
Submission to the call for contributions on ageism and age discrimination

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Ageism and Age-Discrimination

The author is privileged to have this opportunity to present some of her findings on ageism and age discrimination to the Independent Expert on the enjoyment of all human rights by older persons. The responses draw heavily on a report the author prepared for the European Commission on "[Age Discrimination Law outside the Employment Field](#)" in 2020, as well as the author's work in relation to age discrimination in employment. The response also draws on the work of an on-going participatory research project involving the experiences of women over the age of 50 years in work in Manchester, United Kingdom. The author would like to express support for the development and implementation of an International Convention on the Rights of Older Persons and believes that many insights can be gleaned from the European experience with respect to the protection of age equality in employment, social protection, healthcare, housing, education and access to goods and services.

The author has limited her responses to questions 3, 4, 6, 7, 9 and 10.

Forms and Manifestations of Ageism and Age-Discrimination

Question 3: From an intersectional perspective, are there specific factors that aggravate ageism and age discrimination and how? Please provide concrete examples and collected data where available.

As part of a participatory research project, *Uncertain Futures*, conducted in Manchester, United Kingdom, we have identified that ageism and age-discrimination are heavily intersected by **race, migration, gender, disability and socio-economic background**.

Uncertain Futures is a participatory research project centered around a collaborative artwork at Manchester Art Gallery, which aims to highlight intersectional issues in work for women over 50 focusing on gender, age, race, disability, migration and socio-economic backgrounds. Developed by an Advisory Group formed of women over 50 years linked to Manchester's diverse communities in collaboration with artist Suzanne Lacy, Manchester Art Gallery and Manchester City Council Work and Skills, *Uncertain Futures* aims to co-research conditions around access to work, issues within work and issues leaving work for women over 50 with the University of Manchester: School of Social Sciences, Department of Law and Manchester Metropolitan University: Department of Social Care and Social Work¹. *Uncertain Futures* will open in 2021 with an installation in the Gallery hosting interviews with 100 women from all walks of life, alongside workshops, talks, and media presentations that explore survival and equity issues. The research aims to, *inter alia*, understand the interconnection between women's experiences of work with their age, race, gender, and other relevant aspects of their identities. An additional work package has been added to highlight the impact of what the group has termed the "Covid+ effect" on discrimination and inequality: how existing forms of discrimination and inequality have been exacerbated by Covid-19.

Quote from Advisory group:

'In the current climate of Covid19, work has been extremely challenging for many people but for women of Black, Asian, Minority Ethnic heritage it has been incredibly difficult for women who are on the front line and have been disproportionately impacted. They may have lost jobs or been forced to work in unsafe roles because of income and poverty. For women over 50, it is especially hard to access new jobs. We need to focus on the root causes of inequality in our society to really understand how different people are impacted and Covid has brought the reality in front of us'.

Athia Chaudry GMBAME Network Chair

As part of the participatory nature of the research project, the Advisory Group has co-produced with the other partners, an intersectional matrix which identifies the intersection of identity between age, race, migration, disability, gender and socio-economic background within specific work packages. This matrix was devised over a year-long period of participatory and exploratory engagements between the Advisory Group and the research partners. The matrix indicates that within these work packages (access to work, in-work experiences, Covid-19 impact, work, ageing and retirement) there is a common intersection between age and race, migration, disability, gender and socio-economic background. The work packages also identify certain common themes, explanations for which are provided in the text below.

Intersections of Identity with AGE	Race	Migration	Disability	Gender	Socio-economic background
Work Packages					
↓ Access to Work	<ul style="list-style-type: none"> • <u>Discrimination</u> • <u>Opportunities, training and skills</u> • <u>Access to justice</u> • <u>Language barriers/Cultural differences</u> • <u>Personal circumstances</u> 				
In-Work Experiences	<ul style="list-style-type: none"> • <u>Discrimination</u> • <u>Access to justice</u> 				

¹ *Uncertain Futures* is a partnership between women and agencies in Manchester: Artist, Dr. Suzanne Lacy, Manchester Art Gallery, Work and Skills Manchester City Council, University of Manchester School of Law and Social Sciences (Dr. Elaine Dewhurst), Manchester Metropolitan University School of Nursing and Social Care (Dr. Sarah Campbell), MICRA - Manchester Institute for Collaborative Research on Ageing. The Advisory group is formed of women from the following organisations: Carisma (Moss Side), Women’s Voices (Longsight), Aquarius Tenants and Residents Association (Hulme) Ethnic Health Forum Rusholme, Cheetham Welcome Centre (Cheetham), Wythenshawe Good Neighbours, Wai Yin Society, GMBAME Network, Zimbabwean Women’s Organisation, Support African Women’s Network, MAES, Buzz (City wide).

