



EQUALITY ACT 2010 Applies to Clubs and Associations in England, Scotland and Wales with 25 or more members

There have been at least 5 attempts to introduce Equality Legislation into England, Scotland and Wales over the last 10 years. The current Act was introduced as a Bill in April 2009; it has passed through both Houses of Parliament and received Royal Assent on 8th April 2010. The most relevant provisions are not yet in force but it is anticipated the main provisions will be operative between October 2010 and April 2011.

The responsibility for this action will fall to Theresa May MP as Home Secretary and Minister of Women and Equality.

The Government Equalities Office drove the legislation. Details and updates are likely to be posted on their website <http://www.equalities.gov.uk/Default.aspx>.

Its aim is to harmonise discrimination law and to strengthen the legal framework supporting equality in England, Scotland and Wales. It repeals, re-enacts and consolidates approximately 116 Acts of Parliament and Regulation. The most significant for the purposes of this paper are The Sex Discrimination Act 1975; The Race Relations Act of 1976; and The Disability Discrimination Act of 1995. The Equality Act is in 15 parts each subdivided into various chapters which are themselves divided into various sections. The Act concludes with 28 Schedules.

It should be noted that no interim or transitional arrangements have been presented. **Compliance will need to be absolute from the day of commencement.**

Those framing the Act appear to have applied special effort to catch golf clubs fairly and squarely within the ambit of the legislation (the number of examples relating to golf clubs contained in the Explanatory Notes to the Act bear this out) and accordingly almost all of the scenarios and services associated with the provision of golf are covered by the Act.

Whilst it may be thought that explanatory notes are merely guidelines with little value it should be noted that The Explanatory Notes will be used by judges as an aid to statutory construction if there is any ambiguity as to the meaning of a particular Section of the Act.

Golf clubs are put on notice that the time for preparation for change is **Now**. They need to be ready to implement once the legislation is brought into force and not when they are pushed by their members or once they are required to defend proceedings in the County Court. Although some prospective claimants will be driven by a desire of compensation, it is expected that this area of law will also be driven by earnest claimants enforcing their principles and seeking to ensure the change foreseen by the statute are delivered.

Their intentions are to be treated with respect and taken very seriously.

The new legislation applies to all golf clubs in England, Scotland and Wales with 25 or more members. The main provisions of the Act directly affecting a private members golf club are contained in **Part 7**. Single sex clubs are not totally exempt from the new legislation. A single sex private members club that has "associate members" of the opposite gender will have to look carefully at its constitution as to the impact the new Act will have on its operations. It must also be remembered that it will remain unlawful for a single sex club to discriminate against an individual possessing one or more of the other seven (see below) protected characteristics for example age or transgender.

The Act makes unlawful, discriminatory behaviour against **members; visitors; guests and associate members** possessing one or more of the protected characteristics and provides the following remedies:

The Act defines the jurisdiction of the courts in relation to the new legislation (s.114) and makes wide general provision in respect of the remedies that can be applied. These are found at s.119 as follows:

Section 119(1)

“This section applies if a county court of the sheriff (Scotland) finds that there has been a contravention of a provision referred to in section 114(1).”

Section 119(2)

“The county court has the power to grant any remedy which could be granted by the High Court-

(a) In proceedings in tort:

(b) On a claim for judicial review.”

Section 119(4)

“An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).”

This is a **significant power for the County Court** and there is a **very wide range of orders** that a claimant might seek in addition to a simple claim for damages. The full range of interlocutory relief would be open to the court as would the power **to change decisions and make changes to documents** as such powers would be available to a court judicially reviewing a decision.

The protected characteristics are (and there are eight) (s.4):

- Age;
- Disability;
- Gender Reassignment;
- Marriage and civil partnership;
- Race;
- Religion or belief;
- Sex;
- Sexual orientation.

The definition of race for the purposes of discrimination law has been made non-exhaustive (**i.e. race now includes colour, nationality and ethnic or national origin**) and the definition of **gender reassignment has also been widened such that there is no longer any need for an individual to be under medical supervision to be protected against discrimination.**

It is worth considering both **direct and indirect discrimination** in some further detail before proceeding. Much will hinge upon the **legitimacy of aims and proportionality of means** when attempting to distinguish between age groups.

Direct Discrimination

Section 13 (1)

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

Section 13(2)

“If the protected characteristic is age, A does not discriminate against B if A can show A’s treatment of B to be a proportionate means of achieving a legitimate aim.”

