

Research insight

# Age and recruitment

State of play:  
summer 2007

# Acknowledgements

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# Foreword

Age discrimination is bad for business. Not only is it unfair, but it also wastes talent, experience and knowledge. And now it's also illegal to treat someone less favourably in the workplace because of their age.

The Regulations cover all aspects of employment. The CIPD, jointly with the Trades Union Congress (TUC), published *Managing Age: A guide to good employment practice* in February 2007. During the course of writing this guide, it became apparent that some aspects of employment are causing employers more challenges than others. The CIPD is responding to this by publishing a series of guides concentrating in more depth on particular employment issues, such as recruitment, reward, learning and retirement.

This is the first of these Research Insights and will concentrate on recruitment. The aim is to provide employers with practical guidance and examples of innovative practice from case study organisations on what they need to be thinking about when reviewing their recruitment practices and policies in light of the age legislation.

However, it is not just about compliance and we hope to show how some organisations are working through recruitment initiatives to achieve an age-diverse workforce that will help them overcome the challenge of demographic changes and contribute to business success.

This publication will not provide legal advice or solutions, but hopefully should provide employers with a more detailed insight – 'a state of current play' – of what they need to be looking at and watching out for, and give examples of how they can become a more age-diverse employer.

Sally Humpage  
Diversity Adviser, CIPD

# Introduction

The introduction of UK legislation on age discrimination on 1 October 2006 has meant that organisations must ensure that their HR policies and practices do not unjustifiably discriminate on the grounds of age. This legislation was in response to the European Employment Directive on Equal Treatment that required all EU member states to introduce legislation prohibiting direct and indirect discrimination at work on the grounds of a number of factors, including age. The legislation outlaws age discrimination in employment and vocational training and covers every member of the workforce. A summary of the key legislative points can be found for reference in the Appendix.

This Research Insight focuses on the beginning of the employment cycle, namely recruitment. Although recruitment is not the only issue challenging HR practitioners, it is the reason that most organisations end up defending their actions against an age discrimination claim. Yet the latest CIPD *Recruitment, Retention and Turnover* survey showed that only 29% of organisations had addressed/reviewed their recruitment policies and practices in light of the new legislation, suggesting that many firms are not prepared for the potential impact of this legislation.

Further CIPD research shows that recruitment activity is not slowing down, which will increase the risk of claims if firms have not reviewed their practices and policies. The latest CIPD *Labour Market Outlook* highlighted that over 41% anticipated recruiting in the last quarter of 2006 and 79% last winter. The Recruitment Confidence Index (Cranfield School of Management 1999–2007) has supported this suggestion, predicting an overall increase in employment levels over the period of 1999–2007.

However, the challenge is not just compliance. Over the ten years from 1999 the age structure of the population of working age in Europe will change significantly: the numbers of young people (15–19) will fall by over 1 million, and those aged 20–29 will fall by 9 million, whereas the number of persons aged 50–59 will grow

by 5.5 million and the 60–64 age group will grow by 1 million (Walker 1999). In the UK, there are currently around 19 million people aged 50 or over. It is expected that this age group will increase by a further 3 million by 2020. These population changes mean that organisations will be forced to recognise the importance of employing older workers whose life expectancy is increasing and of using their skills and expertise wisely (Hassell and Perrewé 1995). Demographic change, improved health and pressure on pensions will mean that there will be more older workers wanting to work and young workers, although fewer, will be more highly skilled and educated than ever before. Businesses need to ensure their recruitment practices and policies attract the right people for their organisation whatever their age.

This Research Insight examines the recruitment cycle and the implications of the age regulations. Each stage in the recruitment process is examined and given a practical legal context. These are:

- advertising and attraction
- application process and recruitment agencies
- selection and assessment
- graduate recruitment
- monitoring and measurement
- communication.

The research draws on findings from case study research looking at how a number of organisations learning themselves have chosen to address recruitment in light of the new legislation on age discrimination. These case studies involved interviews with individuals responsible for recruitment and diversity within the organisations. These organisations were:

- ASDA
- Cancer Research UK
- Co-operative Group
- HSBC
- Marks & Spencer
- NHS Employers
- Royal Mail.

# Advertising and attraction

The first step, once a company has decided that they need to recruit, is to find an appropriate way of attracting jobseekers to the vacancy, usually through advertising. Potential applicants can also be attracted through networks, the use of agencies, word of mouth, and advertising in national or local media and trade-specific publications. In addition to ensuring that the job and organisation is made to look attractive and that they reach enough jobseekers, it is now also essential that an organisation makes sure that they don't discriminate against older or younger workers. Recruiters must ensure that they don't ask for a particular age range, or use age-specific language in their advertisements, and also that their attraction efforts are sufficient to reach an age-diverse group of potential candidates. It's also important that the organisation should be made to look appealing to individuals, regardless of their age.

## What does the law say?

There is no explicit provision, under the Regulations, dealing with job advertisements. The key to complying and not to discriminate on grounds of age, at every stage of the recruitment process, is to devise and adhere to a job specification that focuses on the qualifications, skills and experience required to undertake the role. If these requirements appear even indirectly to be discriminatory, the employer must determine whether they can be objectively justified (or otherwise fall within one of the exceptions provided by the Regulations – see Appendix).

Once a satisfactory job specification has been produced, a suitable advertisement can be drafted. Care should be taken to use not only age-neutral words, but also age-neutral imagery.

