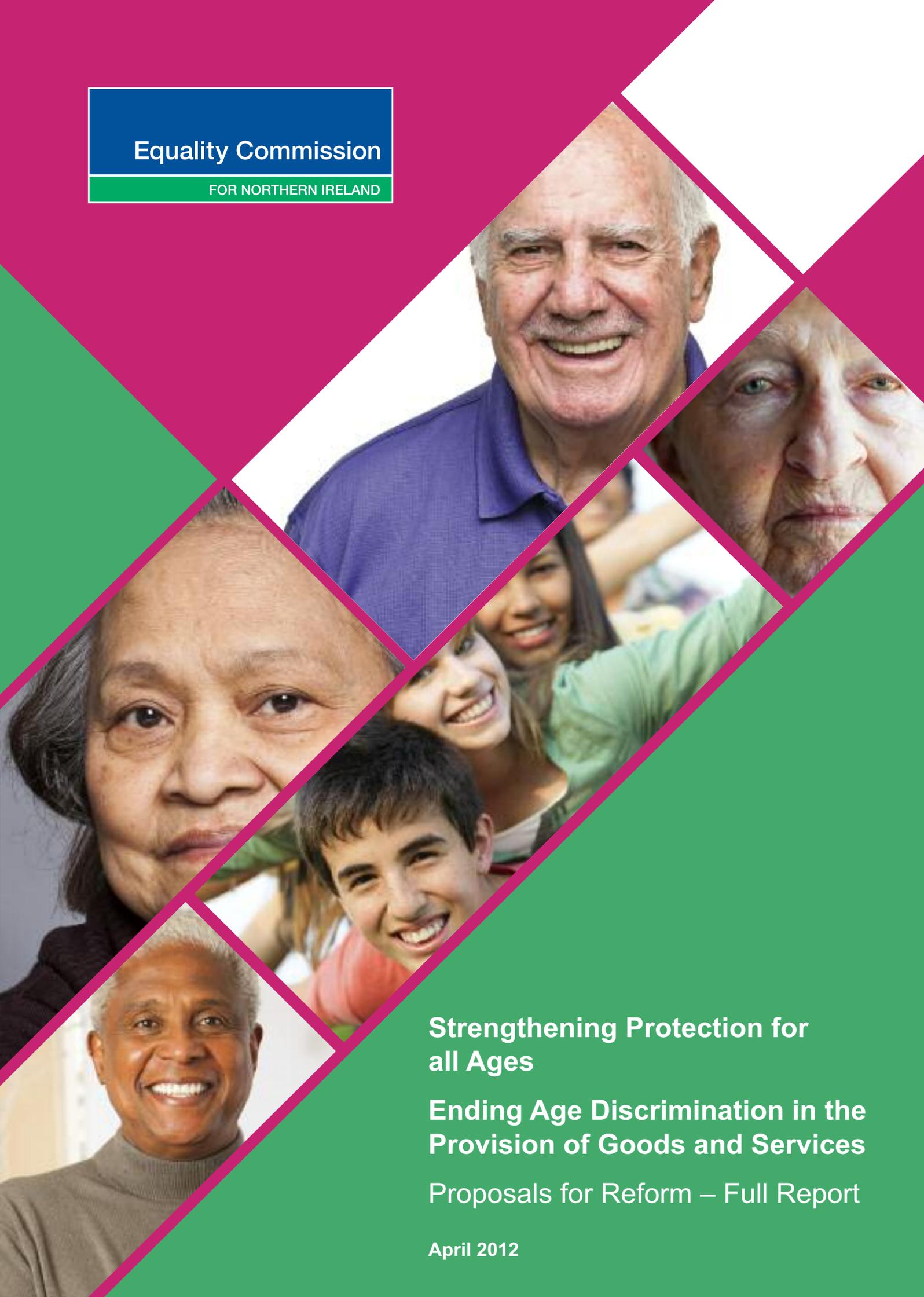


Equality Commission

FOR NORTHERN IRELAND



Strengthening Protection for all Ages

**Ending Age Discrimination in the
Provision of Goods and Services**

Proposals for Reform – Full Report

April 2012

Introduction

The Equality Commission recommends that individuals have increased protection against discrimination on the grounds of **age** by those providing **goods, facilities, services**, exercising **public functions** or by **private clubs**.

