PROFORMA FOR AGE CONSULTATION RESPONSES

The consultation closes on 25 May 2011. Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

Contact details:

Please supply details of who has completed this response.

Response completed by (name):	Jonathan Gardam
Position in organisation (if appropriate):	Policy Officer
Name of organisation (if appropriate):	Association of Directors of Adult Social Services (ADASS)
Address:	**ADASS Business Unit** **Local Government House** **Smith Square** **London** **SW1P 3HZ**
Contact phone number:	020 7072 7436
Contact e-mail address:	jonathan.gardam@adass.org.uk
Date:	25 May 2011

Confidentiality

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential. If you wish your response to remain confidential, please tick this box and say why. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department

I would like my response to remain confidential (please tick if appropriate): ☐

Please say why

You or your organisation

Q(i) **In what capacity are you responding?**

As an individual (if so, please go to Q1 in the main comments section)

☐

On behalf of an organisation (if so, please go to Q(ii) below)

yes

☐

As an employer (if so, please go to Q(iii) below)

☐

Other (please specify)

Q(ii) **Is your organisation**

(please tick the boxes that apply to your organisation)

A local authority (including health authority) / organisation ☐

An equality lobby group or body ☐

A statutory body ☐

An organisation representing employers ☐

An organisation representing financial institutions ☐

A professional association ☐ yes

A university ☐

A college of further education ☐

A trade union/staff association ☐

Other – please specify

Q(iii) **If responding as an employer, how many people do you employ?**

Between 1 and 14 employees ☐

Between 15 and 49 employees ☐

Between 50 and 249 employees ☐

250 employees or more ☐

Q(iv) **If responding as an employer please indicate which sector best describes you:**

Legal services ☐

Construction and/or building design ☐

Communications ☐

Wholesale and retail trade ☐

Leisure – hotels, restaurants, pubs ☐

Leisure – cinemas, theatres, museums ☐

Leisure – other ☐

Distribution/transport ☐

Financial and/or business services ☐

Electricity, gas and water supply ☐

Advice and/or information services ☐

Public administration ☐

Education/training ☐

Health and social work ☐

Charity/voluntary work ☐

Other (please tick box and specify) ☐ _____

Note:

- In addition to the completed proforma, you can also send other supporting information if you so wish.

Completed forms should be e-mailed to the following address:-

age@geo.gsi.gov.uk

If you are posting the form please send to:-

Age Discrimination Consultation Responses
C/O Mark Reed
Government Equalities Office
Zone J10, 9th Floor Eland House
Bressenden Place
London SW1E 5DU

Thank you for completing this response form.

Health and social care

Question 1: Are there any other ways that age is used as a criterion to determine access to and eligibility for health and social care services that we have not considered?

Please place a cross in the appropriate box

Yes	X	No		Not sure	

Please explain why -

- Although Local Authorities would not discriminate from giving any individual a direct payment / personal budget, it is noted that older people are less likely than working age disabled people to access these. There is some evidence from the Ibsen evaluation report that older people were less comfortable than younger people with use of direct payments. There are also indications however that attitudes and assumptions about what older people are able to manage or benefit from may play a part in discouraging them from taking up the direct payments option.
- Mental health services for older people are less well-resourced than for working-age adults, leading to restrictions on provision available for those with functional mental health problems. Diagnosis rates for dementia and depression amongst older people are low.
- Whereas in the NHS, charging regimes may benefit older people, in practice the opposite is often the case in social care. Older people pay substantial charges for both residential and domiciliary care because they have the means to pay, in the form of savings or housing equity which are above the national threshold. Local authorities also have a good deal of local discretion about levels of charge for home care, and many have increased charges in response to restricted budgets against sustained and increased demand. NB the recent ADASS Budget Survey identified that that of the planned savings for 2011-12, £84m is to be raised through increased charges.
- In contrast, most working age disabled people, unless they have received damages payouts or inherited capital, are not in possession of significant resources and will not be subject to similar levels of charging. Dilnot (chair of the Commission on Funding of Care and Support) on is on record as saying the current charging system is unfair.
- There has been debate about differential levels of spend per head on older service users and those of working age. There may be an argument that employment is the social norm and policy expectation for people of working age, and that higher spend may be justified to enable disabled people below retirement age to access education, training and employment. Unemployment levels are high among working age disabled people, those with mental health problems and those with learning disabilities, and research suggests significant numbers would wish to work. Evidence from carers' organisations shows that many carers of working age would wish to continue working, and

that the Carers' Benefit is not enough to offset the loss of income from employment. Carers above retirement age do not qualify for carers' benefit.

