

## **EU GENDER EQUALITY LAW DEFINITIONS OF KEY CONCEPTS**

PAUL EPSTEIN QC  
CLOISTERS

ERA, 19 MARCH 2018

### *Direct discrimination*

2006/54/EC, art.2

“where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation”



Direct discrimination

Less favourable treatment/disadvantage

On grounds of sex

Comparator (including pregnancy/maternity)

Causation

Reason/motive/inherently discriminatory criterion/stereotyping

Person

Is a victim necessary?

No justification – except genuine occupational requirement



Indirect discrimination

2006/54/EC, art.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”



Indirect discrimination

Provision, criterion or practice (“PCP”)

Apparently neutral

Selection of pool

Particular disadvantage

Legitimate aim (cost/cost plus)

Appropriate and necessary means

*Enderby* indirect discrimination (equal pay)



Direct/indirect discrimination – other issues

Mutual exclusivity direct/indirect discrimination

Why does the direct/indirect classification matter?

Distinguishing direct/indirect discrimination– CHEZ RB C-83/14

Intersectional discrimination



Harassment

2006/54/EC, art.2

“where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment”



Harassment

Unwanted conduct  
Related to sex of a person  
Gender reassignment  
Violates dignity  
Intimidating etc environment  
Purpose or effect  
No comparator  
No justification  
Perception of victim



*Sexual harassment*

2006/54/EC, art.2

“where 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”



*Sexual harassment*

Of a sexual nature