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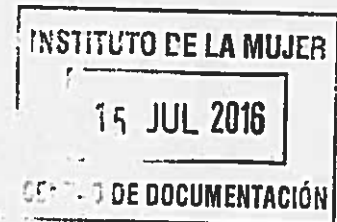
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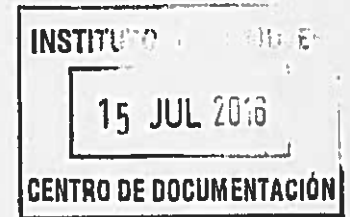
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## This month's issue...

We have two main features this month: Michael Rubenstein's round-up of recent and pending decisions before the European Courts; and a discussion of the impact of recent cases that appear to remove some distinctions between direct and indirect discrimination. Our case studies are on the success of a disability network and the impact of linking diversity with improved safety.

### Agenda: race equality

Sandra Kerr OBE, race equality director at Business in the Community, sets out her views of the issues on racial equality currently facing employers.

### Cases before the European Courts

In the context of a forthcoming referendum on membership of the European Union, Michael Rubenstein explains the significance of 30 cases that have recently been decided or are pending before the Court of Justice of the European Union, the EFTA Court and the European Court of Human Rights. The article is based on his recent lecture given to the Industrial Law Society, and covers a range of aspects of employment law.

### Blurred lines: the fading distinction between direct and indirect discrimination

Stephen Miller, partner in law firm Clyde & Co, considers whether recent case law – in particular *CHEZ Razpredelenie Bulgaria AD v Komisia za zashita ot diskriminatsia* and *Chief Constable of West Midlands Police v Harrod* – has heralded a change in our understanding of the differences between direct and indirect discrimination, and argues that the decisions can be reconciled with current law in the UK without too much modification.

### Supporting disability at Fujitsu

International information technology company Fujitsu has recently established a disability network (SEED – Support and Engage Employees with a Disability) that has very quickly had an impact on the business. Its membership increased from 200 to over 600 in six months and its role expanded to driving initiatives across the organisation and promoting disability confidence. It feeds into the company's diversity and inclusion strategy, looking at issues such as accessibility and awareness across what is termed "the five Rs" – recruitment, retention, representation, realisation and reputation.



### Network Rail: creating a more diverse and safe organisation

The company responsible for the railway infrastructure across England, Scotland and Wales – Network Rail – adopted a new inclusion and diversity strategy that firmly links the issue with improved safety and high performance. It includes a new organisation-wide structure that embeds responsibility for diversity across different corporate functions, and the launch of an inclusive leadership programme. Network Rail has data that shows that maintenance teams that have higher engagement scores have fewer accidents. It also relies on evidence, across sectors, that points to a correlation between better diversity and inclusion and innovation and high performance. The company has also undertaken a baseline monitoring exercise so that it can identify trends in recruitment and promotion and target areas for improvement.

### Discrimination case law

In the Courts covers the disability-related discrimination decision in *Praiser v NHS England*, which raises an issue about how attenuated the “chain of causation” can be for an act to be “in consequence of” the claimant’s disability. Darren Newman argues that by deciding that the withdrawal of a job offer based on a negative reference, which was in turn found to have been given as a consequence of a disability, amounted to disability-related discrimination, “may be overextending the intended scope of s.15 [Equality Act 2010]”.

### Head scarves

In his Diary, Michael Rubenstein discusses a decision from the European Court of Human Rights that holds that, in relation to a Muslim woman who was a public employee in France, there was a justified interference with the right to manifest her religious beliefs by wearing an Islamic headscarf. The Court held that the interference was proportionate, deferring to the principle of secularism embodied in France’s constitution. Michael Rubenstein points out that “context appears to be everything” and believes that although a ban on wearing the hijab was justified in the French public sector “almost certainly it would not [be justified] should such a ban be imposed in the UK”.