Drawing on the outcome of cases brought in Ireland, it's clear that adjectives suggestive of age, such as 'young' and (perhaps more controversially) 'dynamic', are to be avoided. If challenged, the burden is on

the employer to prove that it has not discriminated. Unless there is objective justification for the language used, or image conveyed, an employment tribunal is likely to find that the employer (or its agent) has unlawfully discriminated.

There will, occasionally, be aspects of a job that necessitate the imposition of a minimum age. For example, health and safety laws may require the exclusion of the very young. Similarly, a publican or off-licence may lawfully invite candidates aged 18 or more to apply for a role involving the sale of alcohol, as to employ anyone younger would be illegal.

## What have the case study organisations done?

Most of our case study organisations had examined their advertising and removed any age limits from the content of these advertisements. They had also removed terminology such as 'dynamic' or 'mature', which may be perceived by some as age-related. Organisations such as HSBC had also removed the requirement for a particular length of experience (for example one year), as this could be connected to age, and were instead asking for 'demonstrable experience in...', or something similar. These actions are necessary in order to comply with the legislation. We can see in the case study opposite how ASDA has taken further steps to attract workers with a diverse range of ages into its organisation.

## ASDA

ASDA is one of the largest food retailers in the UK. The company has over 300 stores and approximately 150,000 employees. ASDA has developed the brand of being a community business, so it's important that the employees of ASDA stores are representative of the community. This means that they need to employ both older and younger workers.

ASDA is supportive of both older and younger workers. They offer a variety of flexible working practices, including 'Benidorm leave', where workers can take three months unpaid leave in the winter to take an extended holiday. They also offer grandparents' leave, carers' leave, study leave and the facility to work across two store locations so that students can work at one store during term time and another in the holidays. ASDA also have a seasonal colleagues' scheme allowing colleagues to work a minimum of ten weeks a year at peak times. Clearly all these schemes are available to all colleagues, no matter what their age, although some may be more relevant than others to different age groups.

Store managers work closely with the local community to attract both younger and older workers, for example by talking to organisations such as the over-50s club and asking local schools to send out career packs and advice.

They have been successful, particularly with older workers. The number of over-65-year-olds in the organisation has risen to 3,500 since the legislation came into force.

ASDA has aimed to make itself attractive to both older and younger workers by offering flexible working schemes. The provision of flexible working practices is one way that organisations can attract an age-diverse workforce. ASDA has also been innovative in its approach to reaching potential employees, through the company's links with the local community. Marks & Spencer recruits mainly through its stores and website, thereby ensuring that its employee population has a similar age profile to its customer population.

ASDA has also done a lot of work on its external communications to make sure that it is branded as an organisation that welcomes employees of all ages. The case studies demonstrated that this was an important aspect of attracting an age-diverse workforce, with several of the case study organisations having taken some time and effort to focus on their branding through the messages on their website. Royal Mail created a series of diversity-branded advertisements that included the promotion of the fact that the company is open to employees of all ages. The Co-operative Group already had the corporate brand of being an ethical business so it was important to them to be seen as being age-inclusive. They used their website to promote this and the fact that they were an Age Positive Champion.

### Learning points

- Remove from advertisements all age limits and requests for particular amounts of experience, unless clearly justified.
- Remove age-related terminology, such as 'junior'.
- Think about whether you are limiting the reach of your advertising through the channels that you use.
- Offer flexible working practices to attract older and younger workers.
- Create links with the community to reach particular age groups.
- Pay some attention to your brand as an employer and promote the fact that you welcome employees of all ages.

# Application process and recruitment agencies

It's important that organisations pay attention to the application stage of the recruitment process. Many organisations have decided to remove date of birth from their application forms, as well as the dates associated with qualifications or work experience. While the legislation does not stipulate that this has to be done, many organisations have adopted this as good practice, so that they can try and ensure that age is not a factor in the initial screening stages.

It's also important to ensure that any recruitment or advertising agencies that your organisation uses are also adhering to the legislation. Many organisations have renegotiated contracts with agencies to include standards on avoiding age discrimination. In addition they are putting into place procedures whereby they can monitor the agencies they use to make sure that they will be acting to the standards that they have set as an organisation.

## What does the law say?

The law does not prescribe how job applications should be dealt with. It is for employers, and the recruitment agencies they use, to determine the process, always bearing in mind that their actions may be challenged by job applicants and scrutinised by an employment tribunal after the event.

When instructing a recruitment agency, it's helpful to make clear the employer's requirements. Supplying the job specification, which makes clear the qualifications, skills and competencies required for the job, is an obvious first step. Supplying the employer's equal opportunities or diversity policy will reinforce the employer's wish to recruit without discrimination. The agency's corresponding policy will help complete the picture.

When the initial sifting of applications is undertaken, instructions should include clear guidance on what should and should not be taken into account in the

sifting process. Plainly, even where information is supplied voluntarily by a candidate (usually incorporated in a CV), age-related data should be disregarded.

To ensure consistency of treatment with respect to all prospective applicants, the employer may wish to use, or require all agencies to use, a standard application form devised by the employer, which reflects the requirements of the organisation and, perhaps, the specific role for which the employer is recruiting. Given that age should be irrelevant for all but the few cases where an age-related characteristic is a genuine occupational requirement, there should generally be no reason to include age or date of birth on the application form. Well-designed forms will also seek the applicant's qualifications, skills and experience, without asking for dates of such achievements.

