

Age Discrimination:
The Effect on Incentive Schemes

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Agenda



- The legal framework
- Problem areas in incentive schemes
- Case studies
- Conclusions

The legal framework



- Age discrimination law in force since 1 October 2006
- Direct and indirect discrimination
- Specific defences : eg length of service
- General defence : justification
- Unlimited compensation
- Issues so far

Incentive schemes: the problem areas



- Length of service
- Seniority
- Retirement

Case studies: eligibility for awards



- Employee must have completed five years' service to be eligible for awards
- Employee must be at least aged 35 before eligible for awards
- Participants will be selected at the discretion of the Remuneration Committee
- Employees not eligible for awards if within two years of expected retirement



Case studies: receipt and size of awards

- Award lapses if employment terminates within three years of grant (unless ‘good leaver’)
- Maximum value of award to senior executives is 150% of salary and to other employees 75% of salary
- Maximum value of award determined by reference to employee’s length of service



Case study: retirement



- On cessation of employment during the Performance Measurement Period option will lapse unless the reason for cessation is:

- injury, ill health or disability;
- redundancy;
- retirement at or after contractual retirement age or by agreement with the Company,

or if the Remuneration Committee exercises its discretion allowing the option to vest.

What is “retirement”?



- Andrea leaves work aged 60, taking a full pension, but joins a competitor on a part-time basis.
- Bill resigns aged 50 to join a competitor full-time.
- Jane decides not to return to work after maternity leave, aged 35.
- Sebastian receives a bonus of £25 million and resigns to sail around the Mediterranean. He is 29.

Retirement: possible alternatives



- Remove retirement from 'good leaver' provisions completely
- Replace it with a length of service requirement
- Use an 'age neutral' definition of retirement
- Leave it alone and try to justify

Changing scheme rules



- Changes for future grants
 - shareholder approval?
 - Revenue approval?
 - employee consultation

- Changes for existing grants
 - optionholder consent?
 - shareholder/Revenue approval?
 - leave alone?

Conclusions



- Consider plan rules against risk areas:
 - Access to plan
 - Receipt and size of awards
 - Retirement

- Making changes – consider approvals needed

- Exercising discretion and audit trails

Guest List

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