

# QA

Stuart Markless, employment caseworker at Martin Searle Solicitors, answers questions on age discrimination



**WE HAVE retained a long-term employee on annual contracts since he reached our retiring age of 60 four years ago. I would prefer not to renew his contract when it runs out? His performance is slipping and I need to reduce overheads. What should I do?**

Since October 2006, forcibly retiring people before they reach 65 is potentially unlawful age discrimination.

At present it is lawful to make people retire when they reach 65 provided a set procedure is followed (visit [www.berr.gov.uk/files/file29246.pdf](http://www.berr.gov.uk/files/file29246.pdf) for details). In this case, it is questionable whether it is appropriate to be treating someone of 62 differently to his colleagues by giving him renewable fixed contracts.

This in itself is potentially discriminatory. Therefore, I would advise against dismissal due to the end of his fixed-term contract.

If he worked for you prior to this and completed more than four years' service he is, to all intents and purposes, a permanent employee and you may find yourself facing a claim of unfair dismissal and age discrimination.

**WHAT about the performance issues?**

If you believe his performance may be declining, you should follow a performance review process to find out why his performance is being questioned.

Be sure to investigate thoroughly to ensure he is not being affected by negative age-related stereotypes and whether other factors are responsible for his poor performance, for example, a lack of resources or training, or poor management.

The best way to fairly resolve the situation is to give the employee goals to reach within a reasonable period.

If training, better management guidance or other resources have been requested, ensure they are provided.

If there is no improvement in his performance, the disciplinary procedures may be invoked including dismissal where warranted.

For details of the correct process, visit [www.ms-solicitors.co.uk/employment-law/discipline.html#4](http://www.ms-solicitors.co.uk/employment-law/discipline.html#4).

**I DO need to reduce my wages bill. Can I just make him redundant?**

If you need to reduce overall staffing levels, you should use objective criteria in choosing candidates from the appropriate pool of employees.

This means you cannot start out with the intention of making one individual redundant on the basis of performance or age.

You might decide to select candidates from the whole organisation or from a particular department or group of staff.

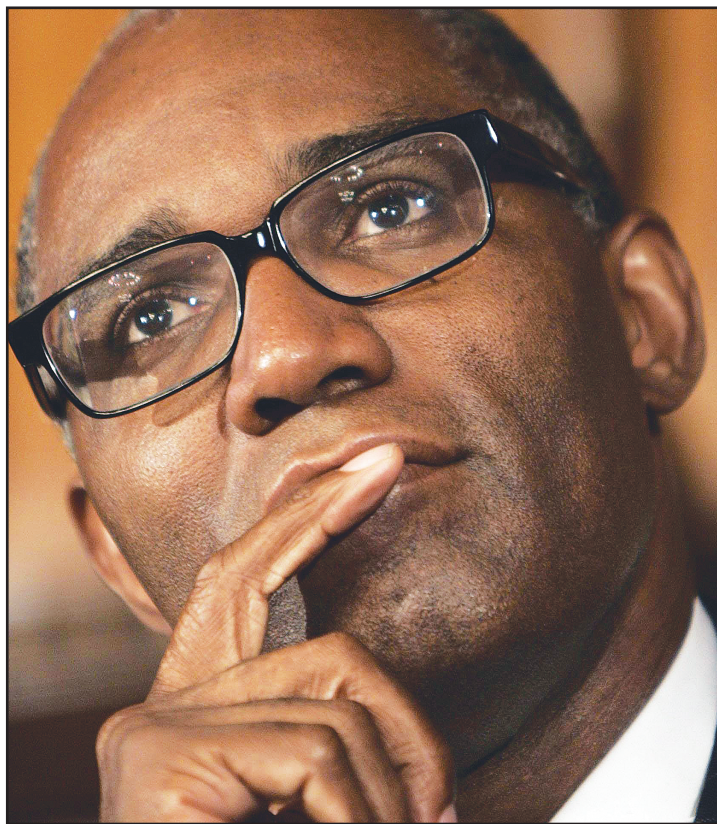
There are no set rules about selection criteria provided they can be objectively measured and are not discriminatory – ie, you cannot select based on age.

For details of the correct process to follow in a redundancy programme, visit [www.acas.org.uk](http://www.acas.org.uk).

● Martin Searle Solicitors is a member of the Brighton and Hove Leader group

# Human rights advocate outlines need for diversity

**IN JUST a few years only a quarter of Britain's workforce will be young, white and able-bodied. Here, TREVOR PHILLIPS, chairman of the Equality and Human Rights Commission, explains that increasing diversity in the workplace will be vital for businesses to be successful in future.**



**LOOKING AHEAD:** Trevor Phillips explains the commission's plans

THE gathering economic gloom should not obscure a fundamental truth of our time: the market remains the most successful engine of wealth creation known to humankind. But when times get hard, business can quickly find itself under siege.

Edward Heath's "unacceptable face of capitalism", the lampooning of 1980s' "greed is good" and last year's media assault on the private equity barons all show it is not difficult to find symbols with which to attack the market.

For those of us who worry about equality, it would be all too easy to join in. Business still has plenty to do to instill fairness in the way it works. There is still a pay gap between women and men, there are still too few people from ethnic minorities in the higher echelons, disabled people are still too likely to be outside the world of work and we have yet to work out how best to use the skills of older workers.

