

# Achieving age equality in health and social care

## NHS practice guide

Produced in partnership with:



## Notes

### 1. Achieving age equality in health and social care resource pack

This document is part of the Achieving age equality in health and social care resource pack, which also includes:

- Audit tool for achieving age equality (web-based) produced by the National Development Team for Inclusion.
- Social care practice guide produced by the Social Care Institute for excellence.

All elements of the resource pack are available, free of charge, from:

→ [www.southwest.nhs.uk/age-equality.html](http://www.southwest.nhs.uk/age-equality.html)

### 2. Authors

This guide was written by a consortium comprising Ros Levenson, Nikki Joule, Mercy Jeyasingham (independent consultants) and Charlotte Potter (from Age UK). Richard Gleave, Project Director for the National Review of Age Discrimination, contributed Chapters 2 and 20.

### 3. Web links

All web links referenced in this document were checked March 2010 and revised in September 2010

This document has been reviewed alongside the toolkit through the NHS South West Equality Impact Assessment Scheme.

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# Chapter 1

## Introduction

### 1.1 Introductory letter from Sir Ian Carruthers

Dear colleague

The White Paper *Equity and excellence: Liberating the NHS* says “the NHS is about fairness for everyone in society” and commits to implementing the ban on age discrimination in 2012, which was the central recommendation of national review of age equality and discrimination.

The White Paper and the NHS Constitution makes it clear that the NHS provides a comprehensive service to all, irrespective of age, and our work over the past 12 months has focused on practical steps that the NHS, working with patients and carers and with local authority partners, can take to end age discrimination and promote age equality.

The headline statistics about the changing age profile of the population provide a context for the work on ending age discrimination but the experience of patients and their carers is crucial in enabling the NHS to deliver “*high quality care for all*”. The law will be changing with the passing of the Equality Act 2010 but our work has showed how important other factors are in ending age discrimination, especially the approach of health care staff and the culture of each NHS organisation.

This guide for the NHS is part of the resource pack that we have produced to help the NHS and local authorities deliver the recommendations made in our report *Achieving age equality in health and social care* and the government’s response *Age equality in health and social care*. It has been designed to help both primary care trusts and service providers look at what they are doing now and identify improvements that can be implemented over the next few years. Each chapter has the same structure that identifies the target audience, outlines the key issues and the policy context, and sets out actions that can be taken to address the issues, including examples of good practice and specific actions that help people locally get started. There is also a list of key questions that will help non-executive directors contribute to the work.

Over the next few years there will be major reforms in the NHS and in its relationship with local government. The reform timetable that has been set out means that PCTs will remain the responsible organisations for preparing and implementing the new public sector duty and the ban on age discrimination. Over this time, PCTs and SHAs will be preparing for the new role of the GP commissioning consortia and the National Commissioning Board. The consultation document *Commissioning for patients* makes it clear that GP commissioning “consortia will have a duty to promote equalities”. Both the consortia and the Board will be covered by the obligations on public bodies set out in the Equality Act 2010.

The key message for commissioners and providers in this guide is that ending age discrimination requires the NHS and social care to deliver personalised care for the individual patient and their carers. Person-centred care is important for people of all ages but our work has shown that older people are especially likely to experience discrimination in health and social care. Thus we have designed the guide so that the messages are relevant to services for people of all ages, even though much of the material focuses explicitly on this age group. However we have pulled together specific information to help the local NHS promote age equality for children and younger adults.

The guide helps the local NHS understand the appropriate use of age in designing and delivering services. It shows that both the 'one size fits all ages' approach and the use of age as a way to limit access to services without any evidence are no longer acceptable. The examples of good practice in the guide show that services designed for older people or for other specific age groups can be the most appropriate way to meet need but that the less favourable treatment of people on the basis of their age is harmful discrimination that must be ended. The guide emphasises throughout the need for health professionals to engage with and listen to what people say to ensure that decisions respond to the needs and aspirations of the public.

The guide provides a 'snapshot' of information available now. It has been produced while the Quality and Productivity Challenge has started to be addressed but work locally will be able to link the opportunities to improve quality and increase productivity, as well as recognise the financial challenges of the next few years. The guide includes many examples of the improvements that cost no additional funding or that can easily be incorporated within existing programmes.

This guide can be read as a 'stand-alone' document but we recommend that it is used alongside the other two parts of the resource pack – the self-assessment audit tool and the guide produced by the Social Care Institute for Excellence (SCIE) for local authorities responsible for adult social care. We have organised this guide so that each chapter can be read by itself and links with a specific section within the audit tool.

Thanks especially to Ros Levenson, Nikki Joule, Mercy Jeyasingham and Charlotte Potter who wrote the guide with input from patient and service user groups and staff from the NHS in the south west and policy leads at the Department of Health. Thank you to Age UK for their advice and assistance throughout the process.

