



Government
Equalities Office

Putting equality at the heart of government

Equality Act 2010

Banning Age Discrimination In Services

**An overview for
service providers
and customers**

People likely to have an interest in this overview

1. The ban on age discrimination in services starts on 1 October 2012. With some exceptions, it will apply to any person or organisation that is:
 - providing (or refusing to provide) goods, facilities or services to another;
 - carrying out (or refusing to carry out) a public function for another;
 - running an “association” like a private members club.
2. So this overview will be of interest to, for example:
 - Retailers, shopkeepers, insurance companies, financial services firms, banks, holiday operators, owners of sites for mobile homes (where the mobile home is someone’s permanent residence), cinemas, sports bodies, hospitals – and their customers or people using their services;
 - Government departments, local councils and any member of the public who uses a public service;
 - Managers and members of private clubs and associations.
3. This is a general guide about how the ban on age discrimination in services will work. More specific guidance for use by small businesses or in relation to particular sectors affected by the ban is available on the same Government Equalities Office website page from which you accessed this guidance.

Coverage of the ban

4. The ban does not apply in respect of children aged under 18. This means that people and organisations can continue to provide different services at different rates or on different terms and conditions for children of different ages, or can refuse to serve children – for example, ‘no children’ hotels can continue as now and newsagents can still restrict the number of children entering their shops.

This ban does not cover age discrimination by employers against employees – such discrimination was banned several years ago and this is not affected by the ban in the provision of services.

What is age discrimination?

5. Age discrimination is unfairly treating people differently because of their age. Whilst such harmful treatment will be banned, some forms of differential treatment can be a good thing – for example, free bus passes and free flu jabs benefit older people. Also of benefit are commercial discounts for younger or older people and discounts for club members because of their age or length of membership. The law will allow such things to continue. This guide sets out the circumstances where age discrimination can continue – by **exception, positive action** and **objective justification**.

6. The law is focused on banning discriminatory behaviour that can be harmful:
- **Direct age discrimination.** Direct 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.
 - **Indirect age discrimination.** Indirect 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** related to age. 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** of someone who has made a complaint of discrimination or harassment or supported someone else's complaint. 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 evidence.
7. A flow chart on page [10] is designed to guide service providers through what needs to be considered.

Exceptions

General exceptions

8. 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. There will be far too many instances to list here, but some examples are:
 - age-based state benefits,
 - use of age limits in adopting and fostering,
 - requirement to be 21 years old to hold an HGV licence,
 - age limits on jury service,
 - free TV licences for those aged 75 and over,
 - winter fuel allowance for pensioners;
 - free bus passes for pensioners.
 - where a private club or association caters for a particular age group. For example, it will remain lawful to have clubs for young people and pensioners;

- where a charity provides benefits only to people of a particular age or age group. For example, a charity for the elderly can continue to provide benefits in cash or kind only to older people;
- where necessary for reasons of national security.

Specific exceptions

9. In addition, there is a range of specific exceptions for:

(a) financial services

Providers of financial services (such as insurance companies and banks) will continue to be able to use a person's age as a factor in assessing risk and charging for their products. They will also be able to continue to use age banding and age limits and to specialise in products only for certain age groups. However, in making any risk assessments based on age, the company must base its assessment on relevant information from a source in which it is reasonable to rely.

Individuals will be able to challenge a financial service provider if they think a risk assessment is arbitrarily based on their age rather than on relevant information from a reliable source.

(b) age-based concessions generally

'Concessions' are any sort of discount, special arrangement, special offer etc. open only to people of a particular age or age group. Many organisations and businesses offer age-based concessions or limited preferential access to specific age groups. Public bodies may also provide age-targeted benefits.

Examples include:

- 10% off for over 65s in DIY stores, hairdressers or fish and chip shops;
- free or cheaper access for pensioners or younger people to local leisure facilities;
- discounts for pensioners to museums and theatres.

These concessions will be allowed to continue under the age discrimination ban. Hairdressers, cinemas, theatres, retailers and transport operators already offer concessions for particular age groups and can continue to do so. There is no need to state a reason for a concession and there is no restriction on the form of a concession.

