

Managing an ageing workforce in construction

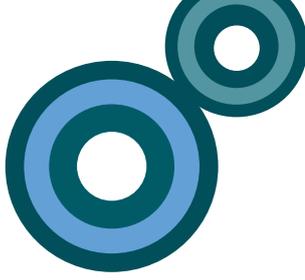
A report for employers

By Stephen McNair and Matt Flynn

Produced for the Department
for Work and Pensions
By the Centre for Research
into the Older Workforce

age**partnership**group
Targeting Employers®





Age Partnership Group (APG)

This research is one of a number of projects commissioned by the DWP on behalf of the APG as part of the National Guidance Campaign (NGC).

The APG was formed in 2002 and consists of a number of national organisations who represent different aspects of employers needs, for example, small business representatives, trade unions, HR and Personnel managers, local government, other government departments, accountancy, insurance and training organisations. There are separate groups representing England, Scotland and Wales.

The NGC aims to raise employers' awareness of, and ability to adopt, practical information and guidance on age diverse employment practices. This includes flexible employment and retirement opportunities in order to increase the recruitment, selection, promotion, training and retention of older employees prior to the implementation of age legislation in October 2006.

You can view the Age Partnership Group website at www.agepositive.gov.uk/agepartnershipgroup

Legislation

In March 2006, the Employment Equality (Age) Regulations 2006 were published. The regulations are the last major stage of the European Employment Directive and will come into effect on the 1st October 2006.

The regulations prohibit age discrimination in employment and vocational training. They apply to individuals of all ages in work, seeking work or looking to access vocational training and to all employers, and to all providers of vocational training and vocational guidance (including further and higher educational institutions).

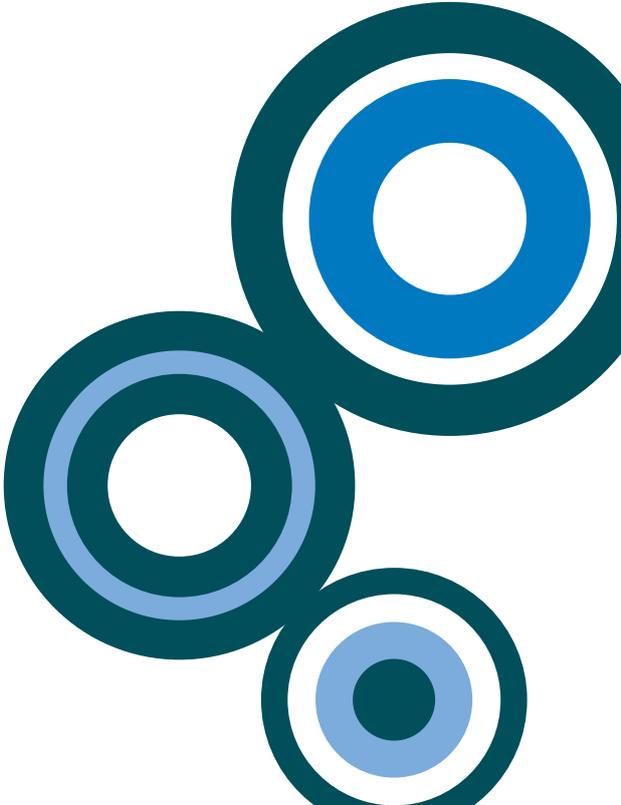
The regulations can be viewed on the Department of Trade and Industry website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Disclaimer

This report has been commissioned to provide information only. Responsibility for the views expressed in this report rests solely with the authors. The members of the Age Partnership Group (APG) and the Department for Work and Pensions (DWP) do not accept responsibility for the views of the authors.

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Introduction

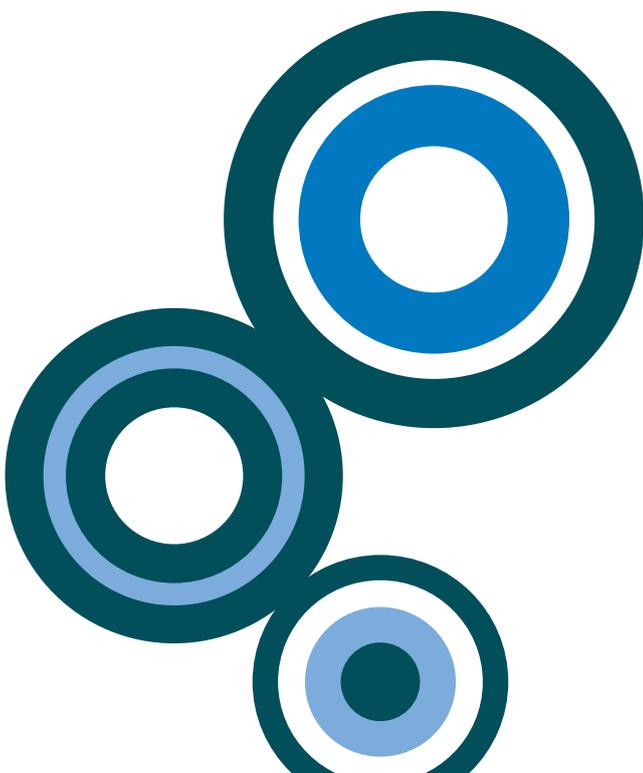
This report is about how firms in the construction sector are managing an ageing workforce. It has been written for the Department for Work and Pensions (DWP) by the Centre for Research into the Older Workforce (CROW) to help employers to make better use of older workers. It also helps to raise awareness of the new Employment Equality (Age) Regulations 2006, which becomes law in October 2006, and prohibits age discrimination in work or training against people of any age.

Workforce ageing presents a growing challenge to most employers. Birthrates have been falling for many years, and in the next few years the numbers retiring will outnumber young people entering the labour market. The government believes that the resulting skills gaps and labour shortages in many industries can be reduced if employers can find ways of making better use of older workers, and encourage people to stay in work longer.

However, every industry has its particular features, and this report outlines the special issues affecting the construction sector, based on a large national survey of employers. It highlights employment practices in the sector which will be hazardous under the Age Regulations, and aims to stimulate discussion and improved practice in firms.

This report is not intended to be an authoritative statement on the age discrimination law itself. Details of how to obtain the Regulations, and advice about them, can be found at the end of the report. However, while the Regulations make some activities unlawful, it is for the Courts and Employment Tribunals to interpret this in specific cases. The term “hazardous” is therefore used in this paper to describe activities which might be ruled unlawful if a case is brought. We suggest that employers need to review their practice in these areas.

During 2006, CROW will explore these issues in more depth through case studies of firms in seven sectors, and DWP plans to publish the resulting Research Report in 2007.



1. Summary: key age issues for construction firms

The construction sector has a high proportion of workers over 55, and already faces serious labour and skills problems, which are likely to increase. A greater or more flexible use of older workers may help to overcome this.

Attitudes to older workers in the sector are mixed. Construction firms are generally more willing than other employers to allow employees to stay in work past retirement age, which may help overcome labour shortages, but they are less likely to recruit staff over 50, perhaps reflecting the time needed to train and become competent for new entrants.

Hazardous age discrimination practices are particularly common in this sector, and raising awareness of the new law will be particularly difficult, given the high proportion of very small firms. Construction firms are less likely than other firms to have protective practices in place to ensure that unfair discrimination is not happening. Large firms in particular are less likely to have processes like equal opportunities policies, formal appraisal and assessment for promotion, and “age blind” recruitment systems than large firms in other sectors.

Common hazardous practices in the construction sector

Common practices in this sector which may need review if employers are to avoid breaking the Age Regulations include:

- **using length of experience as a selection criterion** in recruitment (two thirds of all construction firms do this. Length of experience is a substitute for assessing competence, and is hazardous, since it disadvantages younger workers.
- **using physical strength as a recruitment criterion.** This is lawful where the requirement is genuine, but it will be unlawful to use age as a proxy for physical strength, since the test must be applied to the individual, and changes in physical capacity with age vary greatly between individuals. Employers must also take into account the need for “reasonable adjustment” to working practices under the Disability Discrimination Act.
- **using length of service or “last in first out” as the basis for redundancy decisions.** This is indirectly discriminatory, since it is likely to disadvantage younger workers.

Unlawful practices in the construction sector

The following practices are less common, but unlawful, and firms who use them will need to make changes if they are to remain within the law.

- 10% of firms use age as a selection criterion in recruitment.
- 27% of firms specify maximum recruitment ages more than 6 months before the firm’s retirement age.
- 12% of firms use age to fix starting salary.

2. The shape of the construction sector

The nature of the age management issues facing a sector depends on factors like the average size of firms, the age and skills profile of the workforce, and future expectations of growth or contraction. This section outlines this context for the construction sector.

The Construction sector employs 2.2 million people (8% of the national workforce) in 206,000 mainly small firms, who carry out site preparation and demolition, the construction of commercial and domestic building, civil engineering, motorways, roads, railways, airfields, installation work (electrical, plumbing etc) and finishing trades (plastering, joinery, floor and wall covering, painting and glazing). It includes a wide range of occupations, from unskilled manual labourers to professional architects and engineers, but half of its¹ workers are in skilled trades. Construction is supported by two Sector Skills Councils (SSCs):

ConstructionSkills - which deals with the broad construction industry; and

SummitSkills - represents the more technical building services and engineering part of the sector.

The sector's output has grown in recent years in line with the rest of the economy, but is predicted to decline somewhat. Construction is especially vulnerable to changes in the economic cycle. Current projections suggest that overall employment will not grow rapidly, but unless current retirement patterns change, the sector will need to recruit a further 577,000 people by 2014, especially in skilled trades, to fill the gaps left by retiring workers.

This is a sector of very small firms, with 92% employing fewer than 11 people, and firm numbers are growing. Formal planning is relatively rare: with half of all firms in the sector having no business plan, and two thirds no training plan.

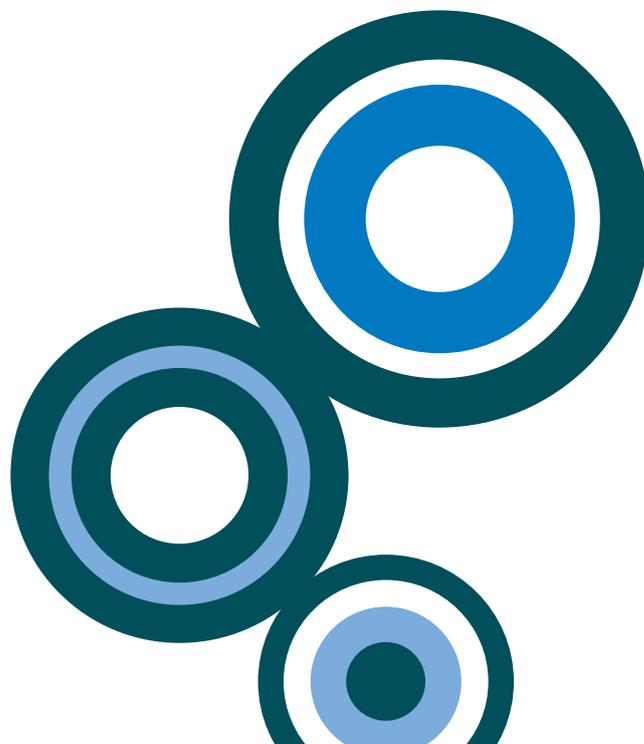
Figure 1 shows that the construction workforce has a higher than average proportion of workers over 55, with 357,000 employees aged between 55 and 64, and 45,000 over 65.

Other distinctive features of the sector include a high proportion of workers who are:

- white and male;
- in skilled trades;
- employed on full time and permanent contracts;
- self employed.

The sector also has a regional concentration of firms in Yorkshire and the East of England, and fewer in London and Wales.

¹ This analysis is based on the Standard Industrial Classification Code 45. This includes most people in Construction, but some (principally consultants and specialist professionals listed under code 74.2 - "Architectural and engineering activities and related technical consultancy") are excluded from this report.



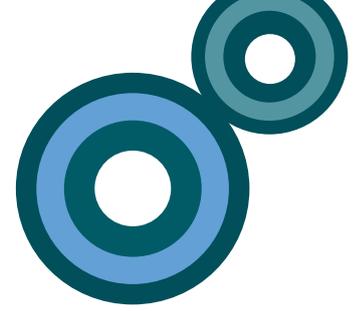
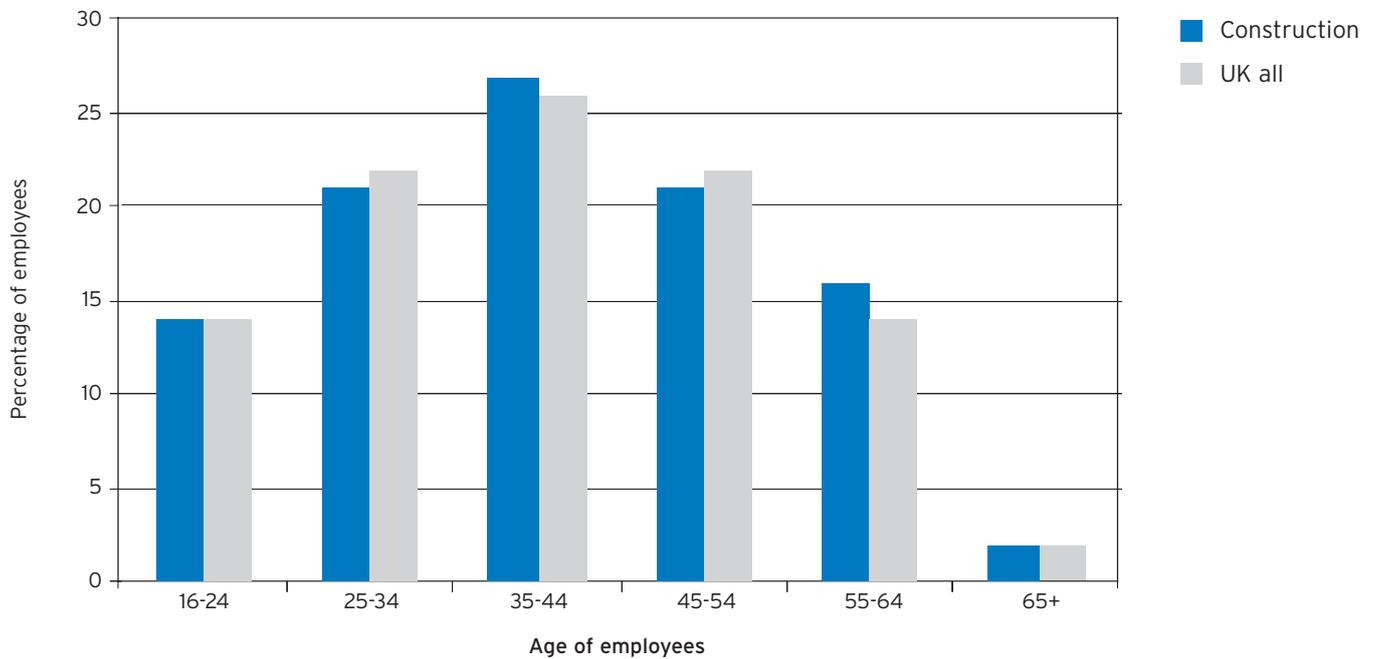


Figure 1 Workforce age profile



Current vacancy rates are slightly lower than in other sectors, but one in three of these is a skills shortage vacancy, and the level is higher still in the skilled trades, which make up half the workforce. The Sector Skills Councils have highlighted three particular features of the sector:

- low training levels, with the proportion of staff trained in the year well below national averages;
- the need to keep pace with rapid technological change;
- the impact of boom and bust economic cycles on training activity.

3. Age discrimination in employment

Age discrimination at work is common. It can affect people of any age, but is particularly likely to involve older people, and more than one in five workers over the age of 50 say that they have experienced it either when applying for jobs or in the workplace². In countries where age discrimination law is already in force, it is the commonest cause of discrimination cases in the courts.

From October 2006, it will be unlawful for any employer in the United Kingdom to discriminate against or harass anyone on grounds of age, directly or indirectly, in relation to either employment or vocational training. This will cover arrangements for recruitment and promotion, pay and conditions, education and training, and retirement and redundancy.

There are exceptions: in relation to retirement, where it will be lawful to make an employee retire at a given age, provided this is not below 65 (for men and women); and where an existing statutory provision exists (like the Minimum Wage Regulations). An employer may also be able to justify discrimination if it is designed to correct an age imbalance in his workforce; if there is a legitimate business reason (and the discrimination is proportionate); or if there is an objective justification (likely to be very rare). The Regulations, and advice on their interpretation, can be found on the DTI and ACAS websites³.

Some features of age discrimination are common to most employers⁴.

- Indirect discrimination is more common than direct discrimination. DWP and DTI's joint survey, conducted by the National Institute of Economic and Social Research (NIESR), found few examples of direct discrimination, but one in five employers believe that some jobs are better done by people of particular ages. Where such beliefs exist, discrimination is more likely.
- Discriminatory attitudes are more likely to be found in private sector firms, and especially small ones⁵, in sectors like manufacturing and construction. These are also the firms and sectors where there are least likely to be formal procedures and policies to protect against unfair discrimination.
- The most common hazardous practices involve setting age limits on recruitment, especially for those over 50, and using age as a basis for decisions on compulsory retirement and redundancy.
- About half the workforce is covered by a compulsory contractual retirement age. In most cases this is already 65, which is the new "national default retirement age". However, even where firms plan to retire staff at 65, they will have to give formal notice of retirement dates and seriously consider requests to stay longer.

² Discrimination is difficult to measure precisely, since it is subjective, and affected by levels of public awareness of age issues, and many people regard it as "normal". In a CROW postal survey of workers over 50 in 2004, 20% reported age discrimination. In research by the University of Kent for Age Concern England 29% of people reported experiencing age discrimination (compared to 24% for gender).

³ See "Further Information" at the end of this report.

⁴ Information based on DWP and DTI's national survey of employers' policies practices and preferences, conducted by NIESR (see "Further Information"), although because this is new secondary analysis not all figures are directly comparable. Also, for certain policies and practices respondents were asked to answer in respect of their largest occupational group rather than for the workforce as a whole.

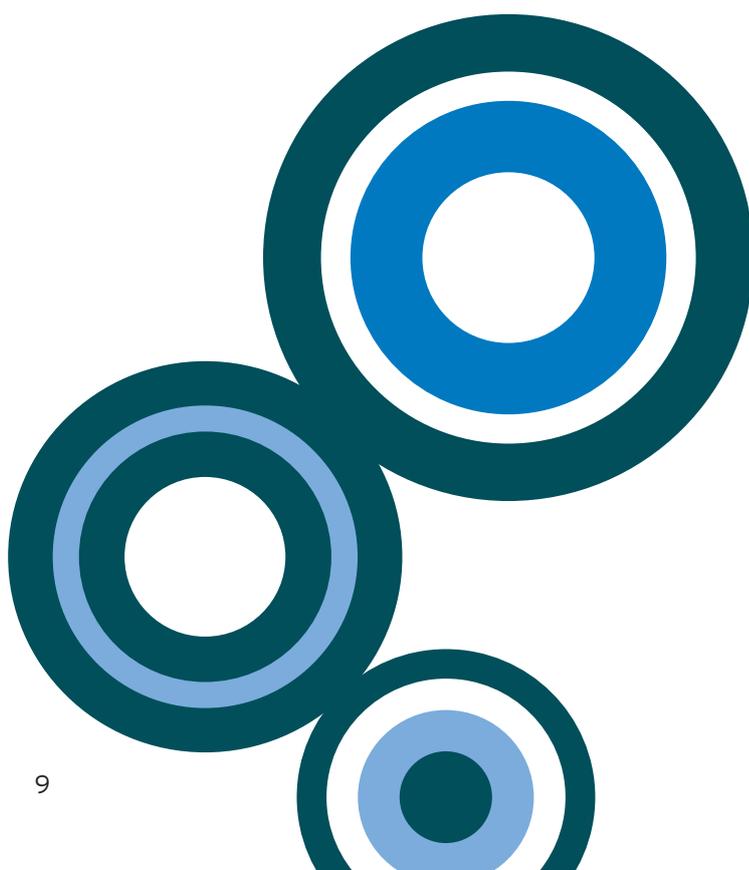
⁵ In this report "micro" firms have 5-19 employees, "small" employ 20-49, "medium" employ 50-249, and "large" employ 250 or more (the survey excluded firms employing fewer than 5 employees).

- Public sector and large private sector organisations, are more likely to have formal procedures (like appraisal schemes or equal opportunities policies) to protect against discrimination, especially where a Trades Union is recognised. However, these organisations are also more likely to have long standing formal agreements which include provisions which are hazardous under the Age Regulations, including contractual retirement ages below the new national default retirement age of 65.
- Two occupational groups are particularly at risk from discriminatory practices. These are professional and associate professional/ technician staff, both of whom are particularly likely to be exposed to discrimination in setting pay, in long incremental pay scales, and in access to training.

The tables in this paper identify hazardous practices identified in DWP/DTI's employer survey, indicating those which are most common among employers in construction, and among employers in general.

Some of the provisions in the Regulations allow an employer to claim an "objective justification" for a practice which would otherwise be unlawful. Such justifications require the employer to be able to show that his or her action is a proportionate means of achieving a legitimate aim. It will be for Employment Tribunals and the County Courts to rule on what is justifiable under these provisions.

The Regulations also allow some practices, like incremental scales, where pay or terms of employment improve with length of service, but only up to five years, beyond which they will need to be objectively justified.



4. Recruitment and promotion

The key principle in all selection for employment or promotion is that decisions should be fair, and based on the individual's competence for the job, and not on arbitrary factors like age (or gender or race etc).

The research evidence shows that work performance in most jobs does not decline with age before the late 60s, provided individuals are healthy, motivated and kept up to date.

Across the workforce as a whole, the commonest hazardous practices in recruitment and promotion involve excluding applicants, either directly (by specifying ages), or indirectly (e.g. by specifying years of experience, rather than specific capabilities) in advertisements, job descriptions and interview criteria.

Table 1 below shows the most common areas of hazardous practice in the construction sector (with figures for firms in general for comparison). Practices followed by more than half of firms in the sector are highlighted:



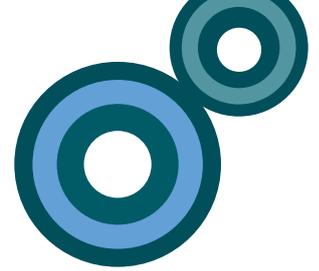


Table 1

Recruitment and promotion	Comments	% of firms reporting in the construction sector	% of firms reporting, all sectors
Selection criteria specify qualifications	Lawful if the qualification is directly relevant to the job, and equivalent qualifications are accepted for candidates of different ages.	58	60
Selection criteria based on length of work experience of any kind	Indirectly discriminatory. The test must be individual capability, not experience, unless an objective justification can be demonstrated.	50	62
Application forms ask for date of birth/age	Lawful to use for monitoring purposes and conforming to Statutory requirements. Potentially discriminatory. ACAS recommends removing this information (as with other equal opportunities information) before shortlisting.	30	48
Maximum recruitment ages are specified	Unlawful if set more than six months before the company's retirement age unless objectively justified.	27	33
Selection decisions are based on remaining period to retirement	Discriminatory unless a clear business justification can be demonstrated ⁷ (like the cost/time required to train, relative to the expected years of work).	25	18
Age information is provided to recruiting staff	Increases risk of discrimination.	32	44
Age criteria are used directly in recruitment, or particular age ranges are targeted	Unlawful unless required by Statute, or for positive action reasons (e.g. to compensate for the under representation of a particular age group).	10	9
Selection decisions are based on expected length of service, judged by age	Unlawful	9	7
Job advertisements specify age	Unlawful , unless there is a genuine occupational requirement (e.g. a young actor for a young part).	6	6

⁶ If the employer does not have a compulsory retirement age, they set a maximum recruitment age of 64 ½.

⁷ See also "maximum recruitment age".

When recruiting, most construction firms specify qualifications and/or length of experience. The former is legitimate, provided the qualifications match the job, and make allowances for comparable qualifications for people of different ages, but the latter is hazardous. A small proportion of micro firms use age directly in selection decisions, which will be unlawful.

About one firm in ten says that some kinds of jobs or work roles are better suited to 25 to 39 year olds. One in four stresses the time it takes for a new recruit to become fully proficient, and almost half say that physical strength is important. It will be important for employers to be clear that they are assessing competence, rather than age, when making such recruitment decisions.

Construction employers are particularly likely to consider the expected length of service from job applicants, and especially how close he or she is to retirement. This is hazardous, unless an objective justification can be argued (for

example, in terms of the costs of training and becoming proficient in relation to future working commitment). It is important to ensure that expectations about future working life are tested and not assumed, since older workers are in general less likely to leave an employer than younger ones.

Construction firms are less likely than other employers to use written application forms, relying instead on unwritten recruitment procedures or CVs. Most firms which have written applications ask for date of birth, and two thirds of these show this information to members of interview panels. This increases the risk of discrimination, especially in a sector where managers appear unusually likely to have strong views about appropriate ages for particular jobs.

Construction firms are less likely than other employers to have formal procedures for promotion, and a small but significant proportion of employers say that older people are less likely to be promoted, which will be unlawful.



5. Pay and conditions

The key principle in setting pay and conditions should be fairness. Where individuals are treated differently, this should be on the basis of a different contribution or skill, not on age, or on a factor which is a proxy for age (like years of service). This applies to people of all ages, and those over an employer's normal retirement age are equally protected by the law⁸.

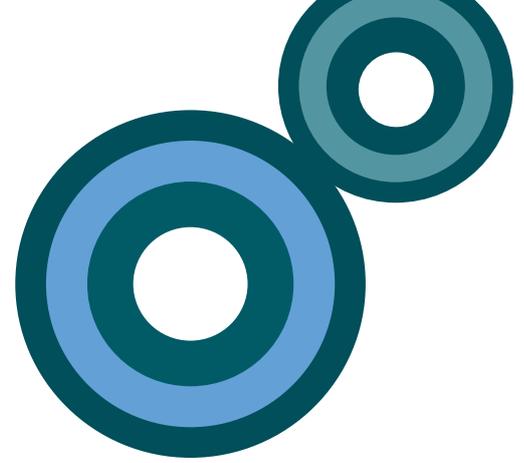
The Regulations do, however, allow different treatment where this can be "objectively justified" as a "proportionate" way of achieving "a legitimate business purpose". Rewarding long service can, for example, be justified if it can be shown to benefit the business by increasing staff retention, and the sums involved are reasonable⁹. The table shows the most common areas of hazardous practice in the construction sector.

Table 2

Pay and Conditions	Comment	% of firms reporting in construction	% of firms reporting, all sectors
Starting salary takes experience into consideration	Potentially discriminatory, since experience relates indirectly to age, and does not directly measure competence.	65	58
Annual leave entitlement is based on length of service	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 44% of all firms but 58% of all employees).	25	44
Long service awards	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 33% of all firms but 54% of all employees).	19	33
Incremental pay scales are used	Unlawful if scale covers more than 5 years (which occurs in 5% of all firms), unless it can be objectively justified.	18	36
Separate youth rates of pay	Only lawful in relation to the National Minimum Wage or Apprenticeships.	18	11
Starting salary is dependent on age	Unlawful except in relation to youth rates under the Minimum Wage Regulations).	12	13
Selection for training depends on period to retirement	Potentially indirectly discriminatory (7% of all firms set a limit of more than 1 year). Objective justification is possible in terms of business benefits such as the cost set against predicted return.	12	8
A maximum age is set for eligibility for sick pay	Unlawful	6	6

⁸ The upper age limit for unfair dismissal claims is being lifted under the new regulations, and employees over their firm's retirement age will have full protection against discrimination.

⁹ This is a complex area. Advice is available on the ACAS website (see "Further Information" below).



In relation to pay and conditions there are no unlawful practices operated by more than 20% of firms, and all of the most common hazardous practices are ones where careful management can ensure that an employer remains within the regulations.

Length of service is less likely to affect levels of pay in construction than in other sectors, with very few firms reporting incremental scales of more than five years (which will require justification). However, one in five large construction firms say that age does influence pay, and a similar proportion say that it affects starting salaries, both of which will be unlawful (other than through formal “youth rates” which will remain lawful in some circumstances).

Ten percent of construction firms which offer sick pay above the statutory minimum have a maximum age for entitlement. This will be unlawful, since protection against discrimination extends to employees of all ages (including those over the employers’ retirement age).

6. Retirement and redundancy

The Age Regulations introduce a new national Default Retirement Age of 65 for both men and women. An employer can lawfully set a retirement age at 65 or above, but can only set a lower retirement age if there is an objective justification (which is expected to be very rare, since age itself is rarely a qualification for a job). Whatever retirement age the firm adopts, the employer will be required to give individuals formal advance notice of their retirement date, and must consider requests to stay on after that.

The key principle here is that, up to the firm's retirement age, exit from the firm through either retirement or redundancy should be based on individual capability and contribution, and personal preference, not on age.

In relation to redundancy and unfair dismissal, the Regulations extend the same rights to all employees, whatever their age, removing the previous age limits. Statutory redundancy entitlements remain unchanged. An employer can use age or length of service to enhance redundancy payments, but only in accordance with the rules specified in the Age Regulations.

In this area, the greatest hazards concern the setting of compulsory retirement ages and the use of age in selection for redundancy or setting levels of redundancy pay.

Table 3 shows the most common areas of hazardous practice in the construction sector.

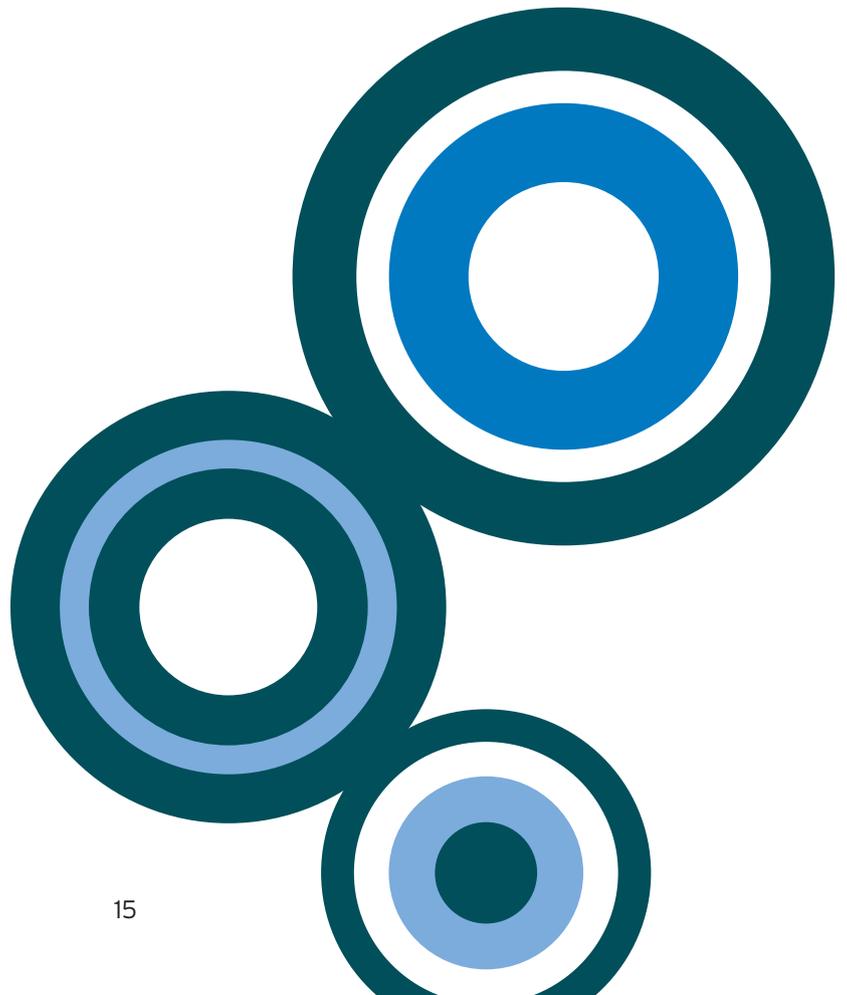


Table 3

Retirement and Redundancy	Comment	% of firms reporting in construction	% of firms reporting, all sectors
Redundancy decisions based on length of service	Indirectly discriminatory since longer service correlates with age.	52	49
Compulsory retirement ages	Compulsory retirement ages Unlawful if below 65 (which affects 6% of all employers), unless it can be objectively justified.	33	37
Compulsory redundancy decisions are based on "last in first out"	Likely to discriminate indirectly against younger employees.	38	28
Level of redundancy pay based on length of service	Potential indirect discrimination against younger employees. Length of service is used in compulsory redundancy by 27% of all firms but affects 38% of all employees. For voluntary redundancy it is used by 23% of all firms but affects 34% of all employees.	18 compulsory 12 voluntary	27 compulsory 23 voluntary
Age is used in selection for redundancy	Unlawful. The decision must be based on requirements of job and competence of staff, or positive action to maintain an age balance.	0 compulsory 0 voluntary	14 compulsory 5 voluntary
Level of redundancy pay is affected by age	Unlawful. Affects only 10% of all firms, but 17% of all employees (because it is more often used in larger firms).	7 compulsory 3 voluntary	10 compulsory 9 voluntary
Redundancy decisions based on current salary	Potentially indirectly discriminatory since salary levels generally correlate with age.	0	7

Construction firms, especially large ones, are more likely than firms in other sectors to allow employees to work past normal retirement age, either for business reasons or to meet the needs of the employee, but they rarely offer this as a formal entitlement (Fig 2).

However, construction firms are less likely than other employers to allow employees to reduce

their working hours either in the run-up to retirement or to care for elderly dependents.

Large construction firms are more likely than other large employers to have standard criteria for selecting individuals for compulsory retirement. However, only a few large construction firms, and none of the other construction firms surveyed, had retirement ages below 65 (which will be unlawful).



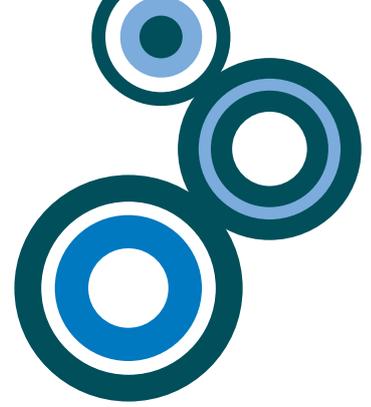
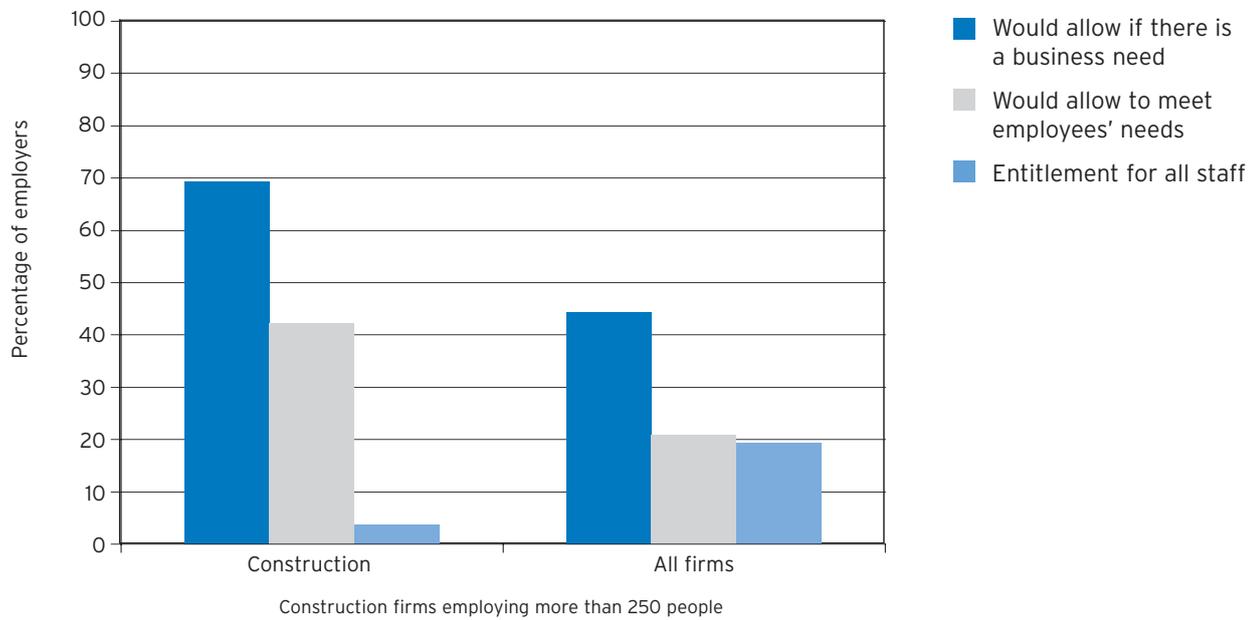
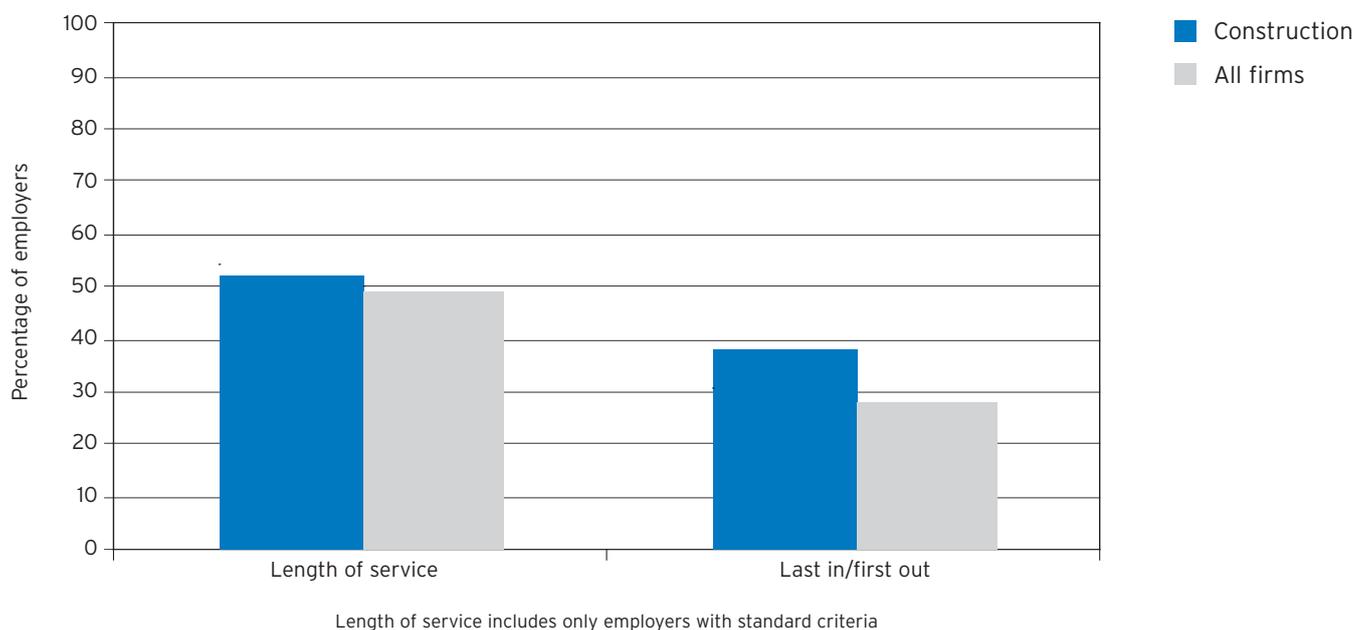


Figure 2 Whether the firm would allow employees to stay in work past normal retirement age



In relation to redundancy, “last in/first out” policies are more common in construction than elsewhere (Fig 3), and this is hazardous, since it is likely to discriminate against younger workers.

Figure 3 Selection criteria for compulsory redundancy



7. Management

There are a variety of management practices which can reduce the risk of legal disputes under the Age Regulations. Table 4 identifies the

commonest ones, and shows what proportion of firms in the construction sector, and the economy in general, use them at present.

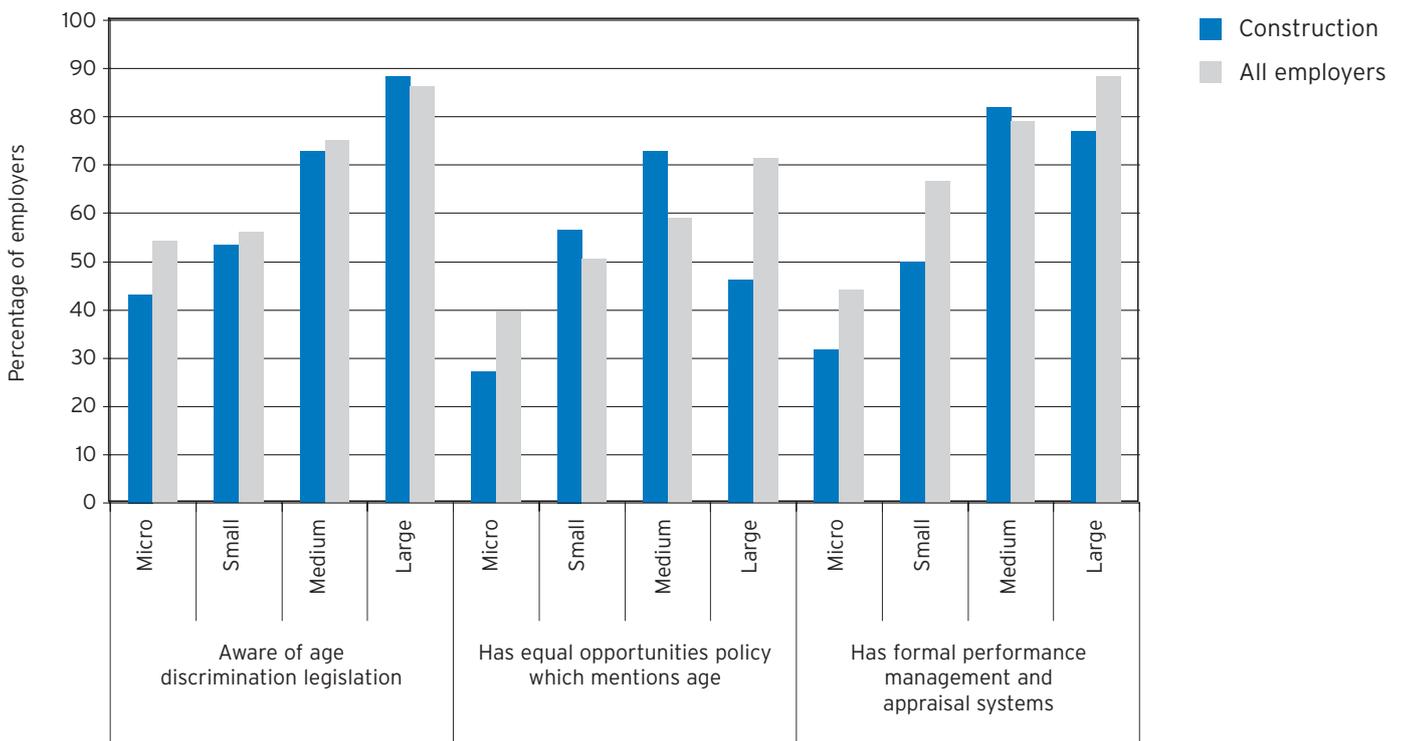
Table 4

Management and training	Comment	% of firms reporting in construction	% of firms reporting, all sectors
Equal opportunities policy	Having a policy, makes expectations clear to managers and staff, and makes monitoring easier.	57	72
	Equal opportunities policy explicitly mentions age.	35	56
	Policy implementation by age is monitored (only those with age policies).	22	49
Flexible working	Many employees, especially those with childcare or eldercare responsibilities, and those approaching retirement, would like to work part-time or flexibly. Offering flexible working improves retention and motivation of key staff	76 for childcare 77 for pre-retirement 68 for elder care 39 for any reason	82 for childcare 78 for pre-retirement 74 for elder care 51 for any reason
Providing work related training for all staff	There is a direct relationship between participation in training and staying longer in work.	60	70
Formal performance appraisal	Ensures that employees are clear about objectives, that performance is recognised, and untapped talents are used This will also be relevant when firms have to consider formal requests to stay after a firm's retirement age	44	68
Flexible retirement ages	Flexible retirement allows individuals to work longer and employers to continue to make use of skills and expertise.	37 for all staff 2 for some staff	50 for all staff 4 for some staff
"Age blind" recruitment practices	Removing dates of birth and age data from applications before they are considered by selectors reduces the risk of discrimination (although training recruiters is also important). Some firms collect this information on equal opportunities monitoring forms which are removed before forms are passed for short listing	24	43
Formal assessment for promotion	Formal assessment increases the chances of promoting the most valuable people, and reduces the risk of discrimination. (4% of all firms currently have age related criteria, which will be unlawful).	18	37

More than half of small and micro construction firms have no formal appraisal and performance management systems, and a quarter of large firms lack them as well (Fig 4). This could be hazardous for employers since, to avoid

claims of discrimination, they will need to be able to demonstrate an objective assessment of an individual's capabilities when making decisions on retirement, promotion, training and redundancy.

Figure 4 Prepared for age discrimination regulations



Less than half of all construction firms have equal opportunities policies which mention age, and only a third monitor the age profile of new recruits. None of the construction firms which do monitor age reported taking any action as a result.

Awareness of the age discrimination regulations is low in the sector, with half of all firms being unaware of the legislation, and only 20% knowing (at the time of survey in Spring 2005) when the regulations will become law.

Most construction firms of all sizes support off the job training, and none of the respondents reported any age restrictions on the selection of individuals for training. However, some large firms do take into consideration the potential length of service of the individual, which is hazardous, although it could be objectively justified in terms of return on investment, provided the timescale could be shown to be realistic.

8. Managing age in the construction industry: discussion questions

The following questions are designed to help you, as an employer in the construction sector, to plan how you will respond to an ageing workforce and the Age Regulations:

1. How concerned are you about **skills gaps and shortages** in your sector, and do you believe current labour market predictions about this?
2. Do you think that **a different age mix** in the workforce could help overcome these?
3. Do people generally in your sector **have strong views about appropriate age ranges for particular jobs** which would limit the opportunity to change the age mix?
4. Is your **ability to change pay and conditions** limited by national agreements, or regulations like “licence to practice” rules? How can you tackle this?
5. Policymakers sometimes assume that all firms in a “sector” are alike. In your sector are there particular **kinds of firm which are very different** in their approach to age management?
6. How easy is it to **extend working lives** in your sector? Does this apply more to some groups of staff than others?
7. Are there **traditional career patterns** in your sector which might change if working lives became longer (e.g. “downshifting” or mentoring roles for older workers)?
8. Older workers often prefer **to work part-time or on a flexible basis**. How easy is it to do this in your sector, and what might be the constraints?
9. Are there jobs where **physical demand or levels of stress** make extending working life more difficult? Are there ways of overcoming these?
10. Is it difficult to **recruit older people** in your sector? After what age? Can training help?
11. **Small firms** in general have less formal management structures and procedures. Will this make overcoming age discrimination easier or more difficult for them?
12. A high proportion of people working after 65 are **self employed**, what role does this play in your sector?
13. What are the implications of an ageing workforce for supply and demand for **training** in your sector? (given that those who train generally stay in work longer)
14. How difficult will it be to **raise awareness among employers** in your sector about the ageing workforce, and about the age discrimination regulations, especially among small firms, who are more difficult to contact?
15. Are there **lessons about managing an age diverse workforce** which your sector could offer to others?

CROW would welcome any comments on these questions (or any others) as a contribution to its final research report for DWP¹⁰.

¹⁰ See “Further Information” below.

9. About this paper

This paper was written by the Centre of Research into the Older Workforce on behalf of the Department for Work and Pensions. It draws on two sources:

- The background material on the sector comes mainly from the Sector Skills Development Agency's Research Matrix database, which brings together a large quantity of information about all sectors from a variety of sources, including the Labour Force Survey, the National Employer Skills Survey, the Annual Business Inquiry, and the Inter Departmental Business Register¹¹.
- The material on current age management practice in the sector is based on data gathered by the National Institute for Economic and Social Research (NIESR) and the British Market Research Bureau (BMRB), in a national survey for the DWP and DTI in Spring 2005¹². They interviewed the most senior person responsible for HR issues in 2084 firms employing more than five people in England, Scotland and Wales. Each interviewee was asked 160 questions about aspects of age management, including recruitment, retirement, benefits, pensions, management practices and discrimination. CROW carried out a separate analysis of this data to produce the current paper. The sample included 113 firms in the construction sector.

The DWP/DTI evidence is the best available on current employer age management practices across all sectors, but it should be interpreted with some caution since:

- it probably underestimates the frequency of some practices (since firms with a positive record are more likely to respond to such surveys; employers may be reluctant to admit to what they suspect is "bad practice"; and the senior managers who replied to the survey may be unaware of poor practice by some line managers);
- In some cases the number of employers responding is relatively small, and may not be fully representative of particular sizes of firms in that sector;
- Since some practices are more common in large firms, the behaviour of a small proportion of firms may affect a much larger proportion of workers;
- Although some hazardous practices are rare, the firms involved will still be open to legal challenge if they do not make appropriate changes.

We have not commented on pensions issues since pensions provisions are largely exempt from the regulations¹³.

All views expressed in this paper are those of the authors. They are not intended to be authoritative statements of the law, and do not represent the views of the Department for Work and Pensions or any other Government Department.

¹¹ Details on the Skills for Business website at www.ssdamatrix.org.uk/

¹² See "Further Information" below.

¹³ DTI's guidance *The impact of age regulations on pensions*, explains the implications of the legislation for pensions in detail.



10. Responding to this paper

This paper is intended for consultation with employers, sector bodies and other interested organisations and individuals during 2006. Responses will contribute to a larger report on sectoral approaches to age management, which DWP plans to publish in 2007.

If you would like to comment on any aspect of this paper, or of age management in the construction sector (or on age management more generally), please write directly to the Centre for Research into the Older Workforce (CROW). We would be particularly interested in responses which:

- add relevant information on the shape of the sector and age management issues and practices within it
- clarify the reasons for particular features (e.g. why one part of the sector has very different practices from others, or why construction is different from other sectors)

- identify examples of good practice which might be disseminated to other employers or sectors
- identify questions which need further investigation

Responses and comments on the content or issues raised by this paper should be sent by email to: crow@niace.org.uk

Or by post to:

Age Legislation Research
Centre for Research into the Older Workforce
NIACE
21 De Montfort Street
Leicester
LE1 7GE

11. Further information

Further information on age related issues, policies, practices, and legislation can be found at www.agepositive.gov.uk

You can request further copies of this paper, or contact the Government's Age Positive team at: agepositive@dwp.gsi.gov.uk

or write to:

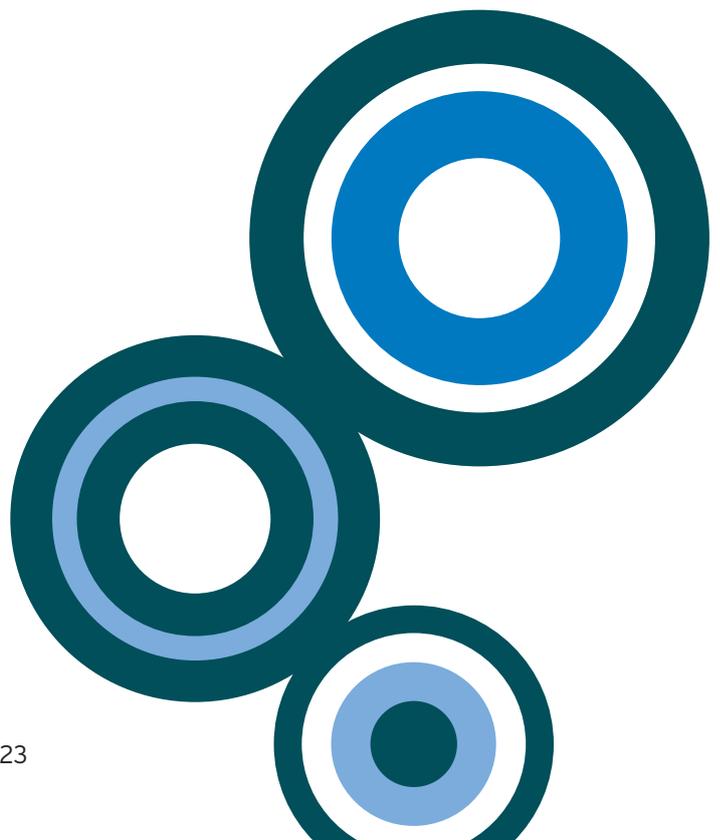
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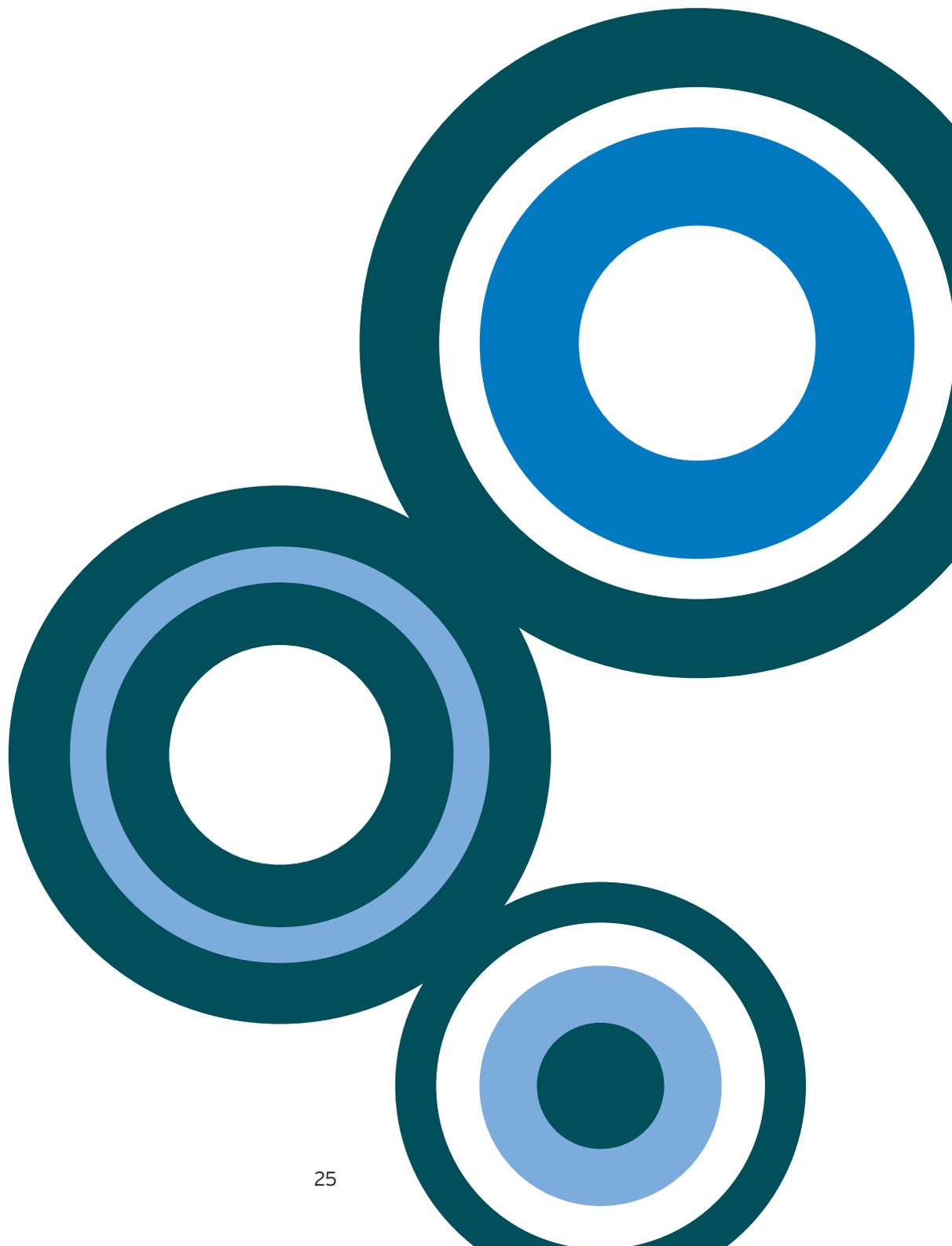
Details of the Age Discrimination Regulations, which will come into force in October 2006, can be found on the DTI's website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

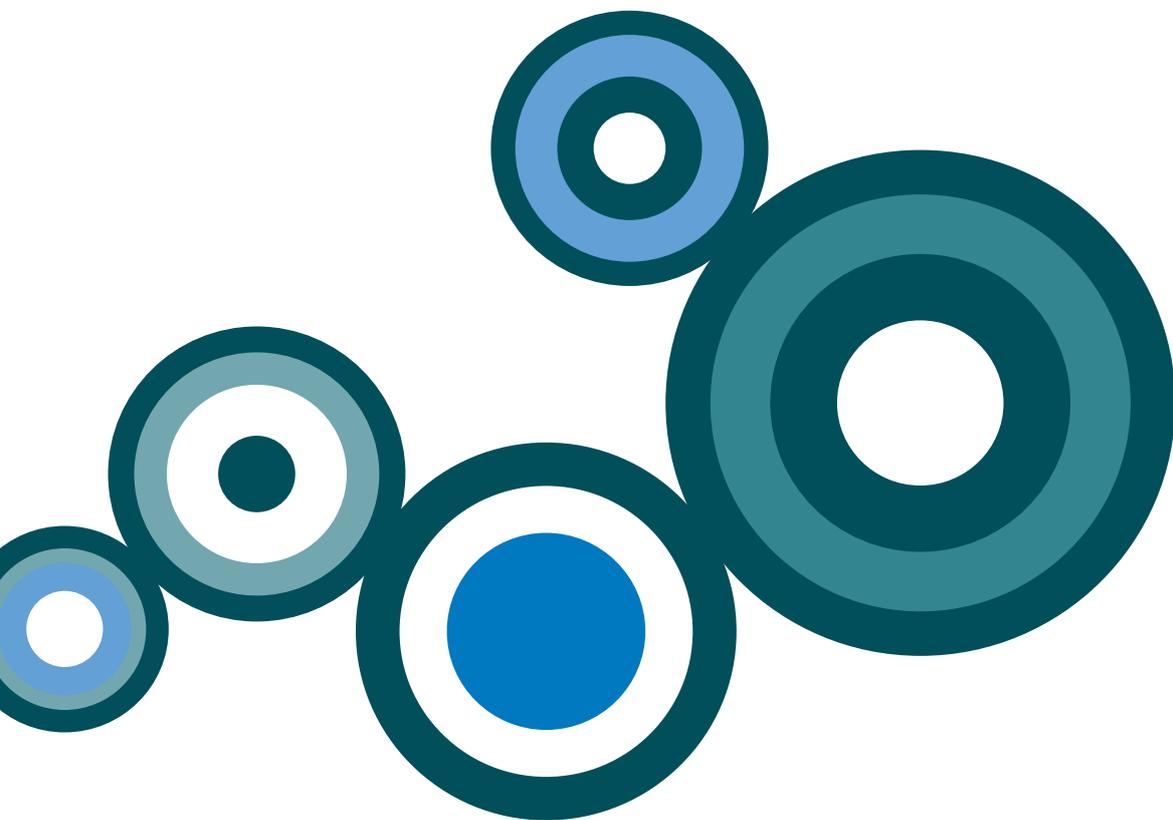
Advice on interpretation and good practice can be found on the ACAS website at: www.acas.gov.uk

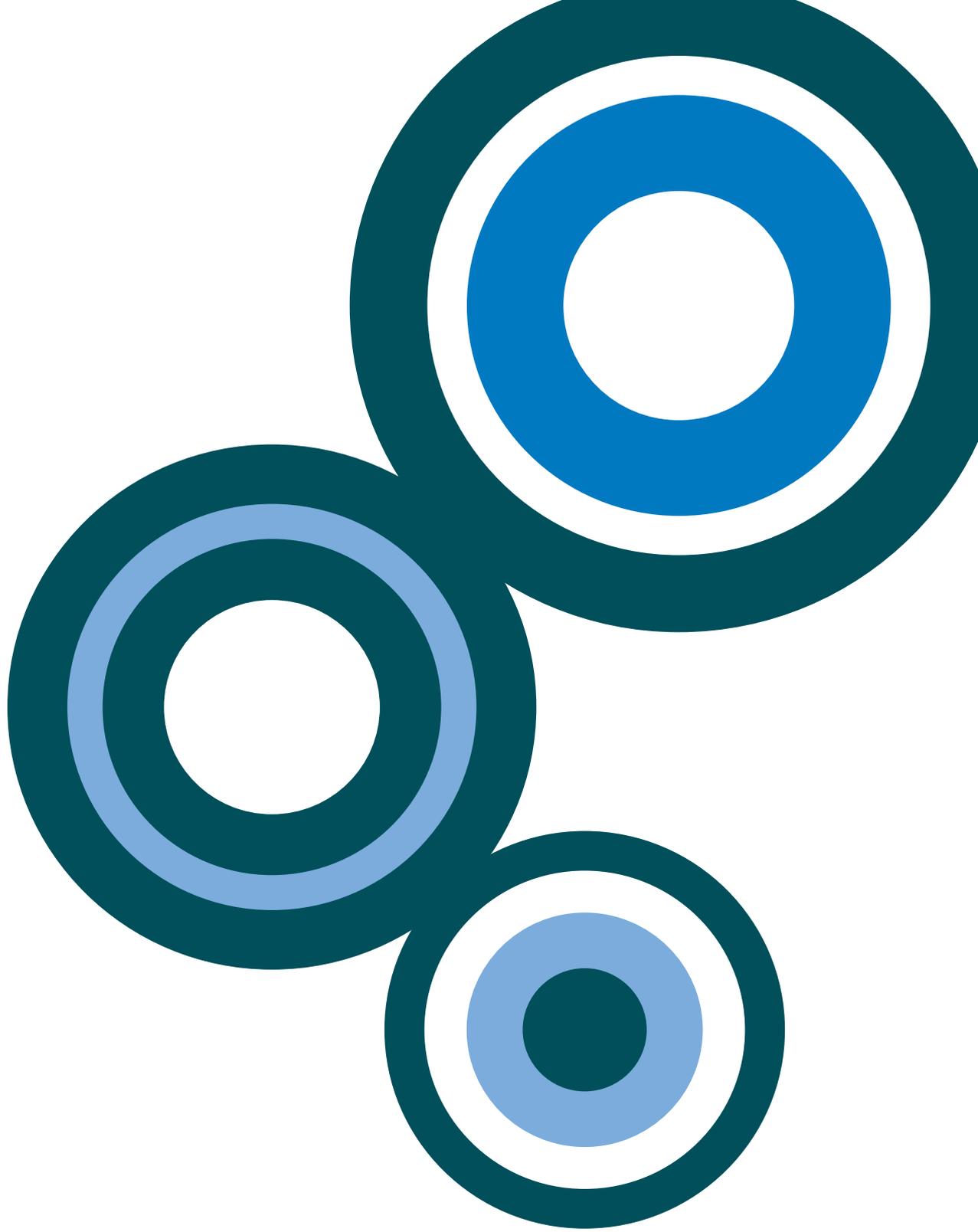
The full report of the DWP/DTI joint national survey conducted by NIESR and BMRB which produced the evidence for this report is *Survey of Employers' policies, practices and preferences relating to age* by Metcalf & Meadows (DWP Research Report 325, DTI employment relations research series number 49). The full report is available for download free on the DWP website at: www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep325.pdf

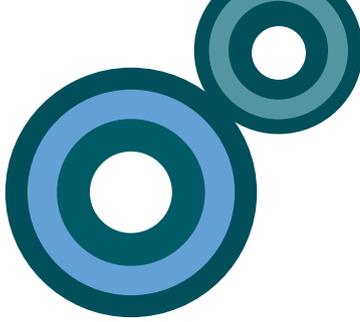
Further information about CROW can be found at: www.niace.org.uk/crow











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Members of the Age Partnership Group, listed below, support and endorse the Be Ready campaign.

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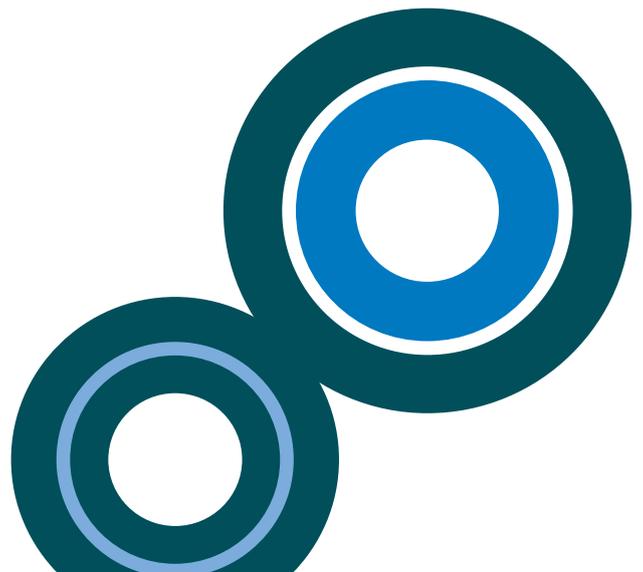
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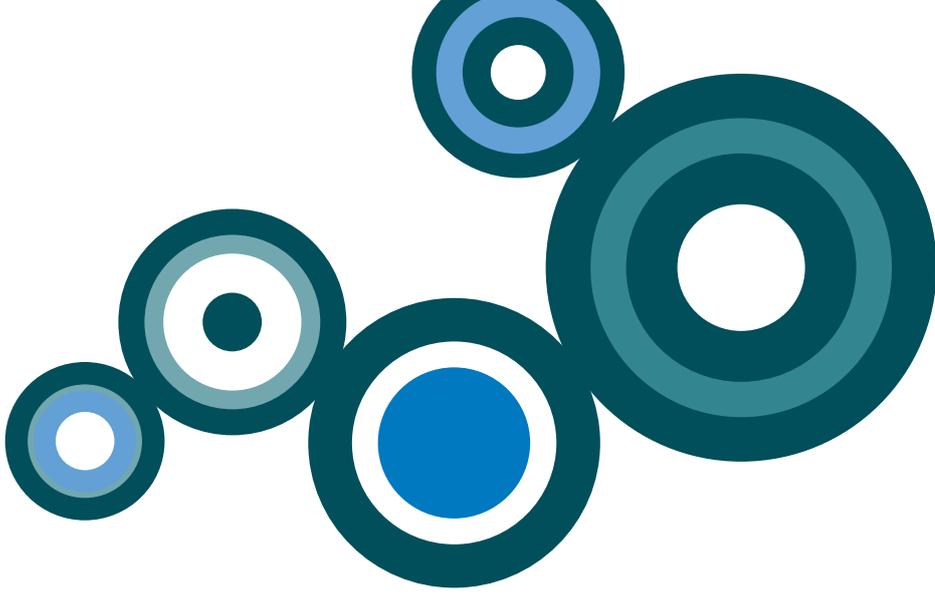
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Managing an ageing workforce in business services

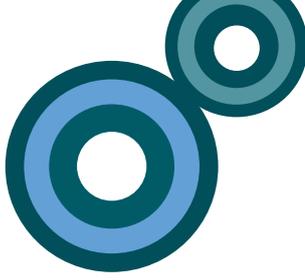
A report for employers

By Stephen McNair and Matt Flynn

Produced for the Department
for Work and Pensions
By the Centre for Research
into the Older Workforce

age**partnership**group
Targeting Employers®





Age Partnership Group (APG)

This research is one of a number of projects commissioned by the DWP on behalf of the APG as part of the National Guidance Campaign (NGC).

The APG was formed in 2002 and consists of a number of national organisations who represent different aspects of employers needs, for example, small business representatives, trade unions, HR and Personnel managers, local government, other government departments, accountancy, insurance and training organisations. There are separate groups representing England, Scotland and Wales.

The NGC aims to raise employers' awareness of, and ability to adopt, practical information and guidance on age diverse employment practices. This includes flexible employment and retirement opportunities in order to increase the recruitment, selection, promotion, training and retention of older employees prior to the implementation of age legislation in October 2006.

You can view the Age Partnership Group website at www.agepositive.gov.uk/agepartnershipgroup

Legislation

In March 2006, the Employment Equality (Age) Regulations 2006 were published. The regulations are the last major stage of the European Employment Directive and will come into effect on the 1st October 2006.

The regulations prohibit age discrimination in employment and vocational training. They apply to individuals of all ages in work, seeking work or looking to access vocational training and to all employers, and to all providers of vocational training and vocational guidance (including further and higher educational institutions).

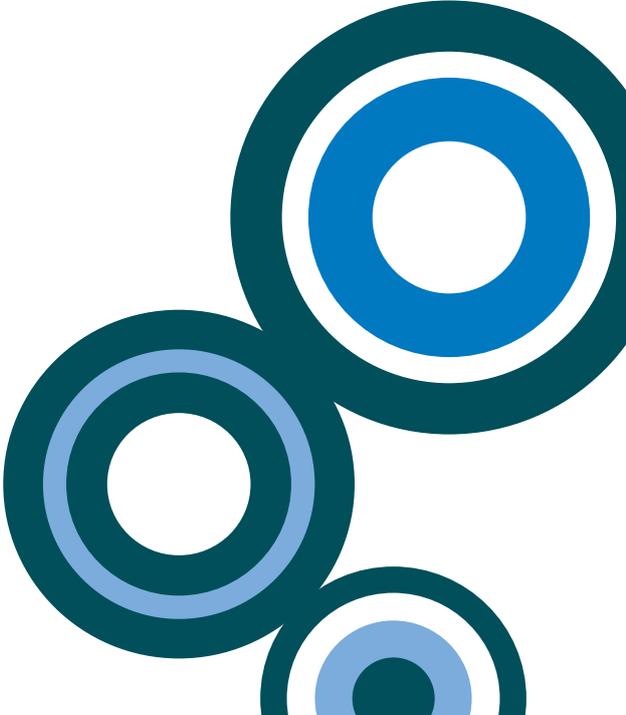
The regulations can be viewed on the Department of Trade and Industry website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Disclaimer

This report has been commissioned to provide information only. Responsibility for the views expressed in this report rests solely with the authors. The members of the Age Partnership Group (APG) and the Department for Work and Pensions (DWP) do not accept responsibility for the views of the authors.

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Introduction

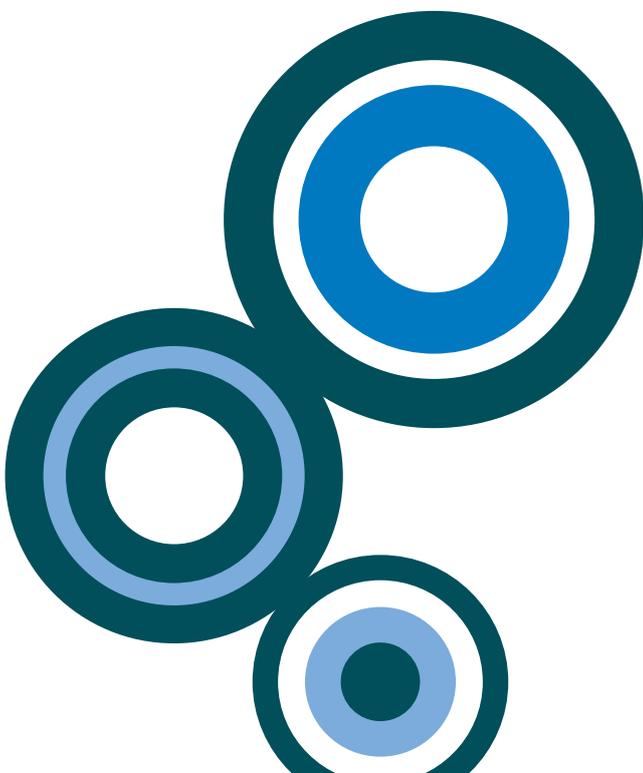
This report is about how firms in the business services sector are managing an ageing workforce. It has been written for the Department for Work and Pensions by the Centre for Research into the Older Workforce (CROW) to help employers to make better use of older workers. It also helps to raise awareness of the new Employment Equality (Age) Regulations 2006 which become law in October 2006, and prohibit age discrimination in work or training against people of any age.

Workforce ageing presents a growing challenge to most employers. Birthrates have been falling for many years, and in the next few years the numbers retiring will outnumber young people entering the labour market. The government believes that the resulting skills gaps and labour shortages in many industries can be reduced if employers can find ways of making better use of older workers, and encourage people to stay in work longer.

However, every industry has its particular features, and this report outlines the special issues affecting the business services sector, based on a large national survey of employers. It highlights employment practices in the sector which will be hazardous under the Age Regulations, and aims to stimulate discussion and improved practice in firms.

This report is not intended to be an authoritative statement on the age discrimination law itself. Details of how to obtain the Regulations, and advice about them, can be found at the end of the report. However, while the Regulations make some activities unlawful, it is for the Courts and Employment Tribunals to interpret this in specific cases. The term “hazardous” is therefore used in this paper to describe activities which might be ruled unlawful if a case is brought. We suggest that employers need to review their practice in these areas.

During 2006, CROW will explore these issues in more depth through case studies of firms in seven sectors, and DWP plans to publish the resulting Research Report in 2007.



1. Summary: key age issues for business services firms

“Business services” is a large and complex sector, which has seen rapid change and employment growth in recent years. The sector includes a very diverse range of highly specialised services, in fields like finance, computing, law and architecture¹ and even within the restricted group of professional services firms examined here, there are firms of very different kinds.

Attitudes to extending working life are more positive in Business Services than in other sectors, with 96,000 workers over 65, most of them working on a freelance or consultancy basis, or in firms employing less than 6 people².

Many of the features of the sector reflect a high concentration of professionals, where work, even within large organisations, is individualised, and depends on personal knowledge and experience. However, this makes employees in the sector particularly vulnerable to discrimination.

¹ Most of the very small firms are excluded from the data, as only firms with five or more employers have been surveyed.

² For statistical purposes Government groups a wide range of firms into a single category of “Other Business Services” (Standard Industrial Classification Codes 70-74). In view of the very mixed range of activities we have narrowed the range to be considered in this report to include only codes 72-74.5 (Computing, Research & Development, and the part of “Other Business Activities” which includes legal services, financial and management consultancy, architecture, engineering and advertising)

Common hazardous practices in Business Services

Common practices in this sector which may need review if employers are to avoid breaking the Age Regulations include:

- **using CVs rather than application forms in recruitment.** This is common professional practice, but it increases the risk of unfair discrimination, since individuals may volunteer age information which makes discrimination easier.
- **using length of experience to fix starting salary.** This risks indirect discrimination, since length of experience (unlike competence) reflects age.
- **using age or length of service to select for redundancy.** Using age as selection criteria for redundancy is unlawful. Using length of service is hazardous since younger workers are more likely to have been employed for a shorter period.
- **refusing to consider job applicants who are thought to be approaching retirement age.** It is unlawful to exclude job applicants on the basis of age unless they are within 6 months of the employer’s retirement age.

Unlawful practices in Business Services

The following practices are less common, but unlawful, and firms who use them will need to make changes if they are to remain within the law.

- 23% of firms specify maximum recruitment ages.
- 13% of firms use age to fix starting salary.
- 9% of firms use age to select for compulsory redundancy, or to set levels of compulsory redundancy pay.

2. The shape of the business services sector

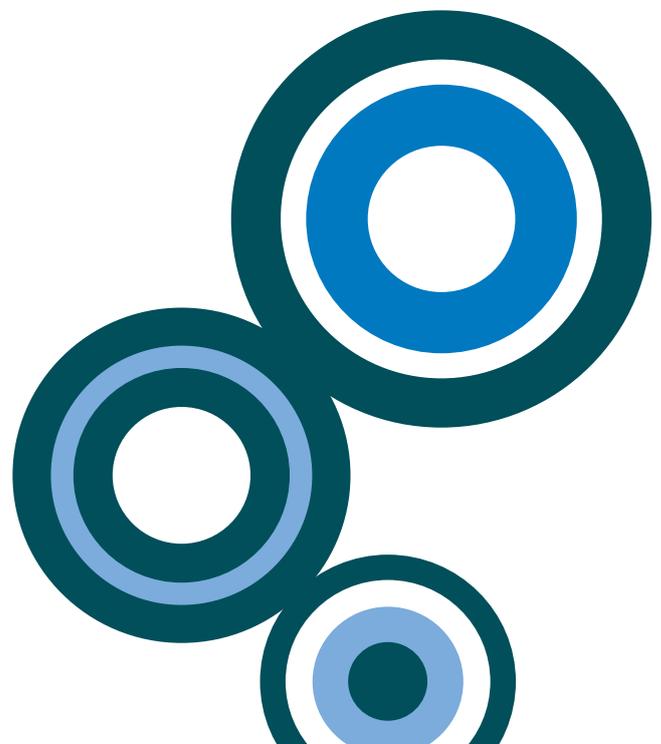
The nature of the age management issues facing a sector depends on factors like the average size of firms, the age and skills profile of the workforce, and future expectations of growth or contraction. This section outlines this context for the business services sector.

The sector defined by the Office of National Statistics as “Real Estate, Renting and Other Business Activities” is very large, employing 3.2 million people (11% of the workforce), and 17% of all those working after 65. It generates 8% of total UK output through 97,000 establishments, most of them very small. The sector is extremely diverse, covering many activities which have seen dramatic change and growth in the last two decades. They include real estate; renting of equipment and machinery; computing services; research and development; professional services in fields like law, finance, management and architecture and engineering; advertising; personnel recruitment; security services and call-centres. Employment is heavily concentrated in London and the South East (38% of its workforce), and the sector employs the largest concentration of professional, associate professional, and managerial staff, who form over 60% of the workforce.

The sector’s output has grown very rapidly in recent years although this is expected to slow over the next decade. Firm numbers are growing, and 14% of firms have existed for less than a year. As a result of its volatility and diversity, employment projections are not available for this sector.

As one might expect in a sector with many independent professionals, a very high proportion (92%) of firms employ under 11 people, and fewer than 1% employ more than 50. Levels of formal business planning are higher than the private sector and lower than the public.

Overall the sector’s age profile matches the workforce in general apart from a high number of workers over 65. However, averages mask substantial differences within the sector, where, for example, 75% of computing staff are under 45, and 42% of research and development staff are over 45. Levels of self-employment are high. Workers in the sector are also rather more likely to be full-time and male, and much more likely to be graduates (who make up 45% of the sector’s workforce).



