

Public Policy Statement

Discrimination and Human Rights

August 2016

Summary

Negative attitudes towards older people and ageing are pervasive in our society. In common with most other forms of discrimination, ageism is based on inaccurate stereotypes, and often in the case of older people, assumptions about a person's ability and competence due to their age. An effect of ageism is that older people frequently experience discriminatory treatment. As a result society is failing to benefit fully from the valuable resources that older people offer – as potential employees, volunteers, elected representatives and in many other roles.

The Equality Act 2010 provides a set of legislative tools for tackling age discrimination both within the area of employment and in the provision of goods and services. The main areas in which the ban on harmful age discrimination in goods and services has the potential to improve the lives of older people are in health and social care. The financial services sector, however, has been largely exempted from the ban.

The Equality Act 2010 must be effectively used by the Welsh Government and all public authorities in Wales to protect older people from discrimination and promote age equality in later life. The Public Sector Equality Duty supported by the Welsh specific equality duties provide a framework that can assist public bodies to understand the needs of the ageing population and to ensure that decisions they make do not disproportionately impact on particular groups, including older people.

We welcome the Welsh Government's Declaration of Rights for Older People in Wales. Whilst in itself the Declaration has no binding legal effect, it aims to clarify the rights of older people as already underpinned by existing legislation. We believe that the Declaration could be a symbolic step in highlighting a focus on the rights of older people in Wales, both to older people themselves and to organisations and services.

Despite the introduction of UK legislation in the form of the Equality Act 2010, and a significant policy framework in the devolved context, there is still much to be done if we are to achieve meaningful equality for older people. Older people deserve equal respect, rights and the same access to services as the rest of the population.

Under the Equality Act 2010, there is an outright ban on age discrimination in health and social care, although people can continue to be treated differently if there is objective justification. However, women aged over 70 years in Wales are not automatically called for breast cancer screening, and would need to self-refer for screening. Female breast cancer incidence is strongly related to age, with the highest incidence rates overall being in older women.

We believe that people should be treated on the basis of their clinical need and not their age. We deem that this upper age limit for invitations to screening should be removed, and that there is a need to raise awareness of breast cancer risk to women over 70. There is also a need for greater awareness in the health service of the health needs of older people from a diversity perspective.

It is a major concern that the financial services sector has been exempted from the ban on age discrimination. This means that banks, insurance companies, credit reference agencies and others can continue to use age as a criterion in the provision of financial services, which makes it harder for older people to shop around for the best products. We believe that access to financial services should be based on individual circumstances and not on arbitrary age limits. We believe that the UK Government should reconsider the financial services exemption from the ban on harmful age discrimination.

Age discrimination in employment remains widespread despite the introduction of the Equality Act 2010. We believe that everyone should be able to remain in work as long as they desire and are capable of doing so, and no-one should be disadvantaged because of their age. Tackling prejudice and discrimination is a key issue. The introduction of fees in the Employment Tribunal system may restrict access to justice for those experiencing age discrimination, and should be repealed.

Human rights have particular relevance to older people who may find themselves in situations where they experience infringements of their human rights in later life. The lack of human rights protection for people who self-fund their care services is an issue of concern. All older people in care must have equal protection from abuse and poor treatment, regardless of how this care is organised or paid for.

There is no dedicated set of rights for older people in the UK, and there is no binding international human rights treaty that specifically protects the rights of older people. We believe that the Welsh Government should further explore what role the Declaration of Rights for Older People in Wales could play in lobbying at UK and international levels for greater legal protection for older people, including pressing the UK Government to support the development of a UN Convention on the Rights of Older Persons.

Older people who lack mental capacity for some decisions have little or no voice and are among the most excluded groups in society. People must be supported in making as many decisions for themselves as possible, and where they are unable to do so, decisions must be made in that person's best interests, and principles of the Mental Capacity Act must be adhered to.

