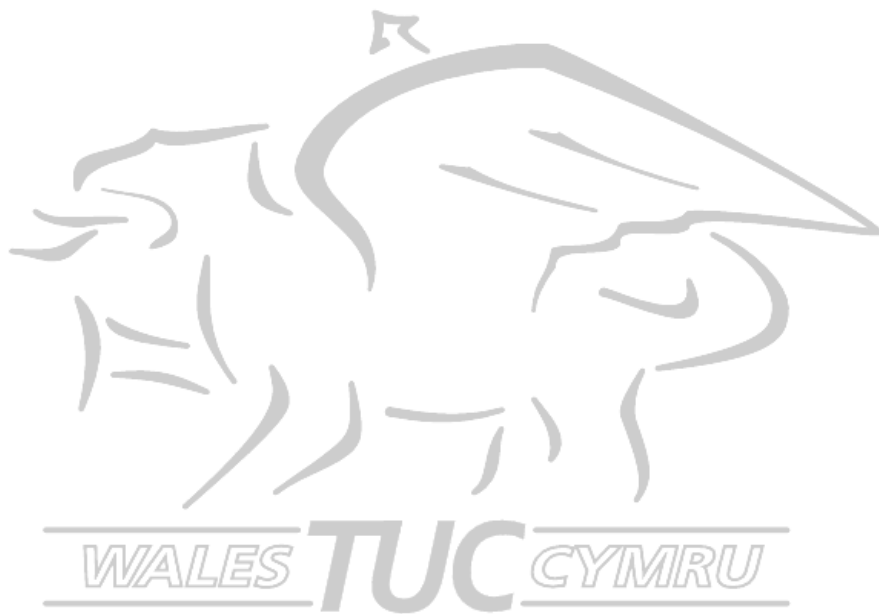


**Equality of Opportunity Committee:
Welsh Assembly Government's
Strategy for Older People**



**Wales TUC Cymru
1 Cathedral Road
Cardiff
CF11 9SD**

**Tel/Ffôn: 029 2034 7010
Fax/Ffacs: 029 2022 1940
E-mail/e-bost: nhirst@tuc.org.uk**

The Wales TUC is the voice of Wales at work. With almost 50 affiliated trade unions the Wales TUC represents nearly half a million workers.

The Wales TUC was established in 1974. It is an integral part of the TUC and was set up to ensure that the role of the TUC is effectively undertaken in Wales. The Wales TUC seeks to work with and make representations to other organisations at an all-Wales level. A major role is to co-ordinate the trade union approach to the Welsh Assembly Government and ensure that the interests of Wales' trade unionists are properly represented in the whole range of Assembly decision making.

15th May 2009

Introduction

The Wales TUC put out a request to trade unions for examples of cases or anecdotal evidence where members had experienced discrimination on the grounds of age in their workplace. A discussion also took place at a Wales TUC Executive meeting. Both a summary of key issues raised in discussions with trade union officers, and excerpts from individual written responses have been included in this response to the inquiry. Cases have been anonymised to protect the identity of individuals and workplaces involved.

The Wales TUC commissioned the Bevan Foundation report on Equality and Trade Unions in Wales, published in 2008. The full report has been attached and excerpts relating to evidence on age discrimination in workplaces have been placed in the Appendices.

The Wales TUC does not collect data on discrimination cases and does not have access to any detailed breakdown of cases taken or grievances raised.

Summary of responses

There are concerns about the impact of the recession on older workers. Anecdotally, trade union officers have reported on older workers being unfairly selected for redundancy which is especially prevalent during the economic downturn where many redundancies are being made. In sectors such as journalism and teaching, younger and cheaper workers are favoured in replacing older workers. This causes difficulties for younger workers who may be exploited (especially notable in journalism) but also for older workers who wish to continue working beyond retirement age. Indeed, the comments made to the Wales TUC largely focus on older workers being denied their request to continue working after retirement age, or not being able to secure flexible or part time working.

