

A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain

Response from Carers UK

September 2007

1. Introduction – about Carers UK

1.1 Carers UK is the leading organisation representing the views and interests of the six million carers in the UK who care for their frail, disabled or ill family member, friend or partner. Carers give so much to society yet as a consequence of caring, they experience ill health, poverty and discrimination. Carers UK seeks to end this injustice and will continue to campaign until the true value of carers' contribution to society is recognised and carers receive the practical, financial and emotional support they need.

1.2 Carers UK is an organisation of carers, for carers, with a reach of around 1,300 organisations (including over 100 branches, run by carers) who are in touch with around 1,000 carers each, making our potential reach around 1,300,000 people. With additional local organisations signing up to Carers Week each year, we are also often in contact with another 2,000 or so organisations which means a potential overall reach to nearly 3.5 million people.

1.3 Carers UK run an information and advice service and advise in excess of 18,500 carers and professionals working with carers every year. We also provide training to over 600 professionals each year.

1.4 Carers UK has offices in Wales, Scotland and Northern Ireland and we also run a specific project in London. This response reflects the views of the organisation, UK-wide.

2. Action for Carers and Employment, led by Carers UK

2.1 Carers UK is the lead partner in a European Social Fund programme, Action for Carers and Employment. ACE National is a development partnership working to support the inclusion of carers in training and work, funded by the European Social Fund's EQUAL Community Initiative Programme. ACE National has been funded in both rounds of EQUAL. In the first, its partners included key public, private and not-for-profit organisations providing information, advice and guidance on accessing training and work, City&Guilds, the UK's leading accrediting body, and a leading group of employers, Employers for Carers, chaired by BT. In its second round, ACE is working with an innovative partnership consisting of key public, private and not-for-profit social care service providers and key policy stakeholders such as regulatory bodies and trade unions. All relevant government departments, including the Department of Health, the Department for Work and Pensions and the Department for Trade and Industry, have been partners in both rounds of ACE.

2.2 ACE National's objectives are: to raise awareness in the widest possible forum of the barriers facing carers who want to work; to develop and test the mechanisms that can support carers to return to, or remain in, work; to mainstream support and have the greatest possible impact on local and national policy on carers and work.

3. Our response to the consultation paper – opening comments

3.1 Carers UK welcomes the Discrimination Law Review and the opportunity to respond to the consultation paper. We support the Government's equality initiatives over the past decade and the setting in motion of the most extensive review of equality in Britain for over 30 years. We also support the aims of the paper that, "rather than just consolidating the current

legislation, we want to take this opportunity to review it, and decide whether we can improve it, to make it fit for the 21st century”.

3.2 We outline below our detailed response to the relevant chapters of the paper. However we wish firstly to make an introductory comment as, while we welcome many of the paper’s proposals, we are disappointed that, in several key respects, it fails to measure up to its terms of reference. While it addresses, to some extent, the issue of simplification and streamlining of the law, our key concern is that it fails to tackle adequately what it describes as “areas of deep-rooted inequality and disadvantage in our society which need to be addressed”. These include persistent and hidden inequalities, significant gaps in protection and deep seated problems regarding the way in which our equality laws work.

3.3 In particular our key concern is that the very real issue of **discrimination against carers** has not been addressed in the paper. Our definition of carers, which is also accepted and used by the Department of Health, is people who **“look after family, partners or friends in need of help because they are ill, frail or have a disability. The care they provide is unpaid”**. Carers are an often hidden but very substantial part of our population, constituting around 6 million people in the UK, i.e. 10% of the total population and approximately 12% of the adult population. With the number of people aged 85+ predicted to increase by over 900,000 in 2025 (*GAD 2003-based population projections, Crown Copyright*), and part of this longer life span likely to include more years in poor health, the number of carers is also set to rise, with an estimated additional 3 million required by 2034 (*Source: More than a job - Working Carers: evidence from the 2001 Census*).

3.4 Recognition is the number one concern that carers highlight to us, both in their telephone calls and in their response to consultations and surveys (including our recent survey of 3,000 carers) and they speak openly to us every day about the discrimination that they face. This comes in many forms - including from employers, and potential employers, and from public authorities and other providers of goods, facilities and services - and we will be evidencing this in this response. Carers are a unique group as they experience a particular tension between their role in supporting those they care for and keeping their rights as individuals. For this reason they can be particularly vulnerable to discrimination and disadvantage both as employees and as recipients of services.

3.5 Coming at a time when the Government is reviewing the Prime Minister’s Strategy for Carers, and the Prime Minister’s announcement this week of a Standing Commission on Carers, we therefore believe that it would be a gross oversight if the new legislation excluded carers from its proposals.

3.6 In the light of the above, we have set out in our response what we believe to be a very strong case for **extending protection to carers** against discrimination in the three key areas of:

- ◆ the proposed new **public sector equality duties**
- ◆ **discrimination in employment**
- ◆ **discrimination in the provision of goods, facilities and services**

3.7 Anti discrimination policy for carers has been tried and tested by the best employers and service providers and is in many ways a less onerous and challenging area of discrimination

to understand and to implement than that of age and disability. We believe that it should not be a difficult issue to address in practice and that including it in the new equality legislation would send to carers a very real and positive message that they are recognised.

3.8 The substantive part of our response below is our comments are on Chapter 5 on the Public Sector Equality Duties and Chapter 8 on the Grounds of Discrimination (in which we include our comments on discrimination in employment and in the provision of goods, facilities and services). We have therefore focussed on these chapters, with some additional comments on other relevant issues at the end of this document.

3.9 Firstly, as background to our specific comments on Chapter 5 and 8, we outline below evidence of the discrimination, harassment and inequalities that carers face, both as highlighted in recent research and statistics and as reported to us on a daily basis.

4. What is the evidence of discrimination against carers?

4.1 As we have highlighted in our introduction to this response, carers are an often hidden but very substantial part of our population, constituting around 6 million people in the UK, i.e. 10% of the total population and approximately 12% of the adult population. This number is also set to rise considerably, with an estimated additional 3 million carers required by 2034 (*Source: More than a job - Working Carers: evidence from the 2001 Census*).

4.2 However, carers remain one of the few groups against whom it is possible to discriminate; they themselves feel very strongly about this as can be witnessed by the calls that we receive on a daily basis to our helpline CarersLine. These include instances of discrimination from employers, discrimination when applying for jobs and discrimination in terms of access to services, goods and facilities. Examples of these include:

- **Lack of access to work** - One in five carers gives up work to care; this can lead to loss of income, pension and long-term financial security and is a loss to the carer and to the employer alike. (*Source: EOC and Real Change Not Short Change, Carers UK*). Carers have also been refused jobs on the basis of their caring responsibilities; for example, in a job interview a local authority employer told the interviewee to reapply for similar positions once his wife with MS had died. The experience below of a parent/carer looking after a child with autism and desperate to hold on to her paid job is also typical of that reported by carers:

“It’s just constant battles all the time – and it wears you out mentally, and it wears you out physically. You become ill, you’re run down all the time ... I will one day have to give up, I’ll have no choice. To be 36 and not ever work again – what do you do?... If I give up, then autism has completely taken over my life. And that little bit of fight that you have left ... it’s, like, I will NOT allow that to happen”.

