

*Community
Legal Service*



Equal opportunities

Dealing with discrimination

CLS information
leaflet number

15

There are many situations where you might be discriminated against because of your age, or your sex, or because you are gay or lesbian, for example. This leaflet explains when there are laws to protect you from discrimination, and what you can do if you are discriminated against.

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When discrimination can happen

Discrimination happens when someone is treated worse ('less favourably' in legal terms) than another person in the same situation.

Discrimination may happen:

- **At work.** For example, a black person might be refused a job without good reason, or be racially harassed by other employees. A woman might have a problem about equal pay, or the way she is treated if she is pregnant or has a child to care for.
- **When you are buying or using goods and services.** For example, a person in a wheelchair might be told they can't go into a restaurant because their wheelchair takes up too much space.
- **When you are buying or renting somewhere to live.** For example, a landlord might refuse to let their flat to an Asian person.
- **At a school or college.** For example, a school might treat a black child differently from a white child when deciding whether to expel them.

You may suffer discrimination for a number of reasons. In many cases it is because of:

- your race;
- your sex; or
- because you have a disability.

But it might also be because:

- you are elderly;
- of your religious beliefs; or
- you are gay or lesbian (your sexual preference or sexual orientation).

The protection you have in law depends on why you were discriminated against. In the case of sex discrimination, for example, there are specific laws setting out when it is unlawful for someone to discriminate against you because of your sex.

In these situations, you have the right to go to an employment tribunal or to court if you have been treated unfairly. You may get compensation for loss of earnings or if your feelings have been hurt, depending on the kind of discrimination you've suffered. Also, taking someone to court or to a tribunal may change the way an organisation behaves so that other people aren't discriminated against.

With other types of discrimination, such as discrimination because of your age, there are no specific laws, though there are things that you may be able to do, to stop the discrimination happening. And there are changes in the laws planned which should give you more protection against discrimination.

This leaflet begins with how the law on equal opportunities and anti-discrimination works, and what types of discrimination you are protected from. It also looks in more detail at the laws covering discrimination because of sex, and explains what you can do if you have been discriminated against. Finally, it looks at the more limited rights you have if you are discriminated against because of your age, religious beliefs or sexual preference.

There are separate Community Legal Service leaflets, 'Racial discrimination' and 'Rights for people with disabilities', which deal with those areas in more detail.

Sometimes, someone may be discriminated against for more than one reason. If you think you are in this position, you may need to get advice about the best course of action to take. You can get advice from a:

- trade union (if you belong to one);
- law centre;
- Citizens Advice Bureau; or
- solicitor.

See 'Further help' on page 15 for more about where to get advice.

Types of discrimination

The law on equality talks about two types of discrimination.

- Direct discrimination, which is when you are treated less favourably simply because, for example, you are black, or you are a woman.
- Indirect discrimination, which can happen where there are rules or conditions which apply to everyone but affect one group of people more than others, without a good reason. For example, a company rule that says that employees must do night shifts could exclude women who have children to care for.

The law covers certain cases where what seems like discrimination is allowed. For example, it is not against discrimination laws to insist that a counsellor working in a women's refuge should be a woman. And it might be legal to say that a particular job was not suitable for a person with a disability for safety reasons.

Victimisation

If you want to complain about being discriminated against (or if you are helping a colleague who is complaining), you may fear that your employer may treat you less favourably for this reason. If they do, this is called victimisation, and it is unlawful (illegal) in the same way discrimination is.

Sex discrimination

There are two laws which make sure that men and women are treated equally:

- The Sex Discrimination Act 1975 (as amended 1986) makes it unlawful to discriminate against men or against women in employment, education, housing, or providing goods and services, and also in advertisements for these things. It's also against the law to discriminate against someone because they are married, but only in work-related matters.
- The Equal Pay Act 1970 (as amended 1984) says that women must be paid the same as men when they are doing the same (or broadly similar) work, or work which is of equal value. European law also says that women and men should receive equal pay for equal work. For more about this, see 'Equal pay' on page 7.

Applying for a job

The Sex Discrimination Act makes it unlawful for an employer to discriminate because of your sex or whether you're married when choosing someone for a job. It covers three areas.

- When deciding who should be offered the job. This includes the job description, the 'person specification' (the description of the skills, experience and qualifications needed to do the job), the application form, the short-listing process, interviewing and final selection.

