



Education and Culture

Leonardo da Vinci
Pilot projects

**NEEDS ANALYSIS FOR
ADULTS MENTORING**

PREPARED BY



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1 INTRODUCTION

Edinburgh University Settlement (EUS) Community Learning Centre is a partner in the Leonardo Adult Mentoring Programme. The lead partner is the Municipality of Sliven. Other partners come from Poland, Slovenia, Bulgaria and Greece. The remit of EUS is to conduct a Needs Analysis of people over the age of 50 years who want to be employed. We have prepared an online questionnaire and the results are incorporated at the back of this report. These results have been conveyed to a Steering Group consisting of businesses, local government and mentoring organisations.

There has been a marked increase in the interest of policy makers in social inclusion issues and reintegration policies for this target group of adults over the age of 55, including those with a disability. One important aspect relates to the labour market position of this group, in particular the desire to prevent social exclusion on the one hand, as well as growing shortages in the labour market on the other. Businesses are finding it difficult to fill skilled positions and therefore looking to older people to fill these positions. It is now recognised this this group have skills and expertise that employers are having difficulty in finding in the younger generation. Statistics are also demonstrating that people are living longer and will work beyond the retirement age.

In this report we attempt:

- To provide a framework for the partners of the programme to be informed as to the employment issues of this target group.
- To provide a resource for partners to find employer related issues for information and preparation for the practicalities of people in this target group.
- To assist partners to help this target group improve their employability and sustain future employment.

2 WHICH ARE THE CATEGORIES THAT INTEREST US?

For the purposes of this project we have defined the target group as people over the age of 50 including those with a disability.

It is well known that definitions related to particular categories of people can lead to stereotyping. The emphasis must be upon each individual person and the provision of solutions and support according to specific needs. Unemployed older people include: women and men who may have family problems with elderly parents, have health and fitness issues, suffer from redundancy or early retirement, lack further education, suffer from discrimination from employers/government policies.

Fifty something Women may have significant family problems, worrying and caring for ageing parents. They may be looking after parents for longer than previous generations. This responsibility tends to be addressed by a daughter. There are now 50, 60 and 70 year olds looking after ageing parents. Women also suffer from diseases such as breast cancer, which are more likely to be detected, treated and cured than 50 years ago. Therefore part-time work or working from home may be their only viable option. The level and type of support needed could be very different for different individuals, ranging from low support to high level of specialist support.

Fifty something Men are more likely to suffer from increased age discrimination and redundancy in the labour market, especially as a result of the recessions of the mid 1970s and early 1980s. The main factors explaining this are declining mortality rates and recession. The UK experienced simultaneous contraction of full time employment and larger numbers of young people entering the labour market. Older people were actively encouraged to take early retirement as youth unemployment was given a high priority by government. Research shows that older people are considerably less likely to receive job related training than younger people. Premature retirement was not a preferred option but forced on many as the result of job loss and a fruitless search for re-employment. They were caught between the twin pressures of an inhospitable labour market and their need to be in paid employment. Attitudes towards and beliefs about older workers were identified as being significant obstacles to recruitment, training and promotion of older workers. Many felt the only jobs open to them were part time or extremely low paid.

Health and Fitness Issues are central to disadvantaged groups including older people which are even more likely to be dismissed from work early. Older people are less likely to be re-employed and more likely to suffer from economic difficulty. People with mental health issues, learning difficulties and physical disabilities are confronted with difficulties which are characterised as psychological, physical and learning.

Age Discrimination

There is now legislation in the UK against age discrimination in employment for the first time. This legislation was the result of signing up to a recent European Commission Directive. Annexe 1 contains the summary of the Act in October 2006.

In general, legislation has had a positive effect on employment rates of older workers. Employer behaviour has changed in countries with legislation to the extent that explicit discrimination has reduced. However, society's and employers' attitudes to older workers do not yet appear to have shifted as much as the changing attitudes towards groups such as women and people from minority communities where legislative protection has, operated for longer. Discriminating against workers on the basis of their age can be unfair to individuals and harmful to the economy by assuming that someone is "too old" to be sufficiently adaptable to do a job as well as a younger person. The UK government has adopted a voluntary Code of Practice on age diversity. In October 2000 the European Council passed a new Directive requiring government to introduce equality in employment legislation including on age discrimination. They have the option of consolidating this legislation into a single act including sex, race, age and other anti discrimination laws.

Redundancy and early retirement

Against the background of concern over low employment rates among the over-50s, much UK public policy has come to focus on sustaining people in employment, both up to and beyond the State Pension Ages (SPAs), currently 60 for women and 65 for men. Within the UK, employment of older workers in Scotland is of particular concern because of low birth rates, migration and lower rates of economic activity of the over-50s as compared to England.

Economic activity among the over-50s in the UK underwent a period of sustained decline during the 1980s and 1990s. Low activity rates of older workers lag behind those for younger persons and fall far short of EC targets. Early withdrawal from the labour market can worsen the dependency ratio, increase public and private pension costs, and put

under considerable strain State welfare expenditure over the longer-term. Lack of work before SPA can restrict the accumulation of pension entitlement, leading in turn to poverty in a prolonged old age. Moreover, unemployment can be a powerful source of economic and social exclusion exacerbated where older workers are discarded by employers on grounds of 'outdated' skills, 'unacceptable' performance, or outright age discrimination. In response, since the late 1990s, the UK Government has taken various initiatives to prolong working lives. These include: the establishment within the Department for Work and Pensions (DWP) of the Extending Working Life Department. From October 2006 women's SPA will be raised from 60 to 65 by 2020; and the opportunity for people to defer receipt of their State pension. Bypassing older workers for training and promotion can deprive employers of valuable skills and experience.