Some employers take comfort from seeing an applicant's history (with dates given) in order to identify any career breaks or other interruptions in employment (for example because the applicant has spent time in prison). Again, the careful employer should consider whether such information is required either at this stage in the process or at all. For example, where relevant, an employer can at a later stage seek to undertake a check with the Criminal Records Bureau.

If age-related and other sensitive personal data is sought from all candidates, for the purposes of monitoring, this should be separately recorded and separated from the information to be assessed for the purposes of sifting applications.

In this way, employers should be well placed to demonstrate that they have taken reasonable steps to ensure that the application process is bias-free and that agencies instructed on their behalf have clear instructions to comply with discrimination law. Since employers are liable for the unlawful acts of

their agents, they should also ensure that there are appropriate warranties and indemnities incorporated in the terms and conditions agreed with the agencies they instruct to protect themselves in respect of such liability.

#### **What have the case study organisations done?**

If we look at HSBC we can see that they have removed date of birth and indeed all indications of

age from their application forms. Therefore, they no longer ask for dates for qualifications, schooling and work experience. HSBC have also gone through a due diligence procedure with the recruitment agencies that they use. They have examined the agencies' standards on diversity and reduced the number of agencies that they use considerably so that they are easier to monitor.

## **HSBC**

HSBC is one of the largest banking and financial services organisations in the world. HSBC's international network comprises 10,000 offices in 82 countries and provides a comprehensive range of financial services: personal financial services; commercial banking; corporate, investment banking and markets; private banking; and other activities. HSBC has approximately 312,000 employees worldwide.

HSBC worked with the Employers Forum on Age to audit its policies and practices against the new legislation. As it is a very high-profile organisation that is branded as having diversity among its organisational values, they decided to be more cautious with their policies and practices than the legislation required. The company has an age-diverse workforce that reflects the local community.

The company has removed all indication of age from its application forms, including date of birth and the dates of schooling, qualifications and work experience. As the Financial Services Authority (FSA) requires dates for employment, they have had to create two forms – one for FSA-regulated positions, which includes dates, and one for non-regulated positions, which does not. They have also added '12 months' experience' as an alternative requirement to some qualifications, as they are aware that some qualifications are indicative of age. For example, for a cashier the company now requires a minimum level of education or 12 months' work experience. They have changed job descriptions and advertisements so that they use phrases such as 'must be able to demonstrate ability in' rather than asking for a particular amount of experience.

The organisation has reassessed all of the recruitment agencies that it uses and reduced the number used from 228 to 50 so that they can monitor them more closely. This process of due diligence and vetting included an examination of the agencies' standards on diversity. The agencies' contracts have been renegotiated and they now have to meet the company's standards with regard to age discrimination. They have found that some agencies don't apply the age legislation to the same level and still provide CVs that include dates. They have been returning these CVs to the agencies to try to reinforce that this is not acceptable.

Most of the case study organisations had removed date of birth and other dates from their application forms despite the fact that the legislation does not actually require them to do this. It was generally felt that it was better to take a cautious approach so that the organisation could not be accused of using age as a factor in the initial screening process. Most of the organisations examined had removed their maximum recruitment age. Royal Mail, however, still have a maximum recruitment age of 64, as their retirement age is 65, but they have justified this based upon evidence that their employees need at least six months working in the role before they are fully competent. A number of the organisations had also taken care not to include the requirement for a particular number of years' experience as part of the person specification that they sent to potential applicants. For instance, ASDA is now specific about the exact type of experience that is needed for a role rather than summarising this as length of experience. The resourcing team at Cancer Research UK has also spent time working with managers to identify the exact experience requirements for each role rather than using a number of years' experience.

Several of the case study organisations had also revisited their agreements with external providers such as recruitment agencies, had updated the contracts they had with these providers and put in place systems for monitoring the agencies to ensure that they remain compliant with the company's standards on age. The Co-operative Group undertook a detailed selection procedure for the agencies used for its graduate recruitment, based on criteria including the need to attract a more diverse workforce.

#### Learning points

- Consider whether the date of birth and other indicators of age, such as the dates of qualifications and work experience, are necessary on the application form.
- Remove the dates from CVs before passing them on to the people doing the assessing.
- Ask for particular types of experience rather than length of experience in the person specification.
- Discuss the demands of the age legislation with recruitment agencies and recruitment advertising agencies, and update contracts with these providers if necessary.
- Put in place systems by which the performance of agencies on attracting age-diverse applicants can be monitored and ensure they understand that the success of their contract will partly be measured upon this.

# Selection and assessment

It is essential that candidates for a position within your organisation should be assessed based only on job-related criteria such as their skills, experience and other competencies. The decision on whether or not to select a particular candidate for a job should be based purely on these attributes and not upon their age. Legislation on other areas of discrimination, such as gender and race, has emphasised the importance of objective, non-discriminatory selection techniques. The introduction of legislation on age discrimination means that it is now even more important that valid, objective selection techniques should be used to avoid any impact of the age of an applicant on the selection decision.

## What does the law say?

Although there is no legal requirement to produce a job specification or description that identifies the skills, experience and competencies required of a successful applicant to fulfil the role, it is clear that producing such a document – and requiring those involved in selection and assessment to take full account of it – will help to ensure an objective and consistent approach, which should be bias-free.

