

EQUAL OPPORTUNITIES REVIEW 2006

M25 Consortium of Academic Libraries

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Lies.....

- The average compensation award for race discrimination in 2004-5 was £24,605

True

False

.....Damned lies

- The maximum award for sex discrimination in 2004 -05 was £179,026

True

False

..... and statistics

- The minimum award for Disability Discrimination in 2004 – 05 was £3,476

True

False

COMPENSATION AWARDS 2004 - 05

	RACE	SEX	DISABILITY
MAXIMUM	£170,953	£179,026	£148,681
AVERAGE	£19,114	£14,158	£17,736
MINIMUM	£6,699	£6,235	£7,500

“The law is the last result of human wisdom acting upon human experience for the benefit of the public.”

Samuel Johnson

Direct Discrimination

- “But for” test
- Less favourable treatment
- Motive/intent irrelevant
- Tribunals can draw an inference

Indirect Discrimination

- Provision, criterion or practice to workforce
- Puts people of same race/sex etc at a particular disadvantage
- Puts complainant at that disadvantage
- Cannot be justified as a proportionate means of achieving a legitimate aim

Victimisation

- “Protected Act”
 - Bringing proceedings
 - Giving evidence or information in connection with proceedings
 - Doing anything else with reference to discrimination law
 - Alleging breach of discrimination law

Harassment

- What is harassment?
 - Unwanted conduct (on sex, race, disability etc grounds) which has the purpose or effect of:
 - Violating the complainant's dignity, or
 - Creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant
 - Mixed objective/subjective test
 - The view of the objective reasonable person, AND
 - The subjective perception of the complainant

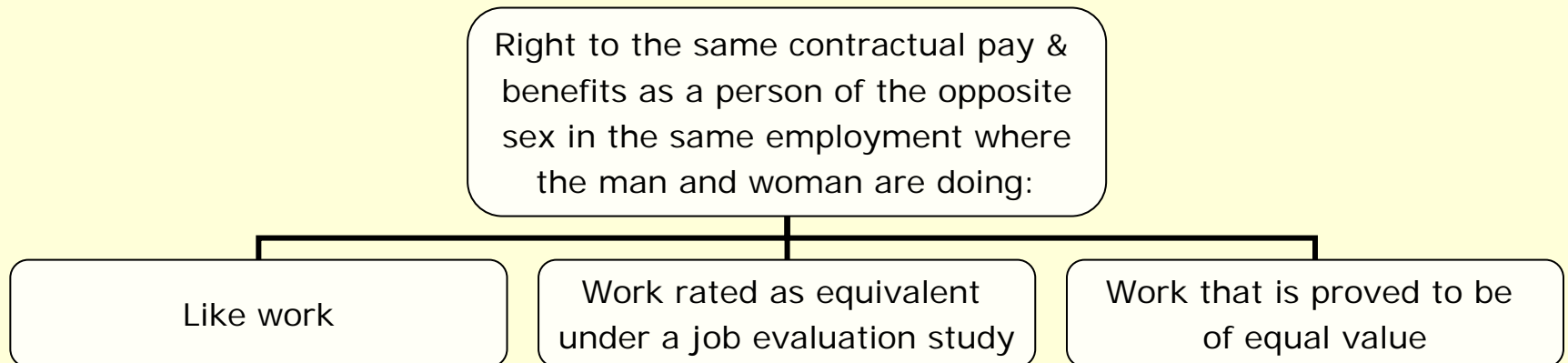
Question

- Equal pay only covers pay and other contractual financial benefits such as salary, commission, overtime etc.

True

• False

Equal Pay Act 1970



Equal Pay

- Comparator employee includes:
in the job now or predecessor or successor
- Comparator employer
same employer, associated employer, multi
site

Equal Pay

- Employer is not required to provide the same pay and benefits if it can establish that the difference in pay / benefits is genuinely due to a reason other than one related to gender. For example: security; skills; market forces; unsocial hours; red circling.

Equal Pay

- Claim brought during employment or within 6 months of leaving employment
- Remedies include:
 - Same level of pay / benefits as comparator
 - Back pay up to a 6 year limit

*“The first thing we do, let’s kill
all the lawyers.”*

WILLIAM SHAKESPEARE
Henry VI, Part 2

Case update: Indirect Sex Discrimination

- **Starmer v British Airways (EAT) 2005**
 - EAT upholds claim of indirect discrimination relating to employer's refusal to allow female pilot to work part-time.
 - EAT finds no grounds to disturb ET's finding that there was no cogent evidence why it would be unsuitable for the claimant to work 50% of full time hours

Case update: Religious / Belief Discrimination Khan v G & J Spencer Group plc 2005

- Dismissal for gross misconduct following extended period of leave to make a pilgrimage to Mecca
- Risk of indirect discrimination through application of policy on annual leave.

