Title:
Ending age discrimination in the provision of services
IA No: GEO 1020

Lead department or agency:
Government Equalities Office (Home Office)

Other departments or agencies:
Department of Health, HM Treasury

Impact Assessment (IA)

Date: 15/05/2012

Stage: Final

Source of intervention: Domestic

Type of measure: Secondary Legislation

Contact for enquiries:
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Summary: Intervention and Options

RPC Opinion: AMBER

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
£40m	£5m	-£0.5m	Yes	Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

There is evidence that some people experience unjustified discrimination because of their age when being provided with services, resulting in an inferior service; or having access to a product restricted, simply on the basis of age; or not being treated with dignity and respect when receiving a service. The responses to the consultation *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*[1] showed that age discrimination (an umbrella term which, whilst primarily describing direct discrimination in this context, also includes indirect discrimination, harassment and victimisation) is widespread. Age equality groups cited a survey in which almost 30 per cent of adults questioned said they had been discriminated against because of their age. This piece of research suggests that Government intervention is necessary to prohibit age discrimination outside work and to put it on a similar basis to the prohibition on discrimination in the workplace, sending an unequivocal message that ageist attitudes, and the discriminatory practices they often lead to, are no longer acceptable, in the same way as previous discrimination legislation has helped to changes attitudes and behaviour towards women, ethnic minorities and disabled people.

What are the policy objectives and the intended effects?

The objective is that where age is used as a factor in providing a service it is used in a fair and transparent way. Legislation will help to ensure that inappropriate or harmful barriers caused by age discrimination outside the workplace are removed, so that no group is unjustly excluded from services. The legislation will help service providers to eliminate harmful age discrimination by providing a clear legal framework within which to design, commission and deliver age appropriate services. The new law will give individuals confidence that it is their right to be treated fairly. It will provide them with a right of redress in the courts if they are discriminated against.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

•Option 1: Do nothing. Not commence the provisions in the Act banning age discrimination.
•Option 2 (preferred): Prohibit all age discrimination i.e. direct, indirect and harassment against people aged 18 or over by providers of services, except where it can be objectively justified, providing relevant exceptions to ensure that age based treatment can continue without a need for objective justication in some cases.
The preferred option is option 2. It ensures that we address real problems in a common sense way, taking account of how people of different ages live; and how businesses operate in order to avoid disproportionate burdens and unintended consequences. We have revised our proposals to use non-legislative solutions where possible, such as, improving transparency and signposting in the financial services sector.

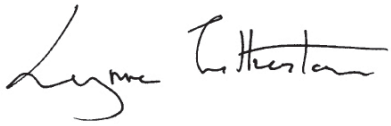
Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 2015

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro**	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** 0%	**Non-traded:** 0%	

[1] ***http://www.communities.gov.uk/publications/communities/frameworkforfairnessconsultation***

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: 17 / 5 / 12

Summary: Analysis & Evidence

Policy Option 2

Description: Prohibit all age discrimination against people aged 18 or over by providers of services, except where it can be objectively justified, and provide relevant specific exceptions to ensure that age based treatment can continue without a need for objective justification in some cases.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2011	2012	10	**Low:** 38.2	**High:** 42.2	**Best Estimate: 40.2**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	10.8	1	9.0	**87.8**
High	12.1		9.3	**91.8**
Best Estimate	11.4		9.1	**89.8**

Description and scale of key monetised costs by 'main affected groups'

Familiarisation, training and compliance costs – £8.8–10.0m transitional costs for private sector & £2.0-2.1m for public sector. **Ongoing Compliance Costs in Health and Social Care Sector**: £0.15m for private sector & £0.26m for public sector. **Litigation Costs:** £0.56-0.89m in year one and £0.51-0.81m from year two onwards to service providers, individuals and Exchequer. **Financial services (transparency costs)** - £0.72 m for private sector in transitional costs (set up data monitoring system) & £0.25m recurring for administering data collection (non-legislative measure). **Financial services (increase in claims)** - £7.8m annually recurring for private sector

Other key non-monetised costs by 'main affected groups'

The health and care system will, partly as a consequence of this legislation, rely upon objective justification of age-related treatment in determining service eligibility. This will lead to better focusing of care upon those with greater need and a consequential tightening of access for those who would otherwise have benefited from the inappropriate use of age as a criterion.
Any increased costs for financial service providers may also lead to higher prices for small groups of consumers in higher risk groups.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	1	N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	0		15.10	**130.0**

Description and scale of key monetised benefits by 'main affected groups'

As a result of signposting and increased transparency in financial service there will be a reduction in search costs to individuals of £4.5 million and an increase in premiums to insurers of £9.9million per annum. There will also be benefits to individuals from accessing motor and travel insurance (willingness to pay) of £0.7million per annum.

General benefits will arise as a result of increasing the market share for younger and older consumers where this legislation leads to greater access to and participation in markets for goods and services. However, it has not been possible to robustly monetise the magnitude of these benefits to individuals, providers of services and goods, and the economy more widely.

Other key non-monetised benefits by 'main affected groups'

(1) Better focusing of care will provide benefits to those previously denied care because of objectively unjustifiable age discrimination.(2) Helping to tackle social detachment in older people occurring from lack of access to services, which can result in inactivity which can accelerate the decline towards premature ill-health. (3) Presents an additional incentive to business to develop products particularly aimed at meeting the requirements of older customers. (4) Helping to improve 'Active Ageing' and independent living. This reduces costs related to medical treatment, admissions to care homes and emergency hospital care. (4) New legislation will reinforce the effectiveness of planned wider reforms to embed equality within the health and care system.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5

General

- All large and public sector firms will familiarise with the legislation and firms with 10-249 employees who provide goods and services.
- Between 8-12% of large and public sector firms will incur training costs and 2.5-3.5% of small firms.
- 5% of large and public sector firms will incur compliance costs from changing policies and practices, and between 0.5-1.5% of small firms.
- Approximately 620 enterprises in the car rental, and the self-catering accommodation sectors would need to prepare a strong objective justification position for their age based practices to be fully compliant with the change in the law.
- There will be 25-49 cases brought against service providers in the first year, and 20-39 from year two onwards.

Health and Social Care

- The reform of the health and care system is driving equality in NHS services for older people and will be reinforced by this new legislation. This is not being addressed by levelling up existing service provision. Rather, the whole system is being reformed, with age based treatment criteria being removed, and access to care being determined purely on the basis of need. This will automatically lead to benefits - as a blunt criterion of ability to benefit based on age is displaced by a more refined set of criteria.
- All large and NHS bodies will familiarise with the legislation and firms with 10-249 employees.
- 100% of large firms and NHS bodies will incur training costs and 5%-10% of small firms.
- 100% of large firms and NHS bodies will incur compliance costs from changing policies and practices, and between 5%-10% of small firms.
- The majority of health and social care providers and commissioners will need to prepare an objective justification position to ensure full compliance with the ban. However, this will be minimal on providers – we assume the main risk of challenge will be on commissioners, NHS bodies and large enterprises, where the decision point is more likely to be challenged.
- There is an increased risk of litigation against NHS bodies in particular. Here it is estimated 7 significant age discrimination cases could be brought each year. There is a low risk of litigation being brought more generally in the health and social care sector, and any liability would primarily lie with bodies making NHS and social care policy and commissioning decisions.

Financial Services

- Almost all insurers would choose to enter into collective publication arrangements through the ABI.
- Cost estimates based on the costs of introducing the transparency requirement for gender.
- 50% of those aged 65+ want to purchase travel insurance, 25% are refused on 1st attempt and 7% are subsequently unable to find a supplier.
- 3% of those aged 65+ are refused motor insurance and 7% are unable to find alternative.
- 1% of those aged 16-24 do not drive because they could not find motor insurance.
- 60% of those aged 65 + and 30% of those aged 16-25 who are unable to find a motor insurance quote, and 63% of those unable to find a travel insurance quote, will benefit from using the signposting system once established.
- Each search for insurance costs £2 and signposting will save around 2.25m searches per annum.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: 8.7	**Benefits:** 9.2	**Net:** -0.5	Yes	Zero Net Cost

Evidence Base (for summary sheets)

Contents:

Summary

Introduction

The Equality Act 2010 includes provisions to make it unlawful to discriminate against adults aged 18 and over by those providing services and public functions.

Our approach to the commencement and operation of legislation is a practical one. We want to ensure people are treated fairly and that services are in place which meet the needs of people of all ages. However, we also want it to be possible to treat people differently because of their age where it is justifiable or beneficial to society to do so. The legislation therefore needs to take into account how people of different ages live and their different needs, as well as how businesses and other organisations operate in order to avoid disproportionate burdens and unintended consequences.

We have therefore considered carefully the need for beneficial age-based practices to be able to continue once a ban is in place; and how the law should facilitate this. This is why we have decided that there are justifiable or legitimate uses of age for which we want to provide specifically in the legislation through 'exceptions', in particular in the provision of financial and general services.

This Impact Assessment therefore looks at the evidence, we have divided it into three sectors – general services, health and social care and financial services and these are in the respective Annexes. The Annexes are introduced by this Summary, which, as far as possible, abstracts from the three distinct areas to offer a more general perspective on the proposed legislation. However, similarly to the Annexes, the Summary is structured by looking at the problem under consideration, the Policy Objective, the Options and the Costs and Benefits. The Annexes, in addition, will detail the risks and assumptions of the preferred options under each area.

Problem under consideration and rationale for intervention

There is evidence that some people experience unjustified discrimination because of their age when being provided with services. This can mean receiving an inferior service; or having access to a product restricted, simply on the basis of age; or not being treated with dignity and respect when receiving a service.

The evidence ranges from surveys' responses indicating a widespread perception of discrimination to detailed case studies of, for instance, health care practices, as well as detailed research on the market structure and pricing of some financial services. There is also a substantial amount of evidence from a large set of consultations and reviews run by government over the years.

For instance, we received 750 responses from equality groups, businesses, charities, education and research bodies, local authorities and public sector providers and trade unions to the questions on age discrimination in the consultation *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*[1]*.* The responses gave a wide range of examples of perceived age discrimination and conveyed strong support for new legislation, with 83% of these respondents in favour of legislating to end age discrimination.

In the health and social care sector, evidence of discriminatory outcomes emerges from the 2009 review commissioned by the Department of Health carried out by Sir Ian Carruthers and Jan Ormondroyd. They found that some age groups, especially older people, are more likely to receive poor services. Other evidence is provided by the Audit Commission, the Healthcare Commission as well as various other surveys.

In the financial services sector, many older people have complained that they are discriminated against when trying to obtain various financial services; they say that they have a more limited choice of services and pay a higher price for them. They also say they have problems obtaining loans, mortgages and are particularly concerned about travel and motor insurance[2]. In order to determine the extent of age discrimination occurring in the financial services industry, the Government Equalities Office

[1] A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain - http://www.communities.gov.uk/publications/communities/frameworkforfairnessconsultation

[2] Age Concern surveys suggest that people aged 75 and over are nearly ten times more likely to be refused a quote for motor or travel insurance than people aged 30 to 49. 13 per cent of people over 80 said they were put off taking holidays because of worries about getting insurance or the cost of premiums

commissioned independent research by Oxera. This research found that age is a key risk factor to be taken into account when pricing financial services products. It is a proxy for driving ability, health, medical conditions and other factors that determine the frequency and costs of making an insurance claim or the likelihood that someone will default on a mortgage or loan.

This evidence would also need to be considered alongside demographic change to the UK population. The ONS reports that between 1971 and 2009 the proportion of the UK population aged under 16 years decreased from 25.5 per cent to 18.7 per cent, while the proportion aged 75 and over increased from 4.7 per cent to 7.8 per cent. It is projected that the number of UK residents aged 65 and over will be larger than the number aged under 16 years by 2018. Clearly, the UK population is ageing. This increasingly important section of the population represents considerable spending power. Selling products and services to older people is therefore a major opportunity. Analysis, such as that in the *Aspects of the Economics of an Ageing Population*, produced in 2005 by the House of Lords Select Committee on Economic Affairs, concluded that there was a 'generalised failure by industry and commerce to take advantage of the lucrative market represented by the ever-growing group of older people who have at their disposal what is sometimes called the Grey Pound'[3]. They went on to argue that little had changed since the Foresight Ageing Population report in 2000. A more recent report by the ILC UK concluded that 'many of the market barriers remain similar to those identified almost 50 years ago'[4].

There is therefore a strong rationale for intervention to put the approach for age discrimination outside work on a similar footing to discrimination in the workplace. That is what informed the Equality Act provision to make it unlawful to discriminate against adults aged 18 and over by those providing services and public functions.

Policy Objective

By commencing provisions in the Act to ban age discrimination in the provision of services and exercise of public functions the Government firstly aims to:

- Provide individuals that have been discriminated against with a right to recourse through the courts.
- Send out a strong signal that discriminating unnecessarily because of age is unacceptable, ensuring that companies and service providers consider if their age policies and practices generally are justifiable.

In addition, the Government wants to:

- Create a cultural shift helping society to take steps to remove entrenched disadvantages, and to provide more opportunities to members of a disadvantaged group in order that they have a genuinely equal ability to participate in society.
- Ensure that age discrimination is taken as seriously as other types of discrimination.
- Create a primary driver for change in business practices**.**

Options

- **Option 1:** Do nothing. Age discrimination in the provision of services and the exercise of public functions to continue.
- **Option 2 (preferred):** Prohibit all differential treatment of people aged 18 or over by providers of services and those exercising public functions, except where it can be objectively justified, and additionally provide relevant specific exceptions to ensure that justifiable age based treatment can continue.

We have looked at whether any of our policy goals could be achieved through non legislative solutions and to that end we have decided that measures to improve transparency, for instance in the financial services sector and to help older consumers access appropriate financial services products through signposting, can be dealt with through an industry level agreement rather than through legislation.

Taking into account the better regulation principles of transparency, accountability, proportionality, consistency and being targeted we believe the legislation should include the following:-

[3] Aspects of the Economics of an Ageing Population, 2005 by the House of Lords Select Committee on Economic Affairs

[4] The Golden Economy: the Consumer Marketplace in an Ageing Society, ILC-UK, October 2010

- a general requirement not to discriminate against adults aged 18 and over, because of age in the provision of services and the exercise of public functions;
- an 'objective justification' defence to allow differential treatment based on age where it can be shown to be a proportionate means of achieving a legitimate aim;
- specific exceptions to enable beneficial or justifiable differential treatment to continue without risk of legal challenge; and
- Codes of practice or guidance to provide explanations and practical examples of what would be covered by the new law or unaffected by it.

The Government therefore believes that Option 2 is the appropriate approach to take. This would end harmful and unjustified age discrimination, but allow age differentiated services where they are beneficial or can be justified, which is a proportionate response to the problem.

More specifically, in the provision of general services, the impact assessment is based on specific exceptions from an age discrimination ban where differential treatment on the basis of age would continue to be lawful. The exceptions permitted are:

- Age-based concessions and benefits;
- Age-related group holidays;
- Residential park homes;
- Sporting events;
- Immigration service decisions; and
- Age verification initiatives such as "Challenge 25"

In the provision of health and social care services, the Government believe there should be no exceptions: any age-based practices in the NHS and social care should be objectively justified. This decision was taken because exceptions would have the potential in effect to permit 'bad' uses of age to continue as well as protecting beneficial practices. Where harmful age-based practices that are not objectively justifiable are occurring, it is right that this should be open to challenge. The legislation will not prevent age being taken into account in decision making where its use can be demonstrated to be a proportionate means of achieving a legitimate aim. The overall response to the May 2011 consultation agreed and confirmed that a ban on age discrimination in health and social care without exceptions would have a positive impact and would help ensure that a person's age is only taken into account where it is right to do so. Thus the age ban will not include an exception for health and social care, and the ban will be fully implemented in that sector. However, it will only be possible to factor in age in determining treatment and care, where it is objectively justified in terms of outcomes.

In the provision of financial services, the Government has decided to provide an exception that would allow financial services providers to continue to use a person's age in decision-making, but only when their risk assessments are based on relevant and reliable information. This is in conjunction with non-legislative measures to improve access and transparency in respect of travel and motor insurance through a signposting service.

The signposting service commenced on 6 April 2012 and forms part of e an agreement between the Association of British Insurers, British Insurance Brokers Association and the Government, under which members of the ABI and of BIBA are signed up to conditions (as part of their membership) whereby any individual insurance company unable to provide insurance requested (because of a person's age) will refer the customer either direct to an insurance company that will provide such cover, or to a central signposting service operated by the industry.

There is evidence that older and younger customers sometimes struggle to access motor or travel insurance and signposting arrangements are intended to ensure improved access in future. It is not a mandatory requirement of the signposting service for insurance companies to refer young drivers to the signposting service, because the industry has pointed out that only one company refuses to provide insurance to that age group, and because insurance decisions for this age group are often based on factors other than age, such as engine size and other individual circumstances. Because of such detailed, individual-based decisions, the industry considers that mandatory signposting is less workable for drivers in this age group. However, whilst insurance companies will not be required, under the agreement, to refer such customers to the signposting service, we are working with the industry to encourage them to do so.

Accordingly we have reduced the anticipated benefit of signposting in relation to the market for that age group.

This non-legislative approach also allows the continued use of age banding. We believe this is the right approach because restricting the extent to which the financial services industry can base prices on risks and costs would distort the market, leading to increased costs and higher prices, with the possibility of some companies leaving the market altogether.

The ABI is the biggest trade association in the insurance sector with over 300 members, accounting for some 90% of premiums in the UK. Although the signposting agreement with the ABI and BIBA is non-legislative and was reached voluntarily, the ABI has made it a mandatory condition of membership that all members will need to refer people turned down for insurance because of their age to another insurance company or the industry signposting service. Failure to do so will be regarded as a breach of membership. The legislation provided an incentive and encouragement to establishing the signposting service, and its continued upkeep will in part be encouraged by the fact there is primary legislation covering age discrimination in service provision, with an exception in secondary legislation for the financial services sector.

The use of age-limits will be able to continue. Financial service providers will not therefore be forced to participate in sectors that they do not wish to operate in, or have no experience in.

The individual Impact Assessments in the Annexes detail the evidence in support of these options.

Note: Annexes 2 and 3 consider the impact on the health and social care, and financial services sectors under the counterfactual that a ban will be implemented, and therefore appraise the option of whether or not to provide exceptions. While we accept that the IA should be as consistent as possible in terms of the baseline throughout, the approach we have taken reflects the policy decision before us – i.e. whether or not to exempt the financial services sector from a ban once it has been implemented. They therefore represent the decision making process that reflects how the legislation would be implemented in practice

Micro-businesses

The Government Equalities Office will apply for a waiver from the micro-businesses exemption as for the ban to fully succeed in eliminating inappropriate and harmful age discrimination it needs to apply across the board to be truly fair and effective. In addition, the range of exceptions already proposed (which will apply to firms of any size) is considered more tailored to the concerns expressed during the consultation process. The difference in impact between including and excluding micro-businesses is set out within the Impact Assessment for General Services and Health and Social Care in Annex 1 and Annex 2 respectively.

We believe that it is appropriate to apply for a waiver given the large proportion of micro-businesses in the services sector, for example, in the renting of motor vehicles micro-businesses make up 79.5% of the total enterprises, whilst in holiday accommodation micro-businesses amount to 89.9% of the total enterprises in that sector.[5]

To rebuild our economy it is essential to make sure we offer opportunities fairly to everyone, putting an end to old-fashioned stereotyping of people because of their age and recognising the valuable contribution people of all ages can make to society as workers, consumers and citizens. If we believe that age discrimination is wrong at work, then it is equally wrong outside work and should be addressed in similar terms, as it can form a significant barrier to people's opportunities. When older customers are turned away from the market place through unfair treatment, the economy misses out on increased business and revenue, and costs to the State increase as families suffer the ill effects of social exclusion.

Many businesses and organisations including micro-businesses do of course have excellent records on reaching out to people of all ages. For these service providers, introducing this new protection for age will have a very minimal impact. They will not need to do anything different from what they currently do to ensure that they do not discriminate.

Many micro-businesses will not be affected by the age discrimination ban, because they will in any event be covered by one or more of the exceptions or do not unfairly discriminate. For example, many small

[5] Business Population Estimates for the UK and Regions, 2010

businesses offer discounts to young adults and pensioners and will continue to be able to do so, as there will be an exception from the ban for concessions based on age.

Introducing an age discrimination ban without a waiver from the micro-businesses moratorium would mean that the ban could not be implemented in a fair and transparent way, as some businesses would be able to use the moratorium to continue discriminating whilst others could not. This would be confusing for service users because it would be difficult for them to know what service they could expect from any particular provider. This could result in discriminating businesses going unchallenged and in older customers avoiding smaller providers in order to ensure they will be treated fairly.

