

forbessolicitors.

The Value of Experience

Legal issues in recruiting and retaining older workers

6 March 2019

Emma Swan

Partner and Head of Commercial Employment

Recruitment

Be clear about the skills needed for the role

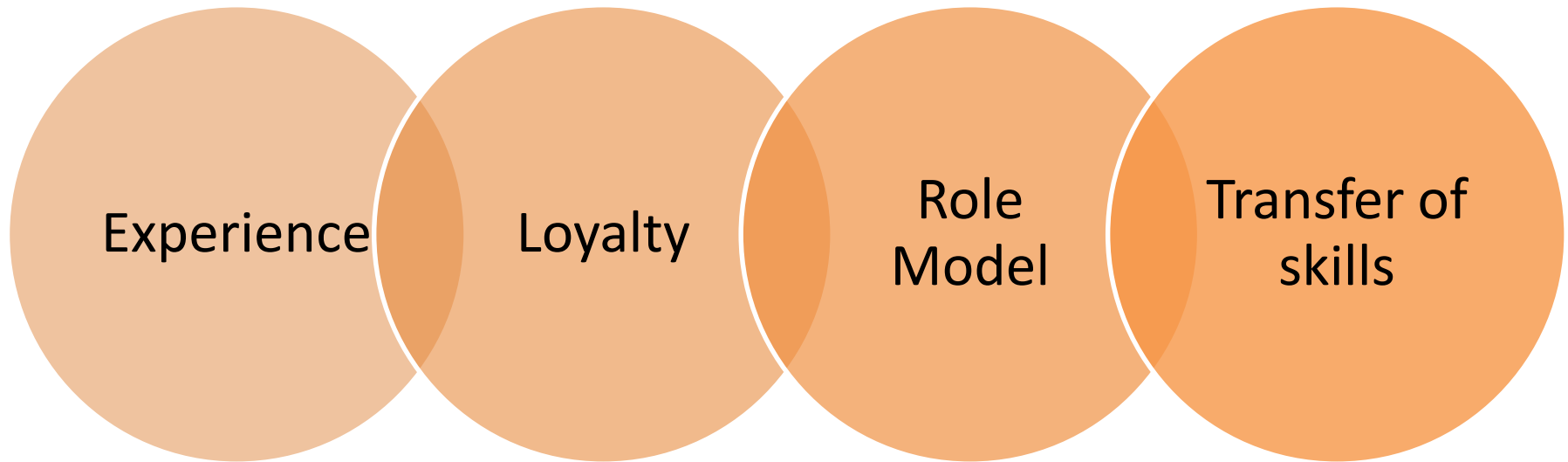
- Job description/person specification

Use the information to assess is this employee right for this role?

