Artificial Intelligence, equality law and human rights

Equality and
Human Rights
Commission

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Why is the EHRC interested in AI?
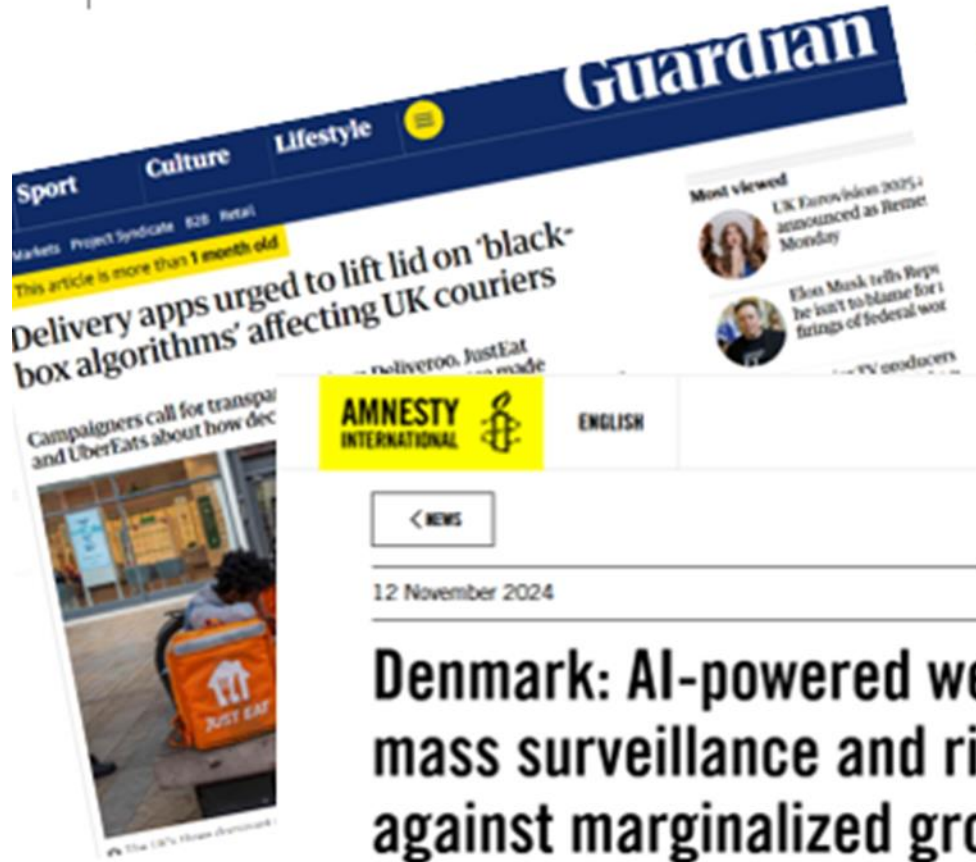
Examples of the EHRC's work on AI

As part of our mission statement to ensure a fairer society, we are keen to support the public sector to embed equality considerations in their use artificial intelligence technology.

We have published:

i. a 10 step guide for public bodies in England on "How to consider equality in policy making: A 10-step guide". SEE LINK

ii. 6 case studies (to date) on how Councils can discharge various elements of PSED when commissioning and using AI-based technology. SEE LINK

iii. guidance on PSED & Data Protection (in collaboration with the ICO and the Netherlands Institute for Human Rights). SEE LINK.

Bridges v South Wales Police [2020]

Police trialled use of live facial recognition technology (AI tool).

2020, Court of Appeal judgment: Police had not done all that they reasonably could to fulfil the PSED as they failed to recognise the risk of indirect discrimination on the basis of sex or race from the "novel" AI facial recognition technology.

