

# HR INSIGHTS

# Ageism in the Workplace

Researched and compiled by:



REFRESHING LAW

*Down to Earth*

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## About Anna Denton-Jones & Refreshing Law

Anna Denton-Jones is an Employment law specialist at [Refreshing Law](#). An Oxford graduate, qualifying in 2000, Anna is an experienced trainer with a passion for sharing good HR practices and has spent the last 20+ years dealing with legal cases and complex complaints.



She spends approximately 30% of her time on tribunal work, the rest is trying to avoid people needing to get there. Her focus is on resolving cases as swiftly and sensibly as practicable to the benefit of her clients.



REFRESHING LAW

She holds the Law Society's Lexcel accreditation, only given to those who can demonstrate an outstanding commitment to customer care. In addition to that, Anna is a trained mediator, assisting parties to resolve disputes quickly where mediation is an appropriate medium for alternative dispute resolution.

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## Ageism in the workplace

The introduction of age legislation in 2006 marked a significant milestone in the journey towards equality and fairness in the workplace.

Unlike other forms of discrimination, such as sex and race, which found legal protection earlier, age discrimination is often perceived as a 'late comer' to the equality landscape. What sets age discrimination apart is its universal nature – it's an aspect of diversity that every one of us could experience at some point in our lives.

Age discrimination remains a nuanced issue that often goes under the radar. Only a mere 1 in 5 employers have a strategy around age diversity in their organisation, a surprising fact given the benefits of having a balanced age range in the workplace:

- ✔ Reduced turnover
- ✔ A wealth of managerial experience
- ✔ Valuable knowledge sharing across generation
- ✔ Greater productivity

**Does your business have untapped potential for a multi-generational workforce?**

# Ageism in numbers

1/3

of the UK's workforce are over 50. Latest ONS data shows the number in the workforce over 50 in the UK is at its highest.

1 million

Age UK have said there are 1million who want to work more but aren't.

1.3%

an estimated 1.3% put on GDP by 2040 if they were back in the workforce.

42%

part-time workers are over 50 and

26%

increase overall in over 50s working part-time.

This has seen a large increase, and the percentage gets higher if you look at age 65.

Sometimes that is not by choice to gradually move into retirement, but it is about poor quality roles and not being offered more.

## AGEISM TRIBUNALS

There is a **2-3% chance of success**. Majority of strong cases will settle. The average award is around the £26K mark.



During the pandemic redundancies affected you most if you were over 50 and female.

The Organisation for Economic Co-operation and Development (OECD) research suggests if you implement an increase of 10% more over 50s in your workforce, it puts 1.1% on productivity.

*"Ageism is perhaps the most paradoxical prejudice: we are, barring accident, discriminating against ourselves. Members of the persecuting in-group are through the course of their lives gently conveyor-belted into the persecuted out-group, which is, when you think about it, a very strange state of affairs."*

*Martha Gill, The Guardian*

# Age Discrimination

Age discrimination is not always about an 'old person' being preferred over a 'young person' because of their age – or vice versa.

The age difference might be small – for example, a few years between one person in their late 40s compared to another in their early 50s.

Or, for example, someone might feel they have been discriminated against because they are over 60.

In another case, it might be because they are seen as middle-aged. Or, a 21-year-old might claim discrimination because they are being treated differently because of their age compared to their colleague who is 43.

## Types of discrimination cases:

### Direct discrimination

Direct discrimination (sometimes the hardest to evidence) – "I have been treated this way because of my age" with a direct link.

For example:

- ✔ Siobhan is turned down for a supervisor's job because her bosses decide she does not look mature enough for the role. They think she looks about 20. In fact, she is 30. Her bosses' decision is likely to be discriminatory by perception.
- ✔ Senior manager Jurgen decides not to invite employee Sarah and her partner Claude to a business party because Claude is much older than her. Jurgen feels Claude would not fit in with the party mood. This is likely to be discriminatory by association.



## Indirect discrimination

Where a 'provision, criterion or practice' is applicable to everybody but impacts people of a particular age group more negatively than others.

For example:

- ✔ City centre gym manager Esme tells employees she needs two more staff to work on reception. She adds that anyone interested needs to look 'fit and enthusiastic' as the gym is trying to encourage more young people to join. Her requirement may indirectly discriminate against older staff unless it can be objectively justified.

## Harassment

Harassment is defined as 'unwanted conduct' related to a relevant protected characteristic – in this case, age, creating an intimidating, hostile, degrading, humiliating or offensive environment in the work place.

Managers should be careful not to let their own views influence a situation or dismiss a concern because they do not deem the behaviour offensive themselves. It is important to remember that if an employee feels strongly enough to raise a concern or make a complaint, the employer should take it seriously, and deal with it correctly.



For example:

- ✔ Sixty-year-old Margaret feels humiliated and undermined at the store where she works because of her age. Despite her extensive experience in retailing and recently gaining a qualification as a visual merchandiser, her manager Darren regularly tells her in front of other staff that she is 'out of touch' and that the store needs 'fresh blood'. Darren's behaviour is likely to be harassment.

### REAL-LIFE EXAMPLE

An employee received comments like "Life begins at 40", and they were awarded £2,000 due to injury to feelings.



## Victimisation Claims

An area employers find themselves in more regularly and we have seen a recent growth in. There is the protected act, i.e raising a grievance, and then as a result the employee has seen a detriment, i.e. a delay in dealing with the grievance or ending up in a redundancy pool.

