

# United Kingdom of Great Britain & Northern Ireland

## Submission

### Guiding Questions for the 11<sup>th</sup> Session of the Open Ended Working Group on Ageing (OEWGA)

#### Right to Work and Access to the Labour Market

##### National Legal and Policy Framework

*What are the legal provisions and policy frameworks in your country that recognise the right to work and access to the labour market by older persons?*

1. The UK removed the Default Retirement age in 2011, meaning most people can choose when to retire. Employers can only set a fixed retirement age if it can be objectively justified in their particular circumstances - but this is open to challenge at an Employment Tribunal.
2. Access to flexible working practices, such as flexi-time, compressed hours and remote working, is key to helping older workers to stay in the labour market and in 2014 the UK extended the Right to Request Flexible Working to all employees with 26 weeks' continuous service with their employer.
3. Flexible working is becoming steadily more popular in the UK: 60% of employees surveyed in 2011 had done some form of flexible working in the preceding year, up from 56% in 2006. The extension of the Right to Request Flexible Working has doubled the number of employees who are able to make a request to over 20 million. The Department for Business estimated that this would lead to a further 80,000+ requests a year – leading to 60,000+ new working arrangements a year.

*What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?*

4. **Age discrimination.** Older people report that they often face discrimination when in employment, or when looking for employment, due to their age. In the past employers may not have recognised the valuable experience and knowledge older workers bring to their work place, this is beginning to change as more employers are now employing older workers – around three-quarters of employer's employ someone over the age of 50 (77%).
5. **Caring responsibilities.** There were an estimated 4.5 million informal carers in the UK in 2017-18. Older people are more likely to have caring responsibilities, and this could be a barrier for them to remain in and return to work. Currently, three in five adult carers are aged 50 and over, with the peak age of caring between 50-54 years, this is particularly the case for women.

6. Evidence suggests that caring for 10 plus hours a week can have a substantial negative effect on employment, and therefore pension contributions:
  - 56% of males and females aged 50-64 years who spend 10 hours per week providing informal care are in employment compared with 74% of males and 64% of females with no caring responsibility.
7. Only a third of employers (34%) in the UK have a formal written policy or an informal, verbal policy in place to support carers in their workplace.
8. Care work, including childcare, is disproportionately performed by women and this has an impact on their labour market participation and progression. Almost one in four older female workers have caring responsibilities compared with just over one in eight older male workers. Everyone who is providing informal care should be able to return to work if they wish to do so.
9. **Health conditions.** Ill health, which prevents people from working, costs the UK economy an estimated £100 billion a year. There is clear evidence that poor health is a barrier to employment for people of any age, whilst unemployment is a significant cause of poor health.
10. Other barriers affecting older people to return to the labour market include out of date skills or qualifications and a lack of familiarity with more recent technology, as employers may prefer to employ those with more up to date skills and experience.

*What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?*

11. The Department for Work and Pensions published a summary of research on informal carers and employment in September 2019 - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/830401/Informal\\_Carers\\_and\\_Employment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830401/Informal_Carers_and_Employment.pdf)
12. The age at which a person is most at risk of leaving their employment in order to care is between 50 and 64. Factors such as proximity to State Pension age, and the likelihood of being 'sandwich carers' (looking after dependent children as well as older parents) are believed to contribute to employment exit.
13. Difficulties in accessing formal care, including a lack of flexibility and an inability to find such care, can be a trigger for carers leaving employment. Key transition points across the carers 'caring journey' can also cause friction with employment. The most obvious point is the transition into becoming a carer. Changing circumstances increase the risk of employment exit.

## **Availability, Accessibility, Acceptability and Quality**

*What steps have been taken to ensure the access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations?*

14. The UK supports people with disabilities and health conditions to remain in or return to work, including older workers. We have a vision for a society in which disabled people and those with health conditions are able to – wherever possible – fulfil their potential and work. The UK is committed to seeing one million more people with disabilities and health conditions in work by 2027.

