



Response to the Office of the First and deputy First Minister (OFMdFM)

Consultation on Proposals to Extend Age Discrimination Legislation (Age Goods, Facilities and Services)

October 2015

CONTENTS

1	Introduction	3
2	Executive Summary	5
3	Evidence of Age Discrimination	10
4	Scope of legislation	27
5	Age-based differential treatment	29
6	Age-based concessions	31
7	Equality Commissions Enforcement Powers	32
8	Conclusion	33

Appendices

•	NIPP Motions on Age Discrimination 2015	35
•	ASP Members	36

1 Introduction

Age Sector Platform (ASP) welcomes the opportunity to respond to the Consultation on Proposals to Extend Age Discrimination Legislation (Age Goods, Facilities and Services) from the Office of the First and the deputy First Minister (OFMdFM).

Age Sector Platform, which was established in 2008, is a charity which supports older people to have their say on the issues that matter most to their lives. The organisation has a membership base of 34 older people's organisations and networks which represent approximately 200,000 older people across Northern Ireland.

Age Sector Platform also runs the Northern Ireland Pensioners Parliament (NIPP) each year which surveys pensioners from across each county to identify their key areas of concern. Since the NIPP was established in 2011 it has held engagement events in seventeen different locations across Northern Ireland, conducted over 5,000 surveys and held five two-day parliaments where over one hundred motions have been passed by Members of the Pensioners Parliament (MPPs).

For more than a decade, the age sector has campaigned for legislation to outlaw age discrimination in goods, facilities and services which would protect older people from discrimination on the basis of their age in areas like healthcare and financial services. Legislation to outlaw age discrimination in the provision of goods, facilities and services was introduced in Great Britain three years' ago and also exists in the Republic of Ireland, leaving Northern Ireland as the only part of these islands where citizens are not afforded this protection.

Age Sector Platform was delighted when the Northern Ireland Executive gave a commitment in its 2011-15 Programme for Government to extend age discrimination legislation to the provision of goods, facilities and services (GFS).

This long overdue legislation provides a major opportunity to enhance and improve the lives of older people, through prohibiting unjustifiable age discrimination,

removing barriers to older people participating in society, and challenging negative stereotypes about older people.

The phenomenon of ageism and discrimination challenges the dignity and rights of older people in Northern Ireland. The commitment to enact robust legislative protections against age discrimination in accessing goods, facilities and services provides a huge opportunity to redress this inequality. This response provides evidence that age discrimination in accessing goods, facilities and services is widespread across a range of areas and that is why this legislation is needed to help older people negatively affected by it.

Age Sector Platform has considered the consultation document and has outlined in the following response the main comments that our members have on this important piece of legislation.

2 Executive Summary

Outlaw Age Discrimination for everyone aged 16 and over

- Age Sector Platform (ASP) welcomes the legislation to extend age discrimination in relation to goods, facilities and services to everyone aged 16 and over given the many examples of age discrimination experienced by older people across Northern Ireland on a daily basis.
- Older people have been left exposed to being victims of age discrimination for too long and Northern Ireland remains the only part of the UK or Ireland where age discrimination is still legal. This is totally unacceptable and why this legislation needs to be in place by the end of the current Northern Ireland Assembly term.
- At the 2015 NI Pensioners Parliament, a motion supporting the immediate introduction of age discrimination legislation for everyone aged 16 and over was passed with 89% support. This shows the overwhelming support from older people for the proposal in the consultation document.

Scope

- ASP believes that the proposed legislation should give protection against unlawful discrimination on the grounds of age in the following areas:
 - access to general services;
 - exercise of public functions by public bodies;
 - private clubs and associations;
 - charities;
 - accommodation;
 - health and social care;
 - financial services.

Health and Social Care

- ASP strongly welcomes the inclusion of all health & social care services in the legislation, without any specific exemptions.
- Differences in treatment should be based on individual clinical and welfare need only. Decisions must not be based on stereotypical assumptions about a person based on age, or assumptions about the ability of an 'average' older person to benefit from treatment.
- ASP believes that the passing of legislation alone will not remove age discrimination from our health service and there needs to be robust mechanisms put in place to ensure that any existing ageist policies or practices are identified and removed from everyday healthcare provision as soon as possible.
- ASP would therefore request information on how the Department of Health, Social Services and Public Safety (DHSSPS) is preparing for the introduction of this legislation and what systems it is planning to put in place to ensure that the legislation has its desired effect.

Financial Services

- ASP is extremely disappointed that the proposals include an exception in the area of financial services, which will allow financial service providers to continue using age as a criterion in designing financial services and assessing risk.
- Financial services has been an area where age discrimination has been most prevalent with older people frequently denied access to or charged excessively for a range of financial products.
- ASP is also concerned that there has been expectations raised among older people that this legislation will tackle this important area and therefore many older people will be extremely disappointed that the legislation will not be able to tackle some of the ageist practices that are in place in this field.

- ASP is concerned that the commercial interests of companies and the approach already taken in Great Britain have been weighted more heavily than the negative experiences of older people in Northern Ireland in accessing financial services.
- ASP strongly recommends that if the financial services exception is included in the legislation that it includes the requirement that any difference in treatment on grounds of age is proportionate and that OFMDFM undertake an independent review of how the age financial services exception is operating in NI.
- Such a review should consider whether any clear evidence exists for maintaining such an exception; whether any legislative changes are needed; and whether further non-legislative actions can be taken to address the barriers experienced by people on the grounds of their age in accessing financial services.

