



Equality Law Newsletter from Chesterfield and Nottingham Law Centres

This newsletter brings you news of updated case law, the range of cases we have assisted on, self help packs, training courses and information on our free legal advice and casework service in Equality and Human Rights.

Contents

- [Equality and Human Rights advice and casework service](#)
 - [A flavour of the cases that we have assisted on](#)
 - [Updates](#)
 - [Caselaw 2010](#)
 - [Self Help packs and guides](#)
 - [Training](#)
-

'Equality and Human Rights advice and casework service'

This free legal advice service is provided by Chesterfield and Nottingham Law Centres, funded by the Equality and Human Rights Commission. Both Law Centres provide free legal advice service to individuals, regardless of their means, living in Derbyshire, Lincolnshire and Nottinghamshire including the three cities.

Chesterfield Law Centre specialises in discrimination law in accessing goods and services (consumer discrimination).

Nottingham Law Centre specialises in discrimination law in employment.

To refer clients for free legal advice or you require consultancy advice, please contact:

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A flavour of the cases that we have assisted on

“A client who had her gender changed had serious problems with her bank. Each time she tried to use telephone access to her account, because she had a male sounding voice, she was refused access and told to go to her local branch with her passport. This happened repeatedly, even though she answered all the required security questions and there were notes on her computer records saying that she was transgender. She had tried to resolve the problem herself without success over a long period of time. Chesterfield Law Centre became involved and the parties agreed to formal mediation funded by the Equality and Human Rights Commission. The terms of the agreement are confidential, but it ensured that our client would be able to access her account by phone and the bank would develop an Equality and Diversity Policy.”

A client felt that she was discriminated against on the grounds of her race by an Ice Rink. The client was advised of her rights under the Race Relations Act and the Law Centre assisted her in presenting her case at formal mediation funded by the EHRC. Mediation proved successful in resolving differences and getting the parties talking again on a regular basis which has improved her situation.

The Law Centre assisted a client who was not able to access a men’s clothing store on the top floor. The Law Centre arranged a meeting with the national clothing chain which resulted in:

- An accessible changing room on the ground floor,
- Signage was put up to alert people to request assistance,
- An alert button was put at the bottom of the stairs so that disabled people could attract the attention of staff both downstairs and upstairs,
- A seat was put in position at the bottom of the stairs so that the client could wait.
- An agreement to improve the accessibility for disabled people at this company’s clothing stores throughout the UK.

Updates and caselaw

Updates

The Equality Act 2010 came into force on 1.10.2010 and will replace over 100 pieces of legislation, making it easier and clearer for lawyers and judges to interpret and apply the law, as well as enabling employers and service providers to understand their obligations and steer away from unlawful practices. It also enables individuals to understand their rights under one or more of the nine protected characteristics.

The new Act gives protection to those who suspect that they have been discriminated against on the grounds of:

- **Age**

There is already protection from discrimination in work on the grounds of age but not when accessing goods and services. We hope the Government will introduce legislation that will give people over the age of 18 protection from discrimination. If it does, then it is anticipated that this will be introduced in April 2012 onwards.

- **Disability**

- **Gender**

- **Race**

- **Religion or belief**

- **Sexual orientation**

People will have the protection in the above five protected characteristics which are covered in previous and new legislation within employment and access to goods and services.

- **Maternity and new mothers**

This is already covered in the employment provision. However there are new rights for this group of people in accessing goods and services.

- **Wrongly perceived to having one of the protected characteristics.**

This is a new right for individuals who have been wrongly perceived as having one of the characteristics above (Age, disability, gender etc).

- **Association with a person who has one of the protected characteristic.**

Again this is a new right which gives protection to those who have been discriminated against due to their association with a person who possesses one of the above characteristics.

