



Company Registration No: NI. 36868
Inland Revenue Charity No: XR 11970

NICEM SUBMISSION

Consultation on Proposals to Extend Age Discrimination Legislation (Age Goods, Facilities and Services)

**OFMDFM
July 2015**

August 2015

Introduction

- 1.1 The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.² Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society. Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.
- 1.2 Inequality of any form is an obstacle to the social and economic development of a country. This reality is reflected in the fact that rights for all individuals are internationally recognised as being universal, indivisible and interdependent. Thus, equality can never be fully realised for any group while another endures unequal treatment.
- 1.3 Therefore, it is important to ensure that Northern Ireland (NI) has a consistent anti-discrimination framework that treats all forms of discrimination as equally reprehensible. This is especially vital to tackling ‘multiple discrimination’, which is experienced by individuals whose identities cover multiple minority groups.
- 1.4 Consequently, NICEM welcomes the opportunity to consult on the adaptation of the law on age discrimination, the current form of which leaves those discriminated against on the basis of age with less protection than that afforded to individuals discriminated against on other bases. NICEM believes that the development of a strong, consistent legal framework for tackling all forms of discrimination is the only way to eradicate inequalities in NI. Therefore, we maintain our position that having a Single Equality Bill for NI is the best option and represents best equality practice.

¹ Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

² In this document “Black and Minority Ethnic Communities” or “Minority Ethnic Groups” or “Ethnic Minority” has an inclusive meaning to unite all minority communities. It is a political term that refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status united together against racism.

Question: Are you aware of any other evidence of age discrimination in the provision of goods, facilities and services, charities, premises, education, public functions, and private clubs and associations? Please give us your views.

- 2.1 It is important to acknowledge the vast evidence base concerning multiple discrimination, as experienced by BME people of all ages across the UK. Most of the current evidence concerning BME older people focuses on the provision of health services, although BME younger people also face multiple discrimination in daily life. In both cases, this discrimination can be indirect – with a failure to develop services that accommodate particular needs – or direct and overt.
- 2.2 Research conducted in England and NI has illustrated how BME older people face indirect discrimination in accessing health services, due to a failure to meet their particular needs. These needs include language issues, with access to interpretation proving variable.³ Lack of interpretation can leave individuals reliant on family members for translation, which in turn impedes health practitioners' ability to assess these individuals' wellbeing.⁴
- 2.3 The language barrier also impacts on BME enjoyment of care services, with some individuals being unable to communicate their needs to staff; a situation that has 'potentially devastating' consequences for the individual concerned.⁵
- 2.4 Isolation also presents as a difficulty for BME older people, particularly where individuals live in areas where few people share their culture or language. This can also present as an issue where gendered expectations and the stigma of accepting outside help exist. Consequently, mental health issues, such as depression, may be perpetuated.⁶
- 2.5 It is important to note that BME older people experiencing dementia or Alzheimer's may also suffer to a disproportionate degree due to a number of factors. Firstly, BME individuals experiencing dementia or Alzheimer's with English as a second language are likely to suffer the preemptive loss of the ability to communicate in their second language.⁷ This can greatly impede individuals' communication with health service providers where lingual accommodations are not made.

³ Manthorpe, J. et al, 'Supporting Black and Minority Ethnic Older People's Mental Wellbeing: Accounts of Social Care Practice' (2010) Available at:
<<http://www.scie.org.uk/publications/reports/report38.pdf>> [Accessed 08/07/15] p.2

⁴ ibid p.12

⁵ ibid p.21

⁶ ibid p.16

⁷ Moriarty, J., Sharif, N. and Robinson, J., 'Black and Minority Ethnic People with Dementia and their Access to Support and Services' (2011) Available at:
<<http://www.scie.org.uk/publications/briefings/files/briefing35.pdf>> [Accessed 08/07/15] p.9

