



Is time on your side?

Taking a closer look at the perils of age discrimination claims in the case of *Horgan and Keegan v Minister for Education & Skills & Others*¹

The Court of Justice of the European Union finds reduced pay scales and less advantageous classification on pay scale for newly appointed teachers does not constitute discrimination on the grounds of age.

Background

Mr Horgan and Ms Keegan (the “**Applicants**”) qualified as primary school teachers and commenced employment as such in autumn 2011. Circular 0040/2011 (the “**Circular**”) introduced a 10% pay reduction for all teachers newly appointed on or after 1 January 2011. In addition, the Circular classified all newly appointed teachers at the first point of the applicable salary scale in contrast to the previous practice of classifying new teachers at the second or third point of that scale. These measures were adopted at a time of significant budgetary restraints in the public service sector.

The Applicants, supported by the INTO, claimed they were discriminated against on grounds of age on the basis that they perform “like work” with a named comparator and are entitled to equal remuneration in accordance with the Employment Equality Acts 1998-2015 (the “**EEA**”). The Applicants contended the reduced pay scales particularly affected younger teachers and that they suffered direct and indirect discrimination in respect of pay.

Findings

The Applicants were unsuccessful in the Equality Tribunal. The Tribunal was satisfied that a case of direct discrimination did not arise and found that the difference in pay between the Applicants and the comparator arising out of their appointment on different scales was justified by the Respondent as being a necessary aim of social policy. The Tribunal stated that if the reduced salary scale had simply been about saving money then it could not have amounted to a legitimate aim, however, in circumstances where it was part of a large number of measures aimed at reducing the pay bill in the public sector, it amounted to broad national financial policy. It concluded that the means for implementing the aim were both appropriate and necessary and, as such, the Respondent could rely on the defence to indirect discrimination in section 29(4) of the EEA.²

The Applicants appealed the Tribunal’s decision to the Labour Court and the Court requested a preliminary ruling from the CJEU, regarding the interpretation of the indirect discrimination provision in Council Directive 2000/78/EC (the “**Directive**”).³

¹ Case C-154/18, *Horgan and Keegan v Minister for Education & Skills & Others, the Department of Finance, the Department of Public Expenditure & Reform, the Government of Ireland and the Attorney General*

² Section 29(4) of the EEA provides an employer with a defence against a claim for indirect discrimination where the disputed measure can be objectively justified by a legitimate aim and the means of achieving the aim are appropriate and necessary

³ Council Directive 2000/78/EC established a general framework for equal treatment in employment and occupation

CJEU Decision

The CJEU judgment, delivered on 14 February 2019, held that in order for the Applicants to rely on the principle of equal treatment under the Directive, it is necessary to ascertain whether teachers recruited on or after 1 January 2011 are treated differently from those recruited before that date, on account of their age on the date of their recruitment. The CJEU considered the difference in treatment resulted from the date of recruitment of the Applicants, as that date determines whether the former or reduced salary scale and classification rules apply and that this was regardless of the age of the teacher on the date at which s/he was recruited. The CJEU was satisfied that the reduced pay scales were not based on a criterion inextricably or indirectly linked to the age of the teachers, given that it is common case that irrespective, of the year of recruitment, both the teachers recruited after 1 January 2011 and those recruited before that date, were on average 25 years of age or under. Accordingly, the CJEU held the Circular which required a reduced salary scale and classification which was less advantageous to that which previously applied, as of a specific date, did not constitute indirect discrimination on the grounds of age, within the meaning of the Directive.

Commentary

Whilst the matter will return to the Labour Court for its decision on the action pending before it, the CJEU decision provides a clear statement on the Circular. The case highlights some of the issues litigants face in making a claim of indirect discrimination. Whilst a measure may result in a difference in treatment or pay between two groups, it will not be found to be discriminatory where an employer can establish that the relevant criterion is manifestly unconnected to the protected ground under the EEA.

Indirect discrimination claims, as distinct from direct discrimination claims, are capable of being objectively justified and the case law clearly demonstrates how a Tribunal or Court will assess all the evidence available to it.

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For further information please contact:



Margaret Gorman

Partner & Head of Education

+353 1 6644325

MargaretGorman@eversheds-sutherland.ie



Bernard Martin

Associate, Education

+353 1 6644234

BernardMartin@eversheds-sutherland.ie



Kara Turner

Consultant, Education

+353 1 6644222

KaraTurner@eversheds-sutherland.ie

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