1. Introduction

The United Kingdom of Great Britain and Northern Ireland is a parliamentary democracy and constitutional monarchy made up of the constituent countries England, Scotland, Wales and Northern Ireland. In 1997 significant powers were devolved to the Scottish Parliament and Executive in Edinburgh, as well as to the Welsh Assembly in Cardiff and a new Northern Ireland Assembly in Belfast, which replaced the Northern Ireland Parliament created in 1920. (The Northern Ireland Assembly was suspended on four occasions, most recently from 14 October 2002, until power was restored to the Assembly on 8 May 2007). England does not have a devolved executive body and its affairs are managed by the UK Parliament and Government.

In mid-2006 the resident population of the UK was 60,587,000. The population has grown relatively quickly in recent years, due both to increased life expectancy and international migration, which has accounted for an average net inflow of approximately 170,000 migrants per year between 1998 and 2005. The Home Office stated that approximately 427,000 immigrants from EU accession states registered for work under the Worker Registration Scheme between May 2004 and June 2006. The population is also aging, with a declining proportion of those under 16 (11.5 million in 2006) and an increasing proportion of people who are 65 years old and over (9.7 million).

In the 2001 Census, 13.1% of the population identified themselves as being members of an ethnic minority, i.e. other than “white British”. This included 7.9% non-white, of which Black 2%, Indian 1.8%, Pakistani 1.3%, mixed 1.2%, and other 1.6%; and 5.2% white. There were considerable regional variations, with 40.3% of Londoners describing themselves as ethnic minority compared to 3.6% of residents in the Northeast of England. 76.8% of the population described themselves as belonging to a religious denomination, and the religious affiliation of the remaining 23.2% was “none or unspecified”. 5.4% of those who described themselves as belonging to a religious denomination were members of a non-Christian minority (Muslim 2.7%, Hindu 1%, other 1.7%). As such, the UK is a diverse, multi-ethnic and multi-faith society, though recent public debate has focused on strengthening the cohesion and integration of minority groups, especially following the July 2005 bomb attacks on the London underground whose perpetrators included 3 British citizens of Pakistani descent.

2. Facts and Comments

Most Significant Patterns of Discrimination

In February 2005 the Government launched a Discrimination Law Review (DLR) in Great Britain and brought forward proposals for a clearer and more streamlined equality legislation framework, which should produce better outcomes for those experiencing disadvantage due to age, disability, gender, race, religion or belief, or sexual orientation. The Government has also issued a consultation paper setting out its proposals for a Single Equality Bill for Great Britain to be introduced in the next parliamentary session (draft legislative programme published 11 July 2007).

Alongside the DLR, an independent Equalities Review carried out an investigation into the causes of persistent discrimination and inequality in Britain. The resulting report entitled "Fairness and Freedom" called for a new approach to tackling discrimination and disadvantage and its recommendations were presented to the Prime Minister in February 2007. The Equalities Review Panel was chaired by Trevor Phillips, Chair of the new Equalities and Human Rights Commission for Great Britain (EHRC). The Government has announced that it will respond to this review in the autumn of 2007. The findings of the report suggest that although significant progress has been made over the past 60 years, intolerable levels of inequality persist in some areas.

2 Some cases have been cited to illustrate the issues which are coming before the courts and which have been reported in the media.
The final report of The Equalities Review proposes a 10-step programme to help make Britain a fairer society, at ease with its diversity. It proposes a new working definition for equality that takes factors beyond income and wealth into account. According to the report's Equality Scorecard, a modern measure of equality needs to take into account areas such as family and social life, safety, education, quality of life and freedom of belief and religion. The terms of reference of the review required it to address chronic and persistent inequalities and within this remit it identified four dimensions to the Equality Scoreboard in which equality gaps were most likely to produce further waves of inequality for particular groups of people. They were: early years and education, employment, health and criminal justice. The findings of this section are re-produced below where they are relevant to the different groups.

Below are some of the more significant patterns of discrimination in the UK in greater detail.

a) Gender

‘Completing the Revolution’, the final report by the Equal Opportunities Commission (EOC) before it was absorbed into the new Equality and Human Rights Commission, set out a comprehensive measure of gender equality in Britain. The EOC put together a Gender Equality Index which indicated that progress in many areas had been ‘painfully slow’ and that in some instances the process had actually gone backwards.

Accompanying the report was a ‘Gender Agenda’ in which the Commission highlighted the key issues for future action. The Agenda pointed out that despite 30 years of legislation on equal pay a persistent pay gap remains between men and women. Women who work full-time earn, on average, 17% less per hour than men working full-time. This in turn creates a pensions gap with women’s retirement income being 40% less than men’s. Some groups of women, for example Pakistani women, face an even bigger differential, which raises the issue of multiple discrimination.

The Equalities Review looked at new research which revealed clearly the one factor, above all others, that leads to women’s inequality in the labour market – becoming mothers. More needs to be done in balancing work and family life, with greater thought given to support for modern families caring for children and elderly relatives. This should involve adaptation of public and workplace policies, encompassing such issues as transferable maternity leave. Public services, which are designed to support men’s lives rather than those of women, need to be modernised. The power gap in institutions and workplaces should be narrowed. Women are much less likely than men to reach the top of their professions. Only 10% of directorships of FTSE 100 companies are held by women. Less than 20% of MPs are female, and with the current rate of change it will take up to 200 years to achieve an equal number of men and women in the Westminster Parliament. For certain groups of women, for example ethnic minority women, their representation is even lower. The Equalities Review also found that despite the fact that female undergraduates have outnumbered male undergraduates in higher education since 1997, women are underrepresented in degree subjects which generate the highest financial return. In addition, four years after graduation, women were found to be earning less than men in every area, even when they had started out on equal terms, and the gap was greatest in the highest earning occupations.

Gender-based violence still continues to be a reality. The EOC felt that gender-based violence should no longer be considered acceptable; that the criminal justice system

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5 Ibid., p. 75.
6 Ibid., p. 70.
should be more effective in tackling gender-based crimes; that there should be a significant reduction in the incidence of domestic violence and increase in the proportion of reported rapes that are successfully prosecuted; and that more action was needed to prevent the trafficking of women and girls for forced prostitution. While forced marriages were rare and survivors were being better supported, gender-based violence should be a recognised ground for asylum.

