Discrimination ... the final frontiers?

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Abstract This paper reviews the latest developments in the area of discrimination and its effect on pension schemes in the UK. It considers whether we have now reached the final frontier. After a review of recent changes in the areas of part-time workers, fixed-term employees, disability, sexual orientation and religion, it looks at recent case law relating to agency workers and the UK's proposed approach to age discrimination and pensions from 2006.

Keywords: *discrimination; part-time workers; fixed-term employees; agency workers; age discrimination; objective justification*

In the beginning...

Any human resources manager in the UK will tell you that the ever-expanding discrimination legislation is taking up an increasing amount of their time. Since the 1970s there has been a rapid expansion of discrimination law in the UK, driven by the European Union (EU). Most recently, this has been through the European Equal Treatment Directive.¹

Discrimination legislation in the UK has followed Europe's lead. The Equal Pay Act 1970 made it unlawful for one sex to be paid more for the same work than the other sex. Following that, there was the Sex Discrimination Act 1975 and then the Race Relations Act 1976 which made it unlawful to discriminate on grounds of race in education, training and employment.

Case law on the early legislation developed the concepts of direct and indirect discrimination.² These concepts now run through all of the laws on discrimination. Direct discrimination occurs where a person is treated less favourably than other persons have been or would have been in a comparable situation on particular grounds (eg the person's sex or disability). For example, if a pension scheme only allows male employees to join, that would equate to direct discrimination against women. Indirect discrimination, on the other hand, is where a generally applied provision, criterion or practice (that is not directly discriminatory) puts particular persons (eg women or disabled people) at a disadvantage. An example here would be where a pension scheme only allows employees who work more

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than 14 hours a week to join, and the effect of that provision disproportionately affects women.

Another important common concept is the defence of 'objective justification'. This operates if a person can show that the apparent discrimination is a proportionate means to achieve a legitimate aim. This defence is now well developed throughout discrimination law and is explicitly referred to in much of the legislation.³

The second wave: Part-time workers

The first cases relating to part-time workers and pension scheme membership were brought under the Equal Pay Act 1970 on the basis of indirect sex discrimination. The successful cases were those where the claimant could show that a rule excluding part-timers from scheme membership disproportionately disadvantaged one sex compared to the other.

The decision of the House of Lords in *Preston v Wolverhampton*⁴ clarified a number of points. The case determined that men and women excluded from their employer's pension scheme on indirect sex discriminatory grounds are entitled to claim retrospective access to the scheme, unless their exclusion can be objectively justified. Such membership can potentially be backdated to 8th April, 1976.⁵ To be successful, a person must lodge a claim at the Employment Tribunal whilst still in employment, or within six months of leaving their employment. The case also confirmed that, as a condition of obtaining backdated membership, employees could be obliged to pay contributions relating to the period of backdated membership.

The judgment of the Employment Appeal Tribunal (EAT) in *Preston (No. 3)*⁶ was delivered on 19th December, 2003.

It provided further clarity in a number of areas. First, it confirmed that there is a breach of the Equal Pay Act 1970 where scheme membership is compulsory for full-time staff, but part-time staff are excluded. However, there is no breach of that Act where membership is compulsory for full-time staff and optional for part-time staff.

The EAT in *Preston (No. 3)* was also asked what information should have been given to employees when any restriction excluding part-time workers was lifted. The EAT concluded that there is a breach of the Equal Pay Act 1970 where an employer has a policy of failing to inform staff of the removal of the barrier to scheme membership, and this failure has a disparate effect on women.

The EAT also considered when the six-month period in which a claim must be brought begins. In particular, would a series of short employment contracts defeat a claim? To decide when the six-month limit started, the EAT held that the period over which a 'stable employment relationship' may have existed through the series of contracts, and the intention of the parties must be looked at. In relation to a transfer of business assets to which the Transfer of Undertakings (Protection of Employment) 1981 (TUPE) applies, the EAT ruled that time starts running from the date the employee ceases to be employed by the transferee employer following a TUPE transfer, not when the transfer took place. This particular aspect is being appealed to the Court of Appeal.

