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889	Lord Chancellor & Ors v McCloud & Ors; SS for the Home Dept & Ors v Sargeant & Ors CA held that difference in treatment between younger and older judges and firefighters constituted direct discrimination on the grounds of age. A legitimate social policy aim requires an objective assessment and must, as a minimum, be rational.	Joanna Whiteman & Sam Barnes	21
890	British Airways v Pinaud The CA dismissed the appeal and upholds ET and EAT findings that the terms of a part-time employee's contract requiring her to be available for work for proportionately 8.5 days per year more than a full-time comparator whilst receiving the same salary pro rata constituted less favourable treatment contrary to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.	Michael Potter	23
891	J v K and another CA overturns ET and EAT and allows claimant's application for extension of time to lodge appeal; it provides guidance on the relevance of a party's mental ill-health in the context of such an application.	Elaine Banton	25
892	Wood v Durham County Council EAT considers and upholds the provisions for excluded conditions in the EA disability regulations, holding that a claimant who had shoplifted had been correctly considered to have a 'tendency to steal' and that his dismissal as a result could not be the subject of a disability discrimination claim.	Catherine Casserley	27
893	Awan v ICTS UK Ltd Where a disabled employee benefits from contractual long-term disability benefits, there is an implied contractual term the employer will not dismiss for incapacity reasons. Dismissal in breach of that term will normally be both unfair and a disproportionate act of discrimination arising from disability.	Jason Braier	28
894	Martin v University of Exeter The EAT upholds the ET's decision to dismiss the claimant's appeal. It finds that the ET judge's use of a colloquial term ('necessarily') when assessing how 'likely' a claimant would remain disabled, was done in a predictive context and did not depart from the 'it may well happen' legal test in <i>SCA Packaging Ltd v Boyle</i> .	Amanda Boyd	30
895	Evans v Xactly EAT dismisses appeal and upholds ET's decision that, in this specific context where the claimant was an active participant in inappropriate workplace comments and behaviour, the comments complained of did not amount to harassment. EAT reiterated that harassment claims are highly fact sensitive and context specific.	Catrin Lewis	31
896	R (Z and others) v (1) Hackney LBC and (2) Agudas Israel Housing Association The divisional court held that it was lawful for a small, Orthodox Jewish housing association to provide tenancies to members of the Orthodox Jewish Community to the exclusion of non-members. The association successfully defended a claim of unlawful discrimination by arguing the exceptions under EA s158 (positive action) and s193 (charities)	Rea Murray	32
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Editorial: Time for reimagining

It is of huge concern to discrimination lawyers and policy-makers alike that decision-making on the allocation of resources is having a differential impact among groups of people protected by equality legislation.

Drawing on evidence from a range of independent sources Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, identifies appalling levels of poverty and disadvantage in the UK. The report of his investigation in November 2018 highlights the disproportionate and devastating impact austerity has had on the women, racial and ethnic minorities, children, people with disabilities, single parents and migrants. As reported in their article *Urgent action demanded on disproportionate impact of austerity on protected groups to enable their access to justice* Catherine Rayner and Michael Newman describe how these groups have borne the brunt of austerity policies which have reduced services and dismantled social security benefits originally designed to protect and support them.

The DLA took the opportunity to engage with Professor Alston's investigation and put forward the case for access to justice. While the differential adverse impact of social and economic decisions on groups with protected characteristics has been legally challenged, successfully overturning the government's wide margin of discretion and proving that such decisions are manifestly unreasonable can be difficult. Professor Alston's report provides statistics and information which could be an evidential starting point for claims of unlawful discrimination; it challenges us to find ways to continue the fight against social and economic decision-making which has a disproportionate adverse impact and could amount to unlawful discrimination.

The DLA has consistently argued that it is increasingly more difficult for those hardest hit by austerity to access advice on discrimination law or to fight for legal redress. The EHRC has highlighted how the funding cuts to legal aid following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in 2013 has meant that fewer people could access legal advice and representation for problems in areas such as family, employment and welfare benefits law. Its evidence suggests that, following the introduction of the Legal Aid Agency's mandatory telephone gateway, provision of initial legal aid for discrimination cases dropped by nearly 60%. The reduced availability of legal advice post-LASPO has also reduced the awareness that such a claim could be made in the first place.

Without information or knowledge that an issue is a legal problem with a potential remedy under the antidiscrimination legislation, people endure; and without free legal aid and access to expertise to challenge unlawful decision-making, those without resources are effectively deprived of their human right to a remedy.

That government denies the extent of poverty in the UK as described in the report and expressed its disappointment at *'the extraordinary political nature of [Alston's] language'* saying it was *'wholly inappropriate and actually discredited a lot of what he was saying'*, is alarming. Alston calls on the UK government to provide a legal framework for recognising and enforcing social rights. The DLA has long argued for the implementation of the s1 EA public sector duty designed to reduce inequalities of outcome which result from socio-economic disadvantage. It adds its voice to Professor Alston's recommendations and in addition will continue to demand free, accessible, expert legal advice on discrimination law for those who cannot afford it. It will contribute to the EHRC's ongoing inquiry into whether legal aid enables people who raise a discrimination complaint in England and Wales to get justice which is examining, among other topics, whether improvements could be made to reduce barriers and improve access to justice.

We note that the Ministry of Justice's February 2019 Legal Support Action Plan *'to deliver quicker and easier access to legal support services'* states that, by spring 2020, it will remove the mandatory requirement for individuals to seek advice over the telephone in the first instance in discrimination cases, and will reinstate immediate access to face-to-face advice in this area. Such a move would be welcome but it needs to be resourced adequately if the impact of LASPO cuts on specialist advice services and the creation of 'advice deserts' across the UK is to be overturned.

Professor Alston's positive words in these negative, uncertain times about reimagining what the UK should represent are worth repeating: *'The negotiations surrounding Brexit present an opportunity to take stock of the current situation and reimagine what this country should represent and how it protects its people. The legislative recognition of social rights should be a central part of that reimagining. And social inclusion, rather than increasing marginalization of the working poor and those unable to work, should be the guiding principle of social policy.'*

There could be no better time for reimagining than now.

Geraldine Scullion
Editor