- 2.6 Secondly, there may be a lack of understanding about the nature and implications of Alzheimer's and dementia amongst those BME older people who have grown up in a country and an era where these conditions were not well understood. Health practitioners who are unaware of this dynamic may fail to explain the implications of diagnosis to their patient, leaving them upset and confused.^{8 9}
- 2.7 Thirdly, there is a lack of culturally sensitive health services provided for BME older people experiencing dementia or Alzheimer's in the UK. A failure to accommodate BME patients in this manner can result in patients eschewing specialist dementia/Alzheimer's services and relying on less appropriate generic services that are targeted at their ethnic group.¹⁰
- 2.8 BME older people may also face more direct discrimination from health service providers who tacitly assume that some communities will 'look after their own'.¹¹
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- 2.9 Ultimately, it is clear that the failure to develop a health service that fits BME groups as well as majority populations has resulted in differential access to services. It is important to acknowledge the effect that multiple discrimination in this manner has had on BME older people.
- 2.10 There is evidence to suggest that BME younger people experience particular forms of discrimination as a consequence of both their age and their ethnicity. For example, racist bullying is a phenomenon that is widely experienced by BME younger people in NI, with research showing that up to 53.7% of BME young people experience racist bullying at post-primary school.^{13 14}

⁸ Nijar, M., 'Perspectives on Ageing in South Asian Families' (2012) Available at: <<http://www.jrf.org.uk/sites/files/jrf/ageing-south-asian-families-summary.pdf>> [Accessed 08/07/15] p.4

⁹ Age UK, 'Later Matters: Tackling Race Inequalities for BME Older People' (2010) Available at: <[http://www.ageconcernyorkshireandhumber.org.uk/uploads/files/FINALmapping%20and%20good%20practice%20guide%20\(2\).pdf](http://www.ageconcernyorkshireandhumber.org.uk/uploads/files/FINALmapping%20and%20good%20practice%20guide%20(2).pdf)> [Accessed 09/07/15] p.9

¹⁰ op cit n 7 p.9

¹¹ Age UK, 'Equality and Human Rights in Practice: A Guide for Practitioners and Commissioners of Services for Older People' (2011) Available at: <http://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Equality-and-human-rights/Expert_Guide_Equalities_In_Services_pro.pdf?dtrk=true> [Accessed 08/07/15] p.27

¹² op cit n 9

¹³ Rooney, E. and Fitzpatrick, B., 'Promoting Racial Equality in Northern Ireland's Post-Primary Schools' (2011) Available at: <http://nicem.org.uk/wp-content/uploads/2014/03/Education_report_Final_PDF.pdf> [Accessed 08/07/15] p.27

¹⁴ NCB NI, 'Attitudes to Difference: Young People's Attitudes to and Experiences of Contact With People From Different Minority Ethnic and Migrant Communities in Northern Ireland' (2010) Available at: <http://www.ncb.org.uk/media/506602/attd_final.pdf> [Accessed 08/07/15] p.54

- 2.11 More indirect discrimination is experienced by BME younger people who are also newcomer pupils. Evidence suggests that the needs of BME younger people are not met by education services; for example, the lack of age appropriate learning material for some newcomer pupils can leave these pupils feeling frustrated.¹⁵
- 2.12 Additionally, research suggests that the continuing confusion around the system for transferring between primary and post-primary education disproportionately impacts on newcomer families, with only 8.5% of the newcomer pupil post-primary population attending grammar schools.¹⁶
- 2.13 Ultimately, it is clear that multiple discrimination affects service provision for both younger and older BME individuals in NI. It is important that evidence of these experiences is acknowledged.

Question: How strongly do you agree or disagree with our current proposal to extend protection against age discrimination to those aged 16 or over? Please provide any further views that you may have on our proposal.

