
The Review of the Default Retirement Age

**Evidence from TAEN –
The Age and Employment Network**

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1. Introduction

TAEN - The Age and Employment Network works to promote an effective labour market that serves the needs of people in mid and later life, employers and the economy. We provide information to older workers and jobseekers and all those who support them. We promote the concepts and ideas of age management by working directly with organisations to influence opinion and practice. We help them to champion age diversity and gain the knowledge, inspiration and support to translate this commitment into reality.

TAEN has followed the evolution of the 2006 Age Regulations from an early stage of drafting to enactment and has maintained contacts with employees, people who are currently outside the workforce but aspire to return, employers, unions, labour market intermediaries and many others. We welcome the opportunity to comment in relation to this review of the default retirement age (DRA).

The call for evidence asks that the case for the default retirement age should be considered in light of:

- The operation of the default retirement age in practice
- The reasons that businesses use mandatory retirement ages
- The impacts (positive and negative) on businesses, individuals, and the economy, of raising or removing the default retirement age
- The experience of businesses operating without a default retirement age
- How could any costs of raising or removing the DRA be mitigated and benefits realised?

We will attempt to address these points in our evidence below.

2. The 2006 Age Regulations

The Employment Equality (Age) Regulations, which came into force on 1 October 2006, made age discrimination unlawful in employment and vocational training. Age discrimination could be direct or indirect. Age discrimination was popularly described as being “outlawed” in Britain’s workplaces. This was far from the case, however, as is made clear in the following sub-sections.

2.1 Justification of “less favourable treatment”

Firstly, the Regulations allow continued age discrimination by an employer who can offer an “objective justification” of the discriminatory treatment.

The intention here was to give effect to Article 6 of the European Directive (see Panel 1) which allows that differences of treatment shall not constitute discrimination if they can be “objectively and reasonably justified”. The wording of the statute reflects this approach and it is for the courts and tribunals to consider the merits of each case on the facts and having regard to the general principles of justification laid down.

Panel 1

Extract from Equal Treatment Framework Directive (2000/78/EC) Article 6.1 Justification of differences of treatment on grounds of age

Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

- (a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
- (b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
- (c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

It should be said that these provisions are in striking contrast to other strands of discrimination, where the possibilities for justification are much narrower, being for genuine occupational reasons only. Age discrimination is allowed providing it is in pursuit of a legitimate aim and that the means employed are “proportionate,” that is to say, reasonable, appropriate and necessary.

Thus, any employer may have a discriminatory policy including of course a mandatory retirement age, providing they can meet the justification criteria.

2.2 The default retirement age

The Regulations also include the separate provision of a “default retirement age,” (DRA) which offers much greater certainty for the employer who wishes to retire people at 65. (However, the corollary is that the DRA offers little scope for employees to continue working beyond 65 if the employer does not wish them to do so.)

In contrast to the separate right of an employer to justify discrimination (considered above), the DRA is a draconian power. There is no condition that mandatory retirement at 65 must be justified, no need for the employer to have a legitimate aim, nor to show that retirement is a proportionate response to the purpose the employer has in mind. The DRA is simply the fall back position to which any employer may revert regarding mandatory retirement. It is as though the DRA represents a commonly accepted point when so many people are no longer fit or suitable for work, that there is no point in requiring employers to justify their enforced retirement.

2.3 The “duty to consider”

In retiring employees, the employer has a “duty to consider” requests to remain in work beyond 65. However, the duties laid down are procedural duties only. They include notifying the employee not less than six (but no more than 12) months ahead of his/her impending retirement, that the employer wishes to retire him or her. The employee must be informed of a right to make a written request to continue working and if this is exercised the employer must arrange a meeting at which the request must be considered “in good faith.” If the employee is dissatisfied with the response there must be a right of appeal.

These duties are not onerous on employers however. There is no obligation to assess the capacities, capabilities and personal circumstances of employees requesting to work on. The employer is supposed to consider requests “in good faith,” but this does not appear to have prevented some employers from rejecting all requests and allowing no-one to work beyond 65.

It follows that the “duty to consider” is a procedural duty only. Employees who are notified of their impending retirement may indeed make requests, but there is no real way of ensuring that they are given open-minded or serious consideration. When a request is refused, the employee has no right to receive even the basic reasons. The lack of any objective criteria against which requests may be judged, places the employee at severe disadvantage and guarantees unfettered discretion to the employer.

The Engineering Employers Federation has conducted a survey which gives a more positive gloss to the right to request to work on beyond 65. However, TAEN has received numerous complaints from individuals that show it is commonplace for requests to be rejected out of hand, merely because it is company policy to do so.

TAEN and the Employers Forum on Age surveyed employers’ responses to mandatory retirement. Of respondents which applied a mandatory retirement policy, 10 per cent said that they “always” allowed employees requests to continue working, 6 per cent said that they “never” did so and 84 per cent said that they did so “sometimes.” Within this latter group there is doubtless a spectrum of responses, so that in some cases agreement may be reasonably commonplace whilst in others one may expect it to be relatively rare.

Whether or not a person with good reasons to work on and good capacity to hold down a job is able to maintain continued employment beyond 65, is then more a matter of luck rather than personal qualities, employability, need, family circumstances and so forth. In our view this is a poor instrument for balancing the interests and needs of individuals against those of employers.

2.4 Refusal of employment to jobseekers aged over 64½

An additional provision allows employers to refuse employment on grounds of age to anyone who is within six months of the DRA. Thus an additional form of discrimination is deemed allowable, which we believe has a “knock on” effect on job applicants in their early 60s and even in their 50s. Jobseekers in the 50+ age range report pervasive discrimination right across the labour market and it cannot be discounted that some of this is at least encouraged by the view that at 64½ it is “not worth bothering to consider” someone’s application, in the knowledge that the law allows such discrimination.

