

Birmingham City Council Equality Act 2010 Fact sheet

AGE EQUALITY

The Equality Act (2010) consolidates all previous equality legislation and extends some protections to groups that were not previously covered. Although there are similarities, there are also significant differences concerning the types of protection afforded the different protected groups. The protected characteristics include: **age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.**

This Fact Sheet discusses the provisions with regard to the characteristic, **AGE**. It forms part of a series of fact sheets that highlight the relevant points pertaining to the Act for each of the nine protected characteristics. More detailed guidance and information about the provisions can be found in the [Equality Act 2010 Statutory Code of Practice Employment](#) and the [Equality Act 2010 Statutory Code of Practice Services, public functions and associations](#).

WHAT IS THE PROTECTED CHARACTERISTIC OF AGE?

The Act defines age by reference to a person's age group. As explained in the Equality Act 2010 Explanatory Notes:

“where the Act refers to the protected characteristic of age, it means a person belonging to a particular age group. An age group includes people of the same age and people of a particular range of ages. Where people fall in the same age group they share the protected characteristic of age”¹

WHAT FORM OF PROTECTION DOES THE ACT PROVIDE?

Those who share the protected characteristic of Age are protected from direct and indirect discrimination, harassment and victimisation, as discussed below. Such protection applies in a range of areas including **employment**; the **provision of services**; the **exercise of public functions** and **Membership associations**². Age discrimination in employment has been unlawful since 2006, and has been reinforced and extended by the Equality Act. Age discrimination protection in the remaining three areas (i.e. services, public functions and Membership associations), became law recently, when the Equality Act 2010 (Age Exceptions) Order 2012, came into effect on 1 October 2012.³

¹ **EQUALITY ACT 2010, EXPLANATORY NOTES** Revised Edition August 2010 (p13)

² Membership associations generally provide services or other benefits to their members, associates or guests. Under the Act, associations include those bodies which have membership criteria such as private clubs and political parties. Only associations with at least 25 members have obligations under the Act. (Cited in the Equality Act 2010 Code of Practice (Services, public functions and associations).

³ Home Office Announcement – www.homeoffice.gov.uk/equalities/equality-act/age-discrimination/ [visited on 14/08/12]

Direct age discrimination is where someone is unfairly treated in comparison with another, for example, where an older person is refused admission to a gym or a nightclub simply because of their age, where a younger person would be admitted.

There are two supplementary provisions that protect people from direct discrimination or harassment. These include:

- Discrimination by **Perception** – e.g. where a person is discriminated against or harassed because he or she is mistakenly thought to share a protected characteristic such as age.
- Discrimination by **Association** – e.g. where a person is discriminated against or harassed because he or she is associated with a person who has a protected characteristic such as age.

Indirect age discrimination is where a rule or practice applies to everyone, but puts a particular group of people at a disadvantage. For example, where an optician allows payment for spectacles by instalments, but restricts eligibility to those in work. The optician's practice applies to everyone, but puts pensioners at a disadvantage.

Harassment is unwanted conduct which violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. For example, where a computer salesperson makes assumptions about an older person's ability to use a computer, and makes offensive remarks and jokes about this.

Victimisation is where someone who has made a complaint of discrimination or harassment or supported someone else's complaint is victimised as a consequence. For example, a customer has arranged to be a witness and to give evidence in a court case against a service provider and in response the service provider threatens not to serve that customer in future if they go ahead with giving evidence⁴.

DOES THE PROTECTED CHARACTERISTIC OF AGE APPLY UNIVERSALLY TO ALL AGE GROUPS?

Different circumstances determine whether a particular age group is protected from age discrimination. In relation to the provision of services and the exercise of public functions the protected characteristic of age applies to persons aged 18 and over, exclusively. However, in relation to Members' associations (such as a private members' club), age is a protected characteristic irrespective of the person's age".⁵

⁴ Government Equality Office "Equality Act 2010, Banning Age Discrimination In Services, An Overview for service providers and customers

⁵ The Equality Act 2010 Code of Practice (Services, public functions and associations), par 1.11
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/servicescode.pdf

ARE THERE ANY EXCEPTIONS?