Tackling discrimination against harassment and stereotyping of transgender people should also be a priority.

b) Race

There are particular ethnic minority groups that suffer from high rates of unemployment, social exclusion and poverty. For instance, the Commission for Racial Equality (CRE) found clear evidence that Gypsy and Irish Travellers throughout Great Britain faced some of the most serious forms of discrimination and disadvantage.7

Education

According to the Equalities Review, a large and apparently unbridgeable gap exists between pupils of Roma and Traveller of Irish heritage and pupils of other ethnic groups in primary and secondary school education.8 Interestingly, the Report found that class background is still the strongest factor in educational achievement, but that ethnicity can have a substantial impact, suggesting strongly that a focus on socio-economic status alone will not be enough to close the ethnic equality gap. Black Caribbean, Mixed White and Black Caribbean heritage pupils make less progress than other pupils in primary school and for the first two groups this persists into the first years of secondary school.9 Some factors involved in this include the fact that they are more likely than white British pupils to live in deprived areas and are more likely to have been excluded from school. Some researchers also suggest that low academic expectation may be part of the issue in some secondary schools.10

Employment

There is substantial evidence of exclusion in employment of certain racial and religious groups, the most concerning of which is with Muslim Pakistanis and Bangladeshis who are disproportionately unemployed or involved in low paid forms of employment.11 There have been a number of recent in-depth reports that have highlighted a range of discriminatory and exploitative measures used against migrant workers, particularly those from the ‘new’ EU Member States.12 Some of the practices resulting in low rates of pay, often below the minimum wage, may constitute, depending on the circumstances, direct or indirect discrimination on the basis of race/ethnic origin or nationality.

Other Issues


9 Ibid., p. 54.


11 90% of Pakistanis and Bangladeshis in the UK are Muslim. See Final Report of the Equalities Review, particularly in relation to women from these communities.

There are concerns about racial profiling by the police in the use of stop and search powers, particularly in the context of extended powers permitted under terrorism legislation.\textsuperscript{13} There are also concerns that some public authorities’ activities in the area of migration amount to racial discrimination, prohibited by Section 19B of the Race Relations Act 1976 (RRA). In a case which went to the House of Lords, the UK’s highest court decided that UK Immigration Service officials working at Prague airport in 2001 had directly discriminated against Roma seeking to enter the UK and were therefore in breach of Section 19B RRA.\textsuperscript{14}

c) Religion

It has been acknowledged that there is prejudice against some religious groups and in particular against Islam since 11 September 2001.\textsuperscript{15} There have been several recent cases that have received a lot of media attention, centred on religious symbols in the education and employment spheres where an overlap between discrimination and associated human rights is evident. Considerable controversy has surrounded the wearing of the niqab (Islamic face veil) in schools by pupils and teachers. There is also evidence of a more generalised discrimination that is often combined with perceived links to terrorism and that has manifested itself in increased violence against and harassment of Muslims.\textsuperscript{16} There is also evidence of discrimination against Muslims in areas such as employment\textsuperscript{17} and housing.\textsuperscript{18}

The first high profile case was that of R (Begum) v Governors of Denbigh High School [2005] 2 WLR 3372. In that case, a majority of the highest court in England and Wales, the House of Lords, held on the facts of that case that the Muslim claimant’s right to freedom of religion under Article 9 of the European Convention on Human Rights had not been infringed when she was not allowed to wear jilbab (long coat-like garment) in her school. In a later decision of the High Court of Justice of 21 February 2007\textsuperscript{19}, a 12-year-old schoolgirl was prohibited from wearing an Islamic niqab at her school, on the basis that it violated the school’s new uniform policy and because teachers believed it would make communication and learning difficult. About 120 of the school’s 1,300-plus pupils are Muslims. About half of them wear the hijab headscarf, which is permitted. Just as in the Begum ruling, the judge again stressed that he was dealing with one particular case, not the wider issue of whether the niqab should be worn in schools or elsewhere. The judge held that there had been no violation of Article 9 of the European Convention on Human Rights, as the girl could have gone to an alternative school that permitted the wearing of the niqab, and in any case, the ban was proportionate as: 1) the veil prevented teachers from seeing facial expressions, which was a key element in effective classroom interaction; 2) the need to enforce a school uniform policy, under which girls of different faiths would have a sense of equality and identity; 3) the need to maintain security, as the head teacher had said an unwelcome visitor could move around the school under a face-veil; and 4) the need to avoid peer pressure on Muslim girls to take up wearing the veil.

\textit{Employment}

In another case, Azmi v Kirklees Metropolitan Council, a Muslim primary school teacher

\textsuperscript{13} See discussion below under religious discrimination.
\textsuperscript{14} R v Immigration Officer at Prague Airport [2004] UKHL 55.
\textsuperscript{19} R (on the application of X) v Headteachers and Governors of School [2007] EWHC 298 (Admin) \url{http://www.bailii.org/ew/cases/EWHC/Admin/2007/298.html}
was suspended for wearing the full niqab, including a face-veil, when teaching pupils English. The school justified its decision stating that the children, many of whom did not speak English as a first language, were having great difficulty in understanding the teacher when she spoke through her face-veil. The teacher argued that she had been subject to direct and indirect discrimination, and had also been victimised for bringing the complaint. In a decision of 19 October 2006, the Employment Tribunal found that she had not been subject to direct discrimination on the grounds of her religion under Regulation 3 of the Employment Equality (Religion or Belief) Regulations 2003, as the suspension was not on the grounds of her Islamic faith, but rather due to her decision to wear the face-veil. A non-Muslim woman who chose to wear a face covering would also in any case have been treated the same way. The tribunal considered that discrimination on the basis of wearing a religious symbol such as the niqab that was closely linked to one particular faith, could constitute indirect religious discrimination, but held that the school’s action was justified in the circumstances on the grounds of educational necessity and the best interests of the pupils. However, the teacher was awarded £1,000 damages for victimisation, as the school had failed to follow proper procedures after she had made her complaint of discrimination. On appeal, the findings were upheld by the Employment Appeals Tribunal.20

A female British Airways (BA) employee was told that she could not visibly wear her cross while working in uniform at a check-in counter as BA’s uniform policy stated that such items could be worn only if concealed underneath the uniform. Other types of religious symbols, such as headscarves and turbans, could be worn openly, as they could not be concealed under clothing. BA offered her a non-uniformed post where she would be able to openly wear her cross but she refused. After failing in an internal appeal against the decision, she threatened to bring the matter to an employment tribunal. However, after criticism from church leaders and the media for adopting such a policy, BA reversed its policy and from 1 February 2007 it permitted the wearing of crosses and similar symbols in addition to more obvious religious symbols such as the turban and headscarf.21

Two Reports by the Advisory, Conciliation and Arbitration Service (ACAS) – which is a publicly funded arbitration service that aims to improve organisations, working life and employment relations by providing up-to-date information, independent advice, high quality training for both employers and employees – found that half of all employment claims before it were from Muslims, with the other half split between Christians, Jews, Hindus and Sikhs. The most common complaint was the failure to accommodate for religious practices (such as requesting time off), or harassment or bullying.22