Comment

In TAEN's view, the existence of the DRA in addition to the provision allowing *justifiable discrimination* is unnecessary. The DRA is heavily skewed to favour employers, permitting them to fire people in a discriminatory fashion with no need to justify their policies.

Further, the Regulations contain minimal provisions to allow employees to express dissent. They do not oblige employers to assess the strength of a case for delaying retirement or to weigh the strength of individual requests. Neither does the employer have to take into consideration personal circumstances of applicants, their value to the organisation nor the broader personal, social and economic implications of enforced retirement, in any form.

3. Working without a default retirement age

Setting aside for one moment objections to the concept of mandatory retirement *per se*, if the law was changed to remove the DRA, how could those employers, who believe they need such a power, function? TAEN believes that any employer who wishes to compel employees to retire at any age should present a compelling case for justification which might be defended before an employment tribunal. We understand that employers would prefer not to have to face the uncertainty of employment tribunals, but in other respects their behaviour is *already* subject to regulation by these means. For example, in cases of dismissal or redundancy employees may claim that the employer has acted unfairly and the employer must then defend his/her position. Society takes it for granted that employers should be accountable in this way.

In employment matters generally, the decisions emerging from tribunals and the appellate system provide clear rules which other employers and legal advisers take into account. The system thus influences standards of management generally. It is, of course, the business of advisers of employers and employees to know what these rules state. Bodies like Acas perform a vital role in providing clear, understandable information.

We believe that employers who generally deal perfectly well with the technicalities of unfair dismissal legislation or the intricate rules, for example in the execution of redundancies, could also cope with new duties relating to retirement. We also think that were the DRA to be repealed, a minority of employers would actually seek to maintain mandatory retirement, precisely because in most cases it is simply unnecessary.

Comment

Mandatory retirement at the default retirement age is one of the few remaining examples of legitimate discrimination against employees, without legal redress whatsoever. We believe this unfair exception to the UK's Age Regulations, offered by the DRA, should cease. We see no obstacle to employers functioning perfectly efficiently without a DRA and we see no reason why employers with powerful reasons for mandatory retirement policies should lack the confidence to justify their chosen practices in the legal system.

4. The impact of the default retirement age on older workers and jobseekers

4.1 Forced retirement

We consider there is already sufficient evidence of damage and harm caused by the DRA. TAEN receives regular news of discrimination against individual older workers and jobseekers. Not all of these are directly related to the retirement process but many are. Many of our day to day conversations are unrecorded and simply form part of our everyday business interaction with members of the public. However, they enable us to comment on the DRA with understanding of the perspective of individuals who have recently been retired or are facing retirement in the near future. File notes of some of our conversations are collected and appear as Appendix 1.

Cases brought to our attention show how in some instances real hardship has been caused. People are being obliged to retire before they were ready to do so. Many have been forced to leave their jobs, still needing or wishing to work. On seeking work, they then find it very hard to overcome the barriers so often encountered by older people.

Moreover, it has to be borne in mind that in the years since the Age Regulations were enacted many people have become greatly affected by changes in the economy. (Savings are no longer attracting the levels of interest that they used to; what may once have seemed a reasonable nest egg for retirement is no longer sufficient.) Further, unemployment (perhaps occasioned by redundancy) may increase the need for others in a family to work longer - perhaps beyond 65.

Comment

The DRA is causing real hardship for people who are well able to earn a living were it not for the fact that they have been arbitrarily cast aside for no reason other than their age.

We believe that the legitimate but manifestly harsh and harmful discrimination to people of 65+, which is represented by the DRA, would not be acceptable in the case of gender, race, disability, sexual orientation, religion or belief.

4.2 Older jobseekers

The experience of workers compulsorily retired at 65 has to be understood in context of the experience of older jobseekers. TAEN's *Survey of Jobseekers Aged 50+* seeks to unpack some of the issues.¹ Whilst the employment figures show that more people are working on beyond state pension age, many more would like to work but are finding it harder to regain employment.

Our *Survey of Jobseekers Aged 50+* shows that age discrimination is regarded by older job applicants as one of the major barriers to finding work. Only 9 per cent of participants had *never experienced age discrimination* while looking for work. And although half (52 per cent) believed they had experienced discrimination in job hunting, a great many pointed out how difficult it was to prove such discrimination in the recruitment process.

¹ TAEN July 2009: *Survey of Jobseekers Aged 50+*
http://taen.org.uk/uploads/resources/24104_Taen_50_plus_survey.pdf

The second edition of the *Survey of Jobseekers Aged 50+* covers periods before and during the recession, allowing us to consider how the recession impacted on older jobseekers. Not surprisingly, work had become harder to find; overall, the recession saw an increase in the proportions of our survey cohort seeking work for between three and 12 months.

Nearly a third more 50+ jobseekers in the post-downturn period were “desperate” to get work than before the recession. More felt that they were unable to find work because they were seen as “too experienced or overqualified,” or simply because they were seen as “too old.” (Both statements are, of course, examples of thinly veiled age discrimination.)

As has already been mentioned, people who are simply *approaching* the age of 65 may also be subject to discrimination because the law allows employers to refuse to recruit someone within six months of becoming 65. We believe that this influences the hiring policies of employers more generally, in that employers are likely to be similarly reluctant to recruit a new employee who is 62 or 63. While our survey results do not demonstrate the *causes* of age prejudice against 50+plus jobseekers, the fact that they report it as widespread, should prompt consideration of the DRA as a link.

Comment

On one hand we have widespread, *covert* and unlawful discrimination against older jobseekers. whilst on the other we have widespread *overt* and lawful discrimination against older people who are obliged to retire at the age of 65. The possibility must be considered that one form of discrimination feeds and informs the other.

If the state expresses ageism in the way it shapes the law, we can hardly be surprised if employers adopt ageism as a mind set and apply it at their own convenience.