Question 2: Do you think implementing the ban on age discrimination in relation to health and social care without exceptions will have a negative or positive impact on people of a particular age? If you consider that it will have a negative impact what action could be taken to minimise this?

Please place a cross in the appropriate box

Positive		Negative		Unsure		Both	

Please explain why -

- In social care, there could be both positive and negative impacts. Some may flow from the absence of exceptions from the general ban, but others would be influenced by the way the new arrangements are implemented.
- The general argument against statutory exemptions is persuasive. They would be a blunt instrument, and the proposed combination of a presumption against age discrimination and provision for objective justification allows local authorities flexibility to tailor available resources to personalised needs.
- Given the known under-resourcing of services for older people (confirmed for instance by Dilnot, and Wanless before him, and highlighted in the ADASS Budget Survey which showed demographic pressures of £425m for 2011-12 on adult social care budgets), a simplistic “levelling down” of provision for disabled working age adults to match would be to their disadvantage. This could be seen as a negative impact.
- There is a need to clarify how “objective justification” is to be defined and applied in the context of social care. Would it cover a local decision to allocate more resources per head to disabled working age adults, and charge them less, in order to increase their employment prospects and incentives? How would it deal with the situations which arise now, where people of working age with multiple disabling conditions, or early onset dementia, are placed in services catering for much older people because the authority does not have, and has not commissioned, age-appropriate provision?
- Applying needs assessment, the FACS eligibility criteria and the individual resource allocation system (RAS) on a common basis regardless of age would on the face of it meet the requirements of the Act. It may however lead to a larger proportion of older people than of working age people being turned down for publicly funded services, because the demographic trends mean their numbers are growing faster, and resources have not kept pace (as recognised by the Dilnot Commission). Could this constitute age discrimination, or be seen as a negative impact of having no exceptions?
- In times of very restricted resources, the relationship between quality and volume of provision can be put under severe strain. Commissioning authorities are being forced to choose between economies of scale (such as home care ever more thinly spread in 10-minute calls) or allocating bespoke support, better tailored to individual requirements, to falling numbers of individuals. In these circumstances, assumptions about older people’s expectations and

lifestyles may influence decisions on resource allocation in ways that could constitute discrimination.

- As well as ensuring that the allocation of scarce care and support resources is fair and equitable, it will be important to ensure ready access for both working age and older disabled people to high quality advice, information and advocacy services. As growing numbers are potentially assessed as ineligible for state support (growing demographics set against most councils now operating at Substantial or Critical level of eligibility – ADASS Survey confirms 122 councils at this level for 11/12) , it will be all the more important that they are enabled to make informed decisions about alternative service and resource options open to them. The information and advice should be in age-appropriate formats, media and presentation, taking advantage of the ever-growing range of web and communications applications. Effective advocacy will ensure people of whatever age are able to express their preferences, claim their entitlements and exercise maximum choice and control in finding the right solutions for them and their families and carers. ADASS has commented upon this aspect within their response to the Department of Health consultation on the Information Revolution, January 2011

Question 3: Are there any areas in health and social care in Scotland or Wales where you believe that there may be differences in approach to the use of age in decision making compared to England?

Please place a cross in the appropriate box

Yes ☐ No ☐ Not sure ☐

Please explain why -

Financial services

Question 4: Does exception 2 (financial services) in the proposed draft Order in Annex 1 adequately achieve the policy intent described in paragraphs 6.1 to 6.10? If not, or you are not sure, please explain why.