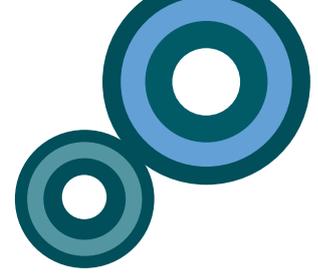
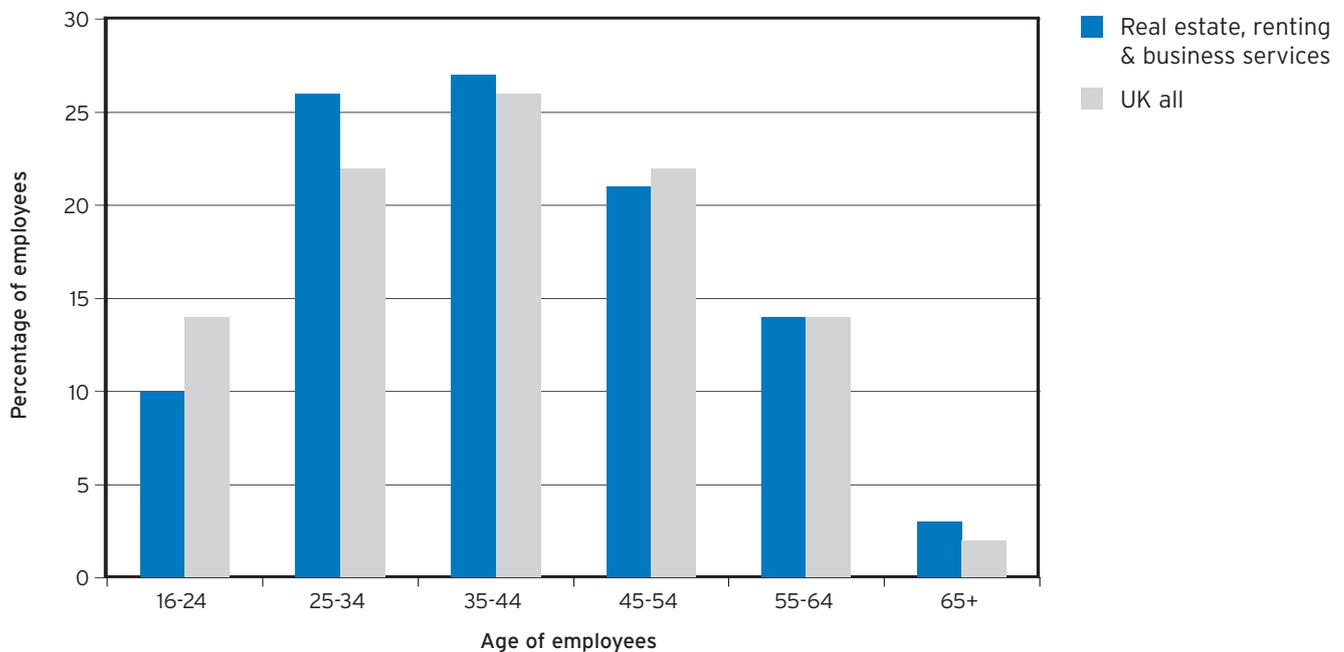


Figure 1 Real estate, renting and business services: workforce age profile



Overall vacancy levels in the sector match those of the economy as a whole, with 17% of firms reporting vacancies, although these represent a rather higher proportion of the sector's workforce. Levels of hard to fill vacancies and skills shortages are substantially higher than in other sectors, but reported skills gaps among

the existing workforce are very low. Training activity is at comparable levels to the rest of the economy, although training spend per employee is very much higher than average, perhaps reflecting the need for very specialised professional updating.

3. Age discrimination in employment

Age discrimination at work is common. It can affect people of any age, but is particularly likely to involve older people, and more than one in five workers over the age of 50 say that they have experienced it either when applying for jobs or in the workplace³. In countries where age discrimination law is already in force, it is the commonest cause of discrimination cases in the courts.

From October 2006 it will be unlawful for any employer in the European Union to discriminate against or harass anyone on grounds of age, directly or indirectly, in relation to either employment or vocational training. This will cover arrangements for recruitment and promotion, pay and conditions, education and training, and retirement and redundancy.

There are exceptions: in relation to retirement, where it will be legal to make an employee retire at a given age, provided this is not below 65 (for men and women); and where an existing statutory provision exists (like the Minimum Wage Regulations). An employer may also be able to justify discrimination if it is designed to correct an age imbalance in his workforce; if there is a legitimate business reason (and the discrimination is proportionate); or if there is an objective justification (likely to be very rare). The Regulations, and advice on their interpretation, can be found on the DTI and ACAS websites⁴.

Some features of age discrimination are common to most employers⁵.

- Indirect discrimination is more common than direct discrimination. DWP and DTI's joint survey found few examples of direct discrimination, but one in five employers believe that some jobs are better done by people of particular ages. Where such beliefs are shared, discrimination is more likely.
- Discriminatory attitudes are more likely to be found in private sector firms, and especially small ones⁶ in sectors like manufacturing and construction. These are also the firms and sectors where there are least likely to be formal procedures and policies to protect against unfair discrimination.
- The most common hazardous practices involve setting age limits on recruitment, especially for those over 50, and using age as a basis for decisions on compulsory retirement and redundancy.
- About half the workforce is covered by a compulsory contractual retirement age. In most cases this is already 65, which is the new "national default retirement age". However, even where firms plan to retire staff at 65, they will have to give formal notice of retirement dates and seriously consider requests to stay longer.

³ Discrimination is difficult to measure precisely, since it is subjective, and affected by levels of public awareness of age issues, and many people regard it as "normal". In a CROW postal survey of workers over 50 in 2004, 20% reported age discrimination. In research by the University of Kent for Age Concern England 29% of people reported experiencing age discrimination (compared to 24% for gender).

⁴ See "Further Information" at the end of this report.

⁵ Information based on the national DWP/DTI survey (see "Further Information"), although because this is new secondary analysis not all figures are directly comparable. Also, for certain policies and practices respondents were asked to answer in respect of their largest occupational group rather than for the workforce as a whole.

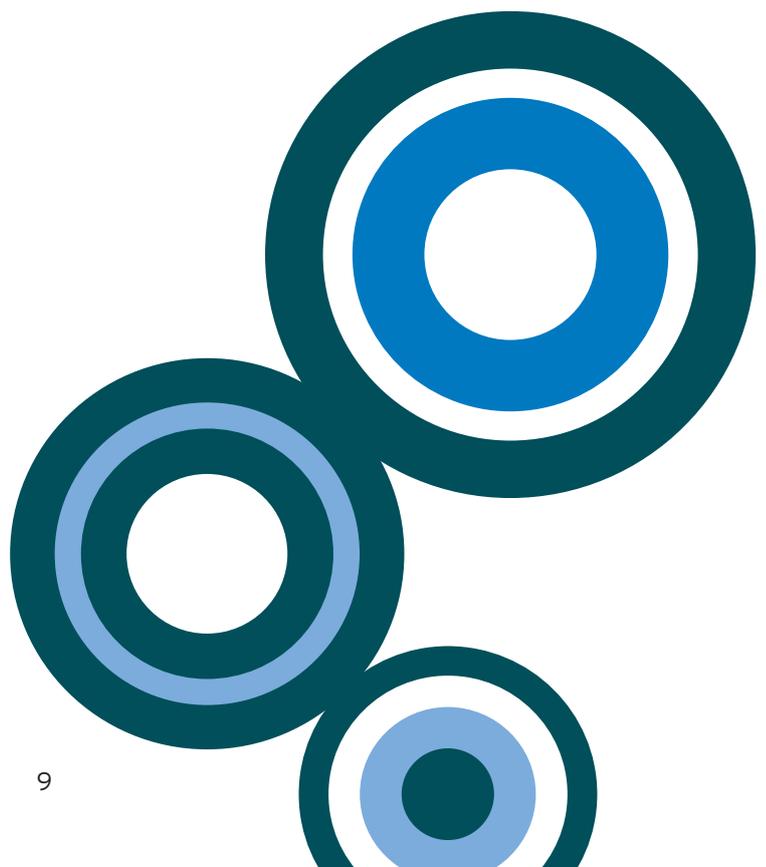
⁶ In this report "micro" firms have 5-19 employees, "small" employ 20-49, "medium" employ 50-249, and "large" employ 250 or more (the survey excluded firms employing fewer than 5 employees).

- Public sector, and large private sector, organisations are more likely to have formal procedures (like appraisal schemes or equal opportunities policies) to protect against discrimination, especially where a Trades Union is recognised. However, these organisations are also more likely to have long standing formal agreements which include provisions which are hazardous under the Age Regulations, including contractual retirement ages below the new national default retirement age of 65.
- Two occupational groups are particularly at risk from discriminatory practices. These are professional and associate professional/ technician staff, both of whom are particularly likely to be exposed to discrimination in setting pay, in long incremental pay scales, and in access to training.

The tables in this paper identify hazardous practices identified in the DWP/DTI survey, indicating those which are most common among employers in business services, and among employers in general.

Some of the provisions in the Regulations allow an employer to claim an “objective justification” for a practice which would otherwise be unlawful. Such justifications require the employer to be able to show that his or her action is a proportionate means of achieving a legitimate aim. It will be for Employment Tribunals and the County Courts to rule on what is justifiable under these provisions.

The Regulations also allow some practices, like incremental scales, where pay or terms of employment improve with length of service, but only up to five years, beyond which they will need to be objectively justified.



4. Recruitment and promotion

The key principle in all selection for employment or promotion is that decisions should be fair, and based on the individual's competence for the job, and not on arbitrary factors like age (or gender or race etc).

The research evidence shows that work performance in most jobs does not decline with age before the late 60s, provided individuals are healthy, motivated and kept up to date.

Across the workforce as a whole, the commonest hazardous practices in recruitment and promotion involve excluding applicants, either directly (by specifying ages), or indirectly

(e.g. by specifying years of experience, rather than specific capabilities) in advertisements, job descriptions and interview criteria.

Table 1 shows the most common areas of hazardous practice in the business services sector (with figures for firms in general for comparison).

Practices followed by more than half of firms in the sector are highlighted.



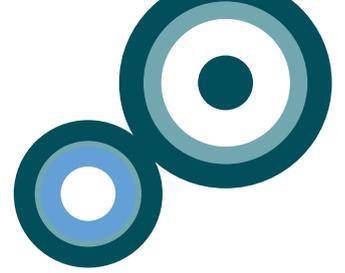


Table 1

Recruitment and promotion	Comment	% of organisations reporting in business services	% of organisations reporting in all sectors
Selection criteria specify qualifications	Lawful if the qualification is directly relevant to the job, and equivalent qualifications are accepted for candidates of different ages.	70	60
Selection criteria based on length of work experience of any kind	Indirectly discriminatory. The test must be individual capability, not experience, unless an objective justification can be demonstrated.	62	62
Age information is provided to recruiting staff	Increases risk of discrimination.	44	44
Application forms ask for date of birth/age	Lawful to use for monitoring purposes and conforming to Statutory requirements. Potentially discriminatory. ACAS recommends removing this information (as with other equal opportunities information) before shortlisting.	30	48
Maximum recruitment ages are specified	Unlawful if set more than six months before the company's retirement age unless objectively justified ⁷ .	23	29
Selection decisions are based on remaining period to retirement	Discriminatory unless a clear business justification can be demonstrated ⁸ (like the cost/time required to train, relative to the expected years of work).	21	18
Age criteria are used directly in recruitment, or particular age ranges are targeted	Unlawful unless required by Statute, or for positive action reasons (e.g. to compensate for the under representation of a particular age group).	8	9
Selection decisions are based on expected length of service, judged by age	Unlawful	7	7
Job advertisements specify age	Unlawful , unless there is a genuine occupational requirement (e.g. a young actor for a young part).	3	6

⁷ If the employer does not have a compulsory retirement age, he can set a maximum recruitment age of 64 1/2.

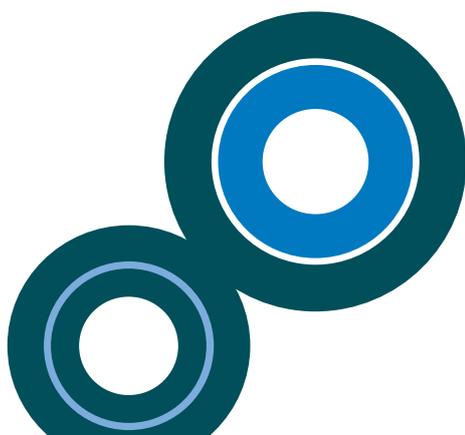
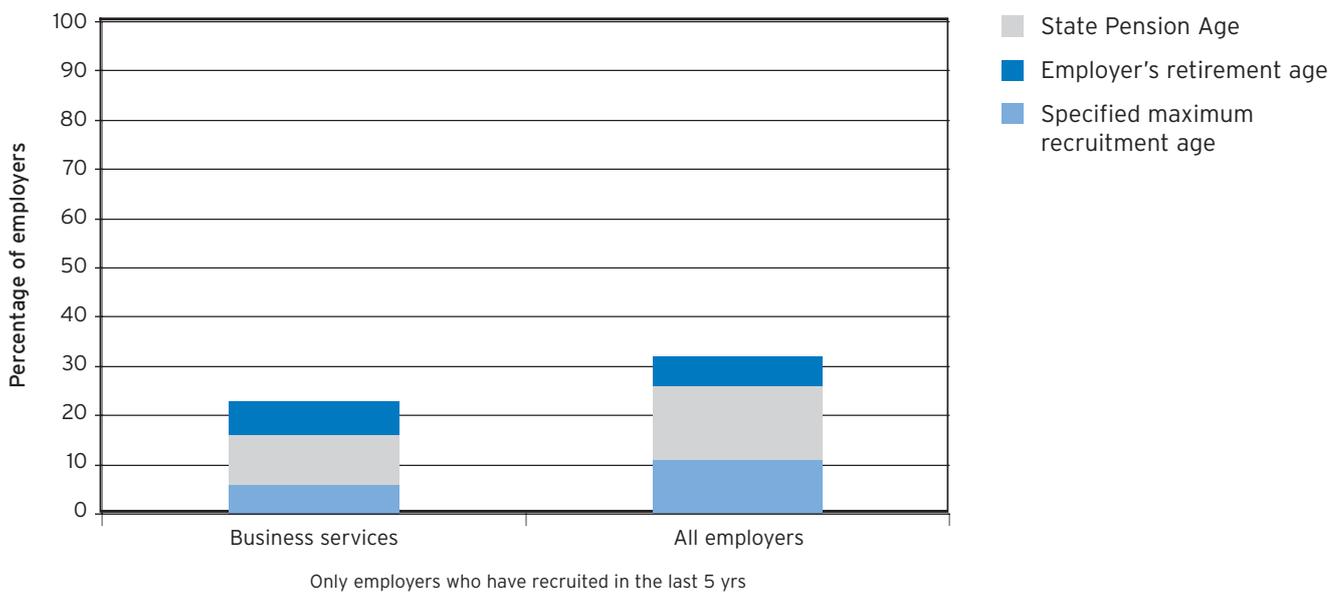
⁸ See also "maximum recruitment age".

Qualifications and length of experience are the principal criteria for recruitment in the sector. The former will be lawful, provided that the qualifications are relevant to the role. The latter is hazardous, since length of service discriminates against younger applicants, and is a proxy for capabilities which would be better assessed more directly. On the other hand, business services firms are less likely than others to set maximum recruitment ages (Fig 2), which will be unlawful until 6 months before the firm's retirement age, and are more willing to

consider applications from people who are either above the company retirement age or State Pension Age.

Nearly one half of firms gather information on candidates' age and provides it to shortlisting and interviewing staff, which is hazardous since it increases the risk of age discrimination. This is particularly common in firms employing fewer than 20 people (Fig 3). However, age is less likely to feature in either selection or starting salary decisions in business services, and maximum recruitment ages are rarer.

Figure 2 Employers who will not consider applicants above a specified age:



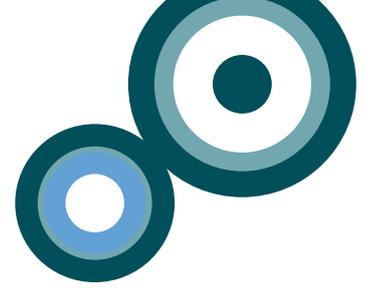


Figure 3 Age information given to short-listers and interviewers

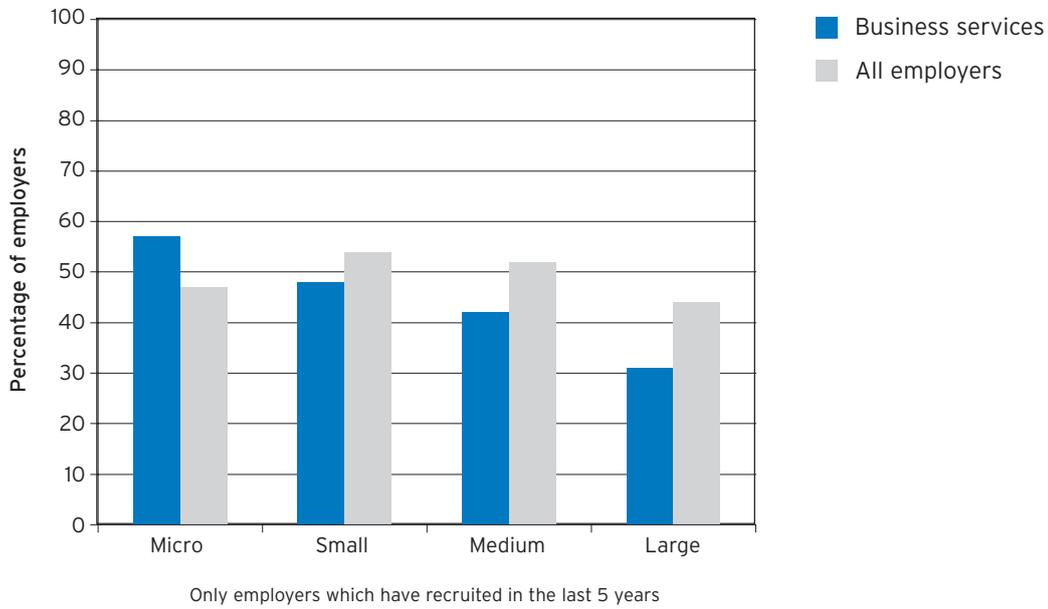
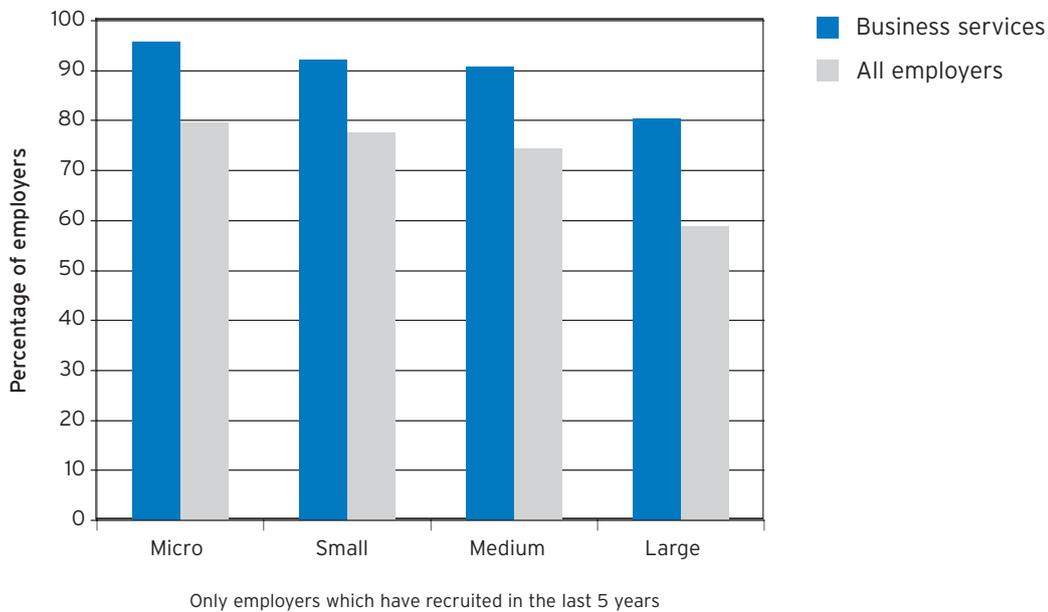


Figure 4 Employers who ask for CVs



5. Pay and conditions

The key principle in setting pay and conditions should be fairness. Where individuals are treated differently, this should be on the basis of a different contribution or skill, not on age, or on a factor which is a proxy for age (like years of service). This applies to people of all ages, and those over an employer's normal retirement age are equally protected by the law⁹.

The Regulations do, however, allow different treatment where this can be "objectively justified" as a "proportionate" way of achieving "a legitimate business purpose". Rewarding long service can, for example, be justified if it can be shown to benefit the business by increasing staff retention, and the sums involved are reasonable¹⁰.

The table shows the most common areas of hazardous practice in the business services sector.

Table 2

Pay and Conditions	Comment	% of organisations reporting in business services	% of organisations reporting, all sectors
Starting salary takes experience into consideration	Potentially discriminatory, since experience relates indirectly to age, and does not directly measure competence.	71	58
Annual leave entitlement is based on length of service	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 44% of all firms but 58% of all employees).	41	44
Incremental pay scales are used	Unlawful if scale covers more than 5 years (which occurs in 5% of all firms), unless it can be objectively justified.	25	36
Long service awards	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 33% of all firms but 54% of all employees).	23	33
Starting salary is dependent on age	Unlawful	13	13
Selection for training depends on period to retirement	Potentially indirectly discriminatory (7% of all firms set a limit of more than 1 year). Objective justification is possible in terms of business benefits such as the cost set against predicted return.	6	8
A maximum age is set for eligibility for sick pay	Unlawful	5	6
Separate youth rates of pay	Only lawful in specific circumstances relating to the National Minimum Wage or Apprenticeships.	4	11

⁹ The upper age limit for unfair dismissal claims is being lifted under the new regulations, and employees over their firm's retirement age will have full protection against discrimination.

¹⁰ This is a complex area. Advice is available on the ACAS website (see "Further Information" below).

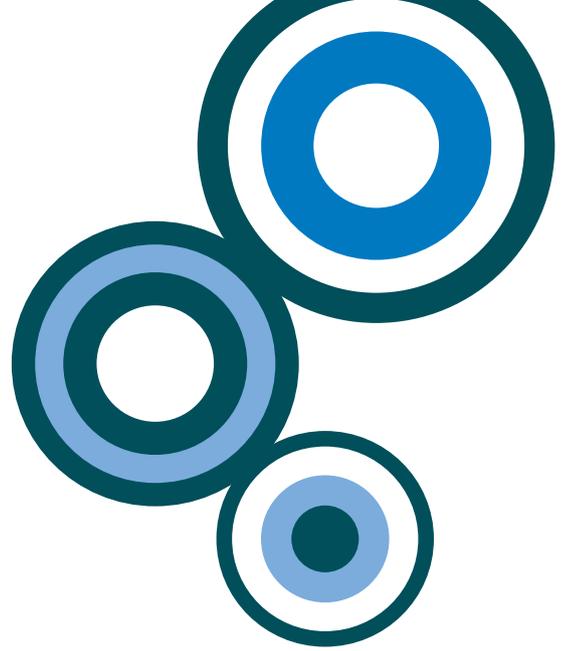
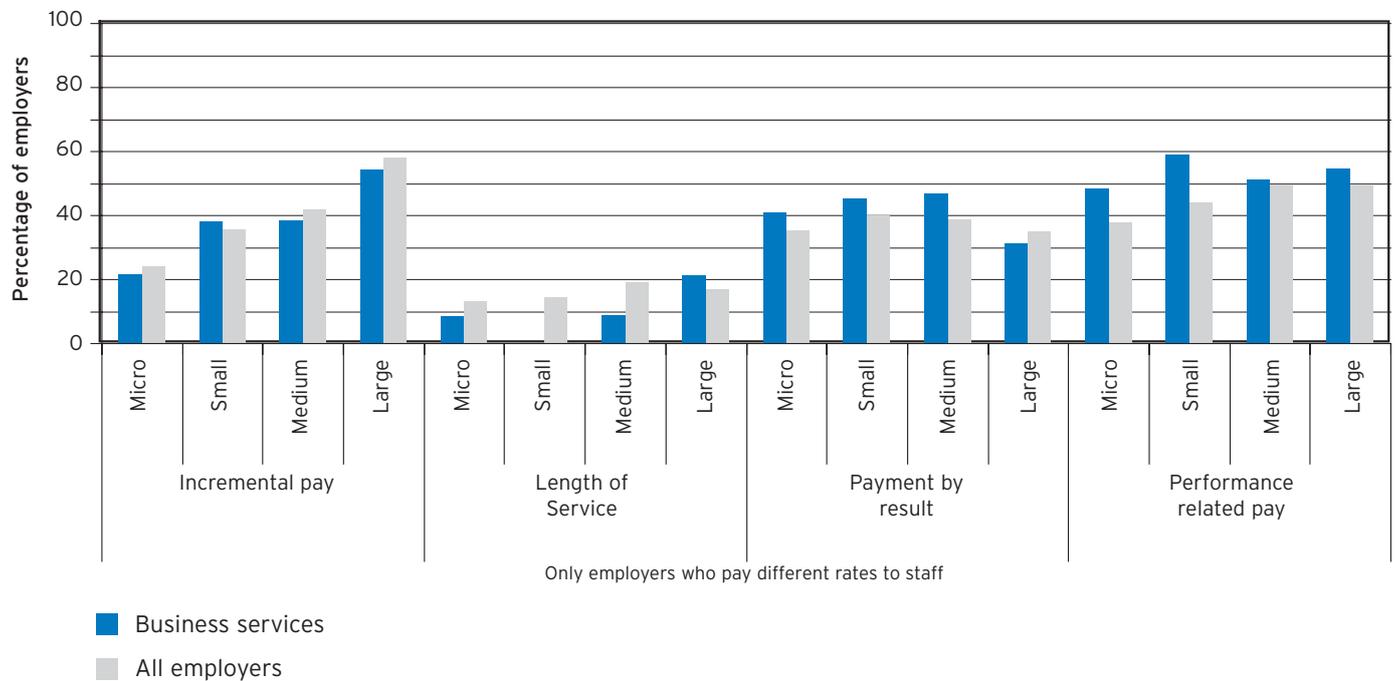


Figure 5 How pay is determined



The principal hazardous practices in the sector involve the use of experience to set starting pay, since this correlates with age. However, compared with other sectors, incremental scales of over five years and length of service bonuses, which are hazardous, are relatively rare; and where incremental scales exist they rarely extend beyond the five year span allowed under the regulations (Fig 5).

Business services firms are more likely to use objective measures of output or performance related pay than other employers. These are less hazardous, provided that the criteria for assessing performance are not themselves age biased.

6. Retirement and redundancy

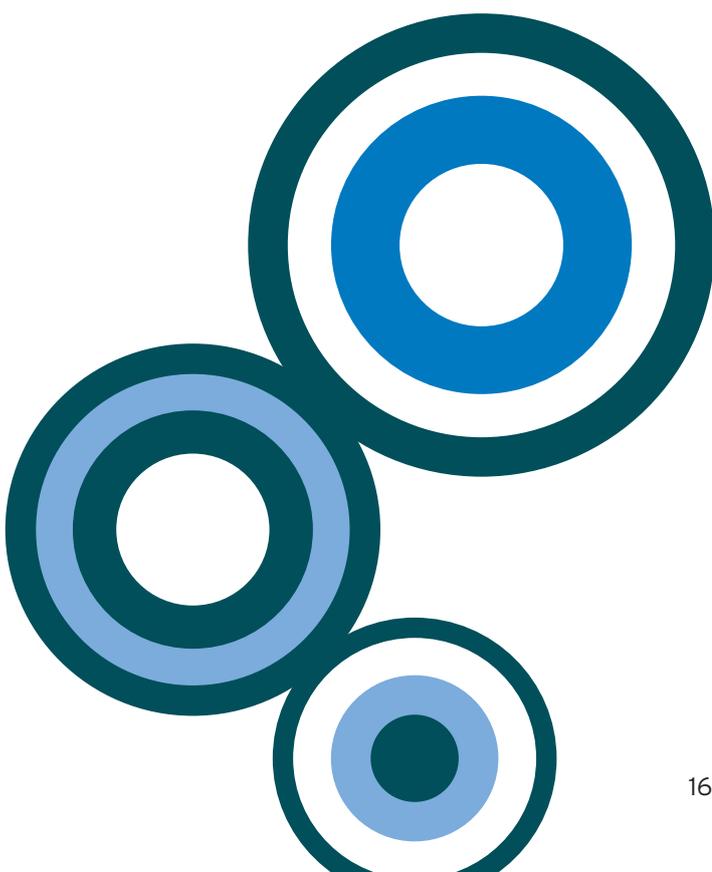
The Age Regulations introduce a new national Default Retirement Age of 65 for both men and women. An employer can lawfully set a retirement age at 65 or above, but can only set a lower retirement age if there is an objective justification (which is expected to be very rare, since age itself is rarely a qualification for a job). Whatever retirement age the firm adopts, the employer will be required to give individuals formal advance notice of their retirement date, and must consider requests to stay on after that.

The key principle here is that, up to the firm's retirement age, exit from the firm through either retirement or redundancy should be based on individual capability and contribution, and personal preference, not on age.

In relation to redundancy and unfair dismissal, the Regulations extend the same rights to all employees, whatever their age, removing the previous age limits. Statutory redundancy entitlements remain unchanged. An employer can use age or length of service to enhance redundancy payments, but only in accordance with the rules specified in the Age Regulations.

In this area, the greatest hazards concern the setting of compulsory retirement ages and the use of age in selection for redundancy or setting levels of redundancy pay.

Table 3 shows the most common areas of hazardous practice in the business services sector.



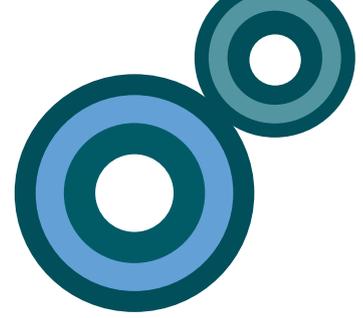


Table 3

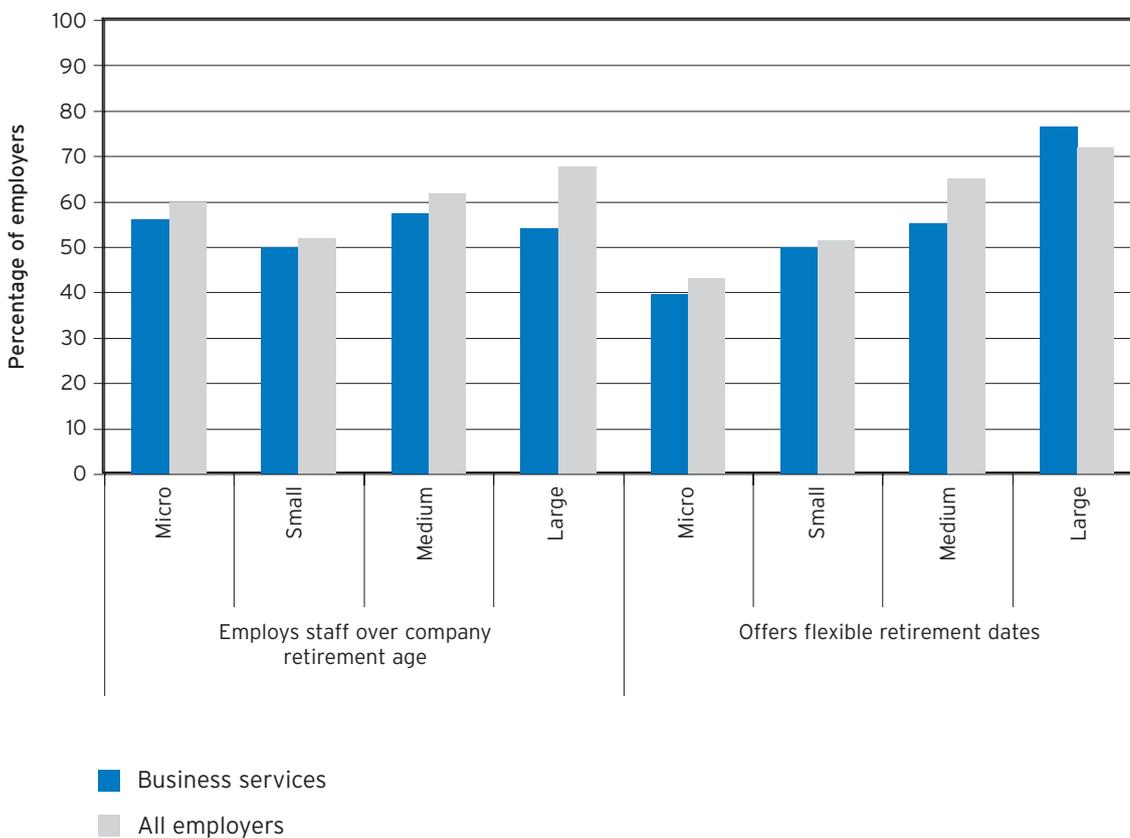
Retirement and Redundancy	Comment	% of organisations reporting in business services	% of organisations reporting, all sectors
Redundancy decisions based on years of service	This discriminates indirectly since longer service correlates with age.	49	49
Compulsory retirement ages	Unlawful if below 65 (which affects 6% of all employers), unless it can be objectively justified. 50% of the UK workforce is affected by compulsory retirement ages (because these are more common in large firms). In most cases the fixed age is 65, which will remain lawful, although employers must consider requests to stay on.	32	37
Compulsory redundancy decisions are based on "last in first out"	Likely to discriminate indirectly against younger employees.	25	28
Level of redundancy pay based on length of service	Can be indirectly discriminatory against younger employees. Length of service is used for compulsory redundancy decisions by 27% of all firms but affects 38% of all employees. For voluntary redundancy it is used by 23% of all firms but affects 34% of all employees.	23 compulsory 21 voluntary	27 compulsory 23 voluntary
Level of redundancy pay is affected by age	Unlawful. Affects only 10% of all firms, but 17% of all employees (because it is more often used in larger firms).	9 compulsory 8 voluntary	10 compulsory 9 voluntary
Age is used in selection for redundancy	Unlawful. The decision must be based on requirements of job and competence of staff, or positive action to maintain an age balance.	9 compulsory 3 voluntary	14 compulsory 5 voluntary
Redundancy decision based on current salary	Potentially discriminatory since salary levels generally correlate with age.	3	7

Half of all firms in the sector use length of service in selecting for redundancy, which is hazardous, since it correlates with age.

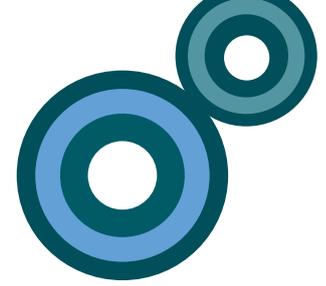
Business services firms are as likely as other employers to allow employees to stay in work past normal retirement age, either for business or personal reasons, although the large and medium firms report little post 65 employment

in practice. This suggests that there may be a common career pattern in this sector of movement from employment in large organisations to small ones, self employment or freelance work in later working life, since the Labour Force Survey shows 96,000 over 65 workers in this sector (far more than in any other sector)¹¹.

Figure 6 Approaches to retirement



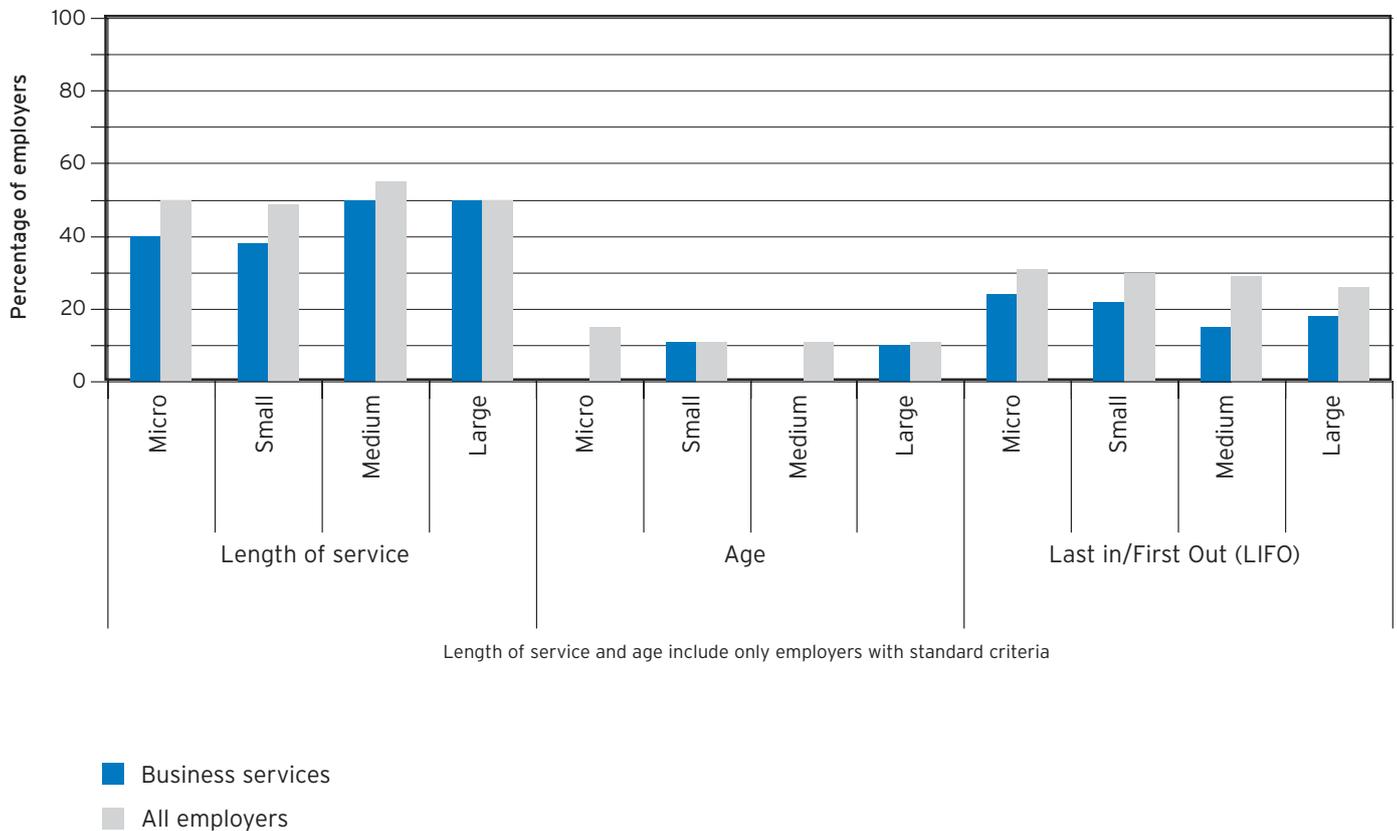
¹¹ The DWP/DTI survey excluded firms employing fewer than 5 people, so comparable data on these is not available



When selecting individuals for compulsory redundancy, business services firms are less likely to use age or “last in/first out”, both of which are hazardous, but larger business services firms are as likely as large firms in other sectors to use length of service as a selection criterion. This is hazardous, since length of service is likely to correlate with age.

Business services firms are less likely to use age as a factor when enhancing pay for either voluntary or compulsory redundancy.

Figure 7 Selection criteria for compulsory redundancy



7. Management

There are a variety of management practices which can reduce the risk of legal disputes under the Age Regulations. Table 4 identifies the

commonest ones, and shows what proportion of firms in the business services sector, and the economy in general, use them at present.

Table 4

Management and training	Comment	% of organisations reporting in business services	% of organisations reporting, all sectors
Equal opportunities policy	Having a policy makes expectations clear to managers and staff, and makes monitoring easier.	69	72
	Equal opportunities policy explicitly mentions age.	52	56
	Policy implementation by age is monitored (only those with age policies).	44	49
"Age blind" recruitment practices	Removing dates of birth and age data from applications before they are considered by selectors reduces the risk of discrimination (although training recruiters is also important). Some firms collect this information on equal opportunities monitoring forms which are removed before forms are passed for short listing.	18	43
Providing work related training for all staff	There is a direct relationship between participation in training and staying longer in work.	70	70
Formal performance appraisal	Ensures that employees are clear about objectives, that performance is recognised, and untapped talents are used. This will also be relevant when organisations have to consider formal requests to stay after a firm's retirement age.	76	68
Formal assessment for promotion	Formal assessment increases the chances of promoting the most valuable people, and reduces the risk of discrimination. (4% of all firms currently have age related criteria which will be unlawful).	34	37
Flexible working	Many employees, especially those with childcare or eldercare responsibilities, and those approaching retirement would like to work part-time or flexibly. Offering flexible working improves retention and motivation of key staff.	77 For childcare 80 For pre-retirement 67 For eldercare 53 For any reason	82 For childcare 78 For pre-retirement 74 For eldercare 51 For any reason
Flexible retirement ages	Flexible retirement allows individuals to work longer and employers to continue to make use of skills and expertise.	46 offer to all staff 3 offer to some staff	50 offer to all staff 4 offer to some staff

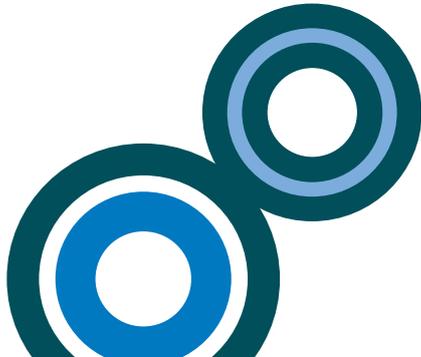
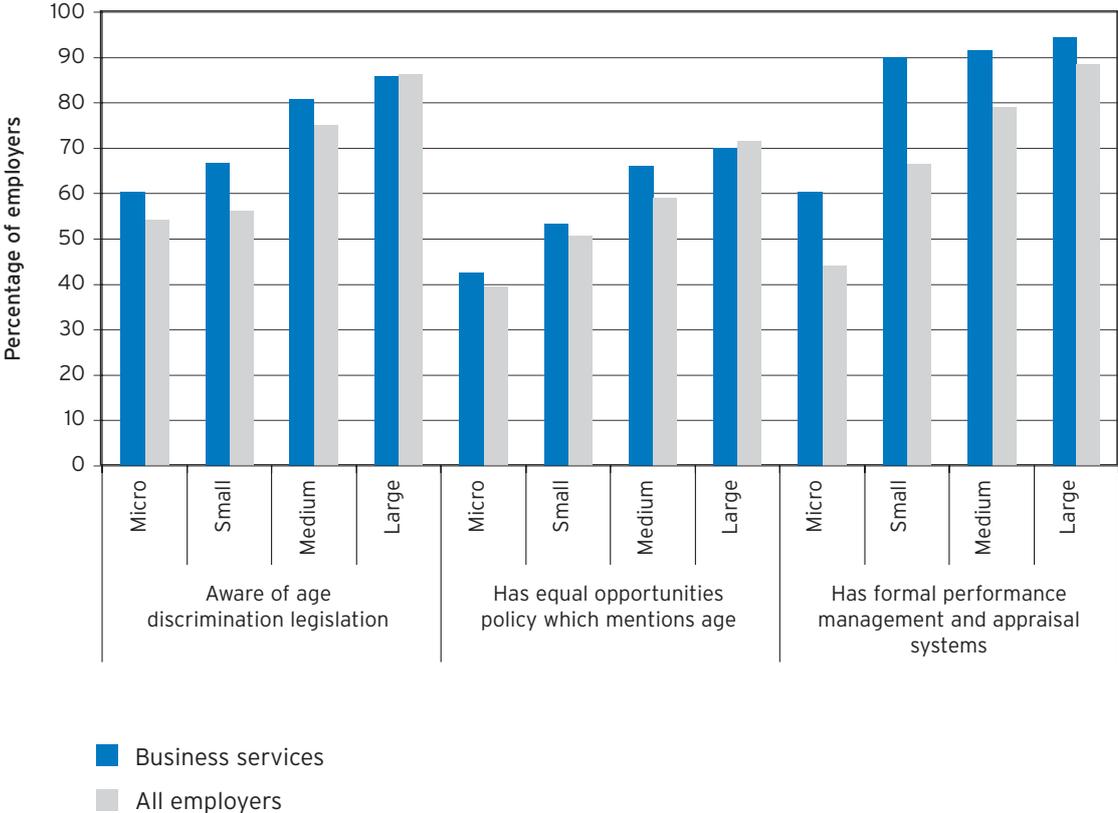
Business services firms are generally better prepared for the legislation than firms in other sectors. They are more likely to be aware of the Age Regulations than employers in general and small firms in particular are more likely than other employers to have appraisal and performance management systems, which can help ensure that age discrimination does not take place.

Most business services firms have equal opportunities policies which mention age, but only a quarter of smaller firms, and half of larger ones monitor HR policies for age bias.

Large business services firms are less likely than other large employers to offer training to employees, and a small but significant group of large business firms (5%) use age as a factor in choosing candidates for training, which will be unlawful.

Business services firms are slightly less likely to be flexible about retirement than firms in general. However, the national data on employment over 65 suggests that a high proportion of people in this sector remain in work after “retirement” by becoming self employed or freelance.

Figure 8 Prepared for age discrimination regulations



8. Managing age in business services: discussion questions

The following questions are designed to help you, as an employer in the business services sector, to plan how you will respond to an ageing workforce and the Age Regulations:

1. How concerned are you about **skills gaps and shortages** in your sector, and do you believe current labour market predictions about this?
2. Do you think that a **different age mix** in the workforce could help overcome these?
3. Do people generally in your sector **have strong views about appropriate age ranges for particular jobs** which would limit the opportunity to change the age mix?
4. Is your **ability to change pay and conditions** limited by national agreements, or regulations like “licence to practice” rules? How can you tackle this?
5. Policymakers sometimes assume that all firms in a “sector” are alike. In your sector are there particular **kinds of firm which are very different** in their approach to age management?
6. How easy is it to **extend working lives** in your sector? Does this apply more to some groups of staff than others?
7. Are there **traditional career patterns** in your sector which might change if working lives became longer (e.g. “downshifting” or mentoring roles for older workers)?
8. Older workers often prefer **to work part-time or on a flexible basis**. How easy is it to do this in your sector, and what might be the constraints?
9. Are there jobs where **physical demand or levels of stress** make extending working life more difficult? Are there ways of overcoming these?
10. Is it difficult to **recruit older people** in your sector? After what age? Can training help?
11. **Small firms** in general have less formal management structures and procedures. Will this make overcoming age discrimination easier or more difficult for them?
12. A high proportion of people working after 65 are **self employed**, what role does this play in your sector?
13. What are the implications of an ageing workforce for supply and demand for **training** in your sector? (given that those who train generally stay in work longer)
14. How difficult will it be to **raise awareness among employers** in your sector about the ageing workforce, and about the age discrimination regulations, especially among small firms, who are more difficult to contact?
15. Are there **lessons about managing an age diverse workforce** which your sector could offer to others?

CROW would welcome any comments on these questions (or any others) as a contribution to its final research report for DWP¹².

¹² See “Further Information” below.

9. About this paper

This paper was written by the Centre of Research into the Older Workforce on behalf of the Department for Work and Pensions. It draws on two sources:

- The background material on the sector comes mainly from the Sector Skills Development Agency's Research Matrix database, which brings together a large quantity of information about all sectors from a variety of sources, including the Labour Force Survey, the National Employer Skills Survey, the Annual Business Inquiry, and the Inter Departmental Business Register¹³.
- The material on current age management practice in the sector is based on data gathered by the National Institute for Economic and Social Research (NIESR) and the British Market Research Bureau (BMRB), in a national survey for the DWP and DTI in Spring 2005¹⁴. They interviewed the most senior person responsible for HR issues in 2084 firms employing more than five people in England, Scotland and Wales. Each interviewee was asked 160 questions about aspects of age management, including recruitment, retirement, benefits, pensions, management practices and discrimination. CROW carried out a separate analysis of this data to produce the current paper. The sample included 246 firms in the business services sector.

The DWP/DTI evidence is the best available on current employer age management practices across all sectors, but it should be interpreted with some caution since:

- it probably underestimates the frequency of some practices (since firms with a positive record are more likely to respond to such surveys; employers may be reluctant to admit to what they suspect is "bad practice"; and the senior managers who replied to the survey may be unaware of poor practice by some line managers);
- In some cases the number of employers responding is relatively small, and may not be fully representative of particular sizes of firms in that sector;
- Since some practices are more common in large firms, the behaviour of a small proportion of firms may affect a much larger proportion of workers;
- Although some hazardous practices are rare, the firms involved will still be open to legal challenge if they do not make appropriate changes.

We have not commented on pensions issues since pensions provisions are exempt from the regulations¹⁵.

All views expressed in this paper are those of the authors. They are not intended to be authoritative statements of the law, and do not represent the views of the Department for Work and Pensions or any other Government Department.

¹³ Details on the Skills for Business website at www.ssdamatrix.org.uk/

¹⁴ See "Further Information" below.

¹⁵ DTI's guidance *The impact of age regulations on pensions*, explains the implications of the legislation for pensions in detail.

10. Responding to this paper

This paper is intended for consultation with employers, sector bodies and other interested organisations and individuals during 2006. Responses will contribute to a larger report on sectoral approaches to age management, which DWP plans to publish in 2007.

If you would like to comment on any aspect of this paper, or on age management in the business services sector (or on age management more generally), please write directly to the Centre for Research into the Older Workforce (CROW). We would be particularly interested in responses which:

- add relevant information on the shape of the sector and age management issues and practices within it
- clarify the reasons for particular features (e.g. why one part of the sector has very different practices from others, or why business services is different from other sectors)

- identify examples of good practice which might be disseminated to other employers or sectors
- identify questions which need further investigation

Responses and comments on the content or issues raised by this paper should be sent by email to: crow@niace.org.uk

Or by post to:

Age Legislation Research
Centre for Research into the Older Workforce
NIACE
21 De Montfort Street
Leicester
LE1 7GE

11. Further information

Further information on age related issues, policies, practices, and legislation can be found at www.agepositive.gov.uk

You can request further copies of this paper, or contact the Government's Age Positive team at: agepositive@dwp.gsi.gov.uk

or write to:

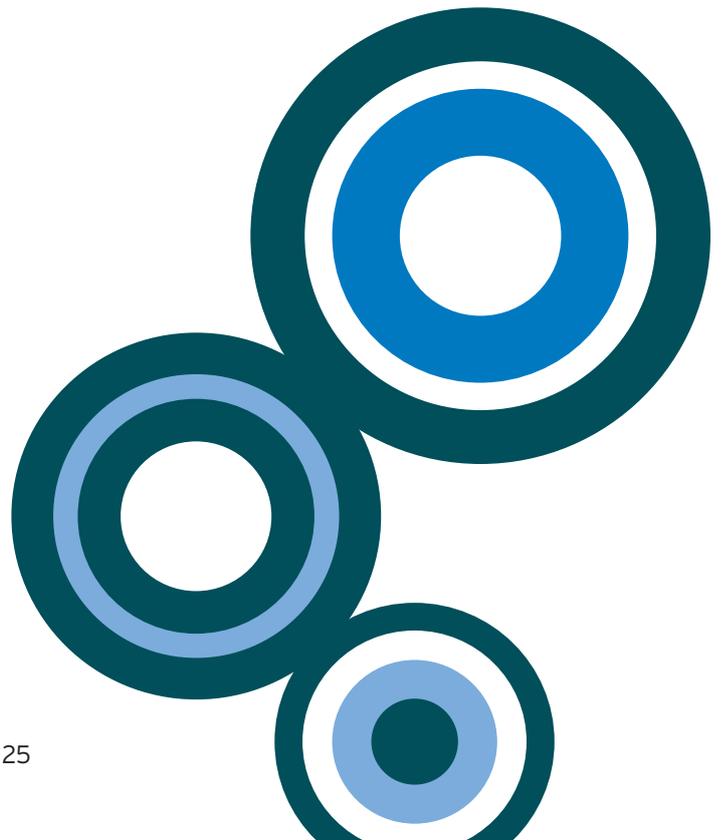
Age Positive Team
Extending Working Life Division
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Moorfoot
Sheffield
S1 4PQ

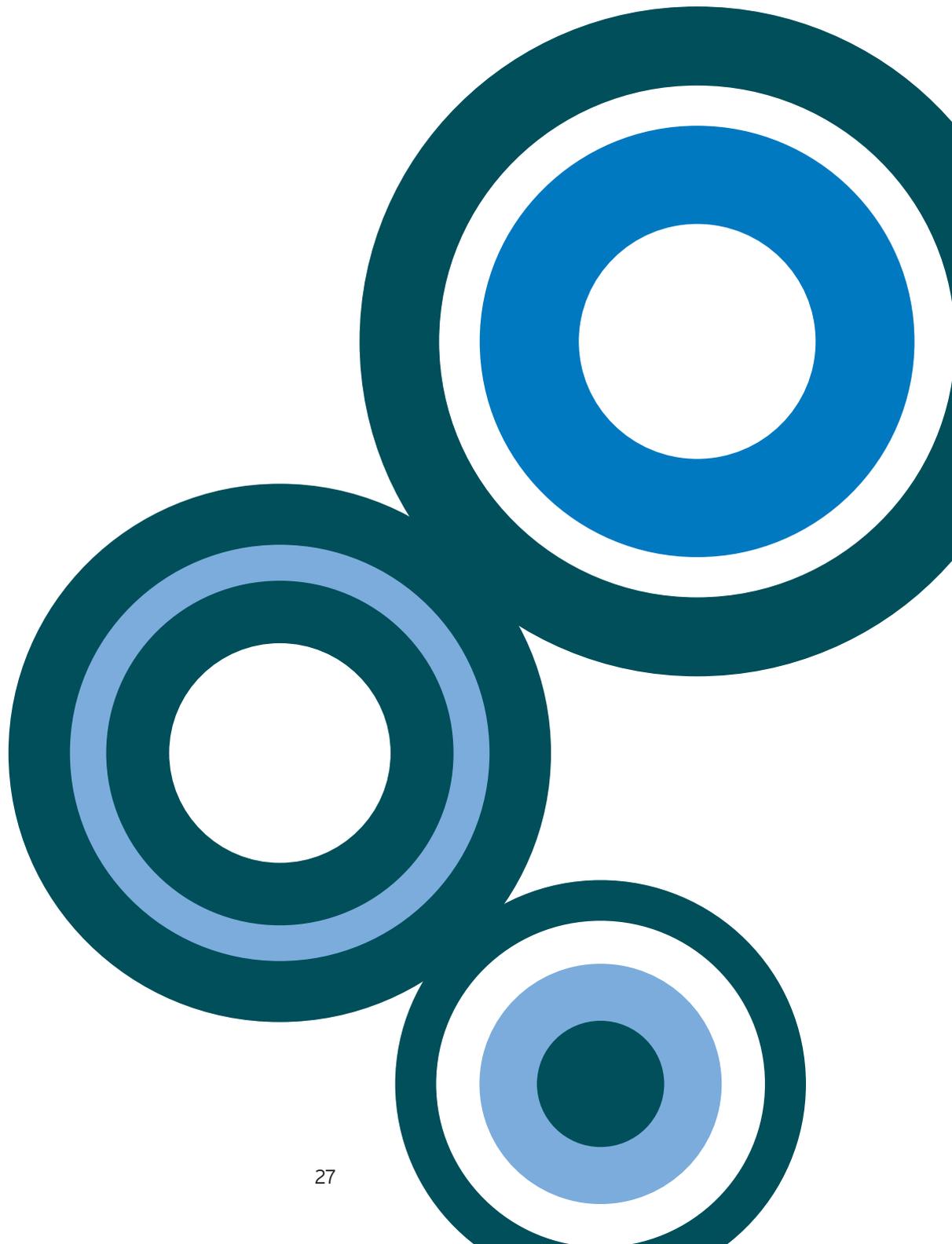
Details of the Age Discrimination Regulations, which will come into force in October 2006, can be found on the DTI's website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

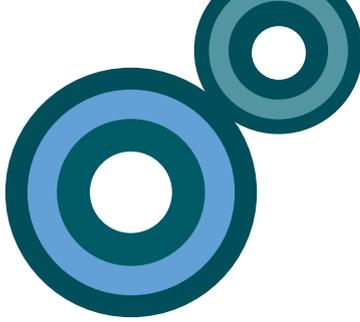
Advice on interpretation and good practice can be found on the ACAS website at: www.acas.gov.uk

The full report of DWP and DTI's joint national survey conducted by NIESR and BMRB which produced the evidence for this report is *Survey of Employers' policies, practices and preferences relating to age* by Metcalf & Meadows (DWP Research Report 325, DTI employment relations research series number 49). The full report is available for download free on the DWP website at: www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep325.pdf

Further information about CROW can be found at: www.niace.org.uk/crow







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Members of the Age Partnership Group, listed below, support and endorse the Be Ready campaign.

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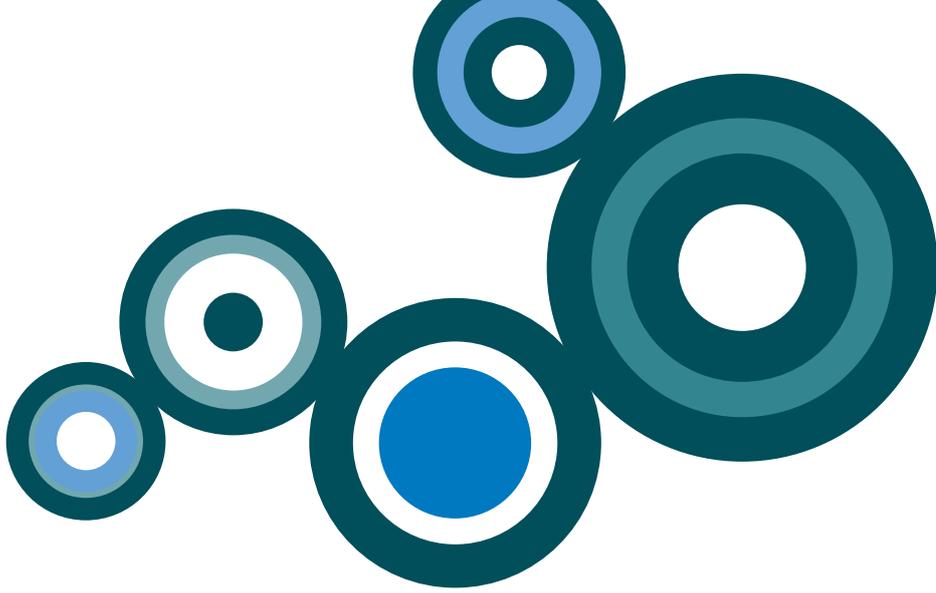
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Managing an ageing workforce in education

A report for employers

By Stephen McNair and Matt Flynn

Produced for the Department
for Work and Pensions
By the Centre for Research
into the Older Workforce

age**partnership**group
Targeting Employers®





Age Partnership Group (APG)

This research is one of a number of projects commissioned by the DWP on behalf of the APG as part of the National Guidance Campaign (NGC).

The APG was formed in 2002 and consists of a number of national organisations who represent different aspects of employers needs, for example, small business representatives, trade unions, HR and Personnel managers, local government, other government departments, accountancy, insurance and training organisations. There are separate groups representing England, Scotland and Wales.

The NGC aims to raise employers' awareness of, and ability to adopt, practical information and guidance on age diverse employment practices. This includes flexible employment and retirement opportunities in order to increase the recruitment, selection, promotion, training and retention of older employees prior to the implementation of age legislation in October 2006.

You can view the Age Partnership Group website at www.agepositive.gov.uk/agepartnershipgroup

Legislation

In March 2006, the Employment Equality (Age) Regulations 2006 were published. The regulations are the last major stage of the European Employment Directive and will come into effect on the 1st October 2006.

The regulations prohibit age discrimination in employment and vocational training. They apply to individuals of all ages in work, seeking work or looking to access vocational training and to all employers, and to all providers of vocational training and vocational guidance (including further and higher educational institutions).

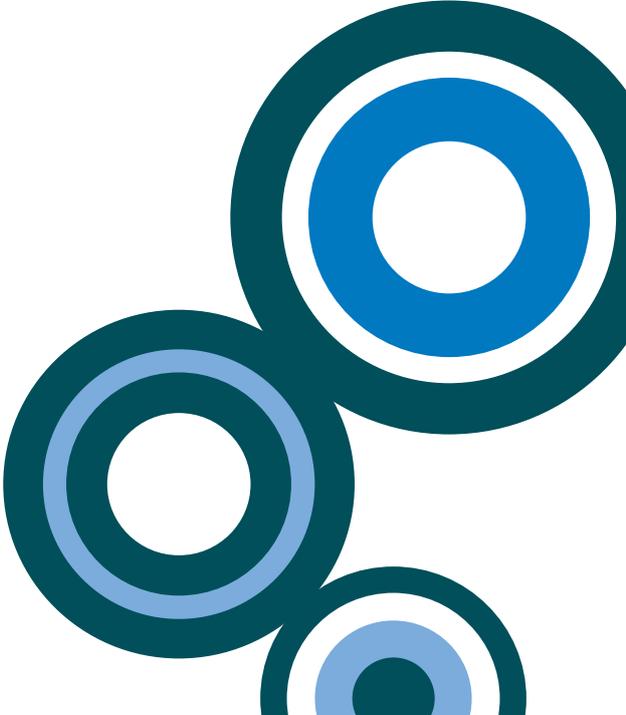
The regulations can be viewed on the Department of Trade and Industry website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Disclaimer

This report has been commissioned to provide information only. Responsibility for the views expressed in this report rests solely with the authors. The members of the Age Partnership Group (APG) and the Department for Work and Pensions (DWP) do not accept responsibility for the views of the authors.

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Introduction

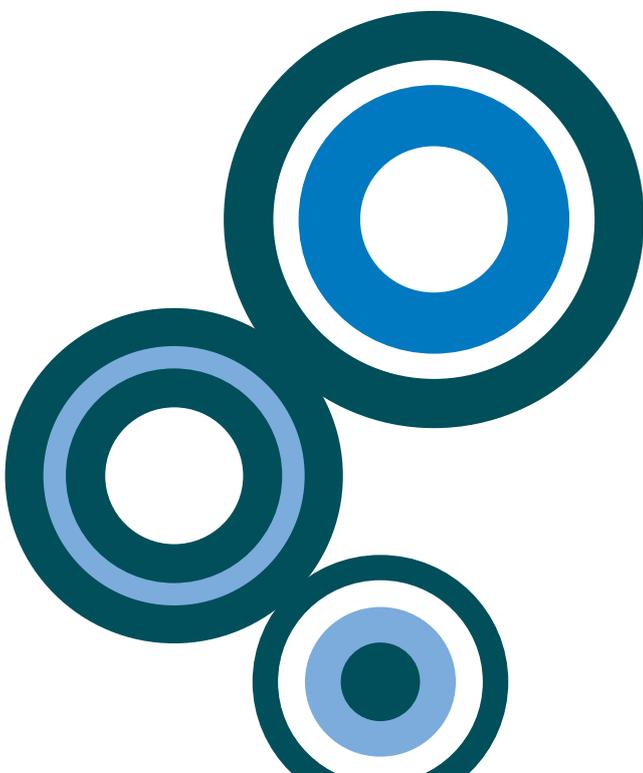
This report is about how organisations in the education sector are managing an ageing workforce. It has been written for the Department for Work and Pensions (DWP) by the Centre for Research into the Older Workforce (CROW) to help employers to make better use of older workers. It also helps to raise awareness of the new Employment Equality (Age) Regulations 2006, which become law in October 2006, and prohibit age discrimination in work or training against people of any age.

Workforce ageing presents a growing challenge to most employers. Birthrates have been falling for many years, and in the next few years the numbers retiring will outnumber young people entering the labour market. The government believes that the resulting skills gaps and labour shortages in many industries can be reduced if employers can find ways of making better use of older workers, and encourage people to stay in work longer.

However, every industry has its particular features, and this report outlines the special issues affecting the education sector, based on a large national survey of employers. It highlights employment practices in the sector which will be hazardous under the Age Regulations, and aims to stimulate discussion and improved practice in organisations.

This report is not intended to be an authoritative statement on the age discrimination law itself. Details of how to obtain the Regulations, and advice about them, can be found at the end of the report. However, while the Regulations make some activities unlawful, it is for the Courts and Employment Tribunals to interpret this in specific cases. The term “hazardous” is therefore used in this paper to describe activities which might be ruled unlawful if a case is brought. We suggest that employers need to review their practice in these areas.

During 2006, CROW will explore these issues in more depth through case studies of organisations in seven sectors, and DWP plans to publish the resulting Research Report in 2007.



1. Summary: key age issues for employers in Education

The Education sector has a very highly qualified workforce, with a large proportion of female and part-time workers. Although many staff are over 55, the numbers staying after 65 are relatively low. This suggests that there may be potential for filling skills gaps by improving retention after normal retirement age.

In general Education has more positive policies and practices in relation to age management than most other sectors, and few employers report practices which are likely to be hazardous under the Age Regulations. The age management issues for this sector are more a matter of making better use of an age diverse workforce, and updating national agreements, than overcoming direct discrimination.

Common hazardous practices in Education

Common practices in this sector which may need review if employers are to avoid breaking the Age Regulations include:

- **using formal qualifications in selecting staff.** This will not be hazardous, provided the qualifications can be shown to be relevant, and that equivalent qualifications are accepted for applicants of different ages.
- **providing age information to shortlisting and interviewing staff.** There are legitimate reasons why employers would request dates of birth from job applicants (for example, to monitor equal opportunities), but passing this information to staff who are responsible for selection increases the risk of age discrimination in recruitment.
- **long incremental pay scales.** The Age Regulations permit incremental scales for up to 5 years. Scales which extend beyond this, which are common in Education, will be unlawful unless a clear and proportionate business benefit can be demonstrated.

Unlawful practices in Education

The following practices are less common, but unlawful, and organisations which use them will need to make changes if they are to remain within the law.

- 9% of firms set a **maximum age for eligibility for sick pay.**
- 11% of organisations **use age to set redundancy pay levels** (unlawful unless they follow the strict rules laid down in the Age Regulations).
- 41% of organisations **set maximum recruitment ages** (unlawful below the default retirement age of 65 without objective justification).

2. The shape of the education sector

The nature of the age management issues facing a sector depends on factors like the average size of organisations, the age and skills profile of the workforce, and future expectations of growth or contraction. This section outlines this context for the education sector.

The education sector¹ employs 2.5 million people (8% of the national workforce) in 13,000 establishments. These include primary and secondary schools, further and higher education institutions, adult education and private training agencies. A large proportion (though not all) of this work is in the public sector, and subject to direct or indirect Government regulation. The sector has a very high proportion of professional staff, with twice the national average proportion of graduates.

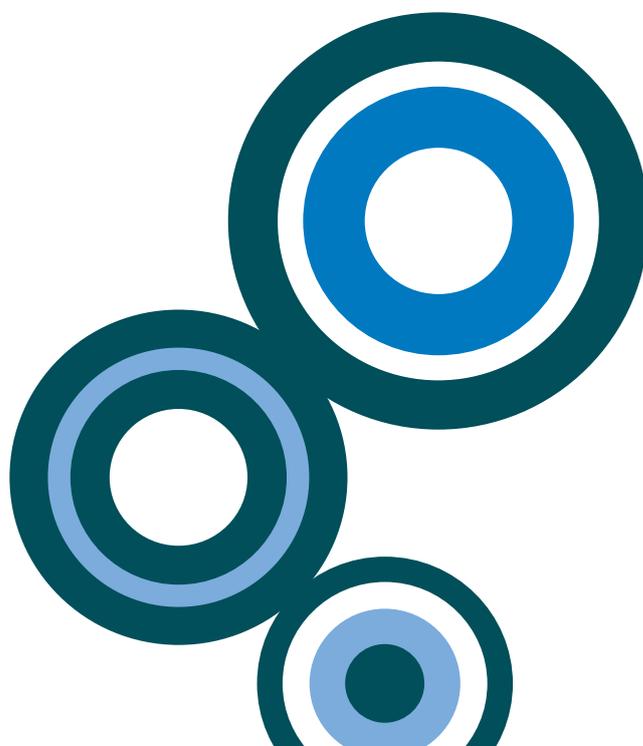
Those parts of the sector outside primary and secondary schools are supported by the Lifelong Learning Skills Council, while some comparable planning and support provisions are made through a range of agencies, including national representative bodies for individual sub-sectors (higher education, schools, etc.), Government departments, professional, funding, quality and regulatory bodies.

The number of establishments is growing, as is employment in the sector, and the workforce age profile creates a relatively high demand for new recruits to replace retirees. The sector is predicted to need an additional 1.14 million employees by 2014 (equivalent to 46% of the current workforce).

Establishments in Education are much larger than organisations in the economy as a whole, with only 38% employing fewer than 11 people, and 20% employing more than 50. They are much more likely to have formal planning processes, training plans, and training budgets. Only 6% have no formal planning processes at all.

Education is an aging sector, with nearly half of all employees in the sector over 45, although numbers remaining after 65 are relatively low (Fig 1). Three quarters of employees are women, half are graduates (double the national average), and over a third work part-time.

¹ The definition of the sector used in this report is the ONS Standard Industrial Classification Code 80



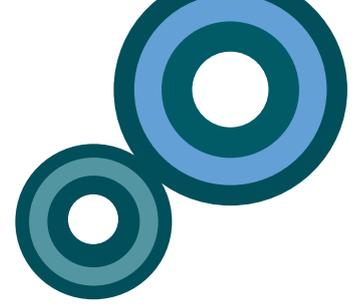
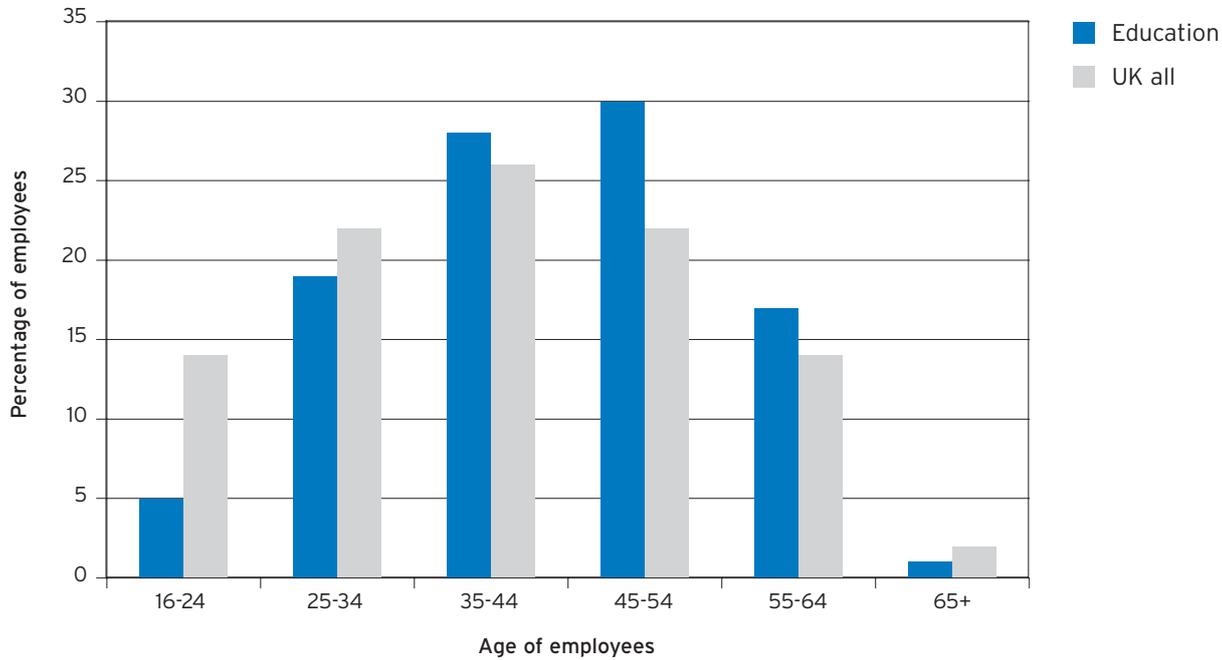


Figure 1 Workforce age profile



Levels of vacancies are high, with over a quarter of establishments reporting vacancies among both professionals and personal services workers. However, levels of skills shortage, hard to fill vacancies and skills gaps are not significantly different from the workforce as a whole.

Participation in training, which is highly regulated, is very high in the sector, although reported figures may be distorted by a greater awareness of learning and training among professional educators, who may adopt a broader definition of “training” than is common elsewhere.

3. Age discrimination in employment

Age discrimination at work is common. It can affect people of any age, but is particularly likely to involve older people, and more than one in five workers over the age of 50 say that they have experienced it either when applying for jobs or in the workplace². In countries where age discrimination law is already in force, it is the commonest cause of discrimination cases in the courts.

From October 2006, it will be unlawful for any employer in the United Kingdom to discriminate against or harass anyone on grounds of age, directly or indirectly, in relation to either employment or vocational training. This will cover arrangements for recruitment and promotion, pay and conditions, education and training, and retirement and redundancy.

There are exceptions: in relation to retirement, where it will be lawful to make an employee retire at a given age, provided this is not below 65 (for men and women); and where an existing statutory provision exists (like the Minimum Wage Regulations). An employer may also be able to justify discrimination if it is designed to correct an age imbalance in his workforce; if there is a legitimate business reason (and the discrimination is proportionate); or if there is an objective justification (likely to be very rare). The Regulations, and advice on their interpretation, can be found on the DTI and ACAS websites³.

Some features of age discrimination are common to most employers⁴.

- Indirect discrimination is more common than direct discrimination. DWP and DTI's joint survey, conducted by the National Institute of Economic and Social Research (NIESR), found few examples of direct discrimination, but one in five employers believe that some jobs are better done by people of particular ages. Where such beliefs exist, discrimination is more likely.
- Discriminatory attitudes are more likely to be found in private sector organisations, and especially small ones⁵, in sectors like manufacturing and construction. These are also the organisations and sectors where there are least likely to be formal procedures and policies to protect against unfair discrimination.
- The most common hazardous practices involve setting age limits on recruitment, especially for those over 50, and using age as a basis for decisions on compulsory retirement and redundancy.
- About half the workforce is covered by a compulsory contractual retirement age. In most cases this is already 65, which is the new "national default retirement age". However, even where organisations plan to retire staff at 65, they will have to give formal notice of retirement dates and seriously consider requests to stay longer.

² Discrimination is difficult to measure precisely, since it is subjective, and affected by levels of public awareness of age issues, and many people regard it as "normal". In a CROW postal survey of workers over 50 in 2004, 20% reported age discrimination. In research by the University of Kent for Age Concern England 29% of people reported experiencing age discrimination (compared to 24% for gender).

³ See "Further Information" at the end of this report.

⁴ Information based on DWP and DTI's joint national survey of employers' policies practices and preferences, conducted by NIESR (see "Further Information"), although because this is new secondary analysis not all figures are directly comparable. Also, for certain policies and practices respondents were asked to answer in respect of their largest occupational group rather than for the workforce as a whole.

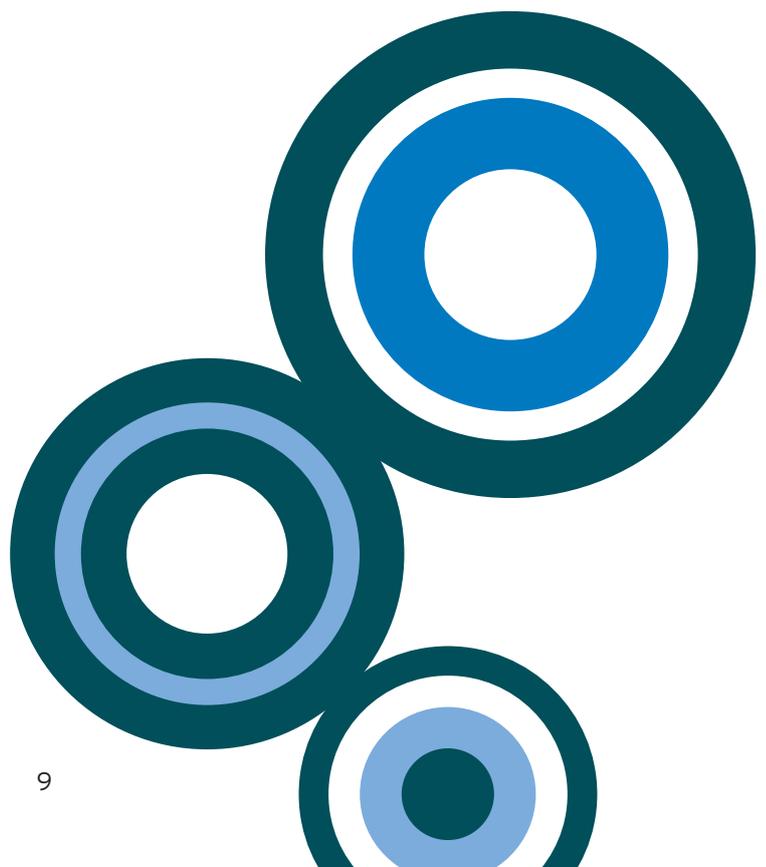
⁵ In this report "micro" organisations have 5-19 employees, "small" employ 20-49, "medium" employ 50-249, and "large" employ 250 or more (the survey excluded organisations employing fewer than 5 employees).

- Public sector and large private sector organisations, are more likely to have formal procedures (like appraisal schemes or equal opportunities policies) to protect against discrimination, especially where a Trades Union is recognised. However, these organisations are also more likely to have long standing formal agreements which include provisions which are hazardous under the Age Regulations, including contractual retirement ages below the new national default retirement age of 65.
- Two occupational groups are particularly at risk from discriminatory practices. These are professional and associate professional/ technician staff, both of whom are particularly likely to be exposed to discrimination in setting pay, long incremental pay scales, and access to training.

The tables in this paper identify hazardous practices identified in DWP/DTI's employer survey, indicating those which are most common among employers in Education, and among employers in general.

Some of the provisions in the Regulations allow an employer to claim an "objective justification" for a practice which would otherwise be unlawful. Such justifications require the employer to be able to show that his or her action is a proportionate means of achieving a legitimate aim. It will be for Employment Tribunals and the County Courts to rule on what is justifiable under these provisions.

The Regulations also allow some practices, like incremental scales, where pay or terms of employment improve with length of service, but only up to five years, beyond which they will need to be objectively justified.



4. Recruitment and promotion

The key principle in all selection for employment or promotion is that decisions should be fair, and based on the individual's competence for the job, and not on arbitrary factors like age (or gender or race etc).

The research evidence shows that work performance in most jobs does not decline with age before the late 60s, provided individuals are healthy, motivated and kept up to date.

Across the workforce as a whole, the commonest hazardous practices in recruitment and

promotion involve excluding applicants, either directly (by specifying ages), or indirectly (e.g. by specifying years of experience, rather than specific capabilities) in advertisements, job descriptions and interview criteria.