Despite the recent rulings, there are still some practical problems. Although the Inland Revenue has made it clear that individuals may exceed the current contribution limit of 15 per cent of salary in the year they pay their backdated contributions, tax relief is limited to 15 per cent. For pensioners, it

appears that there is no tax relief available at all. It is also still not clear whether members can be required to pay interest on backdated contributions and whether or not an employer can insist on an employee paying all the contributions in a single lump sum. Contracting-out issues also remain problematic.

In July 2000, the Part-Timer Regulations⁷ became law. These Regulations make it unlawful to discriminate on the basis of a person being a part-time worker (note that these are not referred to as 'part-time employees' — 'worker' is a broader term). Individuals no longer need to show indirect sex discrimination to establish a claim. The pro-rata principle applies, so if someone works half a week it is lawful to provide him or her with half the benefits of a full-time worker. Objective justification also operates as a defence. The 2003 case relating to the retained firemen appears to limit the extent of the Regulations by requiring that a claimant must show that his or her full-time comparator was employed 'under the same type of contract'.⁸

And then ... fixed-term employees

The Fixed-Term Employee Regulations,⁹ which came into force on 1st October, 2002, give fixed-term employees the right not to be treated less favourably than comparable permanent employees as regards their employment terms.

The Regulations cover, in addition to other contractual terms, pay and occupational pension schemes. They do not require each term to be equal; the test is whether the terms as a whole are no less favourable. So, for example, it may be acceptable not to provide certain benefits for fixed-term employees where basic pay for such employees is at a

higher rate than for permanent employees.

An employer has three basic options when deciding how to deal with fixed-term employees and access to pension schemes. First, the employer can admit them to the pension scheme. This will result in some level of increased administration costs. Once allowed into the scheme, the employer is under an obligation to provide vested benefits pensions for those employees who stay in the scheme long enough to qualify. The period for qualification in most schemes is two years at present but the Pensions Bill introduces a more immediate vesting of pension rights.¹⁰ Despite these apparent disadvantages, this option may be the best for the employer as it may be that many fixed-term employees will choose not to join the scheme anyway as they have their own personal arrangement.

Secondly, the employer could exclude fixed-term employees from the scheme but ensure that the terms of the employee's contract are at least as favourable as the terms of a comparable permanent employee as a whole. Difficulty arises though in assessing the value of different benefits to different people. Ultimately, it would be for an Employment Tribunal to decide whether the package was at least as favourable.

Finally, the employer could exclude fixed-term employees from the pension scheme and rely on an objective justification defence for doing so. It is not entirely clear what would amount to a successful defence. An employer might argue that the percentage of employees who leave within two years of joining the scheme is much higher for fixed-term employees than for permanent employees, so fixed-term employees would not generally accrue vested benefits and the cost of admitting them was disproportionately high. This

argument will be weakened by the immediate vesting of pension rights to three months under the Pensions Bill.

More recently ... the impact of the European Equal Treatment Directive

The European Equal Treatment Directive required implementation by member states by 2004 (except in relation to age, where the date is 2006). The UK government conducted a consultation exercise on this, and the results are set out below.

Disability

The Disability Discrimination Act (the DDA) was introduced in 1995. It prohibits an employer from discriminating against a disabled person in the field of employment, (which includes pensions). A non-discrimination rule is inferred into pension scheme rules.

At present, direct discrimination in the context of pension provision can be justified if, because of the disability, the cost of providing benefits under the scheme is 'substantially greater' than it would be for a comparable person without the disability. Examples of direct discrimination are: excluding an employee from pension benefits; or restricting access to benefits because he or she is disabled. Indirect discrimination, for example, making benefits dependant on a member completing a satisfactory medical examination, can be objectively justified.

