



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4100338/20

Held on 19 June 2020

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Employment Judge N M Hosie

Mr T Groves

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**Claimant
Represented by:
Mr N Fraser –
Solicitor**

William Walker Transport Limited

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**Respondent
Represented by:
Mr S A McCormack –
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the Tribunal has jurisdiction to consider the complaint of indirect discrimination “by association”.

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REASONS

Introduction

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1. The claim in this case comprises complaints of unfair dismissal; disability discrimination; breach of contract (failure to pay notice); for outstanding holiday pay; and for unpaid wages. The respondent admits the dismissal but

E.T. Z4 (WR)

claims that the reason was conduct and that it was fair. Otherwise, the claim is denied in its entirety.

2. The disability discrimination complaint is one of indirect discrimination “by association”. The “protected characteristic” is the alleged disability of the claimant’s partner, Sheila Marr. The respondent’s solicitor has raised various preliminary matters including an assertion that an Employment Tribunal does not have jurisdiction to hear a complaint of this nature.
3. As it is not possible at present to conduct Preliminary Hearings “in person”, due to the effect of the Covid-19 Pandemic, it was agreed that I would consider and determine the issue of the Tribunal’s jurisdiction by way of written submissions.

Claimant’s submissions

4. The submissions by the claimant’s solicitor, which were attached to his e-mail of 6 April 2020, are referred to for their terms.
5. In support of his submissions he referred to the following: -
- Chez Razpredelenie Bulgaria AD v. Komisia Za Zashtita OT Diskriminatsia*** AD C – 83/14; [2015] IRLR 746, ECJ
Coleman v. Attridge Law & Another [2008] ICR 1128, ECJ
Council Directive 2000/78/EC of 27 November 2000 (“the Disability Directive”)
Council Directive 2000/43/EC of 29 June 2000 (“the Race Directive”)
Pfeiffer (Social Policy) [2004] EUECJ C-397/01, para. 112;
Bear Scotland Ltd & Others v. Fulton & Others [2014] UKEAT 0047_13_0411 paragraph 64
Marleasing v. La Comercial Internacional de Alimentacion S A [1992] 1 CMLR305.

6. The claimant's solicitor said this in his submissions, by way of introduction: -

5 “The Equality Act 2010 provides that a person A discriminates against another person B “if because of a [disability], A treats B less favourably than A treats or would treat others.” (Equality Act 2010, s.13(1)). Nothing in the Act requires that the person B have the disability giving rise to less favourable treatment. Hence, it is a breach of the Act for a person A to treat person B less favourably because of person C's disability. This is associative discrimination; person B is discriminated against because of their association with someone with a disability.

10 However, the Act provides that a person A only **indirectly** discriminates against another person B if they apply “to B a provision, criterion or practice which is discriminatory in relation to a [disability] **of B's**” (emphasis added).

15 In other words, the Act, as written, apparently prohibits direct discrimination because of one's association with a disabled third party, but only prohibits indirect discrimination because of one's own disability.”

7. The claimant's solicitor took issue with this for the following reasons: -

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- The Act is the implementation into UK Law of the Disability Directive.
- The Act is also the implementation into UK Law of the Race Directive.
- The Act, on its face, fails to prohibit indirect race discrimination by association.
- 25 • The UK Parliament is presumed to have meant to comply with its obligations to fully implement the Disability Directive into UK law.
- If the Disability Directive does prohibit indirect discrimination by association, then the Act, on its face, fails to implement the Disability Directive.
- 30 • The Race Directive has been held by ECJ (**Chez**) to prohibit indirect discrimination by association.
- The Race Directive and Disability Directive are drafted in essentially the same form; so, what is true for one, should be true for the other.
- Thus, the Disability Directive should also prohibit indirect discrimination by association.
- 35 • Thus, the Act fails to implement the Disability Directive.
- The Equality Act 2010 should be interpreted in such a way as to properly implement the Disability Directive.
- 40 • Thus, the Equality Act 2010 should be read to prohibit indirect disability discrimination by association.

“*Chez* and the Race Directive”

8. The claimant’s solicitor then went on in his submissions to refer to paras 55-60 inclusive, of the Judgment of the ECJ in ***Chez***.

5 **“Race Directive and Disability Directive”**

9. The respondent’s solicitor submitted that the “key reasons” in the ***Chez*** Judgment could be organised under a number of headings: -

10 **“1. It was necessary to interpret the Directive by looking at the general scheme and aim of the Directive and the scope of the Directive cannot be defined restrictively”**.