- 3.1 NICEM acknowledges OFMDFM's assertion that provision for those aged 16 or over would result in broader protection than that offered in the rest of the UK. However, it remains that this would leave a group that is significantly affected by discrimination – including multiple discrimination - without legal protection.
- 3.2 As has been noted above, BME young people experience discrimination in accessing education services. However, there are other fields where BME young people are disadvantaged. For example, the Northern Ireland Commissioner for Children and Young People has indicated that 'language difficulties, racism and cultural misunderstanding' can impede migrant, asylum seeking and migrant families' access to health services.¹⁷
- 3.3 Children can also be impacted indirectly by the poor implementation of interpretation services, when they are utilised as impromptu interpreters for family members, in order to discuss sensitive issues such as domestic violence, health problems and parent-child conflicts.¹⁸

¹⁵ Kernaghan, D., 'Feels Like Home: Exploring the Experiences of Newcomer Pupils in Primary Schools in Northern Ireland' (2015) Available at: <http://www.barnardos.org.uk/9788_-education_report_d9.pdf> [Accessed 08/07/15] p.8

¹⁶ *ibid* p.23

¹⁷ Northern Ireland Commissioner for Children and Young People, 'Children's Rights: Rhetoric or Reality – A Review of Children's Rights in Northern Ireland 2007/08' (2008) p.244

¹⁸ Wallace, A., McAreavey, R. and Atkin, K., 'Poverty and Ethnicity in Northern Ireland: An Evidence Review' (2013) Available at: <<http://www.jrf.org.uk/sites/files/jrf/poverty-ethnicity-northern-ireland-full.pdf>> [Accessed 08/07/15] p.35

3.4 Evidently, young people from a BME background face discrimination in a variety of ways, so it would be important to advocate for their protection under the law. While the current proposals represent an advance in the right direction, they do not provide the coverage required to fully tackle age discrimination, particularly against BME young people.

3.5 It is noted that the intersectionality of differing forms of discrimination is increasingly central to the international discourse on discrimination.¹⁹ It is widely acknowledged that discrimination of any form cannot be tackled without addressing other forms of discrimination.²⁰ Thus, discrimination against BME young people cannot be wholly combated unless they enjoy full protection under the law at all ages.

3.6 NICEM acknowledges the progress that a law protecting over-16s would represent, but encourages the extension of the law to cover under-16s as well, in order to tackle the discrimination faced by BME young people in accessing and benefiting from various services.

Question: How strongly do you agree or disagree with how we have defined the concept of goods, facilities and services? If you disagree please provide details of what you would like to see added to or changed in the proposed definition. Please provide any further views that you may have on our proposal.

4.1 The concept of goods, facilities and services as proposed within the consultation document is broadly reasonable, however the application of future age discrimination legislation in the context of education services only to those pupils who have finished compulsory education is questionable.

4.2 It is reiterated that BME young people face a range of discriminatory treatment, particularly in the field of education and that it is thus vitally important that the Department give consideration to extending age discrimination protections to under-16s in order to tackle this issue.

4.3 NICEM recognises the breadth of the Department's definition of goods, facilities and services, but recommends that age discrimination legislation be extended to cover under-16s, in order to afford protection against discrimination in the provision of education services.

¹⁹ Lawson, A. and Schiek, D., *European Union Non-Discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination* (Ashgate Publishing Ltd., 2013) p.3

²⁰ For example, the UN Committee on the Elimination of Racial Discrimination noted the impossibility of tackling racism without also addressing sectarianism in NI. See: Committee on the Elimination of Racial Discrimination, 'Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland' (2011) CERD/C/GBR/CO/18-20, para.20

Question: How strongly do you agree or disagree with how we have defined the concept of service provider? Please provide any further views that you may have on our proposal.

5.1 NICEM agrees that the definition of service provider as conveyed in the consultation document is suitably comprehensive.

Question: How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should apply to public functions? How strongly do you agree or disagree with how we have defined the concept of public function? Please provide any further views that you may have on our proposal.

6.1 The proposals concerning the application of age discrimination legislation to public functions as detailed in the consultation document are broadly reasonable. However, the proposed exclusion of educational bodies from the scope of the legislation where the pupils concerned are undergoing compulsory education is questionable.

6.2 It is reiterated that BME young people face a range of discriminatory treatment, particularly in the field of education and that it is thus vitally important that the Department give consideration to extending age discrimination protections to under-16s in order to tackle this issue.

6.3 NICEM recommends that bodies exercising public functions concerning education for pupils undergoing compulsory education be included within the remit of age discrimination legislation.