Financial security in the form of an occupational pension may persuade older persons to retire early – and permanently – from work. Aligned to this, social class also has a powerful influence, with evidence indicating increasing demand among older professional and managerial workers for earlier retirement. Other factors associated with personal and family circumstances are also seen to be key. In their modelling of economic transitions of the over-50s, researchers have found that those who had a working partner worked for longer and were more likely to delay retirement.

The concept of 'bridge employment' is thought to be preferred by some, especially men, in contrast to the widespread practice of 'cliff-edge' retirement of either full-time employment or full-time retirement. However, older workers may face a range of organisational and institutional barriers should they try either to remain with their current employer or seek alternative employment. According to researchers, age is used to assign certain jobs in organisations, to deny entry to internal labour markets, and to discard workers. It is also doubted whether sufficient jobs are available for older workers, should employment levels increase. Relatively little is known about the experiences and aspirations of older workers who are currently in employment.

Recent Research

Women are more likely to be juggling work and family/caring roles. Women may be more likely to continue working past normal retirement age for social, as well as financial reasons. However, there were several reservations raised in relation to the quality of jobs in the service sector, particularly in areas such as hospitality and caring services. There is a need for more detailed, sectoral studies.

Other key barriers to choice included age discrimination. Ageist assumptions and beliefs have been internalised by older workers. This will of course influence their own attitudes and expectations. The second, which is another form of internalisation, is that existing organisational culture is ageist. In many senses ageism has become institutionalised within organisational policies and practices, and as such is rarely questioned.

3 EDUCATION AND TRAINING

LIFELONG LEARNING FOR OLDER WORKERS

Context of the Research

Demographic change will continue to drastically alter the structure of the workforce in coming decades across Europe. This will lead to a diminishing supply of labour, which could have an impact on productivity and competitiveness. A greater understanding is needed of how the labour market and the working lives of people will need to adapt to an “ageing workforce” that also has to cope with technological changes and an increasingly global economy.

During the 1990s the trend was for older workers to be excluded from the labour market. Increasingly there will be a need to reverse this trend in order to cope with these demographic changes. Education and training systems are going to need to adjust to these changes in order to ensure that all workers including, older workers, have the necessary competences to meet these new demands on their potentially longer working lives - thus the growing importance of lifelong learning.

Lifelong learning in general, and demand for continuous development of skills, knowledge and attitudes needed in working life in particular, have resulted in a call for new ways to organise learning, in and outside the workplace. Parallel to that, there is a need to monitor, recognise and more effectively to put into action the existing knowledge in companies, and include all stakeholders in these processes.

Key Conclusions

The following conclusions were reached: -

- Older workers are competent workers. Job competence is often qualitatively different between older and younger workers, due to the differences in their work histories and experiences and educational background, but not their age. Both groups manifest strengths and weaknesses in competence in comparison to each other.
- The job competence of older workers was generally highly valued by managers and employees in SMEs.
- Age as such was not a contributing factor to any competency deficiencies.
- Although systematic monitoring or documenting of older workers' competence did not exist, experienced workers were acknowledged and often had a “mentoring” role in the SMEs.
- Work experience and personal characteristics were valued as more important contributors to job-competence than formal training.
- Social and occupational competence, as well as work morale were considered to improve with age.

LEARNING AT WORK AMONG OLDER AND YOUNGER WORKERS ALIKE IS CHALLENGED BY THE CHANGES IN WORKING LIFE AND WORKPLACE.

- Continuous changes both stimulate learning and reduce opportunities for it. Age as such has little to do with effectiveness of learning at work. How learning from and at work is organised in the workplace is crucial to learning at work to flourish as individual and collective activity.
- Changes in working life and workplaces do challenge the learning of older workers but workload and time pressures reduced their opportunities for learning. In some cases

older workers adopted an adjusting rather than participating strategy amidst these changes.

- The assessment of learning attitudes, skills, or motivation, show no relationship to age except in regard to memory and speed.
- New technology was the biggest learning challenge to all employees. Some older workers managed well, whilst with others it resulted in their departure. Practice-based learning was preferred, though in some cases the need for more general theoretical issues was brought up.
- Learning in the workplace was highly social and a collegially shared activity but rarely systematically focused upon or organised.

A FULLER UTILIZATION OF THE JOB COMPETENCE OF OLDER, HIGHLY EXPERIENCED WORKERS IN THE COLLECTIVE SCENERY OF THE WORKPLACE CAN ENHANCE PRODUCTIVITY AND FACILITATE COOPERATIVE LEARNING.

- However, its full recognition, putting into action and development poses as much of a challenge to management as many other areas of modern knowledge management.
- Older workers do participate in informal training but compared to younger workers are less inclined to participate in formal training.
- Competence development of younger workers was more visible and systematic (e.g. mentoring), whereas older workers were viewed more as contributors and 'teachers' as opposed to being in need of learning and development, with the exception of information technology.

DEVELOPMENT OF LEARNING ORGANISATION REQUIRES CAPABILITY, MOTIVATION AND OPPORTUNITIES TO REFLECT UPON ONE'S OWN AND COMPANY'S PRACTICES WITH MANAGEMENT SETTING THE BOTTOM LINE.

