

# An Age-Old Injustice?

Carole Spiers considers whether there ought to be a law against it . . .

The Collins dictionary states ageism as ‘discrimination against people on the grounds of age’.

It is also:

- The idea that people cease to be valued by virtue of having lived a specific number of years
- The use of age to define capability and roles
- A process of systematic stereotyping

Young people are just as likely to fall victim to this kind of attitude as older people, and made to feel they are held back at work because of their age. To be told ‘you are too young’ is as disheartening as to be told ‘you are too old’; both statements stereotype.

We are “ageist” because the society in which we live is permeated by these attitudes. We cannot escape it, even though this may be very hard for us to accept. Yet, so deep rooted is it in our society and our institutions that our efforts will not make the difference we would like, unless we can more effectively address this major challenge, and principal threat.

In order to maintain a competitive edge, the legal profession and its clients need to employ an age-diverse workforce which reflects the demands of our changing community. This is also the message echoed by the Government in their document, ‘Age Diversity in Employment’ 1999.

There are considerable bottom-line benefits to using qualified older workers. According to a US study conducted for the National Council on the Ageing, most firms reported that they believed older workers to be more reliable, thorough, conscientious and dependable. Myths and stereotypes must be directly countered through education.

Age discrimination itself is by no means a simple issue, but a much larger and more complicated issue than sex or race; it will,

after all, affect all of us sometime, and perhaps many times, over the course of our lives.

## Britain’s changing population profile

Britain’s population profile is changing. By 2005, it is estimated that 36% of the labour force will be aged 45 or over. By 2015, almost 40% will have reached that age group, while 16-24 year olds will make up just 17% of the labour force. (Source: Code of Practice for Age Diversity in Employment 1999).

With people living longer and retiring earlier, the U.K., in common with many other European countries, is shouldering a great economic burden. This could be offset in part by encouraging older people to remain in the workforce and by tackling age discrimination in recruitment. The Government’s Performance and Innovation Unit has recommended that it should set out its vision of the role of older people in society.

In a report entitled *Winning the Generation Game*, it says that age discrimination legislation should be introduced if the Code of Practice on age diversity is unsuccessful. It also suggests that the minimum age for pension eligibility should be raised from 50 to 55.

## What is being done

As yet, there is no legislation in the U.K. to protect older workers from “ageist” prejudices of employers, so it can be extremely difficult to bring an action against them. However, some actions have been brought against individual employers under human rights and unfair dismissal legislation, or before the Equal Opportunities Commission, and most of these have been settled out of court.

Nonetheless, it can also difficult to prove age discrimination in employment situations.

Last year the Government published a report on employment and age discrimination, following a consultation

process. The report – ‘Action on Age’ – signalled its opposition to age discrimination in employment. A key finding was the need to change outmoded attitudes and practices that are a factor in cases of this kind, and it was clear that a non-statutory Code of Practice would be an invaluable tool for achieving this.

The Code of Practice for Age Diversity in Employment 1999 covers good practice in six aspects of the employment cycle:

- Recruitment on the basis of the skills and abilities needed to do the job
- Selection on merit
- Promotion based on the ability, or demonstrated potential, to do the job
- Encouraging all employees to take advantage of relevant training opportunities
- Decisions based on objective, job-related criteria to ensure the skills needed to help the business are retained
- Ensuring that retirement schemes are fairly applied, taking individual and business needs into account

The Code recommends:

- Avoiding the use of age limits or age ranges in job advertisements
- Using mixed-age interviewing panels
- Ensuring that age is not a criterion for redundancy, and
- Considering alternatives to early retirement for those whose skills and abilities may be lost

The Code was launched after a government report in August 1998, proposing a non-statutory approach to combating age discrimination; and the publication, in November 1998, of a draft developed by a working group including representatives of the Confederation of British Industry, the Trades Union Congress, the Institute of Personnel and Development, Age Concern and other groups.

## Old enough to know better?

A Government media campaign against age discrimination at work was launched in the U.K. in February 2000 by the Department for Education and Employment.

This campaign aimed to highlight the benefits of an ‘age diverse workforce’ and to promote the Code of Practice. The campaign included newspaper advertisements with the slogan ‘Age Prejudice – you’re old enough to know better’.