The Equality Commission has set out below in detail what changes are required to the age equality legislation, as well as the reasons why reform is necessary at this time. It considers the tangible differences and impact that the changes will have on people of different ages, including older people. It recommends that legislation is introduced in Northern Ireland in order to **keep pace** with proposed changes to the law in this area due to come into effect in Great Britain in October 2012.

Finally, it sets out the steps that the Equality Commission has taken, and proposes to take, to secure reform in this area.



The Equality Commission is calling for the age equality legislation to be strengthened and extended.

What changes are required?

In summary, the changes will mean that individuals will have protection against **unjustifiable discrimination** on the grounds of their age **outside the workplace**. Currently protection against unlawful discrimination on the grounds of age in Northern Ireland is limited to the fields of employment and occupation.

The changes will mean, for example, that individuals will have the right to seek redress to a court if they, without justification, receive an inferior service or are unable to access goods and services simply on the basis of their age.

The Equality Commission recommends that the legislation banning age discrimination covers the provision of **health and social care, financial services** (such as grants, loans, credit or finance or insurance) and **other services** (such as retail services or transport provision, or facilities for entertainment).

The Equality Commission also recommends the introduction of legislation that bans age discrimination by public bodies when exercising **public functions**. This would include regulatory or law enforcement functions, the setting of budgets, grant making functions or determining frameworks for the entitlement to benefits or services.

Under Section 75 of the Northern Ireland Act 1998, public authorities are already under a duty when delivering services, developing and implementing policy, and carrying out their public functions, to have due regard to the need to promote equality of opportunity between persons of different ages. Public authorities, in compliance with the obligations set out in their equality schemes, must therefore consider the impact of their policies on people of different ages.

Whilst this is an important legislative requirement that encourages public authorities to consider proactively the impact of their practices on people of different ages, this legislation does **not** grant an individual the right to seek redress in a Court in circumstances where they have, without justification, been discriminated against by a public authority on the grounds of their age when accessing a service, or when subject to the exercise of public functions.

Finally, the Commission recommends that individuals have protection against unlawful discrimination on the grounds of age by **private clubs or other associations** (such as private golf clubs and political parties).



The changes will strengthen protection against discrimination and harassment for people of all ages when accessing goods and services.

The Equality Commission proposes that the legislation bans unjustifiable **direct** and **indirect** discrimination on the grounds of age (actual or perceived), as well as **harassment** and **victimisation** (for example, treating an individual less favourably because they have made a complaint of unlawful age discrimination).

It is important to note that the Commission recommends that the legislation, if introduced, allows differential treatment on the grounds of age in circumstances where it can be **objectively justified**. There are likely to be many instances of justifiable different treatment; for example, free bus passes or eye tests for over 60s, or treatment which is designed to counteract the disadvantages certain age groups face, or meet their particular needs.

Why are these changes required?

In summary, the recommended changes will:-

- **help address the inequalities facing people of different ages in Northern Ireland when accessing goods, facilities and services;**
- **ensure that Northern Ireland age equality legislation keeps pace with proposed changes in legislation due to take effect in Great Britain in October 2012;**
- **ensure parity with protection against unlawful discrimination when accessing goods and services which exists on other equality grounds;**
- **further the overarching aims and objectives of the Executive's Older People's Strategy-*Ageing in an Inclusive Society*;**
- **help ensure that Northern Ireland age equality legislation complies with the anticipated requirements of the draft European Commission Directive on the provision of goods and services. The introduction of such legislation is also in keeping with international obligations and principles relating to age equality.**

The reasons underpinning the Equality Commission's recommendations are set out in detail below.

Help address key inequalities

The Equality Commission considers that the proposed legislation will help address key inequalities facing people of different ages in Northern Ireland when accessing goods, facilities and services.

It will mean that people of all ages are treated fairly and have equality of opportunity in accessing services provided by the public, private and voluntary sectors.

It will help challenge negative stereotypes, prejudice and ageist behaviours; for example, in relation to older people or young adults. It will help tackle 'hidden' or 'covert' age discrimination.



The changes will help challenge negative stereotypes, prejudice and ageist behaviours.

The proposed legislation will help reduce social exclusion, for example, of older people, by improving access to, and targeting of, various services; as well as improving transparency and accountability within the financial services sector. As highlighted in the Equality Commission's *Statement on Key inequalities in Northern Ireland*¹, the social inclusion of older people is inextricably linked to their wellbeing and access to services. A number of factors contribute to social isolation including differential access to, and availability of, health and social care, and differential access to financial services.

