

## **UCEA/ECU Age Discrimination Working Group Guidance**

### **Age Discrimination Legislation 2006**

#### **Guidance Note 2: Recruitment, Selection and Promotion – A UCEA Publication**

##### **Scope of guidance**

This guidance note addresses the implications of the Employment (Age) Equality Regulations, due to be implemented on 1 October 2006, for recruitment, selection and promotion arrangements in the higher education sector.

##### **The regulatory framework**

As with most areas of anti-discrimination law, there are two potential types of discrimination on the grounds of age:

- *Direct discrimination*, occurs where one person (the employer) treats another less favourably on the grounds of age. This is lawful only where the employer can objectively justify age related treatment or practices.
- *Indirect discrimination* occurs where a provision, criterion or practice is applied generally but which disadvantages people of a particular age group, whether “young” or “old”. This can occur anywhere in the employment cycle from recruitment, through an individual’s working life, to retirement practices.

The Regulations provide that both direct and indirect age discrimination may be justified objectively. Objective justification means that the employer will have to show that the age discriminatory treatment, policy or practice is a “proportionate means of achieving a legitimate aim”. The DTI’s consultation paper states that the test of objective justification “will not be an easy one to satisfy”. Therefore to seek, systematically, to rely on this statutory defence would be potentially hazardous. Higher education employers are advised to seek to comply with the spirit, as well as the letter, of the legislative requirements.

There are exceptions within the Regulations to the discrimination provisions, as follows:

- Where there is a genuine occupational requirement for a person of a particular age.
- On the grounds of positive action (i.e. encouraging persons of a particular age or age group to take advantage of opportunities for doing particular work where it reasonably appears to the employer that this prevents or compensates for disadvantages linked to age).
- The provision of enhanced redundancy payments.
- Salaries covered by age related statutory minimum wage and statutory apprenticeship rates.

- Specific length of service provisions (see 'Guidance on implications for pay and benefits', Guidance Note 1).

## **Specific provisions relating to recruitment, selection or promotion**

In countries that already have age discrimination in place (e.g. USA and Ireland) the highest number of court cases have been in relation to recruitment practice and outcomes. It is therefore particularly important to review your practices relating to recruitment, selection and promotion.

Decisions based on age related criteria are generally forbidden by the Regulations. However the Regulations will provide limited protection to organisations that are forced to discriminate on age grounds e.g. bar staff serving alcohol must be at least 18.

Decisions based on age related criteria will be lawful where the employer can show either that this is objectively justified or that there is a genuine occupational requirement for the person to be of a certain age. For example, it may be possible to justify the fixing of a maximum age for recruitment based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

Also, it will be possible to discriminate in respect of applicants above the default retirement age i.e. aged 65 or older (or within 6 months of this).

Unlike the Regulations' provisions on pay and benefits which allow differentiation on the grounds of service up to a maximum of five years (see 'Guidance on Implications for Pay and Benefits', Guidance Note 1), there is no length of service justification in relation to recruitment, selection or promotion.

## **Recruitment**

### ***General***

In all cases recruitment criteria should be based on the skills and abilities needed to do the job. It is important to avoid unnecessary standards relating to experience, personal qualities or qualifications that could be discriminatory on grounds of age. For example, unnecessary minimum requirements for experience or qualifications may constitute indirect discrimination against younger persons. It is preferable to state what experience is required rather than how much. Similarly an undue emphasis on formal qualifications may discriminate against older candidates who have acquired the necessary skills through experience rather than by formal education.

### ***Job descriptions and person specifications***

- Job descriptions and person specifications (e.g. descriptions of the 'essential' and 'desirable' characteristics required) should be objective, based solely on the skills, relevant experience and competencies required to do the job.
- Specific details should be used to explain job requirements, for example, instead of saying 'needs to be physically fit', the person specification might say 'needs to be able to occasionally stack heavy books onto library shelves'.
- Do not use criteria that might be deemed to be indirectly related to age. For example, the government's consultation document gives the example of an advertisement which included a requirement to have held a driving license for five years. A higher proportion of those aged over 40 will have fulfilled this requirement than those aged in their mid-20s. Similarly, ACAS advise employers to avoid asking for 'so many years' experience as this may rule out younger people who have the skills required but have not had the opportunity to

demonstrate them over an extended period. Employers will need to be able to justify any time requirement specified.

### ***Advertising***

- Job adverts should state clearly what the job is and the skills, competencies, qualifications or equivalent experience the candidate needs to do the job effectively, based on the job description and person specification.
- Age, age-related criteria or age ranges should not be used in adverts except to encourage applications from those age groups where it can be shown applications are low or non-existent, i.e. 'positive action'. Where this is the case it should be clearly stated.
- It is also important to be wary of language that may imply a certain age-group e.g. 'youthful' 'mature' or 'young graduates', as such terms might be indirectly discriminatory, for example in the appointment of student ambassadors.
- In order to maximise your pool of candidates, consider where the advert is being placed. You should also ensure that any images used reflect age diversity.