Table 1 shows the most common areas of hazardous practice in the education sector (with figures for organisations in general for comparison):



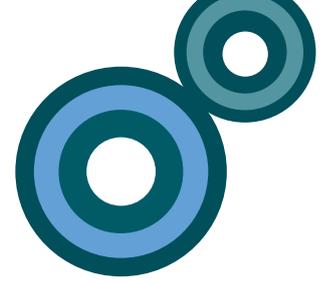


Table 1

Recruitment and promotion	Comment	% of organisations reporting in education	% of organisations reporting in all sectors
Selection criteria specify qualifications	Lawful if the qualification is directly relevant to the job, and equivalent qualifications are accepted for candidates of different ages.	84	60
Selection criteria based on length of work experience of any kind	Indirectly discriminatory. The test must be individual capability, not experience, unless an objective justification can be demonstrated.	61	62
Application forms ask for date of birth/age	Lawful to use for monitoring purposes and conforming to Statutory requirements. Potentially discriminatory. ACAS recommends removing this information (as with other equal opportunities information) before shortlisting.	51	48
Age information is provided to recruiting staff	Increases risk of discrimination.	40	44
Maximum recruitment ages are specified	Unlawful if set more than six months before the company's retirement age unless objectively justified ⁶ .	41	29
Selection decisions are based on remaining period to retirement	Discriminatory unless a clear business justification can be demonstrated ⁷ (like the cost/time required to train, relative to the expected years of work).	23	18
Selection decisions are based on expected length of service, judged by age	Unlawful	5	7
Job advertisements specify age	Unlawful , unless there is a genuine occupational requirement (e.g. a young actor for a young part).	5	6
Age criteria are used directly in recruitment, or particular age ranges are targeted	Unlawful unless required by Statute, or for positive action reasons (e.g. to compensate for the under representation of a particular age group).	3	9

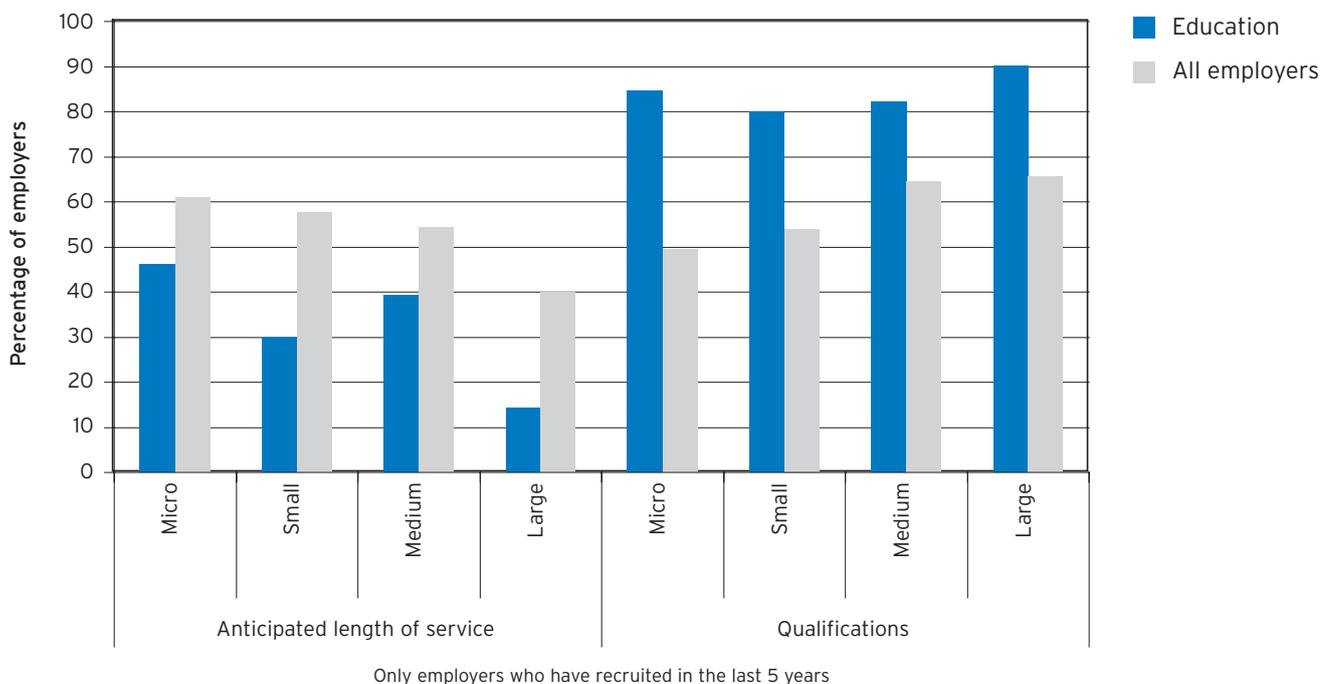
⁶ If the employer does not have a compulsory retirement age, he can set a maximum recruitment age of 64 1/2.

⁷ See also "maximum recruitment age".

Recruitment in education is overwhelmingly based on qualifications (Fig 2) and length of experience. The former is lawful, provided that the qualifications are relevant and proportionate, and equivalent qualifications are accepted from applicants of different ages. The latter is hazardous, since length of experience correlates with age, and is being used as a proxy for capabilities which ought to be assessed directly. On the other hand, few employers take length

of potential service or proximity to retirement into consideration when selecting candidates (and both of these are hazardous). It is also very rare for explicitly age related criteria to be used except in setting maximum recruitment ages, which will be unlawful until 6 months before the employer's retirement age (which in most cases cannot be before the new national default retirement age of 65, for men and women).

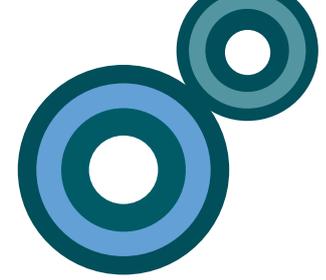
Figure 2 Factors taken into consideration when recruiting



Attitudes to age also appear to be more open, and employers are less likely here than in other sectors to have strong views about appropriate age ranges for particular jobs.



5. Pay and conditions



The key principle in setting pay and conditions should be fairness. Where individuals are treated differently, this should be on the basis of a different contribution or skill, not on age, or on a factor which is a proxy for age (like years of service). This applies to people of all ages, and those over an employer's normal retirement age are equally protected by the law⁸.

The Regulations do, however, allow different treatment where this can be “objectively justified” as a “proportionate” way of achieving “a legitimate business purpose”. Rewarding long service can, for example, be justified if it can be shown to benefit the business by increasing staff retention, and the sums involved are reasonable⁹.

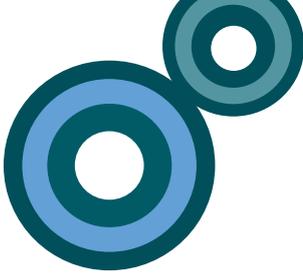
The table shows the most common areas of hazardous practice in the education sector.

Table 2

Pay and Conditions	Comment	% of organisations reporting in Education	% of organisations reporting, all sectors
Incremental pay scales are used	Unlawful if scale covers more than 5 years (which occurs in 5% of all organisations), unless it can be objectively justified.	86	36
Starting salary takes experience into consideration	Potentially discriminatory, since experience relates indirectly to age, and does not directly measure competence.	70	58
Annual leave entitlement is based on length of service	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large organisations (affects 44% of all organisations but 58% of all employees).	46	44
Long service awards	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 33% of all firms but 54% of all employees).	30	33
A maximum age is set for eligibility for sick pay	Unlawful	9	6
Starting salary is dependent on age	Unlawful	7	13
Separate youth rates of pay	Only lawful in specific circumstances relating to the National Minimum Wage or Apprenticeships.	5	11
Selection for training depends on period to retirement	Potentially indirectly discriminatory (7% of all organisations set a limit of more than 1 year). Objective justification is possible in terms of business benefits such as the cost set against predicted return.	5	8

⁸ The upper age limit for unfair dismissal claims is being lifted under the new regulations, and employees over their firm's retirement age will have full protection against discrimination.

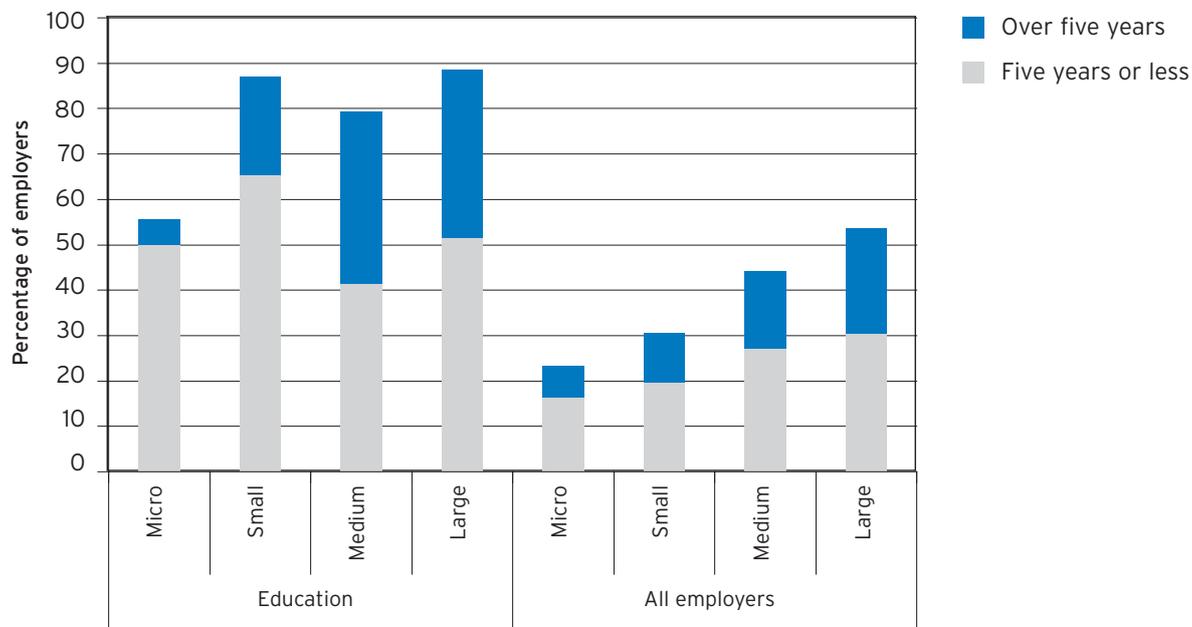
⁹ This is a complex area. Advice is available on the ACAS website (see “Further Information” below).



In most, but not all, educational institutions, pay is determined through collective agreements at the national level. There are two principal features of pay and conditions in this sector that are both potentially hazardous. The first is the use of incremental pay scales (Fig 3), which are only lawful under the regulations if they extend for five years or less (which is often not the case in Education), or can be objectively justified for

business reasons. The second is the basing of annual leave entitlement on years of service, which discriminates against younger staff, and is only lawful provided a clear business benefit, like increasing loyalty, can be demonstrated. However, on the positive side, age is very unlikely to directly influence individuals' pay, and few managers have discretion over starting pay.

Figure 3 Employers who use incremental pay scales



6. Retirement and redundancy

The Age Regulations introduce a new national Default Retirement Age of 65 for both men and women. An employer can lawfully set a retirement age at 65 or above, but can only set a lower retirement age if there is an objective justification (which is expected to be very rare, since age itself is rarely a qualification for a job). Whatever retirement age the organisation adopts, the employer will be required to give individuals formal advance notice of their retirement date, and must consider requests to stay on after that.

The key principle here is that, up to the organisation's retirement age, exit from the organisation through either retirement or redundancy should be based on individual capability and contribution, and personal preference, not on age.

In relation to redundancy and unfair dismissal, the Regulations extend the same rights to all employees, whatever their age, removing the previous age limits. Statutory redundancy entitlements remain unchanged. An employer can use age or length of service to enhance redundancy payments, but only in accordance with the rules specified in the Age Regulations.

In this area, the greatest hazards concern the setting of compulsory retirement ages and the use of age in selection for redundancy or setting levels of redundancy pay.

Table 3 shows the most common areas of hazardous practice in the education sector.

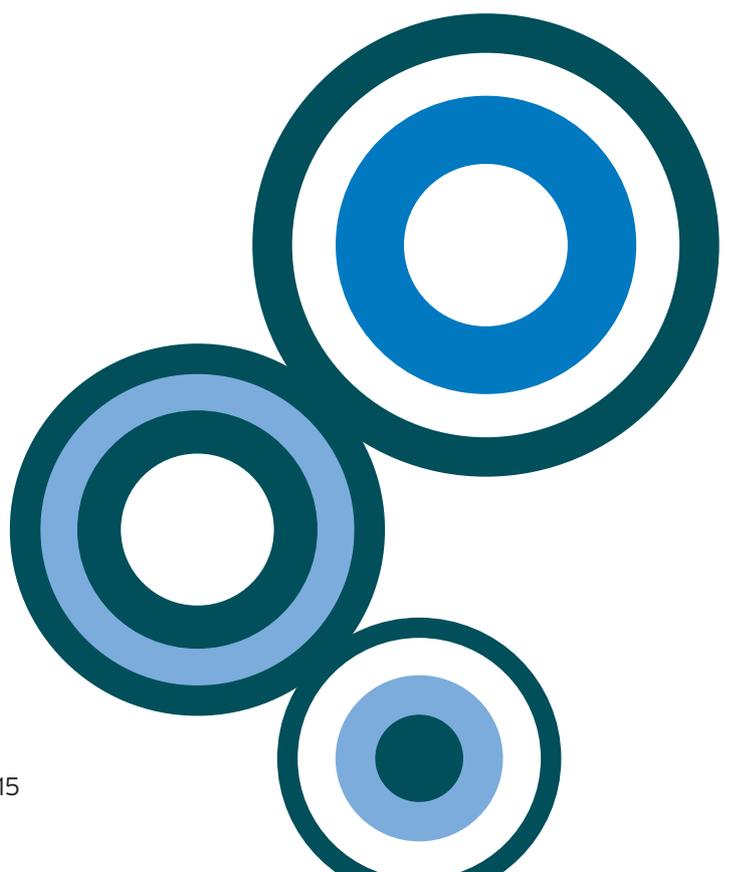


Table 3

Retirement and Redundancy	Comment	% of organisations reporting in education	% of organisations reporting, all sectors
Compulsory retirement ages	Unlawful if below 65 (which affects 6% of all employers), unless it can be objectively justified. 50% of the UK workforce is affected by compulsory retirement ages (because these are more common in large firms). In most cases the fixed age is 65, which will remain lawful, although employers must consider requests to stay on.	57	37
Compulsory redundancy decisions are based on "last in first out"	Potentially indirectly discriminatory against younger employees	19	28
Redundancy decisions based on length of service	This discriminates indirectly since longer service correlates with age.	40	49
Level of redundancy pay based on length of service	Can be indirectly discriminatory against younger employees. Length of service is used in compulsory redundancy decisions by 27% of all organisations but affects 38% of all employees. For voluntary redundancy it is used by 23% of all organisations but affects 34% of all employees.	24 compulsory 24 voluntary	27 compulsory 23 voluntary
Level of redundancy pay is affected by age	Unlawful. Affects only 10% of all firms, but 17% of all employees (because it is more often used in larger organisations).	11 compulsory 13 voluntary	9 compulsory 10 voluntary
Age is used in selection for redundancy	Unlawful. The decision must be based on requirements of job and competence of staff, or positive action to maintain an age balance.	8 compulsory 6 voluntary	14 compulsory 5 voluntary
A maximum age is set for eligibility for sick pay	Likely to discriminate indirectly since salary levels generally correlate with age.	5	7

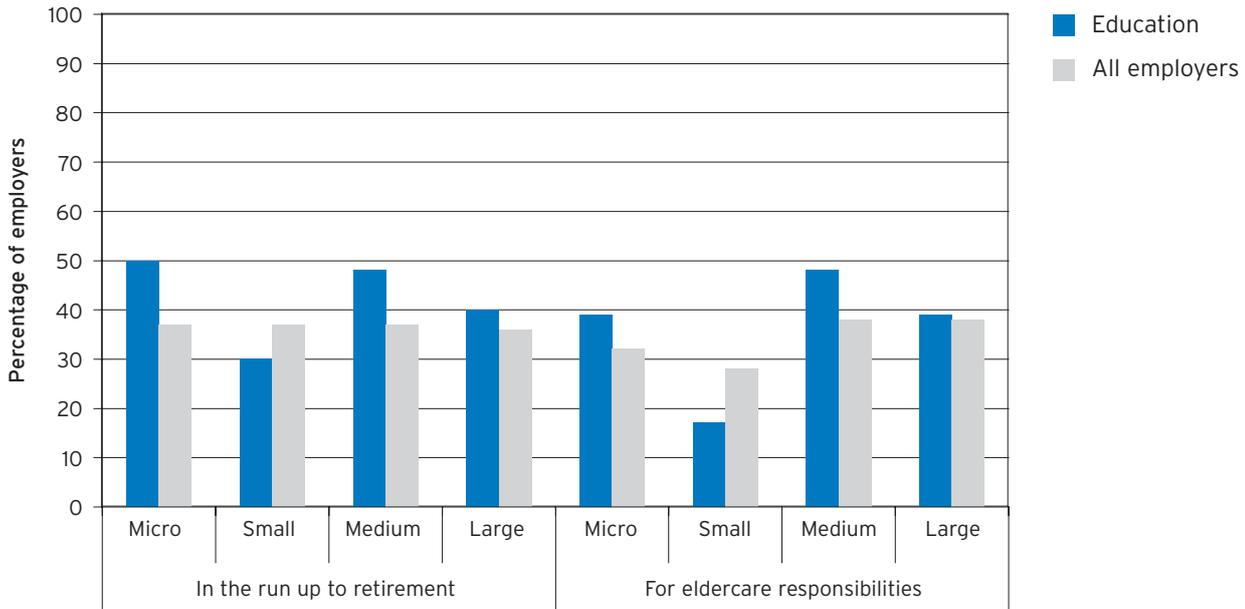
A small but significant proportion of large and medium employers in education have compulsory retirement ages lower than 65, which will be unlawful under the Age Regulations. Although it is theoretically possible to put forward a business case to justify this, it is unlikely to be sustainable, since such age criteria are almost always used

as (unreliable) proxies for capabilities which should be assessed directly.

Although the workforce in education is older than in other sectors, employers here are less likely to allow staff to stay on after normal retirement age. However, most establishments in education, other than small ones, treat requests for flexible working for eldercare reasons or in the run-up to retirement more sympathetically than in other sectors.



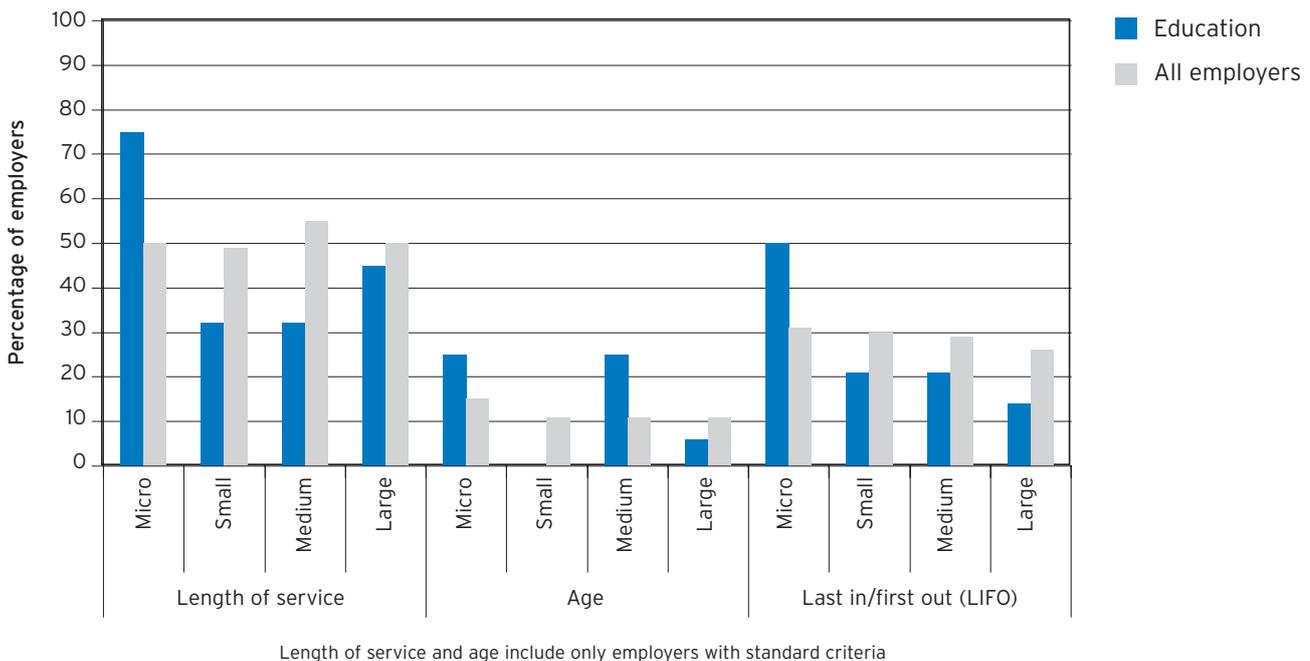
Figure 4 Employers who would be "very likely" to allow employees to reduce working hours



Educational establishments are as likely as other employers to have standard procedures for compulsory redundancy and more likely to have formal criteria for selecting applicants for voluntary redundancy. Selection explicitly on the basis of age is rare here (as in other sectors),

but will nonetheless be hazardous for those establishments which do it. Apart from very small businesses, education employers are less likely than others to select for redundancy on the basis of "last in, first out", or length of service, both of which are hazardous.

Figure 5 Selection criteria for compulsory redundancy



7. Management

There are a variety of management practices which can reduce the risk of legal disputes under the Age Regulations. Table 4 identifies the commonest ones,

and shows what proportion of organisations in the education sector, and the economy in general, use them at present.

Table 4

Management and training	Comment	% of organisations reporting in Education	% of organisations reporting, all sectors
Equal opportunities policy	Having a policy makes expectations clear to managers and staff, and makes monitoring easier.	97	72
	Equal opportunities policy explicitly mentions age.	76	56
	Policy implementation by age is monitored (only those with age policies).	66	49
"Age blind" recruitment practices	Removing dates of birth and age data from applications before they are considered by selectors reduces the risk of discrimination (although training recruiters is also important). Some organisations collect this information on equal opportunities monitoring forms which are removed before forms are passed for short listing.	55	43
Providing work related training for all staff	There is a direct relationship between participation in training and staying longer in work.	70	70
Formal performance appraisal	Ensures that employees are clear about objectives, that performance is recognised, and untapped talents are used. This will also be relevant when organisations have to consider formal requests to stay after a firm's retirement age.	91	68
Formal assessment for promotion	Formal assessment increases the chances of promoting the most valuable people, and reduces the risk of discrimination (4% of all firms currently have age related criteria which will be unlawful).	53	37
Flexible working	Many employees, especially those with childcare or eldercare responsibilities, and those approaching retirement would like to work part-time or flexibly. Offering flexible working improves retention and motivation of key staff.	77 For childcare 66 For pre-retirement 68 For eldercare 41 For any reason	82 For childcare 78 For pre-retirement 74 For eldercare 51 For any reason
Flexible retirement ages	Flexible retirement allows individuals to work longer and employers to continue to make use of skills and expertise.	47 offer to all staff 11 offer to some staff	50 offer to all staff 4 offer to some staff

Education employers are much more likely than employers in general to have policies and management practices to protect them against unfair discrimination (Fig 6). These include equal opportunities policies which mention age, accompanied by formal monitoring, and training of managers on age diversity. They are also more likely to have taken action in response to such monitoring in the past, which suggests an advanced understanding of discrimination and equal opportunities issues. Education employers

are also more likely than others to have formal appraisal and performance management systems, which help managers to make the best use of staff talents, and to assess the capabilities of employees who ask to stay in work past retirement age (Figs 6 & 7). In view of these relatively positive approaches to age management it is surprising that only a small proportion of employees continue working after normal retirement age.

Figure 6 Prepared for age discrimination regulations

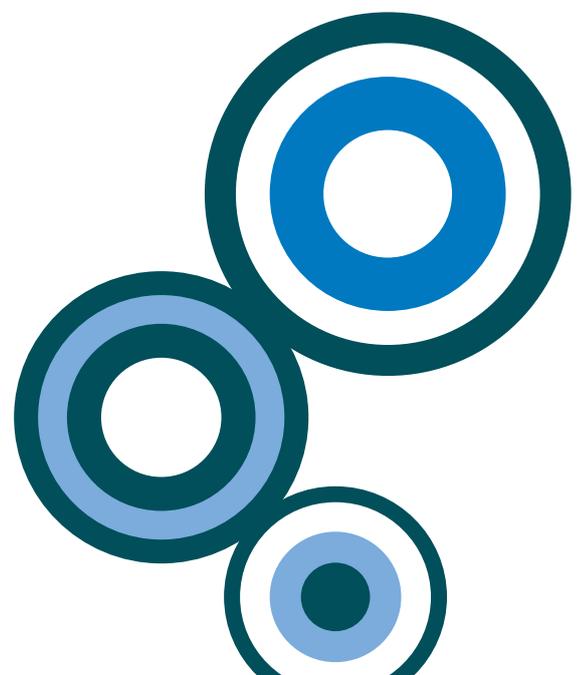
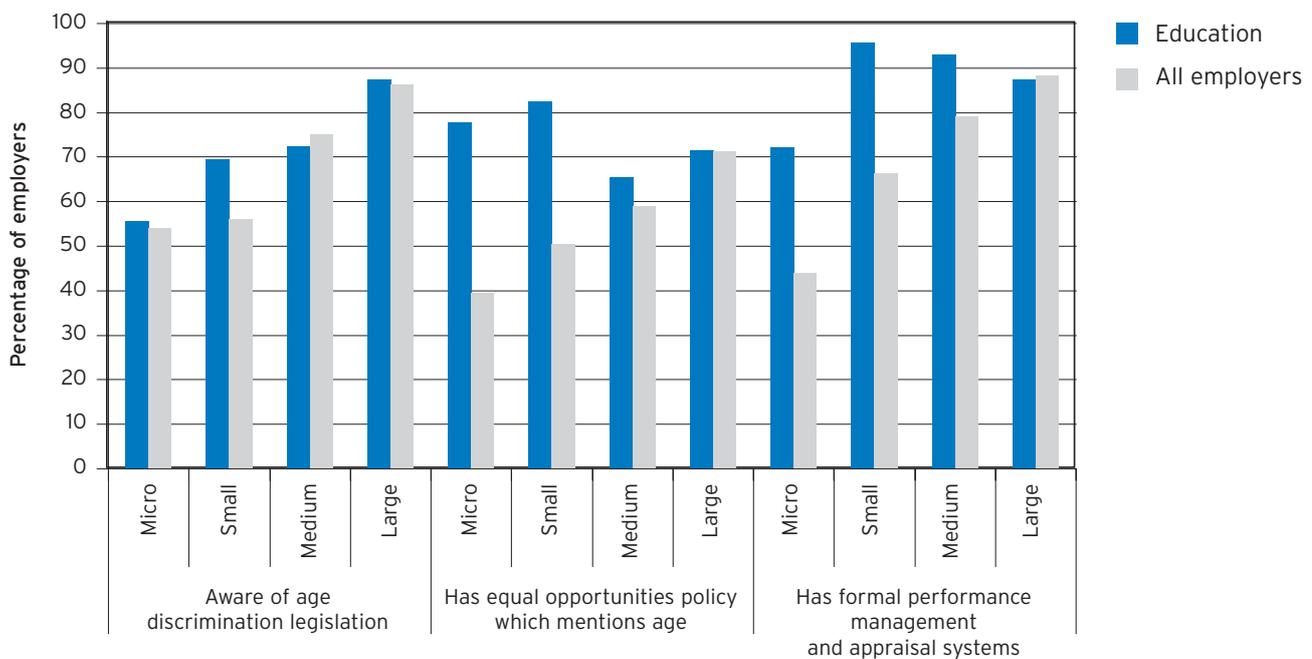
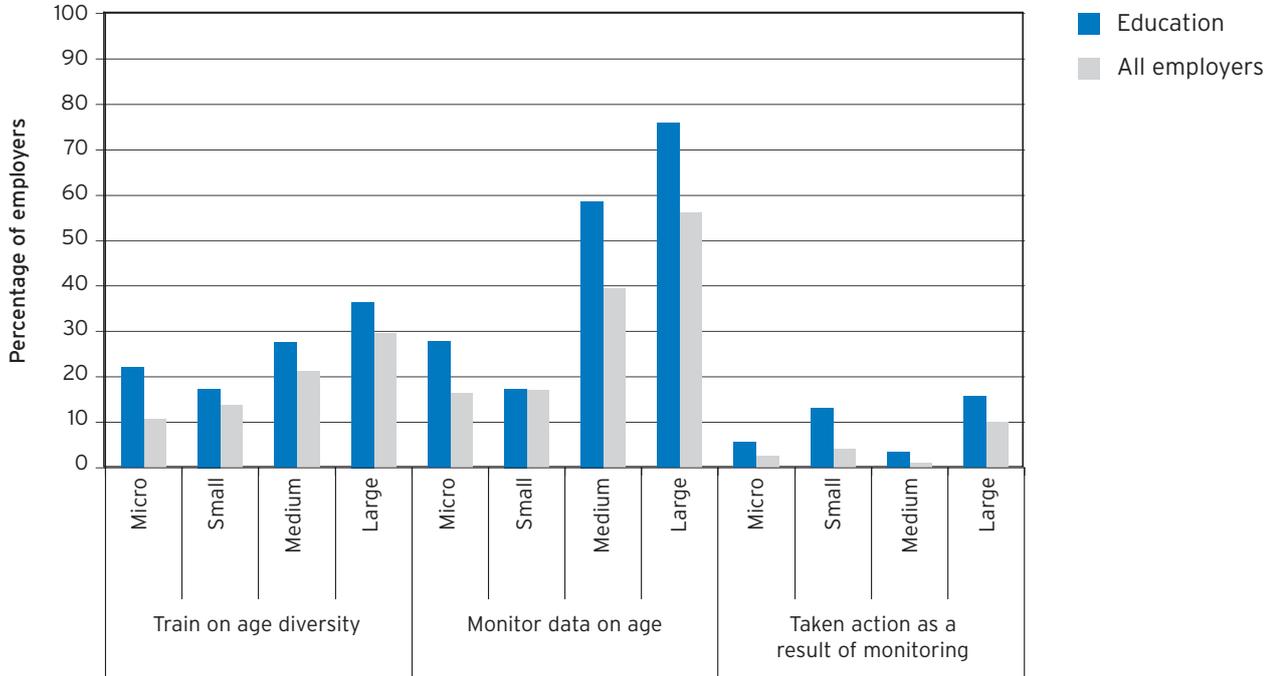


Figure 7 Equal opportunities policies



8. Managing age in education: discussion questions

The following questions are designed to help you, as an employer in the education sector, to plan how you will respond to an ageing workforce and the Age Regulations:

1. How concerned are you about **skills gaps and shortages** in your sector, and do you believe current labour market predictions about this?
2. Do you think that **a different age mix** in the workforce could help overcome these?
3. Do people generally in your sector **have strong views about appropriate age ranges for particular jobs** which would limit the opportunity to change the age mix?
4. Is your **ability to change pay and conditions** limited by national agreements, or regulations like “licence to practice” rules? How can you tackle this?
5. Policymakers sometimes assume that all firms in a “sector” are alike. In your sector are there particular **kinds of firm which are very different** in their approach to age management?
6. How easy is it to **extend working lives** in your sector? Does this apply more to some groups of staff than others?
7. Are there **traditional career patterns** in your sector which might change if working lives became longer (e.g. “downshifting” or mentoring roles for older workers)?
8. Older workers often prefer **to work part-time or on a flexible basis**. How easy is it to do this in your sector, and what might be the constraints?
9. Are there jobs where **physical demand or levels of stress** make extending working life more difficult? Are there ways of overcoming these?
10. Is it difficult to **recruit older people** in your sector? After what age? Can training help?
11. **Small firms** in general have less formal management structures and procedures. Will this make overcoming age discrimination easier or more difficult for them?
12. A high proportion of people working after 65 are **self employed**, what role does this play in your sector?
13. What are the implications of an ageing workforce for supply and demand for **training** in your sector? (given that those who train generally stay in work longer)
14. How difficult will it be to **raise awareness among employers** in your sector about the ageing workforce, and about the age discrimination regulations, especially among small firms, who are more difficult to contact?
15. Are there **lessons about managing an age diverse workforce** which your sector could offer to others?

CROW would welcome any comments on these questions (or any others) as a contribution to its final research report for DWP¹⁰.

¹⁰See “Further Information” below.

9. About this paper

This paper was written by the Centre of Research into the Older Workforce on behalf of the Department for Work and Pensions. It draws on two sources:

- The background material on the sector comes mainly from the Sector Skills Development Agency's Research Matrix database, which brings together a large quantity of information about all sectors from a variety of sources, including the Labour Force Survey, the National Employer Skills Survey, the Annual Business Inquiry, and the Inter Departmental Business Register¹¹.
- The material on current age management practice in the sector is based on data gathered by the National Institute for Economic and Social Research (NIESR) and the British Market Research Bureau (BMRB), in a national survey for the DWP and DTI in Spring 2005¹². They interviewed the most senior person responsible for HR issues in 2084 firms employing more than five people in England, Scotland and Wales. Each interviewee was asked 160 questions about aspects of age management, including recruitment, retirement, benefits, pensions, management practices and discrimination. CROW carried out a separate analysis of this data to produce the current paper. The sample included 208 firms in the education sector.

The DWP/DTI evidence is the best available on current employer age management practices across all sectors, but it should be interpreted with some caution since:

- it probably underestimates the frequency of some practices (since firms with a positive record are more likely to respond to such surveys; employers may be reluctant to admit to what they suspect is "bad practice"; and the senior managers who replied to the survey may be unaware of poor practice by some line managers);
- In some cases the number of employers responding is relatively small, and may not be fully representative of particular sizes of firms in that sector;
- Since some practices are more common in large firms, the behaviour of a small proportion of firms may affect a much larger proportion of workers;
- Although some hazardous practices are rare, the firms involved will still be open to legal challenge if they do not make appropriate changes.

We have not commented on pensions issues since pensions provisions are largely exempt from the regulations¹³.

All views expressed in this paper are those of the authors. They are not intended to be authoritative statements of the law, and do not represent the views of the Department for Work and Pensions or any other Government Department.

¹¹ Details on the Skills for Business website at www.ssdamatrix.org.uk/

¹² See "Further Information" below.

¹³ DTI's guidance *The impact of age regulations on pensions*, explains the implications of the legislation for pensions in detail.

10. Responding to this paper

This paper is intended for consultation with employers, sector bodies and other interested organisations and individuals during 2006. Responses will contribute to a larger report on sectoral approaches to age management, which DWP plans to publish in 2007.

If you would like to comment on any aspect of this paper, or of age management in the education sector (or on age management more generally), please write directly to the Centre for Research into the Older Workforce (CROW). We would be particularly interested in responses which:

- add relevant information on the shape of the sector and age management issues and practices within it
- clarify the reasons for particular features (e.g. why one part of the sector has very different practices from others, or why education is different from other sectors)

- identify examples of good practice which might be disseminated to other employers or sectors
- identify questions which need further investigation

Responses and comments on the content or issues raised by this paper should be sent by email to: crow@niace.org.uk

Or by post to:

Age Legislation Research
Centre for Research into the Older Workforce
NIACE
21 De Montfort Street
Leicester
LE1 7GE



11. Further information

Further information on age related issues, policies, practices, and legislation can be found at www.agepositive.gov.uk

You can request further copies of this paper, or contact the Government's Age Positive team at: agepositive@dwp.gsi.gov.uk

or write to:

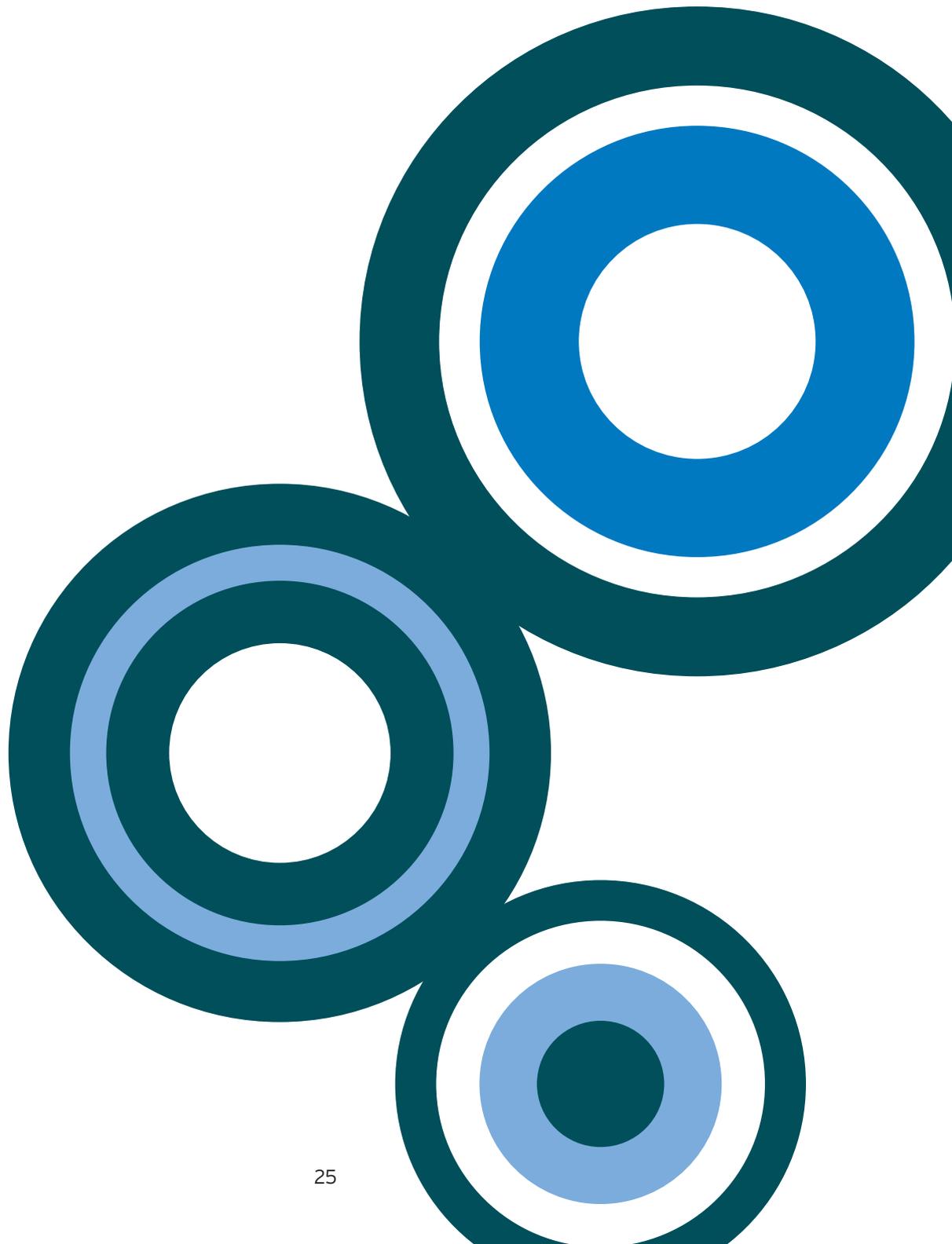
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Extending Working Life Division
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Sheffield
S1 4PQ

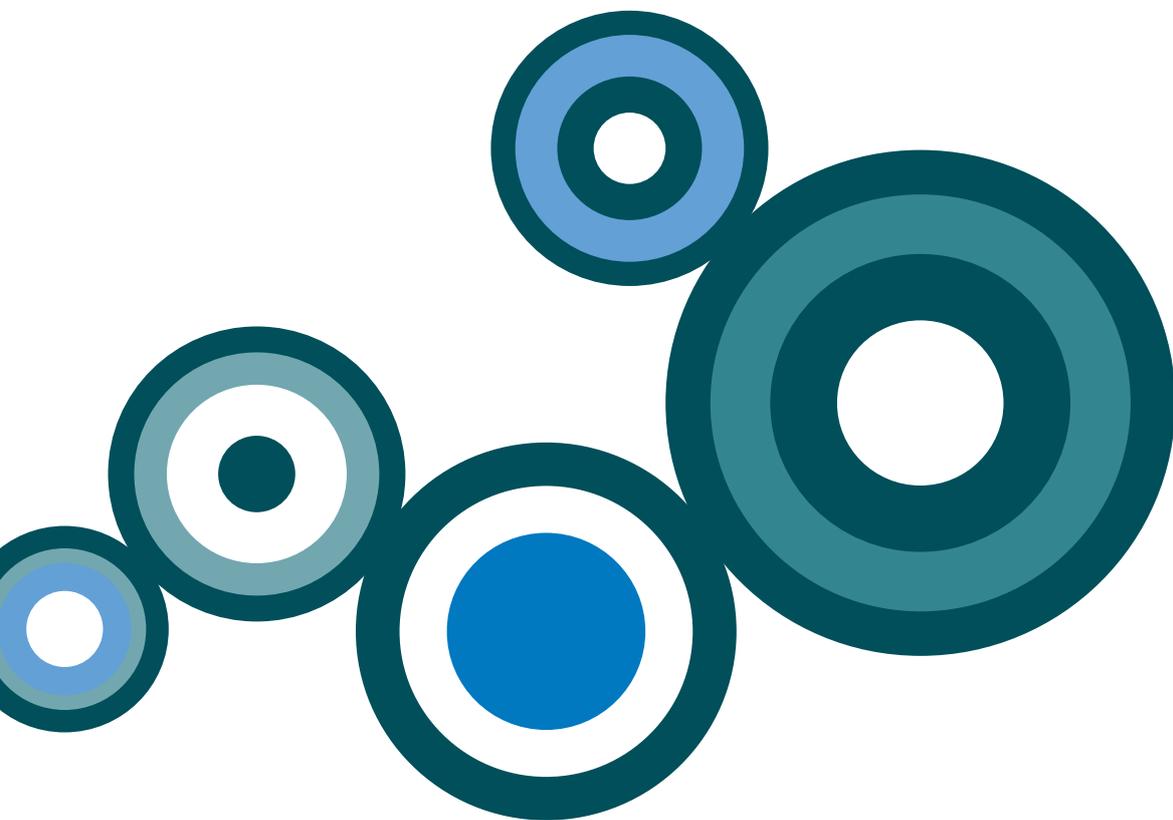
Details of the Age Discrimination Regulations, which will come into force in October 2006, can be found on the DTI's website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

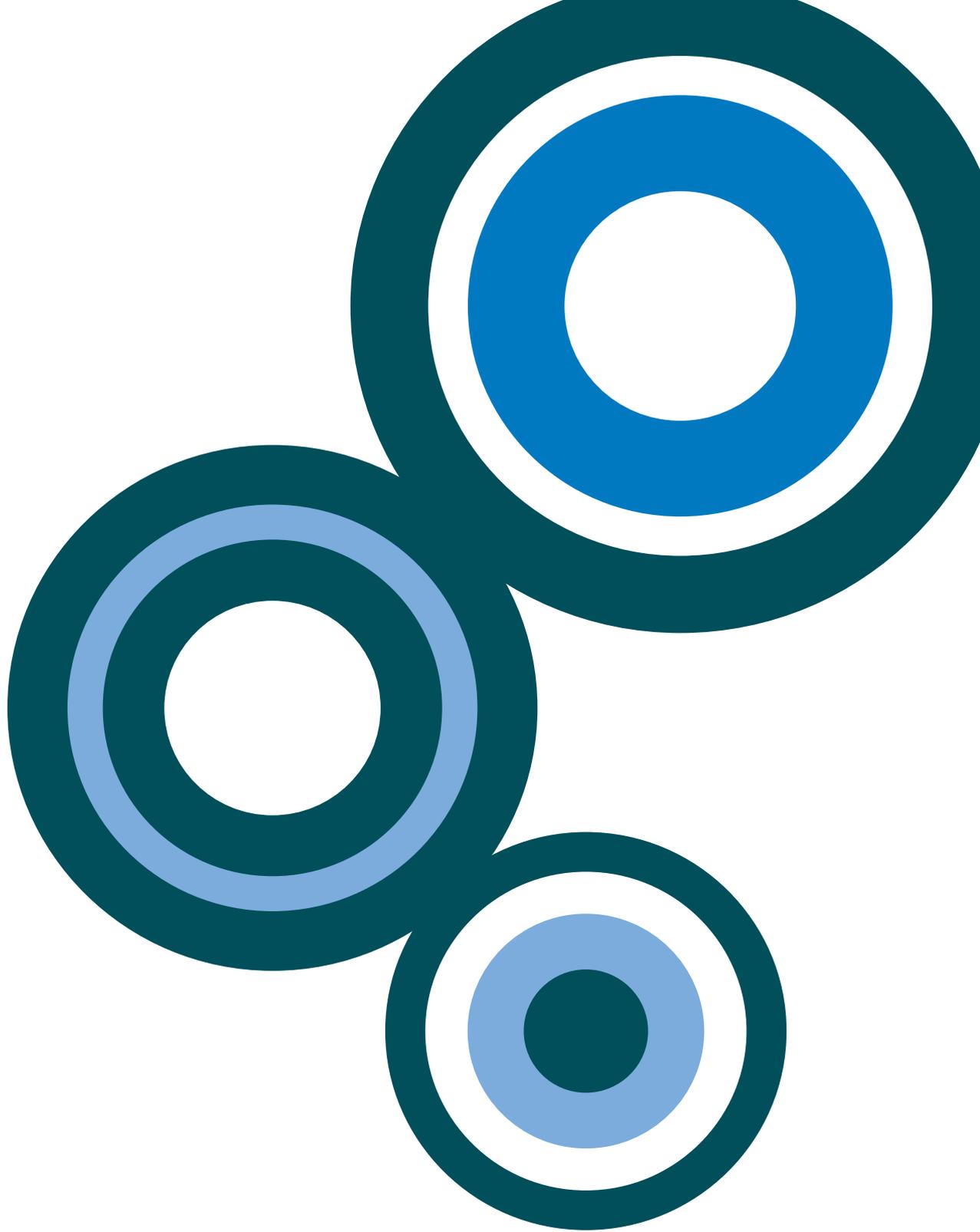
Advice on interpretation and good practice can be found on the ACAS website at: www.acas.gov.uk

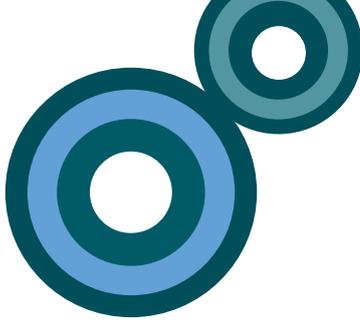
The full report of DWP and DTI's joint national survey conducted by NIESR and BMRB which produced the evidence for this report is *Survey of Employers' policies, practices and preferences relating to age* by Metcalf & Meadows (DWP Research Report 325, DTI employment relations research series number 49) The full report is available for download free on the DWP website at: www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep325.pdf

Further information about CROW can be found at: www.niace.org.uk/crow









Members of the Age Partnership Group

Members of the Age Partnership Group, listed below, support and endorse the Be Ready campaign.

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The British Chambers of Commerce (BCC)
Chartered Institute of Personnel and Development (CIPD)
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Confederation of British Industry (CBI)
Department of Trade and Industry (DTI)
Department for Work and Pensions (DWP) - Chair
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Federation of Small Businesses (FSB)
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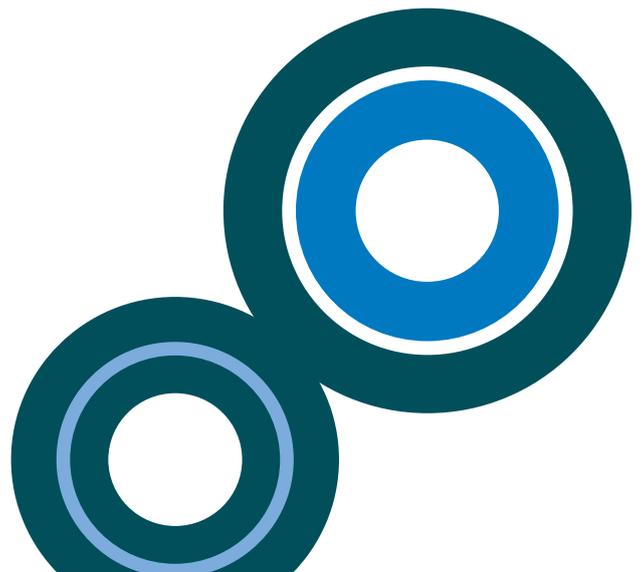
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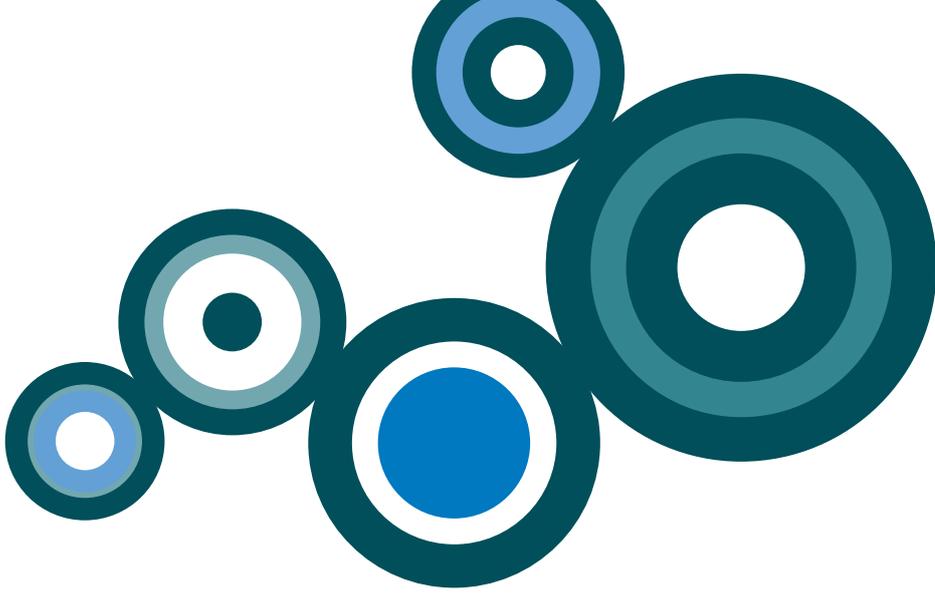
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Managing an ageing workforce in health and social care

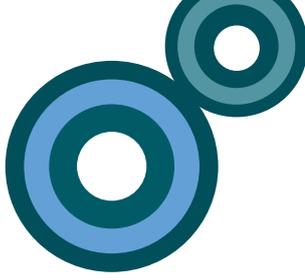
A report for employers

By Stephen McNair and Matt Flynn

Produced for the Department
for Work and Pensions
By the Centre for Research
into the Older Workforce

age**partnership**group
Targeting Employers®





Age Partnership Group (APG)

This research is one of a number of projects commissioned by the DWP on behalf of the APG as part of the National Guidance Campaign (NGC).

The APG was formed in 2002 and consists of a number of national organisations who represent different aspects of employers needs, for example, small business representatives, trade unions, HR and Personnel managers, local government, other government departments, accountancy, insurance and training organisations. There are separate groups representing England, Scotland and Wales.

The NGC aims to raise employers' awareness of, and ability to adopt, practical information and guidance on age diverse employment practices. This includes flexible employment and retirement opportunities in order to increase the recruitment, selection, promotion, training and retention of older employees prior to the implementation of age legislation in October 2006.

You can view the Age Partnership Group website at www.agepositive.gov.uk/agepartnershipgroup

Legislation

In March 2006, the Employment Equality (Age) Regulations 2006 were published. The regulations are the last major stage of the European Employment Directive and will come into effect on the 1st October 2006.

The regulations prohibit age discrimination in employment and vocational training. They apply to individuals of all ages in work, seeking work or looking to access vocational training and to all employers, and to all providers of vocational training and vocational guidance (including further and higher educational institutions).

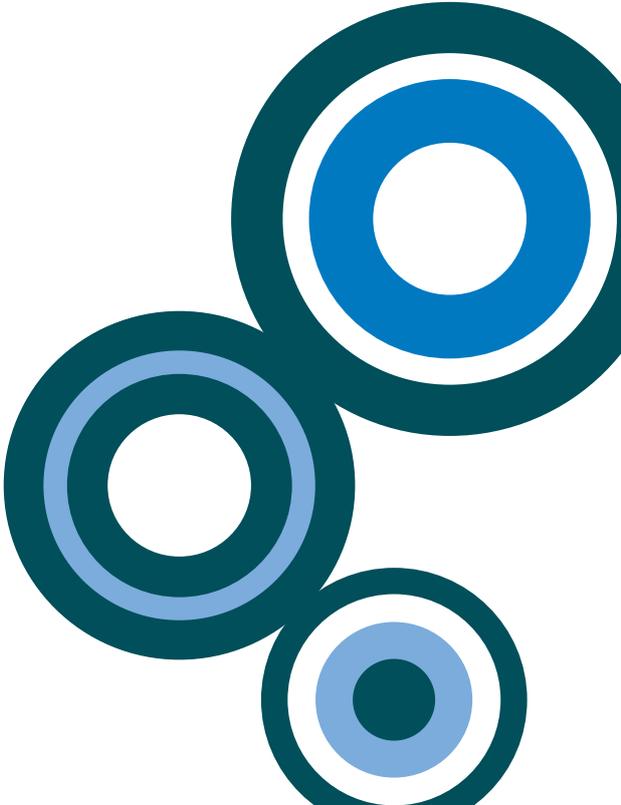
The regulations can be viewed on the Department of Trade and Industry website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Disclaimer

This report has been commissioned to provide information only. Responsibility for the views expressed in this report rests solely with the authors. The members of the Age Partnership Group (APG) and the Department for Work and Pensions (DWP) do not accept responsibility for the views of the authors.

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Introduction

This report is about how organisations in the health and social care sector are managing an ageing workforce. It has been written for the Department for Work and Pensions (DWP) by the Centre for Research into the Older Workforce (CROW) to help employers to make better use of older workers. It also helps to raise awareness of the new Employment Equality (Age) Regulations 2006 which become law in October 2006, and prohibit age discrimination in work or training against people of any age.

Workforce ageing presents a growing challenge to most employers. Birthrates have been falling for many years, and in the next few years the numbers retiring will outnumber young people entering the labour market. The government believes that the resulting skills gaps and labour shortages in many industries can be reduced if employers can find ways of making better use of older workers, and encourage people to stay in work longer.

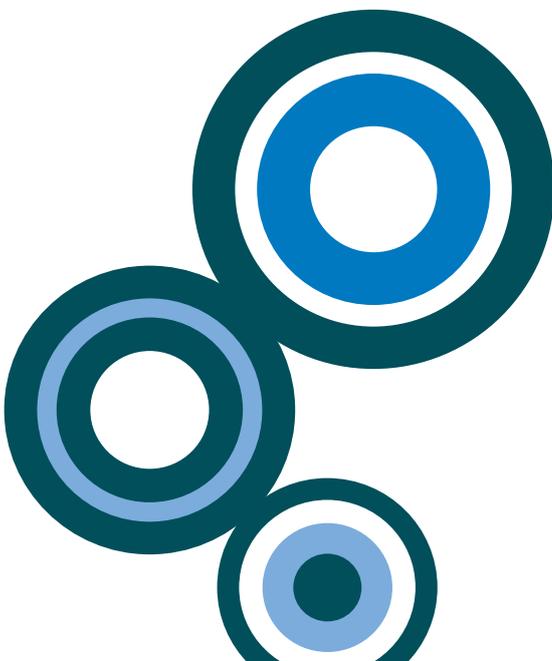
However, every industry has its particular features, and this report outlines the special issues affecting the health and social care sector, based on a large national survey

of employers. It highlights employment practices in the sector which will be 'hazardous' under the Age Regulations, and aims to stimulate discussion and improved practice in organisations.

This report is not intended to be an authoritative statement on the age discrimination law itself. Details of how to obtain the Regulations, and advice about them, can be found at the end of the report. However, while the Regulations make some activities unlawful, it is for the Courts and Employment Tribunals to interpret this in specific cases. The term "hazardous" is therefore used in this paper to describe activities which might be ruled unlawful if a case is brought. We suggest that employers need to review their practice in these areas.

During 2006, CROW will explore these issues in more depth through case studies of organisations in seven sectors, and DWP plans to publish the resulting Research Report in 2007.

¹ The Age Regulations define what activities will be unlawful, but it is for Employment Tribunals and the Courts to interpret them in individual cases. The term "hazardous" is used in this report for practices which are likely to be ruled unlawful if and when cases are considered.



1. Summary: key age issues for health and social care organisations

The health and social care sector has an unusually old workforce, which, combined with anticipated expansion needs over the next decade, makes strategies for extending working life, and worker retention, particularly important.

By comparison with other sectors, health and social care employers are better prepared for the Age Regulations, and the issues are more a matter of making better use of an age diverse workforce, than overcoming hazardous practice. Awareness of the Age Regulations is high, and employers are more likely to have formal equal opportunities policies and the supporting mechanisms of implementation and monitoring to ensure that they are put into practice.

Health and Social Care employers generally have positive attitudes to the older workforce. They are more likely to allow employees flexibility in choosing their retirement dates, and to allow them to stay in work past retirement age, than employers in other sectors. In some organisations there are strongly positive measures designed to encourage retention of experienced staff, although employers are less likely to consider recruiting people over normal retirement age.

Despite this positive picture, however, a number of hazardous practices exist, some of which are incorporated in national agreements. These will need review and renegotiation to comply with the regulations, unless a clear and proportionate business benefit can be demonstrated.

Common hazardous practices in Health and Social Care

Common practices in this sector which may need review if employers are to avoid breaking the Age Regulations include:

- **using years of experience as a selection criterion in recruitment:** This affects two thirds of all employers. Length of experience is a substitute for assessing competence, and is hazardous, since it disadvantages younger workers.

- **applying long incremental pay scales.** This is a particular issue in Social Care, although most such scales are currently being eliminated in the NHS. Incremental scales extending beyond five years will need objective justification.

Unlawful practices in Health and Social Care

The following practices are less common, but unlawful, and firms who use them will need to make changes if they are to remain within the law:

- 40% of establishments use **length of service to select for redundancy.**

- 42% of establishments set **contractual retirement ages.**

- 31% of establishments set **maximum recruitment ages** more than 6 months below retirement age.

- 6% of establishments set **maximum age limits on access to sick pay.**

2. The shape of the health and social care sector

The nature of the age management issues facing a sector depends on factors like the average size of organisations, the age and skills profile of the workforce, and future expectations of growth or contraction. This section outlines this context for the health and social care sector.

Health and social care² is a large employer, with a workforce of 3.4 million people (11% of the national total) in 14,000 establishments. It covers all aspects of human health, together with social care, social work and veterinary activities. Professionals and Associate Professionals account for 38%, and personal service workers for 31% of the workforce.

The sector is supported by two Sector Skills Councils:

- Skills for Health; and
- Skills for Care and Development.

The sector is broadly divided between a largely public sector health service, comprising relatively large and formal establishments, and a social care sector with a much larger private sector component. A common factor is the influence of Government regulation and professional requirements on practices and policies. Combined with high levels of unionisation this results in more formalised employment relations than in most other sectors, and very few organisations have no formal planning of any kind.

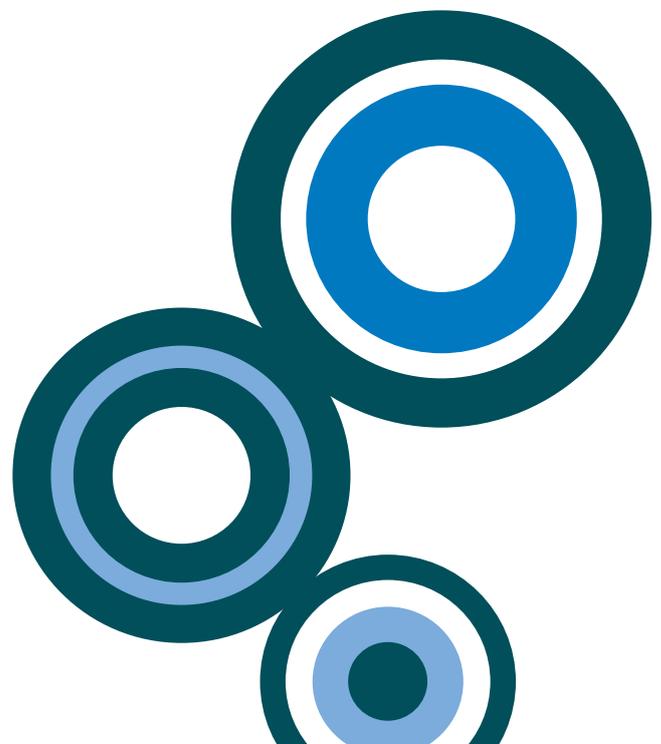
Overall, the majority of establishments are small, with 56% employing under 11 people, and a particularly high concentration in the 11-49 range. However, in terms of total employment the reverse is true, with a large proportion of employees working in large establishments.

The number of establishments in Social Care is relatively stable, but in the public sector, the Health service is going through a major reorganisation.

Expected rates of employment growth in the sector are well below those for the economy as a whole but the size of the sector means that this is still a substantial call on the potential labour pool, requiring by 2014 an additional 1.6 million people (equivalent to 47% of the current workforce) to meet needs for expansion and to replace those leaving and retiring.

The workforce in health and social care is much older than the broader workforce, with a high proportion of employees over 45. Employees in general are much more highly qualified than in any other sector (except education), although there remains a small proportion (15%) who have no qualification above level 2. Other distinctive features of the workforce are a high proportion who are: part-time, female, and from ethnic minority groups.

² This definition corresponds to the Standard Occupational Classification Code (SIC code) 85, but veterinary activities are excluded from this analysis.



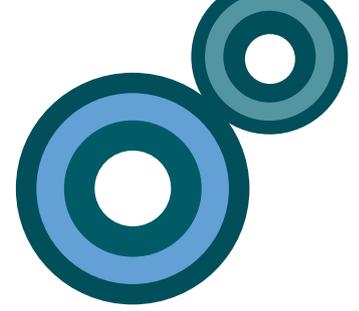
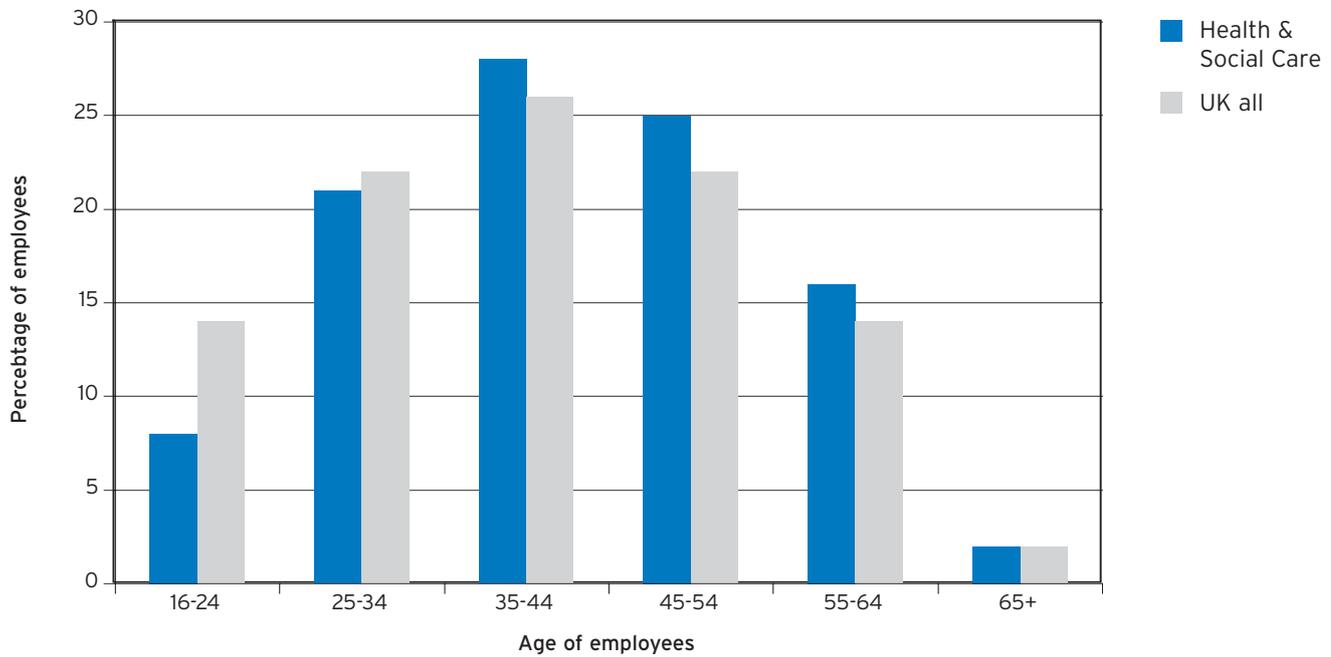


Figure 1 Health and social care workforce age profile



Labour shortages are a serious problem in the sector, partly as a result of recent expansion and the long training times for many of its professions, and a quarter of all establishments report vacancies. These are concentrated among Personal Services roles, which account for the largest proportion of vacancies, half of all hard to fill vacancies and the largest numbers of both skills shortage vacancies, and skills gaps.

However, there are similar problems with Associate Professionals and Technical staff. Levels of participation and investment in training are very high in establishments of all sizes. The sector has a long tradition of education and training with well established institutions and a heavy engagement with the Higher Education system.

3. Age discrimination in employment

Age discrimination at work is common. It can affect people of any age, but is particularly likely to involve older people, and more than one in five workers over the age of 50 say that they have experienced it either when applying for jobs or in the workplace³. In countries where age discrimination law is already in force, it is the commonest cause of discrimination cases in the courts.

From October 2006, it will be unlawful for any employer in the United Kingdom to discriminate against or harass anyone on grounds of age, directly or indirectly, in relation to either employment or vocational training. This will cover arrangements for recruitment and promotion, pay and conditions, education and training, and retirement and redundancy.

There are exceptions: in relation to retirement, where it will be lawful to make an employee retire at a given age, provided this is not below 65 (for men and women); and where an existing statutory provision exists (like the Minimum Wage Regulations). An employer may also be able to justify discrimination if it is designed to correct an age imbalance in his workforce; if there is a legitimate business reason (and the discrimination is proportionate); or if there is an objective justification (likely to be very rare). The Regulations, and advice on their interpretation, can be found on the DTI and ACAS websites⁴.

Some features of age discrimination are common to most employers⁵.

- Indirect discrimination is more common than direct discrimination. DWP and DTI's joint survey, conducted by the National Institute of Economic and Social Research (NIESR), found few examples of direct discrimination, but one in five employers believes that some jobs are better done by people of particular ages. Where such beliefs exist, discrimination is more likely.
- Discriminatory attitudes are more likely to be found in private sector organisations, and especially small ones⁶, in sectors like manufacturing and construction. These are also the organisations and sectors where there are least likely to be formal procedures and policies to protect against unfair discrimination.
- The most common hazardous practices involve setting age limits on recruitment, especially for those over 50, and using age as a basis for decisions on compulsory retirement and redundancy.
- About half the workforce is covered by a compulsory contractual retirement age. In most cases this is already 65, which is the new "national default retirement age". However, even where organisations plan to retire staff at 65, they will have to give formal notice of retirement dates and seriously consider requests to stay longer.

³ Discrimination is difficult to measure precisely, since it is subjective, and affected by levels of public awareness of age issues, and many people regard it as "normal". In a CROW postal survey of workers over 50 in 2004, 20% reported age discrimination. In research by the University of Kent for Age Concern England 29% of people reported experiencing age discrimination (compared to 24% for gender).

⁴ See "Further Information" at the end of this report.

⁵ Information is based on the national DWP/DTI joint survey (see "Further Information"), although because this is new secondary analysis not all figures are directly comparable. Also, for certain policies and practices respondents were asked to answer in respect of their largest occupational group rather than for the workforce as a whole.

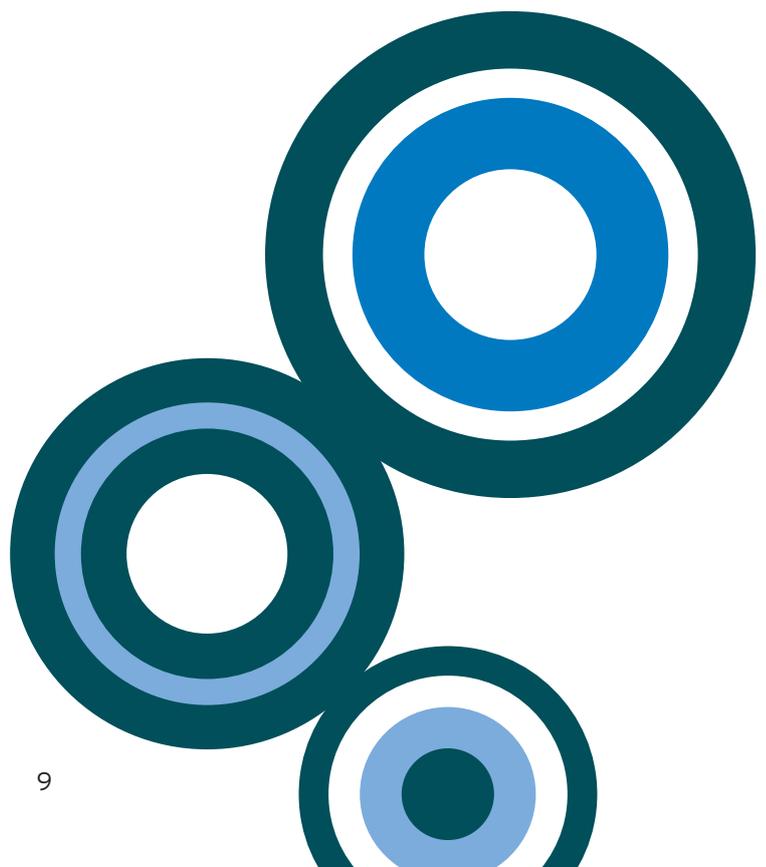
⁶ In this report "micro" firms have 5-19 employees, "small" employ 20-49, "medium" employ 50-249, and "large" employ 250 or more (the survey excluded firms employing fewer than 5 employees).

- Public sector and large private sector organisations, are more likely to have formal procedures (like appraisal schemes or equal opportunities policies) to protect against discrimination, especially where a Trades Union is recognised. However, these organisations are also more likely to have long standing formal agreements which include provisions which are hazardous under the Age Regulations, including contractual retirement ages below the new national default retirement age of 65.
- Two occupational groups are particularly at risk from discriminatory practices. These are professional and associate professional/ technician staff, both of whom are particularly likely to be exposed to discrimination in setting pay, long incremental pay scales, and access to training.

The tables in this paper identify hazardous practices identified in DWP/DTI's employer survey, indicating those which are most common among employers in health and social care, and among employers in general.

Some of the provisions in the Regulations allow an employer to claim an "objective justification" for a practice which would otherwise be unlawful. Such justifications require the employer to be able to show that his or her action is a proportionate means of achieving a legitimate aim. It will be for Employment Tribunals and the County Courts to rule on what is justifiable under these provisions.

The Regulations also allow some practices, like incremental scales, where pay or terms of employment improve with length of service, but only up to five years, beyond which they will need to be objectively justified.



4. Recruitment and promotion

The key principle in all selection for employment or promotion is that decisions should be fair, and based on the individual's competence for the job, and not on arbitrary factors like age (or gender or race etc).

The research evidence shows that work performance in most jobs does not decline with age before the late 60s, provided individuals are healthy, motivated and kept up to date.

Across the workforce as a whole, the commonest hazardous practices in recruitment and promotion involve excluding applicants, either

directly (by specifying ages), or indirectly (e.g. by specifying years of experience, rather than specific capabilities) in advertisements, job descriptions and interview criteria.

Table 1 below shows the most common areas of hazardous practice in the Health and Social Care sector (with figures for organisations in general for comparison). Practices followed by more than half of organisations in the sector are highlighted:

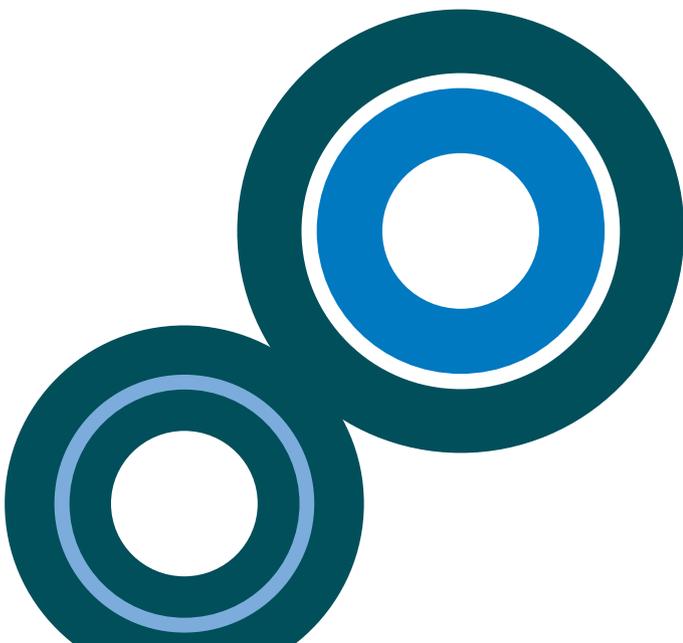


Table 1

Recruitment and Promotion	Comments	% of organisations reporting in Health and Social Care	% of organisations reporting, all sectors
Selection criteria specify qualifications	Lawful if the qualification is directly relevant to the job, and equivalent qualifications are accepted for candidates of different ages.	68	60
Selection criteria based on length of work experience of any kind	Indirectly discriminatory. The criterion must be based on individual capability not experience, unless an objective justification can be demonstrated.	66	62
Application forms ask for date of birth/age	Lawful to use for monitoring purposes and conforming with Statutory requirements. Potentially discriminatory. ACAS recommends to remove this information (as with other equal opportunities information) before shortlisting.	56	48
Age information is provided to recruiting staff	Increases risk of discrimination.	34	44
Maximum recruitment ages are specified	Unlawful if set below six months before the company's retirement age or if objectively justified ⁷ .	31	29
Selection decisions are based on remaining period to retirement	Discriminatory unless a clear business justification can be demonstrated ⁸ (like the cost/time required to train, relative to the expected years of work).	8	18
Age criteria are used directly in recruitment, or particular age ranges are targeted	Unlawful unless required by Statute, or for positive action reasons (e.g. to compensate for the under representation of a particular age group).	4	9
Selection decisions are based on expected length of service, judged by age	Unlawful	3	7
Job advertisements specify age	Unlawful, unless there is a genuine occupational requirement (e.g. a young actor for a young part).	3	6

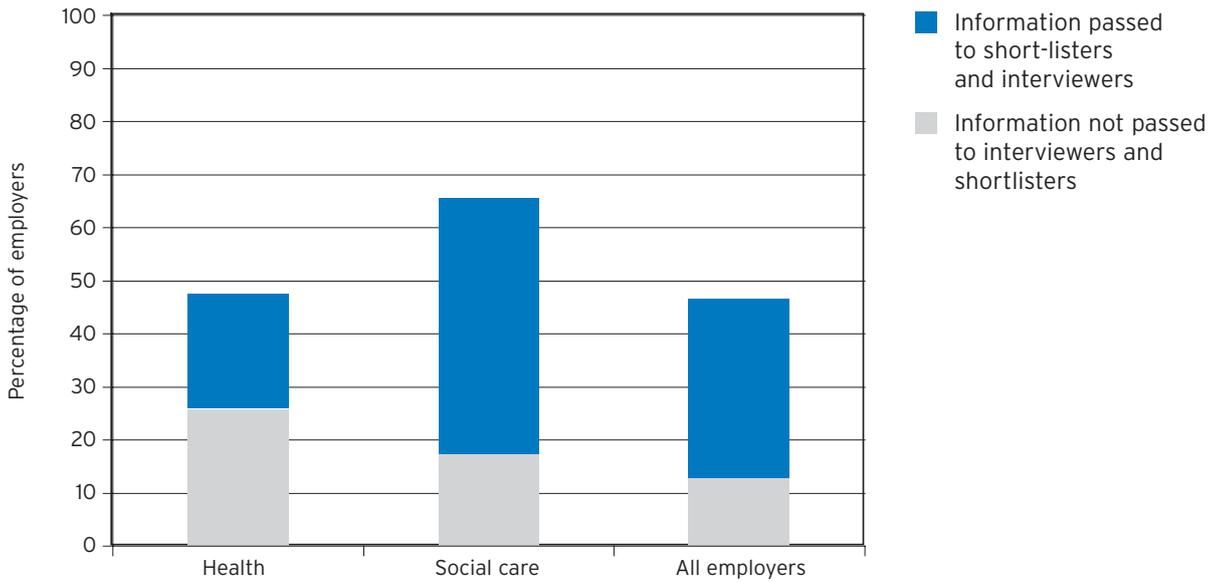
Recruitment practices in health tend to be different from those in social care. While both use application forms in the recruitment process, employers in social care are more likely to request age details on application forms, and more likely to pass this information to shortlisters and interviewers. Health employers, on the other hand, are less likely than either social

care organisations or employers generally to do this (Fig 2). While it will be lawful for employers to collect age information, introducing it into the selection process increases the risk of unfair discrimination, which can be reduced by processing this information separately (as is normal with monitoring information on race, disability or gender).

⁷ If the employer does not have a compulsory retirement age, he can set a maximum recruitment age of 64 1/2.

⁸ See also "maximum recruitment age".

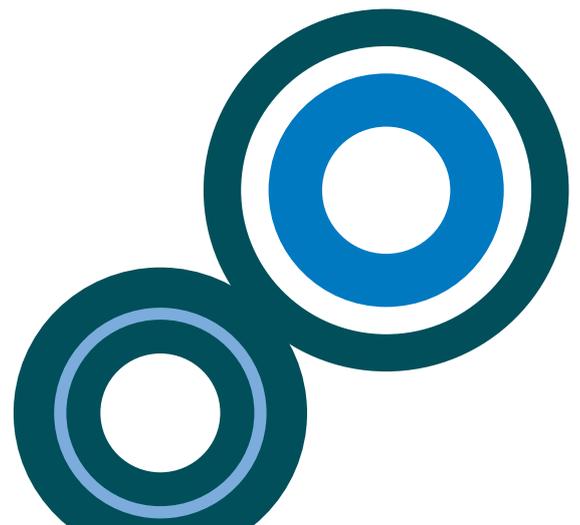
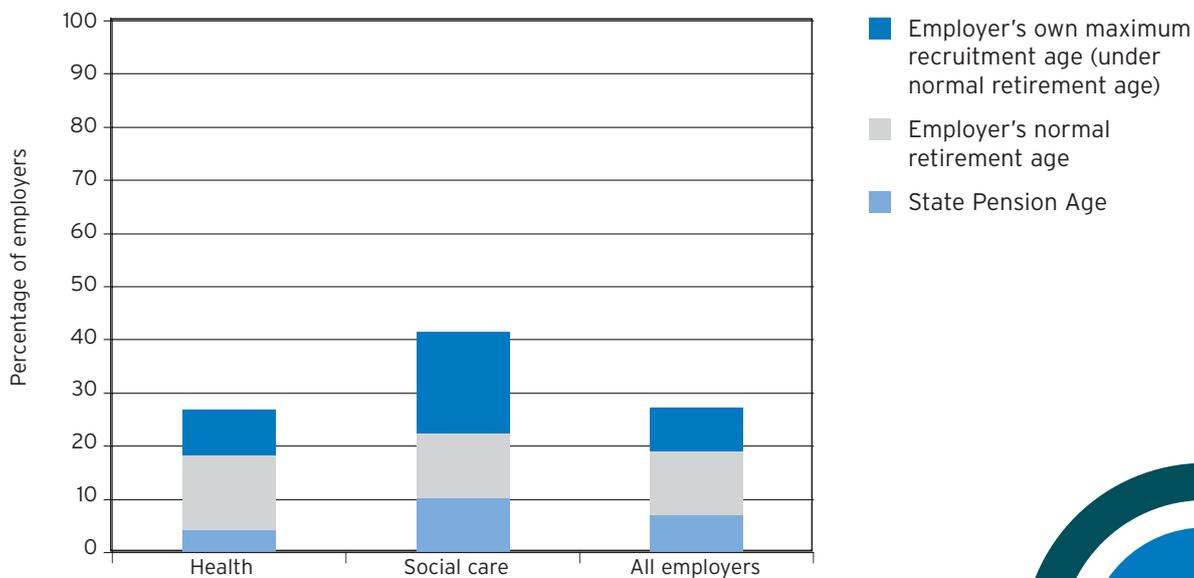
Figure 2 Employers who request date of birth information on application forms



However, despite a generally older workforce, employers in social care are less willing than those in health, and other sectors, to recruit employees above state pension age (Fig 3). They are also more likely to set maximum

recruitment ages below their normal retirement ages. Maximum recruitment ages which are more than 6 months before the employer's retirement age will be unlawful under the Regulations.

Figure 3 Employers who would not recruit people over a specified age



5. Pay and conditions

The key principle in setting pay and conditions should be fairness. Where individuals are treated differently, this should be on the basis of a different contribution or skill, not on age, or on a factor which is a proxy for age (like years of service). This applies to people of all ages, and those over an employer’s normal retirement age are equally protected by the law⁹.

The Regulations do, however, allow different treatment where this can be “objectively

justified” as a “proportionate” way of achieving “a legitimate business purpose”. Rewarding long service can, for example, be justified if it can be shown to benefit the business by increasing staff retention, and the sums involved are reasonable¹⁰.

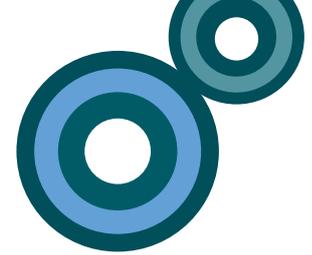
The table shows the most common areas of hazardous practice in the Health and Social Care sector.