- ◆ **Lack of ability to return to work** – Some carers can and do return to work but many are unable to do so. As one carer in this situation, a father of two disabled children, has reported:

“Not to provide cover, in these days when one is encouraged to look ahead, is not only morally wrong but has discrimination and lack of equal opportunities written all over it”

- **Lack of access to training at work** – Carers frequently report problems in accessing training courses provided by their employers, for example, if these are held at weekends or during the evenings and no alternative care is provided. Even where employers take child care requirements into consideration they often overlook carers of adults; for example CarersLine took on a case where an employer had paid alternative care costs to enable an employee with a child to attend training but was not prepared to do so for an employee caring for a disabled adult.
- **Lack of flexibility and understanding at work** – carers of sick or disabled children face particular problems here especially when alternative care services for sick or disabled children are extremely limited. Many have to use their paid annual leave to cover their care needs meaning they do not get a break themselves. Although some succeed in reducing their hours or changing their working patterns, many feel forced to look for a different type of work or to change their jobs. At work some have also met with ignorance, disrespect or hostility because of their need to work flexibly (*Source: Caring for Sick or Disabled Children, Centre for Social Inclusion, Sheffield Hallam University, 2006*) Forthcoming research, the largest survey of its kind, will show similar problems faced by carers of adults. As an example, a day centre in Halton was closed without properly consulting or considering carers’ views; the resulting plans forced many parents to give up work in order to care for their adult sons and daughters because the more “flexible” packages of care assumed they would provide the care in between.
- **Harassment and negative attitudes at work** – carers often experience this from managers or colleagues. Comments such as the following from a carer employed in social services are typical experiences:

“There was a time when my son was poorly and when I came into work, the first thing they said was, “Ooh, you’ve had time off again have you? You’ve been on holiday again, have you?” These sorts of digs. She must have known why I was off, that my son was really sick, poorly. Even when I told her, she carried on with these comments and digs. Never once said, “Oh I’m sorry, how is he? Is he OK?” Ironic when you think they are educational social workers supporting families where children have special needs.

Lack of access to alternative care and support services – this problem is repeatedly reported by carers of all ages. Working carers of sick or disabled children face a particular challenge in that much childcare provision, including after school and school holiday care, is not accessible to disabled children. In addition, access to respite care and sitting services is often limited and few carers have the support of formal alternative care services or any contact with their local social services department. (*Source: Caring for Sick or Disabled Children, Centre for Social Inclusion, Sheffield Hallam University, 2006*). Forthcoming research, the largest survey of its kind, will show similar problems faced by carers of adults. Comments such as the following are typical experiences faced by such carers:

“At first it was okay, but now, as time goes on, (father’s) more dependent, and the longer you do it, the more it seems to wear you down, so the more you feel that you need a break from it. It would allow me to be better mentally prepared to do the (training) course and look after Dad - not just trudging from one task to the next task, and not any break in between, and it just grinding you down”.

“I could probably find computer-based work to do at home, but since I am unable to leave the house without first finding someone to look after my father, and there is no mechanism for registering people such as me with the job centres, realistically I’m not going to find anything like that.”

- **Lack of access to education and qualifications** – Working carers are more likely to be unqualified, and less likely to hold university degrees, than other people in employment. Among women in full-time paid work, those who provide unpaid care for 50 hours or more per week are twice as likely as non-carers to be unqualified. (Source: *Who Cares Wins, A report for Carers UK by the Centre for Social Inclusion, Sheffield Hallam University, 2006*)
- **Lack of access to higher level jobs** - Related to the above point, working carers of both sexes are much less likely to be in higher level jobs. Almost 45% of men and 55% of women who are in paid work and caring for 20 or more hours a week are in elementary occupations, “process plant and machine operative jobs” or in sales, customer services or personal services. (Source: *More than a Job: Working Carers: Evidence from the 2001 Census*). Other evidence shows that carers forgo promotion and training opportunities because of lack of understanding.
- **Lack of flexibility and understanding from service providers** – this is a widespread problem reported by carers. For example, in one case both health and social services assumed that a woman with a broken leg would be able to rest it despite the fact that her husband was in the terminal stages of cancer and required 24 hour care from her. They eventually provided her with support too late, leaving her with lasting complications and constant pain from her broken leg as it was not able to heal properly. Many carers report the constant battle with service providers in order to get support and having to be at breaking point before they receive any response, for example, the following experience is typical:

“I’d just got to breaking point, and I’d phoned (social services), and phoned them, and asked: ‘Can you just take him out, can someone take him for a couple of hours?’ – No. So I got to breaking point and I phoned them and I said to them, ‘You have two hours ... to come up with some sort of thing to help me’, I said, ‘I’m bringing him down to your office’, and I said ‘I’m leaving him there because I cannot cope with him any more with no help’. Then, funnily enough, within three hours later, I had the pack in the post, saying you have this many hours”.

4.3 Further examples of discrimination faced by carers, both in employment (or trying to access employment) and in accessing services are given in later sections of this response. In addition, we are particularly concerned that such discrimination against carers often hits those very people who already suffer disadvantage on the following grounds:

- ◆ **Disability** - Carers are two to three times more likely to have a life limiting illness if they are providing substantial care compared with those who are not carers. (*Source: Census 2001*).
- ◆ **Age** - The peak age for caring is between 45 and 54 when one in four people is a carer (Census 2001) and, because of the age profile, if a carer gives up work to care, they are more likely to find it harder to return to work.
- ◆ **Race** – Bangladeshi and Pakistani men and women are three times more likely to provide care compared with their white British counterparts (*Source: Who Cares Wins, Statistical analysis of the Census 2001*).
- ◆ **Gender** – women have a 50:50 chance of providing care by the time they are 59 compared with men by the time they are 75 years old and women are more likely to give up work in order to care (*Source: It Could be You, Carers UK 2000*).
- ◆ **Sexual Orientation** – people who care and who are in a lesbian or gay relationship face additional barriers in accessing the sorts of services that they need and face different prejudice.
- ◆ **Religion or Belief** – the way that services are supplied to a family may not be religiously appropriate.

4.4 As we have mentioned earlier, carers are a unique group as they experience a particular tension between their role in supporting those they care for and keeping their rights as individuals. They can therefore be especially vulnerable to discrimination and advantage both as employees and as recipients of services. Indeed, the Chair of the CEHR, Trevor Phillips, has recognised publicly on several occasions that carers tend to face many different types of compound discrimination and are therefore an issue that will be looked at by the new Commission. For example, addressing the All Party Parliamentary Group on Carers in April 2007 on the subject of equalities, he commented that:

“Carers were off the map before, but put several maps together, and carers become the centre of a new one”.

5. The public sector equality duties – Chapter 5

5.1 We welcome the paper’s recognition in this chapter that “public bodies are uniquely placed to make a difference to the life chances of disadvantaged groups” through their provision of key services and their role as major employers. We also welcome many of the comments and some of the proposals in this chapter including the principle of replacing the existing three public sector duties (race, disability and gender) with a streamlined single duty and the extension of this duty to the additional strands of age, sexual orientation and religion or belief.

5.2 However, we do have some serious concerns with the proposals in this chapter for two main reasons. Firstly, it fails to address in any way the very real discrimination that carers face, both as public sector employers and recipients of services. Secondly, we believe that the structure of the proposed single public sector equality duty would be a much weaker and less effective version than the current race, disability and gender duties and would undo some of the good results and learning that have been achieved from these. We strongly believe

that, as the proposals currently stand, the single equality duty could not meet its objective of promoting equality in the public sector.

5.3 Firstly, we do not believe that the single equality duty could be either inclusive or effective without addressing the discrimination, harassment and inequalities that are faced by such a significant and growing part of the population as **carers**. We believe that Section 75 of the Northern Ireland Act 1998 provides a good precedent for extending this protection to carers; it is not an untested duty, it is currently being reviewed and it provides useful learning. In summary it places:

“a statutory obligation on public authorities in carrying out their various functions (relating to Northern Ireland) to have due regard to the need to promote equality of opportunity –

- *between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation*
- *between men and women generally*
- *between persons with a disability and those without; and*
- ***between persons with dependants and those without***

5.4 The Northern Ireland duty requires public authorities to regularly consult with “persons with dependants” or their “recommended consultees” on the policies and procedures that underpin the authority’s functions, both as service providers and as current or potential employees. In general there are 3 stages to this consultation process: (1) producing an overall equality scheme (2) screening; and (3) impact assessment. Public authorities do not all have to follow exactly the same process, however they do have to include all of these stages.