	<ul style="list-style-type: none"> • <u>Employment conditions (work-life balance)</u> • <u>Opportunities within the workplace</u> • <u>Identity and work</u> • <u>Informal and unpaid work</u>
Covid Impact	19 <ul style="list-style-type: none"> • <u>Covid+ effect on discrimination and inequality</u> • <u>Health, mental health and well-being</u> • <u>Change to lived experiences and uncertainty</u> • <u>Financial impacts</u> • <u>Digitised world</u>
Work, Ageing and Retirement	<ul style="list-style-type: none"> • <u>Discrimination</u> • <u>Impact of economic history</u> • <u>Cultural and faith contexts</u> • <u>Elder abuse</u> • <u>Preparation for retirement</u> • <u>Health, mental health and well-being</u> <p>© Uncertain Futures Project, Manchester, UK (2021)</p>

Work Package Explanations:

Access to Work:

- *Discrimination*: includes in this context age discrimination (including ageism and limiting older women based on conceptions of such people based on their age), race discrimination, religious discrimination, discrimination on grounds of pregnancy and maternity, disability discrimination and other aspects of identity (criminal convictions, asylum status)
- *Access to Justice*: includes in this context the difficulties in challenging discrimination and accessing legal supports
- *Opportunities, Training and Skills*: includes in this context the need for re-training, the lack of appropriate opportunities, the digital divide, digital recruitment strategies, the type of employment conditions available and the lack of opportunities for flexible work around family and caring responsibilities. In terms of the digital divide, other issues such as access to equipment, use of social media, the use of online assessments and the risks posed by online activity will all be considered. This topic also includes the recognition of skills/professional qualifications. In addition, issues such as navigation of the job market and benefits system and the challenges it poses will be considered.
- *Personal Circumstances*: includes in this context geographical factors that limit access to work due to poor infrastructure for travel, limitation of opportunities due to costs of travel and issues around time to commute (juggling for example caring responsibilities). It also includes caring responsibilities, and financial difficulties more generally.
- *Language barriers/Cultural Differences*: includes in this context language barriers, and cultural differences which impact of the ability of the older women to access appropriate work.

In-Work Experiences:

- *Discrimination*: includes in this context all the cross-cutting issues including more awareness of the need for reasonable adjustments for people in age and disability.
- *Access to Justice*: includes in this context issues such as whether there is access to legal support or information available as to legal rights.
- *Employment Conditions (Work-life balance)*: includes in this context issues such as demands and stress of the workplace, whether flexible policies exist to allow for work-life balance, whether legalities are adhered to, the financial and job status of the individual women, the types of contracts offered (zero/flexible hours), impact of language barriers and low-pay.
- *Opportunities within the Workplace*: includes in this context the availability of upskilling opportunities, the impact of the glass ceiling, whether qualifications are recognised, the impact of the digital divide with respect to access to equipment and keeping up with technological changes, the lack of appropriate infrastructures for personal development/supervision and movement within the workplace.
- *Identity and Work*: includes in this context the importance of the social value of work, particularly for women and includes topics such as the value of being a worker, the identity of being a worker e.g. status / independence, the recognition and representation of older women as valuable as opposed to vulnerable, the experience of women beyond their expertise, the enjoyment of work, the relationships and friendships developed, the lack of status and position which comes from being without work, the new phases of a woman's life in terms of success, experience, age, wisdom, vigour and energy, the menopause and its effects and health issues.
- *Informal and unpaid work*: includes in this context the value of all of women's work and recognition of what women give to society. This work may include volunteer work, caring for children or grandchildren, caring for relatives e.g. older parents, juggling multiple caring roles, working from home in piece work/gig economy work and cash-in-hand work. This topic will also address issues such as the pressures to provide support and care, the pressures of being a full-time carers with none of the normal associated work benefits e.g. holiday/sick pay, hours of work, pension schemes or retirement; the impact of the role of carer on personal health, the need to retrain to re-enter the formal labour market, the nature of hidden work and its pitfalls and the lack of general support for BAME careers in particular and the lack of access to services and support networks.