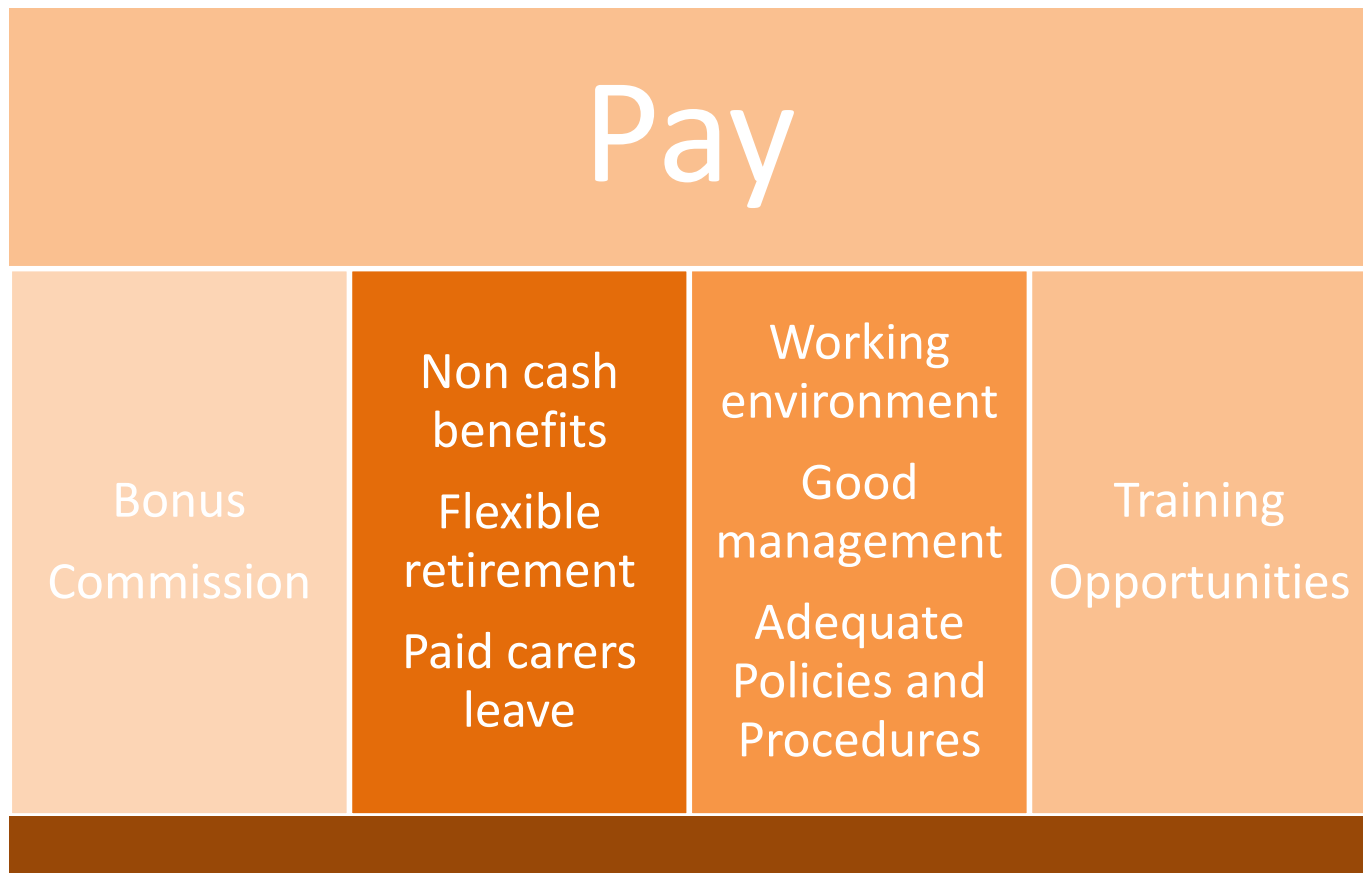
- CVs/references/testimonials
- Are there any gaps in the information

Assessment days/probationary periods/induction

Reasons for Retaining workforce



Ways to retain



Retention of older employees - Impact of differing views

Employee attitude

- Perceived experience
- Entrenched views

I have always
done it this
way

I am too old to
change

I'm not doing that

Employer attitude

- Assumptions/stereotyping
- Inadequate policies or procedures
- No or inadequate training
- Different ways of working

Case Studies

Managing an Older Workforce

- No compulsory retirement age
- Capability
 - poor performance
 - ill health/attendance
- Conduct
 - attitude
 - lateness

Discrimination Issues

- Watch out for disability discrimination and the duty to make reasonable adjustments for ill health
- **Associative discrimination** – could that person be a carer?
- Grievances and constructive dismissal
- What about age discrimination?

Age Discrimination

Direct treat less favourably than another employee on the grounds of age

Indirect – a PCP puts the employee at a substantial disadvantage compared to an employee who isn't that age

Harassment – violate dignity, subject to hostile or intimidating environment on the grounds of their age

Victimisation – subject to detriment for doing or employer thinks has done a protected act

How does this affect you and your business?

- Equality legislation applies to everyone
 - Employees
 - Workers
 - Applicants
- Tribunal awards can be made against the employer and/or personally against individuals
- Impact on working environment and employee relations

The Cost Implications - ££££££

- No cap on compensation
 - Record award: **£4,452,206.60**
- Discrimination Tribunal cases often take up to twice as long to conclude
- Management down time and legal costs
- No requirement for a period of continuous service

Age Discrimination

- Braithwaite & ors v HCL Insurance BPO Services Ltd
EAT 2014
 - A requirement to sign new terms and conditions can be a PCP that disadvantaged older workers.
 - Objective justification – there was no less discriminatory way of achieving the aim of reducing staff costs

forbessolicitors.

THANKS FOR LISTENING

Emma Swan

Partner and Head of Commercial Employment

E: emma.swan@forbessolicitors.co.uk

M: 07817 392717