Forms of discrimination

- ASP agrees that the proposed legislation should give protection against unlawful direct and indirect discrimination, harassment and victimisation on the grounds of age; as well as other types of discriminatory behaviour.
- ASP supports the proposal that the legislation prohibits direct discrimination due to a person's perceived or actual age, as well as discrimination due to association on grounds of age.
- ASP agrees that the legislation should include provision for an objective justification test. However, the legislation should explicitly state that direct age discrimination, can only be justified where a social policy objective is being pursued; and the measures adopted to achieve that social policy objective are proportionate.

Age Scope

- We recognise that there has been political disagreement in relation to the scope of the legislation and that this has significantly delayed its progress but we welcome that a compromise was reached to ensure the legislation could be progressed for everyone aged 16 or over as older people cannot wait any longer to avail of this additional protection.
- ASP continues to support the extension of the legislation to all ages but recognises that some people have concerns around the implications of such a move, particularly when the legislation in Great Britain and the Republic of Ireland only cover anyone aged 18 and over.
- ASP recommends that steps are taken to conduct a review into the scope of the legislation in the next Assembly term to identify if the concerns raised can be addressed so that all ages can be protected in the future.
- At the 2015 NI Pensioners Parliament, over three quarters (76%) of older people supported a motion to extend age discrimination to under 16s in the next NI Assembly term
- ASP welcomes the fact that this legislation goes further than legislation in Great Britain and the Republic of Ireland in that it protects 16 and 17 year olds from age discrimination.

Age-based differential treatment

- ASP supports the proposal to allow service providers to take positive action measures to treat people in a particular age group more favourably where it meets a clear social policy objective e.g. reducing social isolation, promoting healthy lifestyles or addressing financial disadvantage.

Age-based concessions

- ASP supports the proposal to include an exception in the legislation for age-based concessions, which would allow for benefits like flu jabs to people aged 65+, bus passes and free prescriptions for people aged 60+ and internet training for older people.

General Exceptions

- ASP believes that any exceptions to equality legislation should be narrowly construed and objectively justifiable.
- ASP agrees that the legislation should include provision for an objective justification test.
- The legislation should explicitly state that direct age discrimination, can only be justified where a social policy objective is being pursued; and the measures adopted to achieve that social policy objective are proportionate.
- ASP recommends that guidance on what constitutes objective justification and what are examples of appropriate aims, could helpfully be provided through Codes of Practice and good practice guides, as has been the case in other areas of equality law.

3 Evidence of Age Discrimination

This section outlines a range of areas in which older people are discriminated against in accessing goods, facilities and services because of their age. Although not exhaustive, it highlights the widespread existence of age discrimination and why it is so vital for legislation to be passed to start tackling these injustices.

Health and social care

Older people are experiencing age discrimination in the provision of health and social care in Northern Ireland daily and this is completely unacceptable and must be ended immediately. There has been much research that has evidenced age discrimination in the health service across the UK in recent years. Some of the evidence includes:

- Clinically based research in England has shown ageism in cancer services, coronary care units, prevention of vascular disease, mental health services, and the management of strokes.¹
- Other research reveals more subtle ageist practices and negative attitudes towards older patients.²
- Older patients less likely to be referred for surgical intervention for cancer, heart disease and stroke.³
- Survival rates for British cancer patients over 75 are amongst worst in Europe.⁴
- Clinical trials often exclude older people based on chronological age rather than capacity to be entered to such trials.⁵

¹ Glenn on, L. and Dickson, B. (2009) *Making Older People Equal: Reforming the Law on Access to Services in Northern Ireland*, p. 36, quoting J. Young, 'Editorial: Ageism in services for transient ischaemic attack and stroke' (2006) 333 *British Medical Journal* 508-509.

² Ibid, quoting D. Oliver, 'How do you stand working with all these old people?' (2007) 117 *Health Service Journal* 20-21.

³ Centre for Policy on Ageing, (2009) *Ageism and age discrimination in secondary health care in the United Kingdom*, p. 26

⁴ De Angelis R, Sant M, Coleman MP, et al *Cancer survival in Europe 1999 – 2007 by country and age: results of EUROCARE-5 – a population-based study*. *Lancet Oncol* 2013; published online Dec. 5 [http://dx.doi.org/10.1016/S1470-2045\(13\)70546-1](http://dx.doi.org/10.1016/S1470-2045(13)70546-1). Cited by Macmillan Cancer Support Charity [Accessed 22 January 2014]

⁵ Wildiers H, Mauer M, Pallis A, Hurria A, Mohile SG, Luciani A, et al. *End points and trial design in geriatric oncology research: a joint European organisation for research and treatment of cancer – Alliance for Clinical Trials in Oncology* – International Society of Geriatric Oncology position article. *J Clin Oncol* 2013;

- More than 70% of deaths caused by prostate cancer occur in men aged over 75 years, but few older patients receive treatment for localised prostate cancer, and are denied access to chemotherapy for advanced disease.⁶
- Clinicians may over-rely on chronological age as a proxy for other factors, which are often but not necessarily associated with age, such as comorbidities and frailty.⁷
- Older people are under-referred to psychological treatments (talking therapies such as Cognitive Behaviour Therapy) that are available for younger people, or to specialist mental health units.⁸
- Up to 50% of older people in residential care have clinically severe depression, yet only between 10%-15% receive any active treatment.⁹
- Patients over 65 who complain of heart issues are less likely to be referred to a cardiologist, given an angiogram or a heart stress test.¹⁰

Further comments on the importance of outlawing age discrimination in the provision of health and social care can be found later in this consultation response.