Question: How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should apply to private clubs and associations? How strongly do you agree or disagree with the way that we have defined the concept of private clubs and associations? Please provide any further views that you may have on our proposal.

7.1 The proposals in the consultation document regarding private clubs and associations are reasonable, being in line with those protections afforded by Section 21F of the Disability Discrimination Act 1995 and Regulation 17 of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.

Question: How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should apply to charities? Please provide any further views that you may have on our proposal.

8.1 The consultation document's proposals are on the application of age discrimination legislation to charities are broadly reasonable, however it should be made clear that this legislation will not impede the existence of charities providing for particular age groups (e.g. Age UK) or the work of charities in targeting particular age groups (e.g. a charity running a youth project).

8.2 It is notable that Section 18C of the Disability Discrimination Act 1995 contains an exception allowing charitable instruments to confer benefits to particular groups without contravening the provisions of the Act.

8.3 NICEM recommends that future age discrimination legislation include relevant exceptions to ensure that the work of age-based charities and charities conducting age-group targeted work is not impeded.

Question: How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should be applied to premises? Please provide any further views that you may have on our proposal.

9.1 The proposals in the consultation document regarding premises are sufficiently broad and in keeping with other anti-discrimination laws.

Question: Are you aware of any issues which may affect how these proposals would apply in the provision of goods, facilities and services in the education sector? Are you aware of any issues which would result in any unintended consequences in the provision of goods, facilities and services in the education sector? Are there any areas where specific exceptions would be required to ensure that certain age-based practices would be allowed to continue under any future age discrimination legislation?

10.1 It is not generally anticipated that the application of age discrimination legislation to the education sector would have any detrimental effect; as noted above, BME young people face a number of inequalities as a result of multiple discrimination, which age discrimination law could be a part of resolving.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include direct discrimination? How strongly do you agree or disagree with the way that we have defined the concept of direct discrimination? Please provide any further views that you may have on our proposal.

11.1 The consultation document's definition of direct discrimination is reasonable, as is its proposal to include an exception where differential treatment can be objectively justified.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include indirect discrimination? How strongly do you agree or disagree with the way that we have defined the concept of indirect discrimination? Please provide any further comment that you may have on our proposal.

12.1 The consultation document's proposals regarding indirect discrimination are reasonable.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include harassment? How strongly do you agree or disagree with how we have defined the concept of harassment? Please provide any further views that you may have on our proposal.

13.1 While the consultation documents proposals regarding harassment are broadly reasonable, legislation should clarify what kinds of action may be taken where an individual is harassed on the basis of their age. For example, it is made clear in Part VIII of the Race Relations Order 1997 that prohibitions on harassment and other forms of discrimination may be enforced via an industrial tribunal, civil proceedings, or proceedings undertaken by the Equality Commission, depending on the context of the harassment.

13.2 Legislation on age discrimination should be similarly clear on the enforcement mechanisms underlying the prohibited behaviours outlined in the instrument.

13.3 NICEM recommends that the finalised legislation outline the enforcement mechanisms underlying its provisions on discrimination, harassment and other prohibited behaviours. This should involve recourse to civil proceedings to uphold provisions concerning goods, facilities and services, in line with other non-discrimination legislation.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include victimisation? How strongly do you agree or disagree with the way that we have defined the concept of victimisation? Please provide any further views that you may have on our proposal.

14.1 The consultation document's proposals concerning victimisation are broadly reasonable, although NICEM would reemphasise its above recommendation regarding enforcement.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include discrimination after a relationship has come to an end, discriminatory practices, discriminatory advertisements, instructions to discriminate, pressure to discriminate and aiding unlawful acts? Please provide any other views that you may have on our proposal.

