

Welsh Declaration of the Rights of Older People Advisory Group

Report to the Deputy Minister for Social Services

September 2013

Background

Wales has been innovative in establishing the Strategy for Older People in Wales, the Older People's Well-being Monitor and the world's first Older People's Commissioner. The Strategy, Monitor and Commissioner are required to reflect the values of the UN Principles for Older Persons in their work.

In October 2012, the Older People's Commissioner issued a briefing to the First Minister of Wales which said that whilst many positive steps have been taken to protect the interests of older people in Wales more could be done, particularly in relation to upholding the rights of older people. The UN Principles are helpful but the Commissioner has found that the Principles have little meaning for older people in Wales because they lack ownership of them.

The number of older people in Wales is growing and there is no dedicated set of rights for older people in the Welsh context. Age discrimination and ageism are widely tolerated across the world and Wales should demonstrate that we are not willing to tolerate such attitudes.

The Commissioner has challenged the Welsh Government to set a 'gold standard' in the treatment of older people. A Welsh Declaration of the Rights of Older People would demonstrate a commitment to such a standard.

On 11 December 2012, the Deputy Minister for Children and Social Services announced the Welsh Government's commitment to exploring a Welsh Declaration of the Rights of Older People that would send very clear signals to statutory bodies and service providers, as well as to older people themselves, about expectations in Wales when older people receive the support and services they need to lead independent and full lives. She also announced that the Commissioner would lead an Advisory Group to give advice to the Welsh Government on the potential content, parameters and impact of such a Declaration. This is the report of that Advisory Group.

The Advisory Group

The Commissioner invited the following to be members of the group:

- The National Partnership Forum regional representatives
- The Welsh Senate for Older People
- Age Alliance Wales
- John Williams, Aberystwyth University
- Welsh Government

The Advisory Group was chaired by the Older People's Commissioner.

Terms of Reference

1. Following consideration and analysis of relevant evidence, to advise on the potential content of a Welsh Declaration of Rights for Older People.
2. To outline clearly how older people would be made aware of the Declaration, its benefit to them and how they can make use of it to claim their rights.
3. To outline clearly how the Declaration should be used in practice by service providers and how it might impact their policies and practices.
4. To define parameters for the Declaration and identify potential legal implications.

A Draft Declaration of the Rights of Older People in Wales

1. Content of the document

A draft Declaration is attached. The ‘speech quotes’ are real quotes from older people and illustrate in some small way how rights may be overlooked in practice. The Declaration is drafted in the first person so that people can immediately grasp hold of it and verbalise it for themselves.

The draft Declaration is simple and straightforward; it is high level and is not concerned with too much detail – this is deliberate. Detail can be added later on (see below).

The document may need to be altered slightly when formally published to make it more accessible. However, the general feedback so far from older people has been that they like the layout and the colours bring it to life.

2. How would older people be made aware of the Declaration, its benefit to them and how they can make use of it to claim their rights?

The Declaration should be published as a full document and also as a 'headliner' document, i.e. the rights without the detail or quotes. A smaller leaflet/document could be published and distributed online and in hard copy. The Declaration must be made available in accessible formats.

All organisations that work with older people should have it on their websites and should promote its use, e.g. 50+ Fora, local and national older people's organisations, and 'umbrella' organisations. Ultimately, the best way for things like this to become widely known in Wales is to encourage 'good gossip' about it, so communication through a wide range of media – including national television - will be vital in making this happen. There will be many older people and organisations that would be willing to help by using their contacts and networks.

The Welsh Government would have a role in setting up the Declaration as the standard for Wales. The Older People's Commissioner would have a role in carrying out work explaining what the Declaration should mean in practice, e.g. providing training and supporting documents.

The Declaration will have greatest effect when written into legislation and statutory guidance (see below).

3. How would the Declaration be used in practice by service providers and how might it impact their policies and practices?

The Advisory Group is keen to see the Declaration written into commissioning and procurement contracts and any documents that relate to the values of the service provider. It may be that the Welsh Government would award, over time, some kind of 'kite mark' to those organisations that adopt the Declaration *and* put its ethos into practice.

Again, the Older People’s Commissioner and others could assist in providing training for service providers and provide resources that explain how the Declaration would be put into practice. It is very important for public bodies to understand that the Declaration merely underlines the legal duties they already have under the Human Rights Act 1998 and the Equality Act 2010 – and will have under new legislation such as the Social Services and Well-being (Wales) Act and the forthcoming regulation and inspection legislation.