Other Issues

There are some concerns that the power granted to the police under the Section 44 of the Terrorism Act 2000 to stop and search people without requiring them to have “reasonable suspicion” if it is necessary to prevent terrorism may result in religious discrimination. While this power is in theory restricted to a limited place and time on the basis of specific intelligence, in practice, since February 2001, the Metropolitan Police has obtained a rolling authorisation across London, on the grounds that the whole capital has been under permanent threat of terrorist attack over this time period.23

There is some evidence that Muslims have been disproportionately targeted in religiously aggravated offences such as assaults. For example, the Crown Prosecution Service Racist Incident Monitoring Annual Report 2004-05 indicates that 23 of the 34 cases where the religion of the victim was indicated involved Muslims.24 Incitement of Religious Hatred became a topical issue in the wake of September 11 when concerns were raised in the

20 http://www.employmentappeals.gov.uk/Public/Upload/07_0009ResfhAMMAA.doc
21 http://news.bbc.co.uk/1/hi/uk/6280311.htm
23 http://www.irm.org.uk/2006/january/ha000025.html
media about fundamentalist teaching by imams in mosques. As a result the Racial and Religious Hatred Act 2006 made it an offence to intentionally incite religious hatred against people on religious grounds.25

d) Disability

One in six people of working age is either disabled or has a long-standing health problem and the fastest growing section of people with disabilities is those under 16. In education, unpublished data from the Department for Education and Skills suggest there are significant attainment gaps for pupils with all types of Special Educational Needs (SEN), including pupils with physical and sensory impairments. Almost 90% of pupils with SEN in England attend mainstream primary and secondary schools. The Equalities Review recognised the need to reduce disproportionate exclusion rates for pupils with SEN.26

Employment

Disabled people have suffered from a significant employment disadvantage, particularly those with mental health problems and people with learning disabilities.

A very real issue concerns that of whether disability legislation covers discrimination on the grounds of disability by association and therefore extends protection to, for example, parents of disabled children who are discriminated against in an employment context as a result of the caring role they have to cope with together with their employment. On 17 July 2008, the European Court of Justice passed judgment in the case of Coleman v. Attridge Law and Steve Law (Case C-303/06) which considered this issue. The judgment interpreted the meaning of the prohibition of direct discrimination and harassment in employment and occupation on grounds of disability pursuant to Article 2(2)(a) and Article 2(3) of Council Directive 2000/78/EC of 27 November 2000. The Court held that Directive 2000/78 must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Thus where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Thus where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3).

e) Age

A report published on 17 May 2007 by Age Concern entitled “Age of Equality? Outlawing Age Discrimination beyond the Work Place,” stated that the failure of public authorities to outlaw discrimination meant that older people are all too often denied life-saving medical treatment, discouraged from accessing vital health tests and denied transforming health and social care and mental health services. In-built discriminatory regulations, unfair practices and ageist attitudes all combine to mean that older people – the primary users of health and social care – often receive inferior care and unequal public services. A report of the Parliamentary Joint Committee on Human Rights regarding human rights in care

25 See more on this below.
http://archive.cabinetoffice.gov.uk/equalitiesreview/upload/assets/www.theequalitiesreview.org.uk/equalities_review_-_fairness_and_freedom.doc
homes issued on 14 August 2007\textsuperscript{27} raised the concern over the quality of care in such homes and stated that the Department of Health must show greater leadership in placing dignity and human rights at the heart of health and social care. The report called for human rights to form part of professional qualifications for the staff that work in such organisations.

f) Social Origin

The Equalities Review found that despite an increase of young people in higher education from 13\% in 1980 to 33\% in 2000, this figure masks an increase of just 3 percentage points for children from the poorest families, compared with an increase of 26 points in graduates from the richest families.

g) Sexual Orientation

In the last few years significant developments have taken place with regard to the discrimination faced by sexual minorities, most notable through the introduction of legislation providing legal recognition of same-sex partnerships – The Civil Partnership Act 2004. There was also an extensive debate around the Equality Act 2006 (Sexual Orientation) Regulations 2007, which prohibit sexual orientation discrimination in goods and services, education and the performance of public functions. The debate surrounded a controversial decision by the UK government that these regulations would prohibit Catholic and other religious adoption agencies that receive public money from discriminating against homosexual couples. Religious adoption agencies have been given until December 2008 to adjust their practices before the prohibition on discrimination will apply.

3. Law

The UK does not have a single codified constitutional document. There is no technical difference between ordinary statutes and law considered "constitutional law" and, according to the principle of parliamentary sovereignty the Parliament can therefore perform "constitutional reform" simply by passing Acts of Parliament. The UK constitution consists of a variety of written sources and unwritten constitutional conventions. Foreign treaties, which are passed as Acts of Parliament, are also often of constitutional importance. Below is a table which shows that the UK has ratified most of the major international treaties containing the right to non-discrimination. The principle of parliamentary sovereignty means that international law provisions are not directly applicable in national law unless they have been directly incorporated through an Act of Parliament. That said, the provisions can and are increasingly being used by the courts to interpret national legislation in particular circumstances.\textsuperscript{28}

a) International Obligations of the State

<table>
<thead>
<tr>
<th>International Treaties</th>
<th>Signed</th>
<th>Ratified</th>
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<tbody>
<tr>
<td>Convention on the Prevention and Punishment of the Crime of Genocide 1948</td>
<td>Yes</td>
<td>Yes</td>
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\textsuperscript{27} \url{http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/156/15602.htm}

\textsuperscript{28} See, for example, \textit{R v Immigration Officer at Prague Airport} [2004] UKHL 55.
<p>| International Convention on all forms of Racial Discrimination 1965 | Yes | Yes |
| International Covenant on Civil and Political Rights 1966 | Yes | Yes |
| Optional Protocol to International Covenant on Civil and Political Rights 1966 | No | No |
| International Covenant on Economic, Social and Cultural Rights 1966 | Yes | Yes |
| Convention on the Elimination of all forms of discrimination against Women 1979 | Yes | Yes |
| Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 | No | No |
| Convention on the Rights of Persons with Disabilities 2006 | Yes | No |
| Rome Statute of the International Criminal Court 2002 | Yes | Yes |
| Convention relating to the Status of Refugees 1951 | Yes | Yes |
| 4 Geneva Conventions of 12 August 1949 and the 1977 Protocols Additional to the Geneva Conventions of 12 August 1949 | Yes | Yes |
| ILO Convention No. 169: Indigenous and Tribal Peoples Convention 1989 | - | No |
| ILO Convention No. 111 on Discrimination (Employment | Yes | Yes |</p>
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<tr>
<th>Convention/Convention</th>
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<tr>
<td>and Occupation) 1958</td>
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<td>ILO Convention No. 100: Equal Remuneration Convention 1951</td>
<td>Yes</td>
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<tr>
<td>UNESCO Convention against Discrimination in Education 1960</td>
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### Regional Treaties