The EHRC has designed many guidance materials and toolkits that support employers and service providers to ensure their practices, procedures and

activities do not breach the law. These can be found at www.equalityhumanrights.com

ACAS also has excellent leaflets for employers and employees on the Equality Act 2010. These can be downloaded at www.acas.org.uk

It is still unclear what the current government's intentions are on the implementation of:

- Dual discrimination
- Gender pay gap information
- Civil partnerships in religious premises.
- Provisions relating to auxiliary aids in schools
- Diversity reporting by political parties
- Public sector Equality Duty (following the recent consultation on specific duties)
- Provisions about taxi accessibility
- Prohibition on age discrimination in services and public functions
- Family property

The following provisions are unlikely to be implemented by the current government:

- Socio-economic duty
- Positive action in recruitment and promotion

Caselaw 2010

There has been considerable caselaw in the discrimination field in 2010 – far too much to set out a full summary here. But in brief some key areas and cases are set out below:

1. Age discrimination continues to trouble the courts. In *Homer v Chief Constable of West Yorkshire Police*, [2010] IRLR 619, the employer introduced a new pay structure in its legal department. This provided that the highest pay range would be paid to employees with a law degree. The claimant was 61 when this policy came into effect; he did not have a law degree. In his claim for age discrimination he maintained that he could not attain the necessary law degree before his retirement age, and the requirement was therefore indirectly discriminatory. The tribunal upheld his claim of indirect discrimination: whilst the aim of introducing the qualification requirement was legitimate, the means of achieving it were disproportionate. The Employment Appeal Tribunal allowed the employer's appeal. An older

person was just as capable of obtaining a law degree as a younger one. The claimant's inability to obtain a law degree in time to derive benefit from the higher rate of pay was the inevitable consequence of age, not of age discrimination; to hold otherwise was to treat older employees more favourably rather than less favourably. The Court of Appeal endorsed this approach. The disadvantage complained of was not age but the fact that the employee would withdraw from the workplace before he had a chance to use his law degree. The matter has been given permission to go to the Supreme Court.

2. In relation to religion and belief, the last year has seen a number of significant decisions on the balance between the right to religious belief and the manifestation of that belief where it impinges on the rights and beliefs of others.
3. In ***Eweida v British Airways plc* [2010] EWCA Civ 80**, the claimant was a devout Christian who wanted to wear her plain silver cross in manifestation of her faith. BA had a policy forbidding any jewellery being displayed although it was permissible to wear it under the uniform. However, female Muslim employees were allowed to wear hijabs and Sikhs allowed wearing turbans in BA colours. The claimant alleged that this amounted to indirect discrimination. She failed in her claim and on appeal. Her desire to wear a cross was not part of the practice of her religion, nor could she establish that a significant number of fellow Christians were disadvantaged by BA's policy of banning jewellery. She herself accepted that it was a choice rather than a mandatory element of Christianity. The Court of Appeal dismissed the appeal, noting that some of Ms. Eweida's more extreme allegations had been dismissed by the employment tribunal. The Supreme Court refused permission to appeal and the case is being appealed to the European Court of Human Rights.
4. In ***Ladele v L B Islington* [2009] EWCA Civ 1357 CA**, the claimant was a practising Christian who worked as a registrar. She declined to conduct civil partnerships and was herself the subject of a complaint by fellow gay employees who maintained that her refusal breached the Dignity at Work policy. She claimed direct and indirect discrimination as well as harassment. Ms Ladele succeeded at the employment tribunal, but Islington's appeal was upheld. The Employment Appeal Tribunal said that Ms. Ladele could not herself discriminate against gay couples pursuing their civil rights because of her own religious views. There was a difference between her being permitted to pray, preach or teach and her manifestation of her views in preventing

someone else doing something of which she disapproved as a result of her religion.

5. In ***MacFarlane v Relate (Avon) Ltd*** [2010] EWCA Civ B1 the claimant was a practising Christian, working as a counsellor for Relate. He also found homosexuality contrary to his religious views. He was happy to counsel same sex couples about non sexual matters, but he refused to become involved in psycho-sexual therapy (PST). He was dismissed and his claim to an employment tribunal failed. Mr MacFarlane's appeal to the EAT also failed. On the issue of indirect discrimination, the court saw no reason to differ from the judgment of Elias J in *Ladele*. Like Islington Council, Relate had a duty to offer all its clients all types of counselling. Unlike Ms Ladele, however, Mr MacFarlane also claimed direct discrimination, namely that the action against him was on the grounds of religious belief. As to this, Underhill P drew a distinction between holding a religious belief and manifesting that belief.

