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**EMPLOYMENT RELATIONS  
RESEARCH SERIES NO.42**

The age dimension of  
employment practices:  
employer case studies

STEPHEN MCNAIR AND MATT FLYNN  
CENTRE FOR RESEARCH INTO THE  
OLDER WORKFORCE  
UNIVERSITY OF SURREY



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The views expressed in this report are the authors' and do not necessarily reflect those of the Department of Trade and Industry or the Government.

# Foreword

The Department of Trade and Industry's aim is to realise prosperity for all. We want a dynamic labour market that provides full employment, flexibility and choice. We want to create workplaces of high productivity and skill, where people can flourish and maintain a healthy work-life balance.

The Department has an ongoing research programme on employment relations and labour market issues, managed by the Employment Market Analysis and Research branch (EMAR). Details of our research programme appear regularly in the ONS journal *Labour Market Trends*, and can also be found on our website: <http://www.dti.gov.uk/er/emar>

DTI social researchers, economists, statisticians and policy advisors devise research projects to be conducted in-house or on our behalf by external researchers, chosen through competitive tender. Projects typically look at individual and collective employment rights, identify good practice, evaluate the impact of particular policies or regulations, or examine labour market trends and issues. We also regularly conduct large-scale UK social surveys, such as the Workplace Employment Relations Survey.

We publicly disseminate results of this research through the DTI Employment Relations Research series. All reports are available to download at <http://www.dti.gov.uk/er/inform.htm>

Anyone interested in receiving regular email updates on EMAR's research programme, new publications and forthcoming seminars should send their details to us at: [emar@dti.gov.uk](mailto:emar@dti.gov.uk)

The views expressed in these publications do not necessarily reflect those of the Department or the Government. We publish them as a contribution towards open debate about how best we can achieve our objectives.



Grant Fitzner  
Director, Employment Market Analysis and Research

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# Executive summary

*Case study employers were aware that age discrimination legislation was on the horizon, but most did not consider it a high priority issue, and the legislation was not seen as a major driver for change. Many HR managers identified potential benefits from reduced age discrimination; implementation costs did not appear to be a major issue. However on many issues the key decisions were made by junior and middle managers, and some respondents believed that an age diverse policy might not be reflected in practice.*

*Retirement age practice varied, though most employers had a contractual retirement age. There was some concern about the management of retirement. Some employers also expressed concerns about the implications of the legislation for service-related benefits, and the adequacy of their performance and appraisal schemes should retirement ages be abolished. They wanted the government to be consistent and co-ordinate its initiatives on age discrimination, pensions and TUPE, and to give employers sufficient time to implement change.*

## **Introduction**

This is the report of a study of employers' human resource (HR) practices, designed to investigate how prepared they are for the pending UK legislation on age discrimination in the workplace. The project sought to establish:

- How aware employers are of age discrimination and the implications of the pending legislation;
- How important they think it is;
- How far current practices are conducive to age diversity;
- How far current practices are consistent with the proposed legislation;
- How far they are amenable to change.

## **The strategic environment**

The overall strategic context of the case study organisations was turbulent. All were undergoing some kind of change, some of them quite radical. There were no consistent patterns; some organisations were growing and others contracting. More often they were trying to maintain levels of service or production on reducing resources. There was a strong divergence in focus and formality of human resource management processes between public and private sectors, and between large and small organisations in the private sector.

The dominant HR issues were skills gaps and shortages, and strategies to overcome these. However, few organisations saw age diversity as a major strategy for solving this problem – although several were introducing more flexible working patterns, which may make them more attractive to older workers, and one was developing ways of recruiting and retaining older workers.

Most organisations were aware, at a relatively low level, of age issues, and of the pending legislation, and felt that the age composition of their workforce could be better. However, few had any formal policies to address this. Several noted an uneven age distribution, reflecting, in the case of public sector organisations, previous waves of contraction and expansion in their sectors. HR managers felt that general career patterns were becoming more fluid, and several organisations were aware of the growth of second careers, with mature workers entering their organisations, or retirees moving on to second careers elsewhere. Trade unions were anxious that moves towards age diversity should not lead to changes in the state pension age or the 'right to retire'.

The forthcoming legislation was not widely seen as a driver for change (pending the publication of the regulations), and none of the case study organisations could recall a formal grievance relating to age discrimination, although they recognised that age-related issues might arise in cases of harassment.

Although the legislation will apply to people of every age, respondents rarely, even when prompted, talked about discrimination affecting young people, other than in relation to the minimum wage and statutory controls on the operation of machinery, sale of alcohol, and driving.

### **Age and employers' policies and practices**

Explicit policies on managing the age balance of the workforce were rare. However, most case study organisations identified age as an issue within a generic equal opportunities policy, and in the public sector this was backed up with formal committees. In several organisations policies on age appeared to be changing, especially in response to concerns about recruitment costs.

Policies and practices often applied differently to different staff groups within the same organisation, and there was concern about the cost and industrial relations issues raised by levelling up or levelling down in response to the legislation.

There was no evidence of overt discrimination in policy documents, but there was evidence that on many issues the key decisions (like whether to allow flexible working or phased retirement) were made in practice by junior and middle managers, and a number of respondents believed that an age diverse policy at the top of the organisation might not be reflected in practice on the ground.

There were a number of specific areas of employment where age discrimination was likely to be an issue:

- The trend in **recruitment** was towards 'age blind' procedures, and few case study organisations included age on application forms as seen by selectors.

- **Pay** was rarely directly age-related, except for workers under 20, but half the organisations had incremental pay scales, which tended inevitably to favour older workers. Three organisations were subject to nationally negotiated scales and conditions which allowed little or no discretion locally on pay levels and benefits.
- There were some **age-related non-pay benefits**, including long service awards, annual leave increases for long service, or increased sick leave entitlement. HR managers in all of the case study organisations felt that these ought to be justifiable under the legislation. In the case of health insurance there was discrimination, on grounds of cost, at upper and lower ends of the age range, with those over 65 barred from the scheme because of high premiums, and younger people barred on the grounds that they were too mobile to justify the costs of setting up accounts.
- Most organisations had some form of **performance management** and appraisal system, but their application was often patchy. Several HR managers said that such systems were applied less firmly to people nearing retirement age. Similarly, all organisations had some form of health assessment process which could be used for identifying people no longer capable of carrying out their job. However, there was general agreement in most organisations that, were contractual retirement ages to be abolished, current systems would not provide a robust basis for handling significant numbers of unwilling retirees.
- Senior HR and line managers suggested that older workers were less likely to participate in **training** than their younger peers, but that when they did so, it increased the likelihood of them staying in employment. However, there was a general view that this was at least as much a matter of reluctance by employees as refusal by employers. Most employers said that generally they did not discriminate on the basis of age in the provision of training, although some said that they would not support someone 'approaching retirement'.
- There was little evidence of formal **succession planning** or strategies for knowledge retention, although one case study organisation had recently created a succession planning unit to manage imbalances in the age profile of its workforce, and several expressed interest in taking succession more seriously as an issue. There was some evidence of a growing concern about recruitment costs, and the potential to reduce these by reducing premature exit.
- There was some concern about the **management of retirement**, and that good HR practice, in asking older employees to discuss their retirement plans in order to provide support and ensure effective succession planning, might be viewed as discriminatory.
- **Retirement age** practice was varied, however, most organisations had a contractual retirement age. Eight organisations set this at 65 for all new entrants, while three set it below 65 for some staff. Two applied contractual retirement ages lower than 65 for all new entrants. One had

no retirement age. One organisation was planning to abolish fixed contractual retirement ages.

- Most organisations were willing to consider some form of **flexible retirement**, either by phasing out, going part-time or continuing on a fixed term contract. However, it would appear that awareness of the possibility of this was low among workers, and most HR managers could not remember ever being asked. Only two organisations had formal schemes (in both organisations, employees who were within a year of retirement could reduce their working week without a reduction in pay).
- Views on employees' **motivation to retire** varied. Only two HR managers saw work pressure in itself as a major factor in the decision to retire. Perhaps surprisingly, finance was not perceived as a major influence on retirement decisions. More significant was the influence of a changing working environment. It was widely suggested that the pressures of organisational change, and change in working practices, led to earlier withdrawal. On the other hand, several managers said that promoting the opportunity to work more flexibly was encouraging older workers to stay in work longer. Most interviewees thought that the number of people wanting to continue working would be relatively small, although other research by the Centre for Research into the Older Workforce suggests that most older workers support the idea of abolishing occupational retirement ages.
- Older workers were seen by HR managers to be usually advantaged in **redundancy** situations, because of last in first out policies, and because of increased enhancement of statutory pay based on years of service. Although previous research suggests that older workers, with more dated skills, can be vulnerable to being targeted for redundancies, at least two of the organisations sought to retain and retrain workers whose skills had become obsolete.
- **Pension** arrangements were very complex, with most organisations operating several distinct schemes, either for different classes of worker, or for those who joined the organisation at different times. Very few (mainly public sector) organisations were still offering a defined benefit scheme to new entrants, and it was argued that such schemes tended to discourage flexible retirement (because pension entitlements were usually based on final salary, and did not increase after the specified number of years' service). Most of the case study organisations offered defined contribution schemes (some recently introduced), where workers may be likely to want to stay in work longer to increase their pension fund.
- There were some **external constraints** on employers' age policies, notably safety-related age limits set by Statute and limits set by insurance companies on benefits like health insurance or third party cover. A number of HR managers wanted to see these issues addressed in the regulations.

## **Discrimination: responding to the legislation**

Most of the case study organisations were already undergoing some kind of change, and preparation for age discrimination legislation was seen either as a minor issue by comparison, or something which could wait until the regulations were published. The public sector organisations were making some limited preparation by reviewing policies and practices, while the private sector organisations were more likely to be engaged in lobbying around the specific implementation and regulatory issues.

In general, human resource managers reported a **positive experience of previous discrimination legislation**, and felt that, in so far as it has increased the diversity of the workforce, it was a good thing. They also felt that it had had a positive effect on HR practices, requiring organisations to formalise and enforce good management practice<sup>1</sup>. The general view was that discrimination legislation tends to produce a flurry of concern in advance, but then proves less problematic than anticipated. The case of the right to request flexible working was cited repeatedly – when organisations had to address it, they found it less difficult than they expected, and found that it brought evident benefits. Several organisations said that, having introduced flexibility for people with childcare responsibilities, they decided to extend it to all workers.

The expectation was that the age discrimination legislation would have similar effects, and many HR managers identified **potential benefits** from reduced age discrimination. These included skills and knowledge retention, organisational stability, depth of experience, better management, reduced training and recruitment costs, matching staff and customer profile, and the fact that people would no longer be ‘written off’.

There appeared to be **little resistance at senior levels or among trade unions** to increasing age diversity in the workplace, and the HR practitioners interviewed were keen to use this opportunity to improve the quality of management practice generally. The main issue appeared to lie with the training and support of middle managers, who may need more convincing of the benefits of having an age diverse workforce.

However, HR managers argued that **age discrimination is different** from any other form of unfair discrimination, in that all people age, and everyone’s performance declines with age, albeit at different rates. It may be particularly difficult, therefore, to distinguish legitimate from illegitimate discrimination, and there was a widespread view that, in relation to age, some discriminatory practices may be legitimate. These included rewards for loyalty through long

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<sup>1</sup> It should, of course, be borne in mind that HR professionals have a particular view of these issues, which may not be mirrored among managers in general in the organisation.

service awards and incremental pay, and easing the transition into retirement through pre-retirement training and reduced working weeks in the pre-retirement period.

The **costs of implementation** of age discrimination legislation did not appear to be a major issue. Few expected the costs to be substantial, and few planned to undertake any formal cost-benefit analysis, although most organisations expected to do some kind of assessment of the costs of implementation at some stage. Most expected some resistance to reforming HR policies from middle managers, and two expected it from board members. Most planned to carry out some management training when the implementation date approached.

The key message for Government was to minimise uncertainty by publishing **clear regulations** which clarified the standards of justification for dismissal and thus reduced dependence on case law. Although most organisations identified a range of sources of support and advice in implementing such changes, they were keen that Government guidance should be as clear and definitive as possible. Several organisations asked that announcements on age discrimination and pension reform should be synchronised, to avoid confusion among employees and the need to carry out two separate reorganisations of systems and procedures.

There was particular concern about **conflicts between age discrimination and other legislation**, and especially the interaction with disability discrimination law. Here there was felt to be a need to clarify what 'reasonable adjustment' for disabled workers under the Disability Discrimination Act might mean as people grew older.

HR managers had mixed views about the likely impact of the possible **abolition of contractual retirement ages** on their organisations. Some felt that abolition would force improvements in the management of older workers, and at least one organisation was planning to abolish its own retirement age regardless of Government decisions. Most of the employers already allowed staff to work up until 65, and were unlikely to be significantly affected by Government's plans to set a default retirement age of 65.

### **The pending age discrimination legislation**

Under the EC Directive on Equal Treatment in Employment and Occupation, all EU Member States are required to introduce legislation to prohibit age discrimination in employment and vocational training by December 2006. This requires the prohibition of discrimination in: access to employment, vocational training, working conditions and membership of unions and employee associations.

However, Member States have discretion about implementation, particularly in relation to exemption for age differences in treatment which is deemed to be 'objectively and reasonably justified'. This gives the UK greater flexibility in its application of the Directive in relation to age than to other forms of

discrimination. In implementing the Directive the UK Government aims to maximise the benefits to employers, employees and the wider economy, while minimising burdens on business.

### **About this project**

This is the report of a qualitative research study commissioned by the Department of Trade and Industry, and carried out by the Centre for Research into the Older Workforce at the University of Surrey. Its aims were to investigate human resource practices across a range of employers and to examine how well adapted they are to the requirements of the forthcoming age discrimination legislation.

The study began with a review of the literature, and interviews with key national informants: the Chartered Institute for Personnel Development (CIPD); the Employers Forum on Age (EFA); the Trades Union Congress (TUC); and the Confederation of British Industry (CBI). These interviews were followed by 14 case studies of individual organisations. In each case study, interviews were conducted at the firm with senior HR managers, trade union and employee representatives, and line managers. The study was carried out between July 2004 and January 2005.

# 1

## Literature review

Prior to conducting the case study research, existing literature, both in the UK and abroad, was reviewed and representatives from key stakeholders from both employer and employee sides were interviewed. This review indicated that, while some employers have put considerable resources into equality-proofing HR practices in relation to age, most have paid little attention to the subject. A survey conducted by Manpower (2004) found that 61 per cent of employers either had not heard about the legislation or were not preparing for it. Both the Confederation of British Industry (CBI) and Employers Forum on Age (EFA) suggested that employers are deferring action until the publication of draft regulations. Employers are reluctant to spend time and resources on developing policies and practices until they have a clear picture about what will be required of them by law.

The Chartered Institute for Personnel and Development (CIPD) and EFA both said that most of their members have not begun to review their HR policies. Once they do, they argued, employers find that the implications are more significant than originally thought. CIPD represents HR managers, and EFA is an organisation of senior managers of employers which have some interest in age management issues. The level of preparation for organisations outside of CIPD and EFA would be expected to be even lower.

### **Age discrimination**

Ageism has only been widely recognised as a form of discrimination within the last quarter century (Bytheway 1995). Even in the US, which has prohibited some forms of workplace discrimination against older workers for 37 years, older American workers have not been recognised by the US judiciary as an oppressed group of workers; and workers under 40 are unprotected against age discrimination. Greengross and McEwen (1990) referred to ageism as the unrecognised discrimination. Much of the problem with identifying ageism as a form of discrimination can be attributed to the difficulties in disentangling ideas around discrimination from concepts pertaining to career paths and psychological and physical changes associated with ageing.

In this part of the report, the current debate around age discrimination in the workplace will be discussed. This includes a review of the literature, as well as reflection on interviews conducted with key stakeholders on the subject including the EFA, CIPD, CBI and Trades Union Congress (TUC).

## **Employers' views on age discrimination legislation**

Previous research shows little evidence of hostility among employers to combating age discrimination in the workplace. This is evident in quantitative surveys conducted on behalf of the Department for Work and Pensions' (DWP) *Age Positive* (DWP & NOP Social and Political 2001) campaign and, previous to that, the Department for Employment and Education's (DfEE) *Getting On* campaign (Hayward et al. 1997). Perhaps surprisingly, this even extends to support for legislation, where Taylor and Walker found in 1994 that a majority (53 per cent) of the 500 large employers they surveyed favoured some form of legislation to address workplace age discrimination. More recently, a survey conducted by the Chartered Management Institute (CMI) (2003) revealed that 79 per cent of employers believe that legislation will lead to a more diverse workplace. Employer opposition rests not on the principle, but on scepticism over whether legislation would be effective, with 53 per cent of employers surveyed by CMI revealing that they do not understand how justified and unjustified age discrimination at work can be differentiated.

Taylor and Walker (2003) suggest that prohibition of age discrimination may have a significant impact on customs and practices, particularly in industries with an ageing workforce. EFA (2001) argue that employers will need to make considerable changes to their HR practices if they are to avoid costly tribunals after the legislation is enacted.

## **Employers' preconceptions about older workers**

EFA suggested that employers who have not begun to review the age dimension of their HR policies are most concerned about the impact of the legislation on recruitment, retention and retirement. It contended that employers fear that the legislation will restrict their ability to manage staff efficiently.

Employers worry that the legislation may force them to recruit and/or retain employees after they have passed the peak of their capabilities. However, some of the research evidence suggested that these anxieties are based on preconceptions which are either out of date, or were never true. Surveys conducted of local authorities (Itzin, Phillipson, & Laczko 1994), for example, suggest that employers' reluctance to recruit older workers is associated with the belief that older people 'cannot learn new skills well', while other employers believe that older workers take more time off for sickness (Hayward et al. 1997). However, Abraham and Hansson (1995) argued that while some abilities do decline with age, older workers find ways of maintaining job performance. Belbin (1965) found that while the speed of absorption of new skills may slow with age, older workers tend to be able to retain information longer. Warr (1994), in a survey of 100 studies of age and performance, showed that older workers actually take less short-term time off for sickness.

## **Retirement**

One of employers' main concerns about the forthcoming legislation relates to occupational retirement age. In its 2003 consultation paper, *Age Matters* (DTI

2003), the Department of Trade and Industry (DTI) proposed three options for retirement: to ban compulsory retirement ages altogether; to allow employers to set contractual retirement ages within the guidelines published by the Government; or to set a default age of 70 after which dismissing people on grounds of age would be permitted. In December 2004, the Secretary of State announced the Government's decision to abolish compulsory retirement age, but to set a default age of 65 after which it will be permissible to dismiss someone on grounds of age. It has pledged, however, to review the policy in five years.

The CBI expressed concern that abolition of retirement age could change the relationship between employers and older workers. Whereas now, older workers automatically leave the workforce after a certain age, it was thought that a complete abolition of occupational retirement ages could compel employers to dismiss older staff because of poor performance. It was felt that such a scenario would have a negative impact on older workers as they enter retirement.

Complete abolition of retirement age may not have as significant an impact on the workforce as some stakeholders, like the CBI, expect. The Centre for Research into the Older Workforce (CROW) recently conducted a survey of 401 older people, both in work and retired (McNair & Flynn 2005). The findings are scheduled to be published in 2005, but two results are particularly pertinent to this project:

First, the survey found that contractual retirement age does not seem to be a significant factor in people's decisions on retirement. Only 12 per cent of employed respondents, and 11 per cent of those retired thought that their employer's contractual retirement age was a factor in deciding when they would retire.

Second, the research found that older people want the right to continue, and the right to exercise choice about when they retire. Respondents were asked whether they felt that the three options posited in the *Age Matters* consultation paper would be: good for people in my line of work; for the economy; for older people and for society. Overwhelmingly, respondents were more likely to support complete abolition of retirement age than the other options.

**Table 1: Older Worker Views on the Government's Retirement Policy Options**

Good for:	People in my line of work	The economy	Older people	Society
Abolishing compulsory retirement	57	66	64	61
Employer set within Government guidelines	43	54	49	46
Default age of 70	27	28	26	26

CROW 2005 (results of unpublished survey – publication pending)

Employers' perceptions have a significant impact on older workers' chances of staying in and progressing at work. Wrenn and Maurer (2004) suggested that managers' beliefs about declining ability have a greater influence than workers' own capabilities. The potential impact of employer prejudice has led some (Duncan 2003; Taylor & Walker 1997) to argue that the legislation on age discrimination could help to eradicate transparently ageist HR policies, but do little to address underlying disadvantages which older workers face in the labour market.

More broadly, CBI has expressed concern about the impact of the legislation on succession planning, chiefly as it relates to changes to retirement age. By compelling employers to keep staff in employment longer than expected, it fears that promotion opportunities could be limited for younger staff. However, it has been noted both in interviews with EFA and by Taylor and Walker (2003) that, in many sectors, the rapid turnover of employees makes it impossible for many employers to develop effective succession plans, and CIPD suggested that many employers are abandoning succession planning, at least for some roles.

## **Recruitment**

Discrimination against older workers can affect both those still in employment, and those seeking to change jobs or re-enter from unemployment, and a particular set of issues arises for the latter group, where prejudices about the relationship between age and ability and motivation are likely to impact most severely. Government figures indicate that as people age it becomes progressively more difficult for them to re-enter employment (Cabinet Office 2000). Hornstein (2001) suggested that age discrimination laws in other countries have been more effective in helping older workers stay in, rather than to attain, employment. Employers in the USA and Australia have more discretion in not recruiting someone based on his/her age than in compelling an employee to leave. However, in the UK, recruitment procedures are more tightly regulated. If the scope of the legislation covers recruitment, unsuccessful applicants in the UK could find it easier to challenge employers than their US or Australian counterparts.

## **Training**

Participation in job-related training, and education more generally, declines with age. CROW research (McNair et al. 2004) indicated that older workers are less likely than their younger peers to receive employer sponsored training, even in situations in which they change to jobs requiring greater skills or taking on new responsibilities. Labour Force Survey (LFS) data showed a mixed picture (Urwin 2004). While older workers (between 50 and State Pension Age (SPA)) are significantly less likely to take part in job-related training than younger workers, there is a much smaller gap between the proportion of younger and older workers who have been offered training by their employers.

The discrepancy between offer and take-up suggests that the low level of older worker participation may be more a product of the self perceptions of employees than of employers' unwillingness to train. This is a view expressed by

employers (Itzin, Phillipson, & Laczko 1994). However, Brooke (2003) pointed to employers' perception that employees who are close to retirement will not generate an adequate return on the training costs. It may be that both factors are involved. DWP (2001c) found that unemployed older people are less likely to take up government assisted schemes even after targeted campaigns; and Warr and Fay (2001) found a decline with age in participation in educational activities. However, given that younger workers change jobs more often than older workers, employers' views that training younger workers is a safer investment than training older ones may not always be sound (Taylor & Urwin 2001).

### **Pay and conditions**

CIPD, EFA and CBI expressed concern over the impact of the legislation on age-related systems for setting pay and conditions, which may be direct (as with lower age limits on some kinds of driving and machine operating) or indirect, as with incremental pay scales, which inevitably tend to reward older workers. Some pay and conditions are often age-related, either directly or indirectly (e.g. based on length of service). The Workplace Employee Relations Survey (WERS) 1998 found that 18 per cent of employers use age of employees as a factor in determining pay, while 34 per cent use length of service (Department of Trade and Industry 1998). Length of service pay and benefits awards are particularly prevalent within public sector organisations. Long service awards could also be considered age discriminatory.

There was a consensus amongst stakeholders that some age based pay and conditions could be justified for reasons related to employee morale, but that differences should be proportionate. The CIPD, for example, argued that shorter or tapered (i.e. faster progression at early stages) progression could mitigate employment tribunal challenges. The TUC suggested that long service awards worth a few hundred pounds could be considered justifiable, while a pay system in which an employee would need 20 years to reach the maximum would not.

### **Pensions and retirement**

A third problem identified was the relationship between pensions and retirement. Even though the legislation does not directly affect either the State or occupational pension ages, both the TUC (2003) and CBI (2003) expressed concern about how the three options on retirement age would lead to changes in pension ages. The TUC is concerned that a default retirement age set at 70, together with financial constraints, could encourage employers to raise their occupational pension ages. CBI has called for pensions to be exempt from the legislation, and, in our interviews, warned that eradication of compulsory retirement ages will result in workers postponing saving for retirement, planning instead to work longer than they are realistically capable.

EFA identified a third potential source of difficulty in the increasing number of organisations which have closed their defined benefit pension schemes to new entrants. The two-tier system in which longer serving employees have better, or at least different, pension entitlements could be ruled age discriminatory. While the EFA anticipates that most age based conditions of service may be

levelled up in order to avoid claims under the Wages Act, employers are likely to strongly resist re-opening defined benefit schemes which are seen to be too expensive to keep open.

Meadows (2003) noted a fourth potential conflict, associated with the elimination of compulsory retirement. Permitting employees to continue to contribute to their pensions past what was hitherto considered their retirement age could lead to unlimited financial liabilities for employers. TUC argue that such concern may be exaggerated, as a 'flexible retirement decade' could provide a balance between offering employees choice on when they leave work, while ensuring employers have the certainty of a fixed point at which the employee's accrual ceases. Hayward et al (1997) found that 42 per cent of employers operate flexible retirement, with 22 per cent setting no retirement age at all.

### **Flexible retirement**

Employers in the UK are beginning to adopt policies for facilitating older workers in staying in work longer through more flexible work arrangements. Labour shortages often account for such initiatives, as employers see older workers as an under-used source of skills. However, Mooney and Stratham (2002) noted that flexible working arrangements are much less often offered to older workers with elder care responsibilities than younger workers needing childcare arrangements. EFA reported that most of their members now offer special leave for employees with elder care responsibilities. EFA's membership is predominantly large employers, and the situation could be different for smaller organisations.

Part-time working arrangements are used more often by older women than older men. Lissenburgh and Smeaton (2003) found that part-time employment for men is associated with labour market advantage (e.g. enjoying a high degree of choice over the kind of work they move into), and for women it is associated with disadvantage (e.g. job insecurity and low pay). However, they also noted that men who enter part-time work are likely to experience a significant drop in income, while women, surprisingly, experience an hourly wage increase when moving from full-time to part-time work.

Portfolio working (in which a worker chooses to work on a short-term contract basis for more than one employer) has been a way in which some older employees manage their way into retirement and enable employers to help people stay in work but with more flexible working patterns. However, Platman (2003) noted that such workers are particularly vulnerable to job loss and exploitation, as their network of clients shrinks. EFA questioned whether flexible retirement arrangements (whether initiated by employers or employees) to help older workers postpone retirement could conflict with the age discrimination legislation, especially where tribunal applicants complain of being compelled into such arrangements.

## **Younger workers**

The legislation will proscribe age discrimination against workers of all ages, but most of the literature has focused on older workers. Snape and Redman (2003) found that, although forms of discrimination can differ, younger and older workers are equally likely to experience discrimination. That said, Maturity Works (2003) found that only 13 per cent of a sample of 150 people between 34 and 67 surveyed recall been discriminated against before the age of 40, but 65 per cent of the older respondents reported that they had experienced age discrimination after they turned 50.

While older workers are often assumed to be incapable of adapting to new technology or learning new skills, younger workers are susceptible to assumptions of being capricious or unprofessional (Carnegie Trust 1993). A study carried out for the DWP (2001a) found three areas of concern:

Younger, like older, workers can be subject to implicit age barriers to recruitment and promotion. Although few advertisements were uncovered which placed direct age bars on jobs, language such as 'mature applicants needed' revealed barriers to younger applicants. EFA noted that the finance and care industries are among the most likely sectors to impose arbitrary age floors, attributed to customers' views of older service providers as more trustworthy. DWP found that younger workers are more likely to be subject to discrimination in communities where there is higher unemployment, suggesting that, like the over 50s, workers in their teens to early 20s are often treated as a 'reserve pool of labour' (i.e. a group of workers who can be recruited in times of labour shortage and expelled during periods of recession). That said, younger workers can experience problems with being perceived as 'too old' for certain entry level or apprenticeship jobs.

Pay and conditions for younger workers may also be affected by the legislation, particularly where young people are employed in training or apprenticeship programmes. The national minimum wage is presently lower for under 21 year olds. The Government has raised the minimum wage for 18-21 year olds and set a minimum wage of £3.00 for 16-17 year olds, acceding to the Low Pay Commission's argument (2004) that a wage floor for young workers would help prevent exploitation.

DWP found a significant problem of harassment and victimisation of younger workers by their line managers and work colleagues. Less skilled younger workers are particularly susceptible to bullying, teasing, and being singled out to perform menial or unpleasant tasks. Although employers frequently have policies prohibiting harassment and victimisation, they do not often include explicit prohibitions of age-related bullying. In some industries, such as manufacturing, there is a significant gap between policy and practice. (Taylor & Walker 1994).

## **Policies and practices**

A minority, albeit a large minority, of employers has written policies on age discrimination. DWP (DWP and NOP Social and Political 2001) estimated that

around a third of employers have written policies, usually incorporated into wider equality codes. Around one in ten organisations do not have written age policies, but claim to have implicit understandings about age management, but how well disseminated such understandings are within the corporate structures is unknown. Only a small number of organisations, according to the DWP, explicitly restrict job opportunities based on age. Usually, health and safety or insurance reasons are cited to legitimise such practices.

Government, industrial and pressure group campaigns have had some success in persuading employers to adopt policies to ban age discrimination. Since its launch in 2001, the DWP estimated that its Age Positive campaign contributed in part to raising the proportion of British employers with written policies on age from 25 per cent to 33 per cent (although other factors, such as changes in the labour market, played a role as well). Similarly, 88 per cent of employers who had seen guidelines issued by the Institute of Personnel Development (now CIPD) reported to have complied with some or most of its recommendations (Hayward et al.1997). However, most also said that the guidelines had not changed their HR practices much.

While many organisations have policies, written or unwritten, proscribing age discrimination, there is often a gap between policies and practice. McVittie et al. (2003) found that in interviews, managers of organisations with written policies often displayed ageist attitudes or at least a lack of understanding about age equality. Platman and Tinker (1998) noted that in the BBC, an organisation with a comprehensive policy on age, older workers were vulnerable to job loss during a period of financial cutbacks imposed on the corporation. DWP (2001b) found that, where there are policies on age, these policies are not usually disseminated to line managers through training.

### **Differences between employers**

Taylor and Walker (1994) found differences in age policies according to sector, while Arrowsmith and McGoldrick (1997) found differences according to size of employers. External factors, such as whether the employer is facing a labour shortage or surplus, play a primary role in determining how employers address age management, rather than a desire to eradicate discrimination. This seems to support Duncan's (2003) argument that the business case approach seems to predominate in explaining why employers are presently reviewing their policies on age.

EFA, whose membership base is mainly large employers with an identified interest in age issues, report that most of its members have policies on age. CBI, which has a much broader constituency, noted that most of its members have not yet started to review the age dimension of their HR policies, choosing instead to wait and see what the draft regulations will require of them. CIPD noted that, while age is a less important issue for its members than gender or race equality, there is an increasing interest in the subject, demonstrated by the increasing volume of requests for advice and information.

Public sector organisations are more likely to have formal policies on age than private organisations (Itzin, Phillipson, & Laczko 1994), reflecting the more

regulated employment practices in Government. Usually, policies on age are part of overall equality policies with few public bodies featuring stand-alone age policies. However, while public organisations are more likely to have adopted age policies, there is evidence of problems in age management within the public sector. There has been significant union resistance to Government plans to raise the occupational pension age in local government and the Civil Service from 60 to 65. Further, Watson et al (2003) discovered that despite a significant shortage of nurses, the NHS has not focused systematically on how flexible working arrangements could help in the retention of older staff.

Taylor and Walker (2003) noted that service industries are offering flexible working patterns to older employees to help them stay in work longer. Part of the reason for this is the shift towards a 24 hour/7 day a week service culture, and the need to recruit staff to work atypical hours. However, they also argued that recruitment and retention drives are usually limited to low-skilled front line jobs, and could lead to the ghettoisation of older workers (Taylor & Walker 1994).

The size of organisation appears to have some bearing on the likelihood of age policies. Large organisations (500+ employees) are most likely to have adopted anti-discrimination policies which include references to age (DWP 2001b). Arrowsmith and McGoldrick (1997) attributed the reason to large organisations' dedicated HR staff. On the other hand, they also argue that small employers are highly likely to adopt policies to accommodate older staff. Far from resisting flexible working, small employers have used such practices to recruit older workers displaced from larger industries. The TUC noted that small employers are establishing informal networks between themselves in order to accommodate staff who want to work flexibly.

### **Experiences of other countries**

The United States abolished compulsory retirement and age discrimination for most categories of employees through a series of federal statutes beginning in 1967. The Age Discrimination in Employment Act (ADEA) only protects workers over 40, and does not protect employees from discrimination based on 'being too young'.<sup>2</sup> Some groups of workers are excluded from the legislation either because of their official positions (e.g. judges); for health and safety reasons (e.g. fire fighters); or for 'genuine occupational-related reasons' (e.g. actors). The scope of the legislation has been determined by the courts through judicial interpretation which have usually treated ageism differently from discrimination based on gender or race. Older workers are not considered a 'suspect' group; that is, workers who are consistently and historically

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<sup>2</sup> In *General Dynamics Land Systems v. Cline*, the Supreme Court rejected a claim that a company's policy which excludes employees under 50 from health benefits is age discriminatory against employees in their 40s.

disadvantaged (Meenan 2000). For example, successful applicants cannot receive punitive damages; and the enforcement agency must first try to resolve disputes through conciliation before enforcement takes place. Issacharoff and Harris (1997) have gone as far as to argue that ADEA has not eradicated discrimination but simply transferred wealth from younger to older workers.