It is also notable that many older workers may have a disability or may have caring responsibilities and find it hard to secure flexible working to accommodate their needs. Lack of access to training opportunities has been noted and also problematic is discrimination on multiple grounds, making it hard to take a case forward. The current Age Regulations allow employers to discriminate without providing a good reason when retirement age is reached. Further, the lack of provision in the current legislation and the Equality Bill prevents multiple discrimination cases being taken where individuals may be discriminated against on multiple grounds but may not have enough evidence on single grounds alone to take a successful case. The Wales TUC acknowledges that this is not within the remit of the Welsh Assembly to change but it certainly is a key

consideration when scrutinising the effectiveness of the Strategy for Older People when it comes to promoting equality for older workers.

The Appendices contain the following:

Appendix 1: Responses 1-4

Appendix 2: Bevan Foundation Report (2008): Equality and Trade Unions in Wales (attached)

Appendix 3: 5th March: TUC Press release.

Appendix 1 – Responses:

Response 1 – Male aged 64, private sector (summary of a phone conversation)

He was made redundant 2 months ago.

He worked in sales and his employer tried to make him redundant or get him to retire blaming his poor sales figures. This was despite the fact they had recently taken on a younger man whose sales figures were worse. He didn't accept this so they cut his wages (£50k to £30k). Eventually they wanted to make further cuts and they made him redundant despite the fact that his sales figures were much better than the younger man. When he asked for an explanation the bosses explained that the younger man had lots of potential, was young and was the future of the company or words to that effect. When they made him redundant they refused to pay some of his salary and other bits.

Union solicitors think there is strength in case and will have confirmed they will take it on. They are using unfair dismissal as well as age discrimination law.

He was 63 when it started and is 64 now. He got a new job fairly quickly but on a lower wage again. He is going to have to work until he is 70 and is fearful because after 65 he has fewer entitlements (for example to redundancy pay) despite the fact he has to work to enable him to have a decent pension.

Response 2 – Female, private sector (firsthand account by email)

"I have worked in the print trade for more than 14 years. During that time I had spent many years as the only female working on the shop floor in a pre dominantly male environment. This environment was kinder towards the younger females that I occasionally worked with, during a short period of time. As an elder female I have experienced terms of isolation, ridicule, persecution and rejection.

From my experiences I found some discriminations go hand in glove, it can be difficult to separate the two... Some events that I have encountered could be either sex or age discriminate, one event I was subjected to discrimination against my age or disability, or both!

The company lacked the direction to instil discrimination guide lines towards the staff, the male gender were very comfortable with their biased attitudes, as long as it was not a member of their family!

The selection for redundancy was made on a point system, I was incorrectly marked and robbed of a few points. I would also have had a higher mark to sustain my

employment if I had the same training as the men. During my 9 years service with my last company, I had to step back and watch all the male gender employed after me, train to an advanced level.”

(Note: This worker was recently made redundant)

Response 3 – Female Clerk aged 65, Female aged 65 Approved Social Worker, Male aged 65, Female aged 65 Care Worker - all public sector (Trade union rep by email)

“I have dealt with a number of members wishing to work beyond the age of 65.

The first one was just after the law changed. A female Clerk was sent the standard letter 6 months before she was due to retire and she spoke to her supervisor who told her she was happy for her to work on but a meeting was then arranged with the manager. The member did not think there would be a problem so attended without union representation. At the meeting the manager said she was only a clerk and they could easily recruit another so she could go and in any case they were not satisfied with her commitment or performance. We became involved and another first meeting was held and we were officially told that there were no 'business reasons' to keep her on. We said that there could not be any 'commitment or performance issues' as no issues had been raised at her regular supervision sessions. (written minutes were used as evidence). An appeal meeting was held but they still did not agree to keep her on. I did pursue this with our solicitors but to no avail.

