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1. UK must prove that retirement age is needed

The European Court of Justice has rejected a claim by the charity Age Concern, that British legislation allowing employers to set a default retirement age breaches European anti-discrimination regulations in what is known as the Heyday case. However, the Court said that the UK Government will have to meet "a high standard of proof" in establishing a "legitimate aim" behind the compulsory retirement age.

The further ruling will now be made by the High Court, where the Government will have to prove that the laws are "objectively and reasonably justified by legitimate aims, such as those related to employment policy, the labour market or vocational training".

Age Concern's director-general, Gordon Lishman said that it had a very strong chance of winning the case in the British Courts:

"The ECJ has said the Government must prove to a high standard why forced

retirement ages are needed, and those reasons must be based on social or labour market needs, not the interests of employers."

An estimated 25,000 workers are believed to be forced to retire each year when they would be happy and able to continue working.

Under current laws employees can request to work beyond 65 but should the employer desire, employees can still be dismissed at 65 without redundancy payments – or at the employer's mandatory retirement age, if it is above 65.

In what was seen as a test case, the judgment now leaves the question open on what will happen to the hundreds of age discrimination claims currently on hold in the Employment Tribunals. As the Heyday case was sent for consideration in Europe the practice has been to stay those alleging that forced retirement at 65 is unlawful.

Paul Cann, director of policy and external relations for Help the Aged, called on the Government to concede that there were no social benefits behind the regulations:

"Mandatory retirement ages are unfair and the Government should act to abolish them as soon as possible," he said.

"Challenging financial circumstances mean it is even more important for older workers to be able to choose to work for longer if they want to. Ageism in all its forms must be eradicated from our society once and for all."

It is expected that the Government will attempt to argue in the High Court, that it could not hit employers with changes that could potentially damage them in the middle of a deep recession.

The Government's Department for Business, Enterprise and Regulatory Reform (BERR) responded to the ruling by saying:

"We are monitoring the default retirement age and are committed to reviewing it in 2011. If the evidence shows it is no longer necessary then we will remove it."

Controversy over forced retirement is likely to continue until the case returns to the High Court for a determination, although it is perhaps inevitable that the case, however decided by the High Court, will be subject to further appeals.

2. New complaints regulations to come into force

The Department of Health has published new regulations which will provide the statutory basis for the new approach to complaints handling in health and social care in England.

The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 ("the Regulations"), which come into force on 1 April 2009, will introduce a revised procedure for the handling of complaints by local authorities, in respect of complaints about adult social care, and by NHS bodies, and in respect of primary care providers and independent providers of NHS care.

The Regulations revoke the National Health Service (Complaints) Regulations 2004 which previously laid down the complaints procedures for NHS bodies and for Local Authorities, in respect of their adult social services function.

The Regulations call for a person-centred approach requiring all but the most straightforward complaints to be resolved according to the new regulations.

As intended by the Government and described in numerous publications leading

up to the reform, the new approach is a major shift away from fixed processes and timescales towards person-centred and outcome-focused resolution. The new focus is on early response, involving complainants, and taking account of their preferences for resolution.

The Regulations, published on 27th February 2009, aim to align adult social care and health complaints processes into a single set of arrangements.

Every local authority, NHS body, and primary care provider must designate a complaints manager to be responsible for managing the procedures for handling and considering complaints in accordance with the Regulations.

Under the new system, complainants will retain the same rights to take their complaints either to the Parliamentary and Health Service Ombudsman for NHS complaints, or to the Local Government Ombudsman for social care complaints, for independent investigation where they are dissatisfied with the response they have received from the local organisation.

Some of the key components included in the new system for health and social care complaints resolution are:

- The Regulations will apply to all complaints except those verbal complaints resolved within one working day;
- Verbal complaints not resolved within one working day will be required to be put in writing by the responding body and forwarded to the complainant;
- There will be an opportunity for a discussion to determine how the complaint is to be handled and the timeframe in which to seek resolution;
- The responding body is required to investigate the complaint in a manner appropriate to "resolve it speedily

and efficiently and, during the investigation, keep the complainant informed, as far as reasonably practicable, as to the progress of the investigation,";

- The complainant must be sent a written response signed by the "responsible person," which describes how the complaint has been considered, what conclusions have been reached and what actions, if any, have or will be taken as a result.

