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NEWS REPORT

Country:	United Kingdom
Title:	Indirect discrimination on grounds of age; <i>Harrod and others v Chief Constable Of West Midlands Police And Others</i>
Date:	5 April 2017
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<u>Context</u>	
Issue at stake:	Justification of indirect age discrimination
Ground of discrimination:	Age
Source:	National court decision; <i>Harrod & Ors v Chief Constable of West Midlands Police & Ors</i> [2017] EWCA Civ 191; 24 March 2017
Field:	Employment
Applicable law:	Equality Act 2010 s 19

Content

Case: The case involves claims of indirect age discrimination on behalf of police officers following their compulsory retirement as a result of the application to them of Regulation A19 of the Police Pensions Regulations 1987. The police forces needed to make reductions in staff numbers and the only lawful way to do so was by the application of Regulation A19 which allows for enforced retirement once an officer has served for 30 years, thereby qualifying for a pension of two thirds average pensionable pay. The Appellants claimed that the use of Regulation A19 was indirectly discriminatory on grounds of age, as others with less service were not required to retire. The Respondents argued that the use of Regulation A19 was the only lawful means by which they could reduce their staff numbers, and so its use was justified.

Decision of the Court: The Employment Tribunal (ET)¹ upheld the claims of indirect age discrimination but this decision was reversed by the Employment Appeal Tribunal (EAT).² On 24 March 2017 the Court of Appeal (CA) upheld the decision of the EAT. The decision to reduce the number of police officers to the fullest extent available was taken in the interests of achieving certainty in terms of costs reduction. It was not for the ET to devise an alternative scheme involving the loss of fewer posts. As no other method of selection was lawful, the decision to limit dismissals to police officers with more than 30 years' service cannot be called into question. The CA determined that the only possible conclusion from these two propositions was that the Respondents' actions in using Regulation A19 were justified and that the Appellants had no valid claim for age discrimination.

Key points of analysis: The high level of job security in this case (only those who were eligible for retirement could be made redundant) left very little discretion to the employer. As there was no alternative means of reducing the number of police officers,

¹ ET/1307406/2011, 5 February 2014.

² UKEAT/0189/14/DA, 8 July 2015.

the use of Regulation A19 was not disproportionate. The court could not reject justification on the basis that the respondent could have pursued a different aim which would have had a less discriminatory impact.

Internet link source:

<http://www.bailii.org/ew/cases/EWCA/Civ/2017/191.html> accessed 31 March 2017.