New Regulations coming into force on 1st October, 2004¹¹ will abolish the 'substantially greater cost' defence. The Regulations will also require occupational pension schemes to make 'reasonable adjustments' where a disabled person is put at a substantial disadvantage

in comparison with persons who are not disabled. An example of a 'reasonable adjustment' might be arranging for suitable literature to be produced for blind members in Braille or, in large print for partially sighted persons.

Trustees will have the power to adopt resolutions to change scheme rules if it appears to them that the rules are in breach of the Regulations. This power will exist whether or not the trustees have control over the power of amendment under the scheme rules. Consideration will need to be given to rules around medical evidence requirements.

Sexual orientation

The Sexual Orientation Regulations¹² came into force on 1st December, 2003. They apply to trustees, managers of schemes and employers and cover discrimination against lesbians, gays, bisexuals and heterosexuals.

Under the Regulations, it is unlawful to discriminate on grounds of sexual orientation in an employee's terms of employment. A non-discrimination rule is automatically inserted into all occupational pension schemes. Both direct and indirect discrimination are prohibited although indirect discrimination may be objectively justified. The Regulations only apply to benefits accrued after 1st December, 2003.

Discrimination on the grounds of sexual orientation is lawful if it is done to prevent or restrict access to a benefit by reference to marital status.¹³ A union has challenged this exemption on the grounds that lesbian, gay and bi-sexual individuals were intended to be covered by the European Directive and are being indirectly discriminated against because they are unable to marry their partners. The unions recently lost their challenge

in the High Court and are currently deciding whether to appeal to the Court of Appeal.

The Civil Partnership Bill, which was published on 31st March, 2004, will allow adult same sex couples to register as a civil partnership through a statutory civil registration procedure. The Bill gives Ministers power to make legislative provision with respect to pensions for surviving civil partners. The Bill states that any such provision may be the same as, or different to, the provision made with respect to widows, widowers or the dependants of persons who are not civil partners. We await the detail.

The Regulations have a number of consequences for trustees and pension schemes. Trustees must ensure that when exercising discretions (eg to pay lump sum death benefits) they do so in a non-discriminatory manner. Schemes that provide benefits to unmarried opposite sex couples but not to same sex couples (eg pensions on a member's death) are in breach of the Sexual Orientation Regulations. However, at the moment, it remains lawful for schemes to provide benefits on death for spouses only.¹⁴ It may well be that 'spouse' is taken (or required) to include 'civil partner' in the future for pensions purposes.

The cases of *Goodwin*,¹⁵ *Bellinger*¹⁶ and *KB*¹⁷ confirmed that failing to allow transsexuals to register their acquired sex was contrary to the right for private and family life under the European Convention of Human Rights. The draft Gender Recognition Bill, introduced in the House of Lords on 27th November, 2003, addresses this issue and provides for individuals to receive gender recognition certificates and an 'acquired gender'. This will impact on a member's sexual identity for the purposes of benefits, but also raises issues about actuarial assumptions and the treatment of guaranteed minimum pensions.

Religion

The Employment Equality (Religion or Belief) Regulations 2003,¹⁸ which came into force on 2nd December, 2003, make it unlawful to discriminate on the grounds of religion, belief or similar philosophical belief in employment and vocational training. They follow the same structure as the Employment Equality (Sexual Orientation) Regulations, but there is no 'marital status' exemption.

The Regulations are unlikely to create many difficulties for pension schemes but there have been a couple of interesting related developments recently.

HSBC recently announced that it was to launch an Islamic pension fund that complies with Shariah law. Some Muslims may choose not to join schemes where there is the possibility of investment in certain prohibited industries (eg alcohol, pornography) or 'unlawful' gains such as interest. Where relevant to scheme membership, trustees should be considering whether such products ought to be available to members.

