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19 April 2011

Your Reference: Aging/2011/CM/JS/is

Dear Mr Mokhiber,

Thank you for your letter dated 24 February 2011 in which you call our attention to General Assembly resolution 65/182 of December 2010 entitled "Follow-up to the Second World Assembly on Ageing" and list 9 questions for respondents to answer.

By way of response the Equality and Human Rights Commission (the Commission) sends the below information.

On 10 November 2010 the Commission launched a formal inquiry in which we are using our specific legal powers under section 16 of the Equality Act 2006. The inquiry investigates the provision of home care to those 65 years of age or older. It will specifically look at the effectiveness of the English care and support system in protecting and promoting the human rights of older people requiring or receiving home based care and support.

In order to capture all the relevant issues we are conducting 5 different strands of evidence collection which are;

**Equality and
Human Rights
Commission**

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The Equality and Human Rights Commission was established by the Equality Act 2006 as the Commission for Equality and Human Rights.

1. A general call for evidence which started in November 2010 and concluded in March 2011. We received over 500 responses from individuals receiving home care, their family and friends, social care workers and organisations.
2. Focus groups were held to top up information where the information from our general call for evidence was sparse.
3. Two targeted surveys
4. Targeted and tailored questionnaires sent to organisations
5. Case studies

You will find the initial press release and terms of reference of the inquiry attached to this letter for background information.

The Commission will release the final report in Mid November 2011 which will contain the findings and recommendations drawn from the evidence collected. We will send you a copy of the report to share with interested parties. I hope it will help to inform your work with regards to human rights issues in England.

Yours sincerely

Quinn Roache

Project and Inquiry Manager

**COMMISSION FOR EQUALITY AND HUMAN RIGHTS (known as the
EQUALITY AND HUMAN RIGHTS COMMISSION)**

**NOTICE OF AN INQUIRY UNDER SECTION 16 OF THE
EQUALITY ACT 2006**

TAKE NOTICE THAT THE EQUALITY AND HUMAN RIGHTS COMMISSION WILL BE CONDUCTING AN INQUIRY INTO THE HUMAN RIGHTS OF OLDER PEOPLE WHO REQUIRE OR RECEIVE HOME-BASED CARE AND SUPPORT WITHIN THE TERMS OF REFERENCE STATED BELOW.

In accordance with Schedule 2 paragraph 2 of the Equality Act 2006, **notice is hereby given** that in fulfilment of the Commission's duties under Section 3, 8 and 9 of the Equality Act 2006 and using powers granted to the Commission under Section 16 of the said Act, the Commission intends to carry out an Inquiry into Human Rights and home-based care for Older People.

The Inquiry Terms of Reference are:

1. The extent to which public authorities are effective in protecting and promoting the human rights of older people, including those paying for their own services, in the initial and ongoing assessment of their needs, commissioning home based care and support and subsequent contract management.
2. Good practice in the promotion and protection of human rights of older people in home based care, including by reference to examples of how public authorities have addressed human rights matters in discharging their existing duties to promote race, gender and disability equality or through the development of single equality schemes.
3. Public authorities' understanding of their duties under the Human Rights Act in relation to promoting and protecting the human rights of older people requiring or receiving home based care and support.
4. The extent to which the legal framework for human rights and community care adequately protects and promotes the human rights of older people requiring or receiving home based care and support services.
5. The extent to which appropriate information, advice and advocacy is provided to older people directly purchasing home based care and support in order to protect and promote their human rights.

6. The extent to which inspectorate and regulatory bodies, including professional regulatory bodies, protect and promote the human rights of older people requiring or receiving home based care and support services and the extent to which it is appropriate for them to do so.
7. The scope for enhancing the role of inspectorate and regulatory bodies, including professional regulatory bodies, individually and collectively, in promoting and protecting the human rights of older people receiving home based care and support.
8. The extent to which people, including the families of older people requiring or receiving care and support, based on their experience, have confidence that the system will promote and protect their human rights.

Scope of the Inquiry

To inquire into the extent to which the human rights of older people (aged 65 and over) who require or receive home-based care and support, however funded, are promoted and protected by public authorities, working singly or with others, and the adequacy of the legal and regulatory framework within which they are required and empowered to do so.

In carrying out the Inquiry the Commission will have regard to the extent to which the diverse experiences and needs of older people related to their disability, age, gender, gender identity, race or ethnicity, religion or belief and sexual orientation are effectively incorporated.

Geographical scope:

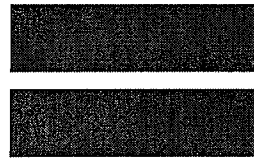
The Inquiry will cover England.

This Inquiry is conducted pursuant to the Equality Act Schedule 2, the effect of which is:

- To enable the Commission to serve a notice on any person or organisation requiring the production of information, documents or evidence in their possession (Sched 2 paras 9 and 10) ;
- To require the Commission to report on the Inquiry's findings (Sched 2 para 15); and
- To enable the Commission to address recommendations to any party (Sched 2 para 16).

Baroness Sally Greengross
Lead Commissioner for the Inquiry,
Equality and Human Rights Commission

10 November 2010



**Equality and
Human Rights
Commission**

Media release

Embargoed until 00.01hrs on 10 November 2010

The Equality and Human Rights Commission launches Inquiry into home care of older people

Responses sought from older people, their relatives, care agencies and public authorities.

The Commission today (November 10) launches a major inquiry into the human rights of older people requiring or receiving home-based care.

