

DEFINITION OF KEY CONCEPTS DIRECT/INDIRECT/HARASSMENT/ SEXUAL HARASSMENT

EU GENDER EQUALITY LAW

ERA 12 & 13 APRIL 2018

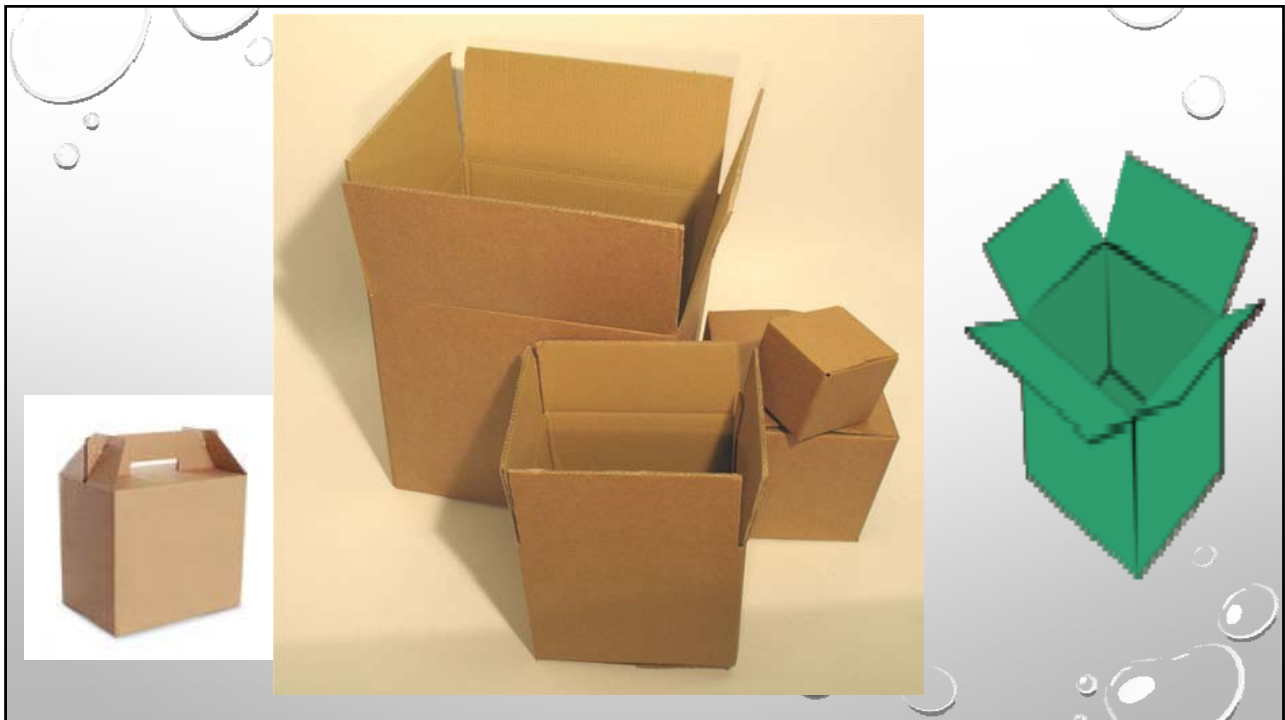
CHRISTA CHRISTENSEN

DIRECTOR OF TRAINING JUDICIAL COLLEGE, LONDON



This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

1



	Sex	Race	Age	Disability	Sexual orientation	Pregnancy Maternity	Religion /Belief	Marriage	Gender reassignment
Direct	XX								
Indirect	XX								
Harassment	XX								
Sexual Harassment	XX								
Victimisation									
Reasonable Adjustments									
Arising from disability									

3

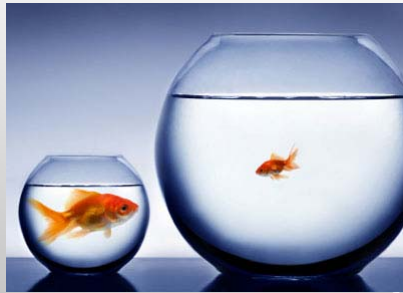
EQUAL TREATMENT DIRECTIVE 2006

- ARTICLE 1: PURPOSE IS TO ENSURE THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT OF MEN AND WOMEN IN MATTERS OF EMPLOYMENT
- ACCESS TO EMPLOYMENT
- WORKING CONDITIONS INCLUDING PAY

4

DIRECT DISCRIMINATION: ARTICLE 2

- WHERE ONE PERSON IS TREATED LESS FAVOURABLY ON GROUNDS OF SEX THAN ANOTHER IS, OR HAS BEEN OR WOULD BE TREATED IN A COMPARABLE SITUATION