The other development is the concept of 'alternatively secured income' as a method of providing benefits other than traditional activities. This was announced in the government's proposals on tax simplification in response to the objections of some religious groups to the pooling of mortality risk under conventional systems.¹⁹

And now ... agency workers

Agency workers are self-employed workers who are supplied by an agency and who do not become employees of the customer. At present, it is not possible to admit self-employed agency workers to occupational pension schemes. That position may change due to a draft EU Directive and the recent cases of *Allonby*²⁰ and *Dacas*.²¹

On 20th March, 2002, the European Commission published a proposal for an EU Directive on 'working conditions for temporary workers'.²² This Directive is currently with the EU Council and no political agreement has yet been reached. The draft Directive requires basic terms of employment (including pay and presumably pensions) of temporary workers to be at least as favourable as those terms that would have applied if they had been recruited directly by the customer to do the same job.

The draft Directive presents a number of difficulties for member states. In the UK it would be necessary to change tax laws to allow self-employed workers into occupational pension schemes. The Directive also gives rise to a number of unresolved issues such as who would run the pension schemes once the temporary workers are given access, what would happen to vesting periods and whether an objective justification defence would be available to agencies and employers.

Although UK law does not currently provide agency workers with a stand-alone right to equal treatment at law, claims have been brought by workers under Art. 141 of the EC Treaty on the basis of indirect sex discrimination.

Mrs Allonby was part of a group of part-time lecturers whose employment was terminated and who were then re-engaged at the same college by an agency under a contract for services. While employed by the college Mrs Allonby was eligible to join the Teachers' Pension Scheme. Following her move, she was no longer allowed access to the scheme. One of the conditions for eligibility was employment under an employment contract. Mrs Allonby claimed that her exclusion amounted to sex discrimination contrary to Art. 141 of the EC Treaty.

The Court of Appeal referred two

questions to the European Court of Justice (ECJ). First, whether Mrs Allonby could compare herself, for the purposes of remuneration (including access to the pension scheme), with a male lecturer who remained employed by the college. Secondly, whether she could demand access to the pension scheme, as the condition restricting access to lecturers employed by the college resulted in differential treatment, which was indirectly sex discriminatory and was not objectively justified.

The ECJ concluded that Mrs Allonby could not compare herself to a male lecturer remaining in the service of the college. The ECJ followed its judgement in the *Laurence*²³ case, holding that the indirect sex discrimination could not be attributed to a single source.

The ECJ did, however, hold that Art. 141 (which provides for equal pay for equal work) could be relied on by a person teaching under a contract for the provision of services who is excluded from a statutory occupational pension scheme restricted to persons under a contract of employment. The person would have to prove that the exclusion was due to indirect sex discrimination that could not be objectively justified.

In the more recent case of *Dacas*, the court considered the relationship between an agency worker, employment agency and customer. Mrs Dacas worked as a cleaner for Wandsworth Borough Council. She had been supplied to the Council by an employment agency and had a written temporary worker agreement with the agency but no contract with the Council. Mrs Dacas was dismissed and claimed that the dismissal was unfair.

The original tribunal held that Mrs Dacas was neither an employee of the agency nor the Council. Mrs Dacas appealed against the finding that she was not an employee of the agency. The

EAT upheld her appeal, but this decision was subsequently overturned on technical grounds by the Court of Appeal. The Court of Appeal went on to examine the relationship between Mrs Dacas and the Council (even though this point was not the subject matter of the appeal). It held that where it is not clear whether a temporary worker's employer is the agency or the customer, the customer might be the employer if it actually controls the worker's day-to-day activities. The court said that tribunals and courts should look to find an employment relationship with either the end user or the agency.

This case has potentially far-reaching consequences. If the decision were applied to the *Allonby* case, it would seem that Mrs Allonby would have had one single source to find a comparator (namely the college).

On 6th April, 2004, the Conduct of Employment Agencies and Employment Businesses Regulations 2003²⁴ came into force. Employment agencies are now required to inform workers in writing whether they are employed or engaged under a contract of employment or a contract for services. This document will be very important because it will play a crucial part in determining whether an agency worker is entitled to join a customer's pension scheme. It remains to be seen how these Regulations will interact with the Court of Appeal's decision in the *Dacas* case.