4. What are the parameters and potential legal implications for the Declaration?

In and of itself, the Declaration has no legal status – which is similar to the position of the UN Principles for Older Persons. However, like the UN Principles, the Declaration could be incorporated into primary legislation. For example, s.25 of the Commissioner for Older People (Wales) Act 2006 states:

“In considering, for the purposes of this Act, what constitutes the interests of older people in Wales, the Commissioner must have regard to the United Nations Principles for Older Persons adopted by the General Assembly of the United Nations on 16 December 1991.”

The Declaration provides a useful measure by which to establish whether public bodies are achieving outcomes for older people that uphold, and do not breach, their human rights. The National Assembly could choose to incorporate the Declaration into new legislation – such as the Social Services and Well-being (Wales) Bill or the new Regulation and Inspection Bill – in order to set a benchmark for measuring outcomes for older people and for devising policies and guidance that support the legislation. For example, there could be a clause that states:

“For the purposes of this Act, in order to ensure that the rights of older people are upheld, public bodies and those providing services on their behalf must have regard to the Declaration of the Rights of Older People in Wales adopted by the National Assembly for Wales on xxx 2014.”

An older person could not bring a claim to enforce a specific right in the Declaration against another person or public body, however, if a court were to review (for example by judicial review) the manner in which a public body - or person discharging duties on behalf of a public body - has discharged its functions under primary legislation that contains a clause about the Declaration (as above) it could consider whether or not the body/person being reviewed has given regard to the Declaration. If a person wishes to bring a direct human rights claim, they would still have to use existing human rights law such as the Human Rights Act 1998, which is why the Declaration outlines – in a very basic manner - relevant UK legislation.

The primary aim of the Declaration would be to change attitudes and practices by convention - “*this* is how we treat older people in Wales”.

Conclusion

As an Advisory Group, we can say that this has been a challenging but highly rewarding task to undertake. There was plenty discussion and debate before the final document was drafted. Our aim was not to engage in academic debate but to put pen to paper and come up with some principles that, if taken seriously, will make a real difference for the 767,000 plus older people who live in Wales.

This is what the draft Declaration aims to do and it is our hope that it will be adopted and be significant in signalling a shift in the way we, in Wales, choose to view ageing. As one gentleman said recently, “What *is* an older person? I just think it is someone who is ten years older than me.”

**Declaration of the Rights of Older People Advisory Group
September 2013**

Evidence base

“An anatomy of economic inequality in Wales”, Equality & Human Rights Commission, 2011

“Close to home: An inquiry into older people and human rights in home care”, Equality & Human Rights Commission, 2011

“A Framework for the Law as it Affects Older Adults: Advancing Substantive Equality for Older Persons through Law, Policy and Practice”, Law Commission of Ontario, 2012

“How fair is Wales?”, Equality & Human Rights Commission, 2011

“Human rights issues arising from the treatment of older persons in hospital and residential care”, Alzheimer’s Society, 2007

“The Human Rights of Older People in Healthcare”, House of Lords & House of Commons Joint Committee on Human Rights, 2007

“In Defence of Dignity: The Human Rights of Older People in Nursing Homes”, Northern Ireland Human Rights Commission, 2012

“Older People and Human Rights”, Age Concern and the British Institute of Human Rights, 2009

“Older People and Human Rights: A reference guide for professionals working with older people”, Age UK and the British Institute of Human Rights, 2011

“Protection of Older People in Wales: A Guide to the Law”, Older People’s Commissioner for Wales, 2011

“Report of the United Nations High Commissioner for Human Rights; Older People”, United Nations Economic and Social Council, 2012

United Nations Principles for Older Persons, 1991

“Your Human Rights: A guide for older people (Second edition)”, British Institute of Human Rights, 2010

A Declaration of the Rights of Older People in Wales

“There is no old age. There is, as there always was, just you.”

Carol Matthau 2003

Introduction

In Wales, we believe that people should not be defined by their age. Age is just a number that says very little about who older people are as individuals and how diverse they are. Older people are integral to Welsh society, communities and families. Wales has been and will continue to be shaped by their contributions.

Although older people possess the same lifelong rights as any other adult in Wales, we sometimes need to be reminded of these rights and that is the purpose of this Declaration. The Declaration does not replace existing legal rights – it builds on them. Older people's rights should be upheld by public bodies and others who work for them.

Although each statement is written separately, they must be understood in relationship to one another. Some of the statements complement each other. Others may appear to conflict and it will be necessary to balance one against the other, as is always the case with human rights.

I have the right to be who I am

Not all older people are the same and I have the right to be who I am. I am a unique person and have the right to be understood, considered and recognised as an individual. I have the right to be treated equally and without discrimination.

