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The equalisation of the state pension age in United Kingdom: indirect sex discrimination?

Abstract

This commentary examines the Court of Appeal's decision in *R (Delve and Glynn) v Secretary of State for Work and Pensions*, which concerned the judicial review of the incremental increase of the state pension age in the United Kingdom for women born in the 1950s. It focuses on the claims of discrimination contrary to Article 14 of the European Convention on Human Rights, in particular the discussion relating to indirect sex /sex and age discrimination. It is argued that there is scope for greater clarity in the Court's reasoning which led to its conclusion that the measures did not result in indirect discrimination contrary to Article 14. However, the dismissal of each appeal is not surprising, in view of the adoption of the 'manifestly without reasonable foundation' test when scrutinising decisions relating to social welfare policy. In other words, even if the measures resulted in indirect sex discrimination, they were justified.

Introduction

The Pensions Act 1995 began the process of equalising the state pension age in the United Kingdom. Prior to 1995, the pension age for women was 60, but 65 for men. Subsequent legislation, between 2004 and 2014, raised the state pension age for both men and women, from 65 to 66, 67 or 68, depending upon date of birth. In *Delve*,¹ the Court of Appeal heard the appeals of two women born in the 1950s who were both affected by the various Pensions Acts implementing the equalisation of the state pension age and its subsequent increase for both men and women. The claimants both now had a state pension age of 66. While one of the aims of the Pensions Act 1995 was to end the discrimination which had allowed women to claim their state pension five years before men, the claimants argued that the 'equalisation has run ahead of actual improvements in the economic position of women in their age group.'²

The claimants sought judicial review, arguing that the legislation implementing the changes was discriminatory on grounds of age and /or sex. Rather than equalise the position of men and women, it was contended that the legislation aggravated 'pre-existing inequalities' linked to the traditional emphasis on the home caring role of women.³ The generation of women to which the claimants belong are particularly affected by these inequalities, which reduced their work opportunities in comparison with men of the same age. First, they argued that there was direct age discrimination contrary to both EU law and Article 14 of the European Convention on Human Rights, in conjunction with Article 1 of the First Protocol (A1P1). This was on the basis that their generation was in the same economic position as women born earlier, who continued to receive their pensions at 60. Second, there was indirect sex discrimination contrary to EU law. Alternatively, there was indirect discrimination on grounds of sex, or sex and age combined, contrary to Article 14. In comparison with men of the same age, the claimants were in a weaker financial position, and thus more likely to struggle without the state pension. In addition, they claimed that the government had failed to provide them with sufficient notification of the changes. The Divisional Court rejected each of their claims.⁴ They appealed in relation to each claim, save for the rejection of their claim of direct age discrimination under EU law.

This commentary examines first the background to changes in the state pension age, before considering each discrimination claim in turn. It focuses on the claims of discrimination contrary to Article 14, in particular the argument relating to indirect sex/sex and age discrimination. The dismissal of each appeal is consistent with, first, the weight afforded to the executive and legislature's view when the courts scrutinise the lawfulness of social and economic policy and, second, the fact that the previous differential in state pension ages between men and women directly discriminated against men. It is not suggested that a different outcome should have been reached. Even if the court had found indirect sex discrimination, it would not have found that the policy was manifestly without reasonable foundation. However, the Court's discussion of *why* there was no indirect sex discrimination is unclear. An examination of this part of the judgment reveals that, whilst the Court highlights the relevant issues relating to the concept of indirect discrimination, the judicial reasoning is incoherent.

Background to the equalisation of the state pension age

The judgment of the Divisional Court includes a comprehensive narrative of the history of the state pension in the United Kingdom and the changes introduced by the Pensions Acts between 1995 and 2014.⁵ The state pension is a contributory social security benefit. Employees and employers pay National Insurance contributions into the National Insurance fund, and benefits are paid out to those eligible for the state pension.

