

Evidence submission

Consultation on Human Rights of Older Persons

Follow-up to the Second World Assembly on Ageing

April 2011

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Name: Katherine Hill, Policy Adviser Equality and Human Rights Policy Adviser

Email: katherine.hill@ageuk.org.uk

Age UK
Astral House, 1268 London Road
London SW16 4ER
T 020 8765 7200 F 020 8765 7211
E policy@ageuk.org.uk
www.ageuk.org.uk

Age UK is a charitable company limited by guarantee and registered in England (registered charity number 1128267 and registered company number 6825798). The registered address is 207-221 Pentonville Road, London N1 9UZ.

About this consultation:

In preparation for the report of the United Nations Secretary-General on the Follow-up to the Second World Assembly on Ageing, the Office of the UN High Commissioner for Human Rights has asked for submissions from Civil Society organisations.

In particular, views and information are sought on:

1. The current situation of the human rights of older persons, including particular challenges and threats that may prevent the full realisation of their rights.
2. Existing legislation, policies and programmes:
 - a) to protect and promote the human rights of older persons;
 - b) to address discrimination against older persons, including measures to address multiple discrimination (e.g. discrimination based on age and gender);
 - c) to address violence and abuse against older persons in the private and public spheres;
 - d) to address old age-sensitive services and facilities, such as those related to mobility, age-adequate design, long-term care, primary health care and adult and continuous education;
 - e) concerning social protection measures as well as the right to work and the right to social security with regard to older persons;
 - f) and capacities to systematically collect, update and analyze information disaggregated by age;
 - g) to enhance participation and active engagement of older men and women in community, political and cultural life; and
 - h) to ensure access to justice and judicial remedies for violations of the rights of older persons, including references to specific mandates of institutions such as national human rights institutions to address their rights.

Age UK's response below sets out information regarding the situation of older people in the UK.

The human rights of older persons

The Human Rights Act 1998 (HRA) is the key source of human rights protection for older people in the UK. The HRA places all public authorities in the UK under a duty to respect the rights it contains in everything that they do. Public authorities are therefore under a duty not to commit human rights abuses. They also have duties to take proactive steps (known as 'positive obligations') in order to ensure that human rights are respected, protected and fulfilled. For example, if a public authority is aware that someone is being abused, they may have a duty under the Human Rights Act to investigate or intervene.

On 18th March the Government announced the terms of reference for the Commission on a UK Bill of Rights. The Commission 'will investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the

European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extend our liberties.¹ It has been asked to report no later than by the end of 2012.

Looking beyond the HRA some other areas key policy documents have also incorporated human rights principles. For example the National Health Service (NHS) Constitution which refers a number of times to human rights, including: 'The NHS ... has a duty to each and every individual that it services and must respect their human rights'.²

Despite the existence of the HRA and other references to human rights in policy and legislation, breaches of older people's human rights remain all too commonplace in the UK. For example a recent report by the Parliamentary and Health Service ombudsman based on the findings of ten independent investigations into complaints about NHS care for people over the age of 65 across England highlights a number of examples. The investigations revealed examples of older people suffering unnecessary pain, indignity and distress while in the care of the NHS. Specific issues highlighted in these stories include lack of dignity, healthcare associated infections, poor nutrition, poorly planned discharge from hospital and personal care, staff attitude and poor communication.³

Discrimination against older persons including multiple discrimination

The Equality Act 2010 provides comprehensive anti-discrimination legislation for Great Britain⁴, which is designed to tackle discrimination based on age, disability, gender and gender identity, race, religion or belief and sexual orientation.

The cornerstone of the Act is the public sector Equality Duty which will require all public bodies and those performing public functions to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between groups. The duty can assist public bodies to meet the challenges posed by our ageing society. For example a local authority reviewing the support it provides for carers would be prompted by the requirements of the Equality Duty to take into account that the demand for informal care is projected to rise by 40% by 2022.⁵ And at a time when the public sector in the UK is facing difficult financial decisions the Equality Duty also offers an invaluable tool to help it ensure that choices it makes do not disproportionately impact on some of the most disadvantaged groups in our society and inadvertently further entrench discrimination. The requirement to foster good relations between groups will also mean that public bodies have to consider the implications of cuts programmes on intergenerational relations.