INDIRECT DISCRIMINATION: ARTICLE 2

- WHERE AN APPARENTLY NEUTRAL PROVISION, CRITERION OR PRACTICE WOULD PUT PERSONS OF ONE SEX AT A PARTICULAR DISADVANTAGE COMPARED WITH PERSONS OF THE OTHER SEX, UNLESS THAT PROVISION, CRITERION OR PRACTICE IS OBJECTIVELY JUSTIFIED BY A LEGITIMATE AIM, AND THE MEANS OF ACHIEVING THAT AIM ARE APPROPRIATE AND NECESSARY



HARASSMENT: ARTICLE 2

- UNWANTED CONDUCT RELATED TO THE SEX OF A PERSON OCCURS WITH THE PURPOSE OF EFFECT OF VIOLATING THE DIGNITY OF A PERSON, AND OF CREATING AN INTIMIDATING, HOSTILE, DEGRADING, HUMILIATING OR OFFENSIVE ENVIRONMENT



7

SEXUAL HARASSMENT: ARTICLE 2

- ANY FORM OF UNWANTED VERBAL, NON-VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE OCCURS, WITH THE PURPOSE OR EFFECT OF VIOLATING THE DIGNITY OF A PERSON, IN PARTICULAR WHEN CREATING AN INTIMIDATING, HOSTILE, DEGRADING, HUMILIATING OR OFFENSIVE ENVIRONMENT



8

ON GROUNDS OF SEX/DIRECT

- FIRST CATEGORY
- DISCRIMINATORY ON THE FACE OF IT
- DISCRIMINATION ON THE GROUNDS OF A CHARACTERISTIC VERY CLOSELY RELATED TO SEX - WORKSHOP
- POSITIVE DISCRIMINATION.....IS DISCRIMINATION

ON THE GROUNDS OF SEX/DIRECT

- SECOND CATEGORY
- THE TREATMENT IS NOT OBJECTIVELY DISCRIMINATORY
- NEED TO KNOW SOMETHING ABOUT THE EMPLOYER'S REASONS FOR ACTIONS – IS THE TREATMENT BECAUSE OF THE PROTECTED CHARACTERISTIC
- BURDEN OF PROOF ASSISTS
- SUFFICES FOR THE PROTECTED CHARACTERISTIC TO BE THE SUBSTANTIAL REASON EVEN THOUGH IT IS NOT THE SOLE OR INTENDED REASON
- WORKSHOP EXAMPLES

COMPARATOR

- REAL OR HYPOTHETICAL
- STAND THE CLAIMANT SIDE BY SIDE WITH HER COMPARATOR
- NO **MATERIAL** DIFFERENCE



11



DISCRIMINATION BY ASSOCIATION

- 'ON THE GROUNDS OF' USUALLY COVERS THE PROTECTED CHARACTERISTIC (SEX) OF THE CLAIMANT
- 'ON THE GROUNDS OF' IS WIDE ENOUGH TO COVER THE SEX OF SOMEONE WHO IS NOT THE CLAIMANT
- LESS FAVOURABLE TREATMENT ON THE GROUNDS OF SEX – NOT THE CLAIMANT'S SEX
- EXAMPLE

13

INDIRECT DISCRIMINATION

- PROVISION CRITERION OF PRACTICE (PCP)
- PUTS PERSONS OF ONE SEX AT A PARTICULAR DISADVANTAGE
- IS THERE A LEGITIMATE AIM FOR THE PCP?
- IF SO IS THE AIMS OF ACHIEVING THAT AIM APPROPRIATE AND NECESSARY