5. Attitudes to working beyond state pension age

It is worth considering why and in what ways it matters that people should be allowed to continue working beyond dates arbitrarily set as “the retirement age.” Society comprises *real* people with real families and real problems and issues to consider. As we all know, people’s individual circumstances and preferences differ. Some may well be happy to retire at a given age whilst others would prefer to work much longer, perhaps delaying complete retirement until their late 70s, or later. What motivates these people to want to continue working when others have long since left the world of work?

In a survey of older workers in the G7 countries² by the AARP, a US non profit organisation, 82 per cent of British respondents said in general they worked for the money but only 45 per cent listed money as the main factor for continuing to work beyond retirement age. In the same survey, 49 per cent said they *intended to continue working to stay mentally active*. Thirty-one per cent said they worked to stay physically active, whilst 27 per cent gave *liking work* among their top three reasons and 24 per cent said simply: *to have something to do*.

² AARP, *Profit from Experience*, 2007

Panel 2

Responses to question: “Why do you want to work?” by respondents to TAEN’s Survey of Jobseekers Aged 50+

Most respondents to TAEN’s survey of older jobseekers³ cited financial worries as their principal motivation for seeking work. A woman said:

“We lost a good two-thirds final salary pension scheme. We are in our late 50s and currently have no spare income to save. I have no job. My husband earns half of what we used to. We are worried about how we will live in retirement.”

Another woman, aged over 65, commented: *“I just want a job, any job, to enable a survival standard of living.”*

A man in his 50s explained: *“All I want is to find rewarding, challenging employment to get me out of this downward spiral of debt and having to rely on state handouts.”*

Research from the fifth annual Scottish Widows Pensions Report revealed that the almost one in six (15 per cent) of retired people in the UK have an outstanding mortgage, with an average debt of more than £50,000. The average non-mortgage debt for retired people is £7,344.

1.41 million people⁴ are now working beyond state pension age and many of them are part-time workers. These figures suggest that, on one level at least, the concept of *partial retirement* is taking hold, with individuals combining the state pension with part-time work as a sort of ‘stepping down’ approach or to supplement their income.

These different sources of evidence strongly suggest that more and more people will continue to work longer if they are permitted to do so. The DRA intrudes into these aspirations and precludes individuals (and the state) from benefiting from changing social attitudes towards work. Supporters of the DRA sometimes cite the growth in the number of people working on beyond state pension age (SPA) as evidence of the success of the current arrangements. However labour market studies attribute the rise in working beyond SPA as reflecting a general trend that is not attributable to the DRA. Studies show that just under four in ten men and just under one in five women remaining in work after SPA are self-employed, which rather indicates that the growth has occurred in a climate not necessarily welcoming of older workers in conventional employment.

In considering the need for a DRA therefore, the changing circumstances of Britain’s older people should be considered, including the fact that (as has been well documented) many more people in their 60s are nowadays fit, active and have long lives ahead of them. Whilst it should not be assumed that the DRA really does support business interests, the latter should always be seen in the context of the national economic interest and the needs of individual members of society. This sense of balance needs to be observed, though we will now comment on what our inquiries tell us of business needs, bearing in mind the experience of managers of the DRA in operation.

³ TAEN op cit see note 1

⁴ Labour Market Statistics, ONS, January 2010

Comment

The DRA was framed wholly in response to the demands (and supposed needs) of business, but this was not a proper way to approach the transposition of the Equal Treatment Framework Directive. The Directive was designed to remove age discrimination from European workplaces, whereas the DRA perpetuates discrimination. We believe this imbalance should be rectified and that the rights of individuals and the needs of the economy should be given greater weight than hitherto on this policy question.

6. Impact of the default retirement age on business practices

6.1 Prevalence of mandatory retirement

According to a 2006 DWP survey conducted to establish the effects of the forthcoming legislation, 57 per cent of establishments had no mandatory retirement age. A survey carried out in May 2009 for Age Concern and Help the Aged found 70 per cent of businesses now operate a mandatory retirement age. If these results are to be relied upon, they mark a startling change.

It would seem possible that many more businesses are now operating a mandatory retirement age than when the Regulations were introduced. The proposed BIS/DWP survey of policies, practices and procedures will establish whether or not this is in fact the case.

6.2 Business arguments to support mandatory retirement

The arguments for a default retirement age put forward by business leaders in advance of the 2006 Regulations coming into force included the importance of the following:

- mandatory retirement in succession planning (i.e. removing “job blocking”);
- supporting manpower planning by introducing predictability;
- moving on under-performing older people “with dignity” rather than using capability procedures or disciplinary procedures;
- Improved productivity and efficiency by replacing older workers with younger workers.

Some business leaders claim that it is impossible to carry out succession planning without using a mandatory retirement age. However, as many businesses have proved, this simply is not true. No business operating in the USA, Australia, Ireland and in most provinces of Canada is permitted to use a forced retirement age,⁵ a fact that does not appear to have impeded international competitiveness of companies in these countries.

In the UK, many large business groups (including several members of the CBI, which has opposed the abolition of the default retirement age), operate without recourse to a mandatory retirement age. These include: Asda Stores Ltd, Barclays Plc, BT, B&Q, The Cooperative Group, Nationwide Building Society, Marks and

⁵ Casey Wunsch and Jaya Vimala Raman *Mandatory Retirement in the United Kingdom, Canada and the United States of America* TAEN 2010

Spencer, JD Weatherspoon, Transport for London and Sainsbury's are some examples of such organisations.

In order to test whether arguments for the DRA were borne out in practice, TAEN and the Employers Forum on Age collaborated in 2009 in a survey of employers both with and without mandatory retirement ages. The findings of the survey and some of the conclusions we draw from it are described in the section below.

