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AGE MATTERS

*Towards Equality and  
Diversity:*  
Report of Responses  
on Age

June 2003



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# Towards Equality and Diversity: Report of Responses on Age

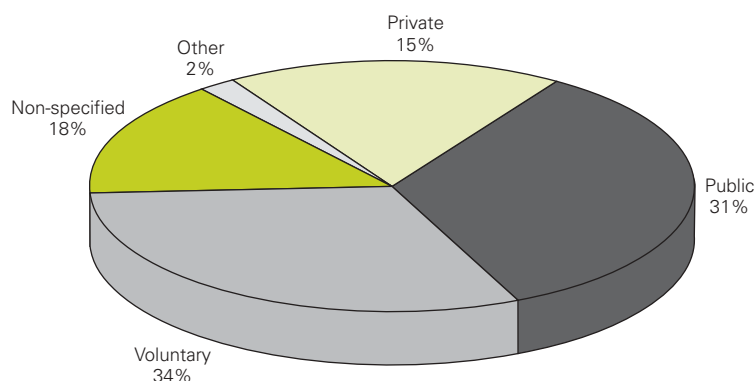
## Background

1. In the consultation – *Towards Equality and Diversity* – which took place from December 2001 to March 2002 – we sought views on a number of broad key issues. We also asked:
  - a. what age based practices employers had;
  - b. why they had them;
  - c. why and if they needed to keep them.
2. This paper is a summary of the responses. These figures represent a combination of individual and institutional responses. It is not possible, therefore, to say how many employers or employees these represent, nor to infer anything about the views of the general population from the responses. They do, however, help us to understand the issues that face both groups in the area of age discrimination.

## Number of responses

3. In total 870 responses were received to the first consultation “*Towards Equality and Diversity*”, of those 583 responses came from organisations and 287 from individuals. A wide selection of small and large organisations took part in the consultation ranging from those with under 10 employees to those with over 250. Responses were received from a wide variety of sectors.

## Percentage of organisations from different sectors



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## Age discrimination in the workplace

4. The responses to the consultation revealed how common age discrimination was – 50% of respondents<sup>1</sup> had either suffered age discrimination at work or had witnessed someone else suffering. Discrimination took a variety of forms:

Being forced to retire after reaching a certain age	22%
Not being given a job they applied for	18%
Being prevented from attending training courses	17%
Being told their age was a barrier to general advancement	17%
Assumptions being made about abilities due to age	15%
Being selected for redundancy because of age	13%

5. Responses suggested that age discrimination in the workplace stemmed from employers having very strong preconceptions about age and ability. For example, young workers were dynamic, and easier to train; older workers were mature and more reliable, but unable to adapt to new working practices and sophisticated technology.
6. Some typical examples of age discrimination were: employers disregarding working time regulations when employing younger workers; and older workers not being successful in their job search because they were considered to be too expensive. Difficulties for older female workers were also highlighted, as were those experienced by older workers who faced pensions restrictions when re-entering the labour market.

## Tackling age discrimination

7. Over two thirds of those who had suffered age discrimination at work believed that strict legislation outlawing age discrimination needed to be introduced<sup>2</sup>. But legislation was not the only solution. Around a third of people suggested that the only way of preventing such discrimination happening again was to educate people and dispel the myths surrounding workers of different ages and their abilities.

<sup>1</sup> There were 434 responses to this question (question 31 of the consultation: "Have you suffered age discrimination at work, or witnessed anybody else suffering age discrimination?").

<sup>2</sup> There were 172 responses to this question (question 33 of the consultation: "What do you think might help prevent such discrimination from happening again?").

8. Respondents demonstrated contrasting views on how far the government should go in implementing the legislation:
  - a. the age lobby felt that legislation should extend to cover other areas such as goods and services;
  - b. age and other equality organisations were concerned that implementing the Directive through secondary legislation rather than primary legislation would undermine the authority of the Directive;
  - c. the 2006 deadline for implementation of the age provisions was too far off;
  - d. business was concerned that the legislation should be implemented without undermining workforce planning and succession management;
  - e. small businesses were concerned about the potential costs associated with implementing the Directive, and how they would obtain advice and support;
  - f. trade unions needed time to review their collective agreements and how they might have to change in light of the new legislation;
  - g. professional bodies also highlighted the effects that the new legislation would have on their members' activities. For example, the insurance industry felt that there were implications for providers of group life insurance, income protection, critical illness, medical schemes, and pension schemes.
9. Many of the views were closely tied to concerns about enforcement:
  - a. age provisions would have little effect if they were not accompanied by effective sanction measures;
  - b. a number of respondents welcomed the proposals concerning the establishment of a single equality commission, but felt that transitional arrangements should create an age commission or that there should be other interim arrangements for the enforcement and support of the new legislation.

### **The principle of objective justification**

10. The Directive outlaws differences of treatment on grounds of age in employment and vocational training except where they can be

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objectively justified by a legitimate aim. 63% of respondents thought that in some cases it could be justified for an employer to specify a minimum or a maximum age of recruitment for a job<sup>3</sup>.