It is notable that between 1925 and 1940 the contributory state old age pension consisted of a flat rate pension paid to all pensioners over the age of 65. It was only in 1940 that the pension age for women was lowered to 60, while remaining at 65 for men.⁶ As noted in the Divisional Court, the resultant 'relative disadvantage' for men was believed to be justified by social conditions of the day and had been a response to the 1930s campaign by unmarried women, who argued that many of them spent much of their lives caring for dependant family members.⁷

The process of equalising the state pension age for men and women began in 1991, following the decision of the European Court of Justice (ECJ) in *Barber v Guardian Royal Exchange Insurance Group*.⁸ Unlike the state pension scheme, occupational pension schemes constitute 'pay' for the purposes of European law and the ECJ found that the provision of unequal benefits for men and women under an occupational pension scheme was contrary to Article 157 TFEU.⁹ In light of this decision, the government declared its intention to deal with unequal pension ages in the state scheme as well as occupational schemes.¹⁰

Following consultation, the government decided that the state pension age should be equalised at the age of 65. The process of change would commence in 2010, with a gradual increase in women's pension age over the following 10 years, meaning that women who were aged 44 or over in 1993, would be unaffected. Thus, a woman born before 6 April 1950 would remain entitled to her state pensions age at 60. A woman born after that date would receive her pension when she was aged between 60 and 65, on a date determined by her date of birth. The 1993 White Paper referred to the difference in state pension ages as 'the last glaring inequality in our treatment of men and women'.¹¹ It identified four reasons for the equalisation at 65. First, it would reflect the role played by women in the workplace. Second,

there was a need for fairness between the generations, which took account of the increase in life expectancy and the expected doubling of expenditure, in real terms, on state pensions by 2025. Third, a state pension age of 65 would reflect the move towards higher pension ages which could be seen elsewhere in industrialised countries. Finally, this would also reflect the similar equalisation of normal pension age at 65 found in occupational pension schemes.¹²

The incremental increases in the equalised state pension age for men and women were introduced by the Pensions Act 2007; the increase from 65 to 66 was brought forward by the Pensions Act 2011 while the increase to 67 was brought forward by the Pensions Act 2014. One of the papers which preceded the Pensions Act 2007 focused on the inequalities and challenges faced by women in the context of the various changes to the state pension age, such as the marked difference in the proportion of the state pension received by women and men.¹³ For example, it noted that in 2005 85% of men would reach state pension age entitled to a full basic state pension, compared with around 30% of women. Changes to the pension system were not restricted to the equalisation and increase of the state pension age. A further aim was to 'deliver fairer outcomes for women and carers', ensuring that those with caring responsibilities could accrue credits from time spent caring.¹⁴ In short, there was clear evidence that the government was responding to remaining gender inequalities in relation to pension income and the build-up of and entitlement to state pensions.

In *De/ve*, the appellants said that, in terms of well-paid and steady employment opportunities, they were in the same position as women born earlier, who were unaffected by the legislative change. In addition, they said that women born in the 1950s experienced unequal treatment in the world of work when compared with men. Thus, when reaching their 60s, they are in a weaker financial position than men of the same age, which is exacerbated by the delay in entitlement to their state pension. These arguments formed the basis of their claim that the legislation was discriminatory contrary to EU law and Article 14.

Claims under EU law

The appellants did not appeal against the decision of the Divisional Court that the various pensions legislation was not unlawful age discrimination contrary to EU law.¹⁵ This claim had failed on the basis that the general EU principle of non-discrimination did not apply: EU age

discrimination law did not extend to the payment of state pensions which were excluded from the scope of the Equality Directive by Article 3(3).¹⁶ Similarly, there was no appeal in relation to the dismissal of the direct sex discrimination claim based on Article 4 of the Social Security Directive.¹⁷

With regard to indirect sex discrimination, the claimants also based their claim on Article 4 of the Social Security Directive while the Secretary of State relied upon the exclusion in Article 7(1)(a). The Court of Appeal held that the Divisional Court were right to dismiss the claim for indirect sex discrimination on the grounds that the derogation in Article 7(1)(a) applies.¹⁸ This provides that determining pensionable age for old-age and retirement pensions can be excluded from the prohibition of sex discrimination in the calculation of benefits. The exception recognises the social reality within the European Union and the fact that some Member States retain a difference in state pension ages for men and women. Article 7(2) clearly expects Member States to assess, from time to time, whether such a differential remains justified.¹⁹

Claims under Article 14 ECHR / A1P1

Direct Age Discrimination

A1P1 protects the right to peaceful enjoyment of possessions. The European Court of Human Rights (ECtHR) has found that A1P1 does not include 'a right to acquire property' and there is no obligation to provide benefits, including a state pension.²⁰ However, once benefits are provided by the state, A1P1 is engaged and they should not be managed in a discriminatory manner contrary to article 14.