- The terms and conditions of the job, such as pay, holidays or working conditions.
- By deliberately not considering your application.

The Sex Discrimination Act covers contract and part-time workers as well as full-time or permanent staff.

An example of direct sex discrimination would be refusing to consider you for a job just because you are a woman, or because you are a man (for example, refusing to consider a man for a job as a secretary).

An example of indirect sex discrimination would be saying, without good reason, that everyone applying for a job must have been in the armed forces. Because fewer women than men have been in the armed forces, a woman would be less likely to get the job.

Treating a married person less favourably than a single person of the same sex is also unlawful under the Sex Discrimination Act. It would be 'direct marriage discrimination' if an employer refused to employ a married woman just because they thought that she would be more likely than a single woman to leave to have a baby.

'Indirect marriage discrimination' could happen if, for example, an employer said that everyone applying for a job must move to a new location. This could discriminate against married staff unless the employer could show that moving was essential to the job.

When an employer is allowed to discriminate

In some cases employers are allowed to offer a job only to men, or only to women. This is called a 'genuine occupational qualification' (GOQ). The main cases where an employer is allowed to do this are:

- for privacy and decency, for example, employing a male care assistant because he has to help men dress or use the toilet;
- for personal welfare services, for example, employing women counsellors for a women's welfare charity;
- where the employee has to live on work premises and there aren't separate sleeping areas for men and women;
- for some jobs in private homes, such as a live-in carer;
- where the job has a real physical need, such as to model women's clothing;
- in some cases, where the job is outside the UK; and
- where the job requires a married couple.

However, employers cannot use a need for strength or stamina in a job as a reason for not looking at applications from women, for example.

Being dismissed or made redundant

An employer cannot discriminate against women or men when dismissing people or making them redundant. This means that, for example, it would be against discrimination laws to:

- dismiss a man if he took time off work to care for a sick child, if a woman wouldn't have been dismissed for the same reason;
- dismiss someone for being frequently late for work if someone of the opposite sex who was late just as often was not dismissed; or
- have a company policy which says that staff with the shortest length of service are to be the first in line for redundancy, because women are more likely to have taken a career break for family reasons.

For more about your rights if you are dismissed, or facing redundancy, see the Community Legal Service leaflet, 'Employment'.

Having a child

It could break discrimination laws because a woman is pregnant, or needs to care for her children, and she is:

- dismissed or made redundant;
- refused promotion; or
- treated differently in some other way.

Examples of this kind of discrimination include:

- if a woman is moved to a less-rewarding job when she comes back to work after having a baby; and
- if a breast-feeding mother was told she could come back to work only if she worked fixed full-time hours. The employer would

have to show that she really needed to work full-time and that, for example, she could not do part of her job at home.

Equal pay

The Equal Pay Act entitles you to claim equal pay for work which:

- is the same or broadly similar (known as 'like work') to that done by someone of the opposite sex (known as the 'comparator'). The comparator must be working for the same employer as you; or
- even though it may be quite different, is of 'equal value' to the comparator's job in terms of the demands on you.

The Equal Pay Act also covers most other terms of your employment, for example:

- working hours;
- holidays;
- sick pay; and
- pensions.

Most equal-pay complaints are by women, but the law also applies to men who are paid less than women for the same work.

If you believe that you are not being paid the same as someone else of the opposite sex for the same work, you should first take up your complaint with your employer, through their grievance procedure (if they have one).

If that doesn't work, you can take an equal-pay claim to an employment tribunal. If the jobs being compared are fairly similar, it is usually best to make a 'like-work' claim as well as an 'equal-value' claim. The tribunal will examine your like-work claim first and, if that fails, it will

go on to consider the equal-value claim.

The process of taking either a 'like-work' or 'equal-value' claim can be complicated. Even if the tribunal decides that you are doing like- or equal-value work, the employer may be able to convince them that there is a 'material factor' (a good reason other than your sex) why you are paid less. You can get more details and advice about the process from the Equal Opportunities Commission.

You can get advice and support about taking a claim from your union if you have one, or from a law centre, Citizens Advice Bureau or solicitor. See 'Further help' on page 15 for details.

Part-time work

The Sex Discrimination Act and the Equal Pay Act cover all workers, including people who work:

- part time; or
- on casual or temporary contracts.

