

Submission on the Issues to be Examined at the XI Session of the UN Open-Ended Working Group on Ageing: - Older People's Access to Justice

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. The submission sets out the relevant provisions within the legal and policy framework in the UK, and some of the central issues relating to older people's access to justice.

1.) NATIONAL LEGAL AND POLICY FRAMEWORK IN ENGLAND AND WALESⁱⁱ

- 1.1) The right to an effective remedy and fair trial is protected by the European Convention on Human Rights, which is given domestic effect by the Human Rights Act (HRA) (1998). Article 6 of the HRA protects the right to a fair trial in both civil and criminal proceedings. Read together with Article 14, the HRA guarantees freedom from discrimination in relation to fair trial rights.
- 1.2) The UK has signed a number of international human rights treaties that elaborate the core elements of access to justice, including the right to an effective remedy and fair trial,ⁱⁱⁱ alongside protection from discrimination. While these treaties are not directly enforceable in the domestic courts, they may be relevant and a consideration when the courts interpret related domestic law, including the HRA and the Equality Act (2010).
- 1.3) The Equality Act (2010) provides a legal framework to protect individuals from unfair treatment and discrimination in a number of situations, including in the justice system. It lists nine separate protected characteristics, including age, and the Act makes it unlawful to discriminate against someone because of any of these protected characteristics. Under the Equality Act (2010) it is unlawful for the Ministry of Justice and its executive agency HM Courts and Tribunals Service (HMCTS) to discriminate in providing services or exercising public functions on the basis of age.
- 1.4) The Older People's Commissioner for Wales protects and promotes the rights of older people throughout Wales, scrutinising and influencing a wide range of devolved policy and practice to improve their lives.^{iv} The Commissioner's role is underpinned by a set of unique legal powers to support their work in reviewing the work of public bodies and holding them to account when necessary. There is currently no equivalent role in England.

2.) OLDER PEOPLE'S ACCESS TO JUSTICE IN ENGLAND AND WALES

- 2.1) Older people can face a range of barriers to justice in the UK including: barriers to understanding their rights, difficulties in accessing legal advice and information, and barriers relating to mental capacity, or specific communication needs that are not appropriately met.^v Whilst not unique to older people, barriers can be particularly apparent for older people, who are statistically much more likely to live with dementia^{vi}, or experience sensory impairments than younger people.^{vii} A recent report by the Older People's Commissioner for Wales also raised concerns that the rate of convictions for crimes against older people in the UK is disproportionately low, and indicates that this could be related to decision-making by police forces and the Crown Prosecution Service (CPS), particularly in relation to safeguarding.^{viii}
- 2.2) **Information and advice** – There is a range of free legal advice and information that can be accessed by older people and others in the UK. This is available in person, online or over the telephone. Sources of free legal advice and information include helplines, such as the Equality Advisory and Support Service (EASS),^{ix} law centres,^x and charities, such as the Citizen's Advice Bureau^{xi} and Age UK.^{xii} However, recent evidence shows that more than a quarter of the law centres or agencies offering free legal services in England and Wales closed between 2013-14 and 2018-19^{xiii}.
- 2.4) **Legal aid** – In the UK, legal aid is available for those who cannot afford to pay for legal costs. In 2012, the UK Government introduced the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), which made significant changes to the scope, eligibility criteria and rates paid for legal aid in England and Wales.^{xiv} LASPO resulted in a substantial fall in legal aid spending; and large areas of civil law were removed from coverage.^{xv} LASPO has been widely criticised for its adverse impact on access to civil and criminal justice, especially among disadvantaged groups and people with protected characteristics.^{xvi}
- 2.5) **Modernisation of the court system** - The UK Government has pledged to invest £1 billion over seven years to modernise the courts and tribunals system in England and Wales, creating services that are digital by design including by moving cases online, closing physical court structures, and introducing virtual hearings.^{xvii} Whilst we recognise that modernising the court system may provide opportunities to improve access to justice, we are concerned that aspects of the reform programme may also undermine access to justice for certain groups, including for some older people. The UK Government has committed to take steps to improve the evidence base for aspects of the reform programme, including through research and user testing. Potential barriers for older people where mitigating measures may be required are outlined below.
- 2.6) **Court closures** – Since 2010/2011 the UK Government has closed more than 290 court facilities, including crown, county, magistrates', family courts

and tribunal buildings.^{xviii} The closure of local courts, resulting in longer journey times, can have potentially negative implications on access to justice for older people, with the length of journeys to further away courts being prohibitive to some older people, particularly for those with physical impairments,^{xix} or for those who are carers.^{xx} The closure of courts in rural areas may also disproportionately affect older people who are more likely to live in rural areas where access to public transport is more limited.^{xxi}