In *Carson v United Kingdom*,²¹ the ECtHR outlined the principles established in relation to discrimination under Article 14. First, Article 14 only covers differential treatment based on an identifiable characteristic, or status. Furthermore, claimants must establish they have been treated differently in comparison with persons in an analogous situation. Such treatment will be discriminatory unless justified, meaning there must be a legitimate aim and a 'reasonable relationship of proportionality between the means employed and the aim sought to be realised'.²² Significantly, States are afforded a wide margin of appreciation in relation to general economic or social provisions. The ECtHR stated that it would 'generally

respect the legislature's policy choice unless it is "manifestly without reasonable foundation".²³

The Court of Appeal in *Delve* considered the two issues on which the Divisional Court had rejected the claim of direct age discrimination contrary to Article 14. First, the issue of whether there had been a difference in treatment compared with the comparator group(s) and, second, whether differential treatment is justified. In relation to the first issue, the Court of Appeal noted that the Pensions Acts created three groups of women: the pre-1950s women, who reach pensionable age at 60; women born between 6 April 1950 and 5 October 1954, who reach pensionable age between 60 and 66; and women born after 5 October 1954 but before 6 April 1960 whose pensionable age is 66.²⁴ The claimants were in the latter group. The Divisional Court concluded that the claimants were not in a comparable situation with the older pensioners. This was on the basis of ECtHR decisions which indicated there would be no discrimination simply as a result of legislation being prospective only or by the selection of a particular date for the commencement of a new legislative regime.²⁵

On this point, the Court of Appeal took a different view of the ECtHR jurisprudence, noting that:

'There is in this legislation something that the ECtHR noted was absent in Zammit, namely a "distinguishing criterion based on the personal status" of the claimant because the cut-off date adopted by the legislation distinguishes on the basis of age and not simply on the implementation date of the measure'.²⁶

Thus, it was not possible to conclude that the pre-1950s group were not an appropriate comparator group. The Court of Appeal thought that the flexibility afforded to the State by Strasbourg, to respond to transforming socio-economic circumstances, would be a relevant consideration in assessing whether the measure was justified, rather than when discussing the comparator group.²⁷

Turning to justification, the appellants accepted that the appropriate test in this situation was whether the legislative changes were 'manifestly without reasonable foundation' (MWRF). In *DA v Secretary of State for Work and Pensions* Lord Wilson examined how the MWRF test connected to the burden on the state to establish justification. He said the court will

‘proactively examine whether the foundation is reasonable’ after the state puts forward its reasons for the differential treatment.²⁸ In *De/ve* the Court of Appeal found no basis for questioning the Divisional Court’s decision that the legislation in question was justified. The correct approach was taken, namely ‘to approach the issue on the basis that this legislation operates in a field of macro-economic policy where the decision-making power of Parliament is very great’.²⁹

A line must be drawn somewhere and it is for Parliament to make that decision. In a series of consultations, from 1991 through to 2010, it was clear the Government recognised the challenges women faced in accumulating adequate pension entitlement, alongside the urgency for reform in light of the increases in life expectancy. At the same time, the equalisation of the state pension age reflected the principle of equal treatment of men and women in employment. The Court of Appeal expressed their sympathy for the claimants and other women similarly situated. However, it did not accept that the Government’s decision to ‘strike the balance where it did between the need to put state pension provision on a sustainable footing’ and the potential difficulties caused by the legislative changes was manifestly without reasonable foundation.³⁰ Furthermore, the Court of Appeal agreed with the conclusion of the Divisional Court that the claimant’s argument that the changes could have been implemented in a less intrusive way was not sustainable. In view of the MWRP test adopted, and the respect afforded in this area to the decision-makers, it is not surprising that the courts concluded the legislation was justified.

Indirect Sex Discrimination or sex/age discrimination

The claimants argued that both the equalisation and the subsequent increases in pension age result in indirect sex discrimination, or combined sex and age discrimination. In terms of the comparator group, the claimants relied upon men aged between 60 to 66. Men and women between those ages do not receive a pension and were affected by the increase in pension age from 65 to 66. The claimants argued that women were adversely affected more than men, as the men in that age group were in a better position than women in the same age group to bear the lack of financial support.