5.5 The addition of the category of “persons with dependants and those without” was felt to be an important provision in Northern Ireland not just for the many carers affected themselves but also for the people who rely on them for support. For example, in her evidence to the UK Parliament Joint Committee on the Draft Disability Discrimination Bill on 7 April 2004, Dame Joan Harrison, Chief Commissioner to the Equality Commission for Northern Ireland, stated that ***“as well as disabled people, Section 75 covers people with dependants. This is particularly important in ensuring comprehensive rights for disabled people, many of whom rely on carers for support. If carers experience discrimination, this can have a knock-on effect on disabled people. Examples include additional costs incurred when disabled people need to be accompanied. Including carers within such an equality framework would help ensure that these issues are considered by policymakers.”***

5.6 In response to this point it could be argued that the introduction of a protection against “discrimination by association” would deal with this point. However, as we argue later in this paper in our section on “Additional comments” (in our response to Chapter 1), we do not believe that this would provide adequate protection to carers and the people for whom they are caring as not all of the latter will come under the category of disabled.

5.7 The current review of the implementation of Section 75 by public authorities in Northern Ireland has highlighted the following reported positive outcomes including:

- Integration of the duties into corporate strategic objectives

- Structural change including appointment of equality officers and location of these officers in Chief Executives' departments
- Involvement of affected groups through consultation and participation

and specifically regarding carers:

- 51% of public authorities reported increased opportunities for people with and without dependants
- For the first time policies have been assessed for their impact on carers and parents

Specific examples include:

- Two Education and Library Boards piloted a new policy on home-based working for the benefit of people with dependants to be rolled out cross all Board areas
- The Equality Impact Assessment (EQIA) on Pay Scales undertaken by the Colleges of Further and Higher Education identified the potential impact of disrupted pay affecting staff with caring responsibilities
- Belfast Institute started to open on Saturdays, specifically to provide access for those who reported difficulty attending college during the week, including those with caring responsibilities
- SHSSB EQIA on Temporary Transfer of Services identified a need for the provision of a bus service during a temporary transfer of service between two hospital sites to mitigate adverse impact on persons with dependants, older people and disabled people
- Fermanagh District Council EQIA of Community Relations Grants Policy found that the previous policy had a possible adverse impact on some groups e.g. people with dependants and disabled people, who required additional funding due to the increased access costs. Grants were then raised for these groups
- Derry City Council worked in partnership with local voluntary and community groups to design and deliver an Equality Awareness programme for Council staff which included training in relation to people with dependants, disability, age, learning disability and mental health.
- The British Council for Northern Ireland raised awareness of untapped additional funds in European programmes which enable better equality of outcome e.g. funds to enable carers to accompany children with learning disabilities, thus ensuring full participation in the programme.

5.8 Cost wise, a Regulatory Impact Assessment will have been prepared for Section 75 in Northern Ireland which should provide some useful background. We do not see that the inclusion of carers would be an unreasonable extra expense; as this consultation paper's Initial Regulatory Impact Assessment (RIA) argues with regard to the costs for the CEHR of extending the general duty to three further discrimination grounds, there are likely to be economies of scale as the duty already exists in other forms. As the above RIA argues, there will of course be one-off and ongoing costs to public authorities implementing the new duty. However, if a streamlined single public sector equality duty is introduced, these additional costs are likely to be offset by not having to implement three separate duties as at present. There are also the likely longer term benefits, as highlighted in RIA, of the new duty's role in helping "embed equality in employment practices and service delivery enabling public authority employers to achieve a more balanced workforce and strengthen their ability to hire, retain and motivate staff". As the paper outlines, it is not possible to quantify these benefits precisely at this stage but "better job matching and development of employee skills" should help raise the productivity and responsiveness of public sector employers and service

providers. So, as the paper recognises, after the initial one-off costs, the yearly recurring costs are likely to be balanced by yearly recurring benefits.

5.9 We would **recommend** that consideration be given to the precedent of Section 75 in Northern Ireland with the Section 75 definition being amended from “persons with dependants” to “**persons with caring responsibilities**”. We believe that a similar positive duty in the UK would roll out the positive impacts carers already experience when public authorities do take their needs into account as above.

5.10 We believe that a public duty to promote equality in public services would be the **single most effective way** of providing recognition for carers, which as our surveys have shown is the top concern of carers.

5.11 In terms of the **format** of the single public sector duty, as mentioned above, our other key concern about the consultation paper’s proposals is that, as these currently stand, they would weaken – and therefore undermine – the existing public sector duties in several ways. We believe that it is very important to build on the strengths, as well as learn from the weaknesses, of the existing public sector duties. For example, while it is early days in the implementation of the Disability Equality Duty, the Disability Rights Commission has cited evidence that it is viewed as a useful tool by those implementing it, including government departments.

5.12 In order that the new duty does not lose the benefits and experience of the existing duties from those aspects that are working well, we would **recommend** that the following elements should be retained.

5.13 The principle of mainstreaming is the key principle underpinning the existing public sector duties. We are concerned that the paper is proposing to require authorities to set equality objectives (and take proportionate action to achieve these) in place of obliging them to mainstream including, for example, by doing **equality impact assessments**. We believe that mainstreaming should be retained along the lines of the current Gender Equality Duty which requires “due regard” to equality to be given to all public authority decisions and activities. We think that it is important that the existing legal mandate is retained to mainstream because, from our experience with carers and professionals working in the field, a common criticism of equality policies is that the policies may exist in writing but are not converted into action on the ground. Mainstreaming is a key vehicle for such implementation and for helping to prevent unwitting failure to think through the implications of decisions which can have an adverse impact on particular groups of employees or service users. Equality objectives are important (and we support a requirement to set them, as in the current Gender Equality Duty) but they should be seen as an addition, not an alternative, to the mainstreaming requirement.

5.14 We believe that the existing legal requirement to produce an **equality scheme** should be retained as these schemes help to give authorities a clear structure for their activities to promote equality. We are concerned that the paper’s proposal of “principles” to underpin effective performance of public sector duties, instead of requiring authorities to produce equality schemes, will not be effective in practice. For example, the Paper says that the new approach “would no longer specifically require, for example, employment monitoring, but would instead set out the key principles which support effective performance of a single

equality duty, and require these to be applied proportionately”. We believe that this could lead to greater confusion and weaken activity. We do not think that the new public sector duty needs to be as prescriptive as the race equality duty about what and how authorities should monitor but we believe that a good model would be to retain the more flexible format of the disability equality duty. This does not prescribe what evidence an authority should collect but requires authorities “in general terms” to collect information on the effects of policies and practices on the recruitment, development and retention of disabled employees and the extent to which services take account of the needs of disabled people.

5.15 We believe that the single public sector equality duty should retain the right, currently within the disability equality duty, for any interested party to **challenge** a public authority decision on the basis that it fails to give due regard to equality. This would be lost under the paper’s proposals which recommend that enforcement will be concentrated exclusively on the CEHR. As the Disability Rights Commission (DRC) has observed, in view of large number of public bodies in Great Britain we believe that this is unrealistic and that the new single duty should be established in a way which is largely self-regulating and which retains the involvement of those groups in society who are directly affected as employees or recipients of services.

5.16 Related to the above point, the existing emphasis in the current disability equality duty on **involving** those directly affected by inequality in the planning, development and delivery of the duty is also an important feature and we believe that this should be retained in the new duty.

5.17 We also believe that the new duty should retain the existing provision in the disability equality duty for Secretaries of State to take responsibility for the progress on equality in their policy sectors and that there should be an explicit requirement for **inspectors** to take authorities’ performance on equality into account when measuring their performance.