### IRLR appearances

Also in Diary, is the annual update of lawyers who have argued cases that have been reported in IRLR, with an update of the “all-time top 40 advocates” and “all barristers with 10 or more appearances” from 1972–2015.

Sue Johnstone  
Editor

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## This month's issue...

The main feature this month is our annual "Key discrimination decisions". Agenda this month looks at equal pay, and our case studies focus on race equality.

### Estimating the gender pay gap

In this Agenda piece, Sheila Wild, founder of EqualPayPortal, considers the implications of the independent review of UK economic statistics and argues that there is still time for the review committee to include the gender pay gap in its final findings. She puts forward ways in which the recommendations arising from the review can be adapted to ensure gender pay gap considerations are covered.

### Key discrimination decisions from 2015

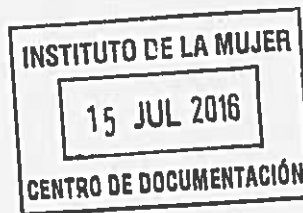
This article brings together the additions to the Discrimination Guide, which is updated annually and subscribers will receive with this edition of EOR. The article lists all the relevant employment discrimination cases reported in *Industrial Relations Law Reports* during 2015, setting out the principles established in those cases.

### RAF spreads its wings to widen recruitment

The RAF runs a week-long residential course for young black and minority ethnic pupils in response to both underrepresentation of ethnic minorities in the service and the need for more applicants with science, technology, engineering and mathematics skills. The course is an accredited programme that provides teenagers with experience of solving engineering and technical problems, working in a team and life on an RAF base. The programme has run for seven years, and the first group are just reaching the age where they are finishing their university studies. The impact of the programme has not yet kicked in, but it is known that in 2014 90% of participants went to university to study STEM subjects. It is too early to assess the impact for RAF recruitment, but it is recognised that this is a long-term commitment.

### Coaching BAME teachers for leadership roles

The largest teachers' union, the NUT, runs a programme for black and minority ethnic (BAME) members – "Aspiring to leadership". It is aimed at BAME teachers in the early stages of their careers, to help them gain the confidence to move into senior positions. The NUT redesigned the programme, in collaboration with Integrity Coaching, so that the emphasis is on a coaching, rather than training, approach. It encourages BAME teachers to realise the limitations they may have placed upon themselves due to negative stereotyping and cultural messages, and helps them remove those self-imposed limitations. There is also recognition of the importance of monitoring and evaluating the impact of the programme.



### Bank of England Ethnic Minority Network

An important development for improving the recruitment and progression of black and ethnic minority staff at the Bank of England is the work of its Ethnic Minority Network (BEEM). The network has successfully engaged with senior management and heads of functions to agree specific actions, including a scholarship programme for BAME students, a mentoring scheme for BAME staff and changes to line management guidance on pay and bonus moderation. BAME representation at senior level increased to 7% in 2015 from 3% in 2013.

### Discrimination case law

This month we cover 14 discrimination cases. The Court of Appeal's decision in *Griffiths v Secretary of State for Work and Pensions* is discussed in In the Courts. It relates to disability-related absence and the extent to which absence management policies need to be modified to comply with the duty to make reasonable adjustments.

Other cases highlighted by Michael Rubenstein include the Court of Appeal decision in *Naeem v Secretary of State for Justice* (also discussed in his Diary), which concerns a controversial decision that a service-related pay structure did not put Muslim chaplains at a "particular disadvantage" compared with Christian chaplains.

Also covered is the EAT's decision in *Beckford v London Borough of Southwark* – the most recent decision on whether or not the 10% uplift in general damages decided by the Court of Appeal in *Simmons v Castle* should be applied to tribunal awards for injury to feelings. This latest case comes down on the side of applying the uplift – and this was in fact what the tribunal did in the employment tribunal decision in *Lawson v Police and Crime Commissioner for Avon and Somerset*, reported in Case Digest.