The Equality Act 2010 also includes legislation to outlaw harmful age discrimination against those over the age of 18 in the provision of goods and services, which it is

¹ <http://www.justice.gov.uk/news/newsrelease180311a.htm>

² NHS Constitution, Guiding Principle 1, DH (January 2009), p.3

³ Parliamentary and Health Service Ombudsman (2011) *Care and Compassion? Report of the Health Service Ombudsman on ten investigations into NHS care of older people*

⁴ Note on NI

⁵ Cabinet Office (2008) *Realising Britain's Potential: Future Strategic Challenges for Britain*. p.11

expected will come into force in 2012. Currently, without comprehensive legislation in place, age discrimination remains a major obstacle in many older people's lives. Analysis of 2008 data from the European Social Survey has found that across Europe age discrimination is the most widely experienced form of discrimination for every age group. 64% of respondents from the UK saw age discrimination as a very or quite serious issue.⁶

Evidence of age discrimination

In the public sector age discrimination may also appear in frontline practice: for example, the under-prescribing of cholesterol lowering treatments to older patients.⁷ Or it may only be detectable in the outcomes services achieve – for example, in cancer care – where success rates for people over 75 have not improved over the last decade and are much lower than in comparable countries.⁸

In the private sector, the issues play out in similar ways. Formal age limits are the most visible and outrageous examples of discrimination; the most glaring example being that companies still routinely turn people down for financial products simply on grounds of age. In a recent mystery shopping exercise, 50 per cent of people aged over 80 were turned down for motor and travel insurance by major insurers.⁹

Multiple discrimination

The older population in the UK is more diverse than ever before and will become more so. For example, research published in 2010 estimated that by 2051 there will be 7.4 million Black and minority ethnic people over the age of 50 living in England and Wales, compared with 1.7 million in 2007.¹⁰ Over two thirds (69%) of people aged 85 and over in the UK have a disability or limiting long-standing illness.¹¹ And while there are no official statistics for the number of gay, lesbian and bisexual (GLB) people in the UK, let alone the number of GLB older people, based on the estimate that GLB people comprise roughly 6% of the UK population, we can assume that there are at least 600,000 older GLB people currently living in the UK. If public services are to meet older people's needs, enable them to reach their potential and guarantee their dignity, then much more must be done to view older people not as a homogeneous group but in all their diversity.

⁶ D. Abrams et al., *Ageism in Europe and the UK: Findings from the European Social Survey*. A report from EURAGE (European Research Group on Attitudes to Age) commissioned by Age UK. (In press).

⁷ R. Raine et al., *Sociodemographic variations in the contribution of secondary drug prevention to stroke survival at middle and older ages: cohort study*, *BMJ* (2009);338:b1279

⁸ Report of the All Party Parliamentary Group on Cancer's Inquiry into inequalities in cancer, APPG on Cancer 2009

⁹ Turned Away: older people and insurance, Research Briefing, January 2010, Age Concern and Help the Aged

¹⁰ Centre for Policy on Ageing and Runnymede Trust (2010) *The Future of Ageing of the Ethnic Minority Population of England and Wales*.

¹¹ Family Resources Survey 2007/8, Department for Work and Pensions, 2009

Violence and abuse against older persons in the private and public spheres

In 2000 the Department for Health issued statutory guidance on safeguarding adults entitled *No secrets: guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse*. The document gives guidance to local agencies that have a responsibility to investigate and take action when a vulnerable adult is believed to be suffering abuse. It offers a structure and content for the development of local inter-agency policies, procedures and joint protocols which will draw on good practice nationally and locally.

While this guidance offers some limited protection to older people, Age UK is strongly convinced that over-arching framework legislation is needed to ensure better accountability between agencies and to require that suspected abuse is investigated. There is also a need for a greater emphasis on preventative work that should not be restricted to preventing an abusive situation arising for an individual – there should also be a strategic approach to eliminating situations – such as isolation or being in an institution – that render people vulnerable to abuse.

Since 2006 the Department of Health has run a campaign called Dignity in Care Campaign which aims to put dignity and respect at the heart of care services. Over 23,000 people have now joined the campaign as Dignity Champions and are part of a nationwide movement, working individually and collectively, to ensure people have a good experience of care when they need it. They include councillors, staff at all levels in NHS and social care, volunteers, service users, their carers and members of the public.

