



# *GMB v Allen*

## Is equal pay a priority?





- **1997 – Single Status Agreement between local authority employers and unions**
- **History of gendered pay inequality between groups of public sector employees – clerical and manual**
- **Introduction of single spine pay scale – use of non-discriminatory job evaluation schemes**



- **National agreement but local bargaining**
- **Limited funding**
- **Need to prioritise –**
  - Past inequality – back-pay for the women
  - Single spine pay deal – winners and losers – protect the losers
  - Future pay and job security – maximise funding and security



**The use of proportionate means in the attainment of a legitimate aim**



## A legitimate aim?

**“The end goal was to achieve single status ... en route to the end goal, the aims were to avoid privatisations, avoid job losses, avoid cuts in hours, avoid or minimise ‘losers’ and in so far as losers were inevitable to get the best possible pay protection. Those aims are all legitimate ...”**



## **But the means were not Proportionate**

- **Failure to protect equal pay claimants – did not pursue back pay claims at an early stage**
- **Deliberately omitted to give advice about back pay and refused to support litigation**
- **‘Rushed headlong’ into an ill-considered back pay deal**
- **Failed to give claimants a fully informed choice about their options – no assessment of litigation risk – manipulation of ‘relatively unsophisticated claimants’**



## What did the Union do?

**It prioritised future pay, job security and protection for ‘losers’ over back pay for women**

**Why was this indirectly discriminatory?**

**It was to the detriment of a substantially greater group of women**

## Did they have a legitimate aim?

**‘to seek to achieve single status, avoid job losses, avoid or minimise ‘losers’ and maximise pay protection are all legitimate aims’**



## Did they use proportionate means?

**‘the tactics of manipulation and mis-selling employed by the Union to achieve their aims were not proportionate means’**



**“When [trade unions] seek to achieve legitimate aims by proportionate means, they have nothing to fear.”**

**Lord Justice Maurice Kay**

**GMB v Allen [2008] IRLR 690**



## Collective bargaining and individual litigation?

- **UK legislation focuses on individual**
- **Limited collective involvement**



## Mainstreaming and Compromise?

- **Persistence of pay gap**
- **Move towards mainstreaming and integration**
- **At expense of equal pay compensation**

## Ends and Means?

- **Does the end justify the means?**
- **Is equal pay a priority?**