And then ... age discrimination

A consultation document prepared by the government's Ageing Population Panel²⁵ estimates that by 2020, those aged 45 to 64 will be the largest group within the working age group. As the numbers of retired people and the length of retirement increases, governments have become increasingly concerned

about the cost of pensions. There is now a clear policy shift towards encouraging people to stay in work for longer and protecting older workers against discrimination. Although there is currently no UK legislation preventing age discrimination, there have been a number of cases seeking to test age criteria on the basis of indirect sex discrimination and redundancy benefits. See *Taylor v Secretary of State for Scotland*²⁶ and *Swanson v Pensions Ombudsman*.²⁷

In another case, *Rutherford v Town Circle*,²⁸ Mr Rutherford was over 65 when he was made redundant. This meant that he did not qualify for unfair dismissal rights or statutory redundancy payments. Mr Rutherford claimed this was indirectly sex discriminatory because a higher proportion of men than women worked over 65. This went through a series of appeals but the most recent EAT decision confirmed that the lack of statutory protection was not discriminatory and, in any event, was objectively justified. This has now been appealed to the Court of Appeal.

There will, however, be legislation prohibiting age discrimination (old and young) in the UK in the future. The UK government must introduce such legislation by December 2006 in order to comply with the EU Equal Treatment Directive.²⁹ Both direct and indirect discrimination must be prohibited. The Directive allows for differences on the grounds of age if the differences are objectively and reasonably justified by a legitimate aim. There is also an important exemption in Art. 6.2 of the Directive in relation to pension schemes. It says:

'... Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different

ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age provided this does not result in discrimination on the grounds of sex.'

In its consultation paper, the UK government made a very general statement that any new regulations would not affect occupational pension schemes. It appears to have viewed Art. 6.2 as giving occupational pension schemes full 'clearance'. It is not that clear-cut though. As the design of pension schemes is inherently ageist, it is vital for the UK legislation to be clear in confirming what will, or will not, constitute discrimination.

There are a number of difficult issues. For example, will age-related (or service-related) contributions be considered discriminatory? Such contributions are common in relation to defined contribution (DC) schemes, particularly where schemes are set up to replace defined benefit (DB) schemes. If the contributions were held to be discriminatory then would DB schemes also be discriminatory? There ought to be a strong argument for an objective justification defence being available as the intention is to provide equality of benefit.

Many DB pension schemes have been closed to new members. This creates a two-tier workforce. It might then be argued that older employees have a more valuable DB pension benefit than younger employees with DC pension benefits. Will this be age discrimination?

Another issue is whether benefit calculations discriminating on age grounds (not as a result of actuarial factors) are to be prohibited. For example, some ill-health benefits are calculated on the basis of prospective

service. Does such a rule discriminate against older employees?

There are potentially a number of other issues for pension schemes. There is a useful outline of these in the Association of Pension Lawyers' letter to the Department of Trade and Industry dated 20th October, 2003. This just highlights how important it is for the new regulations to provide clarity and certainty.

Of course a number of other jurisdictions, including the USA and Ireland, have had age discrimination legislation for a number of years. UK-based clients may find it useful to take a look at how companies in these other jurisdictions have approached the issues to see if useful lessons can be learned.

USA

The US Age Discrimination in Employment Act (ADEA) prohibits discrimination on the grounds of age in employment against workers who are 40 or over. In contrast to the EU Directive, the ADEA only prohibits discrimination against older people and not against younger people.³⁰

The Older Workers Benefit Protection Act 1990 (OWBPA) amended the ADEA so as to specifically make it illegal for employers to use age as a basis for discrimination with respect to benefits and retirement. Discrimination may however be justified if the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker. A general defence of discrimination based on 'reasonable factors other than age' is also available.

