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## Default Retirement Age

*View from the Chair, Business Newsletter, by Bob Collins, Chief Commissioner, The Equality Commission for Northern Ireland.*

Retirement used to be something that was as fixed as the turn of the seasons - 65 for men, 60 for women; an engraved watch and a (hopefully) happy send off from your colleagues.

Of course, like most workplace clichés of the mid Twentieth Century, that paradigm had already changed substantially over the last decades, in practice if not in popular mythology, as working patterns became more fluent. Older people are now more active and living longer. Many want to continue working, and are well able to do so.

When age discrimination in employment was made unlawful in 2006, however, it contained an important exception which provided for a legal “default retirement age” of 65. An employer could enforce compulsory retirement of an employee at age 65 without having to justify this decision before an industrial tribunal, as would be the case with enforced retirement at an earlier age.

That exception has now been removed and, since 6 April last, there is no automatic protection for an employer enforcing compulsory retirement of staff at 65 or any other age. This means that employers now face an entirely new situation when considering the retirement of their older staff. Any requirement that staff retire at a certain age has, if challenged, to be justified before an Industrial Tribunal.

In the absence of a set retirement age, where employers have concerns about, for example, the productivity or health of their employees, they should address these through the application of sound performance management procedures which are applied fairly and consistently to all workers, regardless of their age.

It may be possible, even under the amended legislation, for an employer to set a compulsory retirement age, but only where that can be shown to be a proportionate means of attaining a legitimate aim. Tribunals are likely to require detailed evidence and logical arguments on that issue which are specific to each employer’s particular circumstances and which hold up when tested at a hearing.

Any employer considering such a course needs to ensure that they are striking a proper balance between their business needs and the discriminatory impact on

the employees concerned. In any challenge, a Tribunal will scrutinise carefully, not just whether the aim is legitimate, but whether it can only be achieved through a compulsory retirement age and not through some other non-discriminatory means.

Making changes to long-held assumptions, such as the fixed retirement age, challenges pre-conceptions that are, I know, widely shared. It fulfils, however, one of the basic principles of all equality law. It demands that we consider, and treat, people according to their individual circumstances and needs; and that we not take decisions by the application to them of an arbitrary label based, in this instance, purely on their age.