

HIGH COURT UPHOLDS THE DEFAULT RETIREMENT AGE OF 65

The High Court has handed down its decision in *R (on the application of Age UK) v Secretary of State for Business Innovation and Skills and others*, or the *Heyday* appeal, ruling that the UK's default retirement age (DRA) of 65 is lawful. This means that it is still legal for employers to retire employees at age 65.

The European Court of Justice previously held that the DRA, contained in Regulation 30 of the Age Regulations, fell within the scope of the EC Equal Treatment Framework Directive. Thus, the DRA would be age discriminatory unless 'justified by legitimate social policy objectives, such as those related to employment policy, the labour market or vocational training, achieved by appropriate and necessary means'.

The High Court was satisfied that the Government had proved that a DRA was a proportionate means of achieving legitimate social policy aims such as securing the integrity of the labour market and its short-term competitiveness. The Court indicated that, if a DRA of 65 had been introduced in 2009, it would not have found it to be proportionate. However, the challenge to the Regulations had to be judged as at the date it was begun, in 2006. On balance, the court concluded that setting the DRA at 65 was within the competence of the Government in implementing the Directive.

Mr. Justice Blake went on to comment that he might have reached a different conclusion if the Government had not brought forward its review of the Regulations to 2010 and there was now a "compelling" case given the state of the UK economy for considering whether a retirement age is necessary. He also noted that he 'cannot presently see how 65 could remain as a DRA after the review'.

Hundreds of retirement-related employment tribunal cases, which have been on hold awaiting the outcome of this legal challenge are now likely to be dismissed.

If you have any queries, please get in touch with your usual Parker & Co contact.

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