



Left out by the Law:

How the law handles
age discrimination and
why it matters

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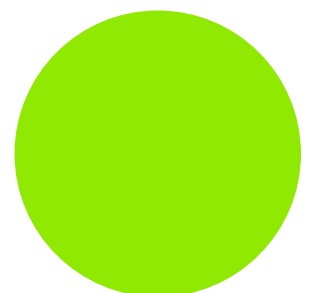
Ageism is damaging to individuals and society - limiting our work, health, and who is valued. More than 50% of the public believes UK society is ageist. Yet the law designed to address age discrimination - the negative treatment of individuals that results from ageism - falls short.

Although the Equality Act 2010 makes age discrimination unlawful, age is treated differently from other protected characteristics. While direct discrimination on grounds such as race or sex is only permitted in very limited circumstances, the law allows direct age discrimination to be justified where it is deemed proportionate and serves a legitimate aim.

This flexibility enables employers and service providers to defend age-based practices and makes age discrimination significantly harder to challenge in practice. As a result, despite legal recognition, age discrimination continues largely unchecked.

The existence of a broad justification defence, alongside numerous age-based exceptions in areas such as employment, financial services, education and criminal law, sends a powerful signal that ageism is more acceptable than other forms of prejudice.

Twenty years after the first legal protections against age discrimination came into force, this report explores the unique treatment of age within the law, and how this makes ageism easier to justify and more difficult to challenge.



How age became a protected characteristic

For most of the 20th century, UK equality law focused on sex, race and disability discrimination. It wasn't until 2006 that the Employment Equality (Age) Regulations came into force in the UK, which made age discrimination in employment unlawful.

In 2010, the Equality Act 2010 brought together all anti-discrimination law, including the Employment Equality (Age) Regulations, and named age as one of nine protected characteristics. Protection was then extended further, to go beyond workplaces and to cover age discrimination in provision of goods and services – such as in health and social care, financial services and hospitality and leisure – in 2012.

The special case of age: different treatment under the Equality Act 2010

The UK's Equality Act 2010 names nine protected characteristics, covering:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race (including colour, nationality, and ethnic or national origins)
- Religion or belief
- Sex
- Sexual orientation



However, age is the only protected characteristic where direct discrimination can be lawfully justified (also known as 'objective justification'). This is a legal test which can be used by organisations to justify a practice which, for all intents and purposes, is ageist – people being treated unfairly because of their age.

Most kinds of direct discrimination - like refusing to hire someone because of their race or sex - can never be justified. But with age, the law allows direct discrimination (a legal term for treating someone less favourably specifically because of a protected characteristic) if it can be shown to be a 'proportionate means of achieving a legitimate aim.'

For example, compulsory retirement ages can be lawful, if there's a good reason. According to the law, this can include considerations such as health and safety standards, workforce planning, 'dignity' and 'intergenerational fairness'. If a business can prove there's no less discriminatory way of meeting these needs, they can introduce an 'upper age limit' for their staff.

But, many retirement ages and age limits are a legacy from an earlier era, when the state pension age was lower and our lifespans were shorter. We are now living longer, and the 100-year life is now an increasing possibility for some.

There are also a raft of exceptions written into the Equality Act, relating to specific industries, such as the insurance and financial services industry - where differential treatment based on age is allowed as long as it is based on a clear assessment of 'risk' associated with someone's age. This means that things like the cost of insurance, and whether you can access it at all, can be affected purely by your age.

This makes the protection for age more limited than for other characteristics. The law indicates that some age-based rules can be fair or practical, whereas discrimination on other grounds is almost never acceptable.

Direct discrimination is one of four types of discrimination covered by the Equality Act 2010:

Direct discrimination – treating someone with a protected characteristic less favourably than others.

Harassment – unwanted behaviour linked to a protected characteristic that violates someone's dignity or creates an offensive environment for them.

Indirect discrimination – putting rules or arrangements in place that apply to everyone, but that put someone with a protected characteristic at an unfair disadvantage.

Victimisation – treating someone unfairly because they've complained about discrimination or harassment.

