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Police officers successfully claim discrimination following their compensation being capped

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Here, the two claimants were police officers who were disabled under the Equality Act 2010 and held “H1 certificates” which entitled them to immediate access to their pension when they left the police, as opposed to deferring it until their retirement date.

In 2016, the Chief Constable of Gwent Police adopted the Home Office’s voluntary exit scheme (similar to a voluntary redundancy scheme), and when the claimants chose to leave the force under this scheme, their compensation lump sums were both capped at 6 months’ pay when they would have otherwise received 21 and 18 months’ pay. This was said to be on the basis that “differing factors” applied to them, namely that they both held H1 certificates. As a result of this, both claimants brought claims in Cardiff Employment Tribunal contending that the capping of their compensation payments amounted to unfavourable treatment under section 15 Equality Act 2010.

The Employment Tribunal found in both of the claimants’ favour. Upon appeal, in upholding the Employment Tribunal’s decision, the EAT distinguished the case from Williams v Trustees of Swansea University Pension and Assurance Scheme [2018] UKSC 65 on the grounds that while ‘the award of a pension’ in the Williams case was not unfavourable treatment, capping the compensation lump sum was entirely different and was clearly unfavourable. Moreover, the EAT rejected the Chief Constable’s argument that it was able to objectively justify the unfavourable treatment on the basis that, by capping the payments, it was preventing the claimants from receiving a ‘windfall’.

This case serves as a helpful reminder to employers of the application of section 15 of the Equality Act 2010. In particular, it reinforces previous case law that saving money is not in itself a legitimate aim when trying to objectively justify unfavourable treatment. While the EAT acknowledged here that preventing claimants from receiving a ‘windfall’ could be a legitimate aim, it held that insufficient evidence had been presented by the Chief Constable to raise a justification case based on preventing a windfall or otherwise. Employers must always consider whether the action they are considering taking can in fact be regarded as reasonably necessary and proportionate.

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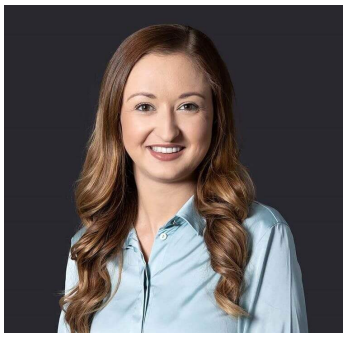

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