15 10. He submitted the purpose of the Race and Disability Directives, “*appears to be almost identical save for the subject matter at hand – i.e. racially or ethnic origin vs. disability etc. **Chez** obliges interpretation of the Disability Directive in such a way as to look at its aim and purpose. The aim is clear – to combat discrimination on the grounds of disability as regards employment with a view of putting into effect in the Member States the principle of equal treatment. **Any** discrimination based on disability should be prohibited.*”

20 **“2. Interpretation must be by reference to grounds in Article 1 so that the principle is intended to benefit also persons who, although are not members of the race, but nevertheless suffer disadvantage because of the grounds”**.

25 11. The claimant’s solicitor submitted that, “*if you are to apply paragraph 56 of **Chez**, to the Disability Directive, the same follows. The aim of the Directive cannot be defined restrictively. Equal treatment applies not to a particular category of person but by reference to the grounds in Article 1. For present purposes disability is the equivalent ground in Article 1 of the Disability Directive*”.

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“3. The Directive is clear in the preamble in Article 3(1) that it is designed to benefit all persons”

12. The claimant’s solicitor referred to preamble 16 of the Race Directive and 4
5 of the Disability Directive. He further referred to Articles 3(1) of both Directives and submitted that, *“the intent and application of both Directives is clear: they must apply to all persons”*.

“4. Specific provisions regarding the non-associative nature of Indirect Discrimination”

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13. The claimant’s solicitor made the following submissions under this heading: -
“Article 2(b) of both Directives sets out the definition of Indirect Discrimination, and on their face, as with the Act, both appear not to apply to associative discrimination. The Directives refer to “persons of.....” (Race) and “persons having” (Disability). The point, of course, is that notwithstanding this apparent restriction of Indirect Discrimination in the Race Directive to that which relates to the individual having a particular characteristic, the ECJ found that it nevertheless could be extended to cover persons without that characteristic. The ECJ were not prepared to interpret this crucial provision restrictively (as discussed above).”
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“Interpretation of the Equality Act 2010”

14. The claimant’s solicitor made the following submission under this heading: -
25 *“On the basis on the above analysis and arguments, it can be concluded, as in paragraph 60 of **Chez** that:*

The concept of ‘discrimination on the grounds of [...] disability’, for the purpose of Directive 2000/78 and, in particular, of Articles 1 and 2(1) thereof, must be interpreted as being intended to apply irrespective of whether that [PCP] affects persons who have a certain disability or those, without possessing that disability, suffer, together with the former, and the less favourable treatment or particular disadvantage resulting from that measure.
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If so, then section 19 of the Equality 2010, on the face of it, does not fully and accurately implement the Disability Directive.

An analogous situation recently arose on the question of how the Employment Rights Act 1996 and the Working Time Regulations 1998
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approached the calculation of holiday pay in particular in **Bear Scotland**. Reference is made to the following paragraphs of that decision: -

5 “13. The second issue is whether the rule of conforming interpretation (the “Marleasing principle”) permits an interpretation of Regulation 16 of the Working Time Regulations 1998 and/or Sections 221 -224, and Section 234 of the Employment Rights Act 1996 so as to give effect to the requirement to Article 7. If so, then how should these provisions be interpreted?

10 64. Next, I cannot accept that the interpretation contended for goes against the grain of the legislation. First, the Regulations were specifically made to implement the Working Time Directive. **It can be presumed that the intention of Parliament was to fulfil its obligation to do so fully and accurately.** If, seen through a modern lens, **the words do not achieve that, then to adopt a conforming interpretation is not doing violence to the intention of Parliament but instead respecting it [...]**!”

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“Conclusion”

20 15. Finally, the claimant’s solicitor said this by way of conclusion: -

“The claimant argues that it is the effect of the interpretation of s.19 of the Act which matters, and that interpretation, in order to give effect to the Disability Directive, as seen through the lens of **Chez**, should be such that s.19 applies irrespective of whether a provision, criterion or practice affects persons who have a certain disability or those who, without possessing that disability, suffer with the former, the less favourable treatment or particular disadvantage resulting from that provision, criterion or practice.”

