



DISCRIMINATION LAW REVIEW

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

Submission from the National AIDS Trust

1. Introduction

The National AIDS Trust welcomes the opportunity to submit views to the consultation on the Discrimination Law Review: Fairness and Equality for All. Great progress has been made in recent years in developing and extending equality and discrimination legislation to address systemic discrimination and injustice in society. But it is now time to establish a consistent and principled legislative framework

The National AIDS Trust congratulates the Discrimination Law Review on its work, but believes that the proposals as they currently stand do not go far enough to establish genuine equality, on occasion dilute existing statutory provisions, and are often marred by timidity and lack of vision.

The National AIDS Trust is the UK's leading independent policy and campaigning organisation on HIV and AIDS. We develop policy and campaign to halt the spread of HIV and improve the quality of life of people affected by HIV, both in the UK and internationally. The eradication of HIV-related stigma and discrimination is one of our four strategic goals. We engage on equality, stigma and discrimination issues in a number of areas including surveys of public attitudes, employment rights, media coverage of HIV, stigma in healthcare, and the criminal justice and prisons systems. We are also active at the European level advocating for greater legal protection for people living with HIV.

In this submission we concentrate on how the Single Equality Act should meet the needs of people living with HIV in the UK. We do, however, consider equality and anti-discrimination legislation to be interconnected and its concerns seamless – that, after all, is why we need a Single Equality Act in the first place. Therefore, whilst some of the particular points made might appear less immediately relevant to people living with HIV, **the National AIDS Trust supports and endorses the submission to the Discrimination Law Review from the Equality and Diversity Forum, of which we are a member, and its wider conclusions and recommendations.**

HIV in the UK disproportionately affects two groups which experience inequality and discrimination – gay and bisexual men, and black Africans – and amongst black Africans women are disproportionately affected. Discrimination may be a major contributory factor to HIV infection, whether it is gender violence, discrimination-related poverty, or lack of sex and relationships education on gay sex in schools. Furthermore it is often hard to disentangle HIV discrimination from the homophobia, racism, anti-immigration prejudice and sexism which so many people living with HIV also experience and which fuel HIV stigma. **The National AIDS Trust supports the submissions to the Discrimination Law Review from Stonewall, the Commission for Racial Equality**

and the Equal Opportunities Commission which discuss in detail the equalities concerns of gay and bisexual men, black and minority ethnic communities, and women.

2. The inequality and discrimination experienced by people living with HIV

The inequality and discrimination experienced by people living with HIV is complex and pervasive, partly relating to other discrimination 'grounds', such as homophobia or racism, and partly specific to HIV itself. This section aims very briefly to map out the experience of inequality and discrimination faced in the UK by people living with HIV.

- HIV overwhelmingly and disproportionately affects people from marginalised groups. 42 per cent of people living with diagnosed HIV in the UK are gay or bisexual men, and 39 per cent are of black African ethnicity.¹
- A significant proportion of heterosexuals with HIV in the UK lack settled residency status in the UK, with implications for the right to work, the right to education, and in some instances the right to healthcare.²
- Research suggests less than half of people living with HIV are in paid employment, despite the effectiveness of treatments.³
- One in three people living with HIV have experienced discrimination, with half of this number stating that it came from healthcare workers.⁴
- One in three people diagnosed with HIV in the UK have experienced severe economic hardship.⁵

3. HIV and the 'ground' for discrimination protection

The Government is to be congratulated on the Disability Discrimination Act 2005 which extended disability protection to people living with HIV (as well as those with cancer or MS) from the point of diagnosis. In the case of all three conditions so protected, this was an important acknowledgment of the way discrimination can work in relation to a long-term or 'progressive' condition. Even in the absence of any impairment, fears and prejudices around future impairment or deterioration can result in discrimination now.

In the case of HIV, this protection from the point of diagnosis is important also for other reasons. HIV discrimination relates not just to impairment, whether actual or predicted,

¹ Health Protection Agency SOPHID results 2005 www.hpa.org.uk

² See for example the important qualitative research 'My Heart is Loaded – African women with HIV surviving in London' Doyal L. and Anderson J. 2004, and 'I want to survive, I want to win, I want tomorrow: An exploratory study of African men living with HIV in London' Doyal L., Anderson J., Apenteng P. 2005

³ Elford J., Ibrahim F., Bukutu C., Anderson J., 'In the era of HAART how many people living with HIV are employed?' British HIV Association Spring Conference 2007 Abstract P122

⁴ Elford J., Anderson J., Bukutu C., Ibrahim F., 'Discrimination experienced by people living with HIV in London' XVI International AIDS Conference, Toronto, August 2006 Abstract number TUPE0716

⁵ 'Poverty and HIV: Findings from the Crusaid Hardship Fund 200' National AIDS Trust/Crusaid December 2006 p.6

but to social stigma linked to sex, sexuality and sometimes also other behaviours (such as injecting drug use). It also relates to fear of infection, to the fact HIV infection is incurable and to the fact that without treatment it results in death.