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<th>Convention</th>
<th>Ratification Status</th>
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<tr>
<td>European Convention on Human Rights 1950 (ECHR)</td>
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<tr>
<td>Protocol 12 to the ECHR</td>
<td>No</td>
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<tr>
<td>European Social Charter 1961</td>
<td>Yes</td>
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<tr>
<td>European Social Charter (revised) 1996</td>
<td>Yes</td>
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<tr>
<td>Framework Convention for the Protection of National Minorities 1995</td>
<td>Yes</td>
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</table>

The Human Rights Act 1998 is a key piece of legislation which incorporated the rights enshrined in the European Convention on Human Rights and therefore enabled individuals to rely on its provisions, including Article 14 before the national courts. The Act came into force on 2 October 2000.

**b) National Law - Definitions and Grounds**

Even though the UK has the longest history in Europe of legislation designed to tackle racial discrimination in particular, there is as yet no comprehensive anti-discrimination law. There is a real need to streamline the plethora of existing legislation. Currently, a range of definitions exist for various aspects of discrimination across the UK’s legislation. In general the current policy and legal developments are seeking to systematise where necessary the different definitions to incorporate the requirements contained within Council Directives 2000/43 and 2000/78. However, in their Green Paper “A Framework for Fairness” the Government has set out proposals for extending and harmonising certain aspects of the definition of discrimination and maintaining separate definitions for certain grounds of discrimination.

The ongoing reform of equality and non-discrimination law in the UK was part of the

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Governments 2005 election manifesto pledge to adopt a single equality law within the life time of the parliament.\textsuperscript{32} This agenda has been the response to the activities of various academics, politicians and lawyers who have highlighted the need for urgent reform.\textsuperscript{33} In September 2007 the Government completed its consultation phase on their Green Paper “A Framework for Fairness”.

\textit{i) Sex Discrimination}

In Great Britain, the Sex Discrimination Act 1975 (as amended) prohibits direct and indirect discrimination, victimisation, discrimination on the grounds of pregnancy or maternity leave, sexual harassment and harassment on the grounds of sex in employment, vocational training, education, the provision and sale of goods, facilities and services, premises and the exercise of public functions. In Northern Ireland (NI), the Sex Discrimination (NI) Order 1976 (as amended) has similar provisions. In both Great Britain and Northern Ireland, in employment and vocational training, it is also unlawful to discriminate against someone on the grounds that a person is married or a civil partner or on the ground of gender reassignment. In Great Britain, the Equal Pay Act 1970 and in Northern Ireland, the Equal Pay Act (NI) 1970 (as amended) makes it unlawful for employers to discriminate between men and women in terms of their pay and conditions where they are doing the same or similar work; work rated as equivalent; or work of equal value.

\textit{ii) Race and Ethnic Origin}

At present there are laws which deal with the different grounds of discrimination. In Great Britain, the Race Relations Act 1976 (as amended) prohibits direct and indirect discrimination,\textsuperscript{34} harassment and victimisation on the grounds of race, ethnicity, colour, national origin and nationality (including citizenship) in the fields of employment and occupation, access to goods and services, disposal and management of premises, education and the performance of public functions. The Race Relations (Amendment) Regulations 2003 which includes a new definition of indirect discrimination and a definition of harassment prohibits discrimination on the grounds of race, ethnic origin and national origin also in the fields of social security, health care and social advantage. In Northern Ireland, the Race Relations (NI) Order 1997 prohibits direct and indirect discrimination,\textsuperscript{35} harassment and victimisation on grounds of race and belonging to the Irish Traveller Community, in the fields of employment and occupation, education, access to goods and services and disposal and management of premises.

\textit{iii) Disability}

In Great Britain and Northern Ireland, the Disability Discrimination Act 1995 (as amended) prohibits direct discrimination and unjustified less favourable treatment on the grounds of being, or having been a disabled person within the definition of the Act, in employment and occupation, access to goods and services, including housing and the performance of public functions. A definition of harassment is included which is different from that


\textsuperscript{34} A different definition of indirect discrimination applies to the grounds of colour and nationality as well as certain discrimination areas under this legislation. The UK government considered these grounds and areas to be outside the scope of European Directive 2000/43 (See O’Cinneide, Colm. Country Report on Measures to Combat Discrimination, Directives 2000/43 and 2000/78, 2007, \url{http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/ukrep07_en.pdf})

\textsuperscript{35} The two definitions of indirect discrimination contained in the Race Relations Act (as amended) also appear in the NI legislation.
appearing in other non-discrimination measures and victimisation is outlawed. In Great Britain and Northern Ireland, the Special Needs and Disability Act 2001 prohibits discrimination on grounds of being a disabled person within the definition of the Disability Discrimination Act as a pupil/student or prospective pupil/student by bodies responsible for schools and further and higher education.\textsuperscript{36}

\textit{iv) Religion or Belief}

In Great Britain, the Employment Equality (Religion and Belief) Regulations 2003 prohibit direct and indirect discrimination, harassment and victimisation on the grounds of religion or belief in employment and occupation and further and higher education. In Great Britain, the Equality Act 2006 prohibits direct and indirect discrimination on the grounds of religious belief in the fields of the provision of goods and services, including housing, education and the performance of public functions.\textsuperscript{37} There is no separate provision of harassment or victimisation. In Northern Ireland, the Fair Employment and Treatment (NI) Order 1998 prohibits direct and indirect discrimination\textsuperscript{38}, harassment and victimisation on the basis of religious belief and political opinion in the field of employment and occupation, further and higher education, access to goods and services and disposal and management of premises, and the Northern Ireland Act 1998 prohibits discrimination on the grounds of religion or belief and political opinion in the performance of public functions.

\textit{v) Sexual Orientation}

In Great Britain, the Employment Equality (Sexual Orientation) Regulations 2003 prohibit direct and indirect discrimination, harassment and victimisation on the grounds of sexual orientation in the fields of employment and occupation and further and higher education. In Northern Ireland, the Employment Equality (Sexual Orientation) Regulations (NI) 2003 prohibit direct and indirect\textsuperscript{39} discrimination, harassment and victimisation in the fields of employment and occupation and further and higher education.