The Equality Commission is also of the view that the introduction of legislation banning age discrimination outside the workplace will send a strong signal to service providers, public bodies and others, that discriminating unjustifiably because of age is unacceptable.

It will ensure that service providers and others consider proactively whether their age policies and practices are justifiable. It will create a cultural shift that will help society to take steps to remove entrenched disadvantages facing people of different ages.

The Equality Commission considers that there needs to be a strong legislative driver in terms of clear enforceable rights, in order to address discrimination and harassment effectively and challenge systemic discrimination and indirectly discriminatory policies, practices and procedures on the grounds of age outside the workplace.

1 Statement on Key inequalities in Northern Ireland , 2007, ECNI
[http://www.equalityni.org/archive/pdf/Keyinequalities\(F\)1107.pdf](http://www.equalityni.org/archive/pdf/Keyinequalities(F)1107.pdf)



There needs to be a strong legislative driver in terms of clear enforceable rights.

It is clear that the proposed introduction of age discrimination legislation outside the workplace in Great Britain is acting as a catalyst to encourage organisations, including health and social care organisations, to look at their practices and how they impact on people of different ages and what steps they can take to promote age equality in service delivery.

For example, in Great Britain, health and social care organisations and others are already taking proactive steps in order to raise awareness with organisations, working with local stakeholders, to identify what actions they need to take to end discrimination and promote age equality. Work is also underway with the National Mental Health Development Unit to launch an action-learning network focusing on promoting age equality in mental health².

The need for protection against age discrimination outside the workplace is heightened in light of the growing evidence that many people, particularly older people, in Northern Ireland, are being subjected to unjustifiable discrimination and harassment on grounds of age.

As highlighted in more detail below, independent research commissioned by the Equality Commission and conducted in Northern Ireland entitled '*Older People's Access to Financial Services: A review*'³ found 'numerous examples of direct and indirect age discrimination across the scope of financial services in Northern Ireland'.⁴

In addition, a survey for Age NI in August 2010 highlighted that 45% of older people surveyed agreed that they were aware of instances where older people had been treated with less dignity and respect when accessing services because of their age.⁵

2 See Equality Act 2010: Banning age discrimination services, public functions and associations. A consultation on proposed exceptions to the ban, GEO, Feb 2010, www.homeoffice.gov.uk

3 Older People's Access to Financial Services: A review, B Fitzpatrick and I Kingston, June 2008, commissioned by ECNI, [http://www.equalityni.org/archive/pdf/OLDERPEOPLEFinancialservices\(F\).pdf](http://www.equalityni.org/archive/pdf/OLDERPEOPLEFinancialservices(F).pdf)

4 See page 10

5 Age NI, Millward Brown research for Age NI, August 2010, www.ageuk.org.uk

Enquiries to the Equality Commission have also revealed instances of potential unjustifiable discrimination in a range of areas, including lack of dignity and respect when accessing services, inability to access health insurance, restricted ability to apply for grants, and less favourable treatment by private clubs.



Enquiries to the Equality Commission reveal instances of potential unjustifiable age discrimination.

In addition, the UK Government has made it clear that the introduction of age discrimination legislation outside the workplace ‘can help improve active ageing and independent living and thus reduce costs related to medical treatment, admissions to care homes and emergency hospital care.’ It has also highlighted that ‘when people are excluded from our society, for example, when older customers are turned away from the market place, the UK economy misses out on potential increases in business and revenue.’⁶

When considering the impact of such legislation, and those likely to benefit from its introduction, it is important to reflect that the Northern Ireland population is an increasingly ageing one. For example, the estimated pensioner population (people aged 65 and over) in Northern Ireland is approximately 254,000.⁷ In addition, population projections show that by 2051, the estimated population of persons of pensionable age in Northern Ireland will increase to approximately 469,000.⁸

The introduction of legislation prohibiting age discrimination in the provision of goods and services is also likely to benefit individuals with multiple identities such as **older disabled** people: For example, there is a clear link between age and the increasing prevalence of disability; with many older people who access health and social care having a long term condition or

6 See footnote 2

7 Source: NISRA Annual abstract of statistics: 2009, www.nisra.gov.uk

8 NISRA, annual abstract of statistics, Jan 2010, www.nisra.gov.uk

disability. Proposals aimed at addressing the needs of older people in health and social care are therefore likely to have a positive impact on a large number of people with disabilities.