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Respondent’s submissions

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16. The submissions by the respondent’s solicitor which were attached to his e-mail of 7 April 2020 are referred to for their terms. He said this by way of “Introduction and Outline” of his position: -

35 “a) The claimant makes claims of associative indirect disability discrimination against the respondent under section 19(1) of the Equality Act 2010.

b) The claimant claims that the respondent had a policy of making the claimant work away from home involuntarily. He claims that this policy was in place from January 2019 and that it and the disciplinary action which was taken against him (which he contends was as a result of his refusal to comply with the policy) was indirectly discriminatory against him on account of his partner’s disability.

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c) *The claimant does not contend that he is disabled under the terms of section 6 of the Equality Act 2010. It is also understood that the claimant is not making or seeking to continue with a claim in respect of failure to make reasonable adjustments under section 20 of the Equality Act.*

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d) *Under the terms of section 19(1) of the Equality Act 2010, indirect discrimination exists where a person (A) discriminates against another (B) if (A) applies to (B) a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

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e) *It is the respondent's position that a claim for indirect discrimination is only valid where a claimant has personally suffered the disadvantage and personally possesses the protected characteristic that relates to the claim.*

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f) *It is the respondent's position that section 19 is clear and not at odds with the European Framework Directive (European Council Directive 2000/78EC of 27 November 2000) ("the Framework Directive") which establishes a general framework for equal treatment in employment and occupation.*

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g) *The respondent's alternate position is that, even if section 19 is at odds with the Framework Directive it cannot be interpreted to include a claim for associative disability discrimination under the principles in **Marleasing SA v. La Comercial Internacional de Alimentacion SA (C-106/89)** [1990] E.C.R. 1-4135; [1992] 1 C.M.L.R. 305.*

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h) *It is submitted on behalf of the respondent that no claim for associative indirect discrimination exists and that the Employment Tribunal has no jurisdiction to hear any such claims. On that basis the claim for indirect discrimination should be struck out."*

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17. The respondent's solicitor then went on in his submissions to refer to the wording of s.19(1) of the 2010 Act which he submitted was "clear".

18. He compared the terms of s.19(1) with the "specific provision" in s.13(1) which specifically covers associative direct discrimination, "*i.e. where an employer treats an employee less favourably because of the disability of another person*". However, "*section 19 does not follow that wording*". The respondent's solicitor submitted, therefore, that: "*It is clear that this does not allow for a claim of associative indirect discrimination as the person discriminated against must have the relevant protected characteristic.*"

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“The European Directive”

19. The claimant’s solicitor then made reference to Article 2(b) of the Framework Directive which he submitted “*does not on the face of it allow associative claims*”. He submitted that on the basis of the wording in Article (2), “*Indirect discrimination requires that it is the person who has the disability who must suffer the disadvantage and it does not apply to associative discrimination. While it is accepted that this wording is very similar to the wording of the Race Directive which was interpreted in **Chez**. It is the respondent’s contention that **Chez** can be distinguished (see below).*”

“Distinguishing Chez and other case law”

20. The claimant’s solicitor submitted that **Chez**, “*is not authority for the general proposition that the Framework Directive covers associative discrimination.*” He submitted that there were a number of reasons for this: -

“(i) *Chez related to the race directive (EC Directive 2000/43) and more particularly to ethnicity not the Framework Directive.*

“(ii) *Chez related to the provision of goods and services not employment.*

“(ii) *As is clear from paragraph 60 of the Judgment Chez related to a situation where the protected person or group also suffered from the discrimination.....*

At the very least this suggests that any claim associated with discrimination of the type considered in Chez must require the protected person or group also to suffer from that discrimination.”

21. The respondent’s solicitor also referred to the comments of LJ Laws in **Hainsworth v. Ministry of Defence** [2014] 3 C.M.L.R. 43. He submitted that: “*That case related to Article 5 of the Framework Directive and the issue of reasonable adjustments. It is authority for the proposition that there can be no associative discrimination claim in relation to reasonable adjustments either under Article 5 or under section 20 of the Equality Act.*” He referred, in particular, to paragraph 20 of the Judgment: -

“20. Moreover, once it is postulated that the disabled beneficiary of art.5 may be a person other than the employee, the article gives no clue as to who the other person might be. On the face of the article, it would be an entirely open question who such a person might be. The article would be, in my judgment, hopelessly uncertain. The appellant says that a person associated with the employee would qualify, as of course her disabled daughter is associated with her. **But the concept of association is of itself vague and open-ended.** (the respondent’s solicitor’s emphasis)

Mr Mitchell for the EHRC this morning submitted that the disabled person would probably not need to be a member of the employee’s family. That seems to me, if anything, to underline the point.”