Table 2

Pay and Conditions	Comment	% of organisations reporting in Health and Social Care	% of organisations reporting, all sectors
Incremental pay scales are used	Unlawful if scale covers more than 5 years (which occurs in 5% of all organisations), unless it can be objectively justified. Such scales have recently been abolished for most Health staff, but remain for Social Care.	65	36
Annual leave entitlement is based on years of service	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large organisations (affects 44% of all organisations but 58% of all employees).	60	44
Starting salary takes experience into consideration	Potentially discriminatory, since experience relates indirectly to age, and does not directly measure competence.	52	58
Long service awards	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large organisations (affects 33% of all organisations but 54% of all employees).	32	33
Separate youth rates of pay	Only lawful in specific circumstances relating to the National Minimum Wage or Apprenticeships.	8	11
Selection for training depends on period to retirement	Potentially indirectly discriminatory (7% of all organisations set a limit of more than 1 year). Objective justification is possible in terms of business benefits like the cost set against predicted return.	7	8
A maximum age is set for eligibility for sick pay	Unlawful	6	6
Starting salary is dependent on age	Unlawful	4	13

⁹ The upper age limit for unfair dismissal claims is being lifted under the new regulations, and employees over their organisation’s retirement age will have full protection against discrimination.

¹⁰ This is a complex area. Advice is available on the ACAS website (see “Further Information” below).



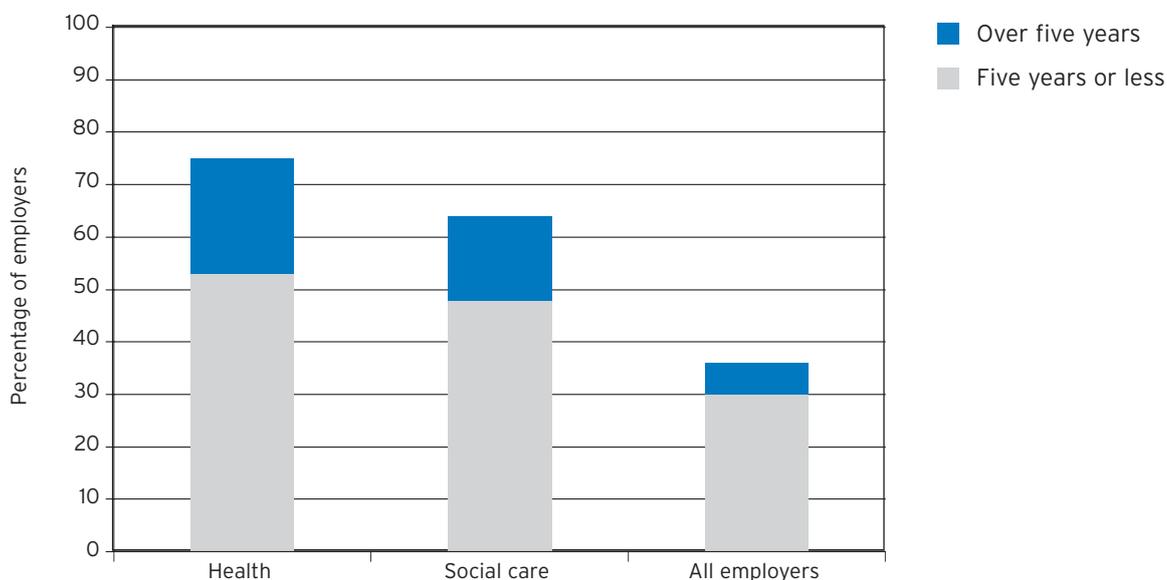
While health and social care employers are generally more sympathetic to employing older workers, they also have a number of practices, often enshrined in long standing collective agreements, which are hazardous under the new regulations. They involve the use of long incremental scales (in Social Care), and using length of service to give access to a range of benefits.

Employers in this sector are less likely than other employers to use age directly in setting starting pay or salary levels, or in promotion decisions, although a small proportion of establishments do still operate pay schemes directly related to age, which will only be lawful where they relate to the Minimum Wage for young people or involve the first year of Apprenticeships.

Using length of service as a basis for setting pay and benefits is hazardous, since older employees are more likely to benefit, unless an objective justification can be demonstrated.

At the time of the DWP survey three quarters of health sector employers, and nearly two thirds of social care employers used incremental pay scales (a practice which is more common in the public sector generally) (Fig 4). In both cases they are more likely to extend beyond five years than incremental scales in other sectors. Incremental scales of no more than five years are permitted by the regulations, but scales which extend further will need to be objectively justified. However, under the Agenda for Change reforms, such scales have been abolished across the NHS, with exceptions for certain specific occupational groups like doctors.

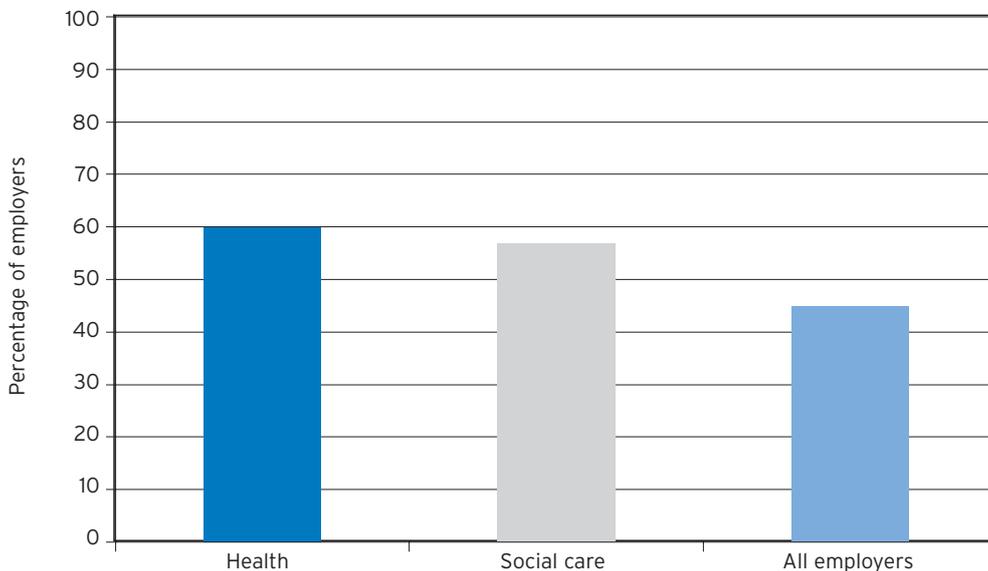
Figure 4 Employers who use incremental pay scales



Length of service also affects annual leave entitlement in both sectors (Fig 5). This is hazardous since it discriminates indirectly against younger employees, and employers will need to

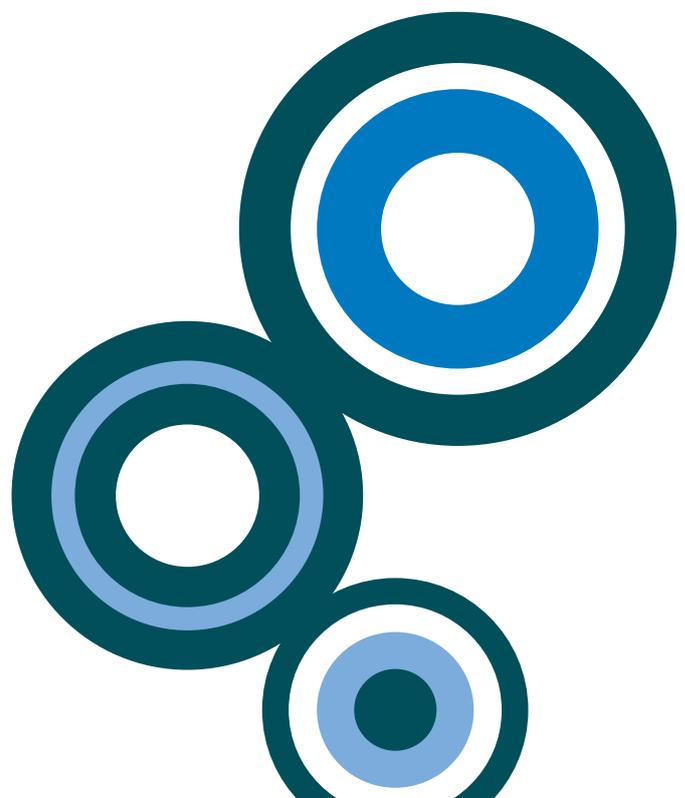
be able to demonstrate that this is a proportionate means of achieving a legitimate business need, like increasing retention of experienced staff.

Figure 5 Length of service affects annual leave entitlement



Both health and social care employers are more likely than employers in other sectors to set maximum ages for entitlement to sick pay. If based on age alone this will be unlawful, even if the maximum age is above the employer's retirement age or state pension age, since there is no age limit on the legal protection for the employee.

Health and social care employers are more likely than employers in other sectors to use age to calculate compulsory redundancy pay. There are specific constraints on how this can be done if it is to remain within the law.



6. Retirement and redundancy

The Age Regulations introduce a new national Default Retirement Age of 65 for both men and women. An employer can lawfully set a retirement age at 65 or above, but can only set a lower retirement age if there is an objective justification (which is expected to be very rare, since age itself is rarely a qualification for a job). Whatever retirement age the organisation adopts, the employer will be required to give individuals formal advance notice of their retirement date, and must consider requests to stay on after that.

The key principle here is that, up to the organisation's retirement age, exit from the organisation through either retirement or redundancy should be based on individual capability and contribution, and personal preference, not on age.

In relation to redundancy and unfair dismissal, the Regulations extend the same rights to all employees, whatever their age, removing the previous age limits. Statutory redundancy entitlements remain unchanged. An employer can use age or length of service to enhance redundancy payments, but only in accordance with the rules specified in the Age Regulations.

In this area, the greatest hazards concern the setting of compulsory retirement ages and the use of age in selection for redundancy or setting levels of redundancy pay.

The table shows the most common areas of hazardous practice in the Health and Social Care sector.



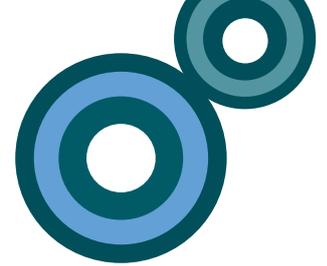


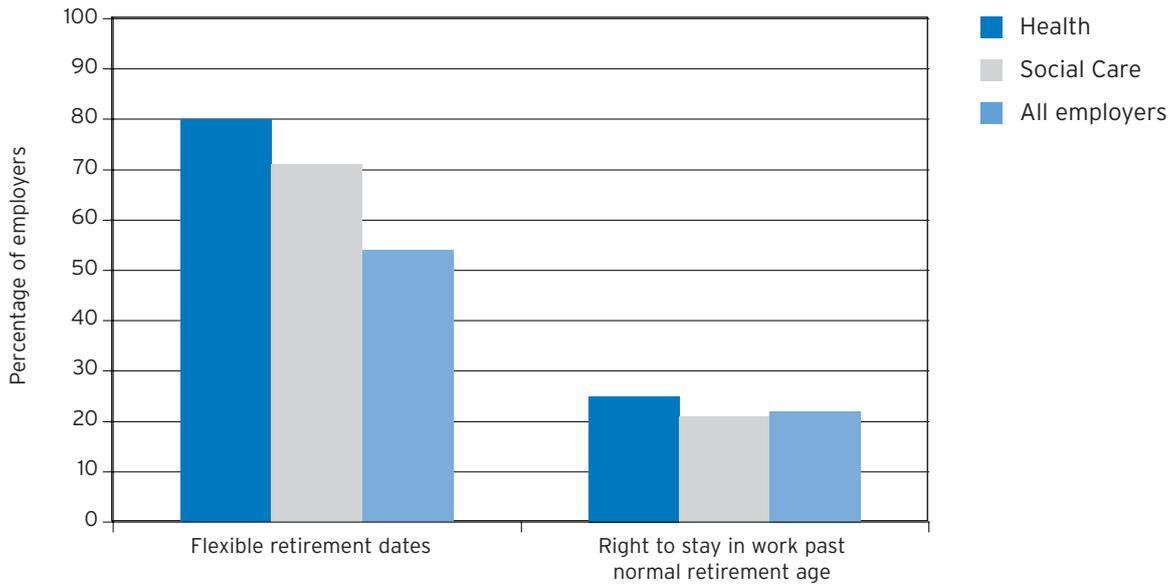
Table 3

Retirement and Redundancy	Comment	% of organisations reporting in health and social work	% of organisations reporting, all sectors
Compulsory retirement ages	Unlawful if below 65 (which affects 6% of all employers), unless it can be objectively justified. 50% of the UK workforce is affected by compulsory retirement ages (because this is more common in large organisations). However, in most cases the fixed age is 65, which will remain lawful, although employers must consider requests to stay on.	42	37
Redundancy decisions based on length of service	Indirectly discriminatory since longer service correlates with age.	40	49
Compulsory redundancy decisions are based on "last in first out"	Likely to discriminate indirectly against younger employees.	22	28
Level of redundancy pay based on length of service	Can be indirectly discriminatory against younger employees. Length of service is used in compulsory redundancy decisions by 27% of all organisations but affects 38% of all employees. For voluntary redundancy it is used by 23% of all organisations but affects 34% of all employees.	12 compulsory 11 voluntary	27 compulsory 23 voluntary
Age is used in selection for redundancy	Unlawful , unless the decision must be based on requirements of job and competence of staff, or positive action to maintain an age balance.	10 compulsory 7 voluntary	14 compulsory 5 voluntary
Level of redundancy pay is affected by age	Unlawful . Affects only 10% of all organisations, but 17% of all employees (because it is more often used in larger organisations).	5 compulsory 5 voluntary	10 compulsory 9 voluntary
Redundancy decisions based on current salary	Likely to discriminate indirectly since salary levels generally correlate with age.	0	7

"Last in/first out" selection criteria for compulsory redundancy are more common in social care than in other sectors, but less common in health. This is hazardous, since its likely to discriminate against younger employees. Health and social care employers are more

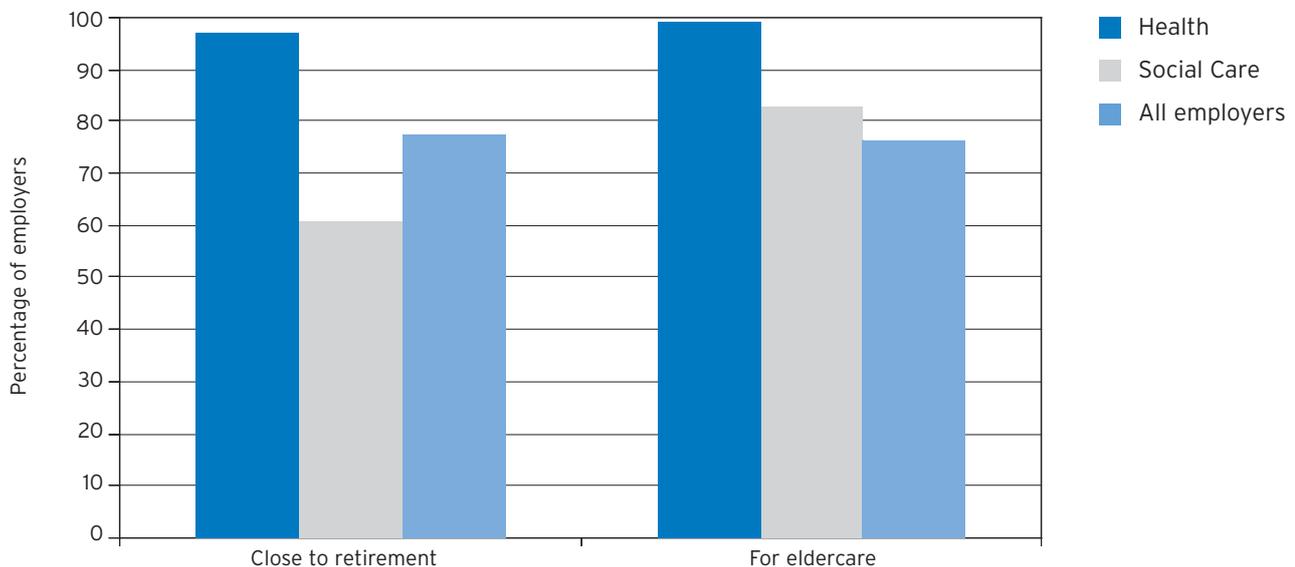
likely than employers in general to offer flexible working arrangements to older workers). Almost four in five employers offer flexible retirement dates, and almost one in four give all staff the right to stay in work part normal retirement age (Fig 6).

Figure 6 Employers offering flexibility in retirement dates



Health employers are more willing than those in social care to consider requests for flexible working (including part-time) for staff who are either close to retirement or who have caring responsibilities for elderly dependents (Fig 7).

Figure 7 Employers who are “very” or “quite” likely to offer flexible hours to employees



On the other hand, a small, but significant, number of both health and social care employers (4%) retain mandatory retirement ages below 65, which will be the new statutory default retirement age. This will be unlawful, and although exceptions for genuine occupational

reasons are possible, these are expected to be extremely rare, since there are few, if any, circumstances in which age, rather than capability of some kind, determines someone's suitability to work.

7. Management and training

There are a variety of management practices which can reduce the risk of legal disputes under the Age Regulations. Table 4 identifies the

commonest ones, and shows what proportion of organisations in the health and social care sector, and the economy in general, use them at present.

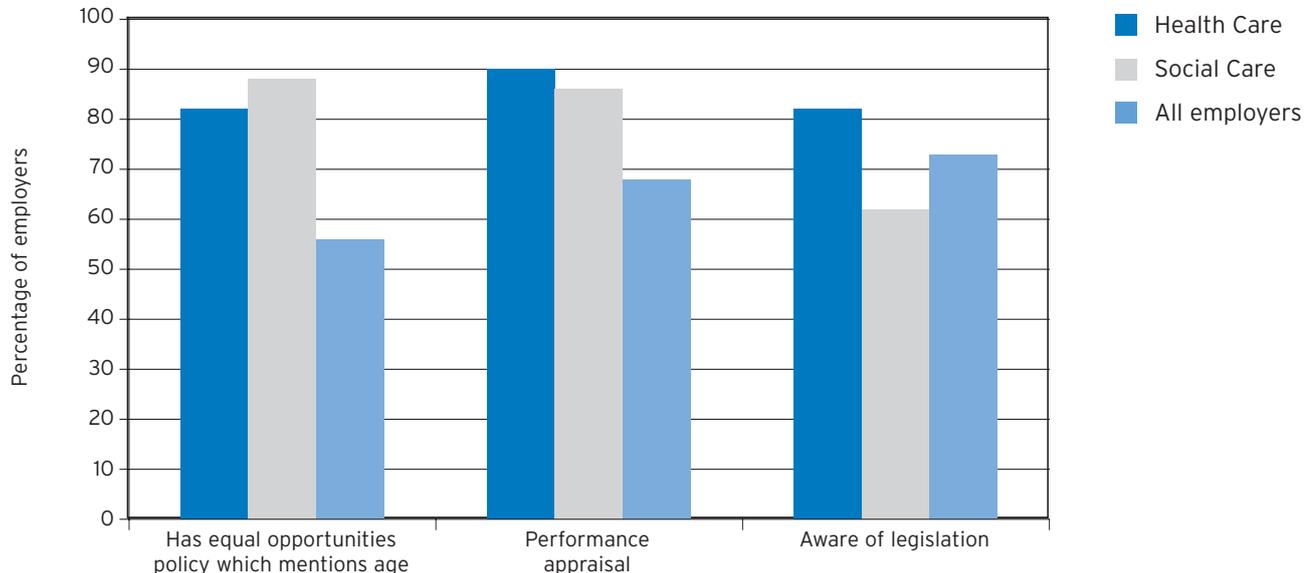
Table 4

Management and training	Comment	% of organisations reporting in Health and Social Care	% of organisations reporting, all sectors
Equal opportunities policy	Having a policy makes expectations clear to managers and staff, and makes monitoring easier.	98	72
	Equal opportunities policy explicitly mentions age.	84	56
	Policy implementation by age is monitored (only those with age policies).	63	49
"Age neutral" recruitment practices	Removing dates of birth and age data from applications before they are considered by selectors reduces the risk of discrimination (although training recruiters is also important). Some organisations collect this information on equal opportunities monitoring forms which are removed before forms are passed for short listing.	59	43
Providing work related training for all staff	There is a direct relationship between participation in training and staying longer in work.	68	70
Formal performance appraisal	Ensures that employees are clear about objectives, that performance is recognised, and untapped talents are used. This will also be relevant when organisations have to consider formal requests to stay after an organisation's retirement age.	88	68
Formal assessment for promotion	Formal assessment increases the chances of promoting the most valuable people, and reduces the risk of discrimination (4% of all organisations currently have age related criteria, which will be unlawful).	37	37
Flexible working	Many employees, especially those with childcare or eldercare responsibilities, and those approaching retirement, would like to work part-time or flexibly. Offering flexible working improves retention and motivation of key staff.	92 For childcare 82 For pre-retirement 87 For eldercare 63 For any reason	82 For childcare 78 For pre-retirement 74 For eldercare 51 For any reason
Flexible retirement ages	Flexible retirement allows individuals to work longer and employers to continue to make use of skills and expertise.	64 To all staff 4 To some staff	50 To all staff 4 To some staff

Health and social care employers are much more likely than employers in general to have management practices which will help them avoid unfair discrimination (Fig 8). One aspect of this is the widespread use in the sector of formal appraisal and performance management systems.

Such systems are important tools for employers to manage the careers of workers in later working life, including the assessment of requests to stay in work past retirement. It is, of course, important that managers are appropriately trained to operate such systems.

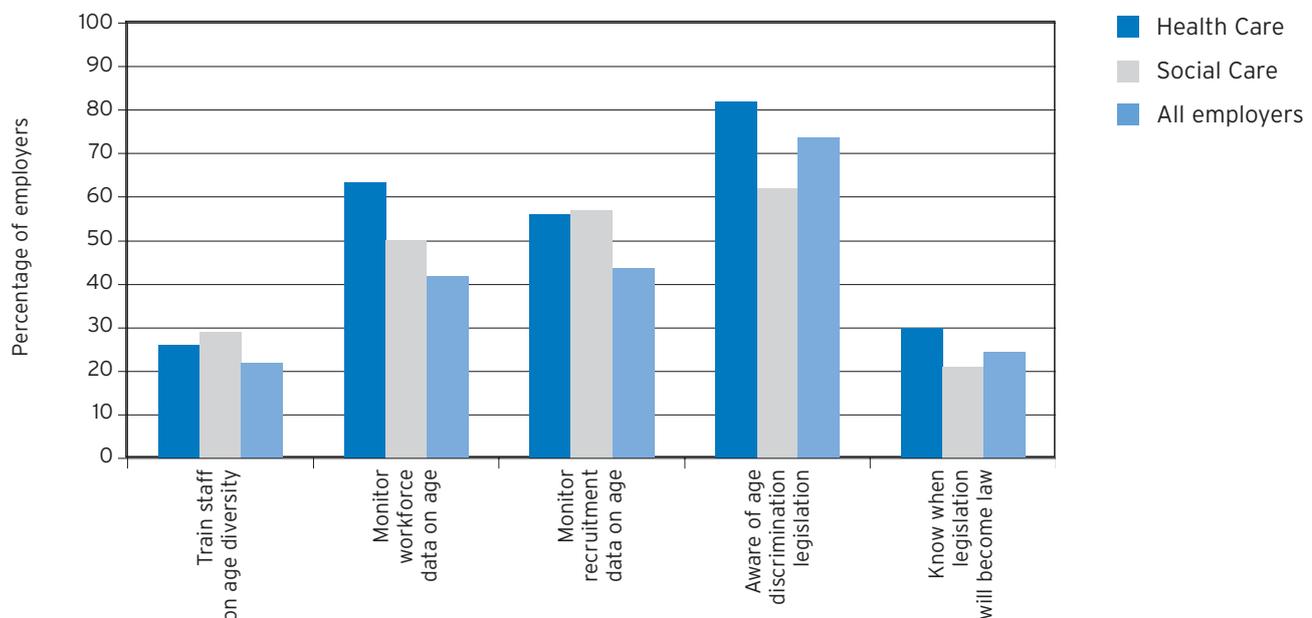
Figure 8 Employers prepared for age discrimination regulations



Similarly, both health and social care employers are more likely than those in other sectors to have equal opportunities policies which

mention age, to train employees on age diversity, and to monitor data to identify potentially hazardous practice.

Figure 9 Age diversity



Few health employers use age, directly or indirectly, as a criterion in deciding who to support for training, although social care employers are more likely to consider the potential length of service, particularly the proximity to retirement, of the individual. Employers who select in this way will need

to be able to demonstrate that such restrictions are proportionate and objectively justifiable.

At the time of the survey (Winter/Spring 2004-5) most employers in health and social care knew that age discrimination was planned, although only one in six social care employers knew exactly when it would take effect.

8. Managing age in health and social care: discussion questions

The following questions are designed to help you, as an employer in the health and social care sector, to plan how you will respond to an ageing workforce and the Age Regulations:

1. How concerned are you about **skills gaps and shortages** in your sector, and do you believe current labour market predictions about this?
2. Do you think that **a different age mix** in the workforce could help overcome these?
3. Do people generally in your sector **have strong views about appropriate age ranges for particular jobs** which would limit the opportunity to change the age mix?
4. Is your **ability to change pay and conditions** limited by national agreements, or regulations like “licence to practice” rules? How can you tackle this?
5. Policymakers sometimes assume that all firms in a “sector” are alike. In your sector are there particular **kinds of firm which are very different** in their approach to age management?
6. How easy is it to **extend working lives** in your sector? Does this apply more to some groups of staff than others?
7. Are there **traditional career patterns** in your sector which might change if working lives became longer (e.g. “downshifting” or mentoring roles for older workers)?
8. Older workers often prefer **to work part-time or on a flexible basis**. How easy is it to do this in your sector, and what might be the constraints?
9. Are there jobs where **physical demand or levels of stress** make extending working life more difficult? Are there ways of overcoming these?
10. Is it difficult to **recruit older people** in your sector? After what age? Can training help?
11. **Small firms** in general have less formal management structures and procedures. Will this make overcoming age discrimination easier or more difficult for them?
12. A high proportion of people working after 65 are **self employed**, what role does this play in your sector?
13. What are the implications of an ageing workforce for supply and demand for **training** in your sector? (given that those who train generally stay in work longer)
14. How difficult will it be to **raise awareness among employers** in your sector about the ageing workforce, and about the age discrimination regulations, especially among small firms, who are more difficult to contact?
15. Are there **lessons about managing an age diverse workforce** which your sector could offer to others?

CROW would welcome any comments on these questions (or any others) as a contribution to its final research report for DWP¹.

¹ See “Further Information” below.



9. About this paper

This paper was written by the Centre of Research into the Older Workforce on behalf of the Department for Work and Pensions. It draws on two sources:

- The background material on the sector comes mainly from the Sector Skills Development Agency's Research Matrix database, which brings together a large quantity of information about all sectors from a variety of sources, including the Labour Force Survey, the National Employer Skills Survey, the Annual Business Inquiry, and the Inter Departmental Business Register¹².
- The material on current age management practice in the sector is based on data gathered by the National Institute for Economic and Social Research (NIESR) and the British Market Research Bureau (BMRB), in a national survey for the DWP and DTI in Spring 2005¹³. They interviewed the most senior person responsible for HR issues in 2084 firms employing more than 5 people in England, Scotland and Wales. Each interviewee was asked 160 questions about aspects of age management, including recruitment, retirement, benefits, pensions, management practices and discrimination. CROW carried out a separate analysis of this data to produce the current paper. The sample included 214 establishments in the health and social care sector.

The DWP/DTI survey evidence is the best available on current employer age management practices across all sectors, but it should be interpreted with some caution since:

- it probably underestimates the frequency of some practices (since firms with a positive record are more likely to respond to such surveys; employers may be reluctant to admit to what they suspect is "bad practice"; and the senior managers who replied to the survey may be unaware of poor practice by some line managers);
- In some cases the number of employers responding is relatively small, and may not be fully representative of particular sizes of firms in that sector;
- Since some practices are more common in large firms, the behaviour of a small proportion of firms may affect a much larger proportion of workers;
- Although some hazardous practices are rare, the firms involved will still be open to legal challenge if they do not make appropriate changes.

We have not commented on pensions issues since pensions provisions are largely exempt from the regulations¹⁴.

All views expressed in this paper are those of the authors. They are not intended to be authoritative statements of the law, and do not represent the views of the Department for Work and Pensions or any other Government Department.

¹² Details on the Skills for Business website at www.ssdamatrix.org.uk/

¹³ See "Further Information" below.

¹⁴ DTI's guidance *The impact of age regulations on pensions*, explains the implications of the legislation for pensions in detail.

10. Responding to this paper

This paper is intended for consultation with employers, sector bodies and other interested organisations and individuals during 2006.

Responses will contribute to a larger report on sectoral approaches to age management, which DWP plans to publish in 2007.

If you would like to comment on any aspect of this paper, or of age management in the health and social care sector (or on age management more generally), please write directly to the Centre for Research into the Older Workforce (CROW). We would be particularly interested in responses which:

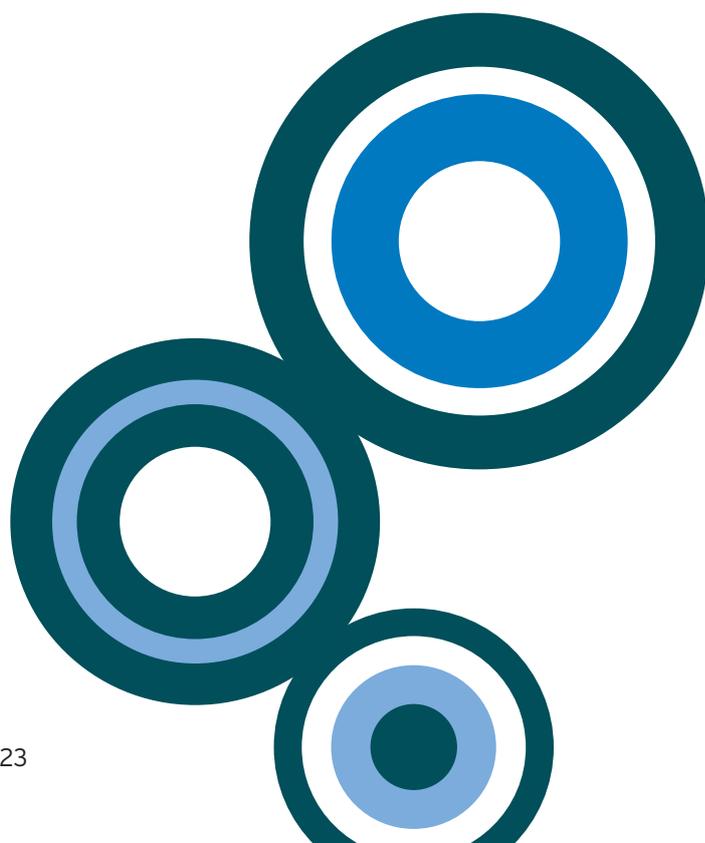
- add relevant information on the shape of the sector and age management issues and practices within it;
- clarify the reasons for particular features (e.g. why one part of the sector has very different practices from others, or why health and social care is different from other sectors);

- identify examples of good practice which might be disseminated to other employers or sectors;
- identify questions which need further investigation.

Responses and comments on the content or issues raised by this paper should be sent by email to: crow@niace.org.uk

Or by post to:

Age Legislation Research
Centre for Research into the Older Workforce
NIACE
21 De Montfort Street
Leicester
LE1 7GE



11. Further information

Further information on age related issues, policies, practices, and legislation can be found at www.agepositive.gov.uk

You can request further copies of this paper, or contact the Government's Age Positive team at: agepositive@dwp.gsi.gov.uk

or write to:

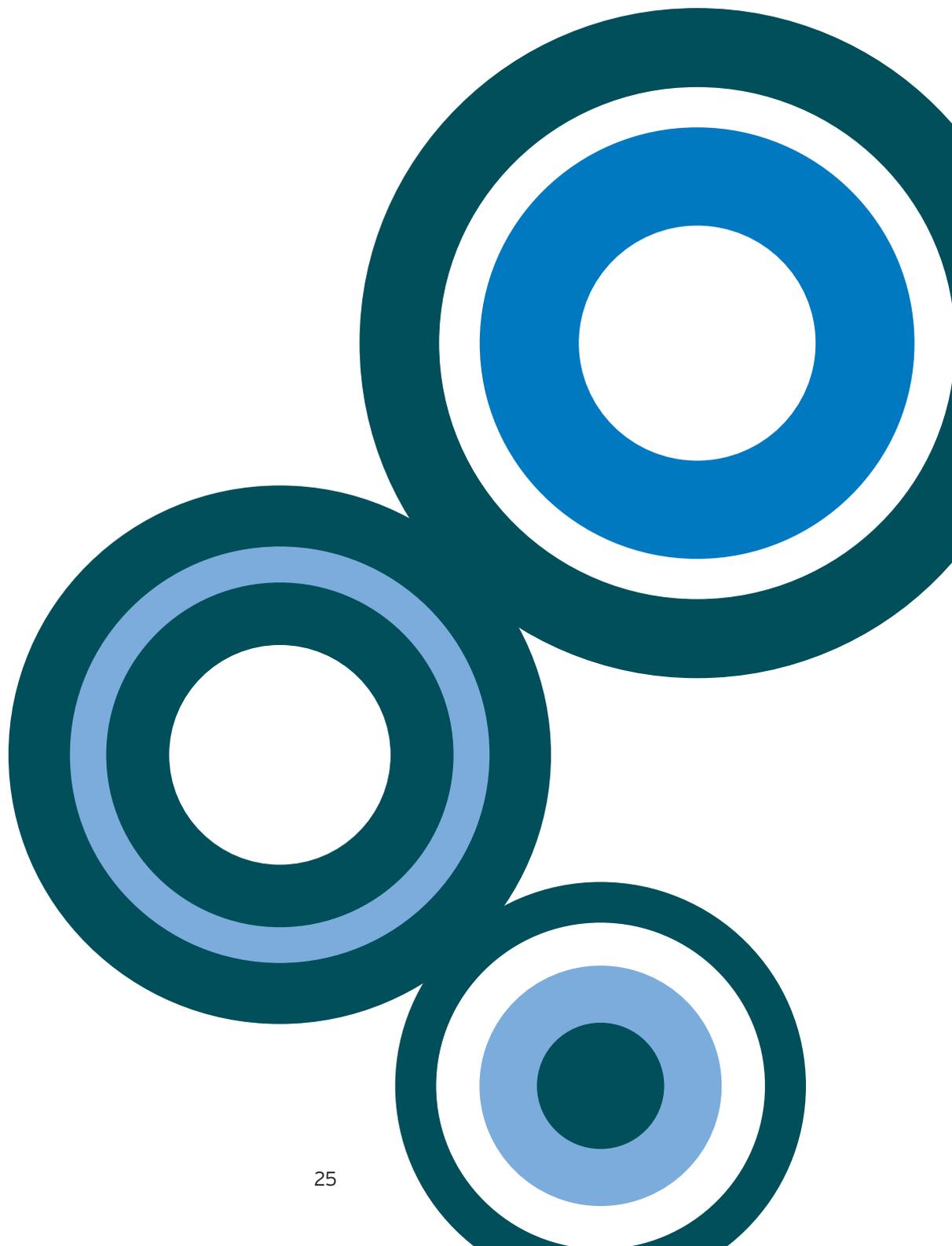
Age Positive Team
Extending Working Life Division
N10
Moorfoot
Sheffield
S1 4PQ

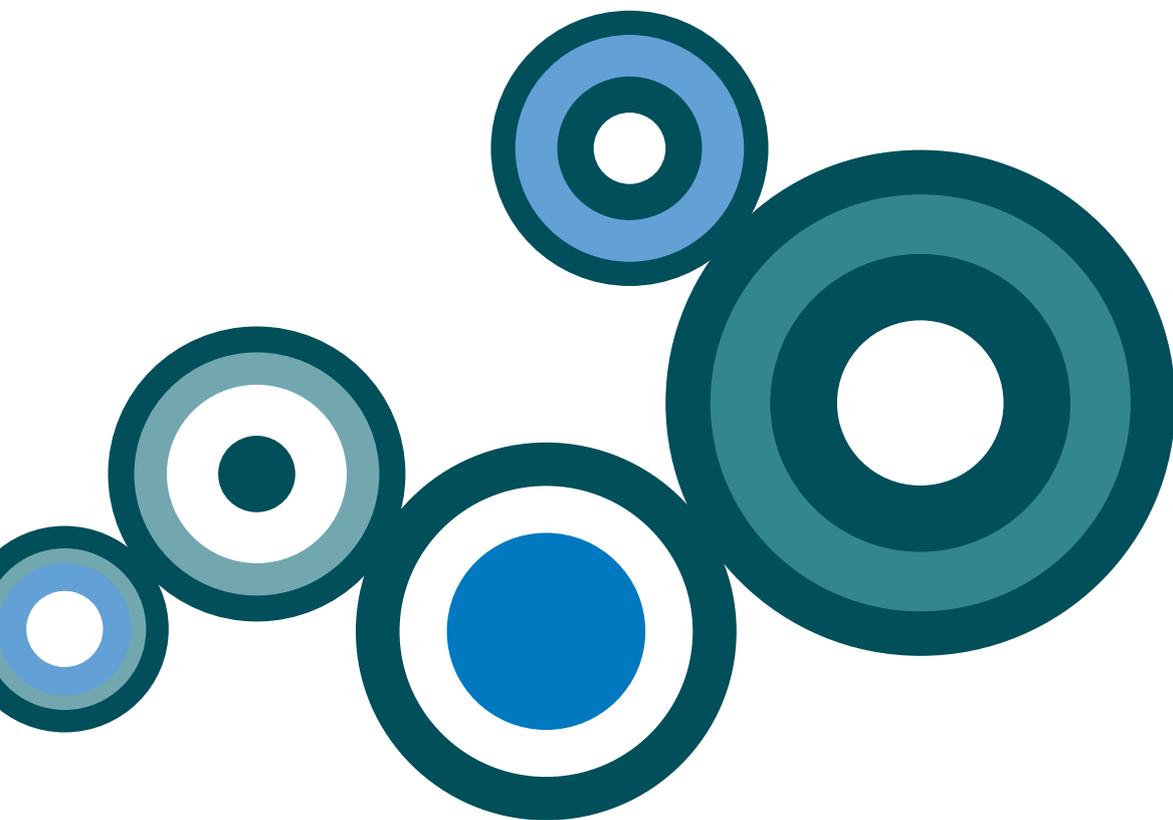
Details of the Age Discrimination Regulations, which will come into force in October 2006, can be found on the DTI's website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

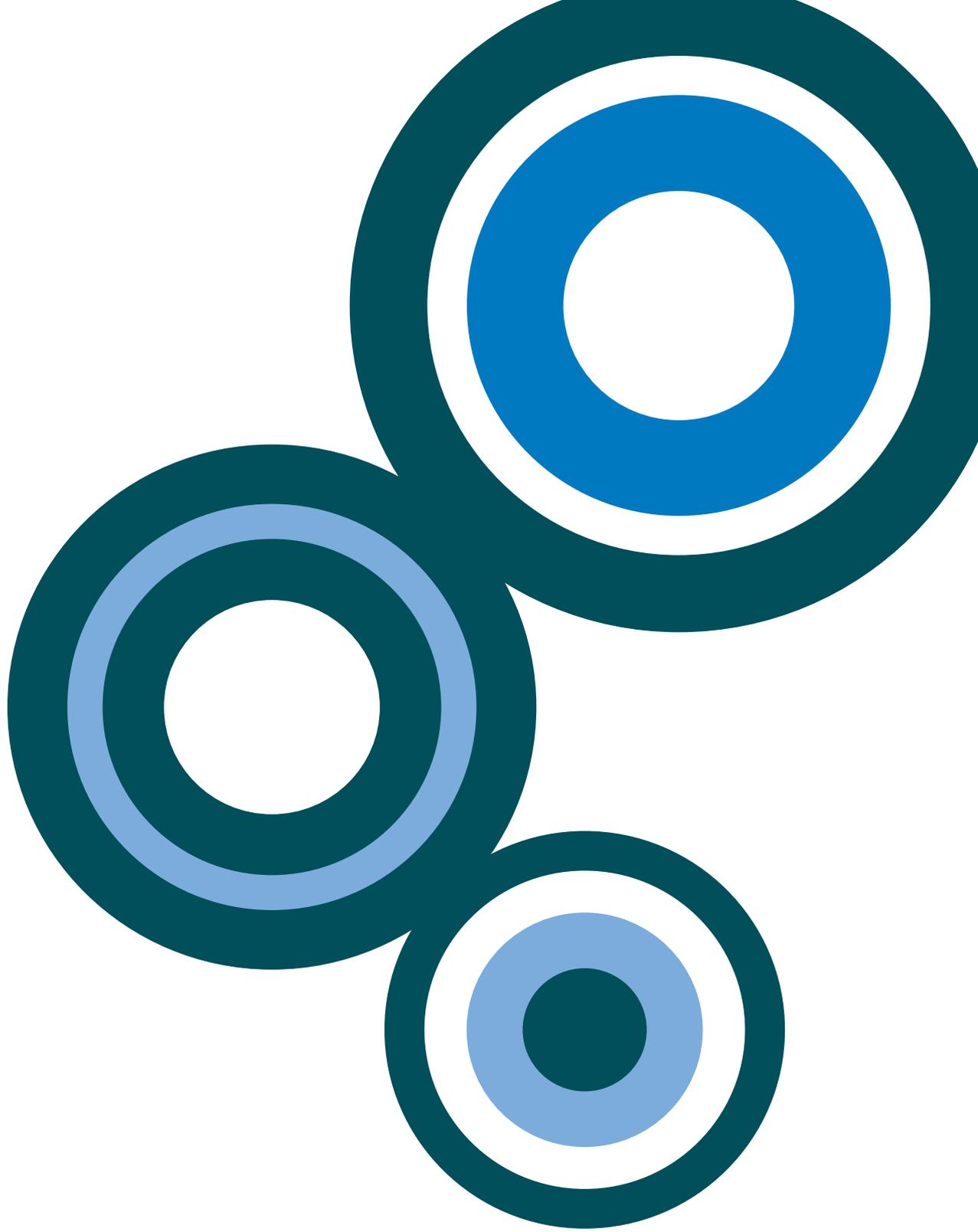
Advice on interpretation and good practice can be found on the ACAS website at: www.acas.gov.uk

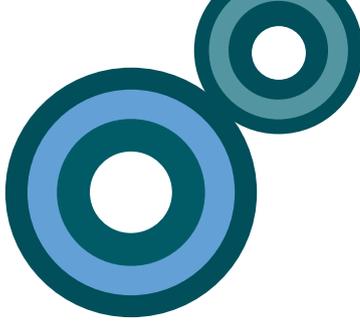
The full report of DWP and DTI's national survey conducted by NIESR and BMRB which produced the evidence for this report is Survey of Employers' policies, practices and preferences relating to age by Metcalf with Meadows (DWP Research Report 325, DTI employment relations research series number 49). The full report is available for download free on the DWP website at: www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep325.pdf

Further information about CROW can be found at: www.niace.org.uk/crow









Members of the Age Partnership Group

Members of the Age Partnership Group, listed below, support and endorse the Be Ready campaign.

for England

Acas
Association of British Insurers (ABI)
Association of Chartered Certified Accountants (ACCA)
The British Chambers of Commerce (BCC)
Chartered Institute of Personnel and Development (CIPD)
Chartered Management Institute
Confederation of British Industry (CBI)
Department of Trade and Industry (DTI)
Department for Work and Pensions (DWP) - Chair
Employers Forum on Age (EFA)
EEF, the manufacturers' organisation
Federation of Small Businesses (FSB)
HM Revenue & Customs (HMRC)
Institute of Directors (IOD)
Improvement and Development Agency (IdeA)
Local Government Employees (LGE)
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Public Sector People Managers Association (PPMA)
Small Business Service (SBS)
Trades Union Congress (TUC)

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Acas Scotland
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Better Government for Older People in Scotland
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PRIME-Cymru
Prospect Wales
Wales Social Partners Unit
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If you require a hard copy please e-mail: agepositive@dwp.gsi.gov.uk

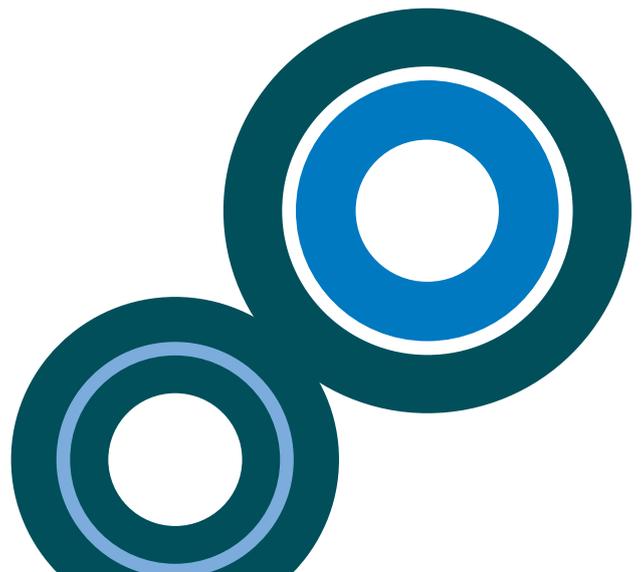
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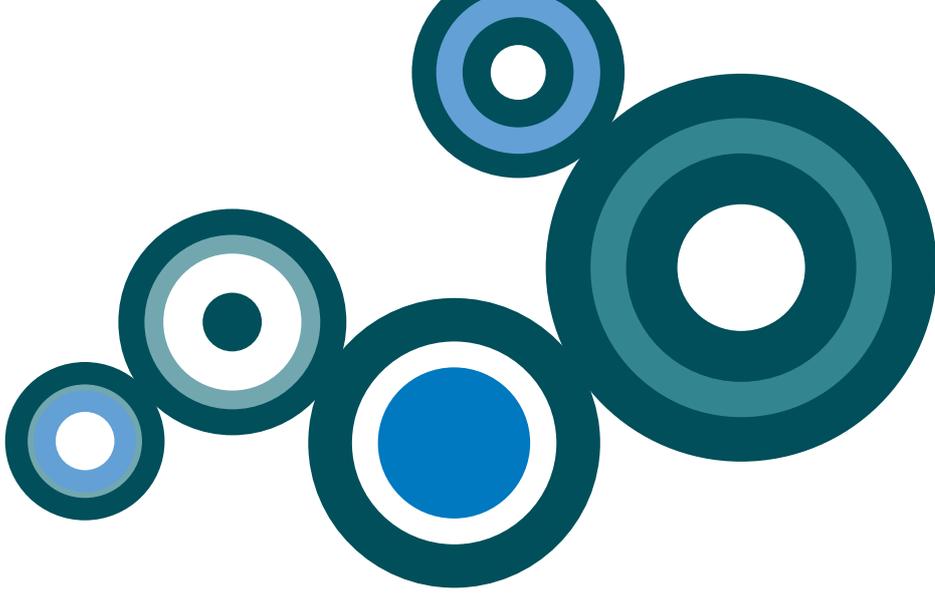
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Managing an ageing workforce in hospitality

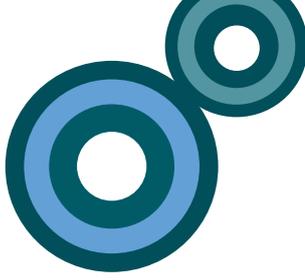
A report for employers

By Stephen McNair and Matt Flynn

Produced for the Department
for Work and Pensions
By the Centre for Research
into the Older Workforce

age**partnership**group
Targeting Employers®





Age Partnership Group (APG)

This research is one of a number of projects commissioned by the DWP on behalf of the APG as part of the National Guidance Campaign (NGC).

The APG was formed in 2002 and consists of a number of national organisations who represent different aspects of employers needs, for example, small business representatives, trade unions, HR and Personnel managers, local government, other government departments, accountancy, insurance and training organisations. There are separate groups representing England, Scotland and Wales.

The NGC aims to raise employers' awareness of, and ability to adopt, practical information and guidance on age diverse employment practices. This includes flexible employment and retirement opportunities in order to increase the recruitment, selection, promotion, training and retention of older employees prior to the implementation of age legislation in October 2006.

You can view the Age Partnership Group website at www.agepositive.gov.uk/agepartnershipgroup

Legislation

In March 2006, the Employment Equality (Age) Regulations 2006 were published. The regulations are the last major stage of the European Employment Directive and will come into effect on the 1st October 2006.

The regulations prohibit age discrimination in employment and vocational training. They apply to individuals of all ages in work, seeking work or looking to access vocational training and to all employers, and to all providers of vocational training and vocational guidance (including further and higher educational institutions).

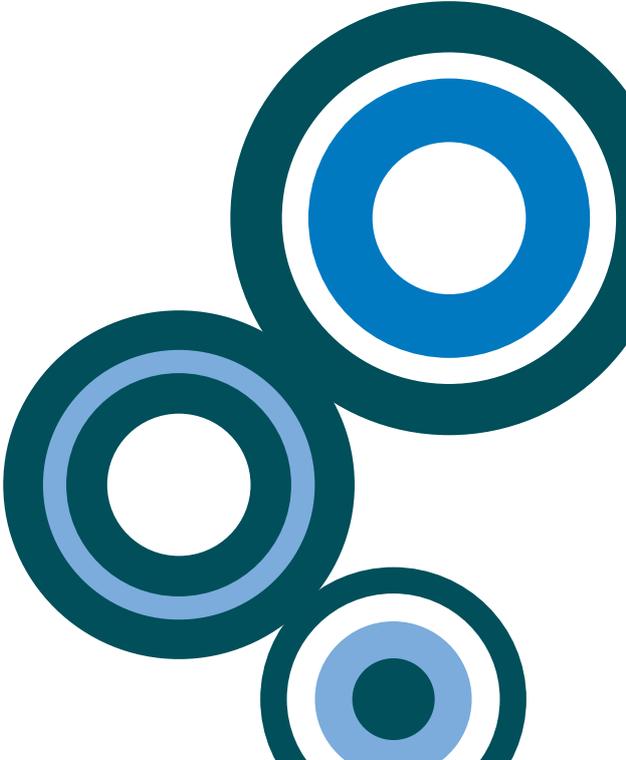
The regulations can be viewed on the Department of Trade and Industry website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Disclaimer

This report has been commissioned to provide information only. Responsibility for the views expressed in this report rests solely with the authors. The members of the Age Partnership Group (APG) and the Department for Work and Pensions (DWP) do not accept responsibility for the views of the authors.

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Introduction

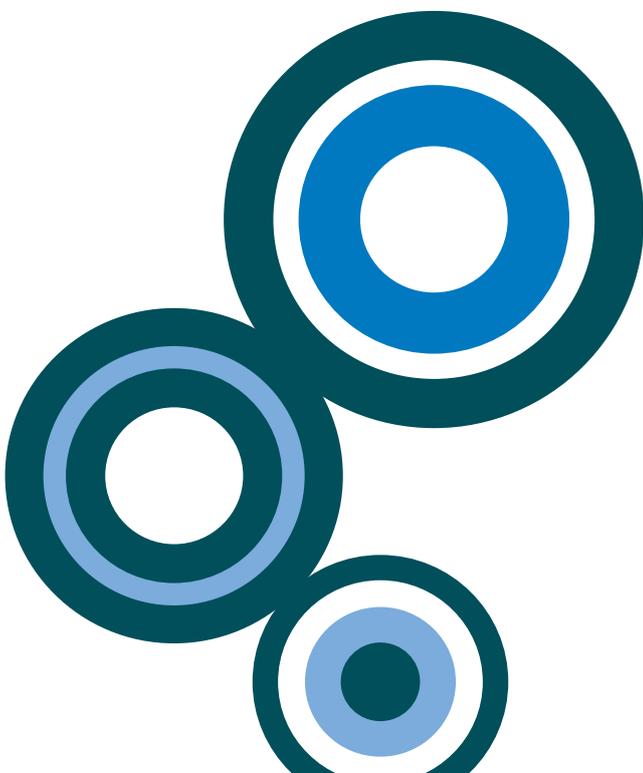
This report is about how firms in the hospitality sector are managing an ageing workforce. It has been written for the Department for Work and Pensions (DWP) by the Centre for Research into the Older Workforce (CROW) to help employers to make better use of older workers. It also helps to raise awareness of the new Employment Equality (Age) Regulations 2006 which become law in October 2006, and prohibit age discrimination in work or training against people of any age.

Workforce ageing presents a growing challenge to most employers. Birthrates have been falling for many years, and in the next few years the numbers retiring will outnumber young people entering the labour market. The government believes that the resulting skills gaps and labour shortages in many industries can be reduced if employers can find ways of making better use of older workers, and encourage people to stay in work longer.

However, every industry has its particular features, and this report outlines the special issues affecting the hospitality sector, based on a large national survey of employers. It highlights employment practices in the sector which will be hazardous under the Age Regulations, and aims to stimulate discussion and improved practice in firms.

This report is not intended to be an authoritative statement on the age discrimination law itself. Details of how to obtain the Regulations, and advice about them, can be found at the end of the report. However, while the Regulations make some activities unlawful, it is for the Courts and Employment Tribunals to interpret this in specific cases. The term “hazardous” is therefore used in this paper to describe activities which might be ruled unlawful if a case is brought. We suggest that employers need to review their practice in these areas.

During 2006, CROW will explore these issues in more depth through case studies of firms in seven sectors, and DWP plans to publish the resulting Research Report in 2007.



1. Summary: key age issues for hospitality firms

Hospitality has a very young workforce, with high labour demand and turnover and increasing skills problems. This makes the sector particularly vulnerable to the effects of falling birthrates. With fewer young people entering the workforce over the next decade, many employers will need to review strategies for recruitment and retention.

Employers in hospitality are generally less sympathetic than others to extending working life, with low degrees of flexibility over retirement dates, and low proportions allowing people to stay past normal retirement age, although they are more willing to consider reducing hours.

Although explicit discriminatory practices are rare, firms in the sector are less likely than others to have protective systems in place (like equal opportunities policies, formal appraisal and assessment for promotion, and “age blind” recruitment systems) which could ensure that unfair discrimination is not happening.

Common hazardous practices in Hospitality Sector

Common practices in this sector which may need review if employers are to avoid breaking the Age Regulations include:

- **using length of experience as a selection criterion in recruitment** This affects two thirds of all employers. Length of experience is a substitute for assessing competence, and is hazardous, since it disadvantages younger workers. However, employers in this sector are less likely than others to use age directly as a criterion in recruiting staff, and are more likely to pay all staff at the same rates, which reduces the chances of hazardous or unlawful practices.

- **providing age information on candidates to shortlisting and interviewing staff.** There are legitimate reasons why employers would request dates of birth from job applicants (for example, to monitor equal opportunities), but passing this information to staff who are responsible for selection increases the risk of age discrimination in recruitment.

- **use of “last in first out” as the basis for redundancy decisions.** This is hazardous, since it is likely that the last in will be younger than the rest of the workforce.

Unlawful practices in Hospitality firms

The following practices are less common, but unlawful, and firms who use them will need to make changes if they are to remain within the law.

- 21% of firms use age to fix starting salary.
- 10% of firms use age as a recruitment criterion.
- 8% of firms specify age in job advertisements.

2. The shape of the hospitality sector

The nature of the age management issues facing a sector depends on factors like the average size of firms, the age and skills profile of the workforce, and future expectations of growth or contraction. This section outlines this context for the hospitality sector.

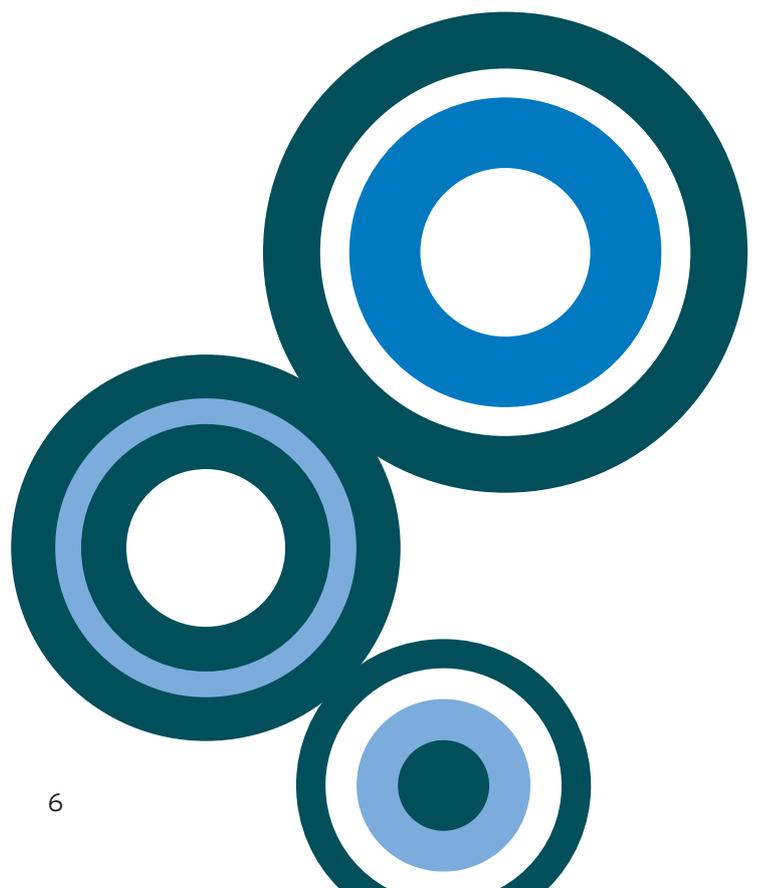
Hospitality (the sector defined statistically as “hotels and restaurants”)¹ employs 1.2 million people (4% of the national workforce), and produces 4% of total output. In addition to hotels and restaurants, its 130,000 firms include camping sites, self catering accommodation, take away food shops, bars, pubs and clubs, canteens and catering. Half the workforce work in “elementary” roles. The sector is supported by a single Sector Skills Council, *People 1st*.

Output in hospitality is growing in line with the rest of the economy, and the number of firms is also growing, although the turnover in firms is very high with 15% of all firms less than a year old. Employment in the sector is expected to expand, mainly among managers and elementary occupations. Because of high labour turnover the sector expects to need an additional 850,000 people by 2014 (equivalent to 70% of the current workforce).

This is a sector of smaller firms, with a very high proportion employing 11-49 people, and a very young workforce. About half of all firms have some form of business planning.

Hospitality has a higher proportion of young employees than any other sector, and is much less likely to employ people over 55. Employees are also much more likely to be part time, female, and from ethnic minority groups and also two thirds have qualifications below Level 3. In occupational terms, the workforce is sharply divided between half who are in elementary occupations and a fifth in managerial roles.

¹ This report includes firms in the Standard Industrial Classification (SIC) code 55



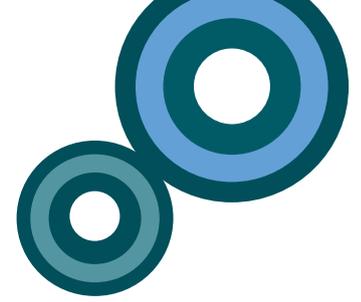
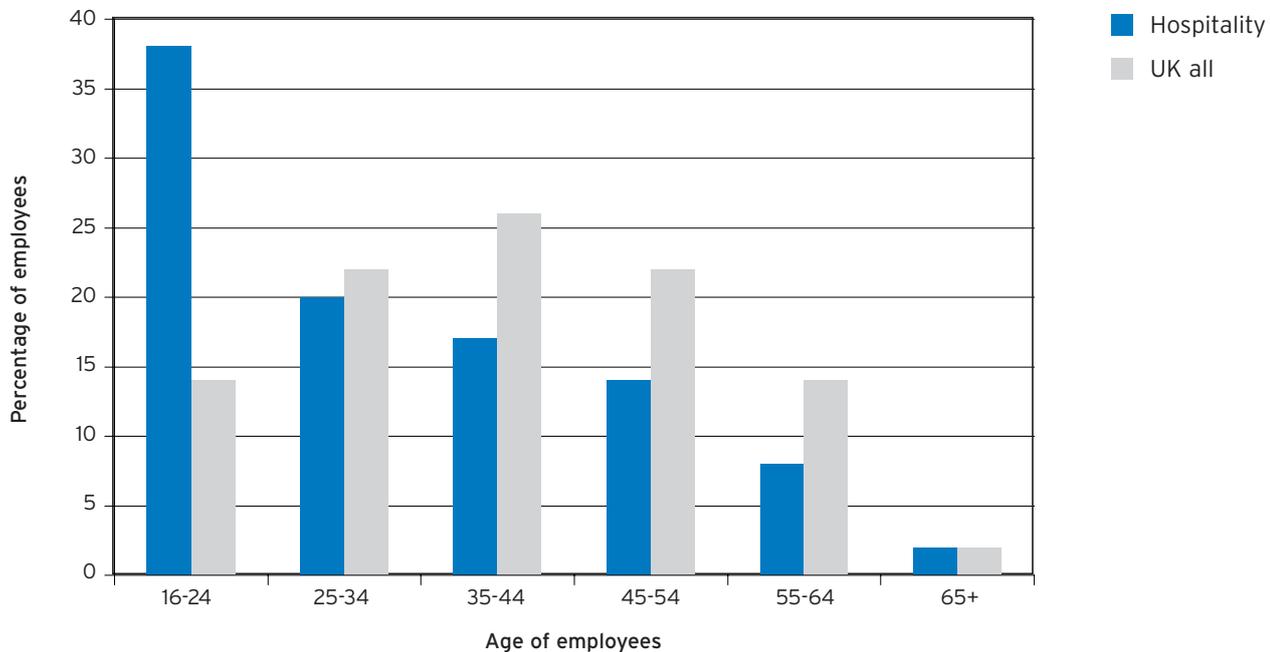


Figure 1 Hospitality workforce age profile



The hospitality sector has much more serious problems of labour supply than the economy as a whole, perhaps as a result of the youth and high turnover of the workforce. Key indicators of this are high levels of:

- vacant posts,
- hard to fill vacancies,
- skill shortage vacancies,
- internal skills gaps (where current employees lack necessary skills for the job) affecting a large proportion of the current workforce.

These problems affect all occupational groups, but are especially severe among elementary occupations, where all skills problem levels are more than three times the national average.

This suggests a sector with real recruitment difficulties, and/or uncompetitive levels of reward in a tight labour market.

Despite the evidence of skills problems, levels of training are below average on most indicators, although the proportion of staff who receive some training in a year is higher than average (probably reflecting statutory requirements combined with high turnover). Firms in this sector are as likely to plan for training as firms generally but are less likely to have a training budget, and over a third have no formal skills planning of any kind. People 1st identifies customer, managerial and supervisory skills as particular problems.

3. Age discrimination in employment

Age discrimination at work is common. It can affect people of any age, but is particularly likely to involve older people, and more than one in five workers over the age of 50 say that they have experienced it either when applying for jobs or in the workplace². In countries where age discrimination law is already in force, it is the commonest cause of discrimination cases in the courts.

From October 2006, it will be unlawful for any employer in the United Kingdom to discriminate against or harass anyone on grounds of age, directly or indirectly, in relation to either employment or vocational training. This will cover arrangements for recruitment and promotion, pay and conditions, education and training, and retirement and redundancy.

There are exceptions: in relation to retirement, where it will be lawful to make an employee retire at a given age, provided this is not below 65 (for men and women); and where an existing statutory provision exists (like the Minimum Wage Regulations). An employer may also be able to justify discrimination if it is designed to correct an age imbalance in his workforce; if there is a legitimate business reason (and the discrimination is proportionate); or if there is an objective justification (likely to be very rare). The Regulations, and advice on their interpretation, can be found on the DTI and ACAS websites³.

Some features of age discrimination are common to most employers⁴.

- Indirect discrimination is more common than direct discrimination. DWP and DTI's joint survey, conducted by the National Institute of Economic and Social Research (NIESR), found few examples of direct discrimination, but one in five employers believe that some jobs are better done by people of particular ages. Where such beliefs exist, discrimination is more likely.
- Discriminatory attitudes are more likely to be found in private sector firms, and especially small ones,⁵ in sectors like manufacturing and construction. These are also the firms and sectors where there are least likely to be formal procedures and policies to protect against unfair discrimination.
- The most common hazardous practices involve setting age limits on recruitment, especially for those over 50, and using age as a basis for decisions on compulsory retirement and redundancy.
- About half the workforce is covered by a compulsory contractual retirement age. In most cases this is already 65, which is the new "national default retirement age". However, even where firms plan to retire staff at 65, they will have to give formal notice of retirement dates and seriously consider requests to stay longer.

² Discrimination is difficult to measure precisely, since it is subjective, and affected by levels of public awareness of age issues, and many people regard it as "normal". In a CROW postal survey of workers over 50 in 2004, 20% reported age discrimination. In research by the University of Kent for Age Concern England 29% of people reported experiencing age discrimination (compared to 24% for gender).

³ See "Further Information" at the end of this report.

⁴ Information based on DWP and DTI's joint national survey of employers' policies practices and preferences, conducted by NIESR (see "Further Information") though because this is new secondary analysis not all figures are directly comparable with the DWP/DTI report. Also, where respondents were asked to describe certain policies and practices this was in respect of their largest occupational group.

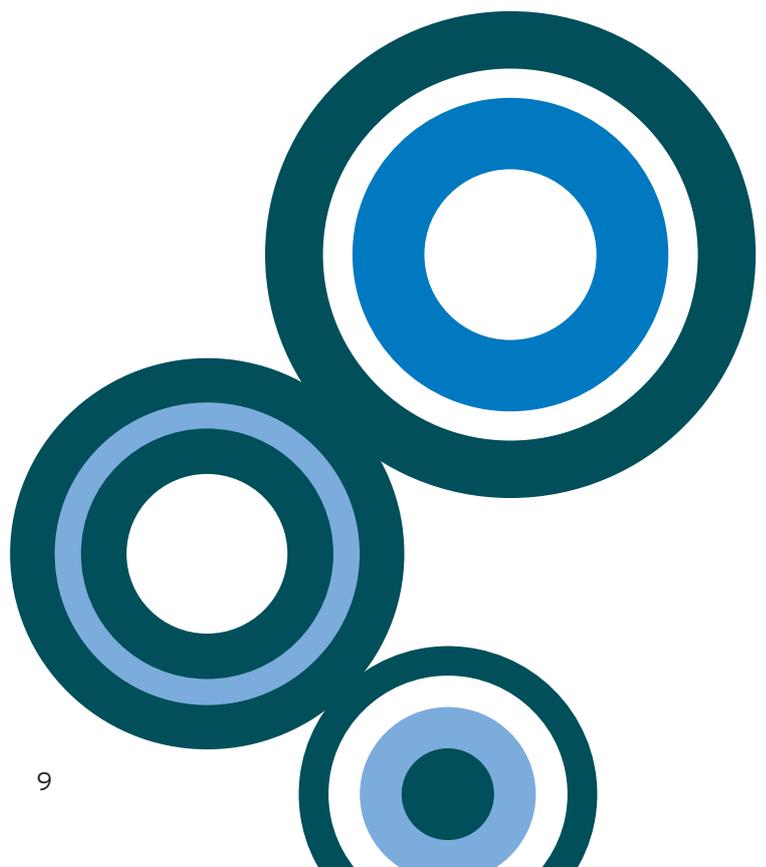
⁵ In this report "smaller" firms have 5-49 employees, and larger ones have 50 or more employees (the survey excluded firms employing fewer than 5 employees).

- Public sector and large private sector organisations, are more likely to have formal procedures (like appraisal schemes or equal opportunities policies) to protect against discrimination, especially where a Trades Union is recognised. However, these organisations are also more likely to have long standing formal agreements which include provisions which are hazardous under the Age Regulations, including contractual retirement ages below the new national default retirement age of 65.
- Two occupational groups are particularly at risk from discriminatory practices. These are professional and associate professional/ technician staff, both of whom are particularly likely to be exposed to discrimination in setting pay, long incremental pay scales, and access to training.

The tables in this paper identify hazardous practices identified in DWP/DTI's employer survey, indicating those which are most common among employers in hospitality, and among employers in general.

Some of the provisions in the Regulations allow an employer to claim an "objective justification" for a practice which would otherwise be unlawful. Such justifications require the employer to be able to show that his or her action is a proportionate means of achieving a legitimate aim. It will be for Employment Tribunals and the County Courts to rule on what is justifiable under these provisions.

The Regulations also allow some practices, like incremental scales, where pay or terms of employment improve with length of service, but only up to five years, beyond which they will need to be objectively justified.



4. Recruitment and promotion

The key principle in all selection for employment or promotion is that decisions should be fair, and based on the individual's competence for the job, and not on arbitrary factors like age (or gender or race etc).

The research evidence shows that work performance in most jobs does not decline with age before the late 60s, provided individuals are healthy, motivated and kept up to date.

Across the workforce as a whole, the commonest hazardous practices in recruitment and

promotion involve excluding applicants, either directly (by specifying ages), or indirectly (e.g. by specifying years of experience, rather than specific capabilities) in advertisements, job descriptions and interview criteria.

Table 1 below shows the most common areas of hazardous practice in the hospitality sector (with figures for firms in general for comparison).



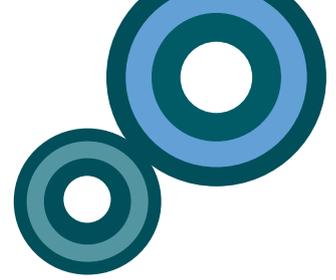


Table 1

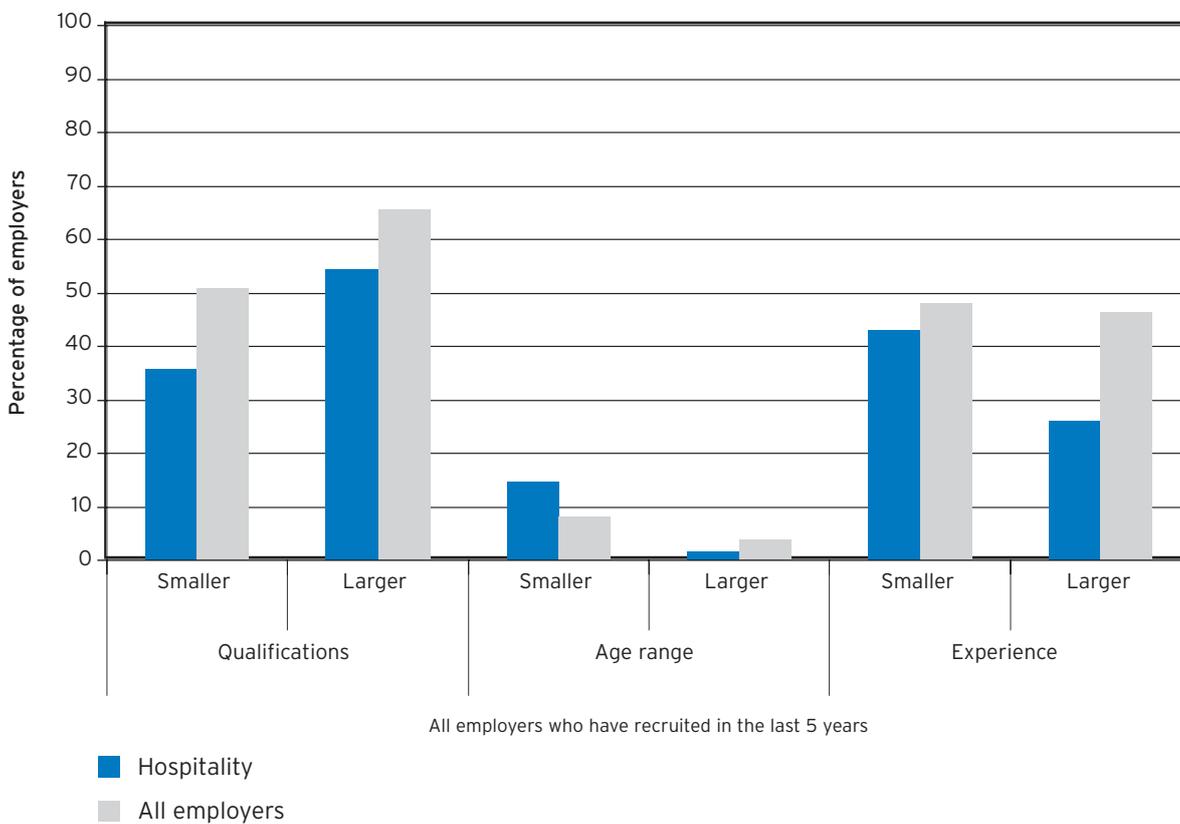
Recruitment and promotion	Comment	% of organisations reporting in hospitality	% of organisations reporting in all sectors
Selection criteria based on length of work experience of any kind	Indirectly discriminatory. The test must be individual capability not experience; unless an objective justification can be demonstrated.	63	62
Application forms ask for date of birth/age	Lawful to use for monitoring purposes and conforming to Statutory requirements. Potentially discriminatory. ACAS recommends removing this information (as with other equal opportunities information) before shortlisting.	47	48
Age information is provided to recruiting staff	Increases risk of discrimination.	49	44
Selection criteria specify qualifications	Lawful if the qualification is directly relevant to the job, and equivalent qualifications are accepted for candidates of different ages.	35	60
Maximum recruitment ages are specified	Unlawful if set more than six months before the company's retirement age unless objectively justified ⁶ .	15	29
Selection decisions are based on remaining period to retirement	Discriminatory unless a clear business justification can be demonstrated ⁷ (like the cost/time required to train, relative to the expected years of work).	13	18
Age criteria are used directly in recruitment, or particular age ranges are targeted	Unlawful unless required by Statute, or for positive action reasons (e.g. to compensate for the under representation of a particular age group).	10	9
Job advertisements specify age	Unlawful, unless there is a genuine occupational requirement (e.g. a young actor for a young part).	8	6
Selection decisions are based on expected length of service, judged by age	Unlawful	3	7

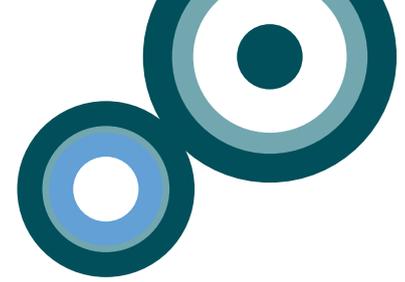
⁶ If the employer does not have a compulsory retirement age, he can set a maximum recruitment age of 64 1/2.

⁷ See also "maximum recruitment age".

Employers in hospitality tend not to specify qualifications or experience desired in job advertisements, but they do use length of experience when selecting. However, a small but significant proportion of smaller firms specify preferred age ranges, which will be unlawful from October 2006 (Fig 2).

Figure 2 Job advertisements specify a preference for particular:

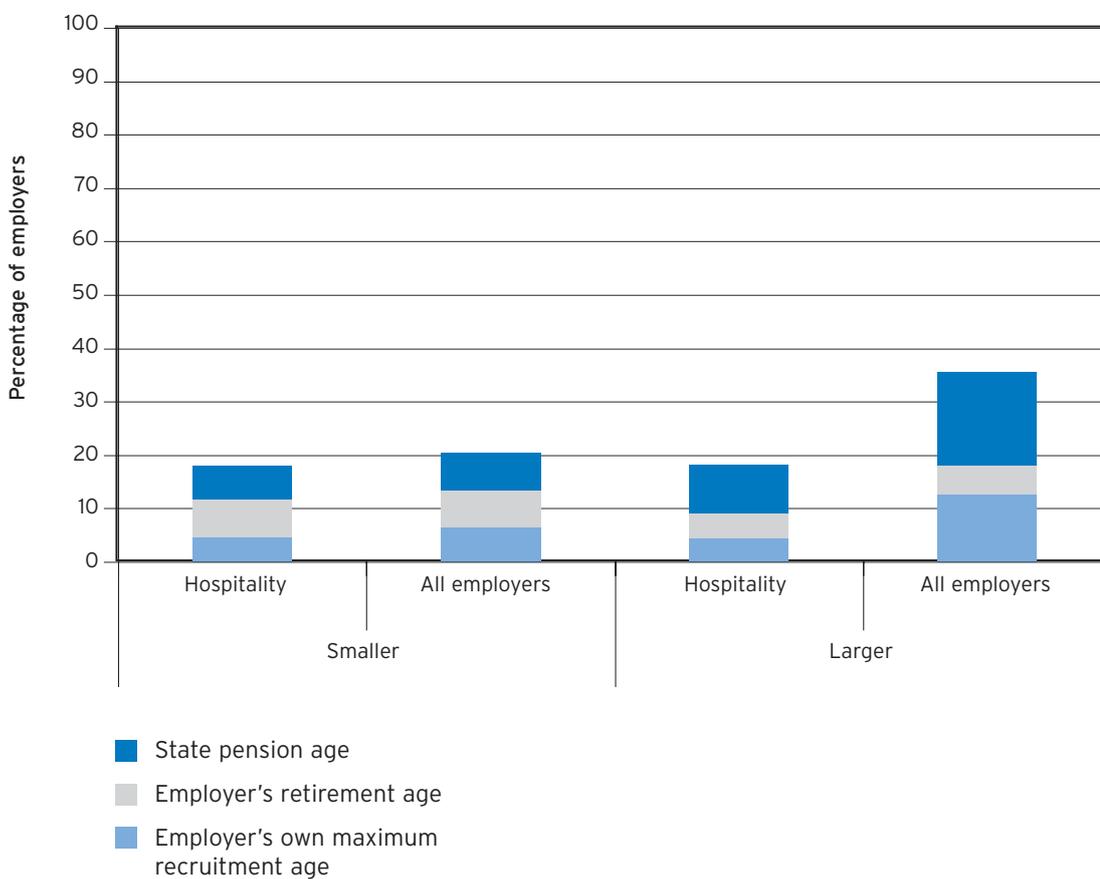




When recruiting, large firms in this sector are rather more likely to consider how long they believe applicants will stay, but they do not generally take age itself into account when making a decision. Provided that untested assumptions are not made about length of stay and age, this is not a hazardous approach,

Hospitality employers are less likely than other firms to set a maximum recruitment age, but some are more reluctant to recruit people over their normal retirement ages, and this is particularly true of very small firms (Fig 3). Employers can lawfully reject job applications from candidates who are over the firm's normal retirement age⁸ or within six months of it.

Figure 3 Employers would not recruit above a given age



⁸ If an employer does not have a retirement age, he can still lawfully reject applications from people who are older than 64 1/2.

5. Pay and conditions

The key principle in setting pay and conditions should be fairness. Where individuals are treated differently, this should be on the basis of a different contribution or skill, not on age, or on a factor which is a proxy for age (like years of service). This applies to people of all ages, and those over an employer's normal retirement age are equally protected by the law⁹.

The Regulations do, however, allow different treatment where this can be "objectively justified" as a "proportionate" way of achieving "a legitimate business purpose". Rewarding long service can, for example, be justified if it can be shown to benefit the business by increasing staff retention, and the sums involved are reasonable¹⁰.

The table shows the most common areas of hazardous practice in the hospitality sector.

Table 2

Pay and Conditions	Comment	% of organisations reporting in hospitality	% of organisations reporting, all sectors
Starting salary takes experience into consideration	Potentially discriminatory, since experience relates indirectly to age, and does not directly measure competence.	42	58
Annual leave entitlement is based on length of service	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 44% of all firms but 58% of all employees).	22	44
Starting salary is dependent on age	Unlawful	21	13
Long service awards	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 33% of all firms but 54% of all employees).	21	33
Separate youth rates of pay	Only lawful in specific circumstances relating to the National Minimum Wage or Apprenticeships.	16	11
Incremental pay scales are used	Unlawful if scale covers more than 5 years (which occurs in 5% of all firms), unless it can be objectively justified.	15	36
Selection for training depends on period to retirement	Potentially indirectly discriminatory (7% of all firms set a limit of more than 1 year). Objective justification is possible in terms of business benefits such as the cost set against predicted return.	2	8
A maximum age is set for eligibility for sick pay	Unlawful	2	6

⁹ The upper age limit for unfair dismissal claims is being lifted under the new regulations, and employees over their firm's retirement age will have full protection against discrimination.

