

THE IMPACT OF AGE DISCRIMINATION LEGISLATION ON THE HIGHER EDUCATION SECTOR

A LITERATURE REVIEW

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INTRODUCTION

This literature review was commissioned by the Equality Challenge Unit (ECU) in response to the UK legislation regarding age discrimination. The purpose of the review is to examine the impact of age discrimination legislation within the Higher Education (HE) sector in a range of specific countries where such legislation has existed for some time. The specific question that the review aims to answer is:

What lessons can be learned from the experience of other countries with regard to the implementation of age legislation in the UK HE sector?

The countries to be included in this review are the United Kingdom, the Republic of Ireland, Australia, New Zealand, Canada and Finland, which have had legislation for some time and have made particular progress. The review is not intended to be a review of literature regarding countries other than those stated above (e.g. the USA), nor does it cover the impact of age legislation on employers outside of the HE sector or the impact of other diversity legislation.

CONTEXT

The UK legislation

The European Employment Directive requires all member states to introduce legislation prohibiting direct and indirect discrimination at work, including age discrimination. The Employment Equality (Age) Regulations 2006 came into force on 1 October 2006. The regulations apply to employment and vocational training and prohibit unjustified direct and indirect age discrimination, and all harassment and victimisation on grounds of age, of people of any age, young or old.

The regulations seek to remove age discrimination in terms of recruitment, promotion, training, unjustified retirement ages of below 65 and to remove the current age limit for unfair dismissal and redundancy rights. They also introduce a right for employees to request working beyond retirement age and a duty on employers to consider that request. Although there are no cases to note at present, there is currently the HEYDAY Judicial Review which is considering the default retirement age set by the recent legislation.

It should be noted that the interpretation of vocational training within the UK is very broad and includes a variety of features of the provision of vocational training, including the provision of courses for students and student services.

Overseas legislation on age discrimination

Australia

Legislation to prohibit age discrimination was introduced in all Australian states and territories in the 1990s. State anti-discrimination laws include multiple grounds for complaint, of which age is one. At Commonwealth level, the 1988 Industrial Relations Act included the outlawing of age discrimination in "employment and occupation". This was superseded by the 1996 Workplace Relations Act, which includes the same clause. This legislation covers direct and indirect discrimination and harassment and includes advertising of vacancies, recruitment, promotion, pay, training, termination and terms of employment. The various equality laws also cover a range of areas outside of employment including education.

Canada

There is legislation prohibiting discrimination at both the federal and provincial levels, collectively referred to as 'human rights legislation'. Age discrimination legislation was first developed in the 1960s, and by the 1970s human rights legislation existed in all 10 provinces. The federal Act applies only to federally regulated employers, whereas other employers are subject to the legislation of the province in which they operate. The federal Charter of Rights and Freedom (1982) – part of the constitution – lists a number of prohibited grounds of discrimination, including age. This legislation applies to a range of people including employers and vocational training advisors, and covers direct and indirect discrimination, discrimination because of association, victimisation and harassment over the entire employment cycle. It also covers a wide range of non-labour market discrimination.

From December 12th 2006, Ontario will introduce the Ending Mandatory Retirement Statute Law Amendment Act, which will remove mandatory retirement.

New Zealand

The 1998 Human Rights Act provides protection against discrimination on a number of grounds, including age, in a number of areas including employment, industrial and professional associations, qualifying bodies, vocational training bodies and education. This includes direct and indirect discrimination and harassment.

Republic of Ireland

The 1998 Employment Equality Act addresses discrimination in the labour market, including age discrimination. The 2000 Equal Status Act extends the cover of anti-discrimination to include the provision of goods and services. The 1998 Act covers direct and indirect discrimination, harassment and victimisation with regard to access to employment, terms and conditions, pay, vocational training and work experience, promotion and membership of unions and professional bodies. When the 1998 Act was introduced, it had an upper age limit of 65 years. However, this was changed by the Equality Act of 2004 that brought people of over 65 years within the terms of the Act.

Finland

The prohibition of age discrimination exists in three main legal instruments – the Constitution of Finland (2000), the 1970 Contract of Employment Act and the Penal Code: Employment Offences (1995). Age is one of a number of conditions in which the constitution applies to everyone and the other laws apply to employers, employees and those seeking employment.