From a practical perspective, the protections available to people living with HIV from disability discrimination law were very welcome and far reaching. It must, however, be acknowledged that this is not an entirely comfortable 'fit'. HIV discrimination is not wholly, or indeed mainly, about disability, even a social model of disability. There is evidence that some people living with HIV are uneasy at being so defined, and unsure of the implications.⁶ We have also seen many cases where, for example, employers or public bodies persist in considering disability solely from the perspective of impairment, with little grasp of the need to address social stigma and other issue relevant to HIV.

Whilst the number of distinct 'grounds' under discrimination law cannot be multiplied endlessly, there is a unique aspect to HIV discrimination which needs to be recognised. **In drafting the Single Equality Bill, we believe that consideration should be given to distinguishing HIV-related discrimination from other forms of disability discrimination.** If making HIV positive status a distinct ground is not considered practicable, consideration should be given to redefining the 'disability' ground to make clear its provisions extend beyond the usual definition of disability – perhaps 'disability and specified health conditions'. The specified health conditions are currently HIV, MS and cancer. This would assist all subject to anti-discrimination law to consider the specific and particular needs of people living with HIV.

4. Discrimination on the basis of perception or association

HIV positive status cannot be 'seen' and this profoundly affects how stigma and discrimination are experienced.

Discrimination by association can also take place in the context of HIV – one aspect is shared moral opprobrium and this can affect workers in HIV organisations, for example; another is stigma around fear of infection. One case of discrimination by 'association' which came to our attention was a nurse who was asked to change responsibilities at work and no longer engage in invasive procedures because her spouse was living with HIV. Workers, partners and family members can all experience discrimination by association in relation to HIV.

Similarly, a gay man or black African may be discriminated against because they are wrongly 'perceived' to be HIV positive.

Discrimination on the basis of perception or association are social realities which should be addressed in law.

The National AIDS Trust recommends that disability be included as a ground for protection against discrimination by perception or association.

⁶ See 'Outsider Status: stigma and discrimination experienced by gay men and African people with HIV' National AIDS Trust/Sigma Research 2004

5. The Single Equality Duty

The National AIDS Trust has taken a particular interest in the potential of the Disability Equality Duty to promote the equality of people living with HIV, and to that end published in July 2006 the booklet 'HIV and your Disability Equality Scheme'. This booklet provided advice and ideas to senior managers of public bodies on how they might consider implementing the Duty in relation to people living with HIV. The booklet has been well received and widely used. Even at this early stage, the existence of the Disability Equality Duty and its application to people living with HIV has had a noticeable effect on the willingness of public bodies to consider the impact of their policies and practice on people living with HIV.

Given the newness of the Disability Equality Duty and those early signs of positive impact, we read with concern those proposals in the consultation document which appear to dilute the Duty's application and force.

We should make clear that in principle **the National AIDS Trust supports the establishment of a Single Equality Duty**. It seems more appropriate to a Single Equality Act and a single Commission for Equality and Human Rights and, as the consultation document states, can more readily and flexibly address the fact of multiple discrimination faced by so many in our society, in particular people living with HIV. **The National AIDS Trust also supports the extension of the Single Equality Duty to other grounds**. In particular, the discrimination and inequality faced by gay men in education and health systems, to name but two of the key public services, has a direct impact on the ability of gay men to avoid HIV infection and, for those who are HIV positive, to enjoy and access services in a supportive environment.

We would, however, echo the concerns and proposals set out in the submission from the Equality and Diversity Forum. **The National AIDS Trust is strongly opposed to the replacement of the current 'due regard' duty with a requirement merely to 'focus on taking action in a limited number of areas'**.

We oppose the replacement of specific duties with a set of principles, and also believe that individuals and civil society organisations should be able to call public bodies to account, and if necessary go to court, to seek enforcement of the duty. It would be a retrograde step to undermine a duty which is beginning at this early stage already to have positive benefits for people living with HIV.

6. 'Multiple discrimination'

The overwhelming majority of people living with HIV in the UK may also experience discrimination on other and related grounds such as sexual orientation, race (which can include nationality and immigration status) and gender. As has previously been stated, the complex nature of HIV-related discrimination may even mean that it is difficult to disentangle whether a specific discriminatory act related to, say, an individual's sexuality or HIV status. One example of discrimination has, for example, come to our attention recently in a healthcare setting of a pregnant woman living with HIV which was an intersection of sex and disability discrimination.