Age is treated the same as other protected characteristics for most forms of discrimination, but there is a significant and legally important exception: **direct discrimination because of age can be objectively justified.**

Objective justification - can it be justified?

Is it fair that age is treated differently? Does it make sense that we can 'objectively justify' treating people differently because of their age?

Many people do directly benefit from this oddity in the law - free bus passes, winter fuel payments, even age-related health checks could all be harder to maintain if age discrimination were banned entirely.

Age is also arguably different to other protected characteristics. Age is constantly changing, for all of us, all the time. If they are fortunate, everyone will eventually be in every age category - which is not the case for race, religion, sex or other protected characteristics.

However, age-based rules often make little sense because chronological age tells us very little about an individual's capability, aspirations, health, circumstances or contribution. Two people of the same age can have vastly different experiences, needs and capabilities. As Helen Meenan and Christa Tobler (2025) state: 'ageing is individualised and contextualised'. Yet age-based rules assume that reaching a particular birthday fundamentally changes what someone can do, need or deserves.

'the justification model on direct age discrimination that we have has a real chilling effect. ... lots of cases start...but very few get through to the end, because it is an incredibly weak model of discrimination.'

Declan O'Dempsey (2024)



There are some real, and harmful, consequences of this differential treatment in the law.

1. Ageism isn't taken as seriously: because age discrimination can be justified in some cases, this sends the message to employers and the wider public that ageism isn't as important, or problematic, as other forms of discrimination. Rather than talking about equality, judgements discuss how 'useful' or 'acceptable' age discrimination is.

2. It can allow ageist practices to be justified: the flexibility in the law can allow employers to justify certain practices, such as imposing age-based employment cut-offs and mandatory retirement ages, as long as they can frame them as advancing 'legitimate aims' by pointing to business or 'social policy' reasons (such as health and safety, workforce planning or 'intergenerational fairness').

3. It makes it harder to challenge discriminatory practice when it happens: the legal test 'proportionate means of achieving a legitimate aim' can be, and is, interpreted very broadly, which can deter claimants, and make it harder to win discrimination cases that are brought.

4. It makes it hard to understand your own rights: another risk of this legal test, which is dependent on specific facts about each individual case, is that it is interpreted differently by different tribunals. Even extremely similar cases can result in completely different judgements (Bengtsson, 2025).

5. Experiencing ageism has serious and long-term impacts for the individual: Being treated unfairly or negatively because of our age can make us feel unvalued, unimportant, or patronised, leading to low self-confidence and feeling isolated or excluded. Over time, we may internalise these negative views of ageing, limiting what we believe we're capable of and the opportunities we pursue.



These challenges are further compounded by how the UK's legal system operates. Because discrimination cases usually have to be brought by individuals through the tribunal process, people need significant time, money and support to pursue them. In practice, this means that the people most affected by age discrimination are often the ones least able to take action – a reality highlighted by age discrimination scholar Alysia Blackham (2023) who notes that 'those who are most impacted... are the least able to enforce their rights.'



'those who are most impacted ... are likely the least able to enforce their rights.'

Alysia Blackham (2023)

Legally justified age discrimination

There have been several high-profile cases looking at whether practices such as mandatory retirement ages or having to reapply for your job when you reach a certain age, amount to age discrimination. The judgements and discussions of the issues are complex.

A leading case on age discrimination is *Seldon v Clarkson Wright and Jakes*, where the Supreme Court confirmed that mandatory retirement can pursue legitimate aims such as workforce planning, intergenerational fairness, and preserving 'dignity', provided it is proportionate. Others such as *Cross v British Airways PLC* have ruled that making cost savings can also be part of (albeit, not the sole) factor in justifying age discrimination.

Same policy, different outcomes

Two separate cases were brought against Oxford University concerning its Employer Justified Retirement Age (EJRA) of 67.

In *Pitcher v University of Oxford*, the tribunal found that the EJRA was justified and dismissed the age discrimination claim. By contrast, in *University of Oxford v Ewart*, the tribunal concluded that the same policy was not justified and upheld the age discrimination claim.

