

Algorithmic discrimination

Litigation in theory and practice

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September 2025



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Outline



1. Background on algorithmic discrimination
2. The legal framework
3. Enforcement in practice

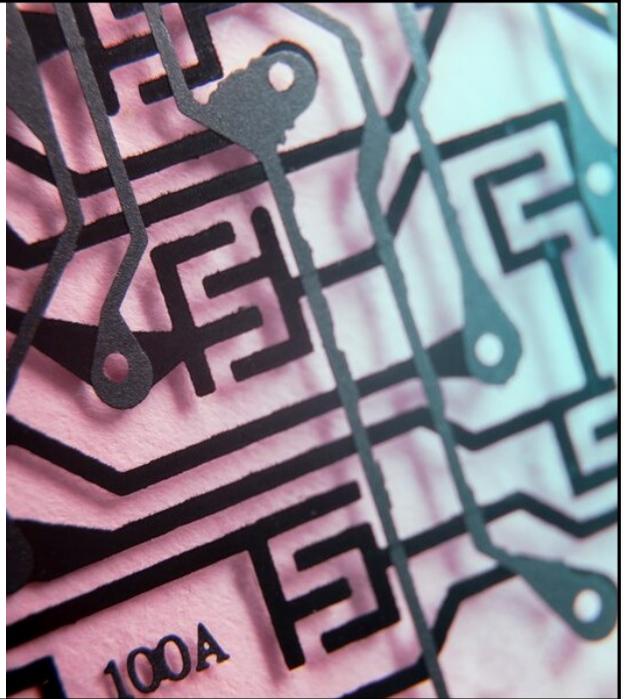
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01

Algorithmic discrimination

A brief introduction



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Amazon scraps secret AI recruiting tool that showed bias against women Reuters

Landscape Summary:

Bias in Algorithmic Decision-Making

What is bias in algorithmic decision-making, how can we identify it, and how can we mitigate it?

Centre for Data Ethics and Innovation (UK public body)

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Justice Department Secures Groundbreaking Settlement Agreement with Meta Platforms, Formerly Known as Facebook, to Resolve Allegations of Discriminatory Advertising U.S. DOJ

HireVue Discontinues Facial Analysis Screening

Decision reflects re-examination of AI hiring tools

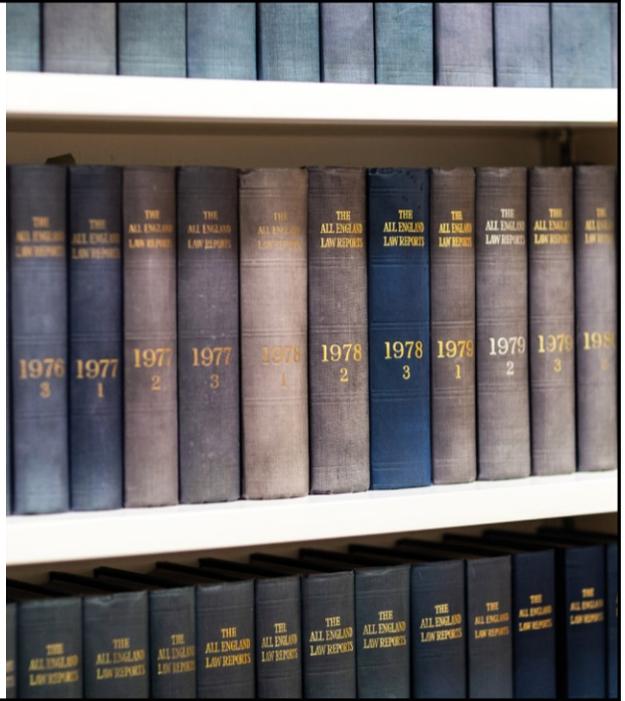
SHRM

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02

The legal framework

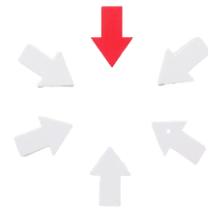
Direct and indirect discrimination



Direct and indirect discrimination

Text from the Gender Equality Directive (2006/54/EC), Article 2

'direct discrimination': where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation...



'indirect discrimination': where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary...

Indirect discrimination

Key issues



- PCP with a particular disadvantage?
- Objectively justified?
- Legitimate aim?
- Proportionate means?