22. The respondent’s solicitor also referred to paragraph 38 of the Judgment in **Hainsworth**: -

“38. In the EAT Langstaff J, considered that it had not been contended that the Employment Tribunal below that the Equality Act 2010 should be read down so as to accommodate the appellant’s interpretation of art.5 (see [11]-13) of Langstaff J’s judgment). Of course, if my Lords agree with my confusion as to the substantive meaning of art. 5, no such issue, nor indeed any issue as to the direct effect of the article would arise. But I ought to say that, whether or not Langstaff J’s approach was right, **I entertain considerable doubt that the appellant’s interpretation of art.5, assuming it to be correct, could be read into the Equality Act given the express and specific provisions of s.20(3) and para.5(1) of Sch. 8 to which I have referred.**” (emphasis added)

“Application of the Marleasing principles”

23. The respondent’s solicitor then addressed the contention by the claimant’s solicitor that, notwithstanding its “clear terms”, the 2010 Act required to be interpreted, so as to give effect to the claimant’s EU rights in accordance with the principles enunciated in **Marleasing** and later cases and the analogy which the claimant’s solicitor gave with cases under the Working Time Directive. He referred, in particular, to paragraph 8 of the Judgment in **Marleasing**: -

“8. The obligation to interpret a provision of national law in conformity with a directive arises whenever the provision in question is to any extent open to interpretation. **In those circumstances the national court must, having regard to the usual methods of interpretation in its legal system, give precedence to the method which enables it to construe the national**

5 *provision concerned in a manner consistent with the directive. The obligation to give an interpretation in conformity with a directive is, it is true, restricted by Community law itself of which the directive forms part, and in particular by the principles of legal certainty and non-retro activity which also forms part of the Community law. (emphasis added)*
 10 *In cases involving criminal proceedings, for example, such an interpretation cannot result in criminal liability unless such liability has been introduced by the national legislation implementing the directive. Nor, similarly, can a directive of itself – that is to say in the absence of national implementing legislation – introduce a civil penalty such as nullity, in national law. However, that is not the issue here: this case is concerned with a provision of a directive which excludes certain grounds of nullity.”*

15 24. The respondent’s solicitor submitted that, “even if s.19 of the 2010 Act is at odds with the Framework directive which is not admitted, the **Marleasing** principles do not allow it to be interpreted in a manner which would allow the claimant’s claim of associative disability discrimination to proceed.

20 *As was commented in **Hainsworth** in relation to the attempt to alter s.20, the respondent’s position is that any attempt to read a claim of associative disability discrimination into s.19 would make that section “hopelessly uncertain”.*

25 25. Finally, the respondent’s solicitor said this in conclusion: -
 “The respondent’s position remains that section 19(1) is clear in its terms in that the Tribunal does not have jurisdiction to hear the claimant’s claim of associative disability discrimination.”

Claimant’s response

30 26. The claimant’s solicitor responded to the respondent’s submission by e-mail on 21 April 2020, as follows: -

“The respondent is correct to note at 1.c that the claimant is not seeking to make or continue with a s.20 claim.

35 *With regard to the point raised in 4.b.i by the respondent, the claimant has provided sufficient analysis of the striking similarities between the two directives and the reasons why conclusions reached in respect of one can logically be applied to the other.*

With regard to point 4.b.ii, the respondent does not advance this point, and it is suggested that nothing in particular turns upon it.

5 *With regard to point 4.b.iii, the claimant has two points to make. Firstly, this was a conclusion reached with regard to the specific facts in **Chez**. Secondly that conclusion should be seen in the light of the underlying ratio in **Chez** which is the express extension of protection in preamble 4 and Article 3(1) of the directive, expressed most directly at paragraph 56, to all persons. **Chez** and the directive should not be interpreted restrictively so as to narrow the application of the benefit for all principle.*

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*With regard to the paragraph of **Hainsworth** quoted in paragraph 4.d, the claimant's position is that no such uncertainty is necessary. Reference is made to paragraph 56 of **Coleman**, where in the extension of protection from (admittedly) direct discrimination on the grounds of disability applied to a parent who was the primary carer of a disabled child. The claimant would not advance the argument taken by the EHRC in **Hainsworth** that the disabled person could be unrelated to the claimant. In fact, it is the closeness of the connection between parent and child or husband and wife, or co-habitees,*

