

DOUGLAS LEACH SUCCESSFULLY RESISTS APPEAL IN TEST POLICE SEX DISCRIMINATION CASE



29 Nov, 2019

The EAT has today handed down judgment in *The Commissioners of the City of London Police v Geldart* dismissing the Force's appeal and upholding Mrs Geldart's direct sex discrimination claim. Douglas Leach represented Mrs Geldart.

There were two principal issues, namely (1) the correct construction of the Police Regulations 2003 as to the entitlement to London Allowance, and (2) whether failing to pay it in full during maternity leave constituted direct sex discrimination.

Mr Justice Lavender held that a failure to pay the London Allowance (LA) in full throughout Mrs Geldart's maternity leave constituted direct sex discrimination. On the correct construction of the Police Regulations, all relevant officers are entitled to receive London Allowance in full at all times unless any of the specific provisions determining when it should be reduced or withheld apply. No such provision applied in Mrs Geldart's case. She had not received LA in full during her maternity leave, because she was on maternity leave, which was direct sex discrimination under s.13 EqA 2010.

As to the direct sex discrimination issue, Lavender J held that the effect of s.18(7) EqA 2010 is not to provide that s.13, so far as relating to sex discrimination, is disapplied in any case of discrimination because of pregnancy or maternity. Rather, it only provides that s.13 does not apply to the extent that s.18 (pregnancy and maternity discrimination) does apply. As a police officer, Mrs Geldart could not rely on s.18 beyond the first two weeks of her maternity leave, but could rely on s.13 thereafter. Further, in such cases falling outside the scope of s.18 EqA 2010, the *Webb v EMO Cargoline* of authority continues to apply, such that Mrs Geldart did not need to rely on any comparator when using s.13 (NB: Mrs Geldart's case was a "protected period" case for the purposes of EU law).

Besides confirming the continuing availability of s.13 sex discrimination claims where s.18 does not apply and that no comparator is required (at least in "protected period" cases), the ruling on the correct construction of the Police Regulations may be of considerable importance to police officers in the London and surrounding forces, on long-term sick leave or maternity leave.