Direct Discrimination	Disparate Treatment	Indirect Discrimination	Disparate Impact
<p>“One person is treated less favourably than another is, has been or would be treated in a comparable situation, on grounds of a protected characteristic.”</p> <ul style="list-style-type: none"> • No need for intention. • Covers implicit bias. 	<p>A person is treated differently because of their protected characteristic.</p> <ul style="list-style-type: none"> • Requires intention or explicit classification. • Contested whether this can include implicit bias. 	<p>Application of an “apparently neutral provision, criterion, or practice which would put persons with a protected characteristic at a particular disadvantage compared with other persons”.</p>	<p>Application of a facially neutral policy which causes a disparate impact on the basis of a protected characteristic.</p>
<p>Very narrow scope for justification; only possible if the protected characteristic is a genuine occupational requirement.</p>	<p>Very narrow scope for justification, e.g. if the protected class is a bona fide occupational qualification.</p>	<p>May be objectively justified as a proportionate means of achieving a legitimate aim.</p>	<p>May be justified by “business necessity”.</p>

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R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS [2009] UKSC 15 & 1

“Direct discrimination can arise in one of two ways: because a decision or action was taken on a ground which was, however worthy or benign the motive, **inherently** racial... or because it was taken or undertaken for a reason which was **subjectively** racial”.

Lord Phillips [78]

Direct discrimination

- Inherently discriminatory algorithms?
- Automating subjective discrimination?
- *'Directly Discriminatory Algorithms'* (2023) 86(1) MLR 144, with Jeremias Adams-Prassl and Reuben Binns
- *'Legal Taxonomies of Machine Bias: Revisiting Direct Discrimination'* in *Proceedings of the 2023 ACM Conference on Fairness, Accountability, and Transparency (FAccT '23)* at 1850, with Jeremias Adams-Prassl and Reuben Binns
- *'Unlawful Proxy Discrimination: A Framework for Challenging Inherently Discriminatory Algorithms'* in *Proceedings of the 2024 ACM Conference on Fairness, Accountability, and Transparency (FAccT '24)* at 1850, with Hilde Weerts, Reuben Binns, and Jeremias Adams-Prassl

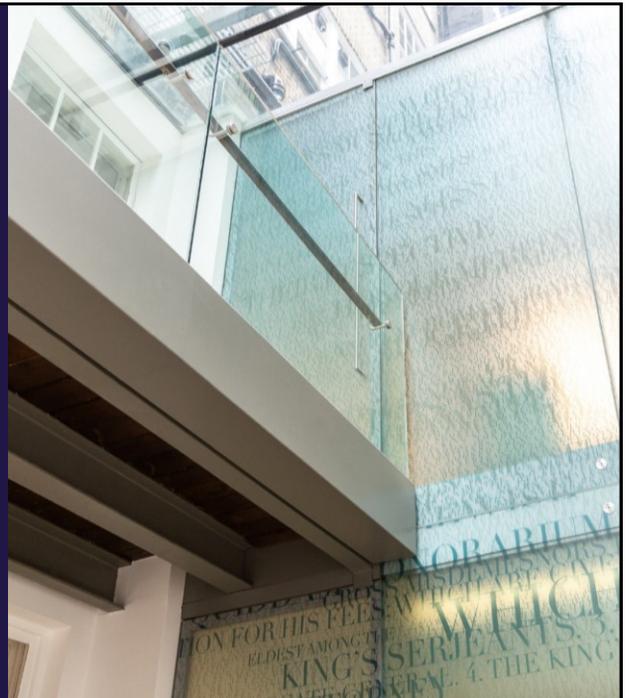
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Enforcement in practice

Stocktake and future directions



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English | Cymraeg

News

Uber Eats courier wins payout with help of equality watchdog, after facing problematic AI checks

Published: 26 March 2024



Uber ordered to pay €584,000 in penalties for failure to comply with court order for algorithmic transparency in robo-firing case brought by Worker Info Exchange & ADCU

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Workday must face novel bias lawsuit over AI screening software

By Daniel Wiessner

July 16, 2024 12:29 PM GMT+1 · Updated 3 months ago

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Achieving transparency



- Article 22 GDPR: suitable safeguards
- Article 15(1)(h) GDPR: meaningful information about the logic involved

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Thank you!

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