The rest of Europe

There are a number of other countries in Europe with anti-discrimination legislation including, Spain, Belgium, France, Greece, The Netherlands, Portugal and Sweden. However, age is not necessarily named in this legislation, or if it is, it is found in particular aspects of the legislation. For example, Spain has legislation outlawing age discrimination in work conditions and recruitment, and Belgium has an Act prohibiting the introduction of a maximum age in recruitment.

The USA

The USA is by far the most advanced in terms of age discrimination legislation and is the only country out of those examined, other than the UK, to have legislation specifically for age discrimination – the Age Discrimination in Employment Act (ADEA) was first introduced in 1967. The Older Worker Benefits Protection Act was introduced in 1990. ADEA covers arbitrary age discrimination and victimisation across the whole employment cycle, including in the advertising of vacancies and training opportunities. The 1975 Age Discrimination Act prohibits age discrimination in all programmes and activities receiving federal financial assistance, including in educational institutions. It should be noted that all of this legislation is designed to protect only older workers.

Differences in legislation

The UK legislation differs from much of the above legislation in its creation of unique regulations regarding age. The legislation in Australia, Canada, Ireland, New Zealand and Finland comprises Acts that cover discrimination on a number of grounds, including age, rather than having legislation specific to age as in the UK. The legislation in each of the countries covered above covers vocational training as well as employment but does not specify how broadly this should be interpreted or whether this includes the provision of courses to students or student services.

LITERATURE REVIEW

Structure

The review of the literature below is divided into three parts. First, a review of those publications published in the UK prior to the release of the legislation specifically targeting the HE sector. Second, a review of the literature assessing the impact of age discrimination legislation on the HE sector in the other countries selected for this report; this section also briefly considers the implications of particularly relevant case law where it exists in those countries as well as the implications of certain key non HE age discrimination cases. The final part looks at practitioner-based research.

Publications on age discrimination – a review of advice to the HE sector in the UK

A number of documents have been produced in the UK providing advice to organisations with regard to the 2006 age discrimination legislation. As the focus of this literature review is the HE sector, only those references specifically for that sector have been discussed here. It should not be forgotten however, that HEIs are subject to the same requirements to eliminate age discrimination in employment as other employers; therefore the advice that has been provided to employers in general such as that from Age Positive or ACAS is also of relevance to the HE sector.

UNISON noted that the legislation will have a direct impact on services within education in one of their regular newsletters. The Age Equality joint agreement between UNISON, the Association of Colleges (AOC), the Association for College Management, GMB, UCU and the Transport and General Workers Union (TGWU) was developed to allow FE providers to meet their obligations under the European Directive on equal treatment. In this document the organisations expressed their commitment to promote equality and

eliminate prejudice and discrimination and to ensure that all employees have equal access to facilities regardless of their age. The document goes on to provide advice to colleges under the headings of, among others; recruitment, selection and promotion, training and development, continuing employment, retirement, dismissal and complaints of harassment and discrimination. This document, however, refers solely to employees of the college and not to students.

NATFHE (now UCU) (2006) has provided some recommendations to HEIs as employers.

- Misconceptions and stereotypes about workers, based on their age, should be challenged and rejected.
- The use of age and age-related criteria should be avoided when making decisions about recruitment, selection for training, counselling, appraisal, development, promotion and when determining pay or redundancy criteria.
- Equality policies should contain an undertaking to remove arbitrary age discrimination and to ensure job-related criteria are used in all employment decisions.
- Dates of birth should be used only for equality monitoring purposes.
- All staff, students, visitors and other members of the organisation should be made aware of the effects of age discrimination and how to eliminate it.
- Regular monitoring should take place to establish whether or not particular age groups suffer discrimination.
- Positive action policies should be considered in order to encourage people in those age groups subject to disadvantage, particularly with relation to recruitment, training and career development.

McNair and Flynn (2006) conducted research for the Department of Work and Pensions (Age Positive) to identify the major issues that were likely to arise within the HE sector (2006). They suggested that HE institutions currently had low numbers of workers staying after 65, implying that there may be potential for filling skills gaps by improving retention after normal retirement age. McNair and Flynn also suggested that HE providers should pay special attention to:

- Ensuring that any formal qualifications used in selecting staff are relevant.
- Providing age information to short-listing and interviewing staff.
- Avoiding long incremental pay scales.
- Maximum ages for eligibility for sick pay.
- Using age to set redundancy pay levels.
- Setting maximum recruitment ages.

