

**Bulletin 169**

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## AGE DISCRIMINATION – PROPORTIONALITY

The Employment Tribunal's decision in the recent case of *Martin & Ors v Professional Game Match Officials Ltd* is of particular relevance to the issue of objective justification of direct age discrimination.

The Employment Equality (Age) Regulations 2006 provide that direct age discrimination can be justified if it is a proportionate means of achieving a legitimate aim.

In the case of *Martin* the Claimants were assistant referees who had been dismissed as a result of the Respondent's early retirement age of 48.

The Respondent alleged that the retirement policy was a proportionate means of achieving a number of legitimate aims, including ensuring a high standard of officiating and creating a career route for officials (i.e. clearing the way for younger officials to progress).

The Tribunal held that, in order for a policy or practice to be a legitimate aim, it must have a public or social policy objective. Simply meeting the needs of a business is not enough.

Furthermore, in order for policy or practice to be proportionate, it must be shown that there was no less discriminatory way of achieving the legitimate aim.

In this case, although creating a career path met the social policy objective and was therefore a legitimate aim, there were less discriminatory ways of achieving this aim (e.g. demoting officials who score badly in fitness and competence assessments) and as such the retirement policy was not proportionate.

The Tribunal also noted that even if the retirement policy had been appropriate, the Respondent had not been able to satisfy the Tribunal that the age of 48, and not another age, was the appropriate age for retirement.

### ➤ **Practical Tips**

This case highlights the difficulties employers face with early retirement policies, even where on the face of it such a policy is justifiable, because of the Tribunal's narrow approach to proportionality.

In addition, where an employer seeks to justify such a policy, it must be able to produce evidence in support.

Employers should ensure that a proper retirement policy is in place and communicated to staff. If advice or assistance is needed with any of these issues, please contact a member of the Brabners Chaffe Street LLP Employment Team.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to [helen.calvert@brabnerscs.com](mailto:helen.calvert@brabnerscs.com)

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