Older people receiving home-based care are acutely vulnerable to human rights violations, yet the duties and responsibilities of those providing, commissioning, funding or regulating the care and support system are far from clear.

Currently, over a million older people receive care and support in their own home, with a smaller proportion – an estimated 173,000 ^[1] - in residential care.

Today, 81 per cent of publicly funded home care is provided by the independent sector, up from two per cent in 1992^[2]. However, most independent providers are likely to be operating outside the direct reach of the Human Rights Act because they are not considered to be performing a 'public function'.

Sally Greengross, Commissioner at the Equality and Human Rights Commission said:

"Against a backdrop of budget cuts and public sector reform, local authorities are playing an ever-decreasing role as direct providers or funders of care and support, with the majority of older people receiving care from private and voluntary sector organisations or individuals.

"The complex web of provision has left older people and their families unclear whether and how their human rights will be protected. Equally, we believe those providing, commissioning or regulating care are unclear of their legal responsibilities and how to discharge them."

As the care model changes, older people and their families will increasingly be forced to fund care from their own resources. This could lead to care being provided at the margins of, or even outside of, current regulations and beyond the reach of human rights obligations.

The numbers requiring home care looks set to dramatically increase as by 2051, there will be 15.8 million people aged 65 years or over, a rise of 91% compared with 2008 ^[3].

The inquiry aims to provide clarity and confidence for all who have rights, and responsibilities that human rights are being robustly and comprehensively protected.

The Commission's recent landmark report, "How Fair is Britain?" identified the rising number of people with support needs as one of the emerging 21st century challenges and a major risk factor in the progress towards a fairer society.

The Commission will investigate whether the current legislative, regulatory and quality control systems offer enough human rights protection as well as people's experiences of and confidence in the system to protect their human rights. It will explore the legal obligations of different players, including care providers, local authorities, the Care Quality Commission and central government. The Inquiry will look at the case for reform to ensure that vulnerable older people are comprehensively and robustly protected.

Recommendations from the Inquiry will be used to inform the practices of local authorities, regulators and providers of home based care, as well as the Commission's own work. It will also influence the Independent Commission on social care reform and the independent Commission on a Bill of Rights.

Sally Greengross, Commissioner added: "By highlighting deficiencies in the present system as well as learning from examples of good practice, the Commission's Inquiry will ensure that the legal and regulatory framework in which home care providers operate protects and promotes the human rights of older people, preventing abuses and transforming the way that social care is delivered in England."

The Inquiry will publish its findings and recommendations in December 2011.

Ends

For more press information contact the Commission's media office on 020 3117 0255, out of hours 07767 272 818.

More information about the Inquiry can be found on the Commission's website at:
www.equalityhumanrights.com

Notes to Editors

[1] – Table 3.2: Estimated number of clients receiving services by service type and age group, England 2006-07 to 2008-09. Community Care Statistics 2008-09, Social Services Activity Report, England:

<http://www.ic.nhs.uk/webfiles/publications/Social%20Care/socialcarepubs280410/Community%20Care%20Statistics%20Social%20Services%20Activity%20Report%20England%20-%202008-09%20FINAL2.pdf>

[2] – Domiciliary Care UK Market Report 2010. Published by Laing & Buisson Ltd.

[3] – ONS estimates:

http://www.statistics.gov.uk/downloads/theme_population/NPP2008/NatPopProj2008.pdf

1. The Independent Commission on social care reform will report to the Government in Autumn 2011
2. The independent Commission on a Bill of Rights will start its work in 2011.
3. Organisations other than public authorities fall within the scope of the Human Rights Act 1998 where they are performing public functions. However, case law has interpreted this narrowly and independent providers of home based care are likely to be outside the scope of the Act.
4. Individuals currently spend some £4.2bn annually on privately purchased care, with a further £1.6bn being spent on private top-up care. – source: Resolution Foundation (2008) A to Z Mapping Long-Term Care Markets
(<http://www.deloitte.com/assets.Dcom->
5. An estimated 450,000 older people have shortfalls in their publicly funded care, and it is estimated that around 6,000 older people with high support needs and 275,000 with less intensive needs received no care at all from state or informal sources. Sources - Commission for Social Care Inspection (2009) *The state of social care in England 2007-08*.
http://www.cqc.org.uk/_db/_documents/SOSC08%20Report%2008_Web.pdf, and Older people in the United Kingdom May 2010 – Help the Aged –
http://policy.helptheaged.org.uk/NR/rdonlyres/29341400-5DF0-49B7-BD90-00CE05A0F46F/0/uk_facts.pdf
6. For the purposes of this inquiry, home care covers:
Paid social care that is provided in the home. This includes supported living arrangements and extra care housing, but excludes all forms of residential or nursing care homes.

Examples of home care services include support with:

Personal care (for example, getting up or going to bed, getting dressed, washing and bathing)

Preparing meals

Taking medication

Housework

Managing money and paying bills

Going out, for example to doctor's appointments or shopping

Making phone calls or writing letters

Keeping in touch with friends and family

Equipment and adaptations such as emergency alarm systems

7. Members of the public who wish to submit evidence can contact the Commission helpline on: 0845 604 6610

Equality and Human Rights Commission

The Commission is a statutory body established under the Equality Act 2006, which took over the responsibilities of Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission. It is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation, and encourages compliance with the Human Rights Act. It also gives advice and guidance to businesses, the voluntary and public sectors, and to individuals.