Challenging Age Discrimination

A NATFHE policy document
This document was composed by a Working Group of NATFHE members and officials. Members of the group included Tracie Coals (NATFHE), Kate Heasman (NATFHE), Saskia Heasman (West Sussex Adult Education), Liz Lawrence (Sheffield Hallam University), Andrew Price (Coleg Glan Hafren), David Renton (NATFHE), Paul Russell (Bradford College) and Malcolm Sargeant (Middlesex University).

Please address comments on this publication to the NATFHE Equality Unit at NATFHE head office, or email eqadmin@natfhe.org.uk.
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Age discrimination in Employment

Introduction

Age discrimination occurs when a decision is made about a person solely because of their age, or on the grounds of their perceived age. Like other forms of discrimination, ageism is a pattern of unjust behaviour that can be expressed directly, through acts of open prejudice, or indirectly, through longer-term processes of unfair treatment.

While younger people may be denied access to jobs because they are regarded as lacking in experience or as unreliable, older workers may be disregarded when applying for jobs, overlooked for promotion, or targeted for early retirement. It is important that workers are treated on their merits as individuals. It is important also that people are protected from unfair, differential treatment by legislation and by fair workplace policies.

In further and higher education, young workers suffer unduly from changes like the growth of poorly paid part-time employment since 1990. Older workers have also suffered from the rise of part-time working, which has fallen disproportionately on workers who joined the sector late, or who have found new work following redundancy.

One reason for the increased interest in age discrimination has been the passing of the European directive on equal treatment in employment, which covers age discrimination. The regulations will come into effect in Britain in 2006. The full legal context is described below. Even before the law comes into effect, employers should begin to draw up appropriate policies. They should consult with unions in this process, with existing equality structures, and with outside bodies. There needs to be a change of culture and expectations. Employers need to learn to value age diversity.

In thinking about new policies, employers should also bear in mind that age discrimination is likely to affect everyone sooner or later but women returners, younger or older ethnic minorities, disabled workers, lesbians, gay men and trans people may face multiple discrimination.

The effects of discrimination are damaging to individuals, institutions and society. Policy commitment has little value if no action is taken. Age discrimination must be identified and challenged. This document aims to:

- Explain the state of the law with regards to age discrimination
- Challenge the myths and stereotypes attached to age
- Provide arguments for those looking to challenge age discrimination
- Provide guidance on policies and collective agreements to combat age discrimination in institutions
Age Discrimination and UK Law

In the run-up to the 1997 election, the Labour Party promised legislation to outlaw age discrimination. After the election, a limited, non-statutory Code of Practice on Age Diversity in Employment was introduced. Yet the Department of Work and Pensions found that only nine percent of employers and less than one percent of employees saw this voluntary Code. (DWP, 2001).

At the European level, Directive 2000/78/EC was passed in December 2000, establishing a general framework for equal treatment in employment and training. The Directive describes freedom from all forms of discrimination as a fundamental freedom, recognised by international law. A ‘principle of equal treatment’ is recognised. There shall be no direct or indirect discrimination. Harassment is judged to be unlawful.

The Directive also recognises that differences of treatment on grounds of age may sometimes be justified, for example in the making of positive provisions to protect the welfare of younger or older workers. The British government has recognised the need to implement Directive 2000/78/EC into British law.

In July 2003, an Age Discrimination in Employment Consultation was launched. Regulations are to be adopted by the end of 2004, and will come into effect on 1 October 2006. Once law is in place making discrimination illegal in the fields of employment and training, other legislation may follow in such areas as goods and services.

There are many deficiencies with the existing law. The European legislation is being passed by secondary legislation into British law. There has been little parliamentary or public discussion of the issues. Despite repeated requests from NATFHE and others, no Statutory Code of Practice has been published, which might provide guidance to employers and key players in further and higher education. The only areas directly covered by law will be employment and ‘vocational training’, which will be taken to include all further and higher education provision. A clarification of anti-discrimination rights will have to take place through case law and further legislation.

The current legislation falls short of recognising an equality of approach between age discrimination and other forms. The government has ruled out establishing any separate Commission for Age, and has in general failed to specify what enforcement powers any representative body might have. The proposed single Commission for Equality and Human Rights to take responsibility for challenging age discrimination will need to have separate and adequate resources to deal specifically with age discrimination.

Research

A MORI survey in 2001 found ageism to be the most common form of discrimination in the workforce. Around 1.8 million people between 55 and 65 report having experienced age discrimination in employment. The annual cost to the UK
economy of age discrimination was estimated in 2003 to be £31 billion (Lawrence, 2003).