How should qualifications and experience sought be expressed? In simple terms, they should be sufficiently specific as to be clear and sufficiently broad as to encompass the variety of ways in which candidates may satisfy the criteria. So, for example, the employer may be seeking candidates who would, originally, have acquired a variety of experience over, perhaps, a period of three to five years to enable them to fulfil the role in question. However, to stipulate that candidates must have a minimum of three years' experience could be to exclude capable candidates who, by reason of their age, have not yet accrued this length of experience. Alternative wording, such as 'candidates will need to demonstrate managing a budget of X, a team of X people, experience of running at least two major projects...', may be equally satisfactory and less contentious.

Where there is a genuine occupational requirement to recruit a candidate of a particular age group, this should be clearly documented and the underlying reasons clearly spelled out. Employers should ask themselves whether the requirement stands up to scrutiny. If challenged, could the employer show that a characteristic related to age is a genuine and determining occupational requirement? Employers must avoid the trap of treating customer preference as a justification for an age-based criterion. For example, it would be no defence for a retailer to recruit only young sales assistants as the products that they sell are purchased primarily by young customers who prefer to deal with sales staff in the same age group.

While a minimum age may be prescribed to satisfy legal requirements (such as health and safety laws), an upper age limit will be very difficult to objectively justify.

The exception, provided for under the Regulations, allows employers to turn away candidates who are within six months of normal retirement age (or, if there is none, age 65). This is in recognition of the fact that employers will generally wish to engage employees for a more substantial period than six months, particularly where some initial training is required to enable the successful candidate to fulfil the role on an ongoing basis (for Royal Mail example see page 8). If the employer generally operates a policy of requiring staff to retire at age 65, the employer is likely to be able to defend any claim of age discrimination where substantial and expensive training is required of the job-holder and the employer is looking to recoup its investment in the medium to long term.

## Unfavourable treatment

Given that the employer is vicariously liable for the acts of its employees engaged in the process of selection and assessment of applicants, employers should ensure that recruiters are trained and have a solid assessment process in place that is used for all candidates.

In the event of a complaint of harassment, the employer is likely to stand in good stead if they can produce documentary evidence of the selection process and can demonstrate consistency of treatment between candidates. Notes should be taken by those conducting the interview (whether on the telephone or in person) so that an accurate record can be produced after the event, if needed.

Even where the notes made or other documents retained are perceived to be unhelpful, these should not be destroyed. Any employment tribunal will take a very dim view of the destruction of any evidence and may draw an adverse inference from the employer's actions.

### **What have the case study organisations done?**

All of the case study organisations used criterion-based selection processes through interviews or assessment centres. An examination of Marks & Spencer's processes (below) shows not only the use of criterion-based selection, but also the use of online selection for initial screening. This ensures that age is not a factor at this stage, as the screening is conducted electronically without reference to the candidate's age. Those candidates who are selected for interview have therefore all satisfied a number of criteria for the job without their age being known. The use of trained assessors and the provision of training on age for recruiters also minimises the likelihood of age being used as a factor in the selection process at the interview or assessment centre stage.

## **Marks & Spencer**

Marks & Spencer is a large retail chain selling clothing, home furnishings, beauty products, food and financial services. The organisation has over 450 stores located throughout the UK and another 200 stores worldwide, operating in 30 countries. Approximately 10 million customers shop at Marks & Spencer every week. The company has approximately 68,000 employees worldwide.

Selection is based purely on talent screening, so age is not a factor in this. They recruit suitable individuals regardless of their age. Individuals apply online and are screened initially on a number of 'killer' questions, such as 'do you have a permit to work in the UK?' Those that are successful at this stage are then screened using online talent screening. This test assesses their skills and experience against that required for the role they are applying for. Those who pass this test are then invited for interview. The online process ensures that age is not a factor in the screening process up to this point. They have analysed the data from the online recruitment process to ensure that the use of the Internet does not discriminate against any particular age group.

The company ran training for recruiters about the new legislation. The training was designed to ensure that those individuals who conduct selection interviews don't discriminate on the grounds of age. They have also ensured that the chairs of assessor teams in assessment centres are well informed about the legislation.

HSBC also used online screening to improve efficiency and ensure that the process was completely objective. Following a series of questions, an application form and online testing, HSBC then uses a telephone interview as the next stage. This means that the interviewer does not know the candidate's age. HSBC described how it will not let its managers or HR practitioners recruit until they have completed diversity training. The company is bringing in accreditation for its internal recruiters that will ensure that the company can be confident that these individuals will not discriminate on any grounds. All the case study organisations trained their recruiters in the requirements of the legislation on age discrimination.

#### Learning points

- Use objective, criteria-based assessment and selection techniques.
- Try to ensure that those doing initial screening don't know the applicants' ages.
- Consider using electronic screening for the first screening stages.
- Consider using telephone interviews to remove age from the equation.
- Take notes at each stage of the process.
- Use clear job descriptions.
- Ensure recruiters and assessors are trained well so that they don't discriminate on the grounds of age when assessing and selecting candidates.

# Graduate recruitment

Graduate recruitment has caused particular concern among recruiters because the concept of graduate recruitment schemes is intrinsically linked to younger employees. There has been much discussion and ‘urban myth’ created about whether graduate recruitment schemes are still legal and about how these schemes can operate effectively within the constraints of the legislation on age discrimination. The good news is that graduate recruitment is not outlawed by the legislation, so those organisations that rely on a large intake of graduates each year are still able to do this. However, it is important that the recruitment of graduates to these schemes is not linked to age, either through attraction or assessment and selection.