In addition, by extending the legislation to cover **children and young people** (minors), the changes will, for example, help tackle the unjustifiable exclusion of children and young people from a range of services. It will also help challenge negative attitudes and stereotypes of children and young people; in particular, being stereotyped as anti-social trouble makers.



The changes will help people with multiple identities, such as older disabled people.

Public support in Northern Ireland for the extension of age discrimination legislation to non-employment areas is clear. In March 2008, the Equality Commission appointed independent researchers to conduct a survey of the general public in Northern Ireland regarding age related issues and attitudes.

There was strong disapproval of the exclusion of goods, facilities and services from the age Regulations (45% moderately or strongly disagreed), with only 9% agreeing with the exclusion.⁹

In addition, independent research published in 2009 *Making Older People Equal: Reforming the Law on Access to Services in Northern Ireland* commissioned by the Changing Ageing Partnership concluded that there was ‘a very strong case for amending the law of Northern Ireland so as to outlaw discrimination on age grounds when people are accessing goods, facilities or services’.¹⁰

9 Awareness of the age Regulations and attitudes of the general public in Northern Ireland towards age related issues, June 2008, commissioned by ECNI, [http://www.equalityni.org/archive/pdf/AgeSurveyMainReport\(F\)190608.pdf](http://www.equalityni.org/archive/pdf/AgeSurveyMainReport(F)190608.pdf)

10 *Making Older People Equal: Reforming the Law on Access to Services in Northern Ireland*, Report for the Changing Ageing Partnership, L. Glennon and B Dickson, February 2009, www.changingageing.org

The Equality Commission has set out below the differences that the legislation, if introduced, will mean for individuals in a number of key areas.

• Health and social care

The introduction of age discrimination legislation in health and social care will mean that a service provider or practitioner (such as a health and social care trust or an individual practitioner) will have to justify, if challenged, any aged-based decisions. In particular, the health and social care provider will have to show that the treatment complained of was a **proportionate means of achieving a legitimate aim**.

The extension of the age equality legislation to these areas is important due to the wide ranging services included in health and social care; for example, specialist medical and psychiatric interventions in hospital community settings, short or long term packages of health and social care support for adults, and the services for people with complex physical, sensory and learning disabilities.

An individual, for example, may be able to challenge:-

- an assumption about whether an older patient should be referred for treatment based solely on their age, rather than on the individual's needs and fitness level;
- not referring certain age groups for a certain treatment or intervention (such as those not of working age) that are considered mainly, but not exclusively for working age adults;
- not considering the well being or dignity of older people using the service;
- a doctor failing to investigate a health complaint raised by an older person simply because of his or her age.



Age should not be used as a proxy for need; each person's needs must be assessed individually.

The Equality Commission is of the view that age should not be used as a proxy for need and that each person's needs must be assessed individually.

It is of note that the UK Government is of the view that the introduction of age legislation in Great Britain will 'require practitioners in health and social care to make a thorough assessment based on an individual's needs in order to objectively justify a decision. It will allow practitioners to take into account an individual's age where it is right to do so, but not where it is not.'¹¹

The UK Government is also of the view that the legislation 'will ensure better access to services allowing older people a fairer or more equitable access to diagnoses and treatment by ensuring that age is no longer used as an arbitrary indicator, rather than the individual's health'.

The legislation will not prevent age being taken into account in decision making where it can be demonstrated to be a proportionate means of achieving a legitimate aim. This means that it must be the least discriminatory method possible of achieving the legitimate objective. The legislation will, therefore, allow justifiable or beneficial use of age in health and social care services.¹²

Evidence collated in Great Britain illustrates the range of issues facing the health and social care sector in terms of addressing unjustifiable age discrimination.

In particular, a review *Achieving age equality in health and social care* ('Age Review') in Great Britain in 2009 found that 'despite recent progress and the good service received by many people of all ages, age discrimination remained an issue for the health and social care system which all organisations needed to address.'¹³

11 See footnote 2

12 The UK Government has indicated that this would include, for example, targeting of public health programmes of particular age groups based on clinical evidence; as well as requiring people of different ages to pay different charges for services; for example, free dental care for those aged 18 or under 19 if they are in full time education. See footnote 2.

