

murray stable

Fife Law Centre
Discrimination Law Update Seminar
3 November 2009

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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
 - Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661
 - Equality Act 2006, Part 2 (religion or belief)
 - Employment Equality (Age) Regulations 2006, SI 2006/1031
 - Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263
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. Appeal heard by EAT in October 2009: no decision as yet.

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 49, overturned by CA, [2009] IRLR 576. 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 (the 'default retirement age' of 65) not *per se* discriminatory *at the time* they were made; domestic courts must assess justification. Highly unlikely that the DRA would *now* be justified
- *Seldon v Clarkson Wright & Jakes* [2009] IRLR 267 (EAT). Solicitor, partnership agreement with default retirement age of 65. Held that matters such as succession planning, opportunities for younger employees and performance management were legitimate aims and justified on facts, except for assumption that performance dropped off at 65. Remitted to ET on latter point, but now appealed to Court of Appeal.
- *Other age discrimination developments.*
 - i. July 2009: Government review of DRA brought forward to 2010
 - ii. October 2009: DRA abolished for junior and senior civil servants from April 2010
 - iii. October 2009: Conservative Party Conference: increase in state pension age for men to 66 from 2016 rather than 2026

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 principal purposes:*

- consolidation
- harmonisation
- extension
- strengthening

see www.equalityhumanrights.com/legislative-framework/equality-bill/
and www.equalities.gov.uk/equality_bill.aspx

9. *Timetable:*

- Introduced April 2009.
- Public Bill Committee stage completed 7 July 2009
- Report Stage in Commons around 12 October 2009
- Royal Assent Spring 2010?
- Most into force autumn 2010.
- Various consultations on Codes, and other aspects, in train.

10. Some notable features

- *Socio-economic duty.*
- “*protected characteristics*”: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief; sex, sexual orientation.
- *extension of equality duty* on public authorities
- use of *public procurement* to improve equality
- *age discrimination protection extended* outside workplace
- *Equal pay*
 - i. ban on pay secrecy agreements
 - ii. sex discrimination claim where no male comparator
 - iii. Publication of salaries by firms > 250 employees. Regulations to be made: voluntary till 2013. Consultation by EHRC
 - iv. Government to consider allowing of representative actions
- *positive action* permitted (not positive discrimination)

- overturning of *Malcolm v Lewisham LBC* [2008] UKHL 43
 - i. retention of direct discrimination , harassment and victimisation
 - ii. retention of reasonable adjustments duty
 - iii. introduction of indirect disability discrimination: justification on usual test
 - iv. introduction of new basis for claim (similar to pre-*Malcolm* “disability related discrimination” test): discrimination arising from disability: no comparator needed: justification on usual test.
 - v. NB: these new proposed grounds liable to redrafting before Bill becomes law.

- *powers of ET* increased in proven discrimination cases

- *protection from discrimination by association* extended

- *Dual discrimination*: new clause introduced permitting claims in relation to combination of any two of the protected characteristics

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