



Government
Equalities Office

Putting equality at the heart of government

Equality Act 2010 and age discrimination: What do I need to know?

A quick start guide for
financial services

September 2012

Who is this guide for?

This quick start guide is intended to help organisations and consumers understand how the age discrimination ban in the provision of goods, facilities and services applies in relation to the provision of financial services.

Sources of further information about the age discrimination ban are listed at the end of the guide.

Summary

Under the law, all financial services providers:

- may continue to use a person's age as a criterion in designing, pricing and offering financial services products.
- must ensure, where they conduct an assessment of risk for the purpose of providing the financial service, that the risk assessment, so far as it involves a consideration of the customer's age, is carried out by reference to information which is both relevant and from a source on which it is reasonable to rely.
- must not behave towards customers in a way that could amount to harassment related to age.
- must not victimise customers who, for example, have, may have or are thought to have made a complaint of age discrimination.

In addition, pursuant to an agreement between Government and the insurance industry mentioned below, if motor and travel insurers refuse cover on the basis that a person's age exceeds a maximum age limit, they must refer that customer to another provider or refer them to the dedicated signposting service which can assist them to find a provider who can meet their needs.

Customers need to remember that financial services providers can operate age bands and age limits for products and services, and it is not discriminatory, under the financial services exception, for them to refuse to provide you with a product or service because of your age.

Introduction

The Government is bringing into force a ban on age discrimination in the provision of goods, facilities and services, the exercise of public functions, and the running of private clubs and other associations. The ban will be effective from 1 October 2012 when the relevant provisions contained in Part 3 of the Equality Act 2010 (the Equality Act) come into force. Discrimination because of age by employers against employees is already banned. The new ban will mean that unjustifiable age discrimination will also be unlawful in the provision of services, as will be harassment by service providers, those exercising public functions and by clubs and associations on the basis of age, and any related victimisation. The ban does not apply in respect of people under the age of 18.

What is the age discrimination ban?

From 1 October 2012 the following are banned in the context of providing services:

- direct discrimination because of age, unless this can be objectively justified. Direct age discrimination is where someone is unfairly treated differently in comparison with another on the basis of age. Objective justification is being able to show that the discrimination is a proportionate means of achieving a legitimate end;
- indirect discrimination because of age, unless objectively justified. Indirect discrimination because of age is where the same rule or practice applies to people of all ages but disadvantages people of a particular age or who fall in a particular age group;
- 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; and
- victimisation of someone who has complained about discrimination or harassment because of age, or who has supported someone else's complaint or is thought to have done any of these.

Some forms of differential treatment can be a good thing. The new law will not prevent service providers offering age-specific services which are beneficial to certain groups (for example, discounts to pensioners or young people) or justifiable (for example, priority flu vaccinations for over 65s, based on evidence that susceptibility to flu and the likelihood of complications are higher than average among this age group). You can find more information about the exceptions for all businesses and organisations in the Government Equalities Office guide for service providers and customers¹.

The new law will often allow differences in treatment for different age groups, so protecting a number of existing age-based practices. This will be achieved through the introduction of various exceptions².

This guide is focused on the specific exception in respect of financial services, which is explained below.

The approach being taken in financial services

It has been decided that an exception from the general age discrimination ban is appropriate for the financial services sector. This means that existing products, contracts and policies which were, for example, designed, offered or priced in a way that differentiates between people of different ages may continue unaffected by the ban. It also means that financial services companies will still be able to use age in assessing risk, deciding which parts of the market to enter and in pricing products.

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

² The Equality Act 2010 (Age Exceptions) Order 2012 will come into force on 1 October 2012.

Financial service providers will be able to continue to use age banding and age limits and to specialise in products only for certain age groups. There will be no need to objectively justify age discrimination in the context of the provision of a financial service. The only new consideration that financial service providers need to be aware of is in relation to risk assessments – see below.