The Employers’ Forum on Age, an employer-led organisation, whose aims are to promote the business benefits of a mixed age workforce and to combat ageism at work, has published a strategy statement – *Commitment to Age Diversity* – which the organisation says ‘provides direction for development above and beyond the Government’s Code of Practice’. It urges member companies to adopt an active age diversity based on six key elements:

- Demonstrating commitment from top management to building age awareness into all aspects of the business
- Demonstrating commitment to the Code of Practice
- Developing existing policies and working practices to achieve a better balanced workforce
- Linking age to other diversity issues where appropriate
- Increasing awareness of ageism with ‘stakeholders’ such as employees, customers, suppliers and the wider community
- Creating measurable performance indicators and a reporting process

These initiatives follow research findings published by the EFA in September 1999 indicating that, three months after its introduction, the Government’s Code of Practice had made little or no impact in the U.K. workplace. The research found that:

- Three in 10 employers had never heard of the code
- Fewer than one in 10 intended to make any changes in the way they recruit and train, and
- 68% said a code would make no difference to the way they run their business

Trade unions, other campaigning groups and some employment lawyers call for statutory intervention, arguing that reliance on a voluntary Code of Practice and governmental exhortation is unlikely to have any real impact in countering workplace ageism.

## What can be done

1. It all starts at the top. Within the legal profession or within their client base,

senior management need to affirm a company’s commitment to older employees and an age diverse workforce. That message needs to be at the centre of all human resources and management practices at every level. The key words for carrying out the company’s commitment are respect, value, praise, recognition and reward

2. Human Resource and legal managers must see ageism as a major component of diversity
3. Talk to employees. Do they feel valued? Do they feel there are age-related issues in the workplace: is youth equated with success?
4. Offer age diversity workshops to all managers, supervisors and employees

Training programmes responding to ‘myths’ about workers of all ages are important; just as important is adjusting attitudes throughout the workforce. Ageing is not some sudden change – it is a continuing process and changes in skill levels will vary for all employees. For this to work, training requires a full-scale commitment. Internal issues need to be looked at from the top down.

Consider flexible work schedules to provide a variety of scheduling options. Understand that the shortage of technical talent may require employers to think about such ‘solutions’ as a part-time pool of qualified retirees.

Recognise and commit to the value of lifelong learning programmes. Access to continuous training and development is important to attracting and retaining older workers; many feel excluded from or not encouraged to continue with this sort of education. On-the-job training for older employees tends to be the most effective way of preventing obsolescence.

Re-think insurance and ‘wellness’ programmes. Increasing life expectancy means that companies have to deal with the fact that employees will be using benefits longer and more often. Concerns about health costs, pensions and other issues will need to be addressed. Older workers may be more interested in long term care insurance or workplace ‘wellness’ benefits. Encouraging people to maintain their health is increasingly important.

## Top ten list for reducing age discrimination in the workplace

1. Recognise age bias and discrimination as the pervasive and increasingly important issue that it is
2. Do an audit to assess your organisation’s culture. Find out how employees feel about older workers and how those feelings manifest themselves in the workplace

3. Re-think attitudes about older adults in the workplace
4. Initiate a dialogue between managers of different departments regarding age discrimination
5. Review and if necessary, revise policies, training programmes, recruitment methods, job designs and evaluations to eliminate discriminatory language and/or implications
6. Expand preventative training on age bias
7. Spend less time documenting defences against potential age discrimination and more time preventing or minimising them
8. Tap into agencies and networks that involve the older adult population
9. Develop community relation programmes to support services for older adults in the community as part of the company
10. Reinforce morale and higher productivity by demonstrating to older workers that they are valued and appreciated

Discrimination in smaller firms is accentuated, as employers tend to keep in mind the level at which people joined the firm, rather than focus on their potential. Employers should not solely look at a person’s age when considering them for a position; the quality of person being interviewed must be taken into consideration.

Ageism has to be fought with two important weapons: knowledge and a willingness that every person, regardless of age, has a right to be treated as an individual with unique strengths, weaknesses, options and opportunities.

Employment decisions based on pre-conceived ideas about age are improvident and will waste the talent of many fine executives. Stereotypical ideas about age will wrongly exclude people from opportunities, training and promotion. Employers and employees both share in this responsibility. Employees need to develop their skills and flexibility in a modern working environment and forward-thinking employers will support them in their endeavours to do so. In a modern, competitive market, law firms need to ensure that they find the best person for the job to ensure their business goes from strength to strength in the future. ●

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