

**Christie KH (Katherine)**

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**Subject:**

Consultation Response.

**Dear Katherine Christie,**

**My name is Richard Saville-Smith and I do not represent a group. I would like to respond to just the one consultation questions. You may share my answer, my name but not my address with the public. You may contact me regarding this response.**

**Question 5: Can we develop the good work of the 'see me' campaign in reducing discrimination? (This is the Scottish Government's campaign against discrimination of mental health)**

**I fear that the good work of 'see me' risks only marginal returns. Getting people to say they are against discrimination – at no cost to themselves – is a bit like getting people to say they're not homophobic or racist or ageist – but what does it actually mean? How does it translate into reducing discrimination where it matters – like in the workplace?**

**My concern is that the territorial nature of departmental 'turf' means that the people of Scotland are not well served in the tangible reduction of discrimination. In particular, employment law is a reserved matter and not subject to the control of the Scottish Parliament which makes it is hard to take a holistic perspective. For instance, if a public sector body discriminates against a disabled employee and dismisses them because of their disability (say) because they were locked up in a psychiatric hospital, who is taking a view of the whole process? The employee can recover from their section and take an action in an employment tribunal, but the success rate for that is 3%. These are the only cases which can publically shame the employer for discriminating. If a claimant loses their case there is (apparently) no shame; and if they settle out of court there is a gagging clause which lets the employer get away with their discrimination by simply paying a price. Any such settlement is trivial, typically less than £30k (which is less than the lawyer's fees). So in Scotland public sector and other organisations can now use discrimination as a tool of human resources policy because 97% of the time they'll get away without being shamed. If the Employment Tribunals were a bit more realistic (and that is what the Equality Act was brought in for) this rate might change, but the damages would still be trivial. Why are there not punitive damages against employers who discriminate?**

**One reason that the success rate for Employment Tribunals is kept low is due to the fact that psychiatrically disabled people generally can't afford the £200 an hour a solicitor accredited by the Law Society of Scotland costs. It is little**

surprise that the expert lawyers work for the employers who need never disclose the specific expense in their financial statements or their disability policy report.

Similarly, if someone slashed my face with a knife, the state would pursue my attacker and then prosecute them. However, if someone takes away my livelihood by dismissing me for discriminatory reasons, I am left to fend for myself. If I get past round 1 in the Tribunal system, I'm entitled to legal aid, but (as above) no accredited employment lawyer will take the case for that pathetic amount of money. So, the victims of discrimination have to fight for themselves whilst the employer gets the expensive lawyers, and the Tribunal system counts the score on legal points that the claimant probably doesn't understand – the system is so inequitable as to be a disgrace.

The additional equality duties for public sector bodies (I'm sure you know about these) allow for a Judicial Review by the Court of Session. How many of these reviews have taken place since that legislation was passed - ?? This is a genuine question, but my instinct anticipates that the answer is none. Please feel free to contradict me.

So, the question is: does any of this have any relevance to a Mental Health Strategy for Scotland 2011-2015?

I think so. If we all agree that work is good for people with psychiatric illnesses because

- it keeps them well/healthy
- lets them live more satisfying/better lives/contribute to society
- provides a positive GVA
- saves costs to the economy (benefits etc.)
- saves direct NHS costs – beds etc.

then we have to take workplace discrimination seriously – as a health service, a judicial service and as a Government as a whole.

And, by refusing to tolerate discrimination in the workplace, that powerful message will be encountered by workers as a real and tangible issue. Kicking people out of work because they have an illness is intolerable in a civilised society. For a Government, the gains of action are great whilst the costs are relatively modest – it just takes some ministers who believe in the 'see me' message to actually decide to do something about it. But if employers can discriminate at will against people, just for being ill, then all the talk of opposing discrimination is...just talk.

Hope this is helpful,

Best regards,

**Richard Saville-Smith**

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