- 15.1 NICEM agrees with the consultations proposals that the above actions should be covered within future legislation, as this is in keeping with existing protections within other non-discrimination legislation.
- 15.2 However, it is notable that a number of legislative instruments – including those under Article 42 of the Sex Discrimination (Northern Ireland) Order 1976, Article 36 of the Fair Employment and Treatment Order 1998 and Regulation 23 of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 – make provision for employers and principals to be held liable for discriminatory actions taken by their subordinates where they failed to take reasonably practicable steps to prevent these actions.
- 15.3 Additionally, other non-discrimination law also provides for contracts to be voided where they consist of undertaking or furthering an act contrary to non-discrimination legislation – for example, under Article 68 of the Race Relations (Northern Ireland) Order 1997, Schedule 3A of the Disability Discrimination Act 1995, Article 77 of the Sex Discrimination (Northern Ireland) Order 1976 and Regulation 25 of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006.
- 15.4 Consequently, the consultation document's proposals that provisions be included in future legislation to ensure that employers and principals may be held liable for subordinates' actions and that contracts providing for unlawful acts may be voided are also relevant.
- 15.5 NICEM recommends that future age discrimination legislation include a provision to allow employers and principals to be held liable for discriminatory actions taken by their employees or those acting with their authority.**
- 15.6 NICEM also recommends that future age discrimination legislation include provision for the voiding of contracts that provide for the undertaking or furthering of unlawful acts in the context of age discrimination.**

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include a provision for an objective justification test? How strongly do you agree or disagree with how we have defined the ‘objective justification’ test? Please provide any further views that you may have on our proposal.

16.6 NICEM agrees that any future age discrimination legislation should include provision for an objective justification test. NICEM agrees that the objective justification test should include proportionate action to satisfy a legitimate aim, which is itself based on satisfying a reasonable need. It is notable that this is in line with the general exceptions to direct and indirect discrimination currently in place in Great Britain, as formulated under Sections 13(2) and 19(2)(d) of the Equality Act 2010 respectively.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include a provision for positive action? How strongly do you agree or disagree with the way that we have defined the concept of positive action? Please provide any further views that you may have on our proposal.

17.1 Positive action is a useful tool for States to utilise in attempting to secure equality between different groups. Indeed, it is notable that positive action has formed a part of international equality discourse for many years.²¹ Furthermore, Section 158 of the Equality Act 2010 permits positive action to be taken in Great Britain.

17.2 In NI specifically, some positive action measures are already protected under Article 74 of the Fair Employment and Treatment (Northern Ireland) Order 1998; thus, ensuring that positive action measures are excepted under future legislation would progress the development of consistent provisions at international, UK-wide and NI levels.

17.3 Consequently, the Department’s proposal that any future age discrimination legislation include a provision allowing for positive action initiatives to continue seems appropriate.

²¹ In both the EU (for example, Article 3 of Directive 2006/54/EC) and the UN (for example, the ‘special measures’ envisioned under Article 4.1 of the Convention on the Elimination of All Forms of Discrimination Against Women 1979).

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for statutory authority? Please provide any further views that you may have on our proposal.

18.1 The proposal that future age discrimination legislation make exception for statutory authority is broadly acceptable, although it is emphasised that providers of goods, facilities and services should avoid contravening anti-discrimination provisions unless there is no other way in which the requirements of statute could be satisfied.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include general exceptions for immigration, charities, premises, care within the family, services provided for persons who share a protected characteristic and other general exceptions? How strongly do you agree or disagree with how we have defined these concepts? Please provide any further views that you may have on our proposal.

19.1 Although the consultation document's proposals regarding general exceptions are broadly acceptable, it seems unnecessary to include an exception concerning actions taken to satisfy immigration law if future legislation is already suggested to contain a general exemption for statutory authority.

19.2 While the consultation document suggests a more expansive exception, which covers actions taken to satisfy immigration 'policy' as well as law, such a provision is not consistent with current equality law, as the document suggests. The instruments cited within the document – Article 20C of the Race Relations (Northern Ireland) Order 1997 and Article 2 of the Equality Act 2010 (Age Exceptions) Order 2012 – do not support the exemption of actions taken to satisfy immigration 'policy' as well as law.

19.3 The phrasing in the latter instrument applies the exception to 'anything done by a relevant person in the exercise of functions exercisable by virtue of a relevant enactment', thus limiting its application to actions taken under statutory authority.