Indirect discrimination is not defined in Article 14, though the ECtHR has considered it in a number of cases. The Court of Appeal referred to both the domestic concept of indirect discrimination and what it described as the 'broad test' provided by the ECtHR in *JD and A v United Kingdom*.³¹ In *JD and A* the ECtHR referred to indirect discrimination arising in circumstances where a measure leads to a 'particularly prejudicial impact on certain persons as a result of a protected ground...attaching to this situation'.³² While in *Essop* the Supreme Court confirmed that indirect discrimination within the Equality Act 2010 requires a causal connection between the measure in question and the particular disadvantage suffered by the group, though the Court rejected the argument that it is necessary to establish the reason *why* the policy or criterion puts the group at a particular disadvantage.³³ Thus, it appears as if the concepts of indirect discrimination recognised by the ECtHR and within the domestic equality legislation both require a causal link between the measure and the disparate impact on a group.

The Divisional Court concluded that the claimants were unable to establish a 'causal link' between the measure and the disadvantages faced by the women, on the basis that the obstacles existed in any event, 'rooted in traditions and cultural norms which meant that women did not have the same work expectations or opportunities as men of the same age'.³⁴ The Court of Appeal noted this was an 'unfortunate' way for the Divisional Court to formulate its conclusion but nevertheless agreed that there was 'no sufficient causal link' between the change to pension age and the subsequent disadvantage to the group.³⁵

Whilst it is clear that the Court of Appeal thought there was an insufficient 'causal link here between the withdrawal of the state pension from women in the age group 60 to 65 and the disadvantage caused to that group',³⁶ the explanation behind that conclusion is not so clear. To begin with, the Court of Appeal accepts that the legislative changes will have 'exacerbated the problems' suffered by the group and disagrees with the Divisional Court to the extent that the latter seems to dismiss this point.³⁷ However, it appears as if the Court concludes it is the economic situation of the women, rather than their status as women, which is the cause of the disadvantage which follows from the legislative changes. In other words, the Court has examined *why* the women are put at a disadvantage. It is drawing a line between the causes of the economic situation they find themselves in and any detrimental impact caused by the

increase to the state pension age. Hellman notes that it is possible for situations to arise where a 'victim of prior injustice' may be put at a disadvantage by a measure but where the action does not 'compound the prior injustice'.³⁸ Might this explain the decision in *Delve* concerning indirect discrimination, notwithstanding the Court's acceptance that women have been historically disadvantaged in the workplace?

In addition, the Court suggested there may be other groups who, as a result of disadvantage during their working lives, can show they depend more on the state pension than comparator groups. It is not clear why the existence of other disadvantaged groups would lead necessarily to the conclusion that the measure is not indirectly discriminatory on the grounds of sex. A measure may well adversely affect more than one group, whether in combination with age or not. However, it appears as if the Court saw this as evidence that there was no causal connection between the disadvantage and the sex of the claimants. Further, the Court of Appeal suggests the claimant's argument would turn the state pension into a means-tested benefit. It is unclear how the nature of the pension is relevant to the question of indirect discrimination. The purpose of the state pension might seem to be more significant to the review of the justification, rather than the determination of whether a measure results in disparate impact on different groups.

The Court went on to state:

*The fact that poorer people are likely to experience a more serious adverse effect from the withdrawal of the pension and that groups who have historically been the victims of discrimination in the workplace are more likely to be poor does not make it indirectly discriminatory to apply the same criterion for eligibility to everyone, if that criterion is not more difficult for the group with the protected characteristic to satisfy.*³⁹

On first sight, the reference to historically disadvantaged groups would seem to support a finding of indirect discrimination. But that was not the Court's view. What does the Court mean when concluding that it is not indirect discrimination if an eligibility criterion is 'not more difficult' to meet? It would appear as if the Court is saying that this means that women although adversely affected, are not *disproportionately* disadvantaged by the measure.

Lady Hale has noted that in indirect discrimination ‘women and men are treated in the same way. The measure in question is neutral on its face. It is not (necessarily) targeted at women or intended to treat them less favourably than men. Men also suffer from it. But women are disproportionately affected, either because there are many more of them affected by it than men, or because they will find it harder to comply with it.’⁴⁰ In *Delve*, is the Court’s conclusion that there is insufficient evidence that ‘many more’ women will be affected? It would have been clearer if the Court had explained that, notwithstanding the disadvantage, there is no evidence that women are ‘particularly’ disadvantaged by the legislation.

