

### **Heyday appeal: Attorney General Rejects challenge to UK retirement age**

The Heyday case challenges UK law which permits employers to compel workers to retire at 65, stating that it does not properly implement EC law. The challenge was prompted by an Age Concern survey of 60,000 people, with 80% claiming that the Regulations which implemented the EC Directive were unfair. Some 260 people in Britain have cases at employment tribunals which have been stayed pending the outcome in this case.

The Advocate General, a senior legal advisor to the European Court of Justice, has given his opinion in the Heyday case, the full title of which is ***The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform***. Unfortunately for employers this is not the end of the story. The European Court of Justice will have to make a decision, it is thought before Christmas, followed by a High Court decision in the UK. Nonetheless the opinion is a welcome relief for now for the UK's employers who have retired employees at 65.

The Advocate General indicated that it is legitimate to allow a general justification defence in relation to age discrimination. Also that the mandatory retirement age is not incompatible with EC law. He noted the ECJ's earlier ruling in ***Palacios de la Villa v Cortefiel Servicios SA*** which stressed that Member States do have a wide discretion as to the use of a legitimate aim relating to employment and social policies.

Although the Advocate General's opinion is not binding, it is likely to influence the judges in the European Court. If the European Court follows the Opinion, it is likely that the British High Court will find that the compulsory retirement provision is objectively justified.

If you have any questions about this or other employment law issues please contact Heather Cowley on 01582 731161.