- Awareness of SMEs as learning organisations and what that might mean in one's own company was relatively low among both management and employees. However, it was observed that a transition process may be taking place as an SME moves from a traditional, stable organisation towards a more dynamic, responsive learning organisation.
- The effects of efforts to develop SMEs towards learning organisations were strongly dependent on management's involvement in and commitment to such a reflection.
- Flexibility and productivity of the older workforce, as well as social cohesion are not given in any particular context. Rather they are produced and reproduced in and through policies created and our everyday practices in working life. Strong will and concerted effort to develop these qualities are crucial, among management as well as among employees.
- Successful work-based learning and training interventions involving older workers have the potential to improve motivation for learning, self-confidence, organisational commitment, and the social climate in groups with mixed ages.

KEY RECOMMENDATIONS

Specific recommendations for European and national policy:

- There is a need to raise awareness of the value of older workers in working life by highlighting the strengths in older workers' job competences. The national programmes and campaigns implemented in some European countries have provided excellent results and hence examples of good practice.
- Educational initiatives should be developed that create and strengthen learning opportunities and support both older workers and genuine lifelong learning. European and national educational policies for lifelong learning must support provision for the upgrading of basic skills.
- Continuing efforts are needed to reverse the lowering of retirement age and to improve the labour market position of older workers through initiatives such as "age-management" in companies.
- More vigorous effort and more positive attitudes are needed towards the training of older workers.
- The benefits of "inter-generational communication" and co-operation towards increasing productivity should be highlighted and incorporated into national policies. However, there is a need to be aware that this increases the risk and the expenditure for small business.
- Greater attention must be paid to synergies between personal interests in work, leisure and training when developing policies to support flexible arrangements between work and retirement. For example, the personal interests of employees in late career could be used as a point for personal development and for updating work skills.

Specific recommendations for companies:

- Initiatives are needed to develop sensitivity and accreditation of workforce diversity in management policies and practise.
- Management should develop an improved awareness of and clarity over the learning-working relationship in their companies and through open discussions work towards clearly articulated, inclusive, longer term learning and development policies, necessary also in small companies.
- Inclusive developments are needed to ensure that older workers are given the chance to participate in organisational restructuring. The designing of work organisations and training systems should be sensitive to workforce diversity.
- New and flexible ways of organising working involving learning are needed to best utilise the competences of highly experienced workers.
- Management needs to respond to new forms of learning and utilise the diversity of their personnel, in order for SMEs to develop into learning organisations, especially in occupations and companies in traditional sectors.
- More attention needs to be paid to the effects of training on workplace and actual job tasks, particularly among highly experienced employees. Participation in training should always be coupled with conscious concern for individual and collective competence development and advancement.
- Human resource development policies and practices should be sensitive to and reflect the diversity of the workforce.
- Increased awareness is needed of differences in learning styles and strategies.

- Older workers with low or obsolete experience in participation in learning activities need support and encouragement to update their skills and personal development. Develop a coaching for “yes you can” attitude.
- Inclusive support is vital for senior employees when learning new technologies, through methods and practises that will include and empower the current negative self-image of older workers and older learners.
- Incentive systems are needed to motivate older workers into training and support learning and competence development.
- Older workers must be encouraged to design their own personal careers through the combination of flexible practise and social/employment security.
- A concerted effort is required to enhance knowledge and skills exchange and acknowledge “inter-generational communication” and cooperation.
- Additional research is needed to improve learning environments in SMEs, including the development of methods to integrate older workers in learning organisations; the mapping of diversity in competences and flexible organisations;
- The identification of both new career patterns in late professional life and the age differences in the mastery of information and communication technology.

Employers/Government Policies

Research among UK employers indicate that most employers have not developed any strategies geared to the recruitment of older workers. Less than a fifth of employers stated that they were seeking to recruit older people. In addition it was found that employers specified age bars in recruitment advertisements. Factors which discouraged employers from employing older workers where they lacked the appropriate skills, payback period on training and pension scheme rules. However, local authorities were now beginning to introduce positive older worker policies. Also managers’ attitudes towards older workers were significant obstacles to the recruitment and training of older workers. A recent survey carried out indicated that in times of crisis older people were shed first and targeted for redundancy or early retirement which is now a feature of programmes of redundancies.

The UK government have recently introduced a series of measures aimed at encouraging older people to remain in or to re-enter the labour market. These included the abolition, in 1989, of the earnings rule which penalised people who worked beyond the state pension age earning more than £75 per week. In 1993 the age limit for access to Training for Work (a government training programme for long term unemployed people) was raised from 59 to 63 years. However, in 1995 an agreement between the government and Training for Work Enterprise Councils (TECs) was reached which states that the first priority should be given to people aged 18 to 24 years. Thus the effect of raising the maximum age of entry may be limited.

There are other areas of employment legislation where discrimination against older people exists. The Employment Protection (Consolidation) Act 1979 does not apply where an employee has reached the “normal” age of retirement, provided that the age of retirement is the same for men and women. However, it has now been established that a person’s age alone is insufficient grounds for making them redundant.

In 1993 the government launched the “Getting on” campaign with the aim of educating employers about the value of recruiting older people. This campaign was aimed at making employers aware of the qualities of older employees with examples of best

practice and how to avoid discriminating against older people. However, in a recent US study Human Resource Managers admitted that unlawful age discrimination remains and there remained nonstatutory means of dealing with it. A key finding was that many attending the “Getting on” presentations were doing so out of professional interest, rather than in the capacity of an employer, suggesting that the presentations were not always reaching their target audience.

The recent introduction of the Age Discrimination Act resulted from European Equal Opportunities legislation. However, employers were concerned about the possibility that legislation would restrict their ability to terminate the employment of an employee on the grounds that they had attained a particular age.