In any event, the Court of Appeal considered that the current state pension age regime was justified. The first issue was whether the correct test for justification for an indirectly discriminatory measure was the MWRF test or a more stringent test. The Court of Appeal said the MWRF test applied and rejected the claimant’s argument that it should be modified because the alleged discrimination is based on gender (or a combination of gender and age).⁴¹ The Court noted the Pensions Acts deal ‘with matters of the highest economic and social importance aiming to ensure intergenerational fairness, to make pensions affordable at a time of great pressure on public finances, and to reflect changing demographics, life expectancy and social conditions’.⁴² The Government was aware of the impact of discrimination on women’s financial position but pointed to changes, such as the increased opportunity for women to develop occupational pensions schemes, which would improve the position of women. The Court agreed that the legislation was not MWRF.

Considerable authority supports the argument that the MWRF test applied in this situation, notwithstanding questions about its precise role.⁴³ The appellants relied upon a decision of the ECtHR which suggested that the MWRF test might be limited to certain situations, namely where differential treatment was a result of transitional provisions which were part of a measure aimed at remedying an inequality.⁴⁴ However, the Court of Appeal said that they were bound by the decision of the Supreme Court in *DA*.⁴⁵ In addition, the equalisation of the state pension age was the exact scenario described by the ECtHR in *JD and A* as being the one where the MWRF test applies: the ‘effect of transitional measure to correct historical inequalities’.⁴⁶

In *DA* both Lord Kerr and Lady Hale questioned whether a domestic court should be applying the Strasbourg test of MWRP, because the latter reflects the “wide margin of appreciation” [given] to the “national authorities” in deciding what is in the public interest on social and economic grounds’.⁴⁷ Whereas the standard to be applied by national courts will depend upon the constitutional framework. In addition, the ECtHR itself has distinguished between two issues: first, was the measure ‘in the public interest’ for the purpose of A1P1; and second, ‘was there a reasonable relationship of proportionality between the means employed and the aim sought to be realised.’⁴⁸ Lord Kerr’s view was that the MWRP standard should not be applied in the final stage of the proportionality assessment. Instead, the test ‘is whether the government has established that there is a reasonable foundation for its conclusion that a fair balance has been struck’.⁴⁹ However, even on this basis, it is suggested that the court would have found in favour of the government in *Delve*.

Conclusion

Successive governments have faced a dilemma in relation to the equalisation of state pension age: in many respects, social reality has not always changed at a pace which reflects the development of the principle of non-discrimination between men and women. Indeed, the legal framework has reflected this social reality, through exceptions such as Article 7(1)(a) of the Social Security Directive. In *Stec* the ECtHR considered the differential in the state pension age in the United Kingdom. The ECtHR noted that the national authorities were in a better position to determine when the ‘social conditions had changed so that women were no longer substantially prejudiced because of a shorter working life’ and ‘the unfairness to men caused by differential pensionable ages began to outweigh the need to correct the disadvantaged position of women’.⁵⁰

The Court of Appeal in *Delve* did not deviate from the approach taken in earlier social security challenges and, ultimately, it would be difficult to argue against the policy of equalisation of the state pension age, in view of the discriminatory nature of the differential in pension ages. The government sees rises in the state pension age as part of a ‘wider package’ aimed at encouraging people to plan ahead for retirement and providing support for people who cannot work.⁵¹ It is arguable that *Delve* highlights that there is, as with occupational pension

schemes, a limit to the promise of ‘stability and reliability’ which such schemes provide, and which the ECtHR has pointed to as enabling ‘lifelong family and career planning’⁵²

There is no doubt that claims of discrimination in relation to social welfare policies can lead to complex judgments.⁵³ In *Delve*, the Court of Appeal did not agree completely with the conclusions of the Divisional Court in relation to indirect discrimination. However, both courts relied upon Lady Hale’s explanation of the concept in *Essop* in finding that there was insufficient evidence of a correlation between the status of the women and the disadvantage caused by the increase in their state pension age. This commentary argues that there is scope for clarification of the judicial reasoning for this conclusion; there may also be scope for revisiting the concept of indirect discrimination in relation to claims based on article 14. However, that would not change the outcome in cases such as *Delve*, unless there was a significant change to the reliance on the ‘manifestly without reasonable foundation’ test when considering whether the measure is justified. But, in view of the discriminatory nature of the differential in pension ages which existed prior to the change, it was to be expected that the legislation was found to be justified.

