

Indirect Discrimination – An introduction

24 July 2020

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The Protected Characteristics

There are 9 in number and (in alphabetical order) are:

- age,
- disability,
- gender reassignment,
- marriage and civil partnership,
- pregnancy and maternity,
- race,
- religion or belief,
- sex and
- sexual orientation.

History of Indirect Discrimination

- Sex Discrimination Act 1975
- Race Relations Act 1976
- Council Directive 97/80/EC of 15 December 1997
- Equality Act 2010

The elements of indirect discrimination under s19 EA

- Need for a “provision, criterion or practice”
 - Overlapping concepts, widely interpreted
 - For a practice see *Ishola v Transport for London* [2020] EWCA Civ 112

- First element: S19(2)(a):

“A [*the alleged discriminator*] applies, or would apply, it to persons with whom B [*the alleged victim*] does not share the characteristic”

Elements of Indirect Discrimination (2)

- Second element: section 19(2)(b):

“it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it”

- Note need for no material difference under s 23(1) EA
- Learning from *Essop v The Home Office* (Supreme Court in 2017)
- Third element – S19(2)(c) : B suffered the disadvantage

Examples

How does this work in practice:

- 2015 public sector pension changes and age discrimination
- Mr Brotton and his regulation 12 award.