Summary of public policy proposals

- The Equality Act 2010 must be effectively used by the Welsh Government and all public authorities in Wales to protect older people from discrimination and promote

age equality in later life. This must be robustly enforced by the Equality and Human Rights Commission.

- The Welsh Government and the Older People's Commissioner for Wales must develop robust reporting mechanisms to evaluate the impact of the Declaration of Rights for Older People in Wales.
- Health services in Wales must be monitored and assessed against patient experience to ensure their compliance with the Equality Act 2010.
- The Welsh Government must remove the upper age limit for invitations to breast cancer screening.
- The Welsh Government must publish the objective justification for having upper-age limits on screening services for cancer.
- The Welsh Government must have in place robust monitoring systems for the 'Together for Mental Health Strategy' to ensure older people are no longer treated on the basis of their age rather than need in mental health services.
- All public authorities in Wales must treat older people as individuals and recognise the inherent diversity of later life. The needs of older people with multiple protected characteristics must be accommodated in public policy and service delivery.
- The UK Government should reconsider the financial services exemption from the ban on harmful age discrimination.
- The UK and Welsh Governments and the Equality and Human Rights Commission should make the case for employing older workers more effectively, including improving awareness of age discrimination.
- The introduction of fees in the Employment Tribunal system could restrict access to justice for victims of age discrimination, and should be repealed.
- The UK Government and the Welsh Government must seek to extend Human Rights Act (HRA) protection to all older people by ensuring that all providers of care services are regarded as public authorities for the purposes of the HRA, regardless of how this care is organised or paid for.
- The Welsh Government should seek to influence the UK Government position on the need for a UN Convention on the Rights of Older Persons.
- People must be supported in making as many decisions for themselves as possible, and where they are unable to do so, decisions must be made in that person's best interests, and principles of the Mental Capacity Act must be adhered to.

Discrimination and human rights

This policy statement covers:

- Current legislation and policy
- Age discrimination in health services
- Age discrimination in financial services
- Age discrimination in employment
- Advice and support services
- Human rights
- Deprivation of Liberty Safeguards (DoLS).

Note: Access to justice and further information on Deprivation of Liberty Safeguards (DoLS) will be covered in the Age Cymru public policy statement on 'Safeguarding older people'.

Public policy proposals

Current legislation and policy

Large numbers of older people in Wales believe they have been discriminated against because of their age, including 30% of people over 65 who reported discrimination by insurance companies and 21% of those between the ages of 50 and 64 who feel they have experienced discrimination in employment.¹ Research by Age UK found that an increase in the number of older people has been accompanied by an increase in age discrimination.²

With reference to the UK's withdrawal from the EU, the UK's age discrimination laws stem from EU treaty provisions and directives which have already been incorporated into UK legislation, notably through the Equality Act 2010. This means that protections against age discrimination should be largely unaffected when the UK leaves the EU, however this will require monitoring over the coming years.

The Equality Act 2010 provides a set of legislative tools for tackling age discrimination both within the area of employment and in the provision of goods and services. It prohibits what is deemed 'harmful' or 'unjustifiable' treatment resulting in discrimination and harassment because of, or related to, age. It does not outlaw instances of different treatment that are either justifiable or do not give rise to harm. Various specific exceptions to the ban on age discrimination were permitted by the UK Government (see below).

¹ ICM (2010) opinion poll conducted for Age Cymru. Fieldwork conducted with 1078 people in Wales between 19/02/2010 and 23/02/2010 (unpublished).

² Age UK (2011) A Snapshot of Ageism in the UK and across Europe.

The main areas in which the ban on harmful age discrimination in goods and services has the potential to improve the lives of older people are in health and social care. The financial services sector, however, has been largely exempted from the ban.

The Equality Act 2010 Public Sector Equality Duty (PSED)³ requires all public bodies to take positive steps to advance equality of opportunity, eliminate unlawful discrimination and foster good relations between different groups in society.

