people receive goods, facilities and services? We think that there is a case here. Australia, Belgium and Canada have gone before us on this, and there has not been a plethora of cases ending up in court. In fact, to the contrary, it could be argued that this strengthens the nuclear family unit.

The big one is the law of unintended consequence. This legislation will not overrule, override, set aside or be in contradistinction to the existing protections. If we are able to have existing protections, that means that we have the intelligence and ability to do it in the future. This will come alongside it, but it should be able to take a child's age into account only when there is an objective reason to do so. For example, a child can buy moped insurance at 16, ordinary insurance at 17 and can take on travel insurance on his or her own right. We are not saying that they should be able to walk in and get alcohol at 14 or pick up a gun. I know that those are very emotive things. We can build in safeguards, and we already have safeguards. None of those will be set aside. There are some issues that particularly Patricia and others might raise about issues that are specific to young people that are around the age, whether it is the use of mosquito devices or asking kids to leave their bags outside a supermarket to allow them to gain entrance. Those are issues that would be taken into consideration. Where is the evidence base for that to happen? Is it simply because of age?

Finally, this is not going to be the panacea. This will not mean that all children have good healthcare or education. This is not about that. We have never said that that is the case, but it does mean that age cannot be the discriminatory factor without an evidential base. It will no longer be enough to say, "You are too young to have that protection." We think that, in a modern society, that is not an acceptable defence. I will ask my colleague Patricia to pick up from here, followed by Emer. Then we will pass over to Robin.

Mrs Patricia Lewsley-Mooney (Northern Ireland Commissioner for Children and Young People):

I begin by thanking the Committee for its invitation to hear evidence from me. Initially, I tentatively welcomed the Northern Ireland Executive Programme for Government commitment to develop and consult on proposals to extend age discrimination to cover the provision of goods, facilities and services. I welcomed it on the basis that I believed it would deliver protection and, therefore, greater equality for people of all ages.

I understood that children and young people would receive the benefit of that protection, which is in accordance with the Government's obligations under the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC is clear on this point, and article 2 contains one of the fundamental principles of the convention, namely non-discrimination. So, I am extremely concerned that children and young people may now be excluded from the protections that the legislation could offer and that, if they are discriminated against on the basis of age, they will not be able to seek an effective remedy under the law.

Including children and young people in the law would send a strong message that this Assembly and this Government actually value them as citizens. The UNCRC committee previously expressed concern at the general climate of intolerance towards and the negative stereotyping of our children and young people throughout the UK. Excluding children and young people from this proposed law will do nothing to dispel that view.

There is very clear and compelling evidence that children and young people are currently subject to less favourable treatment and harassment because of their age when accessing goods, facilities and services. I can give examples of that. The issue of children being accommodated on adult mental health wards is one that you will no doubt be aware of. I am aware that children and young people continue to be accommodated on adult mental health wards, and although I welcome the work that is being done to decrease those admissions, the problem still persists. Children and young people, especially those who have additional vulnerabilities due to mental ill health, require additional protection, not no protection. There is a clear parallel between the experiences of children and young people and those of older people with additional vulnerabilities.

Complaints to my office highlight that children and young people feel that they are regularly treated unfairly because of their age when accessing shops, and they consider that that unfair treatment is based on negative and prejudicial attitudes towards them because of their age. The Access Research

Knowledge (ARK) Young Life and Times survey in 2010 revealed that 83% of young people believed that they were judged negatively simply because they were young people.

I will outline two recent complaints to our office. A 16-year-old who is a member of a local gym contacted us because he was told that under-18s were not allowed in the gym between 5.00 pm and 7.30 pm so that adults coming from work could use the facilities. He pays the same fee as the adults but he believes that his use of the gym has been restricted without good reason whereas adults' time has not. The other complaint was from a 16-year-old who felt that she had been treated poorly in a local shopping centre because of her age. She had saved up money to buy a present for her mother in a jewellery shop, but, when she asked to look at some of the goods, the shop staff were rude to her. She felt that, because of her age, they assumed that she could not afford to buy any of the items. She was told to leave the shop and was escorted off the premises by a security guard. If the law were extended to include under-18s, the actions of those services providers would, in the absence of justification, be likely to be unlawful. If under-18s are not included, young people would have no way of challenging those service providers.

I am aware that a number of MLAs have raised concerns that including children and young people in this law will impinge, as Michael said, on the rights of parents. It will not. Giving children and young people protection under the proposed law will benefit children and young people, their parents, their guardians and their carers. Far from diluting parental authority, the law would enhance a parent's ability to ensure that their children receive appropriate services on a non-discriminatory basis.

Children and young people already have rights against unlawful discrimination when accessing goods and services on other equality grounds. Parents exercise those rights on behalf of those children to ensure that their needs are met by service providers. Parents regularly use the rights that disabled children have under disability legislation to ensure that reasonable adjustments, for instance, are made by schools for their children or to ensure that appropriate provision is made for their child's special educational needs. Concerns have been raised in the Assembly that the legislation could mean that parents may become the subject of litigation by their children and that the requirement for parental consent would be undermined. Again, that is not the case. The law would not allow children to litigate against their parents: only service providers can be litigated against. Recognising children and young people under this legislation will not undermine parental controls or authority or undermine the requirement for parental consent. Including children and young people in the extension of this law would be consistent with the Executive's commitments under their current children and young people strategy, which is designed to improve outcomes for all children and young people. I believe that our recommendations are also in keeping with the Executive's proposals to improve the lives of children and young people through the Delivering Social Change framework and are consistent with the Together: Building a United Community strategy, wherein children and young people were named as a key priority.

Including children and young people in this legislation will improve outcomes for them. It will improve their health outcomes by ensuring greater access to age-appropriate health and social care services, including mental health services. It will build their self-esteem and confidence, and it will help to build a society that respects our children and young people's rights. It will enhance their ability to live more independently through removing unjustifiable barriers to accessing financial services and accommodation.

Ms Emer Boyle (Office of the Commissioner for Older People): Commissioner Wardlow already spoke about older people in his presentation, and I wish to affirm that the Commissioner for Older People is wholly in support of goods, facilities and services regulations that afford protection to all age groups, including children and young people. As well as this legislation being a Programme for Government commitment for the Department, the recent consultation on the active ageing strategy and its associated action plan affirms the Department's goal to bring protection from discrimination on the basis of age into law. The commissioner is concerned that, unless agreement can be reached on the scope of these regulations and the formal consideration can be commenced, this Assembly mandate will run out of time to bring them forward. The commissioner understands that officials in OFMDFM have been tasked with the ongoing development of drafting regulations, and she welcomes that activity so that, when agreement on the scope of the regulations is reached, the work will be well advanced.

