

# RadcliffesLeBrasseur



## Employment Briefing

June 2010

### Case of the month

Age as a feature of the human condition was the subject of the ***Homer v Chief Constable of West Yorkshire Police*** [2010] EWCA Civ 419. This is the first age discrimination case to reach the Court of Appeal.

The appellant worked for the police legal service. He did not have a law degree but had much experience as a senior policeman and had worked without any difficulty in his department. The business director of the service introduced a grading system with the idea of improving recruitment. To reach the highest grade a threshold requirement was introduced; possession of a law degree. At the time this happened the appellant was 61 and he intended to retire at 65. Although his employers were willing to pay him to take a degree on a part time basis he did not want to do so because he considered that by the time he obtained the degree he would retire and it would not be worth the considerable time and trouble to take the exams. When his employers refused to make an exception to the new rule he brought an age discrimination claim and initially succeeded before the tribunal. It held that those in the age group 60-65 were subject to a particular disadvantage by the degree criterion which prevented them achieving higher pay and status and that it was not proportionate to have no reasonable alternative to that requirement.

Both the Employment Appeal Tribunal and the Court of Appeal did not agree. Their analysis shows how difficult age discrimination can be on a conceptual basis.

They said that the problem experienced by the appellant was not created by the application of the criterion of requiring a law degree but by the inevitable consequence of age and that if the appellant's case was accepted that would require more favourable treatment of older workers to mitigate the fact that as their life gets older so their working lifespan decreases and the future value of benefits conferred by an employer is reduced.

It is not, they said, the function of anti-discrimination law to legislate against the general unfairness of age whether juvenile or geriatric. The law required a neutrally worded provision, criterion or practice to cause the disadvantage but in this case the cause was the impending retirement and not requiring a degree.

Many may think this is the sort of logic that brings the law into disrepute!

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#### Further Information

If you would like further information or to comment in general regarding this case, please contact



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