

Research Briefing

This document aims to inform ageing research and add to existing discussion on policy and research developments.

Goods, Facilities and Services: Equality for Older People

Introduction

The case for protection against age discrimination in employment and access to goods, facilities and services is increasingly debated at home and in Europe. Recent research, *Making Older People Equal: Reforming the Law on Access to Services in Northern Ireland* (2009) by Lisa Glennon and Brice Dickson examines the law relating to this issue. Employment Equality (Age) Regulations (NI) 2006¹ enable people to claim protection for alleged discrimination in employment. However, no protection exists against discriminatory acts on the grounds of age when seeking access to goods, facilities and services in Northern Ireland.

This CARDI research briefing highlights key findings from their research and looks to lessons from other countries, including the Republic of Ireland, where age discrimination in provision of goods, facilities and services have been prohibited since 2000 through the Equal Status Act 2000 – 2004². It aims to inform ageing research on inequality, legislation and add to existing discussion.

Research Overview

Glennon and Dickson examine the law of four countries where the legal systems are similar to Northern Ireland, including Canada, the Republic of Ireland, the United States of America and Australia. In each of these jurisdictions they found that the law effectively protects older people against discrimination on the grounds of goods, facilities and services.

The UN International Plan Action on Ageing

The United Nations Madrid International Plan of Action on Ageing⁹ (Priority direction I: Older persons and development) calls for mainstreaming ageing into all policy fields, particularly in combating all forms of discrimination against older people. The United Nations Research Agenda on Ageing for the 21st Century¹⁰ identifies age discrimination as a specific area for research, to include factors which influence social participation and integration in all spheres of life.

They argue that there is no justification for continuing to accept the gap in the law on age discrimination in Northern Ireland and examine three reasons that may explain this continued exclusion:

- Awareness and concern about age discrimination was developed later than in other areas;
- Law-makers in England and Wales have been slow to enact laws in this area, resulting in a lack of pressure in Northern Ireland despite devolution; and
- Law-makers have traditionally focused on employment discrimination.

The Legal Context in Northern Ireland

The law in Northern Ireland protects people based on grounds such as gender, disability, race, sexual orientation and religion when accessing goods, facilities and services. Legal redress is available through the County Court. Glennon and Dickson (2009) note this gap in legal redress only exists for older people when accessing goods, facilities and services.

In addition they highlight how Section 75 of the Northern Ireland Act 1998³ imposes a requirement on public authorities to take steps to promote equality of opportunity across nine grounds, one of which is age. This duty applies only to public authorities and not private bodies.

Central Features and Goals of Age Legislation

Age discrimination law in the jurisdictions surveyed in the report have common features such as:

- It applies outside the employment context;

- It contains exceptions for service providers to defend themselves against a claim of unlawful discrimination; and
- It strikes a balance between protecting people from discrimination while maintaining preferential treatment for both young and old eg concessionary fares and free bus passes.

The report details a number of goals which the law on age discrimination should strive to achieve. These include defining the terms of the legislation and detailing the exceptions and general defences that the law should contain. In addition the report says that particular attention needs to be paid to the two most contentious areas of age discrimination: health and social care and insurance.

EU and International Context

Proposed European Directive⁸

Council Directive on Implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM (2008) 426 final)

The aim of this proposal is to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market. It sets out a framework for the prohibition of discrimination on these grounds and establishes a uniform minimum level of protection within the European Union for people who have suffered discrimination.

The proposed Directive will not be finalised until after the Commission has consulted the European Parliament and a unanimous vote in the Council of Ministers. (CARDI has requested the official date that this will be voted on by Council of Ministers and will update this document in the near future).

Glennon and Dickson conclude that there is no satisfactory justification for the continuing exclusion as every person, regardless of age, deserves to be treated equally. They note that this is not a new phenomenon and point to the existence of the Equal Status Act 2000 – 2004 in the Republic of Ireland. They further argue that there is no reason for law-makers in Northern Ireland not to implement the necessary legal protections ahead of progress in England and Wales as it is in the legislative remit of the Northern Ireland Assembly to do so. Furthermore, to give the impression that discrimination can be tolerated in one society but not in others is counter-intuitive and counter-productive.