Age discrimination can be proven through both disparate intent (i.e. direct discrimination) and disparate impact (i.e. indirect discrimination). Indirect age discrimination has historically been more difficult to prove in the US than indirect race or gender discrimination, and the Supreme Court is presently considering whether it is allowable proof at all (*Smith v Jackson MS*). Part of the reason for the ruling is because the ADEA only prohibits 'arbitrary' age discrimination, and courts have allowed employers a degree of latitude for defending discrimination for business reasons. For example, employers are allowed to maintain seniority systems which directly link promotion to length of service; and ageist remarks have been ruled not to be adequate proof of discrimination.

Unlike other forms of discrimination, international experience suggests that there may be difficulty in disentangling discriminatory practices from what would be considered genuine business reasons. Neumark (2003) noted, for example, that in the United States, courts have failed to keep pace with advancing knowledge on the relationship between age and capabilities, accepting arguments for age discrimination which can no longer be supported on the basis of evidence.

US employers have some discretion in using early retirement as a way of managing job attrition. However, legislative changes in 1990 have restricted scope to where there are legitimate business reasons for favouring older workers over younger workers for exit.

Even though the scope of the ADEA has been considerably more limited than the framework outlined for the UK legislation in *Age Matters*, it has been found to have had a significant effect on the employment rate of workers aged 50 and over. Adams (2004) estimated that 5 per cent of older workers' labour market participation can be attributed to the Act.

In Europe, only a few countries have as yet adopted age discrimination legislation. Ireland has the most comprehensive policy, which is covered in a single act prohibiting nine different forms of discrimination. The introduction of the Employment Equality Act 1998 was coupled with comprehensive guidelines from the enforcement agency responsible. While the guidelines have been criticised for creating rigid employment rules, they have had some success in mitigating the number of employment tribunal cases (Meenan 2000).

The Act has a number of limitations to its scope. First, employment protection is limited to workers between 18 and 65. These age limits have been upheld by the Irish Supreme Court, but it is not certain whether they will comply with the Employment Directive. Second, occupational pensions are not covered by the Act, which until recently gave employers scope to offer different pension schemes to older and younger workers. However, in April 2004, pensions legislation was amended to ensure compliance with the Directive, and the Pensions Act 1990 now outlaws discrimination in pension provision on grounds of age, but lists a number of rules that are exempt from the prohibition. Third, the

Act allows flexible working programmes to raise the labour participation rates of older people and people with disabilities.

Elsewhere in Europe, Nordic countries have gone furthest in raising the labour participation rates of older workers, although less in the way of explicitly addressing age discrimination at work. In Finland, age equality is written into the Constitution and enforced through national frameworks on pay and conditions. Few court cases have been taken on the grounds of age discrimination (Hornstein 2001). In Norway, the default retirement age (after which time protection against unfair dismissal ceases) is 70, although most workers retire before the State Pension Age, which is set at 65.

Elsewhere in Europe, movement on age discrimination has been sporadic, reflective of employment traditions which have favoured early exit of older staff during periods of high unemployment. In France and Belgium, for example, although age limits in job advertisements have been banned, employers still favour early retirement as a way of reducing the workforce.

In the Netherlands, such arrangements are also common. However, a social pact has recently been negotiated which facilitates the retention of workers approaching retirement.

### **Implications for the present study**

This literature review and interviews with key informants underscored the complexity of this issue, and identified a number of areas which needed investigation. The present study sought to address these, and the findings are reported in later chapters. From the literature the following hypotheses seemed plausible:

- Employers are not openly hostile to the concept of age equality;
- Employers and their HR staff might be making different assumptions about the legislation, and these assumptions needed probing before examining the issues;
- Most employers have not yet begun to review policies to ensure compliance with the planned legislation. Few have considered the cost-benefit implications of implementation;
- There is confusion about the boundary between acceptable and unacceptable reasons for different treatment, and employers would welcome clear guidance;
- The approach adopted by an employer to age discrimination reflects a number of contextual factors, including: sector, organisation size, and the extent and nature of skills gaps and shortages;
- There is a gap between policy and practice in implementing discrimination legislation, and this might be particularly true in relation to age, since the issue has only recently been widely raised;
- Key HR policies which might improve as a result of the legislation include:

- Recruitment, progression and retention;
- Pay and conditions, including long service and loyalty awards;
- Retirement, including justification for enforced retirement, and the effect on savings and pensions for employees;
- Flexible working patterns, allowing the employment of people with caring responsibilities;
- Flexible retirement.

# 2

## Methodology

The project sought to establish:

- How aware employers were of age discrimination and the implications of the pending legislation;
- How important they thought it was;
- How far current practices were conducive to age diversity;
- How far current practices were consistent with the proposed legislation;
- How far they were amenable to change.

The research began with a literature review and interviews with key national informants Chartered Institute for Personnel Development (CIPD), Employers Forum on Age (EFA), Trades Union Congress (TUC) and Confederation of British Industry (CBI). Four preliminary case studies were carried out to test the case study methodology, which was then revised. A further ten case studies were then carried out in organisations of varying size and sector. Case studies included interviews with HR directors, employee representatives or trade union representatives and line managers. Each interview was taped and transcribed. Transcripts have been placed with the UK Data Archive ([www.data-archive.ac.uk](http://www.data-archive.ac.uk)).

Data was analysed using the qualitative analysis software MaxQDA. A copy of the coding schedule is included in Appendix C.

### **Case studies**

Fourteen case studies were chosen, representing a range of organisations of different sizes, from a variety of sectors, and with different ownership and management structures. Organisations which considered themselves advanced in promoting age equality, and those which had not thought greatly about the issue were represented. Four of the organisations requested anonymity, and the remainder agreed to be named. Each organisation has seen and approved its own case study and all references to it in the main text.

Table 2 provides a brief indication of the key features of each case study organisation. The individual case studies can be found in Appendix A.

**Table 2: Case studies investigated.**

Name	Company	Sector	Size <sup>3</sup>	Geographical	Ownership
INSPECTOR	CORGI	Service	Medium	National	Private
POLICE	Metropolitan Police	Public	Large	London	Public
SUPERMARKET	Anonymous	Retail	Large	National	PLC
COMMS	British Telecom	Communication Solutions	Large	National	PLC
LOCAL GOVERNMENT	Surrey County Council	Local Government	Large	South East	Public
SME	BJC Commercial Services	Cleaning/Trade	Small	National	Family firm
RESIDENTIAL HOMES	Housing 21	Residential homes	Large	England-wide	Provident
PRINT	Benhamgood headprint (bqp)	Print	Medium	South East	PLC
CHARITY	Meningitis Trust	Charity	Small	South West	Charity
LAW FIRM	Cripps Harries Hall	Legal	Medium	South East	Partnership
HEALTH RETAIL	Anonymous	Retail	Large	National	PLC
UNIVERSITY	Anonymous	Higher Education	Large	South East	Public
REGIONAL NEWS	Anonymous	Media	Large		Private company <sup>4</sup>
PHARMACEUTICAL	GlaxoSmithKline	Pharmaceuticals / Manufacturing	Large	Global	PLC

### Interview schedule

The interview schedules, designed by the research team and agreed with DTI, are included as Appendix B. The objectives of each set of questions are as follows:

- *Senior HR officers:* Senior HR representatives were interviewed in all of the case studies. In most cases, this was the company's HR director or head of HR, although in some cases it was the officer responsible for leading on equality and/or age management issues. In one organisation, we spoke with the director of the company. We discussed the

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<sup>3</sup> Large: over 500 employees; medium: 100-499 employees; small: under 100 employees

<sup>4</sup> REGIONAL NEWS is a family owned firm, although its legal classification is "private company."

organisation's HR policies and practices as well as what measures were then being taken to ensure that employment practices would conform with the age discrimination legislation. The interviews began with open-ended questions, intended to gather unprompted information about the HR challenges for the organisation; the drivers for age management practices; and preparation for the age discrimination legislation. These were followed by questions relating to specific HR policies, which may or may not have been picked up in the open-ended questions. We also asked about lessons learned from previous legislation, and what actions the company has carried out in preparation for the age discrimination legislation. Finally, we provided the respondent with the opportunity to comment on the legislation, specifically what factors should be used to determine whether the legislation has been successful.

- In the pilot stage of the project, finance officers and other senior officers of the two organisations were also interviewed to test for divergent views, but none emerged. In view of this, the research team agreed with DTI that interviews with senior HR officers only would provide an adequate corporate view of the issues. The interview schedule was therefore expanded to incorporate financial and strategic questions.
- *Trade union/employee representative:* Seven organisations were able to identify staff representatives for interview. Five of the interviews were conducted with independent union representatives, and two interviews were conducted with staff council representatives. The interview schedule for the union/employee representative mirrored that for senior HR officers in order to check for possible discrepancies between management and staff perspectives.
- *Line managers:* In eight organisations, group interviews were carried out with line managers to discuss their experiences in managing employees of different age profiles and their perceptions of the age discrimination legislation.

Since the interview schedule was designed in order to gather information rather than generate spontaneous responses, abridged versions of the interview schedule were sent in advance to each of the interviewees, so that he/she could gather in advance information which they might not otherwise have to hand. Respondents were shown all of the interview schedules to give them the opportunity to answer any question not included on their respective schedules. Analysis of the pilot study, and subsequent case studies, showed that this strategy was effective in facilitating robust and informed discussions on the age management policies of the case study organisations without jeopardising the candidness of participants.

# 3

## The strategic context

### Public and private sectors

In terms of strategic issues, the most striking difference between the case study organisations was between the public and private sectors. This was evident both in their focus of attention and in the degree of formality of their processes.

The common feature of all the public sector organisations was a sense that public and political expectations were expanding faster than resources, leading to a struggle with externally imposed constraints. Even POLICE, which had been expanding staff numbers rapidly, pointed out that pay awards above inflation were increasing the organisation's financial problem, and that a large surge of new recruits was putting pressure on the quality of service. For them, skills shortages were a particular issue, both to retain the skills of experienced officers at a time of rapid expansion of new entrants, and also for higher level specialist skills to respond to the increasing sophistication of crime. UNIVERSITY expressed concern about financial constraints, and was responding to the financial challenge by providing a more efficient administrative and support service with reduced staffing levels. LOCAL GOVERNMENT also faced a downsizing of around 10 per cent, but were doing this in the context of a major programme of structural and cultural change involving moving the entire organisation to a new location, as well as introducing new IT systems.

All of the public sector organisations had formal consultative structures for dealing with equal opportunity and HR issues, with written policies and processes for implementation. The private sector ones, on the other hand, were much more varied, with generally positive attitudes to industrial relations, but sometimes in the context of what one HR manager described as 'paternalistic' attitudes.

In the private sector, organisations were much more strongly focused on customer responsiveness and competition. LAW FIRM's strategy to become the leading regional firm in their field called for higher quality staff, a concern shared by PHARMACEUTICAL, an organisation trying to maintain a leading edge standing in a very high skill field. Both were concerned with competition in recruitment and the management of succession. Succession was also an issue for PRINT, where traditional career patterns based on apprenticeship and progressive promotion over a working life remained strong, but were potentially challenged by technological change. SUPERMARKET's focus was more directly on customer service standards, including issues such as maintaining availability of goods and queuing times; but expansion, both within the UK and internationally, was also a major strategic thrust. The principal concerns for

REGIONAL NEWS were declining newspaper sales generally and the need to seize a greater share of potential advertising revenue.

Two of our case study organisations, INSPECTOR and COMMS, had crossed the public private divide. In INSPECTOR, cultural legacies from its former status as a public sector body continued to affect conditions of service and cultural attitudes internally. COMMS has been in a long-term process of downsizing in response to technological change. During the last three quarter-years, it had lost a further 4,800 staff through a combination of natural wastage and voluntary leaver schemes. INSPECTOR, meanwhile, was diversifying from its traditional regulatory base into a range of other functions, which brought a different kind of staff and different commercial pressures.

Finally, the pattern in the voluntary/charitable sector was also turbulent. RESIDENTIAL HOMES had been through the acquisition of a number of distinct agencies to form a large nationwide organisation, bringing a series of problems relating to harmonisation of conditions of employment.

### **Customer demand**

Changing customer demand, in various forms, was a theme of most interviews, though more strongly expressed by the private sector organisations. SUPERMARKET talked about the quality of customer experience, and reinforcing brand values through service levels. HEALTH RETAIL, on the other hand, was conscious of the need to compete on price. LAW FIRM stressed rising client expectations. REGIONAL NEWS was concerned about declining readership, with competition from television and online information sources.

For the voluntary and public sector organisations, customer demand took several forms. The rising public expectations which POLICE was experiencing included Government expectations of changed responses to social diversity, and more front line officers, combined with the call for more highly qualified senior officers to meet more specialised and complex needs. INSPECTOR and RESIDENTIAL HOMES both talked about the need to respond to increasing and changing regulation of services, which generated both more demand for their expertise and for experienced and specialised staff. In the case of RESIDENTIAL HOMES this was partly related to a changing clientele, with a more dependent elderly population in their accommodation as a result of rising life expectancy. CHARITY was also trying to cope with declining demand for its services as a result of improved drugs and medical treatment, by diversifying its services.

### **Skills issues**

Skills gaps and shortages featured in many of the case study interviews. LAW FIRM stressed the dependence of high quality legal services on scarce high quality staff, but also the need to create progression opportunities for aspiring younger ones by managing succession. On a global scale PHARMACEUTICAL had similar concerns, bidding in an international market for scarce staff who could work at the leading edge of practice. On the other hand, PRINT and COMMS were both experiencing technological change which had led to major change in skills requirements. PRINT had a long serving workforce whose skills

sets were largely made superfluous by the introduction of new machinery. The organisation chose to train staff on the new technology rather than make them redundant. COMMS had undertaken massive downsizing, and offered extensive retraining to those who wished to continue working and take up new roles. REGIONAL NEWS had a strong loyalty among its workforce, with a tradition of local, and sometimes family recruitment. LOCAL GOVERNMENT, on the other hand, faced a major culture change process which would require major retraining of all staff for new modes of working. UNIVERSITY had to adopt flexible working and retirement patterns to ensure that it retained the critical skills and knowledge needed to maintain teaching and research in highly specialised fields.

### **Diversification and new markets**

A conspicuous feature of almost all the private sector case study organisations was the move into new or wider markets. PRINT and REGIONAL NEWS were moving from traditional print and journalism to digital technologies. SUPERMARKET was expanding internationally. INSPECTOR and SME were both diversifying into wider areas of construction, while LAW FIRM was trying to balance its traditional legal base with demand for work in new areas of law. RESIDENTIAL HOMES was exploring the potential for its residential units to act as local community support agencies.

### **Reorganisations**

Many of the organisations had experienced some form of reorganisation or merger at some time in the past, with implications for staff attitudes and conditions of service. PHARMACEUTICAL had been created by the merger of two international pharmaceutical companies, whilst INSPECTOR had been privatised. This had left them both with a legacy of inconsistent practices, not least in relation to HR issues affecting long serving staff on protected conditions. LOCAL GOVERNMENT's complex reorganisation, with a change of location, new IT systems and new ways of working all being introduced simultaneously, was predictably causing some tension with its trade unions.

### **The role of personalities**

One feature of the interviews with some of the organisations in particular was the role of key individuals in senior positions. REGIONAL NEWS reflected that this was important, an issue paralleled in LAW FIRM where the 36 partners exercised an influence over HR issues which was not always felt to be positive. In CHARITY, line managers noted that the Chief Executive made them feel empowered to offer staff flexible working patterns as an alternative to early retirement.

The family firms had particular issues: one informant talked about the power of intergenerational rivalry to block change in family firms, while another highlighted the positive features of family tradition and culture, but with a downside that traditions of recruitment from families of existing workers could lead to an unjustifiable, and perhaps illegal, narrowing of the recruitment pool. The importance of personality was not exclusive to smaller organisations or the

private sector. There was a strong expectation that the change of Commissioner in POLICE would lead to changes in practices and culture.

### **Strategic issues: case by case**

In addition to the general strategic issues identified above, there were particular issues facing individual organisations. The following section summarises the key points for each:

#### ***LAW FIRM regional solicitors***

For LAW FIRM, the focus was on the quality of service. They had grown from a local to a regional firm and aspired to become the premier regional law firm. Growth in business was continuing, albeit more slowly than in recent years, but they were conscious that success would depend on the quality of staff, which was proving a problem in a competitive market. The structure of the firm as a partnership, with 36 self-employed owners, was thought to make change difficult and weaken the role of HR professionals in facilitating change, or responding to changes in HR practice.

#### ***COMMS a national provider of communications solutions***

COMMS was experiencing continuing growth, but with increasing competition and development of new markets as technology developed. This went hand in hand, however, with a rapid shrinking of the workforce as technology replaced people. The organisation had lost 60 per cent of its staff since the early 90s and the trend continued, managed through voluntary redundancy and leaver schemes. They also offered reskilling training, which was an option alongside voluntary redundancy.

#### ***PRINT a national magazine printer***

PRINT was a major printer, which had in recent years moved out of newspaper printing and into magazines, with several hundred publications on its books. This led to changes in technology which had been managed through internal training within a very stable workforce, still based heavily on apprenticeship and progressive promotion across a lifetime.

#### ***LOCAL GOVERNMENT a large local authority***

LOCAL GOVERNMENT was going through major upheaval on several fronts simultaneously. Over three years it was moving the headquarters of the organisation physically to a different town, introducing a new IT system which will affect all staff, and imposing major productivity/efficiency improvements involving a 10 per cent reduction in staff costs. These changes were being supported by a culture change process designed to move resources closer to the client/customer, with less office based working. It was aware of problems about management skills to handle this, and about the need to instil a more customer focused approach to all its work.

### ***INSPECTOR a national inspector of gas installation***

INSPECTOR still carried the legacy of its former public sector self, with cultural differences between generations of staff. A new Chief Executive had been seeking to focus harder on the core businesses. Its largest body of work remained under contract from the Health and Safety Executive, with whom it was seeking to develop a clearer and more formal relationship, alongside its growing body of commercial work. It was also wrestling with the complex issues of accountability in an organisation which exists to inspect its own stakeholders. A variety of new issues was on its horizon, including diversifying into other areas of building work, and an expanded role in the new legal requirement to certify building work in the 'home sellers' pack'.

### ***RESIDENTIAL HOMES a national housing agency for the elderly***

RESIDENTIAL HOMES was a Provident Society and a registered charity with a national headquarters and estates in 400 locations in England. Its major challenge was coping with a more dependent elderly population as its residents live longer. It was also seeking to develop a new role as a source of local community support for older people.

### ***CHARITY a national health charity***

CHARITY was facing a decline in its traditional business as a result of improving medical techniques and drugs. It saw a possible response in extending its role into helping people with other medical conditions.

### ***SME a small flooring firm***

SME was a small firm providing flooring maintenance services to the retail industry. Its staff normally worked in pairs from regional bases. The firm grew in response to a market gap and was now diversifying into other aspects of flooring in response to new requirements of the Disability Discrimination Act. However, it had had unhappy past experiences of over-diversification into other areas of construction work, and the latest venture involved a partnership with a major multinational.

### ***UNIVERSITY a medium sized university***

UNIVERSITY was facing financial challenges. Expectations from students, Government and others were rising, and Government funding was not perceived to be adequate for current needs. The challenges were to improve the service by creating more efficient administrative and support systems, involving reduced support staffing levels while retaining the current spread of academic and research activities, and to develop the management skills to handle this. In recent years the University had been developing and formalising its management structures, but the quality and effectiveness of management remained a concern, given the peculiar traditions of Universities as institutions, with high degrees of devolution of responsibility and weak lines of accountability.

***HEALTH RETAIL a national retailer in pharmaceuticals and allied products***

HEALTH RETAIL operated as a national retailer with over 500 stores operating in a very competitive market, where profit margins were very tight. It faced problems in recruiting managers for a very broad range of responsibility in relatively small (and therefore low paying) stores.

***SUPERMARKET a very large international retailer***

SUPERMARKET was a major multinational retailer. Customer responsiveness and availability of products dominated its agenda and queuing times were a key issue. It was keen to diversify its workforce to reflect its customer base. It was expanding internationally, and was keen to maintain its brand and values through its entire staff.

***POLICE the UK's largest police force***

POLICE was acutely aware of staff issues. It was going through a period of expansion and changing of staff roles, with the arrival of new community officers and the development of a more highly skilled and educated senior cohort (at Chief Inspector level and above). It had just acquired a new Commissioner, and it was expected that he would produce changes in expectations and culture. Ageing and staff retention were high on its agenda, and there was a range of initiatives designed to enable people to stay in the organisation, often in changed roles.

***REGIONAL NEWS a regional newspaper chain***

REGIONAL NEWS, like other regional newspapers, was facing increasing competition from new media for advertising and for skilled staff. Its tradition of high staff retention had been eroded in recent years, partly through changes in technology, and partly by increasing staff mobility, especially among the younger workers.

***PHARMACEUTICAL a multinational pharmaceutical company***

PHARMACEUTICAL operated in a competitive global market, built around quality of products. The key strategic issue for PHARMACEUTICAL was the quality of its staff, in terms of recruitment, retention and training. It was still managing the process of harmonising conditions of service for staff from the merged companies. It had a succession management policy to develop senior managers and was developing a new redundancy policy.

# 4

## The human resource context

The dominant issue in the human resource context was skills gaps and shortages, and strategies to overcome these. However, only three case studies (POLICE, SUPERMARKET and LOCAL GOVERNMENT) explicitly identified age mix as a way of addressing these issues, although several were introducing more flexible working patterns, which could make them more attractive to older workers. Flexibility, like some other issues in this report, was very much in the hands of junior and middle managers, who, according to three of the case study organisations (POLICE, UNIVERSITY and SUPERMARKET) could sometimes be less positive about it than either employees or senior managers.

Most of the HR managers were aware, at a relatively low level, of age issues, and felt that the age balance of their organisations could be better. However, few of the case studies had any formal policies to address this. Several HR managers noted an uneven age distribution, reflecting in the case of public sector organisations previous waves of contraction and expansion in their sectors, and a perception that general career patterns were becoming more fluid. Several were aware of the existence of second career workers entering their organisations, or of retirees moving on to second careers elsewhere.

There was little evidence of formal succession planning or strategies for knowledge retention, although one case study organisation had a specific succession planning unit (POLICE) to manage the imbalances, and several expressed interest in taking succession more seriously as an issue. There was some evidence of a growing concern about recruitment costs, and the potential to reduce these by reducing premature exit.

There was little evidence of discrimination in the provision of training, although some organisations said that they would not consider supporting someone 'approaching retirement'. However, there was agreement that older workers tended to take up training less willingly. Some employers were looking for ways to overcome this reluctance, for example by working with trade union learning representatives. There were a number of perceived drivers for change in the age profile. These included customer match, labour shortages, the experience of older workers, reducing recruitment costs, and brand image. The pending legislation was not widely seen as a driver (prior to the publication of the regulations).

Only two HR managers saw work pressure as a major factor in the decision to retire, while several said that older workers who enjoyed their jobs were more likely to delay retirement than they would have been in the past. Finance was not perceived as a major influence on behaviour, although some thought that future generations of workers would not be able to afford to retire because of reduced pensions. More significant was the influence of a changing working environment on working life. Significant workplace changes, such as the introduction of new technology, had sometimes resulted in older workers choosing to bring forward retirement rather than adapting to change.

There was evidence of less flexibility in the workforce in the more traditional organisations (REGIONAL NEWS and PRINT) but both took a protective view of their older workers, whose skills were no longer so relevant.

### **Skills gaps and shortages**

Skills gaps and shortages dominated the discussions on the HR context with all the case studies. Most were concerned that they could not find skills they needed, or in some cases people to fill jobs at all. LAW FIRM, working in a prosperous area of the South East, with very low unemployment and strong competition for skills from London, commented that:

*'The main challenges facing us at the moment are staff recruitment and retention in common with most other organisations...People with good skills in whatever area you are in are hard to find and unemployment is particularly low in this area as well, so there is no workforce sitting out there saying, 'Come along and employ me.' We have to fight for it.'*

LAW FIRM

There were particular issues about managerial skills: SUPERMARKET had problems in particular geographical areas in finding people willing to take managerial positions. HEALTH RETAIL observed that it was very difficult to recruit to demanding managerial roles in relatively small stores, especially in regions with low unemployment. It felt this was because their stores were small but diverse and required managers with a wide range of skills.

While most of the case study organisations noted skills shortage as a general issue, a host of specific skills problems were also noted. INSPECTOR pointed to problems with sales staff, exacerbated by its background as a public sector body which was believed to deter applicants with a commercial background. It also had problems arising from changing customer expectations, with the need to run telephone helplines which require staff with practical experience. RESIDENTIAL HOMES noted that the roles they offered, overseeing residential facilities for the elderly, did not suit many people, and that they had a significant problem with staff turnover. REGIONAL NEWS had shortages of sub-editors, which it attributed to changes in schooling, and in experienced journalists, for whom the market had expanded with the global diversification of media. It also reported problems with high turnover of sales staff, for whom the market was relatively open and very competitive.

UNIVERSITY had a particular problem, common throughout higher education, that some courses or research projects had developed around the specialised knowledge of key individuals, who could not be replaced easily, leading to a range of strategies to allow flexible or deferred retirement.

The nature of skills problems varied significantly by location. For POLICE this involved recruiting and retaining staff in some of the most pressured areas of the inner city. In these areas, it was difficult to recruit in the first place, but because of the demands of the environment, staff acquired skills very quickly and were then 'poached' by other areas. More common problems related to costs of living, as with INSPECTOR, or strong local competition for the same skills, reported by SUPERMARKET for managers and COMMS for technical staff in some areas.

A variety of strategies was being adopted to address the skills problems. INSPECTOR and PRINT were returning to apprenticeship as a method of recruitment (though neither was actively seeking older apprentices). LOCAL GOVERNMENT had begun to recruit outside the UK for a variety of occupations, including care managers and social work. HEALTH RETAIL and SUPERMARKET had strategies for internal talent spotting to develop managers from more junior staff. POLICE was providing broad incentives to staff to work in the city area through schemes to subsidise housing costs. Several organisations were using internet recruitment, and several expressed disappointment at the services offered by agencies. Concern was expressed that recruitment agencies might be using discriminatory recruitment practices, and that this might be an issue in relation to age in particular.

### **Improving and changing practices**

It was clear that there was a great deal of change taking place in HR practice, much of it as a result of concerns about skills shortages. Four organisations (COMMS, RESIDENTIAL HOMES, SUPERMARKET and HEALTH RETAIL) described their response to skills shortages as seeking to become 'the employer of choice' in their particular field. Rising customer expectations also featured in many.

There was much discussion of changes in management style and needs. LOCAL GOVERNMENT, embarking on a major change initiative noted that they were trying to prepare people for living with continuous change and commented:

*'We are going to move from the manager who in the past has had 20 staff sitting in front of him at desks, easily accessible to move him to a much more blended approach to communications. So that often managers aren't going to see staff for four or five days, so they are going to have to get a larger, broader range of skills to manage in new and different ways.'*

**LOCAL GOVERNMENT**

Many managers also commented that employees' expectations of management were rising.

Several organisations, including UNIVERSITY, HEALTH RETAIL and POLICE, were introducing new or improved processes of appraisal and performance management.

Flexible working was one way in which organisations were seeking to make themselves more attractive to potential staff. CHARITY and LAW FIRM both reported that they had recently increased opportunities for flexible working (including for those who had taken career breaks), and UNIVERSITY noted it as a way of enabling staff with scarce skills to phase into retirement. However, in several organisations it was clear that, whatever the organisational policy, a great deal of discretion on whether to offer, consider or approve requests for flexible working rested with line managers.

Changes were also taking place in career structures. REGIONAL NEWS was encouraging young staff to progress more rapidly than in the past in order to retain the most able. POLICE was seeking to offer alternative career routes to enable experienced officers to stay in the service by moving to civilian roles, becoming Coroner's Officers, or moving to more local and perhaps less demanding locations. It was also experimenting with job sharing and flexible working, and instituting processes to retain disabled staff, as was PRINT, in response to the Disability Discrimination Act.

Retention of experienced staff was a common problem. INSPECTOR commented on the difficulty of retaining experienced staff in a small organisation with limited opportunities for reshaping roles. LOCAL GOVERNMENT noted the difficulties of allowing flexible retirement under current pension regulations.

Most of the organisations were undergoing some kind of reorganisation which was impacting on HR practices. LOCAL GOVERNMENT was undergoing major change, with relocation, new IT systems and the development of new ways of working, including much more mobile and off site work. For LOCAL GOVERNMENT, appraisal and performance management systems were critical to the change project, linked to 'fast tracking' for promising staff. COMMS was in the midst of a long-term downsizing project in response to technological change, and had managed to do this so far without compulsory redundancy. RESIDENTIAL HOMES had contracted or established partnerships with a number of local authorities under the Best Value and Compulsory Competitive Tendering initiatives. It was wrestling with multiple sets of inherited conditions of service. CHARITY was anticipating reorganisation as a result of the declining prevalence of the disease they were founded to address. UNIVERSITY was anticipating a slight reduction in administrative and support staffing levels in response to budget pressures.

Several organisations reported changes in career patterns, with increasing mobility of staff. LAW FIRM noted a growing number of staff willing to take on jobs and move on relatively quickly. It also had staff who had worked in more high pressure environments in the City of London who had chosen to move out of London to escape the pace. UNIVERSITY reported people choosing to work there because of the attractions of the local environment and the excitement of working in a university setting.

## **Succession**

Most organisations had some broad view about succession planning, but few had any very developed strategy, although INSPECTOR and LOCAL GOVERNMENT both said that they would like more formal processes. However, there were organisations who took it very seriously. POLICE had a formal team with a remit to manage succession, and PHARMACEUTICAL, operating in a globally competitive high skill market, saw it as a high priority.

*'Well the biggest strategic issue on the HR side is talent management and ensuring that we are developing our people effectively and that we have a strong succession plan. That is an on-going strategic challenge for us as it must be for most companies of our size.'*

### **PHARMACEUTICAL**

LAW FIRM was worried that abolishing retirement age for partners would impact on the age profile of the partnership, since many partners would like to continue after their (tightly enforced) retirement age.

PRINT considered succession issues on an individual basis when a member of staff was known to be approaching retirement, and CHARITY took a similar view.

REGIONAL NEWS took a rather more formal approach, with departmental managers required to produce an annual report on who was retiring and how vacant roles would be filled.

COMMS and SUPERMARKET both stressed the importance of having a conversation about retirement plans with individuals well before their likely retirement date, and POLICE had found that formalising such interviews had led to an increase in staff staying on.

Succession was seen primarily in terms of 'talent spotting' by SUPERMARKET and PHARMACEUTICAL, and the latter commented that the issue was one in which shareholders took an active interest. REGIONAL NEWS had introduced a performance development plan process to help retain younger staff, who sometimes felt they had no promotion prospects in the organisation.

LAW FIRM had recently improved its entry and progression routes in order to attract more young people, with some success.

Finally, there was a raft of specific HR issues in particular organisations. SUPERMARKET was concerned about attendance management, particularly among younger staff. UNIVERSITY was seeking to harmonise terms and conditions across a variety of staff groups in line with recent national agreements.

## **Age and the current workforce**

Age was an issue which most HR professionals appeared to be aware of, but at a relatively low level. When asked, many organisations identified the age mix of their workforce as a potential problem, but it did not appear to be high on their agendas, and few had taken any explicit action to address it. Most were capable

of monitoring their age mix, but none had actually done so. HEALTH RETAIL, INSPECTOR and LOCAL GOVERNMENT all said that they would like a better mix, by retaining or recruiting more older workers, who were valued for their maturity.

Most of the organisations saw the age issue primarily in terms of older workers, and six main drivers for changing the age profile of the organisation were identified:

- Customer match – on the grounds that older customers are more comfortable being served by older staff.
- Skills and labour shortage – introducing flexible working options to make jobs more attractive to older people.
- Recruitment costs – organisations reported becoming more aware of the costs of recruitment, including the costs of induction and initial training before new employees become productive.
- Experience and maturity – the belief that older workers are more conscientious, and had a broader experience base to draw on.
- Public image – a few organisations wished to be seen to be at the leading edge of equal opportunities practice, and saw the visibility of older staff as a positive signal of this.
- Legislation – although all organisations were aware of the pending legislation, none yet saw this as a significant driver for change. Most felt that they would respond when they saw the draft regulations.

A number of organisations reported an increase in very young and much older workers. POLICE felt that it had many young probationers and a large group of older staff approaching retirement. LAW FIRM reported that a significant proportion of its office staff were young people on gap years. HEALTH RETAIL noted that staff tended to be either very young or relatively old. INSPECTOR noted a divide between the field staff, who were experienced tradesmen and therefore all in an older age range, and its central office staff who were more spread across the age range. REGIONAL NEWS reported a similar division, with press operators older and less likely to change jobs (as their traditional craft skills become less in demand) alongside a much younger and more transitory sales force. LOCAL GOVERNMENT, on the other hand, felt that middle age people were over-represented in its workforce.