Financial services

During the NI Pensioners Parliament over the past five years older people have expressed many concerns at the unfairness of age discrimination in relation to financial products such as insurance and have called for action to end practices that have significant impacts on older people's quality of life.

31:3711-8. Cited by Lawler M, (February 2014) *Ageism in Cancer Care: We need to change our mindset*, BMJ2014, 348:g1614

⁶ Aapro MS, *Management of advanced prostate cancer in senior adults: the new landscape*. *Oncologist* 2012; 17 (suppl 1):16-22. Cited by Lawler M, (February 2014) *Ageism in Cancer care: we need to change our mindset*, BMJ 2014, 348:g1614

⁷ Department of Health, *The Impact of patient age on decision making in oncology*. Department of health 2012. www.gov.uk/government/publications/the-impact-of-patient-age-on-clinical-decision-making-in-oncology. Cited by Lawler M, (February 2014) *Ageism in cancer care: we need to change our mindset*, BMJ 2014, 348:g1614

⁸ Centre for Policy on Ageing (2009) *Ageism and age discrimination in mental health care in the United Kingdom*, p. 39 – 41

⁹ *Ibid*, p 46

¹⁰ Centre for Policy on Ageing, *Ageism and age discrimination in primary and community health care in the UK* (2009) page 28

ASP is concerned that:

- Insurers use age as a proxy for risk, and exclude people from accessing financial services, solely on the basis of their age.¹¹
- Older people often pay higher premiums or may not be able to access cover at all for car or travel insurance.¹²
- Mortgages, loans or other credit products can become difficult to access for older people.¹³

There are also examples of age discrimination in the following areas.

Retail

- Retailers may assume that older people are incapable of signing a contract without a young person present to explain the details.¹⁴
- Vehicle rental companies may refuse to rent cars to older people.¹⁵

Accommodation services

- Resettlement services for homeless people are geared towards needs of young people – older homeless people often need long term support to sustain their tenancy but resettlement services are based on short-term intervention.¹⁶
- Little move-on accommodation for older people offering care and support for those with multiple needs.¹⁷
- A lack of adaptations can mean that older people may have to unnecessarily leave their homes.¹⁸

¹¹ Fitzpatrick, B. and Kingston, I. (2008) *Older People's Access to Financial Services*, p. 13

¹² Ibid, p. 59-64;

¹³ Fitzpatrick, B. and Kingston, I. (2008) *Older People's Access to Financial Services*, p. 64-66

¹⁴ Government Equalities Office, *Equality Act 2010: Banning age discrimination in services, public functions and associations, Impact Assessment*, p.26, quoting The Discrimination Law Review

¹⁵ Ibid

¹⁶ Age Concern and Help the Aged (2009) *Ending age discrimination in service and public functions*, p. 30

¹⁷ Ibid

¹⁸ Age Concern and Help the Aged (2009) *Ending age discrimination in service and public functions*, p. 30

A report produced by the Institute for Conflict Research on behalf of the Equality Commission has helpfully set out a range of real life examples to illustrate older people's experiences of age discrimination when accessing goods and services in Northern Ireland.¹⁹ The report found examples of potential age discrimination in areas of health and social care, financial services and other services such as leisure and retail facilities.

Examples include:

- A woman who is registered blind and who had been in receipt of home help service for fifteen years through the Health and Social Care Trust lost her home help services following her 65th birthday. She was transferred from the social work sensory support team to the social work team for the elderly, and although reassessed as still requiring the assistance, was informed that they were unable to provide the services due to limited available resources.²⁰
- A man with extensive experience of driving in a professional capacity for 50 years, who aged 72, was refused insurance cover because of his age, and consequently could no longer work as a taxi driver.²¹
- The report also examples of more general barriers, including negative attitudes, that older people face when accessing goods and services because of their age.²²

¹⁹ Jarman, N., Institute for Conflict Research for the Equality Commission (2014) *Strengthening Protection for All Ages against Age Discrimination outside the Workplace: Examples to illustrate older people's experiences when accessing goods and services.*

²⁰ Ibid, p. 12

²¹ Jarman, N., Institute for Conflict Research for the Equality Commission (2014) *Strengthening Protection for All Ages against Age Discrimination outside the Workplace: Examples to illustrate older people's experiences when accessing goods and services.* p. 22

²² Ibid, p. 28

- Research conducted by Help the Aged in 2007 highlighted the main areas of age discrimination as follows
 - Employment 26%
 - Health 21%
 - Insurance 14%
 - Money matters (excluding insurance) 13%
 - Public areas - pavements 10%
 - Shopping 7%
 - Adverts and TV 5%
 - Buses 4%

- Employment legislation is already in place in Northern Ireland which shows that the two largest areas still to be addressed are health and social care and financial matters.

ASP has consulted extensively with older people in our membership and those who have participated in the NI Pensioners Parliament over the past five years on where age discrimination exists and it has supported the findings of the Help the Aged survey from 2007 in revealing that the two top areas are Health and Social Care and Financial services.

Therefore, ASP has included further comments on these two areas in the following pages which we hope OFMdFM will find useful.

HEALTH & SOCIAL CARE

There should be no exceptions to the age anti-discrimination rule for health and social care in Northern Ireland. The legislation should address any systemic barriers to age equality within health and social care where these exist, for example reduced access to services, programmes or treatments based on arbitrary age limits; ageist attitudes which influence decision-making and delivery of goods, facilities and services.

Here are some comments from older people in relation to healthcare.