7. TAEN and EFA survey of mandatory retirement

The experience of employers with and without mandatory retirement ages was investigated in a survey⁶ of nearly 200 human resource managers. The survey was carried out by TAEN and the Employers Forum on Age in June 2009. It sought to establish their views on the benefits and disadvantages of mandatory retirement ages.

The survey demonstrated that employers that have no mandatory retirement age generally cope very well without it. On the other hand, a proportion of employers with a mandatory retirement age recognise the disadvantages it brings to the organisation.

Disadvantages of the DRA are revealed in terms of lost knowledge and talent when older workers depart, risks from demographic factors, the difficulty in maintaining performance when experienced workers retire, the lost opportunity to be the employer of choice among older and mid life workers, the adverse impact on those employees who would have preferred to work on and the adverse impact on the company's image.

Conversely, of the employers we sampled who had adopted mandatory retirement (generally at 65 – i.e. at the DRA) significant numbers in each case found that the claimed advantages of mandatory retirement were not in reality achieved. Of this group, 19 per cent found they achieved no advantage in succession and manpower planning, 20 per cent said that the DRA did not result in them creating head room for younger workers, 68 per cent said that it did not result in improved performance in some way, and 53 per cent said that under-performing employees were not dealt with more easily with the DRA in place and without disciplinary or competency procedures being used. A large 81 per cent majority of employers using the DRA said that it did not have a positive impact on their organisation's image.

The results undermine the argument that there are benefits to business when workers are forced to retire. Sixty-four percent of those operating with a mandatory retirement age said it could lead to a loss of talent and knowledge to the organisations and 37 per cent said the national default retirement age created risks from demographic factors such as population ageing.

Of the respondents whose organisations had no fixed retirement age, 76 per cent considered it kept valued people in the organisation and 85 per cent said it

⁶ *Is Mandatory Retirement Really Helping Business?* A Survey Report by TAEN and the EFA, July 2009.

maintained valuable skills in the organisation. Fifty-two percent believed it improved morale among employees and that it provided positive role models for younger employees.

Comment

The survey provides evidence to support the view that employers are capable of functioning perfectly well without a default retirement age and that far from the absence of the DRA harming business, it would in fact help them to address the challenges of demographic change.

We believe that the results demonstrate that the advantages of having a default retirement age have been grossly exaggerated.

In the macro economy, we are seeing more employment of older workers. Despite the recession, the UK's current working age employment level (72.5 per cent) is one of the EU's highest and well above the European average of 64.6 per cent. It meets the EU's target of 70 per cent by 2010.

Despite widespread lay-offs, skills shortages are still reported in a number of sectors. Businesses need skilled, knowledgeable workers and, as the economy begins to recover, demand for such workers will grow. Older people with the appropriate skills are a valuable resource and it makes no sense at all to either force them to retire or for that matter to neglect to train them or encourage them to remain engaged with work for as long as they can do a good job.

It is revealing to consider the implications of population changes on the UK economy in the context of the appraisal performed in 2004 by the OECD. Panel 3 overleaf provides an excerpt from the OECD's report.

Demographic changes in society imply that unless we encourage changes in working and retiring patterns, many more people will be living (but not earning) well beyond retirement age. Such a situation will be unsustainable without substantial increases in taxation to pay for the increased pension costs implied.

8. Economic benefits of employing older workers

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<p>Panel 3</p> <p>Selected extracts from recommendations from the OECD's <i>Live Longer Work Longer Study of the United Kingdom, "Ageing and Employment Policies: United Kingdom" 2004</i></p> <p><i>Removing barriers faced by employers in hiring and retaining older people</i> Employers' perceptions may be particularly important in determining the employment patterns of older workers....</p> <p><i>Move ahead with implementing anti-age discrimination legislation.</i> "...despite some reluctance from employers, the Government should move forward with abolishing mandatory retirement ages unless objectively justified.</p> <p><i>Continue to promote age diversity in employment.</i> The Government needs to continue active collaboration with the social partners and prolong promoting age diversity in the workplace.</p> <p><i>Promote a better and more flexible working environment.</i> A significant share of older workers wishes to extend their working lives if offered flexible working arrangements. If the Government is serious about reducing the number of work days lost due to injury and ill-health, more preventive measures are required to retain workers longer. ... flexible work patterns should be extended to focus also on extending working life through reducing work-related ill-health.</p> <p><i>Improving the labour market prospects of older workers</i> Education and skills are important elements affecting employment prospects. Indeed, the first step to tackling skill deficiencies is to ensure that individuals are provided with the right basic skill requirements.</p> <p><i>Improve coordination in skill delivery and strengthen the provision of career guidance for older adults.</i></p>

Business leaders must realise that the availability of people to fill the jobs they need doing cannot be guaranteed unless they are willing to either employ older workers, or continue to look to migrant workers to fill the gaps. While migrant workers offer many advantages, it is increasingly clear that the UK cannot absorb more users of the country's infrastructure without a significant increase in investment to make this possible.

Given all these arguments, it seems clear that there is a good case for businesses to make better use of older workers and an equally strong case for Government to insist that businesses do so.

The Government should emphasise the need for companies to discover what is needed in terms of training, investments in human capital, career change support, transformation of attitudes and management competencies to make it possible for people work longer as well as encouraging (and not dissuading) those who presently wish to do so.

9. Conversations with employers

As a result of many conversations with employers over the past three years, TAEN is able to comment generally on the experiences and attitudes of employers in relation to the older workforce.