(Note: The "responsible person" in the NHS is the chief executive, however, "the functions of the responsible person may be performed by any person authorised by the responsible body to act on behalf of the responsible person." This means they can assign this role to other people and does not therefore mean that the chief executive should sign off every complaint themselves).

In effecting this transition, the Regulations will make changes to GMS and PMS legislation and accordingly your GMS Contract/PMS Agreement may need to be varied to ensure continuing compliance.

Lockharts have produced a variation notice (v11) for Lockharts PMS Agreements and if you require any information regarding its availability or advice on any of the above, please contact Mark Jarvis at mj@lockharts.co.uk

3. End of tax year - IHT relief's to consider

With the end of the tax year approaching (5 April), certain simple Inheritance Tax (IHT) relief's should be considered. The concepts are straightforward - but implementation can prove tricky. The more potential donors within the family (e.g. parents/grandparents), the larger the amount of capital to pass to succeeding generations; potentially saving a charge arising at 40% against chargeable assets

presently in the ownership of parents/grandparents.

The Nil Rate Band (NRB), exempt from IHT, changes each tax year (6th April to following 5th April) as provided within the relevant Finance Act. The current amount is £312k rising to £325k from 6 April 2009. Readers may recall that IHT is not payable between spouses (or registered civil partners); a couple therefore will escape IHT if combined chargeable assets do not exceed £624k this tax year, rising to £650k from 6 April 2009 and £700k from 6 April 2010.

The Annual Allowance is £3000 per donor each tax year; if not used in a previous year, it can be carried forward for one year only. Thus the 2007-2008 Annual Allowance is available until 5 April 2009; a married couple (or civil partners), not having used this exemption previously, will have available £12,000 between them now with a further £6000 available from 6 April 2009 (start of the new tax year).

The Small Gifts exemption – applies, again in tax years, amounting to £250 for any number of recipients which could be ideal for grandchildren/ godchildren etc. It cannot be combined with the Annual Allowance above.

Although not part of the regular annual exemptions; nevertheless the occasion of a wedding, within the family, presents an opportunity to gift relatively substantial amounts of capital from an elder generation to younger family members about to start married life.

Parents can give £5000, to each of their children, as a wedding or civil partnership gift. Grandparents can give £2500 and any other party (does not have to be a relative) £1000. Such gifts can be combined with the (IHT) Annual Allowance making a total of £22,000 exempt gifts (from one set of parents). This could assist children, starting married life, towards a deposit for house property.

On such a happy occasion there are pitfalls to avoid! Wedding gifts must be made either on, or just before, the marriage date; specific to and conditional upon the marriage/civil partnership taking place. Ideally such gifts, seeking exemption, should impose such conditions in writing.

In addition, payment for the wedding is considered the parents responsibility by some but not by HMRC. Accordingly, any costs/gifts outside the limits set out above, are not exempt; they are considered as lifetime transfers (for IHT purposes) and potentially taxable.

Surprisingly there are no formalities; HMRC have no requirement for such gifts to be reported (at the time of gifting); however, it is sensible to maintain accurate records (which will assist executors in completing formalities with HMRC on the donor's demise).

The gift is not valid (for the purposes of claiming the IHT exemption) until the donor's cheque has cleared through the recipient's bank account. This is important; for those donors that wish to claim the (unused) annual IHT allowance for year 2007-08, as the donor's cheque must clear the recipient's account by the 5 April 2009 deadline. The advice is – make such gifts well before the end of the tax year!

These three exemptions are straightforward – the annual £3000 allowance is modest. Over a ten year period, a couple in their late sixties, can gift a total of £60,000 which otherwise would have remained in their estates; the underlying capital value then being exposed potentially to a 40% IHT charge arising on the second death.

Regularity of gifting is the key to these relatively modest gifts.

For further information please contact Andrew Murdoch at am@lockharts.co.uk

4. Extended hours could be stripping funding from smaller practices

Smaller GP practices and those in some of the poorest areas of the country, may be finding it more difficult to offer weekend and evening appointments than those with a larger number of partners and resources.

