



Oifig an Aire Post, Fiontar agus Nuálaíochta  
Office of the Minister for Jobs, Enterprise and Innovation

Your Ref: PSOP\_I\_204\_2014

Our Ref: 141528/MIN

30<sup>th</sup> October 2014

Ms Anita Gibbons  
Petitions Case Manager  
Joint Committee on Public Service Oversight and Petitions  
Houses of the Oireachtas  
Leinster House  
Dublin 2

Re: Petition No. P00033/13 from Mr. Henry Gaynor in relation to 'Equality and fairness regarding the raising of the State Pension to 66 and beyond'

Dear Ms. Gibbons

I refer to your letter dated 12 August 2014 regarding the above-mentioned Petition, and to correspondence from Siobhán O'Carroll of the Employment Rights Policy Section of the Department with you dated 18<sup>th</sup> August.

While responsibility for pensions and pensions policy rests with the Department of Social Protection, the increase in the State pension age is linked to broader public policy issues and takes place against a backdrop of fundamental shifts in the demographics of our population. Ireland is an ageing society, which will invariably lead to a shrinking ratio of working population to pensioners. People are living longer, and older people are healthier and more active and have valuable contributions to make to society either from within the workforce or in other aspects of their lives. There are well documented concerns around improving the long-term sustainability and adequacy of Ireland's pension systems and public finances. All

of these issues are interlinked, and one of the key policy responses is to encourage longer working lives and my Department is fully supportive of this goal.

The specific issue addressed to this Department in connection with the Petition is whether the Minister will consider new legislation which would compel employers to retain employees beyond the age of 65 if the employee wished to remain in the workforce.

At the outset, it is important to clarify the statutory position in relation to retirement ages. Apart from public sector employees, where certain statutory retirement ages may apply as set down in legislation which comes within the remit of the Minister for Public Expenditure and Reform, there is no statutory retirement age for employees in our legislation. A contract of employment will generally contain a retirement age but this is a matter of contract between the relevant parties. Consequently, there is no prohibition on employers and employees setting down a retirement age which goes beyond what is considered to be “the normal” retirement age.

In general, the employment rights legislation which is administered by this Department does not contain an upper age limit. The upper age limit for bringing claims under the Unfair Dismissals Acts 1977 to 2007 was removed by a provision in the Equality Act 2004. It is now the case that a person of any age, when dismissed, may take a case under the Unfair Dismissals Acts unless she or he has reached the “normal retiring age for employees of the same employer in similar employment”, if one exists. In such circumstances, the burden of proof is on the employer to prove the normal retiring age. Furthermore, the upper age limit of 66 years for receipt of statutory redundancy payments was removed by the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007.

However, the key contestable issue that arises around compulsory retirement at a given age is usually whether this entails discrimination on age grounds, in which case the avenue of redress for employees compulsorily retired is to take a claim, under the Employment Equality Acts, to the Equality Tribunal. Policy responsibility for those Acts remains with the Minister for Justice and Equality, notwithstanding that the Equality Tribunal, which is the independent statutory body responsible for investigating and mediating on complaints made under the Acts, has recently come within the umbrella of the Department of Jobs, Enterprise and Innovation in the context of the creation of a streamlined Workplace Relations Service.



While Section 34(4) of the Employment Equality Acts provides that it is not unlawful for an employer to fix a compulsory retirement age for employees, the Equality Tribunal has, in recent decisions, interpreted those Acts in the light of rulings of the Court of Justice of the European Union (CJEU) cases concerning Framework Directive 2000/78/EC, which prohibits discrimination in employment and occupation on various grounds, including age. In those cases, the CJEU has found that terminating someone's employment on the basis of their chronological age is considered as direct discrimination under EU law. However, the CJEU has further found that this discrimination can be justified if it arises as a result of a legitimate aim in a State's social or employment policy. If an employer chooses to defend a mandatory retirement age, they face the challenge of objectively justifying it. In a number of cases heard by the Equality Tribunal, employees have successfully challenged the retirement age set by their employer.

In terms of scale of the impact of the changed state pension age, it is worth noting the figures provided by the Department of Social Protection that of the 11,000 individuals awarded the State Pension transition in 2012, only 1,390 came from employment, the remainder being already retired or on another social protection payment scheme or self employed. In the broader scheme, that is a significantly reduced figure of employees who will be impacted by the increase in the State pension age this year.

With regard to how employers are responding to the change in the State pension age and its implications for them and their employees, it is too early to form any definitive picture. However, it is our understanding from IBEC that while many employers are defending their right to set a normal retirement age within their enterprise, which is generally 65 years of age, a significant proportion of employers are trying to facilitate employees who wish to continue working beyond their 65<sup>th</sup> birthday. Some employers have already changed the retirement age for their employees while others have indicated that they intend to change the retirement age for all employees. Others have awarded one-year fixed term contracts. The Department is keeping lines of communication open with both employer and employee representative organisations to ensure we have an understanding of what is actually happening "on the ground" in relation to this issue since it crystallised in practice from 1<sup>st</sup> January of this year.

The issues arising from the raise in the State pension age, underpinned by the broader public policy issues outlined earlier, are complex and cross-cutting, thus necessitating a whole-of-

Government approach. As you are aware, the Department of Social Protection (DSP) has established, and chairs, an Inter-departmental Committee (IDC) on Working and Retirement to consider these issues. The IDC includes the Department of Public Expenditure and Reform, the Pensions Board, the Department of Justice and Equality and this Department. The Minister is of the view that any consideration of proposals in this area would need to be carefully considered in the context of the work of the DSP chaired IDC by all relevant Government stakeholders.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'John Maher', written over a horizontal line.

John Maher

Private Secretary