

Open-Ended Working Group on Ageing questionnaire on the identification of gaps in the protection of rights of older persons

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About this consultation

The UN Open-Ended Working Group on Ageing has issued a call for contributions on the gaps in the protection of rights of older persons and how best these could be addressed in international frameworks. They have invited contributions from governments, human rights institutions and civil society organisations.

About Age UK

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people: have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

Identification of gaps

a) Equality and non-discrimination

Ageist attitudes and age discrimination are pervasive across all parts of society. Ageism and age discrimination take place at the institutional level (e.g., in the policies and systems enacted by institutions, whether intended or not), at the interpersonal level (e.g., by ignoring someone because of their age), or it can be self-directed (e.g., you might believe you are too old or too young to apply for a specific job).¹ Age discrimination has a significant impact on the lives of older people. For example, it can result in being overlooked for a job opportunity or promotion because of your age. In healthcare, digital modes of access may exclude older people, while you also might be denied access to some treatments because of your age.² Despite an ageing population, only 9% of homes meet basic accessibility requirements.³ The rights of older people are often ignored or overlooked – for example in relation to the blanket introduction of DNACPR orders during the pandemic. And ageist media narratives have also led to a worsening of stereotypes, intergenerational tensions, and sometimes abuse. Ageism intersects with and compounds the impact of other forms of discrimination, including sexism, racism and ableism.

Under international law, all states are required to eliminate age discrimination. However, this obligation is not always well-understood or effectively applied, in part because age discrimination is not listed as a ground for discrimination under the core UN human rights instruments. In addition, age discrimination has not been sufficiently addressed in the work of core treaty bodies. Where ageism and age discrimination have been included, this has not been done in a piecemeal fashion, rather than with a joined-up approach.

In the UK context, the Equality Act (2010) and the Public Sector Equality Duty are designed to reduce discrimination on the basis of protected characteristics, one of which is age. This legislation has greatly expanded the protections available to older people and the right of redress. Despite this, 1 in 3 people in the UK report experiencing ageism or age discrimination in multiple settings, including employment, health and social care and the media.⁴ Legal protections outlined in the Act are not always properly adhered to by public bodies. Other parts of domestic legislation also allow age-based exclusions in relation to financial services, which mean that older people

¹ United Nations Global Report on Ageism 2021

² NHS Digital (2022) Psychological therapies, Annual report in the use of IAPT services, 2021-22. Available at <https://digital.nhs.uk/data-and-information/publications/statistical/psychological-therapies-annual-reports-on-the-use-of-iapt-services/annual-report-2021-22>

³ Centre for Ageing Better, 'The State of Ageing 2022'

⁴ <https://www.equalityhumanrights.com/sites/default/files/national-barometer-of-prejudice-and-discrimination-in-britain.pdf>

sometimes face difficulties accessing insurance or loans because they are deemed 'too old'.

A Convention on the Rights of Older People would clarify state responsibilities towards older people, and place the onus on states to tackle all forms of ageism and help to support older people to live in a society in which they are valued and able to participate, where their legal rights are upheld and where their needs are actively considered in policy-making and service delivery at all levels of Government.

B) Violence, neglect and abuse

Older adults may be subjected to abuse and neglect in their homes, in hospitals and care settings, and in the community. This abuse and neglect may be financial, physical, sexual, emotional or psychological. Perpetrators vary – they may be family members, including adult children, carers, partners and others. As we age, the likelihood of being at risk from abuse or neglect increases⁵ – this is because we are more likely to experience ill health and need to rely on other people for support, which in turn makes us more vulnerable. Resource pressures in social care, as well as inadequate staff training, also contribute to the neglect of older people in these settings.⁶ Abuse among older people is often hidden, ignored or not recognized as such. This is because an older person may face barriers to speaking out because they are unwell or face difficulties in communicating, rely on carers, or do not recognize what they are experiencing as abuse. Ageist perceptions of abuse also mean that health and social care professionals do not always recognize or ask older people about abuse. This invisibility increases among older victims/survivors of domestic abuse where there is intersectional discrimination, particularly where a victim/survivor is older and male, where a victim/survivor is an older woman with dementia, and where a victim/survivor is older and LGBTQ+.⁷ Until recently, following a successful campaign by Age UK, no data was collected on victims of domestic abuse aged 75 and over.

