



## **Consultation Response**

### **Fair Work Commission call for evidence about fair work in Wales**

**November 2018**

#### **Introduction**

Age Cymru is the leading charity working to improve the lives of all older people in Wales. We believe older people should be able to lead healthy and fulfilled lives, have adequate income, access to high quality services and the opportunity to shape their own future. We seek to provide a strong voice for all older people in Wales and to raise awareness of the issues of importance to them.

We are pleased to respond to the Fair Work Commission's call for evidence about fair work in Wales. However, we are disappointed that the call for evidence does not specify older age as a characteristic which leads to needless disadvantage in the workplace. Older people make a significant contribution to Welsh life and the Welsh economy. Age Cymru believes that all people have an innate value in themselves, regardless of their age or other personal characteristics. Nevertheless, it is sometimes helpful to quantify the size of the contributions that are made by older people in order to combat ageist assumptions or negative attitudes.

An ageing population may bring challenges but it is also a significant opportunity. To fully grasp this opportunity we must put aside outdated assumptions and recognise the skills and value that older people bring as employees and contributors to wider society and to the economy.

#### **Employment and employment support**

More people are working for longer than ever before. For some this is through choice while, for others, a combination of economic factors and policies such as the raising of the State Pension Age mean that continuing to work is a financial imperative. More people are continuing to work in older age with just over 1.2 million people currently working past this age in the UK.<sup>1</sup> In Wales, 61,000 people aged 65 and over were employed in March 2016, an increase of 23% over three years (though the number of older people has also increased in this time). 10% of this age group is in employment in Wales.<sup>2</sup>

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<sup>1</sup> Office for National Statistics, Labour market statistics August 2016

<sup>2</sup> Office for National Statistics, Regional Labour Market Statistical Bulletin, August 2016

Nevertheless, remaining in work or finding new employment is still a significant challenge for many 'older' people. Despite being illegal under the Equality Act 2010, older workers – typically those aged 50 and over – still face barriers in accessing work and training.

When people aged 50 are unemployed they tend to remain so for longer. Data on the number of people claiming Job Seekers Allowance (JSA) in Wales (the 'Claimant Count') shows that 39.7% of people aged 50+ have been claiming for more than 12 months, compared to 33% of those aged 25-49 and 26.7% of people 18-24. The differences are starker for men than women, and 42.4% of unemployed men aged 50 and over have been so for longer than 12 months.<sup>3</sup> The reasons for this are believed to include ageism among employers, outdated qualifications, a deficit of skills required in today's job market (such as IT) and declining self-confidence. For the country this is a waste of skills, and for the individual it is often devastating in relation to personal finances, health and self-esteem.

Part of the picture is that older jobseekers often find they are unable to access adequate back-to-work support. Jobcentre Plus advisers tend not to be trained on the specific issues facing this age group, for example how to minimise the effects of age discrimination or help with online job searching. The UK Government Fuller Working Lives strategy focussed on the retention of the over 50s in the workplace and increased engagement with employers.

However, the Work Programme, the UK Government's previous flagship back-to-work programme for the long-term unemployed, is considered to have failed older jobseekers. The proportion of people supported into sustained jobs generally declines with age, but drops steeply between the 45-49 age group and the 50-54 age group. The percentage of Work Programme participants in Wales aged 50 and over who had secured sustained employment was 13% in June 2015 (17% in England) compared to 23% overall and 29% of the 18-24 age group.<sup>4</sup> Other analysis has suggested that the low performance is not caused by higher incidence of disability or health conditions among older people, and research analysis has concluded that age is in itself a barrier to work.<sup>5</sup>

The same research made recommendations about the support requirements of older jobseekers. Because they are a diverse group, with varied skills, employment histories and no typical journey into long-term unemployment, they have a diverse range of different support needs and require tailored provision. However, there are also some cross-cutting issues identified which affect many older jobseekers. The research found that changes in health circumstances were common and could affect the type of work older jobseekers could consider. Ageism and the competitive nature of the job market

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<sup>3</sup> Ibid.

<sup>4</sup> Public Policy Institute for Wales (Dec 2015), Rethinking the Work Programme for Wales

<sup>5</sup> Age UK & Centre for Economic & Social Inclusion (2014), Employment support for unemployed older people.

both present overarching barriers to employment. Overall, it concluded that older jobseekers often face amplified barriers as compared to other jobseekers and so benefit from more intensive employment support.<sup>6</sup>

### **Public policy proposals:**

- Employers should consult older workers about their hopes and aspirations. Employees may not welcome the thought of continuing in their current role for a few more years, but might be open to new ideas and new opportunities.
- The support provided to older jobseekers through Jobcentre Plus (JCP) must be better tailored to individual needs and recognise the barriers to returning to work often faced by those aged 50+.
- JCP must ensure all its advisers are trained to address the particular barriers facing older jobseekers.
- The Work Programme should be reformed to ensure it better meets the needs of older participants. Support providers should be granted an extra payment for placing anyone aged 50+ in sustainable employment, and more disadvantaged jobseekers should be referred after six months unemployment rather than the usual twelve.

