

Crystal Ball Gazing

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The Conservative-Liberal Democrat coalition has set out the measures it proposes to introduce as part of its programme for partnership government in the recently published document: *The Coalition: Our programme for Government*, which we report on Page 2.

A number of the provisions impact on diversity. Two of particular note are to take a range of measures to end discrimination in the workplace and to promote equal pay, in the context of how these sit with the Equality Act 2010, which at face value already meets these aims.

Before the dissolution of Parliament the Labour Government announced its intention that all the Act's main employment provisions would come into force in October 2010. However no mention is made in the Coalition document of the Act, nor did it feature in the Queen's Speech upon the opening of Parliament.

The significance is that during the legislation's final stages in Parliament, the Conservatives said that there were three parts they would not implement if they were elected: (i) the public sector duty to reduce socioeconomic inequalities; (ii) the positive action provisions where two candidates were evenly matched; and (iii) the gender pay gap reporting provisions.

We are therefore waiting to see how the new Government will utilise the Act to achieve its aims. The core substance of this consolidated, well-drafted legislation is badly needed. It is hoped that the Government will not find itself in the position that Permanent Secretary, Sir Humphrey Appleby, did in the sitcom *Yes Minister* where he argued that a measure could not be introduced because he could "foresee some unforeseeable problems."

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Discrimination compensation totalled £8m in 2009

The Equal Opportunities Review has published the results of its annual survey of compensation awarded in discrimination cases. The total amount of compensation increased substantially in 2009, standing at just over £8 million, with interest.

Issue 201 of the Equal Opportunities Review contains the results of the annual survey of compensation awards in discrimination cases. The survey is based on research of all cases filed by the Employment Tribunal Service in Bury St Edmunds. It covers awards made in England and Wales, where the judgment was promulgated in 2009.

The total amount awarded in compensation in discrimination increased substantially in 2009, standing at just over £8 million, with interest. The breakdown of awards is as follows:

Case Type	Highest	Average	Median
Age	£194,182	£24,460	£10,000
Disability	£797,736	£35,746	£10,644
Race	£373,436	£15,780	£3,000
Religion or belief	£7,560	£5,077	£5,077
Sex	£442,466	£13,277	£7,735
Sexual orientation	£30,394	£9,972	£5,500

“The total amount awarded in compensation in discrimination cases increased substantially in 2009, standing at over £8 million, with interest”

Coalition sets out 'details' of its employment policy

In [‘The Coalition: Our programme for Government’](#) document the Conservative-Liberal Democrat coalition has set out the measures it proposes to introduce as part of its programme for partnership government. A number of the provisions impact on diversity.

The key aspects of the Coalition Government’s proposals impacting on employment were set out in the recently published document: The Coalition: Our programme for Government. A number impact on diversity, i.e.:

- Promote equal pay
- Take a range of measures to end discrimination in the workplace
- Extend the right to request flexible working to all employees
- Promote gender equality on the boards of listed companies
- Encourage shared parenting from the earliest stages of pregnancy – including the promotion of a system of flexible parental leave
- Phase out the default retirement age
- Establish a Commission to investigate the creation of a British Bill of Rights

No further details about the measures, or when they can be expected, have been provided as yet. And while the first three measures above were referred to briefly in the Queen’s Speech opening Parliament, none have been included in the Bills in this current session of Parliament.



Commission calls on businesses to close gender gap

On the 40th anniversary of the Equal Pay Act, the Equality and Human Rights Commission has called on organisations to do more to close the pay gap between male and female employees.

When the Equal Pay Act was introduced in 1970, it was heralded as a major advance for women in the workforce. However, despite progress over the past 40 years the Commission's research revealed that the full-time, mean gender pay gap was 16.4 % and the median gender pay gap for all employees was 22 %.

In some sectors, the pay gap is significantly higher. The Commission's recent inquiry into the finance sector found that women working full-time earn up to 55 per cent less annual average gross salary than their male colleagues.

The Commission's research also found a number of causes of the persistent gap. These include stereotyping about women's capabilities and skills, women bearing the brunt of caring responsibilities, and discrimination in pay systems.