*'My GP said that depression was 'just part of getting old' and didn't want to talk about the problem at all or help me in any way.'*²³

*'Last time I was in the hospital, it seemed that everyone just talked over me and always spoke to my niece instead. I was there for 7 weeks and it never really got any better. I just always felt that they didn't actually think of me as a person, just a 'disease' and that they thought just because I was old I couldn't think for myself.'*²⁴

*'I think the issue of feeding older people in hospital is so unfair that it does actually discriminate. Staff just put meals in front of people and then after a while just collect the full tray not bothering to ask if they need help eating. Or they expect family to come in and do it. But it's only older people this happens to so surely that's wrong?'*²⁵

The Department of Health, Social Services and Public Safety (DHSSPS) should be undertaking an Age Discrimination Review of all aspects of Health and Social Care in preparation for introduction of this legislation, similar to the wide-ranging review carried out in GB in respect of the Equality Act 2010.²⁶

²³ Older people speaking at Age NI GFS Listening Events, 9 sessions held with 130 older people across Northern Ireland between May-July 2013

²⁴ Ibid

²⁵ Older people speaking at Age NI GFS Listening Events, 9 sessions held with 130 older people across Northern Ireland between May-July 2013

²⁶ Glennon, L. and Dickson, B. (2009) *Making Older People Equal: Reforming the Law on Access to Services in Northern Ireland*

ASP welcomed the Service Framework for Older People produced by DHSSPS, which states: 'All older people should expect the same opportunity of access to assessment, care and treatment as other users of health and social care services.'²⁷ However, we believe that voluntary standards are insufficient to tackle age discrimination in health and social care. Strong legislation is required because age discrimination is deeply embedded. A House of Commons inquiry into social care found that 'many of the shortcomings in social care appear to relate to inherent and pervasive ageism in the system.'²⁸

The legislation should ensure that differences in treatment in health and social care are based on individual clinical and welfare need only; each person's needs should be assessed individually and age should not be used as a proxy for need.

Decisions must be transparent and based on clinical evidence of a person's health needs. Medical data should be limited to objective and verified medical facts and to undisputed medical knowledge that complies with medical data collection standards.

Decisions must not be based on stereotypical assumptions about a person based on age, or assumptions about the ability of an 'average' older person to benefit from the intervention or treatment in question, or about their quality of life. Stereotypical assumptions should not be made about that person's life expectancy based solely on their age. Open criteria such as 'reasonable' or 'the ability of persons of that age to benefit' provide too much scope for decisions to be based on the 'average' older person and should be avoided.

Recent European research led by Professor Mark Lawler, Centre for Cancer Research and Cell Biology, Queens University Belfast, has recommended a 'fundamental change in the policy on cancer for older patients, whereby decision on whether to treat are based on a matrix that captures patients' performance status, comorbidities, and wishes rather than just chronological age.'²⁹ Professor Lawler also delivered a powerful presentation at the 2014 NI Pensioners Parliament which

²⁷Department of Health, Social Services and Public Safety for Northern Ireland (2013) *Service Framework for Older People*

²⁸House of Commons Health Committee, *Social Care, Third Report of Session 2009- 10*, Volume 1, para. 150

²⁹Lawler M, (February 2014) *Ageism in cancer care: we need to change our mindset*, BMJ 2014, 348:g1614

highlighted the scale of age discrimination in cancer treatment for older people which further strengthened calls for urgent action to tackle the 'life or death' consequences of this being allowed to continue.



Professor Mark Lawler from QUB gave a presentation on age discrimination in cancer care to the 2014 NI Pensioners Parliament, May 2014

Health and social care clauses in the legislation must cover all providers in the public, private and voluntary sectors. The DHSSPS should be required to provide a statutory framework and guidance that covers equal access to and non-discrimination in health care and social care and the responsibilities of all bodies providing health and social care services and facilities, including care homes. Regulatory and professional bodies in health and social care should be obliged to include anti-discrimination on grounds of age requirements in all regulatory frameworks.

Providers should be required to:

- Mainstream equality of opportunity in all aspects of their decision making, including inter alia, design, delivery, monitoring and review of all aspects of provision of goods, facilities and services and achieve improved equality outcomes on the grounds of age.
- Show high level leadership and commitment with clear lines of accountability and ownership of actions.
- Improve the quality and relevance of data.
- Engage in partnership with key stakeholders, develop good practice guidance and measures to encourage and support best practice.
- Provide training and challenge on ageist negative attitudes and behaviour and to raise awareness of rights and responsibilities.

Provided they are justifiable and proportionate, beneficial use of age in health and social care services should be permitted; e.g. providing services to meet specific needs or aimed at addressing particular disadvantages experienced by certain age groups.

Dignity Code

Age Sector Platform also wishes to draw OFMdfM's attention to the existence of the Dignity Code which was accepted by Minister Poots when he was the Health Minister.

The 'Dignity Code' was developed by the National Pensioners Convention (NPC) and it sets out minimum standards for the dignified treatment of older people, whether in hospital or the community. The code has been widely supported by both those in the care sector and across the political spectrum and it would appear that this code can also support the implementation of the age discrimination legislation and increase awareness of standards and principles that must be upheld in the treatment of older people.

The purpose of the Dignity Code is to uphold the rights and maintain the personal dignity of older people, within the context of ensuring the health, safety and wellbeing of those who are increasingly less able to care for themselves or to properly conduct their affairs.