Costs and Benefits

SUMMARY TABLES OF MONETISED COSTS AND BENEFITS OF PREFERRED OPTIONS – (See annexes for detailed discussion of costs/benefits)

Costs (in £ millions)

	Descriptor	COSTS											
		Transitional (one-off)						Average Annual					
		Public Sector		Private Sector*		Individuals		Public Sector		Private Sector*		Individuals	
		High	Low	High	Low	High	Low	High	Low	High	Low	High	Low
General	Familiarisation	0.05	0.05	3.26	3.26	-	-	-	-	-	-	-	-
	Training	0.41	0.28	2.51	1.70	-	-	-	-	-	-	-	-
	Changing policies and procedures	0.01	0.01	0.74	0.50	-	-	-	-	-	-	-	-
	Litigation	0.03	0.01	0.04	0.02	0.02	0.01	0.11	0.05	0.14	0.07	0.07	0.04
Financial Services	Publishing aggregate data (voluntary measure)	-	-	0.72	0.72	-	-	-	-	0.25	0.25	-	-
	Increase in insurance claims	-	-	-	-	-	-	-	-	7.78	7.78	-	-
Health and Social Care	Familiarisation	0.03	0.03	1.01	1.01	-	-	-	-	-	-	-	-
	Training	1.02	1.02	1.45	1.33								
	Changing policies and procedures	0.52	0.52	0.31	0.31			0.26	0.26	0.15	0.15		
	Litigation	-	-	-	-	-	-	0.49	0.35	-	-	-	-
TOTAL		2.07	1.91	10.04	8.84	0.02	0.01	0.86	0.67	8.32	8.25	0.07	0.04

*** Cost per large firm is generally equivalent to the cost per public sector organisation. Costs per employers of 10-249 employees are less per firm than for the public sector.**

Benefits (in £ millions)

	Descriptor	Benefits											
		One-off						Average Annual					
		Public Sector		Private Sector		Individuals		Public Sector		Private Sector		Individuals	
		High	Low	High	Low	High	Low	High	Low	High	Low	High	Low
Financial Services	Reduction in search costs for individuals from signposting	-	-	-	-	-	-	-	-	-	-	4.5	4.5
	Increases in premiums from signposting									9.92	9.92		
	Benefits of obtaining insurance (Willingness to pay estimates)											0.68	0.68
Health and Social Care	Better access to services	-	-	-	-	-	-	-	-	-	-	-	-
	Better outcomes for patients	-	-	-	-	-	-	-	-	-	-	-	-
	Reductions in complaints	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL		-	-	-	-	-	-	-	-	9.92	9.92	5.18	5.18

Net Impact (in £ millions) – See separate annexes for detailed costs/benefits

		Costs		Benefits		Net Impact
		One-off	Average Annual	One-off	Average Annual	Present value
Private Sector	**High**	8.84	8.25	-	9.92	5.52
	Low	10.04	8.32	-	9.92	3.74
Public Sector	**High**	1.91	0.67	-	-	- 7.65
	Low	2.07	0.86	-	-	- 9.46
Individuals	**High**	0.01	0.04	-	5.18	44.28
	Low	0.02	0.07	-	5.18	43.97
Total	**High**	10.76	8.95	-	15.10	42.16
	Low	12.12	9.25	-	15.10	38.25

The Impact of Providing Exceptions

Providing an exception for a current practice, such as the offering of age-based concessions, will lead to no aggregate costs or beneficial impacts. Exceptions will ensure that the status quo is maintained. We have, however, given examples to illustrate the cost impact if an exception was not provided for financial services, and for certain areas of general service provision within annex 3 and 4.

Where an exception has not been provided other age specific services will be able to continue as long as the provider of that service can show that they are a proportionate means of achieving a legitimate aim. Exceptions have only been provided where the use of age is an inherent part of the service provision. In other services age segmentation would need to be justified.

Direct Costs and Benefits to Business (One-In, One-Out Rule)

The Equivalent Annual Net Cost to Business (EANCB) of this measure, including the preferred approach for the financial services and health and social care sectors, in 2009 prices is -£0.50million when exempting micro businesses. This includes benefits to the market from the non-legislative signposting measures for the financial services sector. We consider this as integral to the overall regulatory impact of the proposal given that an agreement with insurance providers was only reached against the background of the introduction of a ban, potentially covering financial services.

The structure of the industry meant that such benefits would not have arisen had it not been for the impetus of the proposed age discrimination ban. Only the industry's representative bodies, the ABI and BIBA, have been in a position to set up signposting arrangements using aggregate industry data, but there was and is no financial incentive for them to do so, i.e. they would not profit from the arrangements, indeed they will incur some transitional and recurring costs as the arrangements are fully established. The trade bodies recognised however that there would likely be an increase in revenue for their members, through setting this up. Our assessment, which is based on aggregate industry data provided to us by ABI, is that the ABI's members and to a lesser extent BIBA's members may benefit. (See Annex 3 for full details)

There had never been a previous push specifically for age signposting by member companies because their business operating models were settled and well niched, i.e. there was little appetite for revision or change, as reflected in the industry's consultation responses and informal exchanges with officials. Their view was that research showed that insurance is available for all age groups and there was therefore no need to change the way that services were offered..

However, evidence such as independent research undertaken for the GEO[6] and Age Concern[7] showed that some people have problems obtaining the insurance products they need. Insurers told us in consultation responses and in meetings with officials that they were concerned about the potential impact that legislation to solve the problem could have on their business, because age factors are integral to their products and practices. The industry estimated that for motor and travel insurance the cost of removing age requirements could be around £482 million in the first year, with diminishing ongoing costs, and stated that "the rush to legislate must be resisted"[8].

[6] Oxera research for the GEO – The use of age based practices in financial services – June 2009

[7] Insurance and Age: exploring behaviour, attitudes and discrimination, CM Insight, Andrew Smith Research - 2007

[8] Age discrimination in financial; services: Final report of the Experts' Working Group – October 2008 http://www.hm-treasury.gov.uk/d/age_discrimination.pdf

Because the industry were not reviewing their individual operating models, they did not themselves collect or pool data specifically related to the benefits of signposting and hence were not in a position to consider the overall potential for business growth. The very modest net income to the industry from signposting set out in the IA is estimated from aggregate industry data.

The 'age discrimination in financial services working group', chaired by HM Treasury and attended by GEO, industry representatives and age discrimination lobby organisations, discussed and reviewed the use of age in financial services, to help inform Government in the development of legislation. The views of the group were very diverse, with the industry opposing change, whilst older peoples' representative organisations wanted the use of age as a factor in services to be restricted to only where it could be justified. A compromise option recommended by the group was the introduction of signposting and referrals. A further working group was set up by HM Treasury to further consider and develop this option and this has led to the Agreement.

Thus the ABI and BIBA accepted that a non-legislative signposting agreement to address the access problems would be far preferable to strict enforcement (without any exceptions) of a ban on age discrimination. It was recognised that the Agreement will bring increased revenue to the industry, as outlined in the impact assessment, but these gains are small-scale compared with the industry's estimate of the costs of not having an exception.

The industry's co-operation in reaching agreement was in effect secured in return for government providing a wide exception for the financial services sector, so avoiding the costly need for the industry to radically restructure its businesses. Signposting was not seen primarily as a revenue-generating exercise.

For One-In, One-Out purposes this measure scores as a 'Zero Net Cost' measure. Were micro enterprises not exempt from this measure, it would score as an EANCB of £0.75million.

Monitoring and Review

The Equality and Human Rights Commission will be responsible for keeping the discrimination legislation and the Human Rights Act under review. Additionally the Government Equalities Office will be reviewing the impact of the Equality Act, which will include a review of the age discrimination ban.

Next Steps

The previous impact assessment was marked fit for purpose given the stage of the policy development, by the Regulatory Policy Committee. We accepted their recommendation that some of the assumptions and evidence behind the estimates of the benefits needed further testing during the recent consultation and have updated the impact assessment accordingly.

Annexes

Annex 1: General Services

Title: **General Services** **Lead department or agency:** Government Equalities Office	Impact Assessment (IA)
	IA No: N/A
	Date: 15/05/2012
	Stage: Final Proposal
	Source of intervention: Domestic
	Type of measure: Secondary Legislation
	Contact for enquiries: Mark Reed 020 7035 8126

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

There are many examples of age discrimination, which have been identified by respondents to the GEO consultations on equality, such as discrimination against older and younger people hiring cars, or older people not being served in shops unless a younger person is with them. Government intervention is necessary to prevent unjustified age discrimination in the provision of goods and services.

However, objectively justified differential age based treatment will continue to be allowed.

What are the policy objectives and the intended effects?

Objective:

- To ensure that all people aged 18 or older are treated fairly on grounds of age, by those providing goods and services and carrying out public functions in the future.

Intended effects:

- Prevent harmful discrimination for all people aged 18 or over in the provision of goods and services.
- Allow justified / beneficial age differential treatment, for example bus passes to continue.
- Ensure that any barriers caused by age discrimination are removed, for older people, to ensure they are treated fairly, and age discrimination does not prevent them living fulfilling lives, so they are able to play a full part in society.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The options are :-

Option 1 – Do nothing. Not commence the provisions in the Act banning age discrimination.

Option 2 (preferred) - Prohibit discrimination against people aged 18 or over because of their age, without affecting the differential provision of products or services for people of different ages where this is justified or beneficial.

Micro businesses are assumed to be exempt from this measure. However, the impact of option 2 has also been assessed in the event that a waiver is applied for the Government's moratorium on new regulation for micro businesses in respect of this measure. The costs/benefits in this case are presented in *brackets* on the following page.

Summary: Analysis and Evidence

Policy Option 2

Description:

Prohibit discrimination against people aged 18 or over because of their age, without affecting the differential provision of products or services for people of different ages where this is justified or beneficial

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -9.8 *(-21.4)*	**High:** -7.2 *(-17.2)*	**Best Estimate: -8.5 *(-19.3)***

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	5.8 *(15.8)*	1	0.2	**7.2 *(17.2)***
High	7.1 *(18.7)*		0.3	**9.8 *(21.4)***
Best Estimate	6.4 *(17.2)*		0.2	**8.5 *(19.3)***

Description and scale of key monetised costs by 'main affected groups'

Transitional costs associated with familiarisation, training of staff and compliance for providers of services and goods:
Private Sector: (excluding micro enterprises): £5.5 – £6.5million *(£15.4 – £18.2million)*
Public Sector: £0.3 - £0.5million
Annual costs of litigation: £0.21-£0.4million in year one & £0.16-£0.32million from year two onwards

Other key non-monetised costs by 'main affected groups'

Implementation of the ban will require service providers who unfairly discriminate, to reconsider their policies and provide better access to services.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	1	N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

General benefits will arise as a result of increasing the market share for younger and older consumers where this legislation leads to greater access to and participation in markets for goods and services. However it has not been possible to robustly monetise the magnitude of these benefits to individuals, providers of services and goods, and the economy more widely.

Other key non-monetised benefits by 'main affected groups'

(1) Helping to tackle social detachment in older people occurring from lack of access to services. (2) Presents an additional incentive to business to develop products particularly aimed at meeting the requirements of older customers. (3) Helping to improve 'Active Ageing' and independent living.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

- All incremental costs for providers of goods and services will be transitional and incurred in the first year after implementation.
- Familiarisation will take on average 1-2 hours depending on the size and sector of the organisation concerned across the entire range of goods and services providers. However, it is recognised that some organisations in specific sectors may incur disproportionately greater time costs.
- Between 8% and 12% of large firms and public authorities will need to retrain some staff, and around 2.5% and 3.5% of firms with 10-249 employees.
- 5% of large firms and public sector organisations and between 0.5% and 1.5% of firms with 10-249 employees will incur compliance costs from changing policies and practices.
- Approximately 620 enterprises in the car rental, and the self-catering accommodation sectors would need to prepare a strong objective justification position in case their continuing differentiation of services/prices according to age came under challenge.
- There will be 25-49 cases brought against service providers in the first year, and 20-39 from year two onwards.

Evidence Base

Problem under consideration

The Equality Act 2010 will make it unlawful to discriminate against adults aged 18 and over by those providing services and public functions. The problem under consideration is how this should apply to the provision of general services when the ban is introduced in 2012.

Various studies and research have identified forms of age discrimination in the provision of services. For instance:

- The English Longitudinal Study of Ageing (ELSA)[1] found that one-in-ten older people experienced social detachment. There are many reasons why this can occur but one key reason is the lack of access to various services, transport, financial products or modern communication technologies.

- In 2006, the Social Exclusion Unit reported that 25% of older people are socially excluded, and that discrimination led to some older people being denied access to services which the rest of the population take for granted, or to receiving a worse standard of treatment[2].

- The Equalities Review found that almost one in three persons aged over 80 are excluded from basic services compared to only one in 20 of those aged 50 to 59[3] whilst the final report stated that people aged over 80 are particularly at risk of suffering multiple exclusion[4].

Moreover, perceptions of discrimination are also widespread:

- Age equality groups cited a survey[5], which found that almost 30% of the adults surveyed reported experiencing age discrimination more than any other form of discrimination. The Trades Union Congress quoted a Social Exclusion Unit finding[6] that 29% of people over 80 are excluded from important basic services.

- Research by Age UK has found that many older people think businesses and retailers have little interest in the consumer needs of older age groups and many still face obstacles in accessing services tailored to meet the needs of a younger audience[7].

- The Discrimination Law Review provided a significant amount of evidence that people are being treated in a discriminatory way by those providing services and public functions, particularly in health and social care, and financial services, such as insurance. For example, a retailer assuming that an older person was incapable of signing a contract –for a mobile phone – without a younger person present to explain the details.

Policy Objectives

The policy objective is to ensure that people aged 18 or over are treated fairly on grounds of age by those providing goods and services and carrying out public functions. However, justified and beneficial age differential treatment will be allowed (the specific exemptions are outlined in the Option section below).

Options

The options are:
Option 1 – Do nothing. Not commence the provisions in the Act banning age discrimination.

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[1] 2006 English Longitudinal study of ageing - http://www.ifs.org.uk/elsa/report08/elsa_w3.pdf
[2] A sure start to later life - Page 21 - http://www.communities.gov.uk/documents/corporate/pdf/913275.pdf
[3] The Equalities review: fairness and freedom: The final report of the equalities review - http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/ interim_report.pdf
[4] The Equalities review: fairness and freedom: The final report of the equalities review - http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/ equality_review.pdf
[5] Age Concern, "How Ageist is Britain?" (2005)
[6] Social Exclusion Unit, "A sure start in later life" (2006) - Page 21 - http://www.communities.gov.uk/documents/corporate/pdf/913275.pdf
[7] The grey pound - http://www.ageuk.org.uk/latest-news/archive/the-grey-pound-set-to-hit-100bn-mark/?paging=false

Option 2 (preferred) - Prohibit discrimination against people aged 18 or over because of their age, without affecting the differential provision of products or services for people of different ages where this is justified or beneficial.

The preferred option is option 2, which would include a number of specific exceptions from an age discrimination ban where differential treatment on the basis of age would continue to be lawful. In fact, these would help to ensure that service providers do not as a matter of course end beneficial practices or withdraw services out of concern that they may be open to legal challenge or that the process of justification undermines their ability to continue to provide the service or function on an economic basis or at all. These include:

- Age-based concessions and benefits;
- Age-related group holidays;
- Residential park homes;
- Sporting events;
- Immigration services; and
- Age verification initiatives such as “Challenge 25”.

The ban applies to all those aged 18 or over as do the exceptions. A detailed rationale for having each of these exceptions is provided in Annex 4.

The overall response to the March 2011 consultation was in agreement with the proposed exceptions for the general sector as they were considered beneficial or justifiable practices. This is because taking account of people’s ages is a valid way to target or provide those services. Providing specific exceptions would help to ensure that service providers do not end these beneficial or justifiable services out of concern that they may be open to legal challenge. Other age differentiation could still occur where there is good reason. Following the consultation, age verification initiatives, for example, asking for ID to prove a person’s age for alcohol sales, was added to the exceptions.

The impact of option 2 has also been assessed applying the Government’s moratorium on new regulation for micro businesses. However, the costs to micros have also been calculated to highlight the potential impact if a waiver is subsequently granted for this measure.

Costs and Benefits

Benefits of banning age discrimination in the ‘general services’ sector

There are real economic benefits for retailers in adapting their practices to meet the needs of older consumers and part of this includes tackling unjustifiable age discrimination.

The ageing population, combined with the potential increase in relative spending power of older consumers, presents significant business opportunities. Therefore, widening availability of goods and services, particularly those aimed at meeting the requirements of older customers, such as health care, recreation, leisure and financial services is important to businesses performance.

A report entitled *Aspects of the Economics of an Ageing Population*, produced in 2005 by the House of Lords Select Committee on Economic Affairs, felt that there was a ‘generalised failure by industry and commerce to take advantage of the lucrative market represented by the ever-growing group of older people who have at their disposal what is sometimes called the Grey Pound’[8]. They went on to argue that little had changed since the Foresight Ageing Population report in 2000. Indeed a recent report produced by the ILC UK entitled ‘The Golden Economy’, concluded that ‘many of the market barriers remain similar to those identified almost 50 years ago’[9].

Given the lack of change a European Commission’s European Business Test Panel of around 3,000 businesses concluded that, legislation is necessary in order to have ‘a considerable impact in promoting action’[10]. This is the conclusion the ILC-UK report also came to and recommended that the ‘Government

[8] *Aspects of the Economics of an Ageing Population*, 2005 by the House of Lords Select Committee on Economic Affairs

[9] *The Golden Economy: the Consumer Marketplace in an Ageing Society,* ILC-UK, October 2010

[10] Cultural Diversity and Economic Performance: Evidence from European Regions - http://www.bepress.com/cgi/viewcontent.cgi?article=1335&context=feem

should review within three years the impact of the Equality Act 2010 on the supply of goods and services to older people'.

The ILC-UK report suggests that some businesses are slow to adjust to the evolution of an ageing society. This research shows that many older people think businesses and retailers have little interest in the consumer needs of older age groups and many still face obstacles in accessing services tailored to meet the needs of a younger audience[11]. Older people often assume that certain products and services are not for them and therefore do not consider purchasing. They also assume that certain technologies are for younger people and don't consider their use as a means of engaging with the whole consumer market[12].

In March 2010 the Department for Business Innovation and Skills (BIS) published a discussion paper entitled: '*Is business ready for an ageing nation? Economic opportunities and challenges of ageing: Discussion paper*'. This discussed in part the reasons why some businesses have been slow to react to the opportunities presented by an ageing society. Further work will follow looking at this issue in more detail and the best mechanisms for influencing behaviour.

Wider Beneficial Impacts

There are also significant benefits from banning unjustifiable age discrimination that are difficult to put a monetary value on. These include:

- ***Helping to tackle social detachment in older people.*** According to the *English Longitudinal Study of Ageing* (ELSA)[13] and the *General Household Survey*[14], one-in-ten older people experienced social detachment. There are many reasons why this can occur but one key reason is the lack of access to various services, transport, financial products or modern communication technologies. For example:-
  - Older people without access to public or private transport were six times more likely to have experienced persistent social detachment than those with access to private or public transport (25% compared with 4%).
  - Older people with no landline telephone, or with no mobile phone or internet access, had an increased risk of persistent social detachment (18% and 8%, respectively).
  - 17% of older people with difficulties accessing basic services such as a post office or shops experienced persistent social detachment.
    The proportion of older people persistently detached was four times higher for those who did no physical activity (16% compared to 4% who were physically active). Of course, physical activity itself may be a form of social *participation*, particularly if done with other people or as part of a club.
  - Over one in ten of older people with no bank account (12%) and with no other financial products (15%) experienced persistent social detachment. It may be that being without these financial products meant that participating in society was difficult – for example, being unable to pay for services with a debit card – although it could also be the case that these older people faced other associated disadvantages, such as being income poor. This is an issue of access and is one that is being tackled through our voluntary signposting scheme.

  Social detachment can result in inactivity and isolation which in turn can accelerate the physical and psychological decline towards premature, preventable ill-health[15]. For example, only 31% of 50-54 year olds, 27% of 60-64 year olds, 16% of 70-74 year olds and 4% of 80-84 year olds achieve the physical activity guidelines (30 minutes of activity 5 days a week). By improving access to services, by eliminating unjustifiable age discrimination, this will go some way to addressing the causes of social detachment in older people. It sets a benchmark for the fair treatment of people of all ages and sends clear signals about the standard of treatment which society finds acceptable.

  Increasing freedom, mobility and choice for younger and older people by removing inequalities which represent a significant barrier to people's opportunities in life - The benefits

[11] Age UK: The Grey Pound set to hit £100bn - http://www.ageuk.org.uk/latest-news/archive/the-grey-pound-set-to-hit-100bn-mark/

[12] Older consumers. The Golden Economy (Research commissioned by Age UK) – presentation by David Sinclair, Head of Policy and Research, ILC-UK

[13] English Longitudinal Study of Ageing (ELSA 2008) - http://www.ifs.org.uk/elsa/report08/elsa_w3.pdf

[14] General Household Survey 2006 - http://www.statistics.gov.uk/statbase/product.asp?vlnk=5756

[15] Making life better for older people (ODPM) - http://www.cabinetoffice.gov.uk/media/cabinetoffice/social_exclusion_task_force/assets/publications_1997_to_2006/making_older_people.pdf

from this range from helping people make new friends, maintaining or improving their health and fitness to developing new skills.

Costs of banning age discrimination in the 'general services' sector
[Note – All figures have been inflated to 2012 prices][16]

The assessment here excludes any costs to health and social care providers as these are considered in Annex 2.

Familiarisation Costs (transitional)

A one-off transitional familiarisation cost will attach to most of the proposals covered by this Impact Assessment. It is assumed that "familiarisation", in the great majority of cases for most employers and individuals, will mean familiarisation with or through guidance provided by the Equality and Human Rights Commission and/or by other advisory bodies. It is also assumed that "familiarisation" means reaching the point where a manager or relevant employee of a firm is aware of the changes in the law and how they impact upon the business.

However, it is also assumed that at any one time, most managers or relevant employees will not be fully expert in the existing law. They will, from time to time, need to "re-familiarise" themselves with the law so that they can advise their staff or colleagues accordingly, even if the law remains unchanged. This might happen, for example, as a result of an internal enquiry or potential set of discriminatory circumstances; or a court case. However, we do not expect that the requirement to "re-familiarise" will be any more burdensome than under the existing legislative framework around discrimination in general services, and therefore do not expect there to be additional costs. No responses to the recent consultation on these proposals identified this category of costs as significant.

For the approximately 3.3million owner-managed firms without employees, this familiarisation will consist of the owner/manager re-informing him or herself by checking available guidance. For this category of firm, we assume that the costs of familiarisation with guidance on the new law will be no greater than the costs of re-familiarisation with guidance on the old law.

Micro Enterprises

In micro enterprises, it is assumed that the equivalent of a general manager will be responsible for familiarisation. Data from the Annual Survey on Hours and Earnings Survey (ASHE) 2011 shows that the median gross hourly wage for this occupation is £20.13[17], when uplifted by 21% to allow for non-wage labour costs, this becomes £24.36.[18] This is then multiplied by the time investment estimated to become familiar with the new guidance and reproduce it for other staff in the firm; and subsequently by the number of micros likely to need to become familiar with the legislation in any one year.

There are 702,000 micro enterprises in Great Britain,[19] whose main business activity is such that they will be affected by this proposal;[20] some of these businesses will seek advice because they are involved or likely to become involved in a court case, while others will respond to planned Government publicity and guidance produced by the Equality and Human Rights Commission.

Responses to the consultation indicated that some small employers will be disproportionately affected by these proposals and the requirement to disseminate the change. However, there was general acceptance that overall the burden would be relatively light, and therefore it is assumed on average employers would spend no more than thirty minutes familiarising with the changes.