### Naeem and indirect discrimination

In his Diary, Michael Rubenstein comments on the *Naeem* case and what this means for indirect discrimination. He questions the reasoning in the judgment, stating that "this analysis fundamentally misunderstands indirect discrimination"; for example, he says that when the judge states that the pay difference between Muslim and Christian chaplains in this case "does not reflect any characteristic peculiar to Muslims", it is unclear, adding that if by "peculiar" it is meant that there must be a characteristic that only Muslims share "that quite simply is wrong". He points out that "... the more 'peculiar' a characteristic is, the more likely that what we are looking at is direct discrimination rather than indirect discrimination."

Sue Johnstone  
Editor

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In Agenda this month, Judge Brian Doyle shares his thoughts on the future structure of employment tribunals in the UK. We have a feature on the Court of Appeal decision in *Griffiths* and case studies on promoting diversity and agile working. Our Legislation Guide explains the draft Gender Pay Gap Information Regulations.

### Employment tribunals and discrimination law in 2016

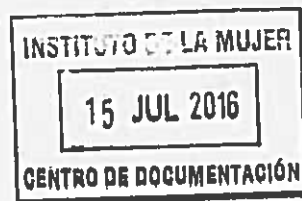
In an article based on his keynote speech at the EOR/TUC annual Discrimination Law conference, Judge Brian Doyle, President of Employment Tribunals (England & Wales), sets out his personal view of the current debate on the future structure of employment tribunals in the UK. He considers the impact of tribunal fees and speculates on the future of the fees regime. He also discusses structural reform of the tribunal system, looking at possible changes in Scotland, and continuing developments on dispute resolution. He also comments on the debate around a possible single Employment and Equality Court.

### Griffiths on reasonable adjustments

Rachel Crasnow QC and Sarah Fraser Butlin, both of Cloisters Chambers, discuss the implications of the Court of Appeal's decision in *Griffiths v Secretary of State for Work and Pensions* on the use of comparators in reasonable adjustment cases. They suggest that a fundamental effect of *Griffiths* is the understanding that the s.20 duty to make reasonable adjustments does not require that all are treated alike. They also discuss what is meant by a reasonable step and what its purpose must be. The third issue arising from *Griffiths* discussed in the article is the relationship between s.20 and s.15 (discrimination arising from disability) cases.

### Northern Rail: a diversity journey

Transport is generally a male-dominated industry, and Northern Rail found that it needed to change its internal culture before attempting to change the diversity of its workforce. It found that a colleague-led approach was most effective in reducing employee resistance to diversity messages. This has been achieved through "staff ambassadors" – a peer-to-peer support network of volunteer employees. This is a key part of the company's Working Together strategy. Another part of the strategy is the outreach work it has done; undertaking recruitment drives in "non-traditional" areas, seeking to attract women and ethnic minorities to work for the company.



### DLA Piper: agile working

The agile working strategy at DLA Piper focuses on career progression for flexible workers, with an emphasis on job sharing. It believes that effective job-share partnerships can be key for the career progression of employees who want to work flexibly. The firm has had 50 new agile working arrangements put in place since introducing its agile working policy, and two job-share partnerships among its lawyers.

### Draft Gender Pay Gap Information Regulations 2016

Michael Rubenstein explains the key provisions in the consultative draft mandatory gender pay gap reporting Regulations; answering questions including who the Regulations apply to, what is pay, the pay period and how the gender pay gap will be measured.

### Discrimination case law

We report 14 discrimination cases this month. Cases discussed by Michael Rubenstein include decisions on victimisation, race discrimination, time limits and equal value, as well as two cases reported in *In the Courts – Banaszczyk* on disability discrimination and *Donkor* on age discrimination.