Please place a cross in the appropriate box

Yes		No		Not sure	

Please explain why -

Question 5: Do you agree that a service level agreement signed by both the ABI and the Government showing how age is used when assessing risk and pricing products is an effective way to achieve improved transparency?

Please place a cross in the appropriate box

Agree		Disagree		Not sure	

Please explain why -

Question 6: Do you agree that a service level agreement signed by BIBA, ABI and the Government, agreeing that a signposting/ referral system should be set up so that those refused an insurance product, because of their age, are referred to a supplier that can help them; is an effective way to achieve improved access?

Please place a cross in the appropriate box

Agree ☐ Disagree ☐ Not sure ☐

Please explain why -

Question 7: Are there any instances where the *customer experience* of people of different ages in accessing financial services (apart from questions of design, delivery, transparency, access already addressed) causes concerns? Are existing safeguards adequate? If not, what would be a helpful and proportionate way to address these?

Are there any instances where the *customer experience* of people of different ages in accessing financial services (apart from questions of design, delivery, transparency, access already addressed) causes concerns?

Please place a cross in the appropriate box

Yes		No		Not sure	

Are existing safeguards adequate?

Please place a cross in the appropriate box

Yes		No		Not sure	

Please explain why -

General services, public functions and private clubs or associations

Question 8: Does exception 3 and 6 (concessionary services and associations - concessions) in the proposed draft Order in Annex 1 adequately achieve the policy intent described in paragraphs 7.3 – 7.9 for both service providers and associations? If not, or you are not sure, please explain why.

Please place a cross in the appropriate box

Yes		No		Not sure	

Please explain why -

Question 9: Does exception 4 (age related holidays) in the proposed draft Order in Annex 1 adequately achieve the policy intent described in paragraphs 7.10 – 7.14? If not, or you are not sure, please explain why.

Please place a cross in the appropriate box

Yes		No		Not sure	

Please explain why -

Question 10: Does exception 1 (immigration) in the proposed draft Order in annex 1 adequately achieve the policy intent described in paragraphs 7.15 – 7.17? If not, or you are not sure, please explain why.

Please place a cross in the appropriate box

Yes		No		Not sure	

Please explain why -

Question 11: Does exception 5 (residential mobile homes) of the proposed draft Order in annex 1 adequately achieve the policy intent described in paragraphs 7.18 – 7.25? If not, or you are not sure, please explain why.

Please place a cross in the appropriate box

Yes		No		Not sure	

Please explain why -

Question 12: Does exception 7 (sport) of the proposed draft Order adequately achieve the policy intent described in paragraphs 7.26 – 7.32? If not, or you are not sure, please explain why.

Please place a cross in the appropriate box

Yes		No		Not sure	

Please explain why -

Question 13: Do you have any further comments about the draft Order (Annex 1), over and above any comments you have already made about the exceptions it covers?

Please place a cross in the appropriate box

Yes ☐ No ☐

Please explain why -

Implementation

Question 14: What would you like guidance to cover to ensure that businesses and organisations are clear about what they need and do not need to do?

Please explain why -

- For social care commissioners and providers, further clear guidance and training materials could be helpful on:

Application of the principle of “objective justification”, defined as “a proportionate means of achieving a legitimate aim”, in the context of social care provision.

How to prioritise the rights of adults for independence, control, choice and participation

Question 15: What particular types of businesses or organisations do you think will need tailored guidance on how the changes affect them?

Please explain why -

Question 16: What do you see as the best way to communicate this guidance to businesses and organisations? Where would you normally go for guidance on discrimination law?

Please explain why -

Impact assessments

Question 17: Can you provide any data on costs and benefits, which have not already been included in the impact assessment? Do you have any comments on the assumptions or estimates we have made? Please give details of the sector(s) to which you are referring.