In Great Britain, the Equality Act (Sexual Orientation) Regulations 2007 prohibit direct and indirect discrimination and victimisation on the grounds of sexual orientation in the fields of the provisions of goods and services, including housing, education and the performance of public functions. Harassment is not explicitly covered. In Northern Ireland the Equality Act (Sexual Orientation) Regulations (NI) 2006 prohibit direct, indirect\textsuperscript{40} discrimination, harassment and victimisation on the grounds of sexual orientation in the fields of the provision of goods and services, including housing, education and the performance of public functions.

\textit{vi) Age}

The Employment Equality (Age) Regulations 2006 and in Northern Ireland the Employment Equality (Age) Regulations (Northern Ireland) 2006 prohibit direct\textsuperscript{41} and indirect\textsuperscript{42} age discrimination, harassment and victimisation in the field of employment and vocational training.

\textit{General Note on Definitions}

Victimisation is prohibited as a form of unlawful discrimination\textsuperscript{43} under all the different

\textsuperscript{36} Some provisions apply to Great Britain only.
\textsuperscript{37} The definition differs from that used in the Sexual Orientation and Religion and Belief Regulations.
\textsuperscript{38} The two definitions of indirect discrimination contained in the Race Relations Act (as amended) also appear in this NI legislation.
\textsuperscript{39} Yet another definition of indirect discrimination is found in this legislation.
\textsuperscript{40} Objectively justifiable, as provided under Article 6 of European Directive 2000/78/EC.
\textsuperscript{41} Using a similar definition to that used in the Sexual Orientation and Religion and Belief Regulations.
\textsuperscript{42} While UK law uses the term “discrimination” in a way allowing the understanding of “discrimination” as either
pieces of non-discrimination legislation using a definition which is broadly similar.\textsuperscript{43}

\textit{Other Laws Containing Prohibitions of Discrimination}

The Crime and Disorder Act 1998 permits increased sentences to be levied for racially aggravated violence and harassment in relation to a range of offences such as harassment, criminal damage, wounding and common assault. The Anti-terrorism, Crime and Security Act 2001 extends these offences to religious aggravation. The Criminal Justice Act 2003 contains a provision which means that any offence aggravated by discrimination on grounds of disability or sexual orientation must be taken into account as an aggravating factor and reflected in the sentence imposed. The Criminal Justice (No. 2) (NI) Order 2004 requires a court, when sentencing, to treat as serious any offences aggravated by hostility on grounds of race, religion, sexual orientation or disability or presumed disability.

The Public Order Act 1986 makes it an offence in Great Britain to stir up racial hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins. This act is amended by the Racial and Religious Hatred Act 2006, introducing a new Part 3A, an offence of intentionally stirring up religious hatred against people on religious grounds, which came into force on 1 October 2007. The offence applies a stricter test than for incitement of racial hatred. The Public Order (NI) 1987 (as amended) includes offences of inciting hatred or arousing fear on the grounds of race or religious belief, and on the grounds of sexual orientation and disability.

The Protection from Harassment Act 1997 and The Protection from Harassment (NI) Order 1997 prohibit harassment as a tort and as a criminal offence.

c) Scope\textsuperscript{44}

i) \textit{Conditions for accessing employment, self-employment and occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion.}

UK anti-discrimination legislation covers all sectors of private and public employment. Legislation defines employment as “employment under a contract of service or apprenticeship, or a contract personally to execute any work or labour”. Some aspects of self-employment are not covered – notably when the self-employed sub-contract out some of their work they will not be covered. The Disability Discrimination Act 2005 (as amended) exempts employment in the armed forces, which is permissible under European Directive 2000/78, but it also extends the definition to include occupations such as contract workers, office holders, police officers, partners, barristers and advocates and those undertaking work experience. It does not include those working in a voluntary capacity. The public sector has an exception for elected representatives, whereby appointed officials are covered but not those elected. However, under the legislation in Great Britain, public authorities are under a duty requiring them to take steps to assess compliance of their employment policies with anti-discrimination law on the grounds of race, disability and gender. In Northern Ireland this duty extends across nine grounds of discrimination.

ii) \textit{Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience.}

unlawful or lawful, whereby the law defines which discrimination is unlawful, the term “discrimination” as used in European Union non-discrimination Directives is identical in meaning with the UK term “unlawful discrimination”. A conduct or policy which is “lawful discrimination” under UK law will not be termed “discrimination” under European law.


Access to vocational training is covered under UK anti-discrimination law for all grounds. Practical work experience is covered where it is a form of employment.

**iii) Employment and working conditions, including dismissals and pay**

All areas are covered under UK legislation. As far as pay is concerned, the Equal Pay Act 1970 and the Equal Pay Act (NI) 1970 exist to expressly cover matters relating to inequality over pay between men and women. Occupational pensions are included within the definition of pay as a result of the case law of the European Court of Justice. There are however a number of exceptions permissible under the age regulations which some commentators indicate may be wider than those permissible under European Directive 2000/78.

**iv) Membership and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided by such organisations**

This aspect is covered comprehensively with discrimination relating to admission, refusal to admit, access to benefits of membership, deprivation or variation of terms of membership of such organisations all being prohibited. Despite this, a large proportion of the UK work force do not belong to trade unions.

**v) Social protection, including social security and healthcare**

There is no actual definition of social protection but it is likely that any publicly provided social security and publicly provided healthcare are covered under the prohibition against discrimination in the fields of goods, facilities and services under discrimination legislation on the grounds of race and ethnic origin, disability, sexual orientation and sex for Great Britain and Northern Ireland. Also religious belief in Great Britain and to a large, but incomplete extent in Northern Ireland is a prohibited ground in this area. In Northern Ireland political opinion is also a prohibited ground. Age discrimination is not covered in this field.

In the area of sex discrimination, Council Directive 76/207/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security instigated changes in Britain’s social security benefits which require equal treatment of men and women in the statutory provision of social security benefits, such as statutory sick pay, invalidity benefits and unemployment benefits. The positive duties on public authorities to promote equality of opportunity in relation to race, sex and disability in carrying out their public functions would presumably include social protection.

**vi) Social advantages**

There is no actual definition of social advantages. Some commentators suggest that it is likely that discrimination on the grounds of race and ethnic origin in Great Britain would be prohibited in this area under the provisions relating to goods, facilities and services under the Race Relations Act 1976 (as amended). The Race Relations Act also prohibits discrimination by public authorities in carrying out their functions. The Race Relations (NI) Order 1997 (as amended) expressly prohibits discrimination by public authorities in providing any form of social advantage.

