

## Irish Supreme Court challenge to mandatory retirement age denied

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In the case of *Mallon v The Minister for Justice and others* [2024] IESC 20, the Supreme Court recently dismissed an appeal brought by Mr Mallon, a county sheriff who challenged the law compelling him to retire at the age of 70.

### Background to the case

In January 1987, Mr Mallon was appointed "Revenue sheriff". The office of sheriff is non-pensionable and pursuant to section 12(6) of the Court Officers Act 1945 (the "Act") "*shall be held at the will and pleasure of the Government*" with a mandatory retirement age of 70 in accordance with Section 12(6)(b) of the Act.

Mr Mallon was 34 at the time of his appointment and was aware that he would be required to retire when he reached the age of 70. He was also a solicitor in private practice and could remain in practice while holding the position of Revenue sheriff. Revenue sheriffs are not paid a salary but are paid an annual retainer.

In July 2020, the Sheriffs' Association made a submission to the Minister for Justice urging an increase in the retirement age for sheriffs. The submission made referred to the retirement age for coroners had recently increased from 70 to 72, the impact of the COVID pandemic on the earnings of sheriffs, and the fact that sheriffs were not entitled to any pension on retirement.

The Minister's response to the submission was that the standard compulsory retirement age in the public service had been consolidated "*to the greatest extent possible, at the age of 70*" and "*approval beyond the age of 70 is not forthcoming.*"

### Application for judicial review

Mr Mallon challenged the response by way of judicial review and argued that the mandatory

retirement age was discriminatory on the grounds of age and incompatible with Council Directive 2000/78/EC (the "**Directive**") transposed into Irish law by the Employment Equality Acts 1998-2021 and that there were no sufficient objective and reasonable grounds capable of justifying it, in that it involved treating sheriffs less favourably than coroners, which, it was said, would be "*an act of discrimination in itself*".

The Minister opposed the claim on a number of grounds with the response to the Sheriffs' Association submission not being a decision amendable to judicial review and that Mr Mallon ought to have brought his claim to the Workplace Relations Commission. As to the substance, the Minister's essential contention was that there is ample justification for the mandatory retirement age of 70 and that the position of coroners was materially different to that of sheriffs.

The High Court refused Mr Mallon's claims for judicial review and the reliefs he sought and accepted the aims as outlined by the Minister of a standard retirement age.

The High Court accepted "that the adoption of a standard retirement age of 70 was to allow for planning at the level of the individual and at the level of the organisation, the creation of an age balance in the workforce, personal and professional dignity, intergenerational fairness, and standardising the retirement age in the public service." With regards to the different treatment of coroners, the Court was satisfied from the evidence that the Government had introduced a specific increase in the retirement age for coroners in order to retain experience and expertise within the coroner system.

## **Appeal to the Supreme Court**

Mr Mallon was granted permission to appeal to the Supreme Court.

One of the core issues of the appeal to the Supreme Court was "Can such mandatory limits be set in relation to defined groups based on general probabilities of age, health and competence, as opposed to individual characteristics on an individualised assessment?" Mr Mallon argued that a blanket mandatory retirement age will not be justifiable where individual assessment is possible.

The judgment at paragraph 74 sets out that "The avoidance of individual capacity assessment - both because of the scope for disputes such assessment necessarily involves and because of its potential impact on the dignity of employees - has been recognised as a legitimate aim capable of justifying a general retirement age. The recognition in the CJEU jurisprudence that standardisation of retirement ages across the public service and the emphasis on coherence and consistency are also at odds with any suggestion that it is only where it "would be impractical to test every person then it may be proportional to use some form of age proxy." It may be that the law might have developed in that direction (as Ó Cinnéide appears to have considered in 2005) but it has not in fact done so."

The Court found that "It is not the case that the Directive presumptively requires case by case or role by role assessment or that such individual assessment must be shown to be impractical if a generally applicable retirement age is to be justified. Provided that the aim sought is legitimate and the means of achieving that aim are "appropriate and necessary" (proportionate), a mandatory retirement rule does not offend the prohibition on age discrimination in the Directive, notwithstanding that it does not entail an individual assessment of those subject to such rule."

In light of the above, the Supreme Court dismissed Mr Mallon's appeal,

## Conclusion

Discrimination cases on the grounds of age have been at the forefront of recent Irish employment law. Helpfully, this important ruling confirms that a difference in treatment directly based on age which is objectively and reasonably justified by a legitimate aim does not require individual assessment. The Supreme Court has a detailed explanation of the outcome of this case that is [available to read in full online](#).

For further information regarding the above case or for assistance in preparing / updating retirement policies, please contact a member of our Employment team via their contact details below.

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### Key Contacts



Mary Gavin

Managing Associate

Ireland

E: [mary.gavin@ogier.com](mailto:mary.gavin@ogier.com)



Marianne Norton

Associate

Ireland

E: [marianne.norton@ogier.com](mailto:marianne.norton@ogier.com)

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