Older people make complaints to the commissioner that they are or perceive themselves to be treated unfairly on the basis of their age. The types of complaints received by the commissioner's office relate to a wide range of issues including pensions, the inability of older people to secure insurance cover and the removal of specific types of social care on the basis of a person's age. Research across

Europe suggests that discrimination on the basis of age is increasingly widespread, including in services such as finance, insurance, health services, mortgages and loans.

It was recently reported in research carried out by Queen's University Belfast that older people suffering from cancer are receiving less favourable treatment for the disease on the basis of their age. This type of discrimination is inexcusable. What is required is a strong legislative framework with clear, enforceable rights for older people and, indeed, people of any age. The commissioner believes that older people must see legal protection from age discrimination delivered through this Programme for Government.

The commissioner is aware of the concerns of some parties that allowing the full continuum of ageing to be represented may interfere with or in some way diminish parental authority. In fact, as you have heard from the other commissioners, this is not the case. Parents are not service providers in the sense of this legislation, and their behaviour and authority would not be adversely affected by the provision of protection from discrimination by these regulations. It is much more likely that parents will use the regulations to strengthen the argument for specific, age-appropriate treatment for their child or young person from public authorities and private service providers. The legislation can provide for differential treatment on the basis that it can be objectively justified, and, in other regulations of this type, this has proven very effective.

Although the Commissioner for Older People's statutory duty is limited to speaking on behalf of issues relating to people over the age of 60, the commissioner is concerned that legislation that seeks only to afford adults with specific protections from discrimination cannot, by its very nature, be considered to be equality legislation if it also ignores the rights of the children and grandchildren of those adults.

Throughout the commissioner's recent programme of engagement directly with older people, she has not encountered any older people specifically calling for protection from discrimination to be limited to older people, nor of any older person calling for children and young people to be excluded from the legislation. The commissioner is concerned by the risk of critical issues such as the scope and application of this legislation being ultimately decided through potentially avoidable and time-consuming legal challenge. It is, surely, preferable for the legislature to decide and define the scope of the regulations at the outset.

The Commissioner for Older People has been heartened by the evidence in Mr Allen's opinion that, in countries where legislative protection against discrimination on goods, facilities and services has been extended to children and young people, this has not resulted in the unintended or undesirable consequences that those resisting this legislation fear. It has not resulted in excessive litigation either. In fact, a survey of MLAs that was undertaken in December 2013 by a Stratagem ComRes MLA research panel suggests that there is considerable support for legislation protecting people of all ages from discrimination on the basis of their age. It showed that 79% of MLAs surveyed believed that GFS legislation should apply to people of all ages. That was broken down to be 85% of nationalist MLAs and 75% of unionist MLAs. In light of that evidence, all three equality bodies now call for the parties to allow a free vote in any forthcoming debates and decisions regarding the legislation. The commissioner calls on the Ministers and the legislative Assembly to adopt best practice and to legislate to the highest international standard by including everyone in the scope of the proposed regulations, regardless of their age.

Dr Wardlow: That is our short and, hopefully, to the point presentation. We are speaking with one voice. Hopefully, if you can indulge us, Robin will be allowed to focus on some of the legal issues and maybe offer some matters to think about on how we might deal with this.

Mr Robin Allen (Cloisters Chambers): Chairman and members of the Committee, thank you very much for allowing me to make a contribution on this matter. As you have heard, me and a junior barrister in my set of chambers, Dee Masters BL, were retained by the Equality Commission for Northern Ireland (ECNI) and NICCY to draft a legal opinion to set out how this type of legislation might work and, indeed, to explore why it should be considered. We were delighted to do that, and now in the public domain is our opinion, which is long and very detailed. I will say a word or two more about that in a moment.

I would like, if I may and without, I hope, sounding like I am blowing my trumpet, to tell you a little about my own background, because what I hope I can add to this debate is some technical expertise in this area of law. I have worked with all of the UK equality commissions for getting on for 40 years. I first started working with the Commission for Racial Equality in the mid 1970s. I worked with the Fair Employment Commission (FEC) when it was in existence in Northern Ireland and the Equal

Opportunities Commission (EOC) for Northern Ireland, as well as, of course, the ECNI for some 20 years. I was involved by the European Commission to advise it on the drafting of the two directives that are so important: the race directive and the framework directive, which deals with sexual orientation, religion and belief, disability discrimination, and so on. I gave the Commission initial advice on how those directives might be drafted. I should add to that that I was retained by the Equality Commission in London to advise the Government and the commission about the text of the Equality Act 2010, which is the GB legislation in the field of equality.

Therefore, I know a little bit about how equality legislation can be made to work, what the difficulties can be, making sure that legislation is aptly predictive, how it is effective and how it is something that advances society and does not retard it. Working with Dee, we have tried to bring that experience to bear on this problem. I want, if I may, to provide one short piece of focus. Let me ask this rhetorical question: who around the room would permit, in a society in which they were a politician, there to be discrimination between men and women, boys and girls, in the provision of goods, facilities and services? Would you permit a society in which the provider of services could say, "We'll give it to women and girls but not boys"? It is a laughable proposition; that is where our society is. What we have now is a law in GB that permits people to complain because they are not being given goods, facilities and services if they are over the age of 18, but people cannot complain about that if they are under 18. There is a total lack of logic in that. It is a provision that, as written in GB, is itself discriminatory. You need not take just my word on that. The parliamentary Joint Committee on Human Rights said exactly the same thing, and we have pointed that out in our written opinion. So, as a matter of straight logic, to exclude under-18s from a law preventing discrimination on the grounds of age is mad. It is not logical. Nobody could stand up in a debate where logic was the test and say that it was a good thing to do. It does not make any kind of sense.

On the other hand, I recognise that new equality laws have to march hand in hand with the way in which society is developing. That is really important. A law that tries to get ahead of itself will not garner support from a community and will not be an effective law. We have tried to address that point specifically in our written opinion. We have done that by saying, "Look, there are other countries which have these laws against age discrimination that work both above and below the age of 18." They exist in Canada, Australia and Belgium. Those are three very different societies, with quite different legal traditions — a civil law country and common law countries. Those laws work. There is no evidence that they have caused difficulties. That is because the lawmakers in those countries have engaged with some of the issues that no doubt will be worrying politicians in Northern Ireland when they listen to the proposals.