SUPERMARKET found that the age mix in its stores varied by area. In areas where the older population was relatively affluent, the age of store staff was lower.

### **Expectations of retirement**

Four of the HR managers reported that the pressure of work could affect staff's retirement decisions. LAW FIRM talked about people 'finding the pace too hard', and seeking opportunities to 'wind down'. HEALTH RETAIL suggested that the physical demands of working in a pressured retail environment took its toll on older workers. Perhaps not surprisingly, the trade union representatives at

UNIVERSITY and LOCAL GOVERNMENT also saw work pressure as a significant issue in need of more attention.

There was considerable difference of view about whether people wanted to stay in work longer. The experience of POLICE in introducing formal review meetings as individuals approached retirement was that most employees assumed that extension was not possible, but some wished to do so when this was offered. Similarly, LAW FIRM, who operated a strict retirement age policy, thought that most people would not consider making a request, since they would expect a refusal, but that the pattern might change were it to be known that the option was there.

LOCAL GOVERNMENT offered flexible working options, but the attractions of these were outweighed by the incentives inherent in the current pension scheme. PRINT and HEALTH RETAIL reported that requests to stay were very rare (if any). REGIONAL NEWS reported that most workers wanted to retire before contractual retirement age. SUPERMARKET and PHARMACEUTICAL both reported few managers wanting to work later. INSPECTOR commented that 'we encourage staying but they usually leave'.

On the other hand, COMMS had found in a survey that 43 per cent of workers over 50 wanted to work longer, and UNIVERSITY reported academic staff choosing to work later, possibly on a part time or casual basis (related to research contracts).

Job satisfaction was identified as a key issue in encouraging people to stay. HEALTH RETAIL said that those who stayed did so for enjoyment, and INSPECTOR suggested that those who stayed did so because they were committed to a particular project, or specialism which they were enthusiastic about. For some, work clearly had strong attractions, often social, and SUPERMARKET reported some older staff saying that they would want to continue working even if they were not paid! POLICE reported that people stayed if they felt valued.

INSPECTOR reported that some people planned retirement as much as ten years ahead, and thought such people were unlikely to wish to change their plans. POLICE similarly reported long-term retirement planning by employees (perhaps because of the tradition in POLICE of early retirement and second careers).

Perhaps surprisingly, finance was little mentioned as an influence on retirement decisions, although INSPECTOR did suggest that it had some people who wanted to stay because they needed the money, and INSPECTOR, POLICE and COMMS all thought that changes in pensions had led to a reduction in early retirement.

One significant factor in the decision to retire was perceived to be change, in technology or organisational culture or structure. INSPECTOR noted that as the environment in which the organisation operated had become more volatile, some older workers sought to leave, and that some older workers, who had grown up in a public service culture, and had seen working in a regulatory agency as a way of retaining public sector values and style, were reluctant to adapt to the

more commercial environment they were being exposed to. This attitude to change was echoed by REGIONAL NEWS who commented:

*'A number of them used to come and say that they can't cope, this is the fourth time I have had to change my job, can I go?'*

REGIONAL NEWS

However, PRINT suggested that for most workers, change, if well managed, was not a problem.

*'It is done really through communication. I think that is the main key and as long as there is a clear focus of where we are going as a business and how we see ourselves getting there and get the buy-in from everybody and you get people's involvement in it too... It [working conditions] changes almost without them realising that they are doing it because we are all focusing on going somewhere new so your mindset automatically takes you there. And normally the things you come up against are that people are scared of change because they are all familiar with what they know and the skills that they have got for that particular work. '*

PRINT

POLICE reported that changes in working practices, and perceived increased formalisation of procedures, were leading some officers to seek to retire, and that some felt that structural changes were breaking an implicit contract, leading to a loss of trust. However, it also reported that the formalisation of exit interviewing had led to an increase in demand to stay, as it gave people the chance to explore alternative options face to face.

# 5

## The age dimension of human resource policies

### Key points

- *Few employers featured explicit policies designed to manage the age mix of their workforce.*
- *Most employers ran some equal opportunity training, although the frequency and level of dissemination varies.*
- *Most employers included a reference to age in their equal opportunities policies.*
- *Age-related bullying between work colleagues was not seen as a problem, but examples of age based harassment by customers and clients were cited by some organisations.*

Few of the organisations had explicit policies on age. While age diversity was considered important by most of the HR managers, they did not see a reason to devote resources to centrally managing the age mix of the workforce. Where policies did exist, they were driven by recruitment and retention imperatives. SUPERMARKET's policy was driven by a strategy for diversifying its workforce and recruiting from groups like the retired, who in the past may have been overlooked.

*'If we recruit the way we have recruited in the past, we will fail because our pool from where we recruit will have changed and we won't have recognised it.'*

SUPERMARKET

While specific age management policies were rare, most organisations had policies on equality and diversity. Where age policies existed, they were embedded in these generic policies. Normally, these were general policies included in the organisation's staff handbook. PRINT's policy, for example, read:

*'The employer is opposed to any form of discrimination on the grounds of race, colour, ethnic or national origin, sex, marital affairs, disability, age or other factors that lead to employees being disadvantaged by condition or requirements which cannot be shown to be justifiable.'*

PRINT

Few of the HR managers could identify either when their organisation's equal opportunities policies were written or when the references to age were included. Most said that the age element had been present 'for as long as I can remember'.

The only exception was PHARMACEUTICAL, which included a reference to age in 2001 when the company harmonised the two equal opportunities policies of its predecessor organisations.

A few of the organisations did not have policies on age equality. POLICE's equal opportunities policy did not feature a reference to age. However, its equality department was currently reviewing HR policies, including the equal opportunities policy, in preparation for the age discrimination legislation.

Most of the organisations trained their line managers on their equal opportunities policies. How the training was undertaken varied. In three organisations, HEALTH RETAIL, INSPECTOR and RESIDENTIAL HOMES, diversity workshops were conducted periodically during meetings of field staff, where managers were briefed on changes to employment law and company policy. RESIDENTIAL HOMES provided diversity training for its court managers (staff responsible for providing front-line care in the organisation's residential courts) to prevent discrimination against either staff or clients. They were frequently trained on equal opportunities, and the staff representative noted that court managers believed there was some repetition in what they learned.

LAW FIRM and CHARITY trained managers on equal opportunities at induction or when a significant change in the law came into effect. Neither organisation trained managers on age equality, although both anticipated doing so once the draft regulations were published.

POLICE ran equality and diversity training through its training department. The breadth of training was considered by line managers to be wide, including not only the service's anti-discrimination policy, but also issues such as flexible working arrangements and anti-bullying policy. However, training for middle ranking managers was rarely mandatory. Line managers noted that training opportunities were often not taken up because of more immediately pressing operational priorities.

Although most of the organisations had policies on harassment and victimisation, few included a direct reference to age. Some of the organisations referred to the equal opportunities policy in reference to the kinds of bullying which were prohibited.

Few of the case studies could identify an example of a formal age-related grievance. LOCAL GOVERNMENT, which kept a central record of all grievances, could find none which directly related to age. Line managers in UNIVERSITY

noted that, while they themselves had never had to address an age-related grievance, administrative staff were sometimes vulnerable to harassment from senior academic staff and the head of one administrative department had organised off-site training for his staff on how to deal with aggressive service users within the university. While age was seen as a dimension of such bullying (i.e. professors tend to be older than administrators are), it was thought that the problem mainly related to status and seniority rather than directly to age.

Harassment by customers and clients was, however, perceived to be an issue for several organisations. INSPECTOR cited examples of younger inspectors experiencing bullying by older gas installers. They had relied on field managers and colleagues to resolve problems. Court managers in RESIDENTIAL HOMES could sometimes be subject to bullying from residents, where some of the elderly residents harassed younger court managers, particularly those with children (court managers live on the premises with their families). This had led to some retention problems for the organisation.

Two years ago, POLICE introduced a 'Fairness at Work' policy to supersede its grievance procedure, and the new procedure for handling grievances included conciliation and mediation where possible. The policy did not include an explicit reference to age, but the procedure was thought to be a useful process for resolving complaints relating to age and assumptions about individuals' work abilities.

## **External constraints in managing change**

### **Key points**

- ***Employers faced external constraints when implementing HR policy reforms of any kind. In relation to age discrimination these constraints included:***
  - **National schemes of pay and conditions**
  - **Transfer of Undertakings (Protection of Employment Regulations (TUPE)) 1981**
  - **Statutory requirements**
  - **External service providers.**

All of the interviewees were asked to discuss their organisation's HR policies, with an aim of identifying the potential impact of the age discrimination legislation. In discussing how HR policies were formulated, a series of constraints on managers were identified.

Nationally negotiated conditions limited local discretion in the public sector organisations (POLICE and UNIVERSITY). UNIVERSITY noted that national negotiations were in progress to harmonise pay and conditions across a variety of separate staff groups, and it was anticipated that the negotiating body would ensure that new pay and conditions would be compliant with the age discrimination legislation.

TUPE affected some of the organisations. An example is RESIDENTIAL HOMES which, as a result of contractual arrangements with local authorities, employed

around a quarter of its workforce on local authority pay and conditions protected by TUPE. Because of case law, there was ambiguity over whether a transferee employer could revise TUPE protected contracts of employment, even where staff were not made materially worse off. It was noted that the Government has pledged to revise TUPE in 2005 to clarify its application. Until then, TUPE would make reform of legacy pay and conditions, such as the removal of age discrimination, problematic for organisations with transferred employees.

*'People like me, apart from being arch sceptics, are also arch neurotics because you know that a big hammer [age discrimination legislation] will come out of one cupboard and then a big hammer [TUPE] will come out of another, and you try to keep the cupboard doors shut.'*

### RESIDENTIAL HOMES

Other regulations affected some occupations. They affected the ability of the local employer to deal with age discriminatory issues among police officers (POLICE), fire fighters (LOCAL GOVERNMENT), social workers (LOCAL GOVERNMENT and RESIDENTIAL HOMES), and healthcare professionals (LOCAL GOVERNMENT, RESIDENTIAL HOMES and CHARITY). Regulations can set age bars for recruitment, training requirements, and physical competency standards. HR managers noted that in reforming HR policies, they would need to resolve conflicts between the age discrimination legislation and public sector employment statutes. In relation to young people there were age-related constraints on undertaking certain jobs (e.g. alcohol sales) or working certain job patterns (e.g. night work).

Finally, some benefits, such as private health insurance, were provided by external service providers. Such providers were responsible for determining eligibility and were not covered by the Equal Treatment Directive. HR managers were unsure how externally imposed age bars on such benefits could be revised, or whether the benefits would have to be withdrawn from all workers.

### Retirement age

#### Key points

- ***Case study organisations differed in their contractual retirement ages, but most were moving towards a universal age of 65.***
- ***Many of the case study organisations had more than one occupational retirement age. In most cases, employees with earlier retirement ages were permitted to extend working life if they wish.***
- ***One large organisation was voluntarily abolishing its contractual retirement, despite the potential costs.***
- ***Because of historical changes, many organisations had different retirement ages for staff according to when they joined the organisation.***

Each of the case study organisations was asked about its policy on retirement. Table 3 below shows, for each of the organisations: a) the occupational retirement age; b) whether people who were approaching retirement have the

option of changing their work patterns or responsibilities; and c) whether staff who have reached the occupational retirement age could request to remain in work.

**Table 3: Case study employers' policies on retirement**

	Retirement age	Flexible retirement	Staying beyond retirement
INSPECTOR	65	Testing options	Informal
POLICE	Officers: 30 years service Staff (Civilians): 65	Yes, but reviewing	Yes
COMMS	60	Yes	Some flexibility and abolishing retirement age
SUPERMARKET	65 (senior managers 60)	Yes	Yes
LOCAL GOVERNMENT	65 (different retirement ages for police and fire fighters)	Yes	Informal
LAW FIRM	63	Informal	No
HEALTH RETAIL	65	Informal	Informal
PRINT	65	No	Informal
SME	None	N/A	N/A
RESIDENTIAL HOMES	65	Yes, but pension implications	No
UNIVERSITY	65 at end of academic term	Yes	Yes
CHARITY	65	Informal	Informal
REGIONAL NEWS	65	Yes	No
PHARMACEUTICAL	65	Yes	Yes

Only one of the organisations, the small firm, had no occupational retirement age. SME employed mainly younger workers, and other than the directors themselves, did not employ any staff over 50 at the time of the interview.

Eleven of the organisations had established retirement ages of 65 for new employees, but had existing employees whose retirement age was below 65. Usually, staff with lower retirement ages had been with the employer longer. REGIONAL NEWS had, in the past, allowed different retirement ages for men and women, and some female workers still had a retirement age of 60. In most of these organisations, those employees whose retirement age was below 65 could opt to stay to 65. In UNIVERSITY, academics could leave at the end of the term before they reached formal retirement age.

Two organisations had company retirement ages below 65 (COMMS and LAW FIRM). LAW FIRM had a retirement age of 63, which was rigidly enforced for all employees.

COMMS was planning to abolish compulsory retirement ages altogether. In 2003, its Chairman announced plans to abolish the company's occupational retirement age of 60 before October 2006. The company had done this recognising that this may lead to costs in voluntary redundancy. However, COMMS was going through a major downsizing project, which gave the organisation considerable experience of managing these processes. It was noted that abolition of retirement age could inflate future redundancy costs.

*'...at the moment, it [retirement age] was perceived by the business as a cost effective resourcing tool. They [managers] know per year how many people will retire and in the future, if we continue to downsize, they will have to pay more people to go.'*

COMMS

Although LOCAL GOVERNMENT had occupational retirement ages for all employees, it was pointed out that the Office of the Deputy Prime Minister (ODPM) is considering abolishing compulsory retirement ages for fire fighters, moving to a system based on fitness rather than age.<sup>5</sup>

Some of the organisations had recently changed their retirement ages. INSPECTOR, HEALTH RETAIL, POLICE (civilian staff), LOCAL GOVERNMENT, RESIDENTIAL HOMES, and PHARMACEUTICAL had all raised their retirement ages for new entrants from 60 to 65, while still allowing some existing employees on the old contract to retire at 60 on full pensions. In RESIDENTIAL HOMES, staff who had transferred from local authorities had TUPE protected retirement ages of 60.

Many organisations had different retirement ages for different staff groups. This included LOCAL GOVERNMENT, POLICE, and SUPERMARKET. In SUPERMARKET, store managers had a contractual retirement age of 60, but the role was considered physically demanding, and many managers chose to retire before they reached that age. POLICE set a retirement age for civilian employees at 65, in line with national policy for civil servants. Police officers, on the other hand, had retirement ages which were largely based on length of service. Officers could retire on full pension after 30 years of service or opt to remain on the force until they reached 60. Because recruits often joined the force in their late teens or early twenties, many officers had the choice to retire at around 50. Similar provisions applied to fire fighters, employed by local authorities.

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[http://www.odpm.gov.uk/stellent/groups/odpm\\_fire/documents/pdf/odpm\\_fire\\_pdf\\_032358.pdf](http://www.odpm.gov.uk/stellent/groups/odpm_fire/documents/pdf/odpm_fire_pdf_032358.pdf)

## Flexible work and flexible retirement

### Key points

- *Flexible retirement was a relatively new concept for most organisations, but most were very willing to consider it, and some had already moved forward.*
- *Most employers had extended, either formally or informally, the right to request flexible working to all staff.*
- *Some employers saw flexible working as consistent with their organisational strategies.*
- *Employers saw some jobs as better suited to flexible retirement than others.*

Flexibility was widely seen, by employers and employees, as a key to making work more attractive to older people, and to allowing phased retirement. Phased retirement options were offered by REGIONAL NEWS and SUPERMARKET, both of whom permitted people who were within a year of retirement to reduce their working hours at full pay. In REGIONAL NEWS, this benefit was considered particularly important in helping people make the transition into retirement.

*'The [company] thought it was helpful for people to go [gradually] from work to no work. They can build up their hobbies in their days off so that when they finally finished they could [pursue these], and we used to send them on retirement courses too, run by the local college round the corner.'*

REGIONAL NEWS

Concern was expressed about whether the company's pre-retirement policy could fall foul of the age discrimination legislation since the provision of the benefit was directly age-related. It was thought that abolishing this policy would be 'a great shame', since it was intended to help people manage their retirement better.

Seven of the organisations (POLICE, LOCAL GOVERNMENT, COMMS, LAW FIRM, SUPERMARKET, UNIVERSITY and PHARMACEUTICAL) formally extended the right to request flexible working arrangements to all employees, and not just those with parental responsibilities for children aged under six. Although it was stressed that the right was extended to all staff, and not just employees approaching retirement, flexible working was seen as a means to retain employees who would otherwise retire completely.

*'We have had a number of requests from some of our older secretaries to reduce the number of their hours, which we have agreed to because they are good people and we want to keep them...They want to have some time to enjoy other things and I think that is a change which is coming throughout the whole UK workforce.'*

LAW FIRM

LOCAL GOVERNMENT noted that its flexible working policy was consistent with its strategic objectives of reforming the work structure of the local authority. Because the authority was relocating and moving to smaller accommodation, it

was looking for ways in which people could work remotely. The authority had invested in a new IT infrastructure which would enable staff to access their workstations from outside the office, and managers were also being trained to manage staff under the new work arrangements.

SUPERMARKET felt its work culture facilitated flexible working for front-line staff. Because it operated many stores, most of which were open 24 hours a day, store managers had wide discretion in how they allocated working hours and patterns. However, flexible working was seen to work less well for management roles in which the post holder took on a wide breadth of responsibilities, although the company was trialling different approaches.

*'In a regional role, for example, you have a choice of either job sharing, with each person doing that region for two or three days a week, or splitting the region into two with part-time coverage. Well, neither of those actually worked. Splitting the region into two means that you have only got someone covering for half the week, and job sharing means that you either have two people who work incredibly well together...or the business they are trying to support lacks continuity.'*

SUPERMARKET

The UNIVERSITY offered flexible working patterns to all employees. However, it was noted that few academics took such opportunities. The HR representatives argued that the nature of academic work already gave staff considerable flexibility in setting their own working hours, and many who had commitments outside of work were able to tailor their working patterns, without the need to make a formal request for flexible working. However, the union representative argued that in practice workload prevented many academics from doing this.

Although CHARITY did not formally extend the right to request flexible working to all employees, in practice it considered such requests. The staff council representative noted that she had helped a member of staff who was approaching retirement to request a reduction in working hours. It was noted that many people living close to CHARITY had relocated from London in order to reduce job-related stress. In order to benefit from this labour pool of experienced professionals, the organisation had tended to look for ways to accommodate employees' requested work patterns.

Not all organisations believed that flexibility was compatible with operational requirements. INSPECTOR was experimenting with alternative working patterns for its inspectors, most of whom were older (because they needed previous experience as gas fitters before taking on the inspection role). However, while the work pattern of inspectors was considered conducive to alternative working patterns such as job sharing, the cost of equipment, particularly the company vehicles, made flexible working problematic.

Although its staff and officers had a formal right to request flexible working, POLICE also had concerns about operational needs, and the Morris Inquiry noted that implementation of the policy was sporadic across the service. Many jobs, particularly those of officers, involved long working hours, and the HR department was actively reviewing how flexible working patterns could be

implemented. It was expected that the review panel would recommend that some police officer roles be excluded from the flexible working policy. An example cited was that of a Family Liaison Officer, whose responsibility was to provide support to the families of victims of crimes. These officers were on call around the clock and, because of the sensitivity of the work, it was not considered feasible to split responsibilities between staff working reduced hours.

Operational constraints also affected attitudes to flexibility in PRINT, SME and RESIDENTIAL HOMES. In RESIDENTIAL HOMES, most staff worked as court managers who lived on site and needed to be on call, while for PRINT the operational requirements of the printing presses were believed to need staff to work twelve hour shifts, three days a week.

Both RESIDENTIAL HOMES and COMMS noted the potential risks for pensions of phased retirement. They believed that, for those employees contributing to a final salary pension scheme, reducing working hours (or transferring to a job with a lower salary and less pay) could reduce their pension entitlements.

*'There is an issue with final salary pension schemes that, if your last year's salary or your last three years' salary is less than your previous salaries, you draw a smaller pension. I think we need to be dancing on that pinhead to make sure that doesn't happen.'*

RESIDENTIAL HOMES

## Working past retirement age

### Key points

- ***Most employers offered staff some scope for working past retirement age, although the degree to which extending working life was encouraged varied.***
- ***People who stayed in work beyond retirement age were normally employed on a temporary basis: fixed term contracts, casual working, or zero hour contracts.***
- ***Skills retention, succession, and labour demands were identified as factors which influenced an employer's willingness to consider requests to stay in work.***
- ***Line managers normally played a determining role in decisions on whether individuals can stay in work. As a result, practice could vary greatly within an organisation, sometimes despite central policy.***

Most of the case study organisations offered some opportunities for older workers to remain in work past retirement age. However, the degree to which extending working life was encouraged varied significantly.

Only one of the case studies, LAW FIRM, explicitly prohibited staff from extending work past retirement. This applied to all employees and partners.

*'Old partners don't go away, even when they have retired...the idea of some people still being around when they are 75, it blocks admission to the partnership if you have too many old guys up there.'*

#### LAW FIRM

Should partners be allowed to work past retirement age, LAW FIRM was concerned about the impact this would have on the age profile of the partnership.

RESIDENTIAL HOMES permitted staff with a retirement age below 65 to continue in work up to 65. The staff representative thought that, given the opportunity, many court managers would like to stay in work past retirement age. Because they lived on site, the position provided free living accommodation, which was an attractive benefit.

At the other end of the spectrum, POLICE proposed policies to actively encourage police officers to remain on the force after they had completed the number of years service required to retire on a full pension. It was mainly concerned with meeting the Police Authority's objective of increasing police officer numbers by 5,000, although it also aimed to retain the skills and experience of older police officers. In order to retain more officers, the Home Office established a new scheme called '30 plus'.

Officers who extended work past thirty years of service were entitled to draw their lump sum (three times final salary) before retirement. 123 police officers accepted the 30 plus offer last year in POLICE.

Police officers who reached retirement could also apply for police staff or community support officers posts. Because the police service and police staff workforces were employed by separate employers (police officers are Crown servants, while police staff are civil servants), an officer who retired from the force and moved to a staff job could draw her/his pension without falling foul of tax and pension rules. Few police officers had taken staff jobs on retirement, although the organisation would like to encourage this. More frequently, officers who had had to leave work for sickness or disability reasons had returned to police staff work.

POLICE (along with other police forces) were somewhat atypical in employing workers who could retire on full pensions at a relatively early age. Most police officers who left the force subsequently began second careers, either working for a police authority closer to home, or beginning work in a new sector. Police officers (other than chief constables) must retire from the force by age 60. They could, however, transfer to civilian work if opportunities were available.

In the three public sector organisations (POLICE (police staff), UNIVERSITY and LOCAL GOVERNMENT), staff who remained in work past retirement age were employed on fixed term contracts ranging from one to three years in length. Police officers could also remain past the 30 year mark (up to the age of 60), providing they could satisfy job-related competency and fitness criteria. As with other fixed term employees, older staff who were employed past retirement age were subject to annual performance assessments at the point of employment

contract renewal. In all three public sector organisations, staff above 65 were subject to an annual health check.

It was observed that LOCAL GOVERNMENT staff who remained with the local authority past retirement age often did so in order to complete a specific project. Remaining in work past one fixed term contract was therefore not considered to be a frequent occurrence. Retired local authority workers who wanted to work occasionally could also be employed on 'zero hour' contracts, which were open to workers of any age. Zero hour contract employees were employed as and when they wanted to work and a job needed to be carried out, but they did not have set contractual hours. Academic staff at UNIVERSITY could be appointed on a part-time basis beyond retirement in addition to receiving their occupational pension. Their duties were either teaching or research focussed. It was noted that research opportunities for faculty members over 65 were limited, as many of the public and private research funds prohibited applications from academics above retirement age. However, opportunities to continue teaching beyond retirement age existed, but varied according to the individual, with academics who had specialised expertise being encouraged to continue past retirement.

*'The university to some extent has to [retain some academics] because, if it's going to continue to offer certain things, it can't get rid of people absolutely...if you have got a particularly powerful and successful course like Shamanic Consciousness.....it is very difficult to replace that person with another who has the same kind of gravity and expertise.'*

UNIVERSITY

REGIONAL NEWS noted that retired journalists and photographers occasionally submitted news stories and photos to the paper, and were paid on a piecemeal basis. Formal arrangements were a rarity, as retired staff normally took assignments as and when projects interested them.

In other organisations, staff could ask, and were sometimes allowed, to work past retirement age despite the absence of any formal policy or procedure. This was true for SUPERMARKET, HEALTH RETAIL, PRINT, CHARITY, REGIONAL NEWS and PHARMACEUTICAL. Only SUPERMARKET was actively encouraging staff to remain in work past retirement age. It was doing so in order to address labour shortages. In those organisations which gave employees the right to request extending working life, staff could ask their line managers to remain in work, and if a continued operational need existed, and the individual was assessed as competent enough to remain in work, they were normally employed on a non-permanent basis. Some of these organisations, like their public sector counterparts, employed staff who were older than retirement age on a fixed term basis (SUPERMARKET, COMMS and PHARMACEUTICAL), while others employed such staff casually. REGIONAL NEWS required employees who wanted to remain in work past retirement to stop work for two weeks in order to establish an explicit break in the continuity of their employment.

The individual line manager was often critical in the decision whether or not to allow a worker to remain past retirement age. In most of the organisations, requests to extend working life had to be made through the individual's line

manager, who was required to identify an organisational need for retaining the member of staff. Union representatives at POLICE and LOCAL GOVERNMENT noted that line managers' attitudes on this issue varied greatly. In some organisations, the head of HR, chief executive, or occupational health care professional might also be involved in the decision.

*'In some boroughs, it is almost assumed that members of staff will extend compared to those ones where they want individuals to actually apply for the extension. It is almost sort of saying, well, they are putting a few hurdles in front of someone to get that extension.'*

POLICE

In none of the case studies did employees have a right to appeal against refusals of requests to remain in work beyond the normal retirement age. Line managers in POLICE argued that they faced constraints in supporting individuals' requests to remain in work past retirement. They noted that senior managers had varying attitudes toward extending working life, and some line managers may not have felt they had the support to request a work extension for a staff member. Managers at CHARITY expressed similar views, noting that a change in chief executive six years ago had significantly changed the workplace culture. Whereas previously, line managers would have expected requests for extensions to be normally rejected, the present Chief Executive encouraged managers to look for ways to help employees who wanted to continue in work.

Finally, although the company did not have a mandatory retirement age, the Director of SME observed that small family firms like his tended to have an inter-generational understanding about when the reins of the company would be handed down from parents to children. However, this understanding was often broken, either because the parents refused to give up control of the firm, they did not feel the children were competent enough to manage, or the children did not want to take on the responsibility. In these organisations, familial relationships governed decisions on work and retirement which the Director felt would probably fall outside the scope of the age discrimination legislation, regardless of what it said.

## **Recruitment**

### **Key points**

- ***Most employers were moving towards an age neutral approach to recruitment.***
- ***Indirect forms of age bias, such as qualifications and experience requirements, were seen as possibly requiring review.***

Each of the case study organisations was asked how age was addressed in the recruitment process: advertisements, applications and selection. Most of the organisations were moving towards an age neutral approach to recruitment, although historical age biases were identified in most of the recruitment processes.

Respondents were asked whether they applied age bars to specific jobs, either upper age limits or lower ones. Some lower age limits were set for statutory reasons. SUPERMARKET could not employ staff under 18 for the sale of alcohol or tobacco. There were also lower age limits enshrined in statute for police officers, fire fighters and social workers. HEALTH RETAIL and POLICE noted that people under 18 could not be employed in night work without a permit. Organisations which employed drivers restricted applications from people under 21 for insurance or (for HGV drivers) statutory reasons. Some of the organisations (POLICE, LAW FIRM, HEALTH RETAIL, RESIDENTIAL HOMES) prohibited managers from recruiting employees who were older than the occupational retirement age. In LOCAL GOVERNMENT, applicants above 65 would be subject to an annual health review with occupational health staff.

Although it did not have a formal age bar, REGIONAL NEWS was reluctant to employ staff under 21 in sales roles.

*'Like most companies we have had age ranges in the past. We haven't had them for some years now. Normally, we wouldn't take on sales staff if they were under 21. Only because we thought there was too much pressure on youngsters, it is a difficult job.'*

REGIONAL NEWS

All of the case studies asked for date of birth on their application forms, but this information was usually requested for monitoring reasons, and in most cases, date of birth and other age-related information was included on a detachable equal opportunities monitoring form which was retained by the HR department and not seen by the interviewing panel. HEALTH RETAIL also required the information because staff under 18 were paid at different rates, and to ensure that under 18 staff had the necessary work permits. PHARMACEUTICAL did allow its short-listing and interviewing panels to have sight of applicants' dates of birth.

*'My very strong view on this is that if you don't put the date of birth people will guess it anyway. It is actually worse for people to guess wrongly than to have the fact. It is the same with race discrimination and gender. It is pointless to try and hide those things at the short-listing phase.'*

PHARMACEUTICAL

LAW FIRM noted that while it did not request date of birth on the main part of the application form which was seen by interviewers, it did accept CVs which sometimes include the applicant's date of birth.

Other case study organisations reported that, while interviewers were not made aware of applicants' dates of birth, they sometimes tended to guess the applicants' ages.

*'We have an Equal Opportunities sheet which is removed before it is given to the recruitment manager. But it is quite easy to work out someone's age from when they went to school...and how long they've been in work.'*

*So you can guess the age, which makes it different from other [forms of discrimination] like ethnicity.'*

INSPECTOR

CHARITY was reviewing its recruitment process, and may change the format of applicants' information presented to interviewing panels. Its aim, although the review was still at an early stage, was to base recruitment on competency match for the job, rather than years of experience which may favour older applicants over younger ones.

*'I think the most obvious way...this can happen is to take all that information out and use a competency base, so it is about 'tell all about your experience of communicating'...and you take part of the application away whereby that chronology of dates is gone.'*

CHARITY

None of the case study organisations could identify job advertisements which featured explicit age limits. Most of the HR departments took measures to ensure that advertisements did not indirectly discriminate against applicants on the basis of age. Four of the HR respondents (LOCAL GOVERNMENT, POLICE, UNIVERSITY and HEALTH RETAIL) had published guidelines for managers on the organisation's intranet, detailing how job advertisements should be framed in order to comply with the respective organisation's equal opportunities policies. PHARMACEUTICAL employed an external recruitment agency, but the HR department was responsible for monitoring its practices. Heads of HR in CHARITY, PRINT, LAW FIRM and REGIONAL NEWS were responsible for signing off advertisements before publication.

Eight of the organisations trained recruitment officers on general equal opportunities issues, although only three (SUPERMARKET, COMMS, LOCAL GOVERNMENT) trained recruiters specifically on age discrimination.

Although few explicit age restrictions could be identified in the recruitment process, practices which had indirect age biases were mentioned. UNIVERSITY was aware that its former practice of requiring staff in certain administrative and secretarial roles to hold higher degree qualifications (in order to work confidently with academics and students) needed to be reviewed and updated to ensure that there was not an inadvertent bias against younger applicants.

*'It might indirectly impact...We have done a lot of work in the past couple of years in terms of our recruitment and selection policy in looking to make sure jobs are defined by their essential and desirable criteria so that we are not asking for qualifications that are unnecessary for the job.'*

UNIVERSITY

POLICE was aware of the same issue, with a tendency for departmental managers to over-inflate job requirements in order to recruit the best applicants. This was thought to occur most frequently in the boroughs which suffered a drain of experienced officers who gravitated towards detective work. In order to maintain an age and experience balance, borough managers sometimes

recruited to higher standards than were necessary for the posts. The HR department reviewed appointments to prevent this, which was seen to be not only age discriminatory, but also a drain on resources.

*'They can give you anecdotes and one or two examples, but they can't sell it to me why they should have a particular level of experience.'*

POLICE

HEALTH RETAIL noted that the working hours of branch employees tended to attract students and younger people. Older people, it was argued, were reluctant to work at night and weekends. It was also noted that branch managers could use recruitment agencies, and the company would need to monitor them to prevent age discrimination in this respect.

RESIDENTIAL HOMES observed that the job requirements for court manager positions tended to attract older people. The post required them to live on site, which was not usually attractive to younger people with families, while older applicants were often attracted to the job because it offers accommodation.

## Pay

### Key points

- ***Directly age-related pay systems were rare, although some (usually public sector) employers based pay on incremental scales, which favoured longer serving employees.***
- ***Differential pay rates for staff under 18 were identified. Although consistent with the Minimum Wage regulations, they could conflict with the age discrimination legislation.***
- ***One organisation was factoring age into its equal pay reviews.***
- ***National, local and individually based pay systems could raise issues about equal pay.***

None of the pay systems observed used age directly as the basis for setting rates of pay. However, the public sector organisations set pay according to incremental scales, which inevitably had an indirect age-related effect. UNIVERSITY staff and POLICE officers were paid according to nationally negotiated pay frameworks. LOCAL GOVERNMENT opted out of the local authority national pay framework, and negotiated its own pay system. POLICE determined pay for its police staff.