- Those employers who have adopted age-friendly retention and recruitment policies almost without exception emphasise the business benefits of doing so. They cite such benefits as superior 'soft' and 'hard' skills: expertise, experience, strong commitment and work ethic, loyalty, commitment and flexibility. There appears scope for knowledge transfer here particularly around the use of older workers as mentors.
- Some employers have discovered the advantages of older workers in marketing and positioning the company as a friendly seller to the ageing population. We all know about B&Q, for example. There are a number of other companies which have not had quite the profile but also have a good story to tell about older workers. Again, there appears room for employers in public-facing industries to consider the advantages of older workers in relating to consumers.
- Many employers realise that their older workers offer a real advantage in terms of knowledge of the trade, industry, customer needs, market, or, in a manufacturing or processing situation, the technical complexities of the job. There is insufficient understanding of the active role companies could take in facilitating knowledge transfer, particularly uncodified or "tacit" knowledge.
- Older workers may be seen stereotypically as having more health problems than younger workers (though in fact they are on average absent less frequently). There is a need for work to be done with employers and RoSPA around the accident and workplace health implications of the ageing workforce.

In other words, companies should be encouraged to embrace the paradigm of *age management*. (See Appendix 3 for a fuller description of what we mean by this term.)

Employers should see older workers as valuable resources and understand that the encouragement of extended working beyond 65 is a necessity in the medium and longer term if their organisations and UK society generally are to prosper as the century unfolds. None of this is facilitated, however, by the retention of mandatory retirement in the shape of the DRA.

10. Proactive measures to maximise impact of older workers

There are many things that can be done to encourage more proactive approaches to age diversity in the workplace. TAEN is a small organisation with limited resources though we have been working actively with the support of Age Concern and Help the Aged, our 200 member organisations, and currently with the support of the European Social Fund on a number of projects. We are particularly keen to work with employers, unions and many other bodies to raise awareness of age management. We have been explaining the benefits of pro-active approaches to the management of the ageing workforce in seminars and conferences.

In TAEN's view, managers need awareness and training in the techniques of age management. The points below illustrate some aspects of the work which TAEN has been doing in this respect.

Good practice dissemination

TAEN has been holding seminars in various parts of the country to bring examples of good practice to the attention of HR professionals. The Government, via a substantially upgraded and re-resourced Age Positive campaign, could engage similarly in this way.

AARP International Innovative Employers Award

The AARP International Innovative Employers Award brings together a number of organisations with an interest in age and work issues, including TAEN in the UK. The programme is designed to promote innovative human resource and workforce practices around the world. Key areas for consideration include: recruiting practices; opportunities for training, education and career development; workplace accommodations; alternative work options, such as flexible scheduling, job sharing and phased retirements; employee health and retirement benefits; and retiree work opportunities. Three British companies, BT Group, Centrica plc and Domestic & General Services Limited were amongst the ten international winners of the awards in 2009 for age-friendly employment practices.

Examples from abroad

There are many examples from other countries from which have been learning in relation to management of older workers. Sharing examples of innovative practice can be a helpful way of inspiring managers to contemplate the sorts of detailed changes they need to make in their own organisations to tackle ageing issues effectively. Government inspired and supported campaigns in the Scandinavian countries, in particular Finland, have resulted in significantly more people remaining in the workforce later in life rather than quitting early and contributing to the deteriorating dependency ratios and skills shortages. TAEN has been working with the EHRC and other bodies to promote awareness of such good practice exemplars.

Technical assistance to ESF providers in England

TAEN has been working to provide technical assistance, in particular around back to work services and support, to deliverers of the ESF programme in England. A series of conferences and seminars with providers has helped to focus more

attention on the older people who are seeking to get back into jobs and need appropriate, tailored support. TAEN has been able to draw on a range of support including past research funded by the DWP and undertaken by TAEN.

Comment

We believe that in removing the DRA, the Government should put more emphasis on the sorts of pro-active measures outlined above and provide resources to support employers in the changes demanded in light of workforce ageing. Both employers and the state should see expenditure on such activity as an important *investment* and not as a cost.

11. Government strategic goals regarding the ageing society

The Government's strategic vision of an ageing society is set out in the document *Building a society for all ages*, issued in July 2009. Also, Public Service Agreement 17 (PSA 17) sets out a vision of an ageing society in which the needs of older people are given due priority. This includes helping them in "making a contribution to society in particular through employment."

The key significance of the DRA in terms of public policy is that its effect is directly contradictory to the objectives set out in the PSA.

The PSA sets out the following indicators among five key aspects of independence and well being:

Making a contribution to society, in particular through employment;

Material well-being, in particular the need to continue tackling pensioner poverty;

The level of health experienced in later life;

TAEN believes that the above three indicators are best achieved through extending working lives and enabling and encouraging people to remain actively engaged in paid employment for as long as they are happy to be so. Enforced retirement simply frustrates and undermines this objective. The DRA is therefore a negative impediment to the achievement of the important public policy goals set out in PSA 17.

12. Additional points

The review call for evidence sets out a number of bullet points to guide the provision of evidence. We have dealt with many of these points in the body of our evidence above but we comment further below briefly:

12.1 The operation of the default retirement age in practice

Please see Section 5 above and Appendix 1.

12.2 The reasons that businesses use mandatory retirement ages

Please see the survey which was undertaken jointly by TAEN and the Employers Forum on Age considered in Section 7. We believe that in so far as there are reasons of substance behind employers concerns to retain the DRA, they can be addressed in other ways.

Manpower and succession planning

The argument for clarity about employees' retirement intentions in order to aid manpower planning and succession planning could for example be met by periodic discussions with employees about their career needs and intentions. Consideration might be given to establishing "a right to ask" employees when they imagine they may wish to retire. If such a conversation were to clarify options for career changes or flexible working arrangements, this would be positive. Certainly, it is ridiculous to imagine that competent managers should be unable to plan succession or recruitment arrangements simply because they lack clarity about their employees' retirement plans.

Competency issues

With regard to the argument that mandatory retirement allows employers to move on underperforming older workers "with dignity", one may comment that there is actually very little dignity in an entire cohort of workers being deprived of employment at 65 because managers lack the ability to discuss competence or capability issues with a small minority of workers. Good practice is to conduct appraisals or, in very small organisations, to have a sufficiently open and regular discourse with employees so that concerns about competency issues are highlighted at an early stage.