As part of the process of implementing the European Directive, the Department of Trade and Industry opened up a consultation period to discuss the new rules. Of the 870 responses that were returned (583 coming from organisations), 50 percent described experiencing discrimination at work or witnessing someone else suffering. Discrimination took the following main forms (DTI, 2003/b):

- Being forced to retire at certain age: 22%
- Not being given a job they applied for: 18%
- Being prevented from attending training courses: 17%
- Being told their age was a barrier to general advancement: 17%
- Assumptions being made about their abilities due to age: 15%
- Being selected for redundancy because of age: 13%

A recent survey of NATFHE members found that nearly a third of over 400 respondents (31.1 percent) had been the victims of age discrimination. Meanwhile, 9.4 percent felt that they had been harassed as a result of their age. Apart from this, there have been relatively few studies of ageism in the further and higher education sectors.

Studies of similar public services, including the health sector, have gathered significant evidence, both of age discrimination in general, and also of a trend for particular groups to suffer most from the overlapping phenomena of ageism, heterosexism, disablism and racism. ‘Black and minority ethnic elders especially report negative experiences in the health system and hospitals. For older members from ethnic groups, the conditions in the health system are aggravated by language barriers, insensitivity to their religious and cultural beliefs and habits and implicit or in certain cases, explicit racism’ (Fredman, 2001).

A number of research projects have identified common factors in age discrimination. A DfEE report on older workers found that they were less likely to be in paid employment than younger groups. When they were in work, they were more likely to be working part-time. The chances of men leaving inactivity to resume new paid work were sharply reduced after 50, and were ‘close to zero’ for those over 60. For women, the chances of moving out of inactivity were reduced after 40 years, and it was ‘particularly uncommon for those in their late fifties’ to find work (DfEE, 1988).

The large majority of cases reported to the UK National Workplace Bullying Advice Line and Bully Online involve people over 40 (Bully Online, 2003).

Younger workers meanwhile suffer from discriminatory laws including differential rates of pay on the minimum wage. Surveys have also shown that young workers can experience other forms of discrimination, including teasing and bullying; being made to do all the menial tasks and having to run errands; being passed over during recruitment and selection in favour of an older person with more experience; being passed over for promotion or exclusion from occupational pension schemes (Age Concern, 2001).
A 1994 survey of 500 British companies asked employers to indicate their most common job and estimate at what age, on average, they would consider someone too old to employ. Sixty percent indicated that they thought a sixty-year old was too old to work (Taylor and Walker, 1994: 569).

Yet it is wrong to assume that ability deteriorates with age. Older people do not have higher rates of absenteeism. Older workers are not less responsive or engaged. The evidence of British Social Attitudes Surveys would suggest that nearly three-fifths of those aged 50 and over ‘do the best they can’, with respect to their job, ‘even if interferes with the rest of their life’. This compares to less than two-fifths of those aged 18 to 24 (Kodz, 1999).

Employers, meanwhile, need to remember that the effect of excluding an individual through retirement or redundancy is to make it difficult for them to rejoin the workforce. A person over 50 changing jobs is generally offered pay that is an average of 26 per cent below what they were earning before. A person made redundant after age 50 is eight times less likely to return to work than a person made redundant at a younger age. On benefits, they are far more likely to stay on them for good (Grattan, 2001).

The fall in birth rate in the 1970s meanwhile, has meant a drop in the number of younger entrants into the labour market. By 2006, 45-59 year olds will form the largest group in the labour force. It would seem sensible for employers to stop discriminating now and to develop strategies to cope with demographic change. Yet employers are still taking the short-term view. The recessions of the early and late 1990s meant that many organisations concentrated on ‘down-sizing’ the workforce by early retirement and voluntary redundancy. In further and higher education, competitive, market-orientated attitudes prevail and, combined with age prejudice, they have produced an unbalanced and unrepresentative workforce.

Instead of increasing employment, we are actually witnessing the exit of older workers from employment. But while 95 percent of 55-65 year old men were working in 1975, in 1999 the figure was closer to 60 percent. While some of this process has been driven by workers leaving the workplace early and of their own volition, we have to make sure that people are not being forced out of work, nor denied access to new employment if they are seeking it. NATFHE believes that workers should be encouraged to stay in employment if they so wish.

**Recommendations to Eliminate Age Discrimination in Employment**

- Misconceptions and stereotypes about workers, based on their age, should be challenged and rejected.

- The use of age and age-related criteria should be avoided when making decisions about recruitment, selection for training, counselling, appraisal, development, promotion, and when determining pay or redundancy criteria.
Equality policies should contain an undertaking to remove arbitrary age discrimination and ensure job-related criteria are used in all employment decisions.

Dates of birth should be used only for equality monitoring purposes.

All staff, students, visitors and other members of the organisation should be made aware of the effects of age discrimination and how to eliminate it.

Regular monitoring should take place to establish whether or not particular age groups suffer discrimination.

Positive action policies should be considered to encourage people in those age groups subject to disadvantage, particularly in relation to recruitment, training and career development.

Taking Action

Challenging Stereotypes and Misconceptions

A number of myths abound about workers at both ends of the age spectrum, and it is important to counter them. Employers may see older workers as being more reliable, more confident, with a stronger work ethic, having better inter-personal skills and working better in teams. This may or may not be true of any individual. However, employers are also likely to attach negative characteristics to older workers such as being less healthy, less energetic, less creative, less co-operative, slower to learn, harder to train, more resistant to change and less able to use new technology. Managers may perceive older workers as being likely to have higher levels of absenteeism due to ill health, but it is not necessarily true that ageing brings illness and infirmity as standards of health and fitness are better than in the past.