13 *Achieving age equality in health and social care*, 2009, Sir I Carruthers, J Ormondroyd, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_107398.pdf

The review highlighted the need for greater consistency across all locations and all services covering young and old people in order to tackle hidden or covert age discrimination. It also found that some age groups, especially older people, were much more likely to receive poor services.



A review into health and social care in Great Britain found some age groups, especially older people, were much more likely to receive poor services.

It indicated that ‘although most services do not exclude people simply because of their age, we have seen data that shows marked differences in service provision between age groups that are hard to explain by reference to the patterns of need.’ The review also highlighted that evidence had been obtained ‘about poor assessments and decisions whether to refer for investigation or treatment where it has been assumed that because of their age, the patient or service user will not want or will not benefit from a specific treatment or a care package.’

The Age Review highlighted that older patients were ‘less likely than younger patients to be referred for surgical intervention for certain illness, such as cancer, heart disease and stroke.’ It concluded that legislating to ban age discrimination could result in better outcomes for older patients as it would lead to quicker more effective treatment; and that this, in turn, would reduce dependence on the health and social care system by, for example, reducing length of stay at hospitals, etc.

The Age Review also highlighted a report by the Health Care Commission in Great Britain in 2009 *Equality in Later Life*, which found evidence of ageism in the form of:-

- exclusion of older people from mental health services that are available to younger adults;
- very low levels of referrals from GPs to specialists units for older mental health sufferers; and

- a general lack of age appropriateness.¹⁴

The Equality Commission concurs with the conclusions of the Age Review in that ‘fairness in ensuring that services are provided on the basis of people’s needs, personalised to them as individuals, is at the core of the NHS and social care.’

• **Financial services**

The Equality Commission considers that the introduction of age discrimination legislation will improve transparency and accountability within the financial services sector so that consumers can be confident that age is not being misused.



The changes will improve transparency and accountability within the financial services sector.

Having effective protection against unjustifiable age discrimination in this area is of particular importance in light of the wide range of services likely to fall within the remit of the legislation; such as equity release products, mortgages, investment bonds, health and medical insurance, saving accounts, motor and travel insurance and unsecured personal loans.

It is of note that independent research commissioned by the Equality Commission and conducted in Northern Ireland entitled ‘*Older People’s Access to Financial Services: A review*’¹⁵ found ‘numerous examples of direct and indirect age discrimination across the scope of financial services in Northern Ireland’. It concluded that ‘it is clear that protection for older people from abuse and discrimination in provision of financial services is essential’.¹⁶

14 Equality in later life, Healthcare Commission, 2009, http://www.cqc.org.uk/sites/default/files/media/documents/equality_in_later_life.pdf

15 See foot note 3.

16 See page 10

The research report, for example, highlighted that there were substantial barriers to obtaining travel insurance by policy holders over certain ages and that there were substantial differentials between products offered by insurance providers, depending on the age of the client. In addition, it concluded that there were even more substantial differences between providers for those clients in the same age groups. It raised concerns in relation to the 'inaccessibility of products and services and the lack of transparency in how they are sold and delivered'.

In addition, in relation to financial services, an independent study in Great Britain commissioned by the Government Equalities Office found that there was 'a clear problem relating to a minority of older and younger adults finding insurance'.¹⁷

Increased access to financial products can promote the social inclusion and independent living of older people. For example, the ability to obtain motor insurance, and therefore have an independent means of transport, can be of substantial value to an older person, particularly in rural areas where public transport may not be accessible.

The Equality Commission recommends that the legislation contains a tailored specific **exemption** for financial service providers which will permit differences in treatment on the grounds of age, **provided** it is proportionate to risks and costs.

It is of the view that where financial service providers seek to justify a higher price for reasons of risk connected to a person's age, that they need to produce evidence to establish that risk and expose it to public scrutiny.

In particular, the Equality Commission recommends that any use of age by financial service providers is based on relevant information which is from a source from which it is reasonable to rely.

In its response to the UK Government's consultation on proposed exceptions to the legislation, the Commission has raised concerns in

17 The use of age based practices in financial services, Oxera, June 2009, <http://sta.geo.useconnect.co.uk/pdf/The%20use%20of%20age-based%20practices%20in%20financial%20services%20Final%20report.pdf>

relation to the breadth of the **proposed financial services exception** in Great Britain.¹⁸

The Equality Commission has, for example, raised concerns that the proposed approach to be adopted in relation to the age insurance exception differs from that adopted in relation to exceptions relating to gender and disability. It also questioned why the proposed exception deviates from the standards set out in the draft Equal Treatment Directive. In addition, the Commission has recommended that there is a clear legislative **requirement** for the data to be compiled, published and regularly updated, rather than dealt with through an industry level agreement, as proposed by the UK Government.