- 2.7) **Digital exclusion** – There are concerns that the digitisation of court services could create additional barriers for older people who do not have access to the internet or have lower digital literacy. Recent research showed that 53% of those aged over 75 do not use the internet,^{xxii} and only 45% of people aged over 65 have basic digital skills.^{xxiii}
- 2.8) **Evidence and monitoring** – The Commission is concerned that there has not been sufficient collection of data, monitoring or impact assessment to ensure the reforms do not disproportionately disadvantage groups with protected characteristics, including older people, or undermine access to justice.^{xxiv}

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>. ensure the reforms do not disproportionately disadvantage groups with protected characteristics, including older people, or undermine access to justice.

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. Issues of law and order have been devolved to the Scottish Parliament. Given that the Commission’s remit only covers reserved matters in Scotland, this submission will focus solely on the policy and legal framework in England and Wales only.

ⁱⁱⁱ The right of access to justice is included in the following international treaties that have been ratified by the UK: the International Covenant on Civil and Political Rights (ICCPR), the UN Convention on the Rights of Persons 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) and the UN Convention on the Rights of the Child (CRC).

^{iv} Older People’s Commissioner for Wales website - <https://olderpeoplewales.com/en/Home.aspx>, accessed 15th January 2020

^v Age UK and the British Institute of Human Rights, [Older People and Human Rights: a reference guide for professionals working with older people](#), 2011.

^{vi} Alzheimer's Research UK Dementia Statistics Hub, "[Prevalence by age in the UK](#)", webpage – accessed 15th January 2020

^{vii} Age UK, [Later Life in the United Kingdom](#) (2019)

^{viii} Older People's Commissioner for Wales, [State of the Nation: An overview of growing older in Wales](#) (2019)

^{ix} The Equality Advisory and Support Service (EASS) is a free telephone helpline, which provides advice and assistance to members of the public on issues relating to equality and human rights - <http://www.equalityadvisoryservice.com/>

^x Law Centres are independent, not-for-profit organisations that offer legal advice, casework and representation to individuals and groups on specific areas of social welfare law -

<https://www.lawcentres.org.uk/about-law-centres>

^{xi} <https://www.citizensadvice.org.uk/> - accessed on 12th December 2019

^{xii} <https://www.ageuk.org.uk/information-advice/> - accessed on 12th December 2019

^{xiii} Written Parliamentary question -

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-07-04/273435/>

^{xiv} [Legal Aid, Sentencing and Punishment of Offenders Act](#), 2012

^{xv} Areas of civil legal aid that were removed from coverage included most housing, family, immigration, employment and welfare benefit problems.

^{xvi} Concerns were raised in concluding observations by the UN Committee on the Elimination of Racial Discrimination in 2016, the UN Committee on Economic, Social and Cultural Rights in 2016, the UN Committee on the Rights of the Child in 2016, and the UN Committee on the Rights of Persons with Disabilities 2017, as reported in EHRC, [Is Britain Fairer?](#) 2018

^{xvii} <https://www.gov.uk/guidance/the-hmcts-reform-programme#our-reform-programme> – accessed 12th December 2019

^{xviii} Data taken from, House of Commons Library, [Briefing Paper: Court Statistics for England and Wales](#) (2019)

^{xix} Research by the EHRC in 2017 highlighted that disabled people often have very limited access to transport. Older people are statistically more likely to have physical impairments compared to younger age groups. EHRC, [Being Disabled in Britain: a journey less equal](#) (2017).

^{xx} Department for Work and Pensions, *Fuller Working Lives: evidence base 2017*

^{xxi} Office of National Statistics, DEFRA, [Rural population and migration, Mid-year population 2018](#)

^{xxii} Office of National Statistics, [Internet Users in the UK](#) (2019) <https://www.ipsos.com/ipsos-mori/en-uk/basic-digital-skills-uk-report-2018>.

^{xxiii} Lloyds Bank and the Tech Partnership, *Basic Digital Skills UK Report 2018*

^{xxiv} Her Majesty's Courts and Tribunals Service (HMCTS) has acknowledged that it does not hold comprehensive data on court users on which to assess the impact of court closures – Ministry of Justice and HMCTS, [Proposal on the future of Northallerton Magistrates Court](#) (2018)