Enterprises with 10-249 employees

In enterprises with between 10 and 249 employees it is assumed, as with micro enterprises, that a general manager will be responsible for familiarisation, with the same wage costs.

[16] HMT GDP Deflator consistent with 21rd March 2012 Budget Report

[17] ASHE 2011 code 11

[18] Uplift derived from European Labour Costs Survey (2007)

[19] Business Population Estimates for the UK and Regions 2010

[20] SIC 2007 classification G-S (excl. Q)

There are 125,000 enterprises with 10-249 employees in Great Britain, whose main business activity is such that they will be affected by this proposal (excluding health and social care providers (see Annex 2)

Responses to the consultation indicated that the assumption of an average thirty minutes for small employers to familiarise with these changes was too low. Therefore, instead, we assume that on average this process would take an hour.

Large Enterprises

In large firms (250+ employees) it is assumed that there will be a dedicated personnel manager to read guidance, answer follow-up questions and disseminate information to other parts of the organisation. The ASHE survey indicates the average gross hourly wage for a personnel manager is £22.52[21] and £27.25 after inclusion of non-wage labour costs.

It is assumed that this proactive dissemination of information will take place in all 3,900 firms employing 250 or more employees whose main business activity is such that they will be affected by this proposal.[22]

Public sector

Familiarisation costs will also fall to the 832 non-NHS (see Annex 2) public bodies that will need to be aware of the change to the law. The law would not apply to schools. It is assumed that each of the public authorities will have a personnel officer who is responsible for reading guidance, disseminating information to other parts of the organisation and answering follow-up questions; and that the non-wage labour costs of such a personnel manager are the same as in the private sector.

The time taken to familiarise with the changes to the law for large enterprises and public authorities is estimated as two hours. This assumption was not challenged during the public consultation.

The table below shows the estimated time and cost of familiarisation.

Type of Firm	Total Number of Enterprises	Hourly Cost	Number of Hours	Total
Micros	701,960	£24.36	0.5	£8,549,350
10-249 employees	125,135	£24.36	1.0	£3,048,102
Large Enterprises	3,945	£27.25	2	£214,989
Public Authorities	832	£27.25	2	£45,341
				£11,857,782

Source: Business Population Estimates for the UK and Regions 2010, ASHE 2011, GEO estimates

Training Costs (transitional)

After familiarisation we recognise that a few firms will need to re-train staff. We estimate that this will take half a day (3 hours). We assumed an hourly wage rate of £13.83[23] for all enterprises.

Employees attending (depending on organisation size)	X	Half a day training	=	Costs of training per organisation
1	X	£41.49	=	**£41**
3				**£124**
100				**£4,149**

[21] ASHE 2011, code 1135

[22] Business Population Estimates for the UK and Regions 2010

Source: ASHE 2011, GEO estimates

We estimate that between 8% and 12% of large firms and public authorities will need to retrain some staff and around 2.5% and 3.5% of small and medium size firms that have familiarised themselves with the law. The costs will be as follows:

Neither of these estimates, or the estimate of number of employees attending training, were challenged during the public consultation.

Low Estimate

Type of organisation	Total number of organisation	Number of organisations that need to carry out training	Cost per organisation	Total
Public Authority	832	67	£4,149	£276,133
Large	3,945	315	£4,149	£1,309,310
10-249 employees	125,135	3,128	£124	£389,355
Micros	701,960	17,549	£41	£728,044
				£2,702,842

Source: Business Population Estimates for the UK and Regions 2010, ASHE 2011, GEO estimates

High Estimate

Type of organisation	Total number of organisation	Number of organisations that need to carry out training	Cost per organisation	Total
Public Authority	832	99	£4,149	£414,200
Large	3,945	473	£4,149	£1,963,964
10-249 employees	125,135	4,380	£124	£545,097
Micros	701,960	24,569	£41	£1,019,262
				£3,942,523

Source: Business Population Estimates for the UK and Regions 2010, ASHE 2011, GEO estimates

Compliance costs of changing policies and practices (transitional)

For a smaller number of firms, along with retraining and familiarisation costs, there may also be a transitional compliance cost associated with physically changing policies or practices. We estimate that this will only affect 5% of large firms and public sector organisations and between 0.5% and 1.5% of small and medium firms that have familiarised themselves with the law will also have these types of costs. We assume that this will take 14 hours. The costs will be as follows:

Low Estimate

Type of Firm	Total Number Firms	Number of Firms occurring Compliance Costs	Number of Hours	Hourly Cost	Total
Public Sector	832	42	14	£13.83	£8,054
Large	3,945	197	14	£13.83	£38,188
SME	125,135	626	14	£13.83	£121,133
Micros	701,960	3,510	14	£13.83	£679,508
					£846,883

Source: Business Population Estimates for the UK and Regions 2010, ASHE 2011, GEO estimates

[23] ASHE 2011 Code All, incl. 21% for non-wage labour costs

High Estimate

Type of Firm	Total Number Firms	Number of Firms occurring Compliance Costs	Number of Hours	Hourly Cost	Total
Public Sector	832	42	14	£13.83	£8,054
Large	3,945	197	14	£13.83	£38,188
SME	125,135	1,877	14	£13.83	£363,398
Micros	701,960	10,529	14	£13.83	£2,038,524
					£2,448,163

Source: Business Population Estimates for the UK and Regions 2010, ASHE 2011, GEO estimates

Compliance costs associated with objective justification (transitional)

Whilst the position across all sectors has not been quantifiable, during the consultation exercise relating to these provisions in 2011, business representatives in the car and van rental sector, and the self-catering accommodation sector suggested that their current practices would likely be challenged and as such they would have to rely on objective justification for continued use of age based practices. Therefore our assumption is that every organisation in these sectors would need to prepare a strong objective justification position in general service provision, and so minimise the risk and burden of unmeritorious legal challenge. Preparation of an objective justification position would involve organisations gathering evidence to support their age based policies, and showing that they are a proportionate means of achieving a legitimate end. Trade bodies and business representatives in these sectors are likely to help their members prepare such a position but, since this will be dependent on individual business need, each affected organisation may have to prepare its own. However, we assume that micro enterprises (if not exempt) would likely rely only on advice from their representatives.

Business Population Estimates for the UK (2010) suggest that there are 390 enterprises whose principal industry activity is car and van rental services, and 230 enterprises whose principal activity is non-hotel holiday accommodation, who are not micro enterprises.[24] This is the absolute maximum number of organisations potentially affected as those enterprises classified as non-hotel holiday accommodation could include camp sites, for example, which would be unaffected. The majority of these enterprises are either small or medium sized.

Whilst the cost of preparing an objective justification position will vary significantly between organisations we estimate that on average, it would take 2 days of a general corporate manager's time, and 1 day to be checked thoroughly by a legal professional. The hourly wage cost for these two professions in 2011 prices, is £24.36[25] and £28.97[26] respectively, and the average total cost per organisation £544. Therefore, the total transitional cost of preparing objective justification positions in the industries considered would be at most **£337,000**, although we also believe that many businesses are / have already taken action to prepare an objective justification position.

Cost of Court Cases

Currently, when people experience age discrimination, when accessing services, there is no recourse to the legal system. Once the age ban is introduced, however, and service providers continue to offer age differentiated service, not covered by an exception or which cannot be objectively justified, this could result in a county court case if the person discriminated against decides to challenge the decision via the legal system.

With adequate guidance, we wouldn't expect large volumes of court cases. It is envisaged that many complaints would be dealt with informally before recourse to the courts. If we use the number of age discrimination cases in the provision of services in the Republic of Ireland, which has legislation in this

[24] Business Population Estimates for the UK and Regions 2010: SIC 2007 code 55.2 for self-catering accommodation providers and code 77.1 for car & van rental services

[25] ASHE 2011 Code 11, incl. 21% for non-wage labour costs

[26] ASHE 2011 Code 2411, incl. 21% for non-wage labour costs

area, this provides us with some useful assumptions for the volume of discrimination cases that will be taken to court in Great Britain.

Examination of the data from the Irish Equality Tribunals for 2001 to 2010 shows that on average there were 3[27] age discrimination cases under the Irish Equal Status Acts each year. We have used this as the basis for calculating the number of court cases that we anticipate will be brought in Great Britain.

To calculate the anticipated number of court cases in year one of implementation we have increased this number by the difference in population in Great Britain[28] compared to the Republic of Ireland[29] (a factor of 13) to give an incidence of 39 age discrimination court cases. For the first year, to represent a likely surge in possible litigation, we have multiplied this by 25% to give a high of 49 cases. We have then also halved this figure to calculate a low estimate of 25 cases in year one.

We have anticipated that following year one the number of cases will drop as services providers become more familiar and compliant with the ban. To calculate the high recurring number of court cases we have retained the figure of 39 as the high estimate of cases per year and reduced this by 50% to calculate a low annual figure of 20.

Estimated number of court cases

	High	Low
Year 1	49	25
Year 2 and onwards	39	20

Source: GEO estimates based on Irish Equality Tribunals, 2001-2010

Cost calculations

Cases involving age discrimination in the provision of services would be heard in county courts. We have calculated the costs using our estimated number of cases and using costs calculated from the survey of Employment Tribunal Applications, 2008 (SETA)[30]. This calculation is based on tribunal costs for cases involving discrimination rather than county court cases as the latter are not available for discrimination cases.

We set out below estimates of the costs of court cases for service providers, individuals and the Exchequer.

Costs for service providers

The average costs to service providers are calculated using SETA 2008. This is calculated as the cost of advice and representation, time spent by corporate managers and senior officials, and time spent by other employees, namely dedicated personnel, training and industrial relations managers, on the case. The median hourly wage is assumed to be £50.48[31] and £27.25[32] respectively for these two roles. The overall average of a case is estimated to be **£5,653**.

Time spent on case by directors & senior staff	£2,120
Time spent on case by other staff	£572
Cost for advice and representation	£2,961
Total	**£5,653**

Source: SETA 2008 adjusted for zero values, ASHE 2011

[27] Irish Equality Tribunals 2001 - 2010 - http://www.equalitytribunal.ie/Database-of-Decisions/ (2001 (2), 2002 (1), 2003 (4), 2004 (5), 2005 (4), 2006 (2), 2007 (2), 2008 (4), 2009 (3), 2010 (4))

[28] GB population 60,003,000 – ONS Population Estimates June 2010

[29] Ireland population 4,581,269 – CSO Ireland Census of population 2011 preliminary results

[30] Survey of Employment Tribunal Applications, 2008 - http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008

[31] ASHE 2010 –111 incl. 21% uplift for non-wage labour costs – Note: uplift derived from European Labour Costs Survey (2007)

[32] ASHE 2010 –1135, incl. 21% uplift for non-wage labour costs

Costs for individuals

The average costs to individuals are calculated using SETA 2008, and reflect average values where the primary jurisdiction of a claim was discrimination[33]. The cost to the individual of market work forgone as a result of claiming is represented by loss of earnings, which is also taken from SETA 2008. The overall average cost to an individual claimant of a case is **£1,870**.

Cost for Advice and Representation	£906
Costs incurred from travel and communication	£31
Loss of Earnings	£932
Total	**£1,870**

Source: SETA 2008 adjusted for zero values

Exchequer

The average cost of an accepted employment tribunal claim is calculated using the Employment Tribunals Service Annual Accounts and Report 2005/2006[34]; net operating cost divided by the number of claims accepted. Therefore, the average cost to the exchequer per claim accepted is **£705** in 2011/2012 prices.

Total costs for court cases

To estimate the breakdown of cases brought by sector of service provider we again use SETA 2008 to provide an estimate. 64% of employment tribunal cases are brought against private or voluntary sector employers, with the other 36% brought against public sector employers. This is used here as a proxy for the breakdown of service providers affected.

Using the data above we have estimated that the cost of age discrimination court cases in year one will be high of **£400,000** to a low estimate of **£210,000**. From year two, the estimated costs reduce to a high of **£320,000** to a low of **£160,000**.

		Low	High
Year One	Private & voluntary sector service providers	£90,000	£180,000
	Public Sector Service Providers	£50,000	£100,000
	Exchequer	£20,000	£30,000
	Individuals	£50,000	£90,000
	Total	**£210,000**	**£400,000**
Year Two onwards	Private & voluntary sector service providers	£70,000	£140,000
	Public Sector Service Providers	£40,000	£80,000
	Exchequer	£10,000	£30,000
	Individuals	£40,000	£70,000
	Total	**£160,000**	**£320,000**

Note: Figures may not sum due to rounding
Source: GEO estimates

[33] Note, all cost figures taken form SETA 2008 in this Impact Assessment are adjusted from median figures to account for zero values

[34] Employment Tribunals Service Annual Accounts & Report, 2005/2006;http://www.employmenttribunals.gov.uk/Documents/Publications/ARA0506.pdf; More recent accounts for the Employment tribunals Service are not available as annual reports are now published under the Tribunals Service as a whole, which are not considered as indicative of the true actuarial cost

Risks and Assumptions of preferred option

The following assumptions were made when calculating the general costs and benefits of legislating to ban age discrimination:

- There will be exceptions for age-based concessions, age-related group holidays, immigration, sport, residential park homes and age verification initiatives.
- *Number of firms familiarising themselves with the legislation* – The calculations assume that 100% of large firms and public sector organisations will familiarise with the legislation in year 1. It assumes all firms with 10-249 employees who provide goods and services to the general public will familiarise in year 1. This is predicated on the fact that the legislation will only impact on those organisations providing services directly to the public (retail, wholesale, hotels, restaurants, repairs, transport, communication, financial services firms etc). Some SMEs do not provide services directly to the public (i.e. agriculture or manufacturing) or are not covered by the law (such as real estate firms) so will not proactively familiarise themselves with the new legislation and will only become aware of the change when circumstances in which the age discrimination ban is engaged arise.
- *Time taken to familiarise themselves with the law* – The calculations assume that large firms and public sector organisations will take 2 hours to familiarise themselves with the law and firms with 10-249 employees will take 1 hour on average.
- *Number of firms incurring training costs* – The calculations assume between 8% and 12% of large firms and public sector organisations will incur training costs and between 2.5% and 3.5% of service providers with 10-249 employees. We have assumed that any training will take 3 hours to complete. These assumptions were not challenged during consultation.
- *Number of firms that need to change procedures as a result of the legislation* – Based on feedback from initial consultation exercises the calculations assume 5% of large firms and public sector organisations will incur compliance costs from amending policies, practices and procedures and between 0.5% and 1.5% of service providers with 10-249 employees. We have assumed this will take an average of 14 hours to complete. These assumptions were not challenged during consultation.
- 620 enterprises in the car and van rental and self-catering accommodation industry sectors would have to prepare a strong objective justification position to justify age based practices. Preparing such a position would on average, with assistance from relevant trade body organisations, require 2 days of a general corporate manager's time, and 1 day of a legal professional's time.
- There will be 25-49 cases brought against service providers in the first year, and 20-39 from year two onwards. Estimates are based on the number of age discrimination cases brought in Irish Equality Tribunals under similar legislation.

Annex 2: Health and Social Care

Title: **Health and social care** **Lead department or agency:** Department of Health **Other departments or agencies:** Government Equalities Office	Impact Assessment (IA)
	IA No: N/A
	Date: 15/05/2012
	Stage: Final Proposal
	Source of intervention: Domestic
	Type of measure: Secondary Legislation
	Contact for enquiries: Barry Mussenden 020 7972 1746

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Evidence from a Department of Health commissioned review undertaken in 2009[35] found a need for greater consistency and transparency across the health and social care system in tackling "hidden" or "covert" age discrimination.

The review found evidence that for some people age can have a negative impact on the level or quality of service they receive. New legislation will reinforce developments already taking place to tackle age discrimination across health and social care, where age based service or treatment criteria are being removed – except where it can be objectively justified – and access to care is being determined purely on the basis of need.

What are the policy objectives and the intended effects?

Objective:

- To ensure that health and social care services are provided solely on the basis of people's needs.

Intended effects:

- To eradicate harmful discriminatory practice
- To allow justified / beneficial age differential treatment to continue
- To create an environment that prevents future age discrimination and enhances equality of opportunity.

To reinforce reforms already being implemented

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Note: This appraisal represents the decision making process of whether or not to exempt the health and social care sector from a ban once it has been implemented. This reflects how the legislation would be implemented in practice – i.e. whether or not to grant an exception.

Option 1: Targeted exceptions on the grounds that certain beneficial uses of age in the health and social care system should be protected through targeted exceptions.

Option 2 (preferred): No exceptions – No specific health and social care exceptions would mean that any age based differentiated service would need to be objectively justified. This will incentivise individuals and organisations to consider their practices in relation to age discrimination.

Micro businesses are assumed to be exempt from this measure. However, the impact of option 2 has also been assessed in the event that a waiver is applied for the Government's moratorium on new regulation for micro businesses in respect of this measure. The costs/benefits in this case are presented in *brackets* on the following page.

[35] Achieving Age Equality in Health and Social Care: A Report to the Secretary of State for Health by Sir Ian Carruthers OBE and Jan Ormondroyd, October 2009

Summary: Analysis and Evidence — Policy Option 2

Description: Prohibit age discrimination across the health and social care sector, relying on objective justification for any age-based practices.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2012	2012	10	**Low:** -12.1 (-13.0)	**High:** -10.8 (-11.6)	**Best Estimate: -11.5 (-12.3)**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	4.2 (5.0)	1	0.8	**10.8 (11.6)**
High	4.3 (5.2)		0.9	**12.1 (13.0)**
Best Estimate	4.3 (5.1)		0.8	**11.5 (12.3)**

Description and scale of key monetised costs by 'main affected groups'

Transitional costs associated with familiarisation, training of staff and compliance for providers of health and social care services: Private Sector: (including micro enterprises): £2.6 – £2.8million *(£3.5 – £3.7million)*, Public Sector: £1.6million
Annual costs of litigation against NHS bodies: £0.35 – £0.49million
Annual ongoing costs of objective justification: Private Sector - £0.2million & Public Sector £0.3million

Other key no-monetised costs by 'main affected groups' Health and social care commissioners (and clinicians) aim to provide the greatest possible health and care benefits for users. This means age (or any other marker) should only be part of decision making where it is objectively linked to the benefits of treatment and care. Many key decision-makers (particularly those setting national criteria for treatment) within healthcare already operate with no age discrimination except on objective criteria. Furthermore, reforms have already been put in place that mean Health and Social care Services will already move towards a stronger matching of resource and need through personalisation. Removing the remaining age discrimination that lacks objective criteria from local commissioning decisions will involve some redistribution of resource, and there will be those who lose from this shift. However, we do not have the information to identify this group and, by definition, any losses will be exceeded by re-distributing resources to those with a greater ability to benefit.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	1	N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise robustly the benefits of this legislation in terms of better access to health and social care services and the outcomes they generate. This is partly because the measures included here reinforce the other ongoing policy changes in the NHS but also because it is not possible at national level to identify whether any apparent age discrimination remaining in local services is based on objective criteria or not.

Other key non-monetised benefits by 'main affected groups'

New legislation will play an important role in bringing about a change in culture which will influence the behaviour and attitudes of practitioners and organisations to end age discrimination and ensure that age is only used as a criterion where it can be objectively justified. This will automatically lead to benefits – as a blunt criterion of ability to benefit is replaced by a more refined set of criteria based on a better matching of resources to the ability to benefit.

Allowing older people a fairer and more equitable access to diagnosis and treatment at an earlier stage could improve patient outcomes over the longer term and help to improve 'Active Ageing' and independent living. This reduces costs related to medical treatment, admissions to care homes and emergency hospital care. Legislating to ban age discrimination may reduce claims for negligence.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5

- Familiarisation will take on average 2-24 hours depending on the size of the organisation concerned across the entire range of health and social care providers.
- All large firms and NHS bodies will need to retrain some staff, and around 5% and 10% of firms with 10-249 employees.
- All large firms and NHS bodies and between 5% and 10% of firms with 10-249 employees will incur compliance costs form changing policies and practices.
- Firms and NHS bodies will need to prepare a robust objective justification position for each of their practices. In practice, this burden will fall on Clinical Commissioning Groups.
- There is an increased risk of litigation against NHS bodies in particular. Here it is estimated 7 significant age discrimination cases could be brought each year. The risk of litigation being brought more widely is low, and any liability primarily lies with those bodies making NHS and social care policy and commissioning decisions.

Evidence Base

Problem under consideration

The Equality Act 2010 will make it unlawful to discriminate against adults aged 18 and over by those providing services and public functions. The problem under consideration is how this should apply to the provision of health and social care services when the ban is introduced in 2012.

In 2009, the Department of Health asked Sir Ian Carruthers and Jan Ormondroyd to lead a review of age equality in health and social care, to inform thinking about what health and social care organisations should do to ensure that people are not discriminated against because of their age. The review analysed evidence about the nature, extent and variability of age discrimination in health and social care services. It looked at evidence from a wide variety of sources, including academic research, stakeholder submissions, personal testimony and the conclusions of a number of workshops and engagement events. The Review said that greater consistency was required across all locations and all services covering young and old people in order tackle what some people call “hidden” or “covert” age discrimination. It also found that:

- some age groups, especially older people, are more likely to receive poor services;
- a disparity of mental health service between older and working age adult;
- that a transition from one service to the other does not always meet the needs of individuals effectively;
- invitations to breast cancer screening are not currently sent to women aged under 50 and over 70 (shortly to rise to over 73).

A report by the Healthcare Commission (2009) found that older people were being denied access to the full range of mental health services that are available to younger adults. In particular, there was poor access to out-of-hours and crisis services, psychological therapies and alcohol services[1].

A study of stroke patients at Mayday University Hospital found that older patients were less likely to receive diagnostic investigations and advice on how to improve their lifestyle compared to younger patients[2].

An Audit Commission review carried out in 2006, found that “deep-rooted cultural attitudes to ageing” were hampering wider Government plans to improve health and social care and local council services such as transport for older people[3].

A survey carried out by The British Geriatrics Society (2008) found that 47% of doctors specialising in the care and treatment of older people think that the NHS is institutionally ageist; 66% agreed that, in

[1] Healthcare Commission - Equality in Later Life. A national study of older people's mental health services - March 2009. http://www.cqc.org.uk/_db/_documents/Equality_in_later_life.pdf

[2] Postgraduate Medical Journal – Do older patients receive adequate stroke care? An experience of a neurovascular clinic – March 2009; 85: 115 - 118

[3] Living well in later life - http://www.audit-commission.gov.uk/nationalstudies/health/socialcare/Pages/livingwellinlaterlife.aspx#downloads

their experience, older people are less likely to have their symptoms fully investigated; and 72% said that older people were less likely to be referred on for essential treatments[4].

