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Rt. Hon Matt Hancock MP (Secretary of State for Health and Social Care)  
Ministerial Correspondence and Public Enquiries Unit  
Department of Health and Social Care  
39 Victoria Street  
London  
SW1H 0EU  
United Kingdom

18<sup>th</sup> of September 2019

**RE: Department of Health Nursery Milk Scheme: restrictive funding**

Dear Minister,

I am writing on behalf of The Vegan Society to express my concern about the restriction on milk subsidies under the current Nursery Milk Scheme. The Vegan Society is an international charity based in the United Kingdom (UK) and part of our work is around protecting the rights of vegans, including vegan children.

As you may be aware, vegans hold sincere ethical convictions, and seek to exclude, as far as is possible and practicable, all forms of exploitation of, and cruelty to, animals for food, clothing or any other purpose. Vegans in the UK are protected under human rights and equality law, and both the public and private sectors are obliged to take all necessary steps to accommodate the needs of vegans to prevent direct or indirect discrimination. As vegan children do not drink the milk of any animal, and instead consume plant milks,<sup>1</sup> the existing Nursery Milk Scheme indirectly discriminates against vegan pupils, who are excluded from accessing the health benefits the Scheme offers.

The Government funded Nursery Milk Scheme reimburses eligible childcare providers the cost of providing milk to children under 5 years of age. Since the Nursery Milk Scheme was first established in the 1940s, it has entitled children under 5 years of age, who attend approved day care facilities, to receive 1/3 of a pint of cow's milk each day, free of charge. The scheme does not include a non-dairy alternative, such as fortified plant milks, which are rich sources of calcium.

It is important for everyone to eat calcium-rich foods daily and fortified plant milks play an important role in vegan nutrition. Their calcium content is comparable with dairy milk and the soya variety is similar to cow's milk in terms of protein quantity and quality. In fact, fortified plant milk is classified as a 'healthy' drink in the English School Food Standards and the UK's Eatwell Guide recognises that fortified plant milks represent a valuable alternative to cows' milk. In addition, the British Dietetic Association and the American Academy of Nutrition and Dietetics acknowledge that well-planned vegan diets can support healthy living

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<sup>1</sup> The Vegan Society is aware that plant milk cannot be marketed as such, and though I refer to the range of alternative products collectively as 'plant milks' The Vegan Society is not opposed to them being referred to differently, i.e. 'plant drinks', when incorporated in the scheme.

during all stages of life. Therefore, the current Nursery Milk Scheme unfairly disadvantages vegans without justification.

I note that The Secretary of State for Health has a statutory obligation to provide the Nursery Milk Scheme as a universal benefit,<sup>2</sup> and that the primary legislation is the Social Security Act 1988 which does not exclude the provision of plant milk. However, the current Nursery Milk Scheme is provided under The Welfare Food Regulations 1996 (the Regulations), which define 'milk' as 'whole or semi-skimmed liquid cow's milk which is heat treated but does not include milk to or from which chemicals, vitamins, flavours or colours have been added or removed otherwise than as a consequence of the process of heat treatment or as a consequence of the process of producing semi-skimmed milk from whole milk'. This definition is a barrier to the inclusion of, and equality of opportunity for vegan children.

I also note that during the course of the 2010 'Equality Analysis: Next steps for Nursery Milk' the exclusion of vegans was not considered under the protected characteristic 'Religion or belief', but that in the same document, the Department of Health committed to engaging with stakeholders and to consider evidence regarding equality groups. The 2011 'Impact Assessment' on Next Steps for Nursery Milk, failed again, however, to identify the issues of equality and inclusion of vegan children. This issue is particularly important given that the 2017 'Statutory framework for early years foundation stage' (EYFS) obligates childcare providers to ensure that the dietary needs of children in their care are respected and met, and that the statutory framework 'seeks to provide equality of opportunity and anti-discriminatory practice, ensuring that every child is included and supported.'

It is important to note that the number of vegans in Britain has quadrupled over the 4 years prior to 2018, with the number estimated to be around 600,000 and rising. In the UK, 17% of consumers report dairy avoidance in their household. This means that there are many vegan children who are currently excluded from the Nursery Milk Scheme because it fails to provide a plant-based alternative to milk.

You will no doubt be aware of the importance of the European Union-wide principle of non-discrimination and related legislation enacted in the UK to address unfair treatment and discrimination. It is in this context that the Regulations underpinning the Nursery Milk Scheme be scrutinised for compliance and assessed as fit for purpose. In this regard, I point out for your consideration the relevant law and legal guidance relating to veganism:

## **1. LAW**

The sincere convictions of vegans are within the scope of equality law and legislation concerning the human right to freedom of conscience. As such, public authorities such as the Department of Health must give due regard to the needs of vegans to ensure compliance with legal duties, and so that vegans do not experience unlawful interference or discrimination.

### **European Convention on Human Rights (ECHR)**

Article 9, Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community

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<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/182327/Impact\\_Assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/182327/Impact_Assessment.pdf)

with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others

Article 14, Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### **The Human Rights Act 1998 (HRA)**

The HRA provides that the human rights contained in the European Convention on Human Rights form part of UK law. Section 6 makes it unlawful for a public body to act in a way that is incompatible with a convention right.