I will say a word or two about those issues. Nobody is proposing, and I am certainly not proposing, legislation that tears up the wisdom of legislators on the need to address the vulnerabilities of young people. Young people are vulnerable. Those vulnerabilities are addressed in law. For example, you cannot get a provisional driving licence until you are 17, you cannot get firearms until a certain age, you cannot have sexual relations until you are 16 and so on. Those laws are a given, and it is not proposed that those should be changed. The purpose of the law being suggested to you is to fill the gaps and say that, where there is not specific provision, there is a general proposition that those that deliver goods, facilities and services, whether in education, housing, commercial services or health, do not give less favourable treatment just because somebody is of a particular age. You may, and we recognise this, give positive action because you think that somebody has a particular positive need, but you do not give less favourable action just because somebody is a particular age, unless there is an objective justification. We recognise, and have said in our written opinion, that society moves on and that we may need to create new exceptions. We have suggested that there should be a power in the legislation to anticipate that, in the future, new exceptions will be necessary.

However, the starting point is to take society as it is and fill those gaps to ensure that, just as you cannot discriminate between a boy and a girl in the provision of healthcare, you cannot discriminate just because of age. You cannot currently discriminate on grounds of political affiliation of their parents in the delivery of healthcare or education. You cannot do that; equally, you should not be able to do it on grounds of age. Pure logic: just filling those gaps.

I know, because I have been involved in some of these discussions, that these suggestions take a little bit of time to get used to. That is common when anybody talks about developing equality law, but it is completely natural. There are some myths going on that I have heard discussed — suggestions that this would allow children to divorce their parents. This is truly a myth; it has got nothing to do with that at all. Parents do not provide goods, facilities and services to their children, and they do not engage with this law. Anybody who thinks that that is what this is about needs to leave this room in due course to know that it is not; that is not what we are talking about.

One of the really beneficial outcomes of equality law is that it truly dignifies people. Sometimes, people choke at the idea of giving rights to people, and you can put that kind of language to one side and see this as treating people as individuals. It is about human dignity and understanding what it is that makes a person the particular person who is in front of you. If they have a need for a particular healthcare provision, you do not deny it just because they are too old. You do not, for simply administrative reasons, say "You will have to wait another year before you can have a benefit that you really need now in a particular delivery of service."

One of the real reasons for actually praising the three commissions for bringing this proposal forward to you is the outcomes that you can expect by getting more. That is an important point. I know from talking to the three commissions that they want to engage with you politically to make sure that those myths are understood to be myths, are put to one side and are not a cause for worry. Every politician looks over their shoulder at those who have elected them, and if those myths exist, they need to have their answers for them. However, the answers really do exist, and they should not be a worry for you. It is equally important to recognise that all too often — we have heard some of the examples of this in, for instance, the delivery of healthcare — there are assumptions that you cannot look at the individual but you can simply look at their date of birth and, on the back of that, decide you will do this or that. appropriate treatment for individuals in healthcare provision and in education and, indeed, more general equal treatment in service delivery.

Can I bring us back to the point about logic?

The Chairperson: I am sorry to interrupt, Mr Allen, but we are keen to question you.

Mr Allen: Fine. Let me draw to an end at this point and say that I am more than happy to deal with technical questions about this and to field them. You will find much of the detail of that in the opinion, which is available to you.

The Chairperson: Yes; members have that in their packs. Thank you to all of you for your presentations. Before we get into the detail, of which there is much to explore, we should look at the legislation first of all. There are two issues, I believe; first the Programme for Government commitment, and secondly the extent to which that commitment has been advanced as per the timeline set out in the Programme for Government. Under priority 2, the key phrase is

"Extend age discrimination legislation to the provision of goods, facilities and services".

There is a question mark as to whether that is for older people or for everybody; that is another discussion.

The second issue, which I do not think is unrelated, is the speed at which that is coming forward. The milestone for financial year 2012-13 was to develop and consult on the proposals. For the year just gone, 2013-14, it was to progress legislation through the Assembly. For the current year, it is to complete the legislation. When the Committee was last updated, which was recently, we were told that there was an expectation or a desire to bring forward legislation by June. However, if we assume that they will allow for a full three-month consultation, that cannot possibly happen, even if they start today. According to the OFMDFM website, they are still scoping the consultation. So, can anybody update the Committee as to their understanding of the timeline?

Dr Wardlow: I think it is fair to say that it was never our understanding that the 2011 commitment would be restricted to 18-plus. That has happened post-event. There may have been a political disagreement on that one. From our end, we had seen what it said as what it said on the tin. So, it was about age discrimination right across. In respect of tracking this, all three of us have been diligent in trying to say that young people who would have been excluded are no longer going to be excluded because they are now 18, because when this started they were 16.

There is a sense that time is against us, but we have to get it right. Time is not the only thing, but it is important. We are saying that we need to get it right. My concern is that, almost three years on, some of the myths still exist. Busting those myths is important, but that is not within our remit and gift. It is within the gift of politicians and those in civil society. There is something Robin said about how we bust the myths. As long as the myths perpetuate, people can stand behind them. The MLA survey is very strong — it is 70%-plus of MLAs. So it seems to me that there is cover in the Assembly. Our experience in scoping this is that people would like this to happen.

In terms of where it sits, we understood that it might have been ready to go out for consultation towards the tail end of last year. However, will there now be two consultations with the over- and under-18s, or will there be one with options? To be frank, I am really sorry, but we do not know.

The Chairperson: So what do you believe has happened since the Programme for Government commitment was published?

Mrs Lewsley-Mooney: To be honest, I think that there has been a lot of talking but not a lot of doing.

The Chairperson: Talking about what?

Mrs Lewsley-Mooney: Talking about excluding or including, or the whole issue around the legislation. My understanding from the conversations that I have had is that when we talked about GFS, as Michael said, there was never any talk about it being only for over-18s. From talking to older people, I know that that was not their interpretation either, even though they may have been very vocal about ensuring that it happens. It was in the Programme for Government, and they welcomed it, as we did. We assumed that it would cover all ages. It is only as it comes up to the period when we thought that the consultation was going to happen that all these issues have started to arise. As Michael said, we have been very vocal when meeting all kinds of people, the Department and the junior Ministers to make it quite clear that collectively, as bodies, we want to see children and young people included in the legislation.

Dr Wardlow: Positively, we are not finding that any party is saying that young people should not be included. What we are hearing is how it is done and when it is done. Those are two different things. We could argue forever about the forensics of this and all the examples, and everybody could nod and say, "Isn't that great?" However, we are faced with this question: is now the right time to do it for everyone, or are we somehow saying that we are going to take this forward sequentially? I cannot see the logic in the sequential approach, because you would not say, "We will include men in anti-discrimination legislation, and if it works, we will include women next year." I am being flippant in one sense, but I am saying that there is no logic in this. If it is about building trust, we are three years on, so what more trust do we have to build on this one? What we are saying is that the forensic arguments have been advanced. This is a question of, "Is this the right thing to do?", and we are saying that it is. Is this the right time? We believe that it is.

