

**SUBMISSION ON THE ISSUES TO BE EXAMINED AT THE XI SESSION OF THE
OPEN-ENDED WORKING GROUP ON AGEING:
OLDER PEOPLE'S RIGHT TO WORK AND ACCESS TO THE LABOUR MARKET**

The following submission provides the EHRC'sⁱ response to the guided questions distributed to NHRIs ahead of the XI Session of the Open-Ended Working Group on Ageing in regards to older people's rights to work. The submission sets out the relevant provisions within the legal and policy framework in the UK, and some of the central issues relating to the realisation of older people's right to work and access the labour market.

1. NATIONAL LEGAL AND POLICY FRAMEWORK IN THE UKⁱⁱ

The right to work, and the right to just and favourable working conditions, are enshrined in a number of international human rights treaties.ⁱⁱⁱ Although the rights contained in UN treaties cannot be directly enforced in UK courts, they represent binding obligations in international law. By ratifying international human rights treaties, the UK has agreed to make sure it respects, protects and fulfils the human rights standards they contain.

The Equality Act (2010) provides a legal framework to protect individuals from unfair treatment and discrimination in a number of situations, including the workplace. The Equality Act (2010) lists nine separate protected characteristics, including age, and the Act makes it unlawful to discriminate against someone because of any of these protected characteristics.

The provisions of the Equality Act (2010) provide a legal framework to protect older people from being discriminated against by employers in a number of ways, including application and recruitment processes, employment and working conditions, or as grounds for dismissal.^{iv}

2. THE REALISATION OF OLDER PEOPLE'S RIGHT TO WORK

Despite the legal framework supporting older people's access to work in the UK older people still face a number of barriers and challenges to the full realisation of this right - from a lack of knowledge about their rights,^v to an absence of workplace policies and support on issues affecting older people, such as the menopause.^{vi} In 2014, Business in the Community estimated that there were over one million people aged 50 or over out of work who would have been willing to work^{vii} whilst one survey found that 40% of workers over the age of 50 years old believe that they have been discriminated at work for appearing too old.^{viii}

Dual discrimination - Older people are not a homogenous group, and public policy must be sensitive to intersectionality and the range of needs and aspirations of the ageing population. The UK Parliament's Women and Equalities Committee has

suggested that the true nature of intersectional discrimination facing older women may not be being brought to light in case law, due to the decision of successive UK Governments not to commence Section 14 of the Equality Act (2010),^{ix}, echoing recommendations by the UN CERD^x and CEDAW Committees^{xi}. The dual discrimination faced by older women is underlined by gender pay gap data, which shows that the pay gap between males and females aged 50-59 is considerably higher than the pay gap between males and females aged 17-29.^{xii}

Flexible working - One of the central issues relating to older people's access to work in the UK is flexible working. Evidence from the UK Government shows that flexible working arrangements are key to enabling older workers with health conditions and caring responsibilities to better balance these with working.^{xiii} The likelihood of becoming a carer increases with age,^{xiv} and evidence shows that employees over the age of 50 who provide 10 hours or more of care per week are more likely to leave paid employment than to seek to reduce their hours.^{xv} Research indicates that many older workers would choose to work for longer before retirement if they had the option of flexible working arrangements.^{xvi} Concurrently, studies have shown that many older people would ideally like to transition into retirement gradually by reducing their hours.^{xvii}

In Great Britain, all employees who have worked for the same employer for at least 26 weeks have the legal right to request flexible working, with requests required to be dealt with in a 'reasonable manner'.^{xviii} In the UK, there have been calls, including from the Commission for this right to request flexible working to be available from day one. ^{xix}

Reasonable adjustments – In line with the UN Convention on the Rights of People with Disabilities (CRPD), the Equality Act (2010) provides a duty on employers to take steps to remove, reduce or prevent the obstacles faced by disabled people as a worker or job applicant, where it is reasonable to do so. This could mean removing physical barriers or providing extra support to ensure that equality for disabled people is achieved in accessing the labour market. Older people without a recognised disability are not legally entitled to reasonable adjustments under current UK law, even if they are experiencing physical or other obstacles to work.^{xx}