Scale and scope of tackling age discrimination in the health and social care sector

The health and social care system is complex and includes national organisations that shape the strategic direction, local commissioners working in partnership with local people to identify local needs and design services; and local social and health care service providers. Providers of care span the statutory, independent and third sectors and deliver services to people in a variety of settings including residential and hospital care and community-based and home-centred care. The scope of services being provided by the NHS is wide-ranging, and includes specialised medical and psychiatric interventions in hospital and community settings, intensive short or long term packages of health and social care support for adults and children, and services for people with complex physical, sensory and learning disabilities. The health and social care sectors are also one of the largest areas of Government spending. The total NHS budget for 2010–11 was £103.8 billion which will increase year on year to £114.4 billion in 2014–15. Funding allocated to support social care was £1.3 billion in 2010–11 and this will increase to £3.4 billion in 2014–15.

Since Jan Ormondroyd and Sir Ian Carruthers reported to the Secretary of State for Health in 2009 on achieving age equality in health and social care there have been significant reforms to the Health and Social Care system. The new direction for health and social care set out by the Secretary of State requires some fundamental changes to functions right across the health and care system, the Department and its arm's length bodies. The Department has made clear that equality remains an integral and vital part of this transition. The reforms provide real opportunities and levers for changing and improving services received by older people. Key policy changes which we believe will promote age equality include moving the NHS towards a system that puts patients first and ensuring services are provided on the basis of people's needs, personalised to them as individuals; a greater focus on outcomes; providing professionals and providers with the freedom to innovate and respond to patient needs and aspirations; and strengthened regulation and accountability to the public.

The NHS White Paper, *Equity & Excellence, Liberating the NHS* (July 2010) and the Health the Social Care Act (2012) make clear an ongoing commitment to addressing equality covering all the protected characteristics including age. There is an explicit duty on the new NHS Commissioning Board to promote equality and the NHS White Paper includes an explicit commitment to banning unjustifiable age discrimination in NHS services and social care. The Equality Act 2010 remains however the means by which the public can obtain legal redress for any unjustifiable age discrimination encountered.

Examples of how this strategic commitment is influencing practice include:

- **embedding equality, including advancing age equality in service delivery across the NHS**
    - Sir David Nicholson, NHS Chief Executive and Chief Executive of the new NHS Commissioning Board (NHSCB) Authority has made clear that the functions of the Board include promoting equality and reducing health inequalities, and that equality and reduction of inequalities are core processes, essential to the upholding of the Board's values[5].
    - The NHSCB published an Equality Analysis on 26 January 2012, together with a paper for the Board setting out how equality is being embedded within the functions of the NHSCB and a paper on designing the NHSCB. This sets out proposal for how all NHSCB activities will contribute towards advancing equality, including age equality, in service delivery across the NHS[6].

- **providing leadership to the NHS and wider healthcare system on equality**
    - The Equality and Diversity Council (EDC), chaired by Sir David Nicholson, aims to champion and facilitate improved equality outcomes in the NHS across all equality

[4] The British Geriatrics Society, on behalf of Help the Aged, surveyed a sample of 201 of its UK members from a total of 2000 UK members on the 30th May 2008

[5] Further detail is available at: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_128118

[6] (All these documents are available on the NHSCB Authority website at: http://www.commissioningboard.nhs.uk/2012/01/26/board-meeting-020212/)

characteristics including age. EDC's role is confirmed to continue as part of the NHSCB Authority.

- providing **tools to support NHS organisations to audit their practice and promote equality**
  - The Department has worked in partnership with the EDC and NHS organisations to produce the NHS Equality Delivery System (EDS). The EDS was launched in November 2011 and provides a framework to support NHS organisations to meet the requirements of the public sector Equality Duty, including the ban on age discrimination[7].

- producing **sector specific practice guidance on age equality**[8] as part of a suite of online resources to support health and social care organisations on advancing equality.[9]

- embedding **equality analysis** to ensure compliance with the public sector Equality Duty and age discrimination ban in all new policies and across transition processes

- **integrating equality assurance into to the development of Clinical Commissioning Groups (CCG).** Steps are being taken through the CCG pathfinder reference group to test approaches to embedding inequalities and equality in the development work of CCGs and to share good practice with the wider pathfinder community. Half-day workshops have been held to help CCGs understand their future responsibilities with regard to the Equality Act 2010 and the Public Sector Equality Duty.

- embedding equalities in **commissioning support** including a test of equality compliance in the assurance process for commissioning support.

- **improving healthcare outcomes** including patient reported outcome measures.
  Promoting excellence and equality is one of the seven principles underpinning the development of all the outcomes frameworks. As far as possible, outcomes measures are being chosen so that they can be measured by different equalities characteristics and by local area

Implementation of a ban on age discrimination across goods, facilities and services will reinforce the reforms of the system already taking place, enhance accountability and help challenge attitudes and create a culture where age discrimination is challenged and eradicated. The legislation will offer a means of legal redress where any unjustifiable discrimination persists, despite developments under the reform proposals.

Policy Objective

The policy objective is to ensure that health and social care services across all sectors are provided on the basis of people's needs with the effect that harmful discriminatory practice is eradicated, any differential treatment is beneficial and can be justified and an environment is created across Health and Social Care that prevents future age discrimination and enhances equality of opportunity. Further, when unjustifiable aged-based treatment nevertheless occurs, the public has an effective means of legal redress.

Options

The two options are:

Option 1: **Targeted exceptions on the grounds that certain beneficial uses of age in the health and social care system should be protected through targeted exceptions.** The Age Review identified six main areas within the health and social care sector where age is used in a beneficial or justifiable way in the decision-making process:

I. Age based charging.
II. Public health programmes.

[7] It is available at: http://www.eastmidlands.nhs.uk/about-us/inclusion/eds/?locale=en

[8] It is available at: http://age-equality.southwest.nhs.uk/

[9] It is available at: http://www.southofengland.nhs.uk/what-we-do/age-equality-in-health-and-social-care/

III. Age appropriate services and facilities.
IV. Individual assessment of need.
V. Advice and guidance on policy and practice.
VI. National resource allocation formulae.

Option 2 (preferred): **No exceptions** – No specific health and social care exceptions would mean that any age-based differentiated service would need to be objectively justified. This will incentivise individuals and organisations to consider their practices in relation to age discrimination. Commissioners and providers should always ensure they have not established subjective criteria for accessing care, whether due to age or not.

The preferred option is option 2, with no specific exceptions in health and social care services contained in legislation: any aged-based practices should be objectively justified.

This approach should mean that any age-based practice or treatment that is undesirable has the potential to be challenged by the public and as such will incentivise a culture shift to ensure that age discrimination does not occur. The position is also clear, can be applied in all cases and avoids any perception that efforts to counter discrimination are being diluted.

Therefore, there are no areas within adult health and social care that should be removed wholesale from the scope of the ban on age discrimination. See section below on Key Assumptions and point iii, for supporting evidence on the decision not to protect the beneficial use of age through targeted exceptions for each of the six areas above.

Costs and Benefits

A literature review undertaken by the Centre for Policy on Ageing (2007) [10]of the likely costs and benefits of introducing legislation to prohibit age discrimination in health, social care and mental health services found no studies which directly addressed this. A study by Julien Forder (2008) into *The Costs of Addressing Age Discrimination in Social Care*[11] found that "*there are significant conceptual and empirical challenges in assessing the extent of any age discrimination in publicly supported social care for adults*" (p24)

National policies that currently use age in determining who should receive particular health services (including guidance developed by NICE) give thorough consideration to the evidence base and are therefore based on objective criteria. The Department of Health's arrangements for making and reviewing policies also ensure that age limits are not adopted or retained except where they are justified. Therefore there should be no costs (or change) at national level. However, local commissioners may have retained age without any objective basis. Where this is now removed or challenged this will lead to a net benefit in the system, since access to care will be determined purely on the basis of need, and therefore services will be provided to those who can benefit. This is no different to the approach all Commissioners should take when prioritising expenditure.

At this local level, there may be areas where age is used in decision–making leading to less favourable treatment (harmful age discrimination), as well as where age criteria are used as part of positive action for provision of age appropriate services and facilities, which could be, or are, objectively justifiable. We cannot identify the costs or benefits at this local level as we do not know at a national level the extent to which local policies and practices are, or will be, objectively justifiable. The reforms in health and social care provide opportunities and levers for ongoing improvement of services provided to older people – with a stronger matching of resource and need through personalisation.

We have therefore explored the potential costs of banning age discrimination at a local level based on what we can currently quantify - **transitional costs** associated with familiarisation, compliance costs associated with objective justification; and **ongoing costs** of improving health and social care services for older people, and compliance costs associated with objective justification; as well as costs of court cases; and non-monetised costs and benefits.

[10] Centre for Policy on Ageing (2007) A literature review of the likely costs and benefits of legislation to prohibit age discrimination in health, social care and mental health services and definitions of age discrimination that might be operationalised for measurement
[11] Forder, J (2008), The Costs of Addressing Age Discrimination in Social Care, Personal Social Services Research Unit

COSTS of banning age discrimination in health and social care

Costs of banning age discrimination in the health and social care sector

[Note – All figures have been inflated to 2012 prices][12]

The assumptions used here to monetise transitional costs were made relative to those in Annex 1 when considering costs to other service providers, not in the health and social care sector. Generally, it is believed that costs for health and social care providers will be higher than other service providers since age is more of a consideration in service provision in the health sector compared with retail for example, and we have tried to reflect this in the assumptions. These assumptions were discussed between GEO and Department of Health economists and officials.

Familiarisation Costs (transitional)

As outlined in Annex 1 for the 'general services,' there will also be familiarisation costs in the health and social care sector. Due to issues of age in service delivery being more delicate and noteworthy in the health and social care sector, these costs are likely to be disproportionately greater. We have assumed this would be twice as great for each type of organisation.

As also explained in Annex 1 for 'general services' we do not expect that any requirement to "re-familiarise" will be any more burdensome than under the existing legislative framework around discrimination in general services, and therefore do not expect there to be additional ongoing costs. No responses to the recent consultation on these proposals identified this category of costs as significant.

Micro Enterprises

In micro enterprises, it is assumed that the equivalent of a general manager will be responsible for familiarisation. Data from the Annual Survey on Hours and Earnings Survey (ASHE) 2010 shows that the median gross hourly wage for this occupation is £20.13[13], when uplifted by 21% to allow for non-wage labour costs, this becomes £24.36.[14] This is then multiplied by the time investment estimated to become familiar with the new guidance and reproduce it for other staff in the firm; and subsequently by the number of micros likely to need to become familiar with the legislation in any one year.

There are 31,000 micro enterprises in Great Britain,[15] whose main business activity is human health and social work activities. Some of these businesses will seek advice because they are involved or likely to become involved in a court case, while others will respond to planned Government publicity and guidance produced by the Equality and Human Rights Commission.

Responses to the consultation indicated that some small employers will be disproportionately affected by these proposals and the requirement to disseminate the change. However, it is assumed on average employers would spend no more than 1 hour familiarising with the changes.

Enterprises with 10-249 employees

In enterprises with between 10 and 249 employees it is assumed, as with micro enterprises, that a general manager will be responsible for familiarisation, with the same wage costs.

There are 20,000 enterprises with 10-249 employees in Great Britain, whose main business activity is human health and social work activities.

Responses to the consultation indicated that the assumption of an average thirty minutes for small employers more generally to familiarise with these changes was too low. Therefore, instead, we assume that on average this process would take 2 hours.

[12] HMT GDP Deflator consistent with 21rd March 2012 Budget Report

[13] ASHE 2011 code 11

[14] Uplift derived from European Labour Costs Survey (2007)

[15] Business Population Estimates for the UK and Regions 2010

Large Enterprises

In large firms (250+ employees) it is assumed that there will be a dedicated personnel manager to read guidance, answer follow-up questions and disseminate information to other parts of the organisation. The ASHE survey indicates the average gross hourly wage for a personnel manager is £22.52[16] and £27.25 after inclusion of non-wage labour costs.

It is assumed that this proactive dissemination of information will take place in all 290 firms employing 250 or more employees whose main business activity is human health and social work activities.

Public sector

Familiarisation costs will also fall to the 246 NHS public bodies that will need to be aware of the change to the law. It is assumed that each of the public authorities will have a personnel officer who is responsible for reading guidance, disseminating information to other parts of the organisation and answering follow-up questions; and that the non-wage labour costs of such a personnel manager are the same as in the private sector.

The time taken to familiarise with the changes to the law for large enterprises and public authorities is estimated as four hours.

The table below shows the estimated time and cost of familiarisation.

Type of Firm	Total Number of Enterprises	Hourly Cost	Number of Hours	Total
Micros	30915	£24.36	1	£753,043
10-249 employees	20095	£24.36	2.0	£978,969
Large Enterprises	290	£27.25	4	£31,608
Public Authorities	246	£27.25	4	£26,812
				£1,790,432

Source: Business Population Estimates for the UK and Regions 2010, ASHE 2011, GEO and DH estimates

Training Costs (transitional)

After familiarisation we recognise that a few firms will need to re-train staff. We estimate that this will take half a day (3 hours). We assumed an hourly wage rate of £13.83[17] for all enterprises.

Employees attending (depending on organisation size)	X	Half a day training	=	Costs of training per organisation
1	X	£41.49	=	**£41**
3				**£124**
100				**£4,149**

Source: ASHE 2010, GEO estimates

We estimate that 100% of large firms and NHS authorities will need to retrain some staff and around 5-10% of small and medium size firms that have familiarised themselves with the law. We do not include any actual costs of the training other than time opportunity costs as it is assumed that those who have familiarised themselves with the legislative change will take part or lead any in-house training. We do not expect this change to require any specialist training from outside the organisation to be commissioned. Estimates of training costs could have benefited from additional evidence regarding what businesses feel is necessary to comply with the change. However the consultation did not provide this evidence. Nonetheless, we believe that existing training around the wider reforms in the health and

[16] ASHE 2011, code 1135

[17] ASHE 2011 Code All, incl. 21% for non-wage labour costs

social care sector already cover these issues to some extent, and any additional training required specific to the legislative change should be minimal, particularly in smaller organisations. The costs will be as follows:

Low Estimate

Type of organisation	Total number of organisation	Number of organisations that need to carry out training	Cost per organisation	Total
Public Authority	246	246	£4,149	£1,020,565
Large	290	290	£4,149	£1,203,105
10-249 employees	20,095	1,005	£124	£125,050
Micros	30,915	1,546	£41	£64,128
				£2,412,847

Source: Business Population Estimates for the UK and Regions 2010, ASHE 2011, GEO and DH estimates

High Estimate

Type of organisation	Total number of organisation	Number of organisations that need to carry out training	Cost per organisation	Total
Public Authority	246	246	£4,249	£1,020,565
Large	290	290	£4,249	£1,203,105
10-249 employees	20,095	2,010	£127	£250,101
Micros	30,915	3,092	£42	£128,255
				£2,602,025

Source: Business Population Estimates for the UK and Regions 2010, ASHE 2011, GEO and DH estimates

This legislative change should not require any additional ongoing training as once embedded within organisations, decision criteria and the legislative framework concerning discrimination will be no more complex than before.

Ongoing costs of improving health and social care services for older people

Whilst we are confident that national policies that currently use age in determining who should receive particular health services (for example flu vaccinations targeted on people of particular ages, and cervical cancer screening targeted on women in specific age groups) give thorough consideration to the evidence base and are therefore objectively justified, it is theoretically possible that the courts might find that in practice some policies have not satisfied the requirement for objective justification. Furthermore there may be an absence of definitive evidence on age explicit criteria applying to certain services. Since our preference is that there are no areas within health and social care that should be removed wholesale from the scope of the ban on age discrimination, Department of Health's arrangements for making and reviewing policies will ensure that age limits are not adopted or retained except where they are justified. The NHS White Paper commits to holding the NHS to account against clinically credible and evidence-based outcome measures.

As already outlined, we believe the action we are taking in reforming the health and social care system and the escalation of activity to comply with the public sector Equality Duty throughout the transition processes, will ensure that there is an ongoing assessment of age-based criteria and that policies comply with the new legislation. Therefore, no new policy changes will be required due to the legislation being put in place.

Compliance costs associated with objective justification (transitional)

Objective justification primarily relates to NHS and social care policy and commissioning decisions, rather than front-line service delivery. So although private sector providers might consider how they are

delivering services with regards age immediately after the legislative change is made, and could conceivably face legal challenge for providing services to older people in a discriminatory way compared to other groups of patients, the more likely legal challenge would be against the commissioner for failing to commission appropriate services for older people. This is even more the case now that the Health and Social Care Act (2012) has received Royal Assent. The Act devolves power to local Clinical Commissioning Groups (CCGs) to design and tailor local health services for their patients and commission services from a range of providers, including public authorities and the private sector. Therefore it is the commissioner that will bear the main burden of preparing objective justification positions.

This means that, in practice, the private sector is unlikely to incur the costs set out above, as the risk of challenge primarily sits with the commissioner as, for NHS funded care, the eligibility for and scope of a service is determined by the commissioner rather than the provider. Although a service provider, whether public or private sector, is required to have an objective justification for an age based policy, and will need to be able to explain it if challenged, this is not the same as a requirement to spend time reviewing all policies, developing a position, or preparing documents to demonstrate compliance, which is the responsibility of the commissioner, which in the new system will primarily mean the CCGs. It is the CCGs that will be most open to challenge and therefore the most likely to be required to provide objective justification, in line with other NHS bodies and large private sector organisations.

Whilst the cost of preparing an objective justification position will vary significantly between organisations we estimate that on average, it would take 5 days of a general corporate manager's time, and 1 day to be checked thoroughly by a legal professional for larger and NHS organisations. The hourly wage cost for these two professions in 2012 prices, is £24.36[18] and £28.97[19] respectively, and the average total cost large enterprises, CCGs and NHS organisations is £1,055. With approximately 250 CCGs in the new system, this equates to a total cost of £0.27million. Therefore, the total transitional cost of preparing objective justification positions in the health and social care sector could potentially be up to **£0.83million** (Large Private Sector (290):£0.3million, CCGs (250): £0.27million and NHS bodies (246): £0.26million).

Compliance costs associated with objective justification (Ongoing)

In addition to the transitional costs already described above, there will be ongoing costs of preparing objective justification positions in the health and social care sector as new treatments, policies and practices emerge. This is based on 2.5 days of a general corporate manager's time, and 0.5 days to be checked thoroughly by a legal professional for larger enterprises, CCGs and NHS organisations. This is based on the same hourly wage costs as set out above for the transitional costs, with the average total cost per organisation being £528. Total ongoing costs of preparing objective justification positions in the health and social care sector would be at most **£0.41million per annum** (Large Private Sector (290): £0.15 million, CCGs (250): £0.13 million and other NHS bodies (246): £0.13 million).

Cost of court cases brought against NHS bodies and the private sector

There is a potential for litigation costs to rise particularly if there are no exceptions, as any health or social care practice can, in effect, be challenged in the courts as being discriminatory because of age. Given that the burden of objective justification will largely fall on the commissioner, it is the commissioner that faces the greater likelihood of legal challenge, rather than other providers, including the private sector. The Equality Act 2010 **Age Discrimination Impact Assessment**[20] estimated that there would be approximately an additional 7 significant cases of litigation a year in relation to age discrimination across the public sector. Department of Health Litigation and Employment division have advised that typically defending such a case would cost £50,000-£70,000, depending on how far it was pursued. Therefore, increased litigation could cost NHS bodies **£350,000-£490,000** per annum. There may also be minor cases brought against health and social care providers, but this has been captured in the discussion of court cases in annex 1. Analysis of the Irish Equality Tribunals statistics suggests that cases brought against health and social care providers were very rare.

[18] ASHE 2010 Code 11, incl. 21% for non-wage labour costs

[19] ASHE 2010 Code 2411, incl. 21% for non-wage labour costs

[20] Equality Act Impact Assessment – http://www.equalities.gov.uk/pdf/Equality%20Act%20Impact.pdf

The number of **clinical negligence claims** (through the NHS Local Authority) involving an age discrimination aspect (in employment) is negligible.

It is difficult to assess the number of **judicial reviews** that are age or discrimination related as applications are not recorded in a way which enables discrimination to be highlighted as a contributory factor. However, the data reviewed identified 9,097 judicial review applications, of which only 2,132 related to matters other than immigration, asylum and criminal proceedings and of these only 107 were allowed. We can surmise that the number of judicial reviews where discrimination is currently a contributory factor is therefore negligible.

Non monetised costs

These are of three types: costs associated with levelling up services for older people, litigation costs (previously covered) and costs associated with training and guidance.

a) Cost of improving services for older people

The Age Review showed there is some evidence of age discrimination in health and social care. However, some of these uses will be objectively justifiable and so will continue. This means that not every user experience of where age is used in decision-making will end. Therefore, this is essentially a local issue, where commissioners need to ensure that spending generates the best outcomes possible, meaning only using age in decision-making where it is objectively justifiable. It is not possible to assess at a national level what this costs or spending could entail – but, it will represent a re-prioritisation rather than an increase in spending overall.

The reform of the Health and Social Care system is providing new opportunities and levers for ongoing improvement of services provided to older people and is expected to lead to an ongoing improvement in health and social care services received by older people. This will involve some redistribution of resource, but will not incur any additional costs. Reform of the care and support system to provide people with more choice and control, will focus on sustainable solutions. Thus the legislation serves to reinforce the messages and impact of the wider reforms, but does not of itself result in additional costs.

b) Training and guidance - to raise awareness within the system and to amend training for clinicians.

The Government is confident that implementing the ban on age discrimination would not entail any additional costs for medical colleges.

We tested with some of the Royal Medical Colleges our assumption that costs relating to implementing the ban would be negligible, as discrimination is already built into their education and training, and processes and practices (e.g. professional standards). The evidence we found corroborated this view.

A recent article in GP Magazine on the potential ban on age discrimination[21] advises that it is unlikely that GPs will need to make huge changes to ensure they comply with the law. The article highlighted the expectation of the General Medical Council that GPs act in an ethical, non-discriminatory manner, considering patients as individuals and providing them with care in the best interests. It should be noted that this is an *expectation* of GPs *as individuals*. It is not an observation about the operation in practice of the Health Service as a whole.