There are also myths that can affect younger workers. Employers may assume younger workers are more energetic, creative, innovative, willing to adopt changes and more confident in using new technology. They may also assume younger workers are more likely to change jobs, less reliable, and less capable of taking on positions of responsibility. Good equality practice with respect to age, as with gender and race, requires employers and managers to view individuals on their performance in relation to their job, rather than making assumptions based on age.

Recruitment and Selection

Britain has seen widespread discrimination on the grounds of age in job advertisements. The law no longer allows overt discrimination on the grounds of gender or race but it has allowed job advertisements to specify an age limit. One 1998 survey of 7000 job advertisements appearing in the Sunday Times and a number of London free magazines, found that around eight percent contained numerical age limits, while up to ten percent had ageist words or phrases (Sargeant: 1999, 4). Employers should remove limits now.
NATFHE believes that age is not a valid criterion to use in assessing a person’s ability to work.

- All criteria used in personnel specifications should be job-related: neither the person specification nor job description should identify a particular age range for the job or imply age requirements. Specifications should not be prescriptive about essential experience and length of service required, as this can constitute indirect age discrimination.

- Advertisements should not state an age range and could take positive steps to welcome applications from older people, or younger people, if under-represented in the workforce or in the grade being advertised.

- All members of shortlisting and interviewing panels, and all those involved in other selection processes, should be trained in equality principles. Panels also should reflect a wide age range.

- Candidates should not be asked to give dates of school attendance, as this could lead to indirect discrimination. Dates of birth should only be used for monitoring purposes and should be on a separate sheet together with information on gender, ethnic origin and disability, not on the main application form itself.

Young, recently qualified job applicants may experience age discrimination. Similarly, employers miss a valuable resource if they ignore older applicants who have made the effort to gain a degree and have demonstrated flexibility in changing direction.

In order not to discriminate against young workers, employers need to recognise skills and potential, as well as experience.

All these principles apply to promotion, as well as initial appointment.

Training and Career Development

Older workers are often vulnerable to stereotyping. The important principle is that each individual has access to training, and that his or her request for training is viewed without stereotyping by age.

Employers may assume that it is a waste of time to train older workers because they will be with the institution for a shorter time. Yet staff aged 50 can potentially offer many years’ service. There should be no age restrictions on any training programme. If particular groups do not apply for training, it may be because of perceived ageist attitudes within the institution.

Young people may also have difficulty in ensuring workplace development if employers view them as short-term workers with little long-term commitment to the organisation.

In-service training is a need for everyone, regardless of age. For many workers, including lecturers, whose work involves creating and communicating knowledge, learning and updating professional skills are integral parts of their work. They need
access to staff development, not as a reward or a privilege, but as a necessary resource to carry out their duties.

Employers should offer pre-retirement courses.

**Enhanced Retirement**

The further and higher education sectors have seen many examples of good practice. Early retirement used to take place within a context set by the mandatory retirement age. Many workers welcomed offers of early retirement with enhanced pension rights, although these are now rarely made. Enhanced retirement is something that many people desire, and it is an option for which the union continues to fight. Conversely, both sectors have also seen much bad practice, with premature retirement forced on unwilling workers by pressure from managers.

At times in the past, it has been a common practice in both FE and HE institutions for staff aged 50 to receive a letter from management enquiring if they are interested in early retirement. Such action often made the atmosphere in institutions intimidating. At times of redundancy, older workers have often been subject to moral pressure to leave from management. Such psychological bullying and devaluing of older workers is just as unacceptable as any other form of harassment.

Stress is a growing problem and trigger-factors can include age discrimination as well as increased workload, changes in conditions of service, and new styles of institutional management.

NATFHE supports flexible ages of retirement and individual choice. Dealing with pressure for retirement is a difficult issue for unions because we would not want to discourage enhanced retirement packages that some members may welcome. It is important to strike a balance between getting good enhanced retirement packages for those who want them while not allowing an atmosphere to develop where people are under pressure to take premature retirement. The guiding principle should be that the job is worth doing at least until the desired retirement age is reached.

Unions welcome enhanced retirement packages, as long as the vacancies created are filled. We are opposed to all redundancies. Vacancies need to be filled to protect jobs and other staff from increased workloads.

Greater flexibility could be offered in retirement age, and provision made for partial retirement. Employees should have more opportunity to take up flexible options such as reduced hours or different duties. As TUC research has shown, the weakness of existing flexible retirement schemes is often the low instance of employee take-up. ‘The key issue is likely to remain whether or not people can afford to retire on adequate incomes’ (TUC, 2003: 7). For this reason, any initial offer of reduced hours should always be made on a fractional, rather than hourly-paid basis. Such offers must also be properly harmonised with pension arrangements.