Mrs Lewsley-Mooney: Children and young people have said that, if the roles were reversed and they were asked to support legislation that excluded over-18s, they would not stand for it either; they would stand strong for inclusion.

The Chairperson: Somebody used the expression "myth-busting". I think that that is important, Michael. There was one thing in your presentation that puzzled me. You said, "We are not advocating for young people. We are standing with them." However, the legislative basis for Patricia Lewsley-Mooney's position is:

"to safeguard and promote the rights and best interests of children and young persons."

The same would apply to the Commissioner for Older People legislation. So, actually, you should be advocating, not standing.

Dr Wardlow: Sorry, the difference is that I am not here simply talking on behalf of young people. We are advocating alongside young people. That is the point. For so often, adults talked on behalf of young people. Young people's voices are now being heard, so the evidence base that I bring to you is not simply my saying this; that is the point. We are saying this on behalf of but alongside, as opposed to simply picking this out of the air because it is in an operational plan or business case somewhere. We are united in this; it is evidence-based.

The Chairperson: Emer, you made some powerful testimony, not least about medical treatment for older people. Are you basing this entirely on principle, or do you make an allowance at any point for pragmatism and practicalities, such as the fact that the National Health Service's resources, as we hear daily, are finite?

Ms E Boyle: I would like to take that question back to the commissioner to get her view, but it would be both. I could justify an answer that would be a pragmatic approach, but the point of our being here

today with the other commissioners is to stand together and really try to help gain political consensus on legislating from cradle to grave.

The Chairperson: I ask because I get the point, which I think Patricia made, about, say, a young person in hospital for a protracted period in an adult ward. I made a television programme on a cancer charity, and one of the people that we featured was a young woman who had to spend time on an adult ward, which was really depressing for her. There was no peer for her to talk to. However, there is a question of resource, so I ask the question: is it principle or just because you made reference to objective justification?

Mr Allen: I would really like to contribute on this point, if I may.

The Chairperson: Sure.

Mr Allen: The interface between equality law and resources is not virgin territory at all; it really is not. It is not virgin territory in the context of age, either. I have personally litigated it in the Supreme Court as an issue. The rule that the Supreme Court has set is clear and simple. What you cannot do, consistently with human rights principles, is to say that we cannot give equal treatment simply on the grounds of cost. It says that politicians and administrators can set budgets because there is only a limited amount of money for education, for health, for a sector in health. However, once you have set that budget, the rule should be to have equality in the distribution of it. That does not mean that you give exactly the same amount to each age group, but you must have a justification for why you give it to different people. You can divide up that budget according to equality principles.

Now, listen: if you pass a law that starts at 18, you will have that rule applied between 18 and when people die. What is the logic in not having that rule from nought to 18? I cannot see it. There is not any. The budget is going to be the same. The same rules for equal treatment in the distribution of resources should be applied to the whole age range. That is the position that I put forward.

The Chairperson: OK. That is useful. Just so I understand, Robin, let me take it a little further to an extreme example. Let us say my 19-year-old son, OK, so 19 —

Mr Allen: Just over the mark.

The Chairperson: He is over the mark, and I am beyond 19. We are both involved in a very serious accident, and medical circumstances mean that doctors can save only one of us. I would want my son saved, as I have had a life and he has not. Is that in any way discriminatory?

Mr Allen: Well, if you said, "I give my place up to my son", of course it would not be discriminatory, because you would not be a victim.

The Chairperson: I have not had the opportunity to say that, because this has happened. It is a car crash.

Mr Allen: But realistically it works in a different way, does it not? Both of you would be taken to the hospital — to the infirmary. The doctors would then have to decide what treatment is necessary for both of you. They should not have to make a decision on the basis of age in relation to them. The decision should be, "What can we do with the money available?" That is the way that it should be dealt with. Of course, either of you might be able to say, "I defer to my son" or "I defer to my father"; that is a question of choice. Assuming that both of you have lost your power of speech for one reason or another, the doctor does not make that kind of division.

If I may say so, this is not new territory. Doctors, at present, are held up to challenge in relation to "do not resuscitate" notices; they are. There is established case law for how that is to be dealt with on a non-age-discriminatory basis.

The Chairperson: You used the expression "objective justification".

Mr Allen: That is right.

The Chairperson: Is that well defined?

Mr Allen: Absolutely, yes. This is standard equality case law. Essentially, what it means is that you have to have a legitimate aim, know what you are doing and why you are doing it, and then take steps towards that aim that are truly proportionate to it. Those steps have to be appropriate and reasonably necessary to achieve that aim. That is what an objective justification is.

The Chairperson: Well —

Mr Allen: If I may say so, that happens all the time. It has been in process, that test, for many years now. Sorry, I interrupted you, Chairman; I did not mean to.

The Chairperson: No, you are OK. Less favourable treatment is not acceptable unless there is an objective justification.

Mr Allen: Yes.

Dr Wardlow: May I give the example of free eye tests? The Government could say, "We will give free eye tests to over-60s and free spectacles to under-sixes." Provided that that went through the normal due process of law, it would not be set against because of some equality legislation on age. You can legislate for specific government intention as long as they have an intent and objective and set out with an appropriate end. You could not say all left-handed people under six. You need to have a reason for it and be able to justify that in your government policy. It already exists.

Mr Allen: A good example of this is chlamydia testing. Chlamydia is a sexually transmitted disease. You would not want to have a policy for chlamydia testing at an age when there is no real expectation of young people having it. However, as soon as you think that they might be sexually active, you will want to have a policy that provides for that. It would be objectively justified to do that. Your aim is to identify, treat and get rid of this sexually transmitted disease, and so on. An age-based rule could be objectively justified in a context like that. That is a very good example of it.

The Chairperson: Before I open it up, I have one more, which again falls to you, Robin. You said that parents do not provide GFS to children. What if a parent said to you, "I give my child an allowance" — pocket money, to a certain age group?

Mr Allen: That would ordinarily be a gift, would it not? GFS is concerned with the provision of social goods, such as housing and healthcare and so on, and services such as financial services, healthcare services, education services and, classically, commercial services. That is what is normally held to be in scope with GFS. I know of no case at all in which, for instance, a child is suing the parent and saying, "You have given the boys more money than the girls." It does not exist in the sex context.

The Chairperson: What about stopping the allowance?

Mr Allen: I know of no case of that kind. I do not think that the courts would entertain it under current equality laws.

