



Employment alert

High Court upholds retirement age of 65 for now – But is it to go?

You may have read in the news last week about the latest chapter in the challenge by Age UK to the UK Government on the Default Retirement Age (DRA) of 65.

The European Framework Directive 2000/78/EC (the 'Directive') generally prohibits discrimination on grounds of age but allows direct age discrimination (including forced retirement) if:

"within the context of national law, [the different treatment is] objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary."

Age UK argued that the DRA was incompatible with the Directive as there was no clear and consistent social policy aim pursued by the UK Government. They also argued the choice of a DRA of 65 was not proportionate.

The Equality and Human Rights Commission (responsible for working towards reducing discrimination in the UK) was also involved in the case. Its submissions to the court were that forced retirement should be allowed in principle, but that the courts should decide what was "legitimate" on a case-by-case basis, (we think hardly workable), or alternatively that the DRA should be 70.

The case has been rumbling on for years and after clarification by the European Court of Justice on a number of preliminary questions relating to the interpretation of the Directive in March 2009, the High Court in the UK has now given its decision.

The High Court said that:

- It was legitimate to have a long term aim of moving away from forced retirement but also a short term policy of allowing it in the meantime.
- The Government legitimately considered forced retirement to be necessary for workforce planning and to prevent job-blocking.
- The age of 65 was legitimate because the Government should be given the benefit of the doubt on implementing EU directives and there was little support from anyone for a different age.

However, the court could not see how the age of 65 could remain after the 2010 Government review on retirement.

So the Government succeeded – but only just on our understanding. The Court held that a DRA in principle was both legitimate and proportionate and that the Government had spelled out sufficiently its social policy aims about the integrity of the labour market at the time the regulations were introduced on 1 October 2006. However, there were powerful reasons why an age over 65 should have been adopted. Two days before trial the Government announced it would review the DRA in early 2010 and we understand this played a big part in the Court's decision. The court stated that if there had been no indication of this imminent review it would not have found in the Government's favour and that if the DRA had been set at 65 now, in 2009, it

would not have held it to be justifiable and the Government would have lost.

So, for now, forced retirement remains legal although we predict that it will be phased out by the Government from perhaps as early as next year.



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