The extension of the Disability Discrimination Act in 2005 to all public functions should mean that most forms of social advantage are subject to the Disability Discrimination Act requirements. The prohibition of discrimination on grounds of religion and belief to the

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47 Article 20A.
performance of public functions in the Equality Act 2006 should operate in a similar way. According to The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 it is unlawful for a public authority to discriminate against a person on the grounds of his sexual orientation or to subject a person to harassment in the course of carrying out any functions of the authority, which is expressed to consist of the provision of any form of social advantage. Under the Equality Act (Sexual Orientation) Regulations 2007 it is unlawful for a public authority exercising a function to perform any act which constitutes discrimination. Again, the positive duties on public authorities to promote equality of opportunity in relation to race, sex and disability in carrying out their public functions would presumably include the provision of social advantages.

There is no protection in this area on the grounds of age discrimination.

vii) Education

Legislation in Great Britain and Northern Ireland prohibit discrimination on the basis of race in all aspects of education. Segregation is also expressly prohibited in this context. However, there are concerns about the levels of concentrations of certain ethnic minority children in certain schools, which reflect the wider issues of divided communities and social segregation, particularly in London. In Great Britain and Northern Ireland, legislation on the grounds of religious belief and sexual orientation cover the fields of further and higher education. However, the Equality Act 2006 (sections 49-51), which prohibits discrimination on grounds of religion in access to and the provision of education in Great Britain, contains wide exceptions relating to public state-funded denominational schools and private schools with a particular religious ethos.

In Great Britain sex discrimination in education is covered with exceptions for single-sex establishments and boarding accommodation (section 4 SDA). There are similar provisions in Northern Ireland. The sexual orientation regulations in Northern Ireland impose a general duty on the public sector to ensure that facilities for education provided by it as well as any benefits and services are provided without discrimination on the grounds of sexual orientation. In Great Britain it is unlawful for a public authority, exercising a function, to do any act which constitutes discrimination, and it is unlawful for a person to operate a practice which would be likely to result in unlawful discrimination if applied to persons of any sexual orientation.

There are extensive obligations in the Special Educational Needs and Disability Act (SENDA) 2001 and Special Educational Needs and Disability (NI) Order 2005 prohibiting discrimination in schools in Great Britain and Northern Ireland. Again the positive duties on public authorities in relation to gender, race and disability are relevant here.

viii) Access and supply of goods and services available to the public

In Great Britain and Northern Ireland legislation prohibits discrimination in the provision of goods, facilities or services to the public, or a section of the public. However, in the British regulations there are a number of exceptions relating to provisions of goods, facilities or services by a person exercising a public function (section 4). Exceptions allow religious bodies, associated charities and other linked organisations to discriminate in their internal organisation and practices, but not in the commercial or state-funded provision of goods and services.

Race legislation in Great Britain and Northern Ireland prohibit discrimination in the

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48 Ibid.
49 Section 12.
50 Section 8.
52 Sections 8 and 9 of the Equality Act (Sexual Orientation) Regulations 2007.
provision of goods, facilities and services by public and private sector bodies. Disability legislation in Great Britain and Northern Ireland, and legislation prohibiting discrimination on the grounds of religion or belief or political opinion in Northern Ireland, prohibit discrimination in access to goods facilities and services. The Equality Act 2006 prohibits discrimination on the grounds of religious belief in access to goods and services with certain exceptions where a skill or particular services are generally provided only for persons of a particular religion or belief. The Sex Discrimination Act 1975 (as amended) prohibits discrimination by a person providing goods, facilities or services to members of the public on the grounds of sex. There is, however, a long list of exceptions. An express provision prohibiting harassment shall come into force on 21 December 2007. Similar provisions exist in Northern Ireland.

There is no protection in this area in relation to age discrimination.

ix) Housing

The race legislation in Great Britain and in Northern Ireland prohibits discrimination and harassment in the sale, letting or management of premises (including residential premises). Discrimination in housing is also prohibited in relation to the grounds of colour and nationality, but exceptions include residential accommodation shared with the owner or their near relatives, other residential occupiers, small premises or for the private disposal of premises. The Sex Discrimination Act 1975 (as amended) prohibits discrimination on grounds of sex in the renting, allocation, management, sub-letting or selling of accommodation. The Act contains several exceptions, which include small properties where the owner or relative lives on the premises and shares part of the accommodation, and persons selling property which he occupies unless that person uses the services of an estate agent or advertises the sale of the property. An express provision prohibiting harassment shall come into force on 21 December 2007. In Northern Ireland the Sex Discrimination (NI) Order 1976 (as amended) has similar provisions.

The Disability Discrimination prohibits discrimination in the sale, letting and management of premises.

In Great Britain the equality Act 2006 also prohibits discrimination on the grounds of religion and belief in housing. Exceptions include small dwellings in which landlords or near relatives also reside in the building, and property not publicly offered for sale or rent. In Northern Ireland the Fair Employment and Treatment (NI) Order 1998 prohibits discrimination on grounds of religious belief and political opinion with an exception for small dwellings.

The Equality Act (Sexual Orientation) Regulations 2007 prohibit discrimination on grounds of sexual orientation in relation to the sale, letting and management of premises. There are exceptions in relation to the disposal or management of a part of a property if the landlord or a near relative continues to reside on the other part of the premises and also in relation to the disposal of premises where the person occupies and owns the whole of the premises and does not (a) use an estate agent or (b) arrange for an advertisement for the sale of the premises. There are similar provisions in the Equality Act Sexual Orientation (NI) regulations 2006.

Genuine and Determining Professional Requirements

The legislation prohibiting racial discrimination in Great Britain and Northern Ireland permits exceptions on the basis of genuine and determining occupation requirements. For the grounds of colour and nationality, the exceptions to the prohibition are participation in a dramatic performance or as an artist or photographer’s model, providing food or drink to the public where a person from a particular racial group is necessary for authenticity, or where persons are providing a personal service to persons of a particular racial group which promote their welfare and can most effectively be provided by that group. There are some concerns that this provision does not accord with European Directive 2000/43 as it does not
expressly require that the employer demonstrate that the requirement has a legitimate objective. 53

There is no exception for genuine and determining occupational requirements on grounds of disability in Great Britain and Northern Ireland. The Sexual Orientation Regulations in both Great Britain and Northern Ireland permit exceptions based on genuine and determining occupational requirement.

The religion and belief regulations which apply in Great Britain permit the genuine and determining occupational requirement exception as well as the other exception permitted under European directive 2000/78, where an employer has an ethos based on religion or belief and, having regard to that ethos and the nature and context of the job, being of a particular religion or belief is a genuine occupational requirement. In Northern Ireland the Fair Employment and Treatment (NI) Order 1998 contains an exception which permits discrimination 'where the essential nature of the job requires it to be done by a person holding a particular religious belief'. There is no express requirement to justify this by recourse to a legitimate aim or proportionality.