### **Age discrimination in employment**

Age discrimination in employment remains widespread despite the introduction of the Equality Act 2010 (which absorbed the Employment Equality (Age) Regulations introduced in 2006). 40% of workers aged 50 and over believe they have been disadvantaged at work for appearing too old across the UK.<sup>7</sup> Research by Age Cymru in 2010 found that 71% of people in Wales believed older people were discriminated against on the grounds of their age in employment, while 1 in 5 people (21%) between the ages of 50 and 64 believed they had personally experienced discrimination in employment because of their age.<sup>8</sup>

The abolition of the Default Retirement Age (DRA) by the UK Government in 2011 was a major step forward in providing equal rights for older employees. The DRA allowed employers to force people to retire at age 65 regardless of their wishes, competency and performance. It also served to illustrate the accepted nature of age discrimination in this aspect of life.

In many cases the DRA was used as a proxy for a competency policy by organisations. A lack of coherent and robust policies and procedures covering performance and appraisal had meant that the DRA was used instead of an assessment of an individual's ability to perform the functions of a post. The removal of the DRA should be a significant step towards countering age discrimination in employment.

At the time the DRA was abolished opponents of the move cited a common misconception that longer working lives would prevent younger people from gaining

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<sup>6</sup> Ibid.

<sup>7</sup> CIPD/CMI (2010), Managing an ageing workforce.

<sup>8</sup> ICM Opinion poll for Age Cymru, February 2010.

employment and progressing their careers. However there is no evidence to support this view. The reality is that more individuals working for longer results in growing consumer spending power and economic activity, which feeds through into the creation of more jobs in the economy.<sup>9</sup>

This is not to say that it is not legitimate to seek to address youth unemployment. It is clearly the case that younger workers have had a difficult time in the labour market during the economic downturn since 2008. However, this is not caused by older workers or delayed retirement. In fact, there is often a correlation between high employment rates for older and younger workers, and the truth is that, regardless of the type of work, a strong economy is the key ingredient for anyone to be in employment. In reality older and younger jobseekers are unlikely to be in direct competition for the same jobs and the majority of older people continuing working are remaining in their existing jobs rather than seeking new ones.<sup>10</sup> A 2011 article from The Economist on this subject concluded: *“The idea that society can become more prosperous by paying more of its citizens to be idle is clearly nonsensical.”*<sup>11</sup>

However, despite these legislative changes, taking age into account in employment decisions is still not certain to be illegal. The law allows for age discrimination where it can be ‘objectively justified’ by an employer as ‘a proportionate means of achieving a legitimate aim’. Legal judgments have also found that when employees are treated differently because of their age, the employer's actions must support a social policy objective, rather than simply their own private interests. Although this is intended to be difficult to prove, and should only happen rarely, it effectively means that the employee’s interest can be overruled in some circumstances. Social policy objectives have been found to potentially include reducing unemployment, encouraging career progression and rewarding employee loyalty.<sup>12</sup>

A common misconception and cause of age discrimination is the belief that people become less productive in the workplace as they age. However, a growing evidence base increasingly proves this view as erroneous. The majority of research finds either a lack of relationship between productivity and age, or that older workers are at least as productive as their younger colleagues. Even in physically demanding situations, for example on a factory production line, a number of studies have found older workers to be just as productive.<sup>13</sup>

### **Public policy proposals:**

- More must be done to tackle age discrimination in the workplace. This includes through educating employers and managers to avoid discriminating and to

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<sup>9</sup> Saga and Cebr (2014), The Saga Generations: Supporting employment across the UK economy.

<sup>10</sup> ONS (2012), Older workers in the labour market.

<sup>11</sup> The Economist (9 April 2011), p.13

<sup>12</sup> Clarion Solicitors (2013), Justifying age discrimination <http://www.clarionsolicitors.com/blog/justifying-age-discrimination> (accessed August 2016).

<sup>13</sup> Age UK (2014), Productivity and age briefing [http://www.ageuk.org.uk/PageFiles/12808/Age%20and%20productivity%20briefing%20\(March%202014\).pdf](http://www.ageuk.org.uk/PageFiles/12808/Age%20and%20productivity%20briefing%20(March%202014).pdf)

challenge stereotypes; and by improving access to redress where people are treated illegally.

- The UK and Welsh Governments and the Equality and Human Rights Commission should make the case for employing older workers more effectively, including improving awareness of age discrimination.
- Given the UK's ageing workforce, employers must recognise that older workers often have the skills and expertise necessary to add value to their business, and judge people on their individual attributes rather than their age.