GMC guidance[22] advises doctors to make detailed notes recording the rationale behind their decisions regarding treatment for elderly patients and to guard against assumptions that elderly and frail patients, who have difficulty communicating, lack capacity.

A position statement issued by the Royal College of Psychiatrists[23] sets out guiding principles for ensuring services are made available to people on the basis of need not age and defining the specialist expertise best met by older people's mental health services.

BENEFITS

[21] GP Magazine, May 27, 2011

[22] General Medical Council Guidance, 2008: *Consent: patients and doctors making decisions together*

[23] Royal College of Psychiatrists[23] [PS2/2009] [http://www.rcpsych.ac.uk/pdf/PS02_2009x.pdf]

There are benefits from implementing a ban on age discrimination, in terms of better access to services, improved outcomes for patients, reduction in complaints.

Better access to services

Older patients are currently less likely than younger patients to be referred for surgical intervention for certain illnesses, such as cancer, heart disease and stroke *(Age Review, 2009).* Allowing older people a fairer and more equitable access to diagnosis and treatment at an earlier stage could improve patient outcomes over the longer term such as:

- fewer premature deaths;
- fewer disabilities associated with chronic diseases in older age;
- more people enjoying a positive quality of life as they grow older;
- more people participating actively as they age in the social, cultural, economic and political aspects of society, in paid and unpaid roles and in domestic, family and community life; and
- lower costs related to medical treatment and care services.

It is, however, difficult to quantify these benefits.
We have considered:

- whether benefits could be quantified using a 'willingness to pay' calculation by examining data on take up of private medical insurance and the reasons for this.
- data from the national patient's choice survey about why a particular health care provider was chosen.

However, we conclude that there is no obvious link between age and why patients choose to go to a private sector provider, nor does age appear to be a factor influencing an increase in demand for particular providers. We therefore cannot estimate any monetised benefits due to improved access from current unmet demand.

Better outcomes for patients

Providing older patients with quicker more effective treatment could shift resources and culture away from institutional and hospital-based 'crisis' care towards earlier, targeted interventions for older people in their homes and communities.

An evaluation found that Partnerships for Older People Projects services were helping to reduce emergency bed days, and that every additional investment of £1 produced £1.20 additional benefit in savings. These financial benefits were seen throughout the local system along with improvements in older people's quality of life[24].

Analysis by the Care Quality Commission suggests that, if every local area could reduce emergency stays in hospital for people aged 75 and over to the levels seen in the best performing parts of the country, this would result in eight million fewer days in hospital for people, and a saving of about £2 billion a year for NHS hospitals[25].

The Care Quality Commission 'State of Care Report' (2009-10) also found that more people are being supported to live independently at home and that the amount of intermediate care is growing.

Reduction in complaints

Legislating to ban age discrimination may reduce claims for negligence.

NHS Litigation Authority (NHS LA) claims have been reviewed. Whilst these are coded in a way which precludes the isolation of equalities issues, it is reasonable to assume that a small number of NHS LA assisted claims have an element relating to discrimination on the grounds of equalities.

It is more likely that discrimination cases would be brought under a fitness to practice claim via the Professional Bodies which could result in a clinician being no longer able to practise.

[24] Personal Social Service Research Unit for the Department of Health, 2010
[25] Care Quality Commission State of Care Report, 2009-10

It is important to note that claims are all handled within existing resource limits. Potential reductions in cases could help to save resources in this area. However, this would also be weighed up against possible increased claims through other means such as the age discrimination legislation.

Potential reallocation of resources and impact on younger patients and service users

Removing any harmful or unjustifiable uses of age in the NHS and social care (that cannot be objectively justified) may involve some redistribution of resources at a local level. It is not possible to state the precise impact that this might have at a local level, as it will be different in each locality, with some localities having already removed any bias towards younger people. However, in localities where there has been a tendency to give greater priority to younger patients and service users, the legislation will require local services to allocate resources more equitably and to demonstrate that decisions are being made on the basis of individual need, risk and ability to benefit, rather than chronological age. The overall shift will be towards ensuring more equitable access to services, as health and social care commissioners make local commissioning decisions based on the needs of their local populations.

There are also a number of safeguards in place nationally that we believe will prevent younger patients and services users from being adversely impacted by the introduction of this legislation.

Statutory Duties under the Equality Act 2010

Strategic Health Authorities and Primary Care Trusts have statutory duties under the Equality Act 2010. Clinical Commissioning Groups, who will be responsible for commissioning NHS services from April 2013, will each have been established as a statutory body – and therefore have statutory responsibilities in relation to the Equality Act 2010. They will need to show they have paid due regard to the Act in their commissioning decisions – across all of the protected characteristics, not just age – so that they assure themselves no patients groups are adversely impacted. Work is underway to integrate equality assurance into the development of CCGs. Local Authorities, who are responsible for commissioning social care services (and in future public health), are also statutory bodies who will have the same statutory responsibilities in relation to the Equality Act 2010, and their commissioning decisions. All providers of health and social care services (and those providing services on behalf of public bodies) will also be subject to statutory responsibilities in relation to the Equality Act 2010 – so they must assure themselves that their services are age equal (if challenged).

Commissioning and delivery of health services

The Operating Framework for the NHS in England 2012/13[26] sets out the priorities for the NHS for the year. These include initiatives that will give patients more power in the system such as **all** patients having choice of named consultant team, choice of diagnostic test provider, and choice of treatment and provider in mental health services. All patients have a right under the NHS Constitution to treatment within 18 weeks from referral (or for the NHS to take all reasonable steps to offer a range of suitable alternative providers if this is not possible). The Framework makes it clear that "Decisions on appropriate treatment should be made by clinicians in line with best clinical evidence. Commissioners must be clear whether they have strong evidence that a procedure is genuinely of low clinical value to patients or whether they believe there is evidence that a treatment may be of high value if given to the correct patient but achieves poor results by being used inappropriately on patients who will not benefit from it. PCT clusters should ensure all patients are seen on the basis of clinical need, which means there is no justification for the use of blanket bans that do not take account of healthcare needs of individual patients."

The framework also reminds NHS organisations that they must act responsibly in fulfilling ongoing statutory and other core duties and must comply with the Equality Act 2010.

The NHS Commissioning Board Special Health Authority[27] is responsible for designing the proposed commissioning landscape in the NHS which includes agreeing the method for establishing, authorising and running clinical commissioning groups (CCGs). Promoting equality and equity are at the heart of the Board Authority's values and its key equality objectives are to:

[26] http://delphi.dh.gov.uk/delphi/NewsandComms/News/DELPHI_025064
[27] http://www.commissioningboard.nhs.uk/

Embed the reduction of health inequalities and promotion of equality in the development of NHS CB work programmes, functions and key processes, such as CCG authorisation, commissioning support and direct commissioning. We will ensure that equality and health inequalities is one of the underpinning 'lenses' or themes reflecting the core processes that support the values and culture of the NHS CB, as outlined in *Developing the NHS Commissioning Board*.

Deliver the high-level actions recommended within the equality analysis of the Board Authority's functions. This includes working with the Department of Health and the wider NHS to explore how the NHS Equality Delivery System can be used to drive up equality performance across the new system.

Unpack the new health inequalities requirements within the Health and Social Care Act, identifying the products, processes, arrangements and relationships necessary to enable the commissioning system to meet the duty in full.

Design the equality and health inequalities function of the NHS CB, including staffing and budget requirements.

Commissioning and delivery of adult social care services

The vision for adult social care[28] has one of its seven core principles around personalisation, so that individuals not institutions take control of their care, and personal budgets, preferably as direct payments, are provided to all eligible people. This will mean that assessment for social care services is led by the person and focuses on the outcomes that they and their family want to achieve.

There is no specific sum of monies allocated by the Government for adult social care, and the Government acknowledges that there can never be enough funding to deliver everything that local authorities may want to deliver. There will always be a finite budget for social care and other funding, there is elastic and increasing demand, particularly with changing demography and increasing care needs, and local authorities have many competing priorities – but some of them may indirectly help with the provision of social care. Local authorities have flexibility and can determine locally, through public engagement with their constituents and key stakeholders, how much is spent on adult social care and other local service priorities[29].

The Department of Health has also published guidance on eligibility criteria for adult social care[30] to assist councils with adult social services responsibilities (CASSRs) to determine eligibility for adult social care, in a way that is fair, transparent and consistent, accounting for the needs of their local community as a whole as well as individuals' need for support.

Equality should be integral to the way in which social care is prioritised and delivered, allowing people to enjoy quality of life and to be treated with dignity and respect. Such objectives will be supported by:

- **Equality of access** to care and support, meaning that councils should not preclude anyone from having an assessment for community care services, if their needs appear to be such that they may be eligible for support.
- **Equality of outcomes** from care and support, meaning that within the same council area people with similar levels of needs should expect to achieve similar quality of outcomes, although the type of support they choose to receive may differ depending individual circumstances.
- **Equality of opportunity,** meaning that councils should work together with individuals to identify and overcome any barriers to economic and social participation within society.

Assessing needs jointly

Joint Strategic Needs Assessments[31] were introduced to create stronger partnerships between communities, local government and the NHS, providing a firm foundation for commissioning that

[28] http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_121508
[29] http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/@sta/@perf/documents/digitalasset/dh_107595.pdf
[30] http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_113155.pdf
[31] http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131733.pdf

improves health and social care provision and reduces health inequalities. It was intended to help commissioners shape services to address local needs.

From April 2013, the local authority and the clinical commissioning groups, together with local HealthWatch, will be required to prepare the JSNA through the health and wellbeing board, undertaking a comprehensive analysis of the current and future needs and assets of their area. In the context of the JSNA an asset could be anything that can be used to improve outcomes and impact on the wider determinants of health. This includes needs and assets relevant to health, social care and public health across the full lifecourse, covering children, young people and adults; and involves an analysis of the wider determinants of health. By looking at these assets health and wellbeing boards can explore what other resources are available to them by working with partners to meet local needs and achieve shared priorities. This could create innovative solutions to issues or create opportunities for wider community involvement.

Deciding not to protect the beneficial uses of age in the health and social care system through targeted exceptions to the ban on age discrimination

The Age Review identified six main areas within the health and social care sector where age is used in a beneficial or justifiable way in the decision-making process:

- Age based charging and entitlements.
- Public health programmes.
- Age appropriate services and facilities.
- Individual assessment of need.
- Advice and guidance on policy and practice.
- National resource allocation formulae.

The following sections examine the potential effects in these six areas of having no exceptions in the secondary legislation.

I. Age-based charging and entitlements

Currently individuals pay different charges depending on their age for certain NHS and publicly funded social services. For example in the NHS prescriptions and eye tests are currently free to individuals aged 60 or over. These exemptions are determined nationally, are set out in law and therefore exempt from the provisions of the Equality Act as a result of the statutory authority exception**.**

Under the current framework for publicly funded social care, the assessment of eligibility and charges for residential care are determined by national guidance, while charges for non-residential care are set at the discretion of local authorities. Both residential and non-residential social services do not use age directly to determine the charges individuals pay, however, there may be some second order effects. For example, there may be interactions between the benefit systems, which have important age based differences, and the assessment of charges (i.e. some local authorities' charging criteria take an individual's pension into account but earned income is disregarded).

Given that both NHS and non-residential charging and entitlement fall within the statutory authority exception and no local authorities appear to use age as the main factor when determining charges or eligibility for non-residential care, it is very unlikely an age discrimination claim could or would be successfully brought.

Having no exceptions for age based charging and entitlements would therefore not incur any additional costs and benefits.

The Department of Health has identified and assessed all the known examples of national charges to ensure they are covered by the statutory authority exception. However, locally determined charges and applications of means tests may exist and these would not be covered by this exception. The Age Review and subsequent consultations have explored the potential evidence for this and no examples have arisen. However, when preparing for the ban, local areas can use the toolkit (ref 9) produced by NHS South West to assess any locally determined charges and assess whether these are justifiable.

II. Public health programmes

Examples of public health programmes, where age is used to identify some or all of the programme's target group include:

- **Breast screening** – Women aged 50–70 are invited every three years for breast screening by mammography. This is currently being expanded to women aged 47–73. Women aged over 70 are able to self refer every three years if they wish.
- **Cervical screening** – Women aged 25–49 are invited for a cervical screening test every three years, women aged 50–64 are invited every five years. Women aged over 64 are invited if they have never been screened or if their last three tests showed abnormalities.
- **Seasonal flu vaccination** – people aged 65 and over are able to receive seasonal flu vaccination (other criteria apply for people under 65).
- **NHS Health Checks** – this programme is aimed at people between 40–74 years-old at risk from coronary heart disease, stroke, diabetes and kidney disease.

Although screening and health check programmes are not available to individuals outside their target population, an individual who is worried about one of the illnesses covered by the programme can visit their local primary medical practitioner (GP), who will undertake a consultation and decide on further treatment based on the clinical symptoms presented. Therefore, although an individual outside the selected age band may not necessarily receive the same testing as an individual inside the age band, they do experience an equivalent outcome. It is unlikely; therefore, that an individual who is not in the target population for a screening or health check programme will be denied access to diagnosis tests on the basis of their age alone. *There are therefore no additional benefits or costs for the screening and health check programmes of banning age discrimination because these screening and health check programmes are already available to people outside these age groups, if necessary.*

III. Age appropriate services and facilities

Age appropriate services and facilities are designed and delivered to meet the needs of particular age groups. There are three key categories of age appropriate services: social care services, mental health services, and geriatric services. Within all three, services are divided into working age (age 18–64) and old age (age 65 or over). However, the age threshold for the transition from working age to old age services is fluid, an assessment of an individual's needs should be used to decide which service is most appropriate for the individual's needs.

Below are some examples of age appropriate services in the three areas:

- **Mental health** – older people specialist dementia day services.
- **Social care** – specialist day centres and residential homes for older people and old age psychiatry and psychiatric liaison services.
- **Geriatric** – specific wards in NHS Trusts, sheltered/supported housing for older people and intermediate care/re-ablement services for older people.

Age-appropriate services are one way in which the particular needs of people can be addressed and met. Moreover they can also help overcome identified disadvantages. We believe this approach could be objectively justified and *therefore an exception is not needed and no additional costs would occur.* Without an exception, risk averse service providers may decide to replace existing age appropriate services with single all age services. This may result in certain age groups receiving lower priority and thus having poor access. We estimate that the likelihood of this occurring to be marginal – but could be mitigated against through appropriate guidance and training.

IV. Individual Assessment of Need

Age is one of the factors that health and social care professionals consider when discussing potential interventions and care packages. This is because at certain ages, people are more or less likely to have certain diseases. Age is also a factor in determining the effectiveness of interventions - for certain age groups the benefits tend to outweigh the risks for some interventions and treatments.

Guidance on when to perform certain diagnostic tests or prescribe certain interventions is often presented by age band and helps to inform clinician advice. However, in a few instances, services or treatment options will only be available to patients of specific ages.

Age discrimination could result from the decisions and actions of an individual service provider. Evidence has shown that there is a tendency for health professionals to give disproportionate weighting to chronological age as a risk factor when deciding interventions and to use age to pre-judge the needs of an individual. If the ban is commenced in the secondary legislation without an exception, and a health or

social care professional acted in this way, the service user could mount a clinical negligence claim or an age discrimination claim, which would require the health or social care professional to justify their actions. However, the main risk we have assessed will be in relation to commissioning decisions, because of the scale and potential impact of these.

A position of no exceptions would make clear that any 'bad' age-based practices are not acceptable – clinicians would still be free to use age as one factor, to ensure personalisation of care – and the best care, and best outcomes for that individual.

V. Advice and guidance on policy and practice

The Department of Health and a range of NHS and social care organisations issue advice and guidance on policy and practice in health and social care services. This is either best practice guidance or statutory guidance.

As advice and guidance are, on the whole, based on a review of research evidence which shows the incidence of many diseases and the effectiveness of interventions vary with age. Therefore, where a particular set of advice or guidance is challenged as being age discriminatory in the courts it should be objectively justifiable so *there would be no additional benefits or costs because the ban has no impact on the current systems*.

There is a difference between the level of certainty required by a court for a potentially age based action to be objectively justified and the level of certainty required for advice or guidance to be issued. The objective justification test is likely to be more stringent. There may therefore be a risk to specific types of guidance, for which the use of age bands and the particular bands chosen are determined primarily based on cost effectiveness and may be rational in light of the available evidence, but may not be objectively justifiable as the two tests do not address exactly the same issues.

Health and social care service providers would need to be aware that just referring to the advice and guidance does not objectively justify their actions, they must ensure their actions both address a legitimate aim and are proportionate. This will be stressed in guidance to health care providers.

In addition both the Department of Health and NICE are subject to equality duties, and therefore ensure that all guidance is assessed for the impact on equalities.

VI. National resource allocation formulae

In both health and social care, the formula for allocating resources nationally to local PCTs uses the age profile of a local population as one of a number of proxies for degree of need when calculating the allocation. The NHS allocation formula uses five year age bands up to age 85 and over for Hospital and Community Health Services, and five year age bands up to age 75 and over for prescribing. The actual amount allocated to a PCT is determined by its historic allocation and the pace of change (determined by ministers) from the historic allocation to the target allocation.

The social care allocation formula allocates two amounts - the first for working age adults (aged 18–65); and the second for older adults (aged over 65), which includes a top up determined by the number of people aged over 90. However, local authorities set their own budgets, and, in the recent past, it would have been common for them to allocate more than the formula indicates.

Changes to the current allocation of resources were set out in the White Paper, '*Equity and excellence: Liberating the NHS*'. The majority of the PCT commissioning function is to be transferred to Clinical Commissioning Groups, the remainder will be commissioned by the NHS Commissioning Board, which is to take over responsibility for commissioning guidelines and the allocation of resources from the Department of Health. The way in which funds are distributed to the Clinical Commissioning Groups will be a matter for the Board. However, the Advisory Committee on Resource Allocation (ACRA) has been asked by the Secretary of State to continue to provide advice on the equitable distribution of NHS resources during the transition period.

Statistical modelling by academics has examined the relationship across small geographical areas between the utilisation of health services and age. These models have been used to decide which age bands to include in the formula as indicators of need, and with what relative weights. Department of Health therefore thinks that the use of age as opposed to any other factor in the National Resource

Allocation formulae could be objectively justified. *Therefore, having no exceptions for National Resource Allocation formulae would not incur any additional costs and benefits.*

Ensuring effective implementation

The Department of Health commissioned a toolkit[32] as part of the Age Review to help NHS and social care organisations prepare for implementing the ban on age discrimination.

The pack has been developed with support from staff in the South West region and national experts, and has three component parts:

- **A self assessment toolkit** that health and social care organisations can use to work with their local stakeholders to identify what actions they need to take to end age discrimination and promote age equality in order to help them prepare an action plan;
- **A Guide for NHS commissioners and providers** that helps the local NHS organisations identify the actions they need to take in order to implement recommendations from the Age Review;
- **A Guide for Social Care** that has been produced by the Social Care Institute for Excellence (SCIE) to help local authority Adult Social Care Departments and providers achieve age equality in the delivery of local care services.

This toolkit has already been produced as part of work on the Age Review and rolled out to all organisations and there are therefore no additional associated costs.

We have worked with the National Mental Health Development Unit to launch an action learning network focusing on promoting age equality in mental health. The toolkit has been tested in two localities with the aim of capturing and disseminating examples of best practice and exploring whether lessons learnt should feed into any additional help or guidance for the NHS and social care. A two-part report was published in June 2011[33] sharing the findings, key messages, priorities for local and national action and highlighting practical steps that can be taken at a local level.

The DH will be working with partners to share the learning from the test sites and publicise the toolkit, so that the NHS and social care is best prepared for implementing the ban on age discrimination.

The Government is also working with the Equality and Human Rights Commission and the Care Quality Commission to explore what guidance would be needed for individual patients and health care providers.

Consultation findings

An analysis of the findings from the consultation found overwhelming support for the proposals in terms of producing benefits within the system and did not reveal additional information to elucidate the challenge of calculating the costs and benefits of reducing age discrimination.

Risks and Assumptions of preferred option

The following assumptions were made when calculating the costs and benefits of legislating to ban age discrimination in the health and social care sector:

- The reform of the Health and Social Care system is providing new opportunities and levers for ongoing improvement of services provided to older people.
- *Number of firms familiarising themselves with the legislation* – The calculations assume that 100% of large firms and NHS organisations will familiarise with the legislation in year 1. It assumes all firms with 10-249 employees who provide health and social care services to the general public will familiarise in year 1.
- *Time taken to familiarise themselves with the law* – The calculations assume that large firms and NHS organisations will take 4 hours to familiarise themselves with the law and firms with 10-249 employees will take 2 hour on average.

[32] http://www.southwest.nhs.uk/age-equality.html

[33] ref: http://www.ndti.org.uk/publications/ndti-publications/a-long-time-coming

- *Number of firms incurring training costs* – The calculations assume between 100% of large firms and NHS organisations will incur training costs and between 5% and 10% of private sector service providers with 10-249 employees. We have assumed that any training will take 3 hours to complete.
- *Number of firms that need to change procedures as a result of the legislation* - 100% of large firms and NHS organisations will incur compliance costs from amending policies, practices and procedures and between 5% and 10% of service providers with 10-249 employees. We have assumed this will take an average of 14 hours to complete.
- In practice, the private sector is unlikely to incur objective justification costs as the risk of challenge primarily sits with the commissioner as, for NHS funded care, the eligibility for and scope of a service is determined by the commissioner rather than the provider. It is the CCGs that will be most open to challenge and therefore the most likely to be required to provide objective justification, in line with other NHS bodies and large private sector organisations.
- There will be on average 7 significant age discrimination cases brought against NHS bodies each year, at an average cost of £50,000-£70,000 each. The risk of wider litigation in the health and social care sectors is considered low.

Annex 3: Financial Services

Title: **Financial Services** **Lead department or agency:** HM Treasury **Other departments or agencies:** Government Equalities Office	Impact Assessment (IA) **IA No:** N/A **Date:** 15/05/2012 **Stage:** Final Proposal **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** Sandra Holben 020 7270 4678

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The Equality Act 2010 will make it unlawful to discriminate against adults aged 18 and over by those providing services and public functions. The problem under consideration is that age-based pricing, which has been proven to not be discriminatory, will be affected by the ban. The government therefore needs to consider whether an exception from the ban for financial services is appropriate.