The fact that the employee's motivation for the conduct in question may be found in his wish to manifest his religious belief does not mean that that belief is the ground of the employer's action

6. "Belief" can cover a wide range of beliefs. In ***Greater Manchester Police Authority v Power*** UKEAT/0434/09/DA the EAT held that spiritualism was capable of being a religion or belief under the Regulations. The claimant had stated:

"My Religion = Love

My Beliefs are those of Spirituality = i.e. the "Spirit" or motivating energy" that animates living things survives physical death."

The case was sent back to the tribunal to make a decision on the merits.

7. In relation to sexual orientation, the EAT observed in ***HM Land Registry v Grant*** UKEAT/0232/09/DA that if a tribunal comes to the conclusion that a gay employee has been 'outed' against his wishes to those whom he would rather not know of his orientation that fact alone may well constitute an act of discrimination or harassment. All will depend on the context. In general it is not unreasonable to expect those who are gay to be fearful of the consequences of others knowing that fact, especially when they have no control over the release of the information. It cannot be assumed that a passing remark which has the effect of 'outing' a homosexual is necessarily so trivial that it leads to no legal consequences.

8. In disability discrimination, the recent case of **Chief Constable of South Yorkshire Police v Jelic UKEAT/0491/09/CEA**, the EAT held that reasonable adjustments included swapping roles between employees to allow a disabled employee to remain in employment.
9. In **Aylott v Stockton-on-Tees BC [2010] EWCA Civ 910**, the Court of Appeal upheld the decision of an employment tribunal that an employee with bi-polar disorder had been subjected to direct disability discrimination when he was dismissed shortly before coming back to work

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Self Help packs and guides

Self help packs for advisers and clients:

- **‘How to complain to service providers that have discriminated against you in relation to your disability’**

Chesterfield, Nottingham and Sheffield Law Centres have worked in partnership and produced this self pack that is designed for clients and advisers to take action for themselves. You can download this self help pack from www.chesterfieldlawcentre.org.uk. Any queries or you wish to refer the complaint to us, please contact Chesterfield Law Centre on 01246 550674.

We are currently developing self help guides on sexuality and race which will be featured in the next edition of e-newsletter.

Is that fair? How to recognise discrimination

Chesterfield Law Centre has worked in partnership with Advice Services Alliance on the development of ‘Is that fair?’ guide. This in-depth, step-by-step guide is for people who think they may have a discrimination problem. It outlines the main discrimination rules and explains how to recognise if it's happening to you.

<http://www.advicenow.org.uk/is-that-discrimination/is-that-fair/>

Another guide produced by 'Is that discrimination?' project:

Singled out? Sort it out!

This second edition of our awareness-raising magazine doesn't look like a traditional advice leaflet and aims to raise awareness of discrimination amongst those who might not have considered it before. It's packed with fun features including readers' letters, a quiz, a crossword and a problem page.

<http://www.advicenow.org.uk/is-that-discrimination/singled-out/>

They have limited **free** stocks of these guides available. If you would like copies please email info@advicenow.org.uk. Don't forget to tell them which guide you want, how many and your full postal address. Guides will be allocated on a first come first served basis.

Training

During the summer, Chesterfield and Nottingham Law Centres have delivered six training courses on the Equality Act 2010. We are planning to put on more training courses in Spring 2011 subject to securing funding. We will let you know when we have more information.

That's it for this time. We'll be in touch in February 2011 with all the latest information.

Chesterfield Law Centre is the coordinating body in promoting information about equality and human rights in Derbyshire, Nottinghamshire and Lincolnshire. We run an independent, not-for-profit website providing the public with accurate, up-to-date information on rights and legal issues.

We hope you've found this email useful. Please feel free to pass it on to colleagues. If you have any comments or feedback about this update, please email us at clc@chesterfieldlawcentre.org.uk If you would like to be removed from the mailing list, just email us at clc@chesterfieldlawcentre.org.uk

Chesterfield Law Centre is a member of Advice Derbyshire – a consortium of advice agencies based in Derbyshire.

Nottingham Law Centre is a member of Advice Nottingham - a consortium of advice agencies based in Nottingham City.