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## Editorial: **Standing firm on protecting workers' rights**

The gaps in protection for workers' equality rights continue to demand legislative attention and commitment - a major theme in this edition of *Briefings*.

Stephen Heath, a lawyer with Mind, describes the continued lack of adequate protection for people with mental health problems in the workplace, despite the apparent protection of the Equality Act 2010. The 21<sup>st</sup> century duties on employers to ensure the health and safety of their employees are derived from 19th century legislation.

Existing health and safety law, designed to tackle the physical dangers of Victorian coalmines and factories, still focuses mainly on physical rather than mental health. Our modern view of mental health has helped us understand the range and impact of this often-invisible issue – around one in four people in Britain suffer from mental health problems.

The anti-discrimination provisions of the Equality Act 2010 are the only remaining mechanism to protect the rights of workers with mental health problems, and are frequently found to be inadequate by claimants and representatives. The 'horrendous ordeal' of attending and arguing one's case at tribunal is a huge barrier to challenging workplace discrimination but it is not the only one. Many sufferers do not disclose their illness to their employers because of a culture of fear and silence and even if they do, employers lack understanding of the sorts of reasonable adjustments they could make to meet the needs of mentally ill employees. Requiring complainants to find the resources - emotional and physical as well as financial - to fight for their rights at tribunals raises serious questions about whether the EA is an adequate mechanism for vulnerable workers to find justice.

Although the Conservative election manifesto made ambitious commitments to 'transform how mental health is regarded in the workplace...and to extend Equalities Act protections against discrimination to mental health conditions that are episodic and fluctuating', these goals were not reflected in the Queen's Speech. It is in everyone's interest to have workplaces where people with mental health problems are supported and protected. The DLA will work with our members, our networks and law-makers to ensure the government delivers on its commitments and improves both the legal protections and the effectiveness and accessibility of the law for those with mental health disabilities.

In her article on intersectional discrimination, Professor Iyiola Solanke argues that the anti-discrimination legislation has failed to deal with the labour market experience of black women workers who are invisible in law because their labour market experiences cannot be attributed to either race or gender alone. Given that black women experience disproportionately high unemployment rates (13% compared to 5% for white women in 2013/14), she makes the case for an 'anti-stigma' principle to be actively researched and developed alongside current regional and European human rights frameworks.

Reviewing the development of vicarious liability under common law, Jason Galbraith-Marten QC and Schona Jolly QC highlight gaps in the EA which does not impose liability on employers for discrimination against a volunteer or discrimination committed by third parties or employees of sub-contractors, among others.

All these gaps leave vulnerable or disadvantaged workers either with impossible hurdles to overcome in accessing justice or no justice at all. It is hard to see where in the current political climate the will and commitment for legislative improvements can be found. Our politicians are focused on their political survival; our minimum demands in the time consuming, energy-sapping Brexit process will be to maintain current equality and human rights protections and to ensure that the UK's new regime will not further diminish workers' rights and equality protections as we move towards an increasingly deregulated labour market.

The DLA will continue to fight for the rights of workers to be protected from abuse and will continually make the case, as the trade union movement does, that strong employment protection for workers goes hand in hand with successful economies.

**Geraldine Scullion**  
Editor