Impact of Covid-19:

- *Covid+ effect on discrimination and inequality*: includes in this context an analysis of how existing forms of discrimination and inequality have been exacerbated by Covid-19. It also includes discussions related to redundancies
- *Health, mental health and well-being*: includes in this context topics such as the impact of covid on health, the impact of long covid, dealing with isolation and loss/bereavement
- *Change to lived experiences and uncertainty*: includes in this context questions such as what does the future hold? What are the difficulties of returning to the job market and the limited /changed opportunities available, the impact of job loss, the impact of health issues on ability to return to work and the invisibility of women during Covid 19.
- *Financial impacts*: includes in this context topics such as losing a household income, becoming a carer, the impact of long covid.

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- *Digitised world*: includes in this context difficulties in safeguarding older women on digital platforms particularly in the context of training, the potential that working from home will become the norm.

Work, Ageing and Retirement:

- *Discrimination*: includes in this context all cross-cutting issues to be addressed including in particular, forced early retirement and ageism
- *Impact of economic history*: includes in this context women born in the 1950's who do not have enough pension contributions and the impact of this. Particular impact on ethnic minority women should be examined.
- *Cultural and faith contexts*: includes in this context the never-ending work (no retirement) for certain groups of women.
- *Elder abuse*: includes in this context potential lack of financial independence and family abuse / financial abuse
- *Preparation for retirement*: includes in this context the importance of retirement planning, lack of information on pension credits etc
- *Health, mental health and well-being*: includes in this context lack of support networks for women, impact on mental health, loneliness, lack of purpose and identity, the impact of the digital divide, the difficulties of upskilling and access to equipment, and leaving work early for caring or health issues.

The art project, delayed due to Covid, will begin in June 2021 with socio-legal analysis beginning in July 2021. More information about the project and its results can be obtained from elaine.dewhurst@manchester.ac.uk

Legal, policy and institutional frameworks related to ageism and age discrimination

Question 4: What international, regional and national legal instruments are in place to combat ageism and age-discrimination?

Question 6: At the national level, please outline the legal protections available against age discrimination and indicate whether age is explicitly recognised as a ground for discrimination? If so, are there specific areas for which equality is explicitly guaranteed? Are there any areas where differential treatment based on older age is explicitly justified?

The author would like to address these two questions together in the context of age discrimination law in the fields of education, social protection, healthcare, housing and access to goods and services within the European legal system (EU, ECHR and EU member state systems). To answer these questions, the author would like to draw attention specifically to two publications of the European Equality Law Network:

- *Age discrimination law outside the employment field* (authored by Dr. Elaine Dewhurst) 2020 Available at: <https://op.europa.eu/en/publication-detail/-/publication/d7477a6b-2e02-11eb-b27b-01aa75ed71a1/language-en>
- *A comparative analysis of non-discrimination law in Europe 2020: The 27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Turkey and the United Kingdom compared* Available at: <https://op.europa.eu/en/publication-detail/-/publication/5afa29ef-700a-11eb-9ac9-01aa75ed71a1/language-en/format-PDF/source-search>

These two reports provide very pertinent information on age discrimination laws across Member States, the latter with respect to employment and the former with respect to all other fields e.g. education, social protection, healthcare, housing and access to goods and services.

Regional Protections:

In *Age Discrimination Law Outside the Employment Field* (2020), the report outlines in **Section I**, an **Overview of European Union and European Court of Human Rights law** on age discrimination generally in the labour market, social protection, housing, healthcare, education and access to goods and services on **pages 51-69**. It identifies three main points:

- Existing law on prohibiting discrimination on grounds of age exists in both EU law and in ECHR law. However, the scope and application of the protection against age discrimination varies between the two. In the context of EU law, very little protection exists outside the labour market context, while in ECHR law there is potentially protection in all areas including social protection, housing, healthcare, education and access to goods and services.
- There have been moves to develop a proposed EU Directive on equal treatment on grounds of, *inter alia*, age in the fields of social protection, housing, healthcare, education and access

to goods and services but this is currently still being discussed in Council (Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, ST 10740 2019 INIT).

- While ECHR law is wider in scope and application than EU law in that it technically applies outside of the labour market to other fields such as social protection, healthcare, education, housing and access to goods and services, it also has a number of significant limitations such as the limited applicability of Protocol 12, the requirement to locate an existing right within the ECHR wherein discrimination under Article 14 can be identified, the need to demonstrate victim status and the wide margin of appreciation given to states with respect to age discrimination.

