

# Paying older workers larger redundancy payments is discriminatory but justified

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# Paying older workers larger redundancy payments is discriminatory but justified

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In order to establish discrimination, a Claimant must establish that they have been treated differently to a

comparator whose circumstances are materially the same to their own (with the only difference being a protected characteristic such as age, race, disability etc). In *Lockwood v. DWP*, an age discrimination case, the Court of Appeal gave short shrift to the suggestion that there was a material difference between groups of workers (and therefore no comparator) on the basis of circumstances intrinsically linked to age.

The employer argued that the circumstances of employees under the age of 35 (being that they were less likely to have family and financial commitments) were materially different to the circumstances of staff over the age of 35. The Court disagreed because the characteristics were intrinsically linked to age and therefore had to be disregarded. Accordingly, the two groups of employees were comparable and the decision to pay enhanced redundancy payments to employees over the age of 35 was an act of direct age discrimination.

However, in any event, the policy was justifiable on policy grounds and the claim failed on that basis.

### ***Detail***

The DWP had a policy whereby employees aged 35 or over benefited from more favourable redundancy payments than employees under the age of 35.

Ms Lockwood was made redundant and paid a redundancy payment of £10,894.04. Had she been 35 or older, she would have received an additional sum of £17,690. She claimed that the DWP's redundancy policy amounted to less favourable treatment on grounds of age and was therefore direct age discrimination.

The ET and EAT dismissed the claim on the basis that:

- there was a material difference between the two groups of staff and therefore no comparator (being that the employees under the age of 35 were less likely to have

family and financial commitments justifying the generous redundancy package); and, in any event:

- the different treatment was objectively justified on policy grounds and therefore the discrimination claim would fail (as the enhanced redundancy payment to older staff addresses the fact that older workers are likely to experience more difficulty securing alternative work).

The Court of Appeal dismissed the comparator argument. The DWP could not rely on circumstances intrinsically linked to age to justify a difference between the two groups.

However, it upheld the EAT's justification argument and was satisfied that the EAT had properly addressed the issue of whether the policy was appropriate and necessary to achieve the policy aim of cushioning the blow of redundancy to older workers.

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