Improved productivity and efficiency

All organisations might be expected to strive for improved efficiency and productivity. *Some* older workers may work more slowly in *some* job roles, particularly where there is a strong physical component, but any generalisation to this effect is dangerous and wrong-headed. On the other hand, the human body does change and sometimes this may affect our performance at work. There are various solutions to such problems, including encouraging workers to accept responsibility for maintaining personal fitness, reviewing job roles and planning for workers in physically draining occupations to move into occupations where their know-how and skills are more important than strength and physical speed. Many of these issues have been addressed by companies that have adopted *age management* approaches.

12.3 The impacts (positive and negative) on businesses, individuals, and the economy, of raising or removing the default retirement age

We have explained the negative impact of the DRA on individuals, the economy and organisations generally. The positive benefits of removing the DRA are reflected in the experience of our survey participants referred to above. Fifty-two per cent said that removing their mandatory retirement policies had led to an improvement in employee morale, 76 per cent said that it had helped to keep valued employees in the organisation, 85 per cent said that it had meant that valuable skills had been retained, 44 per cent said that it had improved their customer facing image, 39 per cent said that an enhanced performance in some

way had resulted and 52 per cent said that removing the mandatory retirement had produced positive role models and a positive inter-generational impact.

12.4 The experience of businesses operating without a default retirement age

Businesses that operate without a mandatory retirement age do not in our experience make much of the absence of mandatory retirement but rather dwell on the positive benefits of employing older people. There are many examples where these messages come across clearly and vividly.

In 2009 TAEN organised a conference with the title *Age Diversity in the Downturn*, collaborating with the EHRC. Representatives from employing companies included the Local Government Association of Queensland (Australia), DB Mobility Logistics AG (Germany), Centrica (UK) and Vattenfall (Sweden). A summary of the contributions by speakers from these companies and a number of academic contributors is available on the following link: <http://taen.org.uk/events/conference/4>

Similarly, TAEN's 2008 conference included a number of contributors from companies that had dispensed with mandatory retirement and had adopted policies valuing older workers. The conference under the heading, *Staying the Work Course – making the job fit for the person and the person fit for the job*, included speakers from Centrica, BT, the Co-operative Group and Contact Consulting as well as others. The following link provides further details: <http://taen.org.uk/events/conference/3>

We believe that these examples illustrate well that companies that value older workers and that have mostly dispensed with mandatory retirement policies have appreciated the positive benefits of the changes they have made. (Appendix 2 provides a summary of a discussion at one TAEN conference in which employers commented on mandatory retirement and good practices regarding older workers.)

12.5 How could any costs of raising or removing the DRA be mitigated and benefits realised?

It follows from the arguments outlined above that removing the DRA should not be seen as a costly item. Rather, failing to take a longer view on retention of older workers will be the damaging, costly course. The alternative road lies through maintaining older workers' work capacity and employability. This requires a longer view towards training, flexible working, workplace adjustments, career planning, job design, health and fitness and other related interventions. Neglect of these approaches will result in manpower and skills shortages, retention problems, lack of knowledge transfer and many other problems for organisations.

Organisations that today work without mandatory retirement do not seem to be less efficient or less profitable than companies that have mandatory retirement. Looking at the experience of other countries that do not allow mandatory retirement, it seems clear that employers have not suffered. In fact, older workers contribute much to the economies of such countries. The EHRC has calculated that extending working lives by one and a half years could reduce Government borrowing by one per cent of GDP, equivalent to almost £15 billion per annum.

Older workers are more likely to be interested in flexible working, which can have many advantages to employers including in customer facing environments. In such instances, flexible working can enable peaks of demand to be covered with fewer employees. Some older employees may wish to work part time from home which, in turn, may result in cost benefits to employers.

Finally, the point has already been made that as long as the law allows objectively justifiable direct or indirect discriminatory practices to continue, any employer that truly believes abolition of the DRA will harm the company will be able to put mandatory retirement arrangements in place and justify them in an employment tribunal.

13. Concluding comment

TAEN takes very seriously the issues raised by this review of the DRA. Whilst the review follows its course, there will be many people reaching the age of 65 who will be obliged to retire under the current rules. Moving to repeal the DRA would be helpful to them and the sooner this is done the better, though businesses will need time and help to prepare for change. At the same time, changing the law alone will not be sufficient to transform the prospects for older workers. Repealing the DRA should therefore be seen as simply part of a programme of changes that will make reality out of the Government's objective that people should be able to work longer as they live longer.

Appendix 1

Comments from selected individuals who have contacted TAEN by email or phone or who completed TAEN's online Jobseekers Survey

1. Respondents to Jobseekers Survey / email comments

1.1 Man (65)

After 13 years with my last company, I felt that I was unceremoniously 'dumped' just after my 65th birthday. My request to continue in post for another year was rejected with the comment "There is no role"; however, the following month I was hired back into exactly the same role, this time as a contractor. We are told there is a real need to finance an ever-growing retirement-aged population, so why is it not discriminatory to force people to retire before they are ready?"

1.2 Margaret Foster (65 – September 08)

"They (Derby City Council) sent me a letter six months ago, telling me that if I wanted to stay, I had to request it." However her request was refused. She was told it was not departmental policy. "I enjoy working, I have been doing it all my life and I feel that I still have a contribution to make to society." She fought hard to keep her job, exploring every possible avenue as she sought to persuade the council to change its mind. "I got in touch with TAEN – The Age and Employment Network because I wanted to know about the legal position. I asked the top-level management in the council. But there is nothing to do, tomorrow is my last day."

