

# 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*”.<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, which are likely to be consulted upon in the autumn 2010 (see the overview note 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.

**The Green Paper Shaping the Future of Care Together** says: "*The prohibition of age discrimination is a very big part of our drive to improve the way that health and social care services are commissioned and delivered to different age groups.*"

**The NHS 2010-2015: from good to great** says: "*The Equality Bill sets the scene for delivering high-quality public services for all, taking full account of disability, age, race, gender or any other characteristic requiring protection from discrimination. It provides an unprecedented opportunity for the health and social care system to build on the progress already made, truly eliminate age and disability discrimination and take further strides to ensure that care is personal and meets the needs of each individual and their carers, regardless of age. Ending age discrimination and promoting age equality are as much about changing the attitudes and behaviours of individuals and the culture and practices of organisations.*"

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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 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 *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)