• **Private clubs and other services**

The Equality Commission also recommends the extension of the age discrimination legislation to cover a range of other services, such as retail services or transport provision, or facilities for entertainment, as well as private clubs or associations, for example, golf clubs or political parties.



It is recommended the legislation permits justifiable age-based concessions and benefits.

The introduction of the legislation prohibiting unjustifiable age discrimination is likely to mean, for example, that the following practices are unlawful:-

- a retailer assuming that older people are incapable of signing a contract without a younger person present to explain the details;
- a service provider refusing to provide a service to someone based purely on their age; for example, a vehicle rental company refusing to rent cars to older people;

¹⁸ Response to UK Government's consultation on banning age discrimination in services, public functions and associations; proposed exceptions, May 2011 ECNI
<http://www.equalityni.org/archive/word/ResponseconsultationonBanningAgeDiscriminationMay2011.doc>

- a local golf club refusing membership to an individual because they are over a certain age;
- younger adults being refused entry into pubs and clubs.

Finally, the Equality Commission supports the inclusion of a specific **exception** allowing for the continuation of age-based concessions and benefits provided they are justifiable; for example, if, as regards particular age groups, they are designed to promote social inclusion; encourage active ageing; promote positive attitudes, dignity and respect; promote independence, health, well being and quality of life; encourage participation in public life; tackle poverty; address disadvantage or meet specific needs.

Keeping pace with proposed changes in Great Britain

The introduction of legislation prohibiting age discrimination outside the workplace in Northern Ireland is also in keeping with proposed legislative changes to age equality legislation which are due to take effect in Great Britain in **October 2012**.

The UK Government has confirmed its commitment to ban age discrimination in the provision of services, the exercise of public functions and by private clubs and other associations in October 2012 in Great Britain.



The changes will ensure that Northern Ireland equality law keeps pace with changes due to take effect in Great Britain.

In March 2011, the UK Government issued a consultation on proposed exceptions to legislation banning age discrimination in services, public functions and associations. To date, the outcome of that consultation is awaited.

In its consultation, the UK Government proposed that there should be:-

- no specific exceptions to the ban on age discrimination for health and social care;
- a specific tailored exception which would allow financial service providers to continue to use age when assessing risks and deciding prices;
- specific exceptions in relation to age-based concessions, age related holidays, immigration, residential park homes, and sport.

The Equality Commission has responded to the UK Government's consultation.¹⁹

The Equality Commission considers that people in Northern Ireland should not have **less protection** against age discrimination outside the workplace compared to individuals in other parts of the UK.

In general, the Equality Commission supports the UK Government's proposed approach in relation to the introduction of legislation banning age discrimination outside the workplace. However, it is important to stress that the Equality Commission is of the view the proposed legislation in Great Britain, in certain areas, is too restrictive.

As indicated above, and as made clear in its response to the UK Government's consultation on proposed exceptions to the legislation, the Equality Commission has raised concerns in relation to the breadth of the **proposed financial services exception** in Great Britain. In addition, as set out in more detail below, it considers that the legislation should be extended to cover minors (under 18s).

19 Response to UK Government's consultation on banning age discrimination in services, public functions and associations; proposed exceptions, May 2011 ECNI
<http://www.equalityni.org/archive/word/ResponseconsultationonBanningAgeDiscriminationMay2011.doc>

• Exclusion of minors

The Equality Commission is strongly opposed to the **blanket exclusion of minors** from statutory protection, as proposed by the UK Government. If such a blanket exclusion exists, minors will remain unable to challenge unjustifiable age discriminatory practices.

As set out in the publication *Children's Rights: Rhetoric or Reality-A review of Children's Rights in Northern Ireland 2007-08* published by the Northern Ireland Commissioner for Children and Young people (NICCY), the review found examples of discrimination in terms of the provision of rights to different groups of children and young people by the State Party, and also gaps in the State Party's efforts to protect children from discrimination emanating from the actions of others.²⁰

In addition, evidence collated by the Children's Rights Alliance in Great Britain has highlighted unequal treatment of children in a range of service areas. Examples include, being refused access to shops without any justification; being refused entry to services such as libraries, leisure centres, museums; refused access to buses and treated less favourably by bus drivers; difficulties in accessing mental health services for older children, aged 16 and 17; and lack of age appropriate legal advice provision for young people.²¹

The Equality Commission is of the view that age discrimination legislation that extends to minors will help tackle negative attitudes and stereotypes towards children and young people; in particular, being stereotyped as anti-social trouble makers.