1.3 Man (66)

"I was approached twice over the last year to see if I would be interested in early retirement. I am currently going through the procedure of 'requesting' to continue working beyond September 08. I am waiting to hear the verdict. I find it ridiculous that people who are often producing their best work and are at that phase of life when they are giving back to society what they have received, should be removed from the employment market; it is like cutting down an apple-tree when the fruit is ready for harvesting."

1.4 Man (67)

Forced to retire due to policy on over-65 employment despite going through the full appeals process which was little more than a paper exercise. "It is impossible to prove age discrimination during the employment process, but I have been told by another local authority that they will not take on anyone over 65."

1.5 Man (65+)

"I found my compulsory retirement was a means of cutting staff during restructuring."

1.6 Woman (60-64)

Accepted offer to retire early. "The current legislation needs changing regarding the default age limit, in order to change public perceptions about retirement age."

1.7 Man (65+)

"Sacked by Royal Mail because I committed the crime of reaching 64 years and 366 days old, although my boss told me that he was quite satisfied with my work; policy stated that I should make way for a younger person, although there was a block on recruitment at the time. Union (CWU) was of not help. Employers can do what they like. My Local Authority will NOT employ any staff 65 or plus."

2. Respondents to Telephone Helpline

2.1 A practice nurse aged 73 (2009)

She had been on a yearly appraisal since the age of 65. She had been working three days a week for a GP surgery. She had applied to stay on. In an interview, she was told it was nothing to do with her performance, it was about policy because they wanted to bring in younger people.

2.2 Woman aged 70 (2008)

She had worked for a property management company for 23 years. She was given six months notice that she had to retire. After an initial hearing and two appeals, they were adamant she had to leave. She felt she was capable of doing her job and raised her case with her local MP.

2.3 Woman aged 67 (2008)

She was working as a legal secretary for a law firm who retired all employees at 65. However, this was not in her contract when she joined the firm. She was forced to retire and was told that she would have to train her successor. She desperately needed to carry on working for financial reasons.

2.4 Man working for health trust in Northern Ireland for 30 years (2008)

Was 65 in February 2008. The trust had failed to follow the fair retirement procedure and so extended his retirement date to August. He was then given a further three months until November. He wanted to work beyond this.

2.5 A. Lister, textile designer, aged 68 (2008)

Told he had to retire. The employer followed the procedure and on his first interview, his request was turned down. He then appealed because he wanted to continue on a part-time basis. This request was also turned down.

"I retired from the company and was taken back as a freelance consultant. I am earning the same money and feel this is a good arrangement for me and my boss. I am very much in demand with the company because they feel I have the experience and that they can depend on me. I do think the fear of the DRA coming in put fear into them regarding issues such as health and redundancy costs. This is a much better arrangement for me all round."

2.5 Maggie Garner, aged 70 (2008)

After 37 years working for an NHS trust as a secretary in Pathology, she was told that she would have to retire on reaching 65. She had to apply through a job bank with the same trust to carry on working in the same job (as she needed to for financial reasons) but she lost her entitlement to London Weighting, holiday money and the ability to contribute to her pension. "I was lucky to keep my job. The

consultant for whom I have worked for many years tried to fight my case. I thought the European Court was there to protect us!”

2.6 Woman aged 73 (2008)

She had worked for an NHS trust in a clerical job. She was given six months’ notice to retire.

2.7 Man aged 67 (2007)

He had worked for a national car hire company for 30 years. He was retired along with everyone over 65.

2.8 A psychiatric nurse aged 68 (2007)

She had been in the job for the past eight years. She wanted to stay on until December 2008. She requested to stay on but was told that she had to retire in November 2007.

2.9 A daughter enquiring about her mother’s rights (2007)

Her mother was forced to retire aged 71 from a clerical job in the NHS. She was very concerned about her mother’s future.

2.10 Male aged 65 (2007)

Forced to retire by a charity.

2.11 Man, working as a driver for an out of hours NHS doctor’s call service (2006 – following the introduction of the Age Regulations)

He had been working 28 hours a week and was given notice by HR at the NHS trust because he and several others were over 65. They were told that they could no longer work. They were given six weeks’ notice.

2.12 A nursing sister who had been working at a hospital for 22 years (November 2006)

She was asked to leave. She had been voted nurse of the year in 2006. She had to stop paying into her NHS pension at the age of 65. She was asked to leave and was told: “We have not got the funding - it’s time you left.”

Appendix 2

Summary of panel discussion at TAEN's Conference *Staying the Work Course – making the job fit for the person and the person fit for the job* October 2008

Nigel Appleton, Principal of Contact Consulting, said he no longer asked candidates to for their ages in job applications. As the owner of a small consultancy in rural Oxfordshire, he said he often took on mature staff on grounds of their self-reliance and ability to work efficiently on their own. His company's flexible leave arrangements were popular with older staff keen to do more overseas travelling. "The flexibility my older employees are looking for has given my company the approach it needs. Certainly in my experience having a strong relationship with older staff is vital to our success."

Amanda Jones, then Head of Diversity at The Co-operative Group, which promotes itself as an ethical business, said the company dispensed with its retirement age policy in 2006. After some initial concern, its policy of greater diversity had been a success. "We genuinely embrace talent and we've found that that is more important than how old people are. Over the past couple of years we have doubled our number of workers aged over 65. There is an issue of letting people go with dignity but that is beyond age."

Replying to a question about the challenges employers faced in the economic downturn and whether this might force the Co-operative Group to abandon its commitment to diversity, Ms Jones said "employers need to have a sense of perspective and stick to their values if they want to survive and succeed."

Dennis Gissing, Head of Diversity Practice at BT, said his company planned to remove its age limit. "Two years ago we had 14 people over 60, now it's 2,000. Thirty-four per cent of our workforce are now over 50. This has changed our profile and we're now making our pension arrangements more flexible for employees."