A report by the UN Independent Expert on the enjoyment of human rights among older persons highlights that the current international human rights framework lacks specific provisions to address violence against and the abuse of older persons.⁸

In the national context, the Care Act (2015) requires local authorities to 'protect against abuse and neglect', and local authorities can make enquiries where abuse or neglect is suspected. In addition, the Domestic Abuse Act (2021) has created a broader statutory definition of domestic abuse, including economic and emotional abuse. However, while this legislation provides some

⁵ [NHS England Safeguarding Data](#)

⁶ [Age UK evidence to the Joint Committee on Human Rights, October 2021](#)

⁷ Sarah Wydall, 'Practice perspectives and the lived experience of older people when seeking support'

⁸ OHCHR Report on the violence, abuse and neglect of older persons, 2023

protection, older people continue to be overlooked and forgotten about in relation to government policy and there is a lack of appropriate support and resources available for older domestic abuse victims/survivors.

A Convention on the Rights of Older Persons would help to clarify the scope of the right to be free from violence, abuse and neglect in older age, including obligations arising from that human right and how it should be implemented in practice. It would increase visibility of abuse and neglect as an issue that affects older people and highlight the right of this group to effective support services and the need for proper access to remedies and redress.

C) Long term care and palliative care

Significant cuts to social care funding mean that proportionately fewer older people are eligible for social care support. These cuts, combined with a staffing crisis in the sector, means that the older people able to access social care are often receiving a reduced service that does not and cannot fully respect wellbeing principles set out in legislation, or in many cases be treated with dignity and respect. Low staffing levels, for example, may result in safety issues, too little time with residents, a lack of support with eating and bathing, and an increase in restrictive practice.⁹ The pandemic further exposed and exacerbated rights issues in social care, with the introduction of blanket Do-Not Resuscitate Orders, worsened visiting rights and a lack of access to medical attention.¹⁰ In the current context, principles of prevention and improving wellbeing are often considered secondary, or even tertiary, to fulfilling basic tasks.

In relation to palliative care, research shows that many older people experience unnecessary pain and other symptoms, being treated with a lack of dignity and respect, and many people do not die where they would choose to.¹¹ People over 80 experience the worst overall quality of care in the last two days of life compared with other age groups, covering such areas as pain relief, nutrition and emotional needs. Care pathways for many older people with multiple or non-specific health problems are not agile enough to respond to needs that can change very rapidly and unexpectedly or where preparation for potential changes hasn't taken place.¹²

Historically, you are more likely to have access to palliative care when you are in the end stages of a terminal disease and less likely if you are at the end of life with no one specific disease, i.e., older people are less likely to receive it. One of the key issues is a poor understanding of the trajectory of multimorbidity and frailty. How someone deteriorates when they live with

⁹ UNISON: 'Staffing levels in care are dangerously low', 2021

¹⁰ Age UK submission to JCHR inquiry on rights in care homes, 2021

¹¹ Age UK, End of life evidence review, 2013 and Offices for National Statistics, National Survey of Bereaved People (VOICES), 2014

¹² Royal College of Physicians, End of Life Care Audit- Dying in Hospital: National report for England, 2016.

multiple health conditions and general frailty, which will be how most people die, is less well understood than terminal diseases and thus advance planning and access to services are less forthcoming. This can result in an older person not getting access to adequate support and having the final days of their life complicated by multiple readmissions and discharges from hospital.

There is no explicit standard on long-term care in older age in international human rights law, no explicit standard on the right to palliative care, nor a specific right to care and support for independent living in older age. Although Article 19 of the Convention on the Rights of Persons with Disabilities provides the right to independent living, it does not apply to older persons without disabilities.

At the national level, there is a legal framework in place to protect the rights of older people accessing social care, including the Care Act 2015, the Health and Care Act 2022, the Human Rights Act 1998, the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards, and the Equality Act 2010. While the legal framework is strong (if imperfect) overall, implementation is patchy at best, and in many cases current practice does not meet legal requirements.

A UN convention has the potential to focus greater attention on the provision of long-term care, which has long been seen as less important than healthcare. There should be a right to services that promote and maintain people's ability to live independently and autonomously.

D) Autonomy and independence

Older people continue to face extensive barriers to autonomy and independence. A lack of proper implementation of legal instruments designed to protect the rights of older people, including the Mental Capacity Act (2005), the Deprivation of Liberty Safeguards, the Care Act (2015), and the Human Rights Act (1998) means that older people often face abuses of their human rights. For example, the Deprivation of Liberty Safeguards is a legal framework that aims to ensure that older people do not have their right to liberty taken away without a set of proper external checks being put in place and that any restrictions put in place are the minimum necessary. However, due to a long-term lack of funding, there is a large backlog of DoLS cases, meaning that in 2022/23, 126,100 DoLS cases were not completed, meaning that large numbers of older people are likely to have been unlawfully deprived of their liberty.¹³ This resource crisis also affects social care more widely – a lack of funding means that there are not enough care staff and resources to support older people with daily activities, such as eating and taking medication, placing significant restrictions on older people's ability to live

¹³ NHS Digital, Deprivation of Liberty Safeguards, 2022-23

independently. The current resource pressures affecting social care have also led to an increase in restrictive practice in care settings, with older people being confined to their rooms or prevented from leaving the setting to go for a walk or visit family for example.¹⁴

Outside of care settings, ageism and discrimination prevent many older people from accessing health, financial services, housing and employment. A deterioration in health, income or access to services that encourage financial independence increases peoples' dependence on others, thereby depriving them of the ability to live independently and autonomously.