Indirect Discrimination

The core provisions in relation to Indirect Discrimination are found in the Act at Section 19(1):

Section 19 (1)

“A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s”

Section 19(2)

“For the purposes of subsection (1) a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if-

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) It puts or would put B at that disadvantage, and
- (d) A cannot show it to be a proportional means of achieving a legitimate aim.”

Thus to simplify:

“A person (the club) directly discriminates against another (member visitor guest or associate member) if, because of a protected characteristic, the club treats him/her/them less favourably than A treats or would treat others.”

E.g. Women or Associate members (in the case of a club which is stated to be a single sex club but which has associate members of the opposite gender) will not be allowed to vote.

Indirect Discrimination ss. 19 (1) & (2)

Indirect discrimination occurs where the effect of certain requirements, conditions or practices imposed by a club has an **adverse impact disproportionately on one group or other**.

E.g. Members 65 with 15 years membership receive discount members 45 with 15 do not (see below)

The Act also prohibits and makes unlawful Combined Discrimination: dual characteristics (s.14).

A legitimate distinction may not be applied in an underhand way. Any effort to do so would be susceptible to challenge and it is most unlikely that a judge will look favourably on any club that tried to do it.

An objective justification will allow clubs to discriminate both directly and indirectly on the basis of age. They must, however, show that this discrimination is ‘proportionate’ and contributes to a ‘legitimate’ aim.

Proportionate means that:

- what the club is doing is actually achieving its aim in other words where is the objective evidence to support the decision (say) to continue with age related discounts to achieve the stated aim (usually the retention of members)?
- the discriminatory effect should be *significantly* outweighed by the importance and benefits of the legitimate aim. This may be difficult to establish.
- the club should have no reasonable alternative to the action they are taking. If the legitimate aim can be achieved by another or less discriminatory means, they must then opt for that route.

Legitimate means e.g.:

- economic factors such as the needs of and the efficiency of running a business
- the health and welfare including the drive that both older and younger people should leave a healthy and active life style and arguably the benefit to the mental health of older people through association with people of the same age.

A legitimate aim must correspond with a legitimate need of the club. It is not easy to prove objective justification, and the club will have to provide valid evidence if they are challenged.

For example, some clubs have policies that link subscriptions and benefits to a member’s continuity of membership. This may indirectly discriminate against younger people who are less likely to have been members for that length of time. In employment matters additional benefits coupled with a fixed length of service is seen as being a proportionate way of encouraging staff loyalty. It is for the courts to decide whether a loyalty bonus is a proportionate means of rewarding members loyalty but it is considered that if a club wishes to implement such a system it has to apply to all proportionately across the membership spectrum.

A club must not unlawfully discriminate against **Members and associates**

- (a) in the arrangements A makes for deciding who to admit to membership;
- (b) as to the terms on which A is prepared to admit B to membership;
- (c) by not accepting B's application for membership.

Nor must it discriminate against a member (B)—

- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
- (b) by depriving B of membership;
- (c) by varying B's terms of membership; (d) by subjecting B to any other detriment.

Further an association (A) must not discriminate against an associate (B)—

- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
- (b) by depriving B of B's rights as an associate;
- (c) by varying B's rights as an associate;
- (d) by subjecting B to any other detriment.

Further an association must not harass—

- (a) a member;
- (b) a person seeking to become a member;
- (c) an associate.

It must not victimise a person (B)—

- (a) in the arrangements A makes for deciding who to admit to membership;
- (b) as to the terms on which A is prepared to admit B to membership;
- (c) by not accepting B's application for membership.

An association (A) must not victimise a member or associate member (B)—

- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
- (b) by depriving B of membership rights as an associate;
- (c) by varying B's terms of membership; (d) by subjecting B to any other detriment.

Guests

An association (A) must not discriminate against a person (B)—

- (a) in the arrangements A makes for deciding who to invite, or who to permit to be invited, as a guest;
- (b) as to the terms on which A is prepared to invite B, or to permit B to be invited, as a guest;
- (c) by not inviting B, or not permitting B to be invited, as a guest.

An association (A) must not discriminate against a guest (B) invited by A or with A's permission (whether express or implied)—

- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
- (b) by subjecting B to any other detriment.

An association must not harass —

- (a) a guest;
- (b) a person seeking to be a guest.