There are circumstances where age discrimination is lawful. The Government Equality Office has published a guide that sets out the circumstances in which it remains lawful to use age as a reason for treating people differently “by **exception**, **positive action** and **objective justification**”⁶.

Exceptions - The Equality Act 2010 allows for a number of **general** exceptions to the prohibition of age discrimination. These exceptions take account of other pieces of legislation which allow or require people to be treated differently because of their age such as legal age-restrictions on adoption and fostering, age limits on jury service, age-based state benefits entitlements such as state pension, free bus passes for older people etc. As well as the general exceptions, there are a number of **specific** exceptions.

The Equality Act 2010 (Age Exceptions) Order 2012, which comes into force 1 October 2012, sets out the specific exceptions. The Order specifies particular types of age-based actions, measures and practices that are considered “to be justifiable, beneficial or needed for good public policy reason”.⁷ Exceptions include:

- Aged-based concessions
- Age-related holidays
- Age verification
- Clubs and associations concessions
- Financial services
- Immigration
- Residential park homes
- sport

Positive Action - The Act allows for age-based positive action such as special measures to address disadvantage, under-representation or identified need of a particular age group. For example, the provision of internet training sessions for older people exclusively, to encourage usage for people within this age group. Positive action initiatives need to be ‘objectively justified’⁸.

Objective justification

Apart from age discrimination by exception and positive action, differential treatment that might otherwise be unlawful may be within the law provided it can be ‘objectively justified’. In other words, a provision, criteria or practice applied in an appropriate and fair manner, but which nonetheless, serves to discriminate, may be legally justified providing it is a “proportionate means of achieving a legitimate aim”. This is often called the objective justification test.⁹

⁶ Government Equality Office “Equality Act 2010, Banning Age Discrimination In Services, An Overview for service providers and customers (Page 1)

⁷ Lynne Featherstone www.publications.parliament.uk/pa/cm201213/cmgeneral/deleg2/120904/1209013/09/12

⁸ Ibid

⁹ Equality Act 2010 Code of Practice. Employment Statutory Code of Practice

The following are examples of objective justification:

Example: A building company has a policy of not employing under-18s on its more hazardous building sites. The aim behind this policy is to protect young people from health and safety risks associated with their lack of experience and less developed physical strength. This aim is supported by accident statistics for younger workers on building sites and is likely to be a legitimate one. Imposing an age threshold of 18 would probably be a proportionate means of achieving the aim if this is supported by the evidence. Had the threshold been set at 25, the proportionality test would not necessarily have been met.

Source: [Equality Act 2010 Code of Practice. Employment Statutory Code of Practice](#)

Example: Cervical screening programmes offer more regular testing to women aged 25-49 compared to women aged 50-64. The health service is likely to be able to objectively justify this differential treatment as being a proportionate response to statistical evidence that the younger group are at greater risk of developing cervical cancer.

Source: Government Equalities Office: [Equality Act 2010 Banning Age Discrimination in Services, An overview for service providers and customers](#)

DO PUBLIC BODIES HAVE A DUTY TO PROMOTE AGE EQUALITY?

The Equality Act includes a public sector Equality Duty (also known as the General Duty), which requires public bodies, when exercising their functions, to have due regard to the need to eliminate age discrimination, advance equality of opportunity for people of different age groups, and foster good relations between people who share the protected age characteristic and those who do not.

Accordingly, local authorities need to be proactive in tackling age discrimination and inequalities and in identifying and responding to the needs of people who share the protected characteristic of age when designing and delivering services.

Resources and Contacts:

1. Equality Act 2010 Statutory Code of Practice Employment
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employecode.pdf
2. Equality Act 2010 Statutory Code of Practice Services, public functions and associations
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/servicescode.pdf
3. Government Equality Office - <http://homeoffice.gov.uk/equalities/>
4. EHRC (Equality & Human Rights Commission), the statutory body with responsibility to enforce and promote equality across the protected characteristics www.equalityhumanrights.com
5. Birmingham Advisory Council of Older People (BACOP for short).
Telephone: 0121 204 4294 Email: BACOP@aston.ac.uk
6. Age UK - <http://www.ageuk.org.uk/>