In Wales the PSED is supported by the Welsh specific equality duties.⁴ In compliance with these, public authorities in Wales, including the Welsh Government, produced their Strategic Equality Plans and have since reported on progress against their equality objectives on an annual basis. Welsh Ministers have a duty to publish a report on how devolved public authorities in Wales, including the Welsh Government, are meeting the PSED.⁵

The PSED and the Welsh specific equality duties provide a framework that can assist public bodies to understand the needs of the ageing population and to ensure that decisions they make do not disproportionately impact on particular groups, including older people.

The Equality and Human Rights Commission (EHRC) is the regulator of the PSED and monitors activity on the duty.⁶ We believe that the Equality Act 2010 must be effectively used by the Welsh Government and all public authorities in Wales to protect older people from discrimination and promote age equality in later life. This must be robustly enforced by the EHRC.

Human rights are universal but they have particular relevance to older people who may find themselves in situations where they experience infringements of their human rights in later life. The Human Rights Act and the European Convention on Human Rights provide valuable means of challenging these infringements. UK human rights legislation covers the whole of the United Kingdom but enforcement is devolved.

The UK's withdrawal from the EU does not automatically affect the UK's status as a signatory to the European Convention on Human Rights (ECHR). The ECHR is an international treaty distinct from the EU Treaties and EU Charter on Fundamental Rights.

³ Equality Act 2010 http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_1

⁴ The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 <http://www.assemblywales.org/sub-ld8462-e.pdf>

⁵ Equality and Human Rights Commission. EHRC monitoring of the PSED in Wales 2014. <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-wales/public-sector-equality-duty-wales-2014/ehrc-monitoring-psed-wales-2014>

⁶ Equality and Human Rights Commission. Public Sector Equality Duty in Wales 2014. <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-wales/public-sector-equality-duty-wales-2014>

Currently, the rights in the ECHR are protected in UK law through the Human Rights Act. Before the Referendum, the UK Government proposed to consult on repealing the Human Rights Act (HRA) and replacing it with a Bill of Rights. We believe that the future of human rights legislation must protect the rights and freedoms in the European Convention on Human Rights, and must not undermine the effectiveness or scope of the HRA or the potential for enforcing it.

In this context, a UN Convention on the Rights of Older People becomes still more vital. In April 2016 Age UK and Age International held a parliamentary reception to launch their joint publication 'A UN convention on the rights of older people: time for the UK to lead'⁷ which sets out the urgent need for international human rights legislation to address the situation of older people.

In Wales there are opportunities to use the Equality Act 2010 in tandem with other legislative and strategic drivers to create a more equal society for older people.

The Welsh Government's Strategy for Older People in Wales was developed in 2003, and was based on the United Nations Principles for Older Persons.⁸ In the devolved context, the Welsh Government has a statutory commitment to embed these UN Principles into all policies that affect older people.

The third phase of the Strategy (2013-2023)⁹ builds on the work of the previous phases, and includes aims to improve quality of life for older people, including addressing discrimination. The 'Diversity' outcome that the Strategy wants to achieve by 2023 is 'older people are not discriminated against because of their age, and do not experience multiple discrimination'.

Arising from the Strategy for Older People in Wales is the Welsh Government's Declaration of Rights for Older People in Wales,¹⁰ which is based on the UN Principles for Older Persons. Whilst in itself the Declaration has no binding legal effect, it aims to clarify the rights of older people as already underpinned by existing legislation.

We believe that the Declaration could be a symbolic step in highlighting a focus on the rights of older people in Wales, both to older people themselves and to organisations and services. The key issue will be whether the Declaration has an impact on the lives and experiences of older people. Setting out how the Declaration is to be delivered and implemented, and evaluating the impact that the Declaration has on the lives and experiences of older people, will be essential.

