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Chapter 1**Equality****Chapter Contents**

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1.1 Purpose

The purpose of this chapter is to introduce the concept of equality and to help define what is meant by the term. We will also discuss some of the causes of inequality and look at some evidence that discrimination on the basis of unfounded stereotypes continues to exist. The important but often neglected subject of multiple discrimination will also be considered. This is where someone is subject to discrimination based upon a number of personal characteristics or, indeed, a combination of those characteristics.

1.2 How fair is Britain?

The Commission for Equality and Human Rights produced a triennial review on inequality (2011c), which stated that:¹

Between 1995–97 and 2006–08, a steady growth in the number of jobs raised the percentage of women and of Black people of working-age in employment by twice the average, and the percentage of Bangladeshi and Pakistani people of working-age in employment by three times the average.¹ However, some groups with low employment rates have done badly over the long term, especially those pushed to the margins of the labour market. For example the employment rate for disabled men without qualifications halved between the mid-1970s and early 2000s. Calls to the Equality and Human Rights Commission's helpline also indicate that employment issues are significant for disabled people with over half of the calls in 2008–09 related to employment issues coming from this group.²

Despite some growth in their employment rates, only 1 in 4 Muslim women work, and many face practical barriers preventing them from doing so. Moreover, Black people and disabled people in their early 20s are twice as likely not to be in employment, education or training (NEET) as White people and non-disabled people. Young Muslims are also more likely than Christians to spend periods out of the labour market. Overall, a more demanding job market is less forgiving of those without qualifications.

Many barriers within employment are breaking down, for example with a growing proportion of managerial and professional positions taken by women. However, the British labour market continues to be characterised by a high level of occupational segregation. Around 25 per cent of Pakistani men are primarily taxi drivers; women make up 83 per cent of people employed in personal services; and over 40 per cent of women compared to 15 per cent of men are employed in the public sector, making women particularly vulnerable to public sector cuts.

Occupational segregation continues to feed pay differences, especially in the private and voluntary sectors where at age 40 men are earning on average 27 per cent more than women. The large proportion of women in part-time jobs also contributes to this. Occupational segregation also explains differences in illness and injury rates in the workplace, with people in manual and routine occupations being most at risk.

¹ Hills, J. et al. 2010. *An Anatomy of Economic Inequality in the UK*. Report of the National Equality Panel. London: Government Equalities Office. Tables 10.3 and 10.4.

² Calls received by the Equality and Human Rights Commission's helpline 2008–09.

There are few large-scale data on the labour market experiences of lesbian, gay and bisexual (LGB) people. However, we do know that LGB adults are around twice as likely to report experiencing unfair treatment, discrimination, bullying or harassment at work than other employees. This is also mirrored in the nature of the queries received by the Equality and Human Rights Commission's helpline, many of which relate to harassment in the workplace suffered by this group. There are even less data available for transgender people, though smaller-scale studies point towards evidence of harassment and other forms of discrimination in the workplace.

The report also states that surveys show that we are more tolerant of difference and less tolerant of discrimination nowadays, but it also reports that what happens in the real world still falls short of the ideals of equality, such as 'the harassment of disabled people, to homophobic bullying in schools, to stereotypes and arbitrary barriers that prevent older people from giving of their best in the workplace'.²

Undoubtedly we have progressed a lot from the days when women had to give up work when they became pregnant or when accommodation owners were able to refuse applications for tenancies from people because of their nationality or the colour of their skin. The above extract from the Commission's report gives some idea of the challenges that still remain if we are to achieve equality.

1.3 Equality

What do we mean by equality? Do we believe that that all people should be treated equally, or that only similar people are treated equally? Should the principle purpose of equality legislation be concerned with achieving equality of opportunity for everyone or should we be more concerned with achieving equality of outcomes? These are really important questions and the way in which we answer them will influence the sort of protection from discrimination that is extended to people.

As an illustration we can look at a hypothetical factory that has a production line predominantly staffed by female employees. The heavier jobs such as driving forklift trucks and lifting and carrying bulk items tend to be done by male employees. The 'white collar' part of the operation has mostly men in management positions and women doing admin/secretarial work. This not an uncommon situation, but what is wrong with it, if anything? All the shop floor staff are paid similar rates, although there is extra pay for those doing heavier work. The management and secretarial/admin staff are on a job-evaluated grade structure and their pay is related to their performance in their jobs. All the shop floor staff are treated equally; all the management and admin staff are also treated equally.

The problem is that in such organisations women have traditionally occupied the lower paid jobs and men have occupied the management jobs, and this is still the reality in many of them. If we take the most senior jobs in organisations, namely the members of the board of directors, we can see the results of a long history of gender inequality. A review carried out by the Department for Business, called *Women on Boards* (BIS 2011), found that in 2010 women made up only 12.5 per cent of the members of the corporate boards of FTSE 100 companies. The review quoted research by the Equality and Human Rights Commission, which stated that, at the current rate of change, it will take over 70 years to achieve gender-balanced boardrooms in the UK.

In our hypothetical factory it is not enough that shop floor workers are treated equally. We need to ask why the heavier jobs are mainly done by men. Is it because men are stronger than women

² See Chapter 1 of the EHRC report: *How Fair is Britain? Equality, Human Rights and Good Relations in 2010*.

and can therefore do heavier jobs, which are often better paid? Such a view relies upon a stereotype of men and women, namely that men are stronger and women are weaker. This is obviously not true. Not all men are stronger than all women; some women are stronger than some men. Yet having this stereotypical view encourages the employment of men in the heavier and better paid jobs, which in turn perpetuates the inequalities in pay and promotion opportunities.

One further situation in the hypothetical factory that we might consider is that of a person with a disability. Let us assume that the employer has an equal opportunities policy that includes automatically giving applicants with a disability a place on a recruitment shortlist, providing the candidate has the relevant qualifications and so on. This is a policy adopted by many employers in order to overcome some of the obstacles that people with disabilities have to face when applying for jobs. In this hypothetical situation the applicant has arthritis and is applying for a job that requires good keyboard skills. At the interview it emerges that the arthritis is in her hands and makes it impossible for her to use a keyboard. The employer reluctantly turns her down on the assumption that there are no adaptations that they can make which would enable this candidate to do the required job. Has the applicant suffered discrimination based upon her disability?