¹⁰ This is a complex area. Advice is available on the ACAS website (see "Further Information" below).

The use of uniform rates of pay for all staff is more common in the hospitality sector than in others, and incremental pay scales are rare, except in large firms. Where such scales extend over more than five years they will be unlawful.

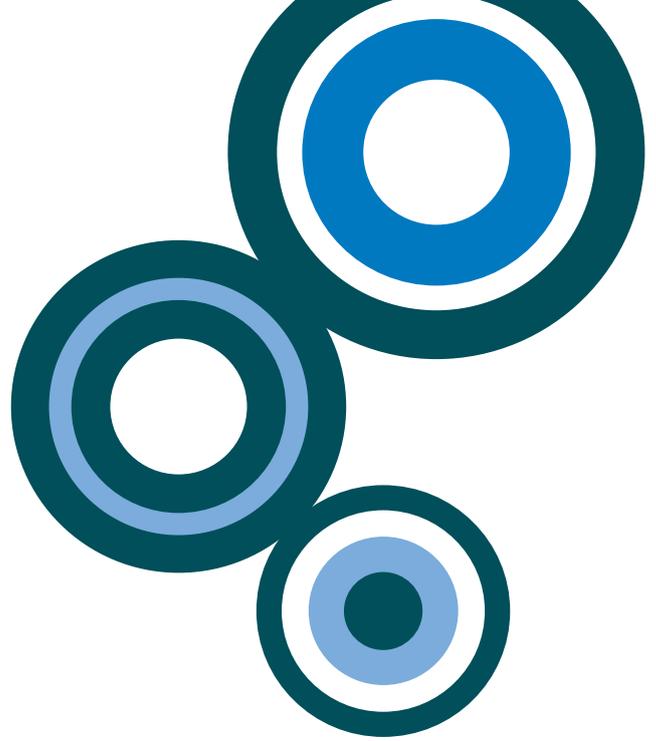
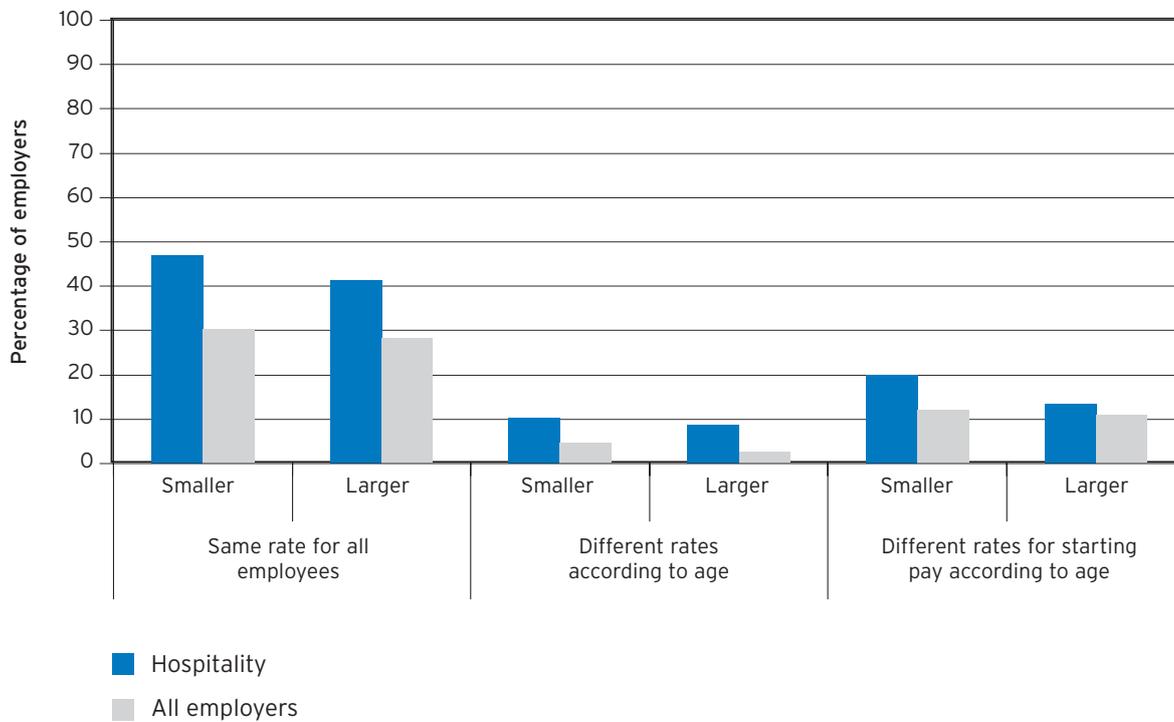


Figure 4 How pay is set



Smaller hospitality firms are more likely than small firms in other sectors to use age as a basis to fix pay and conditions. This will be unlawful, as will setting age limits for entitlement to sick pay, unless a legitimate business justification can be demonstrated.

6. Retirement and redundancy

The Age Regulations introduce a new national Default Retirement Age of 65 for both men and women. An employer can lawfully set a retirement age at 65 or above, but can only set a lower retirement age if there is an objective justification (which is expected to be very rare, since age itself is rarely a qualification for a job). Whatever retirement age the firm adopts, the employer will be required to give individuals formal advance notice of their retirement date, and must consider requests to stay on after that.

The key principle here is that, up to the firm's retirement age, exit from the firm through either retirement or redundancy should be based on individual capability and contribution, and personal preference, not on age.

In relation to redundancy and unfair dismissal, the Regulations extend the same rights to all employees, whatever their age, removing the previous age limits. Statutory redundancy entitlements remain unchanged. An employer can use age or length of service to enhance redundancy payments, but only in accordance with the rules specified in the Age Regulations.

In this area, the greatest hazards concern the setting of compulsory retirement ages and the use of age in selection for redundancy or setting levels of redundancy pay.

The table shows the most common areas of hazardous practice in the hospitality sector.



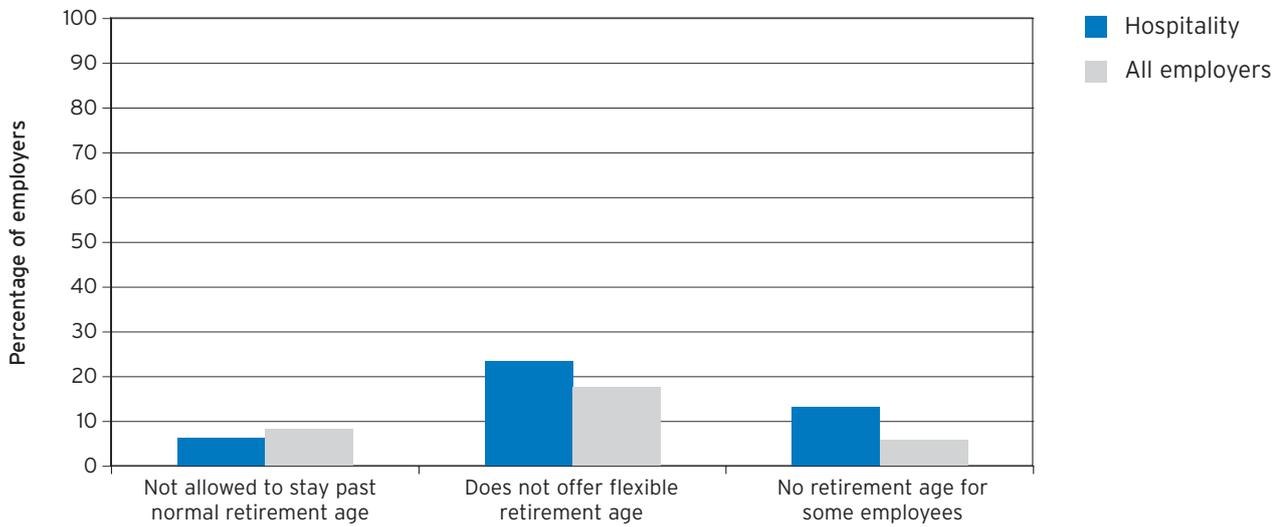


Table 3

Retirement and Redundancy	Comment	% of organisations reporting in hospitality	% of organisations reporting, all sectors
Compulsory redundancy decisions are based on "last in first out"	Likely to discriminate indirectly against younger employees.	40	28
Redundancy decisions based on length of service	Indirectly discriminatory since longer service correlates with age.	31	49
Compulsory retirement ages	Unlawful if below 65 (which affects 6% of all employers), unless it can be objectively justified. Although only 37% of all firms have a formal retirement age, 50% of the workforce is affected (because this is more common in large firms). However, in most cases the fixed age is 65, which will remain lawful, although employers must consider requests to stay on.	18	37
Level of redundancy pay based on length of service	Can discriminate indirectly against younger employees. Length of service is used in compulsory redundancy by 27% of all firms but affects 38% of employees. For voluntary redundancy it is used by 23% of all firms but affects 34% of all employees.	14 compulsory 6 voluntary	27 compulsory 23 voluntary
Redundancy decisions based on current salary	Likely to discriminate indirectly since salary levels generally correlate with age.	2	7
Age is used in selection for redundancy	Unlawful. The decision must be based on requirements of job and competence of staff, or positive action to maintain an age balance.	3 compulsory 0 voluntary	14 compulsory 5 voluntary
Level of redundancy pay is affected by age	Unlawful. Affects only 10% of all firms, but 17% of all employees (because it is more often used in larger firms).	7 compulsory 3 voluntary	10 compulsory 9 voluntary

Employers in hospitality are generally as willing to consider requests from employees to stay past retirement age or to work flexibly close to retirement as other employers. Around one in six have no retirement age for at least some employees (Fig 5).

Figure 5 Approaches to retirement



Around half of smaller firms and three quarters of larger firms allow employees to stay in work past retirement age, but most of these would only allow an employee to stay if there was a strong business reason for doing so. However, hospitality firms are more likely than other employers to allow employees flexibility over working hours either for eldercare reasons or to prepare for retirement (Fig 6).



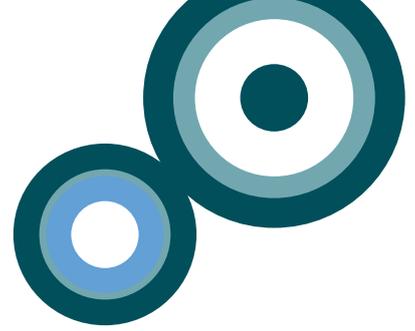
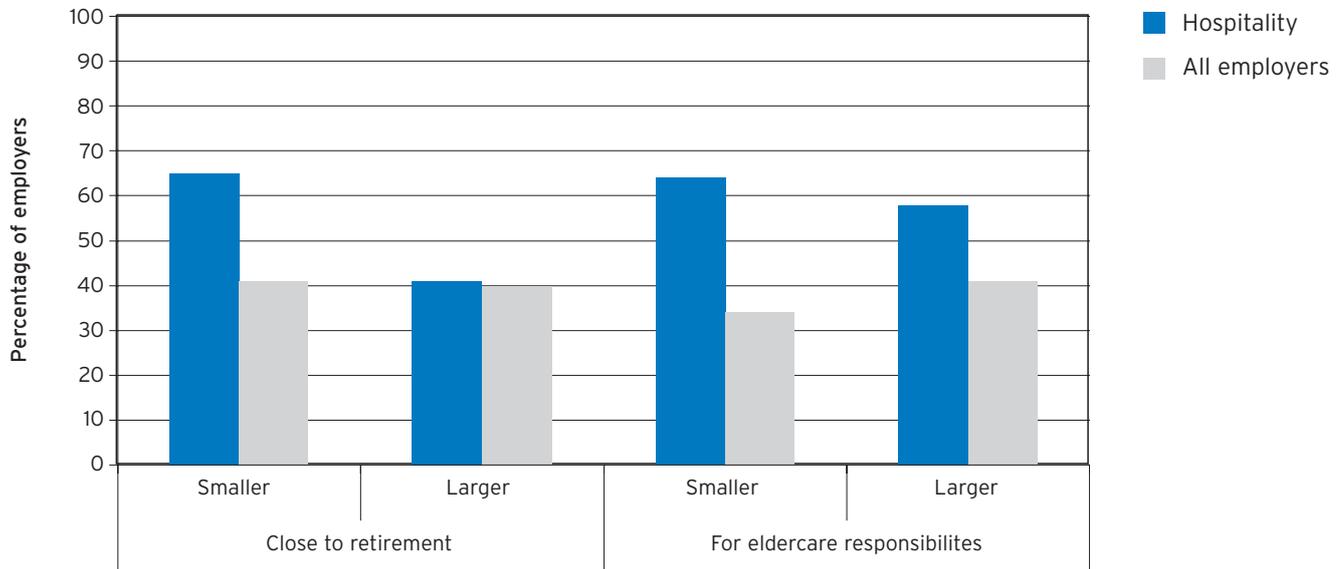


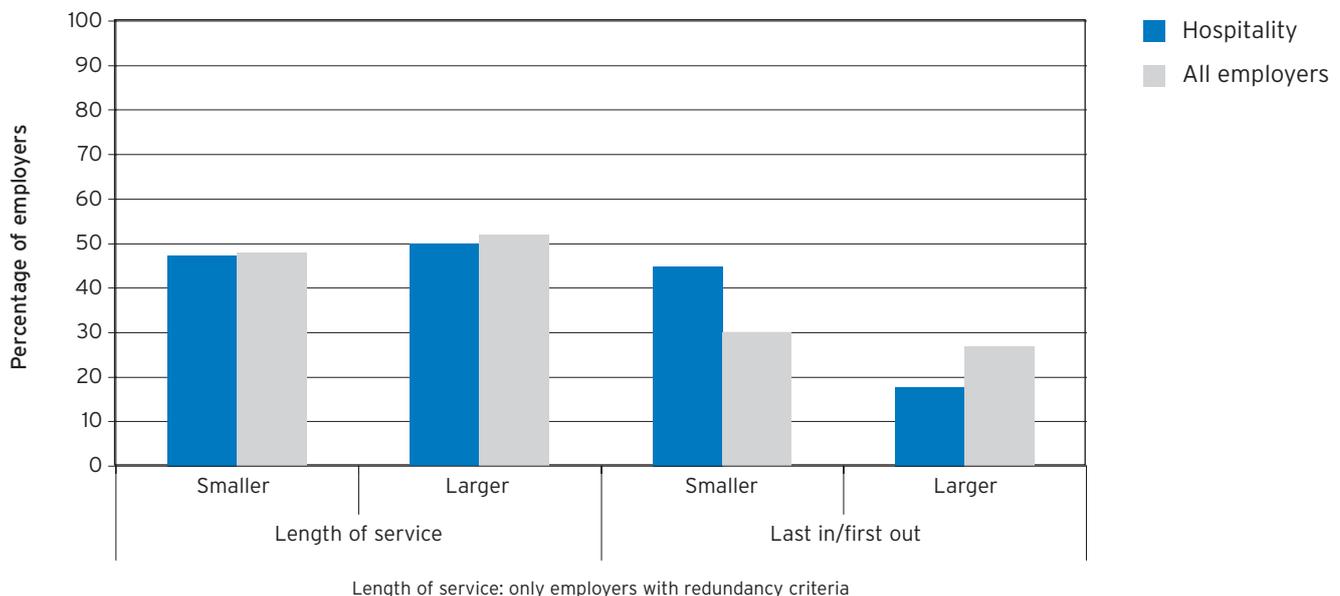
Figure 6 Employers who would be “very likely” to allow employees to reduce working hours



Employers in this sector are less likely than other employers to have set criteria for selecting employees for compulsory redundancy. Length of service is the most likely criterion, and smaller

firms say they would use last in/first out (Fig 7). Both of these practices are hazardous, since they risk discriminating against younger employees.

Figure 7 Selection criteria for compulsory redundancy



7. Management and training

There are a variety of management practices which can reduce the risk of legal disputes under the Age Regulations. Table 4 identifies the

commonest ones, and shows what proportion of firms in the hospitality sector, and the economy in general, use them at present.

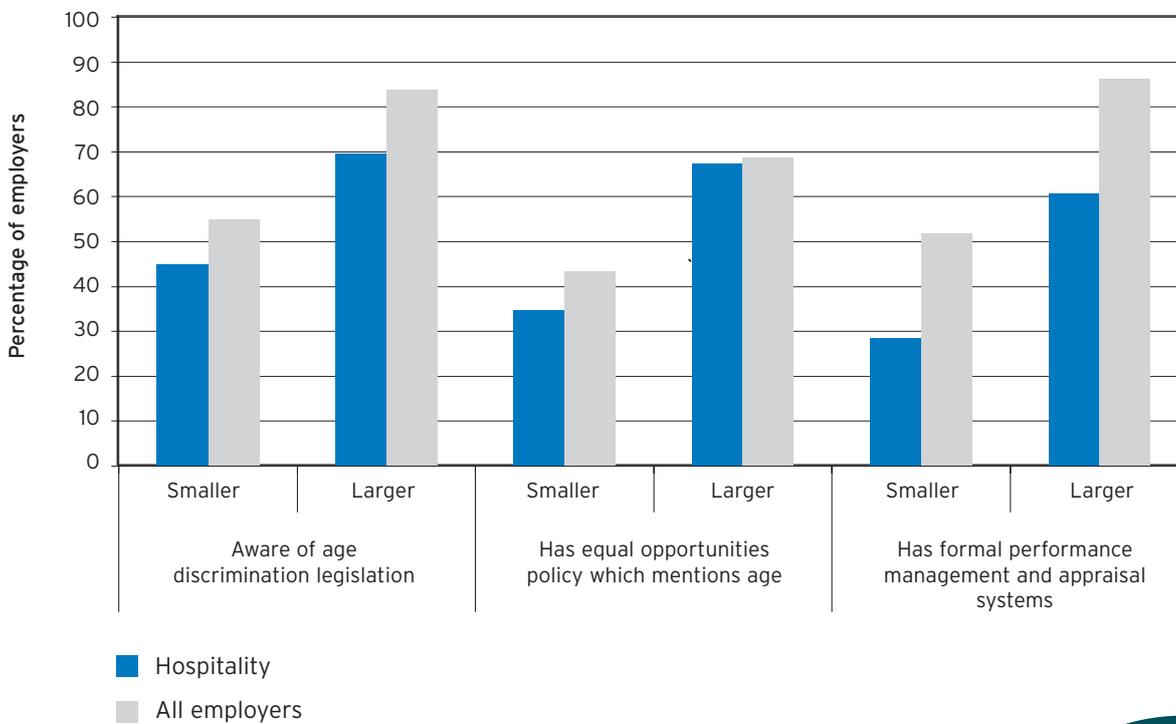
Table 4

Management and training	Comment	% of organisations reporting in hospitality	% of organisations reporting, all sectors
Equal opportunities policy	Having a policy makes expectations clear to managers and staff, and makes monitoring easier.	60	72
	Equal opportunities policy explicitly mentions age.	54	56
	Policy implementation by age is monitored (only those with age policies).	42	49
Providing work related training for all staff	There is a direct relationship between participation in training and staying longer in work.	57	70
Formal performance appraisal	Ensures that employees are clear about objectives, that performance is recognised, and untapped talents are used This will also be relevant when firms have to consider formal requests to stay after a firm's retirement age	46	68
Formal assessment for promotion	Formal assessment increases the chances of promoting the most valuable people, and reduces the risk of discrimination. (4% of all firms currently have age related criteria, which will be unlawful).	36	37
"Age blind" recruitment practices	Removing dates of birth and age data from applications before they are considered by selectors reduces the risk of discrimination (although training recruiters is also important). Some firms collect this information on equal opportunities monitoring forms which are removed before forms are passed for short listing	25	43
Flexible working	Many employees, especially those with childcare or eldercare responsibilities, and those approaching retirement, would like to work part-time or flexibly. Offering flexible working improves retention and motivation of key staff	88 for childcare 82 for preretirement 86 for eldercare 68 for any reason	82 for childcare 78 for preretirement 74 for eldercare 51 for any reason
Flexible retirement ages	Flexible retirement allows individuals to work longer and employers to continue to make use of skills and expertise.	41 offer to all staff 0 offer to some staff	50 offer to all staff 4 offer to some staff

Hospitality firms are much less likely than other employers to have formal appraisal and performance management systems. Firms without systems for assessing the performance of staff may find it difficult to determine the competency of employees who ask to stay in work past retirement, or to defend themselves against charges of unfair discrimination.

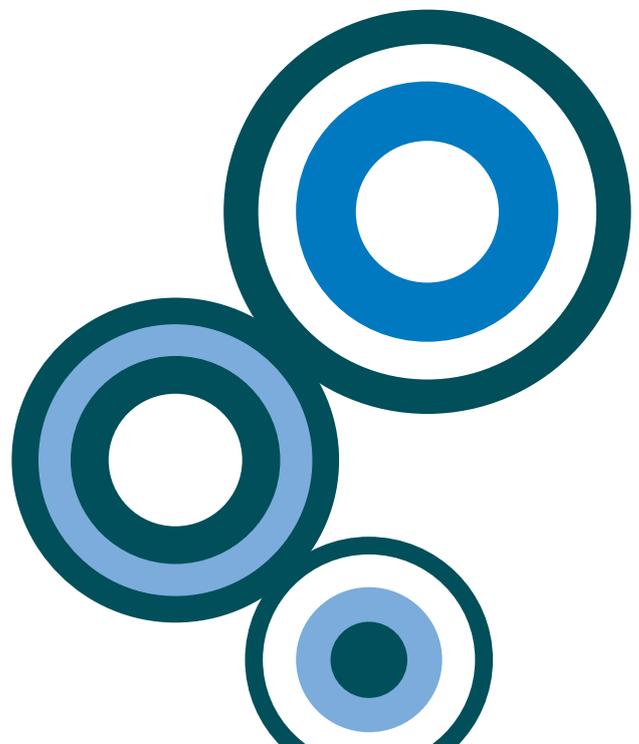
None of the employers surveyed said that age affects selection of candidates for training, although hospitality firms are less likely than other employers to offer off the job training. Small and medium sized employers take into consideration potential length of service of candidates, but none took proximity to retirement into account.

Figure 8 Prepared for age discrimination regulations



Formal equal opportunities policies in smaller hospitality firms are less common than in other sectors and, where they exist, they are less likely to mention age as an issue.

Over a third of firms were unaware of the Age Regulations at the time of the survey (Winter/Spring 2004-5), and less than half knew when they were to take effect.



8. Managing age in hospitality: discussion questions

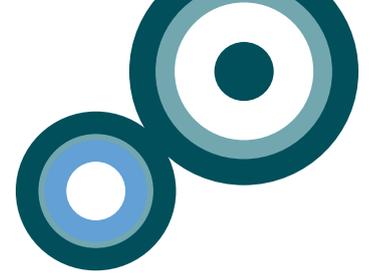
The following questions are designed to help you, as an employer in the hospitality sector, to plan how you will respond to an ageing workforce and the Age Regulations:

1. How concerned are you about **skills gaps and shortages** in your sector, and do you believe current labour market predictions about this?
2. Do you think that **a different age mix** in the workforce could help overcome these?
3. Do people generally in your sector **have strong views about appropriate age ranges for particular jobs** which would limit the opportunity to change the age mix?
4. Is your **ability to change pay and conditions** limited by national agreements, or regulations like “licence to practice” rules? How can you tackle this?
5. Policymakers sometimes assume that all firms in a “sector” are alike. In your sector are there particular **kinds of firm which are very different** in their approach to age management?
6. How easy is it to **extend working lives** in your sector? Does this apply more to some groups of staff than others?
7. Are there **traditional career patterns** in your sector which might change if working lives became longer (e.g. “downshifting” or mentoring roles for older workers)?
8. Older workers often prefer **to work part-time or on a flexible basis**. How easy is it to do this in your sector, and what might be the constraints?
9. Are there jobs where **physical demand or levels of stress** make extending working life more difficult? Are there ways of overcoming these?
10. Is it difficult to **recruit older people** in your sector? After what age? Can training help?
11. **Small firms** in general have less formal management structures and procedures. Will this make overcoming age discrimination easier or more difficult for them?
12. A high proportion of people working after 65 are **self employed**, what role does this play in your sector?
13. What are the implications of an ageing workforce for supply and demand for **training** in your sector? (given that those who train generally stay in work longer)
14. How difficult will it be to **raise awareness among employers** in your sector about the ageing workforce, and about the age discrimination regulations, especially among small firms, who are more difficult to contact?
15. Are there **lessons about managing an age diverse workforce** which your sector could offer to others?

CROW would welcome any comments on these questions (or any others) as a contribution to its final research report for DWP¹¹.

¹¹ See “Further Information” below.

9. About this paper



This paper was written by the Centre of Research into the Older Workforce on behalf of the Department for Work and Pensions. It draws on two sources:

- The background material on the sector comes mainly from the Sector Skills Development Agency's Research Matrix database, which brings together a large quantity of information about all sectors from a variety of sources, including the Labour Force Survey, the National Employer Skills Survey, the Annual Business Inquiry, and the Inter Departmental Business Register¹².
- The material on current age management practice in the sector is based on data gathered by the National Institute for Economic and Social Research (NIESR) and the British Market Research Bureau (BMRB), in a national survey for the DWP and DTI in Spring 2005¹³. They interviewed the most senior person responsible for HR issues in 2084 firms employing more than five people in England, Scotland and Wales. Each interviewee was asked 160 questions about aspects of age management, including recruitment, retirement, benefits, pensions, management practices and discrimination. CROW carried out a separate analysis of this data to produce the current paper. The sample included 103 firms in the hospitality sector.

The DWP/DTI joint survey evidence is the best available on current employer age management practices across all sectors, but it should be interpreted with some caution since:

- it probably underestimates the frequency of some practices (since firms with a positive record are more likely to respond to such surveys; employers may be reluctant to admit to what they suspect is "bad practice"; and the senior managers who replied to the survey may be unaware of poor practice by some line managers);
- In some cases the number of employers responding is relatively small, and may not be fully representative of particular sizes of firms in that sector;
- Since some practices are more common in large firms, the behaviour of a small proportion of firms may affect a much larger proportion of workers;
- Although some hazardous practices are rare, the firms involved will still be open to legal challenge if they do not make appropriate changes.

We have not commented on pensions issues since pensions provisions are largely exempt from the regulations¹⁴.

All views expressed in this paper are those of the authors. They are not intended to be authoritative statements of the law, and do not represent the views of the Department for Work and Pensions or any other Government Department.

¹² Details on the Skills for Business website at www.ssdamatrix.org.uk/

¹³ See "Further Information" below.

¹⁴ DTI's guidance *The impact of age regulations on pensions*, explains the implications of the legislation for pensions in detail.

10. Responding to this paper

This paper is intended for consultation with employers, sector bodies and other interested organisations and individuals during 2006. Responses will contribute to a larger report on sectoral approaches to age management, which DWP plans to publish in 2007.

If you would like to comment on any aspect of this paper, or of age management in the hospitality sector (or on age management more generally), please write directly to the Centre for Research into the Older Workforce (CROW). We would be particularly interested in responses which:

- add relevant information on the shape of the sector and age management issues and practices within it;
- clarify the reasons for particular features (e.g. why one part of the sector has very different practices from others, or why hospitality is different from other sectors);

- identify examples of good practice which might be disseminated to other employers or sectors;
- identify questions which need further investigation.

Responses and comments on the content or issues raised by this paper should be sent by email to: crow@niace.org.uk

Or by post to:

Age Legislation Research
Centre for Research into the Older Workforce
NIACE
21 De Montfort Street
Leicester
LE1 7GE



11. Further information



Further information on age related issues, policies, practices, and legislation can be found at: www.agepositive.gov.uk

You can request further copies of this paper, or contact the Government's Age Positive team at: agepositive@dwp.gsi.gov.uk

or write to:

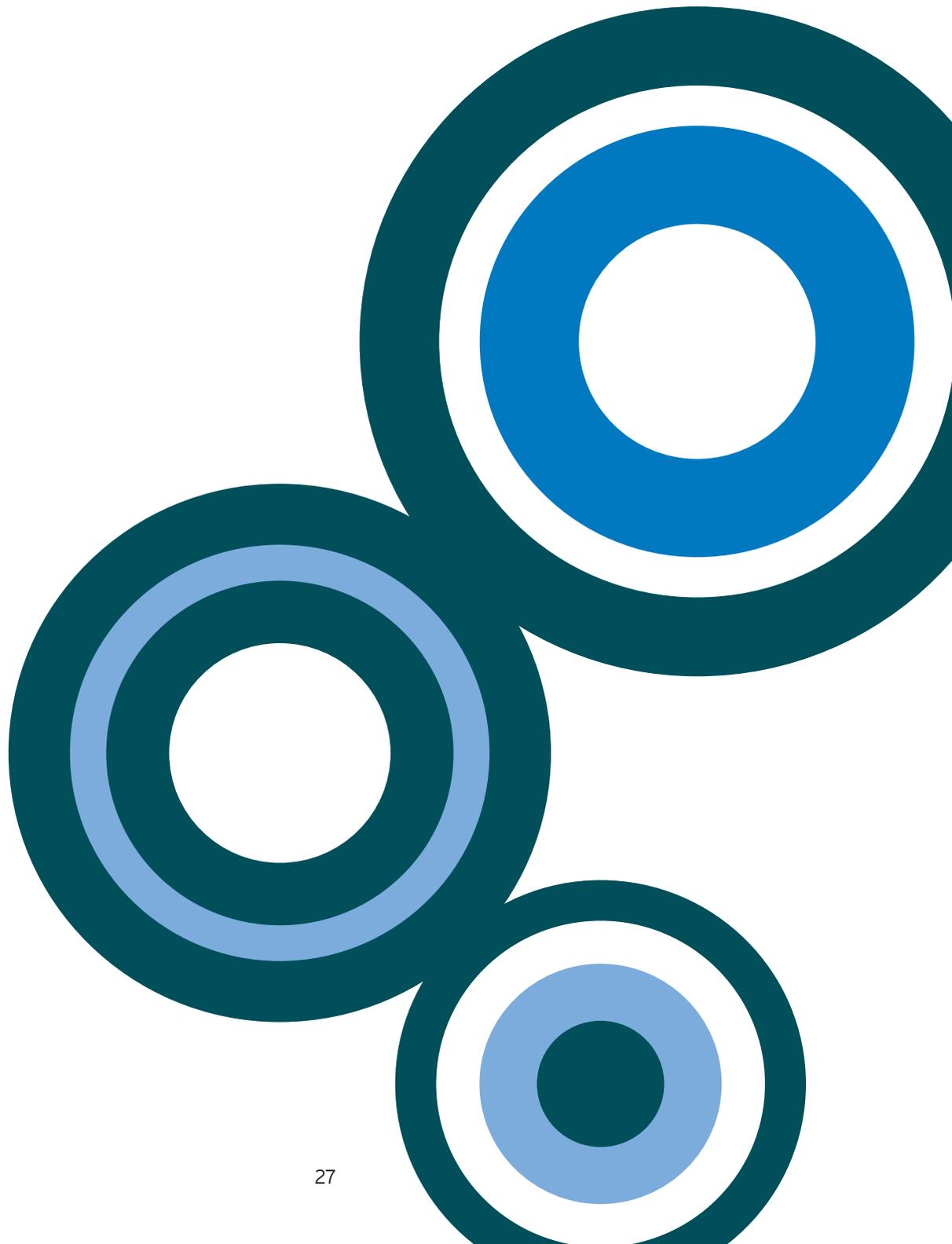
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Extending Working Life Division
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Moorfoot
Sheffield
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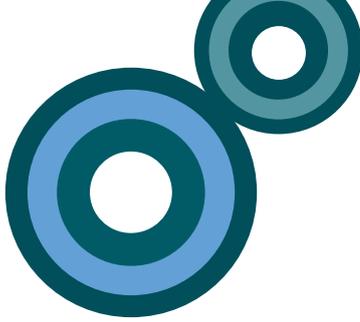
Details of the Age Discrimination Regulations, which will come into force in October 2006, can be found on the DTI's website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Advice on interpretation and good practice can be found on the ACAS website at: www.acas.gov.uk

The full report of DWP and DTI's joint national survey conducted by NIESR and BMRB which produced the evidence for this report is *Survey of Employers' policies, practices and preferences relating to age* by Metcalf with Meadows (DWP Research Report 325, DTI employment relations research series number 49) The full report is available for download free on the DWP website at: [www.dwp.gov.uk/asd/asd5/rports 2005-2006/rrep325.pdf](http://www.dwp.gov.uk/asd/asd5/rports%2005-2006/rrep325.pdf)

Further information about CROW can be found at: www.niace.org.uk/crow





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Members of the Age Partnership Group, listed below, support and endorse the Be Ready campaign.

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Association of British Insurers (ABI)
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Department of Trade and Industry (DTI)
Department for Work and Pensions (DWP) - Chair
Employers Forum on Age (EFA)
EEF, the manufacturers' organisation
Federation of Small Businesses (FSB)
HM Revenue & Customs (HMRC)
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Public Sector People Managers Association (PPMA)
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Scottish Chambers of Commerce
Scottish Council for Voluntary Organisations
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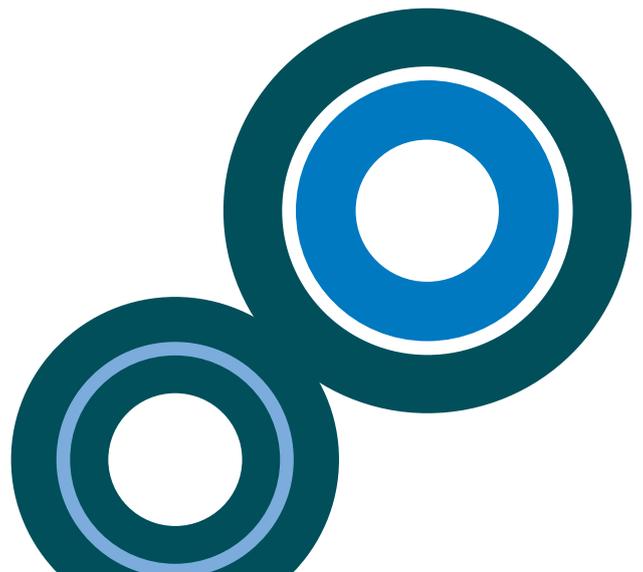
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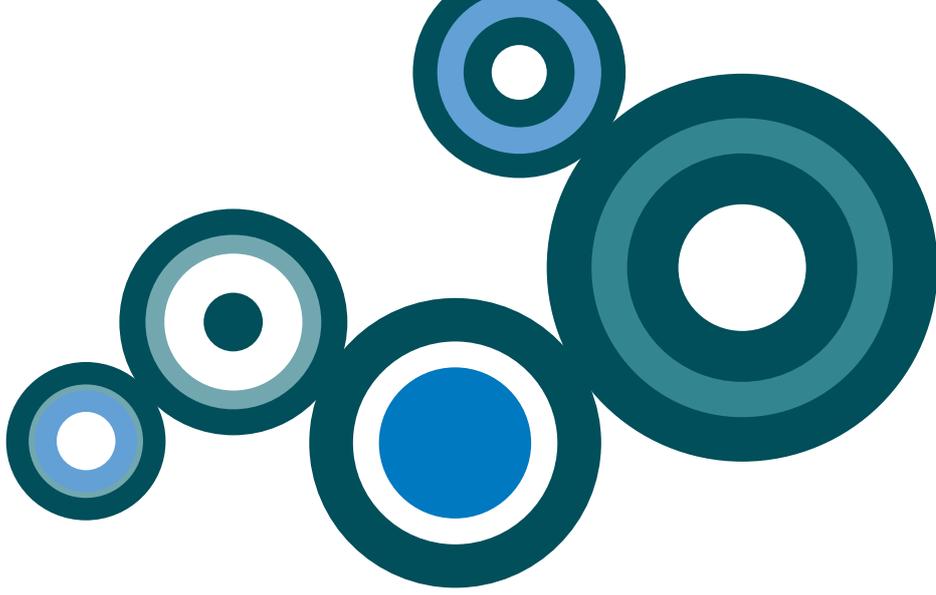
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Managing an ageing workforce in the “other community” sector

A report for employers

By Stephen McNair and Matt Flynn

Produced for the Department
for Work and Pensions
By the Centre for Research
into the Older Workforce

age**partnership**group
Targeting Employers®





Age Partnership Group (APG)

This research is one of a number of projects commissioned by the DWP on behalf of the APG as part of the National Guidance Campaign (NGC).

The APG was formed in 2002 and consists of a number of national organisations who represent different aspects of employers needs, for example, small business representatives, trade unions, HR and Personnel managers, local government, other government departments, accountancy, insurance and training organisations. There are separate groups representing England, Scotland and Wales.

The NGC aims to raise employers' awareness of, and ability to adopt, practical information and guidance on age diverse employment practices. This includes flexible employment and retirement opportunities in order to increase the recruitment, selection, promotion, training and retention of older employees prior to the implementation of age legislation in October 2006.

You can view the Age Partnership Group website at www.agepositive.gov.uk/agepartnershipgroup

Legislation

In March 2006, the Employment Equality (Age) Regulations 2006 were published. The regulations are the last major stage of the European Employment Directive and will come into effect on the 1st October 2006.

The regulations prohibit age discrimination in employment and vocational training. They apply to individuals of all ages in work, seeking work or looking to access vocational training and to all employers, and to all providers of vocational training and vocational guidance (including further and higher educational institutions).

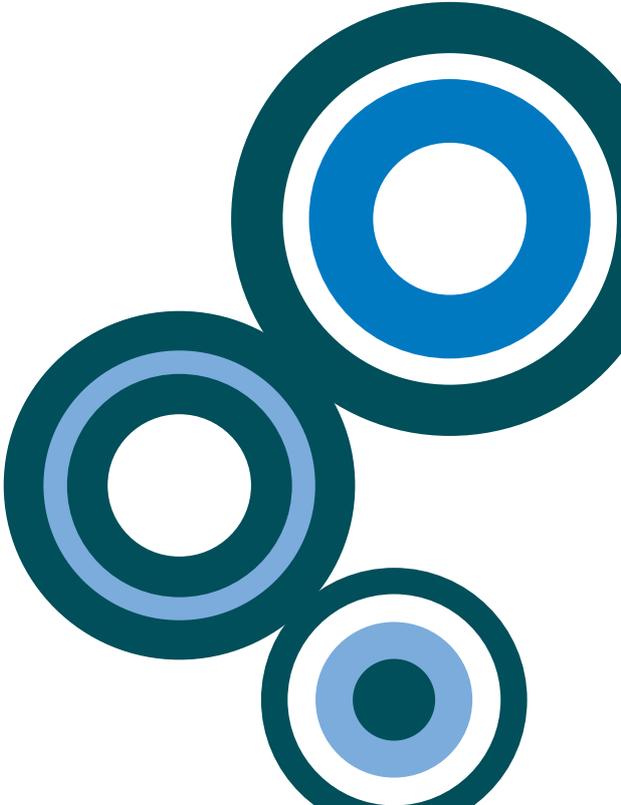
The regulations can be viewed on the Department of Trade and Industry website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Disclaimer

This report has been commissioned to provide information only. Responsibility for the views expressed in this report rests solely with the authors. The members of the Age Partnership Group (APG) and the Department for Work and Pensions (DWP) do not accept responsibility for the views of the authors.

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Introduction

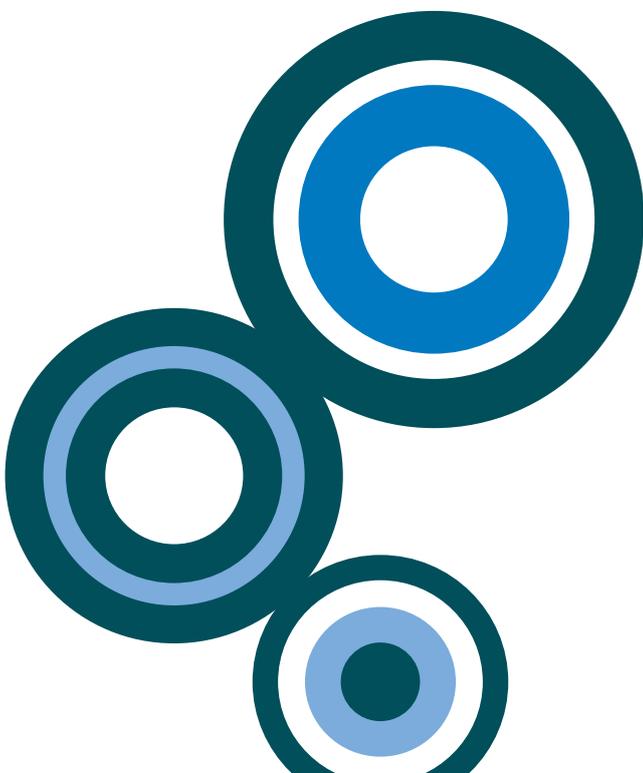
This report is about how firms in the “other community” sector are managing an ageing workforce. It has been written for the Department for Work and Pensions (DWP) by the Centre for Research into the Older Workforce (CROW) to help employers to make better use of older workers. It also helps to raise awareness of the new Employment Equality (Age) Regulations 2006, which become law in October 2006, and prohibit age discrimination in work or training against people of any age.

Workforce ageing presents a growing challenge to most employers. Birthrates have been falling for many years, and in the next few years the numbers retiring will outnumber young people entering the labour market. The government believes that the resulting skills gaps and labour shortages in many industries can be reduced if employers can find ways of making better use of older workers, and encourage people to stay in work longer.

However, every industry has its particular features, and this report outlines the special issues affecting the “other community” sector, based on a large national survey of employers. It highlights employment practices in the sector which will be hazardous under the Age Regulations, and aims to stimulate discussion and improved practice in firms.

This report is not intended to be an authoritative statement on the age discrimination law itself. Details of how to obtain the Regulations, and advice about them, can be found at the end of the report. However, while the Regulations make some activities unlawful, it is for the Courts and Employment Tribunals to interpret this in specific cases. The term “hazardous” is therefore used in this paper to describe activities which might be ruled unlawful if a case is brought. We suggest that employers need to review their practice in these areas.

During 2006, CROW will explore these issues in more depth through case studies of firms in seven sectors, and DWP plans to publish the resulting Research Report in 2007.



1. Summary: key age issues for “other community” firms

The sector of the economy defined in Government statistics as “other community” is complex and diverse. It includes private sector activities, like the media; public sector services like libraries and museums; activities which are in the private sector but subject to public subsidy and regulation like the arts and sport; and voluntary organisations of all kinds.

Public and private sector organisations generally tend to adopt different approaches to human resource management. The former are much more likely to have formal processes, like equal opportunities policies and formal appraisal systems which could help avoid unfair age discrimination. However, they also tend to have well established national agreements which include hazardous practices like long incremental pay scales or low retirement ages.

The sector is unusual in having a high proportion of employees under 24 and a high proportion over 65. Private sector employers in this sector are generally more flexible about working patterns and extending working life than public sector ones, who tend to enforce fixed retirement ages (some of which will be unlawful under the Age Regulations). However, one in six public sector employers actively seek to recruit people over 50 and few take the time left to retirement into account when recruiting staff.

Common hazardous practices in the Community sector

Common practices in this sector which may need review if employers are to avoid breaking the Age Regulations:

- **using length of experience as a selection criterion.** This affects two thirds of all employers in the sector. Length of experience is a substitute for assessing competence, and is hazardous, since it disadvantages younger workers.
- **using qualifications as a selection criterion,** (mainly in the public sector, only half of private sector employers do this). This is lawful, provided that the qualifications are relevant to the job, and alternatives are accepted for candidates of different ages.
- **using long incremental pay scales.** The regulations allow incremental scales up to five years, but in this sector one employer in six operates longer scales, which will need objective justification under the Regulations.

Unlawful practices in the Community sector

The following practices are less common, but unlawful, and firms who use them will need to make changes if they are to remain within the law.

- 73% of public, and 20% of private, employers set **maximum recruitment ages** (unlawful if more than 6 months before the employer’s retirement age).
- 47% of public, and 30% of private employers set **compulsory retirement ages** (unlawful below 65 unless objectively justified).
- 50% of public and 38% of private employers use **age or length of service (which reflects age) in selecting for redundancy and setting redundancy pay levels.**

2. The shape of the “other community” sector

The nature of the age management issues facing a sector depends on factors like the average size of firms, the age and skills profile of the workforce, and future expectations of growth or contraction. This section outlines this context for the “other community” sector.

The sector which government statistics defines as “Other Community, Social and Personal Service Activities” is extremely diverse¹. It employs 1.5 million people (5% of the national workforce), in 143,000 establishments and produces 5% of total UK output. It covers membership organisations, recreational, cultural and sporting activities, radio and television, theatres, libraries, museums, sporting and gambling, and a range of miscellaneous activities like funeral services and hairdressing. Employees are concentrated in professional and associate professional roles (30%) and in personal services (19%).

The diversity of the sector, ranging from national newspapers and broadcasters to local voluntary organisations with a single employee, makes generalisations about a “sector” particularly dangerous, since major problems in one area may be masked by overall averages. However, the issues which this reports highlights are the ones which employers in the sector would be wise to review to avoid unlawful practice under the Age Regulations.

Unlike most other sectors, where employment is predominantly in either public or private sector, “other community” bridges both, with, for example, the media predominantly in the private sector, and museums and libraries in the public. It also has a significant number of organisations in the voluntary sector. Since public and private organisations tend to behave differently in terms of human resource management, this report presents the figures for the two parts of the sector separately².

The sector is supported by three Sector Skills Councils:

SkillsActive - sport and recreation, health and fitness, playwork and caravans

Skillset - Broadcast, film, video, interactive media and photo imaging

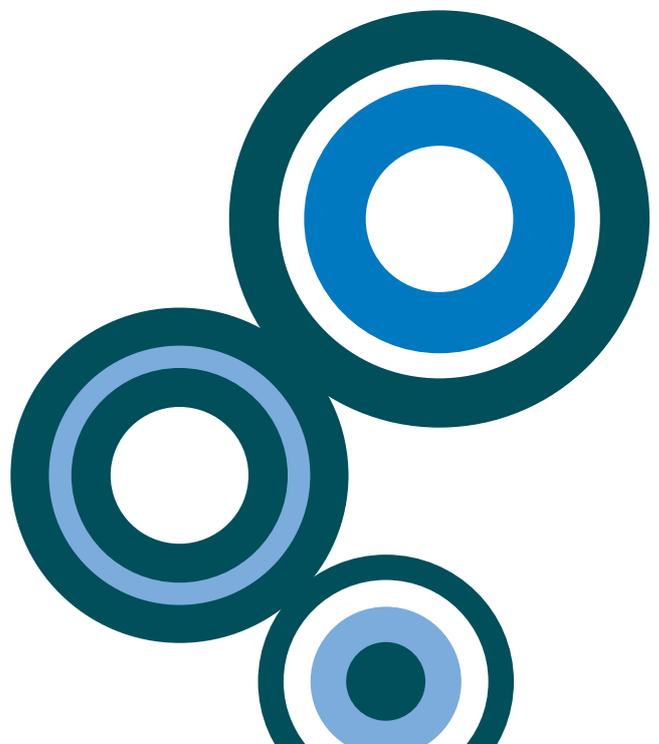
Creative and Cultural Skills - advertising, crafts, cultural heritage, design, music, performing, literary and visual arts.

Across the whole sector, output growth, and the number of establishments, are both falling, and this is predicted to continue. However overall employment in the sector is expected to rise, creating a need an additional 862,000 employees by 2014; equivalent to 56% of the current workforce.

Firms in this sector are very small, with a very high proportion (90%) employing under 11 people. They are less likely than firms generally to have formal business planning processes.

¹ The sector includes all employment in the Standard Industrial Classification Codes 91-93 (code 90 “Sewage and Refuse Disposal” has been excluded from this report).

² Voluntary organisations are grouped here with private ones since they tend to behave similarly on these HR issues.



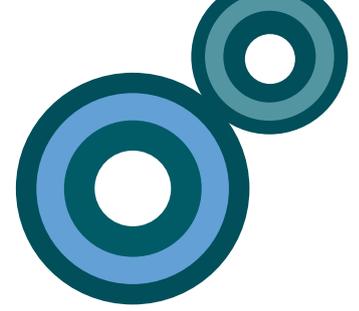
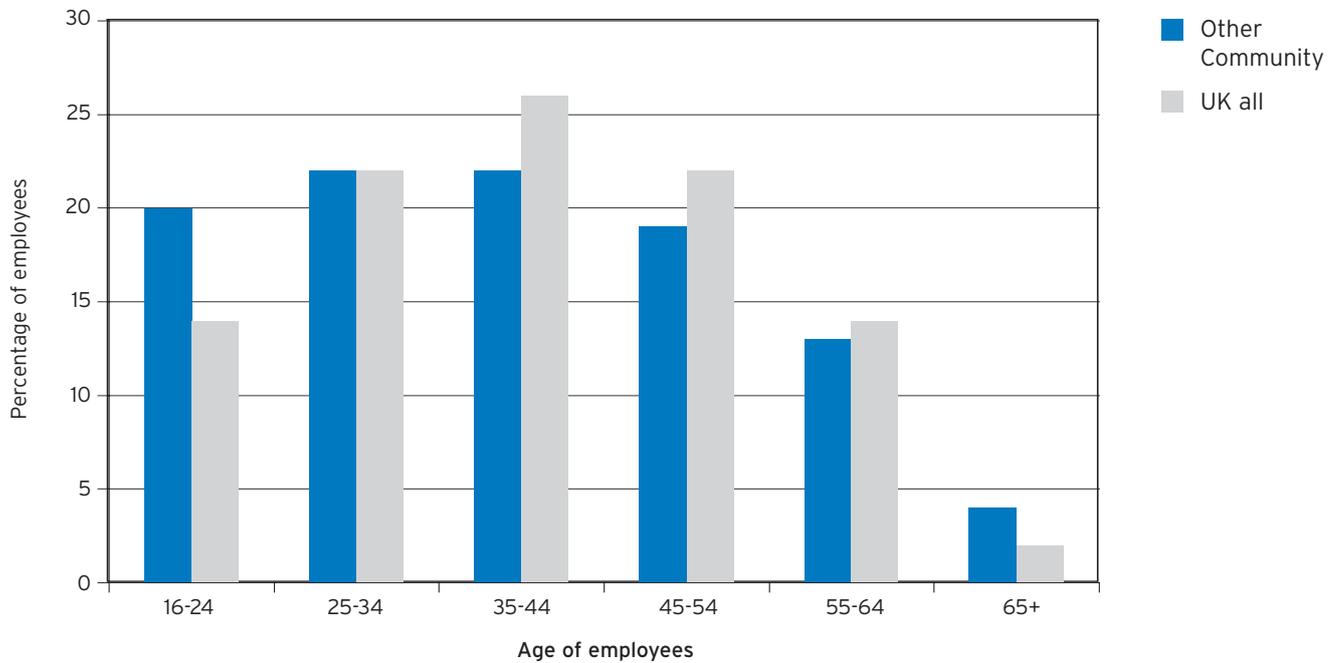


Figure 1 The age profile of the “other community” sector workforce



The sector is unusual in having a very high proportion of employees under 24 and over 65 (the latter the highest of any sector). Other distinctive features of the workforce are a high proportion who are self employed (24%), female (53%) and working part-time (35%). Nearly one third of all employees are in London and the South East, probably reflecting the role of the media and the arts in London.

By comparison with other sectors, “other community” has relatively few labour problems. Fewer than one firm in five reports vacancies, these are mainly for Personal Services workers and Managers, and the sector training activity broadly matches the national profile.

3. Age discrimination in employment

Age discrimination at work is common. It can affect people of any age, but is particularly likely to involve older people, and more than one in five workers over the age of 50 say that they have experienced it either when applying for jobs or in the workplace³. In countries where age discrimination law is already in force, it is the commonest cause of discrimination cases in the courts.

From October 2006 it will be unlawful for any employer in the United Kingdom to discriminate against or harass anyone on grounds of age, directly or indirectly, in relation to either employment or vocational training. This will cover arrangements for recruitment and promotion, pay and conditions, education and training, and retirement and redundancy.

There are exceptions: in relation to retirement, where it will be lawful to make an employee retire at a given age, provided this is not below 65 (for men and women); and where an existing statutory provision exists (like the Minimum Wage Regulations). An employer may also be able to justify discrimination if it is designed to correct an age imbalance in his workforce; if there is a legitimate business reason (and the discrimination is proportionate); or if there is an objective justification (likely to be very rare). The Regulations, and advice on their interpretation, can be found on the DTI and ACAS websites⁴.

Some features of age discrimination are common to most employers⁵.

- Indirect discrimination is more common than direct discrimination. DWP and DTI's joint survey, conducted by the National Institute of Economic and Social Research (NIESR), found few examples of direct discrimination, but one in five employers believe that some jobs are better done by people of particular ages. Where such beliefs exist, discrimination is more likely.
- Discriminatory attitudes are more likely to be found in private sector firms, and especially small ones⁶ in sectors like manufacturing and construction. These are also the firms and sectors where there are least likely to be formal procedures and policies to protect against unfair discrimination.
- The most common hazardous practices involve setting age limits on recruitment, especially for those over 50, and using age as a basis for decisions on compulsory retirement and redundancy.
- About half the workforce is covered by a compulsory contractual retirement age. In most cases this is already 65, which is the new "national default retirement age". However, even where firms plan to retire staff at 65, they will have to give formal notice of retirement dates and seriously consider requests to stay longer.

³ Discrimination is difficult to measure precisely, since it is subjective, and affected by levels of public awareness of age issues, and many people regard it as "normal". In a CROW postal survey of workers over 50 in 2004, 20% reported age discrimination. In research by the University of Kent for Age Concern England 29% of people reported experiencing age discrimination (compared to 24% for gender).

⁴ See "Further Information" at the end of this report.

⁵ Information based on DWP and DTI's joint survey national survey of employers' policies practices and preferences, conducted by NIESR (see "Further Information"), although because this is new secondary analysis not all figures are directly comparable. Also, for certain policies and practices respondents were asked to answer in respect of their largest occupational group rather than for the workforce as a whole.

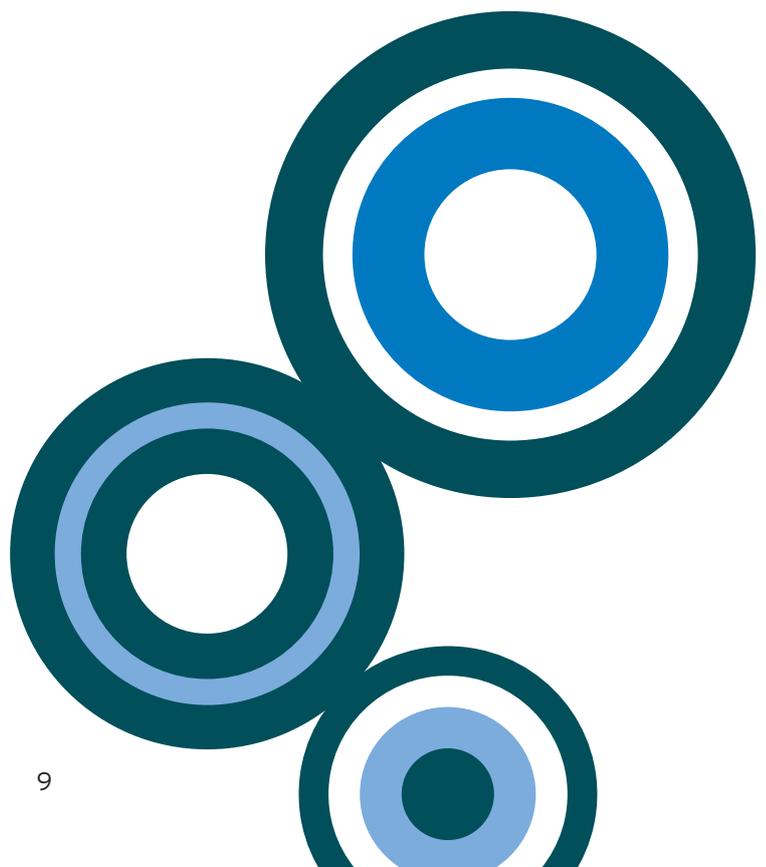
⁶ In this report "micro" firms have 5-19 employees, "small" employ 20-49, "medium" employ 50-249, and "large" employ 250 or more (the survey excluded firms employing fewer than 5 employees).

- Public sector and large private sector organisations, are more likely to have formal procedures (like appraisal schemes or equal opportunities policies) to protect against discrimination, especially where a Trades Union is recognised. However, these organisations are also more likely to have long standing formal agreements which include provisions which are hazardous under the Age Regulations, including contractual retirement ages below the new national default retirement age of 65.
- Two occupational groups are particularly at risk from discriminatory practices. These are professional and associate professional/ technician staff, both of whom are particularly likely to be exposed to discrimination in setting pay, long incremental pay scales, and access to training.

The tables in this paper identify hazardous practices identified in DWP/DTI's employer survey, indicating those which are most common among employers in "other community", and among employers in general.

Some of the provisions in the Regulations allow an employer to claim an "objective justification" for a practice which would otherwise be unlawful. Such justifications require the employer to be able to show that his or her action is a proportionate means of achieving a legitimate aim. It will be for Employment Tribunals and the County Courts to rule on what is justifiable under these provisions.

The Regulations also allow some practices, like incremental scales, where pay or terms of employment improve with length of service, but only up to five years, beyond which they will need to be objectively justified.



4. Recruitment and promotion

The key principle in all selection for employment or promotion is that decisions should be fair, and based on the individual's competence for the job, and not on arbitrary factors like age (or gender or race etc).

The research evidence shows that work performance in most jobs does not decline with age before the late 60s, provided individuals are healthy, motivated and kept up to date.

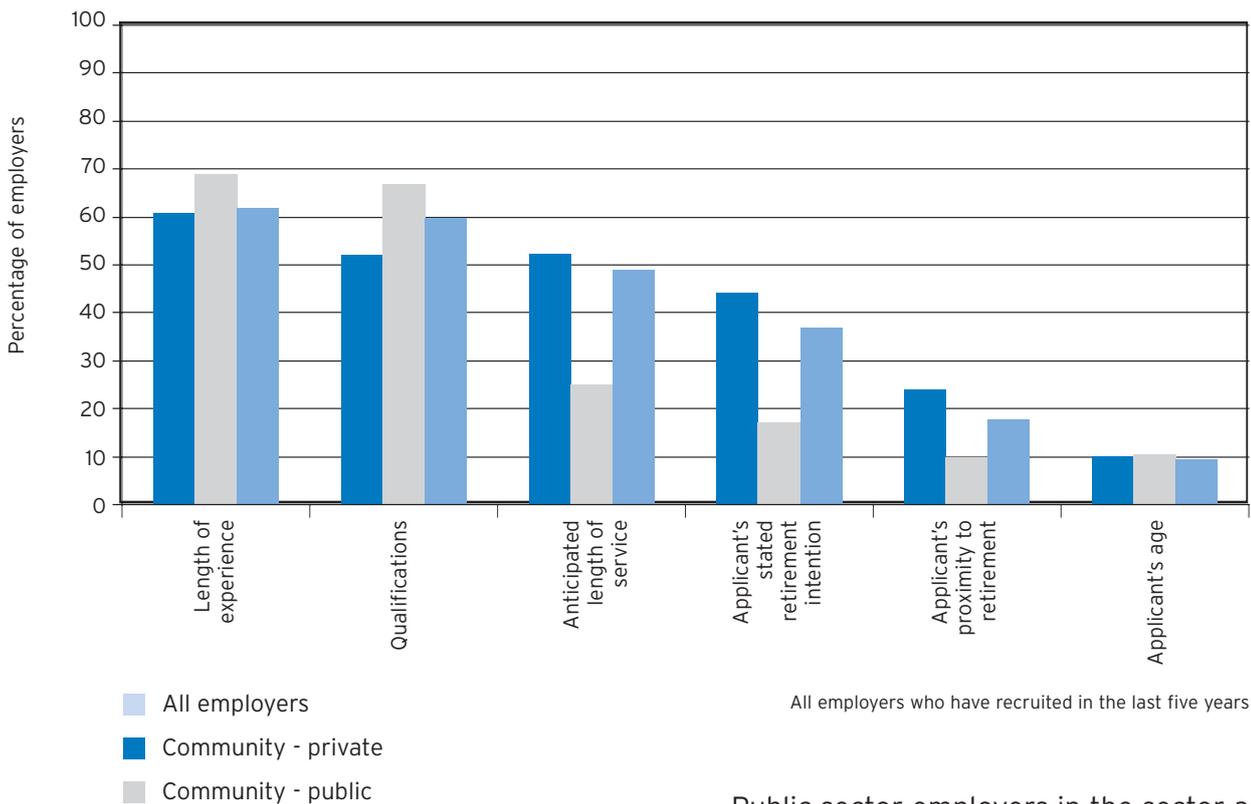
Across the workforce as a whole, the commonest hazardous practices in recruitment and promotion involve excluding applicants,

either directly (by specifying ages), or indirectly (e.g. by specifying years of experience, rather than specific capabilities) in advertisements, job descriptions and interview criteria.

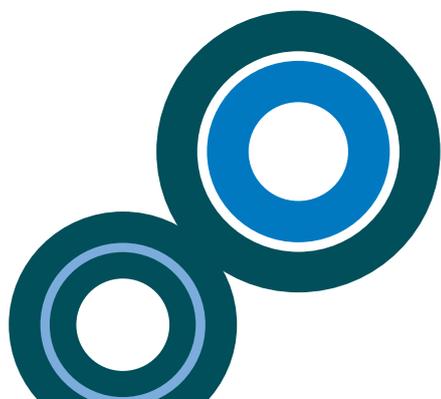
Table 1 on page 11 shows the most common areas of hazardous practice in the "other community" sector (with figures for firms in general for comparison):

Practices followed by more than half of firms in the sector are highlighted:

Figure 2 Factors taken into consideration in recruitment



Public sector employers in the sector are more positive than private sector ones about recruiting people between 50 and State Pension Age, with one in six encouraging applications from people fifty and over when filling vacancies, and few say that they consider age, or time left to retirement, in recruitment or promotion decisions (Fig 2).



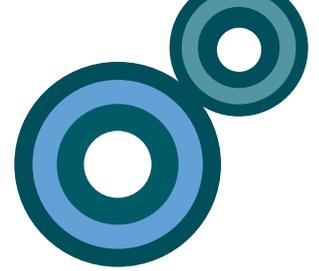


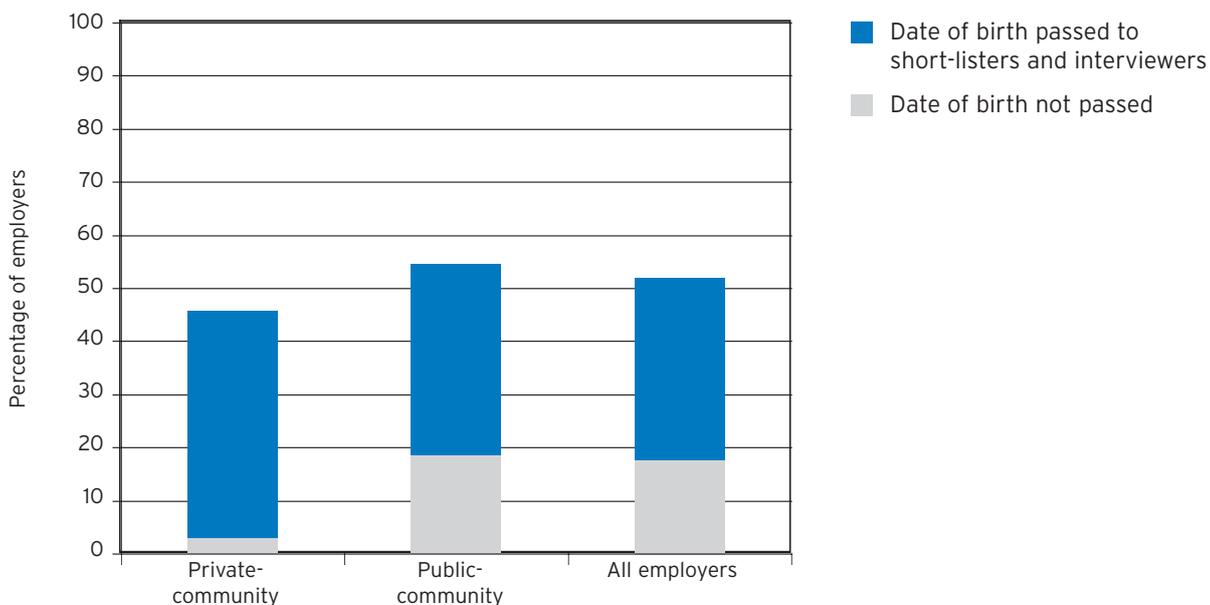
Table 1

Recruitment and promotion	Comments	% of firms reporting in other community activities-private	% of firms reporting in other community activities-public	% of firms reporting, all sectors
Maximum recruitment ages are specified	Unlawful if set more than six months before the company's retirement age unless objectively justified ⁷ .	20	73	29
Selection criteria based on length of work experience of any kind	Indirectly discriminatory. The test must be individual capability not experience; unless an objective justification can be demonstrated.	61	69	62
Selection criteria specify qualifications	Lawful if the qualification is directly relevant to the job, and equivalent qualifications are accepted for candidates of different ages.	52	67	60
Application forms ask for date of birth/age	Lawful to use for monitoring purposes and conforming to Statutory requirements. Potentially discriminatory. ACAS recommends removing this information (as with other equal opportunities information) before shortlisting.	42	52	48
Age information is provided to recruiting staff	Increases risk of discrimination.	42	43	44
Selection decisions are based on remaining period to retirement	Discriminatory unless a clear business justification can be demonstrated ⁸ (like the cost/time required to train, relative to the expected years of work).	24	10	18
Age criteria are used directly in recruitment, or particular age ranges are targeted	Unlawful unless required by Statute, or for positive action reasons (e.g. to compensate for the under representation of a particular age group).	9	10	9
Selection decisions are based on expected length of service, judged by age	Unlawful	9	3	7
Job advertisements specify age	Unlawful , unless there is a genuine occupational requirement (e.g. a young actor for a young part).	9	0	6

⁷ If the employer does not have a compulsory retirement age, they set a maximum recruitment age of 64 1/2.

⁸ See also "maximum recruitment age".

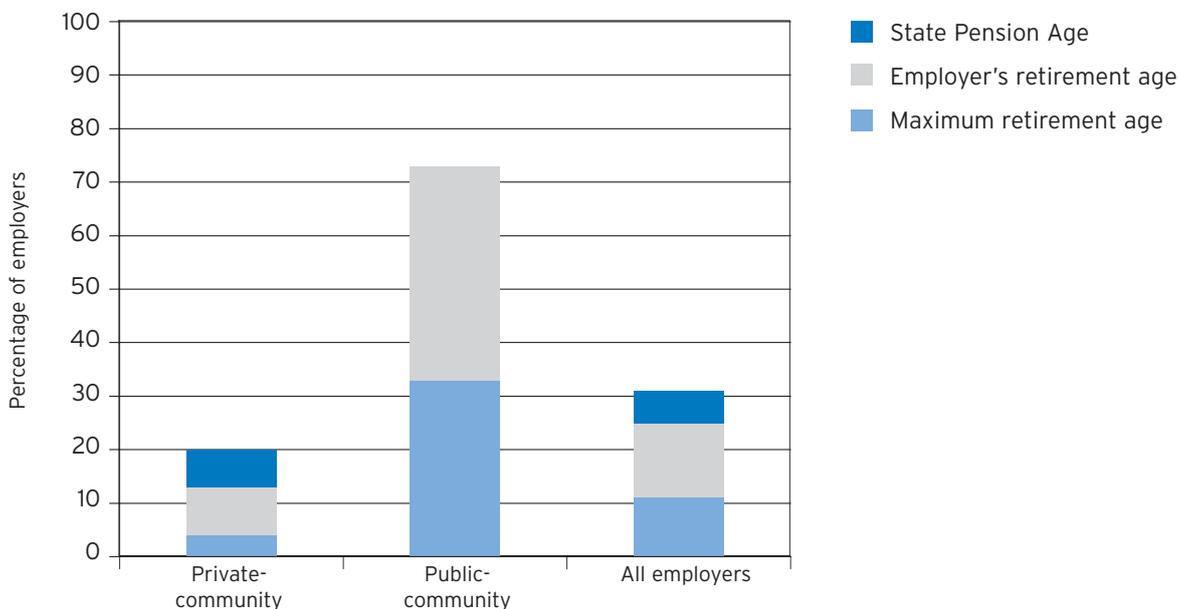
Figure 3 Application form asks for date of birth



It is common for employers in this sector to ask for date of birth on application forms (Fig 3), which is lawful if there is a genuine business need (for example, in order to comply with statutory regulations on employing young people) or for

monitoring purposes. However, a high proportion of employers here, especially in the public sector, make this information available to shortlisting and interviewing staff, which increases the risk of unlawful age discrimination.

Figure 4 Employers who would be unwilling to recruit over:



Most public sector employers in the sector set a maximum recruitment age. One in three sets a limit below their normal retirement age. Under

the Age Regulations it will be hazardous to set a maximum recruitment age more than 6 months before the national default retirement age of 65.

5. Pay and conditions

The key principle in setting pay and conditions should be fairness. Where individuals are treated differently, this should be on the basis of a different contribution or skill, not on age, or on a factor which is a proxy for age (like years of service). This applies to people of all ages, and those over an employer's normal retirement age are equally protected by the law⁹.

The Regulations do, however, allow different treatment where this can be "objectively justified" as a "proportionate" way of achieving "a legitimate business purpose". Rewarding long service can, for example, be justified if it can be shown to benefit the business by increasing staff retention, and the sums involved are reasonable¹⁰.

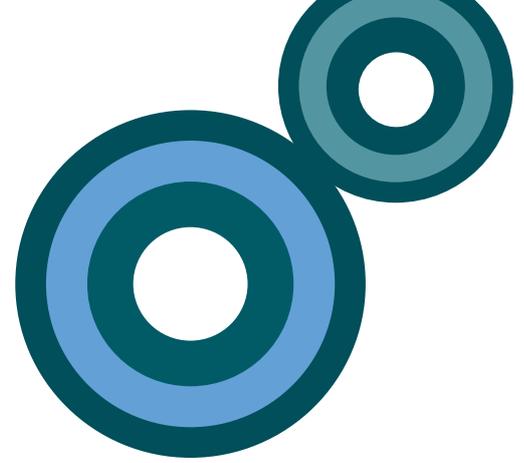
The table shows the most common areas of hazardous practice in the "other community" sector.

Table 2

Pay and Conditions	Comment	% of firms reporting in community - private	% of firms reporting in community - public	% of firms reporting- all sectors
Starting salary takes experience into consideration	Potentially discriminatory, since experience relates indirectly to age, and does not directly measure competence.	56	43	58
Annual leave entitlement is based on length of service	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 44% of all firms but 58% of all employees).	44	90	44
Incremental pay scales are used	Unlawful if scale covers more than 5 years (which occurs in 5% of all firms), unless it can be objectively justified.	39	59	36
Long service awards	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 33% of all firms but 54% of all employees).	20	24	33
Separate youth rates of pay	Only lawful in specific circumstances relating to the National Minimum Wage or Apprenticeships.	18	17	11
Starting salary is dependent on age	Unlawful	10	13	13
A maximum age is set for eligibility for sick pay	Unlawful	2	7	6
Selection for training depends on period to retirement	Potentially indirectly discriminatory (7% of all firms set a limit of more than 1 year). Objective justification is possible in terms of business benefits such as the cost set against predicted return.	7	0	8

⁹ The upper age limit for unfair dismissal claims is being lifted under the new regulations, and employees over their firm's retirement age will have full protection against discrimination.

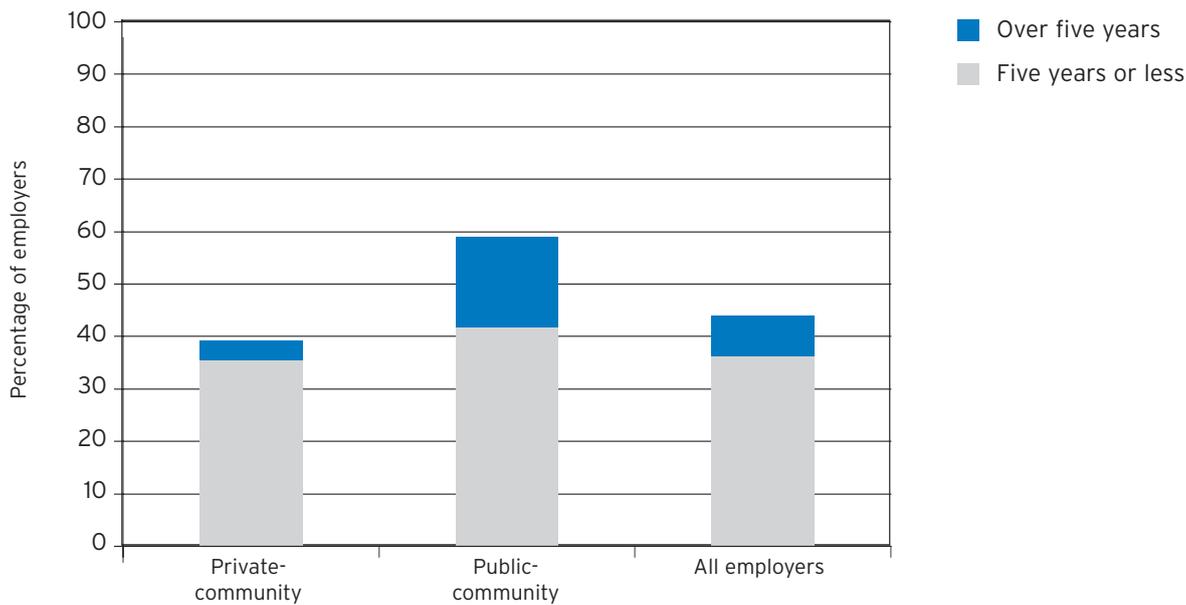
¹⁰ This is a complex area. Advice is available on the ACAS website (see "Further Information" below).



In general, community sector employers are no more likely to adopt hazardous practices on pay and conditions than other employers. However, a majority of public sector employers use length of service to determine pay, which is hazardous under the Regulations, and one firm in six has incremental scales which are longer than the five year maximum permitted under the regulations (Fig 5). This will be unlawful, unless the employer can demonstrate that it represents a proportionate means of achieving a legitimate business need.

A very high proportion of public sector employers in the sector base annual leave entitlements on length of service, which is hazardous under the regulations, since length of service reflects age, and employers would need to be able to demonstrate a legitimate business need, like increasing staff retention, to justify this.

Figure 5 Employers who use incremental pay scales



6. Retirement and redundancy

The Age Regulations introduce a new national Default Retirement Age of 65 for both men and women. An employer can lawfully set a retirement age at 65 or above, but can only set a lower retirement age if there is an objective justification (which is expected to be very rare, since age itself is rarely a qualification for a job). Whatever retirement age the firm adopts, the employer will be required to give individuals formal advance notice of their retirement date, and must consider requests to stay on after that.

The key principle here is that, up to the firm's retirement age, exit from the firm through either retirement or redundancy should be based on individual capability and contribution, and personal preference, not on age.

In relation to redundancy and unfair dismissal, the Regulations extend the same rights to all employees, whatever their age, removing the previous age limits. Statutory redundancy entitlements remain unchanged. An employer can use age or length of service to enhance redundancy payments, but only in accordance with the rules specified in the Age Regulations.

In this area, the greatest hazards concern the setting of compulsory retirement ages and the use of age in selection for redundancy or setting levels of redundancy pay.

The table shows the most common areas of hazardous practice in the "other community" sector.



Table 3

Retirement and Redundancy	Comment	% of firms reporting in community activities-private	% of firms reporting in community activities-public	% of firms reporting - all sectors
Redundancy decisions based on length of service	This discriminates indirectly since longer service correlates with age.	48	50	49
Level of redundancy pay based on length of service	Can be indirectly discriminatory against younger employees. Length of service is used for compulsory redundancy decisions by 27% of all firms but affects 38% of all employees. For voluntary redundancy it is used by 23% of all firms but affects 38% of all employees.	29 compulsory 27 voluntary	48 compulsory 38 voluntary	27 compulsory 23 voluntary
Compulsory retirement ages	Unlawful if below 65 (which affects 6% of all employers). 50% of the UK workforce is affected by compulsory retirement ages (because the latter is more common in large firms). However, in most cases the fixed age is 65, which will remain lawful, although employers must consider requests to stay on.	30	47	37
Age is used in selection for redundancy	Unlawful. The decision must be based on requirements of job and competence of staff, or positive action to maintain an age balance.	11 compulsory 3 voluntary	38 compulsory 10 voluntary	14 compulsory 5 voluntary
Level of redundancy pay is affected by age	Unlawful. Affects only 10% of all firms, but 17% of all employees (because it is more often used in larger firms).	8 compulsory 10 voluntary	27 compulsory 24 voluntary	10 compulsory 9 voluntary
Redundancy decisions based on current salary	Likely to discriminate indirectly since salary levels generally correlate with age.	6	10	7
Compulsory redundancy decisions are based on "last in first out"	Likely to discriminate indirectly against younger employees.	28	10	28



A large proportion of employers in the sector have compulsory retirement ages below 65, usually 60. This is particularly the case in the public sector, where one in five had retirement ages below the new national default retirement age. This will be unlawful under the Age Regulations, and firms will have to change their policies to comply.

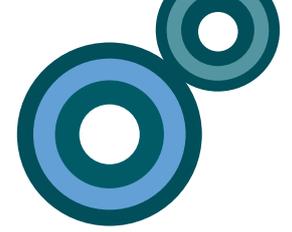
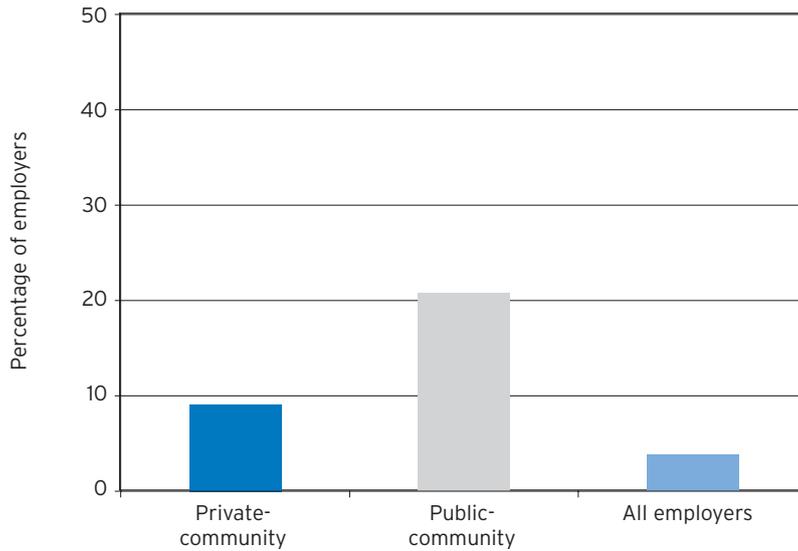


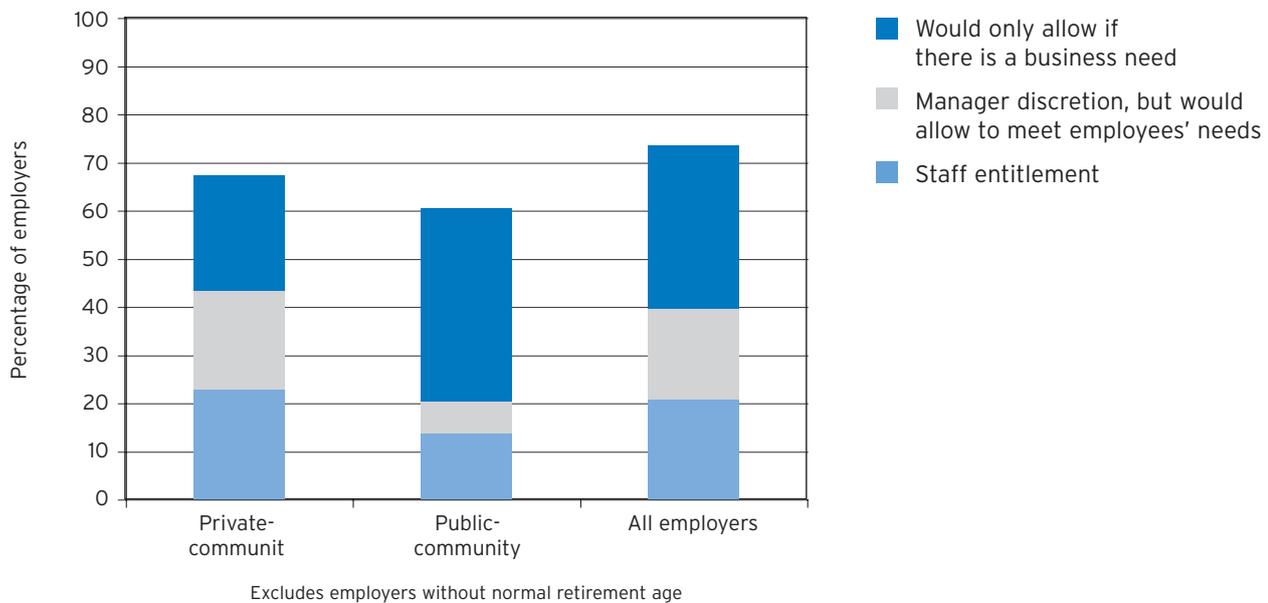
Figure 6 Retirement age under 65



Community sector employers were as likely as others to consider requests to work beyond the firm's normal retirement age, but were less likely to accept such requests unless there was a direct business need. In practice, employers in this sector are less likely than employers generally to allow employees to work beyond retirement age, and this is particularly true in the public sector.