In January 2016, the Older People's Commissioner for Wales secured cross-party support for legislation to be introduced by the Welsh Government that will protect and

⁷ Age International and Age UK. A UN convention on the rights of older people: time for the UK to lead'

⁸ United Nations Principles for Older Persons (1991)

⁹ Welsh Government (2013) The Strategy for Older People in Wales 2013-2023.

¹⁰ Welsh Government (2014) Declaration of Rights for Older People in Wales.

promote the rights of older people and embed a rights-based approach across our public services in Wales.¹¹

In 2015 the EHRC published 'Is Wales Fairer?'¹² which reports on the state of equality and human rights, and summarises the evidence for Wales gathered as part of the Commission's five-yearly statutory report on equality and human rights progress in England, Scotland and Wales. Based on the evidence the report identifies key challenges for Wales including (with reference to older people):

- Improve access to care for older people and children.
- Prevent abuse, neglect and ill treatment of children and older people in hospitals and care homes.

These issues are covered in more detail in Age Cymru's public policy statements on 'Social care' and 'Safeguarding older people' respectively.¹³

The report also identified, with reference to older people, the issue regarding 'Wider participation in political activity', and stated 'In Wales less than one in four people feel that they are able to influence decisions affecting their local area. Older people (aged 75 and over), disabled people and women feel less able to influence decisions than some other groups'.

Public policy proposals:

- The Equality Act 2010 must be effectively used by the Welsh Government and all public authorities in Wales to protect older people from discrimination and promote age equality in later life. This must be robustly enforced by the Equality and Human Rights Commission.
- The Welsh Government and the Older People's Commissioner for Wales must develop robust reporting mechanisms to evaluate the impact of the Declaration of Rights for Older People in Wales.

Age discrimination in health services

Under the Equality Act 2010, there is an outright ban on age discrimination in health and social care with no exceptions. Although organisations and individuals working in health and social care can continue to treat people differently because of their age, they will need to show that there is a good reason (objective justification) for that different treatment if challenged.

¹¹ Older People's Commissioner for Wales. Work Programme 2016-2017.

http://www.olderpeoplewales.com/Libraries/Uploads/Work_Programme_Briefing_2016-17_1.sflb.ashx

¹² Equality and Human Rights Commission (2015) Is Wales Fairer? The state of equality and human rights 2015.

¹³ Age Cymru public policy statements <http://www.ageuk.org.uk/cymru/policy/age-cymru-policy-1-/public-policy-statements-1/>

However, in 2012 and 2014 Age UK published reports alongside the Royal College of Surgeons and MHP Health Mandate (based on research in England) examining access to common surgical procedures. They found that despite limited reference to age in professional guidance, treatment rates dropped rapidly for people over 70-75 years.¹⁴ We believe that people should be treated on the basis of their clinical need and not their age.

Female breast cancer incidence is strongly related to age, with the highest incidence rates overall being in older women.¹⁵ Despite this, women aged over 70 years in Wales are not automatically called for breast cancer screening, and would need to self-refer for screening. For women aged over 70, the lack of awareness of the risk is exacerbated by a lack of awareness of the entitlement and the need to self-refer.

We believe that this upper age limit for invitations to screening should be removed, and that there is a need to raise awareness of breast cancer risk to women over 70. Our research has showed public support for this: 83% of people in Wales believe that women should be invited to routine breast cancer screening beyond the age of 70.¹⁶

Concerns have been raised about ageism in relation to the exclusion of older people from mental health services that are available to younger adults. We welcome the 'age inclusive' vision of the Welsh Government's 'Together for Mental Health' strategy and delivery plan^{17,18} and the intention 'To improve older people's mental health services, ensuring they are based on clinical need rather than age'. The strategy also states that there will be no automatic transfer of older people with mental illnesses, such as depression or psychosis, to a specialist older people's service – 'Transfer will be based upon their clinical needs and not purely on their chronological age'. The implementation of this Strategy and robust monitoring of outcomes will be crucial to its success.