Public authorities were seeking to reduce incremental differentials, in part to prepare for the age discrimination legislation. In the 2003/2004 pay round, the number of years it took for a newly recruited police constable to reach the maximum of the pay scale was reduced from fourteen to ten years.

In higher education, national negotiations were taking place to harmonise seven pay scales. UNIVERSITY noted that incremental progression was likely to be reduced in the new pay structure. It also noted that higher education

institutions were introducing new job evaluation criteria so that pay was more directly related to the requirements of the post.

LAW FIRM and PHARMACEUTICAL had incremental scales, but both argued that progression was not based on length of service. Both organisations argued that pay was based on a matrix of factors such as skills, responsibilities and experience. LAW FIRM noted that it based pay for its solicitors on experience in a specialism. It was thought by the HR Manager that the practice, common in the legal profession, could be indirectly age and gender biased.

PHARMACEUTICAL was in the process of incorporating age as a factor in its equal pay reviews. It anticipated that pay reviews would be designed to identify age biases in pay differentials before the legislation comes into effect in October 2006. It was not anticipated that reforming the company's equal pay review process would require great effort.

*'What you are looking for is significant disparities within the pay bands between men and women. To do it on age you would probably just have to look for significant disparities in salary within a band which only seems to be explained by the individual's age. In which case you would have found discrimination and you would need to review that individual's payment.'*

#### PHARMACEUTICAL

UNIVERSITY also mentioned that age may need to be incorporated as a determining factor in its equal pay reviews, although steps had not yet been taken to do so.

CHARITY, PRINT and INSPECTOR all featured a single rate of pay for the job. INSPECTOR used pay data from external organisations. Although it had employees dispersed across the UK, it maintained a national pay framework.

The Head of HR for REGIONAL NEWS was not directly responsible for setting pay rates for the organisation. Rather, he allocated funds to heads of department who were each responsible for determining the pay for their respective work teams. Some departments paid everyone the same rates of pay while others determined pay individually. The company did not recognise a union for pay bargaining. The union representative noted that the union was not consulted on how heads of departments set pay frameworks.

HEALTH RETAIL abolished its incremental pay system five years ago. However, some staff remained in the legacy pay system. Successive pay rounds had reduced the incremental differentials. There were three pay bands for staff aged 16, 17, and 18 and over. Pay bands were also regionally based. Although directly age-related, it was argued that the pay system was consistent with the approach taken in the national minimum wage.

## Benefits and conditions of service

### Key points

- *A few benefits whose provision was directly age-related were identified.*
- *Some age-related exclusions to benefits were cited.*
- *Some organisations provided long service awards worth around £100-£500.*
- *Sick leave, annual leave, bonuses and share options were identified as benefits whose provision was length of service-related or grade-related.*
- *Private health insurance was cited as a benefit whose provision was age-related.*
- *HR managers believed that length of service awards were rewards for employee loyalty, and therefore objectively justified.*
- *There was uncertainty over whether benefits which were deemed to be age discriminatory would be levelled up or levelled down.*

Few non-pay benefits were identified which were directly age-related. Those that were age-related were welfare-related conditions of service. As mentioned above, two organisations, SUPERMARKET and REGIONAL NEWS, allowed staff who were approaching retirement to reduce their working hours at full pay. POLICE paid the travel expenses for police trainees who were under 20 to visit home four times a year. The travel allowance was a historical benefit, but it was thought to be good practice to enable young officers, who were often on limited incomes, to visit their families.

Some age-related exclusions to benefits were cited, most frequently the provision of private health insurance. All six of the organisations which provided health insurance cover for employees limited this to those under 65, after which premiums became much more expensive. Consequently, staff who stayed in work past retirement age were ineligible to take part. HEALTH RETAIL and PHARMACEUTICAL also tiered subsidies according to levels of seniority.

LAW FIRM also excluded staff under 25 from its private health insurance scheme. The lower age barrier was explained as a means to reduce administrative costs. Younger solicitors tended to be trainees, who would often change partnerships once they settled into a specialism, and the high turnover amongst the younger workforce would result in a high administrative cost of enrolling members. It was also argued that private insurance tended to be less popular amongst younger than older employees.

PHARMACEUTICAL offered pre-retirement benefits. In the year prior to retirement age, employees received bonuses, extra annual leave, and the chance to purchase their company car and company shares at a discount. It was thought that abolition of retirement age could jeopardise this 'good leaver' benefit, since there would no longer be a time at which the benefit would apply.

Some conditions of service provided by the case study organisations were length of service-related. Annual leave was service-related in the three public sector organisations, as well as HEALTH RETAIL, SUPERMARKET and COMMS. REGIONAL NEWS increased paid long-term sick leave with length of service. In the first year, employees received no paid sick leave, which progressively increased to 52 weeks after 25 years of service.

REGIONAL NEWS allocated car-parking permits according to length of service. It was located in an urban centre, where such facilities were a premium benefit.

REGIONAL NEWS allowed employees to purchase discounted shares in the company every two years. While the benefit was not considered directly service-related, it was observed that a member of staff with longer service would have had the opportunity to purchase more shares than someone who had been with the company for a shorter period.

HEALTH RETAIL and PHARMACEUTICAL, as well as the three public sector organisations, allocated some benefits, such as annual leave and private health insurance, by job grade. Managers and those in higher grade jobs normally received more advantageous conditions of service.

Long service awards were provided by some of the large organisations (REGIONAL NEWS, COMMS, SUPERMARKET, PHARMACEUTICAL, HEALTH RETAIL and LOCAL GOVERNMENT). The value of such benefits was between £100 and £500, and provided on a cash basis or as goods. Long service awards were normally provided after between 20 and 40 years of service with the organisation.

All of the organisations which provided long service awards felt that the benefit was important for workplace morale, as a recognition of staff loyalty. For REGIONAL NEWS in particular, long service awards played an important part in the culture of the company. Once a year, staff who reached 25, 35 and 45 years of service were given between £250 and £450 to spend in local shops. Long service gifts were then presented at an annual ceremony which was seen by many as a highlight of the year.

Should long service awards be deemed by the age discrimination legislation as discriminatory, all of the HR managers anticipated that they would be abolished. However, there was some disagreement about how the provision of other conditions of service could be affected by the legislation. Some managers felt that 'levelling up' conditions of service (providing the highest benefits levels to all staff) would be prohibitively costly to the organisation. This was particularly the case for private health insurance and most organisations anticipated eliminating private health cover if the costs were too high.

Other companies raised doubts about whether companies could 'level down' conditions of service without falling into breach of employees' contracts of employment. It was thought that, should conditions of service need to be eliminated, they would need to be bought back from employees with longer periods of service. Such buy-backs were not considered satisfactory, because it was expected that older employees would feel they were losing important benefits.

## Pensions

### Key points

- *Public sector organisations offered defined benefits pensions to all employees.*
- *Private sector organisations provided defined contribution pension entitlements, although most of the private organisations also had closed defined benefits pension schemes.*
- *Defined benefits schemes were seen to penalise older employees who wanted to reduce working hours in advance of retirement.*
- *Staff in defined contribution pension schemes were expected to need to work longer for financial reasons.*

There were clear differences between public sector employers and private/charitable employers in terms of pensions. Most of the private companies and the two charities provided defined contribution pension entitlements. Only one company (SME) offered no pension, although it expected to do so following expansion.

Most of the private and voluntary sector case study organisations had defined benefits pension schemes which were now closed to new entrants. In some cases, the defined benefit pension schemes were pre-privatisation schemes (COMMS and INSPECTOR) or were limited to staff who have transferred to the company from public sector employers (RESIDENTIAL HOMES). Other employers (COMMS, HEALTH RETAIL, REGIONAL NEWS and PHARMACEUTICAL) had funded pension schemes, but had since replaced them with defined contribution schemes. One company (PRINT) had closed its defined benefit pension scheme to future contributions. Of the private organisations, only SUPERMARKET continued to offer new employees access to a defined benefit scheme, based on career average earnings rather than final salary.

HR managers conceded that their organisation's defined contribution pension schemes were generally less generous than the defined benefits schemes which they replaced. Several HR managers noted that their respective organisation's younger employees, when they were eligible for membership in a defined contribution scheme, frequently did not make contributions. As a result, it was thought that in the future, more employees would request to stay in work past retirement age for financial reasons.

Public sector employers had retained their final salary schemes, although the Government was in the process of reforming the local authority and Civil Service pension schemes. The Government was considering replacing the final salary

pension scheme with one based on average earnings<sup>6</sup>, in part to enable members to consider flexible approaches to retirement without penalty.

*'It...recognises that, increasingly, people may wish to 'downshift' by moving to a lower grade or less stressful job as they approach retirement without this having a disproportionate impact on their pension.'*<sup>7</sup>

The LOCAL GOVERNMENT pension scheme was being reformed to limit the scope for early retirement, along with raising the occupational pension age from 60 to 65. Both reforms were intended to encourage staff to stay in work longer, although the trade unions had expressed concern that a compact with employees who had expected to retire before 65 had been broken.

None of the case study organisations expressed concerns about whether they would be able to maintain multiple pension schemes which tended to benefit older, longer serving, employees. HR managers did not consider it conceivable that the age discrimination legislation would require employers to harmonise pension schemes, because of the significant costs and efforts involved. They did, however, express concern about whether the introduction of the age discrimination legislation would be co-ordinated with wider pension reforms recommended in the Turner report. Employers wanted to avoid the need to change their procedures and systems twice.

Public sector employers had a similar view about reform of the public sector pension schemes, although there was a view that national negotiators were taking account of the age discrimination legislation.

## **Appraisal and performance management systems**

### **Key points**

- ***All of the case study organisations had some form of measuring the performance and development needs of staff.***
- ***Public sector organisations tended to have the more comprehensive appraisal and performance systems, although the degree to which they were applied varied.***
- ***No direct form of age discrimination was identified in how people were appraised, although managers were sometimes thought to take a soft-touch approach to employees who were approaching retirement.***

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<sup>6</sup> Police staff belong to the Civil Service pension scheme. Interviews with POLICE respondents occurred before the Government announcement. Therefore, we were not able to discuss the implications of the proposed changes.

<sup>7</sup>

<http://www.civilservice-pensions.gov.uk/downloads/consultation/Final%20member%20QA1.pdf>

- ***One organisation anticipated the need to develop a freestanding performance system for staff who worked past retirement age. Other organisations had systems in place for employees who stayed in work past retirement.***

Case study organisations were asked about their appraisal and performance management systems for two reasons: first, to identify any age biases in how the performance of individual workers was assessed; and second, to explore whether employers had adequate performance management systems in place to objectively assess whether people who wanted to stay in work longer were capable of doing so if contractual retirement ages were abolished, and to do so to standards which would be defensible in an Employment Tribunal.

The type and operation of performance management systems varied widely among the case study organisations. All of the organisations had systems in place to measure performance, although the rationale behind the systems varied.

REGIONAL NEWS operated an appraisal system primarily intended to support its performance pay system. As noted above, journalists' pay rates were assessed individually, and an appraisal system was used to help the head editor allocate the pay package. Appraisals were conducted annually, although the system was not considered particularly sophisticated.

REGIONAL NEWS had also introduced a performance development plan, particularly for the sales department which was finding it difficult to retain employees. The plan was developed because exit interviews had indicated that staff were leaving the company because of a lack of promotion opportunities. The development plan gave staff the opportunity to learn new skills and progressively increase their wages.

For each of its staff, SME conducted weekly performance assessments of the quality of work, customer satisfaction, and maintenance of tools. Physical problems which would affect the worker's ability to handle the cleaning equipment were also reviewed, although the company did not have occupational health staff to make such assessments.

PRINT relied mainly on its line managers to assess the performance of individuals. Performance assessments were carried out daily, but a formal appraisal, which was mandatory for all employees, was conducted annually. Because of the transition to computerised presses, training needs had come to play an important part in appraisal exercises. Line managers were tasked with assessing not only the training needs of their workers, but also identifying reasons for resistance to training, such as basic skills needs.

UNIVERSITY had separate performance management and appraisal systems. The performance management system was introduced 18 months ago as a way to address problems of poor performance. Hitherto, UNIVERSITY relied upon its disciplinary procedures. The new system, which was used before disciplinary action was taken, emphasised development and identifying skills needs in order to bring the employee up to a satisfactory performance level.

Appraisals were also carried out annually by line managers. It was the Dean's responsibility to ensure that appraisals were undertaken for all members of staff.

The HR department monitored schools to ensure that appraisals were undertaken, and was rolling out a training programme for appraisers.

CHARITY conducted performance assessments every six weeks for staff. Some staff worked remotely, and the performance system was considered an important tool for managing these staff. The appraisal system was carried out annually and was mandatory for all employees. Line managers noted that the system was not particularly sophisticated, but was a useful medium for ensuring that discussions about staff development needs were undertaken.

LOCAL GOVERNMENT and POLICE used an appraisal system known as Performance Development Review. The appraisal system was designed for public sector organisations and was considered by HR managers to be a comprehensive process. However, both reported that managers tended to allow other work priorities to push appraisal interviews aside, producing a system which was described as 'strong on policy, but weak on application'. Both reported that strategic demands had, however, strengthened the two HR departments in monitoring the systems, in response to the retention priority for POLICE, and the relocation project for LOCAL GOVERNMENT.

Two organisations (HEALTH RETAIL and POLICE) observed that managers tended to appraise employees who were approaching retirement differently from other staff. It was thought that line managers may overlook problems with the performance of people who were scheduled to leave employment through retirement. This was particularly seen to be the case in POLICE where, because police officers retired young, many tended to start second careers after leaving the force. Managers were reluctant to assess retiring officers as poor performers, since that would harm their future job prospects. On the other hand, it was noted that 'soft touch' appraisals also missed the opportunity to bring poorly performing officers up to a satisfactory work standard. If poor performers had their development needs addressed by management, it was argued, there could be scope for keeping them on the force longer rather than getting rid of them at the first opportunity. While both HEALTH RETAIL and POLICE anticipated that their respective appraisal systems would need to be strengthened, they saw the reform as positive from the employer's perspective.

INSPECTOR used its disciplinary system in order to address performance-related problems. Should it retain inspectors past retirement age, the company expected to institute an individual assessment system which would monitor on an annual basis whether the individual continued to be competent and physically fit enough to remain in work. INSPECTOR saw this approach as better than the disciplinary procedure because staff whose performance was not up to standard would be retired rather than endure the stigma of having been dismissed. However, it expected that only staff past a certain age (which was not specified) would undergo these performance assessments.

Although INSPECTOR was the only organisation to anticipate running a performance system only for older workers, in practice other employers who retained staff past retirement age had systems in place to measure their performance. SUPERMARKET, LOCAL GOVERNMENT and UNIVERSITY employed staff who had retired from their main jobs on annual fixed term

contracts. Renewal of the contracts required satisfactory assessment by the employee's line manager, as well as identification of a continued need for their service. POLICE allowed officers to continue automatically after the minimum retirement age up to the age of 60. However, staff in civilian posts who worked past retirement age were subject to annual reviews, and line managers had discretion over whether to retain them.

## Training

### Key points

- *No explicit age bars on training were identified.*
- *Some managers were reluctant to train staff who were approaching retirement or who were expected to leave the employer.*
- *Older workers were seen to be more reluctant to take up opportunities to train - how managers addressed these attitudes varied.*

All of the organisations had training programmes, although the scope, reasons for, and nature of the training varied significantly. These could be divided into three categories:

First, there was the training which was mandatory, usually governed by statute. For example, first aid training for RESIDENTIAL HOMES' court managers; safety training for INSPECTOR's inspectors; and emergency service training for police and fire fighters.

Because this training was mandatory, no age bars were identified. The staff representative for RESIDENTIAL HOMES noted that longer serving employees tended to see training as monotonous since much of it was repetition of what had already been learned. Nevertheless, they recognised the importance of complying with the law.

Employers who were required by law to train staff had systems in place to ensure that the training was undertaken. INSPECTOR and RESIDENTIAL HOMES had dedicated field team days once a month during which training sessions normally occurred.

Second, staff were trained in order to update skills and keep pace with new work demands. For example, two of the employers (PRINT and REGIONAL NEWS) introduced new machinery which made redundant the skills of most of their blue-collar workforces. In both organisations, training programmes were rolled out to avoid making in-house staff redundant. In both cases, most employees chose to stay with the respective employers, while retraining to be able to work the new machinery. It was noted that most employees had found that they had little prospect of being able to use their retained skills elsewhere, and therefore opted to take advantage of promises of job security.

REGIONAL NEWS' Head of HR stated that retaining their blue-collar workforce had not been the most cost-effective decision for the company, as the skills necessary for the work (for example, touch-typing) could be found in much cheaper employees. However, the company decided that the introduction of new technology would not be coupled with mass redundancies.

Although most employees chose to stay with their employers, both companies noted that older employees were more reluctant to take advantage of training opportunities. The union representative for PRINT, for example, cited colleagues who had opted for demotion rather than updating their skills. He thought that older colleagues were simply too fatigued to undertake further training, which sometimes occurred outside of normal working hours. Older workers would train to keep themselves employed, he noted, but not much beyond that.

The HR Manager for PRINT also noted that reluctance to take part in training sometimes reflected basic skills needs. Workers avoided training because they felt they lacked the literacy and mathematical skills to take part. The company was working with trade union learning representatives to identify and address basic skills needs.

IT skills were identified by most of the companies as a frequent training need, and most felt that older workers were more reluctant to take up opportunities than their younger peers. This was mainly seen not as a matter of age per se, but of generation, although some employers noted that older workers declined to take up IT

training because they did not want to learn alongside younger colleagues. CHARITY looked sympathetically on requests from its older workers to train on new technology individually rather than within the team.

SUPERMARKET and COMMS, on the other hand, felt that older workers were more enthusiastic to undertake training. SUPERMARKET commented that older staff tended to put more effort into training because they wanted to be seen to be as good as younger colleagues. COMMS noted that older workers were more likely to want to replenish redundant skills in order to maintain their positions in the workforce at a time of downsizing.

A third area of training need related to career development, which could be used to gain promotion or better pay. Although no explicit age bars on such training were mentioned, four organisations (HEALTH RETAIL, LAW FIRM, LOCAL GOVERNMENT and POLICE) noted that requests for training from staff who were close to retirement were less likely to be granted than requests made by employees who were considered likely to be with the employer for a longer period of time. LAW FIRM mentioned 'within two months of retirement' as a point at which training would be unlikely to be granted, and pointed out that their policy was consistent with Law Society guidelines. LOCAL GOVERNMENT noted that, for some long-term training, the employee must undertake to stay employed by the Council for a minimum period in order to be funded. The union representative for POLICE felt that it was difficult for staff who were within five years of retirement to access training funds, partly because many officers retired young and started new careers, and training requests could be seen as preparation for a new career, rather than meeting the needs of the service.

Line managers in UNIVERSITY did not feel that an age bias existed in access to training. Within UNIVERSITY, training was funded centrally by the HR department, rather than through individual school and departmental budgets. Line managers felt the system encouraged managers to let staff attend training, and removed biases on decisions about skills development.

*'It is a good safety mechanism in that sense whereas if it were entirely located within people's budgets and I think then it would be much more open to different managers' personal management styles and how they felt about using their budget. Whereas in that sense the potential staff development function is really a quite robust mechanism. It would only be on a time restriction that a manager wouldn't let somebody go.'*

UNIVERSITY

## **Apprenticeship and graduate trainee programmes**

### **Key points**

- ***Employers were considering whether their approaches to apprenticeship programmes indirectly discriminated against mature candidates.***
- ***The Government's apprenticeship programme was seen to be age discriminatory since public funding only subsidised apprentices between 16 and 24.***

Some of the case study organisations ran apprenticeship or graduate trainee programmes.

LAW FIRM, like most law firms, appointed six to eight trainee solicitors a year who rotated between specialisms for two years. They looked to retain them on qualification in order to maintain an ongoing flow of young solicitors in the firm, bringing new ideas and attitude. The policy of recruiting 'newly qualified' solicitors was considered vital for the firm.

PHARMACEUTICAL operated a corporate graduate trainee programme. The programme was described as a 'traditional milk round' development programme. The company did not impose age bars on recruitment into the programme, although it was acknowledged that the company would need to review how it advertised the programme in order to ensure that mature students were made aware of the opportunities.

INSPECTOR did not presently operate an apprenticeship programme, but was considering starting one. Most of its workforce was made up of gas installers who joined INSPECTOR as a second career. The company was seeking to create a younger work profile, and it was anticipated that the apprenticeship programme would include an age bar.

PRINT and LOCAL GOVERNMENT operated apprenticeship programmes in which apprentices earned NVQ qualifications. Apprenticeships were considered central to the print and publishing trade, as the trade was 'man and boy work'. The company did not impose an age bar, although it was noted that the Government's apprenticeship programme only subsidised apprentices between 16 and 24. It was argued that there was some inconsistency between the Government's policy on age discrimination at work and its apprenticeship programme.

## **Redundancy**

### **Key points**

- ***Most of the case study organisations paid redundancy either based on length of service or at the statutory minimum level.***
- ***None of the employers said they operated a 'last in first out' or similarly based selection procedure for compulsory redundancies.***
- ***It was thought that older workers were more likely to accept voluntary redundancy.***

Eight of the case study organisations paid only statutory redundancy pay. Only REGIONAL NEWS had previously had a redundancy pay system based directly on age, although it was mainly based on length of service. Staff who were made redundant received enhanced redundancy up until age 60. For every year past 60, a percentage was clawed back. The reason given for the claw back was that from the age of 60, the employee was approaching the point at which (s)he could draw a pension.

*'So you say that somebody going at 60, [has got to live] until they are 65 before their State pension comes in so they will get the maximum but we will [reduce] it slightly from thereon in as they haven't got so long to go until their other pension comes in.'*

#### REGIONAL NEWS

PHARMACEUTICAL was in the final stages of harmonising the two redundancy policies of its predecessor organisations. One company had based its redundancy pay on age, while the other had based it on length of service. It was decided that the harmonised redundancy scheme would be based on length of service. The company had surveyed 25 companies of equivalent size and found that most companies had done similarly, while half offered enhanced pension contributions for staff over 50.

The three public sector organisations contributed to national redundancy funds which based redundancy pay on length of service and which offer enhanced pensions for staff aged 50 and over. In two of the case studies (POLICE and LOCAL GOVERNMENT), it was noted that the redundancy terms offered more of an incentive to older employees to accept the terms than younger ones. For example, in the Civil Service redundancy scheme, staff under 50 received a lump sum, but their pensions were deferred until they reached 60. By contrast, staff over 50 could immediately receive their pension on redundancy and, in compulsory redundancies, had their pensions enhanced by up to six and a half years. Thus a civil servant made redundant at 53 could receive the same pension as (s)he would have done at age 60.

### Health and safety

#### Key points

- ***Employers expressed concern about retaining older employees in jobs which were physically demanding.***
- ***Most employers had occupational health care staff who played a role in decisions on medical retirement. Doubt was expressed about whether they could effectively assess whether employees would be capable of working past retirement age.***

One of the main concerns expressed by employers concerned the feasibility of retaining older workers in physically demanding jobs. Such jobs included police officers (POLICE), store managers (SUPERMARKET), machine operators (PRINT), fire fighters (LOCAL GOVERNMENT), cleaners (SME), and drivers/loaders (REGIONAL NEWS).

Employers felt that, while they did not want to make unsubstantiated assumptions about older workers' capabilities to continue in these occupations, they had a duty of care to employees to ensure that staff who were incapable of performing their duties were not permitted to continue. Concern was expressed that employers would be forced into a balancing act in deciding how long employees could continue in work.

Most of the employers had occupational health care staff. SME, the small company, did not. It felt that cleaning jobs would be inappropriate for employees over 45. The Director noted that, if an older worker applied for a job, he would explain the physical demands of the job, and seek to dissuade the individual from applying. If the applicant persisted, he would 'let him have a go'.

Occupational health care staff were responsible for consultations over whether employees should be medically retired. Some employers felt that they could also assess whether employees who wanted to stay past retirement were capable of doing so. Others expressed doubts (COMMS). One employer suggested that its occupational health care professional tended to repeat what employees told them.

## **Sick leave**

### **Key points**

- ***Some employers increased sick leave with length of service.***
- ***Some employers were instituting measures to address perpetual short term sick leave amongst younger workers.***
- ***Employers were taking measures to return employees on long term sick leave back to work.***

Some employers increased sick leave with length of service. As with other conditions of service, the increase was seen as a reward for loyalty to the company. One employer (REGIONAL NEWS) explicitly increased sick leave entitlement with length of service, from nothing to 52 weeks after 25 years of service, to reward loyalty and because older employees were felt to need more time to recover from illness or injury.

A number of the companies had taken measures to address problems of short term sick leave, including return to work interviews (INSPECTOR), unpaid sick leave for the first three days (SUPERMARKET), unpaid sick leave in the first year of service (REGIONAL NEWS), and bonuses for staff who did not take sick leave (RESIDENTIAL HOMES). There was a general view that problems of perpetual sick leave tended to occur amongst younger employees. INSPECTOR, for example, noted that very little sick leave was taken by older inspectors. This was attributed to the fact that many older inspectors had previously been self-employed, which created a workplace culture in which taking sick leave was frowned upon.

One employer, POLICE, saw the rehabilitation of staff on long-term sick leave as a strategic priority. It had tightened rules about certification, begun offering private health care to some officers, and strengthened its rehabilitation facilities. It estimated that £20 million has been saved in terms of sick leave over the past four years.

## **Conclusion**

The survey of HR policies revealed few direct examples of age discrimination. HR managers justified those cited on grounds of cost (e.g. private health insurance); legal (e.g. age bars on the employment of young people in the sale of alcohol); health and safety (e.g. the employment of older people in physically demanding work); or cultural (e.g. long service awards) grounds. HR managers expressed concern about the level of proof they would need to demonstrate in order to objectively justify age discriminatory policies and practices, and felt they would therefore need to scrutinise the ancillary benefits of such policies. Improvement was seen as possible for some HR policies, such as the appraisal of employees approaching retirement; and in that respect, the legislation was seen as an agent for positive change.

# 6

## Experience of discrimination law

Since organisations' approach to implementing discrimination legislation might be expected to reflect their previous experience, case study organisations were asked about their experience in implementing previous anti-discrimination legislation. This included legislation which had been in effect for decades (Sex Discrimination Act, Race Relations Act, Equal Pay), as well as more recent anti-discrimination law (Disability, Religion and Sexual Orientation). This is an area where one might expect some divergence of view between HR professionals, who were the main interviewees, and operational managers in organisations, and this should be borne in mind in the following section.

Broadly, most of the case study organisations felt that equality legislation had had a positive impact in the workplace, both on individual employees and on the organisation as a whole. Anti-discrimination laws were seen as ensuring that employers made best use of their workforce and did not waste or overlook talent.

Views differed on the extent to which equality law had changed workplace culture, although there was general agreement about direction. Roughly half the respondents felt that previous legislation had had a significant impact, while the other half thought it had had none, because it was merely emphasising a direction in which HR practice was already going, and that the business case for treating employees equally had become self-evident to most employers.

*'I don't think the legislation [on gender discrimination] has had a great deal of impact really. I would like to think that our practices and processes were quite robust previously. I can't think of a single thing that we've changed as a result, apart from produce a policy which states it differently.'*

HEALTH RETAIL

Others felt that equality law had given focus to employers in improving management practices, and provided guidance on best practice. COMMS noted that, before the Disability Discrimination Act (DDA) was passed in 1995, the company had a good record on employing people with disabilities, but the Act had clarified for the company what adjustments were needed to enable disabled employees to work effectively.

The public sector organisations were very conscious of external pressures to demonstrate best practice in equal opportunities. POLICE's Authority had set targets for POLICE in the recruitment of women and racial and ethnic minorities (though not on age). UNIVERSITY, in seeking to diversify its student intake, noted that there was a business case for the institution to demonstrate its commitment to equality. LOCAL GOVERNMENT said that its equality initiatives have brought credibility to the Council in championing diversity within the wider community, and that local government should act as an exemplar of best employment practice, for other employers, and particularly for small companies.

It was not surprising, therefore, that the public sector organisations cited the most changes in management practices as a result of equality law. All three had equality boards composed of trade union, management and staff representatives who were responsible for providing input into HR policies. LOCAL GOVERNMENT had 'equality champions' in all of its services who monitored HR practices at the department level. UNIVERSITY was piloting an impact assessment review model developed by University College London to review the University's HR policy, teaching, curriculum and accommodation. Following the Stephen Lawrence inquiry, POLICE had held a public inquiry chaired by Sir Bill Morris on the employment and professional standards of the force. Although much of the work on age discrimination was on hold until the draft regulations were published, each of the public sector organisations felt that they had the infrastructure ready to bring their respective structures into line with the age discrimination legislation.

For the private sector organisations the impact of equality law was seen more in terms of the cost of compliance, but it was generally felt that the costs of implementing previous legislation had not been as significant as expected. PRINT, for example, an employer of mainly blue-collar workers who were more vulnerable to disabling injuries than white-collar workers, did not see the DDA as onerous to management.

COMMS was somewhat of an exception among the private sector organisations in its response to equality legislation. Like the public organisations, it had an equality board which was responsible for shaping company policy. It was noted that COMMS has 'been in the equality and diversity game for decades', and as a consequence had usually reformed its policies before new legislation came into effect. For example, it had already begun monitoring HR practices to identify religious and sexual orientation bias before the legislation was brought into effect in 2003.

### **Potential benefits of the age discrimination legislation**

Most of the case study organisations saw benefits to themselves as employers, and in particular for the management of older workers (although most acknowledged that the legislation would cover workers of all ages).

There was a widely shared view that best use was not made of older workers' talents in the workforce generally. Assumptions were made about their capabilities and attitudes toward continuing in work which were not often true. People were living longer and healthier lives, but public attitudes towards older

workers did not keep pace with reality. It was felt that the age discrimination legislation would challenge prejudice about older people, and help capable workers remain in the workforce. The strength of the consensus was very striking, that most of the common beliefs about older workers were mere prejudice.

*'People won't be written off in people's minds just because they pass a certain age. Just because someone slows down a little bit doesn't mean their brain isn't still very active.'*

LAW FIRM

*'I think there could be a cultural shift in how you manage people and interact with people. I think, certainly, human nature causes some people to automatically look around and say, 'oh, they're winding down.'*

POLICE

*'The really positive message in all of this is for staff to be able to drive within an organisation the realisation of the capacity of people who, in the past, would have felt to have been past their best and to add to what we call 'second career people.'*

LOCAL GOVERNMENT

Skills retention was seen as a specific benefit to employers from the age discrimination legislation. It was felt that employers often lost the training and experience built up in individuals once they left the organisation through retirement or redundancy. Employers could sometimes fail to recognise the loss to the organisation until after an older worker had left the workforce. Two organisations, POLICE and CHARITY, highlighted the importance of informal mentoring by older workers to the training of newer employees.

It was also argued that the legislation could result in greater stability in the workforce if it prevented mass exoduses of older workers through retirement or redundancy. This view was particularly clear in POLICE, which was seeking to retain older police officers who were scheduled for retirement within the next few years. Concern was raised that the force would see a significant shift in the age profile of officers towards the younger end, with too few experienced officers remaining.

Some employers felt that the age discrimination legislation would ensure that they better reflected the profile of their customer or client bases. UNIVERSITY was looking to increase its intake of mature students, while HEALTH RETAIL was targeting its market strategy towards older women. SUPERMARKET felt that an ageing customer base would be pleased to be served by older people.

CHARITY and RESIDENTIAL HOMES argued that they needed age balanced workforces to respond to clients' needs. RESIDENTIAL HOMES felt that a business which supported the elderly community required older workers to support them, and CHARITY felt that, in addition to skills and empathy, age might play a role in how community support officers interacted with clients.

*'I think it is important that we reflect the public that we are supporting...For example, you may have members of the public who have been affected or bereaved by [the disease] and to have a 20 year old walk into their home to support them may not go over well.'*

CHARITY

Finally, adopting good age practices was seen as a benefit to companies in terms of positive brand image. Several case study organisations cited the DIY store B&Q as an organisation which had enjoyed positive publicity for its age management practices. This profile helped both in the acquisition of new customers as well as recruitment of staff.

*'We hope that this portrays a very positive brand image for us as an organisation both for our current and any future employees...That's one of the reasons why we focus on these areas.'*

COMMS

### **Concerns about the forthcoming age legislation**

Although the case study organisations were generally positive about the aims of the age discrimination legislation, concern was expressed about specific details. It was argued that age discrimination was different from other forms of discrimination because there was more likely to be a justifiable reason behind it, such as the organisational need for experience or desire to reward loyalty.

*'Not employing a Black or Asian person who can do the job as well as me, I can understand the reason for [banning] that...but I do have a problem with the age discrimination, not because I'm older, but because I think from a loyalty aspect to the company, if somebody has been with the company for twenty odd years, their benefits should be better.'*

REGIONAL NEWS

Six of the case study organisations (POLICE, INSPECTOR, SUPERMARKET, PRINT, SME and REGIONAL NEWS) identified jobs in which they thought that physical requirements would make employing older workers difficult. All of the employers, apart from SME, employed occupational health staff who could assess whether an individual worker was capable of continuing in their posts. However, concern was raised about the standard of proof that would be needed to compulsorily retire an individual. SUPERMARKET argued that the requirement of the Disability Discrimination Act to make reasonable adjustments to enable disabled workers to work might cause problems for employers, faced with ageing employees with failing physical capacity who were unwilling to retire.