The answer to this depends upon what we mean by equality. The person has been turned down because the employer believed that, regardless of what aids were available, she would not be able to do the job of keyboard operator. This is the only reason that she failed to get the job. This might seem very reasonable, and may be the position in which some employers have found themselves. On the other hand one should ask the question as to why the candidate has been turned down. The answer is that she failed to get the job because she had a disability. As will be seen in Chapter 5 on disability, the employee may well have a case to argue that she has been treated in a way that amounts to disability discrimination.

These illustrations are intended to show that the issue of what is meant by equality and discrimination is not a simple one. Are we interested in formal equality or a more substantive approach? The principle of formal equality requires the equal treatment of equal cases, so it does not take into account any material differences between those being compared. In this approach discrimination against men is as bad as discrimination against women and there is no difference in the approach to the two groups. It does, however, ignore the fact that women are much more discriminated against than men. This approach is reflected in the legal definition of direct discrimination. The principle of substantive equality takes into account the material differences between individuals or groups. This approach might be said to try to achieve *de facto* equality and thus will attempt to take into account the reality of the position of women, rather than to apply some universal standard: for example, women are much more likely to have a caring role in the family and a substantive approach to equality will take this into account.

The formal equality approach might allow bad treatment of individuals or groups as long as everyone is treated equally badly; a substantive equality approach might try to correct the wrong. The case of *Glasgow City Council v Zafar*³ concerned Mr Zafar, who was a United Kingdom citizen of Asian origin. In the case at the House of Lords it was recorded that he was employed for some ten years by the Strathclyde Regional Council as a social worker. He was dismissed in March 1989, the reason for his dismissal being given as sexual harassment of clients of the Social Welfare Department of the local authority and of fellow employees. The House of Lords considered the issue of 'less favourable treatment' (Chapter 3 explains that this is the definition of direct discrimination) on racial grounds. The original tribunal had concluded that an inference of less favourable treatment could be drawn because, as the tribunal stated,⁴ 'to treat someone in a way which falls far below the standards of the reasonable employer gives rise to a presumption that that person has been treated

³ *Glasgow City Council v Zafar* [1998] IRLR 36.

⁴ Reported in the House of Lords case; see note 5.

in a way different from the way in which others have been, or would be, treated'. Thus there was a presumption that bad treatment could be inferred to be less favourable treatment by the standards of a reasonable employer. The House of Lords stated that this was wrong and that one could not rely upon the idea of a reasonable employer treating everyone fairly. The House stated:

The alleged discriminator may or may not be a reasonable employer. If he is not a reasonable employer he might well have treated another employee in just the same unsatisfactory way as he treated the complainant in which case he would not have treated the complainant 'less favourably' for the purposes of the Act of 1976. The fact that, for the purposes of the law of unfair dismissal, an employer has acted unreasonably casts no light whatsoever on the question whether he has treated the employee 'less favourably' for the purposes of the Act of 1976.

Thus it is possible for an employer to be a bad employer and treat everyone badly. In such circumstances it may not be possible to show discrimination because nobody is treated less favourably than anyone else.

Another way of discussing these issues is to ask the question whether it is desirable to pursue equality of outcomes rather than equality of opportunities. Equality of opportunities means removing barriers to disadvantaged groups, but it also means that we must take a positive approach to ensuring that disadvantages are compensated for. It means that, effectively, everyone starts from the same point, so a person with disabilities has those disabilities compensated for in order to bring that person to the same starting point as another without the disability. Equality of outcomes is something more controversial because it means levelling out the finishing point as well as the starting point. Equality of outcomes is a process where one tries to achieve the desired result of more equality by active interventionism. Thus a quota system for women on the boards of public companies to make sure that there are as many women as men on such boards would be a way of achieving such equality. The problem with this approach, and perhaps the problem that makes it most controversial, is that it may achieve some form of equality only by discriminating against those not in the protected group. Therefore, having more women on the board may stop some men from being board members.

There are no easy solutions and this is reflected in the fact that the UK's anti-discrimination system is a mixture of policies aimed at achieving formal and substantive equality on a number of grounds.

1.4 Stereotyping

An equality approach might require individuals to be treated on an individual merit basis rather than on some other basis. The problem with a merit-based approach, of course, is that it can be subjective rather than objective, and is likely to be measured against the conventional norms of society, which tend to be those of the dominant group – white males. An equality approach requires that individuals are treated on an individual basis rather than on the group basis of a stereotypical approach.

It has been suggested that the word 'stereotype' was first used in the eighteenth century to describe a printing process whose purpose was to duplicate pages of type. The usage of the word later developed from the idea of producing further images from a stereotype into reproducing 'a standardised image or conception of a type of person' (Collins Dictionary). The problem with producing this 'standard image', or stereotyping, is that individuals are treated as members of a group, rather than being treated as individuals. It is the group to whom we attribute generalised characteristics, which clearly cannot possibly be the characteristics of every individual within that group.

One simple assumption, as illustrated in our previous example, might be that men are stronger than women. The result of this is that only men might be considered for physically demanding jobs, which, in turn, may be the higher paid jobs in certain types of employment. The outcome is that women are discriminated against in the selection process and end up earning less than men.

Another example might be the stereotypical attitudes that employers have towards the abilities of employees based upon their age. In one survey of 500 companies a question was asked about at what age someone would be too old to be employed. Of the respondents 12% considered people too old at 40, 25% considered them too old at 50, 43% considered them too old at 55 and 60% felt they were too old at 60.⁵ The relationship of these judgements to conventional stereotypical attitudes can be shown in their answers to questions about agreeing or not agreeing with statements. Figures such as the 36% who thought that older workers were more cautious, the 40% who thought that they could not adapt to new technology and the 38% who thought that they would dislike taking orders from younger workers suggest that stereotypical attitudes remain strong. Research indicates that there is little evidence that chronological age is a good predictor of performance.

1.5 Does discrimination still take place?

The answer to this is yes. A Eurobarometer survey that took place throughout the EU⁶ found that discrimination is widespread throughout the European Community. When citizens in the EU25 were asked about whether discrimination was widespread or rare, their response showed that many believed it was widespread (see Table 1.1).

These figures record only the perceptions of individuals and are averages from across the EU. The survey report suggests that there are widespread differences between different Member States, but that generally the view is that being disabled, being a Roma, being older, belonging to an ethnic minority or being homosexual tends to be a disadvantage in their country. This is reflected in a further analysis provided by the Eurobarometer survey (see Table 1.2).