The Chairperson: I live in a three-bedroom house. I am married and have two children who have a separate bedroom each. My wife becomes pregnant, and I say to one child, "You are going to have to share."

Mr Allen: I would not see that as being in scope of the legislation at all.

Dr Wardlow: That is not commercial.

Mrs Lewsley-Mooney: That is not a service. It is circumstances. It is up to the family to make a decision and a choice on that.

The Chairperson: And it is not contestable.

Mr Allen: No. There are other exceptions in equality law; historically there have been. They have been, to some extent, contentious about what happens within households. When the race discrimination laws were first introduced, people thought that they would be forced to provide bed and breakfast or have paying guests, and they did not like people of colour to be there, and there were

exceptions in relation to that. I am not suggesting that you need to do that, but, essentially, there is private space and there is public space. This law is not concerned with the private space in the household.

Ms McGahan: Thank you for your presentations. I am the mother of a 17-year-old and, for our part, we want to see the legislation cover everything. We are prepared to work with all political parties and stakeholders to deal with the myths that surround this. What assurances can you give those who feel that the legislation could undermine parental rights?

Mr Allen: I hope that what I have just said may do that, in part. Perhaps I can deal with it in this way. You are governed by the European Convention on Human Rights, which contains article 8, on the protection of private and family life. This legislation is not concerned with interfering in family life; we are talking about a different legal space. Parents have to make decisions about how they treat their children when they have parental responsibility for them: that is the norm for one parent, another parent or both, depending on whether it is a nuclear family. That is not the legal space that we are engaging with. We are concerned with what happens outside the front door, to put it bluntly.

Mrs Lewsley-Mooney: In my presentation I said that this legislation does not take away from parental rights. It enhances parents' rights. It is about giving them more tools in their box for when they have to argue for services that their children need but are not getting. It enhances parents' rights, for want of a better word, by giving children their rights. Parents can use this legislation to make that argument. For instance, say a child is escorted off a shopping centre. When the parent phones up and asks why that was done to their child, there may be only a mediocre apology. However, if this legislation were in place, there would be the opportunity to make those service providers sit up, take notice and realise that they cannot treat young people in that way.

Dr Wardlow: It also obtains in special educational needs. We have a responsibility if someone feels that their child is not being treated appropriately in the educational sphere. Children do not come to us; parents come to us. If your child is badly treated, you, as a caregiver — parent or otherwise — would want to be the advocate for them and stand with them.

Myths exist: children will run amok with credit cards and kids will sue their parents. We are saying that, in the three jurisdictions where this law exists, that has not happened. This legislation complements, rather than challenges, existing legislation because of the protections afforded by the international treaties and the limitations of this law. It will empower a family because, at present, a parent has no redress. An 18-year-old has redress, but a 17-year-old brother or sister may not have the same redress if the same thing happened to them. That seems bizarre.

Mrs Lewsley-Mooney: In fact, when parents come to us about those issues, they are taken aback that children do not have such protection.

Mr Allen: May I add my twopence? In the field of equality law, it is a well-trodden path to have a code of practice that works alongside the legislation. There is absolutely no reason at all why, if the Assembly were to adopt this legislation, it could not say expressly that it expects something like what you have just put forward to be put in the code of practice. Then you would have the double comfort of what I have said that the legislation means and, more important, a code of practice that would say explicitly that that is how it works. It could be done easily, and that is a normal way of dealing with such problems.

Ms McGahan: As a mother, I am absolutely reassured by everything that you say. For me, it is fundamentally an equality issue.

Mr Allen: I have convinced you, anyway

Mrs Lewsley-Mooney: You are preaching to the converted.

Mr Allen: I am happy to field any other concerns that members may have.

Mr Maskey: I have a couple of comments as well as questions. I thought that some of the earlier questions were bizarre. If we were to ask somebody from the Older People's Commissioner whether they could justify not giving treatment to an older person on a resources basis and they were to give me a positive answer to that, I would want them out of the room, to be quite honest.

The Chairperson: Well, they were my questions. You can call them bizarre, but they are mine.

Mr Maskey: I am just making the point. The matter is important, and it would be better to examine whether there are any adverse reasons for applying this legislation. I for one cannot see the logic of legislating for anti-discriminatory measures or the law having to bring in anti-discrimination legislation on goods, facilities and services and then discriminate against a certain sector of the population. Bronwyn has already made that point and that is where we are coming from. That is, in effect, what we would be doing.

It is important that we identify the myths. It is unfortunate, which is really my point, that, at this stage of the game, people can still be subject to some of those myths. That is a bit rich. Nevertheless, people have concerns, legitimate or otherwise. For me, it is all about taking those concerns down. I appreciate that you are here today to make the effort and to explain to the Committee and to try to allay those concerns, because it is clear that some people have concerns over whether it would impact parental control and the family unit and so on. I do not have any problem with it. I think that the legislation is quite circumspect in its own terms, so I have no concerns about it. However, I recognise that if others do they need to have those questions addressed.

Thank you for making yourselves available to present that evidence to us and to commit to work with us to bust the myths continually, if that is what needs to be done. I am assured by what your presentation has said so far, and I am sorry that I missed the earlier part. However, someone said earlier, and I cannot remember whether it was Emer or you, Michael, who passed the point, that there was no logic in doing this incrementally. I see no logic in it. If we are to bring a Bill in, then bring it in, end of story, since it is rather circumspect. I just wanted to tease that out. I am not advocating an incremental approach, but I think that one of you referred to that earlier. Would you like to elaborate on that?

Dr Wardlow: The reason is simple: what I said before you came in was that my reading of this was that parties are agreed that this should be from cradle to grave. What I am hearing is a disagreement about two things: the mechanism and the timing. What we are saying is that no one needs to be convinced that this is needed; the question is why do it now rather than later. One option is that we do it at 16 or 18, or at whatever age we chose as a transition point, and somehow we allow trust to develop to show that there is no law of unintended consequence and then introduce it later through a sunset clause or something.

I am not sure what that does, because it still does not address the issue of under-18s. How can we use that period of protection to further build the trust that we have been trying to build for the past three years? If I genuinely thought that there was a reason to retrieve this in a three-year promotional campaign, I would be for it; but we see no justification for that, and therefore we feel that, if you believe it, grasp the nettle and go for it now.

Mr Maskey: I am sorry, Chair, but to follow on from that, parties will make their own minds up and come at this from a party line on policies. However, our difficulty in this is that there is a wee bit of a potential to emerge for some people from the older sector of our community, and some of us are hitting that. One choice that some people have put to us privately is that, if we have the legislation, that will cover older people at the minute, and, if we do not, we will have nothing. I think that that would be a very unfortunate territory to get into, because it then starts to divide people and people would argue, especially from an older point of view, that time is less than it might be for a younger person.