There can be arguments both for enhanced retirement and for continued service beyond the usual retirement age. But NATFHE rejects all attempts by employers to
compel workers to work longer before being entitled to a full pension. The most important consideration has to be employee choice.

In any redundancy process, the criteria for selection should be advertised in advance, and should be transparent. Age should not be a criterion. Older workers should not be targeted for redundancy simply because they are more expensive, and when this takes place, such practice should be identified as discrimination. Equally, young workers should not be targeted for their age. Last in first out is discriminatory.

**Language**

Care should be taken in the use of language. Terms such as ‘geriatric’, ‘old fogey’, ‘dead wood’ etc should be avoided since they are offensive to the individual and may contribute to a general ageist climate. Like older workers, younger workers can also encounter bullying. This may take the form of patronising remarks, observations and jokes made at the younger person’s expense. Fairly harmless at the lighter, more occasional level, it can become repetitive, then irritating, offensive and upsetting.’ (Age Concern, 2001).

Members should work to change an environment in which ageist remarks and attitudes flourish unchecked. In particular, they should appreciate that what one worker might judge as a workplace prank or banter, might seem to their colleague to be offensive or degrading conduct (Income Data Services, 2003).

Job advertisements which indicate covertly rather than overtly that a young person is being sought by using words such as ‘energetic’, dynamic’, ‘youthful’, ‘progressive’, ‘modern’ or ‘modernising’, ‘forward-looking’, ‘up-to-date’ should be challenged. Educational institutions, in their equality policies, should include attention to acceptable and non-acceptable uses of language in respect of age. Such policies should apply to students and all those in contact with the institution, not only staff.

**Hourly-paid part-time work**

While some younger or older workers may find that part-time work offers them greater control over their lives, for many workers the process is much less benign. Often older lecturers who are made redundant find that they can obtain work only as hourly paid part-time lecturers or consultants but cannot obtain a full-time or fractional job. When established workers are forced onto hourly-paid contracts, they can suffer a very sharp fall in their living standards, with all the additional stresses that places on their working and private lives.

NATFHE observes that both younger and older workers are more likely to be forced into part-time contracts, as indeed are women, members of ethnic minorities, disabled workers and lesbians and gay men (AUT, 1998). The systematic use of hourly-paid part-time work encourages a culture where staff do not identify with the institution, feel that they have little long-term stake in working in the sector, and may even communicate these feelings consciously or unconsciously to their students. It also penalises the staff members by reducing their own access to
training and career development, and it affects young and older workers disproportionately.

NATFHE believes that hourly-paid part-time work is frequently used at the moment in a discriminatory manner. Its current use is incompatible with at least the spirit and possibly also the letter of anti-discrimination law.

Caring responsibilities

One of the ways in which age discrimination interacts with other forms of workplace discrimination is through the failure of employers to provide sufficient support to workers (very often women) who at particular ages have primary caring responsibilities for young or teenage children or for older or disabled relatives. With changing demographic patterns, eldercare responsibilities in particular are likely to grow (NATFHE, 1995).

An institution that gives appropriate financial and emotional support to workers with particular responsibilities for caring will inevitably find that it has more success in recruiting a more diverse workforce, and in retaining young or experienced colleagues, after they have been appointed.

One way to meet the needs of all age groups in the workforce is through the provision of better childcare and eldercare support.

Retirement and pension ages

The secondary legislation against age discrimination has become confused with other issues; not least attempts to increase the state pension age. It has also been subject to employers’ lobbying, over issues such as redundancy payment and mandatory retirement ages, with the result that reduced rights may be introduced.

Under the statutory redundancy payments scheme, introduced in 1965, employers have been subject to a series of minimum requirements. Service before 18 was not counted. Employment between 18 and 21 was rewarded with half a week’s pay for each year of service; employment between 22 and 40 with one week’s pay for each year of service; employment between 41 and normal retirement age was rewarded with one-and-a-half week’s pay for each year’s service.

Under the new proposals, every year’s service up to a maximum of 20 would be rewarded with one week’s pay for each year of service. NATFHE has argued that a more appropriate rate would have been one-and-a-half week’s pay per year of service. We reject the idea of discounting service after age 65 as inconsistent with employment equity.

The secondary legislation is likely to end mandatory retirement at 65. It is possible, however, that employers will be granted the power to impose their own ‘default’ retirement age. NATFHE opposes any such plans, as well as any attempts by employers to lengthen the periods of service required for full pensions.
NATFHE supports policies that would transfer the burden of paying pension contributions from employees to institutions, for example by reducing contributions to the Teachers’ Pension Scheme to 1/60 instead of 1/80.

While NATFHE believes that employers should value the contribution of older workers more positively, we wholeheartedly reject arguments that call for the raising of the state pension age beyond 65.