4 AGE DISCRIMINATION LEGISLATION - UK

There are problems with the current legislation which have been identified:

- Should legislation apply to all areas of employment or just age bars in recruitment and advertisements.
- Whether legislation should cease to apply after a certain age eg 65: whether recruitment advertisements should be barred which do not specify ages but includes statements like “needs to be able to fit into a dynamic young team”.
- Need to include provision for incidents of indirect age discrimination.
- It may be necessary to consider the issue of discrimination against younger people compared to older people
- The need for a policing body to be established or merging of organisations charged with promoting equality issues into a single body to cover all forms of discrimination.
- Bring cases of age discrimination, packaging a claim as one of age discrimination when it could be one of unfair dismissal.

Changes to existing policies and legislation

Unfair dismissal legislation could be modified to apply up to the age of 70 and beyond. This would mean that those working past the age of 65 would have the same rights as younger employees to take a case before an industrial tribunal.

Social Security

Older unemployed men were given a higher rate of benefit not to register as unemployed and served to confirm their disadvantage and discourage them from seeking work. To encourage employers they should receive subsidies to recruit and train older workers.

Contracting with TECS

Incentives should be paid to training providers to recruit older unemployed people on Training for Work schemes.

Reforming the pension system

Bring on board gradual retirement schemes. The government has been considering the relaxation of Inland Revenue rules which require a person to be fully retired and to have ceased contributions to an occupational pension scheme before they are entitled to receive their pension. There needs to be changes to policies on social security, training, pension schemes, redundancy and retirement. Society's attitudes towards ageing and old age needs to be addressed.

Mentorship is considered an important training and development tool and is present as a formal programme in many companies. Having a mentor has been linked to mobility and career advancement and may be even more important for women and minorities. Many companies have invested their resources in the development of formal programmes designed to promote mentoring relationships as part of their human resource development strategy.

5 THE LABOUR MARKET AND OLDER PEOPLE – EU

A recent study was made by the EU, based on a broad definition of disabled people, including those with impairment from birth, those who are disabled as a result of work-related accidents and diseases, as well as those with non-work related accidents or diseases. The type and degree of impairment were identified as important factors when considering the labour market position of people with disabilities. Unfortunately, there is precious little information available on the labour market situation of different categories of disabled people. Most employment specific legislation leaves SMEs out of the equation. This is clearly an issue for disability, since SMEs employ very large proportions of the workforce. Disability is much more prevalent among older people 63% of people with disabilities are older than 45. For non-disabled people the corresponding percentage is only 34%. The general pattern observed across the EU, is that disabled people have a relatively low educational level compared with non-disabled people. Countries with an extremely high share of disabled people with no educational qualifications beyond primary education level are France, Italy, Spain and the United Kingdom. Because disabled people are somewhat more likely to be unemployed and considerably more likely to be inactive they are far more often in receipt of benefits than non-disabled people. Most disabled people are dependent on specific disability benefit schemes. Across the EU as a whole, about 80% of disability benefit recipients are aged 45 years or older.

6 BARRIERS WHICH IMPEDE OLDER PEOPLE TO ACCESS WORK

The rights based approach

Older disabled people find it more difficult to get jobs than older people. One reason is the limitation of function resulting from their impairment. However, societal factors also operate to exclude them. These include the design of buildings and vehicles, the structure and operation of organisations, and the hostile or mistaken attitudes of individuals towards them. The disabling, exclusionary barriers to be tackled by laws and policies lie outside the individual, such as ramps, lifts, loop systems, signing services and materials provided in alternative formats.

General description of barriers

The broad barriers to older disabled people's equal participation in the labour market are generally grouped as follows:

- Exclusion from labour market and dependence on disability benefits;
- Poor basic education
- Employment in low-skilled, low-paid jobs.

An older disabled person's ability or willingness to supply their labour are likely to include:

- The severity of the disability;
- Access to and within a potential workplace;
- Beliefs about the likelihood of facing discrimination or the availability of suitable jobs
- The trade off between employment income and benefit receipt.

Experience and study of this group highlighted some of their experiences, perceptions and approaches to employment. They are summarised as follows:

- A number of participants who had several unsuccessful job applications experienced job search fatigue;
- A lack of confidence and low self-esteem made some reluctant to apply for jobs;
- Some had been successful in their search for employment and were now benefiting from economic independence and increased participation in work and society in general.

All practitioners in vocational training, sheltered work and community employment need to understand how each client learns best, and tailor their teaching and support to the person's individual needs.

Commercial and target considerations of employing organisations:

Rigidity of the decision-makers bias of experts and professionals' focussing on financial budgets, 'number' targets, production levels and unit costs.

A range of barriers that may occur singularly or as part of a combination of barriers, which vary in different circumstances and localities may be identified during accessing or sustaining mainstream employment for older people.

BARRIERS TO MAINSTREAM EMPLOYMENT:

The employer:

- Existing culture and values relating to employment of people with diverse attributes and abilities
- Fear and misconceptions about older disabled people's potential and abilities
- A lack of knowledge
- The difficulty in accepting the concepts and application of job coaching and accompanying support
- Lack of applying reasonable adjustments and accommodations to the work task(s) and environment
- Rigidity of organisation and delivery of production and services processes

The older disabled person:

- Lack of confidence in their own abilities
- Lack of training, vocational and social skills
- Lack of working experience and self-sufficiency communication and presentational skills
- Difficulty in accessing offers of employment and information

The social environment:

- Lack of internal and external support prior to and in the work situation
- Constraint of the familial environment due to the insecure nature of the work
- Physical and transport access to work place
- Negative attitudes from potential co-workers and their representatives

Regulations:

- Insufficient funding for support services and making reasonable adjustments in the work place
- Lack of access to employment in national, regional and local administrations and services, due to restrictive (civil service) entry requirements
- Compartmentalised financing, constraining progression into mainstream employment

7 BARRIERS WHICH IMPEDE EMPLOYERS TO HIRE OLDER PEOPLE

Perceptions of employers about older disabled people

In any attempt to convince or involve employers the first and perhaps the most important, aspect is to respond, in a pro-active way, to their concerns vis-à-vis older disabled people. From a business perspective, these concerns are manifold and justified and managers of small enterprises, in particular, often pose very practical questions when considering the recruitment of people with disabilities.