This Code recognises that certain practices and actions are unacceptable to older people, such as:

- Being abusive or disrespectful in any way, ignoring people or assuming they cannot do things for themselves
- Treating older people as objects or speaking about them in their presence as if they were not there
- Not respecting the need for privacy
- Not informing older people of what is happening in a way that they can understand
- Changing the older person's environment without their permission
- Intervening or performing care without consent
- Using unnecessary medication or restraints
- Failing to take care of an older person's personal appearance
- Not allowing older people to speak for themselves, either directly or through the use of a friend, relative or advocate
- Refusing treatment on the grounds of age

The Code therefore calls for:

- Respect for individuals to make up their own minds, and for their personal wishes as expressed in 'living wills', for implementation when they can no longer express themselves clearly
- Respect for an individual's habits, values, particular cultural background and any needs, linguistic or otherwise

- The use of formal spoken terms of address, unless invited to do otherwise
- Comfort, consideration, inclusion, participation, stimulation and a sense of purpose in all aspects of care
- Care to be adapted to the needs of the individual
- Support for the individual to maintain their hygiene and personal appearance
- Respect for people's homes, living space and privacy
- Concerns to be dealt with thoroughly and the right to complain without fear of retribution
- The provision of advocacy services where appropriate

ASP believes that the Dignity Code can be used as a useful tool to support the outlawing of age discrimination in health and social care and would urge Government to consider how best it can be used in this regard.

FINANCIAL SERVICES

ASP is extremely disappointed that the proposals include an exception in the area of financial services, which will allow financial service providers to continue using age as a criterion in designing financial services and assessing risk. Considering the treatment and pricing many older people receive when accessing loans and insurance, it has been decided that this legislation will not protect them.

ASP strongly believes that maximum age limits in the provision of financial services should be prohibited under this legislation. Financial services has been an area where age discrimination has been most prevalent with older people frequently denied access to or charged excessively for a range of financial products.

ASP is also concerned that expectations have been raised among older people that this legislation will tackle this important area and therefore many older people will be extremely disappointed that the legislation will not be able to tackle some of the ageist practices that are in place in this field.

Indeed, when this issue was discussed during the OFMDFM session at the special sitting of the NI Pensioners Parliament in Parliament buildings in January 2014 then Junior Minister Jonathan Bell MLA specifically referred to the importance of the legislation in tackling unfair financial discrimination saying

“Other people have told me, even ones with very modest health conditions, that they are being asked to pay nearly more than the entire holiday costs just to get the travel insurance. That is just one example whereby a clear law that is definitive in stopping discrimination against the person on the grounds of their age should make a tangible difference. It should make an impact on the quality of people's lives as well as on the cost for them.”

ASP strongly recommends that if the financial services exception is included in the legislation that it includes the requirement that any difference in treatment on grounds of age is proportionate and that OFMDFM undertake an independent review of how the age financial services exception is operating in NI.

Such a review should consider whether any clear evidence exists for maintaining such an exception; whether any legislative changes are needed; and whether further non-legislative actions can be taken to address the barriers experienced by people on the grounds of their age in accessing financial services.

ASP is concerned that the commercial interests of companies and the approach already taken in Great Britain have been weighted more heavily than the negative experiences of older people in Northern Ireland in accessing financial services which is very regrettable.

The exception to financial services in the proposals was discussed at the recent 2015 NI Pensioners Parliament and there was strong opposition to this general exception.

The following motion was passed 95% of the Members of the Pensioners Parliament voting in favour of it.

‘Should financial services be included in the age discrimination legislation?’

ASP believes that there should not be a specific exception for financial services and that financial service providers should be required to objectively justify any differentials due to age. The burden should be on financial service providers to demonstrate that age is a relevant factor in the assessment of risk and that any difference in treatment is proportionate and justified.

OFMdFM has claimed that there may be unintended and unwanted consequences as a result of including financial services in the legislation but no evidence has been provided in the consultation document to support these claims.

It is worth noting that in other countries, such as Sweden, there is a blanket prohibition on age discrimination in relation to insurance without any significant adverse impact on the industry so ASP would ask why the situation should be any different in the UK market?

The document claims that it is not feasible to have a different approach to the legislation in Great Britain but again there is no strong evidence base provided to support this claim. ASP does not agree with the Department’s view that there is “insufficient justification for financial services to be included in any future age discrimination legislation.” We consider that there is clear evidence that people experience discrimination when accessing financial services due to their age.

ASP has come across many examples of older people being victims of age discrimination in relation to financial services including older people

- being refused insurance completely because they reached a certain age
- experiencing what they consider to be excessive rises in their insurance premiums simply because it reached a certain age;
- being quoted excessive travel insurance premiums but with wide variations between insurance providers;
- being refused access to a credit card when they reached a certain age.

We are also concerned that there is no requirement under the proposed exception, that any difference in treatment on grounds of age must be proportionate.

ASP strongly recommends that, in the event that an exception is included in the legislation, it includes the requirement that any difference in treatment on grounds of age is proportionate.

Many 'public sector' concessions, such as the winter fuel allowance for older people, would be permitted under the proposed statutory authority defence. These concessions are proportionate measures which have clear social policy objectives.

The legislation should prohibit unjustified age discrimination in financial services, including banking, savings, investment bonds, credit, unsecured personal loans, mortgages and related products, equity release products, insurance including health and medical insurance, motor and travel insurance.

As our society ages it is important that providers adapt to meet the changing needs and demographics of markets in order to support sustainability of companies; in other words, it makes commercial sense to respond to the changing markets.

Here are some quotes from older people in relation to this issue.