The Commission believes that employers should take it upon themselves to do what they can to bring pay equality to their workforce. The Commission will shortly be issuing guidance to help businesses measure and address pay gaps. However, it has made it clear that if the voluntary approach fails, it will use its enforcement powers to address any persistent and significant problems.

"The Commission will be issuing guidance to help businesses measure and address pay gaps. If the voluntary approach fails, enforcement powers will be used to address any significant problems."

Employers' guide to eldercare published

A new guide from a leading care provider, My Family Care, reveals that identifying employees with eldercare responsibilities and understanding what support they need is the first step for employers who want to introduce the right eldercare policy to attract and retain people from the widest talent pool.

Given the ageing population, [My Family Care's Employers Guide to Eldercare](#) highlights that by 2050 there will be double the number of people aged over 65 as under 18. My Family Care argues that how employers support their working carers will have an increasing impact on recruitment, retention and engagement.



The Guide points out that combining work and care is notoriously difficult at the best of times, but adult dependent care brings its own unique set of challenges. We're typically talking about an employee caring for one or both elderly parents. Not only is it more sensitive than childcare but the UK's social care market is especially difficult to navigate, with the line between healthcare and social care impossible to draw.

The Guide says that finding ways to support working carers is important if employers want to attract, retain and engage people from the largest potential talent pool. In the coming years having a sensible, cost effective and meaningful policy on how to support employees with adult dependents will become essential. Building the business case and developing a flexible strategy to support employees with eldercare responsibilities are essential.

Role swap was a reasonable adjustment

In *Chief Constable of South Yorkshire Police v Jelic*, the EAT held that the swapping over of a disabled post-holder with another post holder can be a reasonable adjustment, and if the employer fails to give it consideration there is bound to be a finding of disability discrimination.

After a series of stress-related absences, PC Jelic was transferred to a role in the Safer Neighbourhoods Unit (SNU), which involved little face-to-face contact with the public. PC Jelic acquired significant expertise, performed the job very well and had very few absences. However, after three years, medical advice was that PC Jelic's condition - Chronic Anxiety Disorder - was permanent, and he was classed as disabled. He was fit for his current duties but would struggle in a public facing role. As the role of officers in the SNU had evolved, and now involved a lot of contact with the public, PC Jelic was retired on medical grounds.

The EAT agreed with an employment tribunal that the medical retirement was disability discrimination, and could have been avoided had a reasonable adjustment been made. Although there was no existing vacancy, a PC Franklin, who was able to undertake public facing roles, worked in a role which needed the expertise developed by PC Jelic and involved no public contact. A reasonable employer should have considered swapping the two officers over, particularly where the employer had a contractual entitlement to order the move, should PC Franklin not agree.

"The swapping over of a disabled post-holder with another post holder can be a reasonable adjustment, and if the employer fails to give it consideration there is bound to be a finding of disability discrimination"

Permission to appeal refused

In *McFarlane v Relate Avon Ltd*, the Court of Appeal refused permission to appeal an EAT decision. A particular viewpoint will not be protected by law simply because it has its basis in a religious principle.

Gary McFarlane was employed as a relationship counsellor. He was dismissed for refusing to provide psychosexual therapy to same sex couples. Such a refusal was contrary to Relate's equal opportunities policy. Mr McFarlane claimed that his refusal to provide therapy to same sex couples was because of his Christian beliefs, and on that basis brought claims for direct and indirect religious discrimination against Relate.



An employment tribunal and the EAT dismissed Mr McFarlane's claims. It accepted Relate's case that it did not dismiss because of his Christian faith, "...but because Relate believed that he would not comply with its policies and it would have treated anyone else of whom that was believed, regardless of religion, in the same way". His dismissal was not because of his Christian beliefs but for his refusal to abide by Relate's fundamental policy requirements - so there was no direct discrimination. In addition while the policy may put Mr McFarlane, as a Christian, at a disadvantage there was no indirect discrimination as the policy was justified as a proportionate means to achieve a legitimate public and social aim.

The Court of Appeal refused permission to appeal. The CA agreed with the tribunal and the EAT and in view of the CA's ruling in *Ladele v London Borough of Islington* (Christian Registrar refusing to officiate in Civil partnerships), the appeal had no prospect of success as the legal principles in both cases were the same.