It is important that financial services providers are able to take into account a person's age because it is an integral factor in, for example, the calculation of risk and thus the design and pricing of many financial products and services. It is a relevant risk factor in determining, for instance, the frequency and likely costs of meeting claims under some insurance policies, or the likely risk of default in relation to a bank loan or mortgage as it is a key risk factor in credit and fraud scoring systems, which underpin lending decisions for consumer credit products. Thus the exception is widely cast, to cater for the diverse nature of the financial services market.

The exception extends to direct and indirect discrimination because of age only and does not permit harassment or victimisation.

What is a financial service?

Financial services include those activities regulated by the Financial Services Authority under the Financial Services and Markets Act 2000 and by the Office of Fair Trading under the Consumer Credit Act. The financial services sector encompasses a broad range of organisations that deal with the management and transfer of investments and money. Among these organisations are banks, building societies, credit card companies, insurance companies, insurance brokers, stock brokerages, investment funds and loan providers.

For the purposes of the financial services exception (see below), a financial service includes a service of a banking, credit, insurance personal pension, investment or payment nature, and includes the following products and services³:

- Advising on a regulated mortgage
- Advising on general insurance contracts
- Annuities
- Bank (current) accounts and deposit taking
- Bank (current) accounts – overdrafts
- Breakdown insurance
- Buying and selling of units in collective investment scheme
- Cheque cashing services
- Consumer loans and credit, including the use of credit-risk models

³ This list was compiled by the 'Age discrimination in financial services experts working group'; we have endeavoured to include all relevant products and services, although there may also be other relevant products and services..

- Credit cards (including store cards)
- Custody services
- Dealing in investment as principal or agent
- Debit cards
- Debt advice
- Debt management services
- Deposit taking and savings accounts
- E-money services
- Equity release
- Extended warranties on motor cars and other items
- Fraud and fraud scoring used by financial services companies
- General insurance, such as motor, travel, liability, payment protection, property, private medical
- Individual Savings Accounts (ISAs)
- Investment advice
- Life assurance including with profits, endowments, pensions, annuities, AVCs, Critical illness, Income protection
- Managing designated investments
- Money transmission linked to bank accounts and done remotely
- Mortgages on timeshare accommodation and holiday clubs
- Mortgages which fall within the Consumer Credit Act, such as 2nd charge mortgages
- Operating regulated collective investment schemes
- Other payment cards, such as charge cards
- Payment systems not linked to bank accounts
- Risk assessment scorecards used by financial services companies
- Spread betting services

This list is not exhaustive.

The exception

The exception provides that a person does not contravene the age discrimination prohibitions in section 29 of the Equality Act by doing anything in connection with the provision of a financial service. The exception means that it is not necessary to objectively justify any age discrimination in the context of financial services provision.

However, where a risk assessment is conducted for the purposes of providing a financial service, the exception will only apply if the risk assessment, in so far as it involves a consideration of the person's age, is done by reference to information which is both relevant to the assessment of risk and from a source on which it is reasonable to rely.

The exception ensures that financial service providers will be able to continue to use age when assessing risk and deciding the prices of products. They will also be able to continue to use age banding. We believe this is the right approach, because restricting the extent to which the financial services industry can pool risks on the basis of age would distort the market, leading to increased costs and higher prices generally, with the possibility of some companies leaving the market altogether.

The use of age limits can also continue. Financial service providers will not therefore be forced to participate in sectors in which they have no experience. We recognise that providers need to have credible data on age groups in order to serve them. This helps to ensure costs are kept to a minimum, which is beneficial for both providers and consumers. Providers will continue to be able to specialise in providing products only to certain age groups, for example, providing for the over 50s.

However, individuals will be able to challenge a financial service provider if they think a risk assessment, so far as it involves a consideration of the person's age, has not been carried out by reference to relevant information which is from a source on which it is reasonable to rely.

What is meant by “a source on which it is reasonable to rely”?