An association (A) must not victimise a person (B)—

- (a) in the arrangements A makes for deciding who to invite, or who to permit to be invited, as a guest;
- (b) as to the terms on which A is prepared to invite B, or to permit B to be invited, as a guest;
- (c) by not inviting B, or not permitting B to be invited, as a guest.

An association (A) must not victimise a guest (B) invited by A or with A's permission (whether express or implied)—

- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
- (b) by subjecting B to any other detriment.

And an association is under a positive duty under Sections 101 and 102 to :

- (1) A duty to make reasonable adjustments applies to an association.

(2) In the application of section 26 for the purposes of section 101(4) (harassment) or 102(3) (harassment), neither of the following is a relevant protected characteristic— (a) religion or belief; (b) sexual orientation.

However the new Legislation does recognise the need for a club in appropriate circumstances to take steps.

- to achieve a legitimate aim – N.B. applies only to age discrimination. **Section 13(2)** *“If the protected characteristic is age, A does not discriminate against B if A can show A’s treatment of B to be a proportionate means of achieving a legitimate aim.”*
- To recognise that discrimination may operate in favour of persons with the protected characteristics. Thus the legislation makes provision for such positive action at sections 158 to 159.

It will be necessary to consider the scope of acceptable “positive action” but note this is an area where the Regulations that will be influential in any effort to apply the legislation have not been published.

Section 158 (1)

“This Section applies if a person (P) reasonably thinks that –

- 1. the persons who share a protected characteristic suffer a disadvantage connected to the characteristic,*
- 2. persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or*
- 3. participation in an activity by persons who share a protected characteristic is disproportionately low.”*

Section 158(2)

“This act does not prohibit P from taking any action which is a proportionate means of achieving the aim of,

- 1. enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,*
- 2 .meeting those needs, or*
- 3. enabling or encouraging persons who share the protected characteristic to participate in that activity.”*

The Sporting Exception

As has been noted already, sporting activity itself is exempted from the scope of the Act. The exclusion provided by section 195 is somewhat nuanced and this may need some further consideration, particularly in reference to a unified golf handicapping system which would seem to be designed to take due account of the variables giving grounds to the exception. However, such considerations have been discussed in conference. Counsel has advised that the Act’s exclusion is paramount and that the CONGU system cannot override this by creating a level playing field for golf competitions in terms of male/female handicaps.

Section 195(1)

“A person does not contravene this Act, so far as relating to sex, only by doing anything in relation to the participation of another as a competitor in a gender affected activity.”

Section 195(3)

“A gender affected activity is a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors in events involving the activity.”

Types of Membership and Access to Facilities

An end to “Ladies Membership” and “Gentlemen’s Membership”

At present many golf clubs provide membership options to members and potential members that discriminate based on sex. In effect, the sex of the member/potential member defines what they pay and what they can do. Most obviously this is seen in the tradition whereby there are certain days (or parts of days) on which access to the course is reserved for ladies or gentlemen. Access arrangements are usually reflected in the membership rates (subscriptions) and that this arrangement is acceptable to many players of the game.

This arrangement discriminates on grounds of sex and will no longer be lawful and would be actionable under the new legislation.

Clubs will need to accept that distinction. The following examples from the Explanatory Notes are clear and should assist:

At page 76 Paragraph 101 provides:

“A private members’ golf club, which has members of both sexes, requires its female players to play only on certain days while allowing male members to play at all times. This would be direct discrimination.”

At page 85 paragraph 386 provides:

“A woman has joined a golf club but because she is a woman she is allowed to play golf only on Tuesday afternoons and is not allowed access to the club bar. She could bring a discrimination claim in the county or (if the golf course is in Scotland) sheriff court.”

Dividing Membership By Age

Many clubs have differing membership rates that depend upon the age of the member or potential member. Many give reduced membership rates to senior members or those who have been members of a club over an extended period. Also, a number of clubs grant a reduced membership rate for younger adult players. Generally there is no distinction in the access to the course only the fees which are due.

The Act permits distinction to be based on age in particular circumstances and it will be necessary to consider whether the case for permitting the distinction has been made out in order to decide whether the distinction is lawful – so clubs will need to consider the point on a case by case basis.

That test is found at s. 13(2) as follows:

“If the protected characteristic is age, A does not discriminate against B if A can show A’s treatment of B to be a proportionate means of achieving a legitimate aim.”

