

Employment Law Review

Consultation response submitted to the Department for Education and Learning by The Commissioner for Older People for Northern Ireland

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Written evidence submitted by the Commissioner for Older People
for Northern Ireland

Summary

The Commissioner for Older People for Northern Ireland (the “Commissioner”) welcomes proposals to bring about the simplification of employment equality law.

Based on current projections from the Northern Ireland Statistical Research Agency, by the year 2025, in Northern Ireland, the number of people aged 65 years and over will increase by around 42% from 260,000 to 370,000. The removal of the default retirement age allows many older workers to stay in the workplace for longer yet only 17%¹ of those aged over 60 years are working and those aged over 60 years make up only 7.7%² of the total workforce in Northern Ireland. Older people have a great deal to contribute to employers in terms of their experience and it is to the benefit of employer and employee alike to plan and prepare for retirement fully and fairly in order to be able to retain this knowledge and resource in a more flexible and mutually beneficial way.

Older people will be impacted by issues arising from the proposed changes to employment law. The Commissioner is of the view that any proposals for employment law reform should, therefore, include the full participation of older people including those whose voices are traditionally not heard and should monitor the equality and human rights impact of its proposals on older people as well as the other s.75 groups.

Introduction

1. The office of the Commissioner for Older People for Northern Ireland is an independent public body established under the Commissioner for Older People Act (Northern Ireland) 2011.
2. The Commissioner has an extensive range of general powers and duties which provide the statutory remit for the exercise of her functions. In addition the Commissioner may provide advice or information on any matter concerning the

¹ NISRA Labour Force Survey Census 2011

² Ibid

interests of older people. Her wide ranging legal powers and duties include amongst others:

- To promote and safeguard the interests of older people (defined as being those aged over 60 years and in exceptional cases, those aged over 50 years);
 - To keep under review the adequacy and effectiveness of law and practice relating to the interests of older people;
 - To keep under review the adequacy and effectiveness of services provided for older persons by relevant authorities (defined as being local councils and organisations including health and social care trusts, education boards and private and public care homes);
 - To promote the provision of opportunities for and the elimination of discrimination against older people;
 - To review and where appropriate, investigate, advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities;
 - To assist with complaints to and against relevant authorities;
 - The power to bring, intervene in or assist in legal proceedings in respect of relevant authorities;
 - To issue guidance and make representations about any matter concerning the interests of older people.
3. The Commissioner's powers and duties are underpinned by the United Nations Principles for Older Persons (1991) which include Independence, Participation, Care, Self-fulfilment and Dignity.
 4. The Commissioner welcomes the opportunity to comment to the Department for Education and Learning on the Employment Law Review.

Early Resolution of Workplace Disputes

5. In principle, the Commissioner supports the early resolution of workplace disputes and discrimination complaints.
6. Communication of any practical change in offering mediation or other form of early resolution will be key. The communication of these changes will require careful planning by the Department. Steps must be taken to ensure clarity of message to all employers and employees and in particular to ensure that older people are provided with sufficient information, in a suitable format, to inform their understanding of such changes.
7. Clear explanatory literature should be provided at the earliest point together with opportunities for support to individuals requiring assistance with understanding how they will be impacted by the changes.

Parity with GB

8. The Commissioner is concerned about any potential adverse impact that differences in equality law between GB (brought about by the Equality Act 2013) and Northern Ireland will have on individuals. The Commissioner recognises that the introduction of such equality law changes falls within the responsibility of OFMdfM and therefore recommends that the Department liaise closely with OFMdfM in this regard. Any deviations from GB must be fully considered and consulted upon and must not result in the dilution of any discrimination or other equality protections.

Compromise Agreements and Protected Conversations

9. The Commissioner welcomes a debate on how best to ensure that there can be open and meaningful discussions between employers and employees about an individual's plans, particularly in relation to retirement.
10. The Commissioner welcomes any process which supports the above aim so long as this is done fairly. Additional barriers however should not be introduced for complainants alleging discrimination and current protections against discrimination must not be diluted as a result of the introduction of protected conversations or other proposed system.
11. Should protected conversations be introduced, there will be a need for better guidance, perhaps in the form of a Code of Practice, setting out safeguards to ensure that the rights of individuals to these proposed discussions are protected.

Equality Impact

12. It is noted that equality screening impact assessments have been carried out in respect of the proposed changes and these form part of the consultation document. Depending on the outcomes from consultation responses and where appropriate, full equality impact assessments may need to be carried out in order to ensure the proposed changes fully meet all legislative equality requirements in both effect and intent and that the ultimate outputs are affordable, sustainable, transparent and fair.

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