



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

### NEWS REPORT

<b>Country:</b>	United Kingdom
<b>Title:</b>	Indirect discrimination; <i>Essop and others v Home Office (UK Border Agency)</i>
<b>Date:</b>	14 April 2017
<b>Expert:</b>	Lucy Vickers
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Establishing indirect discrimination
<b>Ground of discrimination:</b>	Race/ethnic origin, age
<b>Source:</b>	National court decision, Supreme Court, <i>Essop and others v Home Office (UK Border Agency)</i> [2017] UKSC 27
<b>Field:</b>	Employment
<b>Applicable law:</b>	Equality Act 2010 s 19

### Content

**Case:** 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 was 37.4% that of younger candidates. The Court of Appeal had 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. The case was appealed to the Supreme Court.

**Decision of the Court:** The Supreme Court overruled the Court of Appeal.<sup>1</sup> It reinstated the position that it is not necessary to establish the reason for the particular disadvantage caused to the claimant. It is sufficient to show that a provision, criterion or practice causes the disadvantage suffered by the group and the individual claimant. It remained open to the respondent to justify the requirement to pass the skills assessment. The claims were remitted to be determined by the Employment Tribunal in accordance with the judgment.

**Key points of analysis:** The case confirms that in indirect discrimination cases, the claimant only needs to show that a provision criterion or practice causes disadvantage to the protected group. This can be shown by statistical evidence as in this case. The additional requirement, imposed by the Court of Appeal (that the claimant had to show the reason why the disadvantage was caused) imposed significant additional hurdles for claimants to overcome in bringing indirect discrimination claims. The re-statement by the Supreme Court that indirect discrimination does not require the claimant to show the

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<sup>1</sup> [2015] EWCA Civ 609 22 June 2015 <http://www.bailii.org/ew/cases/EWCA/Civ/2015/609.html> accessed 5 April 2017.

reason why disadvantage is caused is therefore welcome.

**Internet link source:** <http://www.bailii.org/uk/cases/UKSC/2017/27.html> accessed 5 April 2017.