I hope you find the guide valuable and enjoy the process of working with your stakeholders to end age discrimination and promote age equality.

With best wishes



**Sir Ian Carruthers, OBE**  
**Chief Executive NHS South West and joint author of *Achieving age equality in health and social care***



## 1.2 Key questions for non-executive directors

- How is your Board acting on Recommendation 17 of *Achieving Age Equality*?

*“Leaders of health and social care organisations, including the boards of those organisations and Elected members, will want to set out a clear commitment to their staff and the wider public to meeting the requirements of the age discrimination ban and the public sector equality duty and demonstrate how the health and social care sector can show leadership in tackling ageism in society.”*

- When did your Board last discuss the implications of the Equality Act and the recommendations of *Achieving age equality in health and social care*?
  - Were there action points as a result of discussion?
  - How are action points being followed up?
  - What arrangements are in place for regular review of your Board’s progress in relation to eradicating age discrimination and promoting age equality.
- What information does your Board need to receive on a regular basis in order to satisfy itself in relation to issues of age discrimination and age equality?
- Has your organisation conducted a recent audit of possible age discrimination (direct and indirect)?
  - How are issues of age discrimination and age equality considered by your Board alongside *other* areas of potential discrimination?
- How does your Board integrate its concern about age discrimination with other possibly related initiatives (e.g. dignity in care)?
- Are there any specific issues or service areas that your Board needs to be particularly aware of in relation to possible age discrimination?
- How do you use existing sources of information on possible age discrimination (e.g. annual patient survey, complaints, serious untoward incidents, comments from Local Involvement Networks (LINKs) or third sector organisations)?
- How are you preparing for changing responsibilities in relation to age equality resulting from the reforms set out in the White Paper?
- Do you have a non-executive lead for age equality?
- How does your Board involve older people and their organisations in issues about age discrimination and promoting age equality?
- How does your Board promote images of old age that are positive and diverse?

# Chapter 2

## Definitions, the legal framework and implementation

### 2.1 What do we mean by ‘age discrimination’ and ‘age equality’ in the provision of health and social care services?

The academic literature has defined and described ‘ageism’ since the 1960s and the pioneering work of Robert Butler. The Centre for Policy on Ageing produced four reviews of the literature to inform *Achieving age equality in health and social care*<sup>1</sup> and these summarise the range of concepts that academics and policy commentators have used to describe age discrimination and age equality.

Age discrimination was banned in employment in 2006 and will be banned in the provision of services and the exercise of public functions when the relevant measures in the Equality Act 2010<sup>2</sup> are brought into force (planned to be in 2012).

A brief overview of *Age and the Equality Act 2010* is available as Annex 1 of this document and is referred to below as the ‘overview note’.

Local health and social care organisations will want to be familiar with both the wider debate within the published literature about age discrimination and equality, and understand the specific provisions of the Equality Act 2010.

#### Some of the key concepts

##### ***Age equality***

The Equality Act 2010 establishes a new legal duty on public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations in the exercise of its functions in relation to eight protected characteristics, including age (see the overview note for more details).

Help the Aged (2007) explains that “*equality means ensuring that all individuals (irrespective of their age) have the opportunity to live in the way they choose, according to their values; that their different needs, situations and goals are recognised and respected; and that they are treated equally with fairness, dignity and respect.*”

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<sup>1</sup> *Achieving age equality in health and social care*, Sir Ian Carruthers and Jan Ormondroyd, Department of Health, 2009  
[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_107278](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_107278)

<sup>2</sup> The text of the Equality Act is available at [www.opsi.gov.uk/acts.htm](http://www.opsi.gov.uk/acts.htm)

Age Concern (2009) explains age equality “*involves balancing the goals of equal citizenship, equality of opportunity and equality of outcome*”. Equality does not mean treating everyone the same but is about ensuring that people are treated fairly and equitably according to their needs. Advancing equality is closely linked with protecting and enhancing human rights.

### **Age discrimination**

The Equality Act 2010 generally bans age discrimination in the provision of services and the exercise of public functions. This ban applies in relation to people aged 18 or over. Direct discrimination because of age is defined in the legislation as the less favourable treatment of one person relative to a comparator (who may be a real or hypothetical person) because of age, subject to the point below about objective justification. The Centre for Policy on Ageing draws the distinction between ageism as an “attitude of mind” while age discrimination is “a set of actions with outcomes”. Ageism and age discrimination in secondary health care in the United Kingdom: A review from the literature, p8, Centre for Policy on Ageing (CPA), 2009.<sup>3</sup>

The Equality Act does however recognise that different treatment on the basis of age is not direct age discrimination if it can be “objectively justified”. The Act also includes some “exceptions” to the ban on age discrimination, and provides powers to make further exceptions, and the approach to implementing the Act in health and social care will be which are likely to be consulted upon in the autumn 2010 (see the overview note in the toolkit for more details).