Please place a cross in the appropriate box

Yes [X] No [ ]

Details – Social Care

- The Impact Assessment is partial and unreliable in relation to costs of social care. On p 51, quoting "government spending" on social care, the figures of £1.3bn and £3.4bn relate only to the DH contribution to social care budgets, some of it to be channelled via the NHS. The bulk of the adult social care budget which comes as part of the DCLG rate support arrangements is omitted, although the figures below for packages of care, community-based services and assessments rely on this funding. There is also no mention of local authorities' heavy reliance on income from charges to offset a significant proportion of social care expenditure
- Whilst the benefits quoted include "fairer and more equitable access" to services, and easier access to proper assessment, there is no recognition of the increased demand for assessment and care services which would flow from this activity. There is indeed a marked discrepancy between the focus in the Equalities Impact Assessment on the benefits of better, more accessible support and the minimal-cost theme of the Impact Assessment.
- In the context of reducing emergency stays in hospital for over-75s, there is a reference (p55) to the finding from the "Partnerships for Older People" (POPPS) projects that every additional £1 invested produced £1.20 additional benefit in reduced emergency bed days. This glosses over the fact that the savings are to the NHS budget, but the extra spend generally needs to be found by local authorities.
- The section (p57 et al) on "General costs of banning age discrimination in health and social care" deals only with costs to the NHS, with no evidence or discussion relating to social care. It concludes (p59) "there will therefore be no additional costs associated with the legislation banning age discrimination for health and social care". Earlier sections of this response have indicated some of the cost pressures which could arise in social care if specific rationing measures are found to be discriminatory.
- The section on "Age-based charging" (p61) glosses over the different social care charging treatment of older people and working age people noted earlier, which in some circumstances may be judged discriminatory..

Question 18: Can you provide any further information or views to help us calculate the economic benefits of reducing discrimination? Please give details of the sector(s) to which you are referring.

Please place a cross in the appropriate box

Yes [X] No [ ]

Details -

- The Impact Assessment interprets “economic benefits” generally in commercial terms, identifying marketing and sales opportunities in the growth of the retired community. In the social care field, self-funders already account for a significant and growing slice of the market for domestic, home care, residential and nursing home services, often supported by contributions from relatives. The market is large, expanding and sufficiently reliable to attract considerable capital investment.

- The IA also identifies the problems associated with social detachment in older people, and the implications of lack of access to transport, telephones, internet, banking and financial facilities, post offices and shops, as well as social and physical activity. “Social detachment can result in inactivity and isolation”. Conversely, social inclusion benefits older people’s physical and mental health and wellbeing, and reduces and/or delays their dependence on care and support services as well as NHS provision. This has clear economic benefits at national and local level, and strengthens the case for increasing investment in prevention and early intervention, despite the difficulties of doing so in the context of heavily constrained budgets, and is an approach that is clearly supported by Government as set out in the Public Health White Paper consultation March 2011 and established in the Government’s Vision for Adult Social Care- Capable Communities and Active Citizens , November 2010.

Question 19: Does the equality impact assessment properly assess the implications for each of the equality target groups? If not, please explain why.

Please place a cross in the appropriate box

Yes		No	X

Please explain why –

- Generally, as noted, the EIA and the IA are better informed about the NHS than social care, with the result that the analysis of social care issues is often somewhat superficial and patchy.
- The IA section on “Age-appropriate services and facilities” (p66) contains examples of what will be good for older people, some of which are themselves based on ageist assumptions. Older people requiring activity opportunities, support and care during the day, for instance, will not necessarily want to receive them in age-segregated day centres. Access to mainstream services used by the rest of the population, or to multi-age facilities with scope for inter-generational links, may be both preferable to them and more beneficial to their wellbeing.
- Within the overall population of older people, other equality target groups are well-represented. A large proportion of older people seeking social care are disabled, and many suffer the effects of multiple disease and disability conditions. People with long-term mental health conditions, and those with learning disabilities, encounter additional difficulties with ageing. Health and social care services are often not well-configured to meet the requirements of people with combinations of physical, mental health and learning disabilities in ways they experience as integrated.
- Older people from black and minority ethnic communities, the variety of faith communities, and the range of sexual orientations often have difficulty in accessing supportive services capable of responding to their particular needs and expectations. This has implications for local authorities as market-shapers in fostering diversity of provision.