Salary Scales

Salaries should be fair for all staff, and should value the skills of teachers and researchers, as well as managers. NATFHE supports incremental scales, for the reason that employers should have the opportunity to reward service. Retaining experienced staff contributes to the collective memory and identity of an institution. The employer needs to value age diversity. On the other hand, incremental scales should only be provided on the basis of experience, and not age. In general, NATFHE supports short scales with just 4-5 points.

Age and multiple discrimination

Universities and colleges of further education frequently develop ‘insider cultures’. Where a majority of staff are recruited from a narrow band of ages and experiences, then workers outside these groups are more likely to suffer obstacles to promotion, including permanent posts and managerial grades. The documented failure of colleges (for example) to promote experienced black colleagues to senior grades may be evidence of both race and age discrimination taking place at the same time.

All groups of disadvantaged workers find that their experiences of discrimination intensify when they are identified as ‘older’ workers. Older women may be subject to particular forms of ageism. Women are perceived as ageing earlier than men, and there is pressure on women to preserve a youthful appearance rather than being valued for their abilities. Institutions where ageist attitudes persist contribute to women’s low self-esteem.

Restricting access to training and promotion opportunities affects women who take career breaks to raise children or care for elderly relatives. If there is an arbitrary age limit blocking further progress they are unfairly penalised.

Women may have difficulty in getting promotion when they are younger, possibly because they were regarded as potential mothers who might take career breaks, but can be perceived as too old for promotion if they apply late, perhaps after having taken time off to spend with their children.

Ageism can also interact with homophobia. The life choices of young workers can be ignored or patronised. Meanwhile behaviour (such as holding hands in the workplace) that might be judged acceptable when it comes from young workers can be deemed particularly threatening or inappropriate when such behaviour comes from older lesbians or gay men.
Reasonable requests made by disabled workers should be met, irrespective of age. Employers should not use competency processes unfairly to weed out older disabled workers.

Institutions may fall without realising it, into patterns of unlawful direct or indirect discrimination. The only alternative is to conduct regular monitoring, which should include staff grades and profiles, job applicant success, access to training, complaints of harassment and direct discrimination. The outcomes of monitoring should be published and made available to all staff.

Conversely, an institution that already takes equality seriously, promotes staff diversity, which already possesses an equality committee, and has already given clear responsibility for mainstreaming equality to named senior colleagues, will find it much easier to meet the challenge of confronting age discrimination.

**NATFHE Policy**

NATFHE has long believed that it is wrong to disadvantage people because of their age and that legislation should give this issue the same importance as sex and race discrimination, as enshrined in the Sex Discrimination Act 1975 and the Race Relations Act 1976. While legislation is not a remedy on its own, it should assist in changing attitudes and put pressure on employers to make decisions on criteria other than age. The law should support people challenging age discrimination.

Over the years, NATFHE has passed motions expressing our opposition to age discrimination. Most recently, in 2002, NATFHE conference passed a motion urging the NEC to set up a Working Group to develop a policy against age discrimination, and this document is an outcome of that process.

NATFHE has opposed the idea of lower minimum wages for younger workers. We have campaigned for better childcare facilities for all our members. NATFHE was one of the first unions to campaign for legislation to outlaw discrimination on grounds of age, and it was partly as a result of our motions that the Trades Union Congress took up this campaign.

NATFHE continues to press for a Single Equality Act, in which age discrimination would receive separate and serious treatment, but in which there would be no idea that any one form of discrimination was more legitimate than any other, or less subject to legal action.

**Age Discrimination against students**

Although the European directive will primarily affect institutions as employers, the published draft regulations do give universities, colleges of further and higher education specific responsibilities. It will be unlawful to discriminate against a person by offering restricted access, or by not accepting their application for admission, on the basis of age.
Many of the good practices that we have outlined in this document, such as an increase in general childcare facilities, would be likely to have positive impact on the general student experience as well. The current practice of restricting student loans to those under 54 will need to be changed.

At present, fewer older people pursue further or higher education (Age Concern, 2003). NATFHE stands for equal rights, including the right of access to education for all groups of students. Where an institution’s student profile is seen as unrepresentative, there may be opportunities for positive action to remedy gaps in provision. For example, mature students’ courses can be seen as an example of positive action.

At the time of writing (2004), the government is targeting further education at students aged between 16 and 18, and higher education at those aged between 18 and 30.

The persistent under-funding of adult education is a sign of the ageist attitudes that remain within society.

Some mature students find that returning to education after a long gap presents psychological and practical hurdles. Such barriers can be mitigated if students are given support by groups of their peers. NATFHE would argue that restricting some programmes, such as access courses, to mature students is justifiable. Colleges should also be willing to provide flexible timetables in order to support students with caring responsibilities.

It is also possible that particular groups of younger students might be under-represented in a certain institution. In such a context, unions would support appropriate positive action.

Age discrimination outside the workplace

One of the main weaknesses of the current proposals is that they concentrate narrowly on employment. There are also many other areas in which society discriminates. Age-related harassment can take place anywhere in society, not just at work. Cultural institutions can promote ageist stereotypes. Many of the most rampant forms of discrimination apply to those in their seventies, eighties and nineties, in areas of life such as health and housing, in nursing homes, care homes and in the provision of social services.