8 ADVANTAGES OF HIRING AN OLDER PERSON

When trying to convince employers about hiring older disabled people we should provide the employer with the benefits to be gained by this initiation. Business has a vested interest in society, and the importance of issues that were once viewed being peripheral to the operation of a business is now recognised can make good business sense to promote diversity in the workplace, and investors are often interested in organisations having responsible employment practices and, therefore, most organisations understand that what happens in society affects business, and what happens to business affects society. A diverse workforce can enable an organisation to gain a greater appreciation of the needs of consumers. From 2006, Europe will have a general framework for equal rights that will include employment. In preparing the final steps for the new directive, the European Commission refers to several beneficial, mainly economic effects that it will bring. First, there is the societal benefit. When social exclusion is replaced by social participation, people have the opportunity to realise their potential in both personal and economic terms. They can provide for themselves and their dependants and reduce their own dependency on state support. Secondly, it ensures that enterprises can access the people best qualified to do the job, thus contributing to the competitiveness and the strength of the enterprise and of the economy. Thirdly, it requires employers to justify their decisions about matters such as recruitment, promotion, and access to training and other working conditions. On the issue of social exclusion in general, CSR Europe (Corporate Social Responsibility- Europe) gives reasons why companies should be involved in the fight against social exclusion:

- Economic and political reasons. Exclusion wastes human resources, threatens social cohesion, and contributes to the rise in collective costs and financial burdens for businesses
- Ethical reasons. In particular, companies that employ older people can demonstrate their awareness of the twin concepts of progress and responsibility. A working environment that is free from discrimination and which promotes diversity, enhances profitability not only for society, but also for the firm, for individual employees, the workforce and clients:
 - Adjustments improve the working environment and conditions for all employees.
 - Working conditions that are accessible to all will reduce staff turnover and absenteeism.
 - Planning a staff policy - an important factor in today's competitive market
 - Older employees can enhance an enterprise's public image.
 - Companies that recognize the value of 'diversity' utilise the skills and attributes of their workforce, enhance the performance of teamwork and achieve a learning culture. Employing older people improves staff morale and team spirit, since everyone will see the organisation as more representative and diverse

With the burden of proof now shifting towards employers, contesting complaints of discrimination can lead to time and money wasting legal proceedings, which can only detract from business goals

Experience shows that promoting a company as an equal opportunities employer and providing equal opportunities for all candidates in recruitment and promotion gives the widest choice of candidates, helps to overcome skills shortages, improves job satisfaction and lifts employee morale generally. In short, it is good employment practice.

An equal opportunities policy is a necessary precursor to the employment of older people. It can be referred to in job advertisements and specifies how equality of opportunity will be actively promoted within an organisation. It is also recognition that discrimination has no place within a modern employment relationship. The policy should be endorsed by staff and union officials and incorporate the experiences of all involved in the company. Such a policy can play a valuable part in an organisation's strategy in meeting challenges posed by labour market conditions, as discrimination against certain categories of employees is not only unlawful, but impedes the realisation of the potential of all employees. It is also an effective tool in ensuring that all employees are aware of the company policy on equal opportunities and discrimination, thereby clearly setting standards of conduct.

9 INFORMATION FOR EMPLOYERS?

Many of the study conclusions focus on concerns about information provision. The inadequacy of information dissemination methods has arisen in relation to employment protection measures, the availability of financial incentives (including the procedures by which they are accessed) and in the promotion of good recruitment and employment practices:

- Financial incentives: the provision of information on the availability of financial incentives and the means by which they are accessed;
- Recruitment practices: the provision of information on good recruitment, training and employment practices and procedures;
- Information related to specific disabilities: practical information, where necessary, to enable the making of informed judgements and decisions about a candidate's suitability.

Information needs can be identified not only at the recruitment level, but also in subsequent induction and developmental stages. While there is an overlap with broad awareness raising initiatives, there is a clear role in information provision and dissemination for mediating organisations or programmes.

Employer perceptions should be challenged in these areas:

- Absenteeism, using evidence to challenge perceptions of sickness and absenteeism among older people;
- Capacity and ability, demonstrating the abilities of older people;
- Risk, stressing ways in which the risks of employing older people can be reduced through the use of mediating organisations or programmes.

In general, there is a lack of knowledge on the part of employers of the potential of older people, and of the services and financial support that are available to assist in their employment. There are also a number of structural, attitudinal and practical issues which currently prevent employers from recognising the abilities of these individuals.

10 INFORMATION FOR OLDER PEOPLE

Promoting Independence, Self-Determination & Self Confidence A Theme Through Everything

Helping people to become decision makers

Self-determination has emerged as a key area of outcome for older people. If older people are to maximise their skills, employment and vocational training services need to help people become self-determined, there are a number of areas of activity that are crucial to getting and keeping a job that they can apply these skills:

- They can examine their employment interests and skills and, through job try out and use of decision making protocols, refine their job choices
- They can carry out some of the activities involved in job finding
- They can set themselves goals for improving their personal, social and work performance, act to improve, monitor their performance and assess their success, and implement further changes.

