



EC PROPOSAL FOR AN EQUAL TREATMENT DIRECTIVE

Response from NAT (the National AIDS Trust) to the UK Consultation

Recommendations:

NAT is a member of the Equality and Diversity Forum and supports the conclusions and recommendations of the EDF's separate submission.

The UK Government should support provisions which extend the prohibition of harassment in goods and services to sexual orientation and religion or belief.

The UK Government should ensure that provisions around financial services and disability are comparable and consistent with those in the Gender Goods and Services Directive, including a requirement for updating and publication of relevant actuarial and statistical data.

The UK Government should strongly support amendments to the Directive text proposed by the European Parliament which enshrine a UN-compatible social model of disability in EU law. The UK Government should make clear in negotiations that it considers such a description of disability provides protection for people with HIV, and that it is important that people with HIV are protected from discrimination across the EU.

The UK Government should support amendments to the Directive which establish a requirement for member state legal provisions to address issues of multiple discrimination.

Introduction

NAT (the National AIDS Trust) welcomes the opportunity to provide input to the UK Government as it negotiates on the proposed Equal Treatment Directive. Overall NAT welcomes the Directive as an essential harmonisation and extension of equality law across the EU.

NAT is the UK's leading charity dedicated to transforming society's response to HIV. All our work is focussed on achieving four strategic goals:

- Effective HIV prevention in order to halt the spread of HIV
- Early diagnosis of HIV through ethical, accessible and appropriate testing
- Equitable access to treatment, care and support for people living with HIV
- Eradication of HIV-related stigma and discrimination.

NAT engages with HIV policy at the European level. NAT is on the steering committee of AIDS Action Europe, a pan-European network of more than 230 NGOs from 44 European and Central Asian countries. Our Director of Policy is also co-Chair of the EU's HIV/AIDS Civil Society forum and sits on the EU's Thinktank on HIV/AIDS.

In the UK, and indeed through much of Europe, the two populations most affected by HIV are gay and bisexual men, and migrant groups from high prevalence countries (mainly from sub-Saharan Africa). It is a staple of HIV-related policy that an effective response to HIV thus involves not just addressing specifically HIV-related discrimination but also the homophobia and racism so often experienced by those at risk of or affected by HIV.

HIV infection is a long-term physical impairment of the immune system. In the UK it is a disability under the DDA 2005 and we also consider it a disability according to the description of disability in the UN Convention on the Rights of Persons with Disabilities. In considering the EC's proposed Directive we thus have a particular interest in its disability-related provisions which we believe offer the prospect of effective and consistent protections across the EU for people living with HIV.

NAT is a member of the Equality and Diversity Forum and supports the conclusions and recommendations of the EDF's separate submission. We wish only to add comments on a few specific areas where we have particular interests or concerns.

Harassment and sexual orientation

We have explained why creating a society free from homophobia is an essential element to an effective response to HIV. We find the consultation paper's arguments against prohibition of harassment on grounds of sexual orientation (and of course also religion or belief) perplexing.

Were direct and indirect provisions adequate to address the problem it is hard to see why harassment provisions are necessary for the other grounds. The EDF submission provides ample illustration of circumstances where only a harassment provision would remedy the harm.

It is in principle harmful for a hierarchy of rights to be maintained or established in either the Equality Bill or in the Directive, both of which purport to be about the harmonisation of rights and law. The failure to harmonise at such a key legislative juncture is not a neutral act but itself a dispiriting instance of discrimination.

We have no doubt harassment on grounds of sexual orientation is rife, almost always endured rather than addressed, and the absence of a clear and unambiguous legal prohibition of harassment in goods and services contributes significantly to this state of affairs.

The UK in considering its position should not only consider the benefits or otherwise of a provision from the UK perspective (albeit this is the essential starting point) but also the wider impact across Europe. In many EU member states, especially in Central and Eastern Europe, homophobia is pervasive and either explicitly or implicitly sanctioned. For example, only a few weeks ago Lithuania passed a law in relation to young people and gay relationships which will in its impact promote homophobia and make safer sex work amongst young gay men impossible. In many other EU member states harassment provisions are even more necessary to clarify

legal rights, benchmark appropriate (and unacceptable) behaviour, and strengthen protections for gay men and lesbians.

Recommendation: The UK Government should support provisions which extend the prohibition of harassment in goods and services to sexual orientation and religion or belief.