5.18 Finally, we believe that the single public sector equality duty should include an explicit requirement for authorities to build equality considerations into the **procurement** processes. Public procurement is an important lever for good practice for the private and not for profit sectors and has been recognised as such by, for example, both the Women and Work Commission and the Equalities Review. We believe that guidance alone – as exists at the moment – is not sufficient and that clear direction should be given in the duty. For example, despite detailed guidance from the DRC, EOC and CRE, evidence from the former DCLG “Two Years On” report on the National Procurement Strategy for Local Government suggests that local authorities have not been meeting their equality obligations in their procurement practice. With this reservation in mind, where guidance is produced, we believe that it should include examples of how to ensure that contracted-out services are sensitive to the diverse needs of users and carers and ways of identifying (and then tackling) barriers to the participation of supplier organisations which are led by people from disadvantaged groups.

5.19 Cost wise, the paper estimates in its Initial Regulatory Impact Assessment that an integrated duty based on the proposed “new approach” would cost 10% less than an integrated duty across all protected grounds as under the current the gender duty. However, we believe that, even if this were the case, it would be a false economy as the proposed new model would be likely to have significant weaknesses and therefore be less effective in the long run.

5.20 In conclusion, we believe that implementing proposals on the above lines - i.e. learning from the strengths and weaknesses of the existing three public sector equality duties and addressing the daily discrimination faced by carers – would lead to an inclusive and robust single public sector equality duty which would have very real benefits for public sector organisations, their employees and service users. We also see this form of protection for carers as very important both in implementing equality and tackling discrimination in the public sector and in driving change (through example and directly through procurement processes) in the private and not for profit sectors.

6. The grounds of discrimination – Chapter 8

6.1 We welcome the consultation paper's recognition of the need to review who is protected from discrimination. This chapter lists a number of questions for response but we focus here on the question which is of the most concern and relevance to us, i.e. comments on the paper's approach to addressing the needs of carers.

6.2 As a preliminary comment we do, of course, recognise – and carers have also recognised and appreciated - the unprecedented steps that the Government has taken to support carers over the last 10 years including: the right to request flexible working, the right (in England and Wales) to a carer's assessment, the new duties on councils to support carers under the Carers (Equal Opportunities) Act 2004, the Community Care and Health (Scotland) Act 2002 and other packages of measures including additional funding for short-term home based respite care for carers in crisis and the establishment of a national helpline for carers. We also very much welcome the current wide-ranging review of the Prime Minister's Strategy for Carers and the development of an expert carers programme.

6.3 However, as we have mentioned in our introduction to this response, our key concern regarding the paper is that it has not addressed in any detail the very real issue of discrimination against carers. We have outlined in Section 4 above evidence of the discrimination and inequalities that carers face, both as highlighted in recent research and statistics and as reported to us on a daily basis. We do not believe the consultation paper addresses this issue adequately. For example, it cites in Chapter 4 – Balancing Measures the right to request flexible working as an example of a measure which was needed to enable carers of adults and parents of young or disabled children to have better access to jobs. However, to suggest that the type of flexibility covered in the Work and Families Act deals with the problems faced by carers fundamentally misunderstands the nature of the discrimination and the harassment that they experience. The type of issues that are reported to us, including harassment and negative attitudes from managers and colleagues at work - which can force people out of work as much as inflexible working practices do - have nothing to do with flexibility and everything to do with discrimination and lack of understanding. No tribunal would be able to offer any protection to a carer in any of these instances under the right to request flexible working.

6.4 What do we think should happen? As we have already argued, there is increasing evidence to show that carers are clearly part and parcel of the discrimination agenda. Organisations should not discriminate, either directly or indirectly, against them. However, there are serious gaps in existing discrimination legislation. We would therefore strongly **recommend** that the Discrimination Law Review should introduce an **extension of**

protection from discrimination to carers. Specifically, we propose that this should include the following:

- ◆ An extension to carers of the **positive duty on public bodies** to include the promotion of equality between people with caring responsibilities and those without (we have outlined our proposals for this above in response to Chapter 5).
- ◆ An extension of protection against discrimination, i.e. a non-discrimination right for carers, in **employment**
- ◆ An extension of protection against discrimination, i.e. a non-discrimination right for carers, in **goods, facilities and services**

6.5 We believe that serious consideration should be given to **all** of these proposals because:

- ◆ Each measure would be less effective without the others. The public sector duty would need to be implemented in conjunction with the above anti-discrimination protection to ensure that it was underpinned (in the same way that the other groups currently covered by public sector duties are also protected under discrimination law). The anti-discrimination protection would also be less effective without the driving force of the public sector duty to bring about culture change and a positive promotion of equality
- ◆ Failing to do so would mean failing to tackle the discrimination faced by a significant and growing section of our population. If such issues are not tackled, we can expect the call for anti discrimination legislation from carers to grow substantially over the years
- ◆ Coming at this unique time of both the review of the Prime Minister's Strategy for Carers and the Discrimination Law Review, we believe that it would be a gross oversight if the Government missed this unique opportunity to look in detail at the discrimination and inequalities facing carers - and if the resulting new equality legislation excluded carers from its proposals

6.6 Extension to carers of protection against discrimination in employment

We include below comments on

- ◆ what is wrong with existing legislation and why can't we rely on this for carers?
- ◆ our views on the concept of discrimination by association
- ◆ explanation of our proposals
- ◆ benefits of our proposals

6.7 What is wrong with our existing legislation? We have already mentioned in our opening comments on this chapter the limitations of the right to request flexible work in covering issues of discrimination and harassment. For example, carers are often unable to attend training because of the times that it is held so they cannot apply for promotion or advance in their job; however, flexible working rights do not cover these types of scenarios.

6.8 In addition, it has sometimes suggested that carers should receive adequate protection under existing discrimination law by means of **indirect discrimination**. For example, by way of analogy, in the area of sex discrimination, it has become well recognised that women are the primary carers of children and that it is therefore indirect sex discrimination to refuse flexible working to them or to treat those working flexibly, including part-time workers, less favourably. It might therefore be argued that, as caring for adults falls disproportionately on women (although the statistics here are not straightforward), an unjustified refusal of flexible working to a carer of an adult may constitute indirect sex discrimination (as may also less

favourable treatment of a female carer). Or, to take another example, if caring responsibilities are falling disproportionately on a particular age group in the workplace, it might also be argued that discriminatory treatment against carers might constitute indirect age discrimination.

6.9 We do not believe, however, that it is adequate or practical to rely on this form of redress for carers as it does not recognise that the actual basis of why they are being discriminated against is **because** of their caring responsibilities. For example, as mentioned earlier in our response, we have received calls to our helpline about people who have been refused jobs because they are carers.

6.10 Indirect sex discrimination and indirect age discrimination are also difficult vehicles for protecting the rights of carers as they involve complex stages for proving the definition of indirect discrimination. They are untested in law, not because this type of discrimination does not exist but because it is so complex, and we believe that it would not therefore provide clarity for employers or employees.

6.11 Relying on this form of protection would also bring about further inequalities as, for example, indirect sex discrimination does not protect unmarried men who are carers and indirect age discrimination would not protect younger carers who are more at risk of poverty and social inclusion than older carers. This situation would be doubly discriminatory, for instance, on the relatively high numbers of young Asian men who are carers (for example younger Pakistani and Bangladeshi men are three times more likely than White British men to be carers. *Source: Who Cares Wins: Report for Carers UK by the Centre for Social Inclusion, Sheffield Hallam University 2006*).

