

To: The Equality Authority,
Birchgrove House,
Roscrea,
Co. Tipperary,
Ireland.

From: Jude Devins,
Vice- Chair,
Local Authorities Members Association (LAMA),

In line with the representations made by our members at a recent meeting of LAMA, we would request the Equality Authority to review and determine whether it is the opinion of the Equality Authority that some of our membership are being discriminated on grounds of age under the Equality Act 2004 and the Employment Equality Acts 1998 and 2004.

Jude Devins

Vice Chair

LAMA

087-2021566

Background:

We wish to make the following points regard to the Gratuity Allowance for Local Authority members. In particular, it has been pointed out to us that certain aspects of Section 142 of the Local Government Act, 2001 may be in breach of The Equality Act 2004 and the Employment Equality Acts 1998 and 2004.

Section 142 of the Local Government Act, 2001 allows for the introduction by way of regulations of superannuation arrangements for councillors. The Local Authority Members (Gratuity) Regulations, 2002 (SI No. 281 of 2002) provide for the payment of a gratuity to councillors **based on their service as members** from 4 May 2000. The main features of the arrangements are as follows:

- Any period of service as a member of a local authority from 4 May 2000 reckons as service for the purposes of the gratuity.
- The maximum gratuity is three times the representational payment rate at date of cessation and is payable after 20 years' service (this equates to an accrual rate of 3/20ths of the representational payment for each year of service).
- The minimum service required for the gratuity is 3 years.
- **The gratuity will be paid on retirement at or after age 50.**
- The gratuity will be paid before age 50 where retirement is due to permanent infirmity or where the member dies in office.

As evidenced in the Act, the payment of a gratuity to councillors is based on their service as members from 4 May 2000. One of the features in the Act is that the gratuity will be paid on retirement at or after age 50.

The fact that it is payable in recognition for time served, means the **only** difference between an individual who receives it and one that does not receive it is based on "age". From informal conversations with various legal contacts, our informal advice is that this could be successfully challenged based on equality legislation.

For example, there are a no of our members of all ages who have decided for differing reasons to not continue in politics. Those that are 50 or over have been able to drawdown the gratuity based on service. Those under the required **age** have not been able to drawdown their gratuity.

Case 1

County Councillor A: Age 53

Years Served: 10. Retired in 2014.

Rate pa €3,344.80 (1/5 of Salary at age of retirement -50+)

Total Claim: €33,448. – Amount is payable immediately.

County Councillor B: Age 33

Years Served: 10. Retired in 2014. (1/5 of Salary at retirement age 50 – if salary remains the same even though the Cllr has retired)

Rate pa €3,344.80

Total Claim: €33,448. – **Amount is not due to be paid until 2031.**

As you can see from the above, both Cllrs have served 10 years and both are retired. The only disparity is that one individual (Cllr A) can drawdown their “gratuity payment” immediately while the other (Cllr B) has to wait a minimum of 17 years only because of the difference in their respective ages.

The Equality Act 2004 and the Employment Equality Acts 1998 and 2004, deal with discrimination within employment. The Acts deal with discrimination related to one nine grounds; of which Age is one.

Discrimination is the Act is defined as less favourable treatment. A person is said to be discriminated against if he or she is treated less favourably than another is, has been or would be treated in a comparable situation on any of the 9 grounds. To establish direct discrimination, a direct comparison must be made. We believe and through informal advice we have receive we believe that a direct comparison can be made in this case.

Although the Act refers explicitly about the treatment of older people versus younger people, it can be strongly argued that the basis of the Act refers to an objective of equality in employment between all ages therefore older v younger or younger v older is irrelevant. Therefore, younger Councillors should not be disadvantaged by any legislation that impacts on their ability to obtain their equal rights.

We as an Association with limited financial means are obviously reluctant to incur legal fees to test the legal validity of the Act in this area. Our memberships through their involvement in local govt. are deeply aware of the exorbitant costs that would be incurred from undertaking a legal challenge. However, we as an Association have been requested from our membership to bring clarity to this matter. At a recent meeting of the Executive a request was made to refer this matter to the Equality Authority to investigate this matter and to also refer the matter to Europe under Council Directive 2000/78/EC Establishing a General Framework for Equal Treatment in Employment and Education (the “**Framework Directive**”) (adopted in 2000) which requires Member States of the EU to ban direct discrimination, indirect discrimination and harassment in employment on the ground of age.

There are three other sub-areas where we believe this can potentially demonstrate discriminatory behaviour against our younger members.

- There are currently no arrangements being made to safeguard Cllrs entitlements for those who have retired but are not yet 50. These will be exposed to financial loss due to reductions in the representational allowance under the FEMPI agreement.
- The true value of the gratuity payment will be worth significantly less now than it will be at time of drawdown for those below 50 (15+ years in certain situations). There is recognition of this through the sum being inflation or CPI linked.
- If legislation is introduced in the future to amend the age from 50 – 65 for an individual to draw down the gratuity allowance, is it likely that it will be introduced retrospectively so retired members who have a realistic expectation of getting their entitlement on a certain date may have to wait an additional period of 15 years.

We believe that the above clearly demonstrates discrimination based on age within identical employment circumstances.

It has been pointed out to us that the national lump sum payments to national representatives (TD's) are age related but it is our understanding is that the classification of the payment for national politicians are fundamentally different than the "gratuity allowance" for local elected members.

The national system is based around a pension payment or "lump sum" at **retirement**. Retirement in these circumstances is naturally based around age and retirement ages as whole can be increased without any prejudice. The gratuity allowance is in "**recognition of time served only**" and is not linked to any retirement/pension payment/entitlement. Local authority members (unlike our national counterparts) are not in receipt of any pension payment at all. It is worth noting that the Association has highlighted to successive Ministers the need for a "pension payment" to local elected members at retirement but as yet this has not been granted to date.

We would be grateful if the Equality Authority confirm if this legislation was reviewed at time of inception to consider if it was in line with The Equality Act 2004 and the Employment Equality Acts 1998 and 2004, and also under European Council Directive 2000/78/EC Establishing a General Framework for Equal Treatment in Employment and Education (the "**Framework Directive**") (adopted in 2000) which requires Member States of the EU to ban direct discrimination, indirect discrimination and harassment in employment on the ground of age.

We look forward to the Equality Authority review of this case and their independent opinion on this matter. Please feel free to revert to us if you require any further information. My contact no is +353 87 202 1566 should you wish to contact me directly.

Sincerely,

Jude Devins

**Vice- Chair LAMA
On behalf of LAMA Executive Committee**