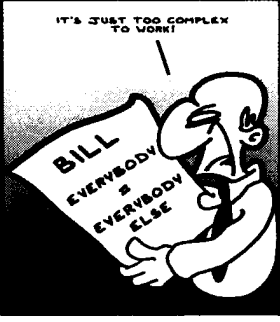


**Recruitment, Retention,
Reward and Retirement:
Age Discrimination in the
Workplace**

**ELA BREAKFAST SESSSION
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Age Discrimination



Recruitment

May well be discriminatory/evidence of discrimination:

- “younger, entrepreneurial profile”
- “in first five years’ of career”
- “youthful enthusiasm”

Not discriminatory/discrimination rebutted by evidence:

- “dynamic young accountant”
- “hands on experience”

Age and occupational competence

- Age as a genuine occupational requirement: *Wolf v Stadt Frankfurt am Main* ECJ
- Whether age can be equated with competence for the job: *Baker v NATS*

Age/retirement as the cause of discrimination

Homer v Chief Constable of West Yorkshire Police:

The complaint: employees in Mr Homer's age group (60-65) would not have time to complete a part-time degree course before retirement.

The CA: It was not Mr Homer's age that was the issue but the proximity of his retirement.

Removal of the Default Retirement Age

- The mechanism for notifying employees of impending retirement may be used until 6 April 2011 (but any notification after 1 April 2011 will be at best futile).
- From that point onwards, the mechanisms in Schedule 6 of the EE(A)R (which were left in place by the Equality Act) will be abolished and no notifications after that date will be pursuant to the statutory scheme.

Removal of the Default Retirement Age

- Any dismissal occurring by reason of a prior notification will be capable of being a fair dismissal and will not amount to age discrimination if takes effect before 1 October 2011.
- Thereafter, retirement will cease to be a potentially fair reason for dismissal, but the use of an objectively justified mandatory retirement age will amount to SOSR.



Removal of the Default Retirement Age

- The short notice retirement notifications pursuant to Schedule 6, paragraph 4 will cease to be a means of avoiding age discrimination with effect from 6 April 2011.
- In addition, the right to refuse to employ somebody over the age of 64 and 6 months is to be abolished.

Removal of the Default Retirement Age

- Group risk insured benefits (e.g. life cover, PHI, health insurance) are to be subject to a carve out from the Age Regulations.
- Conversely, no such alterations are to be made to shares schemes or occupational schemes.
- As to pension schemes, the Government has expressed the view that the definition of pensionable age does not give rise to discrimination issues and thus no changes need to be made.

Justification and the demise of the DRA

What does an employer have to do to justify an age-related dismissal?

- *Seldon v Clarkson, Wright and Jakes*
- *Age UK*
- *Rosenbladt*

Cost as a justification for discrimination

- *Cross v British Railways plc*
- *Kutz-Bauer v Freie Und Hansestadt Hamburg*
- *Steinicke v Bundesanstalt Fur Arbeit*
- *Redcar and Cleveland BC v Bainbridge*
- *Middlesbrough BC v Surtees (No.1)*
- *Nichols v Coventry CC*
- *Woodcock v Cumbria PCT*

The Quiz

- What is the life expectancy for (i) a woman, and (ii) a man born today?
- What would their respective life expectancies have been if they had been born at the turn of the last century, in 1901?

49/45

The Quiz

- Of the c.10,000 people in the UK aged over 100, what percentage are female?
(a) 51%, (b) 75%, (c) 85%
- Which town in the UK employs the highest proportion of older workers?
(a) Southampton, (b) Slough, (c) Salisbury
- Which town in the UK employs the lowest?
(a) Hull, (b) Hartlepool, (c) Hyde

The Quiz

- Which BBC TV show was Miriam O'Reilly ousted from because of her age? *Countryfile*
- What is the normal retirement age for a High Court Judge in England and Wales? *70*
- What is the required retirement age for a Justice of the Supreme Court of the USA? *None.*

The Quiz

- The firm of Clarkson, Wright and Jakes is based where? *Spangher*
- In Woodbridge v Cumbria PCT, the cost of not discriminating was:
 - (a) Between £50,000-£100,000;
 - (b) Between £500,000-£1 million;
 - (c) Between £5-£10 million