There are no explicit standards on autonomy and independence in older age in international human rights law. Everyone's right to equal recognition before the law and the right to a family and private life, which are both central to autonomy and independence, are enshrined in international human rights law. Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD), for example, affirms that all persons with disabilities have full legal capacity and that perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity. It does not apply to older persons without disabilities, however, and there are no explicit international standards on how these rights apply in older age.

A UN Convention on the rights of older persons with a strong emphasis on promoting and protecting older people's rights to autonomy and independence and support for independent living would help to raise awareness and increase the prioritization of these issues. It is equally important to recognize that the undignified care and treatment of older people does not happen in a vacuum; these are rooted in the discrimination towards older people across society. Age discrimination must also be explicitly prohibited by a convention.

G) Right to work and access to the labour market

Age discrimination is a key issue across the labour market. Age UK polling conducted in 2017 found that about a third of 55-64s believe they have been discriminated against because of their age. There are many older people who would like to work but are denied the opportunity, for example because of low skills, caring responsibilities or age discrimination by employers, or because they do not get the unemployment support they need. Older women, who are more likely to have had responsibility for caring and other domestic work over their lifetimes, face particular barriers to accessing paid and decent work as they age.

¹⁴ CQC, The State of Care, 2021-22

Caring impacts people's ability to remain in work in later life, even when they are caring for as few as five hours per week. People aged 50–64 are most likely to be carers with the impact of care on work varying depending on the carer's occupational group – with those in higher skilled occupations (i.e. managerial or professional roles) likely to make smaller reductions in their working hours than those in lower skilled groups. The transition to being a carer presents particular risk to older people's employment – the failure of employers and the care and support system to help people through this transition risks their long term withdrawal from the labour market.

International human rights law does not adequately address the specific application of the right to work to the context of older age and older people. The International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families remains the only international human rights convention to explicitly prohibit discrimination on the grounds of age.

The Equality Act 2010 provides a set of legislative tools for tackling age discrimination both within the realm of employment and in the provision of goods and services, which has greatly benefited older people in the UK. But despite this framework, a lack of enforcement by the authorities means that employers can continue to treat older workers disadvantageously. The Carer's Act 2023 is a step in the right direction towards supporting carers, but the Act doesn't go far enough.

A UN Convention on the rights of older persons is needed to protect older persons' right to work. It would clarify that older persons have the right to decent work on an equal basis with others. It would clarify the exact scope of State obligations, including taking the necessary measures so that we can all enjoy available and accessible employment opportunities and career advancement in older age, as well as effectively access remedies and redress. A Convention would also include specific provisions protecting the rights of older persons undertaking informal or unremunerated work, such as the right to enjoy fair and safe conditions of work.

K) Right to health and access to health services

As we age, we are more likely to develop a health condition and/or disability that means we need to access health services. However, significant barriers remain to older people accessing health and social care services. Age discrimination means that older people are often denied access to health services. For example, a move to online booking of doctor's appointments and ordering prescriptions means that older people may find it difficult to see a doctor or access the medication they need. Treatment options also vary between older and younger patients – for example, mental health treatment

remains much lower for older people than younger people¹⁵, and there is unwarranted variation in access to surgical treatment for some types of cancers and other conditions.¹⁶ Health systems are not set-up to take into account older patients with complex needs or provide sufficient support systems to enable older patients to take part in treatment. And, as the most intense users of NHS services, older people are often disproportionately affected by resource pressures which affect all services.

While some international treaties focus on the right to health, such as Article 12 of the International Covenant on Economic, Social and Cultural Rights, there is a lack of a specific mention of older people. This lack of visibility was clearly seen in the response to the Covid-19 pandemic where older people's right to health was consistently overlooked.

A Convention on the rights of older people is clearly needed to protect the right of older people to the highest possible quality physical and mental health provision, access to health on an equal basis with others, and without age discrimination, as well as health provision that takes their needs into account and provides services and care that meet these needs.

¹⁵ NHS Digital (2022) Psychological therapies, Annual report in the use of IAPT services, 2021-22. Available at <https://digital.nhs.uk/data-and-information/publications/statistical/psychological-therapies-annual-reports-on-the-use-of-iapt-services/annual-report-2021-22>

¹⁶ The Royal College of Surgeons of England (2014) Access all ages Available at: <https://www.rcseng.ac.uk/library-and-publications/rcspublications/docs/access-all-ages-2/>