Less than half of organisations surveyed had employees who were older than their normal retirement ages, and fewer than one in six gave employees a right to stay in work past the firm's retirement age. Although this sector is one of the major employers of people after 65, it is still a minority of employers who do this.

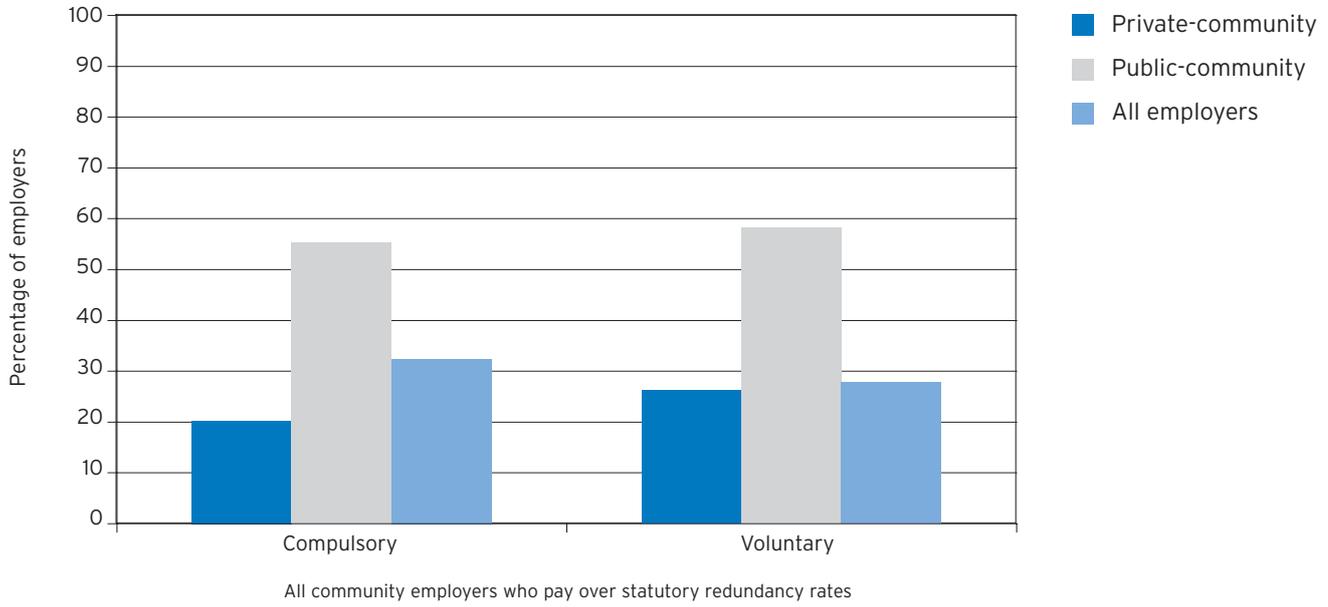
Figure 7 Staying in work past normal retirement age



A small, but significant, minority of employers, mainly in the public sector, use age as a criterion in selecting for redundancy, and a majority who make redundancy payments above the statutory minimum use age in their calculations (Fig 8).

These practices are hazardous, and the use of age to calculate redundancy pay will only be permissible within the rules laid down in the regulations.

Figure 8 Redundancy pay based on age



7. Management and training

There are a variety of management practices which can reduce the risk of legal disputes under the Age Regulations. Table 4 identifies the

commonest ones, and shows what proportion of firms in the “other community” sector, and the economy in general, use them at present.

Table 4

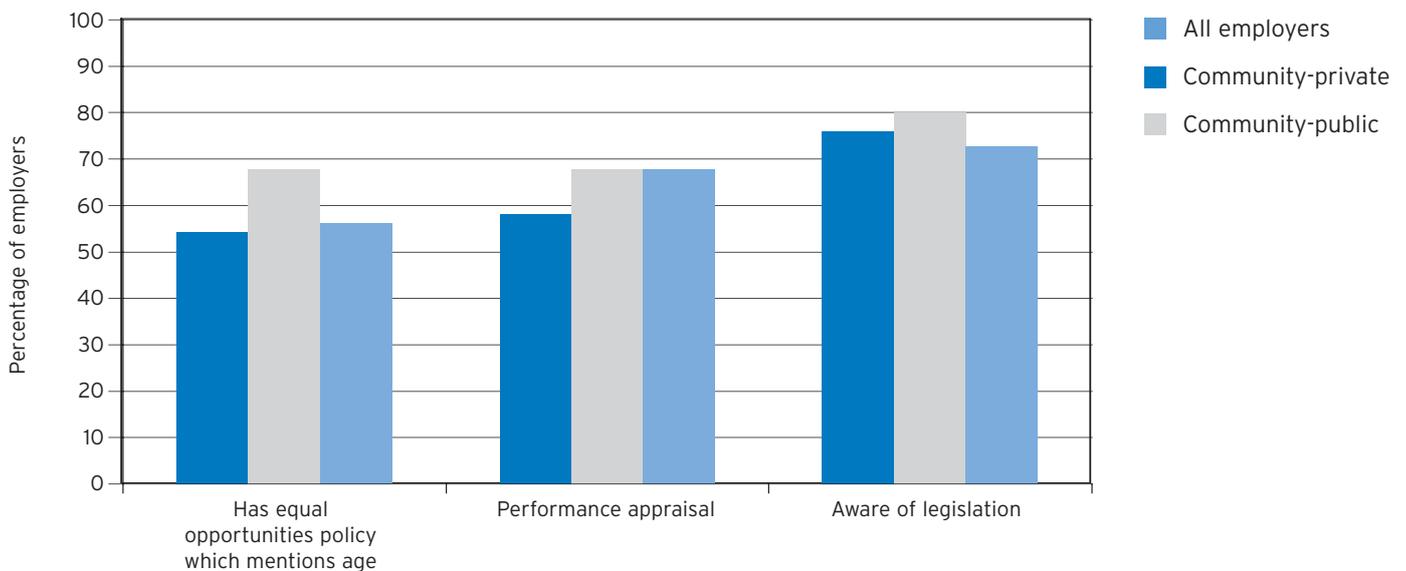
Management and training	Comment	% of firms reporting in community activities-private	% of firms reporting in community activities-public	% of firms reporting, all sectors
Equal opportunities policy exists	Having a policy makes expectations clear to managers and staff, and makes monitoring easier.	68	88	72
	Equal opportunities policy explicitly mentions age.	54	68	56
	Policy implementation by age is monitored (only those with age policies).	54	63	49
“Age blind” recruitment practices	Removing dates of birth and age data from applications before they are considered by selectors reduces the risk of discrimination (although training recruiters is also important). Some firms collect this information on equal opportunities monitoring forms which are removed before forms are passed for short listing.	39	50	43
Providing work related training for all staff	There is a direct relationship between participation in training and staying longer in work.	70	75	70
Formal performance appraisal	Ensures that employees are clear about objectives, that performance is recognised, and untapped talents are used. This will also be relevant when firms have to consider formal requests to stay after a firm's retirement age.	58	68	68
Formal assessment for promotion	Formal assessment increases the chances of promoting the most valuable people, and reduces the risk of discrimination (4% of all firms currently have age related criteria, which will be unlawful).	41	38	37
Flexible working	Many employees, especially those with childcare or eldercare responsibilities, and those approaching retirement, would like to work part-time or flexibly. Offering flexible working improves retention and motivation of key staff	89 for childcare 86 pre-retirement 93 for elder care 78 for any reason	100 for childcare 88 pre-retirement 63 for elder care 50 or any reason	82 for childcare 78 pre-retirement 74 for elder care 51 for any reason
Flexible retirement ages	Flexible retirement allows individuals to work longer and employers to continue to make use of skills and expertise.	33 offer to all staff 4 offer to some staff	50 offer to all staff 25 offer to some staff	50 offer to all staff 4 offer to some staff

Most employers in this sector have equal opportunities policies, which can help protect them from charges of unfair discrimination, and the proportion is higher in the public sector. More than half also have formal appraisal and performance management systems, which reduce the chance of unfair discrimination in promotion and decisions on retirement and extending working life. Two thirds of public sector firms, and half of private sector ones say that they monitor HR policies on age, and most are aware of the new age discrimination legislation. Most public sector firms provide equal opportunities training for managers, but only a quarter of them include age diversity in this. In the private sector,

on the other hand, only half of all community employers provide training in equal opportunities to managers, and only one in eight covers age diversity in this training.

None of the employers surveyed said that age itself plays a direct role in deciding who to train, although one in six private sector firms take into consideration the potential length of service of candidates, and one in twelve considers the employee's proximity to retirement. This is hazardous unless employers can demonstrate that this is a proportionate response to a legitimate business need.

Figure 9 Prepared for age discrimination regulations



8. Managing age in the “other community” sector: discussion questions

The following questions are designed to help you, as an employer in the community sector, to plan how you will respond to an ageing workforce and the Age Regulations:

1. How concerned are you about **skills gaps and shortages** in your sector, and do you believe current labour market predictions about this?
2. Do you think that **a different age mix** in the workforce could help overcome these?
3. Do people generally in your sector **have strong views about appropriate age ranges for particular jobs** which would limit the opportunity to change the age mix?
4. Is your **ability to change pay and conditions** limited by national agreements, or regulations like “licence to practice” rules? How can you tackle this?
5. Policymakers sometimes assume that all firms in a “sector” are alike. In your sector are there particular **kinds of firm which are very different** in their approach to age management?
6. How easy is it to **extend working lives** in your sector? Does this apply more to some groups of staff than others?
7. Are there **traditional career patterns** in your sector which might change if working lives became longer (e.g. “downshifting” or mentoring roles for older workers)?
8. Older workers often prefer **to work part-time or on a flexible basis**. How easy is it to do this in your sector, and what might be the constraints?
9. Are there jobs where **physical demand or levels of stress** make extending working life more difficult? Are there ways of overcoming these?
10. Is it difficult to **recruit older people** in your sector? After what age? Can training help?
11. **Small firms** in general have less formal management structures and procedures. Will this make overcoming age discrimination easier or more difficult for them?
12. A high proportion of people working after 65 are **self employed**, what role does this play in your sector?
13. What are the implications of an ageing workforce for supply and demand for **training** in your sector? (given that those who train generally stay in work longer)
14. How difficult will it be to **raise awareness among employers** in your sector about the ageing workforce, and about the age discrimination regulations, especially among small firms, who are more difficult to contact?
15. Are there **lessons about managing an age diverse workforce** which your sector could offer to others?

CROW would welcome any comments on these questions (or any others) as a contribution to its final research report for DWP”.

¹ See “Further Information” below.



9. About this paper

This paper was written by the Centre of Research into the Older Workforce on behalf of the Department for Work and Pensions. It draws on two sources:

- The background material on the sector comes mainly from the Sector Skills Development Agency's Research Matrix database, which brings together a large quantity of information about all sectors from a variety of sources, including the Labour Force Survey, the National Employer Skills Survey, the Annual Business Inquiry, and the Inter Departmental Business Register¹².
 - The material on current age management practice in the sector is based on data gathered by the National Institute for Economic and Social Research (NIESR) and the British Market Research Bureau (BMRB), in a national survey for the DWP and DTI in Spring 2005¹³. They interviewed the most senior person responsible for HR issues in 2084 firms employing more than five people in England, Scotland and Wales. Each interviewee was asked 160 questions about aspects of age management, including recruitment, retirement, benefits, pensions, management practices and discrimination. CROW carried out a separate analysis of this data to produce the current paper. The sample included 120 firms in the community sector.
- it probably underestimates the frequency of some practices (since firms with a positive record are more likely to respond to such surveys; employers may be reluctant to admit to what they suspect is "bad practice"; and the senior managers who replied to the survey may be unaware of poor practice by some line managers);
 - In some cases the number of employers responding is relatively small, and may not be fully representative of particular sizes of firms in that sector;
 - Since some practices are more common in large firms, the behaviour of a small proportion of firms may affect a much larger proportion of workers;
 - Although some hazardous practices are rare, the firms involved will still be open to legal challenge if they do not make appropriate changes.

We have not commented on pensions issues since pensions provisions are largely exempt from the regulations¹⁴.

All views expressed in this paper are those of the authors. They are not intended to be authoritative statements of the law, and do not represent the views of the Department for Work and Pensions or any other Government Department.

The DWP/DTI evidence is the best available on current employer age management practices across all sectors, but it should be interpreted with some caution since:

¹² Details on the Skills for Business website at www.ssdamatrix.org.uk/

¹³ See "Further Information" below.

¹⁴ DTI's guidance *The impact of age regulations on pensions*, explains the implications of the legislation for pensions in detail.

10. Responding to this paper

This paper is intended for consultation with employers, sector bodies and other interested organisations and individuals during 2006. Responses will contribute to a larger report on sectoral approaches to age management, which DWP plans to publish in 2007.

If you would like to comment on any aspect of this paper, or on age management in the community sector (or on age management more generally), please write directly to the Centre for Research into the Older Workforce (CROW). We would be particularly interested in responses which:

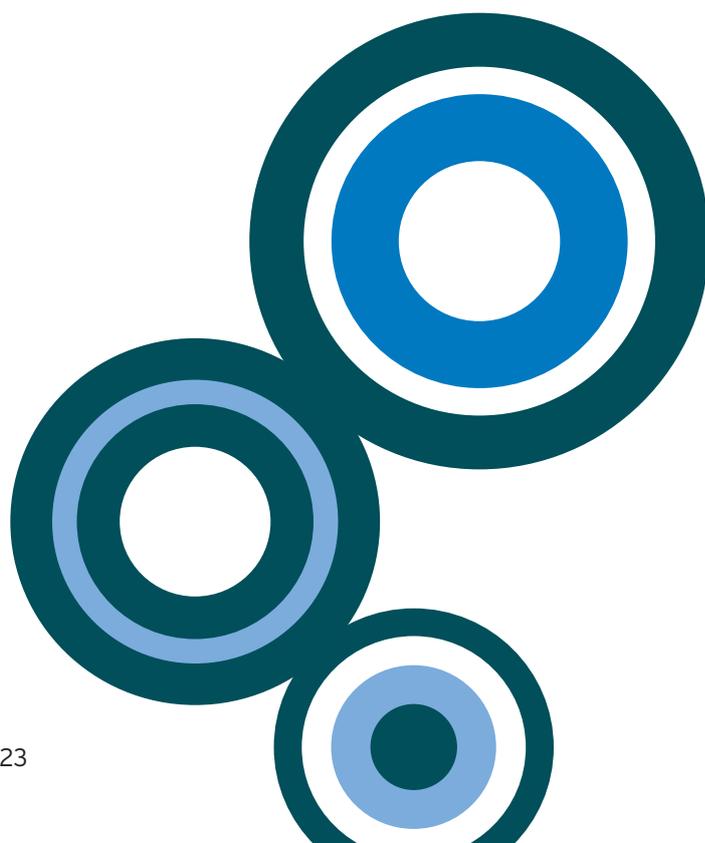
- add relevant information on the shape of the sector and age management issues and practices within it
- clarify the reasons for particular features (e.g. why one part of the sector has very different practices from others, or why the other community sector is different from other sectors)

- identify examples of good practice which might be disseminated to other employers or sectors
- identify questions which need further investigation

Responses and comments on the content or issues raised by this paper should be sent by email to: crow@niace.org.uk

Or by post to:

Age Legislation Research
Centre for Research into the Older Workforce
NIACE
21 De Montfort Street
Leicester
LE1 7GE



11. Further information

Further information on age related issues, policies, practices, and legislation can be found at www.agepositive.gov.uk

You can request further copies of this paper, or contact the Government's Age Positive team at: agepositive@dwp.gsi.gov.uk

or write to:

Age Positive Team
Extending Working Life Division
N10
Moorfoot
Sheffield
S1 4PQ

Details of the Age Discrimination Regulations, which will come into force in October 2006, can be found on the DTI's website at:

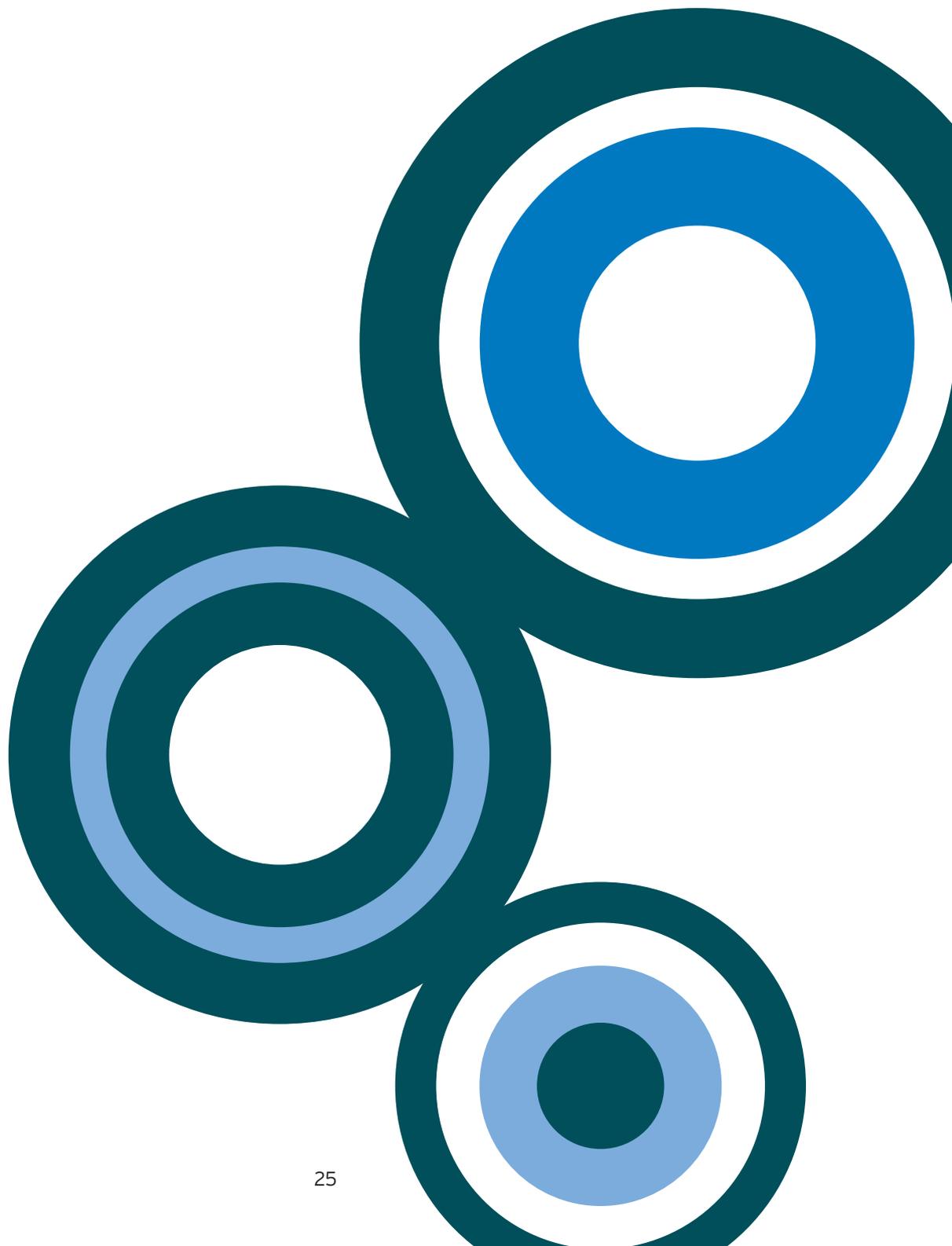
www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

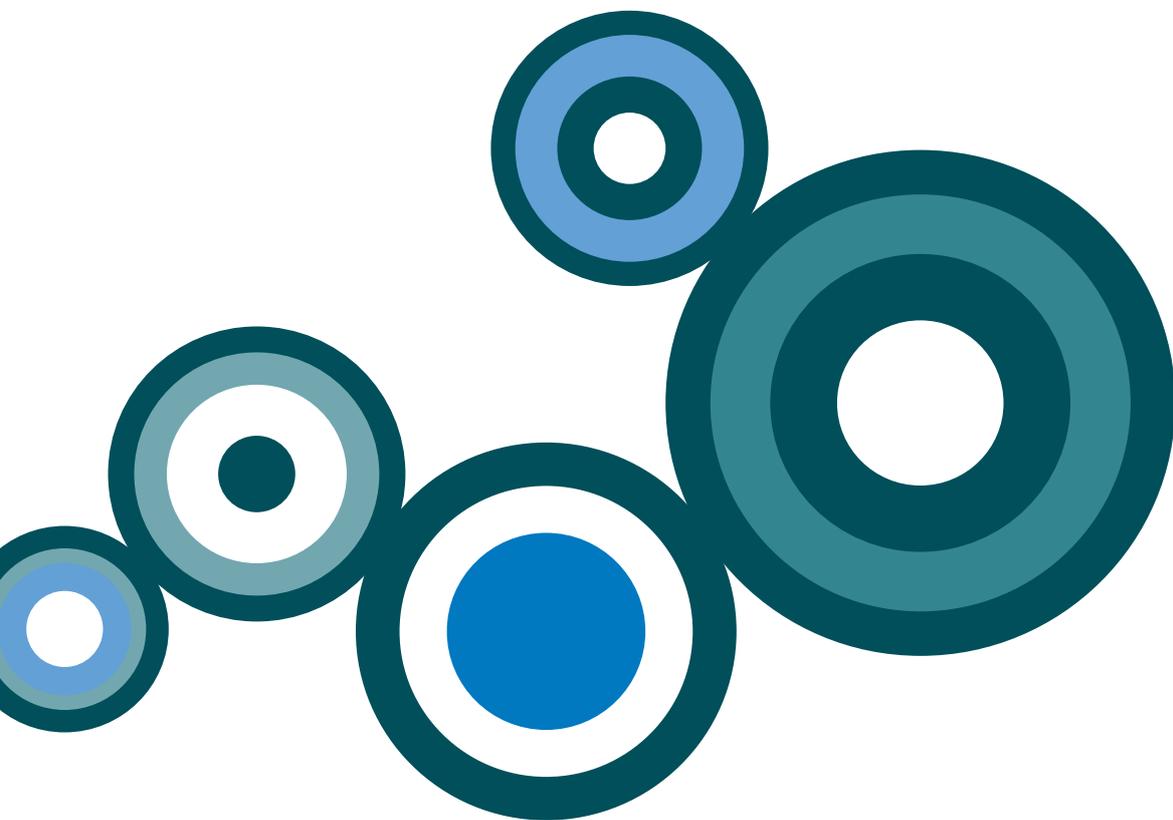
Advice on interpretation and good practice can be found on the ACAS website at:

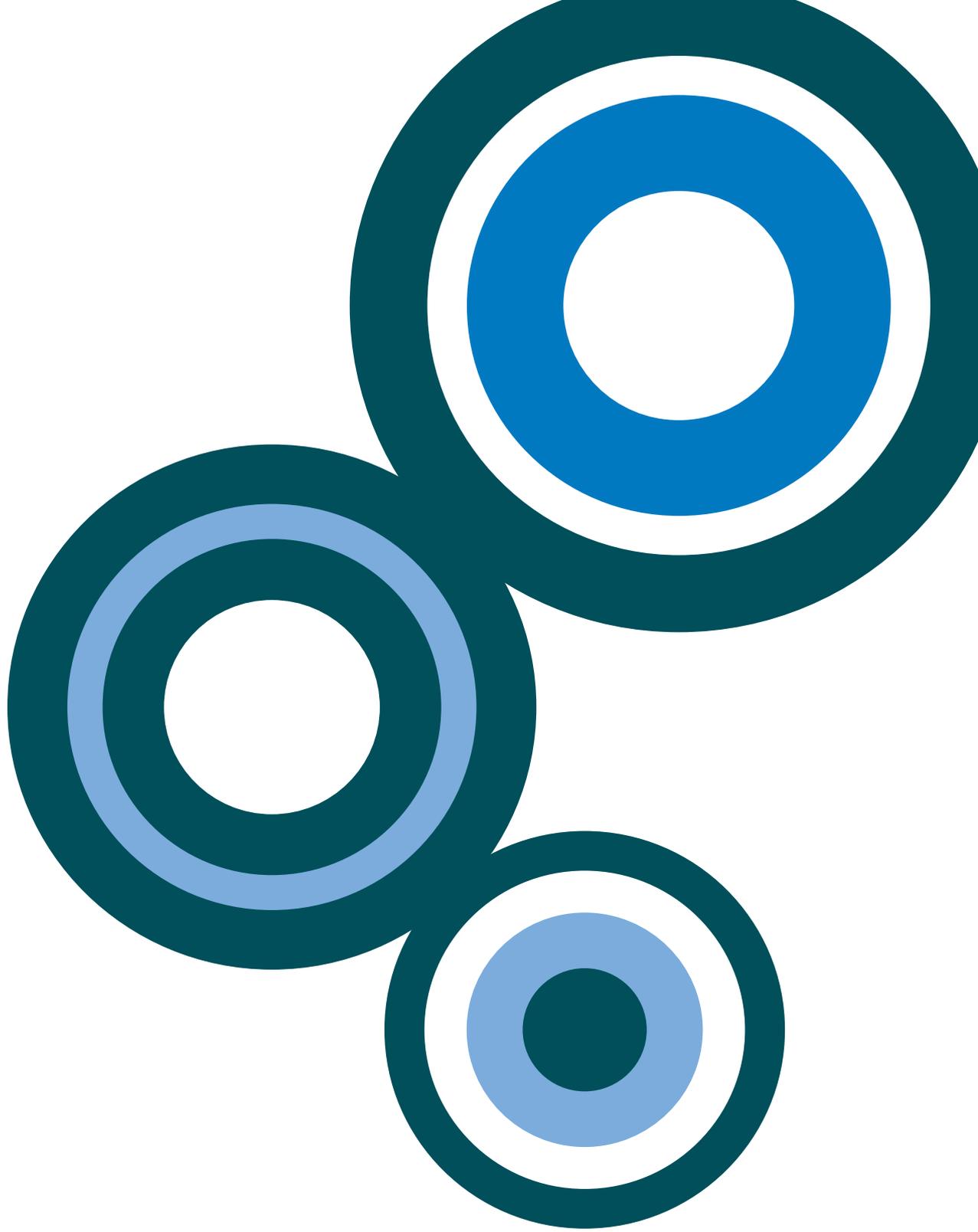
www.acas.gov.uk

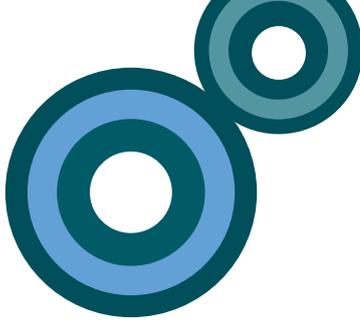
The full report of the DWP/DTI national survey conducted by NIESR and BMRB which produced the evidence for this report is Survey of Employers' policies, practices and preferences relating to age by Metcalf & Meadows (DWP Research Report 325, DTI employment relations research series number 49). The full report is available for download free on the DWP website at: www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep325.pdf

Further information about CROW can be found at: www.niace.org.uk/crow









Members of the Age Partnership Group

Members of the Age Partnership Group, listed below, support and endorse the Be Ready campaign.

for England

Acas
Association of British Insurers (ABI)
Association of Chartered Certified Accountants (ACCA)
The British Chambers of Commerce (BCC)
Chartered Institute of Personnel and Development (CIPD)
Chartered Management Institute
Confederation of British Industry (CBI)
Department of Trade and Industry (DTI)
Department for Work and Pensions (DWP) - Chair
Employers Forum on Age (EFA)
EEF, the manufacturers' organisation
Federation of Small Businesses (FSB)
HM Revenue & Customs (HMRC)
Institute of Directors (IOD)
Improvement and Development Agency (IdeA)
Local Government Employees (LGE)
National Association of Pension Funds (NAPF)
Public Sector People Managers Association (PPMA)
Small Business Service (SBS)
Trades Union Congress (TUC)

for Scotland

Acas Scotland
A City for All Ages
Bank of Scotland
Better Government for Older People in Scotland
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Highlands & Islands Enterprise
Highlands & Islands Equality Forum
Jobcentre Plus, Scotland
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Royal Bank of Scotland
School of Management, Edinburgh University
Scottish Chambers of Commerce
Scottish Council for Voluntary Organisations
Scottish Enterprise
Senior Studies Institute, Strathclyde University
South Lanarkshire Council
STUC
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The Scottish Executive
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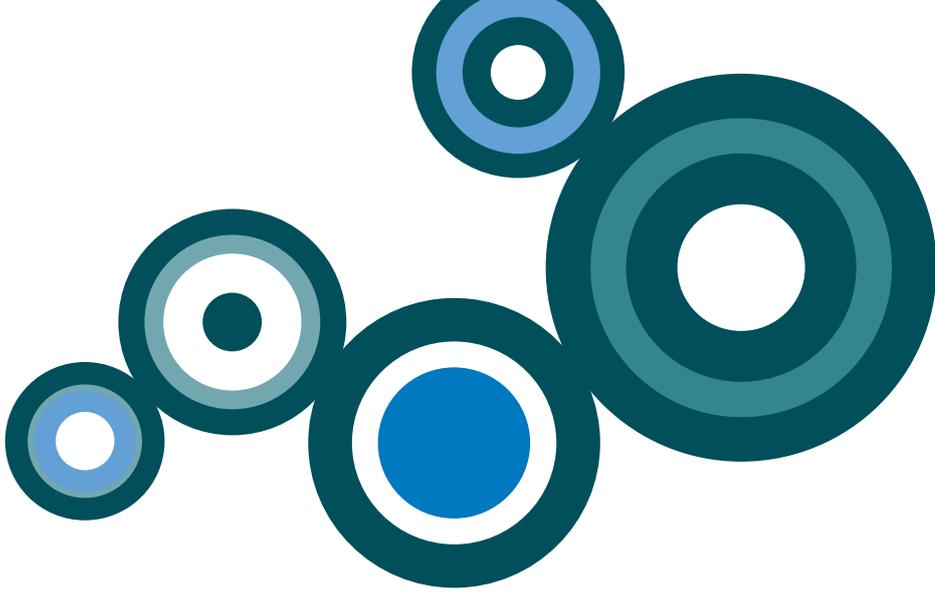
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Managing an ageing workforce in the manufacturing sector

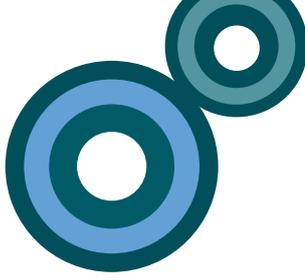
A report for employers

By Stephen McNair and Matt Flynn

Produced for the Department
for Work and Pensions
By the Centre for Research
into the Older Workforce

age**partnership**group
Targeting Employers®





Age Partnership Group (APG)

This research is one of a number of projects commissioned by the DWP on behalf of the APG as part of the National Guidance Campaign (NGC).

The APG was formed in 2002 and consists of a number of national organisations who represent different aspects of employers needs, for example, small business representatives, trade unions, HR and Personnel managers, local government, other government departments, accountancy, insurance and training organisations. There are separate groups representing England, Scotland and Wales.

The NGC aims to raise employers' awareness of, and ability to adopt, practical information and guidance on age diverse employment practices. This includes flexible employment and retirement opportunities in order to increase the recruitment, selection, promotion, training and retention of older employees prior to the implementation of age legislation in October 2006.

You can view the Age Partnership Group website at www.agepositive.gov.uk/agepartnershipgroup

Legislation

In March 2006, the Employment Equality (Age) Regulations 2006 were published. The regulations are the last major stage of the European Employment Directive and will come into effect on the 1st October 2006.

The regulations prohibit age discrimination in employment and vocational training. They apply to individuals of all ages in work, seeking work or looking to access vocational training and to all employers, and to all providers of vocational training and vocational guidance (including further and higher educational institutions).

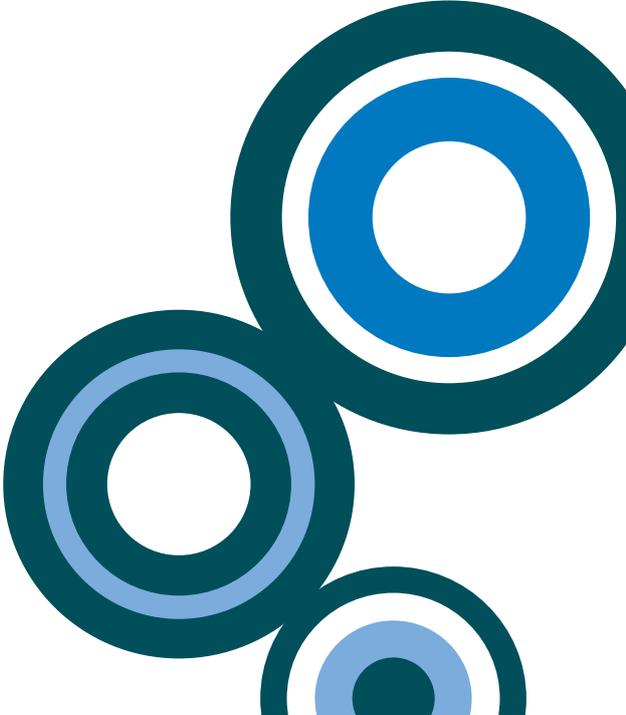
The regulations can be viewed on the Department of Trade and Industry website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Disclaimer

This report has been commissioned to provide information only. Responsibility for the views expressed in this report rests solely with the authors. The members of the Age Partnership Group (APG) and the Department for Work and Pensions (DWP) do not accept responsibility for the views of the authors.

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Introduction

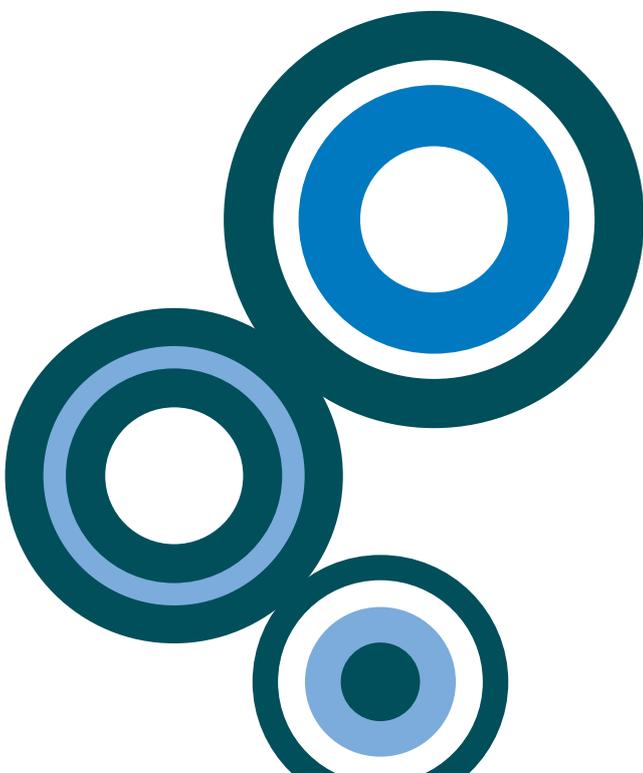
This report is about how firms in the manufacturing sector are managing an ageing workforce. It has been written for the Department for Work and Pensions (DWP) by the Centre for Research into the Older Workforce (CROW) to help employers to make better use of older workers. It also helps to raise awareness of the new Employment Equality (Age) Regulations 2006 which become law in October 2006, and prohibit age discrimination in work or training against people of any age.

Workforce ageing presents a growing challenge to most employers. Birthrates have been falling for many years, and in the next few years the numbers retiring will outnumber young people entering the labour market. The government believes that the resulting skills gaps and labour shortages in many industries can be reduced if employers can find ways of making better use of older workers, and encourage people to stay in work longer.

However, every industry has its particular features, and this report outlines the special issues affecting the manufacturing sector, based on a large national survey of employers. It highlights employment practices in the sector which will be hazardous under the Age Regulations, and aims to stimulate discussion and improved practice in firms.

This report is not intended to be an authoritative statement on the age discrimination law itself. Details of how to obtain the Regulations, and advice about them, can be found at the end of the report. However, while the Regulations make some activities unlawful, it is for the Courts and Employment Tribunals to interpret this in specific cases. The term "hazardous" is therefore used in this paper to describe activities which might be ruled unlawful if a case is brought. We suggest that employers need to review their practice in these areas.

During 2006, CROW will explore these issues in more depth through case studies of firms in seven sectors, and DWP plans to publish the resulting Research Report in 2007.



1. Summary: key age issues for manufacturing firms

The manufacturing workforce is substantially older than the workforce in general, and although a high proportion of workers leave in their 50s, one firm in five employs someone over 65. The sector already faces serious labour and skills problems, and the level of skills required is rising. Although overall levels of employment in the sector are expected to fall, the number of workers approaching retirement means that many employers will need to retain older workers longer, and increase recruitment of younger ones.

Although few firms report practices which are clearly unlawful under the Age Regulations, manufacturing firms are less likely than others to have protective practices in place (like equal opportunities policies, formal appraisal and assessment for promotion, and “age blind” recruitment systems) which could prevent unfair discrimination. Discrimination is made more likely by a high proportion of employers who hold strong views about the age groups appropriate for particular jobs. Despite a relatively old workforce, larger firms in manufacturing are generally unsympathetic to extending working lives, and they tend to enforce retirement ages rigidly.

Common hazardous practices in manufacturing

Common practices in this sector which may need review if employers are to avoid breaking the Age Regulations include:

- **selecting new staff on the basis of length of experience.** Here age is being used as a proxy for competence, which ought to be assessed in its own right, since years of experience relate indirectly to age.
- **using physical strength as a recruitment criterion.** This is lawful where the requirement is genuine, but it will be

unlawful to use age as a proxy for physical strength, since the test must be applied to the individual, and changes in physical capacity with age vary greatly between individuals. Employers must also take into account the need for “reasonable adjustment” to working practices under the Disability Discrimination Act.

- **providing age information to shortlisting and interviewing staff.** There are legitimate reasons why employers would request dates of birth from job applicants (for example, to monitor equal opportunities), but passing this information to staff who are responsible for selection increases the risk of age discrimination in recruitment.
- **giving local managers discretion over setting starting pay.** In view of the attitudes expressed about the suitability of particular age groups to jobs, this may easily lead to discrimination.
- **setting contractual retirement ages below 65,** are more common in manufacturing than elsewhere, although most firms have no rationale for this. This will be unlawful under the regulations.

Unlawful practices in manufacturing

The following practices are less common, but unlawful, and firms who use them will need to make changes if they are to remain within the law.

- 42% of firms set **maximum recruitment ages.**
- 12% of firms use **age to fix starting salaries.**
- 12% of firms use **age as a recruitment criterion.**
- 6% of firms **specify age in job advertisements.**

2. The shape of the manufacturing sector

The nature of the age management issues facing a sector depends on factors like the average size of firms, the age and skills profile of the workforce, and future expectations of growth or contraction. This section outlines this context for the manufacturing sector.

Manufacturing¹ is still the largest sector of the economy, employing 12% of the national workforce (3.7 million people) in 152,000 firms. It is extremely diverse, producing: foods and beverages, clothing, textiles and leather, wood and wood products, paper and publishing, fuels, chemicals, plastics, mineral and metal products, precision instruments, machinery, furniture, electrical and transport equipment and recycling. The bulk of the workforce (43%) are Skilled Tradespeople and Process, Plant and Machine Operators. The sector is supported by four Sector Skills Councils (SSCs):

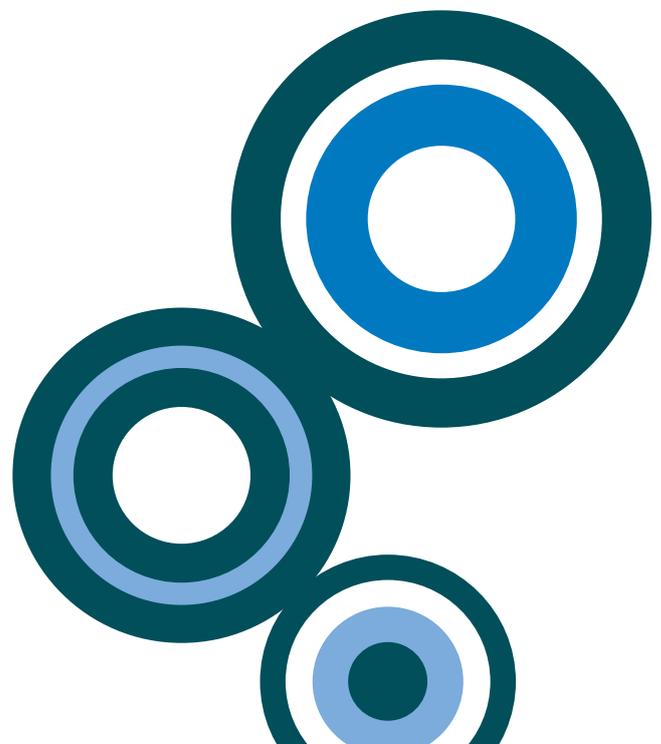
- Proskills UK - process and manufacturing of building products, glass, paint, coatings, print and extractive processing
- Improve - food and drink manufacturing
- Skillfast - clothing and footwear
- SEMTA - science, engineering and manufacturing technologies

Although productivity is relatively high, the sector's output has been shrinking, as has the number of firms, and this is expected to continue. The sector expects a continuing growth in numbers of highly skilled and managerial staff, and a rapid decline in low skilled and craft ones. Among the SSCs, only SEMTA (which has the highest proportion of highly skilled workers) is predicting an overall expansion of employment over the next decade.

By comparison with the economy as a whole, manufacturing firms are relatively large. Although three quarters of all firms employ fewer than eleven people, the sector has twice the national proportion of firms employing over 200. Levels of planning are comparable with the rest of the private sector, with half of all firms undertaking some formal business planning.

The workforce is older in manufacturing than in other sectors, with a disproportionate concentration in the 35-55 age range; a very large number over 55 (598,000); and one firm in five employing someone over State Pension Age (mainly in small numbers). However this varies within the sector, with the proportion of people over 55, higher in basic metals, textiles, and recorded media, and lower in food, drink and tobacco. Other distinctive features of the manufacturing workforce are the low numbers of women and members of ethnic minorities. Part-time working, which is particularly attractive to many older workers, is very rare in this sector.

¹ The sector includes the Standard Industrial Classification Codes (SIC) 15-37. Full details of occupational classifications can be found at [www.statistics.gov.uk/methods_quality/sic/downloads/UK_SIC_Vol1\(2003\).pdf](http://www.statistics.gov.uk/methods_quality/sic/downloads/UK_SIC_Vol1(2003).pdf)



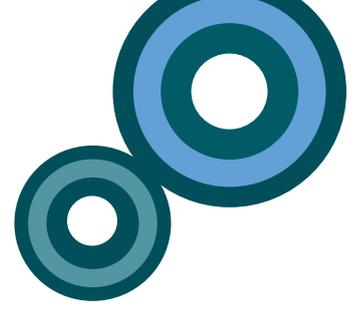
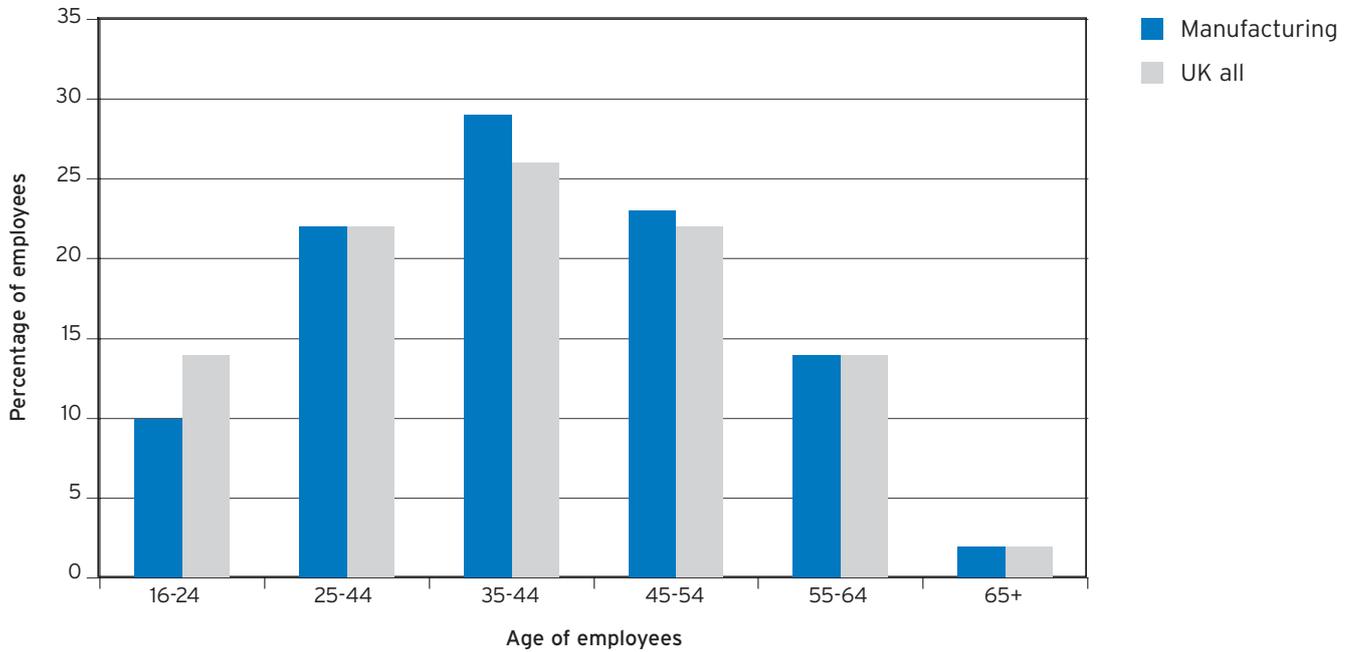


Figure 1 The age profile of the manufacturing workforce



The sector is experiencing high levels of skill problems, with double the national average proportions of skills gap, skills shortage and hard to fill vacancies. Despite this, training levels are below the average for the economy as a whole on most indicators, and a low proportion of firms have training plans. Despite the predicted decline in employment, the workforce age profile means that in the medium term there will be high demand for workers to replace those retiring.

3. Age discrimination in employment

Age discrimination at work is common. It can affect people of any age, but is particularly likely to involve older people, and more than one in five workers over the age of 50 say that they have experienced it either when applying for jobs or in the workplace². In countries where age discrimination law is already in force, it is the commonest cause of discrimination cases in the courts.

From October 2006, it will be unlawful for any employer in the United Kingdom to discriminate against or harass anyone on grounds of age, directly or indirectly, in relation to either employment or vocational training. This will cover arrangements for recruitment and promotion, pay and conditions, education and training, and retirement and redundancy.

There are exceptions: in relation to retirement, where it will be lawful to make an employee retire at a given age, provided this is not below 65 (for men and women); and where an existing statutory provision exists (like the Minimum Wage Regulations). An employer may also be able to justify discrimination if it is designed to correct an age imbalance in his workforce; if there is a legitimate business reason (and the discrimination is proportionate); or if there is an objective justification (likely to be very rare). The Regulations, and advice on their interpretation, can be found on the DTI and ACAS websites³.

Some features of age discrimination are common to most employers⁴.

- Indirect discrimination is more common than direct discrimination. DWP and DTI's joint survey, conducted by the National Institute of Economic and Social Research (NIESR), found few examples of direct discrimination, but one in five employers believe that some jobs are better done by people of particular ages. Where such beliefs exist, discrimination is more likely.
- Discriminatory attitudes are more likely to be found in private sector firms, and especially small ones⁵ in sectors like manufacturing and construction. These are also the firms and sectors where there are least likely to be formal procedures and policies to protect against unfair discrimination.
- The most common hazardous practices involve setting age limits on recruitment, especially for those over 50, and using age as a basis for decisions on compulsory retirement and redundancy.
- About half the workforce is covered by a compulsory contractual retirement age. In most cases this is already 65, which is the new "national default retirement age". However, even where firms plan to retire staff at 65, they will have to give formal notice of retirement dates and seriously consider requests to stay longer.

² Discrimination is difficult to measure precisely, since it is subjective, and affected by levels of public awareness of age issues, and many people regard it as "normal". In a CROW postal survey of workers over 50 in 2004, 20% reported age discrimination. In research by the University of Kent for Age Concern England 29% of people reported experiencing age discrimination (compared to 24% for gender).

³ See "Further Information" at the end of this report.

⁴ Information based on DWP and DTI's joint national survey of employers' policies practices and preferences, conducted by NIESR (see "Further Information"), although because this is new secondary analysis not all figures are directly comparable. Also, for certain policies and practices respondents were asked to answer in respect of their largest occupational group rather than for the workforce as a whole.

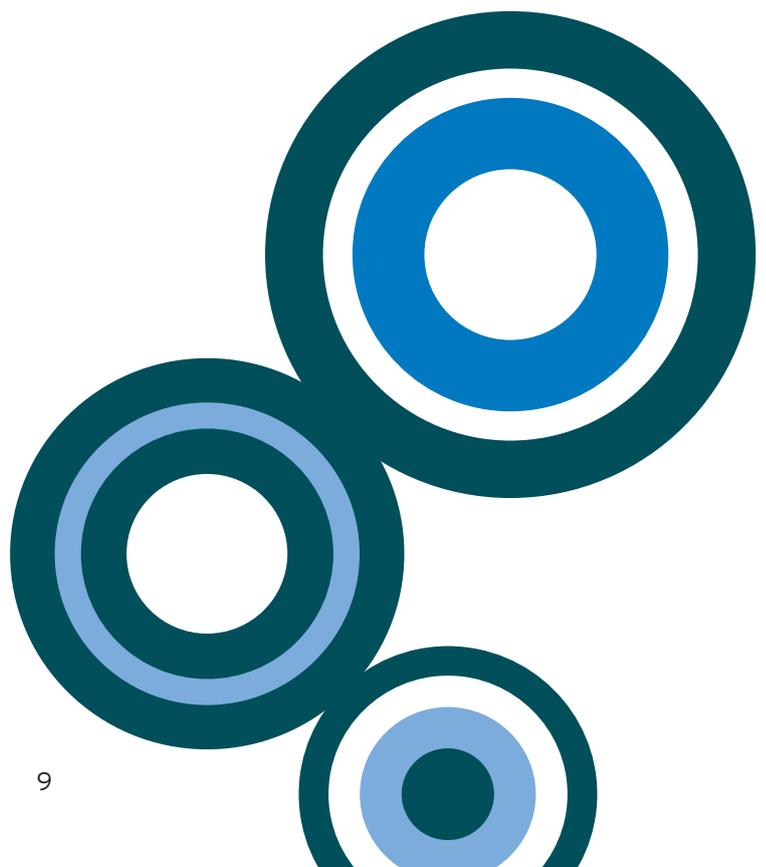
⁵ In this report "micro" firms have 5-19 employees, "small" employ 20-49, "medium" employ 50-249, and "large" employ 250 or more (the survey excluded firms employing fewer than 5 employees).

- Public sector and large private sector organisations, are more likely to have formal procedures (like appraisal schemes or equal opportunities policies) to protect against discrimination, especially where a Trades Union is recognised. However, these organisations are also more likely to have long standing formal agreements which include provisions which are hazardous under the Age Regulations, including contractual retirement ages below the new national default retirement age of 65.
- Two occupational groups are particularly at risk from discriminatory practices. These are professional and associate professional/ technician staff, both of whom are particularly likely to be exposed to discrimination in setting pay, long incremental pay scales, and access to training.

The tables in this paper identify hazardous practices identified in DWP/DTI's employer survey, indicating those which are most common among employers in manufacturing, and among employers in general.

Some of the provisions in the Regulations allow an employer to claim an "objective justification" for a practice which would otherwise be unlawful. Such justifications require the employer to be able to show that his or her action is a proportionate means of achieving a legitimate aim. It will be for Employment Tribunals and the County Courts to rule on what is justifiable under these provisions.

The Regulations also allow some practices, like incremental scales, where pay or terms of employment improve with length of service, but only up to five years, beyond which they will need to be objectively justified.



4. Recruitment and promotion

The key principle in all selection for employment or promotion is that decisions should be fair, and based on the individual's competence for the job, and not on arbitrary factors like age (or gender or race etc).

The research evidence shows that work performance in most jobs does not decline with age before the late 60s, provided individuals are healthy, motivated and kept up to date.

In recruitment and promotion, the commonest hazardous practices involve excluding applicants, either directly (by specifying ages), or indirectly (e.g. by specifying years of experience, rather than specific capabilities) in advertisements, job descriptions and interview criteria.

Table 1 shows the most common areas of hazardous practice in the manufacturing sector (with figures for firms in general for comparison).



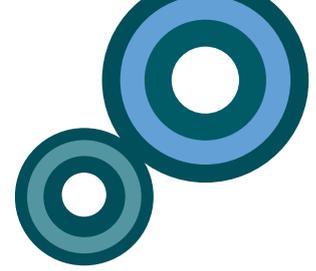


Table 1

Recruitment and promotion	Comments	% of organisations reporting in manufacturing	% of organisations reporting in all sectors
Selection criteria specify qualifications	Lawful if the qualification is directly relevant to the job, and equivalent qualifications are accepted for candidates of different ages.	60	60
Selection criteria based on length of work experience of any kind	Indirectly discriminatory. The test must be individual capability not experience; unless an objective justification can be demonstrated.	59	62
Maximum recruitment ages are specified	Unlawful if set more than six months before the company's retirement age unless objectively justified ⁶	42	33
Age information is provided to recruiting staff	Increases risk of discrimination.	48	44
Application forms ask for date of birth/age	Lawful to use for monitoring purposes and conforming to Statutory requirements. Potentially discriminatory. ACAS recommends removing this information (as with other equal opportunities information) before shortlisting.	37	48
Selection decisions are based on remaining period to retirement	Discriminatory unless a clear business justification can be demonstrated ⁷ (like the cost/time required to train, relative to the expected years of work).	21	18
Age criteria are used directly in recruitment, or particular age ranges are targeted	Unlawful unless required by Statute, or for positive action reasons (e.g. to compensate for the under representation of a particular age group).	12	9
Selection decisions are based on expected length of service, judged by age	Unlawful	8	7
Job advertisements specify age	Unlawful, unless there is a genuine occupational requirement (e.g. a young actor for a young part).	6	6

⁶ If the employer does not have a compulsory retirement age, he can set a maximum recruitment age of 64 1/2.

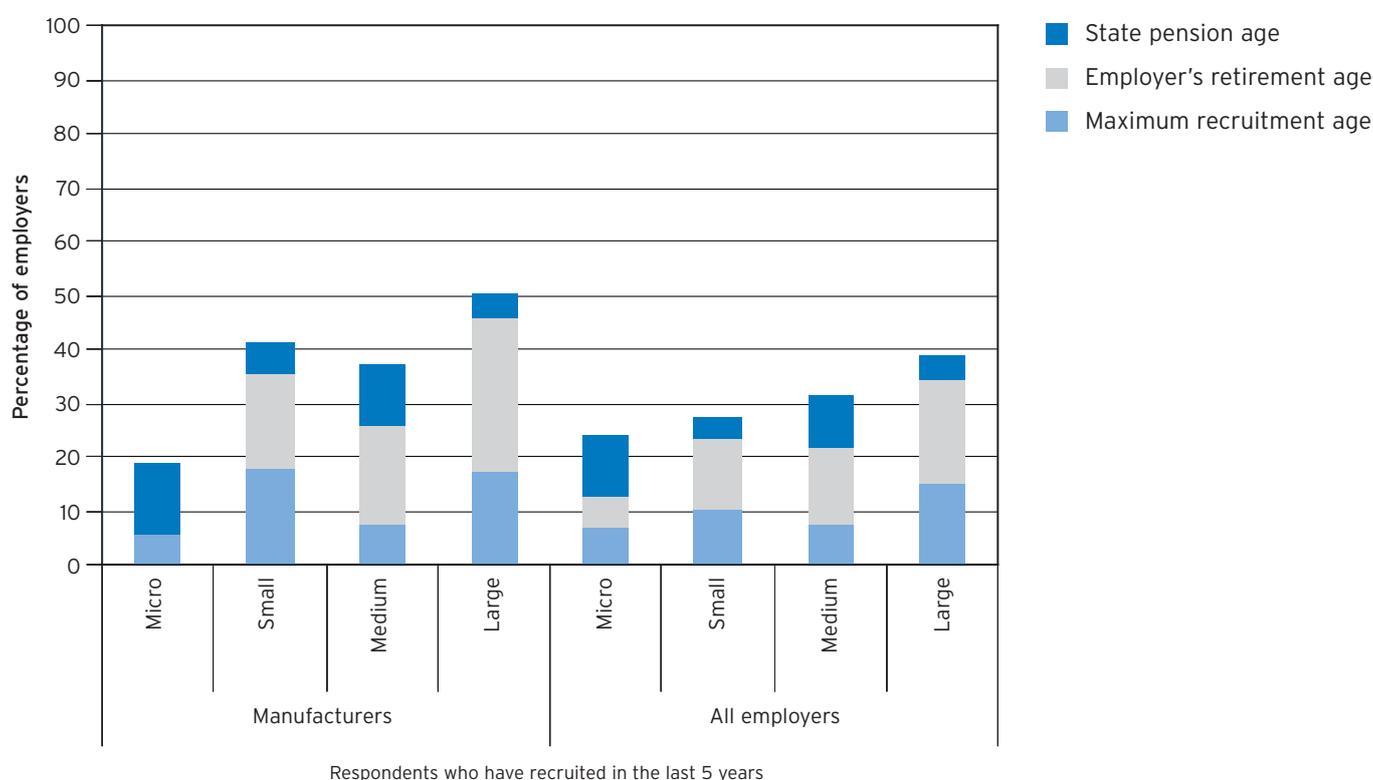
⁷ See also "maximum recruitment age".

Manufacturers in general are less open than employers in other sectors to recruiting and promoting older workers (Fig 2). Few firms encourage applications from people over 50, and 19% of medium firms and 28% of large ones said that they would not recruit people above their normal retirement ages. The reluctance to recruit older workers may reflect their perceptions of the physical demands of the work, since over half of large firms, and almost two thirds of small ones, said that physical strength

is an important requirement for employees. Physical strength is itself a legitimate basis for selecting recruits, but it does not correlate directly with age.

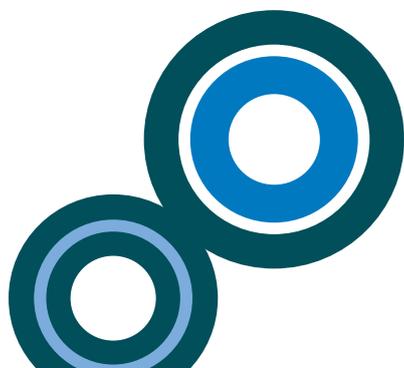
Direct age discrimination, however, is rare in manufacturing, with only 3% of firms saying that employees over 50 would be less suitable for work than other age groups, and fewer than 10% of firms specifying a preferred age range for recruitment.

Figure 2 Employers unwilling recruit over a specific age:



Smaller manufacturers (fewer than 50 employees) are more likely than firms of similar size in other sectors to select applicants for jobs on the basis of age and experience. Anticipated length of service is also seen as particularly important by small firms, who assess how long candidates are likely to stay. Although

manufacturers are no more likely than others to ask for dates of birth on applications, a high proportion (79% of large firms) of those who collect this information allow it to be seen by shortlisting and interviewing staff, which risks age discrimination by selectors.



5. Pay and conditions

The key principle in setting pay and conditions should be fairness. Where individuals are treated differently, this should be on the basis of a different contribution or skill, not on age, or on a factor which is a proxy for age (like years of service). This applies to people of all ages, and those over an employer's normal retirement age are equally protected by the law⁸.

The Regulations do, however, allow different treatment where this can be "objectively justified" as a "proportionate" way of achieving "a legitimate business purpose". Rewarding long service can, for example, be justified if it can be shown to benefit the business by increasing staff retention, and the sums involved are reasonable⁹.

The table shows the most common areas of hazardous practice in the manufacturing sector.

Table 2

Pay and Conditions	Comment	% of organisations reporting in manufacturing	% of organisations reporting, all sectors
Long service awards	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 33% of all firms but 54% of all employees).	32	33
Incremental pay scales are used	Unlawful if scale covers more than 5 years (which occurs in 5% of all firms), unless it can be objectively justified.	27	36
Annual leave entitlement is based on length of service	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 44% of all firms but 58% of all employees).	25	44
Separate youth rates of pay	Only lawful in specific circumstances relating to the National Minimum Wage or Apprenticeships.	13	11
Starting salary is dependent on age	Unlawful	12	13
Selection for training depends on period to retirement	Potentially indirectly discriminatory (7% of all firms set a limit of more than 1 year). Objective justification is possible in terms of business benefits such as the cost set against predicted return.	11	8
A maximum age is set for eligibility for sick pay	Unlawful	3	6

⁸ The upper age limit for unfair dismissal claims is being lifted under the new regulations, and employees over their firms' retirement age will have full protection against discrimination.

⁹ This is a complex area. Advice is available on the ACAS website (see "Further Information" below).



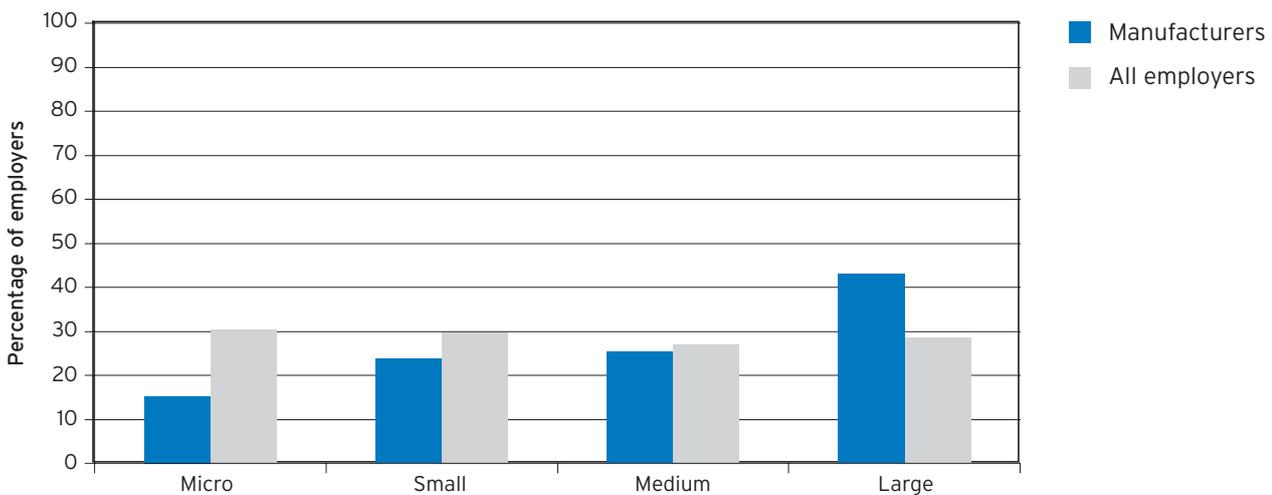
Manufacturers are more likely than other employers to offer long service awards in the form of bonuses or one-off payments, and 85% of large employers have a long service award scheme. These will not be illegal, provided that it satisfies a demonstrable business requirement, like encouraging loyalty or performance.

Large manufacturers are more likely than smaller ones to set the same rate of pay for all employees in an organisational group (43% of large employers, compared to 15% of micro firms) (Fig 3). However, half of the large firms give

individual managers some discretion on starting salaries, which risks unfair discrimination unless this is backed up by clear equal opportunities policies and training for managers.

Manufacturers are less likely than other employers to base pay and conditions on length of service, and among those large firms which have length of service criteria, few have incremental scales which are more than five years in length (which is unlawful under the Age Regulations).

Figure 3 Employers who pay the same rate for all employees in the main organisational group



Smaller firms are more likely than large ones to use age as a promotion criterion. This was reported by 11% of micro firms and 7% of small ones, and smaller firms were also much more likely to set maximum ages for promotion in manufacturing than in other sectors. This will be unlawful unless there is a demonstrable business reason.

6. Retirement and redundancy

The Age Regulations introduce a new national Default Retirement Age of 65 for both men and women. An employer can lawfully set a retirement age at 65 or above, but can only set a lower retirement age if there is an objective justification (which is expected to be very rare, since age itself is rarely a qualification for a job). Whatever retirement age the firm adopts, the employer will be required to give individuals formal advance notice of their retirement date, and must consider requests to stay on after that.

The key principle here is that, up to the firm's retirement age, exit from the firm through either retirement or redundancy should be based on individual capability and contribution, and personal preference, not on age.

In relation to redundancy and unfair dismissal, the Regulations extend the same rights to all employees, whatever their age, removing the previous age limits. Statutory redundancy entitlements remain unchanged. An employer can use age or length of service to enhance redundancy payments, but only in accordance with the rules specified in the Age Regulations.

In this area, the greatest hazards concern the setting of compulsory retirement ages and the use of age in selection for redundancy or setting levels of redundancy pay.

The table shows the most common areas of hazardous practice in the manufacturing sector.

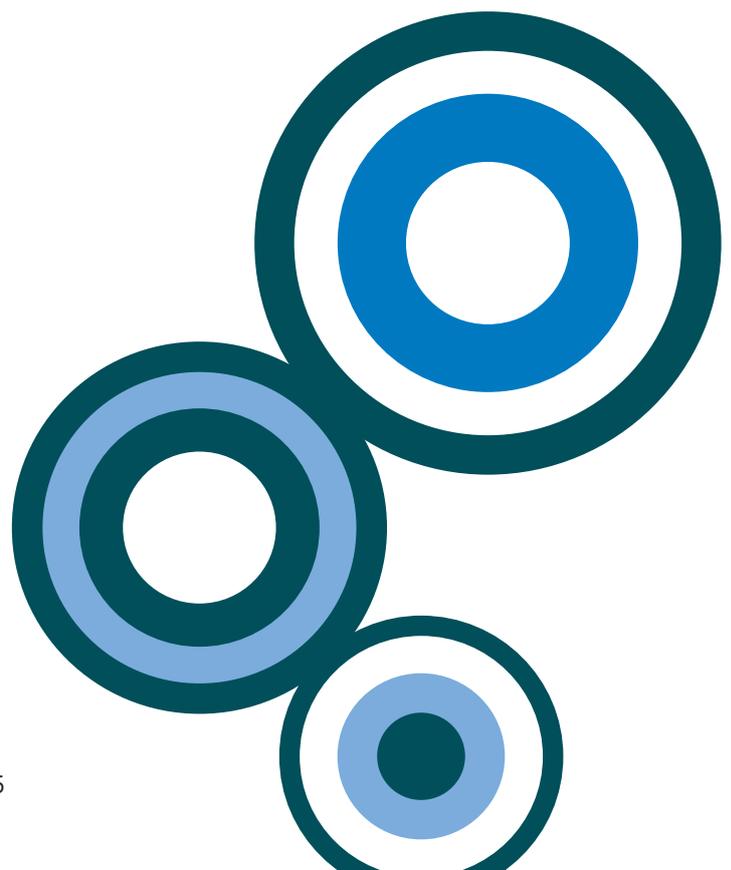


Table 3

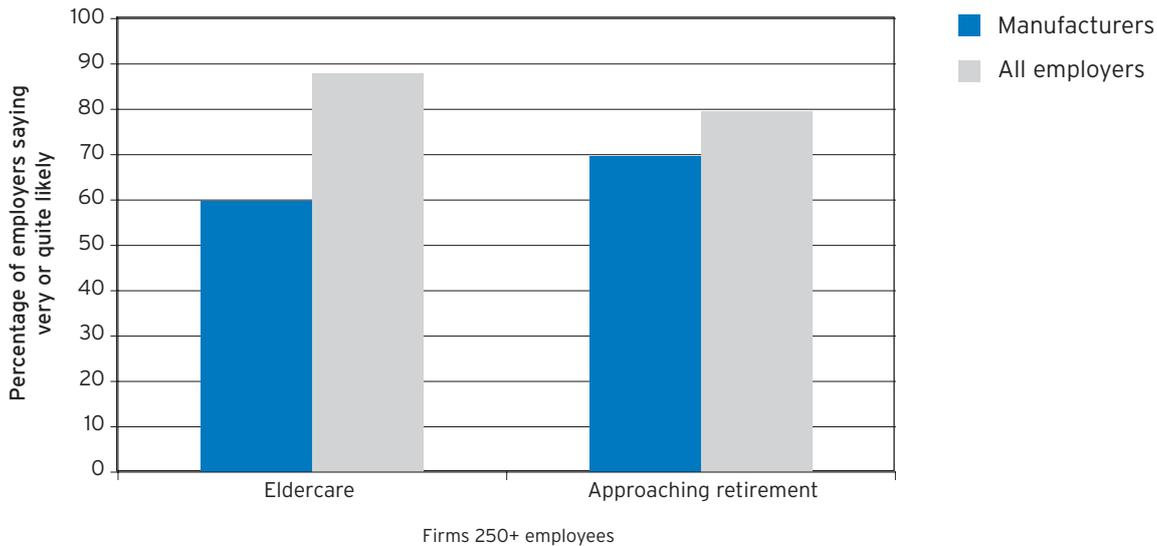
Retirement and Redundancy	Comment	% of organisations reporting in manufacturing	% of organisations reporting, all sectors
Redundancy decisions based on length of service	Indirectly discriminatory since longer service correlates with age.	54	49
Level of redundancy pay based on length of service	Can be indirectly discriminatory against younger employees. Length of service is used in compulsory redundancy decisions by 27% of all firms but affects 38% of all employees. For voluntary redundancy it is used by 23% of all firms but affects 34% of all employees.	38 compulsory 27 voluntary	27 compulsory 23 voluntary
Compulsory retirement ages	Unlawful if below 65 (which affects 6% of all employers), unless it can be objectively justified. 50% of the UK workforce is affected by compulsory retirement ages (because this is more common in large firms). However, in most cases the fixed age is 65, which will remain lawful, although employers must consider requests to stay on.	33	37
Compulsory redundancy decisions are based on "last in first out"	Likely to discriminate indirectly against younger employees.	30	28
Age is used in selection for redundancy	Unlawful. The decision must be based on requirements of job and competence of staff, or positive action to maintain an age balance.	15 compulsory 3 voluntary	14 compulsory 5 voluntary
Level of redundancy pay is affected by age	Unlawful. Affects only 10% of all firms, but 17% of all employees (because it is more often used in larger firms).	16 compulsory 9 voluntary	10 compulsory 9 voluntary
Redundancy decisions based on current salary	Likely to discriminate indirectly since salary levels generally correlate with age.	6	7

Manufacturers are more likely than other employers to have hazardous retirement policies. Smaller manufacturers are particularly likely to require employees to retire before 65, although few of these could explain the reasons for this, and some said that the origins of the policy are just historical.

Retirement practices in manufacturing vary considerably by firm size. Flexible and part-time working makes staying in work more attractive

to older people, and half of micro firms and two thirds of small and medium manufacturers would allow this for people approaching retirement. Larger firms, on the other hand, are much less willing to do so, are more likely to apply retirement ages rigidly and are less willing to allow reduced working hours for employees with eldercare responsibilities.

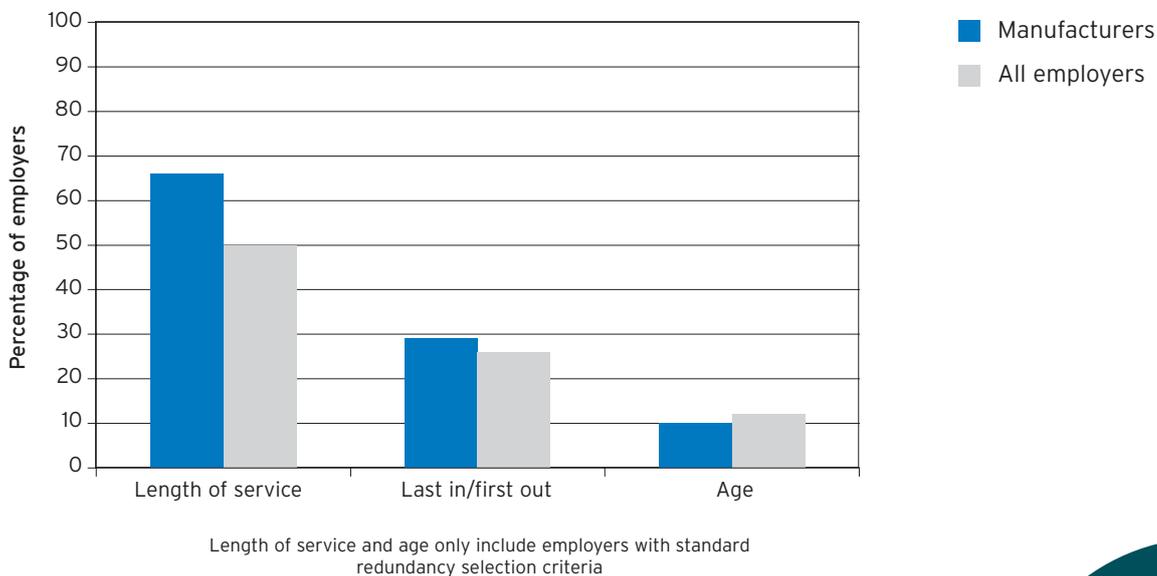
Figure 4 Willingness to consider reducing working hours



Manufacturers are more likely than other employers to have formalised procedures for selecting individuals for compulsory redundancy.

The commonest criterion for selection is length of service, but 10% of those with standard criteria use age, which will be unlawful (Fig 5).

Figure 5 Compulsory redundancy procedures based on:



Manufacturers are more likely than other employers to base redundancy pay, both voluntary and compulsory, on length of service. This will only be legal within the rules laid down in the Regulations.



7. Management and training

There are a variety of management practices which can reduce the risk of legal disputes under the Age Regulations. Table 4 identifies the commonest ones,

and shows what proportion of firms in the manufacturing sector, and the economy in general, use them at present.

Table 4

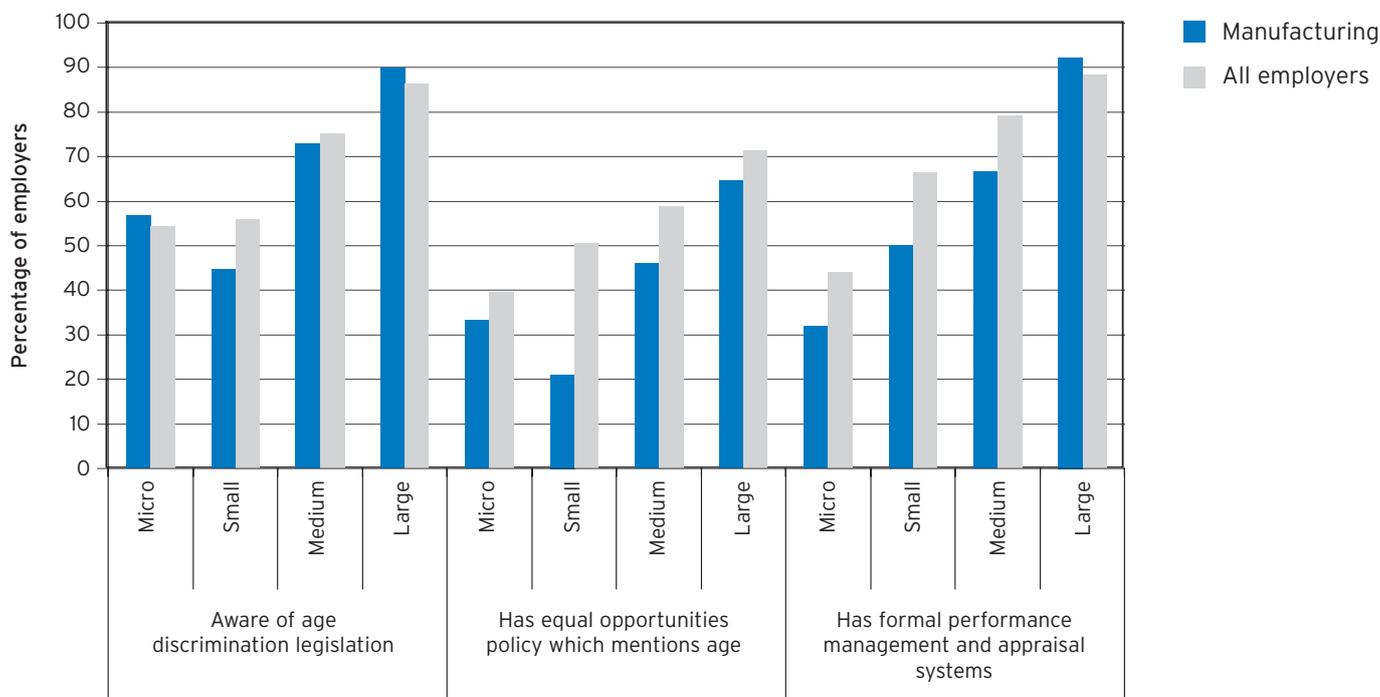
Management and training	Comment	% of organisations reporting in manufacturing	% of organisations reporting, all sectors
Equal opportunities policy	Having a policy makes expectations clear to managers and staff, and makes monitoring easier.	53	72
	Equal opportunities policy explicitly mentions age.	36	56
	Policy implementation by age is monitored (only those with age policies).	32	49
"Age blind" recruitment practices	Removing dates of birth and age data from applications before they are considered by selectors reduces the risk of discrimination (although training recruiters is also important). Some firms collect this information on equal opportunities monitoring forms which are removed before forms are passed for short listing.	25	43
Providing work related training for all staff	There is a direct relationship between participation in training and staying longer in work.	76	70
Formal performance appraisal	Ensures that employees are clear about objectives, that performance is recognised, and untapped talents are used. This will also be relevant when firms have to consider formal requests to stay after a firm's retirement age.	54	68
Formal assessment for promotion	Formal assessment increases the chances of promoting the most valuable people, and reduces the risk of discrimination (4% of all firms currently have age related promotion criteria, which will be unlawful).	23	37
Flexible working	Many employees, especially those with childcare or eldercare responsibilities, and those approaching retirement, would like to work part-time or flexibly. Offering flexible working improves retention and motivation of key staff.	82 for childcare 82 for preretirement 69 for eldercare 45 for any reason	82 for childcare 78 for preretirement 74 for eldercare 51 for any reason
Flexible retirement ages	Flexible retirement allows individuals to work longer and employers to continue to make use of skills and expertise.	56 offer to all staff 3 offer to some staff	50 offer to all staff 4 offer to some staff

Employers in manufacturing are less likely than other employers to have policies and practices to protect them against claims of age discrimination (Fig 6). They are less likely than other employers to have equal opportunities policies, and where those policies exist, they are less likely to mention age (especially in smaller firms). They are also less likely than other firms to monitor workforce data for age bias. Even among large employers in this sector only 39% monitor the

age profile of their current workforce, and less than a third monitor recruitment for age bias.