## What does the law say?

The Regulations don’t specifically deal with graduate recruitment. The question that employers must ask is whether in the operation of a graduate programme they are discriminating on the grounds of age and, if so, whether it can be objectively justified (see Appendix).

## Having a graduate programme

If an organisation wishes to recruit graduates, they need to ask: is there particular merit in recruiting graduates to the organisation? It is unlikely that there is a stock answer to this question. Much will depend upon the size and nature of the employer’s operation, and the particular needs that it has identified will be well served by graduates.

In some instances there will be an indisputable requirement. For example, within the legal profession it is necessary to be a graduate in order to qualify as a solicitor.

However, in most cases, the employer’s requirement for graduates will be the result of a perception that a standard of education and qualifications should

be achieved, which is not always necessary. In such cases, employers must take care to make sure that opportunities are accessible to all through differing entry levels and not just to those that have recently graduated.

## Advertising and attraction

As mentioned, in conducting graduate recruitment the practical dilemma for employers (and particularly smaller employers with limited resources) is how to conduct a recruitment campaign that does not serve to exclude any particular age group of graduates. A recruitment campaign that focuses on the ‘milk round’ and the applications of recent graduates may lend itself to an allegation of indirect discrimination because older graduates are less likely to have recently graduated. Again, employers should ask themselves whether the methods adopted to recruit graduates will withstand scrutiny if challenged.

The range of institutions with whom an employer deals may be indicative of how wide the employer is prepared to cast its net in attracting suitable graduates, irrespective of their age. For example, some universities are likely to have more older undergraduates and graduates than others. The Open University in particular may warrant consideration here.

If the recruitment process includes the ability to make applications online as well as by more traditional methods, employers may attract a wider pool of graduates. Liaising with relevant careers advisory services may, in appropriate cases, establish the employer’s willingness to consider applications from graduates irrespective of their year of graduation.

This raises the question as to whether the employer can objectively justify seeking only recent graduates. In some sectors there may be a legitimate basis for doing so. For example, when recruiting graduates with degrees in computer science, there may be a

legitimate requirement that candidates' knowledge (and, accordingly, their degree) be fully up to date. However, assumptions should not be made. A graduate who has obtained a computer science degree some years ago may nonetheless be fully up to date as a result of recent work experience or independent study or research.

### **Selection and assessment**

Consistent with the good practice of considering all the options, employers should also look at how the value of a graduate's degree is determined. A system of selection that is dependent upon the use of the UCAS points system is liable to discriminate against applicants who have not obtained a recent degree.

### **Training**

It may be that the induction and training given to graduates will be different to that required for those filling non-graduate roles. However, when distinguishing between graduates and others, employers should assess whether they really need to, or are in practice inadvertently engaging in stereotyping of a kind that the age legislation is designed to counter.

If called upon to produce evidence to an employment tribunal to demonstrate that an employer has not even indirectly discriminated on grounds of age, it will be very helpful for an employer to show that it has undertaken an assessment of the impact of its graduate recruitment scheme. And as a result, it has sought to counter any potential flaw in direct discrimination by adopting a variety of means to attract graduates and has carefully scrutinised the extent to which the requirement of a higher education qualification is appropriate in meeting the needs of the organisation.

### **What have the case study organisations done?**

All of the organisations researched ran graduate recruitment schemes and had retained them following the introduction of the legislation on age discrimination in October 2006. While other organisations may have changed the name of their scheme in order to remove the word 'graduate', none of our case study organisations had done this. The case study organisations had removed the age limits associated with their graduate scheme and

had removed any requirement for applicants to have graduated within a particular amount of time (usually the last two years or similar). For instance, Marks & Spencer initially insisted that applicants to its graduate scheme had graduated within the last three years. This was increased to five years and now this limit has been removed entirely.

There has also been some debate about whether UCAS points are an appropriate basis for selection onto a graduate scheme. Those applicants who have not graduated recently may not have completed degree programmes that qualify for the UCAS points scheme, so using UCAS points as a criterion for selection may discriminate against older applicants. Therefore a number of our case study organisations no longer use UCAS points as an entry criterion, or also use an alternative criterion for entry onto their graduate scheme. It can be seen from the case study overleaf that the Co-operative Group has systematically examined the way that it attracts graduates and has strived to increase the diversity of the pool of graduates that it is recruiting.

The branding of a graduate recruitment programme can also be important to attract a more diverse range of graduates in terms of their ages. Royal Mail previously used to ask for 'young and dynamic' graduates, but has now changed its advertising to ask for graduates with particular capabilities. The channels used to attract graduates should also be considered. Graduates are traditionally recruited using the university milk round system, but this may limit the age profile of graduates you are reaching. It is important that any graduates should perceive your graduate training scheme as accessible and welcoming to them, regardless of their age.

Marks & Spencer also has a training scheme for non-graduates with two A-levels or equivalent. This is aimed at people who have the ability to go to university but prefer to work instead. While this scheme is designed to encourage younger workers into the organisation, it is not restricted to younger workers, as there are no age limits for entrants. Any individual can also enter the organisation as a customer adviser and work their way up through the company. The use of these schemes means that Marks & Spencer can effectively attract a very diverse workforce into the company through different entry levels.

