

1:0 to Employers in First Age Discrimination Case

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Unlike other strands of discrimination (such as race, sex or disability) it is possible to defend a claim of direct discrimination on the grounds of age by putting forward an 'objective justification' for the treatment complained of.

Bloxham v Freshfields Bruckhaus Deringer is the first case to examine this possible defence since the Employment Equality (Age) Regulations 2006 ('the Regulations') came into force on 1 October 2006.

The Regulations provide that A discriminates against B if, on the ground of B's age, A treats B less favourably than he treats or would treat other persons, and A cannot show the treatment to be a proportionate means of achieving a legitimate aim.

The *Bloxham* case involved a dispute between a City law firm and a former partner over changes to the firm's pension scheme. That scheme initially provided for retirement at age 55. Those under 55 but over 50 could retire early, subject to a reduction in their pension entitlement. For example, partners retiring at 54 would have to accept a 20% reduction to their entitlement.

By 2002, the firm realised that it needed to amend the pension scheme to avoid the 'intergenerational unfairness' of a growing number of pensioners being supported by profits made by younger partners. The firm put in place a new pension scheme, which provided significantly less generous benefits. A transitional scheme was put in place to allow those partners just coming up to retirement to retire on the terms of the previous scheme.

Mr *Bloxham* took advantage of the transitional provisions and retired at age 54 on 31 October 2006 with a 20% reduction in his entitlements. He then brought a claim in the tribunal arguing that the pension scheme provisions amounted to less favourable treatment on the grounds of age because, for example, had he been 55 he would not have been subject to the 20% reduction.

The tribunal held that he had been treated less favourably on the grounds of his age. It went to consider whether the treatment was objectively justified i.e. was the treatment a 'proportionate means of achieving a legitimate aim?' The Tribunal found that:

- the reforms were designed to reduce 'intergenerational unfairness';
- if the 20% reduction had been removed this would have put other age groups at a disadvantage;
- there was a lengthy and thorough consultation process on the reforms which were agreed by two thirds of the partners; and
- Mr *Bloxham* was offered a consultancy arrangement but rejected it.

As a result of the above factors, the Tribunal held that the discriminatory treatment was objectively justified and dismissed *Bloxham's* case.

The lesson from this case appears to be that if employers consult widely on reforms to contractual terms and articulate their reasons, they will be able to defend age discrimination claims. The fact that employers are given the ability to justify direct age discrimination means that this branch of discrimination offers significantly less protection to employees than other branches of discrimination law.

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