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25 February 2015

Dear Mr Dass

Chandok v Tirkey

Thank you for your email dated 4 February 2015 regarding the Employment Appeal Tribunal's (EAT) decision in Chandok v Tirkey.

As you are aware, EAT considered Ms Tirkey's claim for caste discrimination fell within the definition of "race" in section 9 of the Equality Act 2010, despite the Government not yet having made specific provision for this under section 9(5).

The President of the EAT held that, although caste is not yet separately mentioned in the Equality Act 2010, it falls under the "ethnic or national origins" element of race in section 9(1) of the Equality Act 2010. He considered that there may be factual circumstances involving caste which are capable of falling within the scope of section 9(1). However, he acknowledged his finding was fact-specific and potentially means that not all complainants of caste discrimination will find remedy under the existing law.

In light of this, you are correct to say that each case in which caste discrimination is alleged will have to be considered on its own facts. This means that, while caste discrimination can be found to constitute unlawful

race discrimination under the Equality Act 2010, this will not necessarily be so in all cases. It is however helpful to have an EAT decision that caste discrimination is capable of being covered by the Equality Act 2010. This decision is binding on all Employment Tribunals which consider caste discrimination claims.

I note your request to publish our legal opinion. The Commission's submission to the EAT in its role as intervener is available on our website, here:

<http://www.equalityhumanrights.com/sites/default/files/uploads/Chandhok%20v%20Tirkey%20EAT%20Skeleton%20for%20EHRC.pdf>

We note that the Government has indicated that legislation will be introduced to Parliament during summer 2015 to provide explicitly that caste is an aspect of the protected characteristic of race. As Parliament will be dissolving on 30 March 2015 in preparation for the general election, the time to lay the necessary statutory instrument seems short. Nonetheless, we are reiterating to the Government our view that an express provision in the Equality Act 2010 is desirable for reasons of legal clarity.

Yours sincerely

A handwritten signature in black ink, appearing to read "Baroness O'Neill". The signature is fluid and cursive, with the first name "Baroness" written in a larger, more prominent script than the last name "O'Neill".

Baroness O'Neill
Chair