

It's hard to remember the cultural landscape back in the early 1970s when the first few discrimination cases were brought against employers. Sexual and racial equality were political hot potatoes, despite the proliferation of stereotypes in the media. But against this backdrop, things were starting to change – in the employment arena at least.

One of the first Sex Discrimination Act cases, in 1976, involved Jeanette McLean, who had worked for the Paris Travel Service, a travel agent.

She met her husband, John, an assistant manager, at work, and they had somehow managed to keep their romance quiet until just before their wedding in January 1976, when they decided that they should probably come clean.

After the couple told their managers that they were to marry, they were asked to decide who stayed and who left. It wasn't company policy to employ married couples. Neither wanted to leave, so the company sent a letter advising Mrs McLean that they were terminating her employment as of the day before the wedding.

Mrs McLean successfully claimed unfair dismissal. It was held that it was unfair

to dismiss Mrs McLean because of her marriage to an assistant manager – even if it was contrary to company policy to employ a married couple who worked with each other when one was a manager, "and might on occasion have to exercise managerial business in regard to his spouse".

Mrs McLean was awarded the princely sum of £317 to compensate for her hurt feelings!

Ten years later, a woman by the name of Carole Webb was employed elsewhere to cover maternity leave in 1987 – but within weeks she was also pregnant.

She was sacked. The Court of Appeal decided that it was wrong to sack her purely on the grounds that she could not be available for the whole of the period she had been employed to cover – and said that pregnancy was a unique condition and dismissal because of it would be on the grounds of her sex and contrary to the Sex Discrimination Act.

Stephen Levinson, member of the Employment Lawyers Association, underlined how far sex discrimination law has come since those early days. "There were no actual pregnancy discrimination laws until *Webb* or *EMO Air Cargo* in 1995. Until then, there had

been many cases that had tried to force claimants into Sex Discrimination Act claims, but it was really awkward just because there were no comparators.

"Changing the law as a result of *Webb* brought pregnancy discrimination into sex discrimination law and stopped a lot of the problems."

In 1975, when the legislation on equal pay came into force, a Department of Employment survey showed that only 25.33% of employers believed that women should be paid as much as men in senior positions. There had been progress in women actually achieving the top positions by then – the first woman judge at the Old Bailey was Rose Heilbron QC in 1971, and in 1973 Susan Shaw was the first woman on the stock exchange.

In 1978, however, Charles Robertson, Chairman of Trago Mills (Falmouth) Ltd, and a self-confessed "male chauvinist pig", advertised for seven different positions across his business empire, and managed to offend the Equal Opportunities Commission with all of them.

His transgressions included wording his adverts in a way designed to put women off: "A good job opportunity for a good

Bloke (or Blokess)  
... a body (NOT beautiful) ...". His most serious transgressions, however, concerned equal pay. One advert stated: "Gentlemen over 18 years old £70 for a five-day week, ladies over 18 years old £55 for a five-day week."

...which would be enough to make most commentators wince in these enlightened times. Possibly, the addition in one of the job ads that referred to "satisfying

The workplace of 30 years ago is barely recognisable to the employers and employees of today's enlightened culture. Sarah Clark goes back in time to examine the very first discrimination cases, what happened to those involved, and the disparity that exists between what was appropriate then ... and now.

## What ever happened to ...



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fool legislators" didn't help matters with the EOC. All adverts were deemed to be unlawful.

The Robertson family is still vocal about legislation. In July 1998 the ASA upheld complaints against newspaper adverts for Trago Mills as they were "racist, offensive and could incite violence". Mike Robertson has also described homosexuals as "poofters" and said the young should be protected from "this foul minority".

Current Chairman Bruce Robertson, a member of and donor to UKIP, was displaying a banner with, "B'l'cks Brussels" emblazoned across it as recently as 2007, and using job application forms that featured the EU flag with a line through it saying "Beware of the foreign invasion."

Workplace Law Magazine approached Andrew Nunn, Trago Mills' Business Director for a comment, but he was too busy to speak to us.

The other big news in the '70s and '80s was racial discrimination. Industrial Tribunals heard 298 cases of alleged racial discrimination in employment in 1976, when the amended Race Relations Act was introduced and the Commission

for Racial Equality was established, although only 20 were successful.

One case in 1982 involved Ms James, a young black woman with qualifications in shorthand and typing. She saw an advert for a shorthand typist within a solicitors firm, was interviewed, and was unsuccessful.

Some months later she saw another advert for the same legal firm and again got through to interview. She was told at interview that there was no point in interviewing her again and the interview became hostile. The job went to a white girl with a slower shorthand speed, who was told by the partner who interviewed her that he "could not understand why an English employer would want to take on a coloured girl when they could take on an English girl."

Ms James' complaint to the ET that she had been discriminated against on the grounds of her race succeeded.

Another notable case was the example of a Jewish man, Mr Siede — who was reprimanded by his employer, Gillette Industries, for leaving work early following some anti-Semitic comments. He was then accused of trouble making on another

shift — and took Gillette to tribunal on the grounds of unfavourable treatment because of his Jewish faith. Although the case was unsuccessful, it did establish Judaism as a race and not simply a faith.

