

## AGE – THE DIVERSITY THAT AFFECTS US ALL

by Richard Sheldon

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When thinking about diversity in Jersey, despite the introduction of discrimination legislation in 2013, it is easy to think the entire agenda has passed us by because so many workforces still appear to be overwhelmingly dominated by white, male, heterosexual, middle class and non-disabled employees. Yet, following the introduction of age discrimination as a new protected characteristic in September 2016 and the need to objectively justify compulsory retirement ages from September 2018, the next 12 months' will force all businesses to begin to think about diversity differently, because unlike other protected characteristics, all employees have an age, whether that be young, old, or dare I even say the group I now fall into, which is middle aged!

Employers should already have reviewed their policies and procedures to ensure that they are compliant with the age discrimination laws, but those new policies and procedures will really be put to the test when the law on retirement ages changes. The two-year transitional period has allowed employers to continue to dismiss employees at compulsory retirement age with relative impunity, because employees are unable to bring either an unfair dismissal or age discrimination complaint for such dismissals. That will change from September 2018 and whilst it will theoretically be possible to objectively justify having a blanket compulsory retirement age, based on the experience in the UK for the vast majority of businesses, that will not be possible and most will ultimately abandon the approach – either voluntarily or because they are forced to by the Tribunals.

Unfortunately, the perception of this change amongst many businesses remains negative, with a number expressing concern over the need to performance manage older workers who apparently will lose all of their faculties the day after their 65<sup>th</sup> birthday! The ultimate irony of course, is that more often than not, these words come from directors who themselves are around this age and who don't even performance manage their underperforming workers anyway!

The sad thing about these views is that they are generally fuelled by the fear of the unknown and are caused by approaching the issue of diversity from purely a compliance perspective, rather than looking at the advantages a diverse workforce brings. Probably, the most tangible example of having a positive approach to diversity is that it can be used as a point of difference in the recruitment market, a key area of concern for many when there is such a small labour pool. Probably the best known example of this is B&Q, who are well known for their positive approach to employing older workers. Without question, there is a similar niche to be found by other businesses.

Many employers spend a significant amount of time focussing on school leavers and graduates, yet when they start often bemoan their lack of real world experience. There is a pool of talent there waiting to be tapped into at the other end of the spectrum with decades of experience who are either heading to or recently retired, but very few employers are specifically seeking them out. Whilst it will often take effort to target these people as typical recruitment channels may not work, and require a degree of creativity to either tempt them away from their current employer or in some cases back into the workforce, the rewards will certainly be there for those who succeed. Obvious examples include, offering people who want to or have retired but are willing to help out when needed the opportunity to be employed on a “zero-hours” contract, so that they can come in to deal with sickness or holiday absences, or peaks in work. These employees will invariably be cheaper and more reliable than agency staff, and if they are former staff have the added advantage of knowing your systems. In addition, there remains the perception that older workers are more expensive to employ because of the cost of benefits. For those employers willing to look beyond these stereotypes, they will find that there are exclusions in the discrimination law which mean those over retirement age can be excluded from insurance backed benefits such as private medical as well as pensions too, meaning they are actually cheaper to employ than a comparable younger worker.

When it does eventually come to managing employees beyond their current retirement age and planning for the eventual day that they leave employment, this needs not be an overly legalistic process akin to a disciplinary. Currently, many employers favour the approach of issuing employees with one-year fixed term contracts once they reach 65. Setting aside the question of whether this itself is less favourable treatment on the grounds of age, it’s a wholly unnecessary administrative step. Most contracts of employment will already expressly state that benefits eligibility is subject to the terms and conditions of the scheme, therefore, more often than not, employees can simply stay on their current terms.

For those that manage this process, the best approach is a fluid two-way dialogue with open communication between the employer and employee, so that both know each other’s expectations. It may be a case of signposting to the employee the right assistance in terms of financial planning, if an individual does not know if they are able to afford to retire. Once the employee has received the advice, then they will be in a far better place to tell you when they want to retire. But this does not always need to be a reactive process, always driven by the employee’s timetable. Employers will become more familiar with the concept of flexible retirements, whereby an individual retirement date will be agreed in return for incentives to help employees transition into a life beyond work, or going part-time whilst drawing on their pension.

As more employers are forced to recognise the value of having an age diverse workforce, then perhaps they will begin to appreciate the wider concept of diversity and embrace the opportunities, and even realise that their workforces are actually more diverse than they believed.

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