Evidence of abuse

Abuse of older people in the UK is largely a 'hidden problem'. Official police statistics consistently report low levels of abuse and domestic violence against older people. But prevalence surveys suggest that around 340,000 (about 1 in 25) older people living in the community are affected by abuse every year.¹² There are significant differences between Nations. Wales has twice the level of identified abuse as Northern Ireland. Scotland is the second highest, with men more likely to face abuse than elsewhere.

There are many possible reasons why older people do not report abuse: stigma, shame, feeling guilty for 'having provoked' the abuse, dependency upon the abuser, isolation, and lack of contact with care providers or criminal justice agencies. It is also the case that the wide range of types of abuse – and the fact that different forms of abuse often occur simultaneously - also present a challenge to agencies to work in partnership to tackle abuse holistically.

¹² Action on Elder Abuse (2007) Briefing Paper: The UK Study of Abuse and Neglect of Older People 2007
<http://www.elderabuse.org.uk/AEA%20Services/Useful%20downloads/Prevalence/Briefingpaperprevalence.pdf>

Age-sensitive services and facilities

Health services

The National Health Service (NHS) provides primary and secondary health care to all, free at the point of delivery. People in later life are the highest users of most health and care services. 72% of all social services clients are over 65, people in later life make the most visits to GPs and two-thirds of hospital beds are occupied by people over 65. Age UK research has shown a clear vision of what people want and need from health and care systems. Recurrent themes include coordination between different agencies, services which are physically accessible, and being treated with respect, in a way that maintains dignity, continuity of care and control during decision-making. We are a long way from seeing such needs and preferences built into the design of health and care systems.

Difficulties include: restricted access (9% of people over 75 find it very difficult to get to their GP⁸ but many cannot get home visits); poor coordination between specialisms (up to half of people in later life in hospital may have cognitive impairment including dementia and delirium but very few access specialist mental health services⁹); and commissioning practices that do not recognise the needs of older people (only 66% of primary care sites are shown to have commissioned an integrated continence service¹⁰). Time and again we find a system which is poorly developed to deal with the needs of those who need it most – frail older people.

Health Services in England are currently undergoing major reform. Through this process the Coalition Government is aiming to give patients more choice and control over their care and give professionals the freedom and responsibility to design services to meet patients' needs. While this reform programme offers a major opportunity to address some of the problems outlined briefly above there is also concern that change on this scale will bring with it a high risk of serious disruption of the day to day functioning of the health service that could have very serious consequences for older people.

Social Care services

Social care in the UK is in crisis. Older people's care has already faced years of austerity, with almost no net spending increase, despite growing demand because of rising numbers in late old age.¹³ Many local councils are tightening their eligibility criteria, so that only older people with the most severe health problems are supported. Now further reductions in funding and support, as a result of public spending cuts will have a devastating impact on the most frail and vulnerable older people.

Current care and support provision is often of poor quality and frequently fails to support fundamental entitlements to an acceptable quality of life, and to be treated with respect for dignity and human rights. Issues consistently raised by older people both in residential care and receiving care in their own home include a lack of respect

¹³ Personal Social Services Expenditure and Unit Costs, England, NHS Information Centre (2008/09, 2007/08, 2006/07).

for their right to privacy during personal care, lack of choice and control over how and when care is given, and lack of respect for individual needs.

Social care is again an area which is headed for significant reform in the coming years. The Coalition Government has published '*A vision for adult social care: Capable communities and active citizens*' which sets out how it wishes to see services delivered for people, putting a greater emphasis on the personalisation.¹⁴ It has also set up a Commission to look at the funding of care and support with a remit to report its recommendations by July 2011.¹⁵

Lifetime Homes and Neighbourhoods

The World Health Organization's Age Friendly Cities programme has set out aspirations for the development of communities that offer a good quality of life to all generations. These were reflected by the previous Government in its strategy for Lifetime Neighbourhoods launched in 2008. That means accessible and inclusive design; environments which are aesthetically pleasing, safe and easy to inhabit; good local services, facilities and open spaces; a strong social and civic fabric, with opportunities to take part and have a voice; and a real sense of local identity and place.

