

The Debate on Normal Retirement Ages

This Briefing examines the most contentious issue to be settled in legislation on age discrimination in employment and training: whether the right of employers to choose a fixed year for Normal Retirement Ages (NRA) should be abolished.

In the first round of Department of Trade and Industry (DTI) consultation on the proposed legislation employer responses set out the arguments for keeping this right. Non-governmental organisations set out the case for ending it.

The picture was made more complicated because the DTI put forward a 'default' retirement age of 70 as an alternative to abolition. In that case, the banning of normal retirement ages would only apply below ages below 70. As virtually all retirement ages are presently fixed at 60 or 65, the default proposition was widely and wrongly interpreted as a proposal to raise pension age to 70.

While understanding the concerns about ending normal or fixed retirement ages, TAEN believes that this is the right way forward. This *Briefing* sets out some of the arguments for keeping NRAs and our response to them. It starts with those we see as the most substantive arguments and runs through to those which we believe to be insignificant

The balance of cost/benefit

It is argued that the cost-benefit trade-off does not justify proceeding with the ending of NRAs: that the gain for the few employees who want to extend working life and are currently prevented from doing so by their employer is minimal compared to the costs/disadvantage for employers who are faced with problems (including potential litigation) about termination of careers.

This proportionality argument can be used both ways: the small numbers of people who want to work after 65 and are prevented by their

employers suggests that NRAs are a marginal issue. But the same data equally carries the implication that NRAs are insignificant to employers and that the real impact of ending NRAs on employers will be marginal.

Department of Work and Pensions (DWP) Research Report 200 (*Factors affecting the labour market participation of older workers*, November 2003) shows that the propensity to extend working life is greater in companies that have ended NRAs; ending them does change the climate.

The real negative impact of keeping NRAs is the 'shadow' they cast over the final 10-15 years of working life. Decisions on recruitment, training, promotion and retention of those over 45 or 50 are seen in the context of 'nearing retirement age'. In some professions this culture prevails from the mid-30s.

The greatest gain from removal of NRAs will come from the changes in employment and training practice during the second half of working life.

Employment costs increase with age

Employee secondary costs can increase with age; for example, insurance premiums or more frequent health screening are genuine issues.

However, the more significant issue is the basis used for the increased cost: for example, the actuarial soundness of a *doubled* insurance premium applied by an airline in order to fly if you are over age 65.

That is why discrimination in goods and services is linked to employment. The validity of the increased costs should be examined, rather than the expectation that an employer should have to pay for it. This is also a serious issue for young people. At present the focus of debate in the insurance industry is variable insurance costs for men and women.

Succession planning and dead men's shoes

This is an issue for smaller businesses and all hierarchical organisations with defined posts and grades. Appraisal systems do not realistically handle situations short of serious shortfall in performance where a change of post-holder may nevertheless be in the interests of the enterprise.

Easing out of people who are 'stuck' in a post is probably the most powerful fear related to ending NRAs. It is an issue with which those in professional occupations and the civil service can relate strongly. The life-time hierarchical and cliff-edge career model in the public sector has a strong (and perhaps a too strong) influence on the debate.

One possibility is that reform provides an opportunity to move away from the old public sector employment culture. The ending of NRAs could encourage movement towards flexible changes up and down a hierarchy, contract working, downshifting and a move away from a cliff-edge view of retirement.

Succession planning is an argument for keeping NRAs which can be exaggerated, given the level of turnover of staff at all levels and the degree of uncertainty of job duration in management positions.

Realistically, succession planning is an issue for a minority of workers in more senior positions or professions. One example is airline pilots where there is only one promotion in a lifetime which would be delayed if the average Captain worked five extra years.

However, the majority of people work in jobs which are not so post-specific that long waiting for the opening arises.

Managing an employee out of a job which they do not want to leave is a problem whether there are NRAs or not. It can relate to employees of any age.

However, no information has been put forward to indicate that it is a more severe problem with over-50s.

Nor is there supporting data to show the proportion of employees by age groups when employers 'hang on for the retirement age' in order not to disturb an employment situation.

But in such cases it must, by definition, be a small minority as only a minority of people do in fact retire at their normal retirement age.

Rising costs and declining productivity

It is argued that the pay and pension costs of older workers rise relative to their productivity. The general argument that productivity declines with age while costs increase is based on the Lazear Curve theory and is unproven.

Much evidence from employers on the commercial benefit of employing older people would appear to be contrary to the view that employing older workers costs more overall.

There are, however, specific situations where pay and benefit structures lead to higher cost packages for older employees or recruits. This needs further investigation.

Ending NRAs will increase litigation costs

Large potential legal costs arising from the ending of NRAs are quoted, based on the extrapolation of gender cases in the UK and average age awards in the USA. It is argued that even asking an employee about plans for retirement will of itself risk challenges of age discrimination.

There was an increase in claims for unfair dismissal in the USA when age legislation was first introduced there. If there is an increase in successful claims in the UK it may represent an increased cost but it will be proof that there is age discrimination and that the change was needed.

This can be resolved by removing discriminatory practices. There may be a period of spurious claims in the UK; but if the law is applied clearly by Tribunals, then there is no reason for this to be sustained. It is hard to see that the fact of discussing retirement prospects with an employee would be challenged as discriminatory, but this would need to be clarified.

