

Retirement of Friendly Society Directors

This is an updated version of an article that was first produced for the AFMgovernance website in 2014.

Much has been written, and some anxiety has been caused, by the apparent conflict between the requirements of the Friendly Societies Act 1992 on age limits for directors and the prohibition against age discrimination under the Equality Act 2010. John Gilbert of the specialist friendly society advisers, M&G Advisory Services, believes the legal position is more clear-cut than it has often been described and sets out in this article his view on how the apparent conflict can be resolved.

Schedule 11 to the Friendly Societies Act 1992 imposes various age restrictions on friendly society directors (referred to as "members of the committee of management" in the Act and in the rules of some societies). The schedule establishes a "normal retirement age" of 70 although it says that individual societies may also set a compulsory retirement age (which may be 70 or may be higher or lower than 70) for their directors in their own rules. It is important to note that the "normal retirement age" and a compulsory retirement age are not the same thing: a compulsory retirement age is the age at which a director must retire permanently without possibility of re-election, while a director who reaches the normal retirement age must also retire but can submit himself or herself for re-election provided certain conditions are met. It is not obligatory for a society to set a compulsory retirement age under its rules but the normal retirement age applies to all friendly societies regardless of whether they have opted to set a compulsory retirement age or not (unless of course a society has set a compulsory retirement age of less than 70, in which case all of its directors will have already retired before they reach the normal retirement age).

The requirements for directors approaching the normal retirement age are that they must notify the Society of their impending birthday and can only stand for re-election if the committee of management approves their candidacy. If a director who has reached the normal retirement age does re-stand for election, the fact that they have reached normal retirement age and the reasons for the board's decision to allow them to re-stand must be notified to members entitled to vote. Persons who are over the normal retirement age cannot be co-opted on to a friendly society's board, but can only become directors by a member vote. If a Society has chosen to include a compulsory retirement age greater than 70 in its rules, the age restrictions described above still apply at 70 and the rules will require directors to retire permanently when they reach the age specified by the Society.

All this was a little complicated but relatively clear until the Equality Act 2010 came along. The Equality Act applies the same rules to directors as to other employees and makes it unlawful to discriminate on grounds of age. This causes an apparent conflict but - and this point is often overlooked - the conflict is resolved in paragraph 1 of Schedule 22 to the Equality Act, which states that it is not unlawful to discriminate where doing so is unavoidable in order to comply with a requirement of other legislation. The Friendly Societies Act 1992 is other legislation and therefore no conflict arises under the Equality Act where practices that would otherwise be discriminatory comply with a requirement of that Act. Some provisions of Schedule 11 to the 1992 Act are permissive and therefore not requirements whereas others are requirements. Those which are permissive are superseded by the Equality Act. Those which are requirements still apply.

Our interpretation of the law is therefore as follows:

- Friendly Societies should no longer set a compulsory retirement age. Schedule 11 permits them to do so but it is not a requirement and the permission is overridden by the Equality Act. Any societies that still have rules imposing a compulsory retirement age on directors should amend them.
- Directors approaching the normal retirement age of 70 must still notify the Society of the fact - this is a requirement of Schedule 11.
- Boards must consider whether to approve the candidature of any person aged 70 or more for election or re-election as a director and notify members of their decision - again this is a requirement of Schedule 11. However, in coming to that decision, they should not discriminate against candidates on grounds of age (or on the grounds of any of the other "protected characteristics" under the Equality Act 2010).
- Boards must not co-opt anyone aged 70 or more as a director; such persons can only become directors by election - this again is a requirement of the Friendly Societies Act 1992.

We hope that this generic advice will allay some of the confusion which exists about the apparent conflict between the two Acts of Parliament. It is offered as our interpretation of the legislation but we recommend societies do take their own specific legal advice about their own circumstances. Please feel free to contact us at john.gilbert@mgadvisory.co.uk.