*'As a business, our concern is that without the ability to terminate someone's contract at a certain age, there is sufficient protection from the DDA...that we would be obliged to keep someone on our books where it doesn't feel right to do so.'*

SUPERMARKET

POLICE noted that police officers who were no longer physically capable of continuing in their jobs were normally assigned to deskwork. At present, it was argued, the force has enough 'headroom' to accommodate such staff. If the age discrimination legislation resulted in too many officers staying in work, it could result in an imbalance in the workforce.

*'Our core business is policing and we have to balance that to make sure we have got enough of the jobs out there doing the core business and that the backup doesn't become bigger than the beat.'*

POLICE

For some companies, it was felt that an extension of working life could present problems of succession, with older workers staying in post blocking opportunities for younger people. Problems of this sort were identified by PRINT (machine operators), LAW FIRM (partners), and REGIONAL NEWS (sales staff). POLICE was interesting in this respect. It wanted to retain more experienced and specialist officers in certain boroughs in order to provide training and mentoring for new recruits. However, the Police Authority had set recruitment targets for women and ethnic minorities in specialist and senior roles, which POLICE would find difficult to achieve if experienced officers (mostly white and male) stayed in work longer.

A particular objective for several employers was to retain the ability to discuss retirement plans with employees without being accused of discrimination. COMMS, which had independently decided to abolish compulsory retirement ages (regardless of legislation), was clearly committed to age diversity, but felt that good management required that employers discuss retirement plans with employees.

*'Essentially, the discrimination law may mean that having a conversation about retirement will not be allowed because it itself will be discriminatory. You could equally argue that we won't ask a woman when she would like to have a kid. We wouldn't do that, but I think in this case, it could have benefits for the employer and employee. Employers naturally have to plan and we need to know when we need to replace skills when someone retires. But it also allows us to put things in place to help the retirement experience for the individual.'*

COMMS

Both COMMS and SUPERMARKET wanted to be able to reach agreements with employees on when they retire. Without this, they felt that the employer might have to rely on cruder performance measurements to enforce retirement, which

neither organisation wished to do, recognising the damaging impact of a negative experience of leaving work on the employee in retirement.

Loyalty and length of service were areas where many of the case study organisations felt exemption was required (SUPERMARKET, COMMS, HEALTH RETAIL, PHARMACEUTICAL and REGIONAL NEWS).

*'We are not looking to discriminate against our employees on any criteria...but we believe that their length of service benefits are not there to discriminate and are actually seen to be morally, culturally, socially acceptable benefits.'*

COMMS

The anxiety was that the criteria for proving that a discriminatory practice like this was justifiable might prove too cumbersome, especially for small employers.

Employers felt particularly concerned about the prospects of having to justify long service awards. Although they have relatively small monetary worth, long service awards were felt to be important for workplace culture. However, most anticipated that they would probably abolish long service awards if forced to defend them in Tribunals.

Some benefits which were intended specifically to help older workers to manage the transition to retirement were identified as potentially under threat. REGIONAL NEWS, for example, noted that its policy of reducing working hours for staff within a year of retirement could be considered age discriminatory against younger employees, while PHARMACEUTICAL expressed concern about the vulnerability of its 'good leaver' policy.

### **What employers want in the legislation**

Employers identified four major concerns about the preparation and implementation of the legislation:

- ***The regulations, and accompanying employer guidelines, should be clear.*** Employers wanted to limit the scope for case law to define the application of the regulations. TUPE was cited as an example of regulations whose varying scope has proven problematic to employers. PHARMACEUTICAL argued that experience in the United States had been that class action lawsuits had rendered almost any management decision as a potential form of indirect age discrimination. LOCAL GOVERNMENT suggested that some parts of the legislation should be piloted before being rolled out. It suggested a 'User Acceptance Test' would highlight practical issues that the Government would need to consider.
- **Potential conflicts between the legislation and other employment law and Government policy should be resolved before the legislation takes effect.** Examples which were cited were:

Age discrimination legislation and TUPE

Prohibitions on age based pay systems and the minimum wage

Government subsidies to apprenticeships for people between 16 and 24

Age bars in some public sector research funding institutions

Public sector pension rules which discourage extended working beyond organisations' normal retirement age.

- ***There should be general exemptions for length of service awards.*** These were considered to be objectively justifiable, but employers did not want to be compelled to devote resources to defending them in Employment Tribunals.
- ***The Government should publish comprehensive guidelines.*** As the next chapter will discuss, employers relied on a myriad of sources for information on employment law. It was emphasised that employers wanted maximum clarity in order to avoid costly disputes arising from unintended discrimination.

*'I think for me, the legislation [giving employees the right to be represented in grievance and disciplinary procedures] was a nightmare because, on the one level, it looked really straight forward, but once you actually started to delve into it, the implications were huge...I didn't see anything from the Government, but I was being sent things through all the time from different emails and different websites. At times, it was contradictory, and I was thinking, 'well, which one do I go with?''*

CHARITY

- ***The timing of publication of the draft regulations should give employers enough time.*** Employers were aware that changes to HR policies would need to come into effect by October 2006, but most were waiting until the draft regulations were published before they begin reviewing their HR policies. Some employers did not feel that they would have enough time to implement changes before the law came into effect. Some employers (COMMS, CHARITY, UNIVERSITY) also noted that they needed time to clear changes in HR policies within complex management structures.<sup>8</sup>

### **Measuring the success of age discrimination legislation**

As a final question, respondents were asked how they would judge the success of the legislation. Some felt that success would be evident in a changed age profile of the workforce, with more older workers staying in work longer, and

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<sup>8</sup> It should be noted that most of the interviews occurred before 14 December 2004 when the Secretary of State for Trade and Industry announced the Government's proposals on retirement age, an issue which employers indicated they would need the most time to amend their policies.

more younger workers in jobs for which they were presently thought ineligible. Employers who cited age profile as an appropriate test tended to be those which had expressed concern about the age profiles of their own workforces. For example, POLICE wanted to avoid the rapid swings in the force's age profile which had historically been a problem; HEALTH RETAIL wanted to raise the age profile of its front-line staff; and SUPERMARKET saw the older workforce as a largely untapped resource.

Other employers, however, worried that older workers would be compelled to work longer because of shrinking pension entitlements. For them, an increase in the proportion of older workers would reflect a negative impact of the legislation. The legislation would only be successful, they argued, if employees did not lose the right to retire with dignity.

Some employers felt that the working relationship between employees and employers might change as a result of the legislation. It was thought that a good test of its success would be the number of people who were working in alternative working patterns or more flexibly as a matter of choice, rather than compulsion.

# 7

## Preparing for the legislation

Most case studies had decided to take no specific action to prepare for the legislation until they saw the draft regulations. As one HR manager put it, 'I am not in the business of dealing in what ifs'.

This did not mean that nothing was happening. Most employers were already reviewing their HR policies for other reasons. SUPERMARKET was building a recruitment strategy which, in part, targeted mature people; LOCAL GOVERNMENT was adapting its management structures in advance of relocation; and POLICE was looking for ways to increase its service by 5,000 officers. COMMS had begun preparing for the legislation in order to bolster its brand image as a best practice age management employer and to be prepared.

Some organisations felt that very little change in HR policies would be necessary. These organisations (PRINT, SME, RESIDENTIAL HOMES, HEALTH RETAIL) had few pay and conditions of service which were directly or indirectly age-related, and those which did exist were already being eliminated. They were confident that they would be in compliance with the legislation by October 2006, but may have had other reasons for reviewing their age management policies.

On the other hand, some organisations were undertaking 'blue sky thinking' about how HR policies could be reformed. CHARITY thought that its recruitment policies could focus more on competence and less on experience, observing that its recruitment strategies tended to focus more on the chronology of the applicant's work and educational history rather than whether they were capable of carrying out the work. This was thought to introduce bias against younger workers. In addition, it was thought that traditional recruitment processes enticed interviewers to guess applicants' ages by adding up their years of experience.

INSPECTOR anticipated that some inspectors would want to work past the present retirement age. Although most inspectors were ready to retire at or before 65, many were formerly self-employed, and may not have the savings for a financially secure retirement. INSPECTOR anticipated that a system of performance management and physical assessments would need to be developed to ensure that inspectors who stayed in work beyond 65 were capable of doing so, and that this would need to be separate from the company's existing performance management system.

PHARMACEUTICAL was not reviewing the age dimension of its HR policies, although it had considered the impact of the legislation on its new redundancy scheme. The company wanted to avoid changing the redundancy scheme, and reviewed the equality aspects of the policy before incorporating it into employees' conditions of service. The company was also factoring age into its equal pay reviews, and expected to conduct a major review of HR policies in the second half of 2005.

COMMS had announced that it would be abolishing its occupational retirement age before October 2006. It planned to do so regardless of Government's proposals on retirement age.

RESIDENTIAL HOMES began reviewing its policies when the Equal Treatment Directive was agreed in 2000. It recognised that some forms of discrimination would be addressed before others, but wanted to review the equality dimension of its policies holistically. It had addressed direct forms of age discrimination. Some other issues (e.g. the pensions implication of extending work) had also been identified, but would be reformed after the draft regulations were published.

UNIVERSITY planned to conduct an impact assessment on equality in relation to staff and students. The review would cover not only HR issues, but also teaching, learning, the curriculum and accommodation. It was currently testing a pilot assessment system developed by University College London.

Finally, the large organisations (SUPERMARKET, COMMS, PHARMACEUTICAL) noted that they were seeking to influence the Government through lobbying, both directly and through organisations like CIPD and EFA, while other organisations were using employer associations such as the Local Government Association (LOCAL GOVERNMENT); Newspaper Society (REGIONAL NEWS); and Law Society (LAW FIRM).

### **Sources of information**

Most of the case study organisations were aware of the age discrimination legislation. They were being kept informed about the legislation by various external and internal sources. These were:

**Solicitors:** Three employers (LOCAL GOVERNMENT, LAW FIRM and REGIONAL NEWS) reported that their solicitors were keeping them abreast of changes in employment law, including the age discrimination legislation.

**Employers' associations:** Two organisations were also using their employers' associations to gather information. The associations provided information not only about the legislation, but also enabled employers to exchange best practice.

**Professional bodies:** LAW FIRM mentioned the Law Society, and several organisations identified CIPD and EFA as sources of advice.

**Sponsoring government departments:** POLICE and LOCAL GOVERNMENT said that the Home Office and Office of the Deputy Prime Minister (ODPM) were relied upon to keep them informed about changes in employment law.

Sponsoring departments normally either produced guidelines or distributed those produced by Acas or the legislating department.

**Overseas divisions:** PHARMACEUTICAL noted that it had consulted parts of the company which were located in countries which already have age discrimination law for views on potential issues and impact.

**Informal employer networks:** LAW FIRM belonged to a regional employer network which met quarterly to exchange information and best practice. Acas would send a representative to the network's meetings to inform and consult on changes to the law.

**Unions:** Two union representatives (from Unison and Amicus) noted that they were being kept informed about the age discrimination legislation through their unions. The Amicus representative in PRINT had recently attended a workshop on negotiating in-house agreements. This included a session on equality, including the age discrimination legislation.

**Internet:** Most of the informants said that they regularly browsed various websites, including those hosted by the DTI, Acas, CIPD, CBI and TUC to keep themselves updated.

**Unsolicited information:** Many of the case study organisations reported that they regularly received circulars from various law firms, consultants, and other organisations looking for business. The mass mailings were considered helpful in flagging up issues which should be addressed (e.g. the age discrimination legislation), but the information was not generally considered helpful, and was sometimes contradictory.

### **Cost-benefit analysis**

None of the case study organisations had, as yet, conducted a cost-benefit analysis to assess the financial impact of the legislation.

Five organisations did not anticipate carrying out a cost-benefit analysis at any stage. INSPECTOR, PRINT and SME did not anticipate significant costs associated with the introduction of the legislation.

*'A cost-benefit analysis wouldn't be meaningful. People occasionally ask me to do all sorts of analyses so I could put some figures on a spreadsheet, but it doesn't mean anything.'*

INSPECTOR

PHARMACEUTICAL felt that there could be costs if the legislation resulted in a significant amount of litigation, especially if case law rendered established HR practices, such as voluntary redundancy, indirectly age discriminatory. However, it did not think that such risks could be quantified.

UNIVERSITY also thought that it was difficult to quantify risks, but anticipated that the legislation would generally benefit the organisation.

*'I think the approach that we have taken is that, rather than pushing the business case, we are trying to say that it is in the benefit of the*

*University to have a diverse community...We need to keep attracting students. That is our business case...but we have not actually calculated it in terms of a cost-benefit analysis.'*

UNIVERSITY

SUPERMARKET did not expect a significant financial impact from the legislation. It argued that the company has already adopted good practice in terms of age management, and therefore did not believe that a significant amount of resource would need to be devoted to reforming HR policies.

HR managers for REGIONAL NEWS and CHARITY expected that they would try to calculate the impact at some stage, but would not be preparing any formal analyses. The Head of HR for REGIONAL NEWS anticipated factoring in the costs when allocating staff budgets for each of the newspaper's departments. He saw some potential cost in levelling up pay and conditions, but also saw some financial savings if, for example, long service awards were abolished as discriminatory. Eliminating such benefits could save the employer money, but this may be at the expense of staff morale.

The HR Manager for CHARITY intended to carry out some analysis to inform her board of trustees, who would need to be convinced of the importance of the legislation and the need to reform the Trust's HR policies. Changes to the organisation's approach to recruitment would have a cost in the form of her time, and the legislation might result in the Trust adopting new forms of employment contracts, such as more fixed term contracts for staff working past retirement, and flexible working patterns for staff. Finally, unlike REGIONAL NEWS, she anticipated 'levelling up' health insurance benefits, and having to absorb the increased premium costs of employees over 65.

HEALTH RETAIL and LAW FIRM expected to conduct a cost-benefit analysis once the draft regulations were produced. HEALTH RETAIL was most concerned about the impact the age discrimination legislation would have on its pay system, in view of the high proportion of young employees, currently paid at lower rates. LAW FIRM cited the cost of providing private health insurance to all employees, including staff under 25.

POLICE was the one organisation which gave a firm date at which it expects to conduct a cost-benefit analysis. This would need to be complete by April 2006 so it could be incorporated into the 2006/2007 budget. The most significant cost was thought to be in pensions, but managers were uncertain whether the legislation, particularly changes to retirement age, would result in a net saving or net cost to the pension fund. Nevertheless, it was anticipated that POLICE would set aside some funds, in case the officers' pension fund needed topping up. Other aspects of the legislation were not thought to generate significant costs although some resources will be set aside for training and information for managers. Other costs, like workstation redesign to accommodate older staff, were already being undertaken in response to the Disability Discrimination Act.

COMMS, which was taking the most radical approach to the issue, would be conducting a cost-benefit analysis in 2005, and had established a working group to look at the impact of the legislation on various aspects of the company's

operations. It had already conducted a cost-benefit analysis on the abolition of retirement age, since it planned to do this regardless of Government decisions, and concluded that the most significant cost was likely to be in redundancy payments when retirement can no longer be used to minimise the scale of compulsory redundancy.

## **Implementation**

Many of the employers expressed anxiety about the timing of the publication of draft regulations, recognising that they would need to adapt their HR policies and practices by October 2006. Most felt that they would need around a year to put the necessary changes into effect.

Four of the case study organisations (CHARITY, LOCAL GOVERNMENT, UNIVERSITY and POLICE) said that the time necessary to get approval for changes in HR policies could be significant. UNIVERSITY said that it had hoped to include the impact of age discrimination legislation in its 2005/2006 planning cycle, which was due to begin in April. Prior to introducing any changes in policies or practices, it would need to consult with its recognised unions as well as gain approval for any proposed changes from the University's HR sub-committees, equality and diversity committee, Senate and Council. It would then start on a process of disseminating training and information to Schools and departments. POLICE expected that it would need time to ensure that departmental and borough managers understood the implications of the legislation. The HR department was already in the process of reviewing its relationship with middle ranking managers (for example, enforcing central rules on appraisal and performance management) to ensure that best management practice was occurring. LOCAL GOVERNMENT felt that it had already made significant progress in developing age neutral HR policies, but thought that other local authorities would need more time.

As part of the response to the legislation, most organisations expected to provide some training to managers, although the extent and timing of such training would vary. Most organisations would train before the legislation came into effect. It was expected that the draft regulations would give clear enough guidance to employers to inform managers, although some believed that changes to HR policies would need to be in place before managers were trained. While some organisations would be training managers at all levels of the workforce, others would only be training the most senior managers and directors.

# 8

## Conclusions

This project sought to identify how prepared employers are for the implementation of the age discrimination legislation. Some patterns are common. All case study organisations were experiencing significant change, with implications for their HR policies and practices. Skills gaps and shortages were a dominant issue for almost all, but age discrimination was not a high priority. However, all were aware of the issue and of the pending legislation. The prejudices about age, and particularly about older workers found by previous studies were less evident, suggesting that the climate was changing, at least amongst HR professionals. None of the organisations was hostile to the elimination of age discrimination and many welcomed the legislation as supporting broadly positive trends in HR practice, although there was some scepticism about its potential impact, and a number of specific concerns about how the boundaries would be drawn between legitimate and illegitimate practices.

That said, there were some differences between organisations (although it is important to be cautious about making generalisations on the basis of a small qualitative study). Perhaps the clearest pattern was that awareness of the issue of age diversity and practices which encourage flexibility and diversity among the workforce were more widespread among employers facing skills shortages. After that, the most conspicuous differences were between public and private sector organisations. Public sector employers, and ex-public sector ones, were more likely to have established policies dealing with equality, diversity, flexible working and retirement, and formal structures for consulting on and managing this. However, the degree to which policies were implemented in practice varied, mainly because of the discretion given to line managers. Small private and charitable organisations, on the other hand, had fewer policies, but a more uniform approach to dealing with these issues. In these organisations, senior managers played a more direct role in influencing the workplace culture, and this influence, in the case study organisations, appeared to be relatively benign. Contrary to earlier research, employers in declining industries or changing technologies were putting significant resources into retaining and re-skilling their older workforces.

The project proposal offered to address six key questions. The following is a summary of the evidence on each of these.

### **How aware are managers, workers and trades unions of the pending age discrimination legislation and its implications?**

There was a widespread, but low, level of awareness of the pending legislation, and managers in the case study organisations had begun to think through its

potential implications. A greater awareness of age equality was found in these case study organisations than among employers in the DWP's *Age Positive* research. This may reflect the Government's campaigning activity and the approach of the legislation, although no particular sources of awareness were identified.

Most of the case study organisations saw age as one dimension of their equal opportunities policy, even if it was not explicitly mentioned there. However, they felt that they had been hampered in responding to the legislation by lack of information on what the regulations would actually say, and in general were reluctant to take any very positive action until these were published.

Trade union and staff representatives were aware of the legislation and saw it as a bargaining issue with employers. While supporting the ideas of age diversity, fairness at work and greater choice for employees about when they retire, unions were particularly concerned about the risk that changes in retirement age would come to be linked to discussions about State and occupational pensions and endanger the 'right to retire'.

### **How important do they think it is?**

In a turbulent environment, where almost all organisations are undergoing continuous change, age discrimination was not a first order priority. However, most saw skills gaps and shortages as a key strategic issue, and were devoting some energy to addressing this. However, most did not (yet) see age diversity as a central dimension of solving this problem, although some organisations were developing ways of recruiting and retaining older workers as a partial solution. It was clear, as previous research suggests, that employers facing serious skills problems were prepared to take a more positive view of diversity.

This study found more positive attitudes to older workers than previous research has suggested, and it would appear that levels of prejudice are declining.

The general view of the proposed legislation was positive. Case study organisations thought that it would continue the current trajectory of improvement in HR and equal opportunities practice, but they did not think that it was likely to bring about major changes to HR practice, nor to the behaviour of individual workers.

### **What issues are causing most anxiety?**

A number of issues were causing widespread anxiety. All relate to the difficulty of establishing when different treatment of individuals of different ages would be seen as legitimate or illegitimate. They were particularly concerned that Government should provide as precise guidance as possible on this to avoid expensive litigation. The key issues identified were:

- Length of service criteria for determining pay and conditions, and long service awards. Although by definition these were given to older rather than younger workers they were seen as justifiable rewards for loyalty, and employers wanted a general exemption for them.

- Dismissal of older workers on grounds of capability, particularly in posts which were physically demanding. Here the case study employers generally doubted that their current performance management systems were robust enough to deal with a reluctant retiree, and some were concerned about potential conflicts with the Disability Discrimination Act.
- The management of retirement, particularly around the issues of pensions, employees' welfare, and the right of managers to discuss retirement plans with employees.
- The resolution of conflicts with other statutes, including age limits on the employment of young people.

### **How far were current HR practices consistent with age diversity?**

There was little evidence of directly discriminatory practice among the case study organisations, unless fixed retirement ages were themselves deemed discriminatory. Most of the questionable practices were those listed above, where the interpretation of the 'objectively and reasonably justified' clause in the EU Directive arises, and employers wanted clear guidelines.

In only two of the organisations were there specific strategies to seek or manage age diversity, although when questioned, several respondents thought that the age mix of their organisation could be improved. Where there were age management policies, they had been developed to address recruitment and retention problems, rather than to seek a more age diverse workforce. However, most case study organisations had written, or planned to write, prohibitions against age discrimination into their equal opportunities policies.

Many employers based some aspects of pay and benefits on length of service, and many offered long service awards of relatively low monetary value.

Some employers were seeking to improve the retention of older workers in order to conserve skills and knowledge, reduce recruitment and training costs, and to match customer/staff profiles and, in this respect, the legislation was generally welcomed.

### **How far were current HR practices consistent with the planned legislation?**

There was no evidence of overt discrimination in HR policy documents, and little was identified in practice as reported in this study. However, there was evidence from the case study organisations that on many issues decisions rested at the discretion of junior and middle managers, and a number of HR managers believed that age diverse policy at the top of the organisation might not be reflected in practice on the ground.

One of the most difficult forms of age discrimination to redress was in recruitment. As the case studies showed, employers were seeking to introduce 'age blind' processes. However, national evidence suggests that discrimination still takes place. HR managers were looking for ways to eliminate age discrimination in recruitment, but saw this as a difficult task when interviewers could usually guess an applicant's approximate age.

Although most of the case study organisations had 65 as the contractual retirement age for staff many employees retired earlier, so the Government's proposal to set a default age would probably lead to only a modest increase, if any, in numbers staying in employment.

Appraisal and performance management systems existed, but were not thought to be robust enough to cope with disputes over retirement, especially since many managers were said to turn a blind eye to poor performance of people approaching retirement.

### **How far are they amenable to change?**

There appeared to be little resistance at senior levels to increasing age diversity in the workplace, and HR practitioners seemed to view the legislation as an opportunity to improve the quality of HR practice generally. The main issue appeared to lie with the training and support of middle managers, who it was felt might need more convincing of the benefits of age diversity. Leadership from senior managers could also play a role in changing attitudes and practices.

Few employers expressed an unwillingness to retain employees who wanted to stay in work longer, even if they had no explicit policy. However, there was a view that the support of older workers who wished to continue in their jobs must be balanced against a recognition of their welfare and their ability to retire with dignity.

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# Appendix A

## Case study reports

### Case study 1: Corgi

#### **Overview**

Corgi was relatively proactive in addressing age in its employment practices. This was primarily the result of a tradition of employing older workers, particularly in the core inspector roles. Many of the myths around the older workforce had been jettisoned in the organisation.

There was, however, concern about how the organisation would be able to manage succession planning should compulsory retirement be abolished. This was due to the age profile of the organisation, and the fact that Corgi was hoping to recruit younger inspectors who would be with the organisation longer.

Although no direct forms of age discrimination were identified (e.g. age bars), senior managers recognised that some HR systems, such as performance appraisals, may need to be revised in order to manage an older workforce should compulsory retirement be abolished.

#### **Business context**

Corgi (Council of Registered Gas Inspectors) employed 300 employees. Its core business was the registration and inspection of gas installers, for which it employed 160 inspectors across the UK. This service was financed through a registration fee licensed by the Health and Safety Executive. It also operated non-core business ventures from its Basingstoke headquarters. One hundred and forty staff were employed in direct marketing activities, the publication of *Gas Installers* and a print function. With forthcoming changes to the building regulations, Corgi was hoping to expand its core business to take on more inspecting responsibilities: for example, the registration of electricians.

#### **Workforce profile**

Corgi's workforce was divided into two groups:

The organisation employed 160 gas inspectors across the UK. These employees were almost all aged over 40, with a majority aged over 50. They were also presently all male. The inspector role was seen in the gas industry as a 'status' job. Installers usually applied for the job for one or more of the following reasons: because it required less manual work than installation; for job security and pension entitlements; or due to its flexibility in work routine. There were

currently 97,000 applicants for inspector jobs (of which 1,000 applications were from women), although waiting lists varied by region.

Inspectors worked from home, having been supplied by Corgi with IT systems and company cars to enable them to schedule and attend inspections. Because the inspector role required a high level of experience in gas installation, the job mainly attracted older workers. Corgi was, however, developing an apprenticeship programme to attract younger inspectors. The inspectors were managed by two general operational managers and thirteen area managers. Inspectors were required to attend monthly regional meetings during which skills were updated and networks between inspectors developed.

The administrative workforce, based in Basingstoke, was an age mixed group of predominantly women workers. These employees were organised into small teams carrying out specific functions. All staff were paid according to a national pay framework set by reference to data provided by a third party source.

### ***Preparation for the age discrimination legislation***

Managers did not see the age discrimination legislation as having an impact on company policies and practices, other than in relation to retirement age. They could not identify HR policies which set direct age bars on access to jobs, training or pay and conditions. The organisation operated under an ethos of 'it's the best person for the job, not necessarily having anything to do with cultural background or age'.

Corgi had not conducted a cost-benefit analysis of the impact of the legislation on business operations. It was anticipated that the impact would be marginal and that such assessment 'wouldn't be relevant in a company of our size'. Cost-benefit analyses were not conducted with the introduction of earlier discrimination legislation covering race, disability, sexual orientation and religion. When asked to identify what costs might be incurred by the business, senior officers cited succession planning and keeping staff employed beyond productive years. It was also anticipated that appraisal systems might need to be improved so as to manage staff beyond what was then the normal retirement age. Potential benefits identified were: retention of skills, increased morale and improved performance management.

Corgi had an equal opportunities policy, although there was no specific reference to age. It was anticipated that the policy would be revised once the legislation was introduced. It was expected that, once developed, Corgi's policy on age would be disseminated to line managers and workers through diversity workshops. Experience with the introduction of previous discrimination legislation had proven the success of such workshops in providing open fora in which employees could talk and share views.

### ***HR policies and practices***

- *Age policy:* Corgi had an equal opportunities policy, but it did not feature an explicit reference to age.

- *Appraisals:* Corgi operated a performance appraisal system, although it was not considered robust enough to manage staff exit should compulsory retirement ages be abolished. It was thought that a system of yearly appraisals, past the age of 60 or 65 (the current retirement age), would be necessary in order to assess the physical capability of staff wanting to stay in work longer.
- *Disability:* Many staff, particularly those in inspector roles, joined Corgi after being forced to leave manual work for health or disability-related reasons such as 'plumber's knee'. Managers accommodated staff with disabilities by reorganising work (e.g. limiting manual work) and providing equipment (e.g. special vehicles to help staff with back problems).
- *Flexible working:* Corgi did not have a formal policy on flexible working, although it had experimented with job redesign to accommodate staff (both administrative and inspectors) wanting to job share. It was felt that flexible working could allow older inspectors to phase into retirement, perhaps while mentoring new recruits. There were, however, costs involved which management was hoping to address, for example the cost of providing two cars to accommodate two staff members. Corgi did not offer family friendly benefits beyond statutory rights to parents.
- *Harassment and victimisation:* The company's policy on harassment and victimisation was incorporated into its equal opportunities policy. Line managers could not recall experiences of age-related grievances between staff. However, gas installers occasionally bullied younger inspectors. Such problems were normally addressed by the inspector's field manager.
- *Pensions:* Corgi operated two pension schemes. Most staff belonged to a defined contribution scheme. However, a few staff who transferred from British Gas had carried over membership of a defined benefit scheme.
- *Recruitment:* Corgi did not impose age bars on jobs. Age-related information (e.g. date of birth) was removed from job application forms before they were passed to the interview panel. Corgi was considering introducing an apprenticeship programme. It was pointed out that, should it take part in the Government assisted programme, an age ceiling of 24 would need to be introduced for applicants to the scheme.
- *Retirement:* Retirement age was 65 for all employees. Staff had the option of retiring from the age of 50. Because of the pension implications, few staff chose to retire early. A few staff stayed in work past 65, which they could do with their line manager's approval. No member of staff had stayed beyond 70.
- *Sick leave:* Although Corgi had an older workforce, sickness levels were low. The HR Director attributed this to the fact that many inspectors had previously been self-employed, when they could not afford to take sick leave. Amongst the inspectors, therefore, there was a workplace culture

which resisted the use of short-term sick leave. Corgi had, however, identified a problem of repetitive short-term sickness patterns amongst younger workers in administrative roles. It had introduced return to work interviews in order to reduce absenteeism due to sickness.

- *Succession:* The organisation did not have a strategy for succession planning, but it was starting to devise one. Turnover in Corgi tended to be low.
- *Training:* Training for inspectors was usually in the form of half-day workshops, which were linked to monthly regional meetings. The organisation also provided longer training events/courses for skills such as IT. Corgi did not operate age bars in training. Because of the nature of their work, older workers tended to receive more training.

### ***Changes to retirement age***

Corgi allowed employees to stay in work beyond retirement age if their respective line managers could make a case for business need. It was currently experimenting with flexible working patterns such as job sharing for staff approaching or working beyond retirement.

Inspectors did not indicate a high demand for working beyond the company retirement age. Some wanted to retire earlier than their occupational retirement age. Where there was a desire to stay in work longer, it was associated with financial need, particularly efforts to top-up pension contributions.

Senior managers noted that older employees, most of whom have defined pension entitlement, expected to retire before they reached 65. Younger workers, who contributed to a defined contribution scheme, were not thought to be saving enough toward retirement and it was expected that they would have to work longer in order to afford retirement.

Management anticipated that it would need to introduce a performance management system to assess individual workers who wanted to stay in work longer.

It was anticipated that performance assessments would need to be made after a certain age rather than throughout the individual's working life. Senior managers anticipated that as workers aged, the physical demands of the work, particularly for those in inspector roles, would limit their capacity to continue working. In accordance with disability discrimination legislation, Corgi accommodated staff through job redesign and the provision of necessary equipment. Senior managers had some concerns about whether the combination of the legislation banning disability discrimination with the possible abolition of compulsory retirement ages, could create an imbalance in the workforce whereby an increasing number of staff are unable to meet the physical demands of the work.

Should a performance assessment system be necessary, Corgi wanted to ensure that assessments would be carried out objectively.

Some concerns were raised by senior managers about two of the retirement age options posited by the Government. Managers thought that a default age of 70 could prove unpopular with the majority of employees who did not want to remain in work beyond 65 (CORGI's retirement age). This The HR adviser expressed concern that setting a default retirement age of 70 could put pressure on Corgi to raise its pension age.

Line managers and employees indicated that they would not wish to stay in work past the company's retirement age of 65, and many would prefer to retire earlier. However, because most inspectors had spent a large proportion of their careers in self-employment, many thought they might need to work longer because they lacked adequate pensions to retire comfortably.

It was also felt that an employer-set retirement age within government guidelines would not change anything, since employers could find ways to justify imposing retirement ages.

***Interviewed: HR Adviser, Senior Manager, Finance Director. One group interview with gas inspectors, including some with line manager responsibilities.***

## Case study 2: Metropolitan Police

### **Overview**

The Metropolitan Police had a number of distinctive features as an organisation:

- It had relatively robust HR policies which had historically been applied at the shop floor level in a patchy fashion. The autonomy enjoyed by mid-level management often resulted in varying workplace conditions across the force. There appeared to be stricter enforcements of management appraisal and training requirements, and the HR department was using media such as the intranet to ensure that managers were aware of their obligations under the law.
- There were significant labour demands, and management generally welcomed older employees staying in work longer. It was thought that attitudes toward age discrimination legislation, and the retirement age in particular, could change if labour demands shifted.
- While HR managers did not expect a sharp rise in officers or staff wanting to stay in work longer, it was recognised that the age discrimination legislation could force line managers to manage their older workers better: i.e. better performance management, more training, and more robust appraisals.
- Metropolitan Police officers were amongst the few UK workers who could draw their pensions after retirement while continuing in work with their former employers. Interestingly, however, few took up this opportunity.

### **Business context**

The Metropolitan Police served Greater London, with a boundary that covered 620 square miles. It was financed through annual block grants from the Home Office, which were administered by the Greater London Authority, and had an annual budget of £2.7 billion. It reported to the Metropolitan Police Authority, a body composed of GLA members and independent representatives, and the Home Office, which was responsible for overseeing the Police Service's strategy.