There is no reason to assume that the situation is any different in the UK, although it is fair to say that the situation has improved over the years. Despite this improvement, inequalities do remain and obvious ones include the continuing gender pay gap for all employees, which is still a little under 20%; and the employment rate for people with disabilities is just 50% compared to about 79% for the non-disabled population.

People appear to think that it is a disadvantage to be disabled, a Roma or an older person in our societies. This is further confirmed by the respondents' assessment of which people are more or less likely to get a job, be accepted for training or be promoted (see Table 1.3).

Table 1.1 Discrimination in the EU

Ground	Rare (%)	Widespread (%)	DK ⁷ (%)
Ethnic origin	30	64	6
Disability	42	53	6
Sexual orientation	41	50	9
Age	48	46	7
Religion or beliefs	47	44	8
Gender	53	40	8

⁵ These percentages are cumulative.

⁶ European Commission 2007.

⁷ Don't know.

Table 1.2 Is belonging to one of these groups an advantage, or a disadvantage or neither, in society at the current time?

Characteristic	Disadvantage	Neither	Advantage
Being disabled	79	15	-
Being a Roma	77	15	-
Being aged over 50	69	24	-
Being of a different ethnic origin	62	30	-
Being homosexual	54	39	-
Being part of a different religion	39	54	-
Being a woman	33	54	1
Being aged under 25	20	38	39
Being a man	4	45	49

Table 1.3 Would you say that, with equivalent qualifications or diplomas, the following people would be less likely, as likely or more likely than others to get a job, be accepted for training or be promoted?

	EU25 (%)		
	Less likely	As likely	More likely
A person aged over 50 compared with a person aged under 50	78	16	4
A disabled person compared with an able-bodied person	77	16	4
A person who is not White compared to a White person	59	32	4
A person of different ethnic origin than the rest of the population	58	32	4
A foreigner compared to a national	58	31	6
A woman compared with a man	47	45	5
A homosexual person compared with a heterosexual person	45	44	3
A person who practises a different religion than that of the rest of the country	32	58	3
A person aged under 25 compared with a person aged over 25	30	43	23

Thus the perception is that older people will find it more difficult to get work, and the same is true of people with a disability.

1.6 The grounds for discrimination

A limitation of the statutory protection from discrimination in the UK and the EU is that it relates to a closed number of grounds of discrimination. In the Equality Act 2010 these grounds are referred to as 'protected characteristics'. There are nine of these protected characteristics, which are

would need to be justified by the employer as having a legitimate aim and that the means of achieving that aim (i.e. retirement) were appropriate and necessary. It is believed that this would only be possible in exceptional circumstances.

4.9 Summary

In this chapter we have considered some of the basic issues surrounding age discrimination, particularly at work, but it must be obvious that age equality is treated differently to the other protected characteristics. There are more opportunities to show exceptions for both direct and indirect discrimination, providing that there is a 'legitimate aim' and the means of achieving that aim are proportionate. Part of the problem is that age does not really seem to have been accepted as a human rights issue as have the other protected grounds. The justification for having measures concerning age is essentially an economic one. The population is ageing and the workforce is ageing, so unless some action is taken, the strain on the pensions systems will be too great and the burden on society of supporting this older population will be excessive. Tackling age discrimination in order to encourage workers to stay longer at work is seen as an important contribution to this. Much progress has been made with such reforms as ending the general mandatory retirement age and tackling ageism in various parts of society (see Chapter 1 with regard to the Health Service). The problem is that if there is an economic justification for such a measure, then it is easier to justify exceptions on economic grounds and the principle of non-discrimination can take second place.

Chapter 5

Disability

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5.1 Introduction

There are over 11 million people in Great Britain with a disability covered by the Equality Act 2010, with about 5.2 million being of working age and about 0.8 million who are children.¹ This constitutes some 19 per cent of the working population. Only half of disabled people of working age are in work, compared to 80 per cent of the non-disabled population.² The prevalence of disability rises with age. Around 1 in 20 children are disabled, compared to around 1 in 7 adults of working age and almost 1 in 2 people over state pension age.

Conventionally there are two models of disability discrimination that are discussed. These are the medical and social models of disability. The medical model focuses on the disability and is concerned with treating that disability. There is a strong element of this in the UK legislation. The social model focuses on society and provides that the barriers to participation in society for disabled people are society's responsibility and an individual's disability is irrelevant. Thus the medical model is concerned with providing a wheelchair for a person with a disability that affects their mobility; the social model would be more concerned about making access to transport and buildings as wide as possible. If a person in a wheelchair cannot access a building, it is society's responsibility, not that of the disabled person.

There is much evidence that disabled people face discriminatory attitudes from those who are not disabled. A 2011 survey of people with disabilities³ asked them the question: 'roughly how frequently do you experience discrimination against you as a disabled person?' The responses were that 19% stated that they experienced it every day, 30% every week and some 20% every month. Thus almost half the disabled people surveyed experienced discrimination on a weekly, or more frequent, basis; and over two-thirds experienced it at least once per month. The same survey also asked about which kinds of discrimination had been suffered by the respondents. The responses to this question are contained in Table 5.1.

Table 5.1 Types of discrimination suffered by people with disabilities

Discrimination	Proportion of disabled people experiencing this (%)
Not being served in a shop, bar or restaurant	25
Ignored by a taxi or a bus you were trying to hail	27
Person not talking directly to you	67
Person talking to you in a patronising way	74
Person being aggressive, hostile or calling names	37
Person assuming you do not work	42
Person not believing that you are disabled	54
Person refusing to make adjustments or do things differently	63
Staring	58
Other	21

¹ Office for Disability Issues, information on the website of the Department for Work and Pensions: <http://odi.dwp.gov.uk/docs/res/factsheets/disability-prevalence.pdf> (last accessed March 2012).

² From the website of the Disability Living Foundation: <http://www.dlf.org.uk/content/key-facts> (last accessed March 2012).

³ Survey on behalf of SCOPE carried out by COMRES. Available at: <http://www.comres.co.uk/poll/8/scope-discrimination-survey-15-may-2011.htm> (last accessed March 2012).