Many pensioners live in poverty: Studies suggest that as many as 50,000 elderly people die in Britain each winter because they cannot afford to turn on the heating (Seniors Network, 2001).

Single people and the divorced are likely to be poorer than married couples. Women suffer more from unequal pension provisions than do men. One recent survey found that 40 percent of divorced women over 65 were poor enough to qualify for income support from the state, compared with one percent of married women and 23 percent of divorced men in the same age group (Carvel, 2003).
Examples of documented age discrimination include insurance policies that are restricted by age, or which failed to deliver full benefits to all subscribers. Some councils will not deliver health services to those over 65. People can find that they are denied access to legal services, or necessary health or social care, just on age grounds alone. Particular groups can also miss out on benefits through complex claiming mechanisms that prevent people from applying for benefits to which they are entitled.

Other groups have also suffered. The past twenty years have seen the winding down of clubs and other resources targeted at young people in the communities. There should be a public duty to maintain such resources.

NATFHE calls on the government to introduce as a matter of urgency legislation to extend the rights that are already being offered to young and old people at work, to take in private and public services as well.
Appendices

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Age Positive, www.agepositive.gov.uk

Campaign Against Age Discrimination in Employment, www.caade.net

Employers Forum on Age, www.efa.org.uk


National Pensioners Convention, www.natpencon.org.uk

Third Age Experts, www.thirdageexperts.com
Model Policy: Age Equality

1. Introduction

1.1 This guidance has been developed jointly to equip Institutions to meet their obligations under the European Directive on equal treatment in employment, which covers age discrimination and which comes into effect in Britain on 1 October 2006.

1.2 This guidance is based on the knowledge that age discrimination is among the most pervasive forms of discrimination, that many instances of reported harassment and bullying in the workplace have concerned age, and that many workers have reported experiencing age discrimination in terms of being forced to retire at a certain age, meeting unequal treatment at interview, being told their age was a barrier to general advancement, or being selected for redundancy because of age.

1.3 Employers have a duty to promote equality. This document is intended to support Institutions towards achieving that end.

2. Our Commitment

2.1 The institution celebrates a culture of diversity and is committed to equality of treatment for all employees. It will practise equality in the operation and implementation of all its employment policies. The institution will treat all employees with respect and dignity, and seek to provide a positive working environment free from discrimination, harassment or victimisation on the grounds of age.

2.2 The institution recognises the valuable contributions made by staff and students of all ages, in terms of qualities of experiences brought to learning, teaching, support services, research, consultancy, administration and management. It advocates adult and lifelong learning and expects to benefit from employing workers of all ages at all levels of responsibility and across all areas of work.

2.3 The institution will work in partnership with recognised unions to combat age discrimination and ensure equality irrespective of age. It will ensure that its equality policies are comprehensive and include age discrimination. Trade unions will be fully involved in the design and monitoring of all equality policies.

2.4 The institution will work towards the elimination of prejudice and discrimination, whether overt or covert, and will seek to ensure that all staff have equal access to the full range of institutional facilities, regardless of their age.

2.5 Many details of this policy relate to older staff, as they are the ones most likely to experience acute age discrimination. Other sections address the needs of younger workers. As well as respecting the needs of staff at either end of the age spectrum, the Institution will seek to fulfil its duty of care to all staff, irrespective of age.

2.6 Every attempt will be made to respect staff confidentiality.
3. Our Legal Duties

The institution undertakes to fulfil all the legal duties put upon it by:

3.1 The EU Equal Treatment Framework Directive (2000/78/EC), which specifically outlaws discrimination on the basis of age and places the burden of proof on the employer to show that discrimination has not taken place.

3.2 The wide range of other legislative provision which relates to age discrimination, including:

- The Employment Rights Act 1996
- The Human Rights Act 1998
- Pensions Act 1995
- Protection from Harassment Act 1997
- The Health and Safety at Work Act 1974

4. Recruitment and Selection

4.1 The institution will not discriminate on the grounds of age in the way it recruits and selects staff.

4.2 The institution will ensure that:

Job descriptions will be drafted to ensure they do not exclude applicants of any age.

All criteria used in personnel specifications will be job-related: neither the person specification nor job description will identify a particular age range for the job or imply age requirements. Specifications will not be unnecessarily prescriptive about essential experience, or length of service required.

Advertisements will not state an age range unless to take positive steps to welcome applications from older people, or younger people, if under-represented in the workforce or in the grade being advertised.

In order to encourage people of all ages to seek information on vacancies, all recruitment and publicity materials and internal and external advertisements will present jobs without age bias, and describe jobs in a way which does not deter suitable applicants. In particular, the Institution will avoid any use of code words that are likely to deter applicants of any age.

Application forms and detailed information will state explicitly the Institution’s commitment to equality, and mention its strategies for recruiting staff from all backgrounds and ages.