In order to achieve ambitious performance targets, the Metropolitan Police had set a target of increasing the number of police officers by 5,000 over the 2004/2005 fiscal year. It intended to achieve this objective through a combination of recruitment and retention of existing staff.

### **Workforce profile**

The Metropolitan Police employed 44,000 people: 30,000 police officers, 12,000 police staff; 1,500 police community support officers (PCSOs); and 500 traffic wardens.

People could join the police service from the age of 18. There was an upper age recruitment limit of 50 for officers. On recruitment, police officer inductees had

a two year probationary period. Initial training represented a significant cost for the MPS. Traditionally, the MPS recovered this cost through a career-long service from the officer. However, over the past decade, there had been a trend for officers to leave the force early, taking up a second career, either in another police force or in another sector. Early exit had been attributed to the stress associated with policing the Capital.

Police officers could serve for 30 years, after which they were entitled to draw a full pension. Because many police officers joined in or before their early twenties, most were entitled to retire from the force before they reach 55. Many officers left the force once they could draw a full pension, using the opportunity to start a second career. Those who chose to stay could continue until 60, subject to annual revision, which included an examination by the MPS Chief Medical Officer.

### ***Preparation for the age discrimination legislation***

It was anticipated that line managers may need to be better trained in how they performed annual appraisals. The Metropolitan Police used an appraisal system known as Personal Development Review (PDR), which was designed nationally for police forces. However, its application tended to be patchy, with annual reviews frequently missed, and identified developmental needs often unaddressed. This was particularly the case for officers and staff who were approaching retirement. It was felt by HR managers that if the certainty of an occupational retirement age was removed, line managers would be forced to be more rigorous in their appraisals of older workers. Managers could no longer assume that an older staff member would leave by a certain date. Therefore, they would need to ensure that their older workforce had skills and training which was up to date.

Pay scales for both officers and staff were based on increments, and it was uncertain whether these would need to be changed in order to comply with the legislation. It was noted that the Home Office would be responsible for revising police officer pay systems in order to comply with the legislation.

The Metropolitan Police had not yet conducted a cost-benefit analysis in order to assess the financial implications of the legislation, largely because draft regulations had not yet been published. Each year, the MPS finance department reviewed changes to employment regulations, ranking new legislation according to its financial and operational impact. The age discrimination legislation was ranked a medium priority. The most significant cost was thought to be in pensions. However, the MPS was uncertain whether the legislation, particularly changes to retirement age, would result in a net savings or net cost to the pension fund. Nevertheless, it was anticipated that the Metropolitan Police would set aside some funds, should the officers' pension fund need topping up.

The finance department did not expect to increase departmental or borough budgets in order to comply with the legislation. This would depend on the operational impact of the legislation and would be monitored by the HR department.

Although it was not mentioned by the finance department, the HR Directorate anticipated cost savings on recruitment and training activities as a result of the age discrimination legislation. The MPS expected to reap a financial benefit from retaining experienced officers and staff longer.

### ***HR policies and practices***

- *Age policy:* The Metropolitan Police had an equal opportunities policy, but it did not currently include a direct reference to age. It was expected that the policy would be revised before the new regulations came into force.
- *Benefits:* The Metropolitan Police did not offer private health care (other than a pilot scheme to help incapacitated police officers return to work), or company cars (other than for senior officers). Police officers enjoyed free rail and bus travel, and PCSOs got free bus travel.
- *Career development:* Promotions for police officers up to inspector level were based on a system of National Competency exams. Above inspector level, they were based on a variety of presentations, assessments and interviews. There was less concern about the more junior level promotion system, since the exam provided a means for objectively assessing an applicant's potential. Concern was raised about possible age biases in the interviewing process. Line managers tended to want applicants with the most experience, and could tend to discriminate against younger applicants. The HR Directorate was reviewing how vacancies were advertised in order to mitigate job requirement inflation. This exercise is being carried out on cost grounds, but could also prevent some age discrimination against younger job applicants.
- *Disability:* The Disability Discrimination Act had only recently been applied to police officers. The Metropolitan Police had an occupational health department, and was piloting schemes to help officers injured whilst on duty to return to work faster. Officers with long-term disabilities were usually assigned administrative roles, either in an officer or staff capacity.
- *Flexible working:* The right to request flexible working was open to all members of staff and not limited to parents of young children. In order to meet retention targets, line managers were being encouraged to look for ways to accommodate officers who had completed 30 years of service, but who wanted to continue in work with reduced hours. Decisions on flexible working were made at the borough or departmental level, and managers' willingness to consider flexible working varied across the organisation.
- *Harassment and victimisation:* MPS's policy on harassment and victimisation did not contain a specific reference to age, although the organisation had put considerable resources into rooting out bullying of young officers by older colleagues.

- *Health and safety:* Because of the nature of police officer work, the Metropolitan Police had a large occupational health department, and robust mechanisms for addressing injuries at work, stress and illness.
- *Mentoring:* The Metropolitan Police did not have a formal mentoring programme, although mentoring was seen to exist, particularly at the borough level, where new recruits started their careers with MPS.
- *Monitoring:* The age profile of the workforce was monitored annually, and information was provided to the Home Office, MPA and Greater London Authority. Data was also used to monitor issues around recruitment, promotion, succession and retirement.
- *Pay:* Police officers were paid according to national pay scales negotiated by the Home Office. Staff pay was negotiated by MPS. Both pay systems featured pay scales based in part on length of service.
- *Pensions:* Police staff were members of the Civil Service pension scheme which was an unfunded scheme administered by the Cabinet Office. Police officers were members of a national scheme administered by the Home Office. Both schemes were final salary, although the Government was planning to base benefits from the Civil Service pension scheme on average earnings.
- *Redundancy:* Redundancy terms were set by officers' and staff's respective pension schemes. Police officers had the option of retiring with 25 years service on 2/3rds pay.
- *Retention:* The Metropolitan Police had introduced the Home Office '30 plus' scheme to enable police officers to receive their lump sum pension entitlement (but not monthly pension payments) while remaining in work. Staff who stayed beyond 65 were required to undergo annual assessments to ensure they remained capable of performing their assigned tasks. Police officers, other than chief constables, had to retire by the age of 60. Because such assessments only applied to those above these ages, this aspect of performance management may not comply with the age discrimination legislation. Police officers who had reached retirement could also apply for staff jobs and, if successful, could continue to work for the MPS while drawing their pensions.
- It was not known precisely how many officers across MPS took up the opportunity to move into staff posts after retirement, as many made arrangements within their boroughs. Many officers were not aware that they could move to staff jobs on retirement, while still drawing a pension, which was one reason for the HR Directorate's proposed 'Options to Remain' scheme, a project designed to inform police officers of the various incentives for remaining in work past retirement.
- *Training:* There were no age bars on training. However, line managers had to approve training requests, and were sometimes reluctant to do so if the officer or staff member was approaching retirement.

### ***Changes to retirement age***

HR department officers were generally concerned about how changes to retirement age, for example the abolition of occupational retirement ages, would affect the management of police officers. It was argued that police officer work, particularly patrol jobs, required a high level of physical dexterity and could be very stressful. Doubt was raised over whether officers over 60 (the current maximum age for officers, other than chief constables) would be capable of continuing to perform their responsibilities.

It was noted that the Metropolitan Police had 'headroom': a number of desk jobs to which the service assigned officers who were unable to continue in beat work, for example because of an injury. Should there be a rise in demand amongst older officers to stay in the service, it was anticipated that many would be assigned to desk jobs in which the physical demands were reduced. Some HR managers worried that a sharp rise in demand for retention could lead to an imbalance in the workforce profile: i.e. that the Metropolitan Police would have too many officers assigned to desk jobs and too few assigned to beat jobs.

One of the options posited by the Government on retirement age was to abolish compulsory retirement, but to allow employers to set occupational retirement ages within government guidelines where they are proven to be justifiable. Some respondents felt that this approach could provide the Metropolitan Police with some flexibility in setting a retirement age for police officers. It was felt that the physical requirements on police officers could justify a police force setting a maximum retirement age.

While HR officers were concerned that the abolition of retirement age could affect the management of police officers, there was little concern about the impact on the management of older police staff. Retaining administrative staff past retirement age was not considered, in principle, problematic.

***Interviewed: Head of HR Policy; Assistant Head of Human Resource; Assistant HR Director-HR Services; Head of Career Management and Retentions Unit; Head of Pay and Pensions; Head of Workforce Planning; Director of Strategic Finance; Trade Union Side Partnership Group representative.***

## Case study 3: SUPERMARKET

### **Overview**

SUPERMARKET had sought to develop best practice in workplace age diversity and flexible retirement. Its policies mainly derived from labour market demands and the need for staff available during nights, weekends and anti-social hours. As the respondent noted, if SUPERMARKET continued to recruit in its traditional ways, 'we will fail'.

Although SUPERMARKET was striving for best practice in age diversity, it was concerned about the impact of age diversity legislation. Its main concerns were having to justify long service and age-related benefits and abolition of compulsory retirement age. SUPERMARKET wanted to continue to be able to discuss retirement plans with staff in order to negotiate retirement dates which suited management and the individual.

SUPERMARKET was an example of an organisation which many older workers joined after retiring from their main work. This presented both benefits and challenges to the company. On the positive side, SUPERMARKET enjoyed the wealth of experience and skills its older workers had built up over their careers. They mostly preferred to work flexibly and could adapt to the company's operational needs. However, a large proportion of its workforce was older, many past state pension age, which presented challenges to the organisation in how it managed its workers, particularly around the issue of retirement. Although it actively recruited older workers, complete abolition of retirement age was not welcomed, because of the numbers of employees who could be affected.

### **Business context**

SUPERMARKET, like many retailers, was operating within a 24-hour/7 days a week service environment and this shaped the organisation's HR requirements. The company was continually looking for ways to recruit more employees (particularly at the front line of services), and it needed staff who could work atypical hours and working patterns.

### **Workforce profile**

SUPERMARKET tried to ensure that its front line staff profile broadly reflected the communities in which its stores were located. It preferred to recruit locally. The workforce was age diverse, with an age profile spanning from 16 year olds to staff in their 80s. The majority of its staff were women working part-time.

According to the HR representative, older and younger employees tended to work well together as teams, and there was usually inter-generational harmony on the shop floor. This was evidenced by qualitative research carried out for the company in which SUPERMARKET workers were interviewed about their views on work. Older employees say that younger colleagues made them feel young, and younger colleagues turned to older ones for advice and guidance. There was, however, a difference in older workers' attitudes toward the younger

colleagues who were with SUPERMARKET for a short time (primarily students, who were perceived to be ambitious and able) and those who had dedicated their careers to the supermarket (who were generally perceived more negatively).

### ***Preparation for the age discrimination legislation***

SUPERMARKET had carried out an audit of its HR policies, although it was noted 'That is quite difficult to do without any legislation to measure it against'. With the exception of retirement age, it was not anticipated that the legislation would have a significant impact on SUPERMARKET. There were not expected to be significant direct costs to SUPERMARKET as a result of the legislation, although it was thought that there may be some insurance implications. Concerns were expressed about the level of proof Employment Tribunals would require to justify long service awards and age based conditions of service.

Abolishing the retirement age was seen as potentially problematic. It was suggested that the combination of age discrimination legislation and the Disability Discrimination Act might be particularly problematic, since an employee dismissed on grounds of physical capacity could have sufficient protection under the DDA to remain in work.

SUPERMARKET's experience of implementing previous legislation had suggested that such changes had been less problematic than originally anticipated.

### ***HR policies and practices***

- *Age policy:* SUPERMARKET had an equal opportunities policy which included an explicit reference to age. This was a long-standing policy. The company provided training for managers on equal opportunities.
- *Benefits:* SUPERMARKET offered some benefits which were either directly age-related (e.g. health checks for managers over 50) or related to length of service. There were some concerns about whether SUPERMARKET would be able to justify age or service related benefits, although it was felt that rewarding long service could be justified on 'moral' and business reasons. The HR representative felt it was morally justifiable to reward 'loyalty' where employees had opted to devote a large part of their careers to SUPERMARKET. Because extending employees' service reduced SUPERMARKET's recruitment costs, it was also felt that long service awards were justifiable incentives for employees to stay in work longer.
- *Flexible working:* Most SUPERMARKET staff were part-time workers. The company tried to look favourably on requests by staff to work flexibly. However, it had had some difficulties applying flexible working patterns to jobs that were higher up the organisational hierarchy.
- *Health and safety:* SUPERMARKET believed that it had a strong occupational health team. It recognised that there may be some health and safety issues for older workers carrying out more physically demanding work.

- *Pensions:* SUPERMARKET operated two defined benefit schemes: one based on final salary and the other on average earnings. SUPERMARKET hoped that the age discrimination legislation and pension reforms set out in the DWP Green Paper would come at the same time. Otherwise, it was thought that it would be difficult to implement all the necessary changes arising from the legislation.
- *Recruitment:* SUPERMARKET operated age bars for legal, insurance or health and safety reasons (e.g. not employing staff under 18 in the sale of alcohol). Application forms asked for date of birth, which was seen by the store manager.
- *Retirement:* SUPERMARKET's default retirement age was 60 for senior managers and 65 for all other staff. SUPERMARKET operated a flexible retirement scheme which allowed employees to retire from 50 and time off was offered to staff approaching retirement, the length of which was determined by the store manager. After default retirement age, staff could continue in work, subject to agreement with their line manager. Staff who stayed beyond retirement age were subject to annual performance reviews.
- *Succession:* SUPERMARKET operated a scheme known as 'talent spotting' for retaining staff through providing career development opportunities. It was not thought that the legislation would have a significant impact on this.
- *Training:* SUPERMARKET did not have age bars on training opportunities. It was considered that older staff were as likely to take up training and multi-skilling (e.g. training both on cash registers and inventory) as younger ones, and that there was no age difference in ability to master the IT equipment supplied in the stores.

### ***Changes to retirement age***

Approximately 15 per cent of SUPERMARKET staff were over State Pension Age, and the company actively recruited older workers. The HR representative emphasised that evidence within SUPERMARKET challenged many of the myths around older workers (e.g. that they have higher absenteeism). However, concern was raised about abolishing compulsory retirement without a default age. It was felt that abolition of retirement age, combined with the Disabilities Discrimination Act, could render dismissal of staff on physical competency grounds difficult for employers like SUPERMARKET.

It was felt that a default retirement age would help employers like SUPERMARKET manage their older workers. It was not thought that a default retirement age would lead to SUPERMARKET automatically retiring employees once they reached that age, but it was argued that, with this option, a manager could compel an older worker to leave work without worry of falling foul of employment law.

Allowing employers to set a retirement age which was objectively justifiable within government guidelines was also thought to be a more attractive option

than complete abolition. However, the HR representative was uncertain about the level of proof which an Employment Tribunal would require to justify an employer set retirement age. This would present particular difficulties for an organisation like SUPERMARKET which has a large older workforce. The fact that SUPERMARKET currently has a large older workforce could make justification of a retirement age difficult.

***Interviewed: Group Benefits Officer.***

## **se study 4: British Telecom**

### ***Overview***

BT was an organisation striving to demonstrate best practice on age diversity, particularly in relation to retirement age. While, in principle, it saw the age discrimination legislation as positive, it had some concerns about how the legislation would impact on the organisation's ability to find agreeable processes for employees' retirement. The HR Manager strongly felt that managers and employees should be able to discuss when an employee chooses to retire. It was also feared that, without a general exemption on long service awards, some employee benefits could be levelled down, with less generous benefit packages becoming the standard.

### ***Business context***

BT employed 93,000 staff in the UK providing telephony, internet and IT services. Its main new project was rolling out broadband services. Because of advances in new technology, BT was in the process of downsizing its workforce. In the early 1990s it had a workforce of 250,000. Downsizing had been achieved through voluntary redundancy programmes. Thus far, compulsory redundancies had not been required.

### ***Workplace profile***

BT employed a wide age range of staff, 20 per cent of whom were over 50. The company was downsizing its engineer workforce, while increasing the size of its workforce responsible for network development. The organisation required employees to continually update skills with advancing technologies. Some staff joined the organisation before privatisation, when conditions of service and pension rights changed significantly.

BT had recently conducted a survey of all employees aged 50 and over about work and retirement. Forty three per cent said that they would like to continue working past the occupational retirement age of 60. The 50 to 60 year age bracket had increased from 13 per cent in 2000 to 20 per cent in 2004. It was thought that abolition of the current retirement age of 60 could lead to an even greater proportion of the workforce aged 50 and over.

It was noted that many older staff who would have preferred to retire before 60 had already left BT through voluntary redundancy. The average retirement age was lower than 60.<sup>9</sup>

### ***Preparation for the age discrimination legislation***

The HR Manager did not see the legislation as having a major impact on BT, which had already reviewed the age dimension of its HR policies. BT was an Age Positive exemplar and the DWP cited BT as a best practice employer in reference to its age management policies. While the HR manager could not identify HR policies which were directly discriminatory, she did have concerns about how the legislation might affect BT's ability to manage older workers, particularly managers' ability to discuss plans with staff who were approaching retirement.

BT had set up an age action group made up of senior HR officers with a range of policy responsibilities. The group would be making recommendations on all policies and procedures: which policies would need to be changed, and which they expected to be able to objectively justify under the forthcoming legislation.

Externally, BT was working through the CBI and EFA in order to influence the DTI to ensure that the new law was workable. It was promoting itself as an age diverse organisation through Age Positive and research projects such as this one.

The main concern identified with the legislation was on managing retirement without a set retirement age. Specifically, BT was worried that it would be unable to discuss with staff when they planned to retire. In the absence of such conversations, BT would need to rely upon performance assessments in order to manage staff exit, which they felt could result in staff being forced out of work, rather than choosing when they left.

BT also wanted to see a general exemption for length of service criteria in relation to workplace benefits. Length of service criteria were seen as 'morally, culturally and socially acceptable' since they rewarded long service rather than age. However, potential difficulties were identified in having to justify service-related benefits in Employment Tribunals. It was anticipated that some benefits would need to be levelled up (i.e. improving benefits for employees with shorter service) while others would be levelled down. This would be subject to negotiations with unions as part of the company's annual pay award.

### ***HR policies and practices***

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<sup>9</sup> These results are consistent with a survey carried out by CROW which found that 45 per cent of 50-69 year old workers would probably or definitely want to be in paid work after retirement.

- *Age policy:* BT had a long-standing equal opportunities policy with an explicit reference to age.
- *Appraisals:* BT operated an appraisal system, primarily focused on staff development rather than performance management. There were concerns about whether a person who was forced from work for performance-related reasons could retire with dignity.
- BT operated a flexible retirement scheme allowing staff approaching retirement to work part-time for up to two years. It also provided advice and support such as financial planning for staff who were retiring. Take-up of the flexible work option had been lower than BT hoped, principally because of misconceptions among staff about the impact of working part-time on defined benefit pensions. Many staff were unaware that their pensions were based on the full-time equivalent of their final salaries. It was felt that changes to the Inland Revenue rules on flexible working and pensions would have a positive impact on take-up of flexible retirement options, since staff would then be able to draw their pensions while working reduced hours.
- *Flexible working:* Flexible working arrangements were open to all staff irrespective of age. The company had a policy on support for carers. The right to request time off was not limited to parents of young children.
- *Pensions:* BT operated three pension schemes: a) a defined benefit scheme open to staff who were recruited before privatisation which was broadly comparable to the Civil Service scheme; b) a second defined benefit scheme open to staff who joined BT between privatisation and 2001; c) a defined contribution scheme for staff who joined BT after 2001. BT was consulting its pensions experts about the implications of not only the age discrimination legislation, but also the Pensions Green Paper and changes to Inland Revenue rules. It did not anticipate changing its current pensions accrual age of 60. There was, however, concern about the implications of the legislation for running more than one pension scheme in which there was an indirect age dimension to eligibility. It was felt that, should they be necessary, changes to the pension scheme could take years, as they would involve negotiations with unions, pensions trustees, and the human resource department.
- *Recruitment:* BT did not include age in its recruitment advertisements, unless there was a specific requirement. For example, an HGV driver could only acquire a licence at 21 years of age.
- *Redundancy:* Although the size of BT's workforce had more than halved over the past decade, it had not had to make any compulsory redundancies. Further job attrition was expected, particularly in BT's more traditional services. Some job attrition had been managed through natural wastage, and it was anticipated that abolition of the company's compulsory retirement age would add a cost to its redundancy procedure. BT no longer offered enhanced redundancy payments based on age - the

redundancy scheme was changed to remove direct age criteria in 2003. However, redundancy payments were calculated on the basis of years of service, and therefore an offer of redundancy was more attractive to longer-serving employees. The length of service criteria were seen as justifiable since they rewarded staff who had been with BT longer and who might find re-employment more difficult.

- *Retirement:* Retirement age was 60 for all staff. In 2003, BT's Chairman announced plans to abolish compulsory retirement age in the organisation before October 2006, although a precise date had not been decided. The Age Action Group was currently drawing up recommendations on how retirement would be managed without a compulsory retirement age. In principle, BT wanted to maintain 'a process where we feel people can retire with dignity'. The HR manager emphasised that BT would prefer to negotiate retirement plans with employees.
- There was concern that asking older employees to discuss their retirement aspirations or plans could be seen as discriminatory, but that doing so was important both to provide appropriate advice and support (e.g. accessing financial or pre-retirement training) to the individual, and to plan succession for the firm. Without such conversations, it was thought that BT would need to rely primarily on performance assessments to manage retirement, which were thought to be less attractive for employees, who may feel they were being forced out of work, and for the company which would have less time to plan succession.
- *Succession:* As a large organisation, BT had long operated a succession planning system at most levels of the organisation. Although data had not yet been collected, it was anticipated that abolishing the retirement age might have a significant impact on BT's ability to plan succession.
- *Training:* BT did not operate direct or indirect age bars on training. It was thought that older workers, particularly in work areas which were declining, were more likely to take up BT's offers of training and development. It was noted that older BT employees tended to be working in parts of the organisation in decline, and they tended to take advantage of opportunities to re-skill.

### ***Changes to retirement age***

Because BT had already planned to abolish its retirement age, it was felt that DTI's choice on the three options would not have a significant impact on BT.

The respondent did not see the logic behind setting a national default age of 70, because the age of 70 was thought to be arbitrary.

It was also felt that allowing employers to set their own retirement ages within government guidelines would be impractical for most organisations. This option was considered only feasible for organisations which had discrete groups of

workers where, for health and safety reasons, there might be an objectively justifiable reason for setting a retirement age.

***Interviewed: People Network Manager, responsible for overseeing company's age diversity policies.***

## Case study 5: Surrey County Council

### **Overview**

Like other local government employers, Surrey County Council had historically featured a work culture which encouraged early retirement. The authority was seeking to break down this culture, and encouraged employees to stay in work longer. The drive to extend working life reflected rising pension costs, labour needs and skills retention. The authority had policies on age equality, and the mechanisms with which to disseminate corporate policies to line managers. Equality officers in each directorate, a county equality manager and ultimately the strategy team were responsible for ensuring that Surrey County Council's policies were understood throughout the organisation.

The authority was undergoing a significant transition in its HR management, and it was anticipated that work would in the future be more flexibly managed. The age discrimination legislation was thought to be consistent with the authority's long term HR strategy. It was thought that the policy would require managers to look for ways to help older staff remain working through more flexible work arrangements.

There were mechanisms in place to enable employees to stay in work past retirement. However, staff who stayed in work beyond retirement were employed on annual contracts, subject to annual competency and health appraisals. This could potentially be considered age discriminatory.

A few conditions of service were age based. Access to insurance and private health care was limited to staff between 18 and 65. Pay, annual leave and pension entitlements could be considered indirectly age discriminatory since they were based on length of service.

### **Business context**

Surrey County Council was a local authority in South East England. It was engaged in three inter-related projects of long-term strategic importance:

- Surrey County Council's offices, which were located outside of the county in Kingston were being moved to Woking. The transition to the new offices would occur from 2005 to 2007. The Woking offices would be more modern than existing accommodations. However, there would be less floor space with which to accommodate staff.
- A new IT system was being introduced across all county services. This would enable staff to access office systems remotely, enabling more flexible working patterns.
- Like all public sector employers, Surrey County Council was reviewing service delivery in light of the Gershon report. The authority was looking for efficiency savings of 10 per cent of its staffing cost, which was presently £1 billion, of which £600 million was salary.

These three projects were expected to have a significant impact on how authority employees were managed. Because the authority would have less

office space in the future, and was having to identify efficiency savings, the HR department was looking for ways to reduce the amount of resources required for administration, focusing staff time on front-line service delivery. The Head of HR anticipated that within the next five years, employees would spend less time in the office. This would be facilitated by the new IT system which would help employees communicate with managers from outside the workplace.

While the Head of HR, as well as line managers interviewed, were excited about the changes to people management in Surrey County Council, significant challenges had been identified. In particular, it was recognised that managers would need to adopt new approaches to how they managed their employees. There was also some anxiety amongst staff about changes to working patterns, coupled with concern about the relocation. The HR department was rolling out a training programme to ensure that staff and managers were prepared once the relocation and introduction of the new IT system were complete.

While line managers felt that the strategic changes to HR management were being positively implemented, the union representative expressed concern about the ways in which employees were kept informed about changes to working patterns. Staff could feel that they were not being kept informed.

### ***Workforce profile***

Surrey County Council employed 26,000 staff in a range of public services, including education, fire service, police and social work. Because of its location, the authority's workforce was mostly white. A large proportion of staff were women returning to work following a career break. Line managers noted that working parents were attracted to work in the authority by flexible working hours packages, with many working part-time.

According to the Head of HR, the average age of staff was 42. Many employees stayed with the authority for most of their careers. Early retirement had historically been an attractive option for older employees because of the relatively generous pension entitlements. Efficiency pressures had reduced the scope for the Council to offer older employees early retirement options.

Across the workforce, labour demands were stable. However, there were three services where labour shortages existed: social work, youth work and residential care. Generally, the Council was needing to 'do more with less', which required increases in productivity rather than increases in staff numbers. In the three areas where labour shortages exist, line managers were actively seeking to keep staff in work longer.

Some workers stayed in employment past retirement age, particularly in social care. Employees generally stayed out of enjoyment of the work or for financial reasons or because they could work part-time. Others stayed on for less than a year in order to complete specific projects.

### ***Preparation for the age discrimination legislation***

The Head of HR saw the legislation as having a positive effect on the authority's HR strategy. The HR department was seeking to change employees' attitudes

toward early retirement, and it was felt that the legislation would compel line managers to look for new ways to encourage older workers to remain in work until they reached retirement age. It was also noted that the number of young graduates was declining in the South East, requiring employers to make better use of older workers.

The authority depended on local authority networks, such as the Local Government Association, for information and support in introducing changes to HR practices. The LGA was thought to be a useful network in communicating best practice. The Head of HR felt that, compared with other local authorities, Surrey County Council was advanced in preparing for the legislation, with more time spent providing support to other authorities than seeking help itself.

The HR department had reviewed HR policies in order to identify direct forms of age discrimination. Few directly discriminatory policies had been identified, and where they existed, it was felt that they could be objectively justified. These included age bars for the recruitment of fire fighters and social workers, which were set by statute.

The Head of HR was concerned about potential conflicts between the age discrimination legislation and the local authority pension scheme. Staff could retire with full pension entitlements from the age of 50 (although the administrators were raising this age to 55 over the next five years). It was felt that the current pension arrangements provided a disincentive for employees to remain in work up until retirement. The LGA was representing employers in government consultation over reforms to the Local Authority Pension Scheme.

Surrey County Council did not have direct control over its pension schemes, both of which were determined nationally. Necessary changes to the local authority pension scheme would need to be negotiated nationally, and concern was raised about government co-ordination with employer and union organisations. The Council had opted out of the national pay framework, and negotiated its own pay system.

The HR department trained equality boards for all of its departments. Equality board members, some of whom were nominated by the recognised unions, met once a month to review management practices within their respective workplaces. The boards reported to the authority's heads of service within the HR department. The boards were responsible for identifying training and awareness needs for department managers. The equality manager within the chief executive office was focused on identifying problems of race and gender discrimination. It was expected that once the draft regulations were published, the equality boards would be reviewing HR practices in order to identify age discriminatory practices which would need to be reformed.

The HR department had not conducted a cost-benefit analysis on the financial impact of the age discrimination legislation. While the Head of HR felt that the legislation would have significant resource implications (both positive and negative), it was not felt that the impact could be quantified.

It was felt that the authority would require a minimum of six months from draft regulations being published to introduce changes to HR policies to comply with the legislation.

### ***HR policies and practices***

- *Age policy:* Surrey County Council had an equal opportunities policy which featured an explicit reference to age. The policy was long-standing, having been agreed with the recognised unions. As noted above, each department featured an equality board which ensured that managers and staff were aware of the authority's equal opportunities policies.
- *Appraisals:* Surrey County Council operated a corporately endorsed appraisal system, although it was not obligatory to all departments. Each department operated its own system of appraisal, which could result in some disparities. In general, it was thought that departments with high labour demands had been more proactive in identifying developmental needs of employees. A separate performance management system operated which featured annual reviews. Staff were required to meet performance targets in order to progress in grades. Performance-related pay operated for senior staff.
- *Benefits:* Annual leave varied according to length of service. After five years of service, the number of days rose from 25 to 30 per year. Surrey County Council provided private health care and insurance which was open to staff between 18 and 65.
- *Flexible working:* All employees were entitled to request flexible working patterns. Decisions on flexible working were made by line managers, based in part on operational needs. As a public sector employer, line managers felt that the authority was relatively positive in facilitating requests to work flexibly. The ability of line managers to accommodate staff who requested flexible working patterns varied by department. In some departments, such as social services, the nature of work enabled staff to work flexibly, while in other departments, alternative working patterns proved problematic.

Staff who were approaching retirement age had the right to request continuing in work. However, once a member of staff reached retirement age, (s)he was transferred from a permanent employment contract to an annual rolling contract. Each year, the member of staff was assessed for capability and health. The authority occupational health department was required to sign off each contract renewal. The authority also employed retired staff on zero hour contracts.

- *Harassment and victimisation:* The authority's policy on harassment and victimisation was incorporated into its equal opportunities policy. Complaints of harassment and victimisation were monitored. In reviewing data over the past two years, no recorded grievance related to age could be identified by the HR department.

- *Pay:* According to the Head of HR, no aspect of pay could be identified which was directly correlated to age. However, pay was based on incremental scales. Most staff rose one point a year.
- *Pensions:* Most staff belonged to the Local Government Pension Scheme, except teachers and fire fighters who had their own schemes. All of the pension schemes were defined benefit, final salary schemes.
- *Recruitment:* Fire and rescue services operated upper age limits to recruitment which varied by job. These were required for statutory reasons. Beyond these work areas, managers were prohibited from either setting age limits for vacancies or advertising vacancies in ways which could be construed as indirectly discriminatory. Guidance was available for managers via the authority's intranet. The authority had a recruitment centre which was responsible for monitoring recruitment. Job vacancy application forms asked for date of birth. The information was requested for monitoring purposes, and included on a detachable page which was not seen by the interviewing panel.
- *Retirement age:* Retirement age was 65 for most employees, although some services (e.g. the fire service) had different retirement ages.
- *Training:* No age limits were set for access to training. However, employees on longer vocational training courses were required to stay in employment with the authority for a certain number of years. This could affect staff who were approaching mandatory retirement age. In addition, the authority was introducing a government funded Modern Apprenticeship programme which, as per government guidelines, would only be open to applicants between 16 and 24. The authority was currently training all staff on its new IT system. Training included not only IT skills, but also personal management to ensure that staff would be able to work remotely. It was thought by line managers that older workers were as willing to take part in training as younger ones.

### ***Changes to retirement age***

The Head of HR felt that abolition of retirement age could have a positive impact on the work culture of local authority employers. In particular, such a change could challenge an early retirement culture which was thought to be pervasive. Concern was raised about the pensions implications of abolishing retirement ages. Pension entitlements were based on salary at retirement age, and there was uncertainty about the implication of abolition.

It was not anticipated that many of Surrey County Council's employees would prefer to stay in work beyond the organisation's retirement age of 65. According to the union representative, most employees preferred to retire early. The Head of HR felt that the pension system discouraged continued working.

The Head of HR felt that the anticipated changes to pension rules which would enable staff to both draw a pension after retirement and continue working flexibly could have a positive impact in encouraging employees to stay in work longer. However, it was felt that the HR department would need to monitor the

recruitment of retired employees carefully. If an employee was drawing both a salary and pension, it was thought that the authority could be subject to negative media.

***Interviewed: Head of HR, line manager focus group, trade union representative.***

## **Case study 6: BJC Commercial Services**

### ***Overview***

Like most small firms, BJC Commercial Services featured few written HR policies which could potentially conflict with the upcoming age discrimination legislation. Two issues emerged which were considered significant. First, it was thought that the company's main job of floor cleaning could only be carried out by younger employees. The company lacked formal mechanisms with which to assess whether job applicants were physically capable of carrying out the work. It did not have occupational health staff, and relied upon assessments made by the director or other senior managers.

Second, it was thought that in small family firms like BJC Commercial Services, older family members resisted retiring. Age discrimination legislation could encourage older family members to try to continue to run such firms for longer.