National Protections (27 EU Member States):

In the employment context, the national protections within the 27 EU Member States are generally very similar² and tend to follow the rules as set out in Directive 2000/78/EC of 27.11.2000 establishing a general framework for equal treatment in employment and occupation³. Outside of the employment context, for example in social protection, healthcare, housing, education and access to goods and services, the protection is more diverse and there are certainly many more gaps in protection. **Section II of *Age discrimination law outside the employment field*** (authored by Dr. Elaine Dewhurst) 2020⁴ provides an overview of the national laws of 27 EU Member States with respect to age discrimination protections outside the labour market. It examines the different protections available including protection against direct and indirect discrimination, including any justification requirements and/or exceptions. It examines existing protections with respect to harassment, instructions to discriminate and victimisation and whether these are considered to be discriminatory forms of action in individual Member States. In addition, it analyses specific age-related exceptions to age discrimination law including those in the financial services and insurance sectors. It analyses protections of positive action and protections against multiple discrimination. Finally, some key case law is addressed identifying not only the variety of age discrimination issues arising in Member States outside of the labour market context, but also the commonality in approach of Member States to these specific issues. Two key points can be identified from this analysis:

- The analysis indicates that **there is a general consensus** across Member States in favour of providing protection against discrimination on grounds of age in all fields (employment, social protection, housing, healthcare, education, and access to goods and services) and the majority of Member States already provide for certain levels of protection. Consensus can be found

² See *A comparative analysis of non-discrimination law in Europe 2020: The 27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Turkey and the United Kingdom compared* Available at: <https://op.europa.eu/en/publication-detail/-/publication/5afa29ef-700a-11eb-9ac9-01aa75ed71a1/language-en/format-PDF/source-search>).

³ Directive 2000/78/EC of 27.11.2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 2.12.2000, p. 16

⁴ At pages 69-109. Available at: <https://op.europa.eu/en/publication-detail/-/publication/d7477a6b-2e02-11eb-b27b-01aa75ed71a1/language-en>

with respect to the main concepts of equality law including direct discrimination, indirect discrimination, justificatory provisions and proportionality tests, harassment, instruction to discriminate, general exceptions, positive action, enforcement and penalties. These are the essential elements for any anti-discrimination law and indicates that there is cohesion across the Member States on the majority of issues.

- There were some areas where Member States either diverged in their approach or where there were **gaps in protection**. These areas of concern relate mainly to the issues of victimisation, multiple discrimination, exceptions for the financial services sector (including insurance and banking sectors) and lack of specific protection in the field of education.

Question 7: Do the existing legal protections against age discrimination allow for claims based on intersectional discrimination, that is discrimination which is based on the intersection of age and other characteristics such as race, ethnicity, gender, disability, sexual orientation or other status?

In the report (*Age Discrimination Law Outside the Employment Field, 2020*)⁵, **Section II, pp.82-84** deals with the issue of multiple/intersectional discrimination and how EU national legal systems regulate this issue in the fields of social protection, housing, healthcare, education and access to goods and services. It is also considered to one of the areas of concern highlighted in the report on **pp. 120-122**. The reason for the concern arises from 3 factors:

- There is a variety of different levels of protection in the 27 EU Member States ranging from full protection of multiple discrimination (including an age ground), to no protection at all.
- There is also a lack of cohesion with respect to whether there should be adjusted penalties when a case of multiple discrimination arises.
- The Proposed EU Directive⁶ does propose to include multiple discrimination within its terms but there are some substantial limitations with the existing drafted terms which will need addressing if multiple discrimination is to be adequately addressed. The report recommends at p. 125 that:

“Recommendation 4: Adopt a protection against multiple discrimination. Such protection should include protection against discrimination on all grounds protected under EU equality law and should include a provision which allows sanctions to be adjusted to take account of the gravity of multiple discrimination. The protection against multiple discrimination is a very welcome move in the proposed Directive and will certainly enhance protection against discrimination at a national and EU level. However, in order to achieve this and to have greatest impact, all grounds of discrimination need to be protected. This is particularly important given that multiple discrimination on grounds of age and gender is so prevalent. In addition, including a reference to the adjustment of remedies in cases of multiple discrimination will ensure uniform protection across Member States, enhance the impact of multiple discrimination claims and increase equality on grounds of age.”