Any public or private empirical, actuarial, statistical, qualitative research or other material or data such as forward looking projections, age related assumptions in changes in life expectancy and health, and evidence of costs. It can be from UK or international sources, based on industry-wide material or data, or firm-specific material or data, or the experience of another firm.

What is meant by “relevant information”?

A wide range of information is acceptable. Relevant information can be any data which would be acceptable to use to help define a risk or make an assessment, such as actuarial, statistical, medical or other information relating to a person's age.

What is meant by “risk”?

Risk can be seen as relating to the probability of future events. For example, as people get older there is an increased risk of adverse health conditions, which could affect a person’s ability to work and therefore to repay a loan, or increase the likelihood of medical treatment being needed, thereby increasing the cost of travel insurance.

What documentation is required by service providers to comply with the exception?

There is no prescribed documentation needed to comply with the exception under the legislation, although under the Government/insurance industry agreement referred to below there is a requirement for insurers to provide data to the Association of British Insurers (ABI) on the impact of age on motor and travel insurance. The key point is that where the service provider has made a decision based on a risk assessment, this assessment must use relevant information from a source on which it is reasonable to rely. There is no requirement in the exception which obliges financial service providers to make available to customers the information on which they rely, or the source of such information. However, providers can only rely on the exception if they can show that the information met the conditions as to relevance and source, and in order to demonstrate this some level of disclosure may be necessary.

Improving transparency and access to motor and travel insurance

Travel and motor insurance are two areas which are of concern to many, particularly older, consumers; there have been complaints about the cost of premiums they are required to pay, and problems they have with obtaining insurance. To help solve this problem the Government and the insurance industry have worked together to develop an agreement to ensure that measures are in place to improve understanding of how age impacts travel and motor insurance and to improve access to such insurance. The agreement came into effect on 6 April 2012 between the Government, the ABI and the British Insurance Brokers’ Association (BIBA)⁴ and has two central objectives; to-

- **Improve transparency** within the travel and motor insurance sectors so that customers can be confident that age is not used arbitrarily in the pricing and offering of such cover.
- **Improve access** to travel and motor insurance so that if a provider is unable to provide cover to an older person because of their age, it will be obliged to refer that person to a provider who can meet their needs or to a dedicated signposting service which has been established to help consumers find a provider that is prepared to offer them cover.

⁴ http://www.abi.org.uk/Access_to_Insurance/Insurance_for_older_people/Insurance_for_older_people.aspx

Improving transparency in how age is used in motor and travel insurance

The ABI will make available a central source of anonymised travel and motor insurance data, broken down by age. This will provide aggregated information on size and frequency of claims met among the ABI's membership.

What this means to the insurance company and customer confidentiality

As the ABI will provide a combined anonymised summary of insurance data, this will protect commercially confidential data.

What this means to the customer

The published central source of data will provide data showing the correlation of age and risk and will make it easier for consumers to understand how age impacts on costs and benefits of policies.

Improving access to motor and travel insurance

What this means to the insurance company and insurance broker/intermediary.

If you provide motor or travel insurance and are unable to offer an older customer cover because their age exceeds the upper age limit you have chosen to impose, then you will need to either refer the customer to another company that will be able to meet the customer's needs or refer them to an insurance signposting service.

What this means to the customer

If you are refused motor or travel insurance because your age falls above the upper age limit imposed by that firm, you should be referred to another company that will be able to help you, or you should be directed to a signposting system, which should be able to identify providers who are likely to be able to meet your motor or travel insurance needs.

If you wish you can also approach the insurance signposting system directly, rather than being referred by an insurance provider.

The BIBA signposting service can be contacted as follows:-

Telephone: 0870 950 1790 (9.00am - 5.00pm Monday to Friday)

Online: www.biba.org.uk/

Customer service

People of all ages should be treated fairly when accessing financial services. Concerns have been raised about providers making assumptions about a person's mental capacity on the basis of their age. Providers are under a regulatory duty to ensure that they treat customers fairly and that they provide advice that is appropriate and relevant to the customer. Providers will need to approach the issue of age and mental capacity with care and sensitivity and on the basis of their knowledge of their own customer.