There is no limit on the type of goods or services to which the concession applies.

(c) age-based concessions in private clubs or associations

This exception allows any private club or association to use age to determine eligibility for concessions. For example, a golf club could offer a membership discount or offer free or cheaper access to its facilities to people of a particular age.

The exception does not make it compulsory for a club or association to offer a concession to a particular age group.

A separate guide, available on the same Government Equalities Office website page from which you accessed this guide, explains in more detail how the ban affects private clubs and associations.

(d) age-related holidays

A small number of businesses provide holidays for people who wish to holiday with others of a similar age, for example holidays exclusively for the over 50s and holidays for people aged 18-30.

This exception allows such age-related holidays to continue, but only for holidays whose main purpose is to bring together people of a similar age. The age range must be clearly indicated at the time the holiday is offered.

If a business that provides age-related holidays decides to provide its services to someone who is not in the usual age group, it could do so, but not on worse terms.

This exception does not apply to package or other holidays that are offered to people of all ages. Businesses offering such holidays who wish to limit or refuse access to people of a certain age or age groups would need in each case to objectively justify this (see “objective justification” below).

A separate guide, available on the same Government Equalities Office website page from which you accessed this guide, explains in more detail how the ban affects the holiday industry and its customers.

(e) age 'challenges' or verification by shops when selling age restricted goods

This exception allows businesses selling age-restricted goods such as alcohol, fireworks, cigarettes etc. to continue to ask for proof of age, where a customer appears to be younger than a particular age, for example 25.

The retailer must display clearly that they will ask for proof of age in this way.

(f) immigration

This exception allows the immigration authorities to use age as a criterion in determining, for example: –

- entry to the UK as a spouse or a dependent relative. The minimum age at which someone could sponsor, or be sponsored, for settlement in the UK as a spouse is set out in the immigration rules. Parents, grandparents and other dependent relatives of persons present and settled in the United Kingdom may gain indefinite leave to enter or remain in the UK, with differing criteria applying to different age groups.
- the eligibility of a young person from a qualifying country to come to the UK on a cultural exchange scheme (Tier 5 youth mobility scheme).

(g) residential park homes

This exception applies to owners of sites where static caravans and the like are used as permanent places of residence. Many such sites already operate an age limit restricting residence to people aged 50 or over.

The exception covers the arrangements for deciding who should become a resident. It allows park owners to set, maintain or amend age limits to continue restricting the ownership or rental of park home units to people of a certain age. This requirement must be set out clearly in the purchase or rental agreement covering the use of the home or in park rules. Any park home operator can apply age limits, whether in the private or public sectors.

The exception cannot be used to impose age restrictions on people visiting the residential park. Nor does it allow any sort of age restriction on services on the site, once residents or their visitors have been admitted. The exception does not apply to holiday parks or units.

If a residential park owner with an age-limit policy decided to provide a park home unit to someone who is not in the age group usually eligible to become a resident, he could do so, but not on worse terms.

(h) 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. It applies to all sporting levels, from grass-roots to elite, amateur to professional, and caters for thinking games (such as bridge or chess) as well as physical sports.

The exception can be used by any organisation or individual involved in the organisation or administration of sporting activities, the provision of training or facilities to support such activities; and others participating in an official role in those activities such as coaches, umpires and referees, etc.

It allows, for example:

- selection on the basis of age for national or international competitions.
- age limits and banding to be used when setting eligibility criteria to compete (such as under 21s football tournaments or veterans tennis leagues).
- age limits to be used to determine the provision of training, facilities and other support to competitors.

This exception does not allow:

- age limits or bands which are applied purely for historical, habitual or social reasons, for example, a local lottery that restricts eligibility to people over the age of 70. This is because a restriction of this type would not be necessary to ensure fair competition or the safety of competitors, or to comply with the rules of a national or international competition. These age

restricted events could still be lawful however, if there is a sufficient reason for the restriction (see “objective justification” section below). Such a reason could include, for example, enabling certain age groups to meet, avoid isolation and keep healthy. Alternatively, such events could be justified as a positive action measure (see below) if they alleviate disadvantage, reduce under-representation and/or meet particular needs for people in the age group concerned.

