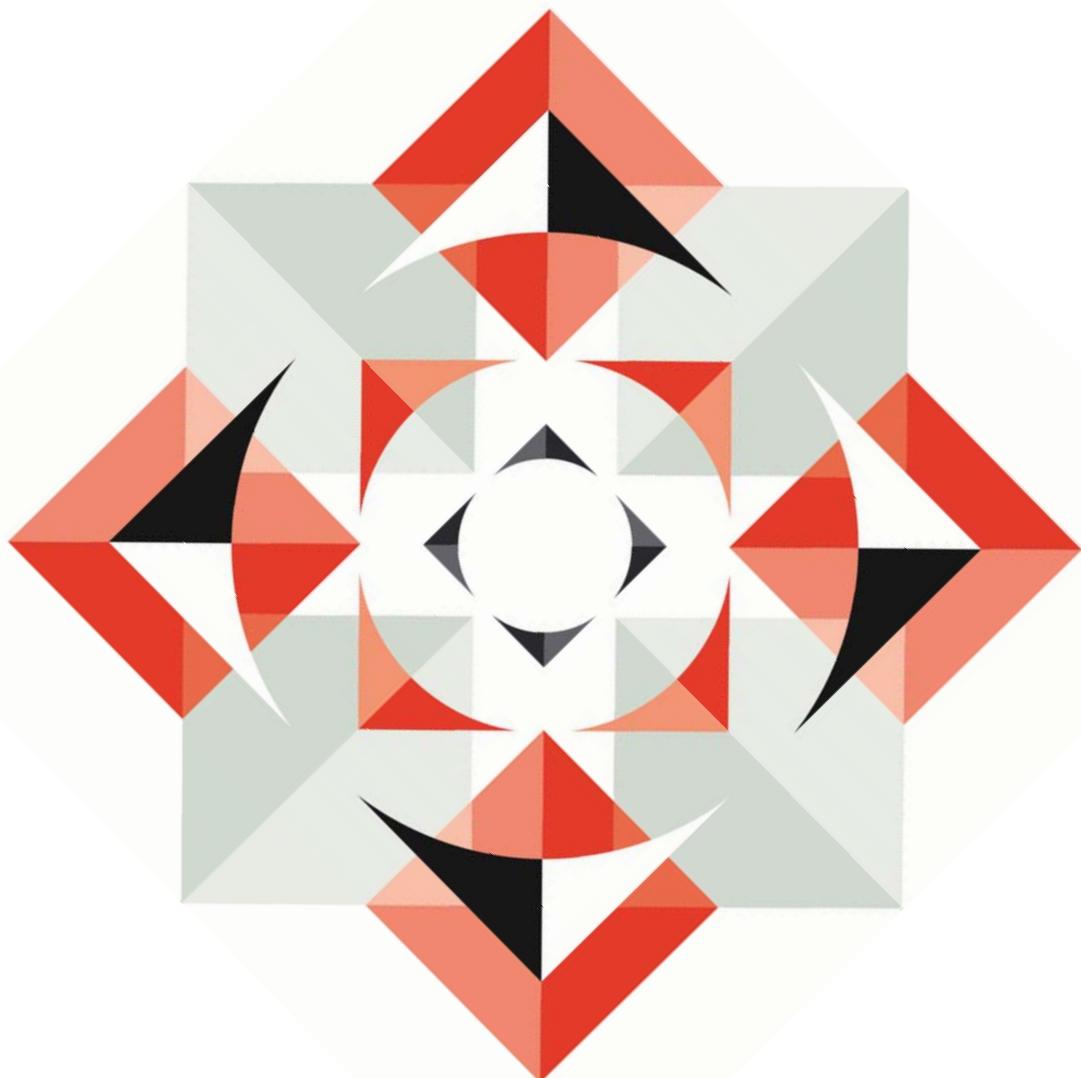
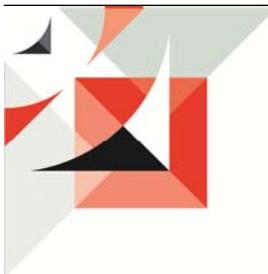


# Age discrimination in the provision of goods and services



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## Introduction

From 1 October 2012, it will be unlawful to discriminate on grounds of age in the provision of goods and services. Laws banning age discrimination in an employment context have been in force since 2006.