However, McNair and Flynn focus purely on employment issues and pay no attention to the provision of courses for students or to student services.

NIACE (the National Institute of Adult Continuing Education) have accounted for students in their advice for training providers (2006). They note that the legislation will cover all services and programs delivered by FEIs, HEIs, and work-based and adult learning providers, regardless of the course content. Vocational training providers will not be able to set age limits for entry to training or the terms under which they provide training (e.g.

the conditions under which help with costs is offered). However, state grants and loans, maintenance loans and bursaries and scholarships are excluded. NIACE also highlights the fact that the legislation will cover harassment, not only of employees by employers but also of a student by their training provider. Harassment can include inappropriate comments, offensive jokes and exclusion from informal groups such as social events.

NATFHE notes that the regulations do give universities and colleges of further and higher education specific responsibilities and that it will be unlawful to discriminate against a person by offering restricted access, or by not accepting their application for admission, on the basis of age. NATFHE also notes that certain age groups of students may be under represented in HE and that, in these cases, positive action to address this may be appropriate.

Since the publication of the draft of the regulations in September 2005 the Equality Challenge Unit (ECU) has been producing guidance on the employment-facing aspects of the age equality legislation in various forms; briefing papers, updates, FAQs and material for use in training sessions. For more information see their website www.ecu.ac.uk. Their work has been complemented by the series of Guidance Notes for heads of HEIs produced by a joint ECU/UCEA (Universities and Colleges Employers Association) working group on the implications of the regulations for various aspects of employment practice in HE.

More recently, in response to an extension of their remit to cover student as well as employment issues, ECU (working with Eversheds) produced some generic legal guidance on the implications of the regulations for student-facing activities. The General Guidance Note on Age and Student Issues is available on the ECU website and deals primarily with issues around admissions processes. ECU describes this publication as an initial guidance document which it hopes to develop further as the full implications of the age equality regulations become clearer for HEIs.

Publications on age discrimination in HE - how much can we learn from overseas?

An analysis of the academic literature in Australia, Canada, New Zealand, Ireland and Finland showed that the impact of age discrimination legislation in the HE sector is extremely under-researched. Indeed, peer-reviewed journals include very little empirical research into age discrimination in the HE sector. The review below therefore includes information from the few relevant cases which have been reported (and even in this realm, very little attention has been paid specifically to the HE sector). It also draws on what is mainly practitioner-based research

Despite the dearth of material, there are still a number of lessons to be learned from legal cases in the countries under review, a topic covered in a recent Age Positive fact sheet Examples of International Case Law in Age Discrimination. Lessons may also be learned from legal cases outside HE that have a direct relevance to the HE sector, and finally from researchers and relevant organisations covered by this literature review.

We look first at what case law relating to higher education from other countries indicates, then at what is indicated by case law on age equality in other sectors, and finally in more detail at what some practitioner research has to say.

The lessons of age discrimination cases in Higher Education

Canada

The cases identified involving universities concerned alleged age discrimination resulting from the mandatory retirement age of 65 in Canadian Universities. The linking of age discrimination with human rights legislation has been problematic. For example, the definition of age in Section 1 of the Human Rights Act 1981 restricted the scope of the general prohibition against age discrimination to people aged between 45 and 65, which is contrary to Section 15 of the Canadian Charter of Rights and Freedoms.

Various cases in the late 1980s and early 1990s ended in appeals (for example McKinney vs. Board of Governors, University of Guelph, and cases brought by individuals against the Board of Governors of Laurentian University, and York University in Canada). The universities have succeeded against these challenges. In the case of Dickason vs. the Board of Governors, University of Alberta, the final appeal stated that the "impugned practice of mandatory retirement is reasonable and justifiable within the meaning of Section II.I of the Individual's Rights Protection Act". This is because the discrimination can be permitted if the employer can show that the breach is "reasonable and justifiable in the circumstances".

A number of current appeals have been made on these grounds and it remains to be seen how the pending changes to the law in Ontario might affect the outcome of these.

Australia

In Australia, there have been a number of relevant cases relating to University staff, to applicants for posts, and to students. In some of these instances, allegations of discrimination have been made on multiple grounds. The following examples illustrate the kinds of cases brought.