Service providers should strive to help older people to take as much responsibility and control over the process of getting, learning and keeping a job as possible.

To achieve greater employment opportunities for older people, the range of barriers needs to be identified and addressed for all concerned. In practice, this involves organising ways of achieving a deeper and better understanding and increased collaboration in the workplace between employers, managers, supervisors, co-workers and older people, to realise greater access to job opportunities and more success in securing employment.

It is important to note that older people are looking for equal opportunity rather than favoured treatment, where they are capable and competent, with the assistance of appropriate treatment or facilities, of undertaking the job concerned.

Support provision and services

It is recognised that the degree, level and type of support may be adjusted or withdrawn once an individual achieves a required level of performance. Different types of support may be necessary at a later stage as work and individual circumstances change.

Support required for older people within mainstream employment:

Three sets of conditions have to be met:

To succeed in the transitional stage before employment, the client must have:

- A willingness to work
- Sufficient autonomy
- Access to pre-work training
- Guidance to assist in creating a coherent career path

To obtain employment, it is necessary to:

- Implement a process for job-seeking which has been discussed and devised with the client
- Implement a probationary period which will enable an employer to recognise an older person's potential and allow an assessment of his ability to adapt

- Provide the employer and client with ongoing practical support, starting with the job interview into full employment
- Provide the employer with information about specific provisions relating to older people's access to employment, by managing administrative files and obtaining financial aid
- Network with all those involved in integration, (role of third party social mediator)

To maintain employment it is necessary to:

- Make organisation at work flexible
- Prepare the managerial staff for the arrival and integration of an older person into a work team
- Regularly monitor the progress of the person within the framework of his social and professional life
- Improve a person's technical competence and provide further training-accessibility to the workplace.
- Apart from these it is essential to promote social

RECOMMENDATIONS & CONCLUSIONS

The recommendations and conclusions of the study on facilitating access to sustained employment by older people are based upon the following:

- Each individual has specific and unique personal experiences and abilities
- Each individual person has unique requirements which determine the nature, degree and level of support needed
- To enhance employment, support services should be available to both the individual and employer

Recommendations

Support services should be:

- Universally available, flexible and appropriate to meet the needs of the individual, the employer and the employment situation
- Determined on the basis of individual profiling, the choice and active participation of the individual person.
- Defined within an individual's personal development programme, in writing, with regular reviews for determining success, amendment or refinement of the support services and the needs of the individual
- Included to meet the needs of the employer and co-workers to apply the natural support in employment, family and the community available and to overcome fear, lack of knowledge and build on good practice
- The duration of such support services should be determined by the need of the individual for accessing and sustaining employment
- Such support services may be integrated within or external to employment or provided as a combination of both
- Development and delivery of support services should be co-ordinated and operated in partnership with the providers of the different elements of such services
- The financing of support services should be flexible and determined in conjunction and in partnership of the funding agencies to ensure consistency and quality of the services required by the individual
- National, regional and local legislation and regulations should be flexible and accommodating to ensure that support services are available and timely
- Accessing, sustaining and retaining employment, meeting the choice and needs of the individual should be the determining feature supported by 'joined up' services and adequate funding

11 SUMMARY

The person should remain at the heart of the system and an individualised path should be formulated and established with him according to his needs. For this reason, the measures and support services for providing social and workplace integration of all disabled people should be:

- Adapted to the real situation of the person and the job to be performed
- Individualised and personalised
- Formalised in writing and updated on a regular basis
- Constant, adapted and flexible to meet changing demands and circumstances
- Monitored for application, quality and success by a referent and overall funding authority
- Supported by positive and consistent legislation and regulations

12 ANNEX 1: THE LAW IN A NUTSHELL

The Employment Equality (Age) Regulations came into force on 1 October 2006. They are the final strand in the EU Framework Directive on Equal Treatment in Employment and Occupation to be implemented by the UK. This Directive committed EU member states to legislate on disability, religion and belief, sexual orientation and age.

The regulations apply to employers and vocational training providers in the private and public sectors, to trade unions, professional organisations, employer organisations, and trustees and managers of occupational pension schemes. They cover, to varying degrees, a broad category of workers, including employees, agency workers, casual and contract workers, office-holders and the police. Political office-holders and members of the armed forces are excluded from the scope of the regulations.

As with other equality legislation, the regulations prohibit both direct and indirect discrimination in employment and vocational training. At the moment, they don't extend to other areas such as the provision of goods and services. They outlaw age discrimination against young and old alike. Employers are generally liable for the discriminatory acts of their employees committed in the course of their employment. It's a defence if the employer can show that it took such steps as were reasonably practicable to prevent the discrimination. There is no minimum service requirement for discrimination claims, so workers are protected from their first day at work.

Direct and indirect age discrimination

Direct age discrimination occurs when a person is treated less favourably because of their age, or perceived age, than other people are or would be treated. Direct discrimination based on assumptions about how old someone is, even if the person's actual age isn't known, is therefore also unlawful. To establish a claim of direct discrimination, the claimant needs to show that:

- There was different treatment
- On the face of it, age was the reason for, or a significant factor in, the different treatment
- They suffered a detriment as a result of the treatment.

An example of direct age discrimination would be an employer denying access to training opportunities to an employee because they are 50 years old; or excluding an employee from a promotion opportunity simply because they are seen as being too young.