Case update: Age Discrimination

Baggs v Fudge 2005

- Non appointment because of membership of BNP
- BNP “peculiar” but does not require members to be a particular religion or hold particular philosophical beliefs

Case update: Sexual Orientation While v Brighton Marine Palace and Pier 2005

- Constructive Dismissal claim based on offensive remark
- Use of term “Chutney Ferret”
- Not direct discrimination

Case update: Harassment

Brooks v Findlay Industries V/C Ltd 2005

- Failure to deal with harassment due to sexual orientation was direct discrimination
- Disclosure of confidential information is also direct discrimination

Case update: Race Discrimination Redfearn v Serco Ltd t/a West Yorkshire Transport Service 2005

- Dismissal of employee who was a member of BNP
- Employers “benign” motivation no defence

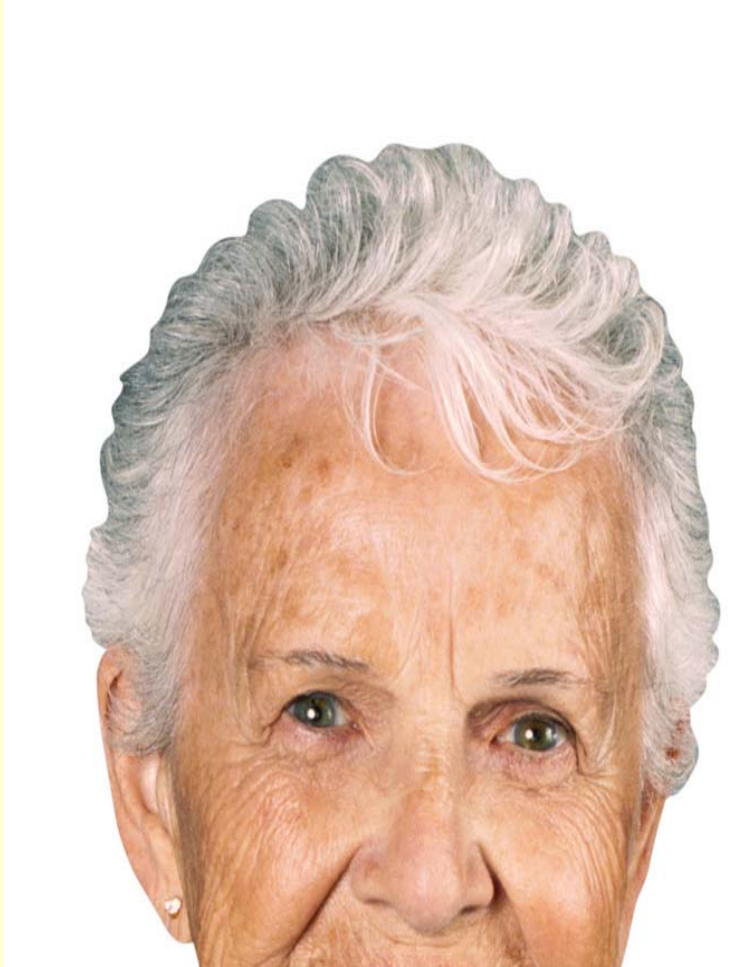
Straight red?



“L’Oreal face mask can’t
fix curse of middle age”.
(The Times)

*(Taken from The Times
Business News headline)*

Straight red?



“If you’re allowed to smack children, you should be allowed to smack old people – because they are a nuisance as well”.

(Radio 4)

(Taken from The News Quiz, Radio 4)

Straight red?

“While an NVQ3 or at least 10 years’ hairdressing experience are essential, it’s your natural way with people that’s key.”

(Taken from a job advertisement in The Times Educational Supplement, 25 November 2005)

Straight red?

“We wish to appoint an enthusiastic and innovative lecturer to join our team.”

“.....are you at the cutting edge of delivering post-16 education and training?”

(Taken from job advertisements in The Times Educational Supplement, 18 November 2005)

Straight red?

“Salary in the range of £21,880 - £30,952 per annum (starting point linked to qualifications and experience).”

(Taken from a job advertisement in The Times Educational Supplement, 18 November 2005)

The 2006 age regulations

The more straightforward elements

Who is protected?

- Job applicants, employees, workers, self employed, agency workers, partnerships, those in vocational training and more
- The old, the young and a person's "apparent age"

Who is liable?