## The Co-operative Group

The Co-operative Group is the largest consumer co-operative society in the UK. Set up in 1863, it consists of food stores, a bank, an insurance business, funeral branches, travel agents, pharmacies and farms. The Group has approximately 68,000 employees and 3,000 retail outlets.

The graduate recruitment process was reviewed three years ago to attract a more diverse range of applicants. The age limit for the graduate scheme was removed as well as criteria that might indirectly imply an age bias (for example UCAS points). The company undertook a process to choose the recruitment agency that would work with them on graduate recruitment. This selection process was based on a number of criteria, including the fact that they wanted to recruit a broader portfolio of people and gain access to a broader range of applicants, including a range of ages. The purpose of this was to create a more diverse workforce in terms of graduates. The company wanted a supplier who was good at reaching a broader range of people through networking, advertising and so on. This has been successful so far, as they now have a higher number of older graduates (nearer to 30 years old). They also have a gender balance (50/50), 23% ethnic minorities and 10% ethnic minority women. They have also discovered that those suppliers who are good at demonstrating that they encourage diversity are generally better at bringing candidates in. They have now extended this work to include their entire preferred supplier list and will not select any supplier who does not appreciate diversity and its importance. The graduate scheme is advertised in a variety of places and is promoted as welcoming graduates of all ages.

### Learning points

- Remove any limits based on age or year of graduation from the entry requirements to a graduate scheme.
- Ensure that the programme is advertised widely enough to reach graduates of all ages (that is, don't use only the milk round), and establish links with a wide range of universities so that you reach a correspondingly wide range of undergraduates and graduates.
- Don't rely solely on UCAS points as entry criteria.
- Consider how your graduate programme is branded – will it be perceived as accessible to graduates of all ages?
- Consider how people can enter your organisation. Have you got different entry points?

# Monitoring and measurement

For an organisation to be confident that it is not discriminating against individuals on the grounds of age, it is important that they monitor the age of individuals both within the existing workforce and also those entering the application and screening process. The age of job applicants is commonly recorded using an equal opportunities monitoring form that is provided with the application form but separated before the application is passed on to assessors. Alternatively, age may be recorded as part of an online recruitment process. It's important that this should be kept separate from the rest of a candidate's application so that it cannot be used in the screening process.

An analysis of the age of candidates entering the application process and then progressing through the various screening stages allows an organisation to assess whether any particular age group is being disadvantaged at any point in the process. An examination of the age breakdown of a company's workforce can also allow an organisation to establish whether it has a balanced workforce in terms of age. An organisation can thereby identify any problems accurately and take steps to address them.

It is important to ensure that any monitoring carried out is 'fit for purpose', the organisation has a use for the information, confidentiality is maintained and regular reviews take place to ensure information remains useful.

## What does the law say?

The law does not, as yet, impose any positive duty on employers to monitor the age of job candidates. However, in due course, the law may encourage if not require employers to take positive steps in this regard.

The benefit of monitoring is that it should enable employers to collate data and assess, by reference to hard evidence, whether the approach taken

and methods adopted in recruitment are effective in avoiding both direct and indirect discrimination on grounds of age. The results of such monitoring may, in practice, prove very useful in responding to any enquiry or allegation that there may have been unlawful discrimination with respect to any individual applicant or candidates of a particular age group. The employer who has collated and analysed data may well be able to satisfy any enquiry or complaint at an early stage, and thereby avoid the time, cost and adverse publicity associated with defending an employment tribunal claim.

When conducting monitoring, it should be remembered that all documentary evidence that is relevant to a complaint should be preserved so that it may be put before the employment tribunal. However, in the absence of complaint, employers are not required to retain data indefinitely.

The employers should bear in mind the principles established by the Data Protection Act 1998, which prescribes how personal data, and in particular sensitive personal data, may be processed. For further information on this see the CIPD factsheet, *Data Protection* ([www.cipd.co.uk/factsheets](http://www.cipd.co.uk/factsheets)).

For the purposes of monitoring, it is usual to adopt a system whereby all data is made anonymous at the outset, so that it cannot be readily attributed to particular individuals. Data may be collected on an anonymous basis without the consent of the individuals concerned, provided that it is not practicable to attribute personal information (such as age) to a member of the group surveyed.

However, if organisations do wish to collate data that can be attributed to specific individuals, consent must be gained and organisations very clear on their reasons and intentions for doing so.

## Royal Mail Group Ltd

Along with Post Office Ltd and Parcelforce Worldwide, Royal Mail is one of the three brands that make up Royal Mail Group Ltd. Until recently, Royal Mail Group was a public limited company wholly owned by the Government, responsible for letter and parcel delivery. The company has annual sales in excess of £8 billion, delivers 83 million items to 27 million addresses every day, and employs more than 196,000 people – almost 1% of the entire working population.

Royal Mail collects extensive information to monitor the recruitment, selection and promotion of workers by age. The company collects information about the age of applicants at the application, testing, vetting and interview stage to examine who gets through each stage and also how employees move within the organisation. They have also analysed the ages of those who do include their date of birth on submitted CVs and are examining employment by age, ethnicity and gender to see if certain groups (for example older women) are at a greater disadvantage.

