

**CIVIL LITIGATION DEPARTMENT
EMPLOYMENT LAW
JUNE 2011
APPORTIONMENT**

WHOSE FAULT IS IT ANYWAY?

**APPORTIONING BLAME BETWEEN
RESPONDENTS IN DISCRIMINATION CLAIMS**

Ms. Natasha Sivanandan was a race equality adviser. She applied for two jobs with ‘Hackney Action for Racial Equality’ (“HARE”) which was the body responsible for advancing good race relations within the London Borough of Hackney. She was unsuccessful in her applications and consequently brought claims for discrimination contrary to both the Sex Discrimination Act 1975 and the Race Relations Act 1976. The Respondents included the members of the interview panels, the Executive Committee of HARE, HARE (the company) itself, the Council and others. Ms. Sivanandan’s claims succeeded and she was awarded **£421,415** net compensation.

The Employment Appeal Tribunal (“EAT”) was asked to decide whether the award should be joint and several, i.e. 100% against each Respondent **OR** whether it could apportion liability between the Respondents. It concluded that, where more than one person has participated in **the same act of unlawful discrimination** (as in this case), a tribunal does **not** have the discretion to apportion liability between the Respondents. However, where the acts are divisible, the tribunal does have such discretion and can apportion liability *if* one of the parties asks it to and there is a clear legal basis to exercise that discretion. Ability to pay must not be a factor in the decision making process.

The EAT was at pains to distinguish between *apportionment of liability to the Claimant* and *an assessment of liability between Respondents*. The latter applies in cases of joint liability where one Respondent seeks to claim a “contribution” from another Respondent towards the payment. Such actions are distinct from the discrimination claim and take place in the civil courts.

In essence, each of the Respondents (including the individuals on the interviewing panels and even the lady who brought the panels together) were found to be 100% liable to Ms. Sivanandan for the £421,415. The tribunal also concluded that tribunals can award exemplary damages against a discriminatory employer where it is shown to be “guilty of oppressive, arbitrary or unconstitutional action and if the award otherwise payable would not suffice by way of punishment and deterrence”.

From a practical viewpoint, if you are a joint Respondent in a discrimination claim, you should consider instructing your own representative and acting separately from the other Respondents. Your solicitor can then ask for apportionment where there are divisible acts of discrimination. This might limit your liability and/or legal costs.

**If you require any advice or assistance about an employment matter,
please contact Julie Granger or Daniel Crook in our Civil Litigation
Department.**

Disclaimer

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