The ADEA is stricter than the EU Directive in the sense that it outlaws mandatory retirement except for a few narrow exceptions. The UK is itself

considering the issue of whether to have a mandatory retirement age (which is optional under the EU Directive). There appears to be a lack of agreement on the point between governmental departments.

It is possible for an employer to ask an employee to waive their rights under the ADEA. However, there are specific minimum standards that must be met in order for a waiver to be considered 'knowing' and voluntary and therefore valid.

There are some interesting cases in the USA. One is the *IBM* case.³¹ IBM converted its pension plan from a DB to a cash balance plan. On 31st July, 2003, the District Court for the Southern District of Illinois ruled that the changes violated age discrimination provisions in the Employee Retirement Income Security Act 1974 (ERISA) because a participant's rate of benefit accrual (expressed as an annuity at normal retirement age) decreased as the participant aged. IBM has appealed this decision.

The IBM ruling is in contrast to prior court decisions³² and draft Treasury regulations that were published in 2002.³³ The Treasury has now proposed legislation to preserve cash balance plans.³⁴ The proposals would clarify that cash balance plans do not violate the age-discrimination rules as long as they treat older workers at least as well as younger workers.

Ireland

In Ireland, the Employment Equality Act (1998) (EEA) deals with age discrimination in an employment context but is limited to those people aged between 18 and 65. Direct and indirect discrimination on any of the nine prohibited grounds set out in s. 6 of the EEA (including age) is prohibited.

There are specific exemptions that apply, some specific to certain of the grounds, others of a more general nature. The main exemptions affecting pensions are in s. 8, 13 and 34 of the EEA. These are wide.

Section 8(6) provides that an employer may discriminate with respect to terms of employment that relate to pension rights. Section 13 provides that an organisation of workers or employers, or a professional or trade organisation that controls entry to a profession, vocation or occupation shall not discriminate, apart from in relation to pension rights. Section 34(4) provides that it is not discriminatory to fix different ages for the retirement of employees or any class or description of employees.

A broad exemption exists in s. 34(3). Discrimination on the grounds of age is not unlawful where it is shown that 'there is clear actuarial or other evidence that significantly increased costs would result if the discrimination were not permitted in the circumstances'.

Again, there are a number of interesting cases. One was *Perry*³⁵ where the Equality Officer held that a severance gratuity that formed part of a voluntary early retirement scheme was discriminatory as its design incentivised retirement most strongly for employees aged under 60. The disparity in severance gratuity was based exclusively on age and there was no clear actuarial or other evidence, which would make such discrimination permissible under s. 34(3). The discriminatory provision was, however, saved by other provisions of the EEA.³⁶

The final frontiers?

Discrimination law in the UK has been rapidly changing over the past few years. Much of the impetus has come from Europe. There is a clear political and

economic agenda for age discrimination in response to demographic shifts and the increasing age of the population. It is not simply about individual rights. There is a continued blurring between employment and self-employment and between work and retirement.

Employers must evaluate whether their pension schemes and wider benefits are discriminatory. If they are, what changes should be made? Trustees must ensure that they do not exercise their trust powers in a discriminatory manner and should check to see whether their scheme rules are discriminatory. If they appear to be, is there an objective? What is the employers' view?

So, have we reached the final frontiers? Probably, yes. Most areas of discrimination have now been dealt with by the enactment of legislation. Age discrimination legislation will be implemented in the near future and we may well see more cases and or legislation relating to agency workers. Both of these areas present a number of difficulties. Age discrimination legislation has the potential to undermine the foundations of DB schemes and agency worker legislation has the potential to significantly increase financial burdens on operators of pension schemes. There is clearly an important balance to be struck between the right of individuals not to be discriminated against and the right of employers to discriminate in certain justifiable circumstances. It will be for the legislation to set this balance and for the courts/tribunals to interpret the new legislation so as to hopefully bring much needed clarity into this complex area.