There is a need for greater awareness in the health service of the health needs of older people from a diversity perspective. A lack of awareness and understanding of cultural or religious needs can lead to situations where an individual's dignity is compromised with certain groups refusing to allow a male to provide care or support.¹⁹

Older lesbian, gay, bisexual and transgender (LGBT) people that encounter health and social care needs can find themselves in situations where it becomes necessary to discuss their sexual orientation or gender recognition with medical and other

¹⁴ Access All Ages: Assessing the impact of age on access to surgical treatment, and Access All Ages 2: Exploring Variations in Access to Surgery Among Older People, Royal College of Surgeons/Age UK/MHP Health Mandate, 2014.

¹⁵ Cancer Research UK. Breast cancer incidence statistics. <http://www.cancerresearchuk.org/cancer-info/cancerstats/types/breast/incidence/uk-breast-cancer-incidence-statistics>

¹⁶ ICM (2012) Age Cymru Wales Poll, March 2012.

¹⁷ Welsh Government (2012) Together for Mental Health. A Strategy for Mental Health and Wellbeing in Wales.

¹⁸ Welsh Government (2012) Together for Mental Health. Delivery Plan: 2012-16.

¹⁹ Age Cymru (2012) The Older Minority Ethnic Network (OMEN) Manifesto.

practitioners. This process can be stressful in its own right and is greatly affected by the levels of awareness and understanding among staff.²⁰ We believe that all public authorities in Wales must treat older people as individuals and recognise the inherent diversity of later life. The needs of older people with multiple protected characteristics must be accommodated in public policy and service delivery. Service providers must ensure that there is equivalent access to services and support for all older people.

Public policy proposals

- Health services in Wales must be monitored and assessed against patient experience to ensure their compliance with the Equality Act 2010.
- The Welsh Government must remove the upper age limit for invitations to breast cancer screening.
- The Welsh Government must publish the objective justification for having upper-age limits on screening services for cancer.
- The Welsh Government must have in place robust monitoring systems for the 'Together for Mental Health Strategy' to ensure older people are no longer treated on the basis of their age rather than need in mental health services.
- All public authorities in Wales must treat older people as individuals and recognise the inherent diversity of later life. The needs of older people with multiple protected characteristics must be accommodated in public policy and service delivery.

Age discrimination in financial services

The Equality Act 2010 provides a widespread exemption for financial services, which means that banks, insurance companies, credit reference agencies and others can continue to use age as a criterion in the provision of financial services. Risk assessments in relation to age will, however, be required to be based on 'relevant and reliable information' and two voluntary schemes have been introduced. These schemes, managed by the British Insurance Brokers Association, are intended to improve transparency in the use of age in product pricing and to signpost older customers who experience difficulties in obtaining travel or motor insurance to companies that can provide these services, and will be reviewed by the UK Government in the future.

In research conducted by Age Cymru,²¹ 30% of people over 65 reported discrimination by insurance companies. Age discrimination in the financial services sector restricts older people's access to essential products. Mystery shopping by Age UK in 2012²² has shown that blanket age limits persist in lending and in travel and motor insurance, which makes it harder for older people to shop around for the best products.

²⁰ Age Cymru (2012). The Older Lesbian, Gay, Bisexual and Transgender (LGBT) Network Manifesto.

²¹ ICM (2010) Opinion poll for Age Cymru, February 2010.

²² Age UK (2012) Still Turned Away, cited in Age UK Policy Position Paper on Ageism and Age Equality, March 2014.

We believe that access to financial services should be based on individual circumstances and not on arbitrary age limits. We believe that the UK Government should reconsider the financial services exemption from the ban on harmful age discrimination.

Public policy proposal:

- The UK Government should reconsider the financial services exemption from the ban on harmful age discrimination.