6.12 Finally, there is also the issue of the **complexity** of carers' needs, which suggests that, if anything, they are in need of particularly strong protection from discrimination. For example, in the area of flexibility at work, carers' needs can be very different to that of parents since adult care packages (and packages for disabled children) are more complex than childcare and there is also often more uncertainty about how their caring role will change in the future. Carers say that it is not just about flexibility but about attitudes to their caring responsibilities; i.e. that they will be less effective than someone who is not a carer. The evidence from employers shows the contrary (*Source: Who Cares wins*).

6.13 As has been recognised earlier in this response, carers are a **unique** group as they often experience the tension between supporting those they care for and retaining their own rights as individuals. We therefore believe that, for the same reasons that the Work and Families Act was necessary to introduce the right to request flexible working, the above protection from discrimination in employment is needed as a priority in order to tackle the persistent inequality and disadvantage that they face.

6.14 Discrimination by association. It could also be argued that introducing protection against "discrimination by association" could help to protect carers from discrimination and avoid the need to include them as an explicit protected group under discrimination law. However, we do not believe that this, on its own, would provide an adequate protection for carers. We do recognise the importance of the case of *Coleman v Attridge Law*, currently before the European Court of Justice, which is arguing that the EC Employment Directive applies to discrimination on grounds of the disability of someone other than the employee (in

this case, the mother of a disabled child who is treated less favourably because of her son's disability). However, we do not believe that discrimination by association alone would be sufficient to protect carers since, as the current situation stands, it would rely on the cared-for person proving that they were disabled. It would not protect, for example, those caring for the significant number of people in the UK with undiagnosed conditions or for people who would not currently be defined as disabled under existing disability legislation but who might require significant amounts of care, e.g. older people.

6.15 Explanation of our proposals. We believe that, instead of relying on the complexities of the above approaches, there is a strong case for ***making the legal position of carers clear*** to both employers and employees by means of an extension of protection from discrimination to carers. We propose that there should be a new prohibited ground of discrimination against carers following the format of the Disability Discrimination Act as we believe that this is the most appropriate to the position of carers. We recommend that this should cover the following points:

- ◆ ***That it should be unlawful to “discriminate directly against a carer”.*** The definition could be based on Section 3A (5) DDA, i.e. “a person directly discriminates against a carer (to be described as in the Work and Families Act) if, on the grounds of the person being a carer, s/he treats the carer less favourably than s/he treats or would treat a person not being a carer”

The purpose of this would be to prohibit prejudice against, and stereotyping of, carers, and to help to drive good practice (not to bind an employer to a form of flexible working which is incompatible with the requirements of the job). It is noticeable that some of the employers who have the best practice in supporting carers at work have indicated that they first started addressing the needs of carers in their workforce from an equal opportunities perspective (*Source: Who Cares Wins: A report for Carers UK by Centre for Social Inclusion, Sheffield Hallam University*).

- ◆ ***That, as in the DDA, we believe that there should be a provision that “a person discriminates against a carer if.***
 - (a) for a reason which relates to the carer's caring requirements, s/he treats her/him less favourably than s/he treats or would treat others to whom that reason does not or would not apply, and
 - (b) s/he cannot show that the treatment in question is justified.”

Examples of areas where such discrimination might apply are: recruitment; training and advancement; holiday entitlement (including when this can be taken); and working arrangements such as the requirement to travel and work away from home. These are all areas where we have received evidence of discrimination against carers.

- ◆ ***That, as in the DDA, there should be a duty to make “reasonable adjustments” in relation to the carer.***

Examples of the types of circumstances and adjustments that might apply are outlined below:

- Provision of special or carers' leave to cover compassionate or emergency leave. This could include carers' emergency leave and carers' planned leave. Evidence suggests that this can often promote loyalty from employees who then repay their employer's trust by making up the lost work in their own time (*Source: Who Cares Wins: A report for Carers UK by Centre for Social Inclusion, Sheffield Hallam University, 2006*).
- Parental leave arrangements (especially important for parents of sick or disabled children)
- Adult care leave arrangements
- Support for employees with dependants with a disability (this could be a disabled child or a disabled adult dependant such as a parent)
- Part time or flexible working arrangements wherever possible. These might include term time working (which is one of the most sought after forms of flexible working by parents of sick or disabled children), flexi-time, banking flexible hours worked, reduced hours, short/long days, split shifts, e.g. arranged with a period of time off in the middle of the day or afternoon, time off in lieu and job share arrangements
- Flexible holiday arrangements (i.e. not enforcing set holiday periods where possible)
- Flexibility in arranging key meetings and events when carers can attend
- Arrangements for working from home at certain times
- Career development and training – access for working carers and additional dependant costs
- Provision of support mechanisms such as a carers' network (which could be run, for example, by paid employees mainly as an on-line forum but with some face to face events with membership open to carers and supporting non-carers who want to know more about the issues)
- Provision of career breaks or compressed working (e.g. 9 day fortnight)
- Provision of information for employees with caring responsibilities, e.g. details of available state benefits and allowances and relevant forms
- Making arrangements to train other staff to take over from carers in specialist roles to cover emergency leave, or in the case of smaller organisations, multi-skilling and closer team work
- Practical arrangements, e.g. access to a car parking space or to a telephone which is often a critical issue for carers

6.16 The benefits of our proposals. We believe that the above proposals would have the advantages of providing a practical vehicle for:

- ◆ Tackling one of the key issues that the paper has recognised in its terms of reference, i.e. "areas of **deep-rooted inequality** and disadvantage in our society which need to be addressed".
- ◆ Recognising the **realities of people's lives**; by 2034 one in three of us is expected to take up caring responsibilities at some point in our lives and, in view of the discrimination that carers are facing, no comprehensive review of discrimination legislation can afford to exclude them.
- ◆ Recognising the existence of **multiple discrimination** which has been cited as one of the rationales for the establishment of the CEHR. Many people such as carers face discrimination on a number of grounds (e.g. their gender, disability, age or race) and cannot be easily pigeon-holed into any one of these categories. As they may

potentially have multiple claims it is not always clear how best to deal with the discrimination they face. A new protection for carers, however, would be easier for both employers and employees to understand, helpful in linking multiple forms of discrimination and helpful in incentivising good practice in the workplace.

- ◆ Providing **clarity for employers**; local authorities, for example, are developing an Equality Checklist on Carers to be used on a voluntary basis and would welcome more final support via legislation and guidance.
- ◆ Ensuring that equality and anti discrimination policy is **put into practice**. What is clear from reports from carers and others “on the ground” is that what is formally “on offer” in the workplace (such as provision for flexible working) and what is actually experienced by employees and line managers is often two different things.
- ◆ **Complementing other government department programmes** including, for example, Welfare to Work and Extending Working Lives. As the population ages, and with the need to maintain a skilled and motivated workforce, we believe that if we do not have anti discrimination law underpinning these programmes, they will not be effective.

6.17 We also believe that it would have a **positive impact on employers** in all sectors not only in helping to recruit and retain staff but also in terms of enhancing reputation. Evidence from case studies from employers who provide support for carer employees suggests that, as well as the benefits to carers (and to the wider economy by keeping carers in work), the employer benefits from:

- Increased productivity
- Savings in recruitment and retention costs
- Reduced sick leave
- Lower staff turnover
- A wider pool of potential recruits (resulting from the visible support of diverse need, which is particularly important in tight labour markets)
- A workforce which better reflects its customer/user base and, related to this, a more positive and inclusive profile
- A more motivated workforce (with more creativity and energy often being reported as a result of flexible working)
- A higher level of trust in relationships at work

6.18 The **costs versus the benefits** are difficult to weigh up. However, from our evidence, the costs of anti-discrimination in employment provide more benefits to the employer than costs; for example, one company (a large utility company with a multi-site operation) calculated that it constituted a benefit of £1 million a year:

(In a caring emergency) “you are not dealing with an absence, you are potentially dealing with a vacancy if you don’t respond appropriately. The cost of recruiting is incomparable to the cost of 2-3 days’ emergency leave”. Retaining carers through support or special leave arrangements “represents a saving to the company of about £1 million per year”.