Ivory vs. Griffith University (Queensland Age Discrimination Tribunal 1997)

Ivory's contract made provision for mandatory retirement at the age of 65. The university waived this but subsequently tried to reinstate and coerced Ivory to retire at 65. Ivory's case was found to be valid and \$5000 compensation was awarded.

Harding versus Vice Chancellor, University of New South Wales (Tribunal 2003.)

In 1983 Harding enrolled on a Bachelor course (medicine) aged 42. In 1983 and 1984 she discontinued her studies due to illness - re-enrolled but failed courses in 1986 and 1988. In 1989 she was rejected for re-enrolment. She alleged numerous discriminations including age. This complaint related to an alleged comment by the professor dealing with the re-enrolment (*he*) "*referred to my age and ability to repay the government.*" This was rejected on the grounds that the complaint lacked substance as it had not been raised at the start of the proceedings 14 years earlier. Complaints referring to disability, sex and victimisation were also judged as lacking in substance.

Simundic Versus University of Newcastle (Tribunal 2004)

This case relates to a student who was failed on a number of courses throughout her student career. She alleged discrimination on the grounds of race, disability and age. She also alleged victimisation. On hearing the evidence and following feedback from the

Tribunal the age allegation was dropped by the complainant. No details are available on the exact nature of the complaint.

Rochas versus The University of Sydney (Tribunal 2004)

The complaint made against the organisation relates to an employee's failure to be successful in five separate applications for jobs within the University. Each time the job was given to a young female. The complainant, a male aged 52, alleged discrimination on the grounds of sex and age. The tribunal found that there was no evidence to substantiate the allegation. Indeed it appeared clear that in each case the university was able to show that the best person for the job was appointed. The complaint was dismissed.

Age complaints to tribunals are in the minority amongst discrimination complaints in Australia. For example, in New South Wales only around 8 percent (112) of all discrimination complaints made were related to age discrimination in employment.

Ireland

Despite searching the World Legal Information Institute database, the Irish Labour court findings 2003 to 2005 (the only available on this resource) and the British and Irish Legal Information Institute database, no cases in Ireland were found that relate to the Higher Education sector. This may be because there are fewer cases in total in this area. For example, in 2004, the Equality Tribunal in Ireland only received 25 complaints relating to age discrimination in employment. Whilst this represented 25% of all the employment discrimination claims received, it represented a much smaller percentage of employment complaints in general.

Extracted from the Equality Tribunal Legal Review 2004:

Ground	Employment Claims	
Gender	35	34%
Race	11	11%
Age	25	25%
Marital Status	7	7%
Family	6	6%
Religion	5	5%
Sex Orientation	3	3%
Disability	10	10%
	102	100%

New Zealand

No cases were found that relate to the HE sector in New Zealand.

Points to note from case law

All of the cases above illustrate that when looking at the impact of age equality laws around the world in terms of cases brought to court, it is in the area of retirement policy and provision that most cases are being brought.

It is also clear that to date, most cases settle in favour of claimants and both of these observations are borne out by recent research *Examples of international case law in age discrimination*:

“Most cases concern older men and women rather than younger adults; most concern dismissal, predominantly retirement issues. Age discrimination in employment represents a very small proportion of all discrimination cases brought in other countries and few cases come to a settlement in favour of the claimant” Leeson and Harper, 2005. p6.

They also illustrate the importance to both employer and employee of bringing sufficient and appropriate evidence to any dispute.

Age discrimination cases outside the HE sector in the UK

There are many other high profile cases outside the HE sector which signify the importance of reviewing even the most apparently entrenched policies and practices, which cannot be justified on age grounds alone. For example, in Ireland, Ryanair's advertisement for a 'young and dynamic professional' was declared discriminatory, in spite of the Company's argument that 'young' was a state of mind. A Qantas pilot was retired at 60 years of age because he could no longer fly to countries with certain age restrictions. The Australian Industrial Relations Court held (on appeal) that he had been unlawfully dismissed on age grounds. In Ireland, the case of O'Byrne v. The Department of Public Enterprise was found in favour of O'Byrne because he was told in front of younger colleagues that he had been passed over for promotion, which amounted to victimisation on age grounds.

