The end of compulsory retirement?

Clin Med
2009;9:199–200

The possibility of outlawing compulsory retirement is being discussed. As it seems contrary to age discrimination it seems changes in legislation in that direction are inevitable. So I raised the issue with Charles as we played a round of golf.

'Charles do you think that compulsory retirement has had its day?'

'And itself compulsorily retired?' *he responded with a smile.* **'Has the time come for it to be put on the scrapheap, as many people feel happens to themselves when the time comes?'**

'But will it go, Charles?' *I persisted.*

'Probably yes, Coe, but the more interesting question is *should* it have to go!'

'I can think of no good reason why it shouldn't' *I responded.* 'People do feel thrown on the scrapheap and that is associated with morbidity and significant mortality.'

'Surely that depends whether the new life is eagerly anticipated or dreaded!'

'But even for those who accept it, it is a sudden change and unexpected domestic problems may materialise.'

'I think whatever happens, coupled with changing work patterns, sudden retirement will become less frequent for the majority as it already is for many senior executives and professionals.'

Charles's golf partner Peter, a physician, intervened, 'I am sure you are right, Charles. Retirement for me has been a long process. It started in 1990. The Tribunal Service has extended my appointment beyond the judicial retirement age so it is still not complete 19 years later at the age of 72! So I am fortunate in having been able to adapt gradually.'

'An extreme example, but I agree it is often helpful if the process can be phased. Surely the strongest arguments in favour of abolishing compulsory retirement are the waste of talent on the one hand, and disproportion in the size of the workforce and the growing retired population on the other?' *I suggested.*

'I agree that there is overwhelming argument for change!'

'Then why your question, Charles?' *I asked.*

'The employer and their customers have an interest too. Neither should be expected to tolerate shoddy work just because the former has to continue to employ someone who is too old to do the job.'

'But people vary a lot, I would be happy to be operated on by several surgical friends in their 70s but others...!' *I continued, with Peter intervening,* 'Surely the type of job is also important. Chronological age contributes little.'

'Yes and no!' *replied Charles* **'Performance declines with chronological age in the individual, and it is the only measure we have in assessing the effect of ageing in cohorts of the whole population. However the relationship between chronological and biological age varies so much between individuals that it can never be the sole determinant of their fate.'**

'I agree' *I replied,* 'But if we accept that compulsory retirement based solely on age is unacceptable, how do you protect the employer and his customers from incompetence due to declining faculties, particularly if this is not recognised by the employee?'

'You did not dispute that chronological age was the only measure we have for whole cohorts. I suggest that there should be a default age for retirement rather higher than now, say 70, with provision for it to be lower in certain jobs where it could be shown that substantially less than 50% are still competent at the age of 70. There is precedent for this approach in current legislation.'

'But surely that amounts to compulsory retirement!' *I interjected.*

'Not so fast, Coe, you did not give me time to explain the implications. At that stage the existing employer's responsibility of showing incapacity should be transferred to the employee, who would have to demonstrate capacity from an independent source. This would encourage people to recognise when their time has come and greatly reduce the resentment and suspicion of doing the employer's bidding when an examination is done by "the work's doctor". By the same token, the employee's own general practitioner should not be regarded as independent.'

'An interesting suggestion but is it practicable, and what happens when the employee fails before or after the critical age?' *asked my partner, Joe.*

'I think it is practicable, Joe. In answer to your second point, the employer would have to offer a

less demanding job if reasonably available. If no job was available, the employee would have to accept retirement, or if it was accepted that the employee was capable of doing something else, they could try their luck on the open market. Whether the employee be more or less than 70 is irrelevant.' *Charles said, adding,* **'I am sure we are all agreed that it is desirable for individuals and society in general that people are encouraged to work for as long as they are willing and able, albeit sometimes in a reduced capacity!'**

'The authorities in the regulated professions must accept the logical consequences of this but they seem to be getting less understanding!' *I replied.*

'Where someone accepts the time has come to slow down, the regulating authority should have a sympathetic approach and commensurately reduce the burden and cost of complying with regulation. To do otherwise would lose valuable expertise and enforce unwilling complete retirement. As this might well be to the detriment of the health of the individual concerned, I would have thought the General Medical Council as a medical regulator would take the lead in this respect!'

'Not in my recent experience!' *said Peter*, 'They make no concession to those doing occasional but useful work, but perhaps even they will see the light in the future!'

'I know several people who feel strongly about this! But to change the subject, what about the implications for pensions?' *I asked.*

'Clearly the standard retirement and basic state pension ages should coincide, with the pension at that age being the gold standard. Although retired people might opt for the pension from, say, up to five years earlier, the changed environment would mean that it would be inappropriate to take the pension or cease contributions before retirement from work of, say, more than 10 hours a week. Whatever date is chosen, the individual must take the full actuarial consequences of their choice, whether it be to their cost or benefit.'

'And private pensions?' *I asked.*

'Even now, before the changes that I foresee, final salary schemes are outdated. They are often seen as wholly to the benefit of employees but this is not always the case. It is true that the employer has to guess not only final salaries, but also, life expectancy years ahead and usually underestimates the cost, but sometimes it is overestimated. Of course even this can paradoxically prove to the benefit to the employee, as I believe you know from personal experience, Peter!'

'Yes in the NHS, I was able to buy ridiculously cheap added years, when the government assumed that their non-existent notional fund was in deficit, charged me more, and then found that in fact it was in surplus.'

'And the tax payer carries the can! But more seriously the principle potential disadvantage to the employee is that the final salary would not prove to be the highest.'

Peter saw his chance to curry sympathy, 'I know, I used to do a lot of domiciliaries which dried up in the few year's before retirement so the superannuation charged did not contribute to my pension.'

'Perhaps not the most extreme example, Peter!' *said Charles, continuing,* **'Although most people are no longer at the height of their powers just before retirement, this is not always reflected in their remuneration, often quite the contrary! I am sure this will change in the future as the trend must be to a longer working life accompanied by a fall in pay towards the end of it. This will be the last nail in the coffin of final salary schemes.'**

'What about the alternatives?'

'Money purchase schemes and other forms of protected savings with limited access have the great advantage of being equitable with one proviso.'

'What's that?' we all asked together.

'They must not be subject to the requirement to buy an annuity at an arbitrary age. We can see the injustice of this for those doomed to reach 75 in 2009 and, even if there were no economic ups and downs, 75 will soon be outdated!'

As Joe suggested, not all of Charles's proposals might be practicable, but surely his approach of gentle encouragement to work as long as we feel able is the right one. This needs more sympathy from regulatory authorities and it should be possible to reward it without vastly increasing the cost of pensions.

Coemgenus