'Travel insurance automatically went up when I turned 65, even though I'm on no medication and am perfectly healthy. I know it's true that people are more likely to have medical problems as they get older, but surely people should be evaluated individually rather than making assumptions that everyone is the same.'

*'I used to pay £78 for my travel insurance by when I turned 80 it went up to £278 and there was nothing different about my circumstances.'*³⁰

Denial of access to financial services on grounds of age should be prohibited. There should be no maximum age limits; financial providers should not be permitted to refuse a quotation to older people on the grounds of age. It is not enough for companies simply to signpost people to other providers instead; this is basically a means of avoiding providing a service. The number of providers offering services and products will not increase and may even encourage other providers to withdraw services and products as the risk is not being shared.

Evidence from Britain has shown that the voluntary 'signposting agreement', entered into by the travel insurance industry (which compelled providers to automatically refer (or signpost) older customers to an alternative insurer if the first would not cover them) is not working, with almost 50% of companies not signposting.³¹

Providers of financial services such as loans and credit facilities should not be permitted to base decisions solely on a person's age, or by reference to statistical data concerning general risk groups. All decisions should instead be based on the general underwriting practice, that is, on factual evidence relating to the repayment capacity and the financial management of individual applicants, regardless of age.³²

We accept the use of age in the design of risk-based products where this can be shown to be proportionate to risk and based on actuarial and statistical data which is relevant, accurate, up to date and publicly available.

The legislation should only limit exceptions in financial services to areas where age is a genuine factor such as where actuarial data is used, e.g. in annuities and life insurance – an actuarial factor exception.

³⁰ Older people speaking at Age NI GFS Listening Events, 9 sessions held with 130 older people across Northern Ireland between May-July 2013

³¹ Which Magazine, December 2012, *Road to Nowhere*

³² Glennon, L. and Dickson, B. (2009) *Making Older People Equal: Reforming the Law on Access to Services in Northern Ireland*

Where decisions are based on general risk groups the legislation should require that the evidence is based on objectively verifiable actuarial and statistical data which is transparent and publicly available and not on ageist assumptions. An insurance company should not be able to refuse to insure someone based on their age alone, but must be required to provide the necessary evidence regarding the level of risk posed by a person within that age group.³³

ASP believes that the legislation should require that data is compiled, published and regularly updated in accordance with government guidance,³⁴ rather than simply through an industry level agreement; this would match existing provisions on sex discrimination and financial services in Northern Ireland. An individual should be able to submit additional information relevant to the assessment of risk that financial service providers are required to take into account.

Decisions and differences in premiums and benefits should be proportionate having regard to the data. They must accurately reflect real risk and not rely on age as a proxy for risk. Decisions should be based on actual evidence linking age to risk assessment and not on stereotypical age-based assumptions. Where financial service providers seek to justify a higher price for reasons of risk connected to a person's age they should be required to produce evidence to establish that risk and expose it to public scrutiny. They should have to show that the same aim could not be achieved by less discriminatory means and that the objective justification for the treatment is important enough to over-ride the impact of the discriminatory treatment.

The legislation should make clear to financial regulators that issues arising from direct and indirect age discrimination in financial services come within their remit. For example, deliberate mis-selling because of a consumer's age could be direct discrimination while general mis-selling may be indirect discrimination in that it puts

³³ Ibid

³⁴ See HM Treasury, *'Guidance on the publication of data associated with the use of gender in the assessment of insurance risks.'* (2008). [Online]. [Accessed 27 February 2014]. Available from http://www.hmtreasury.gov.uk/d/consult_insurance070308.pdf

older people at a disadvantage.³⁵

As stated previously, ASP believes that there should be an audit of financial services in relation to age and age-based discriminatory conditions, both direct and indirect. This would provide more evidence into the scale of age discriminatory practices and identify what steps could be taken to remove these from the system.

At the 2015 NI Pensioners Parliament, older people voted on the following motion:
“Should the legislation be reviewed to see how effectively it is being implemented and how it can be improved in the next NI Assembly term?”

99% of the Members of the Pensioners Parliament voted in favour of this motion.

Travel & holidays

Travel insurers should not be permitted to refuse a quotation and premiums should be proportionate having regard to the data and based on actual evidence linking age to risk assessment and not on stereotypical age-based assumptions. Specific age groups could continue to be targeted in holiday marketing but strict age limits to booking should not apply unless they are objectively justified or fulfill requirements for positive action e.g. encouraging older people to mix with people of the same age with similar interests thereby promoting social inclusion and reducing isolation. There should not be a specific exception allowing age limits on holiday accommodation.

Vehicle hire and car insurance

There is no justification for lower and upper age limits for vehicle rental. Vehicle rental companies and car insurance providers should not be permitted to refuse a car and/or insurance quotation to older people on the grounds of age. Premiums must not rely on age as a proxy for risk but must accurately reflect real risk and be proportionate having regard to the data.

³⁵ Centre for Policy on Ageing (2009) *Ageism and age discrimination in primary and community health care in the UK* p. 40

4 Scope of Legislation

The legislation should offer the highest level of protection from discrimination based on age in goods, facilities and services.

The legislation should on the grounds of age

- Prohibit unlawful discrimination in goods, facilities, services, including access to premises.³⁶
- Prohibit unlawful discrimination in the exercise of public functions by or on behalf of a public authority.
- Provide for measures to ensure equal access for and equal treatment of persons of a particular age.
- Ensure there is protection from discrimination when requesting goods, services or facilities, while being provided or withheld, whether or not a charge is made.
- Make it unlawful to harass or victimise a person or to give or follow instructions to harass or victimise.
- Include not only persons on the grounds of their age but also persons associated with those persons (e.g. carers).
- Apply to all public authorities and all private and voluntary sector bodies.
- Apply to informal associations and private members clubs.
- Be reviewed every four years to assess its effectiveness.