It is recommended the legislation is extended to protect children and young people.

²⁰ <http://www.niccy.org/article.aspx?menuId=4622>

²¹ Making the Case: Why children should be protected from age discrimination and how it can be done: Proposals for the Equality Bill, 2009, Children's Rights Alliance for England, 2009.
<http://www.crae.org.uk/assets/files/Making%20the%20Case.pdf>

It is of note that the *UN Committee on the Rights of the Child* in its Concluding Observations on the UK in 2008 was concerned at the ‘general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights’²².

Our recommendation is in line with the **guiding principle** of non-discrimination in Article 2 of the UN Convention on the Rights of the Child (UNCRC) and the **Concluding Observations** of the UN Committee on the Rights of the Child in the UK which recommended that the UK take “all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or, if necessary, penal sanctions.”

Whilst it is not proposed that the age equality legislation in Great Britain will extend to children and young people, it will be noted that the Joint Committee on Human Rights in its report on children’s rights²³ recommended that the Equality Bill be amended to extend protection from age discrimination to people regardless of their age in relation to the provision of goods, facilities and services, except where discrimination on the grounds of age can be justified.

Further, independent research *Making Older People Equal: Reforming the Law on Access to Services in Northern Ireland* has highlighted that, although the report focused on the position of older persons, it was of the view that ‘any reform of the law in this area in Northern Ireland must benefit people of every age.’ It indicated that ‘if certain age groups were to be excluded from protection this would immediately undermine the principle objection to ageism, which is that treating people unequally *merely because* they happened to have been alive for a longer or shorter period than someone else is inherently unjust.’²⁴

22 UN Committee on the Rights of the Child, Concluding Observations on the UK, www.2.ohchr.org

23 Children’s Rights, 25th report of 2008-09, Joint Committee on Human Rights, www.publications.parliament.uk

24 See footnote 7

• Protection in other countries

It is also of note that legislation to outlaw age discrimination in the provision of goods and services, including health services, has already been enacted in a number of other countries including the Republic of Ireland, Belgium, Australia, Canada (Ontario), and the USA.

In particular, legislation granting individuals the right to legal redress against unjustifiable age discrimination outside the workplace has been in place in the Republic of Ireland since 2000.

Parity with protection on other equality grounds

The introduction of legislation prohibiting age discrimination outside the workplace will also ensure parity with protection against unlawful discrimination when accessing goods and services which exists on other equality grounds.

Age is the only equality ground which does not have protection outside the areas of employment and vocational training. Enacting age discrimination in this area will, for example, ensure that older people in Northern Ireland are afforded similar protection against unlawful discrimination and harassment when accessing goods and services, as people of different community backgrounds, members of ethnic minority communities, disabled people, and people of different sexual orientation and gender.



Age is the only equality ground where there is no protection against discrimination in the provision of goods and services.

This legislative change will ensure greater harmonisation and simplification of the equality legislation as well as ensuring that age discrimination is taken as seriously by service providers, public bodies and private clubs as other types of discrimination.

Furthering the aims of *Ageing in an Inclusive Society*

Critically, the enactment of legislation which provides protection against age discrimination in non-employment areas is in keeping with the overarching aims and objectives of the Executive's Older People's Strategy '*Ageing in an inclusive Society*',²⁵ which sets out its strategic vision and objectives and key recommendations to improve the lives of older people in Northern Ireland.

It is of note that one of the key objectives in the Strategy is "to promote equality of opportunity for older people and their full participation in civic life, and challenge ageism where ever it is found". Other key objectives of the Strategy include ensuring that "older people have access to financial and economic resources to lift them out of exclusion and isolation", and have "access to services and facilities that meet their needs and priorities".



The changes are in keeping with the Executive's Older People's Strategy and the draft EC Directive.

Compliance with draft EC Directive

The introduction of legislation banning age discrimination outside the workplace will also help ensure that Northern Ireland age equality legislation complies with the anticipated requirements of the draft European Commission Directive on the provision of goods and services.

