

An Age Old **Dilemma**



For a variety of reasons, the author **Scott Milligan** of McClure Naismith has had age on his mind recently. The

impending approach of yet another birthday, seemingly only weeks after the last one, leading to the realisation that the gentle glide of the ageing process has seemingly turned into a landslide. On the other hand, having to prove, on disparate occasions, to over officious club doormen that he is in fact over 18 has slightly lessened the blow of the looming date (and provided his friends with a plentiful source of amusement). Here Scott describes some cases involving Age.

It is with interest, that I noted there have been several recent cases involving the Employment Equality Age (Regulations) 2006 ("the Regulations"). Naturally, the initial focus has been the effect on older workers, particularly regarding retirement at 65 (and we are still awaiting the decision of the ECJ in the Heyday case in relation to that).

However, a recent case in the Northern Ireland (NI), McCoy -v- James McGregor & others, the first of its kind under the NI age discrimination legislation, dealt with advertising and interviews. The job advertisement stated the position required "youthful enthusiasm". The claimant, Mr McCoy, who was 58, responded to the advertisement, and was one of three candidates selected for a second interview. Two posts were available at the company. In this interview, Mr McCoy was questioned about his age and motivation, and, although he fulfilled the criteria used in the selection process, he was not successful in his application. A note was specifically made during the interview on his age and motivation. Mr McCoy brought a claim against the company, and the

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tribunal found that "but for his age [Mr McCoy] would have more probably than not been selected for one of the posts". This decision illustrates the potential dangers of making assumptions on qualities of a candidate based on their age.

Another recent decision was that of an Employment Tribunal in Newcastle, which is worth noting, as it illustrates the applicability of the Regulations to younger workers. In *Wilkinson -v- Springwell Engineering*

Company Limited, the tribunal considered the claim of Ms Wilkinson, who was dismissed as an Office Administrator, supposedly due to performance issues. Ms Wilkinson had previously been informed about these issues during her probationary period. However, on dismissal, the Office Manager, stated that Ms Wilkinson was "too young for the job". Ms Wilkinson was 18.

The tribunal held that there was no evidence of lack of capability for the job, and found that Ms Wilkinson was dismissed purely on age grounds. An award was made of £16,000, including future loss of earnings for 6 months, and injury to feelings of £5,000. Although an uplift of 50% was applied due to the failure of Springwell Engineering to follow the statutory dismissal and disciplinary procedures, given that Ms Wilkinson was only employed for 2 months, the award is still a significant sum.

These cases serve to highlight the breadth of situations that the Regulations can apply to, and there will be many more such claims as employees become more familiar with the scope of them. Therefore, an employer and its HR Department must be aware of any possible application of the Regulations to both existing and future employees, and do their utmost not to fall foul of the provisions. And to make matters even more complicated, under Section 3(3)(b) of the Regulations, it is not just age, but "apparent age" that is covered.

In light of the old saying, age may well be nothing but a number - it would seem that this number can certainly not be safely relied upon to justify decisions in the employment law and recruitment fields.

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RECREATIONAL SERVICES

Powerleague		
UK	£23m	PIPE

ADVISERS

Vendor – McClure Naismith, Andrew Williamson (Legal); Ernst & Young, Tim Medak (Corporate finance).

Equity – Berwin Leighton Paisner, Benjamin Lee (Legal); Baker Tilly, Kevin Denham (Financial, tax, risk & insurance due diligence); Jones Lang LaSalle, Andrew Renshaw (Real estate due diligence).

Patron Capital Partners has backed the management of five-a-side football operator Powerleague Plc with an investment of £23.1m. Patron has acquired 29% of the shares from the CEO and the chairman of Powerleague to become the largest shareholder. The vendors now own about 7% of the shares while the current board will hold in total about 10%. The investor approached the company's chairman and CEO in summer 2007, but has been tracking the company for about two years.

The company operates freehold or long leasehold assets but does not have significant property expertise. Patron intends to use its property expertise and pan-European network to support Powerleague in that field and anticipates growing the company Europe-

wide. There was no debt involved in the deal.

AIM-listed Powerleague is based in Scotland and employs 700 staff. Its turnover for the last six months of 2007 was £11.3m and EBITDA for the same period was £3.6m.

Powerleague offers 43 five- and seven-a-side football centres in the UK with 455 floodlit pitches. The pitches can be booked for leagues, social games and corporate days and Powerleague also offers junior leagues for children.