This information is used in three ways. Firstly, there is an age steering group – set up 18 months prior to the introduction of the legislation – that meets on a quarterly basis and is chaired by the Head of Diversity and Inclusion. This group reviews the data at each meeting to identify trends in the data and issues that may need addressing. Secondly, a report is provided to the diversity team on a monthly basis. The diversity team looks at the data and takes any action that is necessary. For example, on one occasion they found that they were receiving a high number of applications from a particular group but that these were not progressing very far in the selection process. The diversity team investigated if this was due to age discrimination but concluded that it was not. Thirdly, line managers have access to information relating to their people and can easily track the age profile of their team, office or department, as well as being alerted to anyone nearing retirement.

### What have the case study organisations done?

It can be seen from the case study above that Royal Mail has been relatively systematic in its monitoring of the recruitment and selection of candidates by age. It collects a large amount of information and has set up systems to make use of this information.

All of the organisations researched collect information regarding the age of their workforce and job applicants. For instance, Cancer Research UK collects information on the age of applicants along with other equal opportunities data online. They have set up a monitoring forum whose job it is to examine all of the data collected about diversity, as well as anecdotal evidence, to monitor trends in the organisation, identify any problems and make suggestions of how to address these. The Co-operative Group also monitors the age of applicants and employees at a number of different points. The collection of this information allows the company to investigate if there are any issues about the age of their applicants or recruits

and to ensure that their workforce is balanced by age. ASDA regularly conducts a mapping exercise whereby the age profile of the workforce is compared with that of the local community to see how representative it is.

### Learning points

- Add an equal opportunities form that includes age to your application pack or online recruitment system.
- Record the age of applicants at each stage of the application process.
- Consider setting up a working group or similar to examine this data in a systematic fashion.
- Use the data to identify any areas of potential discrimination so that these can be addressed.
- Don't just measure – take appropriate action.
- Maintain confidentiality.
- Review your monitoring system to ensure it remains fit for purpose.

# Communication

It can be seen from the previous sections that the introduction of age legislation in the UK has meant that a number of changes have been necessary with regard to the recruitment and selection process. As with any changes within an organisation, the implementation of new practices will not be successful unless the employees or managers involved have been well educated and trained. This final section therefore examines the steps that our case study organisations have taken to make sure that their workforce is aware of the legislation and its impact on the recruitment process.

## What have the case study organisations done?

Most of the case study organisations had undertaken some sort of communication and training strategy to make sure that their recruiters were aware of the legislation and what it meant for them. An examination of the communications provided by NHS Employers provides a good example of what an organisation may produce.

## NHS Employers

NHS Employers is responsible for workforce and employment issues, working on behalf of NHS organisations in England. The NHS is the largest UK employer, with 1.3 million employees.

NHS Employers has produced a range of information and communications for employees within the NHS. These include:

- a briefing document on why organisations need an age diversity policy or strategy – this was distributed to every chief executive and HR director in the NHS
- a legislation update that went through issues, including recruitment
- a document on how organisations must produce age profiles for applicants and those offered positions.

They also support research in the UK looking at age and age discrimination and are involved in the research by the Creative Approaches to Workforce Aging group (CAWA) at London Metropolitan University.

In addition to the information discussed above, NHS Employers has produced an age legislation checklist that instructs NHS organisations on how to be compliant, and advises trusts to adopt practices such as age awareness training. In addition, PowerPoint and speakers' notes on what everyone needs to know about the age agenda are available.

Cancer Research UK also produced some information for managers with responsibility for recruitment. This took the format of a 'handy hints and tips' document that provided a list of 'dos and don'ts' at the advertising, shortlisting and interviewing stages to make sure that recruiters knew exactly what was expected of them. This document was given to managers, posted on the company intranet and used as a basis for the briefings that were given to managers by the field HR team. Marks & Spencer ran training for HR and recruiters about the new legislation, used poster campaigns for the store community, the intranet for head office and produced a series of articles for the staff magazine. The Co-operative Group, like other case study organisations, used the Employers Forum on Age 'age aware' communications and provided briefings for the executive, HR business partners and senior management. HSBC now insists that their recruiters undergo diversity training before being allowed to recruit.

#### Learning points

- Make sure that all managers and employees who are involved with recruitment are aware of the impact of the legislation.
- Produce a list of 'dos and don'ts' for recruiters.
- Use as many channels of communication as possible – email, the intranet, staff briefings, newsletters and so on.
- Provide diversity training that includes age.
- Reinforce messages with clear actions if policies are breached.
- Sustain communication.

# Key issues

This research has highlighted a number of issues about recruitment practices that should be considered in light of the UK legislation on age and in trying to create an age-diverse workforce:

- The style of recruitment campaigns can help attract diverse candidates.
- The adoption of flexible working practices and forging links with the local community may help to attract a more age-diverse workforce.
- Age restrictions and age-related terminology should be removed from recruitment advertisements, job descriptions and person specifications.
- The requirement for applicants to have a particular length of experience should be replaced with more specific details of the type of experience needed.
- Vacancies should be advertised widely enough to reach potential applicants of all ages.
- Consider removing date of birth and indicators of age from the application form or CVs that have been received.
- The use of electronic or online screening and telephone interviews may help to ensure that age is not a factor in the initial screening stages.
- Assessment and selection should be based on objective criteria needed for the job.
- Entry onto graduate recruitment schemes should not be limited to those who have recently graduated or to those with a particular level of UCAS points.
- Graduate programmes should be branded so that they are perceived as accessible to graduates of all ages.
- It is essential that recruiters and assessors are educated and trained effectively so that they are aware of the requirements of the age legislation.
- Notes should be taken at appropriate stages of the recruitment process.
- External providers, such as recruitment or advertising agencies, should be fully briefed on the organisation's requirements regarding age and should be monitored to make sure that they maintain these standards.
- The age of the current workforce and applicants at each stage of the recruitment process should be monitored and this data should be used systematically to identify any problematic areas that need to be addressed.

