

FRA

Thematic Legal Study on assessment of Access to  
Justice in Civil Cases in European Union -  
The United Kingdom

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October 2009

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## 2. Executive summary

[1.] For the most part, the United Kingdom system appears to satisfy the requirements of access to justice in relation to free movement of persons in the context of immigration. In particular, appeals may be addressed to an administrative tribunal in the first instance, there is legal aid for those lacking means, decisions are taken in a relatively timely manner, and there is the eventual possibility of review by the ordinary civil courts.

[2.] Criticisms of the present system operating in relation to free movement of persons may nevertheless be made from the perspective of ‘access to justice’:

- There is no simple remedy in cases of delay.
- There is no right of appeal where an individual lacks proof of status at the relevant time.
- It may be difficult for applicants outside the United Kingdom to bring an appeal, unless the primary European Economic Area national<sup>1</sup> is in the United Kingdom.
- The Special Immigration Appeals Commission, which hears appeals from the Asylum and Immigration Tribunal, is open to criticism for the use of closed evidence, the possible limits to written determinations, and the fact that one of its members may lack independence.
- Legal aid is not available to all who may realistically benefit from it.

[3.] Regarding non-discrimination, claims of non-discrimination in employment and of unequal pay under the equality Directives must be pursued in an employment tribunal. Therefore, the quality of ‘access to justice’ in the United Kingdom with regard to these Directives depends on the good functioning of the employment tribunal system. The following main points can be made.

- The rules of the employment tribunal system promote effective access to justice in a variety of ways. The claimant is entitled to represent him or herself or be represented by anyone he or she chooses, such as a friend. Tribunals are required to take into account the need for the parties to be on an equal footing in proceedings and employment judges normally assist unrepresented litigants to some extent in putting their cases as well as possible. Claimants are entitled to cross-examine witnesses for the other side and to examine and challenge evidence. They can receive written reasons for the tribunal’s judgment and are entitled to appeal where an error of law has been made (although they may not challenge the first instance tribunal’s determination of the facts).
- The study found no evidence that, in general, employment tribunal proceedings were taking an excessively long time to complete, having regard to the standards set by the European Court of Human Rights. Furthermore, the level of compensation awarded in the cases examined did not suggest that there was any concern over the effectiveness of the remedy available.
- Certain factors that may be viewed as restricting access to justice do not, on examination, seem to pose significant obstacles. Although no legal aid is available for claims in the employment tribunal, a representative acting on behalf of the claimant does not need to be a fully qualified solicitor or barrister, as is required in other courts. The claimant is therefore entitled to be represented by an experienced but unqualified adviser. The relatively short time limit of three months for bringing a discrimination claim (compared to six years for personal injury claims, for

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<sup>1</sup> In United Kingdom immigration law the term ‘European Economic Area national’ refers to nationals of the other 26 European Union states, Iceland, Liechtenstein, Norway and Switzerland.

example) must be weighed against the more informal regime that prevails in employment tribunals, compared to other courts.

- More generally, other measures of law and good practice that promote effective access to justice are:
  - the questionnaire procedure, under which prospective claimants have a simple means of eliciting details about the likely prospect of success of a claim
  - restrictions on individuals' freedom to waive their non-discrimination rights unless they have received advice from an impartial adviser
  - the Equality and Human Rights Commission's role in improving awareness of rights, publishing codes of practice and, exceptionally, assisting in discrimination claims.
- Nevertheless, some concerns have been highlighted over the effectiveness of the system in providing a timely resolution. Evidence exists to show that awards often go unenforced for a long time after judgment is given. Enforcing such awards is then a matter for the ordinary civil courts, in which different, more formal procedural rules apply, which may pose problems for an unrepresented claimant. There is also some concern over the length of time equal pay proceedings take to complete. This is usually due to the greater complexity of equal pay claims and, often to the large numbers of litigants involved.
- With regard to non-employment discrimination claims, which must be brought in the mainstream civil courts, the dearth of reported decisions on this subject means that access to justice in this area cannot be effectively analysed. Although no specific enquiry was made of Her Majesty's Court Service (HMCS) for the purpose of this report, the central register of county court judgments<sup>2</sup> to which HMCS refers on its online information pages<sup>3</sup> holds only limited details (such as the names of claimant and defendant, date of judgment and amount of award) and does not allow for analysis of claims brought by reference to particular jurisdictions. Furthermore, while the British and Irish Legal Information Institute (BAILII)<sup>4</sup> offers a well-resourced and searchable database of judgments from the High Court and appellate courts it does not include county court decisions. As explained elsewhere in this report, appeals in non-discrimination cases originating in the county court go to the Court of Appeal. However, a search of the extensive Court of Appeal database on BAILII yielded no appeals in non-employment sex or race discrimination cases for the relevant period (compared to several hundred employment cases). The fact that so few cases are apparently brought may be put down to low awareness of rights, the lack of detailed and readily available guidance for would-be claimants, and the lack of a specialist but informal tribunal system, like the employment tribunals. These very factors suggest that access to justice in this area may be in danger of being hindered, at least by comparison with employment discrimination cases.

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<sup>2</sup> Available at <http://www.trustonline.org.uk> (24.01.2010)

<sup>3</sup> <http://www.hmcourts-service.gov.uk/cms/judgments.htm> (24.01.2010)

<sup>4</sup> <http://www.bailii.org> (24.01.2010)