1. Public authorities cannot rely on a lack of evidence / info to discharge PSED
- Lack of evidence when trial started **and** to go ahead is a "*cart before the horse*" approach
- Purpose of <u>positive</u> duty = "*not inadvertently overlook information*" [182] = a public authority should enquire and ascertain the information to fulfil the PSED

"*South Wales Police have never sought to satisfy themselves, either directly or by way of independent verification, that the software program in this case does not have an unacceptable bias on grounds of race or sex*" [para.199]

Private manufacturer refusing to release info? PSED = "*NON-DELEGABLE*" DUTY

= A public body cannot rely on broad assurances

2. PSED requirements no less stringent for trial of AI technology

"*We would hope that, as AFR is a **novel and controversial technology**, all police forces that intend to use it in the future Judgment Approved by the court for handing down. would wish to satisfy themselves that everything reasonable which could be done had been done in order to make sure that the software used does not have a racial or gender bias.*" [201]

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3. PSED requires proper process

"*a duty as to the process which needs to be followed, not what the substance of the decision should be.*" [185]

Litigating cases involving AI, discrimination & human rights violations

Legal cases specifically involving AI are currently rare within the British justice system. Reasons for this may be due to litigation regarding AI being high risk and expensive because;
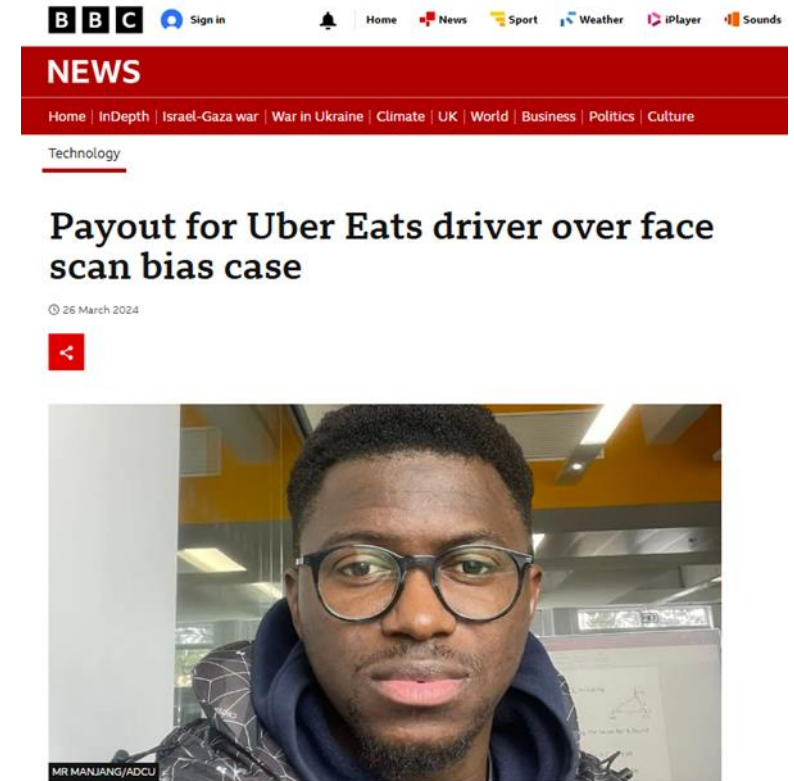
- The subject matter is complicated as it is challenging the "black box" of AI = a lack of transparency

- Often there may be cross-jurisdictional elements at play as litigation could involve long supply chains and / or parties such as multi-national corporations

- There may be power and financial disparity between the parties. Motivated by protecting their commercial position those using the AI tools (often multi-national corporations) may use their massive finances to obstructively take every potential legal point to elongate proceedings to "price out" the other party.

- Specialist technical expertise (e.g., data scientists) may be required to analyse the AI tool = adds to £££

- Some forums (most relevantly, the Employment Tribunal) do not award costs to successful parties. In other courts, the prospect of recovering significant costs must be balanced against the risk of being ordered to bear your own costs and meet those of the opponent.

Manjang v Uber Eats UK

This case concerned the Claimant, Mr Manjang, a food delivery driver, claiming that Uber Eats' facial recognition technology (a type of AI) discriminated against him because of his race during the course of his employment.

The Commission provided financial support to the Claimant.

The case settled with no admission to liability.

Thank you

Equality and Human Rights Commission