19.4 Under the former instrument, the exception allows that it is not unlawful for a 'relevant person' to discriminate 'in carrying out immigration functions'. Under Article 20C(5) 'immigration functions' is defined as functions exercisable under expressly listed statutory provisions. Again, this limits the exceptions application to actions taken under statutory authority.

19.5 Consequently, an exception concerning regarding actions taken to satisfy immigration law specifically is unnecessary in light of extant proposals to include a general exemption for statutory authority, and there is no support in extant equality law for a provision that would extend such an exemption to include actions taken to satisfy immigration policy.

19.6 NICEM recommends that no general exception be included in future legislation concerning the enactment of immigration law, as this would already be covered under the proposed exemption for statutory authority.

19.7 NICEM recommends that if such an exception is included nonetheless, then it should adhere to the wording utilised in extant instruments cited within the consultation document, which limits application to actions taken to satisfy immigration law and does not extend to policy.

Question: Are there any other activities or functions that you consider should be covered by a general exception?

20.1 NICEM does not consider any additional activities or functions to require a general exemption.

How strongly do you agree or disagree with our current proposal that health and social care should be included in the scope of any future age discrimination legislation, without any specific exceptions? Please provide any further views that you may have on our proposal.

21.1 NICEM agrees that health and social care should be included in the scope of any future age discrimination legislation, without any specific exceptions.

How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include a specific exception for financial services? How strongly do you agree or disagree with the proposed exception to allow financial service providers to continue to use age as a criterion to design and price financial products, provided that all assessments of risk, insofar as it involves a consideration of age, must be based on relevant information on from a source on which it is reasonable to rely? Please provide any further views that you may have on our proposal.

22.1 While it would seem reasonable to include an exception for Age GFS legislation as regards financial services, the form of this exception as envisioned in the consultation document is flawed for a number of reasons.

22.2 Firstly, the consultation document proposes an exception for any risk assessment that is based on relevant information drawn from a source upon which it is reasonable to rely. This format neglects the issue of proportionality in the difference of treatment permitted (i.e. the difference in price must be proportionate to the risk determined), which is a key aspect of the EU Proposal

for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, under Article 2(7).

22.3 Secondly, the consultation document's proposal to allow an exception that does not account for proportionality of treatment would render this financial services exception inconsistent with those already in place regarding other protected characteristics.

22.4 For example, Article 46(1) of the Sex Discrimination (NI) Order 1976 contains the financial services exception for treatment that discriminates by sex in NI. While Article 46(1)(a) contains phraseology similar to that proposed in this consultation, Article 46(1)(b) contains an additional requirement of proportionality, providing that the treatment concerned must be 'reasonable having regard to the data and any other relevant factors'.

22.5 Considering these points, the consultation document's assertion that the pricing of financial products 'broadly reflects actuarial risk' seems a weak justification for failing to implement a fulsome legislative requirement that is in line with both international discourse and national law. Indeed, it is notable that EU research covering all Member States has observed that pricing tends to diverge from actuarial risk where there is little market competition i.e. where the financial product is required by law (for example, car insurance).²²

22.6 Furthermore, the consultation document's claim that the evidence of age discrimination in financial services is largely anecdotal and does not allow general conclusions to be drawn about the industry's conduct is questionable.

22.7 EU-wide research based on both existing and original research, covering all 27 EU Member States and considering five key financial products (motor insurance, travel insurance, term life insurance, private health insurance and mortgage loans) has concluded that age and disability were the most frequently mentioned discrimination grounds in complaints regarding the provision of financial services.²³ Thus, it would appear that including further provision within legislation as regards financial services – in the form of a requirement that excepted treatment be proportionate – is justified.