It is important to remember that one in five disabled persons suffer this discrimination on a daily basis. Many experience being patronised, not being talked to directly (does he take sugar?), being stared at or just people not being prepared to do things differently to take into account a disability. Some of the quotes from the respondents about their experiences are contained in the survey summary.⁴ They include:

I have had people shouting abuse in the street, like 'scrounger'. I have been attacked by a group of teenagers, who attempted to kick my stick away and knock me down. This happened in a busy shopping area and no one offered to help me afterwards.

MS is sometimes invisible. I have had a cab driver yell at me for some time in front of my four-year-old for parking my car (in a disabled bay) legally whilst displaying my blue badge in front of the bank.

I have been called scrounger, parasite, and a waste of space. My personal assistant was spat at for helping me recently in a local shop.

I've been called names in the street and told to 'stop faking and get a f***ing job' while struggling to transfer to my wheelchair from the car.

People have referred to my disability railcard as a 'cripple pass'.

A further question in the survey asked the disabled respondents the question: 'Do you feel that a stranger has ever acted in a hostile, aggressive or violent way towards you because you are a disabled person?' Somewhat alarmingly, over half (54 per cent) replied yes to this question.

5.2 The United Nations Convention

The United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted in December 2006 and entered into force on 3 May 2008. In the words of the United Nations,⁵ it:

follows decades of work by the United Nations to change attitudes and approaches to persons with disabilities. It takes to a new height the movement from viewing persons with disabilities as 'objects' of charity, medical treatment and social protection towards viewing persons with disabilities as 'subjects' with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.

This shows the extent to which international attitudes have moved from the medical model of disability, which is focused on the individual's incapacities, to the social model, which focuses on the barriers erected by society against the full participation of people with disabilities. These models are discussed further below.

The Convention describes how rights apply to persons with disabilities and identifies where accommodations have to be made in order for persons with disabilities to exercise their rights. Article 3 of the Convention sets out the principles on which it is based:

⁴ See <http://www.scope.org.uk/news/latest-attitudes-survey> (last accessed March 2012).

⁵ The Convention 'home page' can be found at <http://www.un.org/disabilities/default.asp?id=150> (last viewed March 2012).

The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women; and
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

These are powerful principles that show an intention to tackle the disadvantageous treatment of those with disabilities. Turning the words into reality is something that is much needed, as one can tell from the treatment of the disabled as described above. Signature states are required to take legislative and other measures to end discrimination and abuse of the human rights of people with disabilities. Article 5 is concerned with equality and non-discrimination and provides that states 'shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds'. It also requires states to take appropriate action to ensure that reasonable accommodation is provided (see below).

5.3 The Equality Act 2010

The Framework Directive on Equal Treatment in Employment and Occupation included proposals to combat discrimination on the grounds of disability 'with a view to putting into effect in the Member States the principle of equal treatment'. In particular it provided (Article 5) that employers should have a duty of 'reasonable accommodation'. This means that employers are obliged to take steps, when needed, to ensure that a person with a disability could have access to, participate in, have advancement in and undergo training. The only possible exception to this duty, according to the Directive, is if this places a 'disproportionate burden' on the employer. Thus, in certain circumstances the Directive permits positive discrimination in favour of the disabled employee or applicant.

The Disability Discrimination Act (DDA) 1995 was the first measure to outlaw discrimination against disabled people in the United Kingdom and included an obligation on the employer to make adjustments. The Act, which preceded the Framework Directive, gives disabled people rights in employment and other areas.

The Equality Act 2010 now precludes direct and indirect discrimination, harassment and victimisation in relation to disability. It is important to note that the Act provides for indirect discrimination. Section 15(1) also provides that a person discriminates against a disabled person if the disabled person is treated unfavourably because of something arising in consequence of his or her disability. Thus there is no requirement for a comparator and no need to show detriment. These provisions effectively reverse the decision in *LB of Lewisham v Malcolm*.⁶ *Malcolm*, which had severely limited the opportunity to complain about unfavourable treatment, related to disability by requiring there to be a comparator who did not share the disability of the complainant. None of this applies,

6 [2008] IRLR 700.

however, if the employer did not know, or could not reasonably be expected to know, that an individual had a disability (section 15(2)).

5.4 The meaning of disability

Having looked at the sort of discrimination from which people with disabilities can suffer, we now move on to consider what is actually meant by the term disability. There are of course many types of disability. The government Office for Disability Issues (ODI) provides the breakdown and analysis of prevalence⁷ shown in Table 5.2.

Many disabled people have more than one impairment.

There is a legal definition of disability contained in the Equality Act 2010. Section 6(1) of the Act provides that:

- (1) A person (P) has a disability if—
 - (a) P has a physical or mental impairment, and
 - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Thus the tests for whether a person has a disability are, first, that there must be a physical or mental impairment; second, that it must have a substantial adverse effect; third, that it must have a long-term adverse effect; and, finally, that this adverse effect must relate to the ability to carry out normal day-to-day activities. This is examined further below. A person who has had a disability in the past is also protected by the Act.⁸

5.4.1 Physical or mental impairment

The government Office for Disability Issues has produced Guidance on matters to be taken into account in determining questions relating to the definition of disability.⁹ It states that the term mental or physical impairment should be given its everyday meaning.¹⁰ It is not necessary to investigate the

Table 5.2 Prevalence of disability by impairment in Great Britain (millions)

Mobility	6.2
Lifting, carrying	5.9
Manual dexterity	2.6
Continence	1.5
Communication	2.1
Memory, concentration, learning	2.2
Recognising when in danger	0.7
Physical co-ordination	2.4
Other	3.7
All with at least one impairment	10.9

7 See note 1; figures are for 2009/10.

8 Section 6(4) Equality Act 2010.

9 Office for Disability Issues Equality Act 2010 Guidance, available at: http://www.equalityhumanrights.com/uploaded_files/EqualityAct/odi_equality_act_guidance_may.pdf (last viewed in March 2012).

10 See, for example, *McNicol v Balfour Beatty* [2002] IRLR 71 where the Court of Appeal stated that the term 'impairment' should have its 'ordinary and natural meaning'.

cause of the impairment or for the impairment to have been the result of an illness. An example of this can be found in *Power v Panasonic UK Ltd*,¹¹ which concerned an area sales manager who had the area for which she was responsible expanded, following a reorganisation. She became ill and was eventually dismissed after a long period of absence. During her long absence she was both depressed and drinking heavily and the tribunal concerned itself with whether the drinking or the depression came first. However, the EAT stated that it was not necessary to consider how the impairment was caused. What was relevant was to discover whether the person had a disability within the meaning of the Act at the relevant time.