Although the cases centred on the same retirement policy, with the same stated aims, the tribunals were presented with different evidence. This resulted in opposite conclusions being reached.

Both decisions were subsequently appealed. The Employment Appeal Tribunal upheld both judgments, confirming that different tribunals can lawfully reach different conclusions on the proportionality of the same policy, when the evidence presented differs. This illustrates the fact-sensitive nature of objective justification and highlights the uncertainty that can arise for both employers and employees seeking to understand whether a policy is lawful.

Age discrimination cases: few and far between

Experiences of age discrimination are widespread – with 1 in 3 people aged over 50 believing they have been turned down for a job because of their age, and 1 in 5 employers believing that age discrimination occurs in their organisation. Yet very few cases are heard at tribunals. For example, Acas recorded just 2,951 age discrimination jurisdictions (legal complaints) in 2024/25, making up 7% of cases received (Acas, 2025). Estimations suggest this could be as low as 0.08% of possible claims by older workers who experience age discrimination (Blackham, 2022).

We don't know exactly why, and the reasons will be complex.

Internalised ageism may mean that people do not recognise or challenge discriminatory practice. Social norms and expectations around retirement, and when we are 'expected' to stop working, will also play a significant role.

Age discrimination is also often intertwined with other forms of discrimination. This 'intersectionality' can create fundamentally different experiences of age discrimination for different groups. For example, McGann and others (2016) suggest that the ageism experienced by older women jobseekers is different to that encountered by older men. Women who experience age discrimination also tend to see it as 'bound up' with discrimination on other grounds, especially gender and race (Moore, 2009), making it hard to identify instances of age discrimination specifically.

The law also isn't yet set up to deal with intersectional discrimination. Whilst the law allows you to make multiple discrimination claims based on different protected characteristics, it does not currently allow a single claim based on the combination of these. In other words, you would need to raise a claim on sex and a claim on age, not the two combined.

Potential claimants may also feel their case would be unlikely to be successful, and so the social, personal and economic cost of a claim outweighs potential benefit of raising one. We also know that legal advice often suggests progressing a case based on another characteristic, which would more likely succeed, as the discrimination cannot be justified, like for age.

Alysia Blackham identifies this in her 2022 research on the subject: 'Age discrimination is less likely to be seen as a pressing issue than discrimination on the basis of other grounds. This may be, in part, because people identify more strongly with other grounds than with their age ... claimants and their representatives may prefer to use legal avenues other than age discrimination law, if they are available; making a claim of discrimination is "a last resort legal option", and age is the least preferred ground on which to make a discrimination complaint.'



Limits on 'Lifelong' Learning - upper age limits on higher education grants

While much of the discussion on age discrimination focuses on the workplace, there are other contexts where the weaker legal protections allow people to be treated differently on the basis of their age.

A stark example is in higher education. Currently, if you are aged 60 and over you cannot apply for a loan to cover your tuition fees for a master's degree, but you can apply for an undergraduate loan. However, under the new 'Lifelong Learning Entitlement' being introduced in England in 2027, you will no longer be able to claim tuition fee loans for any higher education courses. However, in Wales, this cap was not added, and people over 60 can also apply for tuition fee loans.

The government defends these age limits as achieving a 'legitimate aim' - to provide financial support to the group that faces the greatest barriers to funding their studies. In a Department for Education policy paper, the rationale for the age limit is described as:

LLE tuition loans will be available for people up to the age of 60 at the start of their course. The age limit is designed to offer the vast majority of the working population access to tuition loans, enabling them to:

- train, retrain and upskill
- make a significant contribution to the economy over a longer period of time

However, a cut-off age of 60 is becoming growingly out of line with an ever-increasing retirement age, and a significant growth in people working beyond State Pension Age - which has more than doubled since 2000 - from 4.9% to 12.4% in early 2025.

What is more, many people aged 60 and over did not have the same opportunity to attend university when they were younger. Participation in higher education was substantially lower during the 1970s and 1980s than it is today. While only a minority of young people entered higher education at that time, around 51% of young people now participate in higher education by age 30 (Department for Education, 2026a). This could mean a lifetime of exclusion from the higher education system for many aged 60 and over.