Being positive about age is about building an effective workforce of different ages. Businesses of all sizes are reporting the benefits of employing an age diverse workforce, namely a higher retention rate, lower absenteeism, increased motivation,

greater flexibility and wider pool of skills. More still needs to be done but hopefully the research shows how a number of employers are starting to move beyond good intentions towards delivering strategies that contribute to that more diverse workforce.

# Appendix

## The legal position

The legal position is governed by the Employment Equality (Age) Regulations 2006.

The well-established concepts of direct and indirect discrimination are used.

So, a person ('A') discriminates against another ('B') if:

### Direct discrimination

- on grounds of B's age, A treats B less favourably than A treats or would treat others, or

### Indirect discrimination

- A applies to B a provision, criterion or practice which A applies or would apply equally to others of a different age group to B, but:
  - which puts or would put B's age group at a particular disadvantage when compared with others and
  - which puts B at that disadvantage,

and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim.

### Objective justification

This critical qualification is referred to as the objective justification test. In practice this means that it will be for the employer ('A' in the context of this research) to prove that it was appropriate and perhaps necessary to act as it has. In adopting good practice, employers will usually be well placed to defend claims of unlawful age discrimination.

### Employer Responsibility

In recruitment, an employer (with respect to employment at an establishment in Great Britain), must not unlawfully discriminate against a job applicant:

- in the arrangements the employer makes for the purpose of determining to whom to offer employment
- in the terms on which employment is offered
- by refusing to offer, or deliberately not offering, employment on grounds of an applicant's age or apparent age.

### Vicarious liability

Employers are vicariously liable for the acts of their employees, whether or not done with the employer's knowledge or approval, unless the employer can prove that it took such steps as were reasonably practicable to prevent the employee from doing the discriminatory act in question (or acts of that kind) in the course of the employee's employment. In relying on the 'reasonable steps' defence, employers need to demonstrate consistent good practice within their organisation.

Liability also arises where the employer instructs an agent, because anything done by an agent with the express or implied authority of the employer is to be treated as done by the employer as well as the agent. Moreover, there is no 'reasonable steps' defence in such a case. To protect themselves, employers must make sure that they have appropriate arrangements in place with those acting on their behalf, such as recruitment agencies.

### Exceptions

#### General

Inevitably, there are some key exceptions to the general principles outlawing direct and indirect age discrimination. Consequently it is not unlawful to do an act:

- in order to comply with the requirement of a statutory provision
- for the purpose of safeguarding national security
- in connection with affording a particular age group access to facilities that would help fit them for particular work or encourage those of a particular age group to take advantage of opportunities for doing particular work.

## **Retirement**

It should be noted that there are also provisions relating to normal retirement age that are pertinent to recruitment. The provisions protecting job applicants do not apply to those:

- whose age is greater than the employer's normal retirement age or (if there is none) the age of 65
- who would, within six months of the date of their applying to the employer, reach that normal retirement age (or, if none, age 65).

## **Genuine occupational requirements**

It should also be noted that there is an exception where there is a genuine age-related occupational requirement with respect to the job in question. It will not be unlawful where: (having regard to the nature of the employment or the context in which it is carried out)

- possessing a characteristic related to age is a genuine and determining occupational requirement
- it is proportionate to apply that requirement in the particular case
- either the applicant to whom it is applied does not meet the requirement or in all the circumstances it is reasonable for the employer not to be satisfied that the applicant meets it.

The practical effect of these Regulations are considered in more detail throughout this publication.

# References and further reading

## Further reading on age diversity

*Managing Age: A Guide to Good Practice*  
(February 2007)

[www.cipd.co.uk/research](http://www.cipd.co.uk/research)

A guide to help employers deliver their legal duties in connection with age legislation and to progress good practice.

*Tackling Age Discrimination in the Workplace: Creating a new age for all* (2005)

[www.cipd.co.uk/research](http://www.cipd.co.uk/research)

A report of an in-depth study of ageism and retirement, written in partnership with the Chartered Management Institute (CMI). It involved surveying over 2,600 managers and personnel practitioners.

*The Opportunity of a Lifetime: Reshaping retirement*  
(2004)

[www.cipd.co.uk/research](http://www.cipd.co.uk/research)

Examines the future of retirement with the Tomorrow Project.

*The Challenge of the Age* (November 2003)

[www.cipd.co.uk/research](http://www.cipd.co.uk/research)

Looks at the changes employers must make to comply with age discrimination law in 2006. Sets out challenges for business and gives tips on coping.

*Age and Employment* (2006)

[www.cipd.co.uk/factsheets](http://www.cipd.co.uk/factsheets)

Provides information on the implications of the statutory regulations on age discrimination.

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151 The Broadway London SW19 1JQ  
Tel: 020 8612 6200 Fax: 020 8612 6201  
Email: [cipd@cipd.co.uk](mailto:cipd@cipd.co.uk) Website: [www.cipd.co.uk](http://www.cipd.co.uk)

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