Age discrimination in employment

The increase in the State Pension Age is based on an assumption that people will be able to work for longer, on the grounds of increasing healthy life expectancy. In 2011, the UK Government abolished the Default Retirement Age so that employees can no longer be forced to retire at 65. Statistics show that many people are working to a later age than ever before.²³ For some this is a positive choice based on a desire to continue to stay in work, whilst others may feel unable to retire for financial reasons.

Older unemployed people are out of work for longer on average than other age groups²⁴ and many experience difficulties accessing support to find new employment. Perceptions and stereotypes (usually negative) of older workers are still held, and challenging these is of great importance. In 2013, fees were introduced in Employment Tribunals, which could restrict access to justice for those experiencing age discrimination.

We believe that everyone should be able to remain in work as long as they desire and are capable of doing so, and no-one should be disadvantaged because of their age. The support provided to older jobseekers must be better tailored to individual needs. Employment is addressed in more detail in the Age Cymru policy position on 'Employment and contribution'.

Public policy proposals:

- The UK and Welsh Governments and the Equality and Human Rights Commission should make the case for employing older workers more effectively, including improving awareness of age discrimination.
- The introduction of fees in the Employment Tribunal system could restrict access to justice for victims of age discrimination, and should be repealed.

²³ Office of National Statistics (2013) Labour market statistics December 2013.

²⁴ Department for Work and Pensions (2012). Older Workers Statistical Information Booklet.

Advice and support services

The Equality Advisory Support Service, which was commissioned by the UK Government, is an advice service aimed at individuals who need expert information, advice and support on discrimination and human rights issues.²⁵

Independent advocacy services are an important means to provide people with the support they need to be heard, and to uphold their rights and promote equality. The Golden Thread Advocacy Programme has been funded by the Welsh Government for three years to run alongside and support the implementation of Part 10 (Advocacy) of the Social Services and Well-being (Wales) Act 2014. The programme's key aims are:²⁶

- to support the commissioning of independent professional advocacy through a sustainable, strategic approach
- to improve the availability of advocacy services to adults across Wales
- to improve the well-being of individuals through advocacy and to give them a stronger voice.

Advocacy services, together with information and advice services, are covered in more detail in Age Cymru's public policy statement on 'Information, advice and advocacy'.

Human rights

Human rights have particular relevance to older people who may find themselves in situations where they experience infringements of their human rights in later life. This can take the form of abuse and degrading treatment; unwarranted deprivation of liberty and autonomy; lack of protection for family and private life; and routine discrimination. Often these human rights breaches are not recognised as such.

Human rights legislation, in the form of the Human Rights Act 1998 (HRA) and the European Convention on Human Rights (ECHR), offers older people a valuable means of challenging these infringements. For example, on several occasions in the UK residents have challenged local authority home closures on the basis that the authority has not taken into account their right to life or right to respect for private life would be affected.²⁷

²⁵ Equality Advisory Support Service <http://www.equalityhumanrights.com/about-us/about-the-commission/equality-advisory-support-service> (Accessed 08/09/14).

²⁶ Age Cymru website: Advocacy: The Golden Thread Programme. <http://www.ageuk.org.uk/cymru/policy/golden-thread-advocacy-programme/> Accessed 11/08/16.

²⁷ Age UK (2016) Policy Position Paper: Human Rights (UK) March 2016.

Most adult abuse referrals concern people aged 65 or over, and the main category of vulnerability of people referred continues to be older persons. The place of alleged abuse for most of the completed referrals in Wales continues to be people's own home, while the next largest group is care homes (residential and nursing).²⁸ The abuse of older people is addressed in more detail in the Age Cymru policy position on 'Safeguarding older people'.

The continued lack of human rights protection for people who self-fund their care services is an issue of concern.

Currently, all residential care services provided or arranged by local authorities in Great Britain are covered by the Human Rights Act (HRA). Previously, a loophole existed which meant that care home services provided by private and third sector organisations under a contract to the local authority were not considered to fall within the scope of the HRA. Following a sustained campaign this loophole was closed by section 145 of the Health and Social Care Act 2008.