He said that BT supported flexibility and choice and encouraged staff with carer responsibilities. "We do have a programme for people who want to change jobs within the company. There can be a physical aspect to this but it's certainly a growing development, particularly in the IT sector. But it is important to tackle the myth of the older worker. We haven't had to send older people away and the issue is much less important than it was."

Melanie Flogdell, Head of HR Policy at Centrica, said the company covered a number of sectors, including oil and the office environment, and fully supported the business case for diversity among its 29,000 employees. "Age is part of our diversity model as a company and has been for a number of years."

The company's engineering sector was particularly diverse with an emphasis on recruiting and retaining staff across the age range. "We've recently taken on a new worker aged 59 and lifted our upper age limit for apprentices to 24. But elsewhere in the company one of our call centres has taken on a man aged 44 as a team leader. The company's 'Workwell' agenda also supports flexible working. "Our default retirement age remains 65 but there are opportunities to work beyond that age."

Appendix 3

What do we mean by “age management”?

Over the past decade a number of writers have researched and written on the developing approaches in managing the ageing workforce. Many examples have been considered and contrasted, principally in European studies funded by Government departments or agencies of the EU.

Walker (1997)⁷ defines “age management” as referring to:

‘... the various dimensions by which human resources are managed within organisations with an explicit focus on ageing and, also, more generally, to the overall management of the workforce ageing via public policy or collective bargaining.’

It should be noted that this definition includes in age management, actions of public policy as well as workplace policies and collective bargaining.

In a later report Walker (2005) argues that in order to achieve good practice in age management, policies do not necessarily have to be labelled ‘older worker’ policies. He argues that in general terms, ‘good practice in the employment of older workers consists of providing an environment in which each individual is able to achieve his or her broad potential without being disadvantaged by their age.’⁸

Broad descriptions of good practice in job recruitment, training and development, flexible working practices, changing attitudes in organisations, ergonomics and job design can all be relatively easily visualised and are summarised in Appendix 3 of the above report. Numerous additional sources illustrate these examples of good practice in considerable detail (Reday-Mulvey, 2005⁹; Department for Education and Employment, 1999¹⁰; ACAS, 2005¹¹; Employers’ Organisation for Local Government, 2006¹²; Employers Forum on Age, 2004 and 2005¹³).

⁷ Walker, Alan 1997, Combating Age Barriers in Employment – A European Research Report, European Foundation, Dublin.

⁸ Walker, Alan, 2005. The Emergence of Age Management in Europe, International Journal of Organisational Behaviour, Volume 10 (1), University of Southern Queensland, Australia.

⁹ Reday-Mulvey, Genevieve, 2005, Working Beyond 60, pub Palgrave MacMillan, 200 pp, Basingstoke.

¹⁰ Department for Education and Employment, 1999, Age Diversity in Employment, Code of Practice www.agepositive.gov.uk

¹¹ Advisory Conciliation and Arbitration Service (ACAS), 2005, Advice Leaflet Employing Older Workers, London.

¹² Employers’ Organisation for Local Government 2006, Be Ready; Practical Guide for Employers http://www.lg-employers.gov.uk/documents/diversity/age/apg_news_english.pdf

¹³ Various – See EFA website <http://www.efa.org.uk/publications/default.asp>

Rolland (2004) produces a matrix model of age management, encouraging the identification of interventions at various points from recruitment, through progression to exit in the context of learning and development, communication, health and well being and leadership.¹⁴ Her recognition that no single response to the changing labour supply will be sufficient, echoes the work of other writers, already mentioned above. In a further interesting application of a managerial method, Rolland provides an assessment profile to analyse risks which ageing workforces pose to organisations, and she proposes the use of age profiles to implement and manage recruitment.

Arguments around the construction of a business case for age management interventions, are put forward by a number of writers (Walker, 1997¹⁵; Patrickson and Ranzijn, 2005¹⁶; Turner and Williams, 2006¹⁷.) For them, such a case would involve a more attenuated treatment of older workers than the rather generalised claims sometimes made of their business benefits (CIPD, 2005)¹⁸ and need to build on the distinctive arguments for different categories of workers. The business case therefore involves a more subtle assessment of the value of specific categories of older workers.

A report for the Australian Employers' Convention (Brooke, 2003)¹⁹ demonstrates one approach that might be adopted. Employing cost-benefit analysis, it compares older workers against the rest of the workforce. Besides debunking many of the stereotypes around older workers the report shows that retention of workers over 45 contributes benefits to businesses by developing more stable workforces with lower turnover costs.

Walker (2000)²⁰ offers a catalogue of success indicators based on the findings

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¹⁴ Rolland, Louise, 2004, *The Age Chasm; Successfully Managing Age in Your Organisation*, Drake White Paper Volume 2 No 5, Australia

¹⁵ Walker, Alan 1997, *Combating Age Barriers in Employment – A European Research Report*, European Foundation, Dublin.

¹⁶ Margaret Patrickson and Rob Ranzijn, 2005 "Workforce Ageing: The Challenges for 21st Century Management" *International Journal of Organisational Behaviour*, Volume 10 (4), 729-739 2005, London.

¹⁷ Turner, Natalie and Williams, Laura, 2006 *The Ageing Workforce*, The Work Foundation

¹⁸ Chartered Institute of Personnel and Development, *Age and Employment (fact sheet)* 2005, London.

¹⁹ Brooke L (2003) 'Human resource costs and benefits of maintaining a mature-age workforce' *International Journal of Manpower* (0143-7720), 24 (3), 260

²⁰ Walker Alan, October 2000, *Combating Age Barriers in Employment: Findings from a European Research Project*, *Finnish Economic Forum, paper to forum on ageing and labour market*
<http://www.ktyhdistys.net/Yhdistys/Esitelmia/WalkerENG3110.htm>

TAEN's aim is to help create an effective labour market which works for people in mid and later life, for employers and for the economy.

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