What are the policy objectives and the intended effects?

In light of the evidence that there is no specific discrimination in financial services, but that certain groups do have difficulty accessing financial services, we believe that an exception is still appropriate to allow the industry to continue all current practices and operate effectively, and that a voluntary scheme to improve access and transparency in respect of travel and motor insurance should be pursued.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Note: This appraisal represents the decision making process of whether or not to exempt the health and social care sector from a ban once it has been implemented. This reflects how the legislation would be implemented in practice – i.e. whether or not to grant an exception.

Option1: Would notionally be for no exception to be introduced, although this is not likely and simply provides a baseline against which the first option could be measured.
Option 2 (preferred): An exception allowing firms to continue to use age as a risk factor. This option includes insurance companies undertaking non-legislative transparency and signposting measures for older consumers. This non-legislative measure is closely linked with the legislative approach because the agreement concerned is between the industry and the Government; and the agreement has come about against the background of potential legislation in this area and in light of the wide exception provided for financial services.

Summary: Analysis and Evidence

Policy Option 1

Description:

No exception to be introduced

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -1,501

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	1	N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	325.2		146.8	**1,769.8**

Description and scale of key monetised costs by 'main affected groups'

Direct costs to the financial services sector form implementing the age discrimination ban (£317million transitional and £143.2million annually recurring) and cost of increased claims where more people are able to access insurance. (£21.03million annually recurring).

Other key non-monetised costs by 'main affected groups'

Any increased costs for providers may also lead to higher prices for consumers in higher risk groups.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	1	N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	0		31.2	**268.4**

Description and scale of key monetised benefits by 'main affected groups'

Premiums to insurers from providing services to those who otherwise would not have been able to purchase (£25.58million annually recurring), reduction in search costs for individuals (£4.5million annually recurring), and direct benefits for individuals from increased access to services (£1.10million annually recurring).

Other key non-monetised benefits by 'main affected groups'

Increased consumer confidence amongst in the financial services sector, and ability to achieve legal redress where discrimination does occur.

There would also be wider indirect or second order benefits from increased expenditure by individuals on travel and motor services of up to £71million.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

Key Assumptions:

- each search for insurance costs the individual £2.
- Costs of implementing a ban in the financial services sector estimated from ABI research.

Summary: Analysis and Evidence

Policy Option 2

Description:

An exception allowing firms to continue to use age as a risk factor.

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	**High:** N/A	**Best Estimate: 60**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	1	N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	0.72		8.03	**69.8**

Description and scale of key monetised costs by 'main affected groups'

Transparency – set-up costs (£0.72million transitional) and costs of publishing data showing how age is used in insurance (£0.25million annually recurring).

Cost of increased claims where more people are able to access insurance (£7.78million annually recurring).

Other key non-monetised costs by 'main affected groups'

Allowing an exception would ensure nobody is protected, and there is an inconsistency in the law.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	1	N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	0		15.10	**130.0**

Description and scale of key monetised benefits by 'main affected groups'

Premiums to insurers from providing services to those who otherwise would not have purchased (£9.92million annually recurring), reduction in search costs for individuals (£4.5million annually recurring), and direct benefits for individuals from increased access to services (£0.68million annually recurring).

Other key non-monetised benefits by 'main affected groups'

Increased consumer confidence from transparency requirement

There would also be wider indirect or second order benefits from increased expenditure by individuals on travel and motor services of up to £43.4million.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

Key Assumptions:

- 60% would use signposting for motor insurance and 63% would use it for travel insurance (though this is reduced to 30% for younger drivers where the arrangement will be less formal).
- each search for insurance costs the individual £2.

Problem under consideration

The Equality Act 2010 will make it unlawful to discriminate against adults aged 18 and over by those providing services and public functions. The problem under consideration is how this should apply to the provision of financial services when the ban is introduced (the intention is to do so in 2012).

In order to determine the extent of age discrimination occurring in the financial services industry GEO commissioned independent research by Oxera (henceforth, "the Oxera research").

The Oxera research, and research by Age UK in January 2010, which looked at the travel and motor insurance markets for older people[1], showed age was a significant factor in determining how prospective customers are treated in the sector, including whether a service is provided at all and at what price.

Many older people have complained that they are discriminated against when trying to obtain various financial services; they say that they have a more limited choice of services and pay a higher price for them. They also say they have problems obtaining loans, mortgages and are particularly concerned about travel and motor insurance[2].

Age Concern surveys suggest that people aged 75 and over are nearly ten times more likely to be refused a quote for motor or travel insurance than people aged 30 to 49. 13% of people over 80 said they were put off taking holidays because of worries about getting insurance or the cost of premiums. A separate SAGA Populus survey found that 25% of people over 65 had been refused travel insurance on the grounds of age[3]. The CRA International research for the ABI stated that 25% of customers aged 65 and over had been refused travel insurance because of their age, although 93 percent of these people were able to find another insurer who would provide cover[4].

Age UK showed that for motor insurance half of quotation attempts for people aged 80 and over were initially unsuccessful; however, a third were then offered an alternative provider. For travel insurance, one-third of quotation attempts for people over 80 were initially unsuccessful, though the majority were offered an alternative provider. The Oxera research also showed that the price of motor and travel insurance policies differs depending on the age of the customer, with older people paying more than any other age group to obtain similar cover. The research also showed providers of motor and travel insurance specialise. Targeting specific age groups and refusing to supply other age groups is therefore common practice.

Policy objective

Evidence indicates that there is no specific discrimination in financial services, but that certain groups do have difficulty accessing financial services. We therefore believe that an exception is still appropriate to allow the industry to continue all current practices and operate effectively, and that a voluntary scheme to improve access and transparency in respect of travel and motor insurance should be pursued.

Following the consultation in 2009[5] the previous government proposed that the legislation would not prevent those providing financial services from treating individuals differently as a result of their age. This proposal was set out in a policy statement published in January 2010[6]. Age is a legitimate risk factor in many financial service products and a total ban on age discrimination in financial services is not appropriate. Since then the Government has looked again at this issue, considering legal drafting and the possible unintended consequences of a specific exception. The Government believes a wider exemption is more appropriate, coupled with a non-legislative requirement to improve access and transparency in the areas of motor and travel insurance.

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[1] http://www.ageconcern.org.uk/AgeConcern/Documents/Turned_away_older_people_and_insurance.pdf

[2] Age Concern surveys suggest that people aged 75 and over are nearly ten times more likely to be refused a quote for motor or travel insurance than people aged 30 to 49. 13 per cent of people over 80 said they were put off taking holidays because of worries about getting insurance or the cost of premiums

[3] Age discrimination in financial services: Final report of the experts working group – page28

[4] ABI research paper No.12 2009 - Insurance and age-based differentiation – page 67

[5] Equality Bill: Making it work – Ending age discrimination in services and public functions – a consultation - http://www.equalities.gov.uk/pdf/13511%20GEO%20Consultation%206th.pdf

[6] Equality Bill: Making it work – Ending age discrimination in services and public functions – Policy statement - http://www.equalities.gov.uk/pdf/GEO_EqualityBillAge_acc.pdf

Options

This impact assessment will focus on the costs and benefits of:

- Option 1: a total ban on age discrimination in financial services; whilst notionally comparing against.
- Option 2: (preferred): an exception which allows firms to continue to use age, coupled with non-legislative measures through an agreement between the industry and the Government, to bring greater transparency in how insurers use age in calculating premiums and the introduction of signposting for older and younger customers who may encounter difficulty in getting a motor or travel insurance quote.

This impact assessment should be read in conjunction with the drafted exception as set out in the Government response to the consultation on exceptions.

The preferred option is option 2, with a specific exception that would allow financial services to continue to treat people of different ages differently.

In fact, Oxera research found that age is a key risk factor to be taken into account when pricing financial services products. It is a proxy for driving ability, health, medical conditions and other factors that determine the frequency and costs of making an insurance claim or the likelihood that someone will default on a mortgage or loan. Oxera found that financial services products are available to all age groups, although some age groups have more to choose from than others, and that only a very small proportion of consumers are turned down or unable to find products because of their age. Prices appear to be broadly fair based on the risks (how likely you are to claim) and the costs (how much you claim). However, the research also found that there was considerable mistrust regarding how age was used when calculating risks and therefore transparency needed to be improved. The research also showed that access could be improved by providing a sign-posting or referral system to help people who are refused a quote because of their age find an alternative[7].

The Oxera research also showed no age group is totally excluded from the market in the sense that no provider at all is willing to supply cover. For example, Oxera found more than 30 separate motor insurance quotes for those aged 80 and over on one price comparison website alone. They also found motor insurance companies generally do not apply age limits to existing customers, so policy renewal is not a problem.

In addition, the aforementioned survey of young drivers by the ABI found that those aged 18-24 did not have significant difficulty in finding a quote, with 89% finding a quote within 45 minutes, and only 1% taking longer than 4 hours to get their first quotation.

Financial services representatives suggest that these markets are competitive and insurance is available for people of all ages. This claim is supported by the Oxera research which suggested that the limited provision of services for older age groups is a result of legitimate business practices, reflecting the different costs of supplying services to different age groups. The research concluded that if there are failures in the provision of financial services, they exist because of the way in which the market currently matches demand and supply; the evidence showed some consumers have greater difficulty in finding relevant products or providers because of their age.

The research concluded that there was no economic justification for preventing insurers using age as a factor in underwriting risk, or requiring providers to supply services to all age groups. Any access problems would be better addressed at the distribution level.

In the areas of travel and motor insurance, the aim is to improve access and transparency, where the main incidence of age discrimination was highlighted.

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[7] The use of age based practices in financial services – a report undertaken by Oxera, available at – http://www.equalities.gov.uk/pdf/The%20use%20of%20age-based%20practices%20in%20financial%20services%20Final%20report.pdf The independent Oxera research indicates that in the main older people are not being denied travel insurance, or indeed young people being denied motor insurance, on a systemic basis. Where there is a bias, this tends to be in favour of older people (for travel insurance) and younger people (for car insurance). The evidence shows that insurers are more likely to lose money, than make excessive profits, on travel insurance for older people.

The Government has decided to provide an exception that would allow financial services providers to continue to use a person's age but only when its risk assessments are based on relevant and reliable information. This is in conjunction with non-legislative measures to improve access and transparency in respect of travel and motor insurance. This approach will also allow the continued use of age banding. We believe this is the right approach because restricting the extent to which the financial services industry can base prices on risks and costs would distort the market, leading to increased costs and higher prices, with the possibility of some companies leaving the market altogether.

The use of age-limits will also be able to continue. Financial service providers will not therefore be forced to participate in sectors that they do not wish to operate in, or have no experience in. We understand 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 instead be able to specialise in providing products only to certain age groups. For example, SAGA specialises in providing for the over 50's.

Based on the evidence above, the Government is keen to improve access to motor and travel insurance products (the areas where people have complained), so if a provider is unable to provide assistance to a person because of their age they should refer that person to a provider who can meet their needs or refer them to a dedicated signposting service. This will provide better access and also more choice for consumers who have difficulty in obtaining the products that they want. This will be achieved through non-regulatory means through an agreement supported by the industry. The Government has worked with the Association of British Insurers and the British Insurance Brokers Association to develop an agreement to deliver improved access[8]. The agreement has been finalised and commenced on 6 April 2012 it covers:

- Transparency arrangements: publication by the industry of collated insurance data showing the link between age as a risk factor and the availability of insurance cover;
- Signposting arrangements: where an insurance provider is unable to provide cover because of a person's age, referral to another provider or to a central signposting service operated by the industry.

Members of the Association of British Insurers and the British Insurance Brokers Association are signed up to this agreement through their membership conditions.

The proposed exception for financial services was supported by industry but opposed by the equality groups. The majority of respondents felt that the additional non-regulatory proposals to improve transparency and the introduction of a signposting and referrals system for insurance would be effective tools to help customers.

Costs and Benefits of Option 1

Benefits of reduced age discrimination
[Note – All figures have been inflated to 2012 prices unless stated otherwise]

The benefits of reducing age discrimination in the financial service sector are difficult to quantify. The Oxera research made it clear that only a small proportion of consumers are turned down or unable to find insurance products because of their age[9]. The study suggested that discrimination per se is not being carried out in the provision of financial services, with at least some cover available for all age sections of the market[10].

It is, however, clear that certain groups feel that they are being discriminated against because of the greater difficulty they have in accessing insurance. The Oxera research found that this difficulty in accessing the market was not necessarily due to discrimination; however it is possible to quantify the benefits to the economy of correcting the difficulty experienced by some groups in accessing insurance.

Travel insurance
Research by Age UK has concluded that 6.6% of people over 65 (and 9.4% of those over 75) have, at some point decided against a holiday or a particular trip because they were unable to find travel

[8] ABI news release - http://www.abi.org.uk/Media/Releases/2012/04/New_initiative_will_improve_access_to_insurance_for_older_customers.aspx
[9] Oxera : The use of age-based practices in financial services, p52
[10] Oxera : The use of age-based practices in financial services, Executive Summary, p (iv)

insurance or gave up looking following initial disappointment[11]. A separate SAGA Populus survey[12] found that 25% of people aged over 65 had been refused travel insurance because of age[13] and 7% of these were unable to find travel insurance[14].

The Office for National Statistics estimates that there are currently 10,584,540 people aged 65 and over in the UK[15]. If it is assumed that 50% of this population demand travel insurance and apply the SAGA results, 92,615 people each year are not able to find travel insurance. The average value of a holiday in 2009 was around £270[16], using the principle of willingness to pay; this can be used as a proxy for value. This results in a possible loss of expenditure in the economy for those over 65 who want to go on holiday of approximately £25 million per year in 2009 prices[17]. These are therefore indirect benefits of banning age discrimination. We have not, however, included these in our overall total benefits of banning age discrimination because they are not direct impacts. They are also difficult to estimate accurately as they will depend heavily on consumer spending patterns.

In addition, an ABI research paper (carried out by CRA international) has considered the direct benefits to the economy of customers obtaining travel insurance, who would not previously have acquired it due to their age[18]. The research also looks at the benefits of individuals being able to go on holiday with insurance. The total value of insurance premiums from these individuals is estimated at £4.08million. This figure is based on the following assumptions and evidence:

- Proportion of those who go on holiday aged 65 and over [a] :17%[19]
- Proportion of Saga Populus survey respondents aged 65 and over who had difficulty in obtaining travel insurance [b] :25%
- Proportion of these respondents who did not subsequently obtain cover [c] :7%
- Premiums for older customers compared with average [d] :214%[20]
- Gross written premiums for travel insurance [e] : £642million

£4.08million = [a] x [b] x [c] x [d] x [e]

The cost of increased claims where more people are insured should also be accounted for. We were unable to obtain detailed data on the cost of claims by age from the ABI. However, using the ABI research paper we can estimate that in 2007 the cost of claims was roughly 55% of the gross written premiums in travel insurance. Therefore, cost to insurers would be approximately £2.25 million.

In addition, the ABI research recognised that there may be direct benefits for older individuals who would be able to go on holiday with insurance. This was calculated by asking consumers how much they would be willing to pay as an extra premium to go on holiday with insurance. Therefore, based on the same sample of individuals who are now able to obtain travel insurance, and that 18.7% of those surveyed indicated they would be willing to pay an extra premium, there is a direct benefit to those individuals of £0.74million per annum.

£0.74million = £4.08million x 18.17%

Motor insurance

[11] Insurance and Age: exploring behaviour, attitudes and discrimination, CM Insight, Andrew Smith Research 2007

[12] 10,6613 individuals aged 50 and over carried out between 8 and 14 August 2008

[13] Question asked – "Some people say they find it difficult to find insurance, others say they have no problems at all. Have you ever been refused insurance because of your age?"

[14] Question asked – "Were you able to find another insurer who would cover you? [Those refused]"

[15] ONS: Population estimates - http://www.statistics.gov.uk/cci/nugget.asp?id=6

[16] Home and Away holiday rentals survey May 2009, estimated that a family holiday for 4 people would cost £1,082.03 (made up of travel £545.50, accommodation £461.35 and Airport parking / hotels £75.18) http://www.holiday-rentals.co.uk/info/press/press-releases/press-releases-2009/average-cost-of-a-holiday

[17] 10,584,540 x (0.5 x 0.25 x 0.07) x 270 = £ 25,005,975

[18] Insurance and age-based differentiation, ABI working paper 12, 2009

[19] From National Statistics population numbers weighted by GfK/NOP data on the proportion of people who do not go on holiday from Insurance and Age: Exploring behaviour, attitudes and discrimination. A report from Age Concern and Help the Aged. Research undertaken by CM Insight and Andrew Smith Research.

[20] Based on quoting information comparison website for single and annual trip insurance and taking a weighted average of quotes by age to obtain both the overall average and the weighted average for those 65 and over, weights are based on National Statistics population numbers and GfK data

Age UK research found that 6% of those over 65 were declined car insurance because of their age. Around 43% of people aged over 65 currently have car insurance[21], and, as motor insurance is compulsory for all UK drivers, we assume this 43% also have access to a vehicle. If 6% of this 43% were refused car insurance because of age and then stopped searching and gave up driving as a result, 273,081 people over 65 would be unable to drive as a result of their age.

The Saga populus survey found that 3% of those who responded aged over 65 had been denied motor insurance because of age[22], of these 7% were unable to find any motor insurance[23]. This would equate to about 9,557 people over 65 who are unable to drive as a result of their age.

A person of retirement age tends to drive around 8,000 miles a year and drive a smaller car, such as a Ford Fiesta, with a purchase price of approximately £10,000. The AA estimates, for people driving 10,000 miles per year, the average cost per year at £4,431 in 2010 [24]. This would result in a possible loss of expenditure in the economy to those over 65 who want to drive but cannot of approximately £42 million per year[25] in 2010 prices. Again these are indirect benefits of banning age discrimination so are not included in the overall benefits.

In addition, the ABI research paper has attempted to monetise the direct benefits from customers aged 65+ obtaining motor insurance that would not previously have gotten insurance, and the benefits of individuals continuing to drive. The total value of insurance premiums from these individuals is estimated at £2.99million per annum. This figure is based on the following assumptions and evidence:

- Proportion of licence holders aged 65 and over [a] : 15.6%[26]
- Proportion of Saga Populus survey respondents who have ever been refused insurance due to age [b] :3%
- Proportion of these who did not subsequently obtain cover [c] : 7%
- Premiums for older customers compared to average [d] : 106%[27]
- Gross written premiums for motor insurance [e] : £8,605million[28]

£2.99 million = [a] x [b] x [c] x [d] x [e]

The cost of increased claims where more individuals over 65 are able to drive should also be accounted for. Private car and motorcycle data by age for underwriting year 2008 in the UK suggests that the total gross written premiums for those over 65 were £930million, and that the gross incurred claims were £753million in 2008 prices. The cost of claims was 81% of the premiums received. Therefore, the cost of more people aged 65 who obtain motor insurance bringing claims is estimated to be £2.42million.

Also, there may be direct benefits from older individuals being able to continue driving. To assess this potential benefit, the CRA consumer survey behind the ABI research paper explored how much more older drivers would be willing to pay in order to continue driving. Therefore, based on the same sample of individuals who are now able to obtain insurance, and that 12% of those surveyed indicated they would be prepared to pay more than the existing premium, there is a direct benefit to these individuals of

£0.36 million per annum

£0.35 million = £2.99million x 12%

Furthermore, there will be real economic benefits to those aged 16-25 from obtaining motor insurance where they were unable to do so because of their age. The total value of premiums from these

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[21] GfK/NOP 2006 in Insurance and Age: exploring behaviour, attitudes and discrimination, CM Insight, Andrew Smith Research, 2007

[22] Question asked: "Some people say they find it difficult to find insurance, others say they have no problems at all. Have you ever been refused insurance because of your age?"

[23] Question asked – "Were you able to find another insurer who would cover you? [Those refused]".

[24] The AA, http://www.theaa.com/allaboutcars/advice/advice_rcosts_petrol_table.jsp. Costs include: depreciation; cost of capital; insurance; road tax; and running costs

[25] 10,584,540 x 0.43 x 0.03 x 0.07 x 4,431 = £42,350,787

[26] DVLA

[27] Based on quoting information from comparison website and taking a weighted average of quotes by age to obtain both the overall average and the weighted average for those 65 and over, weights are based on DVLA information

[28] ABI

individuals is estimated at £18.51million per annum. This figure is calculated based on the following assumptions and evidence.

- Proportion of licence holders aged 16-25 [a] : 12.3%[29]
- Proportion of ABI 18-24 survey respondents who do not drive because they could not find insurance [b] :1%[30]
- Premiums for customers aged16-25 compared with other customers [c] : 171%[31]
- Gross written premiums for motor insurance : £8,605million

£18.51million = [a] x [b] x [c] x [d]

However, the increased cost of incurred claims should be accounted for. Private car and motorcycle data by age for underwriting year 2008 in the UK suggests that the total gross written premiums for those under 25 were £1,271million, and that the gross incurred claims were £1,124million in 2008 prices. The cost of claims was 88% of the premiums received. Therefore, the cost of more people aged 16-25 who obtain motor insurance bringing claims is estimated to be £16.36million

Search costs

The Age UK research found that, after two attempts, 23% of people aged 65 plus failed to get a travel quotation and 19% failed to get a motor insurance quote. They estimate this would equate to 1.5 million of the 6.5 million older people travelling each year, and 750,000 of the over 4 million drivers aged over 65 failing to get an insurance quote after two attempts. These 2.25 million people may have been able to get cover, but there would have been a cost involved in terms of time and effort. The Report by the Financial Services Experts Working Group has generated an assumption that each extra search cost stands at £2[32]. This figure was not disputed during the consultation period, and its inclusion within our calculations is therefore justified. If £2 is therefore used as a proxy, then a single extra search per person would amount to £4.5 million a year. These are direct benefits of banning age discrimination to individuals.

Summary of benefits under option 1

Overall, the direct annual benefits of addressing a failure to access insurance (which is often perceived as age discrimination) amounts to £31.17m, and the indirect annual benefit £71.0m. However, there are also direct annual costs amounting to £21.03million. Government believes this could be addressed at a very minimal cost by further encouraging the voluntary approach taken by the industry to signpost individuals who find it difficult to find travel and motor insurance to another provider.