15 *that provides for the shared suffering of disadvantage or less favourable treatment referenced by the respondent.*

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*With regard to part 5 of the respondent's submissions, the claimant would only reiterate that paragraph 60 of **Chez** is at odds with the respondent's position, in that a general interpretative approach could be taken. In the event that the claimant's submissions regarding the effect of the directive are accepted, then it is Parliament's intention that s.19 apply to associative indirect discrimination and the interpretation advanced by the claimant does not do "violence" to that intention."*

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Respondent's response

27. The respondent's solicitor advised, by e-mail on 21 April 2020, that he had

35 nothing further to add to his written submissions previously lodged.

Discussion and Decision

Associative discrimination

5 28. Since ***Coleman v. Attridge Law & another*** [2008] ICR 1128, ECJ, a person
 may bring a claim for **direct** discrimination if they are treated less favourably
 because they are associated with a protected characteristic, such as disability
 or race, even if they do not share that characteristic. The facts of ***Coleman***
 10 provide a good example of permissible associative direct discrimination in
 that Ms Coleman was subjected to less favourable treatment because of her
 disabled son, for whom she was the primary carer, and that role directly and
 negatively impacted on her employment relationship.

15 29. At para 3.19, the EHRC Code of Practice on Employment states that this form
 of **direct** discrimination can occur in various ways - *“for example, where the
 worker has a relationship of parent, son or daughter, partner, carer or friend
 of someone with a protected characteristic. The association with the other
 person need not be a permanent one”*.

20 Indirect discrimination

30. S.19 of the Equality Act 2020 (“the 2010 Act”) is in the following terms: -

“19. Indirect discrimination

25 (1) *A person (A) discriminates against another (B) if A applies to B a
 provision, criterion or practice which is discriminatory in relation to a
 relevant protected characteristic of B’s.*

30 (2) *For the purposes of subsection (1), a provision, criterion or practice is
 discriminatory in relation to a relevant protected characteristic of B’s if –*

(a) *A applies, or would apply, it to persons with whom B does not share
 the characteristic,*

35 (b) *It puts, or would put, persons with whom B shares the characteristic at
 a particular disadvantage when compared with persons with whom B
 does not share it,*

- (c) *It puts, or would put, B at that disadvantage, and*
(d) *A cannot show it to be a proportionate means of achieving a legitimate aim.*

5 (3) *The relevant protected characteristics are –*

age;
disability;
gender reassignment;
marriage and civil partnership;
10 *race;*
religion or belief;
sex;
sexual orientation.”

15 31. It is clear from the wording of s.19(2)(b) and (c) that in order to establish **indirect** discrimination the claimant must not only suffer the disadvantage personally, but also personally possess the relevant protected characteristic.

20 32. However, this requirement that a claimant share the protected characteristic is not found in the EU Directives which the 2010 Act implements. For example, Article 2(2)(b) of the EU Race Equality Directive (No.2000/43) provides that, “*indirect discrimination should be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a*
25 *legitimate aim and the means of achieving that aim are appropriate and necessary.”*

30 33. This distinction was thought to be of little consequence until the recent decision by the Grand Chamber of the Court of Justice, in a Bulgarian reference, ***Chez Razpredelenie Bulgaria AD v. Komisia Za Zashtita OT Diskriminatsia*** [2015] IRLR 746, ECJ. The Grand Chamber says that in order for a measure to be capable of falling within the Race Discrimination Directive’s definition of indirect discrimination, “*it is sufficient, that although*
35 *using neutral criteria not based on the protected characteristic it has the effect*

of placing particular persons possessing that characteristic at a disadvantage.”

