

MIND THE GAP: IF YOU ARE NOT ON THE LIST YOU ARE NOT GETTING IN!

Gillian Crew and Karolina Zielinska

Disclaimer

This seminar is aimed at providing an oversight and should not be considered as an alternative to fully informed legal advice.

IF YOU ARE NOT ON THE LIST, YOU ARE NOT GETTING IN



Protected Characteristics

Age;

Disability;

Gender reassignment;

Marriage and civil partnership;

Pregnancy and maternity;

Race;

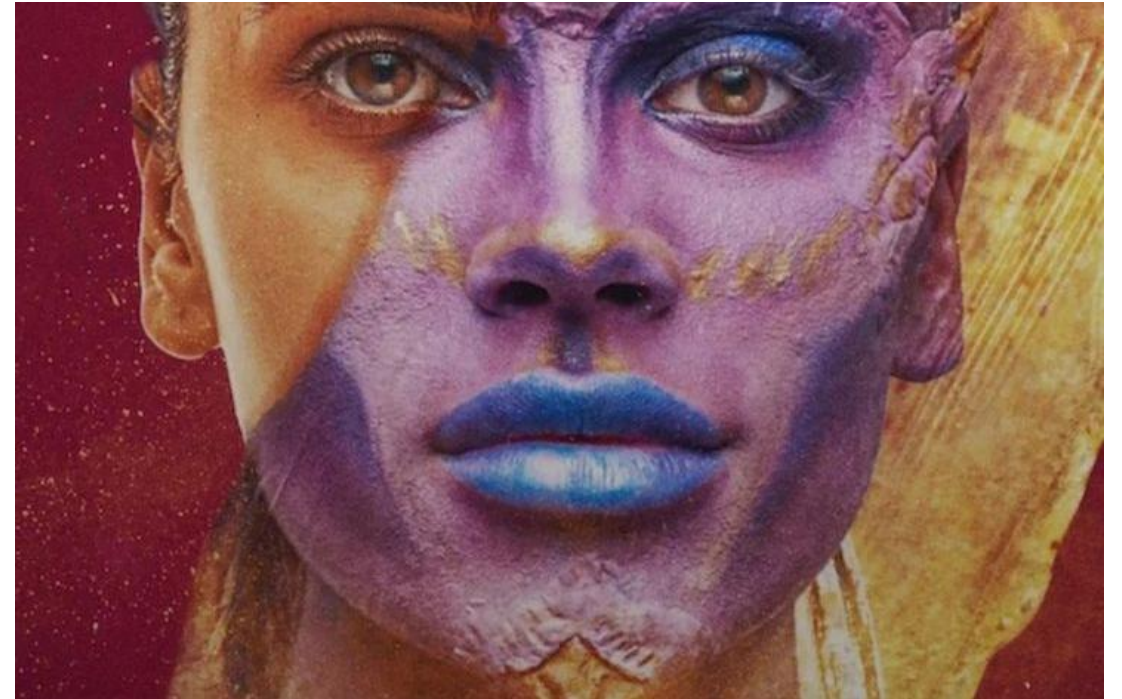
Religion or belief;

Sex;

Sexual orientation.

Does Section 4 of the EQA need a glow up?

- Not changed since 2010
- No combined discrimination
- No hierarchy of PCs
- Significant societal changes in the past 14 years



MIND THE GAP



Obesity

- Reducing life expectancy
- Between 1993 to 2022, obesity has doubled - 29% in England
- Fat shaming
- Weight discrimination?
- Too high a price? Duty to make adjustments



Is obesity a disability?

- [Walker v Sita Information Networking Computing Limited](#): obesity did not render a person disabled of itself, it may make it more likely that someone is disabled.
- [Kaltoft v Municipality of Billund](#): where the obesity of the worker hindered the worker from full and effective participation in his or her professional life, and the limitation was a long term one, the obesity was capable of falling within the concept of 'disability' within the meaning of the Employment Equality Directive (Council Directive 2000/78/EC).
- [Galvani v Walters \(T/A the Crown Inn\)](#) – Comment about not getting evening shift as too fat - argument not supported by the fact of the overweight members of staff of both sexes working the evening shift.

Menopause

- Potential peri menopause symptoms: low mood, anxiety, depression, fatigue, poor concentration, heavy periods, anaemia, palpitations, difficulty sleeping hot flushes, sweating, muscle/joint pain, Increased risk of osteoporosis and vulnerability to heart attacks and strokes.
- The most commonly reported symptoms are difficulty sleeping, concentration/memory issues, hot flushes/night sweats and anxiety.
- BUPA research found that approximately 900,000 women have given up their jobs because of menopausal symptoms .
- HOC recommended adding menopause to the list of protected characteristics



But is it necessary?

- Pro: simplify claims – not have to shoe horn claim onto another protected characteristic
- Reduce stigma of claims.
- Cons: Unnecessary - and covered by other protected characteristics: Age, sex and disability
- Few successful cases.

EAT Cases

Successful: menopause not a disability BUT symptoms may meet the statutory definition: Rooney v Leceister City Council [2022] IRLR 17 EAT held that an employment tribunal gave insufficient reasons and erred in striking out an employee's claim that her menopausal symptoms amounted to a disability.

Unsuccessful: Gallacher v Abellio Scotrail UKEATS/0027/19 SS – February 2020.
Unsuccessful claim. G brought claims of unfair dismissal, disability discrimination (s 15 and reasonable adjustments), indirect sex and age discrimination. Interesting case as one of the rare cases where dismissal found to be in band of reasonable responses despite no procedure. In terms of menopause, although it was accepted as a disability, tribunal found the employer no actual or constructive knowledge on.

String of Tribunal Cases – Suggests No Need

- Merchant v BT Plc [2012]
- Davies v Scottish Courts and Tribunal Services [2018] S/4104575/2017
- A v Bonmarche Ltd [2019] Case No: 4107766/2019 6th December 2019
- Donnachie v Telent Technology Services Limited [2020] 1300005/2020
- Kownacka v Textbook Teachers Limited Case Number: 2602697/2018 March 2021
- *McCabe v Selazar Ltd ET/2200501/2021*
- *Thomas v Bibimoney Global Ltd ET/2204661/2022,*

Class

- S1 Equality Act 2010 – Public sector duty regarding socio-economic inequalities
- “a group of people within society who have the same economic and social position”



Caste

- S9(1)(c) EA 2010 – “ethnic or national origins”
- EAT in *Chandhok v Tirkey* [2015] ICR 527



Care Leaver

- s.3 Children and Social Work Act 2017
- s.149 Equality Act 2010 – Public Sector Equality Duty



Questions