My faith is central to who I am

My pets are more important to me than people

I want to use my own language

The way I dress says who I am

I want my care home to welcome my same sex partner

Don't make me sing 'Daisy, Daisy'...I like Status Quo.

European Convention on Human Rights and Human Rights Act 1998 :

- Article 8 – Private & Family Life
- Article 9 – Freedom of Religion
- Article 10 – Freedom of Expression
- Article 12 – Right to Marry
- Article 14 – no discrimination in enjoyment of these rights

Equality Act 2010

I have the right to be valued

Because I am human I have the right to be valued. My life is significant to me and those who care about me, and I have a right to live a life that has value, meaning and purpose. I matter. I am of worth both when I contribute to society and when I no longer do so.

European Convention on Human Rights and Human Rights Act 1998 :

- Article 8 – Private & Family Life
- Article 14 – no discrimination in enjoyment of these rights

I still have 'places to go' and 'people to see'

Please talk **to** me – not **at** me or **about** me

Sometimes I feel invisible...as if I don't exist

I need to be involved in decisions about my life and my community

I am happiest when I know that I 'belong'

I don't want special treatment – just to be treated with common courtesy and decency

I have free will and the right to make decisions about my life

I have the right to make decisions and be supported to do so if necessary. I have the right to exercise my free will and make choices. My opinion is the most important when decisions are being made about me and my life. I have a right to be supported to live independently.

Life is for living no matter how old I am

Sometimes I just need a little bit of help so I can get on with my life

I decide when I go to bed and when I get up

Remember I take one teaspoon of sugar in my tea

Knowledge is power: please give me the information I need to make the right decision for me

I decide who I will have relationships with

European Convention on Human Rights and Human Rights Act 1998:

- Article 8 – Private & Family Life
- Article 9 – Freedom of Religion
- Article 10 – Freedom of Expression
- Article 11 – Freedom of Association
- Article 12 – Right to Marry
- Article 14 – no discrimination in enjoyment of these rights

I have the right to decide where I live, how I live and with whom I live

I have the right to decide where I live and to choose the person or people to spend my life with. I have a right to be in my own home and with the community I love.

European Convention on Human Rights and Human Rights Act 1998:

- Article 8 – Private & Family Life
- Article 12 – Right to Marry
- Article 14 – no discrimination in enjoyment of these rights
- Protocol 1, Article 1 – enjoyment of possessions & property

Don't wrap me in cotton wool

This village is my community and I want to stay here – even if I need to go into a care home

My partner and I have decided we are going to live together, but people say we can't. Yes we can.

I chose this house and it is part of me now

I often prefer my own company

I am not the tidiest person and they all think I've 'lost it'. I haven't – I just have too many other interesting things to do!

I have the right to work, develop, participate and contribute

My life does not come to an end because I have reached a certain age. I have a right to work. I have a right to full involvement in my own community. I have a right to thrive and to continue learning, developing and growing. I have a right to support so I can continue contributing. I have a right to explore new things.

I like being around young people – it keeps me young

I still have skills and want to use them

Looking after my grandchildren is great fun, but it is not the only thing I can do

I was a book keeper. I asked a local charity if I could keep their books – they said it would be too much for me at my age. I told them to write down twenty random numbers – I added them up in my head faster than they did on the calculator. They took me on.

I have just enrolled for a computer course. People say 'why bother at your age?' Simple - I am hungry to learn and am not going to miss out on something new and exciting.

European Convention on Human Rights and Human Rights Act 1998:

- Article 8 – Private & Family Life
- Article 9 – Freedom of Religion
- Article 10 – Freedom of Expression
- Article 11 – Freedom of Association
- Article 14 – no discrimination in enjoyment of these rights

I have a right to safety, security and justice

I have a right to be taken seriously when I am afraid. I have a right to information and advice that addresses my worries and uncertainties. If I need the law to protect me I should not be treated differently because I am older. I also have the right to take risks if I want to.

My life has been made so 'safe' that it is boring.

It doesn't take a lot to make my street feel safe – good street lighting and seeing the police now and again

I would make a perfectly good witness

I don't want special protection, but I do want the same protection from the law as anyone else

Why is it that when an older person is abused or neglected nothing seems to be done? That makes me really angry. Are we not important?

I get most worried when I don't know what is happening

European Convention on Human Rights and Human Rights Act 1998:

- Article 3 – Freedom from Inhuman and Degrading Treatment
- Article 8 – Right to Private Life
- Article 5 – Right to Liberty & Security
- Article 6 – Right to a Fair Hearing
- Article 14 – no discrimination in enjoyment of these rights