

DOUGLAS LEACH SUCCESSFUL IN SHARED PARENTAL LEAVE PAY APPEAL



1 May, 2018

The EAT has today handed down judgment in *Hextall v (1) Chief Constable of Leicestershire Police (2) Working Families (intervening) (1.5.18, UKEAT/0139/17/DA)*, allowing the appeal on all grounds against the Employment Tribunal's dismissal of Mr Hextall's indirect sex discrimination claim.

In the linked case of *Capita Customer Management Ltd v (1) Ali (2) Working Families (intervening) (11.4.18, UKEAT/0161/17/BA)*, Mrs Justice Slade (who heard both appeals) held that a failure to enhance pay for Shared Parental Leave to a rate equivalent to that for contractual maternity pay, did not amount to direct sex discrimination. In *Hextall* however, the issue was whether the Force's Shared Parental Leave policy (designed to mimic the statutory entitlements applicable to civilian employees) was indirectly discriminatory in providing a right only to the statutory minimum rate of Shared Parental Leave pay.

The Employment Tribunal had erred in applying a direct discrimination comparison when determining the indirect discrimination claim: it was wrong to exclude women who might take maternity leave from the pool. Most female officers with a present or future interest in taking leave to care for a child can choose full pay via maternity leave (if they are or will be the birth mother), whereas men cannot.

The Force's cross-appeal – to the effect that there had been no jurisdiction to hear the claim because it should have been brought as an equal pay claim under Chapter 3 of Part 5 of the Equality Act 2010 – was dismissed. The Force did not appeal against the tribunal's rejection of its objective justification defence. Slade J remitted the matter to a differently constituted Tribunal for re-hearing.

