



## Employment Law Seminar for Perth Faculty

8 June 2008

### **Discrimination Law Update**

**Derek O'Carroll, Advocate**

#### ***Introduction***

1. traditional areas discrimination law
2. now added to by
  - religion or belief
  - sexual orientation
  - age
3. see
  - Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660
  - Equality Act 2006, Part 2 (religion or belief)
  - Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661
  - Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263
  - Employment Equality (Age) Regulations 2006, SI 2006/1031
4. future: Equality Bill 2009

#### ***Case law update in the new strands***

5. *religion or belief*
  - *London Borough of Islington v Ladele* [2009] IRLR 154. Registrar of Births Deaths and marriages: objection to civil partnerships. Not discrimination.
  - *McClintock v DCA* [2008] IRLR 20. JP: objection to gay couple adoption. Not discrimination.
  - *Saini v All Saints Haque Centre* [2009] IRLR 74. Discrimination by association upheld.
  - *Eweida v British Airways plc* [2009] IRLR 78. Uniformed employee; Christian. Insisted wearing cross visibly. Not discrimination

- *Chondol v Liverpool City Council*, unreported. EAT 11 Feb 2009. Christian social worker. Dismissed after proselytising with clients: not discrimination.
- *Nicholson v Grainger*, unreported. ET decision ET/2203367/08. Belief in climate change and environmentalism etc. was qualifying belief.

#### 6. Age

- *MacCulloch v ICI* [2008] IRLR 850. Redundancy scheme advantaging older employees: remitted to ET for reconsideration of justification.
- *Loxley v BAE* [2008] IRLR 853. Redundancy scheme advantaging older employees: remitted to ET for reconsideration of justification.
- *Rolls Royce v Unite* [2009] IRLR 90, overturned by CA, unreported, 14 May 2009. Length of service as criterion for selection for redundancy was not discriminatory.
- *R v Secretary of State for Business Enterprise and Regulatory Reform* [2009] IRLR 373, (The *Heyday* case) ECJ. Retirement age exemption in Regulations not *per se* discriminatory; domestic courts must assess justification though.

#### 7. Sexual Orientation

- *English v Thomas Sanderson* [2009] IRLR 206 (CA). Taunting of straight man with homophobic abuse falls within Regulations.

### **Equality Bill 2009**

8. The two principal purposes: consolidation and extension
9. Timetable: introduced April. Royal Assent Spring 2010. Most into force autumn 2010.
10. Some notable features
  - socio-economic duty
  - extension of equality duty on public authorities
  - use of public procurement to improve equality
  - age discrimination protection extended outside workplace

- ban on pay secrecy agreements
- positive action permitted (not positive discrimination)
- overturning of *Malcolm v Lewisham LBC* [2008] UKHL 43
- powers of ET increased in proven discrimination cases
- protection from discrimination by association extended

**Derek O'Carroll, Advocate,  
Murray Stable  
Advocates Library  
Parliament House  
Edinburgh EH1 1RF  
0131 226 5071  
DX 549302 Edinburgh 36  
LP3 Edinburgh 10**

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