It is important to look at the effect of the impairment on the individual's ability to carry out day-to-day activities. The Guidance provides examples of this:

A woman is obese. Her obesity in itself is not an impairment, but it causes breathing and mobility difficulties which substantially adversely affect her ability to walk.

A man has a borderline moderate learning disability which has an adverse impact on his short-term memory and his levels of literacy and numeracy. For example, he cannot write any original material, as opposed to slowly copying existing text, and he cannot write his address from memory.

So it is the effect of these conditions, that is the obesity and the learning difficulties, that is important and not the underlying conditions.

*Goodwin v The Patent Office*¹² concerned a man who was dismissed from his post after complaints from female staff of disturbing behaviour. He was a paranoid schizophrenic. He gave evidence that he heard voices and that these interrupted his concentration. The Employment Tribunal held that he was not disabled in terms of the (then) Disability Discrimination Act 1995 because the effect of these hallucinations was not substantial in relation to his normal day-to-day activities. The EAT reversed this decision and held that Mr Goodwin was disabled and that the tribunal had failed to consider the effect of the applicant's disability on his regular activities. The applicant was unable to carry on normal day-to-day conversations with his colleagues and this was good evidence that his ability to concentrate and communicate had been significantly adversely affected.

Certain conditions are automatically considered as disabilities. These include the case of a severe disfigurement, where the Act provides that this should automatically be treated as meeting the definition of disability.¹³ This appears, however, to be treated as a narrow exception. In *Cosgrove v Northern Ireland Ambulance Service*¹⁴ the court stated that the impairment here related solely to a condition of disfigurement and not to a condition, one aspect of which was disfigurement. Mr Cosgrove had applied for a job with the ambulance service and was turned down because he had severe psoriasis. The court decided that he had been turned down not because of the disfigurement but because he would be at risk of infection and of infecting others in the role of ambulance person.

Other exceptions included in the Act as specific disabilities are cancer, HIV infection and multiple sclerosis.¹⁵ Without this inclusion one might have the strange situation of a person with

11 [2003] IRLR 151.

12 [1999] IRLR 4.

13 Equality Act 2010 schedule 1 para 3; although tattoos and body piercing are excluded from the meaning of severe disfigurement.

14 [2007] IRLR 397.

15 Equality Act 2010 schedule 1 para 6.

one of these ailments not meeting the definition of disability because there would be periods when the impairment would not have interfered with an individual's ability to carry out their day-to-day activities.¹⁶ The Act also provides that certain people can be deemed to meet the definition of a disability.¹⁷ These include the blind, severely sight-impaired, sight-impaired or partially sighted persons as certified by a consultant ophthalmologist.

Some conditions are specifically excluded from meeting the definition of disability.¹⁸ These include addictions to alcohol or tobacco (provided that they have not been caused by medical treatment or prescribed drugs), a tendency to set fires, to steal, to physical or sexual abuse of other persons, to exhibitionism and to voyeurism. Seasonal allergic rhinitis (hay fever) is also excluded.

5.4.2 Substantial adverse effect

According to section 212(1) Equality Act 2010 the word 'substantial' means 'more than minor or trivial'. The Guidance gives some examples, the first of which is to consider the time taken to carry out a normal day-to-day activity. The comparison should be with a person who does not have the impairment. Here is the example from the Guidance:

A ten-year old child has cerebral palsy. The effects include muscle stiffness, poor balance and uncoordinated movements. The child is still able to do most things for himself, but he gets tired very easily and it is harder for him to accomplish tasks like eating and drinking, washing, and getting dressed. He has the ability to carry out everyday activities such as these, but everything takes much longer compared to a child of a similar age who does not have cerebral palsy. This amounts to a substantial adverse effect.

A second indicator might be the way in which a person carries out a day-to-day activity. The Guidance gives this example:

A person who has obsessive compulsive disorder (OCD) constantly checks and rechecks that electrical appliances are switched off and that the doors are locked when leaving home. A person without the disorder would not normally carry out these frequent checks. The need to constantly check and recheck has a substantial adverse effect.

*Paterson v Commissioner of the Police*¹⁹ concerned the issue of dyslexia. A chief inspector had claimed that, as a consequence of discovering that he had dyslexia, he was disabled within the meaning of the DDA. The tribunal dismissed his claim stating that, although his dyslexia was a substantial disadvantage to him when taking his promotion exam, this was not a day-to-day activity. Any adverse effects of his impairment were minor, not substantial. This decision was changed by the EAT, who held that carrying out an exam or assessment was a day-to-day activity, as were reading and comprehension. The EAT held that the only proper way to decide whether an impairment was substantial was to consider how the activity was actually carried out and compare this to how the activity would be carried out if the individual were not suffering from the impairment. 'If that difference is more than the kind of difference one might expect taking a cross section of the population, then the effects are substantial.'²⁰

16 This was the case with the Disability Discrimination Act 1995 until it was amended by the Disability Discrimination Act 2005.

17 Equality Act 2010 schedule 1 para 7.

18 The Equality Act 2010 (Disability) Regulations 2010 SI 2010/2128.

19 [2007] IRLR 763.

20 *Paterson v Commissioner of Police*, para 68.

Chapter 9

Sex Equality

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9.1 Introduction

In this chapter we consider a number of important issues related to the protected characteristics of sex and marriage/civil partnership. We also consider the subject of equal pay or 'equality of terms'. This perhaps shows the limits of the law, when one considers that while in the UK there has been some sex discrimination legislation since the 1960s and both the Sex Discrimination Act and the Equal Pay Act came into effect as long ago as 1975, discrimination and inequality continue.

