

SUMMARY

## **2016/8 A limited company that was a member of an LLP was allowed to bring a claim alleging direct discrimination by the LLP (UK)**

*&lt;p&gt;Mr Abrams was a member of a limited liability partnership (LLP) and was due to retire. For tax reasons, shortly before retirement Mr Abrams decided to set up a limited company to take his place as a member of the LLP. This was accepted by the LLP. Mr Abrams's employment by the LLP was stopped and he no longer had a continuing contractual relationship with it. The limited company, as a member of the LLP, was entitled to receive the profit share that Mr Abrams would have received had he continued as a member. It was also agreed that this limited company would supply the services of an appropriate fee-earner to the LLP (which was, in practice, Mr Abrams).&lt;/p&gt;When Mr Abrams reached retirement age, the LLP tried to terminate his services on the basis that he had reached retirement age and the LLP objected to Mr Abrams's limited company continuing to be a member of the LLP.&lt;/p&gt;Mr Abrams and his company brought a claim of age discrimination against the LLP at the Employment Tribunal (ET) and the ET had to decide if a limited company could bring such a claim, which was effectively that it had suffered detrimental treatment because of a protected characteristic of someone with whom it was associated. The ET decided it could and the respondent appealed to the Employment Appeal Tribunal (EAT).&lt;/p&gt;*

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Mr Abrams was a member of a limited liability partnership (LLP) and was due to retire. For tax reasons, shortly before retirement Mr Abrams decided to set up a limited company to take his place as a member of the LLP. This was accepted by the LLP. Mr Abrams's employment by the LLP was stopped and he no longer had a continuing contractual relationship with it. The limited company, as a member of the LLP, was entitled to receive the profit share that Mr Abrams would have received had he continued as a member. It was also agreed that this limited company would supply the services of an appropriate fee-earner to the LLP (which was, in practice, Mr Abrams). When Mr Abrams reached retirement age, the LLP tried to terminate his services on the basis that he had reached retirement age and the LLP objected to Mr Abrams's limited company continuing to be a member of the LLP. Mr Abrams and his company brought a claim of age discrimination against the LLP at the Employment Tribunal (ET) and the ET had to decide if a limited company could bring such a claim, which was effectively that it had suffered detrimental treatment because of a protected characteristic of someone with whom it was associated. The ET decided it could and the respondent appealed to the Employment Appeal Tribunal (EAT).

## **Background law**

By section 4 of the Limited Liability Partnership Act 2000, a corporate body may be a member of an LLP. Section 45(2) of the Equality Act 2010, specifies as follows:

“(2) An LLP (A) must not discriminate against a member (B) - (a) as to the terms on which B is a member; ... (c) by expelling B; (d) by subjecting B to any other detriment.”

## **Facts**

Mr Garry Abrams was a member of and fee earner for EAD Solicitors LLP (EAD), a limited liability partnership. On 30 November 2011, Mr Abrams decided to step down as a member and made an arrangement with EAD to accept Garry Abrams Limited (GAL), which he had created shortly before stepping down, to become a member in his place. GAL is a limited company that was established by Mr Abrams on the advice of his accountants. It allowed him to manage the payment of dividends from the limited company in the most tax effective way and enabled him to set up the gradual payment of retained sums over a long period of time, even after he was to retire. GAL was admitted as a member of EAD on the basis that it would provide a solicitor to participate in management decisions and to generate fee income. Whilst it was envisaged by all parties to the agreement that Mr Abrams would continue to be the solicitor provided, this was not contractually stipulated. GAL could supply any suitably

qualified and experienced solicitor to fulfil this role. During 2013 EAD made it known to Mr Abrams that it expected him to cease working at the end of the financial year in which he turned 62, that being 2014. At the end of the 2014 LLP Year, EAD stopped paying GAL its profit share

It is not known whether GAL continued to provide EAD with Abrams' services (or offered to do so).

### **ET decision**

The ET held that the limited company was entitled to bring a claim that it had been subjected to discrimination. EAD appealed the ET decision.

### **EAT decision**

On appeal, the main submission by EAD was that discrimination must be an act against a natural person (because only a natural person could have protected characteristics, such as age, race or gender). As a company cannot have the characteristics protected under the Equality Act 2010, it was not possible to discriminate against it. Mr Justice Langstaff considered the cases of *Showboat – v – Owens* [1984] ICR 65, *Weathersfield – v – Sargent* [1995] ICR 425 and *EBR Attridge Law LLP – v – Coleman* [2010] ICR 242. These were all cases where claimants had succeeded despite not personally having the relevant protected characteristic but rather because they were associated with someone else who had them. Mr Justice Langstaff also rejected the appellant's submissions that because section 27(4) of the Equality Act 2010, which relates to victimisation, specifically excluded victimisation claims from persons who are not individuals, that must apply to other types of discrimination (such as direct and indirect discrimination) as well. He considered that section 27(4) conferred a specific exclusion which would not have been necessary if the draughtsman had not thought that the meaning of "person" was capable of including a company throughout the rest of the Equality Act 2010. In conclusion, Mr Justice Langstaff listed five specific examples where companies could be discriminated against and where if those parties discriminating could not be liable, it would be "plainly contrary to public policy". These examples were:

- A company being shunned commercially because it is seen to employ a Jewish or ethnic workforce;
- A company that loses a contract or suffers detriment because of pursuing an avowedly Roman Catholic ethic;

- One that suffered treatment because of its financial support for the Conservative Party, or say for Islamic education;
- A company not favoured because it offered employment opportunities to those who had specific disabilities;
- A company that suffered detriment because of an openly gay chief executive.

### **Commentary**

Prior to this decision it was accepted that the Equality Act 2010 should only apply to natural persons, however companies and other legal persons can now pursue claims for discrimination in circumstances where they suffer detriment because of a protected characteristic. The Equality Act 2010 makes it unlawful to discriminate in the supply of goods and services. The decision in this case could mean that it would, for example, be unlawful to refuse to purchase from or supply goods and services to a company because of a protected characteristic. The protected characteristics covered by the Equality Act are extremely wide ranging and include age, disability, sex, race, religion or belief and sexual orientation. Therefore, this case law development may have potentially far-reaching applications within the commercial context. Employers should therefore take care not to discriminate because of a protected characteristic when selecting or determining arrangements with their contractors. Businesses who supply goods or services, or dispose of property will need to take measures to guard against discrimination in doing so. They will need to ensure that decisions taken in relation to other companies with which they do business (such as service providers, customers and/or potential customers) are based on legitimate commercial reasons, and not influenced by the protected characteristic(s) of someone with whom a company is associated. This decision also raises further issues around whether a company's right to protection against discrimination would extend to indirect discrimination and how any award of injury to feelings could or would be made to a company.

Subject: associative age discrimination

Parties: EAD Solicitors LLP – v – Abrams

Court: Employment Appeal Tribunal

Date: 5 June 2015

Case number: UKEAT/0054/15/DM

Publication:

[http://www.bailii.org/uk/cases/UKCAT/2015/0054\\_15\\_0506.html](http://www.bailii.org/uk/cases/UKCAT/2015/0054_15_0506.html)

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**Creator:** Employment Appeal Tribunal

**Verdict at:** 2015-06-05

**Case number:** UKCAT/0054/15/DM