[29] DVLA

[30] Assumes same fraction of those aged 16-25 as those aged 18-24 could not find a motor insurance quote

[31] Calculated using AA premium index data, 2010, for comprehensive cover only, average premium for 16-25 compared with average for all

[32] £2 extra search cost assumption made in Final Report of the Financial Services Experts Working Group October 2008, page 30

Table 1 - Benefits and costs of individuals being able to obtain insurance following a complete ban (2012 Prices)[33]

FIRST ORDER BENEFITS (per annum)	
Benefits from reduced search costs	£4.5m
Increased premiums – Motor 65+	£2.99m
Increased premiums – Motor 16-25	£18.51m
Increased premiums – Travel	£4.08m
Benefits of continuing driving (WTP)	£0.36m
Benefits of obtaining travel insurance (WTP)	£0.74 m
Total	**£31.18m**
FIRST ORDER COSTS (per annum)	
Increased in claims – Motor 65+	£2.42m
Increased in claims – Motor 16-25	£16.36m
Increased in claims – Travel	£2.25m
Total	**£21.03m**
INDIRECT/SECOND ORDER BENEFITS (not included in the total monetised benefits of banning age discrimination)	
Money not spent on a Holiday	£26.97m
Money not spent running a car	£44.05m
Total	**£71.02m**

Costs of not providing an exception (option 1)

Impact of a ban on the use of age as a risk factor

A ban on the use of age as a risk factor could lead to substantial costs for the industry and ultimately higher cost for consumers. The main concerns are[34]:

- Prices increase overall – partly because insurers are not able to estimate the risks as precisely and hence factor uncertainty into prices, and partly because the proportion of high-risk individuals is likely to increase (i.e., as they face lower prices) and the proportion of low-risk individuals to decrease (as they face higher prices).
- Prices converge across age groups – this implies redistribution effects between age groups – i.e., some age groups would benefit, whereas others would be worse off.
- Providers would increasingly use substitute variables for age for risk classification and pricing, such as years with driving licence, which may lead to individuals still being discriminated on the basis of age.
- Some types of products or firms may be forced out of the market either because it becomes uneconomical to supply the product (e.g. the costs associated with health screening may be too high, especially for smaller firms), or the risk is too large (e.g. the market for annual worldwide travel policies may collapse due to considerable risk associated with offering such insurance to older people), therefore reducing competition and corresponding benefits.

A General Insurance Research Organization (GIRO) working party examined the effect of removing the age variable from car insurance risk models as well as any multi-way interaction effects between driver age and other factors. The implied effect on premiums was determined by comparing the results from the models including and excluding age. The working party found clear re-distributive effects between age groups, since drivers aged 41 -75 would face increases in premiums of up to 24%, whereas those aged 40 or under and those aged 76 or over would see their premiums fall by up to 20%[35].

In effect, this evidence demonstrates that, on average, if age is not used in the risk classification and pricing models of motor insurers, drivers under 40 would be cross subsidised by drivers over 40 years old. Changes in premiums are also likely to lead to moral hazard effects, whereby different behaviour by the insured, both in terms of uptake of insurance and, for example, road accidents and fatalities, could

[33] HMT GDP Deflator consistent with 23rd March 2011 Budget Report

[34] Oxera research

[35] GIRO Working Party (2007/08), 'Free Market Pricing', section 5

increase as younger people respond to decreased premiums; this will have the effect of more risk in insurers' portfolios and exacerbated premiums for all age groups.

Age is regarded as a relevant indicator of health for holiday insurance purposes. Research commissioned by ABI and conducted by Ipsos MORI found that the over-65s are three times more likely to make a travel insurance claim than those aged 35, and people over 85 years old are eight times more likely to claim. Claims made by people over 65 compared to people under 50 are nearly three and a half times more expensive. If age was removed then there would need to be wide introduction of medical checks for all people seeking insurance which would increase the premiums charged to everyone and/or a reduction in quality of cover offered.

The Financial Services Experts' Working Group report contains results of the analysis of removing age from credit-scoring models, conducted by a major UK lender[36]. The analysis shows the removal of age would have an adverse effect on the providers' ability to assess an individual's ability to repay a loan. This is shown to result in either a reduction in the loan offer rate by 1.7% if the proportion of 'bad' loans is kept constant, or an increase in 'bad' loans by 0.1% if the loan offer rate is held constant.

The analysis also illustrates the effect on loan availability, with the loan offer rate increasing by 2.3% for the 18 – 25 age group (i.e. additional 2.3% of the applicants in this age group would be offered loans), whereas the offer rate would decrease by 1.4% for those aged 60 or more. The lender notes that this needs to be interpreted in the context of the young having the highest predicted 'bad' loan rate (4.7%) and the old having the lowest rate (0.4%).Therefore, removal of age from credit-scoring and loan-decision models is likely to lead to a 'cross-subsidy' from customers over 60 to customers under 25 years old as was also observed in motor insurance. Moreover, the effect of removing age as a risk factor can lead to worse outcomes overall, for example, either more 'bad' loans or less loans being offered.

The use of alternative factors in risk classification was examined by Kelly and Nielson[37], in risk classification and motor insurance pricing. Overall they concluded that the age variable is capturing real differences in the risk drivers are prepared to take that is not captured by any other of the alternative factors examined. They conclude that age cannot be eliminated from insurance processes without creating undesirable market disruptions and decreasing the ability to price risk.

Some of the major concerns in respect of the removal or restriction of the use of age as a risk factor are around the implications on practices such as age limits and age bands which are used within both the Banking and Insurance industries would no longer be permissible.

Costs of a complete ban on the use of age as a risk factor

ABI research and the findings of the experts working group suggest the costs of restricting current practices of using age as a risk factor could be as set out below.

[36] The Final Report of the Financial Services Experts Working Group October 2008, page 166 - 167

[37] M.Kelly and N.Nielsen (2006), Age as a variable in insurance pricing and risk classification pages 212 - 232

Table 2 - Estimated cost to the insurance industry of a ban on the use of age as a risk factor (Only 2012 Prices)

Product	One-off costs	Ongoing costs
Motor Insurance	£11.5m	£0.1m
Travel Insurance	£1.9m	£11.5m
Pensions	Unquantifiable	Unquantifiable
PMI	£5.9m[38]	£4.4m[39]
Life insurance	£132.6m	£80.6m
Critical illness & Income Protection	£111.4m	£32.6m
Annuities (Average)	£32.2m[40]	Unquantifiable
Total	**£295.6m**	**£129.2m**

(Source: ABI research)

In respect of banking products, the cost implications to change the use of credit scoring models due to restrictions in the use of age would increase costs for all lenders. The Finance and Leasing Association (FLA) estimates the costs to a single small lender on annual basis to be around £0.58m. With 30 FLA members classed as small this would be a cost of £17.2m. One off costs for a single lender would be £0.17m for a small lender and £0.82m for a larger lender. With 30 smaller lenders and 30 larger lenders in FLA's membership this would mean £5.2m one off costs for smaller lenders and £24.5m for larger lenders.

Table 3 - Estimated cost to the banking industry of a ban on the use of age as a risk factor

Practice	One-off costs	Ongoing costs
Score card changes – small lenders	£5.2m	£17.6m
Score card changes – large lenders	£24.5m	Unquantifiable
Total	**£29.7m**	**£17.2m**

(Source: Finance and Leasing Association)

Summary of costs under option 1

Based on the information above it is clear that there is no market failure in respect of age discrimination in the provision of financial services The cost of failure to access insurance can be met via a voluntary approach by the industry at a minimal cost whereas a ban would cost the industry well over £300m in one off costs and almost £150m in annual ongoing costs. These costs may increase prices for consumers and provide very little benefit. In addition the changes in the industry would result in higher prices for those in higher risk groups, for example, travel insurance for older people due to the redistribution of prices.

[38] Based on the costs for four the large PMI insurers with a combined market share of 87% in 2009. The costs of smaller firms are assumed to be proportionate to those costs for larger firms

[39] Based on additional costs for medical underwriting resources for a large firm (£200k); MI and pricing analysis (£200k); uncertainty risk, including cost of capital to cover unexpected outcomes (£500k). Calculated on the basis of four large PMI insurers with a combined market share of 87% in 2009 and the costs of smaller firms assumed to be proportionate to those costs for larger firms

[40] Legislation on the use of age could result in the PLA and SSA market, which processes premiums totalling between £100m and £150m per annum, ceasing to exist

Table 4 – Total estimated compliance cost of a ban on the use of age as a risk factor

Product	One-off costs	Ongoing costs
Motor Insurance	£11.5m	£0.1m
Travel Insurance	£1.9m	£11.5m
Pensions	Unquantifiable	Unquantifiable
PMI	£5.9m[41]	£4.4m[42]
Life insurance	£132.6m	£80.6m
Critical illness & Income Protection	£111.4m	£32.6m
Annuities (Average)	£32.2[43]	Unquantifiable
Score card changes – small lenders	£5.2m	£17.6m
Score card changes – large lenders	£24.5m	Unquantifiable
Total	**£325.2m**	**£146.8m**

(Source: ABI Research and Finance and Leasing Association)

Costs and Benefits of Option 2

Improving access through signposting

Some of the costs of age discrimination as set out above can be overcome by improving access to motor and travel insurance. Improving access would help those that find it difficult to find insurance to obtain insurance cover and reduce their search cost for this cover, by better matching demand with the existing supply. By directing customers to specialists in the market, this could result in better quality products for older customers with little unintended consequences for other segments.

An insurer is able to refer customers to an alternative insurer who is better placed to provide insurance if the initial insurer is unable to do so. We believe this practice should be further encouraged to improve access to insurance for older people and that is why the Government has worked closely with the insurance industry to improve access.

The British Insurance Brokers Association (BIBA) operates a signposting system which helps those that have difficulty in finding insurance. This system and those like it can be more widely used to improve access. BIBA state that any increase in throughput can be absorbed at no extra cost. This means that, if issues relating to affordability are ignored, almost all those individuals rejected by an insurer in the first instance could be subsequently placed with an insurer through the BIBA system.

Our proposal for a non legislative arrangement with the Association of British Insurers facilitated by an agreement to use the facility provided by the British Insurers Brokers Association or a facility that meets the principles of a signposting service agreed via the Signposting Steering Committee was accepted by the industry. This is limited to older consumers only at this point, but a less formal agreement will be reached for insurers to also arrange signposting for younger consumers.

The ABI research and consumer survey indicated that 60% of respondents would use signposting for motor insurance, and 63% when searching for travel insurance. As the arrangement for younger drivers will be less formal, we estimate here that only 30% of this group would make use of a signposting system. There is, however, no robust evidence as to what fraction of younger drivers would use a less formal signposting service when searching for insurance. The benefits of signposting would only accrue for these proportions of the instances where it was previously not possible to find a quote (see table 5 below).

[41] Based on the costs for four the large PMI insurers with a combined market share of 87% in 2009. The costs of smaller firms are assumed to be proportionate to those costs for larger firms

[42] Based on additional costs for medical underwriting resources for a large firm (£200k); MI and pricing analysis (£200k); uncertainty risk, including cost of capital to cover unexpected outcomes (£500k). Calculated on the basis of four large PMI insurers with a combined market share of 87% in 2009 and the costs of smaller firms assumed to be proportionate to those costs for larger firms

[43] Legislation on the use of age could result in the PLA and SSA market, which processes premiums totalling between £100m and £150m per annum, ceasing to exist

Table 5 - Estimated annual benefits of tackling issues of access to insurance through signposting (2011 Prices)

FIRST ORDER BENEFITS	
Reduced costs of searching for insurance	£4.5m
Increased premiums – Motor (16-25 & 65+)	£7.34m
Increased premiums – Travel	£2.57m
Benefits of continuing driving (WTP)	£0.22m
Benefits of obtaining insurance (WTP)	£0.47 m
Total	**£15.10m**
FIRST ORDER COSTS	
Increased in claims – Motor (16-25 & 65+)	£6.36m
Increased in claims – Travel	£1.42m
Total	**£7.78m**
INDIRECT/SECOND ORDER BENEFITS (not included in the total monetised benefits of banning age discrimination)	
Money not spent on a Holiday	£17.00m
Money not spent running a car	£26.43m
Total	**£43.42m**

(Source: HMT estimates - see table 1)

Improving transparency

Some people are not confident that age is not being misused particularly in the fields of motor and travel insurance. One approach is to require the industry to publish aggregate data that everyone could check. Insurance suppliers claim that any publication requirement would be an unnecessary burden on business, but they have not given an indication of the scale of these extra costs. Claims data from individual insurers is necessarily confidential and publication on a firm by firm basis would undermine competition and the ability of firms to operate their businesses on a commercial basis. However, it follows that if such data could be published as an aggregated series, incorporating information from as many firms as possible, but on an anonymous basis, and in a way that sought not to undermine the competitive advantage that specialist insurers gain from their better understanding of the risks of some market sectors, then this could allay the fears of individuals that age is being misused.

Putting aggregated insurance data in the public domain illustrating the correlation of age and risk could make it easier for industry and consumers to understand how age impacts on the costs of the services provided and would provide a basis of fact against challenges of age discrimination. Companies would have a source of data to justify their products against, which would help reduce claims because of age discrimination. The consequences if insurers' own data differs from aggregate data would need to be considered carefully.

Industry-wide data might also reduce barriers to entry for new providers, who claim that they cannot offer services to certain age groups, as they do not have sufficient data on the risk they pose.

A publication requirement has now been introduced as part of the insurance agreement and almost all insurers will enter into collective publication arrangements through the Association of British Insurers. The Impact Assessment for the implementation of the Gender Directive 2004/113/EC which has a transparency requirement, stated one-off set-up costs estimated at £720,000 representing the development of some internal reporting systems (£5,000 for a large firm and £2,000 for a small firm) together with the development of a central collection and publication system (£110,000). Estimated annual running costs were £250,000. This was based on 15 senior managers and 20 administrator hours for a large company and 5 and 10 hours respectively for a small company (£235,000), including associated overheads of 30%; central staff costs (£5,000) and central publication costs (£10,000). We estimate costs to be similar in relation to age as similar data will be published.

Table 6 – Costs of improving transparency

Transparency Requirement	One-off costs	Ongoing costs
	£0.72m	£0.25m

(Source: HMT estimates)

The Association of British Insurers has agreed to publish data on behalf of its members. It is likely that any additional costs due to an arrangement for a publication scheme, to illustrate the impact of age on insurance will be minimal. It appears that existing data and procedures used for gathering gender data could also be used for age.

We are pleased that our proposal for a voluntary scheme for industry to improve transparency, to publish aggregate data by way of a targeted approach for travel and motor insurance where consumer confidence is the lowest has been taken forward by the industry. The costs of this are expected to be minimal, with minimal disruption to the industry and we believe such an approach will be more beneficial to consumers than a legislative requirement to produce wider aggregate data.

Summary of costs and benefits of the voluntary approach

Table 7 - Summary of costs and benefits

		Costs		Benefits	
		One off	Recurring	One off	Recurring
Transparency – publishing data showing how age is used in insurance	**Private Sector**	£0.72m	£0.25m		
Signposting – improving access to insurance products	**Private Sector**	No additional cost	£7.78m		£9.92m
	Individual				£5.18
TOTAL		£0.72m	£8.03m		£15.10m

Risks and Assumptions

The following assumptions were made when calculating the costs of measures taken to improve transparency in the financial services sector:

- The calculation assumes that almost all insurers will choose to enter into collective publication arrangements through the Association of British Insurers.
- Estimates were based on the costs of introducing a transparency requirement for gender following the implementation of the Gender Directive. They include the costs of developing some internal reporting systems together with the development of a central collection and publication system. Estimated annual running costs were based on 15 senior managers and 20 administrator hours for a large company and 5 and 10 hours respectively for a small company, including associated overheads of 30%; central staff costs and central publication costs.

The following assumptions were made when calculating the benefits of measures taken to improve access to financial service products through signposting and the cost of individuals having limited access to financial services:

- The calculations assume that 50% of those aged 65+ want to purchase travel insurance and 25% of that number are refused on their first attempt and 7% of these are subsequently unable to find a different supplier. Figures supplied by SAGA and ABI.
- Assumes 3% of those aged 65+ are refused motor insurance and 7% of these are unable to find an alternative. Figures supplied by SAGA.
- Assumes 1% of those aged 16-24 do not drive because they could not find motor insurance.
- Search costs – assumes that each search costs £2 and that a signposting/ referral system will save people carrying our 2.25 million searches a year.

Annex 4: Specific Exceptions

Introduction

There are other age-based practices outside financial services and health and social care, which, although far less significant still need to be considered. We have classified these 'general services'. Respondents to the 2011 age consultation supported the proposed exceptions outlined in the consultation document:-

- Age-based concessions and benefits;
- Age-related group holidays;
- Residential park homes;
- Sporting events; and
- Immigration service decisions.

In addition, following comments received during the consultation we have decided to allocate an exception for age verification initiatives such as "Challenge 25" intended to minimise under-age sale of age-restricted products.

These practices are considered beneficial or are likely to be justifiable, but specific exceptions provide a greater degree of legal certainty to service providers. Thus the exceptions help to ensure that service providers do not end these beneficial or non-harmful practices or withdraw services out of concern that they may be open to legal challenge or that the process of justification undermines their ability to continue to provide the service.

A detailed rationale for having each of these exceptions is provided below.

Providing an exception would lead to no aggregate costs or beneficial impacts. Exceptions will ensure that the status quo is correctly maintained in a limited number of areas. The benefits given below simply illustrate the impact if an exception was not provided.

Age-based concessions and benefits

Rationale for providing this exception

There are many age-based concessions offered to specific age groups, including discounts offered by retailers during off-peak hours as 'cheap OAP haircuts' or '10% off for pensioners' days, cheaper membership rates to join clubs, and age-targeted benefits provided by the public sector, such as free bus passes for the over 60s.

The Government is proposing to provide an exception to allow age-based concessions and benefits to continue because they help to ensure greater participation in society and the economy by young and old alike and withdrawing concessions would have a negative impact for the retailer, manufacturer and the customer. The vast majority of respondents to the previous consultation on age saw no disadvantage in allowing public and private sector age-based concessions to continue.

Examples of the costs associated with not providing an exception for age-based concessions

Retail Sector

The British Retail Consortium provided an example of one company that offers discounts to over 60s. This company has five million registered members and at least half of these visited one of their stores in the last year. 14% of customers said they would not have made a purchase without the discount card. If we assume that these 14% would have visited the store once and spent £20, this would amount to £14 million in lost revenue for the retailer if they were no longer able to offer these concessions. If this 14% would normally make 5 visits during the year, spending £20 a time this would amount to **£70 million** in lost revenue for the year.

In addition the company would need to inform all its members that the concession scheme was no longer in operation, which would be expensive and time consuming. For example, if a company had five million concession card holders and they were to send a letter to each one informing them that the scheme would no longer operate this would cost £1.6 million just in second class postal costs alone, if the total

cost of paper, printing envelopes was added and this totalled £1 per letter this would amount **to £5 million**. There would also be a loss of good will and customer loyalty, which is impossible to calculate.

Historical and education sector

English Heritage has illustrated how a total ban on the use of age based concessions could impact them. Their income from admissions for the over 60s in 2007/08 was £1.9m, it is anticipated that this would fall to £1.3m. In addition senior citizen membership fees totalled £4.1m in 2007/08, it is anticipated that this would also reduce to £3m[1]. Therefore English Heritage would anticipate losing **£1.7 million** of revenue on older people alone in 2007/08 prices.

There is also a wider economic impact as cultural institutions contribute to the economy of the area in which they are located, because of the footfall they deliver. Also a reduction in income would impact the ability of organisations such as English Heritage to protect the historic environment and invest in improving visitor facilities and services.

Culture, arts and cinema

The cinema industry has stated that there were 164.2 million cinema admissions in 2008 with box office revenue of £950m. If we assume that there would be 7% fewer admissions if age based concessions were not offered this would amount to £66.5 million lost revenue in 2008 prices. However, we need to take into account that when these people do attend they will be paying more so we can assume that the £66.5 million deficit, would reduce to **£47.5 million** as there would be an additional £19 million from charging everyone full rates if we assume a modest 2% in adjusted revenue.

In addition the Arts Council announced a two year scheme to give free theatre tickets to the under 26s. This scheme was designed to encourage attendance by young people and in the long term generate more interest and new audiences. It is hard to calculate the benefits, but in the long run they should far exceed the cost of the scheme (currently £1.75 million).

Age-related holidays

Rationale for providing this exception

A number of tour operators provide holidays for people who wish to holiday with other people of a similar age. For example, there are holidays exclusively for the over 50s and those aimed at people aged 18-30. Such holidays form a very small percentage of the holiday market as a whole. Age-related holidays provide a space in which people can come together and associate with others of a similar age to themselves. Such holidays do not disadvantage others, who will still have a very wide range of group holidays to choose from. We therefore propose to have an exception to allow tour operators to continue to restrict the holidays they provide to people of a particular age.

Size of the market

A small number of tour operators currently offer age-related group holidays; for example Saga provides for the over 50s, while Club 18-30 caters for the younger end of the age spectrum. These holidays are very popular. For example 201,000 people went on a Saga holiday in 2008 equating to sales of £267 million[2]. Club 18-30 takes around 110,000 guests each year with a turnover of £50 million[3].

Examples of the costs associated with not providing an exception for age-related holidays

We know that 78% of Saga customers prefer to go on holiday with others aged 50+, so there is a willingness to pay for this service. This amounts to £208.2 million[4] of Saga's turnover. If we assume that 50% of the people who stated a willingness to pay for the Saga product would not book a holiday with someone else we can see that the cost of withdrawing this service to the economy could be as much as **£104 million.** This is the estimated benefit of providing an exception to allow this service to continue. If we also say that 78% of Club 18 to 30 customers prefer to go on these holidays, and would not otherwise book a holiday, then the willingness to pay would amount to £39 million of Club 18 to 30's turnover[5]. However, if we make a broad assumption that only 50% of these people would not book a holiday with someone else, then the costs of withdrawing the service could be **£19.5 million**.