At this point, it is necessary to deal with the general categories to describe the issue and provide information that will be useful to clubs. Many clubs are struggling to recruit new members but at the same time have a preponderance of senior members who are male (who may also receive a discount on membership).

Intermediate Members

A legitimate aim may be the growth of membership in particular age brackets and it may well be proportionate to offer a reduced membership fee to members or potential members. In my opinion, it would be appropriate to offer membership at reduced rates to younger adults if a club has low percentage of adult members under (say for example) 30 years of age (depending on the demographic profile of your club). If there is a clear commercial driver to the need to support the club’s membership then it is my opinion that this would be proportionate if it were open to both men and women.

If there is a permanent offer, this will need to be justified on its own terms but it is not considered that the purpose of the Act is to prevent a legitimate “membership drive” and the prospects of such an offer being open to challenge would be reduced if it was open at certain times of the year or on a one-off/seasonal basis.

Senior Members

As far as senior members are concerned, the position is likely to be different but again **will depend on the age profile of the club**. If senior members make up the bulk of the membership it is more difficult to see how it might be legitimate or proportionate to grant reduced rates.

Similarly, the conditions for positive action under s.158 are not likely to be met unless a general case for the needs and interests of older people could be made out (**as distinct from older golf club members**).

If a case could be made by a club to offer senior members discounts, it must apply the same practice and criterion (namely the discount) to all members irrespective of their sex. If the agreed age limit for such discounts is say 65 for all members, it would be legitimate to ring-fence lady members falling within the 61-64 age bracket who have previously enjoyed discounted rates prior to the passing of this legislation.

On balance, the arguments for granting reductions for older members on the grounds of age alone do not seem overly persuasive. They would need to be supported by having regard to a club's particular demographic profile and the impact that a change in membership fees would have. In effect, depending on the age of the members of the club, it may no longer be legitimate to permit a reduction in membership rate for senior members.

Must all members be the same?

The prohibition is against discrimination because of a protected characteristic – whether directly or indirectly. It is legitimate to establish rules or create classes of membership that distinguish **but do not discriminate**.

It would remain open to a golf club to create different classes of user - it is legitimate to establish distinct commercial propositions for access to facilities based on differing price points. If the issue is essentially one of supply and demand the numbers available in each class may need to be limited and the prices structured to suit.

The prices should not be different for men and women in the same category of membership. Accordingly, clubs may wish to consider this issue as primarily a marketing problem instead of as a question of legal compliance. If clubs are keen to provide that those who can only get on the course in the evenings and weekends are able to do so, then that is not discrimination provided it is not a backdoor way of achieving a discriminatory aim.

Access to Competitions access to the course during Competitions

It is acceptable for sporting competitors to compete against their own gender. It is not necessary to admit ladies to a men's competition or men to a ladies' competition simply because they wish it.

Traditionally, such competitions have been played on particular days for example men's competitions on Saturdays.

However if the practical effect of this is to bar ladies from playing on Saturdays (because there are simply so many men's competitions) I believe this would ultimately amount to actionable discrimination. This is going to require clubs to exercise judgement. Clubs will need to bear in mind their male/female ratio when setting their competition calendars in the future.

In effect, it is necessary to open the course on Saturdays to all those who take membership at the requisite level albeit it is acceptable for some Saturdays to be given over to occasional single sex competitions. **The abiding reality of this Act is that it is discriminatory to keep the ladies off the course on Saturday/Sunday.**

Recruitment of new members

The question of new members and management of waiting lists does need to be considered. **The most appropriate method would be to take applicants who meet the legitimate membership criteria on a first come/first served basis.** The following observations are made:

- (e) *The process should be administered in accordance with a written protocol;*
- (f) *A statement of Equal Opportunity Objectives should be available to members and potential members;*
- (g) *Clubs should be particularly alive to the risk of indirect discrimination;*
- (h) *It will be necessary for any process to take account of members who wish to move from one category of membership to another.*

Clubs must accept that for mixed clubs the proportion of men and women members of a club may well change over time. It will not be legitimate to exclude an applicant because there are “too many women already” any more than it would be acceptable to exclude someone due to their sexuality.

Elite Standards

Some clubs may wish to preserve an elite standard of membership. They may require a minimum handicap level or weight the scoring of membership applications according to the ability of the player. This might indirectly favour men and discriminate against women.