²² Directorate-General for Employment, Social Affairs and Equal Opportunities, 'Study on the Use of Age, Disability, Sex, Religion or Belief, Racial or Ethnic Origin and Sexual Orientation in Financial Services, in Particular in the Insurance and Banking Sectors' (2010) Available at:

ec.europa.eu/social/BlobServlet?docId=5599&langId=en [Accessed 04/08/15] p.174

²³ *ibid* p.165

22.8 Thirdly, it is concerning that the consultation document aims to improve the transparency of financial services as regards age discrimination only through making provision for 'voluntary agreements' with the financial services sector. Arguably, this could lead to inconsistency in the amount of data provided by companies and the unavailability of key data where companies prove unwilling to provide it. Consequently, no actual progress towards transparency would be guaranteed by this approach.

22.9 NICEM recommends that finalised legislation contain an exception for financial services where the treatment at hand was:

- (1) done by reference to information which is both relevant to the assessment of risk and from a source on which it is reasonable to rely, and**
- (2) reasonable having regard to the data and any other relevant factors**

22.10 NICEM also recommends that the finalised legislation contain a provision requiring the regular compilation, publication and updating of data by financial service providers on how age is used as a factor in determining the cost of their products.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for age-based concessions? Please provide any further views that you may have on our proposal.

23.1 While NICEM agrees that there should be an exception regarding age-based concessions, the consultation document envisages an exemption that is almost entirely justified by economic needs, barring a reference to 'ensur[ing] greater participation in society'.

23.2 NICEM notes that the ECNI has previously stated that an exception from age discrimination law for age-based concessions should allow treatment that is:

'designed to promote social inclusion; encourage active ageing; promote positive attitudes, dignity and respect; promote independence, health, well being and quality of life; encourage participation in public life; tackle poverty; address disadvantage or meet specific needs.'²⁴

Arguably, exceptions to age discrimination law should not be justified simply on such economic bases, as this dilutes the content of the Statute.

²⁴ Equality Commission for Northern Ireland, 'Strengthening Protection for All Ages: Ending Age Discrimination in the Provision of Goods and Services' (2012) Available at: <<http://www.equalityni.org/ECNI/media/ECNI/Addressing%20inequalities%20Policy/StrengtheningProtectionAllAgesFullReport.pdf>> [Accessed 05/08/15] p.16

23.3 NICEM recommends that the exception for age-based concessions in any future Age GFS legislation required that treatment be justified on the basis of social, rather than economic, factors.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for age-related holidays? Please provide any further views that you may have on our proposal.

24.1 The consultation document's proposals regarding age-related holidays seem reasonable.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for sporting and recreational activities and events? Please provide any further views that you may have on our proposal.

25.1 The consultation document's proposals regarding sporting and recreational activities and events seem reasonable.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for residential park homes? Please provide any further views that you may have on our proposal.

26.1 The consultation document's proposals regarding residential park homes seem reasonable.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for age-related holidays? Please provide any further views that you may have on our proposal.

27.1 The consultation document's proposals regarding age-related holidays seem reasonable.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for sporting and recreational activities and events? Please provide any further views that you may have on our proposal.

28.1 The consultation document's proposals regarding sporting and recreational activities and events seem reasonable.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for residential park homes? Please provide any further views that you may have on our proposal.

29.1 The consultation document's proposals regarding residential park homes seem reasonable.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include exceptions for private clubs and associations? Please provide any further views that you may have on our proposal.

30.1 The consultation document's proposal for an exception that allows clubs to deny membership solely on the basis of age requires further clarification. An exception in this regard should not be limitless, but rather should require that the treatment be justified in accordance with the social factors discussed above regarding age-based concessions.

30.2 NICEM recommends that any future exception for private clubs and associations require that the treatment be justified on the basis of social factors, including but not limited to promoting health and wellbeing, promoting participation in public life and addressing disadvantage.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for age restricted schemes? Please provide any further views that you may have on our proposal.

31.1 The consultation document's proposals regarding age-restricted schemes seem reasonable.

Question: Are there any other areas of activity that you consider should be covered by an exception in any future age discrimination legislation?

32.3 NICEM does not consider there to be any other areas that require an exception.

Question: How strongly do you agree or disagree with our current proposals for the enforcement and implementation provisions of any future age discrimination legislation? Please provide any further views that you may have on our proposal.