In an equal-pay claim, a part-time job can be compared with a similar full-time job on a pro-rata basis (that is, based on the number of hours each of you work).

Because most part-time workers are women, if they are treated worse than full-time workers, this could amount to indirect discrimination under the Sex Discrimination Act. If you want to work part-time (or flexitime, at home, or in a job-share), because, for example, you need to care for a child, and your employer refuses without good reason, you might have a claim for indirect discrimination.

Part-time workers are also protected by the Part-Time Workers Regulations 2000 which give them the right to the same pro-rata contractual benefits (rates of pay and holidays, for example) as full-time workers doing the same work. In this case, it doesn't matter whether the workers being compared are the same sex or not. For more on this, see the Community Legal Service leaflet, 'Employment'.

Sexual harassment

Sexual harassment is unwanted physical or non-physical behaviour of a sexual nature towards you. At work, it can include:

- comments about the way you look;
- indecent (offensive) remarks;
- requests for sex (sometimes in return for a promotion or other benefit); and
- any similar behaviour which creates an intimidating, hostile or humiliating atmosphere at work.

Sexual harassment usually counts as direct sex discrimination under the Sex Discrimination Act because you are being treated in a way that someone of the opposite sex would not be. If someone is harassing you and they don't stop when you ask them to, you should tell your employer (unless, of course, they are the person doing it).

The law says that employers are responsible for discrimination by their employees or their clients. Many employers treat sexual harassment by their staff as a disciplinary offence, and they should discipline the person harassing you. If your employer does not do anything, you can take a claim against them to

an employment tribunal. In many cases you could also take the person harassing you, or your employer, to court.

You could also go to court if you're sexually harassed by someone unconnected with your workplace. But in some cases there may be a special complaints procedure to follow (for example, if the person who has harassed you was your doctor). You should get expert legal advice.

If you are having a relationship with someone at work

Some employers won't employ:

- the husband or wife;
- the partner; or
- a relative;

of someone working for them.

Some employers also don't allow workplace 'affairs'. This is not against the Sex Discrimination Act, as long as men and women, and married and unmarried staff, are treated equally. Otherwise it could be considered discrimination. An example of discrimination is if a woman was transferred to another office or department when she didn't want to be because she was having a relationship at work, when a man would not have been transferred in the same circumstances.

If you are buying or renting a house or flat

It is illegal to discriminate against someone because of their sex when selling or letting a house or flat. It is also illegal for a landlord to treat tenants differently because of their sex. However, the Sex Discrimination Act doesn't apply where the landlord (or a close relative of

theirs) lives in the same building and shares some of the living areas (including a kitchen or bathroom, but not a hall or stairway) with the tenant.

It's also illegal for a bank or building society to treat someone less favourably in granting a loan because of their sex, or because they are pregnant. If, for example, a couple apply for a joint mortgage and the woman earns more than the man, the lender must use her income as the higher one in working out how much they will lend. And offering mortgages only to people who work full time is also seen as discrimination, because more women than men work part time.

Going to school or university

Mixed-sex schools, colleges, adult education centres and universities must not discriminate against parents or children because of their sex. For example, careers advisors must provide advice and help in the same way to boys as girls. Single-sex schools must not restrict the types of subjects they teach just because they have only boys or only girls as pupils. Schools and colleges must also deal with sexual harassment in the same way that employers do (see 'Sexual harassment' on page 8).

If you feel your child is facing sex discrimination, you should first try to discuss the problem with the teacher or headteacher. If that doesn't solve the problem, you should complain to the school governors or the local education authority.

For advice about dealing with this kind of problem, contact the Equal Opportunities Commission or the Advisory Centre for Education (see 'Further help' on page 15 for

details. For more information about legal rights at school, see the Community Legal Service leaflet, 'Education'.

Buying and using goods and services

The Sex Discrimination Act makes it unlawful for businesses to discriminate against men or women in the 'goods, facilities and services' they provide. This means refusing a service, or deliberately not providing it on the same terms and of the same quality. It covers things which are free, as well as those you pay for. The main ones are:

- shops;
- public places, such as hotels, restaurants, bars, nightclubs and leisure centres (for example, only offering women free or cheaper admission or drinks would be a breach of the Sex Discrimination Act);
- bank accounts, loans, credit cards and insurance;
- travel and transport services that are either public or offered by private companies and travel agents; and
- services supplied by local authorities (such as leisure services).