Mrs Lewsley-Mooney: That reflects the importance of the three organisations being here today to show that we are united on this. We are worried that people will think that there is an opportunity to divide and conquer. That goes back to what Emer said: any older person who has been spoken to wants the inclusion of younger people. On the other side, as I said, if this was about younger people and excluding older people, young people would stand firm to ensure that older people were included.

I have been asked the question: what are the myths, and what are those who listen to the myths doing to dispel them? We have given everybody the arguments on the issues that they have raised about the myths. Why are they not using that to dispel them? They cannot answer.

Dr Wardlow: In short, we are saying that this is an opportunity not to be first. I know that there is fear in some people, but we have been first in other things in this place. Australia, Belgium and Canada have already done this. Hopefully, we have addressed some of the myths. I understand that there is

a trust issue and a method of how you legislate. Time is not in our favour, but time should not be the only thing that we use as an expedient. There is no argument for delaying this.

The Chairperson: Can I be clear about what you and Patricia just said? You said, "Let's get on with it. The ammunition's there. The argument's there". Are you saying, "Get on with the consultation."?

Mrs Lewsley-Mooney: Yes.

Dr Wardlow: Absolutely.

Mr Allen: I want to say a word about the 16 proposal that some people have put forward. Inevitably, it has a superficial attraction by saying, "We're a bit worried about this law, so let's not go too far too quickly". However, you can test it in a very easy equality framework. If a black person wants equality with a white person, they have to concede that the white person has equality with them. If a woman wants to have equal pay with a man, the man has to concede equally that he, too, should have it the other way round. It is unique in the debate to hear it suggested that older people should have equality rights, but that it should not operate entirely the other way round. It does not make sense. If you see it through that lens, you can see why it does not really work in that way.

The Chairperson: Presumably, one argument is that of young people maturing, but to pick an age is random.

Dr Wardlow: That is an argument about transition at what point.

Mrs Lewsley-Mooney: As Michael said, we range from 10 to 18 or 21, with 21 different types, so why not pick 10, which is the age of criminal responsibility? Why pick 16?

The Chairperson: Of course.

Dr Wardlow: We understand that trust is an issue. Some people say, "I don't know what this thing looks like". We have gone as far as we can to say that we hope that we address those myths, but there needs to be a step of trust to say that the legislation is there. I am not sure what else we can do to give you that assurance. We have offered briefings and all sorts of stuff. We are presenting a united front today. Is there anything else that we can do to dispel your concerns? We are not saying that you are wrong to have concerns; please do not take that. We understand those concerns. I am a parent; I know what it is like to think that your 14-year-old is going to throw a wobbler. This is about empowering families and building up the esteem of young people.

Mr Moutray: Thank you for presenting to us today. I am interested in what you said about this impacting on commerce and retail. I have a background in retail. I want to paint a scenario not as graphic or, hopefully, controversial as the Chair's: I have a small newsagent's shop next door to a school attended by 300 or 400 kids. One person works in the shop. I have a sign on the window saying, "Limited numbers of schoolchildren allowed at one time." If the legislation were brought through here, how would it impact on a person such as that? Those small businesses are dotted throughout every town in the Province and around every school.

Dr Wardlow: Each of us could give you an answer, but rather than one of us, who may have a vested interest, answering, I will allow Robin to field it.

Mr Allen: You bring a realism to the debate by that example. I will counter it before I answer it by saying that I bring a realism to this because I also sit as a judge. I am a recorder, and I deal with criminal cases. I know about, for instance, remote and inadequately protected post offices being attacked. The issue that you are addressing is not because you dislike or hate schoolchildren; of course it is not. You want their custom. The problem that your employee running that shop has is security. You are concerned that you have too many people to watch in order to make sure that the security is working in the shop. Your situation is not unique; there are many small stores with single employees running them.

It seems to me that you are really saying that you cannot have disorder in your shop and that you cannot have too many people in it at one time. Your aim is security. The measure is to achieve that security in the shop. You have taken a short cut with your notice. I would say that, under this law, the notice by itself would cease to be lawful. Your aim of security remains entirely lawful, but you have to

have a proportionate means of achieving it. It might be to say — we see this quite commonly, certainly on my side of the water in GB — "Not more than five people in the shop". Equally, I have seen, for instance with petrol stations, rules allowing a limited number of cars on the forecourt where there has been a danger that people will drive off without paying.

Therefore your aim of security is entirely legitimate. However, your assumption that schoolchildren are more difficult to deal with than adults is not necessarily right. You could have six perfectly decent A-level students and you would not let the sixth one in on your rule. That is the problem. It is the short cut that has been taken to a destination that is lawful — security. You just have to change the rule and say, "Not too many people in at once". That is how it would be dealt with.

Mrs Lewsley-Mooney: It is people rather than young people. You could have 20 teachers coming out of the school at the one time. Do you say to them, "Sorry; you cannot come in"?

Mr Allen: I think that that makes the point. One can test it another way. Say there is a stag do in the pub next door, and they have all had too much to drink. You do not want six of them in the store any more than you want six very rowdy, hyper schoolchildren on a windy day. It is about security, and the rule to say how many you can supervise has to be appropriate.

Mr Moutray: In an ideal world what you say is correct, but that is not the reality. The person operating the small CTN is there 18 hours a day. There is one staff member and low profit margins, but there is half an hour or an hour in the day when the schools get out and that is the time that you will have big numbers in the shop.

Mr Allen: Let me be perfectly clear: I have no objection to a rule that states that there should be no more than four people in the store, or six people, or whatever it may be. There is nothing wrong with numbers. However, to assume definitively that those numbers only apply to schoolchildren does not work.

Mr Moutray: So if the legislation comes through, it will directly impact on people like those I have mentioned.

Mr Allen: It absolutely will. I do not disagree with that.

Dr Wardlow: Stephen, may I say something? In our day-to-day work we get members of the Travelling community telling us that they have been badly served in shops on the stereotype that all Travellers cause problems. You might have had Travellers who have caused problems, but that in itself is not sufficient for you to say, "No Travellers". That was hard for people in some areas. We are simply saying that if you have a problem dealing with mass because you have only one, you would not say only girls because perhaps you have more problems with boys. It is about saying, "We can only handle six or eight people". In my view, that would be a perfectly legitimate sign to have, whether you have CCTV or not. You would not be discriminating on the grounds of race or anything else. People are adults in that sense.