### Diary: Gender pay gap information

As well as the legislation guide, Michael Rubenstein comments on the draft Regulations on the gender pay gap in his Diary, opining that the Regulations are “seriously flawed”. He points out that the fact that they apply only to “relevant employees” will almost certainly exclude groups of workers such as employees of contractors and regular temporary agency workers. Also, there are no provisions for enforcement, no requirement that employers explain any pay gap and no need to set out steps the employers intend to take to close the gap.

### Diary: Perceived disability discrimination

Another item discussed in Michael Rubenstein’s Diary is the employment tribunal decision in *Balakumar v Imperial College of Health Care NHS Trust*, (also reported in *Case Digest*), where it was held that “disability” includes “perceived disability”.

Sue Johnstone  
Editor  
sue@rubensteinpublishing.com

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## This month's issue...

Our features this month include the thoughts of an employment judge on the role of tribunals in discrimination cases, and a discussion by Rachel Crasnow QC of some of the policy issues arising from the shared parental leave provisions. Our case studies cover mental health, race and LGBT issues.

### Agenda: Women in the film industry

The head of research at the European Women's Audiovisual Network (EWA) looks at the barriers to women directors, in particular the allocation of funds, pointing out that an "astonishing" 84% of public funds went to male directors, despite the fact that women comprise 44% of graduates from film schools. She argues that urgent action is needed, including targets backed by incentives. The EWA recommends that a 40% share of public funding goes to women.

### Justice in discrimination claims

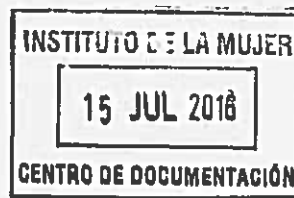
Employment Judge James Tayler argues that employment tribunals have a vital role to play in eliminating discrimination, but that there are also duties on parties and representatives to ensure that cases are dealt with proportionately. He identifies that lengthy and costly hearings are a problem, and recognises the difficulty in keeping claims focused. However, he finds it unacceptable to simply bewail the fact that it is impossible to prevent discrimination claims losing focus. He reminds parties and representatives of their duty to deal with cases in ways that "are proportionate to the complexity and importance of the issues, avoiding delay and saving expense". He recognises the role of the tribunal too, particularly in dealing with the evidence, and criticises the conflation that has developed between evidence needed to draw inferences and the burden of proof.

### Kent Fire and Rescue Service: mental health

The fire service is traditionally male-dominated and firefighters are expected to "prove themselves" in action. Mental ill-health has to some extent been regarded as a weakness, and Kent Fire and Rescue Service (KFRS) found a high level of self-stigmatisation. However, by raising awareness of mental health issues, and taking a holistic approach to physical and mental wellbeing, KFRS has changed how mental ill-health is regarded. Many employees have committed to studying for a level 2 certificate in awareness of mental health problems, and increasing numbers of staff have participated in dementia awareness training and have become "Dementia friends". Staff have also become more willing to disclose mental health problems of their own and within their family.

### Warwickshire and West Mercia Police: increasing BAME representation

Against a background of Government publication of "diversity profiles" of police forces in England and Wales, and a finding



that no force has ethnic minority representation proportionate to its population, Warwickshire and West Mercia Police forces have successfully put in place initiatives to increase recruitment of BAME police officers and staff. Although not yet proportionate to its population, the forces – which have formed a Strategic Alliance to deliver police services jointly in their areas – have increased the representation of BAME officers to the extent that they met their own short-term target within six months.

#### Accenture: 'mobilising' its straight allies

In Stonewall's Workplace Index survey 2016, some 94% of Accenture's lesbian, gay, bisexual and transgender employees agreed that the culture at Accenture is inclusive of LGBT people. This is to some degree down to Accenture's renewed emphasis on the role of straight allies at the workplace. It started its straight allies programme in 2012, but in 2015 it launched "mobilised allies". New terms of reference were published for the ally role. "Mobilised allies" are expected to be a visible, vocalised opponent of prejudice and discrimination and be able to provide a safe and non-judgmental point of contact for LGBT employees who may want support. The number of straight allies increased from 700 to 2,000 from June 2015 to February this year.