- sporting events advertised as if they are open to all but which reveal age cut-offs only when prospective participants apply to take part. For example, a tennis tournament is advertised but it does not make clear that it is only open to people aged 18 – 40.

Positive action

10. Positive action which treats people differently according to their age is allowed. 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. Positive action might allow, for example, libraries to offer dedicated ‘silver surfer’ sessions to older people to help them learn how to access the internet and gain confidence in working online. Positive action needs to be objectively justified if challenged (see “objective justification” section below).

Objective Justification of discriminatory treatment

11. If a business or organisation has policies or practices which amount to age discrimination in the provision of services, and they neither come within an exception nor qualify as positive action, they will still be lawful if they can be “objectively justified”. In other words the service provider must be able to show good reason for the policy or practice. ‘Objective justification’ is a shorthand term for the legal formula to justify what would otherwise be unlawful age discrimination: age discrimination in any area is lawful if you can show when challenged, if necessary before a court, that it is ‘a proportionate means of achieving a legitimate aim’.
12. A business or organisation may never be challenged for age discrimination, so may never need formally to provide an “objective justification” for their policy or practice. It will be up to individual businesses or organisations to come to a judgement about whether to look at their policies and practices, assess whether any might need objective justification and what that justification might be. We suggest however that service providers do this sooner rather than later, and preferably before a challenge to any existing policies, actions or practices that differentiate on the basis of age. Questions to consider: Are they covered by an exception? If not, are they covered by positive action? If not, can they be objectively justified? What can the business do, such as staff training, to minimise the risk of the business doing things that might be discriminatory in their everyday dealings with customers and others. Please see the flow chart on page [10] for an easy to follow way of assessing differential treatment based on age.

13. A challenge could be informal – a customer asking why a particular action or practice appears to discriminate against some people because of their age; or it could become formal if the customer went to the County Court to claim compensation.
14. If this happened and the service provider was able to satisfy the Court that in all the circumstances the action or practice was 'a proportionate means of achieving a legitimate aim', the claim would be dismissed.
15. We show in the following paragraphs some examples of legitimate aims and proportionate means of achieving them.

What is a legitimate aim?

16. Legitimate aims can often be outcomes that are socially positive or generally in the public interest. For example:
- Enabling people of a particular age or age range to socialise together – outings, events, etc.
 - Enabling people of a particular age or age ranges to enjoy activities together – hiking, sports, etc.
 - Enabling people of a particular age to enjoy peace and quiet.
17. Business needs and efficiency could be a legitimate aim, but there would normally need to be wider social factors too. Therefore, if a business found that it could reduce its costs by dropping a service for older customers or focusing only on younger customers and there was a wider community benefit in doing so, the cost reduction might qualify as a legitimate aim in that context. But without the wider social dimension, it is unlikely that business cost reduction as such would be regarded as a legitimate aim.
18. Ultimately, it will be for a court to determine what is a legitimate aim in the circumstances of the particular case.

What is a proportionate means (of achieving a legitimate aim)?

19. The approach of the law is that the end does not automatically justify the means – hence the need for proportionality when working towards a legitimate aim. For their approach to be proportionate, a service provider must show, if challenged, that there is not a fairer way of achieving their desired outcome, or legitimate aim. The service provider may also need to show that their policy or practice is appropriate, necessary to achieve the legitimate aim and that it brings benefits that outweigh any downsides.
20. So it could be proportionate for a holiday chalet owner to only let to people aged over 25, if his property has previously been damaged by younger occupants. Younger holiday makers would still have other options for arranging accommodation. But it may not be proportionate for a hotel next to the chalet to bar such younger people from staying, just because many guests are pensioners, since this would be a blanket policy to the detriment of younger customers.

What does this mean in practice?

21. If service providers differentiate because of age and this is not allowed by an exception or positive action, they may need to be able to show that there is sufficient reason (an "objective justification") for doing so, in the event of being challenged or taken to court.
22. If customers want to challenge alleged age discrimination in court they will need to be able to show that they were actively seeking to use the service or buy the product. A claim will not stand if there was no intention to buy the product or use the service.