- Same as existing discrimination rules
- "Reasonable steps" defence also available

The 2006 age regulations

The more straightforward elements

- The regulations cover:
 - Recruitment
 - Terms and conditions
 - Promotion, transfer and training
 - Dismissal and retirement
 - Harassment and victimisation
 - Post-employment discrimination

NB **Harassment** and **victimisation** – share a common approach with sexual orientation & religion/belief Regs

The 2006 age regulations

The trickier bits

- Direct and indirect discrimination
 - When you can/cannot justify discrimination
- Pay and benefits
 - Special rules apply
- Retirement age
 - The introduction of a new default retirement age
- Dismissal and redundancy
 - Changes to unfair dismissal and redundancy pay



The 2006 age regulations

Direct and indirect discrimination

- **Direct** discrimination:
 - Less favourable treatment on grounds of age than a comparable person
- **Indirect** discrimination:
 - Where an apparently neutral provision, criterion or practice would put persons of a particular age group at a particular disadvantage when compared with other persons
- **BOTH** are subject to exceptions
- **And uniquely, BOTH** are capable of justification

Direct/indirect discrimination - exceptions

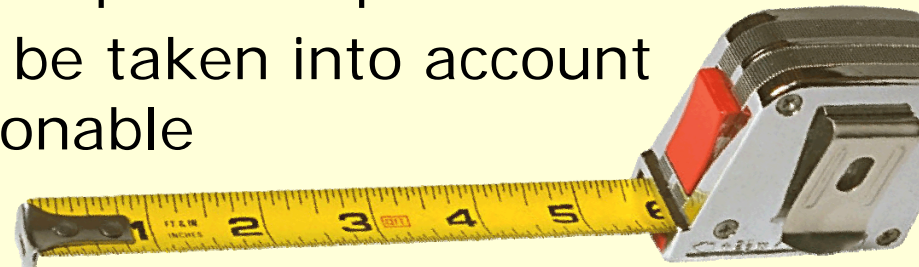
Recruitment over 65 years

- Limited to employees and Crown employees
- Only applies to recruitment activities
- Employer may refuse to recruit where:
 - job applicant is older than 65 or employer's NRA which is over 65 or
 - within 6 months of *job application date* job applicant would reach age 65 or employer's NRA over 65

Direct/indirect discrimination - exceptions

Pay & benefits - length of service

- 5 years or less – absolute exception
- More than 5 years – employer must show a **reasonable conclusion** that benefit fulfils **a business need**
 - egs of business need – encouraging loyalty etc
- Regs set out rules for application of benefits/calculation of length of service – for example:
 - On basis of weeks worked – protects part-timers
 - Absences from work may be taken into account *unless* it would be unreasonable
- Record review of benefits – ET evidence



Retirement and unfair dismissal

The duty to inform & consider

- Employer written notification
 - right to request to stay & intended retirement date
 - duty continues until 14 days before dismissal
- No meeting required if
 - employer confirms employee can stay
 - “not reasonably practicable” circumstances apply
- Right to be accompanied by fellow worker
- Breach of the duty to inform and consider
 - May result in an automatically unfair dismissal
 - Less than 6 months’ notice – max. 8 weeks’ pay

Retirement and unfair dismissal

Retirement as a fair dismissal reason?

- Introducing the concept of “planned retirement”...
- A “planned retirement” is presumed to be a **fair retirement dismissal reason**
 - still also need to comply with duty to consider
- A “planned retirement” is:
 - Date when employee reaches 65
 - NRA of the job
 - Any retirement date notified to employee at least 6 months in advance
 - Transitional provisions apply for retirements between 1 October 2006 and 31 March 2007

Who said this?

"I figured, what the hell, I'm going to be 40, everything's falling apart so let's see what I can do, because this may be the last time I will be right for this kind of role....."

And finally..... they think it's all over...?

- Changes to Disability Discrimination
- Civil Partnerships Act

Question

- Stress is not a disability unless the employee suffers physical symptoms and his doctor confirms that he is ill.
- True
- False

Question

- From 5 December 2005 people with progressive conditions such as HIV, cancer and multiple sclerosis will be protected from the point that they first display any symptoms, whether substantial or not.

True

- False

Disability Discrimination

- Imposition of duty to promote disability equality upon the public sector from 4 December 2006
- Extension of legislation to cover most functions of public authorities
- Extension of duties on landlords and managers of rented premises

Civil Partnerships Act 2005

- Full partnership will constitute a legal commitment similar to marriage
- Legal recognition of civil partners will necessitate review of policies
- Examples: Parental leave, emergency time off, flexible working requests, occupational benefits and so called Spousal benefits

Equality Bill

- Creation of single commission for Equality and Human Rights
- Creation of “gender duty” on public bodies
- Prohibition of sexual discrimination in exercise of public functions

They think it's all over.... it is now?

Any questions?

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