Indirect age discrimination occurs when a provision, criterion or practice is applied equally, but it puts, or would put, people of one age group at a particular disadvantage when compared with those of a different age group. An example would be linking access to certain benefits with length of service, as older people are generally more likely to have longer service than younger people.

Uniquely, under the age discrimination regulations, both direct and indirect discrimination are lawful if the employer can show that the discrimination is objectively justified.

Generally, under equality legislation, there is no defence to direct discrimination and only indirect discrimination is capable of being objectively justified.

Note that the claimant in an employment tribunal case doesn't need to prove conclusively that the different treatment was age-related. It's enough if they can produce evidence from which the tribunal can infer age discrimination. The employer would then have to show either that age was not a (significant) factor or that the discrimination was justified.

Objective justification

The EU Directive permits direct discrimination on the grounds of age, provided the discrimination is objectively and reasonably justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary (Article 6.1, Council Directive 2000/78/ EC). The UK regulations state that an employer must show that the discrimination was a proportionate means of achieving a legitimate aim.

Legitimate aim

It's important to note that an aim which is in itself discriminatory can't be described as 'legitimate'. For example, an employer in the advertising sector wouldn't be able to argue that it is justified in only recruiting people under 25 because it needed to have a young profile in order to attract clients.

In its 2005 consultation document on the draft regulations, Equality and Diversity: Coming of age, the Government cited the following as examples of legitimate aims:

- Facilitation of employment planning
- Health, welfare and safety (including protection of young or old people)
- The need for a reasonable period of employment before retirement.

However, even though an aim is legitimate, the discriminatory treatment isn't justified if the means of achieving that aim is disproportionate. So, for example, refusing to employ anyone above the age of 55 wouldn't be a proportionate means of fulfilling the need for a reasonable period of employment before retirement in posts where the employee can normally be expected to work to age 65 and beyond.

Coming of Age also cited 'economic factors such as business needs and considerations of efficiency' as possible legitimate aims. But the extent to which costs can be taken into consideration as a legitimate aim will need to be viewed in the light of the proportionality test. The less pressing and immediate the legitimate aim, the more scrutiny it is likely to be subjected to – for example, discriminatory treatment based on public safety reasons is likely to require less robust justification than discriminatory treatment based on costs.

Proportionality

In order for discriminatory treatment to be justified, it must not only pursue a legitimate aim, it must also be a proportionate means of achieving that aim. This is essentially a balancing exercise – the relative benefits and importance of achieving the legitimate aim must be weighed against the negative impact of the means chosen to achieve that aim. Where the aim in question can be achieved equally well by less or non-discriminatory means, these must take preference.

The European Court of Justice decision in the case of *Mangold v Helm* [2006] IRLR 143 provides a useful illustration of how the courts may approach the question of proportionality in age discrimination cases. This case concerned direct age discrimination in the treatment of fixed-term contract workers. In transposing the EU Directive on fixed-term contracts, German law limited fixed-term contracts to a maximum term of two years. Within that maximum limit of two years, a fixed-term contract could be renewed three times at most. However, in the case of employees aged 52 and over, German law specifically allowed the renewal of fixed-term contracts for an indefinite number of times, without the prospect of a permanent offer of employment.

The German Government argued that this discriminatory measure pursued a legitimate aim: to promote the vocational integration of unemployed older workers, as they encountered considerable difficulty in finding work. The ECJ agreed that the legitimacy of

such a public interest objective could not reasonably be doubted. However, the Court concluded that the means of achieving that objective was not proportionate as all workers who had reached the age of 52, without distinction and regardless of whether or not they were unemployed before the contract was concluded, could lawfully be offered fixed-term contracts of employment, which could be renewed an indefinite number of times until their retirement. This group of workers, solely on the basis of their age, could be excluded in this way from the benefit of stable employment during a substantial part of their working lives. The German Government had failed to demonstrate that there was no other less discriminatory means of achieving the same objective (or that it had even considered whether there were less discriminatory means available to it).

The Court said: 'Observance of the principle of proportionality requires every derogation from an individual right to reconcile, so far as is possible, the requirements of the principle of equal treatment with those of the aim pursued.' An employer wishing to use an objective justification defence needs to produce good supporting evidence, showing that the aim pursued is legitimate and that they have properly weighed up the benefits of achieving that aim against the detriment to both the individuals and groups of individuals who will be affected by the discriminatory measure. The employer must also show that there were no available alternatives that would have produced a less discriminatory effect.

Exceptions

The Government has chosen to deem many examples of age-related treatment to be objectively justified by means of specific provisions in the age discrimination regulations. This means that age-related treatment is automatically justified and employers do not need to produce their own separate justification for applying the measures. However, it remains to be seen whether all the exceptions within the age discrimination legislation will withstand challenges to their compliance with the EU Directive.

For example, the default retirement age is already the subject of a judicial review challenge on the basis that the regulations offer no protection for people dismissed from employment at or over the age of 65 when the reason for dismissal is retirement; that people who are forced to retire are unable to challenge whether the decision has been made for discriminatory reasons; and that employers have been given scope for justifying direct discrimination that is wider than the Directive permits.

Looking to achieve best practice, rather than following the strict letter of the law, will help to avoid difficulties that may arise as and when aspects of the age discrimination regulations are tested in the courts.

Genuine occupational requirements

Age discrimination is automatically justified where the employer can show that being of a particular age is a genuine and decisive requirement for the position in question, and it is proportionate to apply this requirement in the particular circumstances. This exception is likely to be very narrowly construed. As the Government pointed out in the Coming of Age consultation paper, there will be very few cases where age is genuinely a requirement.