Some sectoral examples of objective justification

Health Screening

23. The National Health Service offers a number of public health programmes which have age-based targeting such as breast screening, cervical screening, seasonal flu vaccinations and Chlamydia screening. As there is no specific exception from age discrimination in any health or social care activity, hospitals and other health service providers will need to objectively justify the age bands used, if challenged.
24. For example, the Department of Health invites women aged 25-49 for a cervical screening test every three years, whereas women aged 50-64 are invited every five years. This is because statistics show that the younger group are more susceptible to the disease than the older group. In this example, the health service is likely to be able to objectively justify offering more regular screening to the younger age group, as this can be seen as a proportionate response to statistical evidence that this group is at the greatest risk of developing cervical cancer.

Holiday accommodation

25. Some holiday accommodation providers (who offer holidays to the general public rather than to particular age groups) are reluctant to rent their properties to young adults (say, under 25s), as they are concerned that there is a greater risk that this age group will damage property. Businesses could rely on objective justification to refuse to rent properties to certain age groups in certain areas, if they can show evidence of problems they have had with that age group in the recent past or where other providers have reported such problems – for example during large events such as festivals when large groups of younger people tend to gather. In these circumstances, setting a minimum age limit for occupancy may be a proportionate means of achieving the legitimate aim of ensuring the continuing availability of a particular standard of holiday property and ensuring that other guests and neighbours are not unduly disturbed. It would however be necessary to demonstrate why other less discriminatory options, such as charging deposits, are not apt or adequate.

Car rental

26. Some vehicle rental companies decline to rent vehicles to older and younger drivers, because statistics show that these age groups are more likely to have accidents. It will be open to them to objectively justify such restrictions as a proportionate means of achieving a legitimate aim. Such an aim might be to retain a high proportion of the company's vehicle fleet as roadworthy and available for other customers to rent, thus contributing to the wider aim of ensuring mobility for people generally. Alternatively, a rental company may choose to rent a car to a younger or older person but charge them higher prices, deposits and excesses; if they are statistically more likely to have accidents, in order to reflect higher insurance premiums and the cost of repair if the car is involved in an accident.

Age discrimination ban: Myth busters

The age discrimination ban will force insurance companies to provide cover for all age groups

No. Financial service providers will not be forced to participate in sectors in which they have no experience, and they can continue to use age limits and age bands.

The NHS can no longer restrict screening to certain age groups

No. The NHS will still be able to target screening programmes at certain age groups, provided that this is supported by statistical evidence to show that these groups are more at risk.

Saga and Club 18-30 can no longer only sell holidays to certain age groups

No. They will be able to provide group holidays to certain age groups where age is a key element of the product they sell and this is appropriately advertised.

Shops can no longer give pensioner discounts

No. There is an exception for age based discounts so retailers will be able to continue to offer age based discounts if they wish.

A golf club can no longer offer an age-based discount to its senior or junior members

No. Clubs will be able to continue to offer concessions and discounts to members based on their age.

The legislation abolishes the age limits for juries

No. The age limits for jury service are stated in legislation, thus these age limits will continue.

Can I continue to treat people differently based on their age? A flow chart for service providers

Do I have a policy or practice that treats people aged 18 and over differently according to their age?

Yes – continue to next box.

No – you are not affected by the ban.



Is my policy / practice covered by an exception described in this guide?

Yes – now consider whether you need to do anything more to satisfy the exception.

No – continue to next box.



Can my policy / practice be justified as positive action as described in this guide.
Could positive action apply?

Yes – Consider writing down why it is positive action, in case you are challenged.

No – continue to next box.



Can my policy / practice be objectively justified as described in this guide?
Is it a proportionate means of achieving a legitimate aim?

Yes – Consider writing down why you think your policy / practice can be objectively justified, in case you are challenged.

No – Your policy or practice may be unlawful under the age discrimination ban – consider changing it so that it comes within the law.

Further sources of information

General information about the age discrimination ban in services and public functions is available from the Government Equalities Office at:

Website: **www.homeoffice.gov.uk/equalities/**

E-mail: **public.enquiries@homeoffice.gsi.gov.uk**

Citizens Advice will also be able to offer assistance:

Website: **www.citizensadvice.org.uk**



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