



Equality Act 2010

Banning age discrimination in
services, public functions
and associations

National Pensioners Convention
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Equality Act 2010: Banning age discrimination in services, public functions and associations

1. Introduction

The National Pensioners Convention (NPC) is Britain's largest pensioner organization, with more than 1,000 affiliated groups representing a total affiliated membership of around 1.5 million older people. This response is based on the views and experiences of our members as expressed through discussion at our annual Pensioners' Parliaments, our representative Executive Committee and National Council, and through conferences we have run on specific issues covered by this consultation paper.

The NPC has had a longstanding interest and involvement in the creation of equality legislation in England, Scotland and Wales, and in particular those aspects that relate to age. In 2009, the Convention took part in the review conducted by Sir Ian Carruthers and Jan Ormondroyd into age discrimination in the health and social care sector, and since then have been supportive of the plans to extend the ban on age discrimination to cover the provision of goods, services and facilities and the exercise of public functions.

This latest consultation now focuses on the proposed exceptions to the ban in three main areas of health and social care, financial services and public functions. This response will therefore deal with each of those areas in turn.

2. General approach

The NPC believes it is important that whilst applying a ban on age discrimination, it is also possible to treat older people differently, and in some cases, more favourably because it is beneficial to do so. It is therefore essential that we recognise that older people do have different needs and requirements than those who are younger.

For example, the provision of concessionary bus travel to those of pensionable age is a key lever for tackling social isolation and exclusion in older age. The ability to travel benefits not only the individual with increased mobility, but by enhancing the sense of well-being the individual is also able to make a contribution to wider society. Furthermore, such schemes that encourage greater independence and activity help reduce the need and cost of care and other social services. This is therefore an excellent example of how the Equality Act 2010 enables a proportionate means to be used in order to achieve a legitimate aim.

3. Health and Social Care

There is little doubt that some older patients already feel that assumptions about whether or not they should be referred for treatment are being based solely on their age, rather than their individual need and fitness level. Equally, there have been numerous stories in the media which demonstrate where there has been a lack of dignity and respect for older people in the provision of care services. This is completely unacceptable and the Equality Act 2010 must be used in future to tackle these areas of concern.

The Convention is also aware that there are a number of age-based charges and entitlements currently in operation. These relate to the provision of free NHS prescriptions and sight tests in England for those aged 60 and over, various programmes of cancer screening, seasonal flu vaccination and health checks.

However, whilst these are specific programmes aimed at tackling health issues across the older population, age should not be used as a proxy when it comes to individual need and the treatment they receive. It is therefore unacceptable that there are significant variations in the provision of care and support that older people receive as a result of where they live. Older people have also expressed concern that they have not been properly assessed, particularly in relation to their social and emotional needs. Whilst this may be due to the attitudes of individual staff rather than an official policy, it is essential that the legislation tackles this 'second-hand age discrimination'.

The consultation document also covers the area of funding for health and social care and highlights some of the changes being proposed in the Health and Social Care Bill. Whilst this process is not directly linked to those proposals, the Convention does have very serious concerns about how changes to the health service could have an adverse impact on older people.

In particular, the proposal to hand 80% of the NHS commissioning budget to GPs and force them to set up local consortiums is a retrograde step, which will lead to further privatisation, weaken the gatekeeper role of GPs and destroy trust with patients. There is also a serious risk that care will be diverted to those people who are most profitable to treat, rather than those who need it most. Older patients often have complicated, ongoing and expensive care needs which a health system based on profit will not be willing to address.

Furthermore, one of the most important aspects of the NHS for older patients is that they receive continuity of care with a doctor they know, and quality comprehensive care at their local hospital. The choices proposed in the white paper are therefore largely illusory for those who need health care most, whilst the plan to transfer responsibility for public health from the NHS to local government might also have a negative impact on the full implementation of the age discrimination ban.

It is therefore essential to argue that there should be no specific health and social care exceptions to the ban on age discrimination. The NPC believes this will encourage health and social care providers and their staff to properly assess an individual's needs so that they can justify how those needs have been addressed, should their decision later be challenged, but it is also important that older people are helped to understand their new rights and how they can be exercised.

4. Financial services

Over the years, the NPC has received many complaints from its members regarding the cost of motor and travel insurance. Too often it was felt that their age was used as short-hand for risk – rather than having their liability properly assessed. For example, considerable research exists to show that older drivers are less dangerous than those in their late teens or early twenties. However, this is not accurately reflected in their insurance premiums. Likewise, arbitrary age bandings in relation to travel insurance often bear no relation to how fit and able the individual might be.

Nevertheless, the draft Order in the consultation document seeks to introduce an exception to the age discrimination ban. It states: 'It is not a contravention of section 29, so far as relating to age discrimination, *to do anything* in connection with the provision of a financial service, provided that any assessment of risk carried out for the purposes of providing the financial service must, so far as it involves the consideration of a person's age, be carried out by reference to *information which is relevant to the assessment* and from a source on which it is *reasonable to rely*.' (Our emphasis).

The NPC believes that the phrase 'to do anything' would effectively mean that anyone wanting to challenge a decision under this clause would have no grounds to do so. The last two italicized clauses are also unfair because there is no guarantee that either the information or the source would be independent of the financial services industry.

The consultation document already accepts that there is considerable mistrust and suspicion regarding how age is used when calculating risks, and this proposed exception will do nothing to aid the need for greater transparency. The Convention is therefore not in favour of the exception in the provision of financial services in the way it is currently drafted.

5. General services and public functions

There already exist a number of both statutory and commercial services which are offered on an age-related basis. Providing specific exceptions in these areas can help to enable certain age groups to participate more fully in the wider society. Discounts in retail outlets and benefits such as the winter fuel allowance for older people are important in addressing a fundamental inequality of income that faces many pensioners. The provision of this exception is therefore essential to their continued well-being and inclusion in society.

However, it is also vital that this exception is properly understood by those making such provisions. For example, following the introduction of the Employment Equality (Age) Regulations in 2007 the National Institute for Adult and Continuing Education informed colleges which offered concessionary learning fees on grounds of age, that they might be breaking the law because a 59-year-old could object to having to pay more than someone aged 60 or over. Most colleges took this advice and ended their concessionary fees. Despite the fact that the regulations were aimed at those in or seeking employment – the effect of the rules inadvertently and incorrectly

applied to older students. As a direct result, course fees rose, the number of older people enrolling declined and courses were cancelled. The NPC therefore believes this is an area where there is an objective justification for the re-introduction of concessionary fees.

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