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**Equal Pay Act at 40**  
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# **GIBSON V SHEFFIELD CITY COUNCIL**

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# GIBSON V SHEFFIELD

- **Equal Pay Case**
- **136 women (and 1 man) GMB and UNISON members employed by Sheffield City Council as Care Workers**
- **Supreme Court 28/29/30 June 2011**

# SHEFFIELD:THE STORY

- **2006/2007 mass equal pay claims submitted by GMB and UNISON members in Sheffield**
- **First hearing in Employment Tribunal November 2007: the employer's GMF defence**
- **Further mass claims submitted**

# BASIS OF CASE

- **Claimants are carers, in mainly female dominated job roles**
- **Work was rated by the employer as equivalent to comparators: street cleaners, gardeners, in mainly male dominated roles**
- **Comparators paid more (33% to 38%)**

# EMPLOYER'S GMF

- **The reason for the difference in pay was historical**
- **A genuine productivity scheme introduced 40 years earlier**
- **The reason the women did not receive the bonus was because their work was not capable of “incentivisation” in the same way**

# EMPLOYMENT TRIBUNAL

- **Accepts the GMF for the Carers (but cleaners win their case)**
- **The reason for the bonus was nothing to do with gender and therefore the employer did not have to show “objective justification”**
- **But was evidence of significant disparate impact and men and women were doing stereo-typical work roles**

# APPEALS

- **Employment Appeal Tribunal upholds the employer's GMF**
- **Court of Appeal overturned the decision of the ET and the EAT and referred back to ET to consider "objective justification"**
- **Employers have appealed to the Supreme Court (Unions have cross-appealed)**



# THE WOMEN'S CASE

- **Given the evidence of significant disparate adverse impact, the employer has to show objective justification**
- **ET had confused direct discrimination with indirect discrimination**
- **Should have looked at the effect of the bonus rather than the cause (and employer cannot objectively justify)**

# CASE LAW ISSUES

- The problem of *Armstrong v Newcastle Upon Tyne NHS Hospital*
- The help from *Enderby v Frenchay Health Authority*
- Cost as justification?

# WIDER SIGNIFICANCE

- **Many employers rely on this approach to defeat equal pay claims**
- **In Sheffield (and else where) many claims turn on the approach to be taken by the Supreme Court in June**

# FIT FOR THE PURPOSE?

- **Individual complaints approach still applies**
- **5 years to determine case at least**
- **Employers able to run arguments to delay and frustrate**
- **Legal costs in litigation**

# SOME OTHER PROPOSALS

- **Existing litigation: single senior judge**
- **Use of the Central Arbitration Committee**
- **Revised Code of Practice**
- **In the meantime Victory to the women members in Sheffield!**