All members of shortlisting and interviewing panels, and all those involved in other selection processes, will be trained in equality principles.

Candidates will not be asked to give dates of school attendance. Dates of birth will only be used for monitoring purposes and will be on a separate sheet together with information on gender, ethnic origin and disability, not on the main application form.
The institution will consider applications from recently qualified applicants, irrespective of age.

In order not to discriminate against young workers, employers will recognise skills and potential, as well as experience.

All these principles will apply to promotion, as well as initial appointment.

5. Appointment

5.1 The institution will pay due regard to the needs established by the Employment Directive and no unreasonable obstacles will placed on workers of any age.

5.2 The institution will make every opportunity to encourage a climate of support for all workers. All instances of age discrimination or age harassment will be logged, according to the appropriate institutional procedure. All new policies will be studied for their impact on staff equality, including their impact on workers of different age.

5.3 Where positive action is appropriate, to meet the needs of particular groups, it will be considered. For example, if young workers are significantly under-represented in the institution, it will consider placing advertisements in appropriate publications. In addition, the institution will respond sympathetically to requests for assistance with childcare or eldercare, or for assistance to workers suffering as a result of age discrimination experienced outside the workplace.

5.4 Flexible working practices will be considered at all levels.

5.5 The institution will discuss seriously any requests from employees for enhanced pensions payments in return for early retirement.

5.6 The institution will also consider any requests for flexible working beyond 65 or 70. Where appropriate, employees will be given the opportunity to take up options such as reduced hours or different duties. Any initial offer of reduced hours will always be made on a fractional, rather than hourly-paid basis. Such offers will also be properly harmonised with pension arrangements.

5.7 No employee will be encouraged ever to take retirement earlier than they wish nor will they be urged to stay in work beyond their chosen retirement age.

6. Career Development

6.1 All employees shall have equal rights to training, promotion and other aspects of career development. Age will not be used to justify a failure to promote or train any employee.

6.2 A system will be set up to enable detailed monitoring by age of current staff, their job, grade and location, the numbers of staff supported on training or continuing education courses or taking higher degrees, and the number of staff promoted. Monitoring will include an initial review and annual reviews thereafter. It will take into account the needs of people of all ages, especially where they are employed
on a part-time or temporary basis. The annual review will appear as an
institutional report provided by the Director of Equality and appropriate goals
will be identified and met.

7. Retention

7.1 The institution undertakes to make every effort to ensure that any employee
with age-related needs who wishes to remain in employment is enabled to do so.

7.2 An employee who perceives that they have been the victim of age-related dis-

7.3 An employee who requests a transfer to part-time work, or lighter duties, on the
grounds of age, whether on a short-term or permanent basis, will have their
request sympathetically considered. In the first instance, any claims for part-time
working will be considered on a fractional, rather than hourly-paid, basis.

8. Dismissal

8.1 The institution will ensure that there is no age discrimination in relation to dis-

8.2 The institution will have no mandatory retirement age.

9. Harassment

9.1 Age harassment is viewed by the Institution as a very serious offence, which if
proven may in certain circumstances lead to the dismissal of a member of staff,
or, if an employee is harassed by a student, the expulsion of that student. For
details of handling harassment claims, see the Harassment Policy.

10. Ensuring Equality Between Workers of different ages

The institution is committed to work to eliminate prejudice and discrimination in
employment practices, as well as to encourage changes in individual behaviour
and attitudes, and ensure equality of opportunity and treatment for all workers.

10.1 The institution recognises that, despite attempts to achieve equality, older work-

ers in particular are still subject to discrimination, lack of opportunity and social
injustice. Older workers suffer from many forms of unfair discrimination, includ-
ing bullying at work, and from negative stereotyping. They are also frequently
overlooked for training. Those workers who are looking for new employment fol-

owing redundancy or retraining are often forced to accept low-status or poorly
paid employment.
10.2 The institution will try to mitigate the effects of these trends by taking positive action within the law to support especially older workers and by monitoring its staff profile in terms of recruitment, promotion and training.

10.3 The institution recognises that many of the problems experienced by older people are due to lack of knowledge of their needs by those around them. The institution undertakes to provide age awareness training to all its staff. This will include examination of the appropriate use of language.

10.4 Where the results of a staff audit show that there is an under-representation of particular groups within the Institution, including younger workers, it will review its recruitment, promotion and training practices to ensure they are free of direct or indirect bias, and contain no barriers to workers of any age. The institution will consider targeted advertising and other positive campaigns.

10.5 The institution will ensure that its publications and publicity material promote positive images of workers of all ages in both language and illustration.

11. Part-Time Working

The institution recognises that a disproportionate number of its older and younger workers are likely to be employed on short-term, hourly-paid contracts. The institution also recognises that other groups of staff may be ghettoised in such employment, including women and members of ethnic minorities. The institution accepts that any unequal treatment of part-time workers is likely to have more adverse impact on workers at either age of the age spectrum. To avoid discrimination, the institution resolves to adhere closely to the Employment of Part-Time Employees Policy or the JNCHES guide, ‘Fixed-Term and Casual Employment: Guidance for Higher Education Institutions’, as appropriate.