14

BILKA-KAUFHAUS-V-WEBER VON HARTZ

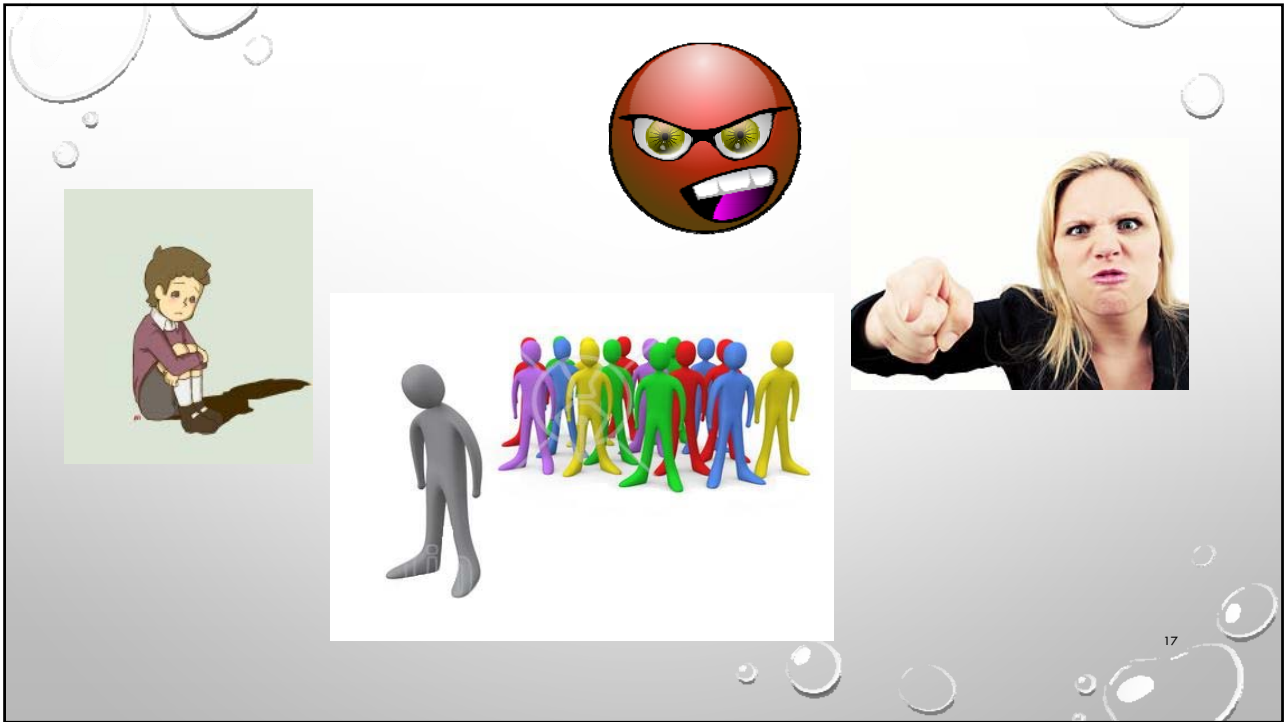
TO JUSTIFY AN AIM WHICH HAS A DISCRIMINATORY EFFECT AN EMPLOYER MUST SHOW THAT THE MEANS CHOSEN FOR ACHIEVING THAT AIM

- CORRESPOND TO A REAL NEED ON THE PART OF THE EMPLOYER
- ARE APPROPRIATE WITH A VIEW TO ACHIEVING THAT AIM
- ARE NECESSARY TO THAT END

- IS THERE NO LESS DISCRIMINATORY WAY OF ACHIEVING THE AIM?

HARASSMENT

- CONDUCT - PURPOSE OR EFFECT – RELATES TO (NOT ON GROUND OF)
- VIOLATING DIGNITY
- INTIMIDATING
- HOSTILE
- DEGRADING
- HUMILIATION
- OFFENSIVE



17

HARASSMENT OF A SEXUAL NATURE

- DISTINGUISH FROMRELATED TO SEX
- PHYSICAL TOUCHING
- SEXUAL COMMENTS
- SEXUAL INNUENDO
- REJECTION OF SEXUAL ADVANCE – FOLLOWED BY LESS FAVOURABLE TREATMENT

18

2016 RESEARCH IN THE UK SHOWS

- 52% OF WOMEN SAID SEXUAL HARASSMENT WAS A PROBLEM AT WORK
- 30% EXPERIENCED UNWELCOME JOKES
- 25% EXPERIENCED UNWANTED TOUCHING
- 9 OF OUT 10 CASES THE PERPETRATOR WAS MALE
- 17% OF WOMEN REPORTED THE PROBLEM WITH THEIR LINE MANAGER
- 79% OF WOMEN SAID THEY DID NOT REPORT THIS TO THEIR EMPLOYER
- DIFFICULTIES OF REPORTING THIS TO A COURT



- 2017
- SOCIAL MEDIA
- WOMEN AND MEN SHARING THEIR STORIES OF SEXUAL HARASSMENT
- RAISED PROFILE OF SCALE OF SEXUAL HARASSMENT
- IMPACT ON CASES BEING BROUGHT TO COURT?

WORKSHOP 14.15

- FACTUAL SCENARIOS
- DISCUSS IN SMALL GROUPS
- FEEDBACK
- TYPES OF DIRECT DISCRIMINATION
- COMPARATORS
- WHAT IS INDIRECT DISCRIMINATION
- HARASSMENT
- SEXUAL HARASSMENT