Manufacturers are also less likely to have formal systems for appraisal and performance management. This increases the risk for employers since, to avoid claims of discrimination, they will need to be able to demonstrate an objective assessment of an individual's capabilities when making decisions on retirement, promotion, training and redundancy.

Figure 6 Prepared for age discrimination regulations



In general, manufacturing employers are as aware of age discrimination legislation as are employers in other sectors. However, awareness is much lower among small firms.

Age itself plays little, if any, direct role in determining who is eligible for training in the

manufacturing sector. None of the firms said that people of a given age would be considered too old for training, although small and medium size firms in this sector are more likely to take potential length of service into consideration.



8. Managing age in manufacturing: discussion questions

The following questions are designed to help you, as an employer in the manufacturing sector, to plan how you will respond to an ageing workforce and the Age Regulations:

1. How concerned are you about **skills gaps and shortages** in your sector, and do you believe current labour market predictions about this?
2. Do you think that **a different age mix** in the workforce could help overcome these?
3. Do people generally in your sector **have strong views about appropriate age ranges for particular jobs** which would limit the opportunity to change the age mix?
4. Is your **ability to change pay and conditions** limited by national agreements, or regulations like “licence to practice” rules? How can you tackle this?
5. Policymakers sometimes assume that all firms in a “sector” are alike. In your sector are there particular **kinds of firm which are very different** in their approach to age management?
6. How easy is it to **extend working lives** in your sector? Does this apply more to some groups of staff than others?
7. Are there **traditional career patterns** in your sector which might change if working lives became longer (e.g. “downshifting” or mentoring roles for older workers)?
8. Older workers often prefer **to work part-time or on a flexible basis**. How easy is it to do this in your sector, and what might be the constraints?
9. Are there jobs where **physical demand or levels of stress** make extending working life more difficult? Are there ways of overcoming these?
10. Is it difficult to **recruit older people** in your sector? After what age? Can training help?
11. **Small firms** in general have less formal management structures and procedures. Will this make overcoming age discrimination easier or more difficult for them?
12. A high proportion of people working after 65 are **self employed**, what role does this play in your sector?
13. What are the implications of an ageing workforce for supply and demand for **training** in your sector? (given that those who train generally stay in work longer)
14. How difficult will it be to **raise awareness among employers** in your sector about the ageing workforce, and about the age discrimination regulations, especially among small firms, who are more difficult to contact?
15. Are there **lessons about managing an age diverse workforce** which your sector could offer to others?

CROW would welcome any comments on these questions (or any others) as a contribution to its final research report for DWP¹⁰.

¹⁰ See “Further Information” below.

9. About this paper

This paper was written by the Centre of Research into the Older Workforce on behalf of the Department for Work and Pensions. It draws on two sources:

- The background material on the sector comes mainly from the Sector Skills Development Agency's Research Matrix database, which brings together a large quantity of information about all sectors from a variety of sources, including the Labour Force Survey, the National Employer Skills Survey, the Annual Business Inquiry, and the Inter Departmental Business Register¹¹.
- The material on current age management practice in the sector is based on data gathered by the National Institute for Economic and Social Research (NIESR) and the British Market Research Bureau (BMRB), in a national survey for the DWP and DTI in Spring 2005¹². They interviewed the most senior person responsible for HR issues in 2084 firms employing more than five people in England, Scotland and Wales. Each interviewee was asked 160 questions about aspects of age management, including recruitment, retirement, benefits, pensions, management practices and discrimination. CROW carried out a separate analysis of this data to produce the current paper. The sample included 310 firms in the manufacturing sector.

The DWP/DTI evidence is the best available on current employer age management practices across all sectors, but it should be interpreted with some caution since:

- it probably underestimates the frequency of some practices (since firms with a positive record are more likely to respond to such surveys; employers may be reluctant to admit to what they suspect is "bad practice"; and the senior managers who replied to the survey may be unaware of poor practice by some line managers);
- In some cases the number of employers responding is relatively small, and may not be fully representative of particular sizes of firms in that sector;
- Since some practices are more common in large firms, the behaviour of a small proportion of firms may affect a much larger proportion of workers;
- Although some hazardous practices are rare, the firms involved will still be open to legal challenge if they do not make appropriate changes.

We have not commented on pensions issues since pensions provisions are largely exempt from the regulations¹³.

All views expressed in this paper are those of the authors. They are not intended to be authoritative statements of the law, and do not represent the views of the Department for Work and Pensions or any other Government Department.

¹¹ Details on the Skills for Business website at www.ssdamatrix.org.uk/

¹² See "Further Information" below.

¹³ DTI's guidance *The impact of age regulations on pensions*, explains the implications of the legislation for pensions in detail.

10. Responding to this paper

This paper is intended for consultation with employers, sector bodies and other interested organisations and individuals during 2006. Responses will contribute to a larger report on sectoral approaches to age management, which DWP plans to publish in 2007.

If you would like to comment on any aspect of this paper, or on age management in the manufacturing sector (or on age management more generally), please write directly to the Centre for Research into the Older Workforce (CROW). We would be particularly interested in responses which:

- add relevant information on the shape of the sector and age management issues and practices within it
- clarify the reasons for particular features (e.g. why one part of the sector has very different practices from others, or why manufacturing is different from other sectors)

- identify examples of good practice which might be disseminated to other employers or sectors
- identify questions which need further investigation

Responses and comments on the content or issues raised by this paper should be sent by email to: crow@niace.org.uk

Or by post to:

Age Legislation Research
Centre for Research into the Older Workforce
NIACE
21 De Montfort Street
Leicester
LE1 7GE

11. Further information

Further information on age related issues, policies, practices, and legislation can be found at www.agepositive.gov.uk

You can request further copies of this paper, or contact the Government's Age Positive team at: agepositive@dwp.gsi.gov.uk

or write to:

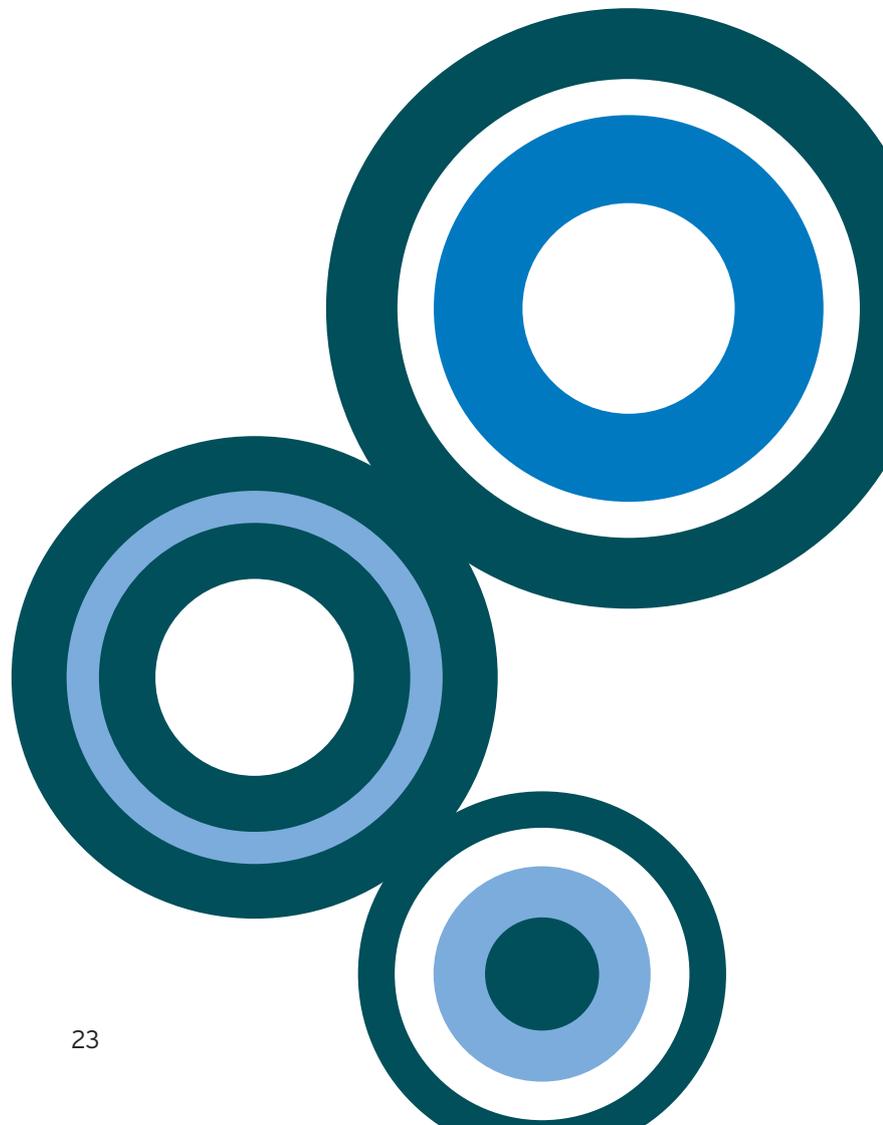
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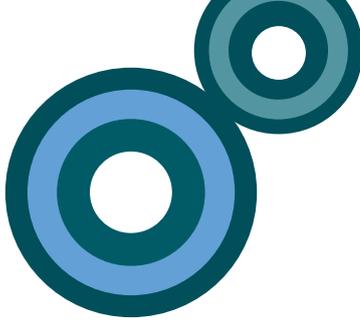
Details of the Age Discrimination Regulations, which will come into force in October 2006, can be found on the DTI's website at: www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Advice on interpretation and good practice can be found on the ACAS website at: www.acas.gov.uk

The full report of DWP and DTI's joint national survey conducted by NIESR and BMRB which produced the evidence for this report is *Survey of Employers' policies, practices and preferences relating to age* by Metcalf & Meadows (DWP Research Report 325, DTI employment relations research series number 49) The full report is available for download free on the DWP website at: [www.dwp.gov.uk/asd/asd5/rports 2005-2006/rrep325.pdf](http://www.dwp.gov.uk/asd/asd5/rports%2005-2006/rrep325.pdf)

Further information about CROW can be found at: www.niace.org.uk/crow





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Members of the Age Partnership Group, listed below, support and endorse the Be Ready campaign.

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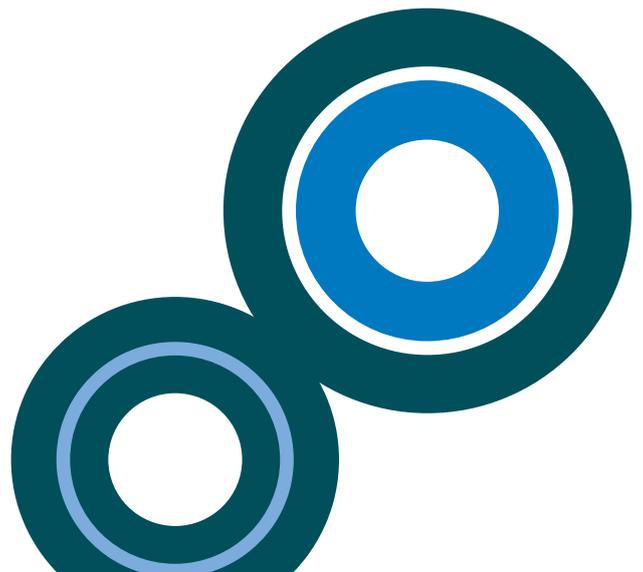
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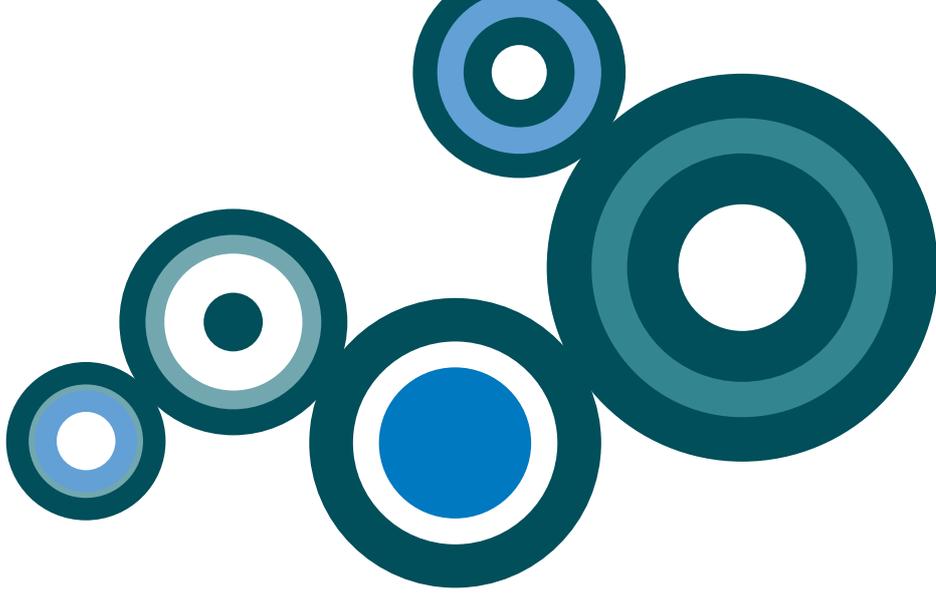
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Managing an ageing workforce in the retail sector

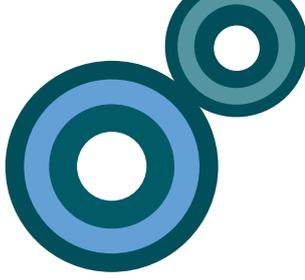
A report for employers

By Stephen McNair and Matt Flynn

Produced for the Department
for Work and Pensions
By the Centre for Research
into the Older Workforce

age**partnership**group
Targeting Employers®





Age Partnership Group (APG)

This research is one of a number of projects commissioned by the DWP on behalf of the APG as part of the National Guidance Campaign (NGC).

The APG was formed in 2002 and consists of a number of national organisations who represent different aspects of employers needs, for example, small business representatives, trade unions, HR and Personnel managers, local government, other government departments, accountancy, insurance and training organisations. There are separate groups representing England, Scotland and Wales.

The NGC aims to raise employers' awareness of, and ability to adopt, practical information and guidance on age diverse employment practices. This includes flexible employment and retirement opportunities in order to increase the recruitment, selection, promotion, training and retention of older employees prior to the implementation of age legislation in October 2006.

You can view the Age Partnership Group website at www.agepositive.gov.uk/agepartnershipgroup

Legislation

In March 2006, the Employment Equality (Age) Regulations 2006 were published. The regulations are the last major stage of the European Employment Directive and will come into effect on the 1st October 2006.

The regulations prohibit age discrimination in employment and vocational training. They apply to individuals of all ages in work, seeking work or looking to access vocational training and to all employers, and to all providers of vocational training and vocational guidance (including further and higher educational institutions).

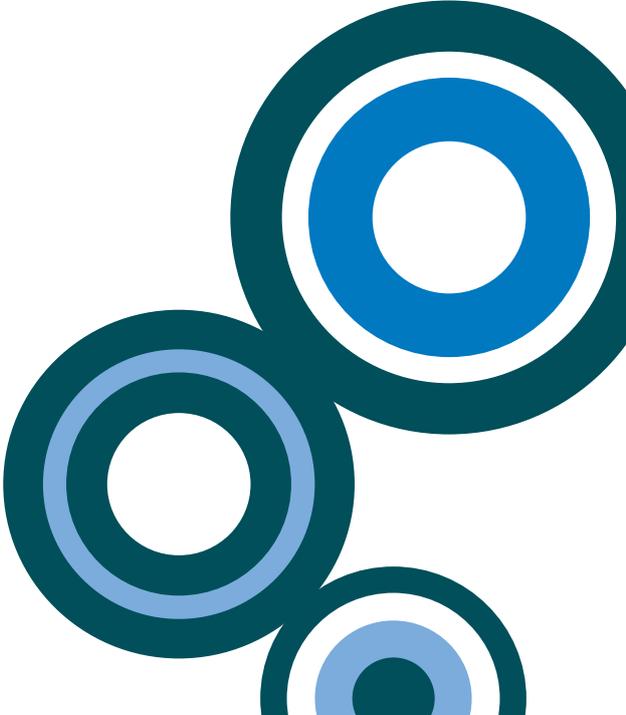
The regulations can be viewed on the Department of Trade and Industry website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Disclaimer

This report has been commissioned to provide information only. Responsibility for the views expressed in this report rests solely with the authors. The members of the Age Partnership Group (APG) and the Department for Work and Pensions (DWP) do not accept responsibility for the views of the authors.

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Introduction

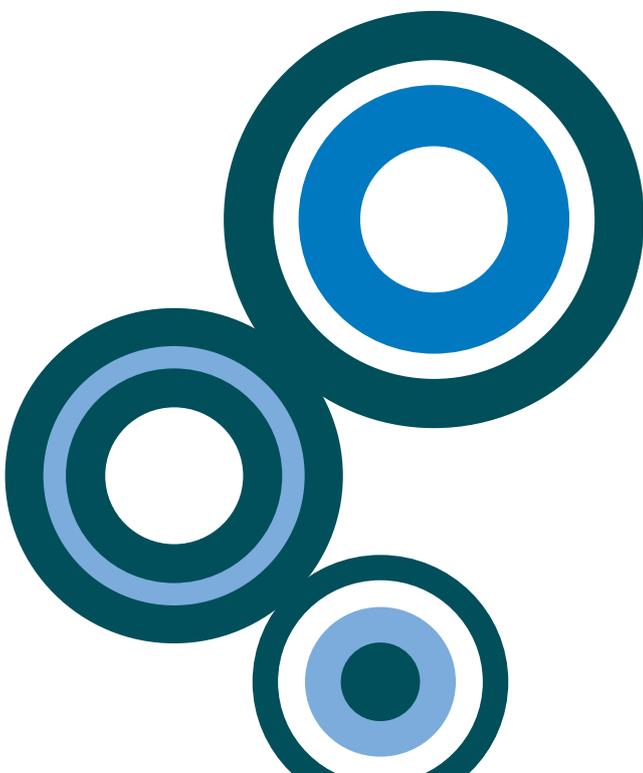
This report is about how firms in the retail sector are managing an ageing workforce. It has been written for the Department for Work and Pensions (DWP) by the Centre for Research into the Older Workforce (CROW) to help employers to make better use of older workers. It also helps to raise awareness of the new Employment Equality (Age) Regulations 2006 which become law in October 2006, and prohibit age discrimination in work or training against people of any age.

Workforce ageing presents a growing challenge to most employers. Birthrates have been falling for many years, and in the next few years the numbers retiring will outnumber young people entering the labour market. The government believes that the resulting skills gaps and labour shortages in many industries can be reduced if employers can find ways of making better use of older workers, and encourage people to stay in work longer.

However, every industry has its particular features, and this report outlines the special issues affecting the retail sector, based on a large national survey of employers. It highlights employment practices in the sector which will be hazardous under the Age Regulations, and aims to stimulate discussion and improved practice in firms.

This report is not intended to be an authoritative statement on the age discrimination law itself. Details of how to obtain the Regulations, and advice about them, can be found at the end of the report. However, while the Regulations make some activities unlawful, it is for the Courts and Employment Tribunals to interpret this in specific cases. The term "hazardous" is therefore used in this paper to describe activities which might be ruled unlawful if a case is brought. We suggest that employers need to review their practice in these areas.

During 2006, CROW will explore these issues in more depth through case studies of employees in seven sectors, and DWP plans to publish the resulting Research Report in 2007.



1. Summary: key age issues for retail firms

The retail sector has a very young workforce with a high turnover. This makes firms particularly vulnerable to the effects of the falling birthrates, which mean fewer young people entering the workforce over the next decade. It also results in high spending on induction and health and safety training.

The sector already faces serious labour and skills problems, and these are likely to increase. This suggests a need to review who is recruited and retained, and whether better use can be made of older workers.

By comparison to other firms, retailers are less aware of the age legislation. This leaves them at greater risk of legal challenge, and makes awareness raising a particular priority for government and sector bodies. They are also less likely than other employers to have protective systems in place (like equal opportunities policies, formal appraisal and assessment for promotion, "age blind" recruitment systems and training) to ensure that unfair discrimination is not taking place.

Common hazardous practices in retail firms

Common practices in this sector which may need review if employers are to avoid breaking the Age Regulations include:

- **selecting staff on the basis of length of experience.** Two thirds of retail employers do this. Length of experience is a substitute for assessing competence, and is hazardous, since it disadvantages younger workers.
- **targeting particular age groups for recruitment.** This will be unlawful from October 2006, unless the purpose is to increase recruitment from under represented age groups or to meet statutory requirements.
- **providing age information to shortlisting and interviewing staff.** There are legitimate reasons why employers would request dates of birth from job applicants (for example, to monitor equal opportunities), but passing this information to staff who are responsible for selection increases the risk of unfair discrimination in recruitment.
- **using length of service or age to select for redundancy.** The former will be hazardous, and the latter unlawful.

Unlawful practices in retail firms

The following practices are less common, but unlawful, and firms who use them will need to make changes if they are to remain within the law.

- 51% of firms set a **maximum recruitment age** (unlawful until within 6 months of the firms retirement age).
- 25% of firms use **age to select for compulsory redundancy.**
- 22% of firms use **age to fix starting salaries.**
- 10% of firms **specify age in recruitment advertisements.**

2. The shape of the retail sector

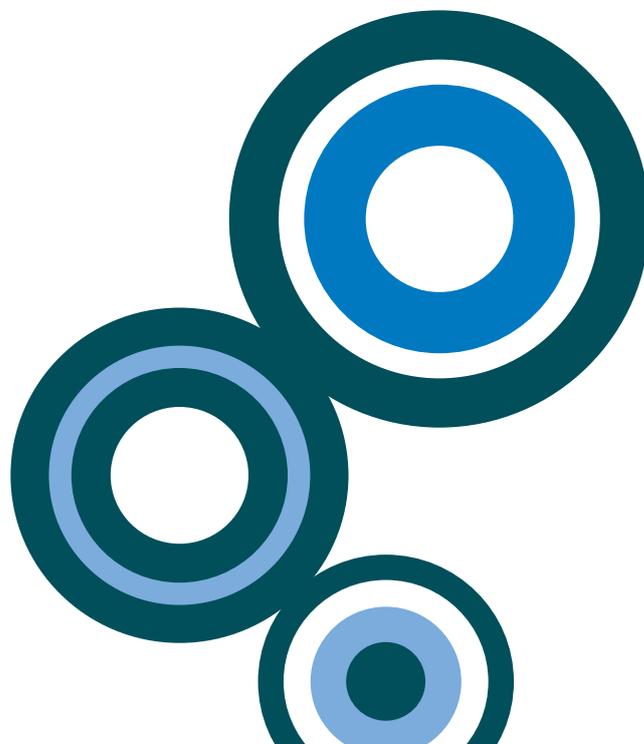
The nature of the age management issues facing a sector depends on factors like the average size of firms, the age and skills profile of the workforce, and future expectations of growth or contraction. This section outlines this context for the retail sector.

The retail sector¹ is very large, employing a little over 3 million people (10% of the national workforce) in 202,000 firms. It covers all retail trade, including general and specialised stores, the retail motor trade, food and beverages, pharmaceutical goods, second-hand sales, “sales not in stores” (markets, mail order, and online) and repair of personal and household goods. Employment is concentrated in two occupational groups: Sales and Customer Services and Managers, with very few workers in other groups, and very little self-employment. The sector is supported by one Sector Skills Council: Skillsmart Retail.

The sector’s output has been rising rapidly but this is predicted to slow, and overall firm numbers are falling slowly. However, employment is expected to grow faster than any other sector, adding 1.4 million new workers by 2014 to its already large base.

The mix of large and small firms matches that of the economy as a whole, ranging from very small micro businesses, to large multinational corporations. In general, management in the sector is relatively informal, with low levels of planning. Despite the high profile of a few very large firms, less than half of all firms in the sector have formal business plans and one third have no business plan, training plan or training budget.

¹ SIC code 52



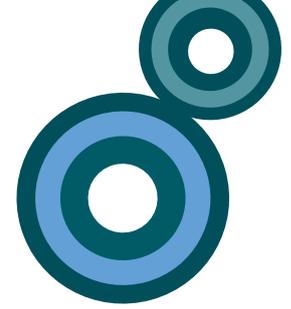
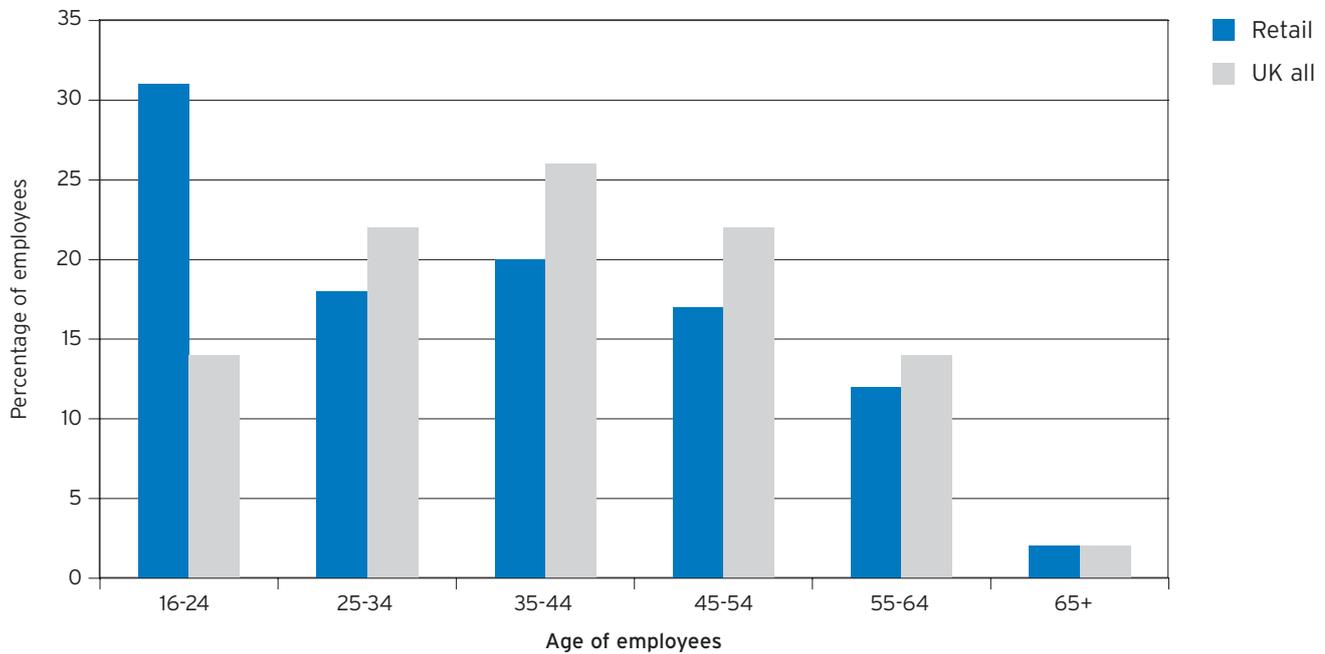


Figure 1 The age profile of the retail workforce



The sector has a very young workforce with nearly a third of all employees under 25, and despite prominent initiatives by some large firms, retailing is less likely to employ people over 55 than firms in general. Other distinctive features of the workforce are high proportions who are part time, female, from ethnic minority groups, and with low qualifications.

The main current skills problems are:

- sales and customer services staff without the necessary skills for the job;
- hard to fill vacancies for managers;
- skill shortage vacancies at three times the national workforce level;
- low levels of training, with only 57% of firms providing training of any kind in the last year, and annual training expenditure at half the national average. What training there is is concentrated in induction and health and safety, probably reflecting a relatively high turnover of staff.

3. Age discrimination in employment

Age discrimination at work is common. It can affect people of any age, but is particularly likely to involve older people, and more than one in five workers over the age of 50 say that they have experienced it either when applying for jobs or in the workplace². In countries where age discrimination law is already in force, it is the commonest cause of discrimination cases in the courts.

From October 2006, it will be unlawful for any employer in the United Kingdom to discriminate against or harass anyone on grounds of age, directly or indirectly, in relation to either employment or vocational training. This will cover arrangements for recruitment and promotion, pay and conditions, education and training, and retirement and redundancy.

There are exceptions: in relation to retirement, where it will be lawful to retire an employee at a given age, provided this is not below 65 (both men and women); and

Where an existing statutory provision exists (like the Minimum Wage Regulations).

An employer may also be able to objectively justify discrimination if it is designed to correct an age imbalance in his workforce, this is positive discrimination; if there is a legitimate business reason (and the discrimination is proportionate); or if there is an objective justification (likely to be very rare). The Regulations, and advice on their interpretation, can be found on the DTI and ACAS websites³.

Some features of age discrimination are common to most employers⁴:

- Indirect discrimination is more common than direct discrimination. DWP and DTI's joint survey, conducted by the National Institute of Economic and Social Research (NIESR), found few examples of direct discrimination, but one in five employers believe that some jobs are better done by people of particular ages. Where such beliefs exist, discrimination is more likely.
- Discriminatory attitudes are more likely to be found in private sector firms, and especially small ones⁵, in sectors like manufacturing and construction. These are also the firms and sectors where there are least likely to be formal procedures and policies to protect against unfair discrimination.
- The most common hazardous practices involve setting age limits on recruitment, especially for those over 50, and using age as a basis for decisions on compulsory retirement and redundancy.
- About half the workforce is covered by a compulsory contractual retirement age. In most cases this is already 65, which is the new "national default retirement age". However, even where firms plan to retire staff at 65, they will have to give formal notice of retirement dates and seriously consider requests to stay longer.

² Discrimination is difficult to measure precisely, since it is subjective, and affected by levels of public awareness of age issues, and many people regard it as "normal". In a CROW postal survey of workers over 50 in 2004, 20% reported age discrimination. In research by the University of Kent for Age Concern England 29% of people reported experiencing age discrimination (compared to 24% for gender).

³ See "Further Information" at the end of this report.

⁴ Information based on DWP and DTI's joint national survey of employers' policies practices and preferences, conducted by NIESR (see "Further Information"), although because this is new secondary analysis not all figures are directly comparable. Also, for certain policies and practices respondents were asked to answer in respect of their largest occupational group rather than for the workforce as a whole.

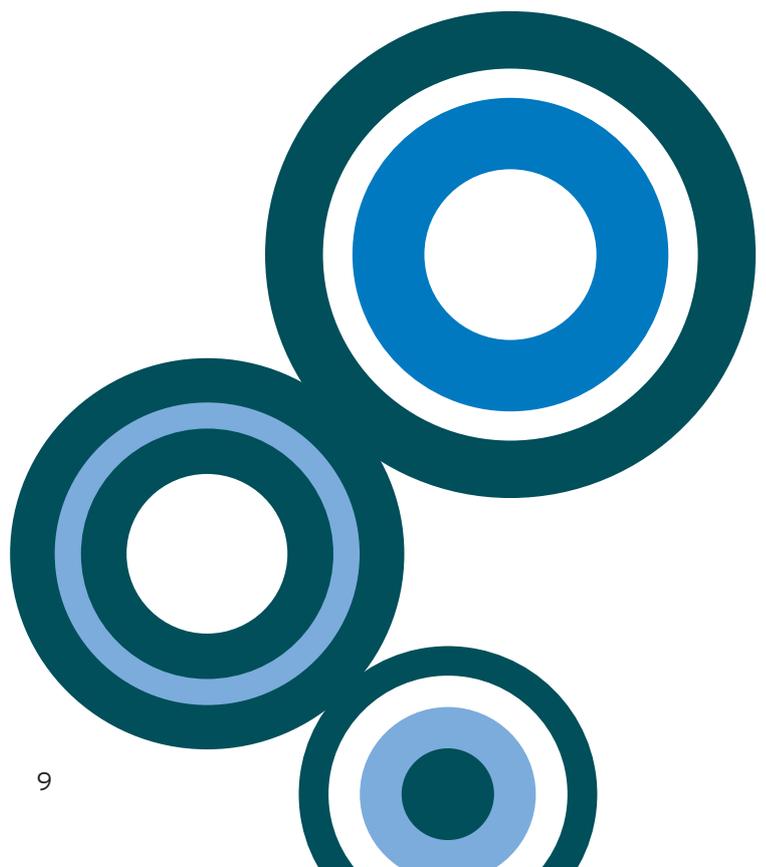
⁵ In this report "micro" firms have 5-19 employees, "small" employ 20-49, "medium" employ 50-249, and "large" employ 250 or more (the survey excluded firms employing fewer than 5 employees).

- Public sector and large private sector organisations, are more likely to have formal procedures (like appraisal schemes or equal opportunities policies) to protect against discrimination, especially where a Trades Union is recognised. However, these organisations are also more likely to have long standing formal agreements which include provisions which are hazardous under the Age Regulations, including contractual retirement ages below the new national default retirement age of 65.
- Two occupational groups are particularly at risk from discriminatory practices. These are professional and associate professional/ technician staff, both of whom are particularly likely to be exposed to discrimination in setting pay, long incremental pay scales, and access to training.

The tables in this paper identify hazardous practices identified in DWP/DTI's employer survey, indicating those which are most common among employers in retail, and among employers in general.

Some of the provisions in the Regulations allow an employer to claim an "objective justification" for a practice which would otherwise be unlawful. Such justifications require the employer to be able to show that his or her action is a proportionate means of achieving a legitimate aim. It will be for Employment Tribunals and the County Courts to rule on what is justifiable under these provisions.

The Regulations also allow some practices, like incremental scales, where pay or terms of employment improve with length of service, but only up to five years, beyond which they will need to be objectively justified.



4. Recruitment and promotion

The key principle in all selection for employment or promotion is that decisions should be fair, and based on the individual's competence for the job, and not on arbitrary factors like age (or gender or race etc).

The research evidence shows that work performance in most jobs does not decline with age before the late 60s, provided individuals are healthy, motivated and kept up to date.

Across the workforce as a whole, the commonest hazardous practices in recruitment and promotion involve excluding applicants, either

directly (by specifying ages), or indirectly (e.g. by specifying years of experience, rather than specific capabilities) in advertisements, job descriptions and interview criteria.

Table 1 shows the most common areas of hazardous practice in the retail sector (with figures for firms in general for comparison). Practices followed by more than half of firms in the sector are highlighted.





Table 1

Recruitment and promotion	Comment	% of organisations reporting in retail	% of organisations reporting in all sectors
Selection criteria based on length of work experience of any kind	Indirectly discriminatory. The test must be individual capability not experience, unless an objective justification can be demonstrated.	61	62
Application forms ask for date of birth/age	Lawful to use for monitoring purposes and conforming to Statutory requirements. Potentially discriminatory. ACAS recommends removing this information (as with other equal opportunities information) before shortlisting.	59	48
Maximum recruitment ages are specified	Unlawful if set more than six months before the company's retirement age unless objectively justified ⁶ .	51	29
Age information is provided to recruiting staff	Increases risk of discrimination	54	44
Recruitment criteria specify qualifications	Lawful if the qualification is directly relevant to the job, and equivalent qualifications are accepted for candidates of different ages.	48	60
Selection decisions are based on remaining period to retirement	Discriminatory unless a clear business justification can be demonstrated ⁷ (like the cost/time required to train, relative to the expected years of work).	19	18
Age criteria are used directly in recruitment, or particular age ranges are targeted	Unlawful unless required by Statute, or for positive action reasons (e.g. to compensate for the under representation of a particular age group).	10	9
Job advertisements specify age	Unlawful, unless there is a genuine occupational requirement (e.g. a young actor for a young part).	10	6
Selection decisions are based on expected length of service, judged by age	Unlawful	8	7

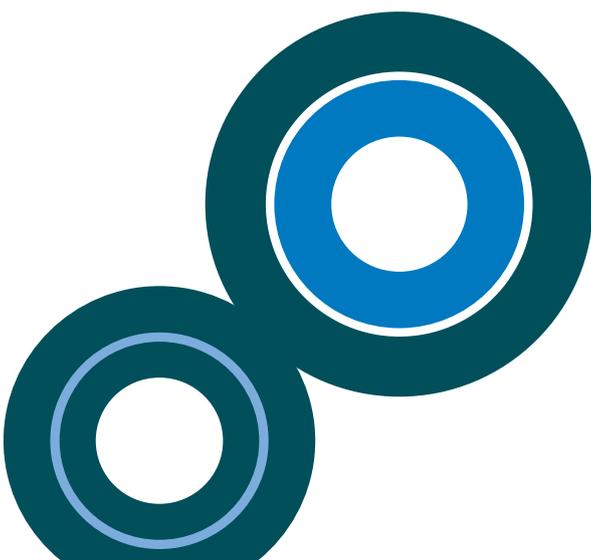
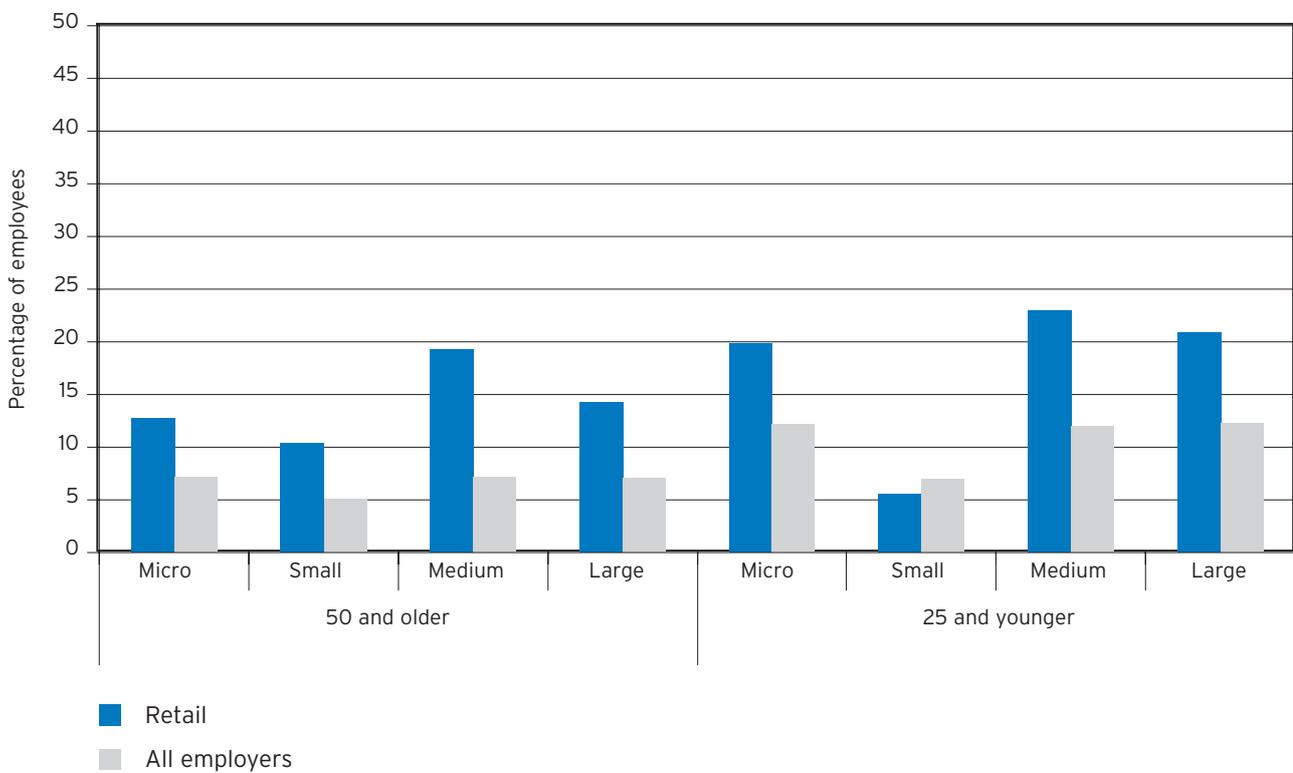
⁶ If the employer does not have a compulsory retirement age, he can set a maximum recruitment age of 64 1/2.

⁷ See also "maximum recruitment age".

Retailers are more likely than employers in other sectors to target particular age groups (both under 25s and over 50s) when recruiting. However, although the retail sector has a reputation for active policies on the employment

of older workers, the survey data suggests that these initiatives are, in general, confined to large multiple retailers, while the retail workforce as a whole is unusually young.

Figure 2 Employers who encourage applications from specific age groups

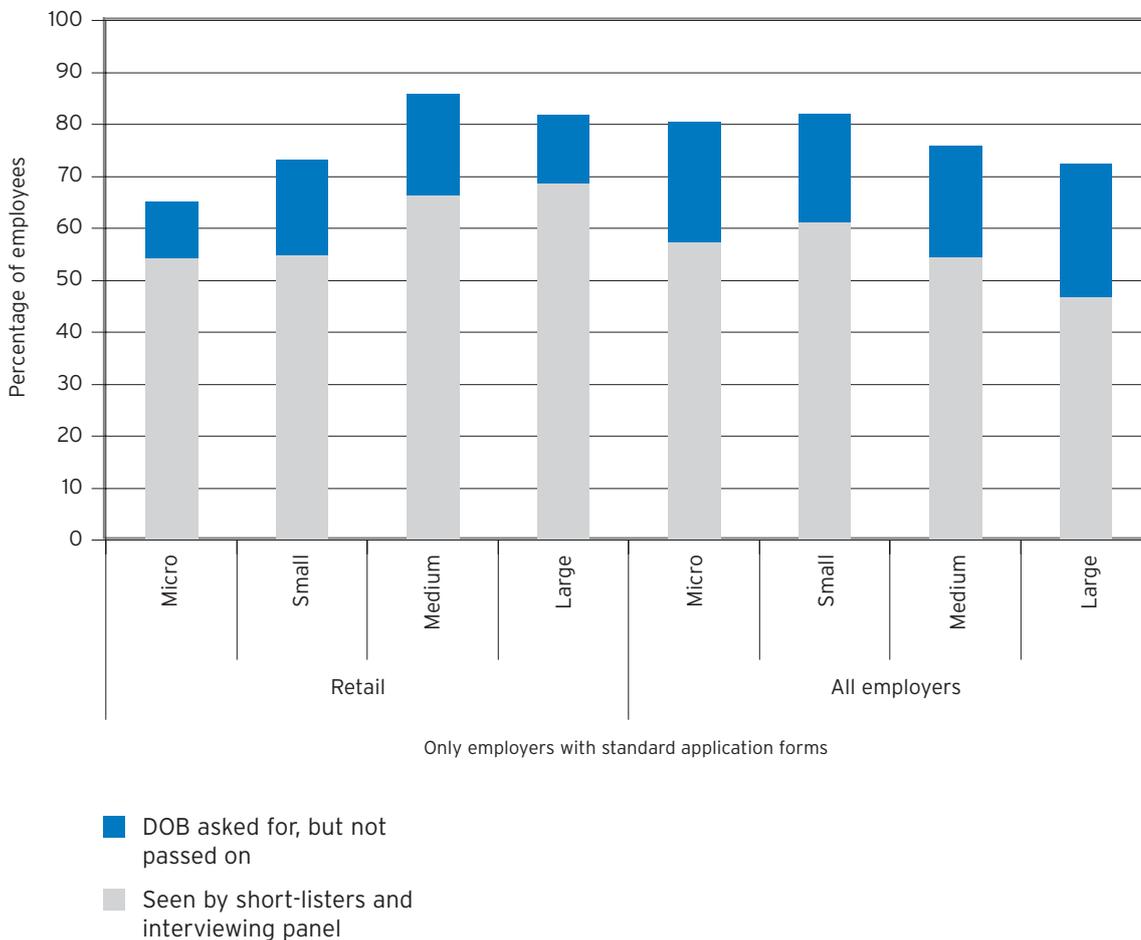




When recruiting, large and medium firms tend to use application forms, while smaller ones either use informal unwritten processes or CVs. Most employers ask for dates of birth (perhaps in order to comply with regulations on the

employment of young workers). However, a high proportion of large retailers provide date of birth information to managers involved in selection, which increases the risk of unfair discrimination (Fig 3).

Figure 3 Employers who ask for date of birth on application forms



5. Pay and conditions

The key principle in setting pay and conditions should be fairness. Where individuals are treated differently, this should be on the basis of a different contribution or skill, not on age, or on a factor which is a proxy for age (like years of service). This applies to people of all ages, and those over an employer's normal retirement age are equally protected by the law.⁸

The Regulations do, however, allow different treatment where this can be "objectively justified" as a "proportionate" way of achieving "a legitimate business purpose". Rewarding long service can, for example, be justified if it can be shown to benefit the business by increasing staff retention, and the sums involved are reasonable⁹.

Table 2 shows the most common areas of hazardous practice in the retail sector.

Table 2

Pay and Conditions	Comment	% of organisations reporting in the retail sector	% of organisations reporting, all sectors
Starting salary takes experience into consideration	Potentially discriminatory, since experience relates indirectly to age, and does not directly measure competence.	52	58
Annual leave entitlement is based on length of service	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 44% of all firms but 58% of all employees).	43	44
Incremental pay scales are used	Unlawful if scale covers more than 5 years (which occurs in 5% of all firms), unless it can be objectively justified.	38	36
Long service awards	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 33% of all firms but 54% of all employees).	23	33
Starting salary is dependent on age	Unlawful , except in specific situations covered by Minimum Wage Regulations or Apprenticeship.	22	13
Separate youth rates of pay	Only lawful in specific circumstances relating to the National Minimum Wage or Apprenticeships.	15	11
Selection for training depends on period to retirement	Potentially indirectly discriminatory (7% of all firms set a limit of more than 1 year). Objective justification is possible in terms of business benefits such as the cost set against predicted return.	6	8
A maximum age is set for eligibility for sick pay	Unlawful	3	6

⁸ The upper age limit for unfair dismissal claims is being lifted under the new regulations, and employees over their firm's retirement age will have full protection against discrimination.

⁹ This is a complex area. Advice is available on the ACAS website (see "Further Information" below).

A significant minority of retailers use age (excluding youth rates) when setting pay levels, and starting salaries, but they are less likely than other employers to use length of service. The former will be unlawful and the latter hazardous.

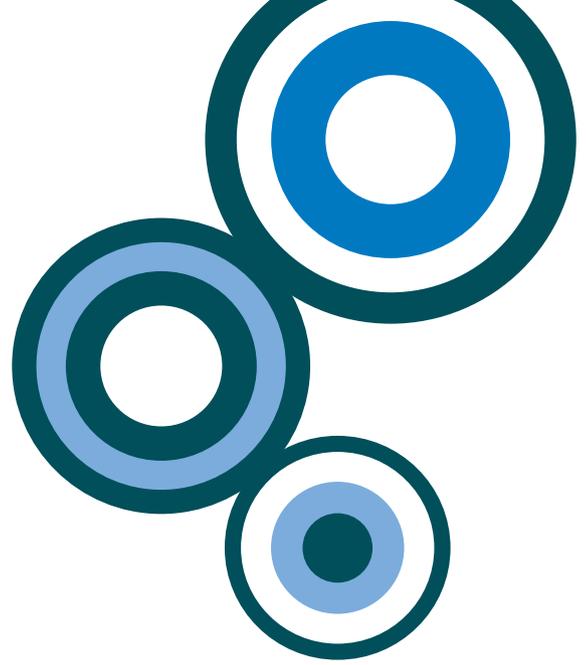


Figure 4 Factors influencing general pay levels

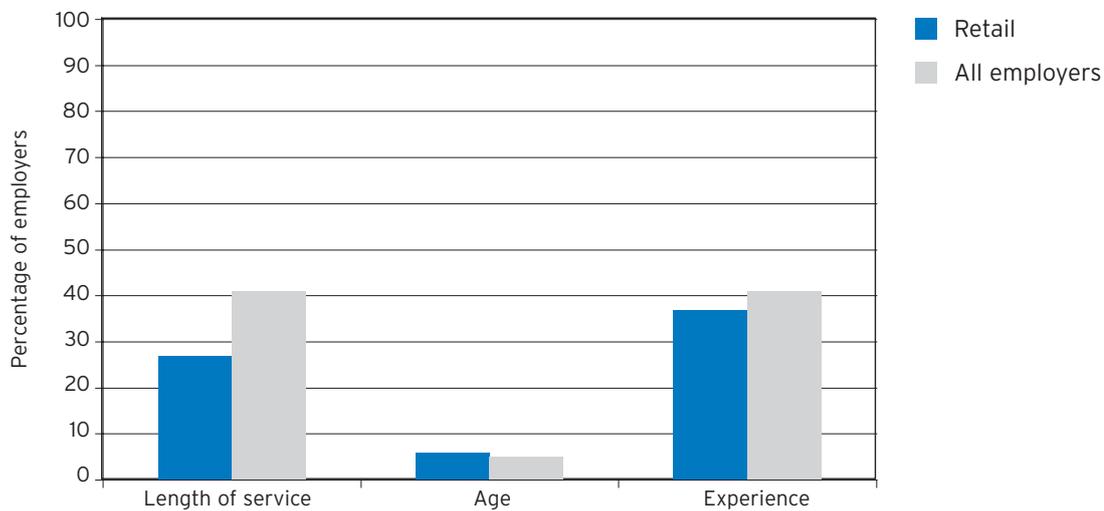
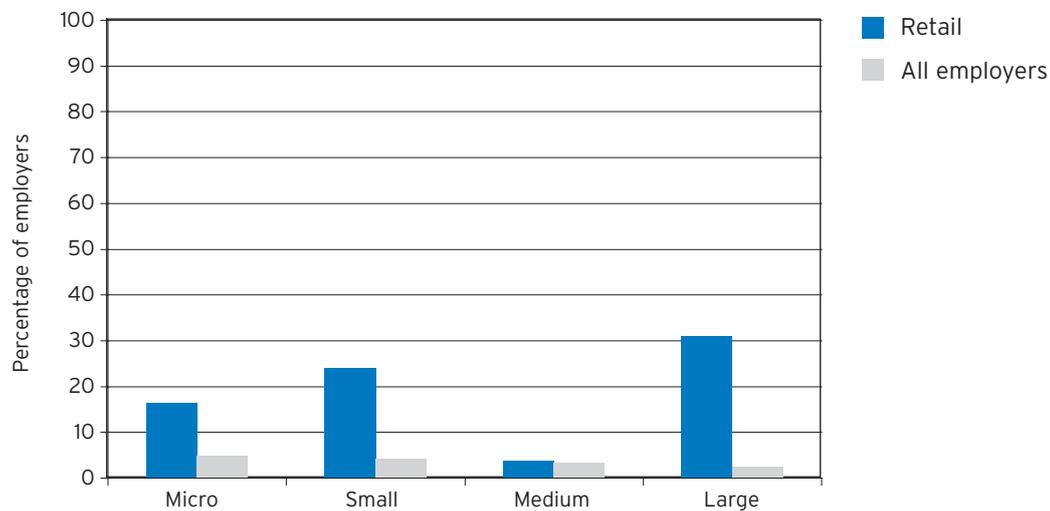


Figure 5 Age influences starting salary



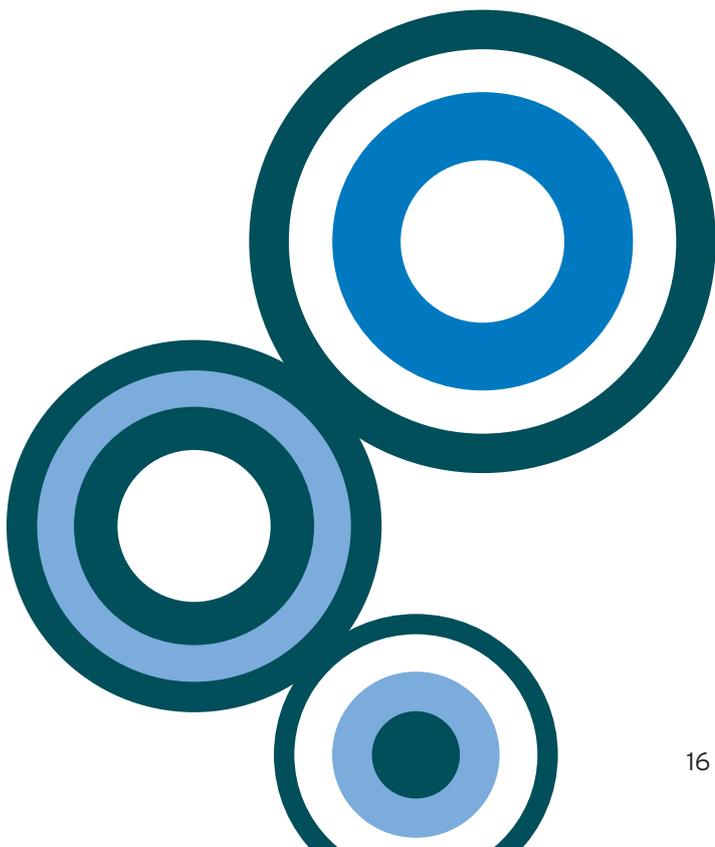
6. Retirement and redundancy

The key principle here is that, up to the new national “default retirement age” of 65 (for men and women), exit from the firm through either retirement or redundancy should be based on individual capability and contribution, and personal preference, not on age¹⁰.

An employer can set a retirement age at 65 or above, but will be required to give individuals formal advance notice of their retirement date, and must consider requests to stay on after that.

The greatest hazards concern the setting of compulsory retirement ages and the use of age in selection for redundancy or setting levels of redundancy pay.

Table 3 shows the most common areas of hazardous practice in the retail sector.



¹⁰ It will only be lawful for an employer to set a retirement age below 65 if this can be shown to be a proportionate means of achieving a legitimate business purpose. Such cases are likely to be very rare, since age in itself is rarely, if ever, a qualification for a job.



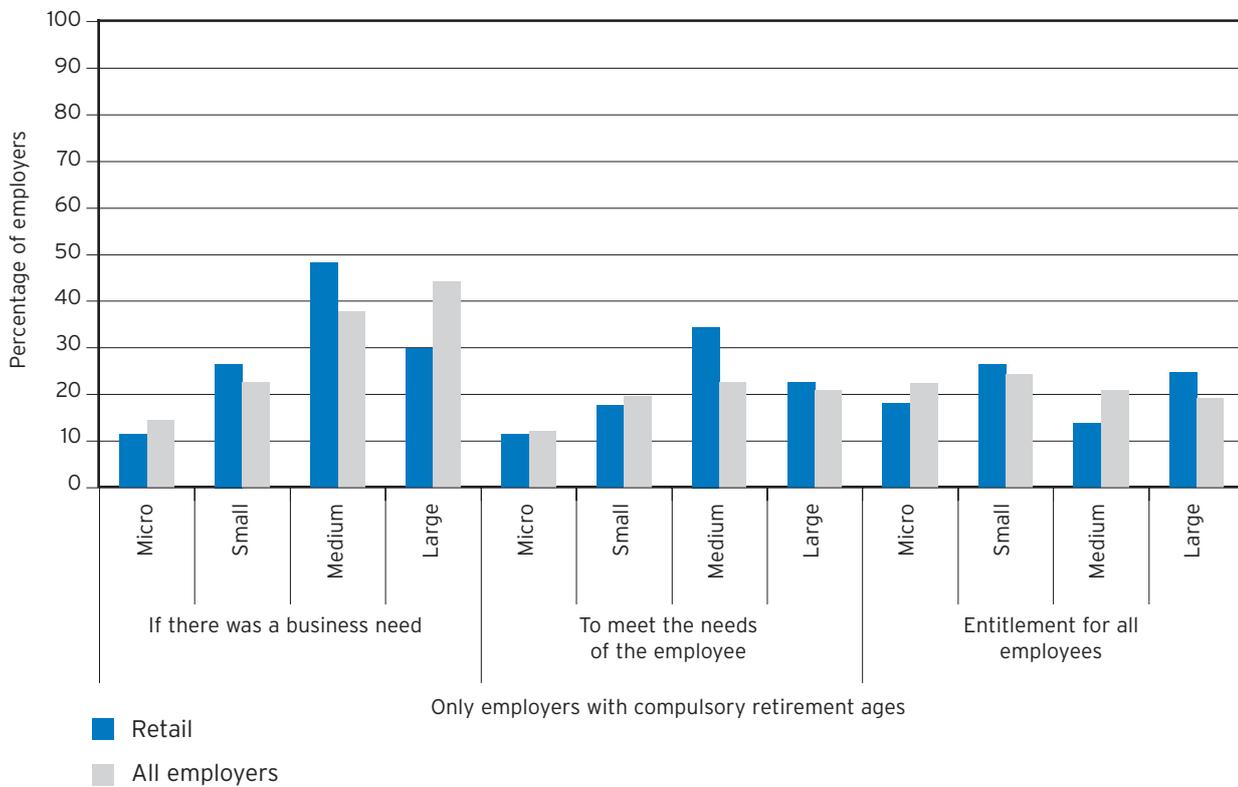
Table 3

Retirement and Redundancy	Comment	% of organisations reporting in retail	% of organisations reporting, all sectors
Redundancy decisions based on length of service	This discriminates indirectly since longer service correlates with age.	58	49
Compulsory retirement ages	Unlawful if below 65 (which affects 6% of all employers), unless it can be objectively justified. Although only 37% of all firms have a formal retirement age, 50% of the workforce is affected (because this is more common in large firms). However, in most cases the fixed age is 65, which will remain lawful, although employers must consider requests to stay on.	32	37
Compulsory redundancy decisions are based on "last in first out"	Likely to discriminate indirectly against younger employees.	29	28
Level of redundancy pay based on length of service	Can be indirectly discriminatory against younger employees. Length of service is used in compulsory redundancy decisions by 27% of all firms but affects 38% of employees. For voluntary redundancy it is used by 23% of all firms but affects 38% of all employees.	28 compulsory 25 voluntary	27 compulsory 23 voluntary
Age is used in selection for redundancy	Unlawful. The decision must be based on requirements of job and competence of staff, or positive action to maintain an age balance.	25 compulsory 5 voluntary	14 compulsory 5 voluntary
Level of redundancy pay is affected by age	Unlawful. Affects only 10% of all firms, but 17% of all employees (because it is more often used in larger firms).	6 compulsory 6 voluntary	10 compulsory 9 voluntary
Redundancy decisions based on current salary	Likely to discriminate indirectly since salary levels generally correlate with age.	3	7

In retailing, flexible approaches to retirement are commonest among small and medium sized firms (50-250 employees), where almost half say that they would allow people to continue in work past retirement if there was a business need, and a

third would do so to meet the employee's needs (but at the discretion of management rather than as an entitlement) (Fig 6). In this sector micro firms are the least likely to consider flexible retirement options.

Figure 6 When would you allow an employee to stay in work past retirement age



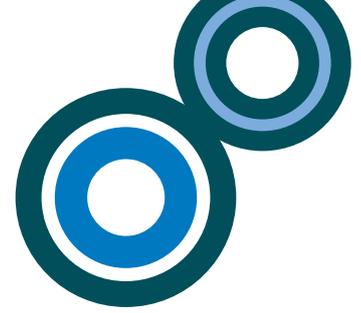
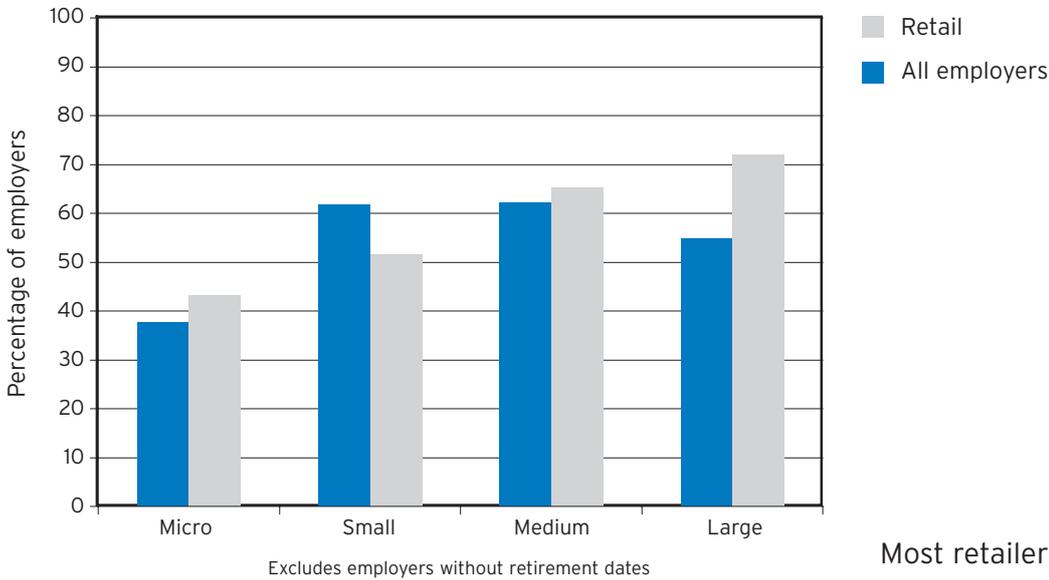
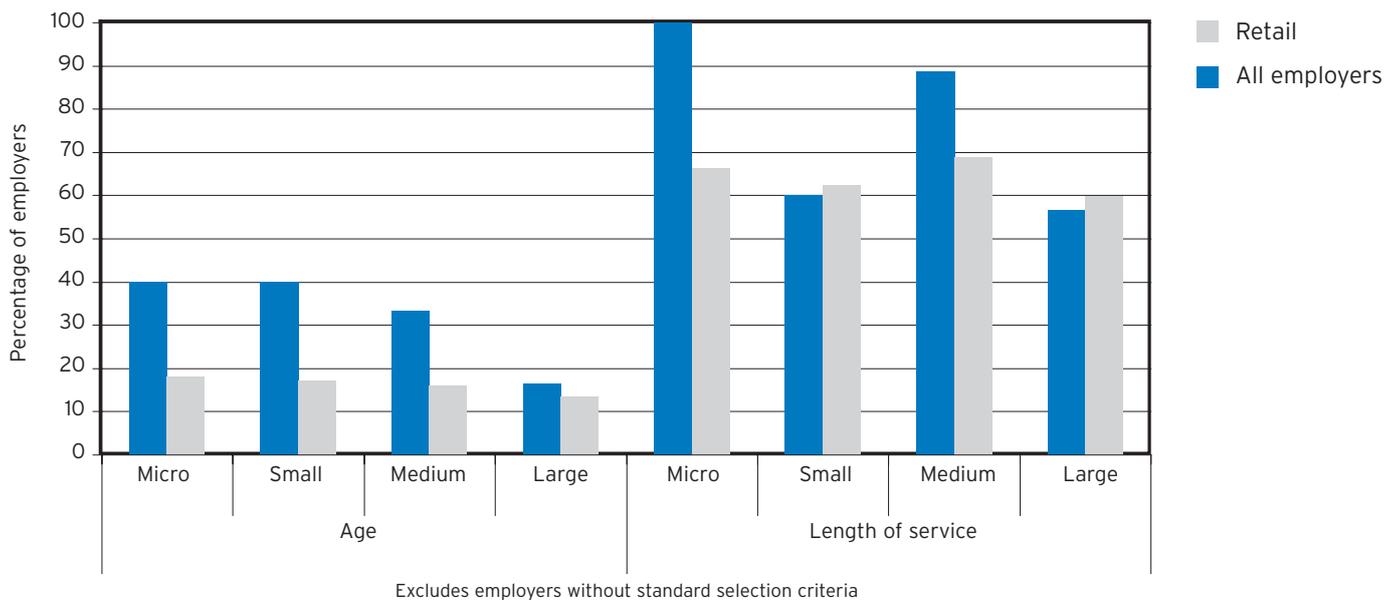


Figure 7 Employers who give employees a choice on retirement dates



Most retailers do not have standard criteria for selecting individuals for either compulsory or voluntary redundancy. Those who do are most likely to use age or length of service, both of which are hazardous under the Age Regulations (Fig 8).

Figure 8 Selection criteria for compulsory redundancy include:



Enhanced compulsory redundancy pay is less likely to be based on age in retail than in other sectors.

7. Management and training

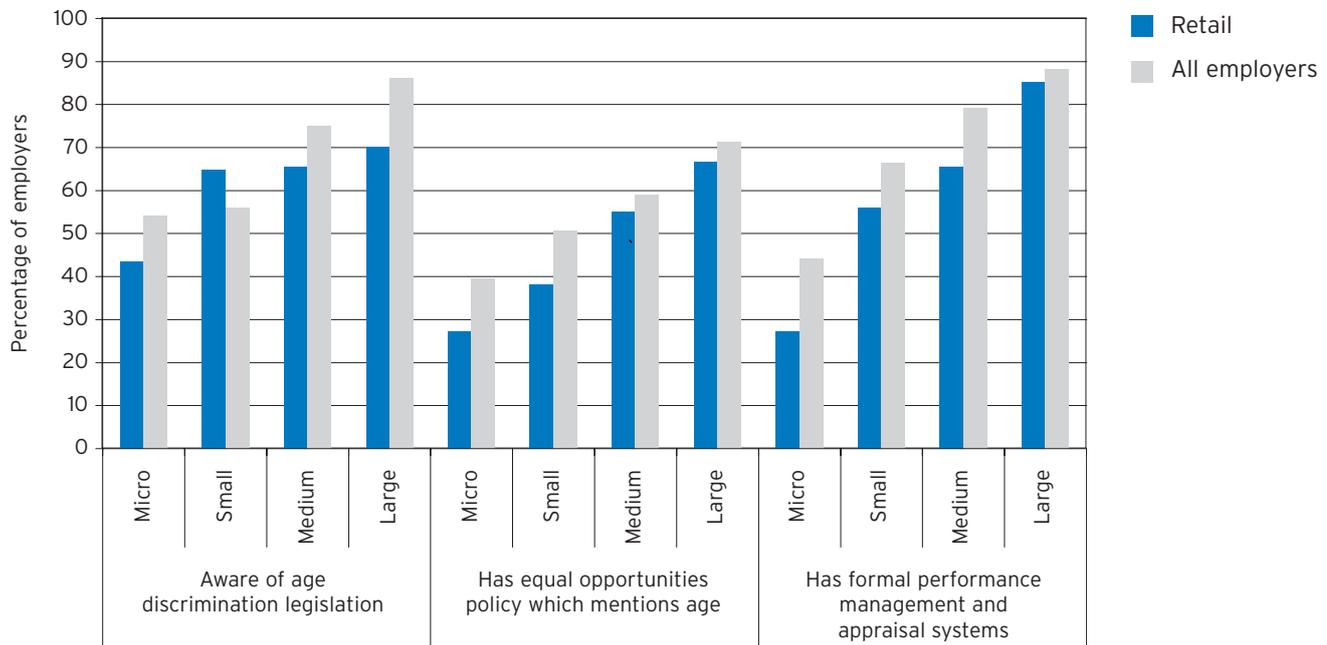
There are a variety of management practices which can reduce the risk of legal disputes under the Age Regulations. Table 4 identifies the commonest ones,

and shows what proportion of firms in the retail sector, and the economy in general, use them at present.

Table 4

Management and training	Comment	% of organisations reporting in the retail sector	% of organisations reporting, all sectors
Equal opportunities policy	Having a policy makes expectations clear to managers and staff, and makes monitoring easier.	68	72
	Equal opportunities policy explicitly mentions age.	53	56
	Policy implementation by age is monitored (only those with age policies).	48	49
Flexible working	Many employees, especially those with childcare or eldercare responsibilities, and those approaching retirement, would like to work part-time or flexibly. Offering flexible working improves retention and motivation of key staff.	80 for childcare 79 for preretirement 72 for eldercare 50 for any reason	82 for childcare 78 for preretirement 74 for eldercare 51 for any reason
Providing work related training for all staff	There is a direct relationship between participation in training and staying longer in work.	66	70
Formal performance appraisal	Ensures that employees are clear about objectives, that performance is recognised, and untapped talents are used. This will also be relevant when firms have to consider formal requests to stay after a firm's retirement age.	65	68
Flexible retirement ages	Flexible retirement allows individuals to work longer and employers to continue to make use of skills and expertise.	47 offer to all staff 3 offer to some staff	50 offer to all staff 4 offer to some staff
Formal assessment for promotion	Formal assessment increases the chances of promoting the most valuable people, and reduces the risk of discrimination (4% of all firms currently have age related criteria, which will be unlawful).	41	37
"Age blind" recruitment practices	Removing dates of birth and age data from applications before they are considered by selectors reduces the risk of discrimination (although training recruiters is also important). Some firms collect this information on equal opportunities monitoring forms which are removed before forms are passed for short listing.	23	43

Figure 9 Preparedness for age discrimination regulations



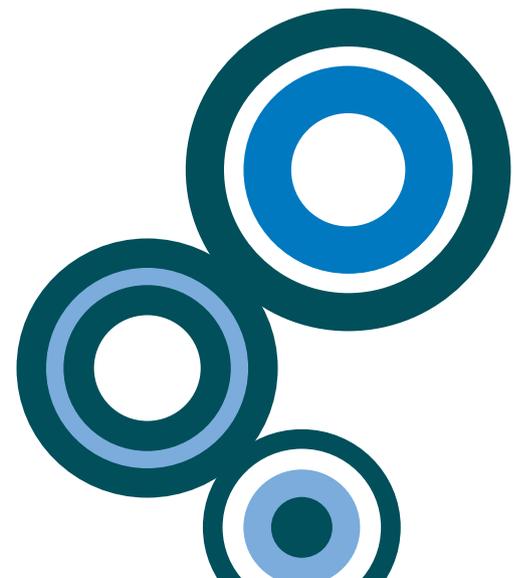
Formal systems for appraisal and performance management are less common in retail than other sectors, and are especially rare among firms employing fewer than 50 people. Under the Regulations, employees have the right to ask to stay in work after their employer's retirement age, and it will be easier for employers to show that there was no discrimination if there are formal records of performance to base decisions on.

Equal opportunities policies which mention age are much less common among smaller firms in retail than among similar sized firms in other sectors. Large retailers, on the other hand, are almost as likely as large employers in other

sectors to have such policies, but are less likely to train staff in diversity or to monitor their human resource practices to check that discrimination is not taking place.

Off the job training is less common in retail than other sectors and around 5% of large retailers consider age when deciding who to train (favouring younger employees), which will be hazardous.

When surveyed, in Spring 2005, retailers were less likely than other employers to be aware of the age discrimination regulations or when they will come into effect.



8. Managing age in the retail sector: discussion questions

The following questions are designed to help you, as an employer in the retail sector, to plan how you will respond to an ageing workforce and the Age Regulations:

1. How concerned are you about **skills gaps and shortages** in your sector, and do you believe current labour market predictions about this?
2. Do you think that **a different age mix** in the workforce could help overcome these?
3. Do people generally in your sector **have strong views about appropriate age ranges for particular jobs** which would limit the opportunity to change the age mix?
4. Is your **ability to change pay and conditions** limited by national agreements, or regulations like “licence to practice” rules? How can you tackle this?
5. Policymakers sometimes assume that all firms in a “sector” are alike. In your sector are there particular **kinds of firm which are very different** in their approach to age management?
6. How easy is it to **extend working lives** in your sector? Does this apply more to some groups of staff than others?
7. Are there **traditional career patterns** in your sector which might change if working lives became longer (e.g. “downshifting” or mentoring roles for older workers)?
8. Older workers often prefer **to work part-time or on a flexible basis**. How easy is it to do this in your sector, and what might be the constraints?
9. Are there jobs where **physical demand or levels of stress** make extending working life more difficult? Are there ways of overcoming these?
10. Is it difficult to **recruit older people** in your sector? After what age? Can training help?
11. **Small firms** in general have less formal management structures and procedures. Will this make overcoming age discrimination easier or more difficult for them?
12. A high proportion of people working after 65 are **self employed**, what role does this play in your sector?
13. What are the implications of an ageing workforce for supply and demand for **training** in your sector? (given that those who train generally stay in work longer)
14. How difficult will it be to **raise awareness among employers** in your sector about the ageing workforce, and about the age discrimination regulations, especially among small firms, who are more difficult to contact?
15. Are there **lessons about managing an age diverse workforce** which your sector could offer to others?

CROW would welcome any comments on these questions (or any others) as a contribution to its final research report for DWP¹¹.

¹¹ See “Further Information” below.

9. About this paper

This paper was written by the Centre of Research into the Older Workforce on behalf of the Department for Work and Pensions. It draws on two sources:

- The background material on the sector comes mainly from the Sector Skills Development Agency's Research Matrix database, which brings together a large quantity of information about all sectors from a variety of sources, including the Labour Force Survey, the National Employer Skills Survey, the Annual Business Inquiry, and the Inter Departmental Business Register¹².
- The material on current age management practice in the sector is based on data gathered by the National Institute for Economic and Social Research (NIESR) and the British Market Research Bureau (BMRB), in a national survey for the DWP and DTI in Spring 2005¹³. They interviewed the most senior person responsible for HR issues in 2084 firms employing more than five people in England, Scotland and Wales. Each interviewee was asked 160 questions about aspects of age management, including recruitment, retirement, benefits, pensions, management practices and discrimination. CROW carried out a separate analysis of this data to produce the current paper. The sample included 103 firms in the retail sector.

The DWP/DTI joint survey evidence is the best available on current employer age management practices across all sectors, but it should be interpreted with some caution since:

- it probably underestimates the frequency of some practices (since firms with a positive record are more likely to respond to such surveys; employers may be reluctant to admit to what they suspect is "bad practice"; and the senior managers who replied to the survey may be unaware of poor practice by some line managers);
- In some cases the number of employers responding is relatively small, and may not be fully representative of particular sizes of firms in that sector;
- Since some practices are more common in large firms, the behaviour of a small proportion of firms may affect a much larger proportion of workers;
- Although some hazardous practices are rare, the firms involved will still be open to legal challenge if they do not make appropriate changes.

We have not commented on pensions issues since pensions provisions are largely exempt from the regulations¹⁴.

All views expressed in this paper are those of the authors. They are not intended to be authoritative statements of the law, and do not represent the views of the Department for Work and Pensions or any other Government Department.

¹² Details on the Skills for Business website at www.ssdamatrix.org.uk/

¹³ See "Further Information" below.

¹⁴ DTI's guidance *The impact of age regulations on pensions*, explains the implications of the legislation for pensions in detail.

10. Responding to this paper

This paper is intended for consultation with employers, sector bodies and other interested organisations and individuals during 2006. Responses will contribute to a larger report on sectoral approaches to age management, which DWP plans to publish in 2007.

