

LAWFUL DISCRIMINATION

In certain limited circumstances, it is lawful to discriminate on grounds of age – for example if:

- There is an objective justification
- There is an occupational requirement defined in law
- The discrimination is covered by one of the exceptions or exemptions for age in the Equality Act, such as:
 - Pay and employment benefits based on length of service
 - Pay related to the National Minimum Wage
 - Enhanced Redundancy Payments
 - Acts under statutory authority
 - Handling insured benefits
 - Occupational pension systems

➤ OBJECTIVE JUSTIFICATION (OJ)

- Objective justification is ultimately only definable in Courts, so it is very difficult to say exactly what is or is not allowed.
- OJ can only be possible in exceptional circumstances and for good reasons.
- Real evidence will need to be provided in order to support any OJ – it is not enough just to assert that it is needed. Courts would judge each case on its own merits.
- OJ for direct and/or indirect discrimination must be a **proportionate means** of achieving a **legitimate aim**.

Legitimate aims might include:

- Factors to do with economic efficiency (but not just saving money because it is cheaper to discriminate than not to discriminate!)
- Particular training requirement of a job
- Health Safety and Welfare e.g. around protection of younger people or older workers)

Proportionate means: you need to demonstrate that:

- The discrimination actually contributes to a legitimate aim
- The effects of the discrimination are significantly outweighed by the benefits and importance of the legitimate aim
- There is no reasonable alternative – i.e. there are no non-discriminatory or less discriminatory means of achieving the legitimate aim

GENUINE OCCUPATIONAL REQUIREMENT (GOR)

Genuine Occupational Requirements can be applied if applicants need to have a particular protected characteristic in order to do the job (e.g. a particular ethnicity, gender or ability to speak a particular language, including British Sign Language (BSL))

To apply a GOR lawfully employers must show all of the following: (thanks to www.citizensadvice.org.uk)

- ▶ the requirement is an **occupational** requirement, not be a sham and there must be a link between the requirement and the job
- ▶ the employer has a good business reason or a **legitimate aim** for applying the requirement - the employer can't just say they have a good business reason for applying the requirement, they must be able to show it
- ▶ having the requirement is the best way to achieve the employer's aim - the Equality Act says the requirement must be **proportionate**.