Shane Law led the deal for Patron. Keith Breslauer, managing director of Patron Capital Ltd will be joining Powerleague's board as non-executive director. Paul Orchard-Lisle, who is known to Patron will also be joining as non-executive director.

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Clyde Group bought by management with Bank of Scotland funding

The Clyde Group, a Glasgow-based marine/high street recruitment, travel agency and training provider, has been bought from its founder David Livingstone by its incumbent management team with funding from Bank of Scotland Corporate.

The Clyde Group, whose subsidiary operating companies have UK offices in Southampton, Clydebank, Stirling, Inverness and Aberdeen, as well as Glasgow, was established in 1981 and has a reputation for excellence in the recruitment of Officers, and Ratings for temporary, permanent and crew management contracts. With Clyde Travel being the largest independent travel management company in the west of Scotland, the company has evolved into a 'one-stop-shop' service solution group, making it unique in its field.

Commenting on the deal, David Murray, Director of Commercial Business for Bank of Scotland Corporate, said: "The Clyde Group is a long standing customer of ours and we were more than happy to offer our assistance to Joyce and her team as they take the business forward. Bank of Scotland Corporate likes to make investments in, and form partnerships with, people of a high calibre, and everyone associated with the Clyde Group fits that bill."

Christie Griffiths carried out financial due diligence on behalf of Bank of Scotland Corporate. Gordon Christie led the team.

Jackson Lord & Co, led by David Martin, provided financial advice to the MBO team. McClure Naismith acted for the bank while Donald Alexander Russell & Haddow provided legal advice to the MBO team.

Clyde Group MBO

Funding provided by:

 **BANK OF SCOTLAND**
CORPORATE

Financial due diligence provided by:

christiegriffith 
USAP DIRECTOR FORTUNE 500

Legal adviser to Bank of Scotland:


morleyandscott
corporate finance

Murgitroyd acquires Kennedys Patent Agency

Murgitroyd, the European Patent and Trade Mark Attorney practice, has acquired Kennedys Patent Agency Limited for a consideration of approximately £3.4 million.

Under the terms of the agreement, £2.4 million was paid in cash upon completion, with the remainder being paid over three years. The transaction has been funded through facilities arranged with Clydesdale Bank plc.

Kennedys Patent Agency Limited, a European Patent and Trade Mark Attorney practice is headquartered in Glasgow, with additional offices in both Aberdeen and Newcastle. The practice, founded in 1997, was owned and managed by David Kennedy and Neil McKechnie.

Ian Murgitroyd, group chairman, commented: "We are delighted to announce that Kennedys has become part of the Murgitroyd Group. We believe that Kennedys represents an excellent fit and the coming together of the two practices will add strength and depth to the group's service offerings. The provision of a level of service which exceeds expectations remains the cornerstone of the enlarged group and the economies of scale will provide benefits to our clients, employees

and investors alike. Welcoming Kennedys' staff to Murgitroyd takes our total staff to over 220 across 12 European offices."

David Kennedy, managing director of Kennedys Patent Agency Limited, said: "The board and shareholders of Kennedys have accepted the offer from Murgitroyd because they believe it delivers immediate benefits to the shareholders, staff and clients of both groups and I anticipate benefits and opportunities accruing from being part of a bigger group."

McClure Naismith provided legal advice to Murgitroyd during the acquisition. Colin Millar led the team, assisted by Stewart Whyte (corporate), Emma Miller (property). Mr Millar said: "This deal provides Murgitroyd with access to both the client base and professional staff of Kennedys with a clear opportunity to generate good synergies. In addition, pre-completion restructuring effected by the vendors mean that the deal is almost immediately likely to be earnings enhancing."

IT due diligence for the transaction was carried out by NVT Group. Stephen Park Brown led the team. MacRoberts, led by Norman Martin, acted for Clydesdale Bank.

Murgitroyd acquisition of Kennedys Patent Agency

Funding provided by:

 **Clydesdale Bank**
A member of the  National Australia Bank Group

Legal adviser to Clydesdale:

 **MACROBERTS**

Legal adviser to the acquirer:

 **MCCLURE NAISMITH**
Solicitors

Reporting accountants:

 **KPMG**

IT due diligence provided by:

 **NVT**
GROUP