Data gaps - The Office for National Statistics collects and publishes a range of data relating to employment rate and type of employment, with data disaggregated by a range of protected characteristics, including age.^{xxi} However, there are no requirement for employers to collect, record or publish data relating to pay gaps by age,^{xxii} or the provision of flexible working arrangements.^{xxiii}

If you have any queries about content included within this submission, or for further information, please contact Matt Blow at matthew.blow@equalityhumanrights.com

- ⁱ The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited at UN Level as an 'A status' National Human Rights Institution, in recognition of its independence, powers and performance. See <https://www.equalityhumanrights.com/en>.
- ⁱⁱ The UK comprises four countries – England, Scotland, Wales and Northern Ireland. The UK Parliament has devolved various powers to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, and it maintains responsibility for matters that have not been devolved ('reserved' matters) and for England. The majority of the provisions within the Equality Act (2010) only apply in England, Scotland and Wales.
- ⁱⁱⁱ Primarily through Articles 6-9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); but also within the UN Convention on the Rights of People with Disabilities (CRPD); the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); the UN Convention on the Elimination of all forms of Racial Discrimination (CERD); various Independent Labour Organisation (ILO) conventions, including eight fundamental conventions relating to rights at work; and the Council of Europe's European Social Charter (1961).
- ^{iv} There are a number of exemptions specified under the Equality Act (2010), specific circumstances, in which it is lawful to provide a difference in treatment based on age, such as when age is an occupational requirement, or when an employer has an objective justification for different treatment. These are listed in the Equality Act 2010 [Statutory Code of Practice: Employment](#)
- ^v ICM Unlimited, (2019), Older People in Wales Survey, data collected on behalf of the Older People's Commissioner for Wales, 14-19 March 2019, 500 respondents aged 60+ living in Wales. – 184 000 (23%) of older people reported not knowing what rights they have.
- ^{vi} <https://www.newsonhealth.co.uk/news/menopause-at-work-survey-results-published> - accessed 29th October 2019
- ^{vii} Business in the Community, *The Mission Million*, October 2014 at page 24, accessed 18 October 2019
- ^{viii} CIPD/CMI, *Managing an ageing workforce*, 2010. The findings of this research build on the findings of our previous research into the discrimination faced by older workers, which is reported in Equality and Human Rights Commission, [Research Report 43: Older workers: employment references, barriers and solutions](#) (2009);
- ^{ix} House of Commons, Women and Equalities Committee, *Older people and employment: Fourth Report of Session 2017-19*
The Equality Act (2010) includes a provision (Section 14), which would allow for claims to be made on the basis of two protected characteristics, however this provision has not been enacted by successive Governments
- ^x Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) (2016)
- ^{xi} Committee on the Elimination of All Forms of Discrimination against Women, [Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#) (2019)
- ^{xii} Equality and Human Rights Commission, [Research report 109: the gender pay gap](#) (2017)
- ^{xiii} House of Commons, Women and Equalities Committee, *Older people and employment: Fourth Report of Session 2017-19*
- ^{xiv} Department for Work and Pensions, *Fuller Working Lives: evidence base 2017*
- ^{xv} Walking the tightrope: The challenges of combining work and care in later life <http://www.carersuk.org/for-professionals/policy/policy-library/walking-the-tightrope-the-challenges-of-combining-work-and-care-in-later-life> (2016)

^{xvi} Written submission from HM Government ([OPE0034](#)) for House of Commons, Women and Equalities Committee, *Older people and employment: Fourth Report of Session 2017-19*

^{xvii} <https://www.workingmums.co.uk/over-50s-favour-gradual-reduction-in-hours-before-retirement/> - accessed 31/10/2019

^{xviii} <https://www.gov.uk/flexible-working>, accessed 22nd October 2019

^{xix} Elizabeth Prochaska, Legal Director, Equality and Human Rights Committee quoted in “[Oral evidence: Older people and employment, HC 359](#)” for House of Commons, Women and Equalities Committee, *Older people and employment: Fourth Report of Session 2017-19*; and Equality and Human Rights Commission’s consultation response to [the Good Work Plan: Proposals to support families](#) consultation (Oct 2019)

^{xx} Summarised in [Schedule 8 Work: reasonable adjustments](#) of the Equality Act (2010)

^{xxi} Equality and Human Rights Commission, [Measurement Framework for Equality and Human Rights](#) (2017)

^{xxii} *Ibid*