What do I do if I think I have been unfairly discriminated against?

If you believe that your age has been unfairly used as a factor in the context of the provision of a financial service to you then you should discuss that first with the service provider. It is important that you complain first to the service provider that you are unhappy with and give them a chance to look into the problem.

If you are not happy with how the service provider has dealt with your complaint, you can ask the Financial Ombudsman Service (FOS), to look into the complaint:-

- Telephone the FOS consumer helpline on 0300 123 9 123 or 0800 023 4567 (8am to 6pm, Monday to Friday); or
- Email: complaint.info@financial-ombudsman.org.uk

Frequently asked questions

Is age based pricing allowed?

Yes. Risk based pricing according to age can continue. For example, older people often find they pay more for travel insurance than younger people, because the link between age and health means that, on average, the likelihood of claiming on insurance and the cost of those claims are greater for older people.

Is strict mathematical proportionality required?

No. Strict mathematical proportionality is not necessary as other relevant factors can also be taken into account.

Are age bands permitted?

Yes. Financial services providers are permitted to set their own age bands, thus age bands can vary from one provider to the next.

Are minimum and maximum age limits permitted?

Yes. Financial services providers are permitted to set their own age limits if they wish. Providers are not expected to serve parts of the market that they do not have experience of, or that do not form part of their business strategy.

Are discounts and concessions related to age allowed?

Yes. Positive action which treats people differently according to their age is allowed. For example, age related current and savings accounts, such as over 50s current accounts and other accounts which offer free insurance cover or age related health screenings. Other contracts which provide special bonuses or discounts to members when they reach a certain age or loyalty bonuses or discounts under pension contracts are also allowed.

Is age-specific marketing permitted?

Yes. Marketing or specialising in providing services to specific age groups is allowed, such as only providing services to people over 50.

Are forecasts based on age permitted?

Yes. Risk assessments require predictive adjustments and estimates of future events to be taken into account. Age related assumptions require age-based estimates of changes in life expectancy and health. For example, in health insurance age is a key factor for mortality and morbidity changes and forward-looking projections for contracts.

Which customers will be referred to the insurance signposting service?

Older customers for motor or travel insurance who are declined a service due to their age. However, people of any age can contact the signposting service when looking for insurance.

What if a customer is turned down for insurance because of a pre-existing medical condition, rather than age?

If an insurance company has declined to offer insurance due to a medical condition, it is not a requirement of the insurance agreement for the person to be referred to another provider or the signposting service. However, the signposting service is also available to help these people.

Enforcement

Any customer aged 18 or over can complain about alleged age discrimination against them by a financial services provider. But the customer must be able to show that they genuinely intended to use the particular service – speculative claims are not admissible.

The Equality and Human Rights Commission (EHRC) is responsible for assessing general compliance with and enforcing the age discrimination ban. It has powers to issue compliance notices to organisations that have failed to comply and can apply to the courts for an order requiring compliance. The age ban can also be enforced against public authorities by judicial review. This can be done by the EHRC or any individual or group of people with an interest.

Further sources of information

The EHRC is the statutory body established to help eliminate discrimination and reduce inequality. It has power to produce statutory Codes of Practice and guidance to explain the law:

Website: www.equalityhumanrights.com

Telephone: 0845 604 6610

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/

Email: age@geo.gsi.gov.uk

The Financial Services Authority can help resolve disputes and complaints and explain rules regarding the regulation of financial services firms in the UK, including banks and building societies, mortgage and insurance brokers and advisers:

Website: www.fsa.gov.uk/

Telephone: 0845 606 1234

HM Treasury may be able to help answer queries on the financial services exception and can be contacted using the following details:

www.hm-treasury.gov.uk/

020 7270 5000

Ce.enquires@hmtreasury.gsi.gov.uk

Citizens advice will also be able to offer assistance:

Website: www.citizensadvice.org.uk



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