Returning to recent times, one piece of legislation that hasn't been widely tested yet is the Employment Equality (Religion or Belief) Regulations 2003. The case that did make the news involved a young Muslim teaching assistant, Aishah Azmi, who argued that she should be allowed to wear her burkha, a full veil, while teaching in class. She lost the claim — although did get £1,100 to compensate for her hurt feelings. The case caused a furore about human rights in the press — but according to Adrian Martin, Employment Partner at Burges Salmon, the Regulations haven't really been tested much to date: "There have been one or two tribunal cases but it's a difficult area and as yet largely untested."

"Where it will get difficult is when religious beliefs clash with other legislation — for example if someone cannot condone homosexuality because of their religion. Another difficult area will be deciding what is a religion — and what is a belief?"

...which takes us right back to 1980 and Mr Siedh!

Homosexuals, lesbians and bisexuals who were discriminated against and harassed at work because of their sexuality had no legal protection before the change in employment legislation. In 1998, a gay man, Paul Smith, took his employer Gardner Merchant to tribunal over claims that he'd been harassed by a female employee who'd told him that he "probably had AIDS" and that "all gay people should



be put on an island" — then dismissed from his job on the grounds of his sexuality. John Stacey was Group HR Director for Gardner Merchant from 1995 until 2000. He takes up the story:

"Paul Smith was a barman working in Stoll Moss Theatres and during one interval he caused a fracas in front of theatregoers and management. He was suspended and dismissed. He never mentioned sexual orientation at his appeal meeting but then brought a tribunal claim supported by Stonewall. Sexual orientation was not covered by the SDA at the time.

"For the company this was a classic dilemma. The facts surrounding the dismissal had not been tested and we found ourselves heading to EAT and beyond on a point of law — a test case. Smith offered to settle for £20,000 but I refused. Gardner Merchant had an equal opportunities policy and employed a number of gay staff. Many of them regarded Smith as an unpopular 'rogue' who deserved to go.

"If we had settled, it could have been proof we were anti-gay. We considered bypassing the Court of Appeal and going straight to Europe, and retained Cherie Blair, but the day before Court of Appeal the South West Trains decision came through and the Court of Appeal threw out the legal argument.

"We went back to tribunal but Smith didn't turn up so we won. From my point of view the company became caught up in a legal test case it did not want to

be involved in — but had to fight. The legal cost was high and if we had gone to Europe would have been six figures. The irritating thing was that the facts of the case were not put to the test. If they had, the tribunal would have ruled it out."

Cornwall County Council found itself in front of the European Court of Justice over the case of 'P', a male to female transsexual who had taken time off in 1992 to embark on a 'life test', a one-year period during which a patient planning to undergo an operation for gender reassignment lives in the mode of the proposed gender. She had initial surgery in summer 1992 and was given notice of dismissal in September.

P claimed discrimination on the grounds of gender — and the result of the successful proceedings was that transsexuals were legally protected from dismissal on the grounds of gender reassignment by European law. The Sex Discrimination (Gender Reassignment) Regulations 1999 followed.

David Bailey, Head of Personnel at Cornwall County Council was working for the council at the time. He told *Workplace Law Magazine*: "P actually worked for Cornwall College. They were responsible for their own HR, but were still legally part of the council. Had they come to us for advice on the issue, it would have been clear — that there has to be a genuine reason for redundancy, and without question we would have not allowed an employee to be made redundant on spurious grounds such as gender reassignment."

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"Because the court didn't believe that the college had dismissed P for legitimate reasons, they then had to consider the gender reassignment as the real reason."

Discrimination legislation continues to be developed, amended, interpreted and introduced. The workplace has changed so significantly in the last 30 years that we gasp at the types of recruitment ads that were run in the 70s. Such care has to be taken nowadays to ensure we don't discriminate against anyone that it's difficult to imagine the laws could get much tighter. But who knows, in another 30 years' time perhaps society will be gasping at the employment style of the naughties!

#### Sources of information

- Equal and Human Rights Commission [www.equalityhumanrights.com](http://www.equalityhumanrights.com)
- White paper: Age Discrimination: are you complying with the regulations? [www.workplacelaw.net/news/display/id/11882](http://www.workplacelaw.net/news/display/id/11882)
- White paper: Gender Equality in the Workplace: still a man's world? [www.workplacelaw.net/news/display/id/12537](http://www.workplacelaw.net/news/display/id/12537)
- Workplace Law Network Discrimination factsheet [www.workplacelaw.net/news/display/id/11770](http://www.workplacelaw.net/news/display/id/11770)

#### Existing discrimination legislation

- Sex Discrimination Act 1975.
- Race Relations Act 1976.
- Disability Discrimination Act 1995.
- Disability Discrimination Act 2005.
- Race Relations Act 1976 (Amendment) Regulations 2003.
- Disability Discrimination Act 1995 (Amendment) Regulations 2003.
- Employment Equality (Sexual Orientation) Regulations 2003.
- Employment Equality (Religion or Belief) Regulations 2003.
- Employment Equality (Sex Discrimination) Regulations 2005.
- Employment Equality (Age) Regulations 2006.