9.2 Women and men

Although the Equality Act 2010 has, as one primary purpose, the removing of gender imbalances between men and women, it does not necessarily require the same treatment as between men and women. The aim is to ensure that one gender is not treated less favourably than another. An example of this can be seen in complaints concerning the differences in dress codes between the sexes. In *Smith v Safeway plc*,¹ for example, a male employee was dismissed because his ponytail grew too long to keep under his hat. The store had a code that required men to have hair not below shirt collar level, but female employees were permitted to have hair down to shoulder length. The court held that the employer was imposing a dress code that reflected a conventional outlook and that this should not be held to be discriminatory. The effect of such a decision was, however, that a male employee was dismissed because of the length of his hair, which would have been permissible in a female employee.²

Section 11(a) of the Equality Act 2010 also makes it clear that this characteristic applies to men as well as women. An example of this occurred in *Eversheds v De Belin*.³ The employer in this case was in a difficult situation. The claimant was one of two solicitors of whom one was to be made redundant. The choice for the employer was between the claimant, who was a man, and another solicitor who was absent on maternity leave at the time. The employer adopted a points scheme to decide on which person was to go. One of the factors in gaining points was called 'lock up'. This was the amount of time between undertaking a piece of work and receiving payment. The claimant was scored on his actual performance, but the person absent on maternity leave was given the maximum possible points for lock up, even though she did not have any payments during the chosen period. This enabled her to gain marginally more points than the claimant and so he was the one made redundant. As a result he made a claim for sex discrimination and unfair dismissal. Given the restrictions on acting against pregnant women or people on maternity leave, the employer argued that they had fulfilled their responsibility to the employee on maternity leave. The EAT held, in the event, that the law that gave pregnant women and those on maternity leave special treatment and protection still required the treatment to be a proportionate means of achieving a legitimate aim. In this case the treatment given to the absent employee was disproportionate and amounted to direct sex discrimination against the male employee.⁴

Women are less likely than men to be working full time and at all ages there exists a gender pay gap in favour of men. Part-time work is often low-paid work. The size of the pay gap depends upon what formula one uses, but the Fawcett Society estimates it to be some 14.9 per cent.⁵ Although there has been a steady decline in the full-time pay gap over the years, its existence remains stubbornly

¹ See *Smith v Safeway plc* [1996] IRLR 457.

² In *Burrett v West Birmingham Health Authority* [1994] IRLR 7 female nurses were required to wear caps but male nurses were not. The EAT held that the important issue was that they both had to wear uniforms, not that those uniforms differed. See also *Department for Work & Pensions v Thompson* [2004] IRLR 348.

³ *Eversheds Legal Services Ltd v De Belin* [2011] IRLR 448.

⁴ *Nelson v Newry and Mourne DC* [2009] IRLR 548 was also a case where a man claimed direct sex discrimination. This case concerned two council employees, one male and one female, who were investigated for misusing council property. They were treated in different ways with regard to the disciplinary process and the man was given a much more severe sanction than the female.

⁵ See <http://www.fawcettsociety.org.uk/index.asp?PageID=321> (last accessed 17 January 2013).

persistent. The part-time gap (i.e. comparing the wages of part-time women workers to those of full-time male workers) has remained fairly constant.⁶ These figures hide some striking extremes; for example the Equality and Human Rights Commission reported that men received bonus payments in the City (of London) at a rate that was five times the amount received by women.⁷ The result was that women earned 87.4 per cent of the rate earned by men using the median figure, and 82.8 per cent using the mean.

Women also suffer in comparison to men in other ways. For example, a BIS report (BIS 2011) provides the following information, from research carried out by Cranfield University about women and membership of the boards of companies in the FTSE 100:

- there are 141 women holding 163 FTSE 100 board seats (out of 1,086 board positions);
- there are 20 (6.6 per cent) female executive directorships and 143 (22.4 per cent) female non-executive directorships;
- the number of companies with no women on the board has dropped to 11 from 21;
- the number of companies with more than one woman on the board has increased to 50; and
- of the 47 new female appointments, 29 of the women (62 per cent) have had no prior FTSE board experience.

Although matters were improving, there was a long way to go before any equality between men and women could be achieved. Indeed, it has been reported that the European Commission may try to introduce legislation to ensure that the membership of the boards of listed companies should be at least 40 per cent female by 2020 (Fontanella-Khan 2012). It seems unlikely that such a policy will be successful.

Stereotypes of women are common and influence the role that women play in society; for example, women are seen as natural carers for children and older people and this can influence the way that their role at work is perceived by others and themselves. *B v A*⁸ was a case where a man complained that he had suffered as a result of gender stereotyping. The case concerned an executive in a local authority who claimed that she had been raped by a colleague and that this was the culmination of a period of sexual harassment. She did not make a formal complaint to the police, but the CEO dismissed the alleged rapist. Subsequently the police decided not to take further action, so he made a complaint of sex discrimination, amongst other matters, namely that the employer had been motivated by a gender stereotype that a complaint by a woman against a man for rape had to be well founded. The ET rejected this, but still found sex discrimination because the employer had not gone through any form of due process. The EAT overturned the decision and held that the CEO had been motivated by a fear of further violence towards the claimant; however, the EAT said that this was not necessarily due to gender stereotyping. He would have acted in the same way if the alleged attacker had been a woman and the victim a man, so there was no case for less favourable treatment.

9.3 The European Union

The Equal Opportunities and Equal Treatment Directive⁹ provides, in Article 1, that its purpose is:

⁶ See EHRC 2011c.

⁷ See BBC news website 6 September 2009, www.bbc.co.uk.

⁸ [2010] IRLR 400.

⁹ Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation OJ L204/23 26.7.2006. This Directive recast seven previous sex equality Directives, including the Equal Pay Directive 75/117, the Equal Treatment Directive 76/207 as amended by Directive 2002/73 and the Burden of Proof Directive 97/80, into one consolidated Directive from 15 August 2009, although the consolidated Directive itself had to be transposed into national law by 15 August 2008.

to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Article 2 states that, for the purposes of this Directive, discrimination includes:

- harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct;
- instruction to discriminate against persons on grounds of sex; and
- any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EC.

