

Age discrimination in the provision of services

Executive summary

- From **1 October 2012** it will be unlawful for providers to discriminate on the grounds of age in the provision of goods, services and facilities.
- For these purposes the protected characteristic of age encompasses both older and younger age groups but does not cover children under the age of 18.
- Not all age discrimination will be unlawful. There are both general and specific exemptions in the legislation as well as the ability for service providers to “objectively justify” any treatment which would otherwise be unlawful.
- Exemptions for age discrimination include: age requirements authorised by other legislation, assessing risks for financial services, offering age related concessions, providing holiday services for specific age groups, age requirements for residents on park home sites and sport.

Introduction

The Equality Act 2010 (the “Act”) makes it unlawful for a service provider to discriminate in the provision of services to the public. “Services” includes goods and facilities.

A service provider must also refrain from harassing a service user or someone trying to access services and must not victimise a person by not providing services.

Service providers would include for example, retailers, insurance companies, financial services, holiday operators, owners of mobile home sites, sports bodies and leisure facilities.

In addition, a person who exercises a public function must not do anything which constitutes discrimination, harassment or victimisation. This would cover the NHS, local councils and Government departments.

The ban on age discrimination in the provision of services is separate from but does not change the prohibition on age discrimination by employers against their staff and job applicants.

Extent of the prohibition

Currently the following characteristics under the Act are protected against discrimination in the provision of services: disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The ban on **age discrimination** in the provision of services will come into force on **1 October 2012**.

Meaning of age discrimination etc.

Direct age discrimination involves treating someone less favourably because of their age in comparison to someone in a different age group.

Indirect age discrimination occurs where a practice or policy applies to everyone but people in a particular age group are put at a disadvantage by it and the policy or practice can not be “objectively justified”.

Harassment is unwanted conduct related to age which violates a person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

Victimisation involves subjecting someone to a detriment where they have made a complaint of discrimination themselves or supported someone else’s complaint for example, by acting as a witness.

Objective justification involves showing that there is a good reason for the policy, practice or treatment and there is no fairer way of achieving the desired outcome. In legal parlance this is known as “a proportionate means of achieving a legitimate aim”. A legitimate aim would include something which was socially positive or in the public interest. An economic reason alone i.e. it simply being cheaper for the service provider to discriminate than not discriminate will not be a legitimate aim. Deciding whether something is a proportionate means of achieving a legitimate aim is not easy and ultimately only a court can decide whether or not something is objectively justified.

Lawful age discrimination

The ban does not apply in respect of children under 18 and not all age discrimination will be unlawful. There are wide ranging **exemptions** in the Act which are considered below.

Even where there is not a relevant exemption, age discrimination will not be unlawful where it can be **objectively justified**.

In addition, “**positive action**” (but not positive discrimination) will be possible. Positive action may be taken to meet the needs of or compensate for disadvantage suffered by a particular age group. It may also encourage participation where under-representation has been identified. For example, public libraries may offer specialist sessions for the over 60s to learn about using the internet. Any positive action must be objectively justified.

Exemptions

Where a relevant exemption applies service providers will not be prevented from continuing to act in a way which would otherwise be age discriminatory.

The Act (schedule 23) contains a number of general exemptions. Perhaps the most important of in the context of age discrimination is the exemption for action authorised by other legislation which requires or allows different treatment based on age. This would cover for example, the requirement to be 21 to hold an HGV licence and age limits on jury service.

The Equality Act 2010 (Age Exceptions) Order 2012 creates the following further exceptions in respect of age discrimination:

- Providing **financial services**. This is subject to a proviso that, where the financial service provider conducts a risk assessment for the purposes of providing the service, that assessment must, so far as it involves a consideration of their customer's age, be done by reference to information which is relevant to the assessment of the risk and from a source on which it is reasonable to rely. It will not therefore be lawful to simply make arbitrary decisions based on assumptions about someone's age which are not founded on objective data.
- Offering **concessions** i.e. any sort of discount, special offer or arrangement for preferential treatment offered to people in a particular age group. There is no need to state a reason for the concession and no restriction on the form it can take. There is a similar exemption for private clubs and associations which offer age based concessions e.g. cheaper access to facilities for people over a certain age.
- Providing **holiday services** to a particular age group for example, club 18-30. However, the main purpose of the holiday must be to bring together people of that age group to enjoy services designed with regard to people of that age and the age range must be clearly stated at the time the holiday is offered. This means that the exception does not apply to package holidays that are offered to people of all ages, businesses that did so but then wished to limit or refuse access to people of a certain age would have to be able to objectively justify this.
- Schemes operated by businesses selling age-restricted goods such as alcohol, fireworks or cigarettes to verify customers' ages. The retailer must clearly indicate that they will ask for proof of age where the customer appears to be under age.
- Limiting occupation of **park homes** on site to people of a particular age. For example, owners of sites for static caravans may restrict residence to people over 50. This requirement must be clearly set out in the lease arrangements. The exception does not apply to visitors to such parks or the services they may use when on-site and does not apply to holiday parks.
- **Sport**: age-bands may continue to be used where these are necessary for fair competition or safety of competitors, to comply with rules set by national, international or governing bodies, or to increase participation. This exception applies not only to physical sports and games but also more mental or intellectual activities such as bridge or chess. Any age restrictions must be made clear in any advertising and the exemption does not apply to age bands that exist for purely historical or social reasons. However, it may be possible to objectively justify such an age band.

Enforcement

If customers want to challenge alleged age discrimination they will generally need to show that they were genuinely seeking to use the service or buy the product, speculative claims are unlikely to succeed.

Proceedings for discrimination in the provision of services must be brought in the county court within six months of the act complained of. The county court may grant any remedy that the High Court could grant in proceedings in tort or on a claim for judicial review. This includes both financial and non-financial remedies such as a declaration. Discrimination is a statutory tort, and the basis of any damages awarded will be to put the injured party back in the position they were in before the tort occurred.

The court may also award damages by way of compensation for injured feelings and this is generally the most commonly awarded compensation in such cases. The level of damages for injury to feelings is currently divided into three "Vento" brackets ranging from £750 to £30,000.

Comment

Given the extent of the specific exemptions which will apply to age discrimination in the provision of services, together with the ability for service providers to objectively justify any potential age discrimination; it is unlikely that retailers and others will need to change their practices to a significant degree. However, it would be prudent for organisations to consider their policies and practices which involve age and whether these could be vulnerable to challenge after 1 October 2012. Businesses need to be able to provide justification for these if challenged but should not wait for a claim before doing so. If practices are identified which do not fall within the exemptions, positive action provision or can not be objectively justified then changes will need to be made.

Further information

The Government Equalities Office has published guidance for service providers and their customers on the age discrimination ban: [New Guidance available on forthcoming age discrimination ban in services and public functions](#)