The legislation prohibiting age discrimination in Great Britain and Northern Ireland permits exceptions based on genuine and determining occupational requirements which are proportionate.

**Reasonable Accommodation**

The Disability Discrimination Act imposes duties on employers in the public and private sector to make reasonable adjustments for their disabled employees or disabled job applicants. Similar duties exist also in the field of goods and services and education. The duty arises when any physical feature of premises, or any provision, criterion or practice applied by or on behalf of an employer, places a disabled person at a substantial disadvantage compared to those who are not disabled. In such circumstances, the employer or potential employer must take all steps that can be considered reasonable in the circumstances to prevent that disadvantage. The duty does not arise if employers do not know a person is disabled and could not reasonably be expected to know. The case of Morse v Wiltshire CC 54 found that the applicable test is an objective one when deciding whether a particular accommodation was reasonable in the circumstances. A failure to meet the reasonable accommodation duty constitutes discrimination. The Disability Discrimination Act also imposes a duty on those managing rented premises, or renting premises, to make reasonable adjustments and also permits tenants to seek consent for the modification of premises from landlords who withhold consent unreasonably. The Building Regulations 2000 (as amended) provide that all buildings constructed after the legislation entered into force have to adhere to legislative standards to facilitate access to and within buildings by people regardless of disability, age or gender.

d) **Positive Action**

The Race Relations Act and the Race Relations (NI) Order 1997, the Age Regulations, the Sexual Orientation Regulations and the Religion and Belief Regulations in both Great Britain and Northern Ireland all contain provisions that permit the introduction of measures necessary to prevent or compensate for disadvantage for persons of a particular racial group, particular age groups, persons of a particular sexual orientation, or persons of a particular religion or belief respectively in the areas of training, or to take advantages of opportunities in accessing certain types of work. 55

In Northern Ireland there are several provisions in law which provide for specific measures to compensate for the historical disadvantages which have arisen: the Fair Employment and Treatment (NI) Order 1998 requires all employers with 10 employees or more to monitor the composition of their workforce regarding religious affiliation and the Northern

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53 O’Cinneide, Colm. Country Report on Measures to Combat Discrimination, Directives 2000/43 and 2000/78, p. 55. This concern is also raised in respect of the sexual orientation regulations and the religion and belief regulations.
54 [1998] IRLR 352, EAT
55 Also contain provisions permitting trade unions, employers’ or professional organisations to encourage membership among under-represented racial groups.
Irish Equality Body can recommend to employers that certain affirmative action is taken by them. Certain provisions also stipulate that the use of affirmative action when selecting candidates for redundancy or for training will not be unlawful discrimination. The Police (NI) Act 2000 includes a temporary positive action provision requiring that 50% of persons recruited to the police as trainees or support staff must be Roman Catholics.

The Disability Discrimination Act 1995 (as amended) allows discrimination in favour of disabled people in the fields of employment, further and higher education and access to goods, facilities and services in general, obviating the need to set out specific exceptions. Positive duties are imposed on public authorities to promote equality and work towards eliminating the discrimination at issue. These exist for racial discrimination under the Race Relations Act (as amended), for disability under the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005, and for sex under the Sex Discrimination Act 1975 as amended by the Equality Act 2006. The Northern Ireland Act 1998 places a duty on public authorities to carry out their functions having due regard to the need to promote equality of opportunity related to nine grounds.

e) Remedies, Enforcement, Sanctions

i) Sanctions

The main remedy is damages, which may include compensation for damage and injury to feelings, for breaches of direct discrimination and harassment, whether intentional or not. If the respondent proves that a claim of indirect discrimination was unintentional, damages will only be awarded if the court considers this is just and equitable. An award of exemplary damages is possible where the seriousness of the discrimination so warrants, as was the case in Husain v Chief Constable of Kent, Employment Tribunal, 6 April 2006. In theory, reinstatement is a remedy available in employment cases, although in the majority of cases damages will be awarded in lieu. In many cases fear of adverse publicity creates a large impetus to settle cases. The Fair Employment and Treatment (NI) Order 1998 permits the imposition of sanctions such as exclusion from future public authority contracts, for not complying with statutory reporting and workforce requirements or for not complying with affirmative action required by the Northern Irish equality body.

The Equality Act 2006 permits the new Equality and Human Rights Commission to apply to the courts for an injunction to prevent the commission of discriminatory acts. It maintains the power of the previous Commission to serve non-discrimination notices requiring organisations to cease discrimination when, as a result of an investigation, it is satisfied that an organisation has committed an unlawful act. European law requires that any sanction imposed is effective, proportionate and dissuasive, but there are doubts as to whether this is the case in the UK. Some forms of harassment will constitute criminal offences punishable either by a fine or by 6 months imprisonment.

Under UK Legislation compensation would be potentially available for a successful claim of victimisation. There is, however, no deterrent sanction in place which would dissuade or prevent victimisation, which may not be in line with European law.

ii) Procedures for Enforcement of the Principle of Equal Treatment

Complaints concerning discrimination in either public or private sector employment can be brought before the employment tribunals. Tribunals have one legally qualified chairman and two lay members. All claims to the employment tribunal concerning unlawful discrimination are referred to ACAS in Great Britain and the Labour Agency in Northern Ireland, both of

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56 S. 71(1).
57 S. 49A.
58 S. 76A.
62 Ibid., p. 78.
which have a statutory duty to promote settlement within 3 months. A settlement reached through ACAS is binding on the parties. Complaints concerning discrimination in any other sector can be brought before the civil courts. There is a statutory time-limit of 6 months within which claims must be initiated. Civil Procedure Rules encourage and reward parties which attempt to reach a settlement prior to commencement of litigation. Judgments of the courts and tribunals are binding and can be appealed.

The Disability Rights Commission Act 1999 contained a provision allowing the Disability Rights Commission (DRC) to make arrangements with any other person for the provision of conciliation services by that person in relation to a dispute between parties with a view to settling the dispute outside the court system. The Irish equality body has similar powers by virtue of the equality (NI) Order 2000. The new Equality and Human Rights Commission can make arrangements for the provision of conciliation services for disputes under the various pieces of UK anti-discrimination legislation. The Commission is to exercise this power to ensure that such services are available to all those who want them (so far as reasonably practical).

Protection against discrimination is generally accorded only to natural persons and so it is only they who can pursue remedies for a violation of their rights. It is possible that discrimination against a legal person could be pursued in relation to the provisions concerning goods, facilities and services under the Race Relations Act, Race Relations (NI) Order 1997, and The Fair Employment and Treatment (NI) Order 1998.