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[1] Data supplied by English Heritage

[2] Saga turnover of £267 million in 2008 (figure provided by Saga)

[3] Club 18-30 turnover - http://en.wikipedia.org/wiki/Club_18-30

[4] Based on Saga turnover of £267 million in 2008 (figure provided by Saga)

[5] Based on the Club 18-30 turnover as stated in - http://en.wikipedia.org/wiki/Club_18-30

Savings if an exception was not provided
These specialist holiday providers could attract additional customers from other age groups who would want to go on one of the group holidays advertised, but can't because of the current restrictions. It is unlikely, however, that the revenue from these new customers would offset the loss of their existing customer base.

Residential Park Homes

Rationale for providing this exception
Many residential parks apply age limits for those buying or renting park homes. This reflects the fact that many consumers prefer to live among people of a similar age. Residential park homes are considered a valued part of the housing market, providing accommodation of choice for some people and meeting the needs of others[6]. Many people have purchased homes on residential home parks because they want a certain life style and the quality of life they were looking for could be dramatically changed if age restrictions were lifted so we propose to include an exception to allow them to continue.

Size of the market
There are approximately 2,050 park home sites in England and Wales providing 89,500 homes and housing an estimated 170,000 residents. In 2002 economic consultants ascertained that 65% of parks stated a minimum age requirement, with the most common age limit set at 50[7]. The main sources of income for park operators are generated from pitch fees, re-assignment commissions, and gross sales of homes and renting where applicable. The average annual income of a park is £196,000 per park. However, park size varies greatly. For example, the top 10% have income well in excess of £507,000[8].

Examples of the costs associated with not providing an exception for residential park homes
If age limits were no longer allowed then this would generate costs for park owners and thus park residents. These will be offset in part by the revenue generated from additional residents from other age groups who would want to live in the park but can't because of the current restrictions. It is unlikely, however, that the revenue from these new residents would offset the loss of their existing resident base.

Impact on sales opportunities and fees
When the residents sell their homes they pay a commission to the park operator. The average value of a home upon assignment in 2002 was £25,500 for a single and £43,500 for a twin. The commission is normally 10% which would be £2,550 and £4,350[9]. The annual park fee averaged £1,216 for single homes and £1,330 for twins[10]. By opening up the parks to all ages this could result in less sales of property and consequently less fees collected. If we assume that the 65% of the 2,050 parks which have a minimum age requirement would need to increase fees to potentially meet the shortfall in income, and we assume that the average annual fee in these parks would rise by 10% or £127 for the 58,175 homes, this would amount to **£7.08 million** a year.

Impact on property prices
Many existing residential park home owners purchased their homes based on the age limits currently in operation. The removal of age limits could see the value of their property change (positively or negatively) and more importantly, the quality of life they were looking for when they purchased their home could be dramatically changed.

Opening up to a wider age group could mean that demand could far outstrip availability beyond the figures detailed above, as these figures assumed that park age limits would remain in place, so any removal of age limits could potentially see this increase even more, which could price many potential buyers out of the market. Alternatively, a potential widening of entrants could have a negative impact as older people may turn away from parks and prices may drop. The real impact is uncertain but will be tested further as part of the consultation.

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[6] Figures provided by the BH&HPA
[7] Economics of the Park Homes Industry report 2002 page 39
[8] Economics of the Park Homes industry report 2002 page 46 states income of £155,000 and over £400,000, and we have reflected these in 2011 prices using the HMT GDP Deflator series consistent with the March 2011 Budget
[9] Economics of the Park Homes Industry report 2002 page 9
[10] Economics of the Park Homes Industry report 2002 page 9 states income of £960 for singles and £1,050 for doubles per annum, and we have reflected these in 2011 prices using the HMT GDP Deflator series consistent with the March 2011 Budget

Park operating costs and fees

A ban on age limits would mean that many park owners would have to consider changing their facilities on their parks and in the homes to cater for a different clientele, which would increase the park operating costs, which average between £186,000 and £124,000 per park[11]. This would further increase the fees which park owners charge. If a park owner had to spend £10,000 to make changes to a park to upgrade the facilities this expense would be passed onto residents. If we assume that the 65% of the 2,050 parks which have a minimum age requirement would need to spend this money, this would amount to on a total **£14.3 million** on 1,332 parks, £246 for each of the 58,175 homes.

Immigration

Rationale for providing this exception

When determining a person's eligibility to enter and remain in the UK, age can be one factor that is given consideration in some applications along with other factors such as earnings. Age is used because other criteria such as earnings are likely to favour older people with established careers, so the weighting is adjusted for younger applicants with demonstrable potential. We propose to have an exception to ensure that immigration policy can continue to be delivered effectively. Differential treatment on the grounds of age is integral to so many immigration functions that this exception is required to avoid the necessity in every case of objectively justifying such treatment.

Examples of the costs associated with not providing an exception for immigration

Not currently calculated

Sport

Rationale for providing this exception

Age limits or age bands are currently used in sporting events where it is necessary to secure fair competition, or the safety of competitors. We propose to include an exception to ensure this practice can continue. The benefits of allowing an exception for age-restricted sports competitions are as follows:-

- *It enshrines the principles of fair competition* - For many sports, success in competition is dependent upon the size, weight, strength, flexibility, dexterity, stamina or experience of the competitor. Taking account of a person's age is important therefore in ensuring that a player does not gain an unfair advantage, as this would contradict the ethics of sport and fair play.
- *It promotes safe competition* - There are notable links between injury rates and the age of competitors. In response to this, some sports impose minimum age requirements to protect young athletes. For example, gymnastics,[12] weightlifting and contact sports competitions.
- *The approach is in line with international practice* - Taking account of the age of a competitor is often necessary in order to comply with rules determined at an international level or by international sports governing bodies. For example, there are many different age requirements for sport at international level, such as under 21 football tournaments.

Examples of the costs associated with not providing an exception for sport

Not currently calculated.

Age Verification

Rationale for providing this exception

This is a new exception which it has been decided to include following the 2011 age consultation.

There are many products such as alcohol and cigarettes which have age restrictions placed on them at point of sale. Retailers need to be careful to avoid selling these products to people below the legal age and, when in doubt, ask for identification as proof of age before supplying the products. To protect themselves from fines or losing their licences, retailers have developed the Challenge scheme; the most popular scheme is Challenge 25, which entails retailers seeking proof of age from anybody who appears to be under the age of 25, prior to purchasing age restricted goods.

[11] Economics of the Park Homes Industry report 2002 states average operating costs of between £147,000 and £98,000 per park, and we have reflected these in 2011 prices using the HMT GDP Deflator series consistent with the March 2011 Budget

[12] BBC News - http://news.bbc.co.uk/sport1/hi/olympics/gymnastics/7575929.stm

Retailer-led age verification schemes have been successful in reducing underage sales[13] and are supported by the Home Office, the police, local councils, trading standards, primary care trusts, schools and businesses across the UK, as they help safeguard the health and well-being of young people as well as reducing instances of anti-social behaviour.

Although the Government believes that these schemes can be objectively justified, since challenging someone for identification is a legitimate action to ensure that a retailer meets their legal responsibility, it has been decided that we do not want retailers to face significant costs in refreshing their schemes and that there should not be any uncertainty in challenging people about their age in the sale of age restricted goods and services.

Size of the market
We have worked with the Association of Convenience Stores (ACS) to consider this issue. They represent 33,500 local shops. There are 40,000 stores in the convenience sector alone.

Examples of the costs associated with not providing an exception for age verification
Stores may need to overhaul their existing age verification scheme, make staff aware of the new restrictions or attempt to implement a new policy. This would lead to additional costs for the sector. A recent Local Better Regulation Office (LBRO) report found that members of the Retail of Alcohol Standards Group invested over £3 million in the introduction of 'Challenge 25' in 2009[14]. This figure represents additional cost of implementing a new version of the scheme and would represent the costs required to implement a new version of the scheme if an exception is not introduced. The ACS has provided expected costs, which estimates the training and material cost for introducing a new age verification policy across two different size members. A 500 store estate estimates a minimum cost of £342,583 on top of the current investment in age related sales and for a smaller member with 80 stores it would cost £250,500. However, there would also be other costs, such as time to design and try and gain cross-industry agreement on a new scheme. This cost also cannot take into account the full impact on a business of the requirement to roll out different schemes across different local authorities and devolved administrations[15] and also the increase in costs caused by additional enforcement actions if there is an increase in underage sales.

ACS believes a more realistic figure is the cost to stores for introducing Challenge 21/25 policies. An ACS member with 500 petrol forecourt stores has provided figures to the LBRO report which estimated that to introduce a new policy it would cost £830,000. This cost covers the creation, implementation and training for a new scheme and is additional to on-going training costs. If this cost of £830,000 is reproduced across the 40,000 stores in the convenience sector alone, this would equate to a £33.2 million compliance cost[16]. Additionally there would be the possibility of legal challenges if there was not an exception.

[13] Test purchase failures for underage alcohol sales have fallen from 32% in the off trade in 2004 to 14% in 2008

[14] LBRO *Age Restricted Sales* p. 12 See http://www.lbro.org.uk/docs/age-restricted-products-report-short.pdf

[15] Some licensees have a licence condition that they must operate Challenge 25 and in Scotland it is also a legal requirement. Therefore in these stores there would be the need to either undergo a costly process to remove the condition and/or the need to have two different age verification systems in place in store.

[16] The ACS calculations are available on request.

Annex 5: Post Implementation Review (PIR) Plan

Basis of the review:

The Government Equalities Office is committed to reviewing the Equality Act as a whole, and this provision, which enables a ban on unjustifiable age discrimination with regards to service provision, will form part of this review. A framework approach to the evaluation of the Act has already been approved, with objectives and success criteria set out for the evaluation as a whole and for where there will be specific focus on those areas that introduce new policy.

Review objective:

As part of the overall evaluation of the Act, the precise objectives of this review are still to be approved but will reflect those of the wider Equality Act of simpler law and strengthened legislation. At this stage it is envisaged that the review will as a minimum:

- Provide a proportionate check that the prohibition is operating as expected; i.e.
  - -people aged 18 or older are not unjustifiably discriminated against because of their age by those providing services and carrying out public functions,
  - -individuals that experience discrimination will be given the right to recourse through the courts,
  - -justifiable or beneficial age-based treatment will continue to be allowed.
- Verify and monitor any costs and benefits set out in the evidence base relating to the ban of age discrimination.

Where there is an opportunity to draw together further supporting evidence, the review will also seek to understand any problems in the operation of the system from the perspective of health service providers, financial institutions, public bodies, other service providers and individuals.

Review approach and rationale:

The precise review approach is being determined in the context of the wider Equality Act review and is being considered alongside the other projects within the Evaluation Framework.
Due to the nature of this provision we expect the review will as a minimum involve:

- monitoring and evaluating legal cases arising from the new regime:
- monitoring any research into the incidence of discrimination in these areas: and
- gathering stakeholder views.

Where there is attributable evidence on wider benefits of this measure available through the overall evaluation activity taking place in the Evaluation of the Equality Act, this will also be included as part of the review. This might cover, for example:

- Helping to remove barriers caused by age discrimination outside of the workplace so that no group is excluded from basic services or experiences social detachment.
- Improving transparency in the financial sector through a voluntary approach.

Baseline:

The baseline will be the evidence of discrimination that we have compiled, which we can measure against future research to see if as a result of the measures introduced age discrimination has reduced.

Where required, further baseline measures will be developed as part of the review of the Act, for example the number of organisations who have made changes to their organisational practises as a consequence of the ban.

Evidence on wider outcomes of the Act will also be included.

Success criteria:

The precise success criteria for this measure will be determined in the wider context of the overall review of the Equality Act. However, at minimum they should include:

- Comparison of the situation before and after introduction of the ban, is there less age discrimination, do people feel less discriminated against.
- Evidence of people challenging and winning discrimination cases.
- Evidence of continued justifiable or beneficial age-based treatment.

Monitoring information arrangements:

We will continue to use (where possible) the data sources set out in the evidence base summary sheets, and revise and update assumptions based on the most up-to-date statistical findings. These will be supplemented with the evaluation evidence established in the review of the Equality Act.

Annex 6: Specific Impact Tests

Competition assessment

A detailed competition assessment is not necessary for any of the proposals put forward in this Impact Assessment as the proposals for exceptions are unlikely to have negative effects on competition. They do not favour one sector of society or business over another.

Age Related Group Holidays

Saga has 20% of the age-related market, but not 20% of the whole holiday market. An exception to allow age related group holidays will maintain the status quo so should not have any impact on competition.

Objective Justification

Where an exception has not been provided other age specific services will be able to continue if the provider of that service can show that they are a proportionate means of achieving a legitimate aim. The Government is therefore not expecting this to have a significant impact on competition.

Small firms impact test

The age discrimination ban and the proposed exceptions are unlikely to have a disproportionate impact on smaller businesses compared with larger businesses. Most would recognise that avoiding discrimination in any form is in line with best business practice.

The costs and benefits of each proposed measure for small businesses will vary. In general, the impact is unlikely to be substantial on any particular small business. This is because the existing method of enforcing discrimination law in service provision is essentially reactive, through claims brought by individuals in the county courts. There are no proposals to change this basic approach.

Enforcement of discrimination law does not involve routine interventionist or invasive mechanisms. The Equality and Human Rights Commission has the power to conduct investigations, but this is intended for use on a strategic basis. Under discrimination law there are no inspectorates or agencies with powers to search and seize company documentation or to enter company premises; and there is no mandatory reporting requirement on companies covering, for example, the composition or pay of their workforce.

As a result, there are no mandatory administrative burdens on small business arising from form-filling or reporting. The Government is not proposing to change this existing light-touch approach.

On the costs side, there will be some administrative burdens on small firms as a result of the need to familiarise themselves with adjustments to the law, as reflected in new or amended guidance produced by the Equality and Human Rights Commission and others.

On the benefits side, the main benefits for small business will arise from simplification and standardisation of the law. It is not that small businesses (or even large businesses) regularly or ever look at the law itself – their main experience of the law is likely to be if a case is brought. However, small businesses during the course of the consultation on establishing the Equality and Human Rights Commission made clear that they supported the Commission as a one-stop-shop for advice and guidance. Simplifying and standardising the law will enable the Commission and other individuals and bodies advising small firms to produce simpler and clearer guidance. The general benefits of simplification are indicated above.

Small businesses, like large businesses, should also benefit from the opening up of a more diverse customer market.

The vast majority of micro-businesses will not need to do anything different from what they currently do to ensure that they do not discriminate, whether there is a waiver from the micro-business exemption or not, either because they do not currently unfairly discriminate or the ways in which they use age when delivering a service will be covered by an exception. For example, many small businesses offer

discounts to young adults and pensioners and will continue to be able to do so, as there will be an exception from the ban for concessions based on age.

Justice

There is likely to be a marginal increase in legal action; but this is unlikely to have a significant impact on Legal Aid costs. Some people who believe they have been unfairly discriminated against will take some discrimination cases to county courts, but we believe these will be minimal as services providers bring their services in line with requirements.

Sustainable development

The proposed exceptions are not contrary to the shared UK principles of sustainable development.

Greenhouse gases

The exceptions will have no effect on carbon emissions.

Wider environmental issues

The exceptions will have no implications in relation to climate change, waste management, landscapes, water and floods, habitat and wildlife or noise pollution.

Health and wellbeing

In health and social care the legislation will support service providers in taking appropriate account of age in the services they provide and will enable any less favourable treatment to be challenged and those suffering unjustified treatment to be compensated. This will build on existing good practice as identified in the equality review[17] and the Department of Health's response to the review. This is particularly significant in the National Health Service, when:

- two thirds of general and acute hospital beds are being occupied by those over the age of 65;
- one in six people over 65 said they had been discriminated against in healthcare or health insurance because of their age[18];
- one in twenty people over 65 believed they had been refused treatment; and
- one in ten believed they had been treated differently since the age of 50[19].

It has recently been estimated that improving healthy life expectancy by just one year each decade, could generate a 14% saving in spending on health care and an 11% saving in spending on benefits between 2007 and 2025[20]. Government expenditure on crisis interventions for older people is significant (47% of NHS budget)[21]. If age is considered more appropriately in preventative services, this expenditure should reduce and can drive big quality of life benefits for older people.

The Partnership for Older People Projects (POPP) were funded by the Department of Health to develop services for older people, aimed at promoting their health, well-being and independence and preventing or delaying their need for higher intensity or institutional care. The evaluation found that a wide range of projects resulted in improved quality of life for participants and considerable savings, as well as better local working relationships[22]. For example, overnight hospital stays were reduced by 47% and use of Accident & Emergency departments by 29%. Reductions were also seen in physiotherapy/occupational therapy and clinic or outpatient appointments with a total cost reduction of £2,166 per person.

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[17] Age equality in health and social care - http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_107278

[18] From an Age Concern/ICM poll carried out in December 2001

[19] Age Concern/Gallup survey 1999

[20] Professor Les Mayhew (2008) – 'Increased longevity and the economic value of healthy ageing and working longer'

[21] Making life better for older people – An economic case for preventative services and activities - http://www.cabinetoffice.gov.uk/media/cabinetoffice/social_exclusion_task_force/assets/publications_1997_to_2006/making_older_people.pdf

[22] National evaluation of partnerships for older people projects: final report - http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_111240

Examples of areas where the age legislation may lead to changes in health and social care for older people include:-

- Services for older people with mental health needs, which are under resourced compared to services for people of working age[23]. For example, older people are less likely to have access to out-of-hours services, crisis resolution, assertive outreach or other innovative services that have been developed for younger adults in recent years.
- Peer reviewed research suggests doctors ration treatment for minor strokes to those over 80[24] and doctors are less likely to refer angina sufferers to see a specialist or to have tests if they are over 65[25].
- At the age of 65, people may be transferred from adult mental health services to services for older people often focused primarily on dementia care. As a result, patients can lose access to the care they need, such as day care services, even if their needs have not changed.
- The number of adults with learning disabilities aged over 60 is predicted to increase by 36% between 2001 and 2021[26] and this increase will need to be handled appropriately.
- There is some evidence that older people receive less intensive treatment than younger people even when they are fit enough to do so. Evidence recently published in the British Journal of Cancer suggests that, even after adjusting for tumour type, when compared to younger women older women are less likely to receive standard management for breast cancer, such as radiotherapy treatment[27]. Similarly, data gathered from the national lung cancer audit suggests that older people are less likely to receive radical treatment[28].
- Older people tend to be excluded from drug trials, even though in many cases they are most likely to be prescribed the drugs. For example, many clinical trials in cancer have historically excluded patients above a predetermined cut-off age, despite the fact that cancers are commonest in older people. This is in part due to the fact that older people are more likely to have coexisting medical problems making evaluation of the results of the trial more difficult, but this should not be taken to condone exclusion by age alone.
- Younger adults being refused treatment normally considered appropriate for older people, such as hip replacements even though the treatment may be clinically appropriate.

The age discrimination ban along with personal health budgets will give people greater control over the services they use.

There is a clear relationship between age and increasing prevalence of disability[29]. Approximately 75% of people aged 85 and over are disabled. This means that the majority of older people seen by health and social care professionals have a long-term condition or a disability. Proposals aimed at addressing the needs of people in later life can therefore be expected to have a positive impact on a large number of people with disabilities. For example, earlier diagnosis and better mental health services for those over 65 should help the 1.4 million people over 65 suffering from 'major' depression and the 700,000 suffering from dementia[30] to live a better more active life. Evidence from the Partnership for Older People Projects shows the benefits of preventative services in supporting people to live independently. POPP services appear to have improved users' quality of life, varying with the nature of individual projects; those providing services to individuals with complex needs were particularly successful, but low-level preventative projects also had an impact[31].

For those who have been disabled over a longer period, perhaps over their lifetime, ageing is typically associated with deterioration in their circumstances. For instance, there are growing numbers of older people with learning disabilities who are at particular risk of social exclusion. Service planners need to

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[23] Healthcare Commission, Commission for Social Care inspection and Audit Commission. Living well in later life – a review of progress against the NSF for older people, 2006

[24] J.Young – Ageism in services for transient and ischaemic attack and stroke, British Medical Journal September 2006

[25] Quality and safety in health care, 2007 16: 23-27

[26] Statistics for people with learning disabilities - http://www.learningdisabilities.org.uk/information/learning-disabilities-statistics/#pcp

[27] DH Cancer reform strategy http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_080976.pdf quoting K. Lavelle, C. Todd, A. Moran, A. Howell, N. Bundred and M. Campbell: *Non-standard management of breast cancer increases with age in the UK: a population based cohort of women ≥ 65 years*, 2007, British Journal of Cancer, 96;1197-1203

[28] DH Cancer reform strategy http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_080976.pdf quoting M D Peake, S Thompson, D Lowe and M G Pearson: *Ageism in the management of lung cancer*, 2003, Age and Ageing, 32;171-177

[29] Health survey of England (2005) - http://www.ic.nhs.uk/webfiles/publications/hseolder/HSESummary.pdf

[30] Alzheimer's Society

[31] National evaluation of partnerships for older people projects: Executive summary - http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_111213.pdf

consult with and reflect the needs of this group and their carers, who may also be older people at risk of social exclusion. Carers would also be protected from "associative" age discrimination under the proposed ban. By moving away from set age limits to more personalised services in health and social care, people will be treated as individuals, whatever their age, and the quality of care for those individuals should improve considerably.

The legislation will make service providers think whether the existing system is meeting the needs of older people and those with disabilities or whether further work needs to be done, and who is eligible for the different types of NHS funding.

Health and social care is covered in more detail in the impact assessment.

Equality duties

There are no implications from meeting the requirements of the proposal on the other equality strands. The proposal does not impose any restriction or involve any requirement that a person of a particular racial background, disability, sexual orientation, religion or belief or gender would find difficult to comply with. Conditions apply equally to all individuals and businesses involved in the activities covered by the proposal.

Indeed the legislation should help these groups. For example, there is a clear relationship between age and increasing prevalence of disability. Proposals aimed at addressing the needs of people in later life can therefore be expected to have a positive impact on a large number of people with disabilities. For example, earlier diagnosis and better mental health services for those over 65 should help the 1.4 million people over 65 suffering from 'major' depression and the 700,000 suffering from dementia[32] to live a better more active life.

More details of the equality impact can be found in the Equality Impact Assessment.

Human rights

The proposed policy does not contravene individuals' human rights and is consistent with the Human Rights Act 1998.

Rural proofing

The proposed age discrimination ban and exceptions do not adversely impact the rural community. As the proposed policy will apply equally to people who live in rural and urban areas.

[32] Alzheimer's Society