The need for age discrimination beyond the workplace has been recognised by the European Commission which has a proposal for a European Union Directive on equal opportunities and access to goods, facilities and services on the grounds of age, disability, sexual orientation and religion or belief²⁶. The Directive, if adopted, will require Member States to introduce an effective legal framework to address age discrimination beyond the workplace within two years of adoption.

Finally, the Equality Commission's recommendations are in line with international obligations and principles, including the *UN Principles for Older Persons*²⁷; the *General Recommendation on the Rights of Older Women* adopted by the UN Committee on the Elimination of Discrimination against Women²⁸; and the *Charter of Fundamental Rights of the European Union*.²⁹

What impact will the legislation have on service providers?

In May 2011, the UK Government consulted on a draft Impact Assessment setting out the estimated main benefits and costs to business, the public sector and individuals of implementing legislation banning age discrimination in goods and services. The final impact assessment is awaited.³⁰

26 2008/0140 (CNS), www.eup-/europq.eu

27 This stresses the need for national policies and programmes to ensure the independence, participation, care, self-fulfilment and dignity of older people.

28 This calls on States Parties to tackle the negative impact of discrimination against older women in a number of areas including health care and to promote their full social, economic and cultural integration.

29 See, in particular, Article 25 which provides a right for the elderly to live a life of dignity and independence and to participate in social and cultural life; and Article 21 of the Charter which states that any discrimination based on age should be prohibited, without qualification; and Article 38 of the Charter of Fundamental Rights of the European Union, which requires Union policies to ensure high levels of consumer protection; the effect of this Article is to require Member States to consider how to protect consumers from unfair discrimination

30 Equality Act 2010: Banning age discrimination in services, public functions: Impact Assessment, Feb 2011, GEO, www.homeoffice.gov.uk

The impact assessment highlights likely costs to businesses in terms of familiarising themselves with the legislation, undertaking training and changing procedures and policies as a result of the legislation.

Whilst recognising that it did not have detailed benefits and costs for all areas, its initial conclusion was that the **‘benefits of introducing the ban outweigh any costs.’** It was of the view that ‘the costs of introducing and maintaining such a law would be low and unintended consequences and disproportionate burdens avoided if the legislation is supported by clear guidance and appropriate exceptions’.

In addition, as a result of the changes which have taken place in Great Britain, UK-wide service providers and public authorities have to grapple with the differences and complexities between equality law in Great Britain and in Northern Ireland, as it relates to the provision of goods and services and the exercise of public functions. The changes will help UK-wide employers and service providers keep pace with changes and developments in both legislation and case law between the two jurisdictions.



The changes will help UK-wide service providers and employers keep pace with changes in legislation and case-law between the two jurisdictions.

Finally, the inconsistencies and gaps between Northern Ireland and Great Britain equality law also present difficulties for Northern Ireland equality lawyers and advisers³¹.

³¹ See, for example, statement issued by the Employers Lawyers Group, Northern Ireland, 13 October 2011, which warns that “the current mismatch in the legislation is making it confusing and increasingly more difficult for Tribunal chairmen (sic) and judges in Northern Ireland to apply the case law that has been developed by the courts in Great Britain.”

Next Steps

The Equality Commission has taken a number of proactive steps in order to raise awareness of its recommendations for reform of the age equality legislation, and to secure support for the recommended changes.

In February 2009, the Equality Commission submitted its proposals on legislative reform to Junior Ministers in the Office of the First Minister and Deputy First Minister (OFMdfM) outlining a number of areas in Northern Ireland equality law which required urgent amendment; including the extension of age equality law to prohibit discrimination in the provision of goods and services. A copy of the Equality Commission's detailed proposals paper submitted to the Junior Ministers is available on the Commission's website.³²

Since that date, it has met with Junior Ministers on two occasions in order to discuss its proposals in more detail. In addition, it has, and will continue to, proactively engage with a wide range of key stakeholders, including MLAs, Assembly Committees, representatives from the age sector and others, in order to secure these urgent reforms.

**Equality Commission for Northern Ireland
April 2012**

³² The proposals paper is available at: http://www.equalityni.org/sections/default.asp?secid=5&cms=The+Law+Legislative+Reform&cmsid=4_285&id=285



Equality Commission

FOR NORTHERN IRELAND

Further information and advice

For further information and advice on equality issues, for more information about the Equality Commission and its work, or to receive this publication in an alternative format, contact us:

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European Year for **Active Ageing**
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