The sporting exception provided by s.195 of the Act will not decide this question as it concerns membership of the club rather than only the playing of the game. If a club is genuinely constituted as a “men only elite club” that would of itself be acceptable but if it were constituted as a mixed club but operated in effect as a men’s club or in a discriminatory way that would not be acceptable.

It would be acceptable to state a standard or level of ability **but this would need to be expressed in a way that did not discriminate against women if a single standard had the effect of being discriminatory.** *Those that are eligible should be accepted on a first come first served basis.*

Economic Factors

Most clubs face the difficulty of dwindling membership and are subject to competition from other (strictly commercial) providers of golf and fear the adverse consequences of introducing changes that the Act will require. In effect the Act is thought to threaten the viability of some clubs as it may provoke a loss of members. *As noted above, these economic factors may inform some of the choices to be made and justify certain decisions but they do not excuse such clubs from compliance.*

Management and Organisation

General Review of process

The Act creates such a change in the workings of associations that it is not sufficient for clubs to simply pay lip service – *golf clubs are a specific target for this legislation.*

Clubs will need to carry out an exercise to review process and operation to consider the level of compliance. They should identify areas and processes for change where necessary as they are under a duty to make reasonable adjustments.

It is suggested that such management or operating committee as clubs may use to run their affairs should consider the Act and its implications and they should record their reasonable conclusions. **They must continue to track progress to completion if for no other reason than this would be useful to defend an action for discrimination or to offer in mitigation of the consequence of a finding of discrimination. Certainly, the absence of any record of effort will be telling to any court.**

Advise Members of the Changes

If clubs advise their members of their Equal Opportunity Objectives then this may aid acceptance of the change and reduce the prospects of arguments on the tees when members start to assert their rights. Accordingly, it would be prudent to communicate the impact of the Act upon the operations of the club to its members.

A “consultation” meeting for all members would seem a good idea. Alternatively, this might be achieved either in a rider to the regular news updates or by means of a notice to members on the adjustments being made to ensure compliance. When relevant, this information should be passed to guests.

The Equal Opportunities Objectives should provide a complaints procedure. This may be substantially the same as any existing mechanism but that mechanism should be reviewed to confirm that it is appropriate for concerns of this nature.

Appointing Officers

The procedures for the management of golf clubs through a committee structure (however it is called committee board or similar) have evolved over time but the accepted norms will be challenged and subject to scrutiny in court if they are not updated to take account of the Act.

Of particular concern would be the way in which clubs are organised and managed and the processes by which “officers” of the club are selected.

The procedures as written (and in practice) are significantly different from club to club so it will be necessary for all clubs to consider for themselves how their constitutions fare in comparison to the obligation not to discriminate. It is considered that the greatest risk is the prospect that there may be indirect discrimination against women. However, other forms of direct discrimination might also need to be considered to determine how they can be eradicated. Age for example might be a factor if the club’s constitution prohibits directly or indirectly (determined by length of membership possibly) when and how an individual may be nominated for service on the committee.

The Act clearly entitles a member with a *protected characteristic* **to have exactly the same rights as any other member in terms of voting and election to the club’s committee**. Traditionally, it may be said that such committees in private members clubs are made up of predominantly male members. This is a practice that should be addressed. Positive steps should be taken to encourage participation by all members at the nomination stage all the way through to the AGM.

Captaincy and Seniority of Captains

The variety of mechanisms for the appointment of a club captain was discussed in with Counsel in conference. Normally, roles of this kind are unremunerated. However, **this does not mean that the Act will not apply**. The trend was observed that many clubs have two captains – one for the ladies and one for the gentlemen but that in many the men’s captain assumed the role of “club captain”. It was also noted that some captains are voted on and some are nominated by Past Captains (male only).

It would remain acceptable for clubs to have the ladies vote on a ladies’ captain and the gentlemen vote on a gentlemen’s captain. However, I do not think that it is acceptable for the gentlemen’s captain to automatically assume the “club captaincy”.

If there are to be two captains one of each sex and there is to be a distinction or precedence as between the two captaincies there will be difficulty. As with all issues of membership rights and voting, clubs will need to review their constitutions to confirm compliance or to work to put in place a new system that does comply with the law. It may be necessary therefore to create a new role of “Club Captain” or “President” which is transparently open for all to aspire to.