There are genuine practical considerations - such as the long repayment periods (often up to 30 years) and how best to manage this. But this is a clear example of how the Equality Act enables practice which directly disadvantages and limits the opportunities we have as we age.



Hate crime and age: another legal blind spot

In England and Wales, age discrimination is a civil matter, it is not a criminal offence.

This isn't the case for all protected characteristics. Certain characteristics are covered by hate crime law, meaning offences motivated by hostility or prejudice toward those groups can be prosecuted as hate crimes. In England and Wales, there are five such strands: race, religion, disability, sexual orientation, and transgender identity.

This means:

- An assault committed because of someone's age cannot be prosecuted or sentenced as a hate crime.
- The maximum sentence for common assault remains 6 months, whereas racially or religiously aggravated assault can carry up to 2 years, for example.

Yet again, we can see how the law undermines the significance and gravity of ageism. As Stuart Goosey (2021) argues: 'the failure to include age as a protected characteristic in aggravated offences ... unjustifiably communicates that age groups do not deserve equal protection under the criminal law.'

A case for reform?

The Women and Equalities Committee, in its recent review of the rights of older people, concluded: 'we believe a wholesale review of age discrimination law is a necessary step in tackling the UK's pervasively ageist culture and internalised age discrimination' (Women and Equalities Committee, 2025). The Committee recommended a range of reforms that remain important for the Government and the Equality and Human Rights Commission to consider.

Recent work towards a UN Convention on the Rights of Older Persons by UN Independent Expert Claudia Mahler has also recommended that legislation 'avoid exceptions, exemptions or justifications that mask age biases that limit the autonomy of older persons and their ability to participate in society on an equal basis with others' (Mahler, 2021).

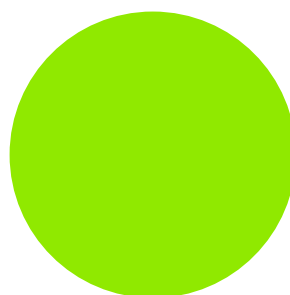
Although in some respects age differs from other protected characteristics, the way age is currently treated in law causes significant harm. Whilst some exceptions might be justified, both civil and criminal law is undermining the significance of ageism and entrenching it further within our society.



Women and Equalities Committee (2025) Recommendations on Equality law and enforceability of older people's rights

'We recommend the Government commission and fund the Equality and Human Rights Commission to review the effectiveness of protections against age discrimination provided by the Equality Act and Public Sector Equality Duty in England, including but not limited to consideration of:

- The implications for older people's rights, and the enforceability of those rights, of allowing objective justification of direct discrimination based on age, and the likely impacts of replacing objective justification with specific exceptions, if required;
- The extent to which the Public Sector Equality Duty in England effectively promotes progress on older people rights in areas including access to healthcare, housing, transport, and digital inclusion, and the case for more specific positive duties to drive progress;
- The case for amending the Equality Act in relation to employment discrimination based on age, to bring in a stronger "reasonable steps" duty on employers; and
- Options to amend the Equality Act to reflect the intersectional nature of age discrimination more effectively, including but not limited to commencement of section 14 on dual characteristics.'



About Age Without Limits

This report is from Age Without Limits, the Centre for Ageing Better's campaign to challenge ageism for the benefit of all of us as we grow older. Our vision is to create a society where everyone enjoys later life free from the impact of ageism. We run activities throughout the year to change how we all think and act about age, and challenge ageism. Together, we can create a society where age is celebrated and everyone, regardless of their age, can live with dignity, respect, and opportunity.

Agewithoutlimits.org

About Centre for Ageing Better

The Centre for Ageing Better is an independent centre of excellence on ageing and demographic change. We work with national and local government, industries, businesses and community organisations to improve how people experience ageing. Our work focuses on creating better workplaces, homes and communities, while tackling ageism and addressing inequality in later life.

Ageing-better.org.uk



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