11. Respondents suggested that there were a variety of circumstances under which age related practices could be justified:

If a job required a minimum age such as driving, or bar work	30%
If the return on training was not cost beneficial	30%
If the work was of a very physical nature an age specification could be justified	21%
If a minimum or maximum age limit must be set on grounds of health and safety	18%
If the job needed life experience e.g. social work	18%
If peers of similar age were needed i.e. holiday rep on an 18-30 holiday	11%

*Note: percentages may not sum because multiple responses possible*

12. Some responses pointed out that some health and safety restrictions were often imposed on the basis of assumptions about physical capability related to age. Proper performance management systems ensured that people who were fit enough to do a job and were not putting either themselves or others in danger could stay in work if they wanted to.
13. On the whole most respondents took a limited view of objective justification: whilst, in principle, it was right to justify a difference of treatment on the grounds of age, in practice there were very few instances in which this could actually be done. Some examples were:
- to tackle under-representation of certain groups in the workforce;
  - to enable effective succession planning;
  - New Deal policies;
  - jobs where a strong customer preference required someone of a certain age, or graduate recruitment schemes.

<sup>3</sup> There were 480 responses to this question (question 34 of the consultation: "Can it ever be justified, for example, for an employer to specify a minimum or maximum age of recruitment for a job?").

## Recruitment

14. Views were split on whether there was a place for age based recruitment schemes: 41% of respondents thought such schemes could be justifiable and 59% thought not<sup>4</sup>:
  - a. graduate training schemes<sup>5</sup> – 32% of those in favour of age based recruitment said that graduate recruitment schemes helped employers plan their intake and focus the recruitment process; 17% thought that if there was a genuine need to employ a graduate as specific knowledge or level of learning is required it was justifiable. 31% of respondents remarked that graduates could be of any age, not necessarily in their early twenties, and that this should be taken into consideration. Graduate recruitment schemes for ‘first jobbers’ might also be justifiable;
  - b. maximum and minimum age limits for recruitment – competence and fitness was more relevant than age. But in some circumstances age limits might be justified – for example, where the absence of a threshold would result in significant increased costs (insurance premiums, training costs, general employment costs), or a post needs to be occupied by someone of a particular age;
  - c. age organisations thought that the use of age limits could be justified only in exceptional circumstances where for example, recruitment schemes aim to redress the balance in other groups, but not to the exclusion of other groups.

## Promotion

15. 65%<sup>6</sup> of respondents thought that employers should not be able to deny promotion on age grounds: promotion was a question of merit.

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4 There were 448 responses to this question (question 37 of the consultation “Do you consider such [recruitment] schemes to be justifiable?”).

5 There were 169 responses to this question (question 38 of the consultation “If you answered yes to the last question 37, in what circumstances would you regard them as justifiable? What are your views on graduate recruitment schemes, for example?”).

6 There were 468 responses to this question (question 39 “Refusing to consider somebody for promotion solely because of his or her age would be prohibited unless the new legislation allows for this to be justified. Do you think it should do so?”).

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16. 35% thought that employers should be allowed to refuse promotion on age grounds. The main reason was cost effectiveness – for example, where there was only a short time before the person’s retirement.

### **Training**

17. 68% of respondents thought it would be reasonable to deny a person training in certain circumstances – for example, when the cost of training would be unreasonable when set against the amount of time that person would spend working for the organisation<sup>7</sup>. However, 64% said they would not prevent an employee from attending a training event because they were due to retire shortly<sup>8</sup>. When asked for other circumstances where exceptions should be made 47% said there were no circumstances that would prevent an employee from attending training; 27% said that if the cost of training outweighed the benefits they would prevent an employee from attending training. Only 12% of respondents suggested that if it affected health and safety they would prevent an employee from participating in training<sup>9</sup>.
18. Some thought that employees might pay back the costs of training if they did not continue with the company for a specific length of time after the training had been completed. This would apply across all ages, and would help ensure that employers got a return on their training investment.

### **Genuine occupational requirements**

19. The Directive provides for narrowly defined exceptions to be made where a post has to be occupied by someone of a particular age. Respondents were asked for examples of where this might be the case<sup>10</sup>:

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7 There were 468 responses to this question (question 41 “Would you support such an exception [in a situation in which the cost of training would be unreasonable when set against the amount of time that person would spend working for the organisation]”).

8 There were 428 responses to this question (question 42 “Would you prevent an employee from attending a training event because they were due to retire shortly?”).

9 There were 151 responses to this question (question 43 “Can you think of any other circumstances where exceptions should be made in relation to training?”).

10 There were 128 responses to this question (question 44 “Can you suggest other examples of work or training where age could be legitimately considered a genuine job requirement?”).

