

# The risks in discrimination awards

A former policewoman won a settlement worth £1 million from the Metropolitan Police for racial and sexual discrimination in one of several recipients of record-breaking awards in cases of sex, race and disability discrimination in the past two years.

Sarah Locker, 38, reached an agreement with Scotland Yard last week on the eve of a High Court case in which the Met would have been accused of discriminating unfairly against a female officer of Turkish extraction. The award is one of the highest paid out by the Yard.

But while Mrs Locker won her action, the vast majority fail. Research by the Department for Education and Employment found that only 20 per cent of employment cases brought under the Disability Discrimination Act (DDA) (Part II) succeeded at hearing.

One reason for the poor success rate could be that many cases have not been prepared in sufficient detail, and because clear guidelines were not available on certain issues. Many fail at the first stage simply because they do not meet the DDA criteria. For example, the Act applies only to firms employing more than 15 people, effectively excluding about 92 per cent of UK employers. In this regard alone, more than 600,000 disabled people are unprotected by the Act. Also, what constitutes a "reasonable adjustment" in the workplace and the meaning of disability within the terms of the Act are still not clear in all cases. Therefore, there is an element of risk as cases are decided on an individual basis while case law is being developed.

**The vast majority of discrimination cases fail despite recent huge awards. Keith Carter explains why**

A significant factor linked to the outcome of discrimination cases at tribunal is whether the parties have legal representation. The research found that applicants who are legally represented are more likely to win their cases. However, only 34 per cent of DDA Part II applicants are legally represented and 59 per cent of respondents.

Actions brought under the DDA are still in their infancy but as awareness of the legislation increases, the number of disability discrimination cases will rise. Given that the evaluation, preparation and presentation of tribunal cases is becoming more complex and stricter timescales are being imposed, legal representation also seems set to increase.

One reason for the increase in awards is that lawyers are using a similar approach to personal injury cases. Until recently, employment experts were not often used in discrimination cases. However, this is changing, as shown by the following examples of cases where an employment expert was used to assess the damage to career and loss of earnings. Race discrimination: Samuel Yeboah v London Borough of Hackney, £380,000; sex discrimination: Esther McLaughlin v London Borough of Southwark,

£222,754; Tania Clayton v Hereford & Worcester County Council, £200,000; Belinda Coote v Granada, £195,000.

Esther McLaughlin was an assistant director with the London Borough of Southwark. A tribunal awarded her compensation of £222,754 (plus £11,508 in interest), made up as follows: £70,203 for past loss, £93,738 for future loss of earnings, £43,813 for loss of pension rights, £2,500 for investment advice and £12,500 for injury to feelings.

When quantifying discrimination, it is important to measure a person's degree of handicap on the labour market. Labour Force Survey figures show that only 46 per cent of disabled people are in employment, compared with 80 per cent of non-disabled. Estimates of the age at which discrimination in recruitment begins range from 26 to 50. "Older workers" (usually defined as 50-plus) are less likely to be unemployed but once they are, they face more difficulties in finding work.

The loss of contacts typically afforded by employment can place a person at a further disadvantage and result in a longer job search. Research shows that about a third find new jobs through someone who already works for the employer.

Workers re-entering employment after involuntary job loss typically earn less than in their previous job. On average a worker will earn 9 per cent less than in his or her last job. The longer a person is unemployed the higher the loss. Displaced women experience about twice the losses of men.

Assessing the probability of a person being able to return to work and at what level is complex. Many factors

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**Sarah Locker, a former policewoman, won her action. However, the vast majority fail**

ly enter into employment solely for money: a job is status, reputation, a way of defining one's self-worth and worth in the community."

For those from whom this is taken away, the loss can be considerable, both psychologically and financially. The use of a legal team and appropriate experts perhaps can ensure that this loss is adequately compensated.

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such as age, qualifications, experience and location are at play and each case is different. However, there can be cumulative discrimination in recruitment/employment, so that while no single reason can be shown to prevent someone from obtaining a job a number of discouraging factors can combine to reduce their prospects.

Loss of employment cannot be measured only in terms of lost earnings. As Judge Braussard in the case of Foley v Interactive Data (1988 Cal Ref 211) noted: "A man or woman does not normal-