It is argued that the majority of cases in the USA are brought by white middle-class males, so the legislation does not reach those for whom it is intended.

This is not a reflection on the validity of the legislation but on the absence of legal aid and support services for individuals without the resources and personal skills to take on the challenges and costs of a legal process.

There is a lesson in this for the UK, if the legislation is to help those who most need the protection of the law.

Misinterpretation of default retirement age

In the Government's *Age Matters* consultation document, it was proposed that individual employers could establish a default retirement age of 70 after which dismissal on grounds of age would not be regarded as age discrimination.

This has been represented as a proposal for a state or national normal retirement age, which increases the risk that it is misrepresented as a back door way of raising State Pension Age.

It is argued that the State Pension Age (SPA) is the age at which most people feel comfortable retiring. DWP data in Research Report No 200 shows that only a small minority of people actually retire in the year in which they reach SPA, so the link between SPA and average retirement age is weak.

Removal of NRAs is not needed in the UK

It is argued that the UK's good record of over-50s employment means the removal of NRAs is not needed: that the UK's employment rate of over-50s compares favourably with the USA and that the practice of retiring older employees to make way for younger ones has long been abandoned.

The UK's employment rate of over-50s is considerably better than most EU partners and improved strongly in 2002-03; but it is still 3% below that in the USA. The UK employment rate of over-65s is 8% below that in the USA. It remains evident from numerous UK surveys, such as those by the Chartered Institute of Personnel and Development, Employers Forum on Age, National Opinion Polls and Norwich Union among others, that age discrimination in employment has not been abandoned.

It can be argued that the employment rate of over-50s is rising faster than any other age group at present, without the aid of legislation. This demonstrates that in this, as in most other legislation, personal financial incentives (the decline in value of savings for retirement) are the strongest single driver of change in behaviour.

This is also true in the USA where the majority of studies indicate that legislation has contributed around 20% of the impact on employment rate trends of over-50s. If the UK had the same employment and savings rates amongst the over-50s as the USA, then a large part of the current pension concern in the UK would be resolved.

It is important to note that there has been no improvement yet in the low participation rates of over-50s in training and skills, which is the other half of the coverage of the planned legislation.

NRAs preserve retirement with dignity

It is argued that NRAs enable employees to retire with dignity and that ending of NRAs will lead to retirement taking place in an atmosphere of dispute or on the negative grounds of failing capability or health.

There will always be a small number of disputed retirements whether NRAs exist or not. But the evidence does not support the view that the ending of NRAs will lead to a sudden decline in the dignity of the ending of working life:

- the majority of people retire before their NRA now (DWP Research Report 200), so the NRA is not currently the guarantor of a dignified route to retirement for the majority;
- those who are made redundant or laid-off in the years proceeding their NRA frequently feel that the ending of their career has been managed in an undignified way.

The average quality of the handling of redundancies now does not form a strong basis for arguing for retaining Normal Retirement Ages on grounds of dignity.

It is argued that management will have to justify every individual retirement age. The DWP research shows that the vast majority of people retire when they want to. The small minority of disputed cases in which employers and employee disagree occurs under the present regime with NRAs and cases will occur in a future with no Normal Retirement Ages.

Threat to occupational pension schemes

It is argued that removal of NRAs will lead to employers raising the age at which a full final salary pension can be taken. The changes to occupational pensions that have already occurred - in the shift to Direct Contribution (DC) schemes and reducing employer contributions - suggests that it does not need the ending of NRAs to trigger a threat to Direct Benefit (DB) schemes. The argument is not, of course, applicable to DC schemes.

If NRAs are ended, there is no reason why it should be used as a reason to accelerate the damage to occupational schemes, unless employers choose to exploit it in that way.

More sick employees

It is argued that if NRAs are ended there will be an increase numbers of sick and disabled employees. Average absence per year does not increase with age, though the average time off work for those on sick leave increases substantially. This is offset by a larger number of older people taking little or no sick leave.

DWP research shows that one of the most significant factors triggering the retirement decision is health, so there is no reason for ending of NRAs to lead to increased sickness absence by employees.

Any increased cost is more than offset by the savings from loyalty, commitment and low turnover recorded by Marks and Spencer, Nationwide Building Society, WH Smith and other employers.

Ending NRAs creates a new employee right

It is argued that ending NRAs will create a unilateral right for employees to stay on. The current retirement age regime creates a unilateral right for employers to terminate a career on grounds of age. Employers seek flexibility to keep employees when they wish to, but do not see an employee's flexibility to stay on where they meet the requirements of a job as the complement to that.

Ending NRAs creates more regulation

It is argued that ending NRAs represents the introduction of more regulation. It would appear self-evident that the removal of fixed retirement ages and a system which leaves retirement age to be settled between employer and employee is a reduction in regulation rather than an increase.

Patrick Grattan
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- *A Short Guide to Pensions, Retirement and Work*
- *Facts and Figures on Retirement and Pensions*
- *Factors influencing Patterns of Work and Retirement of Older People*
- *Older Workers in the USA*
- *Legislation Consultation: Age Matters*
- *Work after 60 – choice or necessity, burden or benefit*
- *Government programmes on Age Diversity, Employment and Enterprise*
- *Key Facts on Age Diversity and Employment*
- *Experience of Discrimination: the evidence*