



**Key Issues:** Equal Treatment – Age Discrimination

**Case:** Horgan & Keegan v Minister for Education & Skills

**Reference:** Case C-154/18, CJEU (Second Chamber), 14 February 2019

**Legislation:** Directive 2000/78/EC

In 2011, Mr Horgan and Ms Keegan qualified as school teachers in Ireland. As of that autumn, they commenced employment as teachers in an Irish State primary school. The salary scales for newly recruited teachers, contained in Circular 0040/2011, reduce, as of 1 January 2011, the salaries by 10% at each point of the salary scale in relation to the salaries of public servants recruited before that date. In addition, under that Circular, all newly recruited teachers were classified at the first point of the applicable salary scale, in contrast to previous practice consisting in classifying new teachers at the second or third point of that scale. Those measures were adopted in order to meet the need to achieve a medium-term structural reduction in the cost of the public service at a time of significant budgetary restraints, and to correct a significant deficit in the public finances.

Mr Horgan and Ms Keegan challenged those measures before the Equality Tribunal (Ireland), claiming a difference in treatment on grounds of age. Since that court dismissed their action, Mr Horgan and Ms Keegan appealed before the Labour Court (Ireland). The latter court states that the measures at issue in the main proceedings have resulted in the coexistence of two groups of workers engaged in work of equal value but who are remunerated differently, there being a clear difference in age between those two categories.

Approximately 70% of teachers who commenced employment in Ireland in 2011 were 25 years of age or under. Thus, at the time of their recruitment, the teachers who commenced employment in that year, including Mr Horgan and Ms Keegan, are generally younger than teachers recruited before that year, the latter group being considered to be the better remunerated group of persons.

The referring court however observes that the factor determining which salary scale teachers are placed on is the year in which they commenced employment and that all teachers recruited after 1 January 2011, irrespective of their age at the date of recruitment, were placed on the less advantageous salary scale. Conversely, all teachers recruited before that year were placed on the old salary scale, and remained on that scale, regardless of their age at the date of recruitment. Thus, the date of recruitment is at first sight a neutral criterion from the age perspective.

The referring court also notes that the parties to the main proceedings do not dispute that the age profile of teachers recruited after 1 January 2011 is no different to that of teachers recruited before that date, irrespective of the year of recruitment. That court therefore raises the issue of whether there has been any indirect discrimination on grounds of age, as claimed by Mr Horgan and Ms Keegan.

As regards the justification for any indirect discrimination, the referring court observes that two justifications have been put forward, namely, first, the need for Ireland to respond to an economic crisis and, secondly, the obligation to adhere to a collective agreement prohibiting any further reduction in the remuneration of public servants recruited before 2011.

That court takes the view that, taken individually, those grounds do not constitute valid justifications, but that they might provide a justification in combination.

In those circumstances, the Labour Court (Ireland) decided to stay the proceedings and to refer a number of questions to the Court of Justice of the EU (CJEU) for a preliminary ruling.

### **Consideration by CJEU**

It follows from Article 2(1) of Directive 2000/78, read in conjunction with Article 1 thereof, that for the purposes of that directive the principle of equal treatment means that there must be no direct or indirect discrimination whatsoever on the grounds, *inter alia*, of age. It is clear moreover from Article 2(2)(b) of that directive that, for the purposes of that directive, indirect discrimination on grounds of age occurs where an apparently neutral provision, criterion or practice would put persons having a particular age at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Therefore, in order to determine whether Mr Horgan and Ms Keegan may rely on the principle set out in the previous paragraph, it is necessary to ascertain whether teachers recruited after 1 January 2011 are treated differently from those recruited before that date on account of their age at the date of their recruitment. In that regard, it is apparent from the file before the CJEU that Ireland chose to amend the remuneration conditions for newly recruited public servants, including teachers, as of 1 January 2011, by providing for a 10% reduction in remuneration and classification at the first point on the salary scale instead of classification at the second or third point.

Those new conditions are applicable to the situation of Mr Horgan and Ms Keegan and to that of the other teachers recruited after that date and it is common ground that those persons are engaged in work comparable to that of

the teachers recruited before that date. On the other hand, the teachers recruited before 1 January 2011 were necessarily classified on the scale in accordance with the conditions in force at the date of their recruitment, that classification determining the amount of their remuneration.

That difference in treatment therefore results from the date of recruitment of the respective group of teachers, since that date determines whether the former or the new rules on the salary scale and classification on that scale are applicable. Thus the only relevant criterion for the purposes of applying the new rules on the salary scale and classification on that scale is whether the person concerned is a '*new entrant to the public service as of 1 January 2011*', regardless of the age of the public servant at the date at which he or she was recruited. Accordingly, that criterion, which renders the application of the new rules dependant exclusively on the date of recruitment as an objective and neutral factor, is manifestly unconnected to any taking into account of the age of the persons recruited.

**The CJEU held that:**

**Article 2(2)(b) of Directive 2000/78/EC of 27 November 2000 must be interpreted to the effect that a measure such as that at issue in the main proceedings which, as of a specific date, provides for the application on the recruitment of new teachers of a salary scale and classification on that scale which are less advantageous than that applied, under the rules previous to that measure, to teachers recruited before that date does not constitute indirect discrimination on the grounds of age within the meaning of that provision.**

**Why is this decision important?**

All newly qualified teachers are not the same age. Teachers can, and do, enter the profession at different stages in their lives. By selecting a date (1 January 2011), and not an age, as the point at which the new salary scale would take effect, the Irish Government avoided indirect discrimination. Employers need to consider carefully the ramifications of all changes to working terms and conditions so as to ensure there are no unforeseen consequences.

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