33.3 The consultation document's proposals regarding enforcement and implementation seem reasonable.

Question: Are you aware of any other evidence or data which you think we should take into account in this Equality Impact Assessment? Please provide details of any additional evidence and any other comments you may have on the available evidence and data.

34.1 NICEM welcomes the EQIA's acknowledgement of multiple discrimination against persons of different age groups and ethnicities. NICEM would, however, recommend that the EQIA consider the evidence that this response has utilised in discussing multiple discrimination above, particularly that concerning BME young people.

34.2 As has been noted above, BME young people – including those under the age of 16 – experience multiple discrimination in accessing and enjoying services, particularly educational services. Consequently, any future legislation that provides additional protection for those aged 16 and over whilst neglecting those under the age of 16 will have a differential impact on BME young people depending on their age.

34.3 If this is to occur, then the impact should be scoped and acknowledged with reference to the available evidence on the treatment experienced by BME children aged 16 and under in accessing services.

34.4 NICEM recommends that the EQIA take account of the evidence this response has considered on the discrimination faced by BME young people in accessing and enjoying educational services.

Question: Have the potential equality impacts of our proposals been correctly identified and assessed? Please provide any comments or views that you may have on the assessment of impacts.

35.1 NICEM concurs with the draft EQIA's assessment that children under the age of 16, particularly those who are from vulnerable groups, may experience an adverse impact from this policy. It is noted that this adverse impact could be avoided by applying future legislation to people of all ages.

Question: Have the potential mitigation measures and alternative policies been correctly identified and assessed? Please provide any comments or views that you may have on the possible measures.

36.1 The draft EQIA's proposals regarding mitigation have some shortcomings that must be highlighted. Firstly, the draft EQIA suggests that the adverse impact on under-16s may be mitigated through the new Strategy for children and young people, to replace the 2006-16 Strategy.

36.2 While this is potentially true for many under-16s in NI, it is not necessarily the case for BME youth; the current children and young people strategy does not make any provision for BME children, but rather refers to the Racial Equality Strategy, which was only active for one year between 2006 and 2016.²⁵

36.3 If the upcoming Strategy elects to continue this approach, then it will not be a vehicle for mitigating the adverse impact that BME children will experience as a consequence of the consultation document's proposal to exclude under-16s from future legislation, particularly as regards their access to and enjoyment of education services.

36.4 Secondly, the draft EQIA states that the Department is:

'...committed to working with a wide range of people within the children's and young people's sector to consider and address the particular issues that affect those aged under 16.'

However, the draft EQIA does not elaborate on what work is planned, what work is being undertaken or how this work will mitigate the adverse impact that under-16s - particularly under-16s who are members of vulnerable groups - will experience if legislation is constructed as the consultation document proposes.

36.5 Consequently, it is unclear how this suggested action will mitigate the adverse impact for under-16s identified by the consultation document. It is noted that ECNI guidance on EQIAs states that 'clear evidence' must be provided of the impact of alternative policies proposed within the impact assessment.²⁶

36.6 NICEM recommends that the finalised EQIA outline what specific actions the Department will take, in partnership with organisations from the children and young people's sector, to mitigate the adverse impact on under-16s and illustrate how these actions will achieve such amelioration.

Question: Please provide any further comments or views that you may have in relation to this Equality Impact Assessment.

37.1 NICEM does not have any further comments to provide on the EQIA, although would emphasise that all aspects of the Assessment should be in line with guidance provided by the ECNI on conducting EQIAs.

²⁵ Office of the First Minister and the Deputy First Minister, 'Our Children and Young People – Our Pledge: A Ten Year Strategy for Children and Young People in Northern Ireland 2006-2016' (2005) Available at: <http://www.delni.gov.uk/ten-year-strategy_1_.pdf> [Accessed 10/08/15] pp.76 and 83

²⁶ Equality Commission for Northern Ireland, 'Section 75 of the Northern Ireland Act 1998: Practical Guidance on Equality Impact Assessment' (2005) Available at: <<http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/EQIA-PracticalGuidance%282005%29.pdf>> [Accessed 10/08/15] p.30

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