Public bodies should ensure that equal treatment in goods, facilities and services on grounds of age is mainstreamed into their policies, practice and provision. The relationship of this legislation to their section 75³⁷ obligations should be made clear in order to strengthen the duty to promote and mainstream equality on grounds of age in public provision.

³⁶ See Section 15 below

³⁷ Section 75(1) of the Northern Ireland Act 1998 states that 'A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without.'

In addition to anti-discrimination provisions, the legislation should introduce a legal duty on private and voluntary providers of goods, facilities and services to have due regard to the need to promote equality of opportunity on grounds of age when developing, marketing and providing goods, facilities and services. Providers should be required to take steps to avoid discriminatory actions by putting in place policies and practices that reduce the likelihood of such actions occurring in the first place. The oversight system would be through complaints to the Northern Ireland Equality Commission (ECNI). Private and voluntary providers should be required to comply with such policies if they wish to be eligible for public sector contracts.

The objective of the legislation is to remove unjustified age discrimination and therefore, existing laws, regulations and administrative provisions contrary to the principles of anti-discrimination and equal treatment should be abolished immediately.

Age Scope

We recognise that there has been political disagreement in relation to the scope of the legislation and that this has significantly delayed its progress but we welcome that a compromise was reached to ensure the legislation could be progressed for everyone aged 16 or over as older people cannot wait any longer to avail of this additional protection.

ASP welcomes the fact that this legislation goes further than legislation in Great Britain and the Republic of Ireland in that it protects 16 and 17 year olds from age discrimination.

At the 2015 NI Pensioners Parliament on the 24 Septembers 89% of older people supported the proposal to introduce legislation for over 16s in this NI Assembly term.

ASP continues to support the extension of the legislation to all ages but recognises that some people have concerns around the implications of such a move, particularly

when the legislation in Great Britain and the Republic of Ireland only cover anyone aged 18 and over.

At the 2015 NI Pensioners Parliament 76% of older people supported the proposal to extend the legislation to cover all ages in the next NI Assembly term.

ASP recommends that steps are taken to conduct a review into the scope of the legislation in the next Assembly term to identify if the concerns raised can be addressed so that all ages can be protected in the future.

5 Age-based differential treatment

Age Sector Platform supports the proposal to allow service providers to take positive action measures to treat people in a particular age group more favourably where it meets a clear social policy objective e.g. reducing social isolation, promoting healthy lifestyles or addressing financial disadvantage.

It is important that the legislation recognises that not all age-based differential treatment on the grounds of age is harmful and in some instances it will be appropriate and necessary to allow people to be treated differently based on their age.

The ban on unjustified age discrimination in the provision of goods, facilities and services should be thorough and complete. Exceptions to such a veto on age discrimination should be principled, rigorous and targeted. There should be no blanket exemptions contained in the legislation. The new law should however, permit age-based differential treatment to be justified in situations where there are beneficial reasons for doing so. For instance, one example of differential treatment on the ground of age which is justifiable is a specialised mental health service for older people which is high-quality, age-appropriate and meeting the specific needs of older people.

Direct and indirect cases of age discrimination can be permissible where the differential treatment is a proportionate means of achieving a legitimate aim which can be objectively justified.

Standards of objective justification should include achieving the legitimate aim by means that are appropriate, proportionate, necessary and effective and in accordance with evidence that is relevant, accurate, objectively verifiable (e.g. actuarial or statistical evidence in relation to excepted financial services) and publicly available. An additional requirement to show that 'it is reasonable to do that thing' (thereby creating a triple lock: legitimacy, objective justification and reasonableness) would harmonise with sex and disability legislation.

The legislation should be explicit that direct age discrimination can only be justified where an identifiable social policy objective is being pursued, consistent with the approach adopted by the Supreme Court in 2012 in the case of *Seldon v Clarkson, Wright and Jakes*.³⁸ It should further expressly make clear that the objective justification test for indirect age discrimination is not limited to pursuance of social policy objectives.

Justifiable age discrimination on beneficial grounds should be based on a sound rationale such as: to rectify historical disadvantage; to promote social inclusion or reduce social isolation; to promote the special interests of persons of a certain age, where the treatment is based on publicly available, objective and statistical evidence concerning social and economic factors.³⁹

If necessary, these could be accompanied by a provision to allow a justification defence in other non-specified areas. This might be known as a genuine service requirement exception. However, this would not include harassment or victimisation, as such conduct should never be considered defensible.⁴⁰

³⁸ *Seldon v Clarkson, Wrights and Jakes* [2012] ICR 716

³⁹ Glennon, L. and Dickson, B. (2009) *Making Older People Equal: Reforming the Law on Access to Services in Northern Ireland*, p 57

⁴⁰ *Ibid*

6 Age-based concessions

Age Sector Platform supports the proposal to include an exception in the legislation for age-based concessions, which would allow for benefits like flu jabs to people aged 65+, bus passes and free prescriptions for people aged 60+ and internet training for older people.

We recommend that the legislation allows age-based concessions, where these are justifiable. Whilst we do not support a blanket exception, and we believe that concessions should meet the objective justification test – i.e. meeting a clear social policy objective, such as reducing social isolation, promoting healthy lifestyles or addressing financial disadvantage.