Beside the above-mentioned statutory time-limits, limitations on the filing of complaints include a lack of availability of good legal advice. The equality commissions have assisted only a few complainants and it is likely that the new Equality and Human Rights Commission will adopt a similar policy. Legal aid is unavailable for legal representation before employment tribunals raising a concern of inequality of arms.

iii) Burden of Proof

Both the legislation of Great Britain and that of Northern Ireland incorporate the European legal provision which requires the burden of proof to be shifted to the respondent in discrimination cases in employment and occupation on the grounds of religion or belief, age, disability and sexual orientation; in cases in education and access to goods, facilities and services on both sex and race grounds; and in cases in housing, social protection and social advantages on the ground of sex. In the case of Igen Ltd. and Others v Wong, the Court of Appeal for England and Wales laid down guidelines for tribunals and courts in applying the shift in the burden of proof which essentially means that once the claimant has introduced facts which raise a presumption of discrimination, the evidentiary burden shifts to the respondent to prove that there has been no breach of the equal treatment principle.

iv) Statistical Data

Statistical data is admissible evidence if it is relevant and of real evidential value in the circumstances in question. In the case of West Midlands Passenger Transport Executive v Singh, the Court of Appeal set out guidelines for the use of statistics in racial discrimination cases. Such statistics are not conclusive evidence in itself, but an inference can be drawn from it, depending on the circumstances. In the sex discrimination case of London Underground v Edwards (No. 2), the Employment Appeals Tribunal permitted evidence from national statistics to be taken into account.

v) Dissemination of Information

Wide-ranging consultation by the government on its legislative proposals, for instance with regards to the introduction of the age regulations, serves a basic awareness-raising

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63 Courts and tribunals may extend the time-limits if they consider it is just and equitable to do so. 
65 Igen & Others v Wong (conjoined with Chamberlain & Anor v Emokpae and Brunel University v Wenster) [2005] IRLR 258, EWCA.
67 [1999] IRLR 364
function. For more detailed dissemination of information, the government has in the past relied on the three equality commissions (CRE, EOC and DRC) and it is expected that given its responsibility for the promotion of equality, diversity and human rights, this role will continue to be led by the new Equality and Human Rights Commission. The Citizens Advice Bureau and the voluntary sector play a large role in dissemination of information about legal protection.

vi) Dialogue between the Social Partners

Article 11 of Directive 2000/43 and Article 13 of Directive 2000/78 place an obligation on the state to promote a dialogue between the social partners to give effect to the principle of equal treatment. The government has consulted widely on the provisions concerning the transposition of the Directives, particularly in relation to age, and has done much to engage business and employers’ associations in these consultations and reassure them that diversity is good for business.

vii) Bodies for the Promotion of Equal Treatment

The Equality Act 2006 establishes the new Equality and Human Rights Commission for Great Britain, which became operational on 1 October 2007. This merges the three earlier equality commissions: the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission, and will provide support for the first time for the new equality areas of age, religion and belief and sexual orientation. The new commission’s general duty is to encourage and support the development of a society in which people’s ability to achieve their potential is not limited by prejudice or discrimination, there is respect for individual human rights, each individual has an equal opportunity to participate in society and there is mutual respect between groups based on an understanding and valuing of diversity. The commission is responsible for monitoring the effectiveness of equality and human rights enactments, monitoring changes in society, promoting the understanding of and good practice in equality, diversity and human rights. The commission is prevented from taking human rights action in relation to certain matters for which the Scottish Parliament has legislative competence.

The first Chair is Trevor Phillips, who is the former Chair of the Commission for Racial Equality. The Equality Commission for Northern Ireland (ECNI) was established under the Northern Ireland Act 1998 and has duties and powers in respect of race, religious belief and political opinion, sex, disability, age and sexual orientation.

4. Realising the Right to Non-discrimination

a) Obstacles

i) Complexity and inconsistency of the legislation

The decision to transpose the European Directives through secondary legislation, rather than primary legislation, in addition to the already existing primary legislation on the grounds of race and sex, has created an unnecessarily complex set of provisions. The existence of several different definitions of indirect discrimination across the different grounds highlights this issue most acutely. A single equality act for Great Britain and Northern Ireland is necessary to address this problem.

ii) Lack of good and affordable legal advice


69 Groups are defined as persons sharing a common attribute based on age, disability, gender, race, religion or belief, sexual orientation and proposed, commenced or completed reassignment of gender. Section 10 of the Equality Act 2006 includes the provision that this list of groups can be varied.

70 Section 3 Equality Act 2006.

71 Ibid., Section 7.

72 The European Communities Act 1972 empowers Ministers to transpose European Union law through ‘regulations’ which constitute secondary legislation and differ from primary legislation as they do not constitute statutes enacted by the parliamentary process.
There are two issues here:

**Legal aid:** Concerns have also been expressed to the CRE, for example, about the impact of legal aid reforms on the funding of discrimination cases. Legal aid is presently not available for applications before the Employment Tribunal (very often the first judicial body to hear equality and non-discrimination cases). Subsequently, building a claimant’s case of discrimination becomes increasingly difficult, the collating of evidence (although mostly in the hands of the respondent) and the construction of legal arguments in these cases is time-consuming, particularly where dealing with more covert or indirect discrimination. Therefore, individuals seeking legal remedies often find the initial hurdle of overcoming the financial cost of bringing a case too great a burden.

**Legal representation:** There is a lack of skilled, experienced advice available in this complex area of law. When advice is available it is often secured by the respondents who are often employers with greater access to professional advice. The three equality bodies have in the past adopted the policy of only supporting certain strategic cases and it is presumed that the new Commission will adopt a similar approach.

**iii) Confidence to bring a claim**

According to research carried out those who have been the victims of discrimination are very reluctant to pursue a legal action. The main reasons for this are lack of confidence that they will be believed or fear that they will face retaliation or victimisation.

**b) Civil Society and Discrimination**

The Citizens Advice Bureau is a charity which provides free legal advice. Staffed by volunteers it provides good basic advice.

http://www.adviceguide.org.uk/index/your_rights/discrimination.htm

Some NGOs, such as Liberty, campaign on certain issues. They also have a website link to their publication ‘Your Rights’ which provides good basic advice.


Some organisations are involved in training programmes to improve capacity building amongst civil society and train staff in discrimination issues. Many of these are funded by the EU and are mainly targeting the new accession countries to the EU or candidate countries.


At an EU level platforms exist which bring together different NGOs and other organisations with the aim of working together to influence policy decisions at the European level.

http://www.socialplatform.org/

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73 Changes under the Carter Review now being implemented to the funding of civil legal aid are likely to affect the numbers of discrimination cases supported.


75 Ibid, pp. 74-75