

## **X v MID SUSSEX CITIZENS ADVICE BUREAU – VOLUNTEERS ARE NOT PROTECTED FROM DISCRIMINATION**

In the case of X v Mid Sussex Citizens Advice Bureau, the Supreme Court has upheld the Court of Appeal's decision that volunteers do not fall within the scope of the EU Equal Treatment Framework Directive (the "Directive") or the Disability Discrimination Act 1995 (the "Act").

The initial claim was brought by X, a Citizens Advice Bureau ("CAB") volunteer, who had signed a volunteer agreement with the organisation in May 2006. This agreement was described as being "binding in honour only...and not a contract of employment or legally binding". When asked to step down as a volunteer, X brought a disability discrimination claim against CAB on the grounds that she had been dismissed for being HIV positive.

The Employment Tribunal, Employment Appeal Tribunal and the Court of Appeal all dismissed X's claim on the basis that she was not in "employment" within the meaning of the Act, as she had no contract and there was no legal underpinning of the relationship. The courts agreed that volunteers also fell outside the scope of the Directive because the role was not an "occupation", which covers paid work only. The Court of Appeal also held that the purpose of the CAB volunteer programme was not to determine to whom employment should be offered under a specific provision of the Act, as volunteers were not automatically used as a pool from which to select full time staff.

The Supreme Court unanimously upheld the prior decision that X was not protected under the Act due to the fact that she did not have a contract. It also rejected X's submission that she was protected under the Directive. In the Court's view, voluntary work could not be construed as operating at the same level as "employment" and "self-employment" under the Directive, which is limited in its scope. This was strengthened by the fact that an amendment to specifically include voluntary work had been rejected during the Directive's legislative process. In addition, the concept of a volunteer having "access to occupation" under the Directive was dismissed on the grounds that this provision contemplates access to a sector of the market rather than a specific post.

The Act was replaced on 1 October 2012 by the Equality Act 2010. However the definitions and provisions are substantially the same and therefore the same conclusions apply.

The voluntary sector is likely to welcome the decision, given that the alternative outcome could potentially have led to a raft of discrimination claims against voluntary organisations.

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