Practitioner-based research outside the UK

There are a number of lessons that have been drawn by researchers and relevant organisations in the countries covered by this literature review.

Performance management

Sheenan, Dobson and Smith (1997) discussed the impact of the Australian legislation on academic careers in Australian universities. Much of this discussion centres around the impact on the tenure system, but the authors do make some suggestions of learning points that may be as useful for UK HEIs. Sheenan et al emphasise the importance of effective performance management systems that must be applied consistently at all times. They note that effective recruitment and selection is essential to get the right people into a university, followed by induction, mentoring, probation and confirmation in post and incremental progression and promotion decisions, coupled with regular developmental support and counselling for academic employees. This system ensures that employment

is based purely on performance rather than on any age-related criteria. In addition, Sheenan et al note the increased importance for HEIs of creating tightly worded and comprehensive employment contracts for all academic employees.

Older workers and barriers to training

A report by the Access Training and Employment Centre (ATEC) in Australia (2000) discussed the barriers that exist to older individuals participating in vocational training activities. The authors note that one barrier may be practical difficulties regarding impaired or limited mobility and a lack of transportation or family support. The ATEC report also suggests that older individuals may be more reluctant to participate in training. This suggestion is supported in the UK by Urwin (2004) in that a large proportion of older workers in the UK do not take up the opportunity to train. A review from Phillipson and Smith for the UK Department of Work and Pensions (2005) reported that, while access to training and further skill development is important for extending working life, older workers continue to be disadvantaged with respect to work-related training. There is also some evidence that older workers may, in some instances, be unwilling to take up offers of training either because they lack confidence or because it may be perceived as offering few advantages. Newton, Hirschfield, Miller, Ackroyd and Gifford (2003) reported that the likelihood of an unemployed individual aged 55 or over participating in training was 50 percent less compared to an adult aged 35-44. Contradictory evidence however has suggested that older people are just as willing to invest in learning new skills as younger people (Taylor and Urwin, 2001).

The delivery and content of training for older workers

The ATEC report also discussed in some detail the impact of training delivery on older worker participation in training, commenting that training delivery and curriculum may need to be modified to reflect the learning styles of mature aged and older people. The authors note that the literature in this area “includes recommendations that training should:

- Be less formalised to negate lack of or limited experience of formalised learning environments and methods.
- Involve age groups limited to mature aged or older learners rather than mixed age groups.
- Be designed to be delivered in such a way as to utilise and focus on the verbal rather than literacy skills of participants
- Adopt task-based or problem solving methods
- Utilise participant experience as fully as possible as a teaching strategy.
- Provide for more training time generally.
- Utilise self-paced learning strategies.
- Include group work as a training strategy.
- Include a substantial vocational experience.”

Baldwin (2003) in a report for the Equity Research Centre (Australia) identified a number of issues that need to be addressed when providing training or education for older individuals. Such issues included self-esteem for those that have been outside of work or

education for some time, a case management approach to learning, recognition of existing skills as a starting point for training and workplace experience for vocational skills. Gelade, Catts and Gerber (2002) identified five criteria for determining good practice in training older individuals.

1. Creating a safe, non-threatening environment.
2. Negotiating the process of learning – content, format and timing relevant to learners interests or needs.
3. Motivating learners – via socialisation, their participation and their achievements.
4. A different approach to learning – learner-centred, practical, hands-on, not competency based. This requires time and repetition.
5. Organisational flexibility and innovation to improve learner outcomes.

Good practice in the training of older workers

A report by the NSW Committee on ageing also provides a number of principles of good practice with regard to providing training and education for older individuals. These include the need to:

- Promote learning as a lifelong activity.
- Base teaching methods and strategies around building on previous knowledge and experience.
- Involve older people in the design and delivery of programmes.
- Make every effort to find out what development older people want and to seek to provide it for them.
- Ensure that the course design is flexible and can be adapted to the needs of individual learners.
- Take the learning styles of older individuals into consideration.
- Ensure that venues are accessible to frail or older people.