For example:

- ✓ Vernon complained to his manager about colleagues mocking him about his age and playing pranks on him. The manager didn't take the grievance seriously and told him to 'Cowboy Up' (toughen up). He didn't need complainers. The negative comment is the victimization.

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## Actions to improve your workplace

### 1. HR DATA

If you're not already doing so, make more of monitoring your workforce data around age diversity and knowing who you have coming forward for jobs.

Track what age group applicants fall in and what age groups you are not attracting.

- ✓ What is the age applying to the jobs?
- ✓ Who is getting shortlisted and then invited to interviews.
- ✓ What is the age of your interview panel?
- ✓ Who is offered work?
- ✓ Who passes probation?



Consider a form that is solely for anonymised data to analyse. This data should not accompany the applicant's recruitment process but just inform on your D&I practices.

### 2. JOB ADVERTS

Are your adverts attracting the right people?

It is advised that you include a short diversity statement in job adverts. This can increase both older applicants' likelihood of applying and their understanding of how well they will fit in.

For example: 'We're actively building diverse teams and welcome applications from everyone including people of different ages.'

It's also important to signal in job adverts that you're willing to make any reasonable adjustments throughout the recruitment process.

This could be anything from providing equipment such as a headset or adjustable desk to supporting scheduled breaks, all of which will enable people to manage health conditions or caring responsibilities, which are more common as people get older.

Consider the language used in the job advert and the age bias it might have. i.e. "Recent graduate" / "Tech-savvy".

Images used on your website and recruitment documents have an impact, consider using a range of ages in imagery.

[Ageing Better has a free library of age positive images. Click here.](#)

[Ageing Better have an inclusive job advert template. Click here.](#)  
(see backpage of PDF guide also)

### 3. WHERE ARE YOU ADVERTISING?

Ensure you are sharing job adverts widely and across multiple digital platforms, making it more likely for them to reach people from a wider range of backgrounds, increasing the number of applications.

Use age-positive recruitment campaigns to reach out and attract the widest pool of talent.

However, in interviewing and shortlisting, age should not be used as a factor in decision-making.

### 4. DE-AGING THE PROCESS

Age blind paperwork is a key action to take when "de-aging" the recruitment process. An example is to ask candidates for relevant job history, rather than a chronological order of every job they have had.

Make sure that tools used within the application process are accessible for all workers. They can be very time-consuming to fill in and often will give an indication of someone's age without any age being given. Consider a skills-based application form rather than employment history.

### 5. INTERVIEWS

A candidate who has been in another role for years could have less experience of the interview process. Consider extra support that can be given to make sure all candidates are comfortable.

Share the basics of the interview process; what to expect from the interview format, when a decision will be made, how long is the interview?

The interview panel should look representative of the company. You should consider how age balanced the panel is. Are you giving off subtle signals to people that they need to be in their 30s to work here?

Can reasonable adjustments be offered for the interview process? (This is needed for disability anyway).

## 6. MANAGER TRAINING

Educate managers on understanding bias and negative stereotypes.

There could be unconscious bias in the recruitment process and it's important to make managers aware.

This is most effective when it includes content about the consequences of age stereotypes and offers managers strategies to combat them.



## 7. INTERNAL COMMUNICATION & PROCESSES

Make sure that career conversations are had with everybody during appraisal systems. Discuss with everyone their career aspirations and training needs and succession planning.

One of the biggest things people can do to avoid the difficult retirement conversation which usually ends up being discriminatory is to be talking about training needs, career plans and succession plans with every person every year – so it is normal and part of your appraisal/ 121 process.

Flexibility options and being open to them is important, as well as work potentially being part-time.

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### Useful links and sources of advice:

[https://ilcuk.org.uk/wp-content/uploads/2019/11/The\\_missing\\_millions\\_web.pdf](https://ilcuk.org.uk/wp-content/uploads/2019/11/The_missing_millions_web.pdf)

<https://www.acas.org.uk/acas-guide-on-age-discrimination>

<https://ageing-better.org.uk/3-how-talk-about-flexible-working-candidates-during-recruitment>

<https://ageing-better.org.uk/2-create-interview-invitation-and-scheduling-form>



# Inclusive job advert template

[Role Name] ([Specify working patterns])

- [Salary];
- [Location];
- [Contract type];
- [Flexible work patterns];

We offer [describe the top 2 or 3 benefits you offer].

[Company name] is looking for a [short description on the role you are recruiting for]. [Description of the team this role is part of]. The ideal candidate has [specify top 2 or 3 details about what is expected from this role].

## Responsibilities:

[List of up to 5 key responsibilities];

## Requirements:

[List of up to 5 key requirements];

## Flexible working:

[Description of available working patterns and company policy and attitude towards flexible working].

For [flexible working pattern]: [describe minimum requirements and expectations]; [Add more working patterns as necessary]

[Location specific requirements and expectations];

When to talk flexibility: [note when you will discuss working pattern preferences with candidates]

## Workplace adjustments:

At [company name] we work closely with employees to help them work at their best, including making adjustments such as [examples of common adjustments]. [Description of process to request reasonable adjustments during the recruitment process and examples].

## How to apply:

[How to apply, including link]. Submit your application before [date];  
Application responses by [date];  
Interview will take place w/c [date];

We are aiming to make an offer by [date].  
[Link to overview of your recruitment process, if available].

If you have any questions or there's anything we can help you with, get in touch with [Name, role]:

[phone number];

[email]

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