Another woman in the same section approached the same supervisor and was given short shrift and was so upset that she went off on the sick and did not return. She then applied to another organisation for a job and was given a dreadful reference by the same manager. Again this was not borne out by her supervision notes and we are currently appealing the grievance against the poor reference. This 65 year old is an ASW (Approved Social Worker (they have the power to section people) - rarer than hen's teeth - and still they wanted to get rid of her)

A man working at a homelessness hostel applied and was turned down at the hearing and the appeal and was dismissed. This again was refused because there was not a 'business case' to keep him on. This time there were no suggestions of unsatisfactory work. This case made no sense at all as we could not recruit to these posts and were using agency staff to cover shifts.

On a more positive note, a female care worker applied a year ago to work on and it was agreed that she would work on for two years with a six monthly review. The review took place the first time OK but at the second review she was dismissed. It was claimed it was too expensive to train her. We appealed this case and won. The Council's policy says the default period for extension was normally to be two years and of course you cannot discriminate against workers with regard to training. Again we were able to use her supervision notes to prove that her conduct had been satisfactory during the extension period.”

Response 4 – Trade union rep evidence by email, Education sector

The main cases which come to our attention are in relation to retirement ages and request to continue working. A number of branches are reporting more difficulty in achieving successful outcomes where people want to continue working due to the number of redundancy or restructuring programmes underway in colleges and universities. One branch recently raised with me the failure of a college to impact assess their age equality policy as the decisions on request to continue working appeared to be detrimentally impacting on women.

We hear anecdotally of cases of members overlooked for development, progression or promotion as a result of age particularly if they are nearing the default retirement age.

Appendix 2: Bevan Foundation Report (2008): Equality and Trade Unions in Wales (attached)

Excerpts:

Section 3.9: Age

Legislation on age discrimination applies to people of all ages, including young and older workers. More than a third of the population of Wales (35.9 percent) is over the age of 50, and more than one in five (22.9 percent) is over the age of 60. However, only a small proportion of that population is in employment, even those who are below state retirement age.

Employment rate

One of the most striking differences between older and younger workers is in the likelihood of them having a job, with the likelihood of being in employment decreasing markedly as age rises. The employment rate of people aged over 50 in Wales in 2006 was just 33 percent.

The key break appears to be around the age of 55, as both men and women aged 50 – 54 have employment rates that are on a par with those of workers aged 25-49.¹ However, the rate declines sharply for 55-59 year olds, and decreases further amongst 60 – 64 year olds.² Nevertheless, 7.5 percent of males over state pension age and 9.5 percent of females over state pension age in Wales are in employment.

Table 3.8 Employment rate for older workers in Wales 2006

	Males				Females			
	50-64		65+		50-59		60+	
	No.	%	No.	%	No.	%	No.	%
In employment	178,00	64.4	16,200	7.4	128,400	64.7	34,900	9.5

Source: Annual Population Survey year to Dec 2006

A key issue in the lower rate of employment of older workers is whether their exit from the labour force is voluntary or not. Research suggests that over 50s leave employment

¹ Wales Management Council (2007) Older Workers in Wales, Cardiff: WMC

² Age Concern (n.d.) The Economy and Older People, London: Age Concern

because of a mixture of people's preferences and the opportunities they have to exercise them, and there is strong evidence that less advantaged groups (e.g. people in less skilled occupations) tend to have less choice and control over their employment.³ Older people who have previously lost their job e.g. through redundancy have been found to be less likely to be working in their 50s and 60s, and those who did then return to work did so to jobs with shorter hours and substantially lower pay.⁴ However, even when factors such as health and labour market history are taken into account, there is a significant difference in employment that may well be due to discrimination on the grounds of age.⁵

There is some evidence that practices that either directly or indirectly discriminate against older workers were widespread amongst employers in the run-up to the implementation of anti-discrimination legislation.⁶ Such practices ranged from specifying age limits in recruitment advertisements and for promotion, to adopting different terms and conditions according to length of service. At the time that this research was undertaken, many employers appeared to be unaware that their practices were potentially discriminatory.

