

Discrimination

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Highlights from recent case-law and key take-aways

Intro

- For Women Scotland Ltd v The Scottish Ministers
- In Q2 (July – September 2025):
 - 33% claims - Disability Discrimination
 - 14% claims - Race Discrimination
 - 13% claims - Sex Discrimination
- Focus will be on belief discrimination, disability discrimination, time-limits and harassment

Higgs v Farmor School

- The Court of Appeal allowed the Claimant's appeal. It substituted a finding that her dismissal had been unlawfully discriminatory.
- Key take-aways:
 - The dismissal of an employee simply because they have expressed a religious or other protected belief to which the employer (or a third party) objects is unlawful direct discrimination.
 - If the dismissal is motivated by something objectionable in the way in which the belief was expressed (determined objectively) then the dismissal will be lawful if, but only if, the employer shows that dismissal was a proportionate response to the objectionable element.
 - It was not in dispute (following the EAT decision in Forstater v GCD Europe) that the Claimant's beliefs that gender is binary and that same-sex marriage cannot be equated with marriage between a man and a woman are protected by the Equality Act.

Higgs v Farmor School

- Key Take-aways (continued):
 - The school sought to justify the Claimant's dismissal on the basis that the posts in question included insulting references to the promoters of gender fluidity and "the LGBT crowd". They argued this was liable to damage the school's reputation in the community.
 - The Court of Appeal found that neither the language of the posts nor the risk of reputational damage were capable of justifying the Claimant's dismissal in circumstances where she had not said anything of that nature at work nor displayed any discriminatory attitudes in her treatment of pupils

Thomas v Surrey and Borders Partnership NHS Foundation Trust

- The alleged belief was described as “English nationalism”.
- The appeal was from a preliminary hearing where the Tribunal had decided that the Claimant’s belief was not protected under the Equality Act 2010.
- The Tribunal had found that if the Claimant’s belief was restricted in the way that his Counsel has submitted, then it probably would have amounted to a protected belief. However, the Respondents had contended there was more to the Claimant’s belief than that.

Thomas v Surrey and Borders Partnership NHS Foundation Trust

- Key Take-aways:
 - The EAT clarified that it was “*the Claimant’s views of an English nationalism which believes that there is no place in British society for Muslims or Islam itself*” which took it outside of a protected belief.
 - The “*disdainful and prejudiced focus on Islam*” showed the Claimant’s belief went beyond what was merely offensive, shocking or disturbing. As did the Claimant’s belief in the “*coercive removal*” of Muslims from the UK.
 - The Judge was right to look at the Claimant’s social media posts where his witness statement made no mention at all of the Claimant’s anti-Islamic beliefs and therefore was “*not a comprehensive reflection of his views*”.

Stedman v Haven Leisure Centre Ltd

- The claim was for disability discrimination relying on alleged disabilities of Attention Deficit Hyperactivity Disorder ('ADHD') and Autism Spectrum Disorder ('ASD'). The ET rejected that the Claimant was disabled and the Claimant appealed.
- Key Take-aways:
 - The EAT confirmed that just because someone has a diagnosis of autism or ADHD, it does not mean that they are disabled within the meaning of section 6 of the Equality Act 2010.
 - The Judgment gave a reminder that in deciding disability the focus should be on what an individual cannot do, or can do only with difficulty, rather than on the things that he or she can do.
 - It is impermissible for a Tribunal to seek to “weigh up” a Claimant’s ability to carry out one type of day-to-day activity against their ability to carry out another type of day-to-day activity.

Stedman v Haven Leisure Centre Ltd

- *“Where a Tribunal has before it evidence of a clinical diagnosis of autism or ADHD, accordingly, then (unless there is some reason to doubt the reliability of that clinical judgment), **the Tribunal must take that diagnosis into account not just as evidence that someone has a condition or impairment, but as evidence as to the impact of that impairment.** The diagnosis means they have been judged by a clinician to have significant (i.e. clinically ‘more than minor or trivial’) difficulties with the areas of functioning covered by the diagnosis.*
- *It does not, of course, follow that the Tribunal must accept the clinician’s view as answering the disability question under the Act. The Tribunal still needs to **consider what it was that led the clinician to make the diagnosis** in the claimant’s case, and to make findings about the claimant’s ability to carry out day-to-day activities. If the claimant is not a reliable narrator, that may undermine any clinical opinion that is based on the claimant’s account. However, as regards something like social interaction and communication, if a clinician has judged a claimant’s difficulties in that respect to be significant enough to merit a diagnosis of autism, **a Tribunal will need to engage with that view** in its reasons when dealing with the question of ‘substantial adverse effect’.”*

Duncan v Fujitsu Services Ltd

- The EAT considered the justification defence in a Section 15 claim. The Claimant had been dismissed for abusive and offensive messages sent via Slack. It was accepted that the Claimant had ADHD and ASD.
- Key Take-aways:
 - The EAT stated the Tribunal was entitled to find that the dismissal for making the messages was a proportionate response in pursuit of legitimate aims and thus was justified.
 - The EAT rejected the complaint that the Tribunal did not properly consider whether the messages were directly due to the Claimant's disability rather than indirectly, because that was not what the Claimant had pleaded.

Jones v Secretary of State

- The Court of Appeal reversed a Tribunal's decision, finding that its reasoning on the "*just and equitable*" issue was erroneous.
- Key Take-aways:
 - The Tribunal should have considered, as a highly relevant factor, that the Respondent had gone to great lengths not to disclose the ethnicity of the successful candidate.
 - The Tribunal had erroneously attached importance to the fact that the Claimant was "*already suspicious*" (within the limitation period) that he had been discriminated against.
 - Courts should not encourage cases to be brought on mere suspicion, and (in a case where all the necessary facts were not known) it was unlikely that a claimant's suspicion that they had a claim would be a relevant factor. What the Tribunal should have done was to set out the extent of the delay and the reasons for it, and to make findings about whether the delay had prejudiced the Respondent.

Carozzi v University of Hertfordshire and another

- The EAT held that a Tribunal had erred in law in its approach to the concept of treatment “*related to*” a protected characteristic.
- Key Take-aways:
 - The Tribunal had required that there should be a mental element, which was an incorrect analysis. The EAT made clear that there is no requirement for a mental element equivalent to that in a claim of direct discrimination, and that there may be circumstances in which harassment occurs where the protected characteristic did not motivate the harasser.

Questions