There are several exceptions to the law, where discrimination against men or women may be allowed. These are:

- private members' clubs;
- services which are only for men or only for women, to avoid 'serious embarrassment' (for example, women-only saunas);
- insurance policies where it can be shown that women are a better or a worse insurance risk than men; and

- voluntary organisations, care homes and charities which provide services only for men or only for women.

What you can do about discrimination

If you have been discriminated against, first think about what you want to be done. Depending on how you were discriminated against, you may want:

- your job back;
- compensation;
- an apology; or
- a clear sign that an organisation won't discriminate in the same way in future.

Whatever you want, it is usually best to first try to resolve the matter with the person or organisation that has discriminated against you (your employer, or the service provider, for example).

If complaining in this way doesn't get you what you want, you may be able to take your case to:

- an employment tribunal if it is about a job; or
- the county court.

If your problem is about sex discrimination, contact the Equal Opportunities Commission, a body set up by the government to promote equal opportunities for men and women.

The Equal Opportunities Commission can tell you more about your rights under the Sex Discrimination Act and the Equal Pay Act. It can also advise you about how to deal with a complaint, including going to a tribunal or to court.

You can also get help from:

- your trade union, if you have one (and it is about a job);
- your local law centre;
- a Citizens Advice Bureau; or
- a solicitor.

See 'Further help' on page 15 for contact details.

The Advisory, Conciliation and Arbitration Service (ACAS) may also be able to help with a claim of discrimination at work. If you and your employer are both willing to try conciliation, an ACAS officer will try to help you reach a settlement without the need for a hearing. If you or they do not want to do this, or you cannot agree, the case can still go to an employment tribunal. However, there are time limits for doing this (see 'Going to an employment tribunal', below).

If the tribunal or court rules that you have been unlawfully discriminated against, it can award you compensation for:

- actual or possible loss of earnings;
- injury to feelings; or
- personal injury, if it was caused by discrimination

Going to an employment tribunal

If you want to make a complaint under the Sex Discrimination Act or Equal Pay Act, you must send your complaint either on form ET1 or in a letter to the Regional Office of Employment Tribunals. You can get this from your local jobcentre, Citizens Advice Bureau or the Equal Opportunities Commission.

The Tribunal Service will then decide whether there are 'reasonable grounds' for going ahead with a claim. You must make your complaint within three months, minus one day, from when you first knew about the discrimination. The cost of going to a tribunal is low. Even if you lose your case, you will not have to pay the other side's costs unless, the tribunal decides you were being unreasonable in bringing the claim.

If you do want to take a complaint to an employment tribunal, you would normally send a special form, called a 'section 74' questionnaire, to the employer. You can get this form from:

- jobcentres;
- your local benefits office; or
- the Equal Opportunities Commission.

This form asks the employer to give more reasons for the treatment you received. For example, if you believe that you didn't get a job because of your sex, you can ask for details of:

- the employer's selection procedures; and
- the qualifications and experience of the person who got the job, to see how they compare with your own.

You must send the form to the employer within three months of when the discrimination happened (or no more than 21 days after your complaint was received by the employment tribunal).

You don't have to use the 'section 74' procedure, but it will normally help your case. In the same way, the employer doesn't legally have to fill in the form, but if they don't, it may harm their case. And if you do use it, you can still withdraw your complaint before your case is dealt with if you want to.

If you, or the employer, is unhappy about how the tribunal reached its decision, you may be able to appeal to the Employment Appeals Tribunal. But you can appeal only on whether the law was applied correctly, not on whether you thought the tribunal's decision was fair. You have 42 days after the decision to lodge an appeal.

Going to court

If you want to take a case to court, you must start your case within six months minus one day from when the discrimination happened. The court can give you copies of the claim form N1 and more information about procedures.

How will I pay for my case?

If you are claiming more than £5,000, you need to think carefully about how you will pay for your case, because the costs can be very high. If you cannot afford to pay for court action yourself, there are several ways you may be able to pay for your case. These are:

- The Equal Opportunities Commission may take on your case, for example, as a 'test case'.

