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FLASH REPORT

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| Country: | United Kingdom |
| Title: | Discrimination on grounds of disability |
| Date: | 8 July 2019 |
| Expert: | Lucy Vickers |
| <u>Context</u> | |
| Issue at stake: | Perceived disability |
| Grounds of discrimination: | Disability |
| Field of application: | Employment |
| Source: | National court decision, <i>The Chief Constable of Norfolk v Coffey</i> [2019] EWCA Civ 1061 |
| Applicable law: | Equality Act 2010 |

Content

Case: Lisa Coffey, a police constable, applied for a transfer to work for a different police force. At the time of her earlier employment, she underwent a medical examination which indicated mild sensorineural hearing loss with tinnitus. However, the level of hearing loss did not affect her ability to do the job and she was employed having passed a hearing functionality test. Her application for transfer to a new police force was rejected, despite medical evidence that her hearing had not deteriorated and that she would pass a practical functionality test. The reason for the rejection was that, although she was not disabled at the time, her recruitment would risk increasing the pool of police officers who might be restricted in future in terms of the duties they could cover. In effect, this was a perception about a risk of future disability.

The claimant accepted on the facts that her condition did not amount to a disability due to the low level of the impairment, but claimed that the rejection of her application amounted to direct perception discrimination (by assumption), in that the discrimination was because of the employer's perception about her disability. The first level tribunal ruled¹ that she had been subject to direct perception discrimination, a decision that was upheld by the Employment Appeal Tribunal.² The case was appealed to the Court of Appeal.

Decision of the court: The Court of Appeal upheld the finding of perception discrimination. The Court of Appeal confirmed that direct discrimination included discrimination on the basis of perception. Discrimination could be 'because of' a characteristic, whether the person discriminated against has the characteristic or not. Here the perception was as to the progressive nature of the impairment, with the case confirming that progressive conditions are protected under the Equality Act 2010.

Key points of analysis: The decision that disability discrimination includes discrimination due to a perception about disability, or even about future disability confirms the breadth

¹ Judgment dated 19 January 2016.

² [2017] UKEAT 0260_16_1912 https://www.bailii.org/uk/cases/UKEAT/2017/0260_16_1912.html.

of the protection for disability discrimination. In its judgement, the Court of Appeal confirmed that a perception regarding disability does not have to involve knowledge on the part of the discriminator of the legal definition of disability, just their perception as to facts which constitute the disability. The case also confirmed that activities which are relevant to working life are included within the definition of 'normal day-to-day activities'.

Internet link source: <https://www.bailii.org/ew/cases/EWCA/Civ/2019/1061.html>.