(Source: Who Cares Wins: A report for Carers UK by Centre for Social Inclusion, Sheffield Hallam University, 2006).

6.19 In terms of Exchequer receipts there are the benefits of additional tax, and for the economy more broadly, the benefits of a more skilled workforce.

6.20 As a concluding comment on this section of our response, carers are a very substantial part of our working population. Today **3 million** people combine unpaid caring and paid work. In 20 years time it is estimated that, with rising life expectancy, there will be almost 7 million people aged 75 or older in the UK and, at the same time, our economy will need to draw **2 million** additional people into employment. (*Source: We Care – Do You?*) Many more people will therefore be juggling work and care. It is vital therefore that serious consideration be given by government and employers about the costs of not providing adequate flexibility and support for working carers.

6.21 It is also estimated that unpaid care provision saves the economy £57.4 billion a year. If the Discrimination Law Review chooses not to see the above employment protection as a priority, and carers continue to be prevented from earning an adequate income at work (or from working at all) then, at the very least, we believe that they must receive recognition and remuneration for the contribution that they make to society and to the economy.

6.22 Extension to carers of protection against discrimination in goods, facilities and services

We include below comments on:

- ◆ what is wrong with existing legislation and why can't we rely on this for carers?
- ◆ explanation of our proposals
- ◆ benefits of our proposals

6.23 What is wrong with our existing legislation? As in the case of employment, it could be argued that carers facing discrimination in accessing goods and services will be protected to some extent by existing law through indirect discrimination provisions. However, as in the case of employment, we do not believe that this protection is adequate as it is not preventing discrimination against carers in practice and taking the indirect discrimination route would be highly complex and is untested in law.

6.24 It may also be suggested that carers are also adequately protected at present with regard to accessing goods and services under the Human Rights Act 1998 (HRA). Carers, like everyone else in the UK, are indeed entitled to rely on the protection of the HRA which should ensure that public bodies take account of their human rights when they provide services. However, this protection is limited for two main reasons; firstly because the Act only covers public bodies and does not therefore protect people working in or receiving goods and services from the private and not for profit sectors; and secondly because evidence (*Whose rights are they anyway? Carers and the Human Rights Act". Carers UK 2006*) suggests that the legislation is not providing adequate protection in practice. Indeed, this evidence suggests that there are several articles of the Human Rights Act where carers' rights may be being violated including:

- A right to life (Article 2). This may seem dramatic but Carers UK research has uncovered carers who have to delay urgent medical treatment because of inadequate support.

- A right to be free from inhuman or degrading treatment (Article 3). Carers rely heavily on public services for funds, practical support and breaks yet many are pushed to the brink of physical and mental collapse because of the lack of support they receive.
- A right to respect for private and family life (Article 8). Public bodies need to balance and consider the rights of everyone affected by their services, which includes respecting people's private and family lives.

6.25 In general terms of accessing goods, facilities and services, we list below some of the areas in which carers are reporting the discrimination that they are facing in accessing goods and services

- **Lack of access to education and training** - this is applicable to carers of all ages as they are often concentrated in low level, low paid jobs. It is particularly relevant to young carers. A key issue also reported by carers of sick or disabled children is the lack of support during the time of transition from children's to adults' services with a reduction of services as children get older. Examples cited include erratic and changeable college and "work training" placements. In addition, working carers are also reporting problems with accessing training and qualifications. In general they are more likely to be unqualified and less likely to have university degrees than other employees. Among women in full-time paid work, those who provide unpaid care for 50 hours or more per week are twice as likely as non-carers to be unqualified. (*Source: Who Cares Wins, A report for Carers UK by the Centre for Social Inclusion, Sheffield Hallam University, 2006*) Carers of sick or disabled children wanting to return to paid work after a period of caring have also reported that they have been unable to access advice relating to career direction, and applying for a job (*Source: Caring for Sick or Disabled Children: Centre for Social Inclusion, Sheffield Hallam University*).
- **Lack of access to childcare and support services for carers of sick or disabled children** - this has often been reported as the biggest hurdle facing these carers in re-entering or remaining in employment. A particular problem is that after-school provision and provision in school holidays for their children is often not geared up to disabled children. As an illustrative example, one carer discovered that, while her local social services said that they could pay a higher hourly rate to cover the increased cost of attending clubs and childminders, these services nevertheless refused disabled children, citing the additional insurance cover needed. She was therefore unable to access the service. Even where local provision has been advertised as "inclusive of special needs" carers have reported that it has not been available to children with behavioural difficulties who are often seen as potentially "disruptive". Other carers have reported that, despite having a formal Statement of Special Educational Need, their child has not been considered "disabled enough" to be entitled to out of school services. All of this means that working outside school hours and during school holiday times can be especially difficult for carers. (*Source: Caring for Sick or Disabled Children, Centre for Social Inclusion, Sheffield Hallam University, 2006*)
- **Lack of access to alternative social care services** – this problem is repeatedly reported by carers of all ages. Unless a carer can afford to approach private care providers and pay for (often costly) alternative social care themselves, in most cases they have to firstly access funding and support through their local social services

department. Surveys of carers have indicated that access to respite care is often limited and few have the support of formal alternative care services or any contact with their local social services department. Many of the carers surveyed found that social services resources were severely limited and that there would be little assistance available to them. In the words of one, **“We were told time and time again: unless you were in crisis there was no support for us at all”**. Another key issue reported, as in the education and training field, is the lack of support during the time of **transition** from children’s to adults’ services with a reduction of services as children get older. Examples cited include limited day care centres and no overnight respite places for adults. (Source: *Caring for Sick or Disabled Children, Centre for Social Inclusion, Sheffield Hallam University, 2006*)

- **Lack of access to medical services** – again, this problem is repeatedly reported by carers of all ages. For example, the need to take time off work for hospital appointments was cited as a barrier to combining work and care by 30% of carers surveyed by Contact a Family on behalf of DTI in 2004-2005. (Source: *Caring for Sick or Disabled Children, Centre for Social Inclusion, Sheffield Hallam University, 2006*). Carers of sick or disabled children face a particular challenge in that the organisation of such services for their children can adversely affect their ability to fulfil work obligations as appointments are often at fixed, inflexible times during office hours. Working carers in general pay a heavy penalty in terms of their own health; those with heavy caring responsibilities are two to three times more likely than workers without caring responsibilities to report poor health in the past year.
- **Lack of access to transport services** – surveys of carers of sick or disabled children have shown that inflexible or unreliable transport services (i.e. because of late running, strikes, cancellations or diversions without notice) have caused frequent care emergencies which have been particularly problematic for working carers. Despite the expense involved, nearly all working carers surveyed had to have a private car in order to ensure that they could access the support services they needed and get to their workplace. However, 23% of families in England and Wales with a sick or disabled child have no access to a car or van. (Source: *Managing More than Most: A Statistical analysis of families with sick or disabled children, Carers UK/University of Leeds*). For carers without a car, relying on public transport or on taxis (which are relatively costly) restricted their lives and work opportunities even further. (Source: *Caring for Sick or Disabled Children, Centre for Social Inclusion, Sheffield Hallam University, 2006*). Another issue reported by carers is the problem of lack of availability – or high cost – of hospital parking spaces when they are attending for appointments.
- **Lack of access to quality and affordable housing** – 16% of families in England and Wales with a sick or disabled child are living in overcrowded accommodation compared with 10% of other households. 34% of these families are also living in social housing compared with 21% of other households. (Source: *Managing More than Most: A Statistical analysis of families with sick or disabled children, Carers UK/University of Leeds*)
- **Lack of access to leisure facilities** – it is often forgotten that if the cared-for person cannot access the facilities (for example, because of a disability), nor can the carer

who is accompanying them. Here it could be argued that the introduction of protection against “discrimination by association” (already mentioned in this paper), would cover this. However, as in the area of employment, this would not cover a carer who is caring for a non-disabled person or who is trying to access the facility without the person they are caring for being present but is unable to do so because of inflexible opening times.

