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925	<b><i>NH v Associazione Avvocatura per i diritti LGBTI</i></b> Advocate General Sharpston concludes that remarks made by a senior lawyer in the course of a radio interview could constitute unlawful discrimination as defined in the Equal Treatment Framework Directive 2000/78/EC. In the absence of an identifiable victim, it is for national law to decide whether a given association can bring discrimination proceedings.	Claire Powell	13
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928	<b><i>Base Childrenswear Limited v Otshudi</i></b> CA considers the issue of inferences and the shifting burden of proof. It holds that if an employer lies, albeit in good faith, about the reason for dismissal then that will be enough to shift the burden of proof in a discrimination case.	Megan Rothman	18
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930	<b><i>Badara v Pulse Healthcare Limited</i></b> EAT upholds indirect discrimination complaint, finding that the employer was not entitled to rely on a negative right to work check notice from the Home Office in relation to an EEA family member employee.	Nina Khuffash	21
931	<b><i>Parnaby v Leicester City Council</i></b> EAT overturns ET decision that the effects of a former employee's work-related stress were not long-term because they improved following his dismissal. It was an error to apply the benefit of hindsight to the assessment of whether the effects were likely to be long-term at the time of the alleged discrimination, especially where the event which purportedly ended those effects was itself an act of alleged disability discrimination.	Emma Satyamurti	23
932	<b><i>Raj v Capita Business Services Ltd &amp; Ward</i></b> ET rejected part of employer's explanation for a female manager massaging a male subordinate's shoulders. EAT held it would have been correct to decide there were no facts from which it could conclude that the unwanted conduct related to the claimant's sex.	Sally Robertson	24
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934	<b><i>R (on the application of Delve) v Secretary of State for Work and Pensions</i></b> Administrative Court rules that pensions legislation which equalised the pension age for men and women was not discriminatory against women on grounds of age, sex or age and sex; the women had not received inadequate notice of the changes so as to render them unlawful.	Henrietta Hill QC	27
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## Editorial: **European rights' framework in jeopardy**

Cases reported in this edition of Briefings illuminate the battlelines along which the fight to maintain the equality/non-discrimination protections and human rights currently enjoyed throughout the UK, will be drawn in the coming years. The domestic legislation and the arguments in the cases all make clear discrimination complainants' reliance on legislation and case law stemming from the UK's membership of the EU and Council of Europe; these are now under threat.

Even before the EU right of free movement has ended, the rights of EEA nationals to live and access work in the UK is being undermined. Since the 2016 referendum, there have been many anecdotal accounts of EU nationals being asked to take unnecessary steps to prove their entitlement to reside in the UK or access jobs, health care or housing, despite this being contrary to their right to free movement and potentially amounting to unlawful discrimination under the Equality Act 2010. The 3million's report on the impact of the EU Settlement Scheme now provides evidence of this discrimination with 10% of EU respondents reporting that they have been required to provide proof of their status when this cannot legally be required.

Directive 2004/38/EC confers on EU citizens and their family members, irrespective of their nationality, an automatic right to move and reside freely in the member states. *Badara v Pulse Healthcare Limited* highlights a policy approach which conflicts with such rights being protected under EU law where, despite previous EAT case law confirming that a non-EU spouse's right to work derived simply from her status as family member of an EEA national and did not depend on documents in her passport or from the Home Office, contrary and unhelpful guidance from the Home Office continues to be applicable for employers. Although the Directive still applies to the end of 2020, further harm can only be expected during the transition period.

Rights arising from Directive 2000/43 (the Race Directive) and the EU Charter of Fundamental Rights were pleaded in *Bessong*. The arguments in *Safeway* relied heavily on EU treaty rights and the Court of Justice's jurisprudence. In *Gilham* the SC construed the Employment Rights Act 1996 to ensure compliance with the ECHR; the age and sex discrimination challenge in *Delve* was brought on the basis of EU and ECHR laws.

And such challenges continue to develop understanding and effectiveness of the law. The appeal in *JD & A v UK* to the European Court of Human Rights under Article 14 ECHR has resulted in a tightening of the wide margin of appreciation available to national governments in the economic or social policy sphere. Ruling on the implementation of the 'bedroom tax', a government austerity policy which has now been held to indirectly discriminate against women at risk of domestic violence, the ECtHR has stated that it will limit its acceptance of a state policy being not '*manifestly without reasonable foundation*' to transitional measures designed to correct historic inequalities. In any other circumstances, any policy which results in difference in treatment must be justified by '*very weighty reasons*'.

Conservative politicians have expressed antipathy towards the Human Rights Act over many years and the Party's 2019 Manifesto commits it to 'updating' the Act and administrative law '*to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government*'. Given recent reports that the government is preparing to reject the EU's proposals in a post-Brexit trade agreement which would require the UK to remain signed up to the ECHR, and given repeated refusals to rule out the UK's withdrawal from the Convention (repeated again by the Solicitor General Michael Ellis during Parliamentary questioning on February 13, 2020), fears about laws which guarantee our fundamental rights being undermined are justified.

The DLA will work with its members and all those who work for social justice to campaign to ensure existing rights are protected and that the proposed Constitution, Democracy & Rights Commission is robustly challenged to defend existing equality and human rights standards.

**Geraldine Scullion**  
Editor