- You may be able to get funding from the Community Legal Service (formerly called LegalAid), provided you meet certain conditions. See 'The Community Legal Service' on page 15 for how to find out more about this.
- You may be able to find a solicitor who will take on your case under a 'no-win, no-fee' agreement. See the Community Legal Service leaflet 'No-win, no-fee actions' for more about this.

The Human Rights Act

The Human Rights Act 1998 has a wide-ranging discrimination provision which includes types of discrimination that are not covered in other discrimination laws. However, it can be used only when it is part of one of the other 'articles' (the specific principles) of the act, such as the right to 'respect for private and family life'.

Also, rights under the act can only be used against a public authority (for example, the police, a local council or the Benefits Agency), and not a private company. However, court decisions on discrimination will generally have to take into account what the Human Rights Act says.

Discrimination because of your religious beliefs

There is currently no law to protect you if you are discriminated against because of your religious beliefs. However, you may be able to bring a claim under the Race Relations Act if the discrimination is because of your national or ethnic origin, as well as your religion (for example, if you are Muslim and Pakistani). For

more about bringing a claim under the Race Relations Act, see the Community Legal Service leaflet, 'Racial discrimination'.

At work, your employer may have their own equal opportunities policy which covers religious discrimination. If they do, and they don't follow it, they could be breaking your contract of employment.

Early in 2001 the Government announced it would be introducing laws to keep to the European Union Equal Treatment Directive on discrimination in employment. The Directive is meant to stop discrimination in European Union countries. But this new legislation probably won't be in force for several years yet.

However, if you think you were sacked or made redundant unfairly because of your religious beliefs, you can still take a case of unfair dismissal to an employment tribunal or to court under the Employment Rights Act (see 'Going to an employment tribunal' on page 11). If you were a public-sector employee (that is, you worked for the Government or a local council, for example) you may also have a claim under the Human Rights Act (see 'The Human Rights Act', left).

Discrimination because of your age

There are currently no laws to stop people or organisations from discriminating against you because of your age. At work, for example, employers are allowed to take into account people's ages when recruiting, or when choosing workers for promotion or redundancy. If you are under 65 and have worked for an organisation for at least two years, you are legally entitled to redundancy pay. But an employer can insist that you retire when you reach a certain age (usually 60 or 65).

The 'Code of Practice on Age Diversity in Employment' is a set of government guidelines about how employers should not discriminate because of age. It is not law, but it sets out what employers should do to be fair to people of all ages in:

- recruitment;
- promotion;
- training;
- making staff redundant; and
- dealing with retirement.

It covers things like how jobs are advertised and how interviews are carried out. See 'Further help' on page 15 for how to find out more about the Code.

If you are already in work, your employer may also have their own equal opportunities policy which covers age discrimination. If they do, and they don't follow it, they could be breaking your contract of employment, and you could bring a claim either through an employment tribunal, or through the courts.

Early in 2001 the Government announced it would be introducing laws on age discrimination at work, to keep to the European Union Equal Treatment Directive. This is meant to stop discrimination in all European Union countries. But these new laws probably won't be in force for several years yet.

However, if you think you were sacked or made redundant unfairly because of your age, you can still take a case of unfair dismissal to an employment tribunal or to court under the Employment Rights Act (see 'Going to an employment tribunal' on page 11). If you were a public-sector employee (that is, you worked for the Government or a local council, for example) you may also have a claim under the Human Rights Act (see 'The Human Rights Act' on page 12).

Discrimination against gay and lesbian people

As with age discrimination, there are no laws at the moment to protect gay and lesbian people from discrimination. However, the European Union Equal Treatment Directive means that the UK will have to introduce laws for this by 2003.

If you are already in work, your employer may also have their own equal opportunities policy which covers age discrimination. If they do, and they don't follow it, they could be breaking your contract of employment, and you could bring a claim either through an employment tribunal, or through the courts.

If you have HIV or AIDS, you may also face discrimination because of this. Someone living with HIV or AIDS (whether they are gay or not) may have protection under the Disability Discrimination Act. See the Community Legal Service leaflet 'Rights for people with disabilities' for more about this.

'Transgender' people

People who have had 'gender reassignment' (often called a sex change) do have some legal protection against discrimination. The Sex Discrimination Act was changed in 1999 to protect 'transgendered' people against discrimination in employment and work training. But these regulations don't cover housing, education or services.