- **Lack of access to legal services and advice.** On the service side, at present claimants must use county courts in England and Wales or Sheriff courts in Scotland (as opposed to tribunals as in employment cases). Such courts are a relatively complex and expensive process and are off-putting. Cases are therefore not being pursued, not because this type of discrimination does not exist, but because of the complexity and the costs involved. Most of the carers we are in contact with have enough to cope with; they are put off by the huge stress and pressure, plus the cost, of taking legal cases. This, in itself, denies carers the access to the justice they deserve.

6.26 Despite reports of widespread discrimination in this area there is currently no recognition in law that what is causing carers’ exclusion from certain services, facilities and activities in society is **because** of their caring responsibilities. As in the case of employment law, while this situation continues, many carers and service providers are either unaware or unsure about their current legal responsibilities. This can and does lead to problems, not only for carers but also for service providers who are likely to be ill prepared for any claims against them.

6.27 In conclusion, as in the case of employment, we do not believe that current legislation on goods, facilities and services provides carers with adequate protection against discrimination. Indeed, because of the gaps in – and complexity of – the current law, rather than giving an incentive to develop and deliver good practice, we feel that there is confusion among service providers, recipients and carers and the potential for a number of complex and lengthy test cases in the future.

6.28 Explanation of our proposals. We believe that, instead of relying on the complexities of the above approaches, there is a strong case for **making the legal position of carers clear to both the providers and recipients of services, goods and facilities** by means of an extension of protection from discrimination to carers. We propose that, as with employment, there should be a new prohibited ground of discrimination against carers following the format of the Disability Discrimination Act (DDA) as this is the most appropriate to the position of carers, but with some amendments as below.

6.29 “Reasonable adjustments” - as in the DDA, we believe that there should be a duty to make “reasonable adjustments” in relation to the carer. This could be along the lines of the DDA as follows.

A service provider would be required to take reasonable steps to:

- *change a practice, policy or procedure which makes it impossible or unreasonably difficult for carers to make use of its services*
- *provide an auxiliary aid or service if it would enable (or make it easier for) carers to make use of its services.*

Examples of the types of adjustments that might apply are outlined below:

- Housing services - since including carers as an equality strand in impact assessments, Rochdale Boroughwide Housing have been able to offer carers more flexible appointment times for servicing appliances, provide more notice to enable carers to make arrangements to attend open days and offer responsive repairs enabling tenants to nominate carer or relative names to ensure they are included in arrangements.
- Health services – health appointments at a convenient time or location for parents, e.g. seeing sick or disabled children in schools rather than requiring parents to miss work for health carer visits. NHS Trusts and PCTs should look at the provision of reasonably priced or free car parking for carers attending hospital and surgery appointments (the cost of these is often cited by carers as a barrier to using the service)

6.30 Prohibition against harassment – we believe that there should be a specific prohibition against harassment in relation to goods and services. This is not included in the DDA for goods and services although it is covered for employment and we believe that this anomaly should be corrected.

6.31 Effective enforcement mechanisms – from experience reported by carers and equality organisations, including the Disability Rights Commission, we believe that it is unrealistic to think that the above legislation could be enforced by the CEHR alone; we therefore believe that further consideration should be given as to how carers and service user groups - who will be the most aware of the deficiencies in accessing provision - could be involved by the CEHR to help regulate this.

6.32 Accessing justice – as reported above, carers face problems in challenging discrimination in services and goods since they are required at present to use the county courts in England and Wales or the Sheriff courts in Scotland which are a relatively complex and costly process. We therefore believe that consideration should be given to the idea that all discrimination cases be commenced in employment tribunals (these could be designated by another term when applying to the provision of goods, facilities and services). The EOC has long argued, for example, for a discrimination division to be established within employment tribunals to hear both employment and non-employment cases of discrimination.

6.33 Benefits of our proposals. We believe that the above approach would have similar advantages to those we have outlined under the discrimination in employment section above, but, specifically for providers of services or goods, we believe that the benefits would include:

- **Developing greater flexibility** in delivering services (and more targeted and accessible services as a result) because of the recognition of carers' needs, and of the fact that carers are becoming a more significant section of our society. Case studies of some organisations have suggested that they have recognised that “greater flexibility is becoming more important in delivering services more efficiently and competitively”. (*Source: Who Cares Wins: A report for Carers UK by Centre for Social Inclusion, Sheffield Hallam University, 2006*).
- **Engaging** with a wider part of the existing (and potential) service recipient or customer base. For example, since including carers as an equality strand, the Adult Care Service of Rochdale Council has identified and put into place a range of targets which have assisted carers to address inequalities in areas such as employment, training, health

and income. Carers have been provided with information, advice and support in order to enable them to make informed choices and know their rights

- **Tackling** the problem of being seen as remote and exclusive, which can be a particular difficulty for organisations who are having to compete to provide services or goods.
- **Enhancing** the organisation's reputation as a result of the above.

6.34 As in the area of employment discrimination, the **costs versus the benefits** are difficult to weigh up. There are potential health benefits through the provision of more tailored services reducing the stress related and physical disorders associated with caring. There are of course likely to be some initial costs for providers in adapting their services to meet the needs of carers and other people who may need services to be provided in a more flexible, responsive way. However, it could also be argued that this would have the positive effect of driving services to be more efficient and cost effective, particularly if they face increased competition. It could also encourage greater take up and commissioning of services where these are seen to be responsive and effective.

6.35 In addition, as the Initial Regulatory Impact Assessment paper has recognised, there are advantages in simplifying and clarifying the grounds of discrimination in reducing the number of cases coming to court out of ignorance and hence "saving money for business, claimants and the public sector". This would be particularly helpful in the area of discrimination in goods, facilities and services which is often less well understood by organisations than the area of employment discrimination.

7. Additional comments

7.1 We include below additional comments on other relevant issues raised in other chapters of the consultation paper.

7.2 Discrimination by association (Chapter 1). Extending protection against discrimination on the basis of "association" beyond the areas of race and religion or belief to the areas of disability and age would mean that (among others) carers would benefit where caring for an older or disabled person. In principle, therefore, Carers UK would view this as a positive step. However, as we have set out in our comments on Chapters 5 and 8, we believe that the real problems of discrimination and harassment faced by carers would only be adequately addressed by extending protection to them under discrimination law and under a public sector equality duty.

7.3 We also recognise, as the paper suggests, that there are some practical difficulties with the discrimination on the basis of association approach. For example, in the area of age, unless specifically restricted to people accompanied by carers, it could potentially bring in a very wide range of people associating with younger as well as older people such as teachers and parents.

7.4 In the area of disability the paper has also stated that the Discrimination Law Review "will in due course consider the impact" of a current case which has been referred to the ECJ (Coleman v Attridge Law). We recognise that this is a very significant case and that there is also a case for making the coverage of perception and association more consistent across

the existing diversity strands. However, we do have reservations about this concept. As far as carers are concerned, in the area of disability, we do not believe that discrimination by association alone would be sufficient to protect them since, as the current situation stands, it would rely on the cared-for person proving that they were disabled. It would not protect, for example, those caring for the significant number of people in the UK with undiagnosed conditions or for people who would not currently be defined as disabled under existing disability legislation, but who might require significant amounts of care, e.g. older people.

