

Briefing

Ban on Age Discrimination in Services

After many years of campaigning by Age UK, its predecessor organisations and many of our partners, a ban on age discrimination in services (including the provision of goods and facilities), comes into force on **1 October 2012**. From this date it will be unlawful for service providers to discriminate on the basis of age unless the practice is covered by an exception from the ban, constitutes positive action designed to address disadvantage experienced by a particular age group or good reason can be shown for the differential treatment ('objective justification').

The ban is introduced under the Equality Act 2010, covers those aged 18 or over, in both the private and public sectors, and is applicable in England and Wales. It aims to prevent discrimination, harassment and victimisation defined as follows:

Direct discrimination will be deemed to have occurred where an older person is treated less favourably than others would be treated, because of their age.

Indirect discrimination occurs when there are rules, regulations or procedures operating, which have the effect of discriminating against certain groups of people, in this case older people. This may happen in subtle ways.

Harassment involves unwanted conduct which is related to a relevant characteristic and has the purpose or effect of creating an intimidating, hostile, degrading humiliating or offensive environment for the complainant or violating the complainant's dignity.

Victimisation occurs when a person is treated badly because he or she in good faith has made or supported a discrimination claim under the Equality Act provisions. The aim of this is to protect people from any reprisals.

The main area in which we expect the ban to improve the lives of older people is in health and social care, where there is compelling evidence of the harmful effects of age discrimination. It is especially important that tackling age discrimination is prioritised at this time of major service reform in both health and social care. The Department of Health has produced guidance to assist health and social care

services in implementing the legislation;
<http://www.dh.gov.uk/health/2012/09/briefing-age-discrimination/>.

When is it permissible to discriminate on the grounds of age?

The legislation recognises that not all discrimination on the grounds of age is harmful and service providers should not automatically adopt a 'one size fits all' approach in response to it. In some circumstances there may be good reasons for treating one age group differently or providing a discrete service for them. For example a specialist mental health service for older people which can offer expertise in age related conditions such as dementia. The legislation provides for a number of mechanisms in order to ensure that these beneficial age based differences in treatment able to continue. These are **exceptions, positive action** and **objective justification** as detailed below:

Exceptions

(i) General

The Equality Act 2010 already contains a number of general exceptions which will also apply to the ban on age discrimination in services. It will be lawful to treat people differently because of their age in the following circumstances:

- ❖ where another piece of legislation allows or requires people to be treated differently because of their age. For example age-based state benefits will not be affected.
- ❖ where charities provide benefits only to people of the same age group, if this is in line with their charitable instrument and if it is objectively justified or to prevent or compensate for disadvantage.
- ❖ where a private club or association caters for a particular age group.

(ii) Specific¹

A number of further exceptions specific to age discrimination have been set out in the regulations which come into effect on 1 October 2012.²

- ❖ **Financial Services:** Despite concerted lobbying on the part of Age UK and others the Government does not believe there is sufficient evidence of harmful age discrimination to apply the ban in this area. Therefore the regulations include a wide exception allowing financial service providers to continue to use age when assessing risk and deciding prices; and permitting the use of age banding and age limits. The regulations stipulate that any such use of age will need to be based on relevant information which is from a source on which it is reasonable to rely. The insurance industry has also put in place a voluntary signposting arrangement under which providers will refer people refused an insurance quote because of age to another provider who will quote or to a signposting service. Age

¹ For further details see <http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/age-discrimination-ban?view=Binary>

² Equality Act 2010 (Age Exceptions) Order 2012

UK will be monitoring these arrangements and will continue to push for the exception to be removed.

- ❖ **Concessions:** The regulations allow any service provider in the public or private sector to use age as a criterion to determine the eligibility for concessions or benefits. This applies where the purpose of the concession is to benefit a specific age group. For example a 10% discount for over 65s in a hairdressers or reduced admission fees for over 65s to museums and theatres. This also applies to age-based concessions in private clubs or associations.
- ❖ **Age specialist holidays:** An exception allows specialist holiday providers to continue to provide holidays for people in particular age groups, provided that the eligible age range for the holiday is clearly stated in the promotional material.
- ❖ **Age 'challenges' or verification:** applies to shops when selling age restricted goods (e.g. alcohol)
- ❖ **Residential park homes:** applies to owners of sites where static caravans and the like are used as permanent places of residence. The exception covers the arrangements for deciding who should become a resident.
- ❖ **Sport:** This exception allows continued use of age limits and age bands which are necessary for fair competition, the safety of competitors or to comply with rules set by national, international or sports governing bodies.
- ❖ **Immigration**

Additionally s. 32 Equality Act 2012 exempts people from protection from discrimination in the disposal and management of premises on the grounds of age. This is intended to allow age-based housing provisions such as sheltered housing for older people or Foyer homelessness services to continue.³

Positive Action

Positive action which treats people differently according to their age is allowed under the Equality Act. This is when the action being taken prevents or compensates for disadvantages experienced by, or meets the particular needs of, such age groups; or when it encourages people from particular groups to take advantage of opportunities when underrepresentation has been identified. An example might be an IT class targeted at the over-50s. Positive action needs to be objectively justified if challenged (see "objective justification" section below).

Objective Justification

Additionally, in relation to both direct and indirect discrimination (but not victimisation or harassment) it will still be legal to treat people differently on the basis of age where that can be 'objectively justified'.⁴ To meet this test the service provider must be able to say why acting in an age discriminatory way is a proportionate means of achieving a legitimate aim. In other words they must be able to clearly state what the policy or practice in question is aiming to achieve, how the use of age is helping to achieve it and why there is no other less discriminatory way of doing so.

³ Part 4 does not apply where accommodation is provided either as a short-term let or where it is provided as part of a service to the public or a public function. In these instances Part 3 applies instead of Part 4 and so age discrimination is prohibited.

⁴ Age is the only protected characteristic for which direct discrimination can be objectively justified. Indirect discrimination on any ground can be objectively justified,

Legitimate aims can often be outcomes that are socially positive or generally in the public interest. Business needs and efficiency could be a legitimate aim, but there would normally need to be wider social factors too. By way of illustration, it is likely that a health screening programme that targeted a particular age group would be objectively justifiable if there is good evidence that this group was more likely to be susceptible to the disease.

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KH/October 2012

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