⁵ Available at: <https://op.europa.eu/en/publication-detail/-/publication/d7477a6b-2e02-11eb-b27b-01aa75ed71a1/language-en>

⁶ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, ST 10740 2019 INIT.

Question 9: Please indicate if there are institutional or complaints mechanism to address inequalities or grievances related to ageism and age discrimination. If so, please provide statistics on cases and types of cases received?

In the report (*Age Discrimination Law Outside the Employment Field, 2020*)⁷, **Section II, pp.97-100** deals with the issue of enforcement and penalties and how national legal systems regulate this issue in the fields of social protection, housing, healthcare, education and access to goods and services. The main points to be raised from this national review include:

- There is a wide degree of consensus among Member States with respect to enforcement of legal rights and the penalties which should be imposed to ensure compliance with non-discrimination principles. The majority of Member States make provision for claims to be made to relevant administrative or judicial enforcement bodies in the case of an age discrimination claim in the fields of social protection, education, housing, healthcare and access to goods and services.
- Despite some anomalies, most Member States also provide for individuals to be assisted and represented in their legal claims and provide for a shift in the burden of proof in age discrimination cases.
- Furthermore, in the case of penalties, the majority of Member States currently make provision with respect to compensation in all fields. While there may be outliers with respect to fixed upper compensation limits or failing to make compensation available in cases of age discrimination in certain fields, these are limited.
- The general consensus would appear to be that enforcement and penalties are a necessary part of protecting individuals from discriminatory treatment and ensuring the promotion of the principle of full equality on grounds of age.
- This is also due to form part of the proposed EU Directive on equal treatment in fields outside employment.

Reports related to ageism and age discrimination and other relevant information

Question 10: Please outline any other areas that you deem important in the context of ageism and age discrimination. Thank you for sharing any relevant reports about ageism and age discrimination.

⁷ Available at: <https://op.europa.eu/en/publication-detail/-/publication/d7477a6b-2e02-11eb-b27b-01aa75ed71a1/language-en>

In the report (*Age Discrimination Law Outside the Employment Field, 2020*)⁸, in **Section III, Conclusions and Recommendations** a number of important recommendations are made.

After an analysis and assessment of the law on age discrimination at regional level (EU and ECHR law) and at national level (27 Member States), the report concludes that there is a high degree of cohesion with respect to the concepts of equality law on grounds of age, but there are still some areas of concern which require action in order to bring them in line with other areas of EU equality law (namely, sex and race) and to reduce age discrimination within the EU.

Five specific recommendations are made:

- **Recommendation 1: Adopt the Proposed Directive on Equal Treatment on Grounds of Age in fields outside the Labour Market** There is a substantial gap at an EU level in the protection of nondiscrimination on grounds of age in the fields of social protection, education, housing, healthcare and access to goods and services. The gap is also not filled by the ECHR or by national Member State law. The proposed Directive has the benefit of overcoming the limitations and shortcomings in protection and would provide a very sustainable and effective basis for legal protection against age discrimination in EU Member States.
- **Recommendation 2: Implement protection against victimisation and inform stakeholders about detrimental impact of victimisation through research and information campaigns** Protection against victimisation is limited at a national level. Lack of protection can be attributed to poor understanding of the detrimental impact of victimisation in fields outside the labour market. Therefore, further research and information campaigns are necessary to address this knowledge gap and ensure protection.
- **Recommendation 3: Ensure that proportionate differences in treatment on the grounds of age do not constitute discrimination for the purposes of the proposed Directive if age is a determining factor in the assessment of risk for the service in question and this assessment is based on actuarial principles and relevant and reliable statistical data** The existing proposal applies a default test to financial service providers who are making assessments of risk based on age. This is unsatisfactory. The implementation of this recommendation would ensure transparency, proportionality and individualised assessment of risk.
- **Recommendation 4: Adopt a protection against multiple discrimination.** Such protection should include protection against discrimination on all grounds protected under EU equality law, and should include a provision which allows sanctions to be adjusted to take account of the gravity of multiple discrimination
- **Recommendation 5: Promote research and information on age discrimination in the field of education** The lack of case law in the field of education on discrimination on grounds of age is remarkable. Promoting research and information campaigns on this particular area will enhance both understanding and protection of this issue.

⁸ Available at: <https://op.europa.eu/en/publication-detail/-/publication/d7477a6b-2e02-11eb-b27b-01aa75ed71a1/language-en>