5 34. **Chez** was a case concerning the supply of goods and services but I was
satisfied it is apposite to the present case. The main focus of this decision is
on “associative discrimination”. The claimant runs a shop in a predominately
Roma district of a Bulgarian town. The electricity company, CRB, put meters
10 in Roma districts considerably higher than in other districts, ostensibly so as
to avoid tampering, making them less visible to consumers. The claimant
brought a complaint that she was unable to check her electricity meter which
meant that she paid more by way of estimated charges and that this
amounted to discrimination. But the claimant is not Roma herself. The issue,
therefore, was whether she could complain about discrimination based on
15 ethnic origin in those circumstances, applying the associative discrimination
principle set out by the Court of Justice in **Coleman**. When the ECJ handed
down its decision it avoided using the words “association” or “associative
discrimination”. However, the ECJ held that it was clear that the concepts of
direct and indirect race discrimination under the Directive extend to persons
20 who, although themselves not a member of a specific race or ethnic group,
nevertheless suffer less favourable treatment or a particular disadvantage on
the ground of that race or ethnic origin. The ECJ held that the principle of
equal treatment applies not to a particular category of person, but by
reference to the grounds of discrimination: “*the principle is intended to benefit*
25 *also persons who, although not themselves a member of the race or ethnic*
group concerned, nevertheless suffer less favourable treatment or a
particular disadvantage on one of these grounds.” Since the words “less
favourable treatment” come from the Directive’s definition of discrimination
and “*particular disadvantage*” from the definition of indirect discrimination, this
30 appears to extend the right to claim associative discrimination into indirect
discrimination.

35. The Advocate General said that in her opinion the principle of discrimination by association is not restricted to cases where there is a close personal link as in **Coleman**, but also covers a case of “*collateral damage*”, as she put it, as was the case in **Chez**. However, unlike the Advocate General, the ECJ
5 sees the associative discrimination in this case as better characterised as direct rather than indirect discrimination but nevertheless does not discount an alternative finding of indirect discrimination. In other words, the ECJ’s decision suggests that the focus should be on establishing whether there is a particular disadvantage experienced by a group possessing a shared race
10 and ethnic origin and if a claimant suffers that particular disadvantage, it matters not whether he or she shares the race or ethnic origin of the group.
36. I did not find the decision in this case at all easy. I was mindful of the “*Marleasing principles*” which the respondent’s solicitor brought to my
15 attention in his submissions.
37. I was also mindful of the clear unequivocal terms of s.19 of the 2010 Act and the comparison with the wording in s. 13 which makes provision for associative direct discrimination.
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38. Also, the ECJ’s decision in **Chez** only considered the position under the Race Equality Directive and did not address the question of indirect discrimination under either the Equal Treatment Framework Directive (No.2000/78 - the “Disability Directive”) or the recast Equal Treatment Directive (No.2006/54).
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39. However, both of these Directives use a definition of indirect discrimination that is practically in identical terms to Article 2(2)(b) of the Race Equality Directive and arguably there is a need for the concept of indirect discrimination to be interpreted consistently across the Directives.
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40. The respondent’s solicitor submitted that, “*an attempt to alter s. 19 by allowing a claim of indirect associative discrimination would make that section hopelessly uncertain*”. However, notwithstanding this submission, and the

5 comments of LJ Laws in *Hainsworth*, to which I was directed, I was mindful of the guidance in the EHRC Code as to the various ways this form of discrimination can occur, albeit in relation to direct discrimination. Nor was it advanced in the present case that the disabled person could be unrelated to the claimant.

41. I am obliged to have regard to the authoritative decision of the ECJ in *Chez* and the Grand Chamber is clear that the Race Discrimination Directive, “cannot, in the light of its objective and the nature of rights which it seeks to safeguard, be defined restrictively...”. As the claimant’s solicitor drew to my attention, the ECJ considered that the principle of equal treatment applies not to a particular category of person possessing a certain racial or ethnic origin, but by reference to racial or ethnic origin more generally: if a person suffers less favourable treatment or particular disadvantage **on the ground of that race or ethnic origin**.

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42. I am driven to the view, therefore, albeit with some hesitation given the clear terms of s.19 of the 2010 Act, that the section is not compatible with EU law. I am satisfied that the submissions by the claimant’s solicitor are well-founded and that the Tribunal in the present case has jurisdiction to consider a complaint of indirect discrimination by the association of the claimant with his disabled partner.

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43. As I recorded above, the respondent's solicitor has raised additional preliminary issues. He has not conceded that the claimant's partner was disabled in terms of the 2010 Act and he has also intimated the possibility of taking a time-bar point. It may be necessary, therefore, to arrange a Preliminary Hearing to consider and determine these issues. **The parties' solicitors are directed, therefore, to make representations as to future procedure to the Tribunal, copied to the other party, within 14 days from the date of this Judgment.**

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Employment Judge**Nick Hosie****Date of Judgement****3 July 2020**

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Date sent to parties**6 July 2020**