Further Consideration

Person transitioning gender

Whilst the position on transgender golfers who have concluded their transition can be understood and accommodated there is some difficulty in understanding how to accommodate transgender people during their transition. Sensitivity would be essential and that there would need to be consultation between the member and the club. It is appropriate for a club to be given written confirmation from a person’s medical practitioner as part of that consultation process. A full medical report is, however, unnecessary. Should a club be faced with such an issue then specific advice must be taken before the application is determined.

Summary of key points

- **Commencement:** The Act will apply to golf clubs and is waiting on sign-off by the new Home Secretary Theresa May.
- **Legitimate Distinctions:** It will be acceptable to distinguish between types or classes of member but it will not be acceptable to distinguish on the grounds of a protected characteristic. This means that ladies will no longer be restricted to or enjoy the exclusivity of a “Ladies day” or be excluded from “Gentlemen only” days or tee times;
- **Single Sex Competitions:** It will still be acceptable to hold single sex competitions on defined days;
- **Categories of Membership:** The practical issue for clubs is likely to be how to appropriately and legitimately divide membership categories in a way that will not cause financial loss to the club;
- **Recruitment of Members:** As regards recruitment of members, the golf club should consider a range of options from which to select but gender or any other relevant protected characteristic must not determine their eligibility or entitlement;
- **Discrimination:** A legitimate distinction may not be applied in an underhand way. Any effort to do so would be susceptible to challenge and it is most unlikely that a judge will look favourably on any club that tried to do it;
- **Not all of the protected characteristics** are treated the in the same way. Age in particular, is managed differently and it is permissible to refuse or allow access to a membership category or to charge a different subscription by reason of age if certain criteria are met;
- **In practice this means:**
 - The situation will depend on the circumstances - particularly the membership demographics;
 - Recruitment drives and marketing efforts will be permitted if justified;
 - It should be acceptable to favour younger members with reduced fees;
 - It may not be acceptable to give senior members discounts; but,
 - It may be acceptable to allow discounts for longstanding members.
- **Identify and address non-compliance:** If a club is concerned it has unlawful practices it should first understand the contravention then and make the reasonable adjustments necessary;
- **For many clubs this means:**
 - updating the club constitution and changing day to day practice accordingly;
 - Reviewing membership rights;
 - Reviewing voting rights and processes to ensure no gender bias;
 - Producing a statement of “Equal Opportunity Objectives” and distributing that statement to members and their guests;
 - Providing a route for complaints or confirming that existing arrangements for complaint are adequate.
- **N.B. The Club as an Employer:** If the club has employees it must not forget that the Act will apply to it as an employer. All clubs on this aspect of the new legislation should take advice. Employment is not within the remit of this paper.

The Hypothetical Golf Club Limited

The HGC is an incorporated non profit making private members' club formed in 1912. Management of the club is in the hands of an elected board of directors headed by a chairman elected by the board. The Captain is elected at each annual general meeting by the members after recommendation by a committee of past captains. In theory and on a true construction of the articles any member can be nominated for the office of Captain on a proposal from two members of at least 5 years standing. In practice this has only occurred on two occasions since formation. Throughout the club's history a woman has never been nominated for Captain. The elected Captain is an ex officio member of the board of management.

The club has a ladies section and a seniors section. Each has its own Captain elected by the section members at the agm of the section, neither is an ex officio member of the board, but are eligible with the appropriate support to be nominated to serve on the board of management at the club's annual general meeting.

Youth members (19 – 29 year olds) are entitled to varying discounts dependant upon age, they do not have voting rights and are not eligible to nominate or be nominated for service on the board.

All members described in the articles as “full playing members” are entitled to attend and vote at all general meetings of the club. Ladies (other than “senior ladies”) do not receive a discount on the annual subscription set each year by the board for all categories of membership. Seniors described as members aged 65 and over with 15 years continuous service, receive a 20% discount on the full annual subscription.

The board, whose average age is 64 years wish to continue discounting subscription for senior members and intermediate members (described as “youth members” in the articles).

The board have identified the legitimate aims to justify their decision as needed to meet the economic needs of the club; to promote a healthy lifestyle and participation in sport; to support the retention of members and to contribute to the autumn years of those entitled.

The secretary has produced a demographic profile of the club (reproduced on the following page).

The following additional information has been requested and supplied:

1. The club must achieve at least £420,000 from subscription income to cover operating costs.
2. There are currently 75 full playing members aged 65 and above who do not qualify for a discount by reason of length of membership.
3. There are currently 107 full playing members with 15 years or more membership who do not receive a discount by reason of age.