15. In April 2017, we introduced the **Personal Support Package** for claimants on Employment and Support Allowance (ESA) and Universal Credit (UC) throughout the Jobcentre Plus network. This initiative is expanding and improving the help we offer to those with disabilities and health conditions. It offers support for ESA and UC claimants to prepare for, find and enter work, but also ensures that we have enough work coaches and advisers to provide that support.

16. Programmes to support and increase employment for disabled people:

- a. **The Work and Health programme**, was rolled out between November 2017 and March 2018, and will provide innovative support for around 275,000 people over five years. The majority of people starting on the programme (around 220,000) will be disabled people who can volunteer for the programme at any time. The UK is keen to support working age disabled people, or people with long term health conditions, including older people, to enter, and stay in employment.
- b. The consultation '**Health is everyone's business**' closed in October 2019. It set out proposals to boost the government support available and to encourage all employers to take early and supportive action to support employees who are managing health conditions in work, and to manage sickness absence more effectively. The consultation included proposals across four major policy areas:
  - i. Amend the legal framework to encourage early action to support individuals when they are absent from work and to facilitate more conversations to agree effective workplace modifications;
  - ii. Reform of Statutory Sick Pay (SSP) so that it is better enforced, more flexible, and support the lowest paid employees;
  - iii. Measures to improve availability of high-quality, cost-effective occupational health (OH) services for employers; and
  - iv. Advice and support from government for employers to understand and act on their responsibilities.

- c. **Access to Work** continues to offer eligible individuals practical advice and a discretionary grant of up to £59,200 per year to fund support above the level of an employer's statutory obligation to make reasonable adjustments. This includes, funding for support workers, special aides and equipment, adaptations to premises or equipment and travel to and within work.
- d. Announced in December 2018, the **Intensive Personalised Employment Support Programme** will roll out by the end of 2019. It will provide highly personalised packages of employment support for disabled people who are at least a year away from moving into work. The support comes from a new £40m fund and we expect it will benefit 10,000 people.
- e. Through the **Disability Confident** scheme, the Department for Work and Pensions (DWP) is engaging with employers, offering online guidance and helping to promote the skills, talents and abilities of disabled people. Over 15,000 employers have already signed up to the scheme.
- f. **Returner programme.** In Spring 2018, the Government Equalities Office (GEO) launched a returners fund to support people who have taken time out of employment for caring responsibilities and want to return to paid work. Through a private sector grant fund, we have awarded in the region of £1.5 million to sixteen organisations supporting returners of all ages and skills levels back to work. We have also launched returner programmes that support people back to key public workforces, including social workers, health professionals and police investigators.

*What steps have been taken to ensure the availability of specialised services to assist and support older persons to identify and find employment?*

- 17. The UK is committed to providing targeted support for people so that everyone, including older claimants, are given the very best chance of getting into work.
- 18. Jobcentre Plus offers advice to those claiming welfare benefits. Through Jobcentre Plus, individuals can get advice on finding a job, help with retraining or skills advice, CV and job applications, and access to new vacancies. They can also access a range of tailored opportunities to improve their likelihood of entering or re-entering the labour market, including demand-led training for higher skilled jobs in specific sectors.
- 19. Jobcentre Plus provides leads and good practice ideas to help people direct their job search in the most effective manner. It has also built up a substantial network of links with external training providers and other organisations such as universities and colleges.

20. The UK has also introduced Older Claimants Champions to work with Jobcentre Plus Work Coaches to raise the profile of older workers, highlight the benefits of employing older workers and share best practice.

*What good practices are available in terms of ensuring the older persons' enjoyment of their right to work and their access to the labour market?*

21. UK has abolished the Default Retirement Age, meaning most people can retire when the time is right for them. Employers can only set a fixed retirement age if it can be objectively justified in their particular circumstances - but this is open to challenge at Tribunal.

22. Many employers in the UK, such as Asda, British Gas, J D Wetherspoon, Marks & Spencer and Alleward Springs, report the business benefits of employing older workers and actively employ workers of all ages and recognise the benefits of multi-generational working. 'McDonalds' found 20 per cent higher customer satisfaction in those outlets that employed workers aged 60+ as part of a mixed age workforce.<sup>[1]</sup>

23. However, many employers still believe in outdated stereotypes concerning the training, health and performance of older workers, which can result in a reluctance to employ them.

