

**‘View from the Chair’ article published in the Business Newsletter, 19 Dec 2017
by Dr Michael Wardlow, Chief Commissioner, Equality Commission NI**

Workers of all ages are entitled to equal treatment

Age is only an indicator of longevity, a measure of how long you have been living here, in this place we call home. It should never be used as a barometer of efficiency or predictor of potential contribution to society.

A recent case supported by the Commission shows how age related prejudice resulted in unfair treatment for a 65 year old man who, having experienced a long and productive work career, was made redundant without any redress to his employer’s enhanced scheme - solely because of his age.

Bernard, the man in question, was found by a tribunal to have been discriminated against on the grounds of his age when he was excluded from JTI/Gallaher Ltd’s enhanced severance package following the closure of its Ballymena factory.

The company did not dispute that the scheme adversely affected employees over 65, but contested the case on the ground of objective justification – a proportionate means of achieving a legitimate aim.

The tribunal decision was clear that employers must consider if there are other ways of achieving their desired result which do not discriminate against anyone – and be prepared to explain and justify their decision.

The Tribunal accepted that Gallaher Ltd was: “genuine in its desire to see that the resources for enhanced redundancies payments would be spread fairly and equitably across the workforce”.

It pointed out that: “The inescapable reality was that those employees who, like Mr Barlow, were over 65, were completely excluded from the benefits of the company’s enhanced severance scheme.”

The Tribunal found “no evidence that the company seriously considered any alternative methods which could have constituted a proportionate way of achieving its aims...”

Unfair treatment is not limited to older employees as there is some anecdotal evidence certain employers have chosen to employ younger people in order not to have to pay the top rate for minimum wage which is due to older applicants.

Whether it is in recruiting for a minimum wage job or bringing an end to a long career, employers must accept that workers of all ages are entitled to the same consideration when decisions regarding their contracts, performance standards, continued employment or redundancy are being made.

Employers must consider if there are other ways of achieving their desired result which do not discriminate against anyone – and be prepared to explain and justify their decision.

We offer training and advice services on managing key issues such as recruiting and redundancy to help employers ensure they are operating within the law.