TASKS

As a starting point using the information above and Table 1 (THE CURRENT POSITION) below, working with your club colleagues (or other convenient group nearby) and referring to the other tables below :

1. **Identify the Equality issues the Hypothetical Golf Club Ltd must immediately address.**
2. **Bullet point the matters (if any exist) which should be included in the Equal Opportunities policy to justify the boards desire to continue with discounts.**
3. **Consider the alternative discounting policy described in table five and consider whether in your opinion it overcomes any equality issues you have identified in tasks 1 & 2**

PLEASE ACCEPT THE DEMOGRAPHIC PROFILE AND THE FINANCIAL NEEDS OF THE HYPOTHETICAL GOLF CLUB LTD AS FACTUALLY CORRECT FOR THE PURPOSES OF THIS EXERCISE. THIS IS NOT A BUDGETING EXERCISE AND THUS MATTERS OF GREEN FEE INCOME AND INCOME FROM OTHER STREAMS HAVE DELIBERATELY NOT BEEN INCLUDED AND FORM NO PART OF THIS EXERCISE!

Demographic Profile of the Hypothetical Golf Club Ltd

1.CURRENT POSITION				
Category	Ann Fee	Number	&age	Income
Full Playing	£745	450	75.0	335,250
Full Playing 65 + year of age with 15 years membership	£596	118	19.7	70,328
Youth 19-21	£260	11	1.8	2,860
Youth 22-26	£500	14	2.3	7,000
Youth 27-29	£650	7	1.2	4,550
TOTALS		600	100.00	419,988

2.IF DISCOUNT APPLIED TO ALL 65 AND OVER				
Category	Ann Fee	Number	&age	Income
Full Playing	£745	375	62.5	278,375
Full Playing 65 + years of age	£596	193	32.2	115,028
Youth 19-21	£260	11	1.8	2,860
Youth 22-26	£500	14	2.3	7,000
Youth 27-29	£650	7	1.2	4,550
TOTALS		600	100.00	410,093

3.IF DISCOUNT APPLIED TO ALL WITH 15 YEARS SERVICE				
Category	Ann Fee	Number	&age	Income
Full Playing	£745	343	57.2	255,535
Full Playing with 15 + years service	£596	225	37.5	134,100
Youth 19-21	£260	11	1.8	2,860
Youth 22-26	£500	14	2.3	7,000
Youth 27-29	£650	7	1.2	4,550
TOTALS		600	100.00	404,045

4.IF ALL DISCOUNTS REMOVED EXEPT FOR YOUTHS				
Category	Ann Fee	Number	&age	Income
Full Playing	£745	568	94.7	420,180
Youth 19-21	£260	11	1.8	2,860
Youth 22-26	£500	14	2.3	7,000
Youth 27-29	£650	7	1.2	4,550
TOTALS		600	100.00	435,870

5. IF STAGE DISCOUNTS ARE INTRODUCED FOR LENGTH OF MEMBERSHIP				
Category	Ann Fee	Number	&age	Income
Full Playing with less than 10 years membership	£745	233	38.9	173,585
Full Playing with 10+ year membership (3% discount)	£722.65	110	18.4	79,492
Full Playing with 15+ years membership (5% discount)	£707.75	95	15.8	67,236
Full Playing with 20+ years membership (10% discount)	£670.50	80	13.3	53,640
Full Playing with 25+ years membership (15% discount)	£633.25	50	8.3	31,663
Youth 19-21	£260	11	1.8	2,860
Youth 22-26	£500	14	2.3	7,000
Youth 27-29	£650	7	1.2	4,550
TOTALS		600	100.00	420,026

The Equality Act 2010 – Employment an Overview

Please be aware that some of the provisions relating to equal pay may change, this part of the paper is provided merely as an overview. More will be published by the NGCAA when the detailed provisions are known.

Concepts of Discrimination

Protected Characteristics

There have been a few changes to their definitions, including the following:

- Gender reassignment – there is now protection for those who are “proposing to undergo” a process for the purpose of reassignment of sex by changing physiological or other attributes of sex (and so there is no requirement for medical supervision).
- Race/racial group – is now non-exhaustive and it may be that caste is added as a protected characteristic at a later date.
- Disability – a wider range of individuals who are likely to be protected fall within the Act where they meet a general requirement that their impairment has a substantial and long-term effect on their ability to carry out normal day-to-day activities.