References

- 1 EC Council Directive 2000/78/EC of 27th November, 2000, establishing a general framework for equal treatment in employment and occupation.
- 2 There was doubt as to whether the Equal Pay Act 1970 prohibited indirect discrimination, but it is now clear that indirect discrimination is contrary to both UK and European law: see *Jenkins v Kingsgate (Clothing Productions) Ltd* [1981] ICR 715, EAT, *Bilka-Kaufhaus GmbH v Weber Von Hartz*: C-17084 [1986] ICR 110, ECJ.
- 3 See for example, the Part-Time Worker (Less Favourable Treatment) Regulations, SI 2000/1551 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, SI 2002/2034.
- 4 *Preston v Wolverhampton Healthcare NHS Trust* (No. 2) [2001] 3 All ER 946.
- 5 The date on which it was held in *Defrenne v Sabena* (No. 2) (case 43/75) that the equal pay provisions (Article 141) of the EC Treaty were directly enforceable.
- 6 *Preston v Wolverhampton Healthcare NHS Trust* (No. 3) [2004] IRLR 96.
- 7 Part-Time Worker (Less Favourable Treatment) Regulations SI 2000/1551.
- 8 *Matthews & others v Kent & Medway Towns Fire Authority & others* [2003] All ER (D) 90 (Aug).
- 9 The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, SI 2002/2034.
- 10 In the May 2004 version of the Pensions Bill, a member may elect to receive either a cash transfer sum or a contribution refund after three months' pensionable service.
- 11 Disability Discrimination Act 1995 (Amendment) Regulations 2003, SI 2003/1673.
- 12 Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, Employment Equality (Sexual Orientation)(Amendment) Regulations 2003, SI 2003/2827.
- 13 Regulation 25 of the Employment Equality (Sexual Orientation) Regs, imported from Council Directive 2000/78/EC.
- 14 However, if the definition of spouse is amended so as to include civil partners if the Civil Partnership Bill comes into force the 'exclusion' is potentially limited.
- 15 *Goodwin v UK* [2002] IRLR 664.
- 16 *Bellinger v Bellinger* [2003] 2 WLR 1174.
- 17 *KB v NHS Pensions Agency*, C-117/01, ECJ, 7th January, 2004.
- 18 Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660.
- 19 Simplifying the taxation of pensions: the government's proposals (December 2003).
- 20 *Allonby v Accrington and Rossendale College & others*, C256/01, ECJ, 13th January, 2004.
- 21 *Dacas v Brook Street Bureau* [2004] EWCA Civ 217.
- 22 COM/2002/0701 final- COD 2002/0072.
- 23 *Lawrence v Regent Office Care Limited and others* [2002] ECR I-7325.
- 24 Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319.
- 25 'The Age Shift: A Consultation Document' Foresight: Ageing Population Panel, (2000) DTI, London.
- 26 *Taylor v Secretary of State for Scotland* [2000] ICR 595.

- 27 *Swanson v Pensions Ombudsman*, L00223, 15th November 2002.
- 28 *Rutherford v Town Circle* [2002] ICR 163.
- 29 Council Directive 2000/78/EC of 27th November, 2000, establishing a general framework for equal treatment in employment and occupation.
- 30 *General Dynamics Land Systems Inc. v Cline* no 02-1080 (24th February, 2004).
- 31 *Cooper v The IBM Personal Pension Plan and IBM Corporation*, 274F Supp. 2d 1010 (SD.111.2003).
- 32 See *Eaton v Oman Corporation*, 117F Supp. 2d 812 (SD Ind. 2000), where the court ruled that age discrimination should be viewed in terms of the increase in the lump-sum amount (or annual accumulation).
- 33 IRS regulations provide for age discrimination to be viewed in terms of the lump-sum amount if a plan meets certain criteria and is deemed to be an 'eligible' cash balance plan.
- 34 'Preserving cash balance plans for workers', published by the HM Treasury, 2nd February, 2004.
- 35 *Perry v Garda Commissioner*, DEC-E2001-029.
- 36 Sections 17(4), 34(6) and 34(7) of the EEA.