

**CIVIL LITIGATION DEPARTMENT
EMPLOYMENT LAW
FEBRUARY 2011**

**SEXUAL ORIENTATION, FLEXIBLE WORKING AND
THE ABOLITION OF THE DEFAULT RETIREMENT AGE**

FLEXIBLE WORKING REQUESTS

The age limit of children in respect of whom employers must seriously consider requests by employees for flexible working is increased from 17 to 18 from **6th April 2011**.

ABOLITION OF THE DEFAULT RETIREMENT AGE

The Government has now confirmed that the Default Retirement Age of 65 years old (“DRA”) is being phased out (subject to parliamentary approval). There are some complex transitional arrangements between 30 March 2011 and 1 October 2011. The last day that the standard six months’ notice of impending retirement can be issued is **30 March 2011** for compulsory retirement using the DRA on **30 September 2011**.

From 1 October 2011, employers will not be entitled to rely on the DRA to terminate an employee’s contract. Instead they may have to dismiss on grounds of poor performance. Alternatively, they might still dismiss at a certain age, but they should ensure that retirement in those circumstances is objectively justified to avoid a claim of discrimination on grounds of age. Each case will be different, so you are advised to seek legal advice where necessary.

A WARNING TO THE HOSPITALITY INDUSTRY

Mr. Lisboa worked as an Assistant Manager at a London pub. He was openly gay and the pub was being transformed from a gay pub to a gastropub. He was told to put a sign outside the pub saying ‘this is not a gay pub’; staff were encouraged to seat heterosexual customers in prominent positions; ‘over the top customers’ were barred; some customers were referred to as “queens” and a staff member was criticised for “walking too gay”. Mr. Lisboa resigned and lodged a claim for sexual orientation discrimination and dismissal. The original tribunal upheld part of his claim but focused on the wholly legitimate commercial aims of the company in encouraging a wider clientele, decided that many of the strategies were manifestations of that legitimate policy and stated that Mr. Lisboa had mistakenly perceived his employer to be homophobic. On appeal, the Employment Appeal Tribunal agreed that there was a legitimate commercial aim, but upheld Mr. Lisboa’s claim that he had resigned because of the unlawful discrimination against customers and that his compensation for dismissal should be reassessed.

**If you require any advice or assistance about an employment matter,
please contact Julie Granger or Daniel Crook in our Civil Litigation
Department.**

Disclaimer

The content of this article is intended for general information purposes only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at January 2011 and it may be affected by subsequent changes in the law. We cannot accept responsibility for any loss as a result of acts or omissions taken in respect of this article.