Lessons from the Republic of Ireland

The Equal Status Acts 2000 - 2004 prohibits age discrimination in the provision of goods, facilities and services, education and accommodation. They provide for older people to seek redress if they feel that they have been discriminated against. These Acts provide an incentive to service providers, who have responsibility under the legislation, to combat discrimination against older people and to promote equality for older people. As in other jurisdictions a number of exceptions exist, including:

- The disposal of goods or provision of services which is not done in the course of business or trade;
- Differences in annuities, pensions, insurance policies or any other matters related to the assessment of risk which are based on actuarial or similar data;
- Age requirements for fostering and adopting; and
- Reasons of authenticity, aesthetics, tradition or custom.

The Equal Status Act 2000 also allows preferential treatment or the taking of positive measures which are intended to promote equality of opportunity and cater for the special needs of persons.

While Irish equality legislation does not impose an equivalent statutory duty to Section 75 of the Northern Ireland Act 1998, the Belfast Agreement commits Ireland to ensuring, '*at least an equivalent level of protection of human rights as will pertain in Northern Ireland*⁴'. The Equality Authority is currently working on measures to support equality proofing in the public sector, including data collection. Their report *Equality for Older People in Ireland* (2002) called for a new public authority duty to be imposed. The Equality Authority and the National Council on Ageing and Older People also produced a booklet *Towards Age Friendly Provision of Goods and Services* in 2005. This states:

"The challenge for business and service providers is to create a service that is age friendly, accessible and affordable without being tedious, stigmatising or over protective."
(Page 9)

Research Recommendations and Conclusions

Glennon and Dickson outline a number of goals and recommendations. The goals are to promote the dignity, worth and social inclusion of older people; to outlaw unjustified age discrimination; to ensure that exceptions are clearly defined and pursue a clear legitimate aim; and to maintain as lawful the preferential treatment of both younger and older people.

Their recommendations include amending the law in Northern Ireland to outlaw discrimination on age grounds when accessing goods, facilities and services; setting out negative exceptions clearly in the legislation; specific

provisions on health, social care and insurance; and positive action measures to enable service providers to give preferential treatment to older people. In addition, it is recommended that government, non-governmental and community organisations work together to raise public awareness of ageism and age discrimination and to inform both older people and service providers that the denial or restriction of goods, facilities and services based on age is discriminatory.

Key Points:

- The existing law can effectively protect older people against discriminatory treatment when accessing goods, facilities and services;
- Reforming the legislation on goods and service is within the legislative competence of the Northern Ireland Assembly;
- Lessons from the Republic of Ireland and elsewhere show that providing equality of access to goods and services is not onerous on service providers and makes good business sense;
- Good practice is developing out of the existence of equality legislation in Ireland.

Examples of Case Law under the Equal Status Act 2000 to 2004 in the Republic of Ireland

There have been relatively few decisions by the Equality Tribunal under the Equal Status Act 2000 to 2004 on age. The cases below outline issues that have arisen.

***Ross v Royal and Sun Alliance Insurance Company (2003)*⁵**

An insurance company refused to provide a quotation for car insurance to Mr Jim Ross aged 77 stating that it did not accept new customers aged over 70. This was deemed to be discriminatory as the insurance company could not provide the required statistical evidence to justify its policy. The Equality Tribunal ordered the insurance company to pay him €2000.

***O'Reilly v Q Bar (2002)*⁶**

Mr J. O Reilly aged 72 year old was refused admission to a pub to celebrate his wedding anniversary. This was deemed to be discriminatory as the bar owner could not provide any convincing alternative explanation for the refusal to allow admission. The Equality Tribunal ordered the bar owner to pay him €1000.

***Phyllis Fahey v Ulster Bank (2008)*⁷**

Ms Phyllis Fahey was aged 70 when she applied for a bank loan to buy a car but was informed that it was the bank's policy not to provide loans to persons over the age of 65. This was deemed to be discrimination as the bank failed to rebut the allegation. The Equality Tribunal ordered the bank to pay her €2000.

Bibliography

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- 3 www.opsi.gov.uk/Acts/acts1998/ukpga_19980047_en_1
- 4 The Agreement: Agreement reached in the multi-party negotiations, April 1998, Belfast
- 5 DEC-S2003-116
- 6 DEC-S2002-013
- 7 DEC-S2008-049
- 8 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:PDF>
- 9 http://www.un.org/ageing/madrid_intlplanaction.html
- 10 <http://www.un.org/ageing/documents/AgeingResearchAgenda-6.pdf>

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