

# Equality of Opportunity Committee

## EOC(3)-15-09 : Paper 1 : 17 November 2009

### The Equality and Human Rights Commission in Wales

The Equality and Human Rights Commission is an independent statutory body established under the Equality Act 2006. Our remit covers age, disability, gender and gender reassignment, race, religion and belief and sexual orientation as well as human rights.

### Removing the stigma and tackling discrimination experienced by people living with HIV

The Disability Discrimination Act 2005 gives people living with HIV protection from discrimination from the point of diagnosis.

Our experience in tackling inequalities tells us that relying on legislation is not enough. Tackling entrenched discrimination needs proactive leadership within institutions to build effective policies, practices and a strong internal culture of equality, dignity and respect. Legislation can be a tool to drive change, but the law should not be seen in isolation.

The Commission recommends a range of measures aimed at tackling discrimination faced by those with HIV. These measures may require Committee engagement with Assembly Government Ministers to determine how they can best be taken forward.

### Measures for the Committee to consider

Action to ensure healthcare organisations adopt a human rights based approach to service provision. This would see healthcare organisations promoting human rights principles to their workforce and implementing human rights principles in service delivery.

Increasing HIV training for healthcare staff working in NHS organisations.

Empowering people with HIV by increasing their knowledge of their rights under the Disability Discrimination Act and the Human Rights Act.

Ensuring the upcoming Equality Act's specific duties are used to plug the gaps that exist in data collection, and, therefore, in evidence of discrimination.

### Human Rights

Human rights are based on core principles such as dignity, fairness, equality, respect and autonomy - these echo the seven Nolan principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The Commission's Human Rights Inquiry found that where human rights principles are put at the heart of public services, they lead to improvements.

A human rights-based approach focuses on the realisation of the rights of excluded and marginalised people, and whose rights are at risk of being violated.

A programme guided by a human rights-based approach takes a holistic view of its environment. A human rights-based approach lifts sectoral "blinkers" and facilitates an integrated response to problems.

A human rights-based approach encourages a participatory process in the formulation of policy.

A human rights-based approach helps to make the policy formulation process more transparent, and empowers people to hold to account those who are accountable.

A human rights-based approach supports the monitoring of public authorities, through public and independent assessment of state performance.

A human rights-based approach leads to better sustained results and greater returns on investment.

### Disability Discrimination Act 2005

The Disability Discrimination Act 2005 gives people living with HIV protection from discrimination from the point of diagnosis. HIV is one of only three conditions in which cover comes into effect from the point of diagnosis rather than symptoms displayed. Prior to the 2005 amendments, the Disability Discrimination Act only included individuals with AIDS; this was changed to cover people who had tested HIV positive regardless of whether they displayed symptoms.

The Act protects against discrimination from service providers, including healthcare settings. It also extends to shops, restaurants, businesses, and many other areas.

This discrimination can include

Refusing to provide (or deliberately not providing) a service.

Providing service of a lower standard.

Providing service on worse terms - such as cost.

## **Awareness of the Law**

The Commission is concerned that those with HIV infection do not know their rights. The Commission in Wales has a Help Line 0845 6048810 with advisers trained to give advice about equality enactments and human rights.

The EHRC in Wales funds a course on discrimination at Cardiff University and Bangor University aimed at CAB workers and Trade Union representatives.

The Commission funds organisations, including Citizens Advice Bureaux, in Wales specifically to give legal advice on discrimination matters.

However, the Commission is aware that there are an insufficient number of outlets able to give authoritative legal advice in Wales. This is an area the Commission would like addressed.

## **Upcoming legislation**

The upcoming Equality Act offers the likelihood of comprehensive protection from discrimination for people living with HIV, including explicit recognition of the existence of multiple discrimination. The passing of this Act will allow the Welsh Assembly Government to write its own specific duties that will be applicable to the public sector in Wales. The Commission has already proposed that public authorities should be explicitly required to collect, analyse and act on evidence. We think that the absence of such a requirement would significantly hamper the ability of public authorities to monitor progress in promoting equality.

The Commission believes that it is vitally important that public authorities consider all relevant evidence in respect of all mandate areas and then make informed decisions regarding priorities on the basis of rights, outcome and considerations of proportionality. Such an effort would be significantly enhanced by a duty on inspectorates to use equality as one of the yard sticks by which they measured the good practice of those organisations being inspected.

The absence of reliable statistical data presents a major obstacle to measuring progress on tackling discrimination and tackling inequality faced by those living with HIV. Evidence is the key to making services reflect everyone's experiences and meet their needs. Therefore we consider it vital to start collecting more robust data.

The Commission is of the opinion that the Welsh Assembly Government can commit to tackling discrimination against people in healthcare and other settings by developing a reliable and credible body of evidence through using specific duties.

## **To conclude**

The Commission believes people with HIV face significant discrimination in healthcare settings. The Committee should assess what changes would most improve the level of service experienced by people living with HIV. A human rights based approach would deliver improved services. Improving the level of understanding of HIV amongst healthcare workers, and improving the understanding of rights amongst people with HIV would lead to increased confidence on both sides, and, therefore, improved services. The Equality Act's specific duties offer the opportunity to plug the gaps that exist in data collection and evidence of discrimination.

## **Background**

Link to BBC News Story "HIV patients 'denied treatment'", including comment from Dr Olwen Williams.

<http://news.bbc.co.uk/1/hi/wales/8027953.stm>