However despite these aspirations, many older people remain isolated from their communities. Social isolation affects about 1 million older people,¹⁶ and has a severe impact on their people's quality of life in older age. Furthermore both the incidence and fear of crime continues to have a significant impact; 23% of older men and 36% of older women report that fear of crime has a significant impact on their quality of life.¹⁷

There is also growing recognition in the UK that an ageing population has profound implications for accessible housing design. There were 2.3 million older disabled people in 2002 and this is set to increase to 4.6 million by 2041.¹⁸ Yet only 3.4% of homes across the whole housing stock have the four essential features that would make them accessible to a person with mobility problems (level access to main entrance, flush threshold to main entrance, WC at entry level and circulation space).¹⁹ The majority (90%) of older people live in general needs housing and would prefer to continue living independently at home, where possible. This is often difficult because increasing numbers are living in sub-standard housing that requires adaptation to allow the deliver of care and support.

The problems with current housing stock provide a good rationale for improving the design of new homes. One approach to this is seeking the adoption of the Lifetime Homes Standard (currently a voluntary code of practice) in both the social and private sectors. The Lifetime Homes Standard contains a set of basic design features that

¹⁴ Department of Health (2010) A vision for adult social care: Capable communities and active citizens

¹⁵ <http://www.dilnotcommission.dh.gov.uk/>

¹⁶ ICM research for 'One Voice' 2009.

¹⁷ Home Office, *Crime in England and Wales 2008/9*

¹⁸ PSSRU, Future demand for long-term care, 2002 to 2041: Projections of demand for older people in England, 2006: <http://www.pssru.ac.uk/pdf/dp2330.pdf>

¹⁹ Communities and Local Government English House Condition Survey - 2007

Annual Report, 2009:

<http://www.communities.gov.uk/publications/corporate/statistics/ehcs2007annualreport>

would make homes easier to adapt and therefore provide significant social benefits and savings over the long term.

Lifelong learning

Public funding for adult education, including for older people has declined in the UK in recent years. In England Between 2005 and 2009 an estimated 1.3 million places on publicly funded adult education courses have ceased without full knowledge of the consequences for individuals and communities. Furthermore, the NIACE 2010 adult learning survey '*A change for the better*' shows that older people are less likely to take part in learning than younger adults.²⁰ On a more positive note the Coalition Government's recent Comprehensive Spending Review protected the Adult Safeguarded Learning budget, maintaining it at £210 million per year.

Social security measures and the right to work

Pension provision

The UK state pension is the largest single source of income for the majority of pensioners. The main elements are the basic state pension and the additional state pension. Key issues with this system are: the low level of the basic pension, gaps in coverage, the complexity of the systems and ongoing debate about state pension age. The 2007 Pensions Act has improved coverage for people reaching state pension age from April 2010 onwards, (providing better support for carers); requires increases in the basic pension to be linked to earnings; and gradually increases state pension age to 68 for men and women by 2046. The Coalition Government has recently announced a new set of proposed reforms to the state pension that include the introduction of a single state pension to be paid at a higher flat-rate level than it is currently, with the intended outcome that the needs for means-tested benefits would be much reduced.

In relation to private pensions the last two decades have seen many private sector defined benefit (DB) schemes close in the UK, and employers switch to Defined Contribution (DC) schemes instead. With DC schemes the amount paid out depends on the investment return on contributions, and economic conditions at the time income is drawn, shifting much of the risk to individuals. Employers also tend to contribute less: on average, 6 per cent of salary compared to 17 per cent for defined benefit schemes⁸. Only a minority are saving into a private pension at all (40% of men, and 32% of women⁹). To encourage pension saving, starting in 2012 the Pensions Act 2008 requires employers to automatically enrol all employees earning above a minimum amount into either a qualifying workplace pension, or the new National Employment Savings Trust (NEST), a DC scheme which is aimed at people on low and modest incomes.

Evidence of poverty among older people

Many older people in the UK continue to face later life in relative poverty. Current figures show that 1.8 million older people live in poverty (measured as being below

²⁰ NIACE (2010) *A change for the better: The NIACE Survey on Adult Participation in Learning 2010*

60% of median income after housing costs).²¹ One major cause of poverty among older people is low benefit take up which means that people miss out on vital support that is available to them. Around one third of those entitled to Pension Credit (the main means-tested benefit for older people) are not receiving it²² and overall between £3.2 and £5.4 billion of income-related benefits are unclaimed by pensioners every year.