Statistics suggest that older workers are more likely to work part time or to be self employed than younger workers. In 2004, 19 percent of over 50s were self-employed compared with 14 percent of 25-49 year olds. Part time working and self-employment were especially common amongst those working over state pension age, with these work patterns accounting for the majority of those who worked in this age group. Part time work and self employment can act as a valuable 'bridge' between full time work and complete retirement, although the quality of 'bridge' jobs very much depends on previous labour market experience, but it may also be because age discrimination makes full time work hard to secure.

People aged 16 – 24 are a much smaller proportion of the population over 16 – just 15 percent. Slightly over half of this age group are in employment (55 percent).

Occupational Segregation

³ D Hirsch (2003) *Crossroads after 50: improving choices in work and retirement*, York: Joseph Rowntree Foundation

⁴ F. Carmichael et al (2006) *The Relationship Between Age and Employment; the Impact of Health and Involuntary Job Losses*, University of Salford

⁵ F Carmichael et al (2006) op. cit.

⁶ H Metcalf and P Meadows (2006) *Survey of employers' policies, practices and preferences relating to age*, Department for Work and Pensions Working paper 325

Statistics on the type of job done by older and younger workers in Britain as a whole show some variation between different groups.⁷ More than four out of ten younger workers aged 16–24 (21.6 percent) and nearly one in four of workers over state pension age (24.6 percent) are found in sales and customer service jobs or elementary occupations compared with 14.6 percent of 25-49 year olds and 15 percent of those aged 50 – state pension age. In contrast, younger workers are very unlikely to hold managerial or professional jobs (just 8.0 percent have such occupations), which account for nearly a third of workers aged 25 – state pension age.

Earnings gap

Older workers on average earn slightly less than workers ten years younger, with average weekly earnings of those aged 40 – 49 being £454 a week whilst the same figure for workers aged 50+ are £431 a week.⁸ However some of the differences in average weekly earnings may be due to older people working fewer hours. Hourly wage rates are therefore a better indicator, and these too show that workers over the age of 50 consistently earn less than those aged 25 – 49. The average hourly rate for men over 50 over the 11 year period 1991-2001 was £9.40 compared with £10.54 for 25-49 year old men. There was a similar gap between hourly earnings of older and younger women, who earned an average of £6.22 and £6.90 respectively.

5.1.4 Age issues

Concerns about age-related issues were said to be one of unions' main equality priorities in five cases, with different types of unions mentioning them. The concerns raised essentially covered two issues – first, the question of flexible retirement and access to pension schemes and second, the lower pay of under-21 year olds who were not only exploited but were sometimes alleged to be employed in preference to older, more expensive workers.

'Another thing is, where schools work on tight budgets, there is an issue with age and experience. ... More and more local authorities are looking to employ less experienced teachers so they can pay less.'

Union official, small teaching union (2)

These issues, plus progression at work, were also mentioned by those unions who identified the most important issues facing younger and older workers specifically.

⁷ Wales Management Council (2007) op. cit.

⁸ Wales Management Council (2007) op. cit.

Appendix 3: 5th March: TUC Press release.

TUC disappointed by ECJ judgement on mandatory retirement ages

Responding to the judgement announced today (Thursday) by the European Court of Justice (ECJ) on Heyday's legal challenge to employers' right to use mandatory retirement ages, TUC General Secretary Brendan Barber said:

“With the recession putting more financial pressure on older workers, today's judgement is a blow to those who are perfectly able and willing to work past 65, or who need to go on working just have enough money to survive. Employers should not be allowed to use age as a quick and easy way of getting rid of employees.

“Age discrimination is still an issue in many workplaces. The ECJ judgement will leave the door open for businesses to ditch staff as soon as they hit 65, regardless of whether or not they are doing a good job and whether or not they want to stop work.

“The Government must now act to ensure that UK legislation allows people to work past their retirement age.”