### **Equality Act 2010**

This Act is informed by the EU principle of non-discrimination which reflects the importance of fundamental rights, the significance of provisions contained in the ECHR and the case law of the European Court of Human Rights (ECtHR).<sup>3</sup>

Provisions for 'belief' should be consistent with Article 9 principles and case outcomes.<sup>4</sup>

Section 10 makes a belief a protected characteristic. Belief means 'any religious or philosophical belief or reference to belief, including a reference to a lack of belief.'

Section 19 makes indirect discrimination unlawful, this being to apply a criterion, provision or practice which is discriminatory to a person's belief and which is not a proportionate means of achieving a legitimate aim.

## **2. LEGAL CASES**

### **Grainger Plc v Nicholson [2010] ICR 360**

This case defined philosophical belief under the Equality Act as

1. genuinely held;
2. a belief, not an evidence-based opinion or viewpoint;
3. related to a weighty and substantial aspect of human life and behaviour;
4. cogent, serious, cohesive and important; and
5. worthy of respect in a democratic society, not incompatible with human dignity and not incompatible with the fundamental rights of others.

### **General Municipal and Boilermakers Union v Henderson [2015] UKEAT/0073/14/DM**

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<sup>3</sup> Council Directive 2000/78/EC, Preamble (1) and (4).

<sup>4</sup> Explanatory Notes to the Equality Act 2010, Section 10, paras 51-52.

Simler J, the Employment Appeals Tribunal President, said: 'The law does not accord special protection for one category of belief and less protection for another. All qualifying beliefs are equally protected. Philosophical beliefs may be just as fundamental or integral to a person's individuality and daily life as are religious beliefs.'

### ***H v United Kingdom (1993) 16 EHRR CD 44***

A prisoner did not want to work in a print shop because he assumed the dyes were not vegan. Veganism was accepted as coming within the scope of Article 9 ECHR.

### **R (Williamson) v Secretary of State for Education and Employment [2005] 2 AC 246**

Lord Walker commented that vegetarianism is an uncontroversial example of what could constitute a belief within the legal meaning.

### **Hashman v Milton Park (Dorset) Ltd [2011] ET 3105555/2009 (31 January 2011):**

This case involved a vegan that worked at a garden centre. He was fired for his views on fox hunting. Relying on *Grainger*, the judge summarised the philosophical belief in question as follows:

*They derive from the sanctity of life and animal welfare. They affect every area of his life. His beliefs are cogent, serious, coherent and important*

The judge found that the claimant lived his life in accordance with his beliefs (including veganism) and therefore they amounted to a philosophical belief both within the ordinary sense of the word and within the meaning of The Employment Equality (Religion or Belief) Regulations 2003, which adheres to the principle of Article 9 ECHR. The judge found there was no competing right, as there was not a human right to indulge in fox hunting.

## **3. LEGAL GUIDANCE**

The Council of Europe and European Court of Human Rights confirm that veganism is a matter for human rights protection.<sup>5</sup>

The Equality and Human Rights Commission has a statutory duty to disseminate information about equality measures and publicly states that veganism is within the scope of protection of UK law.<sup>6</sup>

## **4. ISSUES:**

2. Vegans hold ethical convictions that, affect every aspect of their lives from the food they consume to the clothes they buy and the avoidance of certain forms of entertainment. Therefore, the law recognises veganism as a qualifying belief and protects vegans against discrimination.
3. As vegans do not consume dairy milk, the restriction on the definition of milk entrenched in The Welfare Food Regulations 1996, combined with the lack of provision for a suitable plant-based alternative, is discriminatory because vegan pre-school children are excluded and disadvantaged.
4. The exclusion of plant-based milk has no legal basis and is not provided for in primary legislation.

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<sup>5</sup> The Council of Europe and European Court of Human Rights 'Guide on Article 9 of the European Convention of Human Rights' (2019) [https://www.echr.coe.int/Documents/Guide\\_Art\\_9\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf)

<sup>6</sup> <https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion>

5. The vegan diet, including non-dairy milks, is recognised as being healthy. Fortified plant milk is a calcium-rich food and an important alternative to dairy. There is, therefore, no justification for the discrimination.

## **5. CONCLUSION AND NEXT STEPS:**

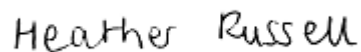
The nutritional value of fortified plant milk is well established. Given the status of veganism in law and the legal duties of the Department of Health, the restriction on the definition of 'milk' under The Welfare Food Regulations 1996 that determines the type of milk for which funding can be sought, must be updated and broadened to comply with human rights and equality duties, and facilitate the effective application of the 'Statutory framework for the early years foundation stage'. Alternatively, The Vegan Society welcomes an amendment to the Regulations to include a subsidy for a non-rice, plain, fortified plant-based alternative to dairy milk. This will enable eligible childcare providers to recoup the cost of appropriate plant milk for vegan children in their care.

Please confirm within 14 days that the Department of Health is committed to addressing this issue of inadvertent discrimination of vegan pre-school children. Failure to do so will result in us considering our legal options.

Yours sincerely,



Jeanette Rowley



Heather Russell