If the job required peers of a similar age, e.g. elderly people seeking advice from Age Concern, or people attending a family planning clinic who may find it easier to relate to someone of a similar age	31%
Dramatic arts could legitimately consider age to be a genuine job requirement. This could include modelling, advertising and acting	25%
If there is a minimum age requirement for a job such as driving or bar work	20%

### **Positive action**

20. The Directive permits the UK to maintain or adopt positive action measures to “prevent or compensate for disadvantages” linked to age. 93% agreed with the approach of the new legislation enabling employers to take positive action<sup>11</sup>. Some concern was expressed that positive action should not be taken at the expense of promoting equality and diversity generally.

### **Pay/non-pay benefits**

21. Respondents suggested a number of pay and non-pay practices that might be considered discriminatory for either younger or older workers<sup>12</sup>:

<sup>11</sup> There were 615 responses to this question (question 13 “In preparing new legislation on sexual orientation, religion and age, we propose to enable employers – if they wish – to take positive action on grounds comparable to those set out in the RRA. Do you agree?”).

<sup>12</sup> There were 266 responses to this question (question 45 of the consultation “Do you know of any pay or non-pay practices that might be considered discriminatory for either younger or older workers? Are there sound reasons to justify continuing these practices?”).

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Annual leave	20%
Long service awards	15%
Trainee pay (including National Minimum Wage)	15%
Incremental pay awards	11%

22. 49% of respondents suggested that employers should be allowed to reward long service and loyalty without being accused of some form of discrimination. An overwhelming majority of respondents (82%) agreed that annual incremental pay might be regarded as a justified exception to reflect experience and reward loyalty to an employer<sup>13</sup>. Employers and employees generally welcomed pay and non-pay benefits.

### Redundancy

23. 74% of respondents thought that offering attractive voluntary redundancy packages based on age or length of service could be justified<sup>14</sup>. Of those, 48% said that it was justifiable to reward redundancy packages based on the loyalty and contribution of an employee to a company, and 42% said that if the package was based purely on length of service age should not be a contributory factor. 16% thought that it depended on how close the person is to retirement, as this affects chances of finding further work. This highlights the link between retirement ages and redundancy payments.

### Retirement

24. 43% of respondents were in favour of employers being able to require employees to retire at a certain age, and 57% against<sup>15</sup>. Of those in favour, 68% thought that legal limits should be placed on their right to do so<sup>16</sup>.

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<sup>13</sup> There were 461 responses to this question (question 46 "Annual incremental pay might be regarded as a justified exception to reflect experience and reward loyalty to an employer, do you agree?").

<sup>14</sup> There were 421 responses to this question (question 47 "At present many employers offer attractive voluntary redundancy packages based on age or length of service. Can this more favourable treatment be justified?").

<sup>15</sup> There were 453 responses to this question (question 49 "Do you think employers should be able to require people to retire at a certain age?").

<sup>16</sup> There were 185 responses to this question (question 50 "If you answered yes to question 49, do you think there should be any legal limits placed on their right to do so?").

25. Respondents were also asked about:

Concerns over current retirement practices<sup>17</sup>

Retirement practices should be flexible and should be left up to the individual employer and employee to decide. People should also be able to reduce their hours, in order to 'phase in' retirement rather than going from full time work to none	52%
Retirement should depend upon people's ability to do the job rather than their age	24%
Useful skills were being lost because people were being forced to retire even though there was no one to replace them	18%
People were being forced to retire before they were financially secure	15%

*Note: percentages may not sum because multiple responses possible*

Advantages of no fixed retirement age<sup>18</sup>

Companies would be able to retain experience and ability	48%
Companies could be flexible, with employees free to continue in work if both the employer and the employee agreed	39%
A longer working life meant less drain on public funds	16%
It would make for a more diverse workforce	16%

*Note: percentages may not sum because multiple responses possible*

<sup>17</sup> There were 262 responses to this question (question 51 "What concerns, if any, do you have about current retirement practices?").

<sup>18</sup> There were 339 responses to this question (question 52 "In your opinion what would be the advantages and disadvantages if there were no fixed retirement age?").

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### Disadvantages of no fixed retirement age

Fewer opportunities for promotion and getting 'new blood' into the company	30%
Fewer opportunities for the young	16%
It would raise concerns surrounding health and safety	14%
Employers using disciplinary procedures to dismiss staff, which could be costly in time and money with the rise of Tribunals	13%
A detrimental effect on company pension schemes	13%
Employers having to retain people with declining skills	12%

*Note: percentages may not sum because multiple responses possible*

26. The majority of organisations thought that people wanted the flexibility to choose when they retired, or to retire gradually. However, responses from business and their representative organisations urged caution: the abolition of retirement ages could result in increased litigation and create real problems for businesses such as:

- a. manpower planning – with no retirement age, employers have no idea when people will leave, this could create bottlenecks, and high turnover of younger staff;
- b. managing benefits – employers obliged to continue paying into people's pensions much longer than they do currently;
- c. employee relations difficulties – with no retirement age, employers would have to dismiss employees on competence grounds if they did not want to retire.