Mr Moutray: Can I ask you a second question. Michael, you talked several times about the three countries that have adopted the legislation. Is there not one other country of the 27 countries in the EEC that has?

Dr Wardlow: Belgium is the only one that I am aware of.

Mr Allen: Belgium is the most advanced.

Mr Moutray: As a relatively newly devolved government here, should this be a priority for us, ahead of the rest of the United Kingdom, the Republic of Ireland and every other country in the EEC?

Dr Wardlow: I will say something very briefly on that. I think that what I said is that we have argued sometimes. Let us call it —

Mr Moutray: Patricia, maybe you do not like my question. I can see the facial expressions that you are making, but I have a right to ask a question.

Mrs Lewsley-Mooney: I am not saying that you do not have a right.

Mr Moutray: No, but I can see your facial expressions.

Dr Wardlow: I will say three things very briefly. First, we have never been afraid to be first. Some people may not like section 75, but we ploughed the way on fair employment and equal opportunities. We ploughed the way on R plates and on seatbelts. In another life I was in the insurance industry. We have said that if we believe in something we do it. We have a commitment to children and young people. It is core both to T:BUC and to what you in the Assembly have agreed. Not to have under-18s would fly in the face of that. Thirdly, it did not happen in Britain because their demography is different, and they did not have serious engagement. Robin can fill you in on the detail. They have an older and increasingly ageing population. We have an increasingly younger population. So my argument is, "Why not?"

Mrs Lewsley-Mooney: Just because the rest of Europe has not done it does not mean that we should not do it. This legislation is before the House, which is why we are here to give evidence to you. We are not saying, "We are not going to bother because it has not been done in the rest of Europe."

The Chairperson: The legislation is not before the House.

Mrs Lewsley-Mooney: It is in the Programme for Government, and it was the government that put it in.

Dr Wardlow: If the legislation was drafted and went out to Northern Ireland plc for consultation, what risk would there be in asking how people would feel about it being put to a free vote in the Assembly? I am not sure what there is to fear from asking that, because the Stratagem survey of politicians found that more than 70% would like the legislation passed. Our experience, anecdotally and otherwise, is that people are up for this.

The Chairperson: With the mention of the Stratagem survey, I pass, appropriately, to the Deputy Chair, Chris Lyttle.

Mr Lyttle: Thank you, Chair.

The Chairperson: I know that you are going to mention it; I just know that you are.

Mr Lyttle: I am not. I am going to mention an Assembly vote, which is possibly even more relevant.

The Chairperson: Your eyebrows went up at the mention of "unionist and nationalist only".

Mr Lyttle: Oh yes, sorry. I felt left out as an "other".

I was going to reference the fact that on 11 March 2013 the Assembly voted in favour of the age discrimination legislation being extended to people of all ages. An amendment to exclude under-18s was rejected by the Assembly, so there is a point of reference. My party supports the extension of the legislation to people of all ages, and it was positive to welcome the Don't Exclude Us campaign to the Assembly today.

There are concerns, and people, including the Chairman of the Committee, have every right to ask questions about those concerns to try to progress us towards delivery. You mentioned what more can be done, and communications sound as if they may be important. It may be worthwhile distilling the briefings and your extremely detailed work into one or two pages so that people can bust the myths with even greater ease.

I would be interested to hear what engagement you have had directly with OFMDFM, because, using the Assembly motion as a point of reference, it appears that the DUP has particular difficulties with the legislation being extended to all age groups. I support the move to consultation to allow people to express detailed responses, whether that is support or concerns, because it will allow us to have slightly more substance. I support, as my party does, the extension of the legislation, and, like you, I am keen to progress it.

Dr Wardlow: We offered Robin's offices to special advisers and to parties for briefings and so on. At a meeting with the junior Ministers four months ago, we said that our staff would be willing to give briefings to parties. We have genuinely offered that, and we understand the issues with timing and everything else.

There was a short digest of the briefing made, which is in your packs. Chris, if you are saying that that is still too detailed, there is no problem with shortening it.

Robin has made a very strong offer. He says that there are workable solutions to people's concerns. For every concern, there is a solution. Perhaps that is the engagement that we need.

Mr Lyttle: I think so. I found the response to Mr Moutray's completely legitimate concern about the security of shopkeepers very helpful. That response was that, on the grounds of objective justification, you may be able to limit the number of people rather than the number of schoolchildren. That makes sense and is a helpful response to a legitimate concern. Perhaps we need to get into that sort of detail to tackle legitimate concerns.

Mrs Lewsley-Mooney: That is why we are here today. We understand that people have legitimate concerns, and we are trying to get a way through that, explain where we are coming from and give some help and support so that those people can understand things better.

Mr Lyttle: Chair, I have one last comment. It is clear, as you outlined perfectly, that timescales have slipped dramatically. Perhaps the Committee could seek a further brief or correspondence with the Department in that regard.

Ms Fearon: Thanks for your presentation. I apologise for missing the beginning of it, and I am sorry if some of this has been covered. Sinn Féin is supportive of extending this and making it all-inclusive. It is important that society recognises children and young people as rights-bearers in their own right from birth — from day 1 — but at the same time acknowledges and fully respects parental rights. In the spirit of myth busting today, how would a mechanism allowing for ad hoc exceptions be taken forward? In the context of financial service providers, what would a practical exemption look like? Again, I am sorry if that has been covered.

Mr Allen: There are two points there: financial services and ad hoc exceptions. In answering your question, I will pick up on a point that Mr Lyttle made and come back to Mr Moutray's point. There are a number of ways that those can be dealt with. You could simply accept the financial services exceptions that exist in GB. There is a template there, and it is almost completely excluded. Personally, I think that that has gone much too far. In Great Britain, the financial services industry, which is incredibly powerful, got exactly what it wanted. I do not recommend that you do that, but that is one option.

We certainly recognise that you will want to be able to allow a financial services industry to assess risk on an age basis provided it is done objectively. European case law in a case called *Test-Achats* said that, in the field of sex discrimination, objective data that assesses risk on a gender basis is permissible in some circumstances, but it has to be done absolutely transparently. It is very limited, but there are rules that you could transpose in relation to that. We have not proposed in our opinion that you should exclude financial services from assessing risk on an age basis. I will say that straight away. Consultation could pull out some of those kinds of problems. The consultation process would bring into the discussion financial services providers.

Let us just stop for a moment and say that people under 18 buy financial services. We know that. They buy insurance from 17 or 16 on mopeds, for instance. They buy financial services that are related to having banking accounts and so on. So, you would have to engage with that, but the consultation process would allow some interchange.