Combined Discrimination

Expected to come into force in April 2011, employees will be able to bring claims of combined discrimination of no more than two protected characteristics (except for claims arising out of pregnancy and maternity or marriage and civil partnerships).

Direct Discrimination and Protection Against Discrimination

The Act amends the existing definition of direct discrimination so that it will be unlawful to discriminate against someone because of a particular protected characteristic. It will cover those discriminated against because they are associated with a third party who is covered by that protected characteristic. The Act also extends to cover discrimination where the employer wrongly perceives the employee to have a protected characteristic (again except for marital status/civil partnerships, which are not covered).

Protection Against Harassment by Third Parties (for this purpose a member is treated as a third party)

Protection from harassment in respect of the protected characteristics (save for pregnancy/maternity and marriage/civil partnerships) will be widened to protect employees who are harassed by someone from outside the employer’s workforce. This could have significance in relation to the conduct of members of the club as well as officials and committee members towards the club’s staff at all levels. It must also be read alongside the existing (and continuing) employment provisions which places a duty on the club to ensure that staff are treated in a dignified way. Written policies should be in place covering such things as **(not)** dealing with staffing issues (particularly performance) at general meetings of the club (they should not form part of any agenda) as well as the standards expected from members visitors and guests in face to face contact with staff *and the consequences of inappropriate behaviour*.

Indirect Discrimination

A standard definition of indirect discrimination is adopted to ensure uniformity of protection across the protected characteristics. Importantly, indirect discrimination applies to all the protected characteristics, except for pregnancy and maternity, and includes (for the first time) disability and gender reassignment.

Disability Discrimination

To address the gap following the House of Lords decision in *Mayor and Burgesses of the London Borough of Lewisham v Malcolm* (2008) (which made it more difficult for a disabled person to prove disability-related discrimination), the Act provides for a new type of disability discrimination – “detriment arising from disability”.

The Act sets out that a person (A) discriminates against a disabled person (B) if: he (or she) treats (B) unfavorably because of something arising in consequence of B’s disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim (i.e. it cannot be justified). In order to discriminate, A must know, or be reasonably expected to know, that B had the disability. This protection replaces the old “disability- related discrimination” head of claim.

Gender Pay and Equality Reports

One of the aims of the Act is to promote transparency within the workplace and the Act gives the Government power to require employer to publish information relating to differences in pay between male and female employees if the employer has over 250 employees (private sector) or 150 employees (public sector). It is unlikely that these provisions will come into force before April 2011 (in relation to the public sector) or before 2013 in relation to private sector employers. Public sector employers meeting the threshold are also likely to have to report on their disability and ethnic minority employment rates.

Pay Secrecy Clauses

Contrary to some earlier media reports, pay secrecy clauses will not be banned but a secrecy clause will be unenforceable against employees involved in a "relevant pay disclosure". There is likely to be much discussion over what a relevant pay disclosure is, but it is clear that the disclosure in question must relate, to some degree, to the question of whether pay may be discriminatory.

Employment Tribunals

Employment tribunals will be able to make recommendations against unsuccessful respondents in discrimination cases to include requirements to remedy matters not just for the individual claimant, but also for the wider workforce. A failure to comply with a recommendation would not result in enforcement action but a failure to comply could be used in evidence to support later discrimination claims.

Pre-employment Health Questions

Health questions during the recruitment process will be banned (but are permitted once an employee has accepted employment).

Disability Discrimination Generally

The new legislation widens the definition of disability and makes substantial changes to the law governing the statutory requirement to make reasonable adjustments. Once in place the new provisions are likely to have a substantial impact on a golf club's obligations to allow members visitors and guests who are disabled and who cannot or have undue difficulty in playing golf without the use of a ride on buggy, to use a buggy on the course, to provide buggies in appropriate circumstances free of charge and to provide storage facilities.

In the circumstances it has been decided to deal with the issue of disability in this context as a separate and distinct issue. Counsel's opinion has been sought regarding the new disability provisions and the NGCAA are working closely with the English Golf Union and both organisations will be issuing authoritative guidance and suggested policies to enable clubs to review their existing policies and procedures.

Until the new regulations are in place the current law remains in place and the NGCAA is in a position to advise clubs who require assistance in this **rapidly expanding** area of law.



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