12. Monitoring and Positive Action

12.1 The monitoring process will be used to ensure that staff of all ages are treated equally.

12.2 The institution will gather and analyse information about its staff profile, including:

- age
- job application and selection success rates
- type of contract (permanent, temporary agency)
- training and staff development
- staff recruitment, development and promotion
- grievances, disciplinary and capability proceedings
- satisfaction surveys and exit interviews

12.3 If monitoring reveals evidence of age discrimination, the Institution will take remedial action to redress it.
13. Curriculum

13.1 The institution will seek not only to eliminate age discrimination, but also to create a working environment based on good relations between people of all ages. To this end, the institution undertakes to provide diverse images in any material that it produces, including positive images of staff and students of all ages. The aim is to create a positive inclusive ethos with a shared commitment to challenging and preventing stereotyping, prejudice and discrimination, respecting diversity and difference, and encouraging good relations between people of all ages.

13.2 The institution will audit the curriculum in all subject areas to ensure that it contains no discriminatory material, and that it provides positive, non-stereotypical content for students of all ages.

13.3 Equality training programmes for both staff and students will include material that addresses age discrimination and tactics to challenge it.

14. Division of Responsibilities

14.1 Governors are recommended to try to ensure that the membership of the Corporation includes people from a wide range of ages.

Governors are responsible for ensuring that:
- The institution’s strategic plan includes a commitment to oppose age discrimination.
- Equality training features as part of the Institution’s strategic plan.
- They are aware of the Corporation’s statutory responsibilities in relation to age legislation as an employer.
- They receive and respond to age monitoring information on staff.

14.2 Managers are responsible for ensuring that:
- The institution Principal or Vice-Chancellor and Senior Management Team are responsible for taking the lead in challenging discriminatory behaviour on the part of the managers, staff or learners and creating a positive, inclusive ethos.
- They are aware of the institution’s statutory duties in relation to age legislation.
- All aspects of institution policy and activity are sensitive to age issues.
- Age monitoring information is collected and analysed.
- The procedures for the recruitment and promotion of staff enshrine best practice in equal opportunities.
- The institution’s publicity materials present appropriate positive and non-stereotypical messages about people of all ages.
- Appropriate training and development is provided to support the appreciation and understanding of diversity.

14.3 Staff are responsible for ensuring that:
- They are aware of the institution’s statutory duties in relation to age legislation.
- Their schemes of work, lesson content and teaching resources demonstrate sensitivity to issues of cultural and age diversity.
- They challenge prejudiced and discriminatory behaviour, whether conscious
or unconscious, by learners, work placement providers, outside contractors
or other members of staff whenever practicable.

- They respond positively to the needs of staff and students of all ages who
  they come in contact with in the course of their work.

15. Publicising Our Policy and Progress

15.1 To the public (including learners, work placement providers and staff):

- Our commitment to age equality will be highlighted in our prospectus,
anual report and annual financial statement
- A summary of the results of our monitoring information will be included in
our annual report and annual financial statements, where this does not
breach individual confidentiality.

15.2 To staff:

- All staff will receive a full copy of the policy as part of the Staff Handbook.
- The staff induction programme will highlight the institution’s commitment to
age equality, action to be taken by staff who suffer discrimination and the
action to be taken against any perpetrators of such discrimination.
- A summary of the results of our monitoring information will be included in
the appropriate institution publication (e.g. newsletter). Any published infor-
mation will have due regard for individual confidentiality.

16. Complaints

16.1 The institution will seek to provide a supportive environment for staff who make
claims of discrimination or harassment. Acts of age discrimination (direct or indi-
rect), harassment, victimisation or abuse will be treated as a serious disciplinary
offence.

16.2 Staff who feel they are being discriminated against by other members of staff will
be able to raise the matter under the Grievance or Harassment Procedures. If
the accusation is upheld, it will be treated as a serious disciplinary offence.

16.3 If, in the course of their work, staff suffer age discrimination from members of the
public, the institution will take appropriate action and provide appropriate sup-
port.

16.4 Any discriminatory behaviour directed against staff by students will be dealt with
under the student disciplinary procedure.

17. Review and Consultation

17.1 This policy will be reviewed on a regular basis in accordance with legislative
developments and the need for good practice, by the institution’s Equality
Committee or Equality Forum.

17.2 As part of the review, the Institution’s Equality Committee or Equality Forum will
seek and take into account the views of stakeholders including the consultation
and negotiating arrangements within the Institution, and appropriate equality bodies.

18. Implementation

18.1 The institution, working in partnership with the recognised trade unions, will seek to ensure that all staffing policies and procedures (e.g. Recruitment and Selection Procedure) are non-discriminatory, and that monitoring and positive action processes are regularly reviewed and monitored.

19. General

19.1 This policy should not be read in isolation, but cross-referenced with all relevant institution employment policies