Financial services and disability

Inappropriate and outdated restrictions on access to financial services remain a significant problem for people with HIV across the EU.¹ It is vital that any difference in provision of terms or premiums is based on transparent and up-to-date actuarial and clinical data if it is not to be discriminatory. We are concerned that the Directive on this issue appears less thorough in its provisions than the Gender Goods and Services Directive.

We support the view of the EDF that consistent language is important and that the phrase 'key factor' should be replaced by 'determining factor' as in the Gender Goods and Services Directive. We note also that where the gender provisions refer to 'relevant and accurate actuarial **and** statistical data' the proposed Equal Treatment Directive refers to 'relevant and accurate actuarial **or** statistical data' [*our emphases*].

Most importantly, there does not appear to be a comparable provision in the proposed Directive to that for gender around Member States ensuring that 'accurate data relevant to the use of sex as a determining actuarial factor are compiled, published and regularly updated'. This requirement of currency and transparency should also be there in relation to age and disability. Clinical developments in HIV are occurring at great speed, in drug tolerability, life expectancy, long-term condition management and in understanding of longer term impacts of treatment. It is essential that decisions of financial services are demonstrably up to date with such advances if they are not to be discriminatory.

Recommendation: The UK Government should ensure that provisions around financial services and disability are comparable and consistent with those in the Gender Goods and Services Directive, including a requirement for updating and publication of relevant actuarial and statistical data.

Scope of the Directive

NAT notes and supports the comments in the EDF submission on the applicability of EU discrimination law to health, education and housing. Of course in the UK direct and disability related discrimination provisions already protect people with HIV in these areas, and indirect discrimination and harassment in provision of goods and services will also be prohibited on grounds of disability if the Equality Bill becomes law. But the Directive will also, as discussed above, ensure harassment provisions apply in these areas in relation to sexual orientation and religion or belief.

The benefits across the EU from such provisions in the Directive will be immense. People with HIV often face discrimination or harassment in healthcare settings – recent research in London found that half of all people with HIV who had experienced discrimination had experienced it in a healthcare setting. Breaches of confidentiality

¹ See NAT/AE seminar report 'Legislation and Judicial Systems in relation to HIV and AIDS' December 2007 www.aidsactioneurope.org

have been reported to us on numerous occasions in relation to healthcare, education and housing providers, as are attempts to deny people services. What we come across in the UK is repeated across all EU member states.² We trust the UK Government will strongly support these proposals.

The description of disability

NAT has led a pan-European campaign to ensure the Directive includes a description of disability consistent with that of the UN Convention on the Rights of Persons with Disabilities, and which can thus ensure the 700,000 people with HIV in the EU are effectively protected from discrimination. As a result of extensive advocacy in the European Parliament, the Parliament's Report included Amendment 17 to the Preamble, which stated:

'(12a) persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, whether environmental or attitudinal, may hinder their full and effective participation in society on an equal basis with others'

NAT have been informed by Commissioner Spidla that the Commission accepts this Amendment for inclusion in the default Directive text which will be subject to further consideration in the Council. We welcome this Amendment and its acceptance by the Commission, which we trust will establish a progressive social model of disability in EU discrimination law and provide protection for people with HIV. We trust the UK Government will support the retention of this Amendment in the Directive text and more broadly advocate for a UN-compatible social model of disability, and for the rights of people with HIV to be protected by disability-related provisions. Of course such protection already exists in UK law but UK citizens with HIV do not necessarily enjoy the same protections elsewhere in the EU which compromises their rights to freedom of movement.

Recommendations: The UK Government should strongly support amendments to the Directive text proposed by the European Parliament which enshrine a UN-compatible social model of disability in EU law. The UK Government should make clear in negotiations that it considers such a description of disability provides protection for people with HIV, and that it is important that people with HIV are protected from discrimination across the EU.

Multiple discrimination

People with HIV are frequently from groups or share other identities subject to discrimination – a high proportion are gay, or from ethnic minorities for example. All member states should have in place legal provisions which recognise and address the possibility of multiple discrimination, and this should be a requirement of the Directive.

Recommendation: The UK Government should support amendments to the Directive which establish a requirement for member state legal provisions to address issues of multiple discrimination.

NAT July 2009

² See NAT/AE seminar report 'Legislation and Judicial Systems in relation to HIV and AIDS' December 2007 www.aidsactioneurope.org and also the report of the pre-seminar survey