24. As the demographic pressures mount, failing to hold on to skilled older employees could damage business performance as firms lose valuable skills. Retaining this talent may mean allowing people to work flexibly.

25. In Autumn 2016, the Government appointed a Business Champion for Older Workers, to actively promote the benefits of older workers to employers across England – influencing them both strategically and in terms of practical advice. Andy Briggs has met a number of leading business leaders and organisations since his appointment.

*What protections are available to ensure older persons enjoy just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, safe working conditions, both in the formal and informal sector?*

26. The Equality Act 2010 contains equal pay provisions which requires employers to ensure that where men and women do the same or equal work, the terms of their employment contracts must be the same. This includes terms relating to pay and all other remuneration terms of their contracts of employment. This protection applies to everyone including older employees.

### **Equality and non-discrimination**

*In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including in older age?*

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<sup>[1]</sup> Age Positive 'Good Practice Case Studies: Managing without a fixed retirement age' at [www.gov.uk/dwp/agepositive](http://www.gov.uk/dwp/agepositive)

27. Age is one of the protected characteristics under the Equality Act 2010, which provides protection against direct and indirect age discrimination in employment. This makes it unlawful for an employer or a recruitment agency to discriminate against an older employee or older job applicant because of age. The UK Government also abolished the default retirement age so older employees can continue working beyond 65 years. An employer may only lawfully treat an employee or job applicant differently on age grounds if they can objectively justify this.

### **Remedies and Redress**

*What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to work and access to the labour market?*

28. The Equality Act 2010 provides legal remedy for older people who may have been discriminated against to make a claim through the court or Employment Tribunal.
29. The first step in redressing discrimination is through Government-funded helplines established to assist people with discrimination concerns. The Equality Advisory and Support Service (EASS) provides free bespoke advice and in-depth support to older people with discrimination concerns. The EASS has the ability to intervene on an older person's behalf to help resolve an issue. The EASS can also advise people who wish to take their complaint further on their options.
30. The Advisory, Conciliation and Arbitration Service (Acas) provides authoritative and impartial advice free to employees or employers via their website. Acas also provides Early Conciliation service to help employees and employers resolve/settle their workplace dispute without going to court.
31. Advice and support is also available through the local Citizens Advice Bureau (CAB) or Law Centres. CAB provides free, independent, confidential and impartial advice to people on their rights and responsibilities. The Law Centres are specialists working in local communities to offer advice, casework and representation to individuals to defend the legal rights when they cannot afford a lawyer.
32. Where "early conciliation" through Acas is not successful, an older person may take their case to an employment tribunal which, if finding in their favour, can award compensation and require an employer to rectify the situation that gave rise to the grievance.

## **Access to Justice**

### **National legal framework**

*How is the access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?*

1. The European Convention on Human Rights, and domestically the Human Rights Act, provide opportunities for all, including older people, to complain and seek redress for a denial of rights. We do not have bespoke systems for older people, however we ensure that they have equality of access to all human rights protections in the UK.
2. The Equality Act 2010 provides protection against direct and indirect age discrimination, making it unlawful to discriminate against older people. The Act provides legal remedy for older people who may have been discriminated against to make a claim through the court or Employment Tribunal.
3. The first step in redressing discrimination is through Government-funded helplines established to assist people with discrimination concerns. The Equality Advisory and Support Service (EASS) provides free bespoke advice and in-depth support to older people with discrimination. The EASS has the ability to intervene on an older person's behalf to help resolve an issue. The EASS can also advise people who wish to take their complaint further on their options. The EASS has also established referrals process with some local law centres to refer cases about work-based and service provision discrimination for bespoke legal advice.
4. The Advisory, Conciliation and Arbitration Service (Acas) provides authoritative and impartial advice free to employees or employers. Acas also provides Early Conciliation service to help employees and employers resolve/settle their workplace dispute without going to court.
5. Advice/support is also available through the local Citizens Advice Bureau (CAB) or Law Centre. CAB provides free, independent, confidential and impartial advice to people on their rights and responsibilities. The Law Centre are specialists working in their local communities to offer advice, casework and representation to individuals to defend the legal rights of people who cannot afford a lawyer.