### **Flexible working**

Flexible working practices are increasingly important to older workers and the economy as a whole because of increased caring responsibilities or health needs as the UK population becomes older. Some workers also indicate a preference to wind down to retirement by working part-time or flexibly, which can benefit both individuals and employers if they use the opportunity to use existing employees to mentor and train other staff. The proportion of workers aged 50 and over using some form of flexible working rose from 30% to 38% between 2005 and 2010.<sup>14</sup>

As the workforce ages more people will need to use differentiated working patterns, so increasing awareness of the benefits of flexibility among employers and individuals is important. These include increased productivity and improved employee retention. Around 60% of over 50s say they would like to continue working after state pension age on a part-time basis. Some 40% would like to stay in their current job, but have greater flexibility in their working pattern.<sup>15</sup>

However, there are also instances of employers forcing 'flexibility' on their employees. Flexible working is often at the employer's discretion and used primarily as a workforce management tool, paying little regard to the individuals' needs. Employers are often likely to consider 'flexible working' differently from employees, hence there is a danger that public debate around 'workforce flexibility' can be a euphemism for reducing employment rights.

An additional factor to consider is the 'family care gap', as identified by the Institute for Public Policy Research.<sup>16</sup> By 2017 there were predicted to be more people needing care than the number of adult children able to provide it. This additional strain on relatives' time and resources emphasises the importance of ensuring that everyone has access to flexible working.

We welcome the legal change enacted by the UK Government in June 2014 which means that all employees (with more than six months' service) now have the right to request flexible working. Previously this legal right had existed only for parents and carers.

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<sup>14</sup> Age UK (2012), A means to many ends: older workers' experiences of flexible working

<sup>15</sup> EHRC (2010), Working Better – The over 50s, the new work generation

<sup>16</sup> IPPR (2014), The generation strain: Collective solutions to care in an ageing society

## **Public policy proposal:**

- In conjunction with extending the Right to Request flexible working to all workers in April 2014, the Government must both promote the benefits to employers and individuals.

## **Retirement**

Report after report has highlighted the lack of planning for retirement – according to one report the average Briton spends more time planning their next holiday than planning their retirement.<sup>17</sup> Two-fifths of current retirees say they did not prepare adequately, and only a third realised this before retirement, while more than two-fifths do not think they will ever make up this shortfall.<sup>18</sup>

A key contributor to this lack of readiness is inadequate pension provision, often dating back to earlier parts of a person's working. However, employees and employers could do more in the immediate period leading up to retirement to help ensure that it doesn't result in a precipitous fall in income.

For some, working longer may be an answer to boosting eventual retirement income. Enlightened employers will undertake retirement planning with their employees and consult older workers about their hopes and aspirations. Some employees may not welcome the thought of continuing in their current role for a few more years, but might be open to new ideas and new opportunities.

Working longer is not an option for everybody however and, unfortunately, this is most likely to be the case for the very people who are most in need of the income. Clearly, poor health is a barrier for some, and the option to continue to work can also depend on the profession or industry in which you work. Long-term unemployment also remains a particular problem for the 50–64 age group and being unemployed during this phase of life can have a severe impact upon income in retirement. For these reasons it is vital the UK Government takes into account health inequalities and varying life expectancy when making decisions about the State Pension Age in future.

Transitions into retirement have rightly become more complex in recent years. Retirement is now more likely to be an evolution, rather than a single event taking place around the State Pension Age, as demonstrated by the growth in flexible and part-time working in later life. For most people, starting to receive a workplace or private pension and leaving paid employment do not happen simultaneously.

It is important that the government, employers and employer associations, and trade unions ensure that adequate pre-retirement advice and information is available to everyone in the build-up to and the immediate period after retirement. This is vital to ensure that people have full access to the information they need to plan a suitable time

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<sup>17</sup> <http://www.legalandgeneralgroup.com/media-centre/press-releases/2014/groupnews-release-1216.html>

<sup>18</sup> HSBC (2013), The Future of Retirement, Life after work?, UK Report.

and process for their retirement, and help them to make important financial decisions. This is especially important given UK Government reforms which allow greater freedom and choice to people over when they access their pension savings.

**Public policy proposals:**

- The UK Government should work with employer's representative groups and others such as trade unions to ensure that all workers have access to accurate and impartial information about their retirement options and the financial implications of these.
- The Pensions Wise guidance available to people considering accessing their pension fund should provide access to information about retirement and financial options, and should consider offering people more than one session, rather than a one-off conversation, as recommended by the Work and Pensions Committee.
- Any future changes to State Pension Age should take into account differences in life expectancy between different groups and provide people with a minimum of ten years' notice of any change.

We hope these comments are useful.