

Can a compulsory retirement age policy be justified in Jersey?

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Since Jersey's discrimination legislation was amended in September 2018, employers have been required to justify the need for employees of any age to retire.

If employers force employees to retire, they risk unfair dismissal and age discrimination claims. Enforced retirement amounts to direct discrimination unless the employer can show that the retirement is a proportionate means of achieving a legitimate aim.

- "**Proportionate**" means that the retirement must contribute to a legitimate aim, and the employer must have evidence that the retirement is achieving that aim. The aim should be of sufficient importance and benefit to outweigh potential unfairness or discrimination, and there should be no reasonable alternative available to the employer.
- For an aim to be "**legitimate**", it must correspond with a real need of the employer, such as economic factors, business needs, efficiency, health and safety, legal considerations, or specific medical/fitness levels.

An associated amendment was also made to Jersey's employment legislation in September 2018 to remove the upper age limit on protection against unfair dismissal so an employee of any age can claim unfair dismissal. "**Retirement**" has also been included as a potentially fair reason for dismissal, as long as the employer has acted reasonably in requiring the employee to retire.

The legislative position in Jersey is now similar to the UK in that employers have to justify the need for employees of any age to retire. The UK's Employment Appeal Tribunal (**EAT**) recently dismissed two joined appeals [1] against contrasting tribunal judgments arising from the University of Oxford's compulsory retirement policy.

The University's retirement age of 67 was justified by three legitimate aims:

- i. inter-generational fairness;

- ii. succession planning; and
- iii. promoting equality and diversity.

The University's position was that the compulsory retirement age facilitated the aims by creating vacancies at a predictable time, so a more diverse group of candidates with new ideas could be considered for senior academic roles.

In each case, the EAT considered whether the compulsory retirement age was proportionate in achieving or facilitating the legitimate aims. In the first case (*Pitcher v Oxford University*), the compulsory retirement of a History professor was held to be justified age discrimination and a fair dismissal. However, in the second case (*Oxford University v Ewart*), the dismissal of a Physics professor was found to be discriminatory. Statistical evidence had been provided to the tribunal in the second case (which had not been provided to the tribunal in the first case), showing that the compulsory retirement age did not produce a significant number of vacancies. These contrasting decisions make it clear that different conclusions can be drawn from different evidence presented to tribunals.

Jersey's Employment and Discrimination Tribunal has considered age discrimination in compulsory retirement – where a retirement age of 65 was specified in the staff handbook – in the case of [Linda Blake v Island Medical Centre](#). However, the Tribunal had no choice but to dismiss that claim because the incident in question (the termination of the claimant's contract) occurred a few months prior to the law change in September 2018. The Tribunal found that the claim could not succeed, even if the claimant had been able to prove that the non-renewal of her contract was due to her age. This was because, at the time of the potential act of discrimination, the law included an exception so that the dismissal of an employee at pensionable age (or the retirement age set by the employer if higher) is not direct age discrimination if the employer has a policy of requiring employees to retire at such an age.

We await with interest any further Jersey Tribunal decisions that consider age discrimination and unfair dismissal in relation to compulsory retirement.

[1] Find out more about the [United Kingdom Employment Appeal Tribunal](#)

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