There was a point about the ad hoc basis. It is very dangerous, in the field of equality law, to think that you can see every problem that exists. That is a lesson that I have learned over a long career. What is being suggested is that you have some mechanism, if there is a really pressing social need, to allow for legal certainty to say that we must permit an age-based rule in some field that we have not anticipated in the consultation to bring that forward so that OFMDFM, for instance, could have a power in the legislation to make a specific ad hoc exception. That is what is being proposed, and that is separate from the consultation. You would expect your consultation process to deal with the problems that confront and pick them up to see how to deal with them.

I want to add to my point about codes of practice, because I totally recognise the problem that Mr Moutray put forward. I have two children. They are now in their 20s and 30s, but I have been through those teenage years and know the problems. I have seen just as many of those problems while sitting as a judge, and I recognise them.

A proper code of practice would give guidance about the lawful way to address these kinds of problems. There are lawful ways to deal with them. It would be uniform and would essentially make sure that that law is effective as it would be predictive. Laws are good if they predict and allow you to see when reading them how you have to deal with a problem. A code of practice would have to cover exactly that kind of situation, but I do not see a problem in addressing it.

I hope that I have answered three people's questions and have pointed towards taking that into consultation to see what the issues are.

Ms Fearon: I just want to reiterate the point that it is really important that children and young people in particular have equal access to goods, facilities and services, particularly mental health services. We know that there is a massive underspend in that area and that there are no age-appropriate facilities. We are fully supportive of equal access, and I appreciate all your support. As Mr Lyttle has, I welcome the Don't Exclude us Campaign.

Dr Wardlow: Megan missed us saying earlier that we do not feel that this is a panacea. If this comes in, young people should not hear us say that they will not be in adult mental health wards. Rather, it is saying that redress will be provided and that there will be a legislative framework on which you can proceed. It does not preclude government policies, resource allocations and all other things. Lest we are misunderstood, we are not saying all this will change if that legislation comes in. It provides the framework.

Mrs Lewsley-Mooney: That also includes older people.

Dr Wardlow: Absolutely.

Mrs Lewsley-Mooney: It is not just about younger people but older people.

The Chairperson: Absolutely.

Mr Attwood: Thank you all for your presentations. Clearly, we support the argument and the approach that you are putting forward. However, I have to say that, the way that things are stacking up, this initiative is going to run into the sand. We are running out of time in this mandate. We have barely two years left, and you can see things backing up generally in the Assembly with laws that are meant to go to the Floor of the Assembly, including in OFMDFM. Consequently, I think that we are at a critical point about whether this happens. So, your presentation and the attention that has been brought to this place by you and others outside the Building today are very important.

Besides the fact that there is resistance to a rights-based approach in various ways and at various times in this society, is there also resistance elsewhere, or, if not resistance, some uncertainty elsewhere, such as in the corporate world, about what the consequences of the legislation would be? Is there anybody in the retail sector, for example, who, for some reason or other, thinks that this is not a good idea as opposed to what might be the more orthodox uncertainty or reticence about a rights-based approach?

Are there any consequences for the age of voting?

Mr Allen: Sorry?

Mr Attwood: Are there any consequences for the age of voting? There was legislation in 2006, and now we might have law regarding goods, facilities and services. It seems that, as far as argument is concerned, if not hard law, it creates questions about the age of voting.

Mr Allen: Shall I deal with that? The first point about voting is very simple. As we made clear in our opinion, it is standard practice in equality law to take existing legislation as is. Voting is covered by existing legislation, so it would have no impact as a matter of law on the age of the franchise — full stop.

You made a second point, which was a political point, about whether it would give somebody a leg up to say that the voting age should be 16 rather than 18. I have no doubt that a politician could argue that point, but, equally, another could say that the franchise is not an issue of goods, facilities and services but a civic right and should be treated in a quite separate way. They could say that it is about maturity, responsibility and so on. So, I do not think that it will change the arguments that we all know about the franchise. You can be sent to war as a soldier before you have the right to vote. You can have sexual relations before you have the right to vote. You can become a parent before you have the right to vote. All those arguments are well rehearsed; they are separate.

With regard to the retail sector, I know of no what I would call fundamental principal-based argument from the retail sector. I have lived through arguments from the retail sector about equality law. I have worked with the retail sector myself. I was special legal adviser to the Disability Rights Commission when disability laws were introduced. I have had to work with the likes of Debenhams and so on about making reasonable adjustments for the provision of access to retail services. It took time. The retail sector sometimes found it difficult to engage with it. Sometimes, it decided that it wanted to be standard-bearers in responding to it. I have absolutely no doubt at all that some aspects of the retail sector would see difficulties in this legislation. It would be a great surprise if they did not.

However, I think that we can put in some comforting words here, which are that we have recognised, for instance, that laws on concessions might be an exception that you would want to adopt. Very often, there are concessions that are related to some sort of age-based rules. We have talked about that in the opinion. Where you draw the line and what you would accept with regard to that would be a matter for debate and consultation. You would want to engage with the retail sector about marketing that was acceptable and marketing that was not acceptable.

Dr Wardlow: Having just received my free bus pass — I know, I am very young — I think that it is no different in that it would not preclude government policy that says that there are age-appropriate interventions and policy imperatives. Earlier, we talked about glasses and eye tests. I think that what Robin is saying is that you can address those issues. That is part of our dialogue. When issues are raised, there is an answer for them. The problem is with where you have the space to address those issues and concerns, which are real and deeply held.

The Chairperson: In the consultation.

Mr Allen: In the consultation.

Dr Wardlow: That is one plus this, of course. We welcome this. This has been brilliant for us.

The Chairperson: Thank you very much. We have certainly noted the fact that we have had the tripartite approach with legal expertise attached. It is impressive. I think that the message that we will take away is that we want to go back to the Department because there is a huge slippage with regard to timelines, milestones and the Programme for Government. As Mr Attwood says, time is nearly out if we are to get it through in this mandate.

Mr Allen: Chair, could I echo that by simply saying that, if there is technical work that needs to be done, and OFMDFM wants to ask technical questions, I am very happy to give a response if those are forwarded through the commissions?

Dr Wardlow: Likewise, our offer is still there about briefings to the parties and so on.

I want to thank the young people for being here as well because — this is the point that I was making earlier — it is not as though we are talking and they are not here; they are here. I would just congratulate them on their very good humour and endeavour.

The Chairperson: We acknowledge those in the Public Gallery.

A final, final thought: if anti-age discrimination is passed, do we still need a commission for older people and a commission for younger people?

Mrs Lewsley-Mooney: Yes. We have to make sure that it is implemented, monitored and evaluated.

The Chairperson: What a very good answer. Thank you very much.

Dr Wardlow: Thank you.