Subject to the point above about objective justification, **direct discrimination** is when a person is treated less favourably than another because of their age while **indirect discrimination** is when an apparently neutral provision, criterion or practice is applied equally to people of all ages but results in one particular person or age group being at a particular disadvantage relative to other age groups. The CPA (2009) describes the difference as follows: “*Direct age discrimination will occur if people with comparable needs are treated differently, purely on the basis of their age. Indirect age discrimination will occur if people from different age groups, with different needs, are treated in the same way, with the result that the needs of the older person are not fully met.*” The Equality Act is clear that both forms of discrimination are covered by the ban.

### **Ageism**

Ageism “*means prejudging or making assumptions about people on the basis of their age*”<sup>4</sup> so it concerns a set of negative beliefs, such as stereotypes, that lead to age discrimination. Addressing ageist attitudes is part of wider government policy, specifically in *Building a society of all ages*.<sup>5</sup>

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<sup>3</sup> *Ageism and age discrimination in secondary health care in the United Kingdom: A review from the literature*, p8, Centre for Policy on Ageing (CPA), 2009

<sup>4</sup> Help the Aged, 2007

<sup>5</sup> *Building a society of all ages*, Department of Work and Pensions, 2009

[www.dwp.gov.uk/policy/ageing-society/strategy-and-publications/building-a-society-for-all/](http://www.dwp.gov.uk/policy/ageing-society/strategy-and-publications/building-a-society-for-all/)

### ***Age sensitive or age appropriate***

Age sensitive or age appropriate attitudes, behaviours and actions are where there is a well-developed understanding of the needs of people at particular stages of their life. Examples of this would include designing services to meet the specific needs of a particular age group.

## **2.2 What has the Government said about age discrimination and equality in health and social care?**

Ending age discrimination and promoting age equality is government policy and the Government has recently made a number of statements about age equality and discrimination:

The timetable for implementing the provisions in the Equality Act is as follows:

**October 2010:** most of the Act, including the provisions that replace existing legislation.

**April 2011:** implementation of the new public sector duty, including age, to have due regard to the need to advance equality.

**2012:** implementation of the ban on age discrimination in the provision of services and exercise of public functions.

The Department of Health's report on its consultation on *Achieving age equality in health and social care*<sup>6</sup> was published on 9 March 2010, which accepted the recommendations of the review.

Subsequent guidance has demonstrated this:

**The NHS Operating Framework 2010-2011** says "*NHS organisations need to take account of Achieving age equality in health and social care, the report of the review led by Sir Ian Carruthers and Jan Ormondroyd.*"

**The Revision to the NHS Operating Framework 2010-2011** says "*Building a service that is personal, fair and diverse requires recognition of the differing needs and skills offered by groups within our communities. There are real opportunities presented by the implementation of the Equality Act in developing such a service, where everyone counts.*"

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[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_107278](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_107278)

**The White Paper “Equity and excellence: liberating the NHS”** says “*We are committed to promoting equality and will implement the ban on age discrimination in NHS services and social care to take effect from 2012.*”

**The Consultation Paper “Commissioning for patients”** says that GP commissioning “*consortia will have a duty to promote equalities*”.

The *Preparing for the audit* section of the *Achieving age equality in health and social care audit tool* will help local NHS organisations decide how they want to work with social care colleagues and the wider group of local stakeholders to prepare for the legislation. See:

→ [www.southwest.nhs.uk/age-equality.html](http://www.southwest.nhs.uk/age-equality.html)

## 2.3 Further publications and consultations

Over the next few months there will be a number of further consultations and publications including:

- The **Equality and Human Rights Commission** has produced guidance on the Equality Act (<http://www.equalityhumanrights.com/advice-and-guidance/guidance-equality-act-2010/equality-act-2010-guidance/>) which focuses on the changes that came into effect on 1 October 2010.
- Further guidance from EHRC will follow on the public sector equality duty and the ban on age discrimination.
- The **Government Equalities Office** is consulting on the detail of the public sector duty (closing in November 2010) which includes proposals that for a requirement to publish age-equality data annually and equality objectives every four years. Other aspects of the legislation will also be consulted upon, notably a consultation into exceptions to the ban on age discrimination ([http://www.equalities.gov.uk/equality\\_bill.aspx](http://www.equalities.gov.uk/equality_bill.aspx)).
- The **NHS Equality and Diversity Council** will be consulting on the Equality Delivery System (EDS), which sets out the approach proposed for the NHS to improve its equalities performance. The consultation will lead to implementation from April 2011.