The extent to which the social objectives of Article 157 TFEU (141 EC) and, consequently, the Equal Treatment Directives could influence the development of equal opportunities has been considered by the Court of Justice. In *Marschall*¹⁰ the complainant was a male comprehensive schoolteacher who had applied for promotion to a higher grade. He was told that an equally qualified female applicant would be given the position as there were fewer women than men at the more senior grade. The Court considered previous judgments,¹¹ which concluded that the Equal Treatment Directive did not permit national rules that enabled automatic priority to be given to female applicants for a job. There was a distinction between those measures that were designed to remove obstacles to women in employment and those measures that constituted positive discrimination by giving them preference just because they were women. This latter approach conflicted with the Equal Treatment Directive. Equality is to be achieved by equality of opportunity rather than equality of outcomes (see Chapter 1). This still seems to be the situation even though Article 157(4) of the TFEU states:

With a view to ensuring full equality of practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures for providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

In *Abrahamsson and Anderson v Fogelqvist*¹² the Court of Justice stated that this approach did not allow positive discrimination in favour of women in the selection process. There needed to be an objective assessment of the qualifications of the man and woman competing for the job in question to ensure that they were similar before any preference could be given to the woman as a result of women being under-represented in the workforce.¹³

Article 3 of the Equal Opportunities and Equal Treatment Directive now states simply that:

Member States may maintain or adopt measures within the meaning of Article 157(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

9.4 The Equality Act 2010

Sex is one of the nine protected characteristics in the Equality Act 2010; thus direct discrimination, indirect discrimination, harassment and victimisation because of sex are made unlawful. There can

¹⁰ Case C-409/95 *Marschall v Land Nordrhein-Westfalen* [1998] IRLR 39.

¹¹ See, for example, Case C-450/93 *Kalanke v Freie Hansestadt Bremen* [1995] ECR 660.

¹² Case 407/98 *Abrahamsson and Anderson v Fogelqvist* [2000] IRLR 732.

¹³ See Case 158/97 *Application by Badeck* [2000] IRLR 432.

be no justification for direct discrimination in situations related to the protected characteristic of sex, but a comparative approach is still required. It needs to be shown that the woman (or man) has received less favourable treatment than the comparator of the opposite sex. The complainant needs to be able to prove facts from which the Employment Tribunal could conclude without an adequate explanation that the respondent had committed an act of discrimination. An example of this can be seen in *Hewage v Grampian Health Board*,¹⁴ where a female Sri Lankan-born hospital consultant was able to show that she had been treated differently to white male consultants. This case is useful because the Supreme Court here discusses the approach to the two-stage test for applying the statutory provisions set out in *Igen v Wong*¹⁵ and applied in *Madarassy*.¹⁶

Indirect discrimination (section 19) results from the equal implementation of neutral rules that end up causing a disproportionate disadvantage to a particular group of people (in this case those of a particular sex) coming within one of the protected grounds, for which there no objective justification can be shown. Thus it occurs when a policy (provision, criterion or practice) that applies in the same way for everybody has an effect that particularly disadvantages people with a protected characteristic. Where a particular group is disadvantaged in this way, a person in that group is indirectly discriminated against if he or she is put at a disadvantage, unless A can show that it is a proportionate (appropriate and necessary) means of achieving a legitimate aim (section 19(2)(d)). Each situation needs to be looked at on its own merits. In the past a 'requirement or condition' (provision, criterion or practice) has included, for example, the necessity for previous management training or supervisory experience,¹⁷ a contractual requirement for employees to serve in any part of the United Kingdom at the employer's discretion¹⁸ or the imposition of new rostering arrangements for train drivers.¹⁹

Indirect discrimination applies to all the protected characteristics except for pregnancy and maternity.

9.4.1 Sexual harassment

Sexual harassment occurs when there is unwanted conduct of a sexual nature that has the effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant (section 26(2) Equality Act 2010). It also occurs when a worker is treated less favourably by their employer because the worker submitted to, or rejected, unwanted conduct of a sexual nature, or unwanted conduct that is related to sex or gender reassignment, and the unwanted conduct has any of the effects mentioned (section 26(3) Equality Act 2010). The Code of Practice on Employment (EHRC 2011a) gives a simple example:

A shopkeeper propositions one of his shop assistants. She rejects his advances and then is turned down for a promotion which she believes she would have got if she had accepted her boss's advances. The shop assistant would have a claim for harassment.

Section 26(3)(a) of the Equality Act 2010 refers to unwanted conduct by 'A or another person' and the Code of Practice on Employment gives a further example of this:

14 [2012] IRLR 870.

15 [2005] IRLR 258.

16 *Madarassy v Nomura International plc* [2007] IRLR 246.

17 *Falkirk City Council v Whyte* [1997] IRLR 560.

18 *Meade-Hill and National Union of Civil and Public Servants v British Council* [1995] IRLR 478.

19 *London Underground v Edwards* [1998] IRLR 364.

A female worker is asked out by her team leader and she refuses. The team leader feels resentful and informs the Head of Division about the rejection. The Head of Division subsequently fails to give the female worker the promotion she applies for, even though she is the best candidate. She knows that the team leader and the Head of Division are good friends and believes that her refusal to go out with the team leader influenced the Head of Division's decision. She could have a claim of harassment over the Head of Division's actions.

The conduct needs to have the 'purpose' or 'effect' of creating the unwanted conditions, so even if the purpose of the action is not to harass, it can be still be harassment if it has that effect. The Code of Practice on Employment provides the example of male employees looking at pornography on their computers. The purpose may not be to harass female colleagues, but it might have that effect.

9.5 Marriage or civil partnership

Marriage or civil partnership is also a protected characteristic under the Equality Act 2010. Civil partnerships are considered further in Chapter 10, which is concerned with sexual orientation.

The characteristic applies to those who are married or in a civil partnership, so just living together is not enough. This may be a rule originally designed to stop discrimination against married women in employment, although it also applies to men. However, there is no corresponding rule that states that it is unlawful to discriminate against people because they are unmarried or not in a civil partnership.

It appears that it is the fact of being married (or in a civil partnership) that is important. In *Hawkins v Atex Group Ltd*²⁰ the complainant was dismissed because she was married to the company chief executive, which was not in accord with the company's policy. The EAT, however, held that she was not dismissed because of the fact that she was married, but because she was married to the Executive Officer. Someone who was not married, but in a so-called 'common law marriage' with the CEO, would also have been dismissed in this situation. It seems a narrow view of the protection offered by the legislation. The protection is available based on the fact of marriage, rather than based on being married to a particular person. This contrasts with the view in *Dunn v Institute of Cemetery and Crematorium Management*²¹ where the EAT held that:

A person who is married or who is in a civil partnership is protected against discrimination on the ground of that relationship and on the ground of their relationship to the other partner.²²

Thus this case concluded that the fact of marriage to a specific person was also protected by the legislation. This and previous cases had been brought under the Sex Discrimination Act 1975 to show that the treatment of married women was a sex discrimination issue. In *Coleman v Sky Oceanic Ltd*,²³ for example, two competing travel firms employed one member each of what became a married couple. There was a concern about confidentiality of each business's information. The two companies consulted and decided to dismiss the female because the man was assumed to be the breadwinner. Such an assumption, according to the Court of Appeal, was an assumption based upon sex.²⁴

20 [2012] IRLR 807.