### **Availability**

*What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?*

6. Services by advisory bodies/helplines (listed under question 1) are provided across the United Kingdom. Citizens Advice Bureaux and Law Centres operate locally in towns and local council areas, and are accessible to older persons, regardless of their location.

7. ACAS provides employees and employers with an alternative dispute resolution - an Early Conciliation service - to help resolve/settle workplace dispute without going to court.

### **Accessibility**

*What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?*

8. Ensuring that all users can access Her Majesty's Courts and Tribunal Services (HMCTS) services is the responsibility of all HMCTS staff, whether that is a service designer within reform, HMCTS service centre staff or a court usher. HMCTS supports all users in a variety of ways to access our services.
9. Reforms will increase access to justice through the digital delivery and subsequent digital take up of services, assisted digital (AD) support, improved paper channels and support for users over the phone, webchat and face-to-face support for those who need digital assistance. In order to ensure access for all we are not mandating digital channels and will be improving our paper channels in tandem with our new digital services.
10. For those who need help accessing services digitally an Assisted Digital provision is being developed to ensure that as court reform increases the use of technology, those who wish to use digital services can be supported to do so. This support can be provided via the telephone (and in the next few months via web chat and screen sharing) by staff or through face to face support.
11. The principal aim of our new digital services is to add new routes to justice, not to take others away. Our paper processes will remain for individuals and for some this will still be the best route into our courts and tribunals (we will scan documents received so that within the organisation we can handle everything digitally).
12. Accessibility starts at the design phase. To build our specific understanding of the needs of vulnerable and excluded groups of users, HMCTS is receiving support from a specialist organisation, Revolving Doors, with whom we have engaged with a wide range of individuals including people with low digital literacy skills, disabilities (including mental health conditions), English as a second language, and repeated contact with the criminal justice system. Our public service groups such as the Litigant in Person Engagement Group and the Equality and Inclusion Engagement Group have also enabled us to receive detailed advice at each stage of design from external organisations such as the Personal Support Unit, Disability Rights UK and AGE UK.
13. Advice/support provided by advisory bodies/helplines listed under question 1 is free. Access is available by telephone, email, textphone or via their websites.



Support provided is tailored to the specific circumstances of each individual case. Calls to the national phone lines cost the same as calls to landline numbers.

*What are the existing provisions to guarantee legal assistance for older persons?*

14. Part 9 of the Equality Act 2010 covers the enforcement of any breach of protections for older people. The proceedings for a claim of discrimination against an older person in the provision of services will be brought in the civil courts, and a claim of discrimination in employment will be brought in the Employment Tribunal.

*What are specific challenges encountered by older persons in accessing justice and remedy in your country?*

15. As would be common in all countries and all age groups, there is often a reluctance to take enforcement action because of the stress or financial commitment that this may entail. Beyond this, the most likely challenge would be a lack of awareness of the availability of advisory bodies and helplines to provide advice and help support people, including older people, in resolving disputes or concerns in a shorter time than the lengthy court process. The UK endeavours to signpost sources of help as widely as possible - in GP surgeries, in job centres and on the government web page dedicated to "Discrimination: your rights and the law - <https://www.gov.uk/discrimination-your-rights>.

### **Equality and non-discrimination**

*What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedures in all administrative and legal proceedings?*

16. The ***Equal Treatment Bench Book*** assists the judiciary by increasing the judicial office holders' awareness of the different circumstance of people appearing in courts and tribunals, and therefore minimising the risk of discrimination.

### **Accountability**

*How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals?*

17. The Judicial Conduct Investigations Office (JCIO) ensures an accountability mechanism through which older citizens can complain about the personal discriminatory conduct of a judicial office holder during litigation.