### ***Business context***

BJC Commercial Services was a small family owned firm. The company was a floor cleaning service providing services to retail outlets, school, hospitals and private companies. It was in the process of applying for a patent for a floor surfacing process which, if successful, could expand the company three-fold.

### ***Workforce profile***

BJC Commercial Services employed 30 members of staff. These were employed in teams of two across the country. Each team was responsible for regional contracts. The youngest cleaner was 25 years old, and the oldest one was 40. Staff normally stayed with the firm for three years. The cleaning work required a high degree of physical fitness. The Director did not feel that workers above 45 would have the strength to operate the machinery and carry out the strenuous work.

The management team consisted of family members only. The company was located in West Sussex. Because of anticipated expansion, the company was in the process of recruiting an operations director. A person had been selected, introduced through an intermediary. The applicant was in his late 50s.

### ***Preparation for the age discrimination legislation***

The Director was unaware of the age discrimination legislation. However, on reflection, he could not identify HR policies which featured a direct age dimension.

It was felt that cleaning jobs could only be undertaken by younger employees. Concern was raised about whether older applicants would be physically capable of operating the machines. However, the Director noted that some younger applicants who appeared physically capable nevertheless found the work tiring. He opined that, should an older applicant apply for a cleaning job, (s)he would be informed of the physical demands of the job. Should the applicant still want to work, (s)he would 'be given a go' at operating the machinery. As a small

organisation, the company could not afford to employ occupational health staff to assess the physical capabilities of applicants.

Although the Director was unaware of the upcoming legislation on age discrimination, he was kept informed about changes to employment legislation by business support organisations. Enterprise Centre, a business support group, was supporting BJC's efforts to expand its services. It regularly provided updates to the company on employment law. Once the legislation was introduced, the Director anticipated that Enterprise Centre and support groups would brief him about the implications for small companies like his. The Director also regularly scanned the DTI website for updates and information.

### ***HR policies and practices***

- *Age policy:* The company did not have a written equal opportunities policy. Grievances were normally addressed by a director or another family member.
- *Flexible working:* The nature of the work was not conducive to flexible working. Cleaning staff worked Monday to Thursday. On Friday, they cleaned and serviced their equipment.
- *Pay:* For cleaning staff, pay was based on a single rate which did not vary amongst staff.
- *Pensions:* The company did not offer pension entitlements to staff.
- *Recruitment:* Although it was thought that only younger workers could carry out cleaning jobs, job advertisements did not set age limits. Date of birth was asked on the application form for monitoring and health and safety reasons.
- *Redundancy:* The company did not offer redundancy above the statutory minimum.
- *Retirement age:* The company did not have a set retirement age. Other than the Director, no member of staff was approaching retirement age.
- *Succession:* Because most staff only stayed with the firm for three years, succession was not thought to be a significant issue. However, as noted above, the Director thought that succession could be an issue in family firms if the older family members refused to retire.

### ***Changes to retirement age***

The Director noted that small family firms like his were prone to familial conflict over management of the firm. Older family members, who had built up the company, resisted retiring, and younger family members were keen to take control. He thought that abolition of retirement age could fuel such conflict. However, he noted that older directors who wanted to continue working would try to do so, regardless of the legislation.

### ***Interviewed: Director***

## **Case study 7: Housing 21**

### **Overview**

Housing 21 represented two important dimensions of the employer's perspective on the age discrimination legislation:

- It was an employer with an older workforce, and with an older clientele. It had therefore sought to adopt best practice in the management of older workers. As a result, it had begun reviewing age management practices early, and had had a longer period of preparation than other organisations studied.
- The organisation had inherited more than 20 different sets of pay and conditions from predecessor bodies, some of which were protected by TUPE. Aspects of inherited pay and conditions could be indirectly discriminatory, but the organisation was limited in its ability to revise legacy employment contracts.

### **Business context**

Housing 21 was a not for profit housing association, providing housing, care and support for older people. Originally part of the Royal British Legion, the organisation limited its services to ex-service people until 1993, when it became a leading provider in housing for older people. In addition to sheltered housing, the charity also provided care and support to clients in their own home. The organisation's main strategic priority was addressing the needs of an ageing clientele. Because people were living longer and remaining healthy for longer, they were entering sheltered housing later in life. As a result the organisation was building new models of extra care housing offering higher levels of care and putting more resources into specialist care for people with dementia.

### **Workforce profile**

Housing 21 employed 2,300 people. Half of the workforce was employed in the arm of the organisation which was responsible for the sheltered and extra care housing, known as courts. Many of these employees worked and lived in the courts, and were responsible for co-ordinating services for residents, as well as organising property management. A further large section of the workforce was responsible for home care services. These employees were qualified home carers with specialist qualifications in fields like dementia care. Most care staff were trained up to NVQ Level 2, and staff in specialist and managerial posts were qualified at NVQ levels 3 and 4.

The age profile of the organisation was mixed, although a large proportion of staff were in their 50s. The nature of the work was thought to be attractive to older workers, particularly court based services. Some residents, according to the staff representative, preferred not to have young families on-site. As a provider of services for older people, Housing 21 sought to reflect best practice in the employment of older workers. Like other social care providers, Housing

21 was facing a tight labour market in the recruitment of staff, and therefore needed to have a wide breadth in seeking workers.

It was noted by the staff representative that Housing 21 lost some qualified prospective court managers who preferred not to live on-site. Living on-site made it difficult for court managers to be off duty. When there was a problem, there was an inclination for managers to address it, whether or not they were on duty. This could add some stress to the job.

Because of the nature of its work, Housing 21 was heavily regulated in terms of the training of its workforce. The Audit Commission, Housing Corporation and Commission for Social Care and Inspection regularly audited the organisation and its services.

Housing 21 provided services in partnership with and on contract to local authorities. As such, around 20 per cent of the workforce had transferred from public sector organisations. Because of TUPE regulations, each time services had been transferred from local authorities, Housing 21 had been obliged to accept the contracts of employment of transferred staff. The organisation operated 29 different sets of pay and conditions. Because of case law, it was noted that employers which took on transferred employees found it difficult to change pay and conditions without falling foul of the TUPE regulations. As such, it could prove difficult to address age discriminatory aspects of local authority sets of pay and conditions. DTI was in the process of revising the TUPE regulations to provide greater clarity over their application.

### ***Preparation for the age discrimination legislation***

The Director of HR began considering the implications of the age discrimination legislation three years ago when the Equal Treatment Directive was approved by the EU Council of Ministers. It was anticipated that the Government would address other forms of discrimination prohibited by the directive (religion, sexual orientation) earlier, and the Director wanted to begin thinking about all issues holistically and early. Because of its workforce profile, it was anticipated that the age discrimination aspect would have the greatest impact on Housing 21.

The HR Director was taking part in various networks organised by the Chartered Institute of Personnel and Development (CIPD) and other professional and employer organisations in order to exchange information with other employers on how to prepare for the legislation. Field managers had also been asked to review the organisation's management practices to identify potential difficulties. However, it was noted that a comprehensive review of HR policies would not take place until the regulations were published.

Neither the HR nor Finance Directors anticipated that a cost-benefit analysis would be conducted. It was noted that whatever changes were required would need to be implemented regardless of the cost implications. It was anticipated that an impact analysis would be conducted which will look not only at the cost implications, but also at the impact on the management, service delivery and culture of the organisation. This would be conducted after the draft regulations were published.

According to the staff representative, court managers were trained on HR matters such as the organisation's equal opportunities policy. Court managers sometimes felt that some training was repetitive. However, the staff representative expected it would be useful when the legislation was introduced.

The main sources of information for court managers were the regular court managers newsletters, more recently information sent via email, and formal procedures such as regular management briefings. If a court manager was IT literate, the email and internet system provided a good means for keeping managers informed. However, some court managers tended not to use computers, and therefore missed some information disseminated centrally.

### ***HR policies and practices***

- *Age policy:* Housing 21 had an equal opportunities policy which applied to the management of staff and to the provision of care and support services to its clients. It included a reference to age. Managers received training on employment law, including aspects of discrimination law. Court staff also received training on equality as part of their induction.
- *Appraisals:* Housing 21 conducted annual appraisals for all staff. The appraisal looked at both career development needs and performance. It was noted that the capabilities of court managers was an area of particular importance to the organisation, since residents depended on the front line service which they provided. The appraisal system looked at competency, basic skills, IT skills and physical capabilities.
- *Benefits:* Annual leave and sick leave varied by length of service and for ex-local authority employees. The conditions of service for newly recruited employees did not vary by age or increments.
- *Flexible working:* Housing 21 had a policy on flexible working which allowed staff to request part-time, home working, job sharing and other flexible work arrangements. No employees were working reduced hours in the run-up to retirement. It was noted that there was not a large demand for flexible retirement. Because the organisation offered a final salary scheme, reduction of working hours in advance of retirement could significantly reduce the employee's pension for some staff.
- *Health and safety:* The organisation employed healthcare staff to provide pre-employment medicals and advice in areas of long-term sickness. It was felt that occupational health staff tended to respond to the concerns of patients, and did not always provide an accurate assessment of patients' conditions to the employer. This was a concern in relation to the possible abolition of retirement age. Doubt was expressed as to whether GPs would objectively assess whether an older worker was physically capable of continuing in work.
- *Monitoring:* The HR Director monitored the profile of the organisation through staff surveys and reviewing recruitment information and other employment metrics.

- *Pay:* Pay was not based either on age or incremental scales. Staff received bonuses, including bonuses for not taking sick leave. It was thought that this could be discriminatory, although it was noted that younger employees are more likely to take short-term sick leave. Pay for most ex-local authority employees was governed by the national local authorities pay scales negotiated between the Local Government Association and unions. Housing 21 was contractually obliged to accept these pay agreements.
- *Pensions:* Housing 21 operated seven pension schemes. Some were local authority schemes, which were final salary. One scheme, for longer serving Housing 21 staff, was also final salary. All new recruits were offered stakeholder pension schemes. It was noted that many younger employees did not contribute anything towards their pensions.
- *Recruitment:* Applicants were not asked their date of birth on application forms. Some social care work had an age limit of 21, which Housing 21 was legally obliged to adopt.
- *Redundancy:* Redundancy pay was based on the statutory minimum provisions plus a notice period. Selection was not based on length of service or age.
- *Retirement age:* Retirement age for new recruits was 65. Longer serving employees and ex-local authority employees had a retirement age of 60.
- *Training:* Training of some staff was regulated by government bodies, and therefore was required for most staff. There was a learning pathways brochure which set out training opportunities across the organisation. The organisation did not set age bars for training. Longer serving members tended to dislike further training, which they sometimes felt repeated what they had already learned.

### ***Changes to retirement age***

The HR Director felt that, should retirement age be abolished, the organisation could manage the continued employment of staff. She was most concerned about ensuring the physical capabilities of employees as they became older. In particular, it was noted that court managers played an important role in caring for residents, and the organisation needed to ensure they continued to be capable of delivering their job requirements.

The staff representative felt that many court managers would take up the opportunity to work past retirement age. The accommodation was particularly attractive to older court managers. Most duties, he felt, could be carried out by staff above the current occupational retirement age. He also felt that the performance assessment system was robust enough to determine whether older court managers were capable of continuing with their responsibilities.

It was noted that the organisation had the performance assessment tools to monitor the capabilities of staff. However, the Director wanted to ensure that staff who retired did so with dignity. It was therefore felt important that the employer was able to have a conversation with employees about their retirement

plans rather than require them to retire because of poor performance. She noted that the organisation provided pre-retirement training, and it was thought that such a conversation could not only benefit the employer in terms of succession planning, but also the employee in preparing for retirement.

***Interviewed: Director of OD and HR, Director of Finance, staff representative.***

## **Case study 8: benhamgoodheadprint limited (BGP)**

### **Overview**

BGP featured few age discriminatory policies, either direct or indirect. However, most of the jobs were 'man and boy work', with employees starting as apprentices and working their way up to become journey men, and on occasion attaining more senior positions. As a result, the company had low turnover, and an expectation amongst staff to progress over their careers. This could present problems for the organisation should retirement age be abolished and some staff be inclined to remain in work longer. There was little desire amongst employees to stay in work beyond retirement age. However, it was felt that over time more staff might want to do so for financial reasons.

BGP was undergoing significant changes to its operations which had skills implications. Accordingly, the organisation had an incentive to ensure that all employees were undertaking training. In this respect the legislation would be consistent with the company's strategic goals.

### **Business context**

BGP was a commercial printer, specialising in magazines and directories. Its titles included *Private Eye*, *New Statesman* and the BT Phone Book. It was owned by a private consortium. It had two worksites, one in Bicester and one in Colchester.

The company constantly invested in new technology and machinery. In some respects, the introduction of the new machinery had changed the skill requirements, and employees were required to learn new skills. The management of workforce skills (both the phasing out of redundant skills and introduction of new ones) was thought to be the main HR priority of the organisation.

### **Workforce profile**

BGP employed 460 staff across both sites. The workforce mainly consisted of blue-collar workers who were responsible for operating the presses and bindery equipment. The age profile of the workforce was mixed. Print workers generally began as apprentices, and continued with the same employer until retirement. The company had a very low turnover rate, which the HR Manager attributed to the tight labour market and nature of work.

Print staff were employed in working patterns which reflected operational need. Staff worked on 12 hour shifts, normally on three day a week work patterns.

Because of the transition to new presses, staff were required to undertake training to operate the new machines. Some resistance to training had been encountered within the workforce. The HR Manager thought that some staff resisted training for fear of change and job insecurity. Resistance sometimes also stemmed from basic skills deficiencies. The company was seeking to address these problems by working with line managers to identify skills needs

and reasons for resistance to training. The recognised union, Amicus GPM sector, was also supporting the training of employees through its learning representatives.

### ***Preparation for the age discrimination legislation***

It was not anticipated that the age discrimination legislation would have a significant impact on the organisation. HR policies had been reviewed in order to ensure that the company did not have any directly discriminatory policies. Negotiations were underway on the company's 'house agreement', which covered pay and conditions as well as HR policies. The union representative noted that the national union was training representatives about the legislation, and he would be discussing the company's age management policies as part of the house agreement. He did not anticipate that significant changes to HR policies would be necessary, but wanted to see more explicit prohibitions of age discrimination.

The HR Manager was being kept informed about developments in the age discrimination legislation by employer networks, in particular the CIPD. In addition, he relied on various law firms and HR consultancy services, which produced leaflets detailing changes to employment legislation.

Two concerns about the legislation were identified. First, it was noted that print work was manual, and could be physically demanding. The HR Manager wanted to ensure that the company had the mechanisms in place to ensure that employees who wanted to continue in work past retirement were able to do so. BGP employed a dedicated occupational health GP. Health assessments were not presently mandatory.

The second concern related to potential changes to retirement age. It was thought that the pension scheme would need to be reviewed should retirement age be abolished. However, to date, only one member of staff had requested to work past retirement age.

The company had not conducted a cost-benefit analysis on the impact of the legislation. The HR Manager would produce an analysis to discuss with the board of directors when a piece of legislation was considered significant. However, it was not anticipated that the age discrimination legislation would have a large cost implication.

### ***HR policies and practices***

- *Age policy:* BGP had an equal opportunities policy. It did not feature an explicit reference to age, but prohibited 'factors that lead to employees being disadvantaged by conditions or requirements which cannot be shown to be justifiable'. Managers were trained on the company's equal opportunities policy.
- *Appraisals:* BGP operated an appraisal system which measured both performance and development needs.
- *Benefits:* No employee benefits could be identified in which allocation was directly or indirectly age-related.

- *Flexible retirement:* Staff could request to work past retirement age. However, only one member of staff had done so. Requests were made to the line manager and had to be approved by the occupational health GP and HR manager. According to the union representative, BGP had, in the past, offered staff who were approaching retirement the opportunity to reduce their working hours. This policy had since been reviewed and amended.
- *Flexible working:* The right to request flexible working was only open to employees with young children. Print work was not thought to be conducive to flexible working patterns, since working hours were dictated by the operational needs of the presses. The 12-hour working shift was thought to be popular with staff (who worked three shifts followed by a three or four day break).
- *Harassment and victimisation:* Harassment and victimisation were covered in the company's equal opportunities policy. The HR Manager had not yet had to address an age-related grievance.
- *Pay:* Pay was negotiated in consultation with the union. BGP did not feature age-related or incremental pay scales.
- *Pensions:* The company contributed to a stakeholder pension scheme which was open to all employees. A final salary scheme operated until 2002 when it was closed. Longer serving employees had accrued pension entitlements in the final salary scheme, but could now only contribute to the stakeholder scheme.
- *Recruitment:* Certain machinery jobs were only open to applicants over 18. The age bar was set for insurance reasons. Apprenticeship programmes were open to all employees. However, it was noted that the company only received government funding when the apprentice was between 16 and 24. Job application forms asked for date of birth for monitoring purposes. This part of the application was detached and not seen by the interviewing panel.
- *Redundancy:* The company did not offer enhanced redundancy pay. The HR Manager noted that in 2003, the company had a redundancy round. Selection was not based on age or length of service, although some members of staff had hoped it would be.
- *Retirement age:* Retirement age was 65 for all employees.
- *Succession planning:* Succession had proven to be an important issue for print staff. Print operators were organised into four levels of responsibility for each machine, with pay set accordingly. Although job allocation was not based on age, staff normally started work at the lowest level and succeeded over time to the top. Because the number of presses was limited, the opportunity for staff to succeed to the top level was limited.

- *Training:* Training was open to all employees. As noted above, longer serving employees tended to be more resistant to training, with management and the union seeking to address employees' concerns. The union had trained learning representatives to help identify skills needs in the workforce and support staff in acquiring training.

### ***Changes to retirement age***

It was anticipated that few employees would want to stay in work beyond the company's retirement age of 65. Those members of staff who were approaching retirement, however, had mainly accrued pension entitlements under the final salary scheme. It was thought that some staff who had contributed solely to the stakeholder scheme might need to work longer for financial reasons.

Concern was raised about the pension implications of potential changes to retirement age. It was thought that, should the retirement age be raised to 70, the pension age would need to be raised accordingly.

***Interviewed: HR Manager, Bicester union representative.***

## **Case study 9: The Meningitis Trust**

### ***Overview***

The Meningitis Trust was an organisation in which job satisfaction and a sense of personal commitment to a cause motivated staff to work. Consequently, there was a low turnover in the organisation. The Trust was also attractive to staff who had previously worked in the City and desired a better work-life balance. Consequently, Trust staff had a high level of skills and experience and retention of these was an important driver in the introduction of age management policies.

Interviewees reported that the Chief Executive had played a key role in leading change within the organisation. The HR Manager would need to inform trustees about the changes of legislation and the need to review and develop policies in the light of this legislation. Positively, the Chief Executive of the organisation had encouraged managers to look for ways to help workers stay with the Trust longer. This had provided support to line managers to look for more flexible approaches to working.

### ***Business context***

The Meningitis Trust was a registered charity operating from the Cotswolds. It raised money for research into meningitis, as well as providing support to victims and their families.

The charity was facing a challenge in maintaining funding levels. Although demand for services continued and the charity provided important support and counselling to meningitis victims and their families, incidence of the disease had been declining as a result of new vaccines, and this had impacted on private fund-raising. It was expected that the organisation would need to review its long-term strategy, for example by reviewing and perhaps diversifying its activities and work.

### ***Workforce profile***

The Meningitis Trust employed 65 staff, 50 of whom worked from the head office in Stroud. Fifteen employees worked remotely from home. Staff were divided into two groups:

Half of the employees worked in fund-raising roles. There was a range of fund-raising projects which the organisation took part in, and staff were encouraged to rotate their roles. Fund-raisers had often dedicated their careers to charitable work, and many moved between non-profit organisations.

The other half of the workforce worked in a variety of support roles. These employees were responsible for such activities as the 24-hour help line and visiting victims and victims' families. All community support officers were trained in basic awareness of the disease although a number, particularly help line staff, were health care professionals who were on hand to provide medical information when needed.

The Trust also contracted the services of professional counsellors. The Trust relied on a network of counsellors who were used by the organisation on a regular basis. All counsellors had to be members of the British Association of Counselling and Psychotherapy.

The Trust had a low turnover rate, which managers attributed to the personal commitment of staff to providing support to people with meningitis. Some staff had personal experience with the disease. It was also thought that the location of the headquarters attracted people to work for the Trust. It was noted that some employees had previously worked in London, and joined the Trust in order to leave the city. Consequently, the organisation had benefited from the influx of skills and experience from professionals who have worked in London.

The age profile of the organisation was mixed. Age diversity was felt to be important to The Meningitis Trust in order to reflect its clients and provide a broad range of experience. This was particularly the case with the support officer roles. It was thought that clients might relate better to support officers of different ages. For example, a grieving young mother might want to speak with another young mother who could empathise with her plight. That said, it was noted that skills and compassion, rather than age itself, were of most importance in support roles.

#### ***Preparation for the age discrimination legislation***

The HR Manager was currently developing a strategy for preparing for the legislation. Because draft regulations had not yet been published, reviewing HR policies was not seen as an immediate priority. However, within six months, it was expected that a comprehensive review would need to take place. While few direct forms of age discrimination were expected to be revealed, it was thought that more subtle forms of bias would need to be challenged. For example, where a job had previously been advertised for applicants with 'a minimum three years experience', the HR Manager would need to ensure that such experience was needed for the post, and not an unnecessary barrier to younger workers.

A cost-benefit analysis had not yet been conducted on the impact of the legislation. However, it was expected that one would be conducted once the draft regulations were published. It was expected that an analysis of the financial implications of the legislation would need to be presented to the board of directors. It was thought that directors might need to be educated to understand the implications of the legislation for The Meningitis Trust.

However, the Trust was thought to be progressive in its approach to the retention of workers through flexible working patterns and incentives to work past retirement. Line managers noted that the Chief Executive encouraged managers to support staff who wanted to remain in work, but to work more flexibly. Leadership from the top had proven important to managers in thinking creatively on how older staff could be retained. While in the past, flexible working patterns had been discouraged, managers now felt able to discuss alternatives to retirement with staff.

The HR Manager was being kept informed about changes to employment law through the Trust's solicitors, as well as employer support networks such as the CIPD, the Chamber of Commerce and Business Links.

Concern was raised about the timing of the publication of draft regulations. The HR Manager was concerned that there would be too little time to reform HR policy before the legislation comes into effect.

It was also hoped that the Government would provide clear guidance on changes to the law. Experience with previous employment legislation, such as the introduction of disciplinary and grievance legislation, proved problematic. The HR Manager felt that little information had been circulated by the Government. Other organisations, such as solicitors, HR publications and business networks, were providing contradictory advice. It was noted that only the Government could provide the last word on how to interpret the new legislation.

### ***HR policies and practices***

- *Age policy:* The Trust had an equal opportunities policy which included a reference to age. Managers were trained on the policy at induction. Because of low turnover of managers, equality training had not occurred recently. The HR Manager was unsure whether new training would be needed once the age discrimination legislation came into force.
- *Benefits:* The Trust did not base the provision of benefits directly on age. However, it did fund private health insurance and, as part of the pension scheme, death in service benefits. Both insurance schemes were only open to staff under 65. Because they were provided by external organisations, it was unclear how the Trust could address potential discrimination against staff over 65. Annual leave varied by grade, but not length of service.
- *Flexible working:* Staff with childcare responsibilities had the formal right to request flexible working arrangements. Other employees had an informal right to request. Examples were provided of employees who had changed their working hours as an alternative to retirement. In addition to changes in working patterns, staff could also ask to work remotely.
- *Harassment and victimisation:* The policy did not include a reference to age. To date, the HR Manager had not had to deal with an age-related grievance.
- *Pay:* Pay was set at a fixed rate for specific jobs, and did not vary either by age or increments.
- *Pensions:* The Trust offered a group personal pension scheme which was operated by an external investment firm. The Trust contributed a set per cent of staff income into the fund, and employees could also make voluntary contributions.
- *Recruitment:* The Trust prohibited managers from advertising posts according to age, although date of birth was requested on a detachable

equal opportunities monitoring form. All advertisements had to be approved by the HR Manager who vetted advertisements for potentially discriminatory language. The HR Manager believed that The Meningitis Trust would need to review how employees were recruited in the future. Competency based job descriptions would need to prevail over job descriptions which set out minimum job experience and training. The HR Manager was consulting senior officers to develop a new approach to recruitment.

- *Redundancy:* The Trust did not offer redundancy above the statutory minimum.
- *Retirement age:* The Trust had a flexible retirement age of between 60 and 65. Staff could request to remain in work past 65, however such requests had to be approved by the Chief Executive.
- *Training:* Training was open to all employees. It was thought that younger workers were more likely to take up opportunities for training.

### ***Changes to retirement age***

Although the Trust had a retirement age of 65, it was felt by the HR Manager and line managers that the organisation looked positively on requests by employees to remain in work past normal retirement age. Consequently, it was not anticipated that abolition of retirement age would have a significant impact on the management of the Trust. Few jobs were thought to be problematic for older staff.

It was thought that setting a default age of 70 could itself be discriminatory. The HR Manager felt that recruitment and retention should be based on competency rather than age and that most jobs in the organisation could be delivered by staff over 70 who were capable and willing to continue in work.

***Interviewed: HR Manager, Community Support Director, Press and Publicity Officer***

## Case study 10: Cripps Harries Hall

### **Overview**

Cripps Harries Hall represented a partnership organisation which was typical of some professional services such as legal, accountancy or property management. Because partners owned the firm, there was some ambiguity over the effect of the age discrimination legislation on them as self-employed people. There was concern that if retirement ages were abolished, and partners' working lives were extended as a result, this could limit career opportunities for aspiring solicitors.

As owners/senior officers of the law firm, partners could sometimes present difficulties to HR managers in implementing changes to HR practices. It was noted that working in a law firm was akin to reporting to '36 chief executives'. Due to their status in the firm, partners were well disposed to resist change. However, law firms' resistance tended to be less problematic when implementing employment regulations as solicitors understood the importance of compliance with the law.

### **Business context**

Cripps Harries Hall was a large full service firm of solicitors, operating from Tunbridge Wells. It had been expanding continuously over the previous ten years. Its main strategic goal was maintaining its position as a leading solicitors firm in the South East. While it did not aim to develop into a national firm, it sought to provide equivalent services offered by city and national firms to clients regionally and in London. Presently, the firm was described as undergoing a process of consolidation.

### **Workforce profile**

Cripps Harries Hall employed around 260 people, including solicitors, administrative and support staff. Nearly all staff worked from the Tunbridge Wells office, although the firm also had a small London base.

Because it was located in the South East, where unemployment is low, the firm was experiencing difficulties in recruiting employees. Although it was not presently expanding its workforce, the firm was facing labour shortage problems in replacing staff who retired or otherwise left the firm. However, it had had considerable success in recruiting solicitors from London firms who had chosen to leave the city for work-life balance reasons. Some Cripps staff who had taken career breaks, principally for maternity reasons, had been recruited back into the firm.

The legal profession was described by law partners as a hierarchical work culture in which years of experience largely influenced a solicitor's status. For example, it was noted that a solicitor with only a few years of experience could have the competency and aptitude to become a partner. However, younger solicitors were unlikely to become partners as partners also needed extensive networks and numerous clienteles, which took time to develop. The emphasis

on experience could have a negative impact on the careers of solicitors who took breaks from work.

At the most senior level, the firm had 36 partners who owned and managed the organisation. Because they owned the firm, partners were self-employed for legal and tax purposes. If the age discrimination legislation applied to self-employed partners, this would be likely to have an impact on the firm. Allowing partners to stay in work past normal retirement age could limit partnership opportunities for younger solicitors and distort the age profile of the firm, unless the firm expanded to a point where it could support a greater number of partners.

### ***Preparation for the age discrimination legislation***

The Head of HR was aware of the legislation, but was waiting until the draft regulations were published before reviewing the firm's HR policies. She felt that doing otherwise would be conducting business in the 'what ifs'. She had consulted the firm's employment law specialists on the impact of the legislation. In addition, she was relying on employers' networks such as the Law Society HR forum to gather information. A second network was a regional employers' network operating in the Tunbridge Wells area. The regional network provided medium sized and large employers with information and advice. It met once a quarter, with a representative of Acas in attendance. The Acas representative consulted the group, and provided updates on changes to employment law.

The main areas of concern for Cripps Harries Hall were:

- *Benefits:* The firm offered private health insurance to staff over 25. There was a high turnover of younger staff, and it was felt that provision of insurance benefits for staff aged under 25 would be too costly to administer. It was also felt that private health insurance was not a particularly attractive benefit for young workers.
- *Retirement age:* The firm had a retirement age of 63 which was applied rigidly, to both partners and staff. Should occupational retirement ages be abolished, it was thought this could prove problematic for the firm in terms of succession.
- *Recruitment:* Selection was largely based on ability and experience within a specialism. This could be indirectly age discriminatory, since the criteria favoured older solicitors. It was also noted that the criteria could disadvantage women who took career breaks, and could therefore be gender discriminatory.
- *Implementation of the regulations:* Partners discussed the difficulty for HR managers of legal firms in ensuring that partners comply with HR policies. It was noted that because they are junior to most partners, it was sometimes difficult for HR managers to change the HR practices of partners. Partnerships were described as organisations with 36 chief executives. That said, it was noted that solicitors understood the importance of the law and usually complied to the letter.

### ***HR policies and practices***

- *Age policy:* Cripps Harries Hall had an equal opportunities policy which included a reference to age. Managers took part in diversity training at induction and when changes to HR policies and employment regulations came into effect.
- *Flexible working:* Alternative working patterns such as job sharing and part-time working were available to all employees. Because the firm was located in the South East, it was attractive to employees who left London for a better work-life balance. Therefore, the firm placed a high priority on accommodating staff's working pattern needs. Managers in larger departments were better able to accommodate staff. It was noted that clients required solicitors to be immediately available, making flexible working patterns problematic for smaller departments.
- *Monitoring:* The Head of HR had the means with which to monitor the age profile of the organisation, but had not yet felt the need to do so. Records were maintained of employees' dates of birth.
- *Pay:* Pay was based on experience in a specialism rather than length of service. As with incremental pay, this could have an age dimension, since older solicitors usually had greater experience and may appear to be favoured over younger colleagues. However, it was thought that experience-based pay systems could be objectively justified on the basis of clients' demands.
- *Pensions:* The firm offered a group personal pension scheme. Staff could retire from the age of 50 on a reduced pension.
- *Recruitment:* The firm recruited six to eight new trainee solicitors a year. It looked to retain them on qualification in order to maintain an ongoing flow of young solicitors in the firm bringing new ideas and new attitudes. The policy of recruiting 'newly qualified' solicitors was considered vital for the firm.
- *Retirement age:* Retirement age was 63 for all employees and partners. The retirement age was rigidly enforced.
- *Succession:* The firm did not operate a formal succession plan but was actively working on succession issues. However, it was thought that succession might be problematic if partners were permitted to stay in work beyond the current retirement age.
- *Training:* Training was open to all staff in order to meet the requirements of the Law Society. However, it was noted that, consistent with Law Society requirements for minimum training, requests for training from staff who were close to leaving the firm, for example due to retirement, were reviewed by the HR department to ensure a rate of return to the firm in terms of increased productivity.

***Changes to retirement age***

Cripps Harries Hall featured an occupational retirement age of 63 which was rigidly enforced. Should partners be able to stay in work past this age, it was thought that this could create succession problems, as opportunities for younger solicitors to become partners would become more limited.

***Interviewed: Head of HR, partner/senior manager group interview.***

## Case study 11: HEALTH RETAIL

### **Overview**

HEALTH RETAIL represented an organisation whose workforce was predominantly young. Turnover in the workplace was rapid, with few employees choosing to stay long-term. The company's main concern with regards to the legislation was how it would address the management and pay and conditions of staff under 22. Pay systems complied with legislation on the minimum wage, but were directly age related. In addition, the organisation required age information to comply with statutes regarding the employment of under 16's.

### **Business context**

HEALTH RETAIL operated over 500 outlets across the UK. Its main strategic priority was operating within a competitive market. In addition to other chemists, HEALTH RETAIL was facing competitive pressure from the large supermarket chains which were rapidly expanding their pharmaceutical departments. Supermarkets competed mostly on cost, and HEALTH RETAIL was looking for ways in which to deliver added value to customers in ways the supermarket chains could not. While its customer base was predominantly young females, the company was seeking to become more attractive to older customers.

### **Workforce profile**

HEALTH RETAIL employed over 10,000 employees, most of whom worked in high street outlets. Management was structured into four tiers: between 10 and 20 stores each were organised into area teams, which in turn were organised into six regions. At the national level, head office employed 400 staff in its HR department, IT services, purchase and other central departments. Area teams met once a month to discuss management and HR issues.

Half of HEALTH RETAIL's workforce was under 22. Many employees were in their late 30's, and only a small proportion was over 50. Most employees stayed for around a year, although some had stayed with the company for a long time. Working hours, which for most branch positions included weekends and evenings, were thought to be unattractive to older workers, and preferred by secondary and university students. The HR department was aiming to increase the proportion of its older workforce in order to reflect the customer base it was seeking to achieve. Although it was not directly targeting older workers, the HR department was monitoring recruitment to ensure that advertisements for posts were being made available to older potential applicants.