But the Equality and Human Rights Commission will not be joining the hunting party to seek capitalism's demise.

In a statement on our ambitions, published recently as *Fairness, A New Contract With The Public*, we recognise the days of regarding business as a tolerated enemy are over. The call last week by Nicola Brewer, our chief executive, for a realistic assessment of the effect of employment laws that grant greater flexibility to mothers, is only the start of our programme to recalibrate thinking on equality.

Equality and enterprise go hand in hand. Without enterprise there would be no opportunity for the disadvantaged to improve their standing. But without fairness, business would never benefit from the talents of many who do not fit the standard template.

By 2010, just one quarter of Britain's full-time workforce will be white able-bodied men aged under 45. Some 80 per cent of jobs created in the past decade were

filled by women. Between 2005 and 2009, half of the growth in the working-age population will have come from ethnic minority groups.

This is why smart businesses are recognising that managing diversity is central to future success. Alex Gourlay, managing director of Boots the Chemist, part of Alliance Boots, last week called

for tax breaks for companies that increase their diversity. BAA, not exactly the world's favourite airport operator after the Terminal 5 debacle, is training workless people locally in order to improve its service delivery.

Success in handling diversity will not depend on business alone. It is also the job of the education

and training sector. But a modern equality regulator in tune with the needs of wealth creation can make a difference. The Equality and Human Rights Commission aims to be just that. We believe we can help business in several ways.

First, we know that unless business can find people to do the work, it is forced to fall back on expensive imported labour. Our powers over the public sector enable us to bring pressure to drive up standards of education and skills. Working with Ofsted, the schools inspectorate, we intend to ensure nobody is excluded from the labour market for reasons of gender, race, disability or age.

Second, we want to ensure businesses understand how to hold on to their best people. I have seen chief executives of the old school swallow hard and march into receptions for minority graduates in the hope of snaring the brilliant young Asian trainees ahead of their rivals. The commission intends to expand its own networks to allow businesses to share ideas on how best to reach the top talent.

Third, we will look for ways of rewarding success. We will publish data showing which companies are doing well and will aim, through awards and perhaps the Kitemark-type scheme proposed by the Government, to identify organisations that are ahead of the pack. We will help to introduce rules to ensure companies that take equality seriously gain a bigger slice of Britain's £160 billion annual public procurement budget.

Fourth, we will make sure the law is simpler and clearer, by promoting a modern Equality Act that tells people what they can and cannot do on, for example, positive action. We will not rely on quotas and vast bundles of guidance and we resent paying lawyers to clog up the courts.

But we will enable companies to move faster where it is in the public or consumer interest. We want to work with the tools of the market – accountability, transparency and competition – and we want change to come about through normal business methods, pressure from consumers and shareholders.

● This article originally appeared in the Financial Times. For more information, go to [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

**WHY WE SHOULD SUPPORT THE EQUALITY BILL – Page 12**

# Equality vital for future

## Flag for Southern

A UTILITY company is flying the flag for employee development following its Investor in People (iP) accreditation.

Laura Moffatt, MP for Crawley, presented Southern Water with the iP plaque and raised a flag at the company's head office in Durrington, Sussex.

She said: "Congratulations to Southern Water for gaining this accreditation. I am impressed by the company's ongoing commitment to develop and support employees to improve performance."

iP sets out standards of best practice in the development of people and in areas such as training, communication and leadership. Southern Water gained the standard earlier this year following a six-month assessment.

Tim Cutting, the company's HR director, said "This is excellent news for the company and is recognition of the commitment and progress we have made in the development of our employees.

"The exacting standards that iP provide have not only benefited our staff but have also enhanced the level of service for our customers."

## Engage Partnership Employment League

**EACH month, the Engage Partnership Employment League will highlight those businesses which demonstrate their commitment to diversity by employing local marginalised people.**

For more information on employing diverse people, contact [claire.mitchell@engagesolutions.org.uk](mailto:claire.mitchell@engagesolutions.org.uk).



One job outcome per company other than those indicated ( )

**Engage organisation: Careers Development Group**

All Staff Personnel (4), Buzl Vending, Georgies Café, Hays Recruitment, Initial Hospital Services

**Engage organisation: Working Links**

Acro Property Services, Beauty Republica, Brighton & Hove City Council (Kings House), Café on the Beach, Champagne And Oyster Company Ltd, Collingwood Batchellor, Construction Alliance Recruitment Ltd, Coral

Stadia Ltd, DB Garden Services, Dunelm Mill, Elreg House, Evergreen Gardening, Guardian Guards, Hillersdon Court Residential Care Home, Honey Club, HR Partners Ltd, Iceland, Infinity Foods Café, Las Iguanas (2), Lidl Ltd, Little Ducklings Nursery, M J McCabe & Sons Limited, McDonald's, MDJ Light Bros, Momentum (2), New Look, Paces Nursery, Ponden Mill, Portland Road Post Office, Ramada Jarvis Hotel, Resolve Security, Royal Bank Of Scotland, Rullion, Saxon Tree Surgery, Scantec Personnel, Shae Shae, SoMacro, Somerfield (10), Stevens Vauxhall, Sussex Credit Union (2), Tansations, T. Holmes Suspended Ceilings, Westows, Wish Park Surgery, Working Links Brighton