Examples of age-based concessions include free flu jabs to all people over 65; free bus passes for the over 60s; free TV licences for all people aged 75 and over; winter fuel allowance for all people aged over 60; older people receiving internet training or training to get the most from their mobile phones from private companies.

These concessions provide older people with much needed special assistance which enables them to have a better quality of life and they must be protected in the legislation.

7 Equality Commission's Enforcement Powers

In promoting elimination of discrimination against an equal access and treatment for the affected persons the Equality Commission should be able to:

- Provide information and awareness-raising so that providers are aware of their responsibilities and those affected are aware of their rights (including fostering an equality perspective amongst financial providers).
- Undertake, commission and provide financial or other assistance for research and education.
- Issue statutory codes of practice and statutory guidance on best practice.
- Monitor implementation of the legislation and undertake investigation of complaints and formal and other investigations as the Commission feels necessary or expedient.
- Make reports and recommendations on matters covered by the legislation.
- Require action to be taken and recommend remedies and sanctions.
- Provide for conciliation.
- Provide advice and assistance, including financial assistance, to a person making a complaint.
- Bring proceedings involving law or practice, intervene in any such proceedings and act as 'a friend of the court' in any such proceedings.
- Publish any matter concerning the legislation and its implementation including research and other reports, results of investigations, advice, guidance and recommendations.
- Cooperate with other statutory equality and rights bodies.
- Engage in dialogue and consultation with stakeholders, in particular Commissions and organisations representing older and younger people.
- Keep the legislation under review and advise the NI Executive and Assembly on its adequacy, making recommendations for improvement on request or as the Commission thinks appropriate.

The Equality Commission should be given additional resources to perform its duties and powers fully and effectively. The ECNI should act independently of government, the private sector and civil society.

8 Conclusion

Age Sector Platform (ASP) welcomes the legislation to extend age discrimination in relation to goods, facilities and services to everyone aged 16 and over given the many examples of age discrimination experienced by older people across Northern Ireland on a daily basis.

Older people have been left exposed to being victims of age discrimination for too long and Northern Ireland remains the only part of the UK or Ireland where age discrimination is still legal. This is totally unacceptable and why this legislation needs to be in place by the end of the current Northern Ireland Assembly term.

We are pleased that there are no proposed exceptions in relation to the provision of health and social care but very disappointment with the proposal to grant an exception in relation to the provision of financial services. Older people can wait no longer to get this legislation in place given their wide and varied exposure to age discrimination on a daily basis so it is vital that this legislation is put on the statute books by the end of the current NI Assembly term.

ASP believes that the passing of legislation alone will not remove age discrimination from our health service and there needs to be robust mechanisms put in place to ensure that any existing ageist policies or practices are identified and removed from everyday healthcare provision as soon as possible.

ASP strongly recommends that if the financial services exception is included in the legislation then it should include a requirement that any difference in treatment on grounds of age is proportionate. We also recommend that OFMDFM undertakes an independent review of how the age financial services exception is operating in NI.

Such a review should consider whether any clear evidence exists for maintaining such an exception; whether any legislative changes are needed; and whether further non-legislative actions can be taken to address the barriers experienced by people on the grounds of their age in accessing financial services.

Age Sector Platform has campaigned along with our age sector partners for this legislation for over a decade. Although we have been frustrated at the length of time it has taken to get to this stage, we are pleased that agreement was finally reached to progress it as it can make a real positive impact on older people's lives if implemented effectively. ASP welcomes the engagement there has been with our organisation and through the Pensioners Parliament over the years on this issue and we remain committed to working with OFMdFM as the legislation is progressed and over the coming years to ensure it can have a maximum impact on older people's lives across Northern Ireland.

Age Discrimination Legislation Questions at NIPP 2015

- Q1 Should the NI Assembly move to introduce legislation immediately to outlaw age discrimination for everyone aged 16 or over? (89%)
- Q2 Should the NI Assembly move to outlaw age discrimination for all ages during the next Assembly term? (76%)
- Q3 Should financial services be included in the age discrimination legislation? (95%)
- Q4 Should the legislation be reviewed to see how effectively it is being implemented and how it can be improved in the next assembly term? (99%)

Age Sector Platform Members

- ABC Seniors Network
- Age NI
- Age North Down & Ards Over 50s Forum
- ALLY Foyle
- Belfast East Seniors Forum
- Carers NI
- Castlereagh Lifestyle Forum
- Civil Service Pensioners' Alliance (CSPA)
- COAST (Causeway Older Active Strategic Team)
- Communications Workers Union (NI Regional Retired Members)
- Engage with Age
- Friendship Federation
- GMB Retired Members
- Hoi Sum Chinese Elderly Group
- ICTU Retired Workers (NIC)
- Indian Senior Citizens' Forum
- Mid & East Antrim Agewell Partnership
- Mid Ulster Seniors Network
- NASUWT Retired Members' Association
- National Federation of Occupational Pensioners
- National Pensioners' Convention (NI)
- NIPSA Retired Members Association
- Newry and Mourne Senior Citizens' Consortium
- Newtownabbey Senior Citizens' Forum
- North Belfast Senior Citizens Forum
- North West Ageing Well Together (NVAWT)
- Older Women's Network NI
- Public Commercial Services Union (Associate and Retired Members)
- South Belfast Lifestyle Forum
- South West Age Partnership (SWAP)
- UNISON Retired Members
- Unite Retired Members
- West Belfast 50+ Forum

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