Widening participation for students

The research above has been based mainly on vocational training providers rather than HEIs, therefore not all of these points may be relevant or possible within a university environment, particularly with regard to academic courses. However, the notion that teaching styles and accessibility should be addressed in order to make programmes inclusive to all ages remains valid. A report to HEFCE by the University of York (July 2006) examined the factors affecting participation in HE in the UK. This report includes a discussion of barriers such as cost and loss of time, institutional barriers from advertisement, entry procedures, timing and scale of provision, general lack of flexibility and a lack of motivation in potential learners. It is important that institutions should take steps to address these barriers in order to improve the participation rates of older workers.

Workplace policies and procedures

An examination of the workplace policies and procedures and HR policies relating to equal opportunity, diversity, equity and of student charters and similar documents, reveals a wide range of ways to set out the principles held by universities. There is a general

consensus of those outside the UK to locate the guiding principles within general statements on human rights, equity of treatment for all (students, staff, academics etc.), conduct, and the institutions' philosophy of rights and responsibilities.

For example, Monash University in Australia writes of its commitment "to promoting equal opportunity in education and employment in recognition of global principles of equity and justice". This includes an undertaking to promote equal opportunities, eliminating unlawful direct and indirect discrimination on all grounds of race, colour, ethnic origin, sex, etc. and includes age. The policy cites as authorities UN and ILO conventions and covenants.

The University of South Australia has a similarly broad equal opportunity policy, which conforms to all the appropriate national and state legislation. It includes succinct definitions. For example, age discrimination

"means unfair treatment of a person on the basis of their age or age group. Age discrimination often occurs because of incorrect assumptions or stereotypes about people's skills, abilities, personal qualities or needs based on how old or young they are."

Griffiths University in Australia has a student equity services unit within student services which delivers support services that facilitate equality of access, participation etc. There is an Equity Committee, which provides advice to the Deputy Vice Chancellor, and a student charter. This latter document does not specify age discrimination but rather seeks to encourage respect for diversity, for each other, etc., and to refrain from harassment and discrimination against other students and staff.

There are similar statements recognising joint responsibilities and declaring principles by other universities, such as the University of Dublin, which formally adopted an equal opportunities policy in 1989, where the University pledged to uphold its principles, including those relating to not discriminating on all the main grounds, including age. The Policy goes on to explain in detail what this means with a thorough statement of its commitments in regard to all aspects of employment.

CONCLUSIONS

It can be seen from this review that very little attention has been paid to the HE sector in the age discrimination literature and that the practitioner-based reports that have been written focus very little on student services.

As HEIs will be subject to the same issues as organisations in any other sector with regard to employees, it is recommended that HR Managers within HEIs examine the general advice given by organisations such as ACAS; they should especially heed advice given by the Equality Challenge Unit which has been written for the HE sector specifically and they should take on board the recommendations of McNair and Flynn for education providers which highlight both the importance of filling skills gaps by retaining older workers and the need for effective performance appraisal.

In the area of age discrimination, the focus particularly in the overseas (Australian) literature is on training delivery and learning styles. This is an important issue that should not be ignored by UK HEIs in either their employment-facing or their student-facing activity.

The Australian literature also discusses issues surrounding accessibility for older students, should they have physical impairments. In the UK one would hope that these issues which

would also apply to staff should already have been largely addressed in the light of our own Disability Discrimination Act (2005).

The Australian literature also pays attention to attitudes regarding lifelong learning, and specifically to the perception that training and education is for younger people. This bias may be overcome through the careful advertising and promotion of courses aimed at all ages.

RECOMMENDATIONS

Drawing on our research for this literature review but also on our expertise in Human Resource Management we would recommend:

1. A detailed statement of principles, to be incorporated into the mission statements and statutes of HEIs, and carried forward into specific policies, provides vision and coherence to all anti-discrimination policy.
2. So ingrained are the stereotypes and attitudes at the heart of age discrimination that a major culture change is necessary for most organisations. Unlike other areas of discrimination, no moral case has yet been made to gain widespread support for anti-age discrimination policies. A change management programme aimed at hearts and minds and for all staff is necessary.
3. All job descriptions, person specifications and competency frameworks must be 'age proofed'. They must be free of terms which could be seen as either directly or indirectly discriminatory.
4. The decisions about recruitment, selection, performance management, rewards, development, training, promotion, posting, terms and conditions, retirement, pensions, redundancy and transfer must be justified, and where relevant, supported with quantifiable evidence or data. Staff training on age equality awareness must be made available to all those likely to be involved in such decision making.
5. All screening, selection, career management, appraisal, performance management, development and promotion must be undertaken purely on the basis of the individual's skills and abilities and job description. Staff training on age equality awareness must be made available to all those likely to be involved in such decision making.
6. Selection for redundancy should not be related to age either directly or indirectly (e.g. length of service criteria are questionable), and opportunities for development must be age neutral. This means, for example, only supporting conference attendance for younger or older people would be against the law, and whilst that does not preclude creating special development programmes for less skilled or new faculty and staff, these must not be earmarked for 'younger faculty', for example.
7. Any reference to age in reward structures should be discarded. In many universities, the grading structures are being replaced by a single spine for pay and broad banding. However, benefits should also be reviewed, along with terms and conditions. The implications of the European Court of Justice ruling in *Cadman v. Health and Safety Executive* seem to be that payment according to length of service is not a breach. However, the ECJ did suggest that the assumption that service-based pay is legitimate may be rebutted if there were to be evidence brought to show that experience was not a criterion for performance in a role. This case is still in appeal. However, for benefits, service beyond five years should not

be used as a basis for deciding entitlements. This is confirmed by the UCEA/ECU Guidance Note 1 on pay and benefits.

8. Promotion in universities for academic staff is usually against clear criteria (e.g. publishing in academic journals, teaching feedback etc.), but care should be taken to ensure that other areas such as 'reputation' are also clearly defined. The RAE Equality Briefing (January 2005) produced by the ECU noted that, whilst at the time of writing there was as yet no age equality legislation in place, such legislation was anticipated and 'may have the greatest potential to provide grounds for major challenges to institutional selection processes'. The subsequent publication RAE Guidance on Submissions (June 2005) provides useful advice which should help HEIs avoid indirectly discriminating on the grounds of age in their RAE activities.
9. According to the cases reviewed earlier, the main source of dispute on age is often over retirement. Universities will need to ensure there is flexibility in their approach to retirement. The opportunity for phased retirement, part time or other contractual relationships should be considered. Here the challenge is to ensure equity of treatment between different retirees.
10. As well as for retirement, there is also a need for flexibility for all age groups in working arrangements, training provision and learning styles. The ECU/UCEA joint working group on age has produced a Guidance Note on Flexible Working for All Ages in its series of Guidance Notes for heads of HEIs on the employment aspects of the age regulations.
11. The way student services are delivered should also be reviewed, to determine that there are no age criteria references, for example in admissions, memberships of societies, accommodation, or in the rules governing examinations, supervisors, registration etc. Similarly, the learning styles, expected or assumed, of students should encompass a range, so that no age group is disadvantaged. It is recommended that current curriculum and teaching styles as well as current staff development provisions are examined closely in order to ensure that they are inclusive to learners of all ages.
12. Rules regarding harassment, victimisation, and how complaints are handled need to be well understood, by staff and students alike. It should be noted that the regulations on age are potentially very far reaching for student facing work so all aspects of University practice that relate to students should be reviewed.
13. The best practice process adopted by many universities, in the creation of a group or committee which oversees the implementation of new rules, regulations and the development programmes necessary is to be recommended. Such a group should represent all stakeholders and should monitor the progress and any responses to issues raised. This group should sit outside the HR function and report directly to the SMT.
14. The literature has emphasised a need for clear performance requirements as a basis of the reward structure within organisation. Organisations should therefore ensure that performance evaluations and rewards are based upon clear objective and justifiable criteria.
15. There is a lack of empirical research on age discrimination in the HE sector, specifically in the area of the provision of courses and of student services. There is therefore a need for further research in this area.

LOOKING AHEAD

The overwhelming finding of this literature review must be that insufficient attention has so far been paid to age discrimination in the HE sector, particularly in student services. During the autumn and early winter of 2006, ECU will be initiating targeted discussions with key student-facing staff, including admissions staff and student services staff, on their views of how the age equality legislation is likely to impact on the work that they do. An invitational seminar to explore optimum ways of working together to support the HE sector in this area is planned for early December 2006.

As well as an initial exploration of student-facing issues, ECU is also conducting a snapshot survey of progress to date on employment issues. This survey, which should be reported on in January 2007 will identify emerging interesting practice that is shareable with the sector as well as provide a moment in time picture against which progress can be measured in future years.

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