

# Key Workplace Discrimination Cases

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# Introduction

- The **Equality and Human Rights Commission (EHRC)** - non **departmental public** body established by the Equality Act.
- Responsible for enforcement and promotion of equality and non discrimination laws in England, Scotland and Wales.



# Cases

- Take cases - fund claimant - many cases outside area of employment law - today just talk about those cases affect workplace.
- Intervene - all cases and can only intervene ( not fund) Human Rights cases.



# Cases continued


- Intervention – not support either party – but aim assist court interpret law.
- Most funded cases are test cases at higher courts, but can concentrate on an area concern eg pregnancy discrimination.



- Also undertake research
- Produce guidance and codes
- Investigate
- Take enforcement action



# Focus talk

- Cases taken last year of significance to workplace.
  - What is in pipeline - cases coming up over the next 12 months
  - Areas of concern for EHRC over next year
  - Challenges and what cases EHRC looking for.
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# strands

- Cases affecting all protected characteristics eg employment status, victimisation
- Key cases affecting race, sex, sexual orientation, age, disability, religion and belief, pay.



# Human rights

- Workplace issues following human rights cases






# Employment status

- Pegg V London Borough of Camden.
- Temporary worker – supplied through an agency. Disability case. Could she claim?
- Went to EAT
- £35,892.08



# Employment status

- Preston (formerly Moore) V president of the Methodist Conference –
  - Methodist minister employee?
  - appealed SC
  - Stayed case – discrimination by association due to disability.
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# Volunteers

- X v Mid Sussex CAB
- EHRC intervened at Supreme Court
- Volunteer outside the scope of protection for disability discrimination



# Length of service

- Redfern v UK
- European Court of Human Rights - intervention.
- Person dismissed due to political beliefs could claim unfair dismissal even though did not have 1 year's service.

# Victimisation

- Is there protection from victimisation for ex employees ?
- Important issue EHRC – drafting problems with the Equality Act.
- Took Taiwo v Olaigbe and ors at ET – successful. But since been developments.

# Victimisation

- Rowstock and anor v Jesseme
- EHRC intervened EAT
- Case unsuccessful
- Appealed Court of Appeal
- Aim establish individuals are protected against victimisation post end employment




# Victimsation

- EHRC seeking amendment Equality Act as appears drafting error, post employment not covered by Act
- Submissions to EU commission on whether the Directive properly implemented




# Age discrimination

- EHRC cases
  - Homer v West Yorkshire Police
  - Seldon v Clarkson Wright and Jakes
  - Helpful when considering mandatory retirement age
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# Age

- Lockwood v DWP
  - EAT age discrimination justified
  - Voluntary severance lower for younger employee
  - EHRC supporting a case to CA
  - No hearing date - waiting permission hearing
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# Association and Perception

- S.13 Direct Discrimination covers cases where discrimination occurs due to victims association with a particular protected characteristic.
- Protection if wrongly thought to have characteristic eg think someone is gay.

# Pregnancy

- But is there protection if you are discriminated against due to your association with a pregnant woman?



# Pregnancy

- Key area concern EHRC –  
associative discrimination  
area pregnancy
- Case Kulikauskas v McDuff  
Shellfish ( Scotland) - went  
to CJEU, but settled before  
answer



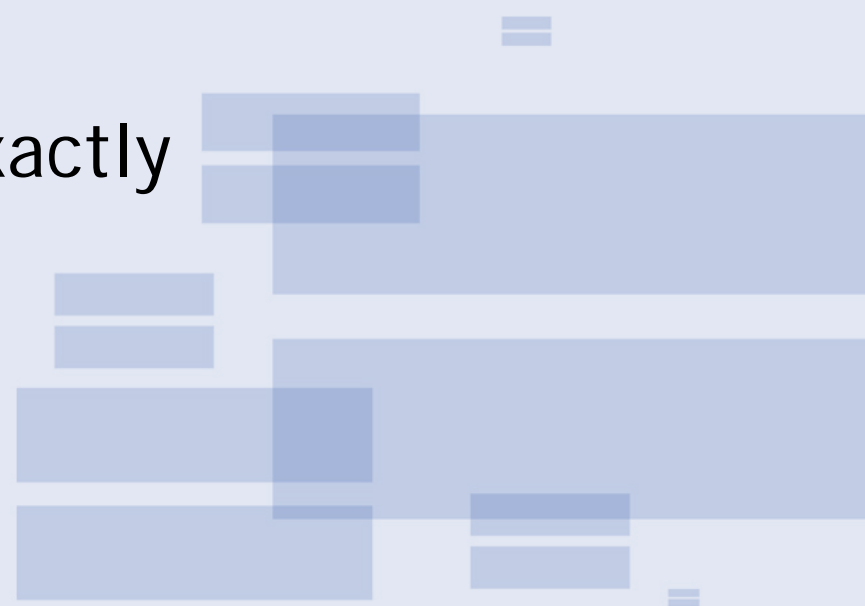
# Associative discrimination

- Currently supporting case
- Pre tribunal
- Man threatened dismissal as not move Dublin due to pregnant wife.
- Important issue EHRC – concentrate in next few years establishing this.



# Special Treatment during pregnancy

- What does this mean?
- Lost case De Belin v Eversheds – regarding special provision during pregnancy/ redundancy.
- Helpful have case see exactly what this means.



# Equal Pay

- Hypothetical comparators – can rely where evidence direct discrimination
- EHRC seeking test issue.
- Supreme Court EHRC case North and Ors v Dumfries and Galloway 21<sup>st</sup>-22<sup>nd</sup> May 2013

- Man and women working at different establishments are in “same employment” for equal pay claim.
- As long as the claimant can show real possibility that comparator could actually be employed at women’s establishment.





# Race

- Houna v Allen and ors
- Nigerian working illegally as au pair.
- Claimed abuse and racial discrimination.
- Contract illegal therefore no remedy.
- Being supported by EHRC at SC.

# Disability - How important is knowledge?

- Gallop v Newport City Council
- The EAT rejected the discrimination appeal.  
respondent did not have the necessary knowledge, actual or imputed, to found complaints of direct, disability-related and failure

- to make reasonable adjustments.
- EHRC supporting appeal
- Court of Appeal to decide.



# Sexual Orientation

- Preddy v Hall – listed October at SC funded EHRC, gay men and bed and breakfast.
- Also another case men not allowed to stay in a B and B as gay and contrary to owner's religious belief




# Religion and Belief


- Ewida and ors v UK
- European Court of Human Rights
- EHRC intervened
- Right manifest belief breached
- Practise inspired by belief regardless whether mandatory is protected.

- Past employee may have resigned
- Are restrictions on religious rights in workplace appropriate and necessary?
- EHRC has produced guidance
- <http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/religion-or-belief-new-guidance-february->

# Human Rights CRB Checks

- R v Chief Constable of Greater Manchester
  - CRB checks of potential employees
  - Government appealed to SC
  - Waiting to see if permission granted
  - No change until appeal decided.
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# Looking ahead

- Possible challenges to 2 year time limit to bring unfair dismissal claims – possible age discrimination.
  - Associative discrimination
  - Pregnancy discrimination
  - Age – what exactly can be justified?
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# Conclusion

- Cuts legal aid
- Loss free advice centres
- Difficult year ahead
- Guidance for employers help changes.