HEALTH RETAIL was experiencing a shortage of store managers and assistant managers, particularly in urban centres and regions with low unemployment. HEALTH RETAIL store managers were responsible for the equivalent number of staff as a supermarket department. However, because they had to work independently, rather than as part of a store team, HEALTH RETAIL store

managers had to have a large degree of maturity and self-discipline. This made recruitment of suitable candidates difficult.

### ***Preparation for the age discrimination legislation***

HEALTH RETAIL had two areas of concern with regard to the age discrimination legislation. First, staff who were under 22 were paid at a lower rate to other employees. Although the pay system was in compliance with the national minimum wage, there was concern that the legislation would prohibit lower rates of pay for young workers. Given the company's age profile, this would have a significant cost implication. Second, some conditions of service, such as holiday and sick leave, were determined by length of service, which was thought to also be potentially age discriminatory.

The Head of Human Resource was reviewing the company's HR policies to identify potential conflicts with the age discrimination legislation. She was keeping an eye on the legislative schedule. However, a comprehensive review of policies was unlikely to occur until the draft regulations were published. It was expected that a cost-benefit analysis would be conducted at some point before the regulations were implemented. It was thought that there could be a cost implication if the pay system had to be changed.

The HR department was alerting branch managers to the anticipated age discrimination legislation, and asking them to review branch-level management practices. Dissemination was occurring through area management teams.

### ***HR policies and practices***

- *Age policy:* HEALTH RETAIL had an equal opportunities policy which prohibited discrimination on the basis of age. This policy was disseminated to branch managers through area meetings. It was part of the staff handbook, which was available to all employees.
- *Appraisals/performance management:* The Head of HR felt that the performance management system was capable of assessing the capabilities of older workers approaching retirement who wanted to stay in work longer. It was thought that, as in many organisations, line managers tended to overlook performance deficiencies of staff approaching retirement.
- *Benefits:* Annual leave and sick leave varied according to length of service. In addition, the company offered a long service award on completion of ten, fifteen and twenty-five years of service.
- *Flexible working:* Only staff with caring responsibilities were formally eligible to request flexible working arrangements. A majority of HEALTH RETAIL employees worked part-time. Staff could request changes to working hours, which was at the discretion of their line managers. Staff in management roles were thought to be more difficult to accommodate.
- *Harassment and victimisation:* The company had a policy on harassment and victimisation, although it did not include an explicit reference to age.

- *Pay:* Staff 16-17, 18-22 and older than 22 were each paid different rates. The rates of pay and differentials varied by regions. Pay rates for new entrants were not based on length of service, although the legacy pay system did increase employees' pay on completion of three years of service. Incremental differences were being reduced through pay negotiations.
- *Pensions:* New employees were recruited onto the company's money purchase pension scheme. HEALTH RETAIL had a final salary pension scheme for existing staff. Managers and above were eligible to join the pension scheme on recruitment. Other employees had to complete one year's service.
- *Recruitment:* Job application forms asked applicants under 18 for their date of birth in order to determine pay. In addition, the company needed to know when a job applicant was under 16, as a work permit was required. The company did not directly target age groups in its recruitment strategy. However, it was noted that approaches to recruitment might have to be reviewed. For example, the company would need to ensure that recruitment agencies which it used did not themselves feature age biases.
- *Redundancy:* The company offered ex-gratia payment above statutory redundancy. The payment was based on length of service.
- *Retirement age:* Retirement age was 65 for all employees. Up until one year previously, the retirement age had been 60. Employees who reached retirement age could request to stay in work longer. If a job was available, the line manager could offer an extension of work to the employee. Few workers chose to stay past the company's retirement age. Only twenty staff were over 65.
- *Training:* There were no age bars on training identified in the HR policy.

### ***Changes to retirement age***

The Head of HR noted that few employees asked to work past retirement age. As noted above, HEALTH RETAIL's workforce was young. Staff who did remain with the company up until, or past, retirement tended to do so because they enjoyed the work. Most staff over 50 were in front-line jobs, with few older managers.

The Head of HR was able to foresee benefits to abolition of compulsory retirement age. While she felt that it could be a hassle initially, she felt that over the long term, it could be beneficial. She felt that the retention of employees should be based on performance and competency, rather than age. She also felt that, as with other organisations, HEALTH RETAIL line managers might be prone to overlook poor performance of employees who were approaching retirement. Abolition of retirement age could force branch managers to apply the performance management system more methodically.

### ***Interviews: Head of Human Resource; Headquarters Line Managers***

## Case study 12: UNIVERSITY

### **Overview**

As with most parts of the public sector, UNIVERSITY was comparatively advanced in implementing policies on equality, including age equality. The elimination of discrimination was seen as vital for UNIVERSITY both as an employer, and also as a service provider seeking to recruit a more diverse group of students. UNIVERSITY required an extended lead time to implement changes to HR policies, as they had to be approved by various parts of the university's government.

For academic staff, flexible retirement options already featured in workplace practices. Therefore, it was not expected that abolition of retirement age would have a significant impact. However, the issue of age bars imposed by funding providers (discussed below) was inconsistent with Government plans for age legislation.

UNIVERSITY required high standards of qualification for staff which might need to be reviewed in light of the legislation. Too high a standard, which did not reflect the requirements of the job criteria, could equate to a bias against younger applicants. HR managers also acknowledged that there were wider issues around promotion criteria for academic staff which could have indirect age and gender discriminatory effects.

### **Business description**

UNIVERSITY was part of 'the 1994 group' of small and medium size universities. The university had five schools, each managed by a dean, and within the schools, a total of 26 departments. Although deans were responsible for the management of each school, the HR department was responsible for oversight of HR practices and setting the university's HR policies. The HR department does not manage staff, but provided advice and information to schools.

UNIVERSITY was facing financial constraints due to a reduction in revenue from research grants and commercial sources. UNIVERSITY planned to address financial constraints by increasing the number of overseas students, increasing sponsorship funding, and developing strategies for identifying research opportunities. While compulsory redundancies were not expected, it was thought that UNIVERSITY might need to consider voluntary redundancy in the coming year.

### **Workforce profile**

UNIVERSITY employed 2,700 academic, administrative and support staff. It was noted by line managers that many members of staff joined because of the attraction of working in a university setting. UNIVERSITY offered considerable training and development opportunities, such as the chance to earn an advanced degree, or to study a language without paying fees. The opportunity to do so

was valued by staff. Access to facilities such as the university's library, sports centre, and access to lectures were considered benefits of the job.

It was also noted that many UNIVERSITY employees were graduates of the university who had returned following an early career in London. The university was located in an attractive location, and many came to work at UNIVERSITY because it was considered an enjoyable work environment.

Academic staff could continue to do research beyond the compulsory retirement age. They retained their offices in the university, and could lecture on a part-time basis. However, some sources of funding were closed to academics over 65. This could prove problematic to UNIVERSITY in employing research staff on permanent contracts should retirement age be abolished, since many sources of funding for researchers over 65 would be unavailable. UNIVERSITY had an interest in retaining academic staff, particularly those with specialist knowledge whom it was difficult to replace. It was noted that the age profile of UNIVERSITY was older than most equivalent sized organisations. Two reasons were cited for the older age profile. First, many academic staff stayed in work longer because they considered their jobs enjoyable and high status (although the union representative noted that many academic staff also left work early because of stress). Second, UNIVERSITY required most academic and administrative staff to hold university degrees, which meant that staff in administrative and secretarial roles tended to be older, and often over-qualified, members of staff. UNIVERSITY required high standards of qualifications to ensure that staff were conversant in the research areas of their departments. Nonetheless, the HR department was reviewing the recruitment strategies of the five schools to ensure that job specifications matched the requirement of the jobs.

### ***Preparation for the age discrimination legislation***

It was noted that UNIVERSITY required a long lead time to adapt HR policies to reflect changes in employment law. Changes to conditions of employment first had to be negotiated with the recognised unions (AUT, Amicus, and Unison). UNIVERSITY also had an Equality and Diversity Committee, which was the means for consulting unions, staff and students on the university's equality and diversity policy. This committee had to be consulted. Subsequently, UNIVERSITY's Senate and Council had to approve changes to policy. Finally, new policies had to be implemented within each of the schools and departments. UNIVERSITY's policy-making worked in cycles. For changes in the regulations to be introduced for the 2006/2007 academic year, preparation would need to begin at the latest in summer 2005. Managers stated that they urgently needed to have sight of the draft regulations.

The HR department did not anticipate conducting a cost-benefit analysis of the impact of the legislation. It was noted that universities did not adopt the same management systems, including financial, as other parts of the public sector such as the NHS. However, it was argued that adopting best practice in terms of age diversity and other forms of equality would reap financial benefits for the university. If UNIVERSITY was seen by the wider community as a model

employer, it would encourage more people from diverse backgrounds, as well as mature students, to enrol in the university.

UNIVERSITY was conducting pilot impact assessment projects on equality in relation to staff and students. The assessment would review policies, curriculum, teaching, and provision of accommodation to assess their impact on under-represented groups. The review model was developed by University College London. UNIVERSITY was reviewing its policies against its race equality policy. It anticipated that age would be a factor in the impact assessment once the pilots were complete.

### ***HR policies and practices***

- *Age policy:* UNIVERSITY had an equality and diversity policy which was available on its website. UNIVERSITY also had a set of corporate equality objectives, which included age equality and wider participation of mature students. The line managers interviewed were aware of the university's policies, but did not necessarily know the content. However, they felt that HR policies did not impede their ability to adapt working arrangements to help staff who wanted to remain in work longer.
- *Appraisals:* UNIVERSITY had introduced a new appraisal system which had been rolled out during the previous year. It was the responsibility of the deans to ensure that the system was applied to each of the schools. UNIVERSITY had also agreed with the unions a performance management system for identifying performance problems. Previously, most cases of poor performance were put through the disciplinary procedure. The new scheme was considered a more enlightened approach since it identified ways to rectify problems with performance before considering dismissal.
- *Flexible working:* Flexible working arrangements were open to all employees, but at the discretion of heads of department. The HR department encouraged schools to consider requests for flexible working. The union representative noted that the application of flexible working varied between departments. He also noted that heavy workloads often made flexible working difficult for staff.
- It was noted that few academic staff had formally agreed flexible working arrangements. Academic staff were normally able to adapt their work routines to suit family and home requirements. As such, most academic staff worked full-time on a flexible basis.
- *Harassment and victimisation:* UNIVERSITY's policy on harassment and victimisation was incorporated in its equality policy. While line managers and the union representative could not recall a grievance which was directly age-related, they did note examples of workplace disputes in which age masked an underlying problem. The most frequent source of grievances related to status with senior (usually older) staff bullying younger ones.
- *Health and safety:* UNIVERSITY had a health and safety directorate which was responsible for monitoring risk assessments conducted by

schools. It was noted that risk assessment in the sciences tended to be more rigorous than in other schools because of the potentially hazardous conditions.

- *Monitoring:* The HR department had the means to analyse the age profile of UNIVERSITY's workforce but it did not do so routinely.
- *Pay and benefits:* Pay and benefits were determined through national negotiations between representatives of university employers and unions. There were six sets of pay and conditions in operation, divided by staff category (e.g. academic teaching staff, academic research staff, and administrative staff). The National Pay Framework Agreement would harmonise pay and conditions onto a single pay spine. UNIVERSITY was moving towards local implementation of the single pay spine and associated changes by August 2005.

Pay, as well as some benefits such as annual leave, varied by length of service. It was thought that the Framework Agreement would provide the means with which to negotiate any necessary changes to pay and conditions in light of the legislation.

- *Pensions:* UNIVERSITY contributed to the national USS pension scheme for academic staff. Support staff were members of a university-run pension scheme. Both were final salary defined benefit schemes.
- *Recruitment:* Application forms asked for date of birth for monitoring purposes. This information was on a detachable part of the application form which was not seen by the interviewing panel. All job advertisements were vetted by the HR department, which ensured that the language used did not discriminate against any group of applicants, and guidelines were provided to ensure that when jobs were advertised, they included only appropriate requirements.
- The HR department was reviewing job requirements for academic staff to ensure that there was not an age or gender bias. It was noted that promotion in academia was often based on publication records. The HR department was looking for other criteria, such as experience in teaching, which could also be used when making recruitment and promotion decisions.
- *Redundancy:* Redundancy pay was normally enhanced. While UNIVERSITY did not select candidates for redundancy based on age, it was noted that older employees were normally more likely to accept offers of voluntary redundancy. Stress was considered the primary motivating factor.
- *Retirement age:* Retirement age was 65. Once an academic or member of support staff reached 65, (s)he could complete the academic year. Staff could request to stay in work past 65, but were employed on one to three year fixed term contracts.
- *Training:* Training was open to all staff. It was noted that the training budget was funded centrally by UNIVERSITY's in-house staff

development programme. This encouraged managers to enrol staff in training opportunities, since the training did not have a direct financial impact on their respective budgets.

### ***Changes to retirement age***

It was noted that most academic staff had the opportunity to remain in work past retirement age on a fixed term basis. They retained offices and facilities for conducting research, and could continue lecturing, which was particularly encouraged where they had expertise in a specialised area. Should retirement age be abolished, UNIVERSITY would need to change the basis on which older academic staff remain in work. However, it was felt that the structures were in place to measure performance, risk, capabilities and competencies for staff wishing to remain.

It was felt that organisations which funded research, particularly those in the public sector, should be obliged to review age bars in the provision of research grants. Scepticism was expressed over whether prohibitions on research by academics over 65 could be objectively justified. Should retirement age be abolished, but research grant age bars remain, there could be a significant impact on UNIVERSITY, as it would have a significant proportion of staff who were not able to deliver funding.

***Interviewed: Assistant Director of HR policies, Equality and Diversity Officer, trade union representative.***

## Case study 13: REGIONAL NEWS

### **Overview**

REGIONAL NEWS was a company in which the 'family firm' culture had a significant influence on HR practices. The organisation's management had sought to portray itself as a benevolent employer, treating people humanely in terms of its policies on sickness, redundancy and retirement. It had few written HR policies, relying on the workplace culture to disseminate the management ethos of the organisation. Responsibilities for determining pay and managing staff were largely devolved to heads of department. The Head of HR would need to ensure that the practices of line managers (e.g. when making pay awards) conformed with the legislation.

The age discrimination legislation may require the company to change long-standing policies regarding sick pay and long service procedures.

### **Business context**

Like most newspapers, REGIONAL NEWS had seen a small but long-term decline in circulation, although this varied from year to year. Information which customers had traditionally got from regional papers could be obtained from other sources such as the internet or television. The organisation was looking for ways to halt the decline in circulation by providing news services that were more local, including the circulation of free newspapers.

REGIONAL NEWS was a family owned company (although it was legally classified as a private company). While both the Head of HR and union representative thought the organisation was a benevolent employer in terms of the management of redundancy, sick leave and performance, the extent of consultation with staff and the unions was thought to be minimal, although the company had a staff council which it consulted quarterly.

### **Workforce profile**

REGIONAL NEWS employed under a thousand staff. The organisation had four groups of employees:

- Sales and advertising staff were generally younger employees in their 20s. This department had the highest turnover rate within the organisation, with staff staying an average of five years. One of the main reasons sales and advertising staff left the organisation was because of a lack of promotion opportunities, as very few supervisors or managers left the company. Consequently, REGIONAL NEWS had introduced a personal development programme which enabled staff to learn new skills, and to progressively increase their earnings over a five year period.
- Press operators were the oldest group of employees, with a very low turnover rate. In 1985, the newspaper switched from hot metal to computerised systems. This transition made redundant most of the skills used by operators, and required them to learn new skills, such as IT

proficiency. The transition was made without compulsory redundancies, and everyone who wanted to stay with the organisation was retrained. The pre-1985 group of employees was dissipating as they entered retirement.

- Distribution and press staff were a mixed age group, although the physical demands of the work were thought to prohibit the employment of older workers. Drivers, for example, had to be able to carry 16 kilogram bundles of papers. A number of older distribution staff who left were retired on grounds of sickness or disability.
- Journalists were a mixed age group of employees, although the union representative thought that there were too few older journalists. The balanced age mix of journalists was thought to be important for the newspaper. Younger journalists were thought to be more eager to pursue a story, while older journalists contributed experience and tacit knowledge. Informal mentoring was thought to be an important element in the workplace culture but there was no formal programme.

Many of REGIONAL NEWS' staff had family members working for the company. Job vacancies were circulated through word of mouth. However, all posts were also advertised and recruitment was through a competitive process. While it was thought that the proportion of family members within the workforce reflected well on the organisation as an employer, concern was also raised about the extent to which the workforce reflected the community.

### ***Preparation for the age discrimination legislation***

Three main concerns were expressed about the legislation:

- First, REGIONAL NEWS provides some service-related benefits. In particular, long-term sick leave rose from none for new starters to 52 weeks for staff who had been with the company for 25 years. Short-term leave was the same for all staff who had completed six months of service. The sick leave policy was felt to reward the loyalty of staff with job security should they become ill. The Head of HR noted that when a member of staff suffered a major illness, her/his line manager was expected to visit the staff member. It was also noted that older people took longer to recover from serious illness, and therefore required longer sick leave.
- Second, the company offered long service awards for 25 and 35 years of service. The awards were of small monetary value, but were thought to be important for workplace morale. It was noted that the company held an annual ceremony for the provision of long service awards which was one of the social highlights of the company's year.
- Third, REGIONAL NEWS offered flexible work arrangements for staff approaching retirement. Within a year of retirement, staff could reduce their working week by one day, and within six months, by two days, whilst remaining on full pay. The scheme was introduced to help staff make the transition from work to retirement. It was thought that the

company's pre-retirement policy could be perceived to be age discriminatory, since only older workers benefited.

The Head of HR had informed the board of directors about the legislation, and the implications in terms of the company's HR policies, principally in relation to benefits which were determined by length of service. He did not anticipate that any changes to occupational retirement ages would have a significant impact on the organisation. He did not expect the board of directors to request a detailed cost-benefit analysis of the impact of the legislation, but would carry out a rough calculation for his own planning.

### ***HR policies and practices***

- *Age policy:* REGIONAL NEWS did not have a policy on age management, although it did have a generic equal opportunities policy. The policy would be revised to refer to age when the age discrimination legislation was introduced. It was also anticipated that directors would be trained on the requirements of the legislation. Directors would be responsible for disseminating the company's age management policy to junior managers.
- *Appraisals:* All staff underwent an annual appraisal which was conducted by heads of department. It was not thought to be a very rigorous appraisal system, but was mandatory. It was mainly used to determine staff's annual pay increase.
- *Apprenticeship:* REGIONAL NEWS had an annual intake of between eight and twelve graduate trainee journalists. Trainees were between 18 and 22 years old (the minimum and maximum ages for the programme).
- *Benefits:* Long-term sick leave varied by length of service. In addition, staff were offered the chance to buy shares in the company every two years. Car parking, which was very restricted, was allocated by length of service.
- *Monitoring:* The Head of HR maintained a database of employees' length of service, and age or date of birth.
- *Pay:* The pay system varied by department. Each year, pay budgets, administered by the Head of HR, were allocated to heads of department who were responsible for allocating pay awards to their staff. In some departments, such as transport, all staff were paid at the same rate, while in others, such as journalism, pay was determined individually. The unions (the largest of which is the National Union of Journalists) were not recognised for pay negotiations.
- *Pensions:* Longer serving employees belonged to a defined benefit pension scheme. New entrants were invited to join a defined contribution scheme which both the Head of HR and the union representative thought was less generous.
- *Recruitment:* All job vacancies were advertised in REGIONAL NEWS' own publications. No formal age bars existed for jobs other than apprenticeships. However, the organisation discouraged applications

from people under 21 for jobs which were thought to have too much pressure. Job application forms asked applicants for their date of birth. This information was seen by the interviewing panel.

- *Redundancy:* REGIONAL NEWS did not have a redundancy scheme, but in a previous scheme redundancy pay rose with length of service until the member of staff reached 60 and was then reduced slightly up to the age of 65.
- *Retirement age:* Retirement age was 65 for all employees except female workers who were recruited before 1988, who had a retirement age of 60. Those with a retirement age of 60 could continue in work until 65. Other than freelance work for journalists, there was little scope for staff to work past retirement age. It was not encouraged by the company. When an operational need was identified to delay an employee's retirement, the employee was required to leave employment for three weeks in order to establish a break in continuity of service.
- *Sick leave:* Staff with less than six months service received no sick leave. Short-term sick leave did not vary for staff with more than one year of service, although long-term sick leave rose from three weeks full pay for staff with six months service to 52 weeks for staff with 25 years of service.
- *Succession:* REGIONAL NEWS did not have a formal succession plan. However, the Head of HR informed heads of department of coming retirements on an annual basis to enable them to plan for filling the vacancies.
- *Training:* No age bars could be identified in terms of access to training, although the union representative felt that older journalists were given less opportunity to take part in training and refresher courses.

### ***Changes to retirement age***

On the day of the interview, the Trade and Industry Secretary announced the Government's plans for occupational retirement age. The Head of HR felt that the proposal would not affect the company, since all staff currently had the right to work until 65. He felt that the abolition of retirement age without a default retirement age would make management more difficult. Should staff have the right to work past 65, he argued, the organisation would need to rely upon performance measurements to determine whether staff could remain with the organisation. He argued that dismissing older workers for poor performance would be a terrible basis for beginning their retirements.

That said, he also anticipated that few employees would seek the opportunity to stay in work past the present retirement age. He noted that the company's pre-retirement policies encouraged staff to take up non-work related interests before retirement.

***Interviewed: Head of HR, trade union representative.***

## **Case study 14: GlaxoSmithKline**

### ***Overview***

GSK was a multi-national company, and the one organisation amongst the case studies which had drawn from the experience of its overseas divisions to assess the impact of the age discrimination legislation. While the company professed support for the intent of the legislation, it was concerned about the potential for case law to determine the structure of the regulations. It wanted the Government to be bold in its approach to the law, setting out clearly how the regulations would apply. It also wanted a general exemption for service-related awards in order to avoid vexatious lawsuits.

### ***Business context***

GlaxoSmithKline was an international blue chip company, manufacturing pharmaceutical and healthcare products. It had recorded annual worldwide profits of around £6 billion since 2001, although this figure was expected to fall by 10 per cent for 2004. The decline in profits was attributed to the proliferation of competing organisations manufacturing generic and copied drugs.

In 2000, GSK was created through the merging of Glaxo Wellcome and SmithKlineBeecham and in 2004 the company was the second largest international pharmaceutical company and a member of the FTSE 100.

### ***Workforce profile***

Worldwide, the company employed 100,000 people, of whom approximately a fifth were employed in the UK. The company operated out of 137 countries, but was headquartered in the UK. It employed staff in six main areas: research and development; manufacturing; marketing; finance; IT; and procurement. The headquarters were located in West London, with manufacturing sites in the South East and North East of England, and Scotland. The company had recently announced the closure of one of its manufacturing plants in Scotland.

Corporately, it was thought that the main HR priority of the organisation was talent management. The company felt it needed to demonstrate its commitment to corporate social responsibility.

The company was also in the final stages of harmonising conditions of service which had been transferred from the two previous organisations. A particularly difficult task had been the harmonisation of redundancy terms. One part of the organisation had set redundancy pay primarily according to age, while another set redundancy pay primarily according to length of service. After surveying equivalent sized organisations, the HR department had proposed a redundancy policy which based redundancy pay purely on length of service. It was determined that an age based redundancy system could fall foul of the upcoming age discrimination legislation. Length of service was also considered to pose a risk, and concern was expressed about the impact of the legislation on the new scheme, in particular the age-related pension enhancement element. It

was noted that nearly half the companies GSK surveyed offered age-related pension enhancements on redundancy. If this practice were to be made illegal, it was expected that many companies would need to significantly reduce their enhanced pension benefits.

### ***Preparation for the age discrimination legislation***

The HR department was reviewing the company's policies and practices to take account of the expected impact of the legislation. It had consulted HR departments in its overseas divisions, principally in the United States which had a long-standing federal law prohibiting age discrimination against older workers. Feedback from the United States was that the age discrimination law had resulted in a proliferation of cases, particularly class action suits. Assuming the impact of HR policies was used as the standard with which to determine discrimination, the HR Director opined that any management decision relating to employment could be potentially challenged in court. For example, compulsory redundancies could be age discriminatory if a disproportionate number of redundant employees were older workers.

It was also felt that the regulations should include a general exemption for service-related benefits. Increasing benefits for longer serving employees was seen as a legitimate reward for loyalty.

The HR Director anticipated that he would begin a major age discrimination review once the draft regulations were published. He was not certain about what the review would entail, as the Government had not yet announced the details of the regulations. He did not anticipate conducting a cost-benefit analysis. The main anticipated cost, based on the US experience, was litigation, which would be difficult to quantify.

GSK conducted equal pay reviews on the grounds of gender and ethnicity. It was currently reviewing the equal pay review process in order to incorporate age. It was not thought that inclusion of the age dimension would significantly change the review process. It was noted that the process of identifying pay disparities which could not be justified was essentially the same for any form of discrimination.

### ***HR policies and practices***

- *Age policy:* The company had an equal opportunities policy which, since 2001, had included a reference to age. Age equality was inserted into the policy when the two previous organisations' policies were harmonised. Around 200 managers a year were trained on employment law and the company's employment policies. This included training on the company's anti-discrimination policy. Age discrimination would be incorporated into the training once the draft regulations were produced; it was already mentioned as a future area of law.
- *Apprenticeship/graduate trainee:* The company ran a graduate trainee programme. Although it did not feature explicit age bars, trainees were usually between 21 and 25 years old. It was thought that the programme might need to be modified to ensure that mature students

had the opportunity to take part. The company planned to review how the trainee programme was advertised, where applicants were sought, and possibly even the name of the programme.

- *Benefits:* Annual leave was influenced by length of service. No directly age-related benefits could be identified.
- *Health and safety:* Each manufacturing plant had a health and safety division which routinely assessed the physical fitness of staff. Staff who were considered to be no longer physically capable of carrying out their responsibilities were reassigned to other posts.
- *Long service awards:* After ten, twenty and thirty years service, staff were awarded tokens of several hundred pounds value.
- *Pay:* Pay was based on grading, determined by responsibility and performance. While pay was not directly linked to length of service, it was acknowledged that new employees generally started work towards the bottom of their pay bands and rose incrementally each successive year. The company conducted equal pay reviews to ensure that the pay system was not indirectly discriminatory on grounds of gender or ethnicity.
- *Pensions:* The company operated both a defined benefit pension scheme for staff who had transferred from the previous organisations, and a defined contribution scheme for new employees. Approximately two thirds of employees currently contributed to the defined benefit scheme.
- *Recruitment:* Job advertisements were written by an external agency. The HR department reviewed advertisements to ensure that any discriminatory language was removed. Job application forms requested applicants' date of birth on a separate 'monitoring' sheet. It was surmised that interviewers would guess the age of applicants even if they were not informed.
- *Redundancy:* The company had recently harmonised its redundancy policy. The new policy based redundancy pay on length of service.
- *Retirement age:* Retirement age was 65 for most employees. Some staff who transferred from Glaxo Wellcome had a retirement age of 62. At the discretion of their line managers, staff could stay in work past normal retirement age.
- *Training:* No direct or indirect age bars for training could be identified.

### **Changes to retirement age**

The company permitted staff to request extending work beyond retirement age. Requests were made to the employee's line manager who had to assess whether there was an operational need to retain the employee. Except for manufacturing work involving manual handling, it was not thought that job requirements would prohibit older workers from staying in work longer.

Most employees who were approaching retirement were members of the company's defined benefit scheme. The HR Manager did not anticipate that many of these employees would want to stay in work longer even if they were able. Senior managers, in particular, were thought to usually seek to retire as soon as they were financially able. However, it was thought that this could change as more staff in the defined contribution scheme approached retirement.

It was thought that the Government's proposal would require the company to set everyone's contractual retirement age to 65. The company's pension age could remain the same, but it was thought that other benefits could be affected. The company operated a 'good leaver' retirement policy. In addition to pension entitlements, retiring staff also benefited from share options, bonus, extra holidays and the chance to purchase a company car at a reduced price. If a default retirement age was set at 65, it was thought that these benefits could be jeopardised for staff whose normal retirement age was 62.

***Interviewed: Director for HR Policy Employee Relations and Diversity***

# Appendix B

## Interview schedule

### Questions for senior HR representatives

*HR Issues Facing the Organisation:* What will be the main human resource challenges facing your organisation?

*Age Diversity and the Organisation's Priorities:* How important is age diversity as an issue to the organisation?

*Formal Policy:* Does your organisation have a policy on age discrimination? How is it being implemented?

*Retirement Ages:* What is your organisation's policy on retirement age?

*Pay and Benefits:* What aspects of pay and benefits vary, directly or indirectly, by age?

*Pensions:* What kind of pension scheme/s do you offer?

*Recruitment and Promotion:* How is age addressed in recruitment and promotion?

*Redundancy and Severance:* How do you manage redundancy/severance?

*Flexible Employment:* What kinds of flexibility of employment do you offer/allow?

*Harassment and Victimisation:* Has your organisation ever had a problem with either older or younger workers being victimised by older workmates? How has it been resolved?

*Monitoring:* Does your organisation monitor the age profile of your workforce?

*Health and Safety:* Are there health and safety reasons for restricting older or younger workers from certain jobs/responsibilities?

*Training:* Does your organisation set age limits, directly or indirectly, on access or support for training or vocational education?

*Young People:* Does your organisation have any special rules or practices which affect young employees specifically?

*Financial Implications:* What will be the main financial implications for your organisation of the new legislation on age discrimination?

*Costs and Benefits:* Have you ever tried to assess the costs and benefits of implementing this legislation? What costs/benefits might you consider?

*Previous Legislation:* Has your organisation conducted a cost-benefit analysis of the implementation of previous discrimination legislation (e.g. the recent legislation on sexual orientation and religion)?

## Questions for trade union representatives

Under the European Equal Treatment Directive, all European countries will make age discrimination in work and training illegal by October 2006. This applies to people of all ages, but is likely to impact most strongly on those over 50.

The Centre for Research into the Older Workforce is conducting research for the Department of Trade and Industry on current employment practices and how they might be impacted by the upcoming legislation. EMPLOYER is one of the case studies in this research, and we would like to get your perspective as the employees' representative on EMPLOYER's current human resource practices and the potential impact of legislation on age discrimination.

For further information on DTI's proposals, please see its consultation paper, *Equality and Diversity: Age Matters*, which is available electronically: <http://www.dti.gov.uk/er/equality/age.htm>.

*HR Issues Facing the Organisation:* What do you think are the main human resource challenges facing this organisation?

*Age Diversity and the Organisation's Priorities:* How important do you think age diversity is as an issue to the organisation?

*Perceptions of Employer:* Do you think that employees here are treated equally regardless of age?

*Consultation:* Is the union consulted over issues around age diversity?

*Casework:* How often, if ever, do you have to deal with members' cases involving age discrimination?

*Training - Access:* Do employees have equal access to training regardless of age? *Family-friendly:* Do employees have equal access to the company's family-friendly policies?

*Awareness:* How aware do you think people are of the organisation's age policy? *Retirement:* Do workers here generally want to work up until the company's retirement age? Longer?

## Questions for line managers

Overall, do you think older people and younger people are treated fairly in this organisation?

Have you ever had to deal with a problem with your employees which you thought was age-related (for example, an employee being victimised by a colleague)?

Does your employer have a policy on age?

How were you made aware of your employer's policy on age?

This slide shows some of the ways in which people might be discriminated against. Which do you think will be most difficult for your employer to manage?

Is it easier to work with a particular mix of ages of workers?

The Government is planning to prohibit age discrimination at work. Do you think this will make a difference in your workplace?

# Appendix C

## Coding Schedule

- 1) Strategic context
- 2) HR challenges
  - a) Solutions to HR challenges
  - b) Main HR costs
- 3) Age discrimination legislation
  - a) Awareness of legislation
  - b) Impact of age legislation
  - c) Concerns
  - d) Benefits
  - e) Likely changes to HR practices
- 4) Drivers for age policy
- 5) Employees; intentions
  - a) Older workers wanting to stay in work longer
  - b) Older workers encouraged to stay in work longer
- 6) Perceptions
  - a) Older workers
  - b) Younger workers
- 7) Previous equality legislation
- 8) Preparation for legislation
- 9) Appropriate test for legislation in ten years time
- 10) Formal age policies
  - a) Content
  - b) Disseminated
  - c) Changed behaviour
  - d) Gap between policy and practice
  - e) Unwritten policies

11) HR policies

- a) Recruitment
- b) Succession planning
- c) Turnover
- d) Retirement age
- e) Pay
- f) Benefits
- g) Pensions
- h) Family-friendly
- i) Redundancy
- j) Outsourcing
- k) Harassment and victimisation
- l) Monitoring
- m) Health and safety
- n) Training
  - i) Age bars
  - ii) Willingness of older workers to take training

12) Young people

13) Cost-benefit analysis

- a) Financial implications
- b) Cost-benefit analysis having been conducted
- c) How would be conducted
- d) Costs
- e) Benefits

14) Retirement age

- a) No compulsory retirement age
- b) Default age of 70
- c) Employer set within guidelines

15) Trade union

- a) Consultation machinery
- b) Consultation on age policies
- c) Backing for policies
- d) Personal cases

- 16) Message to government
  - a) Favoured regulations
  - b) Consultation
  - c) Preparation
- 17) Other issues
- 18) Demographic questions

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