

OLD SQUARE
CHAMBERS





**Length of Service as a
determinant in pay**

***(Cadman v HSE &
Wilson v HSE)***

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The law

Now quite well settled – issue is the practical operation

- **General rule** (*Danfoss & Cadman*): length of service goes hand in hand with experience which enables worker better to perform their job and therefore it is legitimate and appropriate (i.e. proportionate) to reward service
- **Serious doubts** (*Cadman & Wilson*): nevertheless, where the employee raises serious doubts about the applicability of the general rule in a particular case, the employer may be required to prove objective justification in full



The scope of the “serious doubts” test

Wilson makes it clear it is a low test

- No formal burden on employee: evidential burden only
- Employee should not have to descend into detail
- It is a preliminary test designed to filter out frivolous or trivial claims
- Therefore, if the employee can show evidence from which, if accepted at trial, it could be concluded that the general rule does not apply, that will be sufficient
- The doubts may be either about the adoption of length of service *per se* or the proportionality of the employer’s particular recourse to it (or both)



Practical implications

- Should not require a lengthy hearing
- Before deal with serious doubts, employer should be required to explain its particular recourse in full
- And statistics should be obtained – to weigh in the balance against the employer



- This is a good example of a type of case where “pool” and disparate impact is not appropriate because there is no clear “cut-off” between the advantaged and disadvantaged
- Therefore, the statistics should generally involve consideration of:
 - Differences in average pay of men/women
 - Differences in average lengths of service
 - Distribution of men/women at the top/bottom of the pay scales
- Get breakdowns for several years (usually 6 years prior to claim) and for distribution within the scale and by length of service



- Claimants should then set out case on serious doubts – either provide draft statements or summary of evidence that will be given
- Respondents should then indicate whether contest serious doubts (often now will not)
- If it is contested, should be no more than a 1-day PHR involving submissions on paper – anything more itself indicates that serious doubts are made out

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