

# Career challenges and age discrimination

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The new force combining

**AGE** and **HELPTHEAGED** WE WILL  
*Concern*



# Discrimination in General

- Governed by Equality Act 2010 which absorbed the Employment Equality (Age) Regulations 2006
- Entered into force on 1 October 2010
- Sets out definition of discrimination
  - Direct
  - Indirect
- Unlawful less favourable treatment:
  - Harassment
  - Victimisation
- Specific protection of Age category from discrimination

# Discrimination Claim Stats 2009/2010

- A 56% rise in successful discrimination claims
- 5200 age discrimination claims (up 37%)
- 4056 age discrimination claims (78%)- withdrawn or settled before trial;
- 104 claims heard and successful (2%); average award- £10, 931; highest award- £48,710.00

# Age UK and Age Discrimination

Age UK's campaigns in age discrimination in the work-place, based on belief that older persons should be equal citizens with equal rights and have opportunities to participate as workers as long as they are capable.

Examples:

The Heyday case- Age UK challenged the default retirement age.

Campaigned for protection from age discrimination for older persons in employment and other areas

# Discrimination during Recruitment

***An employer must not discriminate against or victimise a person in a. Arrangements made to offer employment, b. The terms of such an offer or; c. In deciding whether or not to offer employment.***

- Adverts
- Interview questions
- What should not be asked
  - Age
  - Health and disability information
- Harassment of applicants
- Voluntary positive action

# Employment Service Providers

- provide recruitment/recruitment training and guidance services
- must not discriminate against or victimise a person in terms of:
  - arrangements made to provide or whom to offer to provide the service
  - the terms upon which it offers the service or;
  - by not offering the service to the person;
  - by terminating the provision of service to a person;
  - by subjecting him/her to any detriment based on age.

# Discrimination during Employment

- An employer must not discriminate or victimise a person:
  - During recruitment phase; or
  - During employment in terms of:
    - Terms of employment
    - Promotion
    - Training/transfer
    - Dismissal or detriment
    - Harassment
- These provisions also extend to contract workers

# Partnerships and LLP's

- Same requirements apply to Partnership's and Limited Liability Partnership's
  - i.e. Recruitment, promotion, training/transfer, harassment
- Case law precedent:
  - *Seldon v Clarkson Wright and Jakes*
- Equally protects Office-holders of other types
  - e.g. Clergymen, officers of the Crown, members of trade bodies*

# Dispute Resolution

- Key Question - Have you been discriminated against?
- Steps to take:
  - Internal resolution of the matter;
  - File a complaint to the Employment Tribunal
- Procedural steps and guidance re complaints
- Best practice guidelines - ACAS

# Filing a Grievance

- Put In writing to line manager or other manager
- The employer to arrange a meeting
- You have a right to be accompanied to meeting
- After meeting, employer should respond to grievance in writing, setting out action to be taken
- If unhappy with outcome, you appeal in writing

# Key points to consider prior to a filing a grievance – Part I

1. Keep a careful written record of dates and times of the events complained of or other relevant facts in chronological order;
2. Carefully consider if any colleague(s) with whom you may be compared, to show less favourable treatment
3. Tactfully consult any colleagues who may have witnessed the acts complained of to consider if willing to give evidence of facts seen;

# Key points to consider prior to a filing a grievance – Part 2

4. Carefully study any response from the person against whom the grievance is raised- if any;
5. Having obtained all the information above, detail your complaint fully and clearly using a professional tone
6. Before the meeting, write down the points you wish to deal with;
7. Request for a note-taker at the meeting;

# At the meeting

- Ask the person accompanying you to also take notes;
- Listen carefully to all points raised and where an important point is made, ask the note-taker to record specifically;
- Present your points in a calm, professional tone, referring to your grievance letter/the notes you have prepared
- At the end of the meeting, ask to review the notes taken.

# The Appeal

- You always have the right to appeal, if the grievance outcome is unsatisfactory
- How to appeal?

Should do so in writing, detailing:

- Points disagreed with; and
- Preferred outcome.

# The Tribunal

- If the Appeal outcome is still unsatisfactory, then you may file a claim at the Employment Tribunal which has jurisdiction for discrimination claims;
- There is always still a possibility of resolution, even after a claim is filed
  - agree a settlement between themselves,
  - settlement via ACAS
- Majority of claims are usually settled via this means

## The Tribunal Part 2

- If parties do not agree then claim goes to trial, where The Tribunal shall hear evidence and legal arguments from the parties and make a decision.
- If a claimant is successful he gets monetary award for “Injury to feelings”
- Awards for Injury to feelings are in three bands
  - Top band: £18,000 - £30,000
  - Middle band: £6,000 - £18,000
  - Bottom band £600 - £6,000

## The Tribunal Part 2

- An award for injury to health (psychiatric injury)
- An award for lost earnings;
- Ancillary loss- e.g. cost of finding new job, loss of pension rights etc

The award can be enforced through the County Court

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