



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

**Country:** United Kingdom  
**Title:** Narrowing Indirect discrimination  
**Date:** 28 July 2015  
**Expert:** Aileen McColgan  
**Context**  
**Issue at stake:** Establishing indirect discrimination  
**Ground of discrimination:** Race/ethnic origin, age  
**Source:** Decision of the Court of Appeal, England & Wales  
**Field:** Employment)  
**Applicable law:** Equality Act 2010, s19

### Content

**Case development:** The case was brought by civil servants who had failed a generic "Core Skills Assessment" ("CSA") test which all civil servants were required to pass in order to become eligible for promotion. The CSA bore no correlation to the post for which a candidate intended to apply (and in respect of which a candidate who had passed the CSA would have to pass a second, job-specific test). The evidence was that the success rate of Black and Minority Ethnic (BME) candidates was 40.3% that of white candidates and that of candidates aged 35 or over 37.4% that of younger candidates.

**Decision of the Court:** The Court of Appeal ruled that it was insufficient for the claimants to establish a statistical disparity in success rates in the CSA in order to bring a *prima facie* claim of age and race discrimination. Rather, they would have to point to the reason *why* the CSA had disadvantaged them as BME and older candidates.

**Key points of analysis:** The Court reached this conclusion because, it said, it was impossible to prove that a provision, criteria or practice (PCP) put a group at a particular disadvantage, and also put a claimant at *that* disadvantage (this being the language of s19 Equality Act 2010) without establishing the reason *why* the PCP was said to put the group (and the individual) at the disadvantage. However logical this might be, it is likely to impose significant hurdles for indirect discrimination claimants.

**Internet link source:** <http://www.bailii.org/ew/cases/EWCA/Civ/2015/609.html> Last accessed on 24/07/2015.