Affected businesses are likely to include retailers, insurance companies, financial services providers, banks, holiday operators, cinemas, sports bodies, leisure centres, hospitals, government departments, local councils, the public sector and private members' clubs.

## The New Law

A number of different types of age discrimination in goods and services will be prohibited. These mirror the types of discrimination that already apply in an employment context:

- > **Direct discrimination** – treating someone less favourably because of age. An example might be refusing someone access to a gym or nightclub because of their age, when a young person is admitted.
- > **Indirect discrimination** – applying a provision, criterion or practice that puts someone of a certain age group at a disadvantage compared with other people. An example might be allowing customers to pay for goods or services by instalments, but restricting eligibility to those in work. This applies to everyone but would put older customers, many of whom will be retired pensioners, at a disadvantage.
- > **Harassment** – unwanted conduct that is related to age and has the purpose or effect of creating an intimidating, hostile or degrading environment. An example might be a computer salesperson making jokes to an older person about their inability to use a computer.
- > **Victimisation** – treating someone less favourably because they have made an allegation of discrimination, or have brought or supported a discrimination claim in the past. An example might be a bartender refusing to serve someone after they made a complaint about him being ageist.
- > On the last bullet you will need to insert a return to get a space between these bullets and the next paragraph.

The maximum word limit for an inbrief is 1800 words, so if it is larger than that please use the pitch/indepth templates instead.

The ban on age discrimination in the provision of goods and services does not apply to those aged under 18, but will affect all other age groups. This means that businesses can continue to operate "no children" policies, but may not be able to operate a "no under-21s"

policy unless an exception applies or it can be objectively justified.

Age discrimination laws in an employment context are not affected by the ban in the provision of goods and services.

## Exceptions

The new law contains a number of exceptions to the prohibition on age discrimination in the provision of goods and services. If one of these applies, behaviour which otherwise would have amounted to age discrimination will be lawful.

There is a general exception which covers situations where legislation requires people to be treated differently because of age. This covers, for example, age-based state benefits, free TV licences for over-75s and the requirement to be at least 21 years of age to hold a HGV licence.

A number of other specific exceptions have also been created:

## Financial services

Providers of financial services, such as insurance companies and banks, can continue to use age as a factor when assessing risk and calculating the pricing for their products. However, the company must make its assessment by using relevant information from a reliable source.

A customer will be able to challenge a financial services provider if its risk assessment is based arbitrarily on age rather than relevant information from a reliable source.

## Age-based concessions

Age-based concessions, such as a 10% discount for pensioners at DIY stores or cheaper train tickets for those aged 16-24, will be exempt.

This exemption is very wide. There is no need to state a reason for a concession and no restriction on its form. There is also no limit on the type of goods and services to which the concession may relate or on the amount of the concession.

Private clubs or associations can also use age when determining eligibility for membership.

## Holidays

Businesses which provide holidays for people who wish to holiday with those of a similar age



(e.g. those aged 18-30 or the over-50s) will still be able to provide these holidays, but the age range must be clearly indicated when the holiday is offered.

The holiday can also be offered to those not within the usual age group, but it cannot be offered on worse terms.

### **Sports**

Age limits can continue to be used in sports in order to ensure fair competition, the safety of competitors or to comply with the rules of national or international sporting bodies. The exemption applies to all sporting levels, from amateur grass-roots to elite professional, and includes mental sports (such as chess) as well as physical ones.

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### **Objective justification**

If a business has policies or practices which amount to age discrimination and which are not covered by one of the exceptions above, they may still be lawful if objectively justified.

A policy or practice will be objectively justified if it is a proportionate means of achieving a legitimate aim. Legitimate aims may include outcomes that are generally positive or in the public interest. For example, this may include enabling people of a particular age range to socialise or enjoy activities together.

Business needs, efficiency and costs can also be a legitimate aim, but wider social factors are generally also needed.

A policy or practice must be proportionate. This means that there should not be a less discriminatory means of achieving the desired aim.

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### **Practical steps**

The ban on age discrimination in the provision of goods and services has wide exceptions, making the new law perhaps not quite the revolutionary change it otherwise could have been.

Nonetheless, businesses should now be auditing their policies and practices to identify areas of potential risk. Where these are identified, businesses need to consider whether any of the exceptions apply and, if not, ensure that there is good objective justification which can be

supported with evidence.

Businesses should also weigh up the commercial advantage of letting potentially age discriminatory policies and practices continue against the possible financial and reputational costs of litigation.

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