However, there is still a group who remained unprotected, namely those whose care is both privately funded and arranged. The Welsh Government regards the issue as reserved to the UK Government because it concerns human rights legislation. The latest moves by the UK Government in the Care Act go some way towards closing this loophole but rely on the right people will have in England to request their local authority broker a care placement for them, even if they are self-funding, to do so. The Social Services and Well-being (Wales) Act does not contain the same right, so there is concern that this will mean that this loophole continues to exist in Wales, unless further action is taken.

This human rights loophole that allows people receiving the same service in the same care home to have different levels of protection must be closed. All older people in care must have equal protection from abuse and poor treatment, regardless of whether they, or the state, are paying for their care.

There is no dedicated set of rights for older people in the UK, and there is no binding international human rights treaty that specifically protects the rights of older people. Age discrimination and ageism are widely tolerated across the world.²⁹ Research by Age UK³⁰ has explored perceptions and experiences of age discrimination across Europe and found that an increase in the number of older people has been accompanied by an increase in age discrimination.

We believe that the Welsh Government should further explore what role the Declaration of Rights for Older People in Wales could play in lobbying at UK and international levels for greater legal protection for older people, including pressing the UK Government to support the development of a UN Convention on the Rights of Older Persons. A Convention would clarify older people's rights under international law, and would enable

²⁸ CSSIW (2013) Adult Protection Monitoring Report 2010-2012.

²⁹ Welsh Government (2014) Declaration of Rights for Older People in Wales.

³⁰ Age UK (2011) A Snapshot of Ageism in the UK and across Europe.

governments to have an explicit legal framework, guidance and support that would help them to meet the needs of people as they grow older.

Public policy proposals:

- The UK Government and the Welsh Government must seek to extend Human Rights Act (HRA) protection to all older people by ensuring that all providers of care services are regarded as public authorities for the purposes of the HRA, regardless of how this care is organised or paid for.
- The Welsh Government should seek to influence the UK Government position on the need for a UN Convention on the Rights of Older Persons.

Deprivation of Liberty Safeguards (DoLS)

The Deprivation of Liberty Safeguards (DoLS) are applied to adults who do not have the 'mental capacity' to make decisions for themselves.³¹ Older people who lack mental capacity for some decisions have little or no voice and are among the most excluded groups in society. They are all too frequently deprived of their human rights to freedom, respect, equality, dignity, and autonomy.³²

CSSIW (2014b) and a joint CSSIW / Healthcare Inspectorate Wales review (CSSIW & HIW, 2015) found that although awareness of deprivations of liberty had increased, more needs to be done. They found significant variation between local authorities and health boards.³³

The Mental Capacity Act 2005 (MCA) created a legal framework governing situations when a person's capacity to make decisions is in question. The Act includes 'Deprivation of Liberty Safeguards' (DoLS) for situations where people without capacity may be being deprived of their right to liberty, as a result of being confined to a hospital or care home. Care homes and hospitals have to seek authorisation if they consider they are, or may have to, deprive a person of liberty. People must be supported in making as many decisions for themselves as possible, and where they are unable to do so, decisions must be made in that person's best interests, and principles of the MCA must be adhered to.³⁴

³¹ Equality and Human Rights Commission (2015) Is Wales Fairer? The state of equality and human rights 2015.

³² Age UK (2016) Policy Position Paper: Mental Capacity (England and Wales). April 2016. http://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Policy/health-and-wellbeing/ppp_mental_capacity_England_and_Wales.pdf?dtrk=true

³³ Equality and Human Rights Commission (2015) Is Wales Fairer? The state of equality and human rights 2015.

³⁴ Age UK (2016) Policy Position Paper: Mental Capacity (England and Wales). April 2016.

Public policy proposal:

- People must be supported in making as many decisions for themselves as possible, and where they are unable to do so, decisions must be made in that person's best interests, and principles of the Mental Capacity Act must be adhered to.