The National AIDS Trust believes that discrimination legislation should acknowledge the existence of multiple discrimination and ensure a system of

redress which provides justice for those who experience it. We endorse the detailed proposals put forward in this regard by the Equality and Diversity Forum.

7. Harassment and hate crime

Disclosed HIV positive status can amongst some people elicit extreme fear or hostility, and this can on occasion become acts of harassment or hate crime against a person or persons living with HIV. The consultation document states the Government will only legislate if convinced 'this is a proportionate response to a real problem' [para.14.5].

The consultation document proposes that protection from harassment for disabled persons should **not** be extended to cover provision of goods, facilities and services, education or public functions.

The National AIDS Trust recommends that protection from harassment be extended to cover disability, thus protecting people living with HIV, in all outstanding areas – provision of goods, facilities and services, education in schools, management or disposal of premises and the exercise of public functions.

The National AIDS Trust does not believe the distinction between 'open' and 'closed' environments is relevant to the issue of harassment, any more than it is to the acceptability of discrimination. To give one example of such harassment in a pub – during the recent St Ives 'scare' over increased diagnoses of HIV in the area, newspapers reported some bar staff as serving customers with surgical gloves as a 'joke'. We believe someone living with HIV who came into the pub would be justified in considering that harassment, and the law should prohibit it.

Hate crime

Hate crime against people living with HIV does occur, although it is hard to assess its extent since there have not to date been any formal processes to record it. Some examples are to be found in the the report on Poverty and HIV published in December 2006 by the National AIDS Trust and Crusaid, which identified such hate crime as one of the factors contributing to HIV-related poverty.

Furthermore, the fear of such crime deters many people living with HIV from disclosing their HIV positive status to others and from accessing the rights and support to which they are entitled. In other words, whilst substantive cases of such hate crime might not be frequent, the social impact of such crime or the real fear of such crime, may have a pervasive and negative effect. The refrain of the consultation paper that legislation is only necessary if a 'real problem' can be demonstrated does not address, for unseen grounds of discrimination such as HIV status, the extent to which the absence of protection forces people to hide their status with the resulting multi-faceted social exclusion.

Section 146 of the Criminal Justice Act 2003 (CJA 2003) is an important provision which aims to deter hate crime against vulnerable populations and signal society's abhorrence of such behaviour. Those found guilty of hate crime, including disability-related hate

crime, can expect more severe sentences from a court. Unfortunately the definition of disability in the CJA 2003 is that of the DDA 1995 and has not been updated to reflect the extension by the DDA 2005 of the definition of disability to include people living with HIV from the point of diagnosis. The result is that two 'classes' of disabled people are created in terms of this legal protection – those who enjoy it and those who do not. Given the highly stigmatised nature of HIV, it is extraordinary that the Government has yet to close this loophole in the law and provide people living with HIV from the protection they need against hate crime.

The National AIDS Trust recommends that the Single Equality Act address hate crime against people living with HIV, equalise protection under the law and close the current loophole under section 146 of the Criminal Justice Act 2003 so that its definition of disability include people living with HIV from the point of diagnosis.

8. Access to justice

For people living with HIV access to justice is a particularly important issue, made difficult by the fact that many are unwilling to have their HIV positive status made generally known through a public process of redress. There have as yet been few cases taken to court or tribunal, and this despite the frequency with which complaints of discriminatory treatment are encountered by HIV support organisations.

The National AIDS Trust endorses the recommendations of the Equality and Diversity Forum in relation to enforcement and access to justice, including the importance of adequate legal aid, the establishment of Equality Tribunals, and the need for Tribunal powers to make recommendations to change discriminatory practice. We also recommend that Tribunal processes have at their disposal and use all necessary powers to protect from media reporting the HIV positive status of complainants.

9. Wider issues

This is the first opportunity for the National AID Trust to comment on the necessary contents of a future Single Equality Act. We believe that this legislation needs to be examined with great care to ensure it genuinely meets the needs and aspirations of everyone within the UK to real equality and an end to discrimination. To that end, **we recommend that the Government first present detailed legislative proposals to Parliament in a draft bill which can be considered by parliamentary committees and to which further evidence can be provided.**

We also recommend that the Government use the opportunity of the Single Equality Bill to examine more broadly its international human rights commitments to equality. **The National AIDS Trust recommends that the UK Government ratify Protocol 12 of the European Convention on Human Rights and the revised European Social Charter.**

**National AIDS Trust
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