



Mrs B Roche MP
Minister for Social Exclusion & Equality
Women & Equality Unit
B07-B17
1 Victoria Street
London
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16 May 2003

Dear Mrs Roche

CIVIL PARTNERSHIP PROPOSALS

In December last year, you announced that the Government was engaged in a civil partnership review and that firm proposals for legislation would be put forward this summer. As a company working for the lesbian and gay community in the financial services sector, we are keenly aware of the inequality that exists at present in our society and we look forward to hearing the Government's plans to remedy this injustice at the earliest possible opportunity.

There is considerable debate in the lesbian and gay community as to the precise form that civil partnership should take. Our concern is more with the substance of the rights and responsibilities that the legislation will bring into effect.

From our wealth of experience in helping our clients fight the discrimination that exists in the area of finance, we should like to bring to your attention a number of our clients' major concerns and possible ways of remedying the injustices that currently exist. The list is not exhaustive but is merely intended to highlight the main areas of discrimination.

Pensions

While many private occupational pension schemes are ahead of public sector schemes in their flexibility and willingness to pay a survivor's pension to the surviving partner in a same-sex relationship, the Government's proposals should provide for legislation to be introduced to ensure that all occupational schemes which currently pay a pension to the surviving spouse of a member should make the same provision for the surviving partner of a civil partnership.

It should be made unlawful for a trustee or manager of a pension scheme to discriminate against a member on the grounds of sexual orientation.

Public sector schemes should also bring their provision for civil partners into line with their current provision for spouses. The pension scheme for Members of Parliament and the new Civil Service scheme have shown the way – other public bodies should now follow suit.

State retirement pensions and S2P should be paid to a surviving partner in the same manner as now applies to a surviving spouse also.

Capital Taxation

Although, since the introduction of independent taxation in 1990 and the later abolition of the married couple's allowance, the income tax system now taxes married people in the same way as single people, married spouses still enjoy significant tax advantages when it comes to capital taxes. The tax system currently discriminates against same-sex partners by not allowing them the same facility as married partners to transfer assets between each other without giving rise to a charge to either Capital Gains Tax or Inheritance Tax.

It is customary when advising a married couple to ensure that their assets are held in the most tax-efficient manner possible. This may involve a higher-rate taxpaying spouse gifting an asset to a basic-rate taxpaying spouse so that investment income will not attract 40% income tax. Any such gift between spouses does not incur a Capital Gains Tax charge, as it is treated as having taken place for such consideration as gives rise to neither a gain nor a loss. In this way, the gain is effectively held over until such time as the asset in question is sold to a third party. This is a normal part of tax planning for married couples.

The situation is completely different for same-sex partners. A gift from one to the other of a chargeable asset will immediately trigger a capital gains tax charge. We believe this to be grossly unfair and hope that the Government will include in its proposals a measure to ensure that transfers between civil partners are also deemed to take place for such consideration as gives rise to neither a gain nor a loss.

A more emotive issue concerns Inheritance Tax. Unlike the position for married couples, transfers between same-sex partners are not exempt. There have been several high-profile cases where surviving partners have been faced with huge Inheritance Tax liabilities and, in some cases, have even been forced to sell the homes they shared with their partners of many years solely in order to pay the tax due. This is grossly unfair and we hope that the Government will now introduce legislation to remedy this long-standing grievance. Gifts between civil partners, whether in life or on death, should be exempt transfers for the purposes of Inheritance tax in the same way that gifts between spouses currently are.

These measures are necessary if same-sex partners are to enjoy the same rights as married couples under the tax system.

Intestacy

The laws of intestacy do not at present recognise same-sex partners. This means that gay men and lesbians cannot rely on the State to ensure that part of their estate goes to their partners automatically on death. In order to provide for their partners, gay men and lesbians must ensure that they have valid wills. The law should be changed to give civil partners the same rights as married partners under the intestacy laws.

Life insurance

Civil partners should automatically have an insurable interest in each other's lives. This provision may be of limited use for gay men so long as the life insurance industry routinely discriminates against them because of stereotyped assumptions about lifestyle, however. We therefore believe that it is necessary to outlaw such discrimination in the life insurance industry.

Next-of-kin and related issues

A same sex partner should be specifically recognised as next-of-kin in the Government's proposed legislation. A same-sex partner would therefore be able to register the death of their partner and participate in medical decisions affecting their partner's treatment.



We are pleased to note that, in a related area, the Government has recently accepted the judgment of the Courts that a same-sex partner counts as a 'nearest relative' for the purposes of the Mental Health Act 1983.

Summary

We hope that the Government will bear these and other issues in mind when drafting the forthcoming legislation. This government has the opportunity to affect positively the lives of hundreds of thousands of our gay and lesbian citizens. We believe that there is cross-party support in both Houses of parliament for civil partnership legislation. We believe also that the majority of people in this country will support the measures.

We applaud the advances that have been made since 1997 by the Government and the Courts, especially since the introduction of the Human Rights Act. By the end of this year, the Government will have introduced legislation outlawing discrimination in employment and we hope that the Regulations will be effective in implementing the EU Employment Framework Directive. But nothing will have such impact in bringing the lesbian and gay community fully into the mainstream of society as civil partnership legislation. If it is to be fully effective, however, in supporting lesbian and gay families, it must ensure that the tax, pensions and related legislation help, rather than hinder, us.

We look forward to reading the Government's consultation paper when it is published. We should also be happy to participate in the consultation process at a later stage.

Yours sincerely,

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Directors

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Louis Letourneau

Jane Mudge