The regulations cover anyone who is about to go through, is going through, or has gone through gender reassignment. If you are discriminated against because of one of these, you will have a claim under the Sex

Discrimination Act. Apart from avoiding discrimination in recruitment, dismissal and so on, your employer should allow you time off work for necessary medical treatment just as they would allow time off for other kinds of necessary medical treatment. They should also take action if you are harassed by other employees because of your gender reassignment.

The procedure for taking a case is the same as for any other Sex Discrimination Act claim (see 'What you can do about discrimination' on page 10).

The Equal Opportunities Commission has a guide 'Sex Equality and Transsexualism', which deals, in detail, with this kind of discrimination, including examples of case decisions which may help you.

Further help

A Citizens Advice Bureau can offer advice and help with a range of problems. Your local Citizens Advice Bureau is listed in the phone book. Information is also available on its website at: www.nacab.org.uk/cabdir.ihtml

Equal Opportunities Commission

phone: 0161 833 9244
www.eoc.org.uk

The Advisory, Conciliation and Arbitration Service (ACAS)

To find your nearest public inquiry point
phone: 020 7210 3613
www.acas.org.uk

Advisory Centre on Education

For advice on discrimination in schools
Helpline open Monday to Friday 2pm to 5pm
phone: 020 7354 8321

Age Concern

phone (England): 020 8765 7200
phone (Wales): 029 2037 1566
www.ageconcern.org.uk

Third Age Employment Network

phone: 020 7843 1590
www.taen.org.uk

Stonewall

For lesbians and gay men
phone: 020 7881 9440
www.stonewall.org.uk

Terrence Higgins Trust Lighthouse

For people living with HIV or AIDS
phone: 020 7242 1010
www.tht.org.uk

The Gender Trust

For transgendered people
phone: 07000 790347
home.freeuk.net/gentrust

For the Code of Practice on Age Discrimination in Employment, contact the Department for Education and Employment (DfEE)
phone: 0845 6022260
www.dfee.gov.uk/agediversity

The Community Legal Service

The Community Legal Service (CLS) is run by the Legal Services Commission, a public organisation which has replaced the Legal Aid Board.

A key aim of the CLS is to make sure that people find the right legal help easily and can be confident of the service they get. All legal services providers in the CLS must meet quality standards set by the Legal Services Commission before they can display the CLS logo (shown on the front cover of this leaflet). The CLS also includes a scheme for funding civil cases (formerly legal aid).

There are CLS Information Points in local libraries and many other public places, which have information leaflets and the CLS Directory of Services. The Directory lists lawyers and advice centres which have met the CLS quality standards, and many others.

You can also phone 0845 608 1122
(minicom: 0845 609 6677)

to find out about advice centres and lawyers in your area, or visit the CLS website at: www.justask.org.uk.

About this leaflet

This leaflet is one of a series produced by Consumers' Association for the Legal Services Commission (LSC). Consumers' Association (CA) is the largest independent, not-for-profit consumer organisation in Europe. CA is committed to empowering consumers to make informed decisions about goods and services. For more information, visit CA's website at www.which.net.

To find out more about the LSC, visit the www.legalservices.gov.uk website, or contact your regional LSC office. Its address is in the phone book. There are also leaflets about LSC funding on the website or from the LSC leaflet line on 0845 3000 343.



**EQUAL
OPPORTUNITIES
COMMISSION**

**This leaflet was written by
Consumers' Association in association
with the Equal Opportunities Commission**

**This leaflet is one of a series being produced in 2001.
All the titles below should be available by summer
2001 in a number of languages and formats. The
leaflets will also be online at www.legalservices.gov.uk**

- 1 Dealing with debt
- 2 Employment
- 3 Divorce and separation
- 4 Renting and letting
- 5 Buying and selling property
- 6 Losing your home
- 7 The Human Rights Act
- 8 Claiming asylum
- 9 Welfare benefits
- 10 Wills and Probate
- 11 Dealing with the police
- 12 No-win, no-fee actions
- 13 Problems with goods and services
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- 15 Equal opportunities**
- 16 Racial discrimination
- 17 Personal injury
- 18 Rights for people with disabilities
- 19 Community care
- 20 Education
- 21 Immigration and nationality
- 22 Mental health
- 23 Alternatives to court

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