¹ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199.

² *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 2.

³ *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin), at 30.

⁴ *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin).

⁵ *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin), at 5-29.

⁶ Old Age and Widows’ Pensions Act 1940.

⁷ *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin), at 6-7.

⁸ (C-262/88) [1991] 1 QB 344).

⁹ Treaty on the Functioning of the European Union.

¹⁰ HC Deb 26 June 1991, Vol 193, cited in *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin), at 10.

¹¹ *Equality in State Pension Age* (Cm 2420).

¹² *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin), at 14

¹³ *Women and Pensions: the Evidence* (2005), discussed in *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin), at 23.

¹⁴ Department for Work and Pensions (2006), *The Gender Impact of Pensions Reform*.

¹⁵ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Equality Directive).

¹⁶ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 17.

¹⁷ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Social Security Directive).

¹⁸ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, 62-69.

¹⁹ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 65.

²⁰ *Stec v United Kingdom* (65731/01), (2006) 43 E.H.R.R. 47, at 53.

²¹ *Carson v United Kingdom* (Appn 42184/05) (2010) 51 EHRR 13.

- ²² *Carson v United Kingdom* (Appn 42184/05) (2010) 51 EHRR 13, at 61.
- ²³ *Carson v United Kingdom* (Appn 42184/05) (2010) 51 EHRR 13, at 61.
- ²⁴ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 27.
- ²⁵ *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin), at 51-52.
- ²⁶ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 36; *Zammit* refers to *Zammit v Malta* (1046/12) (2017) 65 E.H.R.R. 17.
- ²⁷ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 36.
- ²⁸ *DA v Secretary of State for Work and Pensions* [2019] UKSC 21, at 66.
- ²⁹ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 42.
- ³⁰ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 55.
- ³¹ *JD and A v United Kingdom* (Appn 32949/17) [2020] HLR 5.
- ³² *JD and A v United Kingdom* (Appn 32949/17) [2020] HLR 5, at 85, discussed in *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 76-81.
- ³³ *Essop and others v Home Office* [2017] UKSC 27.
- ³⁴ *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin), at 73.
- ³⁵ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 83.
- ³⁶ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 83.
- ³⁷ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 81.
- ³⁸ Hellman D (2018)), Indirect Discrimination and the Duty to Avoid Compounding Injustice. In: Collins H and Khaitan T (eds) *Foundations of Indirect Discrimination Law*. Oxford: Hart, 105-121.
- ³⁹ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 83.
- ⁴⁰ *R (SG) v Secretary of State for Work and Pensions* [2015] UKSC 16, at 189.
- ⁴¹ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 90.
- ⁴² *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 92.
- ⁴³ Meers J (2020) Problems with the "manifestly without reasonable foundation" test. *JSSL* 27(1): 12-22.
- ⁴⁴ *JD and A v United Kingdom* (Appn 32949/17) [2020] HLR 5.
- ⁴⁵ *R (on the application of DA) v Secretary of State for Work and Pensions* [2019] UKSC 21.
- ⁴⁶ *R (Delve and Glynn) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, at 88.
- ⁴⁷ *R (on the application of DA) v Secretary of State for Work and Pensions* [2019] UKSC 21, at 147.
- ⁴⁸ *R (on the application of DA) v Secretary of State for Work and Pensions* [2019] UKSC 21, at 148.
- ⁴⁹ *R (on the application of DA) v Secretary of State for Work and Pensions* [2019] UKSC 21, at 177.
- ⁵⁰ *Stec v United Kingdom* (65731/01), (2006) 43 E.H.R.R. 47, at 62.
- ⁵¹ Department for Work and Pensions, *State Pension age review* (July 2017), at 10.
- ⁵² *Andrle v Czech Republic* (Appn 6268/08).
- ⁵³ *R (DA) v Secretary of State for Work and Pensions, R (DS) v Secretary of State for Work and Pensions* [2019] UKSC 21, Lord Wilson at 20.