



Response to Department for Business Innovation and Skills' call for evidence in respect of the default retirement age

January 2010

Introduction

1. The Equality Commission for Northern Ireland ('the Commission') is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on age, fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation and disability. The Equality Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998, and the disability duties under the Disability Discrimination Act 1995.
2. The Commission welcomes the decision of the Government to bring forward the planned review of the default retirement age from 2011 to 2010. It also welcomes the opportunity to provide evidence to the Department for Business Innovation and Skills ('the Department') in relation to the operation of the default retirement age in Northern Ireland.
3. The Department will be aware that the Employment Equality (Age) Regulations (NI) 2006 ('the Age Regulations') came into operation in Northern Ireland on 1 October 2006. The Age Regulations provided for a default retirement age of 65 that employers could rely on if they wished to.
4. Prior to the introduction of the Age Regulations, the Commission made it clear in its response to the consultation undertaken by the Office of the First and deputy First Minister ('OFMdFM') in relation to the draft Regulations, that it did not support the introduction of a

default retirement age.¹ In its response, the Commission expressed its concern that through the operation of a default retirement age, direct age discrimination was being institutionalised at the heart of statutory provisions which were supposed to be eliminating age discrimination.

5. The Commission supported an approach based on worker choice, and questioned why, if the default retirement age was not deemed appropriate for office holders (such as judges and tribunal chairs), it was deemed appropriate for employees. In addition, the Commission recommended that a duty be placed on employers to “reasonably accommodate” those workers who wished to work beyond 65. It recognised that there may be a range of reasons why such “reasonable accommodation” could not be made.
6. The Commission is of the view that decisions on retirement should be objectively justified, for example, based on an individual’s ability to do the job, rather than his/her age. The Commission is also of the view that in addition to granting older employees greater choice and flexibility, the removal of the default retirement age also has positive business benefits; for example employers benefiting from the experience and skills of the older worker.
7. The Department will be aware from the High Court decision in the case of *Heyday*², that the Judge stated as follows:-

“if the default age of retirement had been adopted for the first time in 2009, or there had been no indication of an imminent review, I would have concluded for all the above reasons that the selection of age 65 would not have been proportionate”. The judge also stated that it “creates greater discriminatory effect than is necessary on a class of people who are both able to and want to continue in their employment”, and that “a higher age would not have any general detrimental labour market consequences or block access to high level jobs by future generations”.
8. Finally, we note that the present state pension age is 60 for women and 65 for men and that this is to equalise in 2020. Furthermore, the stated Government intention is that the state pension age will increase. In light of these changes, it is clear that the default retirement age will act as a barrier to those individuals who wish to work and who need to work beyond 65 years.

¹ ECNI Response to OFMDFM Age Consultation 2005, www.equalityni.org

² [2009] EWHC2336 Age UK -v- Secretary of State for Business, Innovation and Skills

Evidence

Complaints

9. The Commission provides advice and assistance to individuals who believe that they have been discriminated against on the grounds of their age under the Age Regulations. It is of note that since the Age Regulations came into force on 1 October 2006, the Commission has received 54 enquiries from individuals who believed that they were being forced to retire due to the fact that they had reached or were approaching the age of 65. It is therefore clear that a substantial number of individuals have sought advice from the Commission because they believed that they had been unfairly treated as a result of the operation of the default retirement age.

Research

10. In June 2008, the Commission published research on the awareness of the Age Regulations and attitudes of the general public in Northern Ireland towards age related issues.³ It will be noted that nearly two thirds (62%) either strongly or moderately agreed with the statement that “people should be allowed to retire when they want to”. Only 10% of respondents disagreed with this statement.
11. It is also of note that the survey indicated that of those respondents who agreed with a more flexible approach to retirement, just over half (53%) said that being allowed to retire when they wanted to was important because it provided “freedom of choice”. A further 16% remarked that flexible retirement allowed people the choice to retire “if they could afford it”; while 11% believed that people should be allowed to continue working “if they were fit and healthy”. Other respondents noted that “some people wanted to continue working” but were currently prevented from doing so.
12. The survey also asked respondents who were either currently working beyond the present retirement age or wished to continue working past retirement, their main reason for doing so. It is of note that just over half (54%) agreed with the statement that “they needed/would need the money and could not afford to retire”, compared with the quarter (26%) who agreed that work would provide “an opportunity for social interaction”. One in six (16%) of

³ *Awareness of the Age Regulations and attitudes of the general public in Northern Ireland towards age related issues*, June 2008, ECNI, www.equalityni.org

respondents agreed that they “enjoyed their current job and did not want to stop working”.

13. The survey also asked respondents to reflect on their present situation and indicate their preferred choice regarding work and retirement. One third (34%) agreed that their decision to retire would depend upon their “situation at the time”, while the same proportion (34%) preferred to retire early. Just over a tenth (13%) indicated that they would prefer to work beyond the current retirement age, with the same proportion (13%) saying they would like to retire at the current retirement age.
14. It is of note that the preference for working beyond retirement was directly associated with age; i.e. the older the respondent, the more likely they were to prefer working past the current retirement age. Thus, 61% of those aged 65 or over preferred to work beyond the retirement age (or were continuing to work). Marked differences also emerged in retirement preferences for those on different income levels.
15. We also note from a recent report of the Equality and Human Rights Commission⁴, that one quarter of men and two thirds of women wish to remain and work beyond the state pension age. The report also highlights that around 60% would like to continue working after state pension age, but on a part-time basis.

⁴ *Working better the over 50's the new work generation*, January 2010, EHRC, www.equalityhumanrights.com