Equality and Human Rights Commission

Consultation response

United Nations Open-ended Working Group on Ageing – Call for Inputs on Right to Health and Access to Health Services

Consultation details

Title of consultation: United Nations Open-ended Working Group on Ageing – Call for Inputs on Right to Health and Access to Health Services

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National Legal and Policy Framework in England and Wales[1]

The following submission provides the Equality and Human Rights Commission's (EHRC)[2] response to the guiding questions on right to health and access to health services, ahead of the 13th Session of the United Nations (UN) Open-Ended Working Group on Ageing.

[1] The United Kingdom (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. Responsibility for health services is devolved to the relevant administrations in Wales, Scotland and Northern Ireland. This submission focuses solely on the policy and legal framework in England and Wales, in accordance with the EHRC's mandate.

[2] The EHRC 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 EHRC 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 by the UN as an 'A-status' national human rights institution, in recognition of its independence, powers and performance. See https://www.equalityhumanrights.com/en.

International human rights treaties

The UK has ratified seven 'core' United Nations human rights treaties,[3] which establish rights to enjoy the highest attainable standard of physical and mental health,[4] as well as dignity, autonomy, participation and the right to independent living in the provision of care.[5]

These treaties have not been incorporated into UK law and are therefore not enforceable in domestic courts, although they may be a relevant consideration when the courts interpret related domestic law. In Wales only, there is a duty to have due regard to the Convention on the Rights of Persons with Disabilities (CRPD) and the UN Principles for Older Persons when making decisions about social care.[6]

The European Convention on Human Rights is given domestic effect in the UK by the Human Rights Act (HRA) (1998). The Act sets out fundamental rights and freedoms and places duties on those exercising public functions not to act in a way that is incompatible with the Act, which includes taking positive steps to protect rights.[7]

[3] The International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities.

[4] To the maximum of the State's available resources (see Article 2 International Covenant on Economic, Social and Cultural Rights).

[5] See Convention on the Rights of Persons with Disabilities.

[6] Under the Social Services and Well-being (Wales) Act 2014.

[7] Rights most relevant to health include Article 2 (right to life), Article 3 (freedom from inhuman and degrading treatment), Article 8 (right to respect for home, correspondence and family) and Article 14 (protection from discrimination).

Domestic legislation

The HRA applies to public bodies and to private bodies exercising public functions. This includes care providers where the care is arranged by or paid for by a local authority.[8] The Senedd Cymru/Welsh Parliament and Welsh Government cannot make decisions or laws that do not comply with the HRA.[9]

There are duties on the UK and Welsh Governments to ensure health services are provided to the general population and on local authorities to provide community care to the local population and to assess adults' and carers' needs for care and support.[10] Healthcare is mainly free, while adult social care is means tested with limited exceptions.[11] There are specific laws relating to mental healthcare[12] and treatment of people who may lack capacity to make decisions.[13]

The Equality Act (2010) provides a framework to protect individuals from discrimination on the basis of nine protected characteristics, including age and disability. The Public Sector Equality Duty is an important legal tool to ensure that governments and other public bodies consider equality in all their decisions and actions. Age discrimination can be lawful if is objectively justified. There is a duty to make reasonable adjustments for disabled people.

The quality and safety of health and social care is regulated by independent regulators.[14] In Wales, the Older People's Commissioner is empowered to review the work of public bodies and hold them to account when necessary.

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[8] Directly or indirectly, in whole or in part. See Section 73 of the Care Act 2014.

[9] Government of Wales Act 2006 and Wales Act 2017.

[10] See National Health Service Act 2006, Health and Care Act 2022, National Health Service (Wales) Act 2006

[11] Ibid.

[12] The Mental Health Act (MHA) 1983, Mental Health Act 2007 and Mental Health Act Code of Practice provide the legal framework for the treatment, including compulsory detention, of people with mental disorder in hospitals, and the community and related matters.

[13] The Mental Capacity Act 2005 and Code of Practice provide the legal framework for decision-making by and on behalf of people who lack or have limited capacity.

[14] Care Quality Commission (England), Care Inspectorate Wales.

Older People's Access to Healthcare and Health Services

Access to healthcare

Older people can face a range of barriers to accessing care, and there are numerous examples of potential breaches of rights occurring in care settings, particularly during the Covid-19 pandemic. For instance:

- Older people are statistically much more likely to be disabled, have sensory impairments or live with dementia[15] or other condition which can affect their ability to access health services on an equal basis.
- The increasing use of digital technology in healthcare services can create an additional barrier for older people, who are more likely to be digitally excluded,[16] and create risks to privacy from increased gathering and processing of data.
- Older people's health conditions are often treated in isolation rather in the context of a person living with other conditions and a variety of social, psychological and environmental needs.[17]
- Increasing demand on health and social care services has a disproportionately negative impact on those who require more healthcare contact, with increased waiting for planned health interventions.[18]

[15] Alzheimer's Research UK Dementia Statistics Hub, "Prevalence by age in the UK" [accessed 8 February 2023].

[16] Older People's Commissioner for Wales, "Access to information and services in a digital age: Summary of responses from local authorities and health boards" (2022).

[17] Age UK, "Policy Position Paper: Improving healthcare (England)" (2019).

[18] 42% of people with disability and 15% of people without disability were waiting for planned health interventions. Kavanagh et al, "Health and healthcare for people with disabilities in the UK during the COVID-19 pandemic" (2022).

Equality considerations

It is important to consider how the protected characteristic of age intersects with other protected characteristics. For instance, older ethnic minorities in the UK report poorer health than their White British counterparts.[19] Some migrant groups face deteriorating health in older age, despite initially having a health advantage compared to White British groups.[20]

Among adults with probable mental health disorders, older age groups were underrepresented in certain psychological services: 4.5% of those aged 65 and over compared with 13.6% of those aged 18 to 24 years.[21]

[19] Inequalities emerge in middle age for Bangladeshi, Pakistani and Black Caribbean groups. IFS Deaton Review, "Race/ethnic inequalities in health: moving beyond confusion to focus on fundamental causes" (2022).

[20] Fernandez-Reino, "The health of migrants in the UK" (2020).

[21] Office for National Statistics, "Socio-demographic differences in use of Improving Access to Psychological Therapies services, England: April 2017 to March 2018" (2022).