21 [2012] All ER (D) 173.

22 Para 41. The court relied on the decision in *Chief Constable of Bedfordshire v Graham* [2002] IRLR 239.

23 [1981] IRLR 398 CA. On assumed ethnic characteristics see *Bradford NHS Trust v Al-Shahib* [2003] IRLR 4.

24 See also *Chief Constable of the Bedfordshire Constabulary v Graham* [2002] IRLR 239.

9.6 Older women

As an example of the particular disadvantage that women can suffer, we here look at the position of older women and the disadvantages they suffer, particularly in relation to their rights to pensions. The position of older women was summarised in an EIRO report (EIRO 2009) as:

- Older women workers represent an increasing proportion of the workforce in the European Union, especially in the 55–64 years age group. Employment rates for older women workers have been increasing in Europe.
- Older women workers tend to work part time and a higher proportion are on temporary contracts.
- Women aged 55 years and over are much more likely to be working on insecure contracts than men of the same age.
- The gender pay gap still exists for both older and younger women workers.
- Women are still concentrated in certain occupational groups, such as care workers, clerical workers and service and sales workers.
- The likelihood of a woman being a boss is highest in the 55+ age group.
- Older women are more likely than men to play a dual role of both working and caring, if there are care responsibilities in the family.
- Only a small proportion of companies pay specific attention to gender and there is little evidence that gender considerations have become more prominent over time. However, with the rise in the employment rate of older women workers, some companies have introduced specific policies to improve the working life of their older women workers and increase their level of recruitment.
- Women are still retiring earlier than their male colleagues. But this situation may change in incoming years with the growing need to keep older people in the workforce longer.

Generally older women may suffer from age and sex discrimination separately or combined into prejudice against older women. A good example is the case of Miriam O'Reilly and the BBC.²⁵ Ms O'Reilly was a presenter who claimed that she had suffered from being an older woman in the BBC. Something of the attitudes in the media were revealed in the Employment Tribunal, which cited examples of comments from colleagues such as how she would need to look out for her wrinkles once high definition TV came in, or that it was time for Botox, or whether she could not be used for prime time because she would not pass the young and pretty test. She was successful in her claim for age discrimination, but these comments are ones that are most likely to be made against older women.

The disadvantages that older women suffer need to be looked at from a lifetime perspective. Over a lifetime women are more likely to suffer disadvantage in employment compared to men. This can be the result of having children, being a carer for children or older people, working part time, making fewer pension contributions and so on. A report called *Implementing Equality for Older People* (2004) published by the Equality Authority in Ireland stated:

Older peoples' experiences have been acquired through living within a particular set of social, economic and cultural circumstances. So, the experience of an older professional man can be quite different from the experience of an older woman in the home. Within the group of older people, there are people who suffer and/or have suffered discrimination on other grounds. The discrimination problems faced by the current generation of older women largely arise from

²⁵ *Miriam O'Reilly v BBC* Case Number: 2200423/2010 (2011).

past discrimination on the grounds of gender, in particular exclusion from the labour market, arising from the 'marriage bar' and caring responsibilities, and the consequent exclusion from independent pension arrangements.

Older women may suffer from more disadvantages than older men because they tend to live longer, although the life expectancy gap between the sexes has narrowed in recent years. There were 28 per cent more women than men over the age of 50 years in 1961. This difference had narrowed to 18 per cent in 2002. Projections suggest a further narrowing with the difference in numbers being reduced to 14 per cent by 2031 (Office for National Statistics 2004). Older women are often poorer because of this relative longevity and for a number of other reasons, which may include the fact that women on average receive a much lower occupational pension income partly because they were dependent upon male pension-holding partners and because many will take career breaks to care for children and elders. The result of this is that, on average, women's income during their lifetime is some £250,000 less than men's, with an income in retirement that is some 57 per cent of men's (Age Reference Group 2005). Lower overall employment meant fewer opportunities to accrue pension rights; and until the early 1990s part-time employment very rarely involved pension scheme membership (Pensions Commission 2004).

In the United Kingdom research has also shown that, taking all forms of inactivity together, the chances of men leaving inactivity for paid work were sharply reduced after the age of 50 years 'and were close to zero for those over 60'. For women the chances of moving out of inactivity were much reduced after the age of 40 years and 'was particularly uncommon for those older than their late 50s' (McKay and Middleton 1998). Older women are more likely not to be in paid employment. In the United Kingdom some 26 per cent of all women between 16 and state pension age are economically inactive, compared to 17 per cent of men.²⁶

Older women are more likely to work part time and, as a result, have lower average earnings. Figures published by the European Commission show that this is a pattern of employment that is continuing. In 2009 some 31 per cent of employed women in the EU27 worked part time, compared with just 8 per cent of male workers (European Commission 2010). However, these figures hide differences related to age and gender. One report (European Commission 2004) concluded:

There is a clear gender distinction in the occurrence of part-time work by age. In general, men are most likely to be in part-time employment during their youth, while for women it is during the latter stages of their working lives. Furthermore, while the share of part-time employment for men decreases sharply from youth to prime age, for women the share remains roughly the same across these age categories.

It is also true that women are more likely to suffer age discrimination at a younger age than men. Women are traditionally perceived as being 'older' at a much younger age than men and a greater proportion are therefore likely to suffer from age discrimination related to their sex. One survey showed a respondent employer stating that women who returned to work in their mid-thirties after a career break to raise children were regarded as older workers (Metcalfe 1990). Another survey concluded that 'the disadvantage incurred in being "too young" or "too old" was found to impact more on women than men, suggesting that in these age ranges at least, being female acted to intensify age prejudice' (Duncan and Loretto 2004).

The Pensions Act 2007 and the Pensions Act 2008 were part of the government's strategy to implement the recommendations contained in the White Paper *Security in retirement: towards a new pensions*

²⁶ Labour Market Statistics July 2012, available at www.statistics.gov.uk.