Age discrimination in employment

Age discrimination in employment is still widespread, despite the introduction of the Employment Equality (Age) Regulations in 2006 (which have more recently been absorbed into the Equality Act 2010) and more recently the decision made by the Coalition Government to abolish the Default Retirement Age (DRA) from October 2011.

Endemic, unthinking discrimination produces whole workforces that contain barely a single employee over 45. The latest statistics from the Citizenship Survey produced by the Department for Communities and Local Government show that between April and December 2009 five per cent of people aged 50 and over felt they had experienced labour market discrimination in being turned down for a job because of their age.²³ It is of concern that despite these high reported levels of discrimination, in 2008/09 only 3,801 cases of age discrimination were brought before employment tribunals.²⁴

People seeking work report persistent age discrimination when applying for work. For those older people who are able to remain in work discrimination can nevertheless remain a problem as they face unequal access to training opportunities or promotion on account of their age.²⁵

Data collection on age

Until recently public bodies in the UK have not been under any specific duty to disaggregate data by age. From 5 April 2011 the public sector Equality Duty, legislated for under the Equality Act 2010 will require public bodies to publish data that is broken down by age on a regular basis.

²¹ Households Below Average Income 2008/9, DWP, May 2010.

²² Income Related Benefits: Estimates of take up, DWP, June 2010 Table 3.3.1

²³ Department for Communities and Local Government, April 2010, *Citizenship Survey - April – December 2009, England*.

²⁴ Tribunal Service, Sept 2009, *Employment Tribunal and EAT Statistics (GB) 1 April 2008 to 31 March 2009*

²⁵ McNair, S., Flynn, M *The age dimension of employment practices: employer case studies*. June 2005. DTI

Participation and active engagement of older men and women in community, political and cultural life

There is undoubtedly a serious problem in the UK in relation to negative public attitudes towards older people and ageing, which can prevent older people from taking a full and active role in community, political and cultural life.

The stereotyping of older people - for example as passive, dependent or marginal - erodes their sense of self-worth and perpetuates ageist attitudes. Recent research has found that across Europe, a qualified younger person (aged 30) was thought to be more acceptable as a boss than a similarly qualified person of 70 and people over 70 were less likely to be seen as making an economic contribution than those in their 20s.²⁶

Ageism in the media has been much in the spotlight recently and a number of recent high profile cases have highlighted the particularly barriers facing older women attempting to pursue a career in this industry. These include Miriam O'Reilly who challenged the BBC on the grounds of both age and sex discrimination. The positive outcome (in relation to age discrimination) of her case sent out a powerful signal that even in the youth-worshipping world of show business, ageism is will no longer be tolerated.

In terms of political engagement figures seem to suggest that older people are in general more engaged than other age groups. In the 2005 General Election three quarters of people age over 65 voted compared to half of 25-34 year olds and only 37 per cent of 18-25 year olds.²⁷ However in terms of elected representatives there is some evidence that the trend is towards younger people. Of new MPs elected in the 2010 General Election the largest group (41%) are in their 40s. Compared to their counterparts elected over a decade ago in 1997, there are more new MPs in their 20s and 30s, fewer in their 40s and 50s, but slightly more in their 60s.²⁸

Access to justice

The Equality and Human Rights Commission, Northern Ireland Human Rights Commission and Scottish Human Rights Commission are all accredited National Human Rights Institutions (NHRIs) in the UK. Recent Government announcements about plans to narrow the remit and cut the budget of the Equality and Human Rights Commission pose a serious threat to older people's ability to seek redress for breaches of their human rights.

²⁶ D. Abrams et al, . *Ageism in Europe and the UK: Findings from the European Social Survey*. A report from EURAGE (European Research Group on Attitudes to Age) commissioned by Age UK. (In press).

²⁷ *Quantifying the Changing Age Structure of the British Electorate* (2009) Scott Davidson, De Montfort University

²⁸ Madano Partnership (2010) *The Elected Class of 2010*

Another major threat to older people's access to justice is comes from the the Coalition Government's proposals to cut legal aid funding in England and Wales. According to the Government's own figures over half a million people will lose out on advice, according to the Government's own figures, as the legal aid budget is cut by £350 million. These changes will also make it harder for not-for-profit advice agencies, such as Citizens Advice Bureau or Law Centres, to continue to function and provide advice to older people on their rights.