If you would like to comment on any aspect of this paper, or on age management in the retail sector (or on age management more generally), please write directly to the Centre for Research into the Older Workforce (CROW). We would be particularly interested in responses which:

- add relevant information on the shape of the sector and age management issues and practices within it
- clarify the reasons for particular features (e.g. why one part of the sector has very different practices from others, or why retail is different from other sectors)

- identify examples of good practice which might be disseminated to other employers or sectors
- identify questions which need further investigation

Responses and comments on the content or issues raised by this paper should be sent by email to: crow@niace.org.uk

Or by post to:

Age Legislation Research
Centre for Research into the Older Workforce
NIACE
21 De Montfort Street
Leicester
LE1 7GE

11. Further information

Further information on age related issues, policies, practices, and legislation can be found at www.agepositive.gov.uk

You can request further copies of this paper, or contact the Government's Age Positive team at: agepositive@dwp.gsi.gov.uk

or write to:

Age Positive Team
Extending Working Life Division
N10
Moorfoot
Sheffield
S1 4PQ

Details of the Age Discrimination Regulations, which will come into force in October 2006, can be found on the DTI's website at:

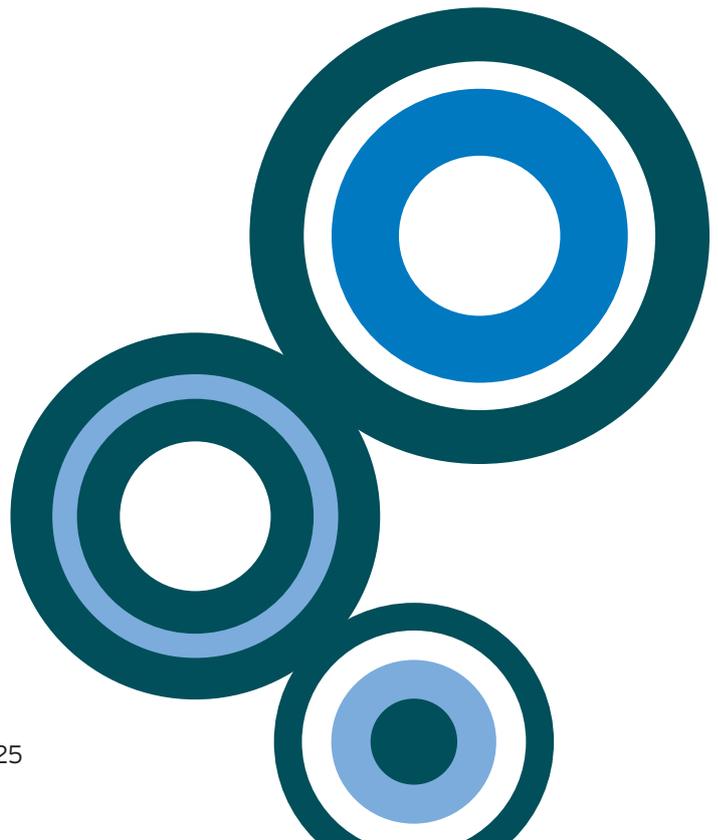
www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

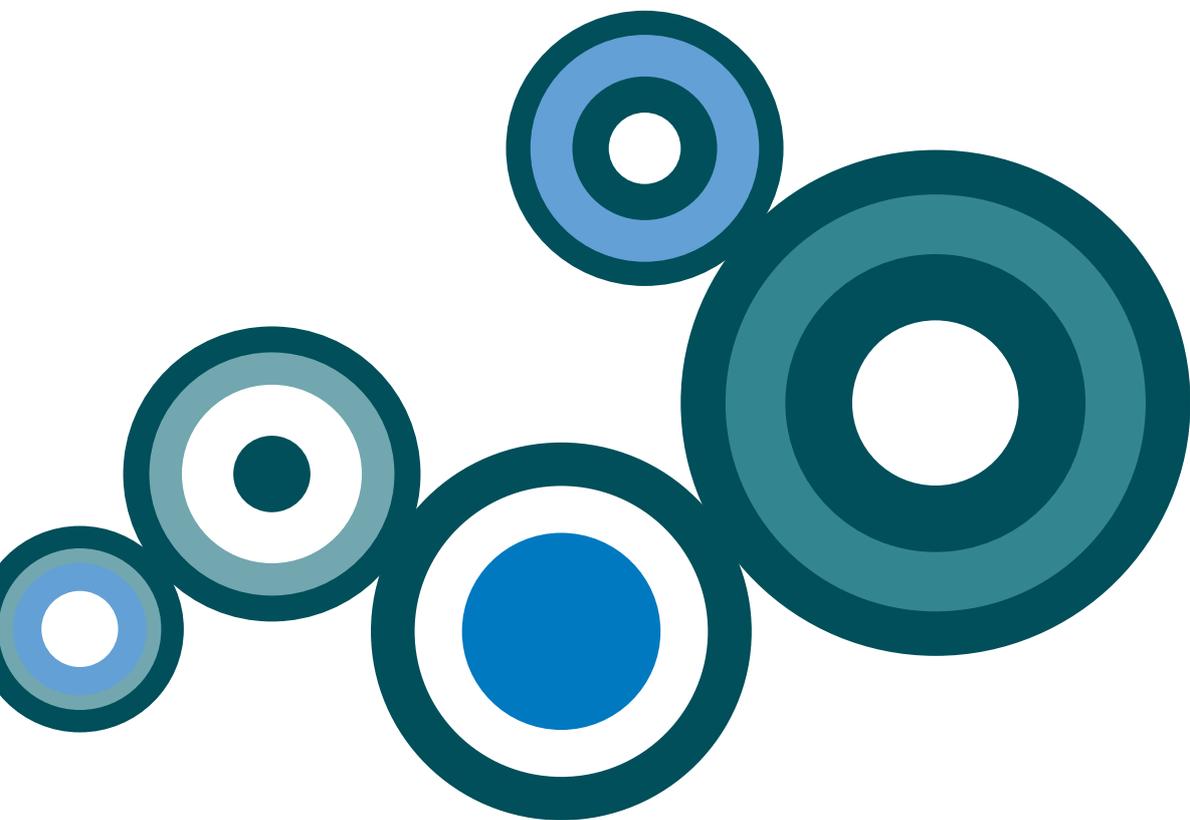
Advice on interpretation and good practice can be found on the ACAS website at:

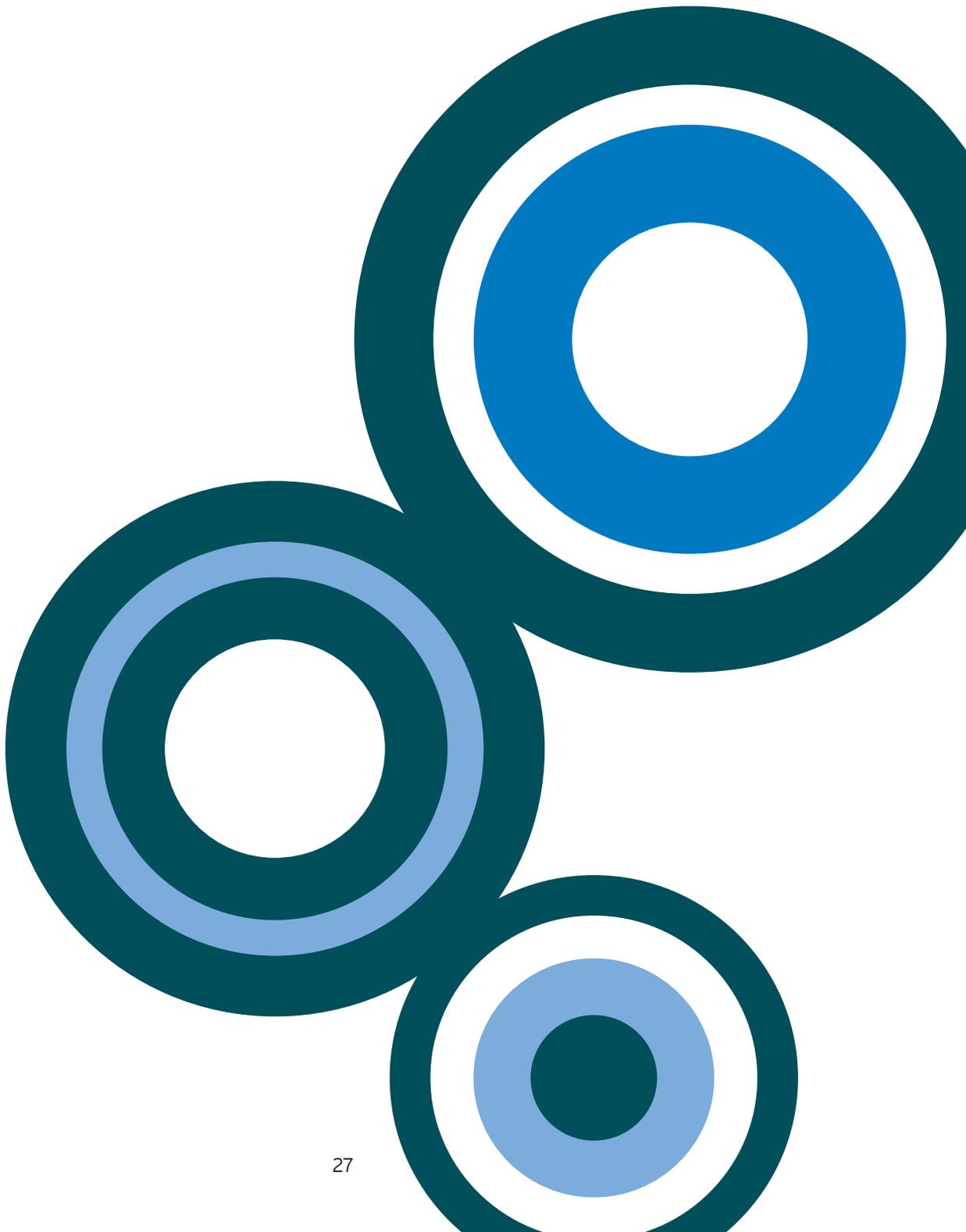
www.acas.gov.uk

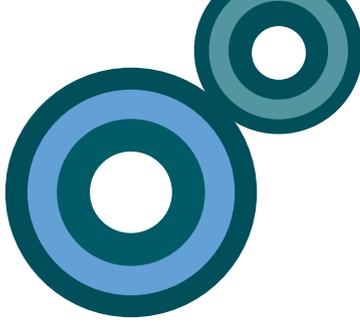
The full report of DWP/DTI's joint national survey conducted by NIESR and BMRB which produced the evidence for this report is *Survey of Employers' policies, practices and preferences relating to age* by Metcalf & Meadows (DWP Research Report 325, DTI employment relations research series number 49) The full report is available for download free on the DWP website at: www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep325.pdf

Further information about CROW can be found at: www.niace.org.uk/crow









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Members of the Age Partnership Group, listed below, support and endorse the Be Ready campaign.

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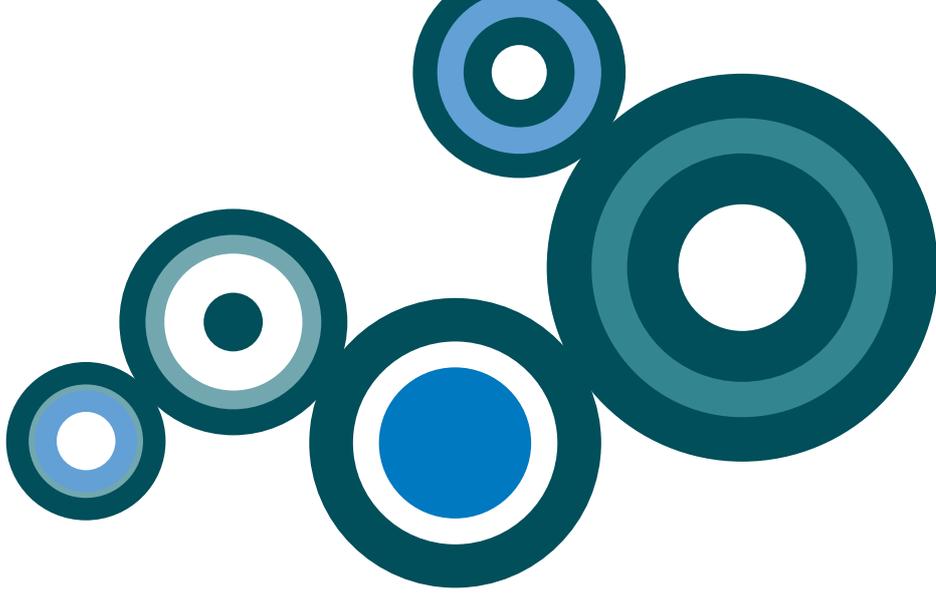
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Managing an ageing workforce in the transport and logistics sector

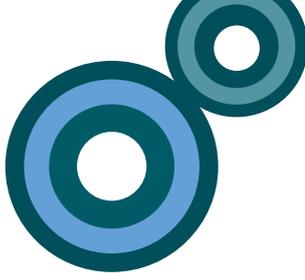
A report for employers

By Stephen McNair and Matt Flynn

Produced for the Department
for Work and Pensions
By the Centre for Research
into the Older Workforce

age**partnership**group
Targeting Employers®





Age Partnership Group (APG)

This research is one of a number of projects commissioned by the DWP on behalf of the APG as part of the National Guidance Campaign (NGC).

The APG was formed in 2002 and consists of a number of national organisations who represent different aspects of employers needs, for example, small business representatives, trade unions, HR and Personnel managers, local government, other government departments, accountancy, insurance and training organisations. There are separate groups representing England, Scotland and Wales.

The NGC aims to raise employers' awareness of, and ability to adopt practical information and guidance on age diverse employment practices. This includes flexible employment and retirement opportunities in order to increase the recruitment, selection, promotion, training and retention of older employees prior to the implementation of age legislation in October 2006.

You can view the Age Partnership Group website at www.agepositive.gov.uk/agepartnershipgroup

Legislation

In March 2006, the Employment Equality (Age) Regulations 2006 were published. The regulations are the last major stage of the European Employment Directive and will come into effect on the 1st October 2006.

The regulations prohibit age discrimination in employment and vocational training. They apply to individuals of all ages in work, seeking work or looking to access vocational training and to all employers, and to all providers of vocational training and vocational guidance (including further and higher educational institutions).

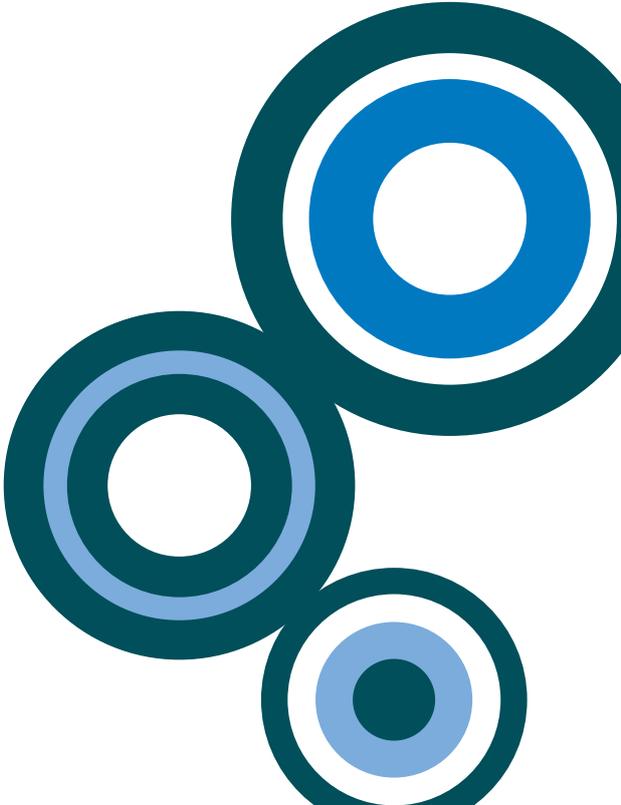
The regulations can be viewed on the Department of Trade and Industry website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Disclaimer

This report has been commissioned to provide information only. Responsibility for the views expressed in this report rests solely with the authors. The members of the Age Partnership Group (APG) and the Department for Work and Pensions (DWP) do not accept responsibility for the views of the authors.

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Introduction

This report is about how firms in the transport and logistics sector are managing an ageing workforce. It has been written for the Department for Work and Pensions (DWP) by the Centre for Research into the Older Workforce (CROW) to help employers to make better use of older workers. It also helps to raise awareness of the new Employment Equality (Age) Regulations 2006 which become law in October 2006, and prohibit age discrimination in work or training against people of any age.

Workforce ageing presents a growing challenge to most employers. Birthrates have been falling for many years, and in the next few years the numbers retiring will outnumber young people entering the labour market. The government believes that the resulting skills gaps and labour shortages in many industries can be reduced if employers can find ways of making better use of older workers, and encourage people to stay in work longer.

However, every industry has its particular features, and this report outlines the special issues affecting the transport and logistics sector, based on a large national survey of employers. It highlights employment practices in the sector which will be hazardous under the Age Regulations, and aims to stimulate discussion and improved practice in firms.

This report is not intended to be an authoritative statement on the age discrimination law itself. Details of how to obtain the Regulations, and advice about them, can be found at the end of the report. However, while the Regulations make some activities unlawful, it is for the Courts and Employment Tribunals to interpret this in specific cases. The term "hazardous" is therefore used in this paper to describe activities which might be ruled unlawful if a case is brought. We suggest that employers need to review their practice in these areas.

During 2006, CROW will explore these issues in more depth through case studies of firms in seven sectors, and DWP plans to publish the resulting Research Report in 2007.



1. Summary: key age issues for transport and logistics firms

The transport and logistics sector has an old and relatively low skilled workforce, with a high proportion of workers over 55, and rising skills requirements. Furthermore, much transport employment is concentrated in London and the South East, where skills gaps and shortages are already high. Unless patterns of training, retention and retirement (and employer attitudes to older workers) change, current labour shortages will get worse in the next decade.

One way of tackling this problem is to increase the retention, and raise the skills of older workers. The sector is broadly positive about the former, with employers relatively willing to let employees choose their retirement dates, and to allow them to stay beyond normal retirement age. However, work in transport and logistics is more likely to be full time, which makes it less attractive to many older workers.

The risk of indirect age discrimination in this sector is high because a large proportion of employers have strong views about appropriate ages for particular jobs, and firms are less likely to have systems in place (like equal opportunities policies, formal appraisal and assessment for promotion, "age blind" recruitment systems and training) which would reduce the risk of discrimination.

Common hazardous practices in Transport and Logistics firms

Common practices in this sector which may need review if employers are to avoid breaking the Age Regulations include:

- **providing age information to shortlisting and interviewing staff.** There are legitimate reasons for employers to request dates of birth (for example: for equal opportunities monitoring), but passing this information to staff responsible for selection increases the risk of unfair discrimination.
- **using age related measures, like years of experience, in selection and to fix starting salaries.** This will be unlawful except where

it is permitted under the Minimum Wage Regulations:

- **using proximity to retirement and maximum recruitment ages to exclude job applicants.**

It will be unlawful to exclude job applicants on the basis of age who are six months or longer from retirement.

- **using incremental pay sales which extend over more than five years.** This affects two thirds of large firms in the sector, but a smaller proportion of smaller ones, and will be unlawful without an objective justification.

- **using length of experience as a basis for redundancy decisions.** This is hazardous, since it is likely to discriminate against younger workers.

- **using time left to retirement to exclude employees from training.** This will be lawful, but only if there is a legitimate business reason, like a demonstrable connection between the cost of training and the time for which the employee will stay in work. It will be unlawful to do this on the basis of untested assumptions about an individual's retirement plans.

Unlawful practices in Transport and Logistics firms

The following practices are less common, but unlawful, and firms who use them will need to make changes if they are to remain within the law:

- One firm in three sets a **maximum recruitment age** (unlawful if more than 6 months before the firm's retirement age).
- One firm in six uses **age to select for redundancy.**
- One firm in ten uses **age as a recruitment criterion.**

2. The shape of the transport and logistics sector

The nature of the age management issues facing a sector depends on factors like the average size of firms, the age and skills profile of the workforce, and future expectations of growth or contraction. This section outlines this context for the transport and logistics sector.

The transport and logistics, storage and communication sector¹ employs 1.3 million people (4% of the national workforce) in 64,000 firms. It covers land, water, air and space transport and logistics, together with supporting activities like storage and warehousing, and travel agencies. Over half the workforce is in driving or elementary occupations². Although firms are overwhelmingly in the private sector, some large ones were previously part of nationalised industries, and still retain some employment traditions from those days. This is significant, since age related employment practices generally vary according to whether a firm is large or small on one hand, and in the public or private sector on the other.

The sector is supported by two Sector Skills Councils:

GoSkills - is the Sector Skills Council for Passenger Transport

Skills for Logistics - represents the freight logistics industry

Transport and logistics is a relatively stable sector. The turnover rate of firms is low, and overall employment growth in the sector is among the lowest. The sector expects to need 478,000 additional workers by 2014, representing only 36% of its current workforce, concentrated among Administrative/Secretarial staff and Drivers. Output growth levels are rather lower than the economy as a whole.

In formal structure the transport and logistics sector mirrors the economy as a whole, with 95% of firms employing fewer than 50 people. A little over half of all firms have business plans, a smaller proportion have training plans and budgets, and one third have no formal planning of any kind.

The sector has a very high proportion of workers over 55 (17%) (Fig 1), posing a serious labour supply problem as this cohort approaches retirement, as Skills for Logistics has noted in its strategic planning documents. Other distinctive features of the sector workforce are a high proportion of full-time and male workers, and half with no qualifications above Level 2. Overall there is also a disproportionate concentration of transport employment in London and the South East, where skills shortages are already high, although employment in logistics is more evenly distributed across the country. Vacancy levels are higher in the sector than in the overall economy, and half of these are for drivers, where "hard to fill" and "skills shortages" vacancies are concentrated.

¹ The sector includes the Standard Industrial Classification Codes (SIC) 60-63. For this analysis post and telecommunications (which are included in the SIC code) have been excluded.

² Included in the standard classification as Process, Plant and Machine Operatives



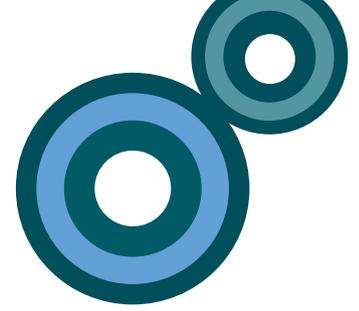
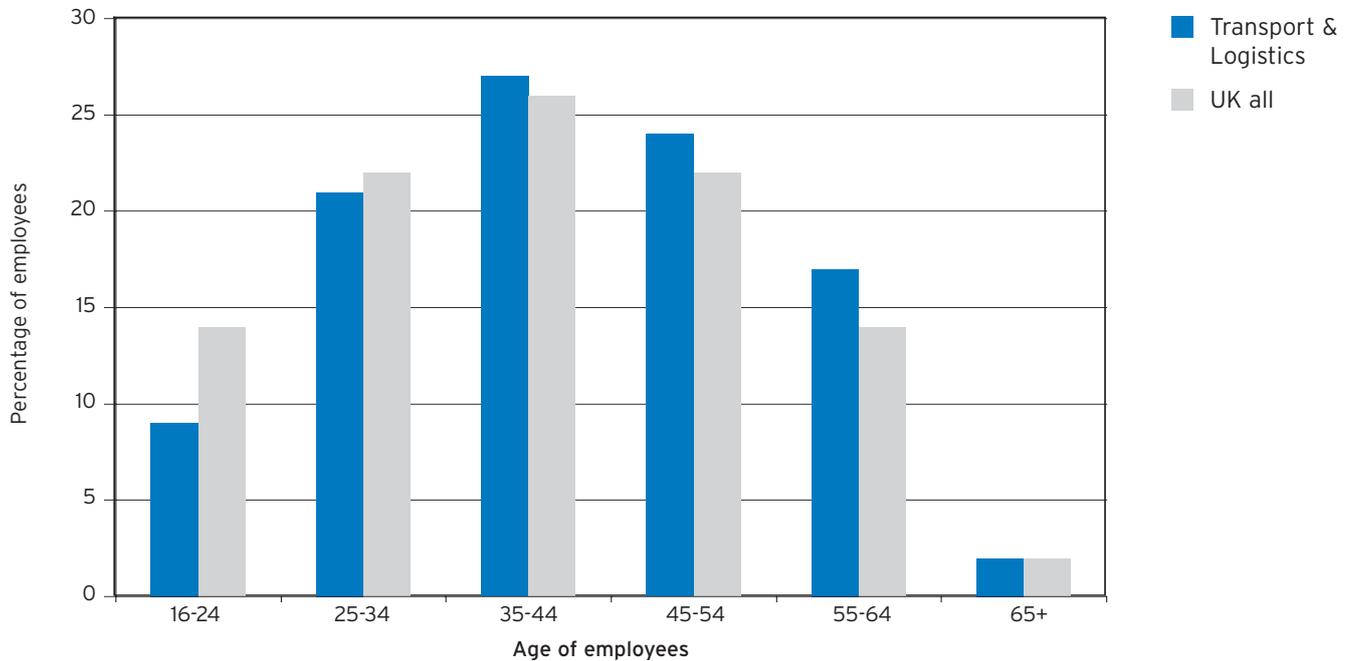


Figure 1 Transport & logistics workforce age profile



Both Sector Skills Councils highlight the need to raise skill levels in response to growing regulation, and the need for improved supervision and management skills in a very competitive market. The overall level of training activity largely matches the average for all firms, although this appears to be concentrated on relatively few

people, since the numbers of people trained are notably low. This may reflect a relatively stable workforce, requiring less of the induction and health and safety training that dominates training activity in some sectors.

3. Age discrimination in employment

Age discrimination at work is common. It can affect people of any age, but is particularly likely to involve older people, and more than one in five workers over the age of 50 say that they have experienced it either when applying for jobs or in the workplace³. In countries where age discrimination law is already in force, it is the commonest cause of discrimination cases in the courts.

From October 2006, it will be unlawful for any employer in the United Kingdom to discriminate against or harass anyone on grounds of age, directly or indirectly, in relation to either employment or vocational training. This will cover arrangements for recruitment and promotion, pay and conditions, education and training, and retirement and redundancy.

There are exceptions: in relation to retirement, where it will be lawful to make an employee retire at a given age, provided this is not below 65 (for men and women); and where an existing statutory provision exists (like the Minimum Wage Regulations). An employer may also be able to justify discrimination if it is designed to correct an age imbalance in his workforce; if there is a legitimate business reason (and the discrimination is proportionate); or if there is an objective justification (likely to be very rare). The Regulations, and advice on their interpretation, can be found on the DTI and ACAS websites⁴.

Some features of age discrimination are common to most employers⁵.

- Indirect discrimination is more common than direct discrimination. DWP and DTI's joint survey, conducted by the National Institute of Economic and Social Research (NIESR), found few examples of direct discrimination, but one in five employers believes that some jobs are better done by people of particular ages. Where such beliefs exist, discrimination is more likely.
- Discriminatory attitudes are more likely to be found in private sector firms, and especially small ones⁶, in sectors like manufacturing and construction. These are also the firms and sectors where there are least likely to be formal procedures and policies to protect against unfair discrimination.
- The most common hazardous practices involve setting age limits on recruitment, especially for those over 50, and using age as a basis for decisions on compulsory retirement and redundancy.
- About half the workforce is covered by a compulsory contractual retirement age. In most cases this is already 65, which is the new "national default retirement age". However, even where firms plan to retire staff at 65, they will have to give formal notice of retirement dates and seriously consider requests to stay longer.

³ Discrimination is difficult to measure precisely, since it is subjective, and affected by levels of public awareness of age issues, and many people regard it as "normal". In a CROW postal survey of workers over 50 in 2004, 20% reported age discrimination. In research by the University of Kent for Age Concern England 29% of people reported experiencing age discrimination (compared to 24% for gender).

⁴ See "Further Information" at the end of this report.

⁵ Information based on DWP and DTI's joint national survey of employers' policies practices and preferences, conducted by NIESR (see "Further Information"), although because this is new secondary analysis not all figures are directly comparable. Also, for certain policies and practices respondents were asked to answer in respect of their largest occupational group rather than for the workforce as a whole.

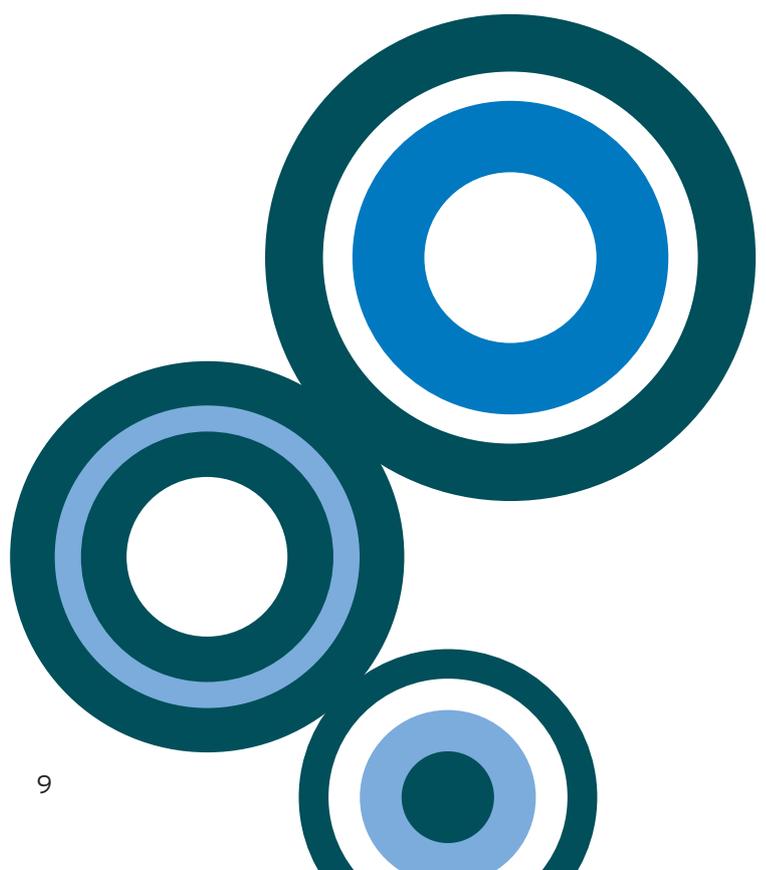
⁶ In this report "micro" firms have 5-19 employees, "small" employ 20-49, "medium" employ 50-249, and "large" employ 250 or more (the survey excluded firms employing fewer than 5 employees).

- Public sector and large private sector organisations, are more likely to have formal procedures (like appraisal schemes or equal opportunities policies) to protect against discrimination, especially where a Trades Union is recognised. However, these organisations are also more likely to have long standing formal agreements which include provisions which are hazardous under the Age Regulations, including contractual retirement ages below the new national default retirement age of 65.
- Two occupational groups are particularly at risk from discriminatory practices. These are professional and associate professional/technician staff, both of whom are particularly likely to be exposed to discrimination in setting pay, long incremental pay scales, and in access to training.

The tables in this paper identify hazardous practices identified in DWP/DTI's employer survey, indicating those which are most common among employers in transport and logistics, and among employers in general.

Some of the provisions in the Regulations allow an employer to claim an "objective justification" for a practice which would otherwise be unlawful. Such justifications require the employer to be able to show that his or her action is a proportionate means of achieving a legitimate aim. It will be for Employment Tribunals and the County Courts to rule on what is justifiable under these provisions.

The Regulations also allow some practices, like incremental scales, where pay or terms of employment improve with length of service, but only up to five years, beyond which they will need to be objectively justified.



4. Recruitment and promotion

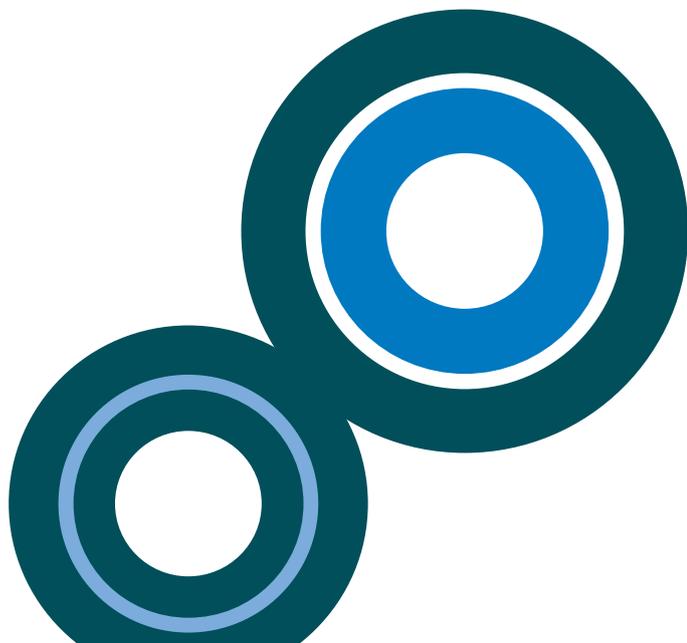
The key principle in all selection for employment or promotion is that decisions should be fair, and based on the individual's competence for the job, and not on arbitrary factors like age (or gender or race etc).

The research evidence shows that work performance in most jobs does not decline with age before the late 60s, provided individuals are healthy, motivated and kept up to date.

Across the workforce as a whole, the commonest hazardous practices in recruitment and promotion involve excluding applicants, either directly (by specifying ages), or indirectly

(e.g. by specifying years of experience, rather than specific capabilities) in advertisements, job descriptions and interview criteria.

Table 1 below shows the most common areas of hazardous practice in the transport and logistics sector (with figures for firms in general for comparison). Practices followed by more than half of firms in the sector are highlighted.



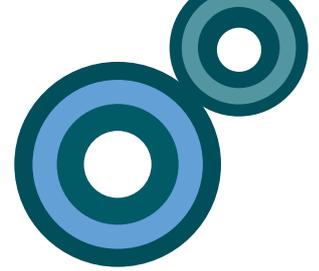


Table 1

Recruitment and promotion	Comments	% of firms reporting in transport and logistics	% of firms reporting, all sectors
Selection criteria specify qualifications	Lawful if the qualification is directly relevant to the job, and equivalent qualifications are accepted for candidates of different ages.	65	60
Selection criteria based on length of work experience of any kind	Indirectly discriminatory. The test must be individual capability, not length of experience, unless an objective justification can be demonstrated.	65	62
Age information is provided to recruiting staff	Increases risk of discrimination.	54	44
Application forms ask for date of birth/age	Lawful to use for monitoring purposes and conforming to Statutory requirements. Potentially discriminatory. ACAS recommends removing this information (as with other equal opportunities information) before shortlisting.	50	48
Maximum recruitment ages are specified	Unlawful if set more than six months before the company's retirement age unless objectively justified ⁷ .	40	29
Selection decisions are based on remaining period to retirement	Discriminatory unless a clear business justification can be demonstrated ⁸ (like the cost/time required to train, relative to the expected years of work).	33	18
Selection decisions are based on expected length of service, judged by age	Unlawful	20	7
Age criteria are used directly in recruitment, or particular age ranges are targeted	Unlawful unless required by Statute, or for positive action reasons (e.g. to compensate for the under representation of a particular age group).	10	9
Job advertisements specify age	Unlawful, unless there is a genuine occupational requirement (e.g. a young actor for a young part).	1	6

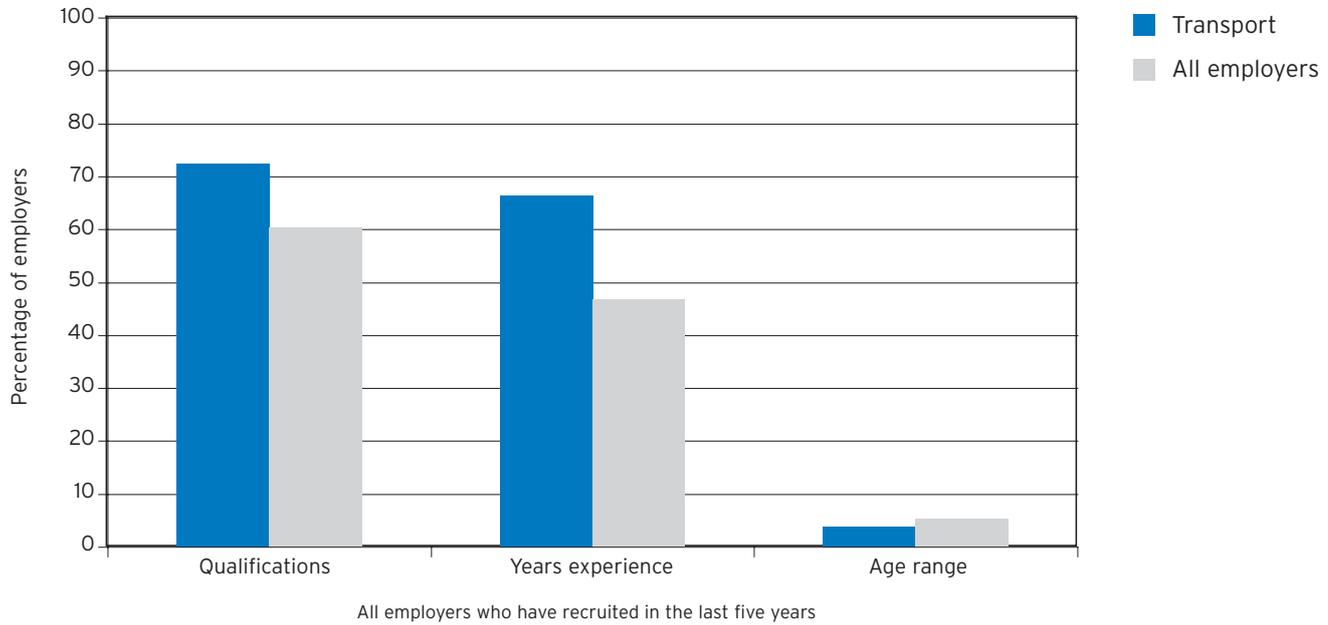
⁷ If the employer does not have a compulsory retirement age, they set a maximum recruitment age of 64½.

⁸ See also "maximum recruitment age".

Age is rarely used as a direct selection criterion, and job advertisements in this sector are more likely to specify qualifications and experience than age (Fig 2). Employers who specify

experience or qualifications will need to ensure that these reflect genuine job requirements, and equivalent qualifications are accepted from job applicants in different age groups.

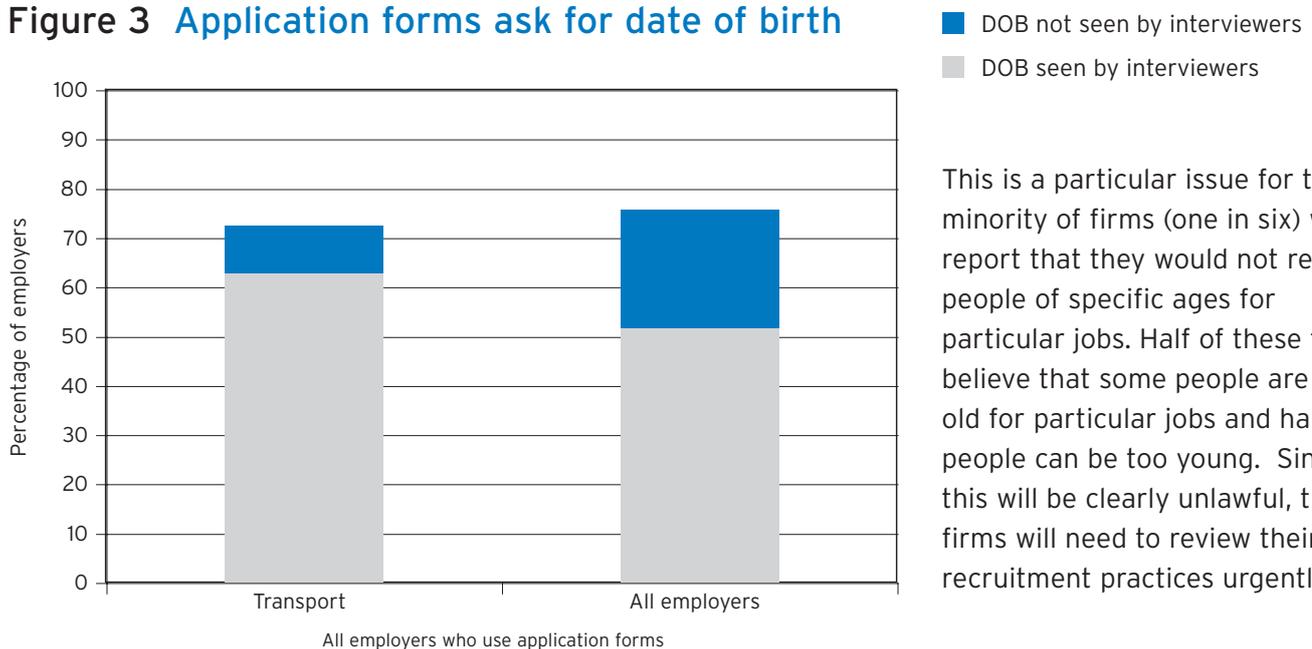
Figure 2 Job adverts specify preferred:



The potential for unfair discrimination is higher when selectors are given age information during shortlisting or interview processes, and this is more common in this sector than among employers generally (Fig 3). There are a few cases where this information reflects a genuine occupational requirement (for example, ensuring that drivers are old enough to qualify for an

HGV license), and collecting the information is also important to monitor equal opportunities practice, but employers who separate this information from the selection decision itself (e.g. by removing monitoring data from the papers seen by interviewers) are less vulnerable to accusations of unfair discrimination.

Figure 3 Application forms ask for date of birth



This is a particular issue for the minority of firms (one in six) which report that they would not recruit people of specific ages for particular jobs. Half of these firms believe that some people are too old for particular jobs and half that people can be too young. Since this will be clearly unlawful, these firms will need to review their recruitment practices urgently.

5. Pay and conditions

The key principle in setting pay and conditions should be fairness. Where individuals are treated differently, this should be on the basis of a different contribution or skill, not on age, or on a factor which is a proxy for age (like years of service). This applies to people of all ages, and those over an employer's normal retirement age are equally protected by the law⁹.

The Regulations do, however, allow different treatment where this can be "objectively justified" as a "proportionate" way of achieving "a legitimate business purpose". Rewarding long service can, for example, be justified if it can be shown to benefit the business by increasing staff retention, and the sums involved are reasonable¹⁰.

The table shows the most common areas of hazardous practice in the transport and logistics sector.

Table 2

Pay and Conditions	Comment	% of firms reporting in transport and logistics	% of firms reporting, all sectors
Annual leave entitlement is based on length of service	Lawful if five years or less or if it fulfils a business need like retaining experienced staff. More common in large firms (affects 44% of all firms but 58% of all employees).	55	44
Starting salary takes experience into consideration	Potentially discriminatory, since experience relates indirectly to age, and does not directly measure competence.	55	58
Long service awards	Lawful if five years or less or it fulfils a business need like retaining experienced staff. More common in large firms (affects 33% of all firms but 54% of all employees)	40	33
Incremental pay scales are used	Unlawful if scale covers more than 5 years (which occurs in 5% of all firms) unless it can be objectively justified.	20	36
Selection for training depends on period to retirement	Potentially indirectly discriminatory (7% of all firms set a limit of more than 1 year). Objective justification is possible in terms of business benefits such as the cost set against predicted return.	20	8
Starting salary is dependent on age	Unlawful	15	13
A maximum age is set for eligibility for sick pay	Unlawful	10	6
Separate youth rates of pay	Only lawful in specific circumstances relating to the National Minimum Wage or Apprenticeships.	5	11

⁹ The upper age limit for unfair dismissal claims is being lifted under the new regulations, and employees over their firm's retirement age will have full protection against discrimination.

¹⁰ This is a complex area. Advice is available on the ACAS website (see "Further Information" below).

In general, pay and conditions of service are less likely to be hazardous in transport and logistics than in other sectors (Fig 4). Firms here are more likely to pay the same rates to all employees, and are much less likely to use incremental pay scales (which can be indirectly discriminatory), and where incremental scales do exist they usually fall within the lawful limit of five years, which will not need to be justified under the Regulations.

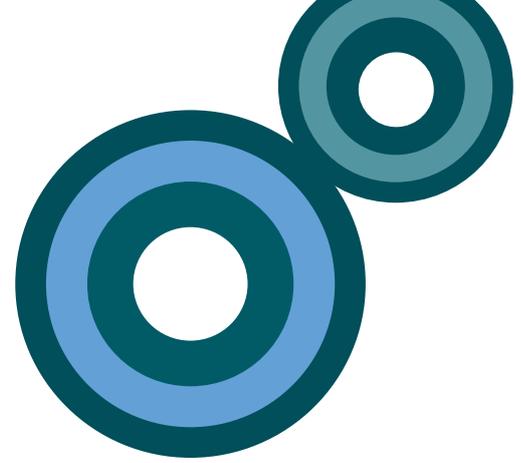
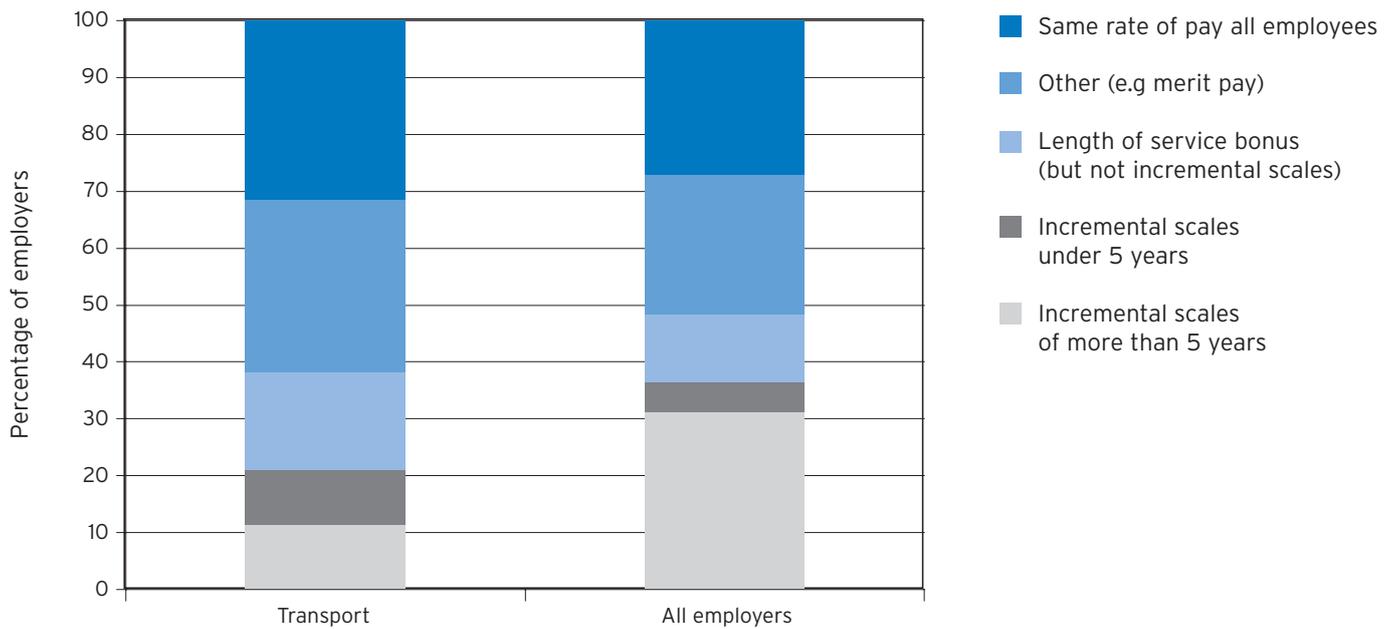


Figure 4 How pay is determined



However, one practice which is more common in transport and logistics is the setting of maximum ages for sick pay, reported by 15% of all transport and logistics firms, especially large ones. This will be unlawful under the Regulations.

6. Retirement and redundancy

The Age Regulations introduce a new national Default Retirement Age of 65 for both men and women. An employer can lawfully set a retirement age at 65 or above, but can only set a lower retirement age if there is an objective justification (which is expected to be very rare, since age itself is rarely a qualification for a job). Whatever retirement age the firm adopts, the employer will be required to give individuals formal advance notice of their retirement date, and must consider requests to stay on after that.

The key principle here is that, up to the firm's retirement age, exit from the firm through either retirement or redundancy should be based on individual capability and contribution, and personal preference, not on age.

In relation to redundancy and unfair dismissal, the Regulations extend the same rights to all employees, whatever their age, removing the previous age limits. Statutory redundancy entitlements remain unchanged. An employer can use age or length of service to enhance redundancy payments, but only in accordance with the rules specified in the Age Regulations.

In this area, the greatest hazards concern the setting of compulsory retirement ages and the use of age in selection for redundancy or setting levels of redundancy pay.

Table 3 shows the most common areas of hazardous practice in the transport and logistics sector.

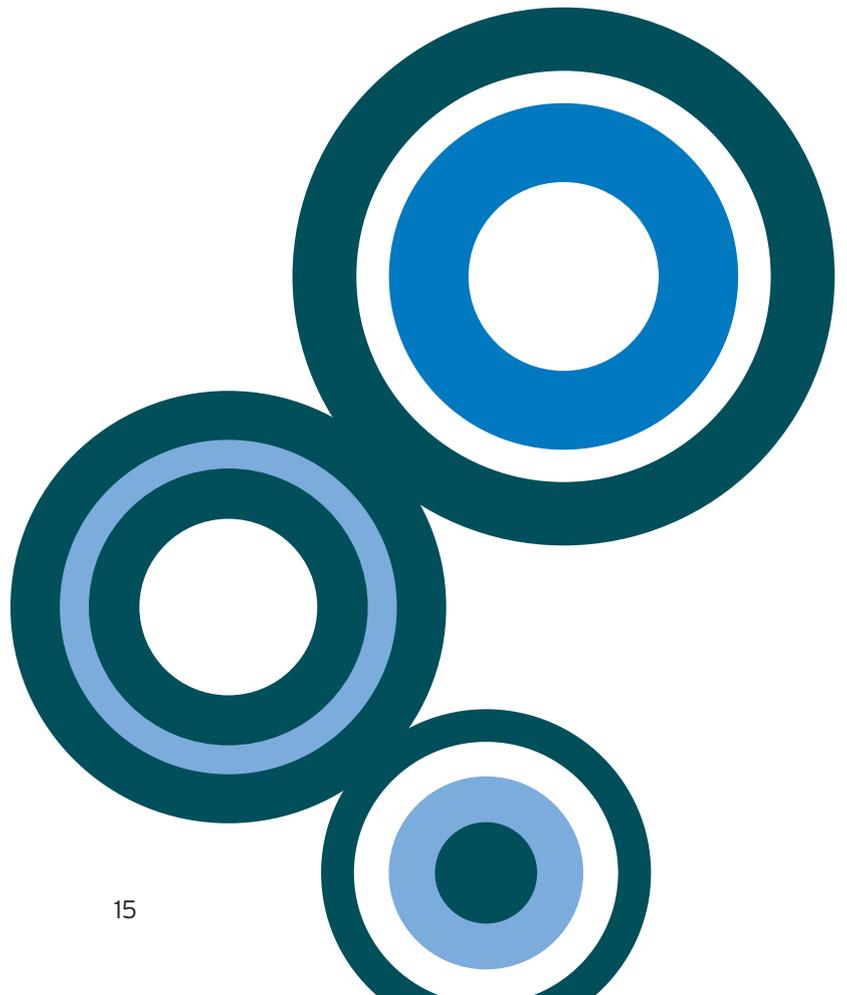


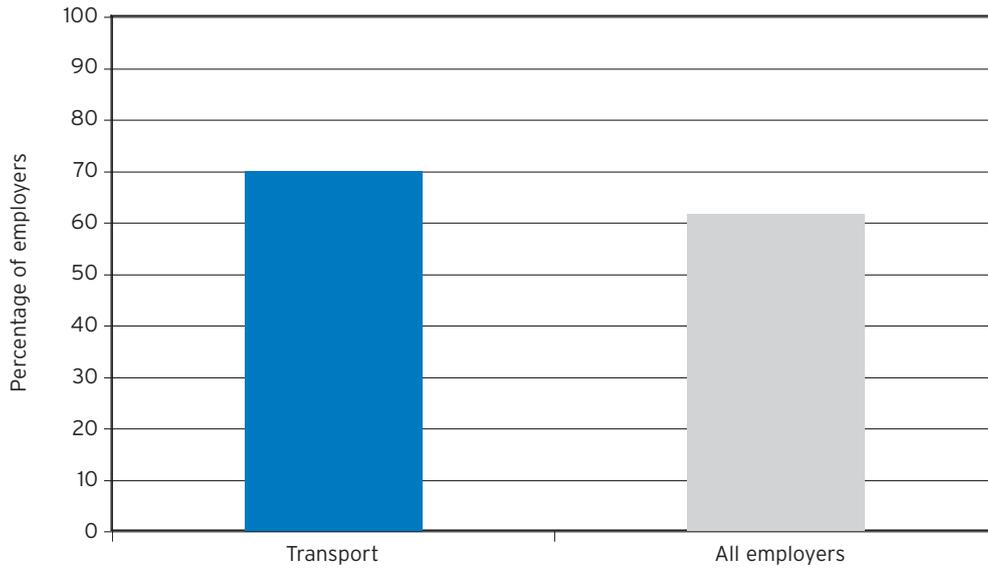
Table 3

Retirement and Redundancy	Comment	% of firms reporting in transport and logistics	% of firms reporting, all sectors
Redundancy decisions based on length of service	This discriminates indirectly since longer service correlates with age.	55	49
Compulsory retirement ages	Unlawful if below 65 (which affects 6% of all employers), unless it can be objectively justified. 50% of the UK workforce is affected by compulsory retirement ages (because this is more common in large firms). However, in most cases the fixed age is 65, which will remain lawful, although employers must consider requests to stay on.	40	37
Compulsory redundancy decisions are based on "last in first out"	Likely to discriminate indirectly against younger employees.	30	28
Level of redundancy pay based on length of service	Can be indirectly discriminatory against younger employees. Length of service is used in compulsory redundancy by 27% of all firms but affects 38% of all employees. For voluntary redundancy it is used by 23% of all firms but affects 34% of all employees.	30 compulsory 30 voluntary	27 compulsory 23 voluntary
Age is used in selection for redundancy	Unlawful. The decision must be based on requirements of job and competence of staff, or positive action to maintain an age balance.	15 compulsory 5 voluntary	14 compulsory 5 voluntary
Level of redundancy pay is affected by age	Unlawful. Affects only 10% of all firms, but 17% of all employees (because it is more often used in larger firms).	20 compulsory 10 voluntary	10 compulsory 9 voluntary
Redundancy decisions based on current salary	Likely to discriminate indirectly since salary levels generally correlate with age.	5	7



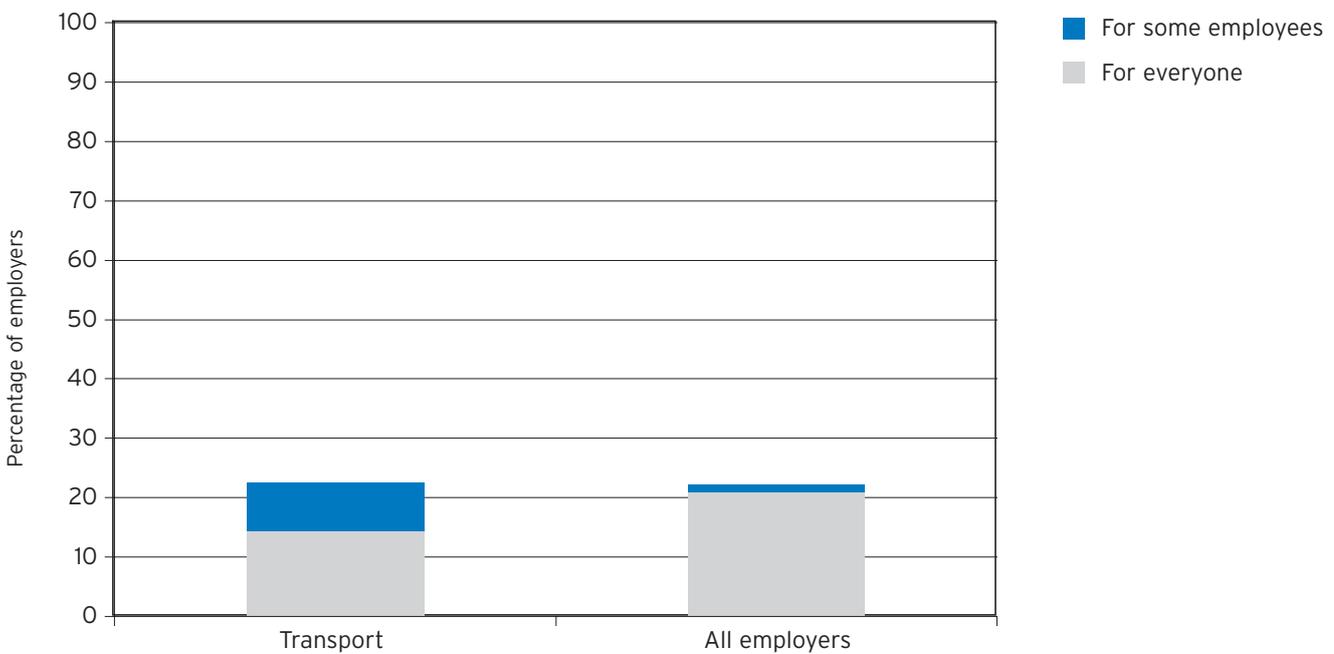


Figure 5 Employer offers flexible retirement dates



Transport and logistics firms in general take a relatively positive view of older workers, and three quarters of firms surveyed offer flexibility to employees in choosing when they retire (Fig 5).

Figure 6 Staying in work past normal retirement age is an entitlement:

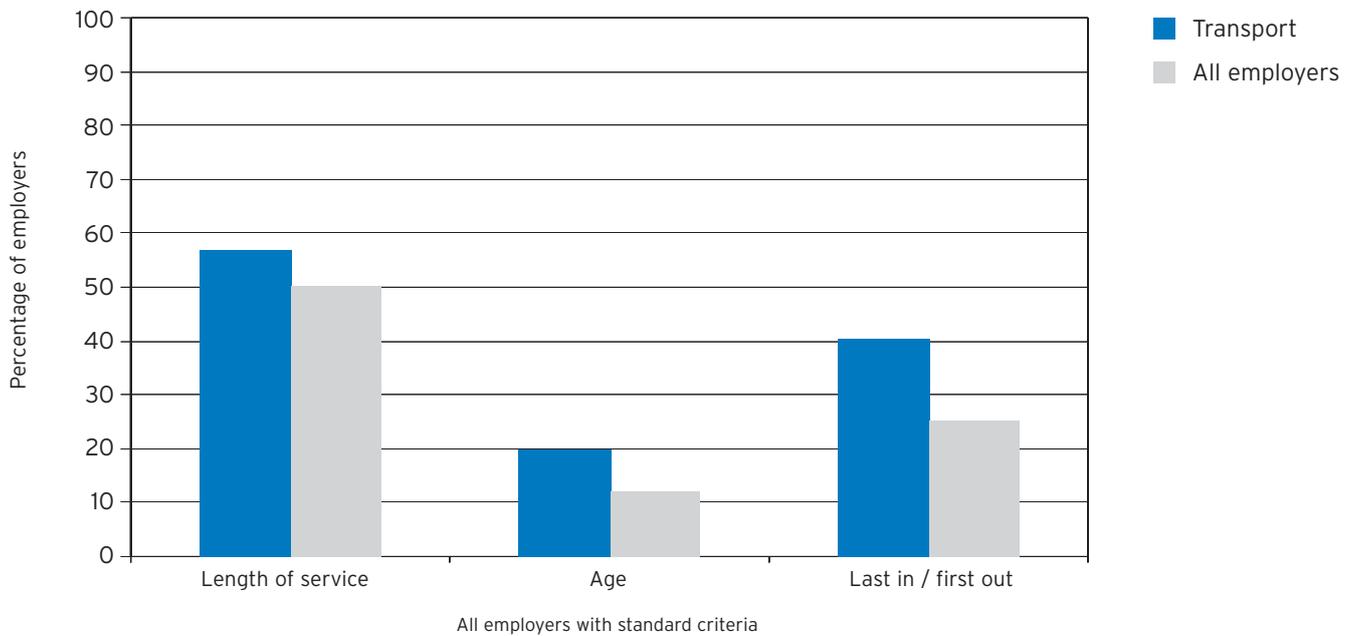


They are also more willing to allow employees to work beyond normal retirement age, and for a quarter this is an entitlement. However, this is not generally open to all workers (Fig 6).

Most transport and logistics firms which use standard criteria to select individuals for compulsory redundancy use length of service, and 40% use "last in/first out", both of which are hazardous, since they affect some age groups more than others. More seriously, almost one

firm in five uses age directly, which will be unlawful. Two thirds of firms in the sector base enhanced compulsory redundancy pay on age, which is permissible, provided that the rules laid down in the regulations are followed (Fig 7).

Figure 7 Criteria for compulsory redundancy



7. Management and training

There are a variety of management practices which can reduce the risk of legal disputes under the Age Regulations. Table 4 identifies the

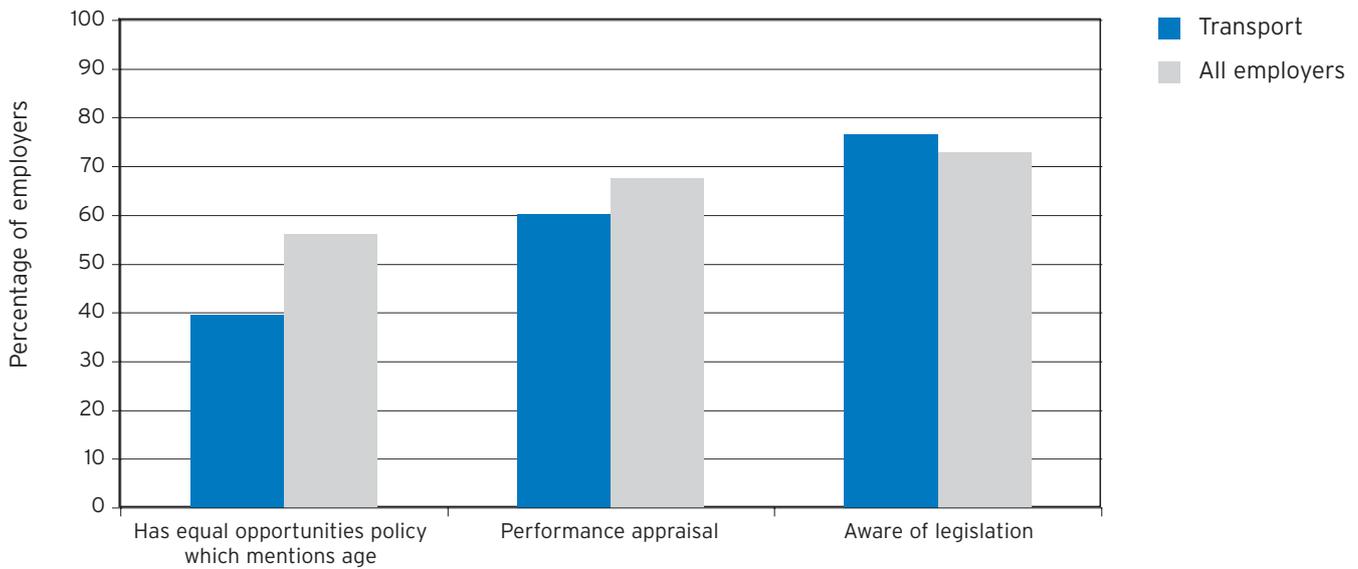
commonest ones, and shows what proportion of firms in the transport and logistics sector, and the economy in general, use them at present.

Table 4

Management and training	Comment	% of firms reporting in transport and logistics	% of firms reporting, all sectors
Equal opportunities policy	Having a policy makes expectations clear to managers and staff, and makes monitoring easier.	50	72
	Equal opportunities policy explicitly mentions age.	40	56
	Policy implementation by age is monitored (only those with age policies).	40	49
“Age blind” recruitment practices	Removing dates of birth and age data from applications before they are considered by selectors reduces the risk of discrimination (although training recruiters is also important). Some firms collect this information on equal opportunities monitoring forms which are removed before forms are passed for short listing.	30	43
Providing work related training for all staff	There is a direct relationship between participation in training and staying longer in work.	70	70
Formal performance appraisal	Ensures that employees are clear about objectives, that performance is recognised, and untapped talents are used. This will also be relevant when firms have to consider formal requests to stay after a firm's retirement age.	60	68
Formal assessment for promotion	Formal assessment increases the chances of promoting the most valuable people, and reduces the risk of discrimination. (4% of all firms currently have age related criteria, which will be unlawful).	35	37
Flexible working	Many employees, especially those with childcare or eldercare responsibilities, and those approaching retirement, would like to work part-time or flexibly. Offering flexible working improves retention and motivation of key staff.	75 for childcare 70 pre-retirement 77 for elder care 40 for any reason	82 for childcare 78 pre-retirement 74 for eldercare 51 for any reason
Flexible retirement ages	Flexible retirement allows individuals to work longer and employers to continue to make use of skills and expertise.	65 offer to all staff 5 offer to some staff	50 offer to all staff 4 offer to some staff

Three quarters of transport and logistics firms have equal opportunities policies, which can help discourage discriminatory practice, but many of these do not mention age as an issue, and among the minority of firms providing equal opportunities training for managers few include age as an issue.

Figure 8 Prepared for age discrimination regulations



Just over half the firms in the sector have a system of formal staff appraisal, a lower figure than employers generally. Such systems make it less likely that discrimination will take place, since they can ensure that performance is being properly assessed, training needs identified and met, and that the reasons for decisions on promotion, pay, and retirement are properly documented.

Although most transport and logistics firms appear to have training practices which conform to the regulations, some bar workers from access to training on grounds of age, which will be unlawful, and a larger proportion of firms exclude some staff from training because they are too close to retirement. This is hazardous unless a clear and proportionate business case can be demonstrated.

8. Managing age in transport and logistics: discussion questions

The following questions are designed to help you, as an employer in the transport and logistics sector, to plan how you will respond to an ageing workforce and the Age Regulations:

1. How concerned are you about **skills gaps and shortages** in your sector, and do you believe current labour market predictions about this?
2. Do you think that **a different age mix** in the workforce could help overcome these?
3. Do people generally in your sector **have strong views about appropriate age ranges for particular jobs** which would limit the opportunity to change the age mix?
4. Is your **ability to change pay and conditions** limited by national agreements, or regulations like “licence to practice” rules? How can you tackle this?
5. Policymakers sometimes assume that all firms in a “sector” are alike. In your sector are there particular **kinds of firm which are very different** in their approach to age management?
6. How easy is it to **extend working lives** in your sector? Does this apply more to some groups of staff than others?
7. Are there **traditional career patterns** in your sector which might change if working lives became longer (e.g. “downshifting” or mentoring roles for older workers)?
8. Older workers often prefer **to work part-time or on a flexible basis**. How easy is it to do this in your sector, and what might be the constraints?
9. Are there jobs where **physical demand or levels of stress** make extending working life more difficult? Are there ways of overcoming these?
10. Is it difficult to **recruit older people** in your sector? After what age? Can training help?
11. **Small firms** in general have less formal management structures and procedures. Will this make overcoming age discrimination easier or more difficult for them?
12. A high proportion of people working after 65 are **self employed**, what role does this play in your sector?
13. What are the implications of an ageing workforce for supply and demand for **training** in your sector? (given that those who train generally stay in work longer)
14. How difficult will it be to **raise awareness among employers** in your sector about the ageing workforce, and about the age discrimination regulations, especially among small firms, who are more difficult to contact?
15. Are there **lessons about managing an age diverse workforce** which your sector could offer to others?

CROW would welcome any comments on these questions (or any others) as a contribution to its final research report for DWP¹.

¹ See “Further Information” below.



9. About this paper

This paper was written by the Centre of Research into the Older Workforce on behalf of the Department for Work and Pensions. It draws on two sources:

- The background material on the sector comes mainly from the Sector Skills Development Agency's Research Matrix database, which brings together a large quantity of information about all sectors from a variety of sources, including the Labour Force Survey, the National Employer Skills Survey, the Annual Business Inquiry, and the Inter Departmental Business Register¹².
- The material on current age management practice in the sector is based on data gathered by the National Institute for Economic and Social Research (NIESR) and the British Market Research Bureau (BMRB), in a national survey for the DWP and DTI in Spring 2005¹³. They interviewed the most senior person responsible for HR issues in 2084 firms employing more than five people in England, Scotland and Wales. Each interviewee was asked 160 questions about aspects of age management, including recruitment, retirement, benefits, pensions, management practices and discrimination. CROW carried out a separate analysis of this data to produce the current paper. The sample included 64 firms in the transport and logistics sector¹⁴.

The joint DWP/DTI survey evidence is the best available on current employer age management practices across all sectors, but it should be interpreted with some caution since:

- it probably underestimates the frequency of some practices (since firms with a positive record are more likely to respond to such surveys; employers may be reluctant to admit to what they suspect is "bad practice"; and the senior managers who replied to the survey may be unaware of poor practice by some line managers);
- In some cases the number of employers responding is relatively small, and may not be fully representative of particular sizes of firms in that sector;
- Since some practices are more common in large firms, the behaviour of a small proportion of firms may affect a much larger proportion of workers;
- Although some hazardous practices are rare, the firms involved will still be open to legal challenge if they do not make appropriate changes.

We have not commented on pensions issues since pensions provisions are largely exempt from the regulations¹⁵.

All views expressed in this paper are those of the authors. They are not intended to be authoritative statements of the law, and do not represent the views of the Department for Work and Pensions or any other Government Department.

¹² Details on the Skills for Business website at www.ssdamatrix.org.uk/

¹³ See "Further Information" below.

¹⁴ Since this is a small sample all percentage figures have been rounded to the nearest 5%.

¹⁵ DTI's guidance *The impact of age regulations on pensions*, explains the implications of the legislation for pensions in detail.

10. Responding to this paper

This paper is intended for consultation with employers, sector bodies and other interested organisations and individuals during 2006. Responses will contribute to a larger report on sectoral approaches to age management, which DWP plans to publish in 2007.

If you would like to comment on any aspect of this paper, or of age management in the transport and logistics sector (or on age management more generally), please write directly to the Centre for Research into the Older Workforce (CROW). We would be particularly interested in responses which:

- add relevant information on the shape of the sector and age management issues and practices within it;
- clarify the reasons for particular features (e.g. why one part of the sector has very different practices from others, or why transport and logistics is different from other sectors);

- identify examples of good practice which might be disseminated to other employers or sectors;
- identify questions which need further investigation.

Responses and comments on the content or issues raised by this paper should be sent by email to: crow@niace.org.uk

Or by post to:

Age Legislation Research
Centre for Research into the Older Workforce
NIACE
21 De Montfort Street
Leicester
LE1 7GE



11. Further information

Further information on age related issues, policies, practices, and legislation can be found at www.agepositive.gov.uk

You can request further copies of this paper, or contact the Government's Age Positive team at: agepositive@dwp.gsi.gov.uk

or write to:

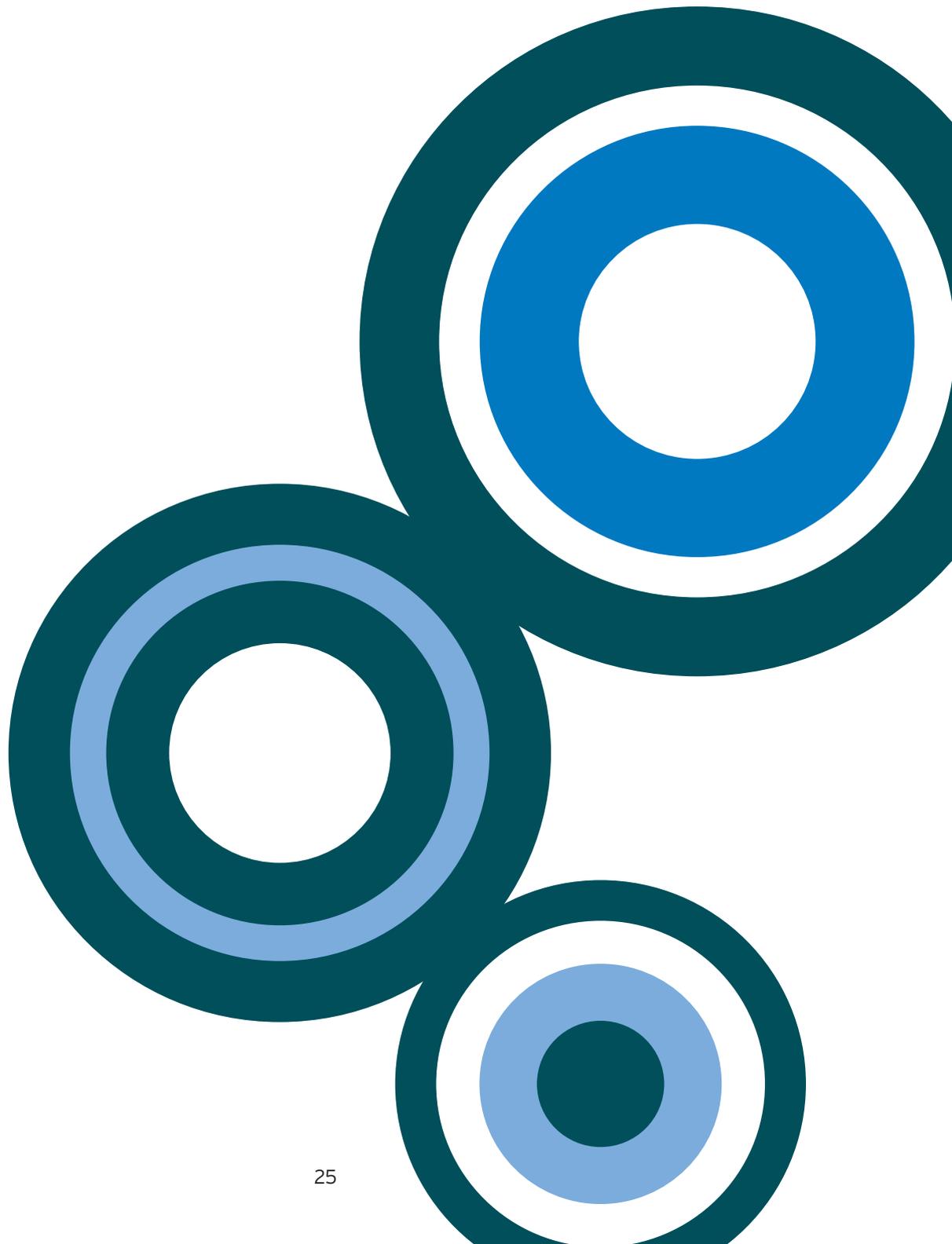
Age Positive Team
Extending Working Life Division
N10
Moorfoot
Sheffield
S1 4PQ

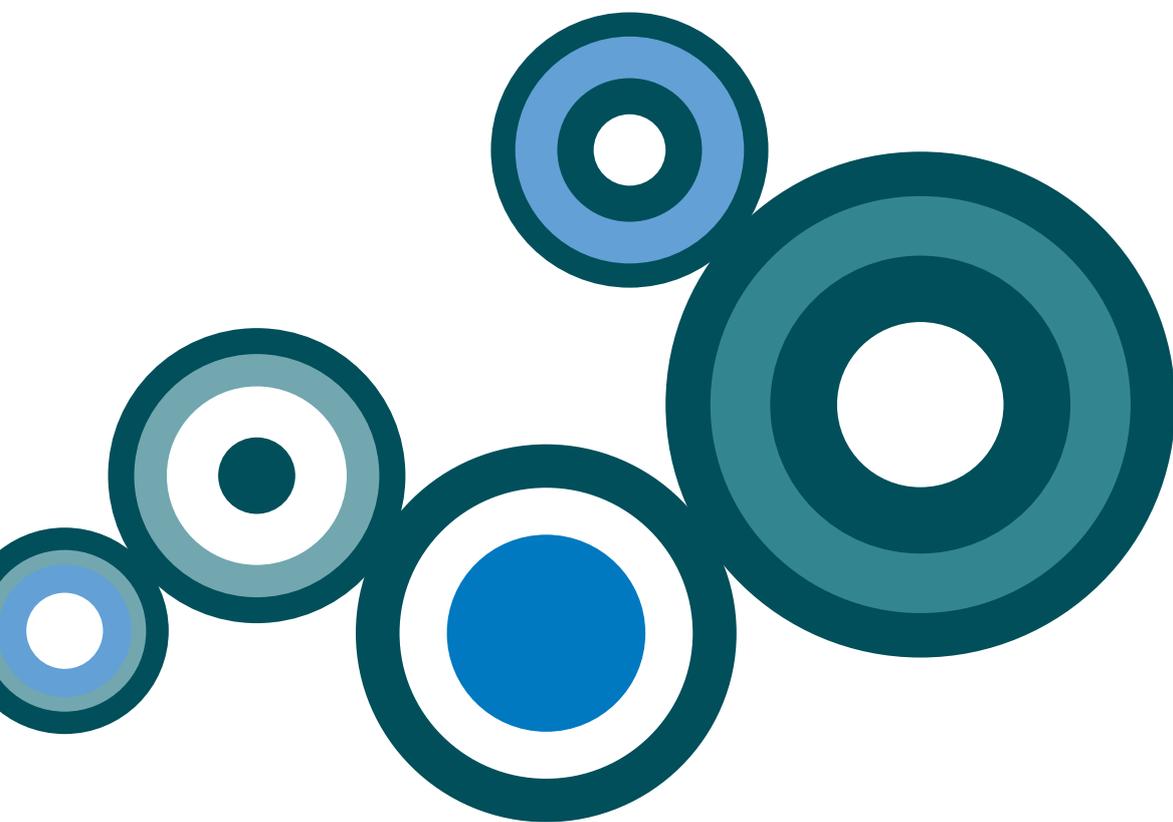
Details of the Age Discrimination Regulations, which will come into force in October 2006, can be found on the DTI's website at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

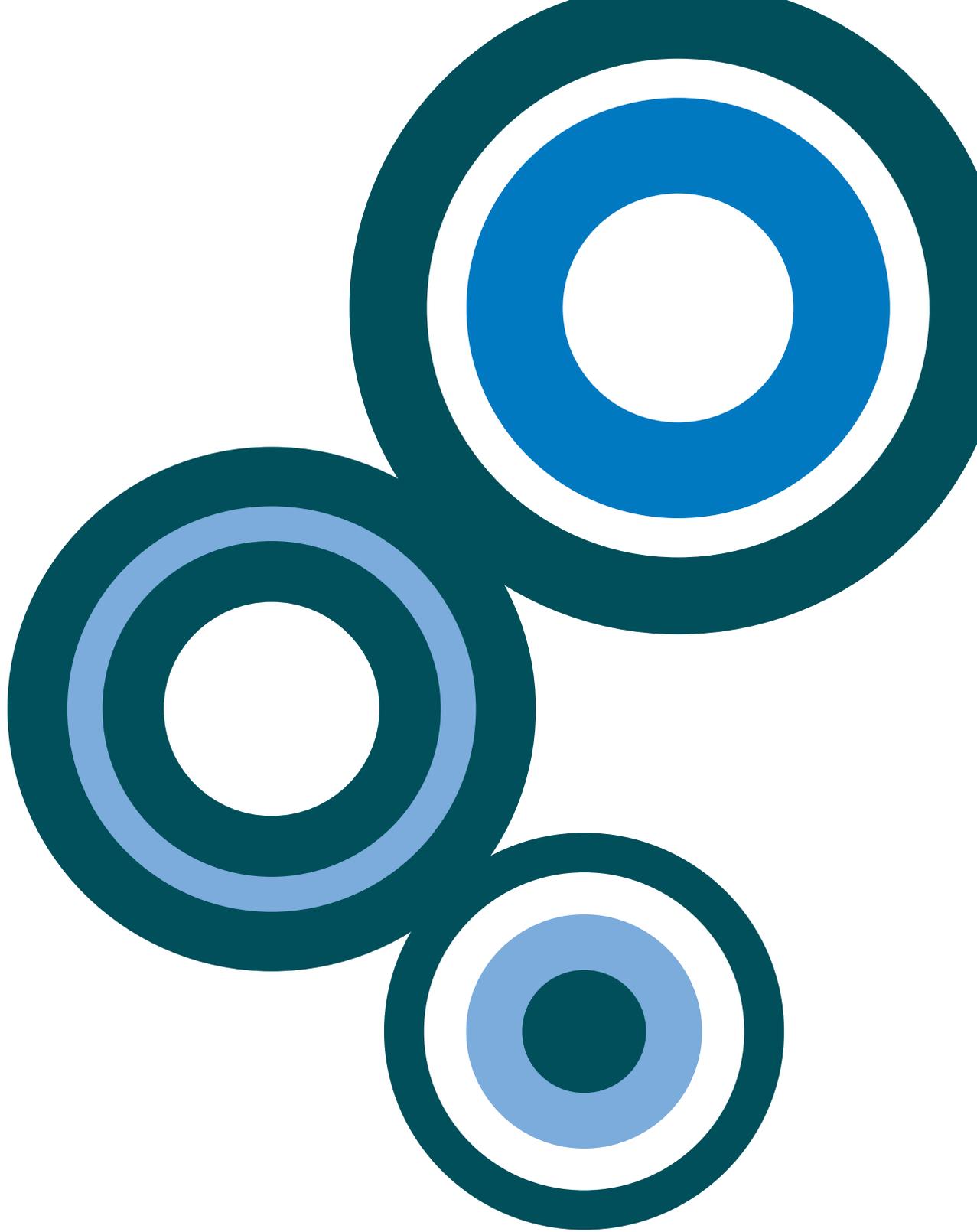
Advice on interpretation and good practice can be found on the ACAS website at: www.acas.gov.uk

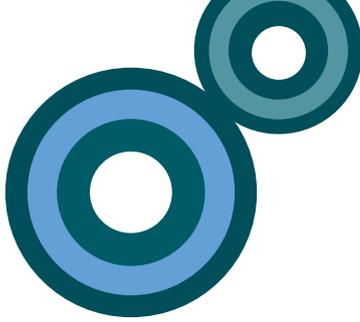
The full report of DWP and DTI's joint survey conducted by NIESR and BMRB which produced the evidence for this report is Survey of Employers' policies, practices and preferences relating to age by Metcalf & Meadows (DWP Research Report 325, DTI employment relations research series number 49). The full report is available for download free on the DWP website at: www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep325.pdf

Further information about CROW can be found at: www.niace.org.uk/crow









Members of the Age Partnership Group

Members of the Age Partnership Group, listed below, support and endorse the Be Ready campaign.

for England

Acas
Association of British Insurers (ABI)
Association of Chartered Certified Accountants (ACCA)
The British Chambers of Commerce (BCC)
Chartered Institute of Personnel and Development (CIPD)
Chartered Management Institute
Confederation of British Industry (CBI)
Department of Trade and Industry (DTI)
Department for Work and Pensions (DWP) - Chair
Employers Forum on Age (EFA)
EEF, the manufacturers' organisation
Federation of Small Businesses (FSB)
HM Revenue & Customs (HMRC)
Institute of Directors (IOD)
Improvement and Development Agency (IdeA)
Local Government Employees (LGE)
National Association of Pension Funds (NAPF)
Public Sector People Managers Association (PPMA)
Small Business Service (SBS)
Trades Union Congress (TUC)

for Scotland

Acas Scotland
A City for All Ages
Bank of Scotland
Better Government for Older People in Scotland
Careers Scotland
CBI Scotland
Department for Work and Pensions (DWP) - Chair
Equal Opportunities Commission, Scotland
Falkirk Council
FirstGroup plc
Help the Aged, Scotland
Highlands & Islands Enterprise
Highlands & Islands Equality Forum
Jobcentre Plus, Scotland
John Reid & Associates
Quality Scotland
Royal Bank of Scotland
School of Management, Edinburgh University
Scottish Chambers of Commerce
Scottish Council for Voluntary Organisations
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ACCA Wales
Age Alliance, Wales
Age Concern Cymru
The Chamber of Commerce
CBI Wales
Department for Work and Pensions (DWP) - Chair
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Genesis, Wales
Help the Aged in Wales
Jobcentre Plus, Wales
Menter a Busnes
PRIME-Cymru
Prospect Wales
Wales Social Partners Unit
Welsh Assembly Government
Welsh Local Government Association

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