### ***Application forms***

- It is not age-discriminatory in itself to require a birth date or age on application forms. However this information could be used to make discriminatory decisions. In line with best practice for all forms of diversity monitoring, forms should be designed so that, wherever possible, selectors do not see unnecessary personal details and there is no unnecessary dependency on chronological information. For example, a 'tear-off' section of the application form can be used to capture personal information, including age, which could then be used for monitoring purposes only.

### ***Recruitment and search agencies***

- If a recruitment or search agency is used for any part of the recruitment process their equal opportunities policies and general approach to age diversity should be checked to ensure compliance with best practice on equality and diversity. If necessary, steps should be taken to ensure their approach is non-discriminatory.

## **Selection**

### ***General***

- All recruiters and selectors should be trained in equal opportunities selection techniques. This training should highlight the need to avoid subjectivity, based on, for example, physical characteristics, and related but unfounded assumptions. It should advise against the kinds of questions that might be seen to be discriminatory, such as "aren't you over-qualified for the job"?
- The selection process should ensure that all elements of the process in their design and content, e.g. interviews, team exercises, psychometric tests, do not directly or indirectly favour or hinder any age group, and that assessment is marked in accordance with genuine job requirements.
- Employers should be careful not to make assumptions about the health status of older candidates. Of course, some jobs do require physically challenging tasks. In such situations, employers should ask either all of the candidates about health and fitness, or none of them.

### **Shortlisting**

- Application forms should be reviewed in accordance with the requirements laid out in the job description and person specification. The criteria should be applied objectively and consistently for all applicants.
- The sifting process should ideally be conducted by more than one person, using a simple marking system to show how the candidates meet your requirements. You must ensure that you are able to justify the decisions made, should record your decisions and retain these records ideally for 12 months.

### **Interviewing**

- Interviewers should follow normal equality guidelines in respect of the process and questions to be asked. For example, interviews should preferably be conducted by more than one person, and candidates should be marked against selection criteria, excluding unfounded assumptions based on physical characteristics or an individual's personal circumstances, such as expectations about when an individual might want to retire. Again, in all instances, decisions should be recorded and retained ideally for 12 months from the date of the interview.

### **Medical information**

- An individual's age should not be used to make assumptions about their abilities or fitness. Where a health related judgment is required, for example in response to information on a medical condition provided by the candidate, an assessment by an occupational health or medical practitioner should be sought.

### **Promotion**

In addition to following the above guidance, promotion processes and practices should be reviewed to ensure that the focus is on the skills, abilities and potential of the candidates. In particular:

- Explicit or implicit reference to age should be ruled out when this is irrelevant.
- Ensure that opportunities for promotion and training are made known to all employees and are available to everyone on a fair and equitable basis, regardless of age.
- Ensure that job-related training or development opportunities are available to all employees regardless of age.
- Length of service criteria should not be used; there should be no minimum period of service before an individual could be considered suitable for the next grade – neither should the process discriminate in favour of applicants with the longest service.
- You should distinguish clearly between the promotion process and the process used to re-evaluate jobs under the terms of your job evaluation scheme.
- Salary on promotion should reflect the institution's policy relating to salary on appointment or promotion. This policy should seek to minimise the possibility of bringing discrimination into the institution by adopting discriminatory practices from other organisations.

## Recommended Actions

Institutions should:

- Scrutinise all recruitment, selection and promotion related practices, policies and procedures to establish whether they contain age related or length of service criteria. If so, they need to be examined to test whether the criteria used can be justified. If they can, any evidence from which it can be concluded there is a benefit to the institution should be identified and documented. If they cannot be justified, they should be revised, in consultation with relevant stakeholders.
- Set in place the data monitoring systems that will support review by age and length of service, as well as the other monitoring criteria referred to in the 2002 JNCHES guidance on equal pay reviews. This could include monitoring:
  - the total workforce to check for age diversity.
  - whether applications are coming from all age groups.
- For monitoring purposes, personal details should be separated and re-introduced at the end of the recruitment process e.g. by using tear off forms. Monitoring recruitment statistics provides useful information on what is happening in the recruitment process.
- Consider whether it would be helpful to include age in a wider equality impact assessment.
- Provide information and training to appropriate staff to ensure that no age or service related criteria are used to influence recruitment, selection or promotion decisions except where these have been judged by the institution to be objectively justifiable. Consider whether your training also covers adequately the need to avoid victimisation or harassment on the grounds of age.
- Integrate age related policies and good practices into a broader approach to equality and diversity; communicate policy to all managers and employees.

## Resources

UCEA/ECU Age Discrimination Working Group Guidance: 'Guidance Note 1: Pay and Benefits – a UCEA publication', available at [www.ucea.ac.uk](http://www.ucea.ac.uk) and [www.ecu.ac.uk](http://www.ecu.ac.uk).

Age and the workplace. A guide for employers. ACAS. (available at [www.acas.org.uk](http://www.acas.org.uk))