#### Discrimination case law

We report 12 discrimination cases this month, including *Peninsula Business Services Ltd v Donaldson*, which concerned a salary-sacrifice childcare voucher scheme. The EAT held that this amounted to "remuneration" and therefore refusal to continue the scheme during maternity leave was held not to be discrimination.

Other issues covered include guidance on the correct approach to indirect discrimination, and the duty on employment tribunals to make reasonable adjustments.

#### Diary: Menopause and disability

In his diary this month, Michael Rubenstein leads with a discussion of the effect of the menopause on some women at work, and explains how changes to the way we understand disability discrimination could provide legal protection for women who are not reasonably supported during the menopause. He stresses that the menopause is not in itself a disability but part of the natural aging process, but also that it is clear that for some women the effect of the menopause can "hinder their full and effective participation at work", a condition that can last for four to eight years. If such symptoms can be brought within the definition of disability under the Equality Act, employers will be under a duty to make reasonable adjustments.

Sue Johnstone  
Editor

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- 5 Unlawful adverts jeopardise job opportunities, says EHRC; Tackling inequality in the civil service; New chair selected for EHRC
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## This month's issue...

This month sees the introduction of a new section in EOR. We have always covered trade union issues, but from this month we will have a regular section focusing on what is happening in the trade unions around equality. We start off with a look at the tenth survey of equality in trade unions in the South East Region TUC. We also have an Agenda item from Gloria Mills, head of equality at Unison.

### Agenda: The Equality Agenda 2016

There is a changing landscape on equality in the workplace, says Gloria Mills, National Secretary Equality, Unison and president of the women's committee of the ETUC. This has led unions to adopt new strategies with more emphasis on strategic litigation, but she also highlights the importance of trade unions challenging discrimination in the workplace. In our new section, we will report the outcomes of union-supported cases as well as developments in collective bargaining in equality and union equality strategies. Gloria also highlights the current developments at European level.

One of the issues raised by Gloria is the impact of tribunal fees, a concern echoed in three recent papers reported in our News and Reports section – the EHRC on pregnancy and maternity (p.29), the House of Commons Women and Equalities Committee (p.30) and the House of Lords Select Committee on the Equality Act 2010 and Disability (p.32).

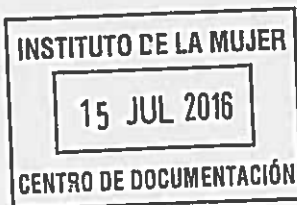
### Inclusive leadership

We have previously reported on the theory and impact of inclusive leadership (EOR 255). In this feature, Gloria Moss explains the findings of research that she led on behalf of the Employers' Network for Equality and Inclusion (enei). The research was commissioned to establish a robust model and definition of inclusive leadership. Anchored in two established theories of leadership – transformational and servant approaches – the research identifies a new definition of an inclusive leader, with foundations in accepted theory. The benefits of inclusive leadership are set out, and enei explains its recommendations arising from the findings.

### EY: regional LGBT networks

EY has offices across the UK and Ireland, and has prioritised its regions to ensure its LGBT network increases its impact, and takes on board those areas where LGBT visibility is lower in the organisation. Its LGBT network – Unity – includes the "A" for "allies" to make explicit that inclusion of non-LGBT allies is important. A successful semi-autonomous network had been established in Dublin. It provided support, along with the London network, to the development of a similar hub in Scotland. As a result, previously invisible LGBT employees in Scotland and Ireland have become more vocal, visible and active. The UK and Ireland LGBT network now has more than 400 members.





### Barclays: changing attitudes to disability

Barclays has used personal stories of experiences of mental health to challenge the stigma often attached to mental illness, and to encourage employees to feel comfortable talking about the issues. Social media has been used to share the stories. Starting with just nine personal accounts, there are now over 160 stories on the website which has had more than 60,000 visits. The campaign "This is Me" was initiated by the staff disability network, Reach, which has around 700 members in the UK.