7.5 Harmonising the objective justification test (Chapter 1). We are in agreement with this proposal in principle as it would appear to make sense to adopt the same objective justification test (using the formula of the European Directives) for all the areas outlined in this section (i.e. all indirect discrimination provisions, and for direct discrimination on the grounds of age). We also believe that the existing right to request flexible working under the Work and Families Act should be amended to provide for the employer to show objective, as opposed to subjective, justification. This would bring these provisions in line with the test of justification under the Sex Discrimination Act. A good reason for doing this is the current confusion for employers and employees of having two parallel obligations/rights which are quite different. It would also mean that employers would, rightly, have to give some thought and justification to refusals.

7.6 Balancing measures (Chapter 4). We welcome the paper's recognition of the need for "balancing measures" which are defined as "measures designed to address the under-representation of particular groups in a variety of roles and situations". We welcome the citation of the right to request flexible working as an example of such a balancing measure which was needed to enable carers of adults and parents of young or disabled children to have better access to jobs. We also welcome the statement about what the paper wants to achieve with balancing measures including to "remove unnecessary barriers to equality of opportunity" and to "base what is done on a sound analysis of the issues, and be open to the idea that positive action may be needed for any group, not just those groups more usually associated with under-representation".

7.7 However, as argued in our response to Chapters 5 and 8, we are extremely disappointed that, given the paper's recognition of the above, it does not provide a comprehensive "sound analysis" of some of the key issues and barriers to equality which still persist in society and which in some cases go beyond the six recognised diversity strands.

7.8 Positive action provisions (Chapter 4). We believe that there is scope for positive action measures to be expanded beyond the current area of employment to areas such as education and the provision of goods, facilities and services. As the paper says, the age, sexual orientation and religion or belief regulations have a more flexible approach than the SDA and RRA in not specifically referring to under-representation but saying that positive action measures can be used where it reasonably appears that the action in question "prevents or compensates for disadvantages" linked to that person's status etc. We also believe that the scope for positive action should be extended from the existing six diversity strands, including to cover positive measures for groups such as carers, if these are needed in order to meet the paper's principle for balancing measures which is "to prevent or compensate for disadvantage". As it is proposed that the above positive action measures would be voluntary, there would be no mandatory additional costs but there could be good

reputational gains for the organisations involved and more effective recruitment and retention outcomes.

7.9 Good practice examples of positive action measures of which we are aware include DCA's flexible working and training practices including positive action to ensure that carers have access to career and personal development opportunities.

7.10 Promoting good equality practice in the private sector (Chapter 6). We welcome the paper's recognition and explanation of the business case for diversity and acknowledge the examples of good practice which are being developed by some leading private sector employers. We believe that a voluntary "Equality Standard" would be beneficial to businesses, employees and customers. We agree that, as outlined in the paper, this should set out what businesses, as both employers and providers of goods and services, need to do to comply with discrimination law and achieve higher standards of good practice in equality and diversity. We also agree that the standard should build on the gender "equality check tool", as recommended by the Women and Work Commission, which would help enable employers to identify problems, further investigate them and then take action.

7.11 In terms of whether the standard should be independently assessed or certified or just used as a non-accredited good practice and compliance tool, we do not have firm views about which option would be most effective in driving good practice in equality and diversity. On the surface, however, it would seem that an independently assessed standard would have the advantage of being more measurable and would also bring greater reputational benefits for business. From the point of view of business, however, a non-accredited standard might be more attractive initially as it would not incur assessment costs. From the government's point of view, both options would involve set-up costs which would probably balance out since, as the paper argues, while these would be higher for the independently assessed scheme initially, part of these costs might then be recovered from businesses seeking accreditation.

7.12 We also reiterate our belief that the public sector equality duty should include an explicit requirement for public bodies to build equality considerations into their procurement processes. We believe that this approach, coupled with the provision of practical guidance and the development of an "Equality Standard", as mentioned above, would be the most effective way of encouraging and embedding good practice.

7.13 We also believe that it is important that consideration be given to assisting the development of good practice not only in the private sector but also in the **not for profit sector**, particularly given its increasing role and importance in the delivery of public service contracts.

7.14 Effective dispute resolution (Chapter 7). We believe that, regarding general non-discrimination legislation in employment, the following measures should be implemented in order to ensure effective enforcement of the law:

- ◆ **Interested parties**, such as trade unions, should have the power to institute proceedings in their own name (or jointly with individuals) where there is a common problem affecting several people. These actions can be a useful route for people to bring their cases to court when they are unable or unwilling to bring claims themselves. The paper's reservations about this proposal seem to be based on concerns expressed

by business but there is a strong counter-balancing factor of the need to ensure that non-discrimination law is properly enforceable.

- ◆ The **time limit** for employment claims (3 months – heard in employment tribunals) should be brought in line with the limit for enforcement of services claims (6 months – currently heard in county/sheriff courts).

7.15 Harassment (Chapter 14). As we have mentioned in our response to Chapter 8, we believe that there should be a specific prohibition against harassment in relation to goods and services. This is not included in the DDA for goods and services although it is covered for employment and we believe that this anomaly should be corrected.

8. Conclusion - summary of our response

8.1 As we have mentioned in our introduction we welcome the Discrimination Law Review and the opportunity to respond to its proposals. The key point that we would like to make is that the Review should take this **historic opportunity** – with the unique timing afforded by the current review of the Prime Minister’s Strategy for Carers, the announcement by the Prime Minister this week of a Standing Commission on Carers and the launch of the CEHR – to give proper consideration to addressing the daily and widespread discrimination that is faced by carers.

8.2 We have outlined evidence of this discrimination both from recent research and from the calls that we receive on a daily basis to our CarersLine. We have set out what we believe is a very strong case for extending protection to carers against discrimination in the three key areas of:

- ◆ the proposed new single public sector equality duty
- ◆ discrimination in employment
- ◆ discrimination in the provision of goods, facilities and services

8.3 We believe that our proposals would provide the most **practical and effective** way of tackling discrimination while also providing the most **clarity** for carers, employers and service providers alike. We also believe that these proposals are in keeping with the aims of the Discrimination Law Review which is to provide legislation which is **streamlined but also inclusive**, i.e. which does not exclude some of the most vulnerable employees and recipients of services who are also a sizable and growing part of our population. We have also pointed out the relative lack of cost of our proposals but their very significant benefits.

8.4 A common criticism of equality policies is that the policies may exist in writing but are not converted into action on the ground. From our experience, members of the public - including carers and those who they care for, who understand the need for protection against discrimination and promotion of equality on the ground – would see the failure to implement any measures for carers in the new legislation as a major failure. We are particularly concerned about the likely mismatch of expectations arising from the historic opportunities presented at the moment. Alternatively, if the government decided to implement the proposals we have highlighted above, we believe that this would send to carers a very **real and positive message** that they are recognised. And, as we have highlighted in our introduction, anti discrimination policy for carers has been **tried and tested** by the best employers and service providers and is in many ways a less onerous and challenging area of discrimination

to understand and implement than other issues such as age and disability. We believe that it should not be a difficult issue to address in practice and that it would have tangible and long lasting benefits.

8.5 Looking ahead, we believe that the Discrimination Law Review has great potential and that, with the incorporation of our proposals to include carers, it should be able to provide both an ***inspirational and practical*** vehicle for:

- addressing some of the most ***persistent and underlying causes of discrimination***
- recognising the ***realities of people's lives*** - i.e. that they are not always part of just one diversity "strand" but that they may face different types of discrimination, including because of caring responsibilities, at various stages of their lives

8.6 Indeed, statistical work on the 2001 Census has shown

"how ubiquitous caring is, underlining that caring is, for most people, at some time in their life, a normal and everyday thing to do.... Across the life course, caring for others who need help or support of some kind is likely to happen, at some point, to most of us"

(Source: Who Cares Wins: A report for CARERS UK by Centre for Social Inclusion, Sheffield Hallam University).

It is at such times of our lives - when we are in most need of accessing flexible employment and services – that the issue of protection against discrimination is at its most relevant.

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