

The Actuarial Profession
making financial sense of the future

Actuaries and the Law
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Retirement Round Up Claire Rankin

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New era of retirement

- Removal of Default Retirement Age
- Implications for employers and workplace pensions
- Objective justification
 - Compulsory retirement
 - Non-exempt differences in pension and other benefits on ground of age.

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Removal of Default Retirement Age

- On 6 April 2011
 - Retirement no longer a “fair” reason for dismissal.
- The end of compulsory retirement?
 - Transitional provisions (latest possible DRA retirement 5 October 2012)
 - Any compulsory retirement must be objectively justified
 - “Some other substantial reason” for dismissal.

Employer options

- Remove compulsory retirement age
- Retain compulsory retirement age
- Combination of both options.



Remove compulsory retirement age

Managing dismissals without a compulsory retirement age

- Treat as any other employee
- Need “fair” reason to dismiss
- No protection against claims for unfair dismissal or age discrimination.

Practical steps

- Absence management, appraisals and performance management
 - Consistency
- Workforce planning
 - Consistency
 - ACAS guidance.

Retain compulsory retirement age

Retain a compulsory retirement age for all or parts of workforce?

- Blanket policy for all = highly unlikely
- Must be able to objectively justify.

Procedural steps to take in compulsory retirement situation

- ACAS guidance: Working without the default retirement age
 - Adequate notice
 - Requests to work beyond retirement.

Current indications

- Many U.K. employers are not confident that they can objectively justify retaining a compulsory retirement age (“CRA”)
 - Is it time for a more European approach?
 - Can employers with good pensions be more bullish?
- Without a CRA, retirement is voluntary but the employer remains able to dismiss for other lawful reasons.



Recent surveys

CIPD

- 1 in 5 private sector employees have no financial plans for retirement.

Baring Asset Management

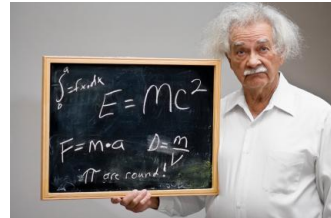
- 1 in 7 of over 65s and 33% of those aged 45- 64 do not know when they will be able to retire.



Possible outcomes (the science bit)

$$A + B = AGH! (+ \text{£})$$

- A = inadequate pension
- B = voluntary retirement



$$(A + \text{£}) + B = \text{😞} + \text{🧐} (+ \text{£})$$

- Hargreaves Lansdown survey- Government reforms will leave average worker £6k short of sum needed for comfortable retirement

Possible outcomes

$$(A + \text{£}) + C = \text{😞} \text{📄}$$

- C = compulsory retirement age plus objective justification.

$$(A + \text{£} \text{£}) + C = \text{🧐} \text{🧐}$$

$$(A + \text{£} \text{£}) + B = \text{🧐} \text{🧐}$$

What is objective justification?

- “Proportionate means of achieving a legitimate aim”
 - Genuine business need (legitimate aim) that a compulsory retirement age/other discriminatory treatment would address
 - CRA or treatment must in fact meet that aim
 - It is proportionate to use that CRA or treatment to meet that aim
- Evidence is crucial
- Guidance from case law.

Legitimate aims- some examples

- Workforce planning
- Facilitating the recruitment, retention and promotion of younger staff
- Contributing to a pleasant workplace and protecting the dignity of older workers by not subjecting them to performance management
- Ensuring a high quality of service and/or continued competence
- Maintaining an age balanced workforce and sharing job opportunities among the generations.

Proportionality

- Consider alternatives
- Go no further than is necessary to achieve the legitimate aim.



Recent U.K. case law

- Retiring partners at 65 to enable workforce planning and provide promotion opportunities justified (in light of DRA)
 - *Seldon v Clarkson Wright and Jakes*
- Retirement of Recorders at 65 could not be justified
 - *Hampton v Lord Chancellor and Ministry of Justice*
- Retiring football referees at 48 to create a career route for match officials could not be justified
 - *Martin and Others v Professional Game Match Officials*



Recent ECJ case law

- Retiring an employee at 65 where this age had been agreed under a collective agreement and pension was available was justified
 - *Rosenblatt v Oellerking Gebaudereinigungsges*
- Retiring dentists at 68 to provide younger dentists with the opportunity to work in the German NHS was potentially justified
 - *Petersen v Berufungsausschuss für Zahn für den Bezirk Westfalen-Lippe*
- Retiring German civil servants at age 65, whilst allowing them to continue working until age 68 if in the interests of the service that they do so, was potentially justified
 - *Fuchs v Land Hessen ECJ 21 July 2011.*

Role of pension schemes

Work those pensions!

- Maximise employee engagement
- Improve retirement outcomes
- Key Regulator focus.



Role of occupational pensions

Flexible retirement in occupational schemes

- Not a member right (unless rules say so)
 - Review A Day amendments
- If permit, do so as option for some or all members of minimum pension age and above
- Permit subject to employer consent? Link to retirement policy, reduced hours, facilitate succession planning?
- All or part of pension?
- New pension rights for pensioners in service?
 - Automatic enrolment.

Review occupational pension schemes

- Are rules fit for purpose in new era?
- What occurs at NRD?
 - Member takes pension at actual retirement?
 - Member takes pension at NRD?
 - Member able to take pension after NRD and before actual retirement?
- Does the member have options at NRD?

Review occupational pension schemes

- What benefits are provided pre and post the scheme's NRD?
 - Accrual as normal post NRD or other or no benefits?
 - If benefits differ, can the difference be objectively justified?
 - Ongoing salary link or late retirement factor (for pre NRD benefits), best of both, or member choice?
 - Are any distinctions in death benefits pre and post NRD for active members lawful?
- Review role of scheme and member options at NRD as part of retirement overhaul.

Any questions?

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