Those in deprived urban areas often face safety concerns and consequently would need a significant number of staff working in the evenings. Where there is difficulty in persuading staff to work evenings and weekends, larger practices are usually better resourced to adapt, as well as being supported by medical and nursing manpower.

An analysis of 200 randomly selected practices from more than 100 PCTs by Pulse magazine, revealed that only 44% of singlehanders and 60% of practices with two or three partners are offering extended hours, compared with 83% of those with eight or more partners. Much also seemed to depend on the location of the practice, with 68% of urban practices offering extended hours, compared with 59% in rural areas.

GPC negotiator Dr Chaand Nagpaul said: "If the Government wants GPs to provide extended hours, it needs to look at the incentives offered and the flexibilities. There are economies of scale at large practices that make it easier for them."

But a Department of Health spokesperson said: "The issue is not the size of practice, their location or the patients they treat – it is whether GPs make the decision to provide extended hours for their patients."

"In some PCTs, nearly 100% of practices, from singlehanded to large surgeries and in both urban and rural areas, are delivering extended hours."

5. PCTs sign up to 'Rate-your-GP site'

The controversial website IWantGreatCare, which invites patients to rate their GP on a

scale of 1 – 100, is to be hired by NHS trusts in order to monitor patient experience and to assist in performance managing GPs.

Trusts will be given 'real-time' access to anonymous patients' ratings and feedback on individual doctors within their area, and a 'bespoke, interactive dashboard' to track patient experience.

NHS Islington, is already endorsing the service, and is urging patients that visit its website to 'rate your own GP or hospital doctor' on IWantGreatCare.

Many GP leaders have responded angrily to the plans, claiming that the site could easily be misleading.

Dr Paddy Glackin, secretary of Camden and Islington LMC, comments: "We've got no problem with patients being informed - what we're not keen on is patients not being adequately informed."

If any GPs have particular concerns about entries that are posted in their name, please contact Michael Rourke at mbr@lockharts.co.uk

6. Department of Health Decontamination Guidance

The BDA has recently submitted comments to the Department of Health on the final draft of its guidance on 'Decontamination in dental practice' ("the Guidance").

The Department of Health published advice on local decontamination on its website in October of last year intended to be used by all members of a dental team (dentists and support staff and engineering staff providing services in key areas).

Many had commented that prior to the Guidance it belied logic to think that a lesser level of decontamination and infection control could be acceptable in one area, but unacceptable in another. The Guidance therefore aims to ensure 'a safe and clean environment with a consistent standard of care every time'.

The Guidance describes 'essential quality requirements' and 'best practice' and introduces benchmarks for compliance. Essential requirements should be in place within 12 months, and although there is no timescale for implementing best practice, practices should plan to progress towards it where they can.

Best practice is concerned with "achieving higher standards in infection control through improvements in premises and equipment, and changes in practice management and the culture in which patients are treated by the dental team."

The BDA, alongside the Department of Health, has produced an advice sheet (A12) called 'Infection control in dentistry' which condenses the recommendations into a practical format to enable dental practitioners and their staff to use it as a quick and easy reference to infection prevention and control practices and to inform their own local infection control policies. It contains an introduction on the importance of infection control policy and practice, and general information on routine procedures, and patient issues such as patient perception and confidentiality.

Practices with a commitment to NHS work may find it helpful to contact their PCTs to discuss the most suitable way forward and whether any financial help will be available.

7. NHS Pension A-Day Valuation Request

Although this is mainly an accounting issue, a number of our clients have been receiving letters back from the Pensions Agency indicating they cannot cope with the level of requests for A-Day valuations.

We understand that there is provision in the legislation for a late notification to be accepted where there is reasonable excuse.

Therefore, to this end we would recommend the following:

1. Ensure you apply for an A-Day valuation immediately if you have not already done so,
2. Keep very carefully the response, which must be dated before 5 April 2009, indicating that the valuation was not yet available, and
3. Once you receive a full valuation you need to apply within seven days of such receipt and enclose a copy of the letter requesting the valuation and a copy of the response indicating that it was not available.

We believe this will be regarded as a reasonable excuse for HM Revenue & Customs and will allow them to accept a late application. Please remember that if you think you need financial services advice, you take it in good time and you use a specialist financial services adviser.

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