The bank advocates the use of personal stories, having found the approach to be "both powerful and innovative", pointing out that it happened "because we weren't afraid to take a risk", highlighting the benefit of taking a big, unexpected, step in addressing difficult issues.

### Trade unions and equality

The South East Region TUC (SERTUC) has published its tenth survey of equality in trade unions, covering 24 affiliated unions and 82% of the TUC's affiliated membership. It examines the representation and involvement of women, and BAME, LGBT and disabled people, and retired and young members. It gives an overview of the position across unions in relation to each group, and then a summary of the position in each union. It also details some of the successful activities of unions in their campaigns on equality.

This section also covers recent reports from the TUC on Pay and parenthood, Young women's pay, and employment rates of BAME graduates.

### Discrimination case law

This month's issue covers 15 discrimination cases. Decisions discussed by Michael Rubenstein include an age discrimination case heard by the Court of Justice of the European Union, and a decision on philosophical belief that considers whether the attributes of a belief can be confined to the workplace rather than human life and behaviour in general. Two of the cases are also reported in detail in *In the Courts*, dealing with the issues of territorial jurisdiction and manifestation of belief.

There are six employment tribunal decisions covering religious belief, burden of proof, disability and remedies.

### Diary

In his Diary this month, Michael Rubenstein considers the possible consequences for discrimination law if the EU Referendum results in a vote to leave the EU. He also highlights the diversity strategy aspects of the renewal of the BBC charter, an area overlooked by much of the media coverage.

*Sue Johnstone*  
Editor

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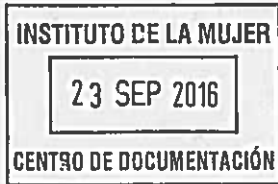
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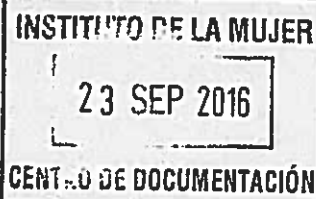
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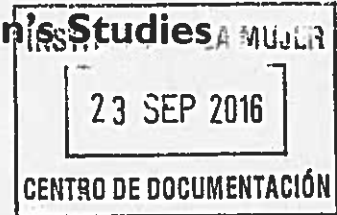
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# Nouvelles Questions Féministes

Volume 35, N° 1, 2016

Morales sexuelles

Coordination du numéro

Marta Roca i Escoda, Anne-Françoise Praz, Eléonore Lépinard

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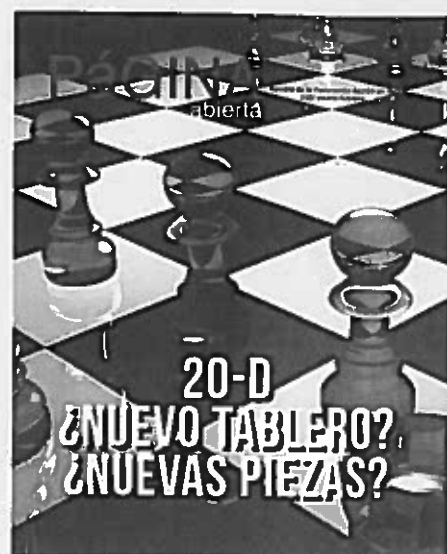
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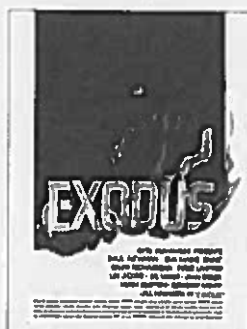
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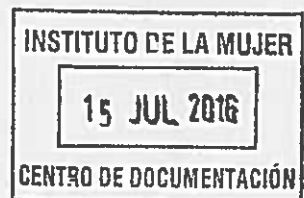
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