The example often cited is that of requiring an actor of a certain age to play a character whose age is specified. However, actors are expected to have the skills and expertise to portray themselves in different lights – and therefore as different characters of different ages.

Default retirement age

The regulations allow employers to compulsorily retire employees at the age of 65, as long as the retirement procedure is properly followed. Without this exception, having a

compulsory retirement age would be unlawful direct discrimination as, except for the fact of their age, the employee would have been able to continue in employment. Further, the regulations don't prohibit an employer from discriminating against job applicants by refusing to employ them because they are 65 or over, or are within six months of reaching that age or the employer's normal retirement age. A consequence of the default retirement age is that it is unlawful for employers to set a normal retirement age of below 65, unless they can demonstrate exceptional circumstances. The default retirement age is the subject of a legal challenge and, in any event, is due to be reviewed in 2011. Employers may want to consider whether having a compulsory retirement age makes business sense. Retirement is discussed in detail in Part 2.

National minimum wage

The differential wage rates for younger people, under the National Minimum Wage regulations, have been exempted from the scope of the age discrimination regulations. As at October 2006, the national minimum wage rates are:

- £3.30 per hour for 16- and 17-year-olds
- £4.45 per hour for 18–21-year-olds
- £5.35 for those aged 22 and over.

The Government's justification for retaining the age bands is that they make it easier for young people to find employment while, at the same time, encouraging them to stay in education after age 16.

The exception to pay differentials based on age and the national minimum wage structure is examined further in Part 4.

Service-related benefits

Pay and benefits, such as holiday entitlement, based on length of service are potentially indirectly discriminatory, as older workers are more likely to have completed the required length of service than younger workers. However, service-related benefits are generally regarded by both employers and employees as promoting good employee relations, encouraging and rewarding loyalty and useful for staff retention strategies. Under the age discrimination regulations, employers may continue to award pay and benefits to employees based on length of service not exceeding five years. But if the length-of-service criterion that is applied to the award of a benefit exceeds five years, the employer must justify its use by showing that it fulfils a business need of the undertaking (for example, by encouraging the loyalty or motivation, or rewarding the experience, of some or all of its workers).

For the purposes of this exception, five years of service can either be calculated by reference to the total amount of time an employee has been working for the employer or by reference to the length of time the employee has been working at a particular level or grade within the organisation. It's for the employer to decide (preferably in consultation with the trade union) which method of calculation will apply to a relevant benefit. To avoid falling foul of the regulations, employers should document which method of calculation has been selected for each service-related benefit.

The employer may disregard absences when calculating length of service unless it would be 'unreasonable' to do so. The exception doesn't apply to benefits that are awarded to a worker by virtue of the termination of their employment. The exception would therefore not apply, for example, to enhanced redundancy payments.

Enhanced redundancy payments

Enhanced redundancy payment schemes that rely on age and length of service are permitted under the age discrimination regulations, as long as their structure closely follows that of the statutory redundancy scheme (SRS). Under the SRS, employees aged 21 and under are entitled to half a week's pay; those aged 22–40 to one week's pay, and those aged 41 and over to one and a half weeks' pay. The lower age limit for accruing service

(18) and the upper age limit for entitlement to a payment (65) have been removed.

Redundancy payments that 'enhance' the statutory rates are paid in the following ways:

- Paying a multiple of the total statutory calculation
- Increasing the multipliers, by increasing the maximum weeks' pay
- Paying a redundancy payment to an employee who doesn't qualify for the statutory scheme.

Pensions

The age discrimination regulations require trustees and managers of pension schemes not to discriminate against or harass members of schemes on the grounds of age. However, pension schemes often use age bands or cut-offs to assess contributions and calculate benefits, and the EU Framework Directive and the age discrimination regulations allow these practices to continue, including practices relating to 'early' receipt of pensions without actuarial reduction. The age discrimination regulations also contain more extensive exemptions for other indirectly discriminatory pensions practices, which may be subject to testing under the EU Framework Directive. These might include closing schemes to new members, and calculations or criteria relating to levels of pensionable pay and length of service. See Part 4 for further information on pensions.

Positive action

In cases where an employer can demonstrate that employees from a particular age group are at a career disadvantage or are under-represented in the workforce, the age discrimination regulations allow the employer to take 'positive action' by:

- Affording employees from that age group access to facilities for training that would help fit them for particular work, or
- Encouraging them to take advantage of opportunities for doing particular work.
- Positive action should not be confused with positive discrimination, where, for example, an employer recruits somebody to a post because of their age alone. This remains unlawful unless, exceptionally, the employer can justify it. Positive action can include a statement in a job advertisement to the effect that, while all applications are welcome irrespective of age, the employer would particularly like to see applications from people in a certain age group.

Acts under statutory authority

Any act done in order to comply with a requirement of any statutory provision is exempted from the scope of the age discrimination regulations. This exception only applies to acts that are mandated by a statutory provision and so doesn't apply to cases where a statutory provision gives permission or discretion to act.

13 USEFUL WEB SITES

www.tuc.org.uk

The UK Trade Union Movement

www.cipd.co.uk

UK Chartered Institute of Personal Development

www.agepositive.gov.uk

UK Government Site

www.acas.org.uk

UK Arbitration and Conciliation Service

www.helptheaged.org.uk

UK Advice and Support Site

www.olderworkforce.org.uk

UK Research Centre

www.age-platform.org

EU Older People's Platform

www.eurofound.eu.int

EU Working and Living Conditions