Overview

What is proportionality for?
What *is* proportionality?
How is proportionality applied by the CJEU?
View from the UK
The future and other questions
What is proportionality for?

A general principle of EU Law
A general principle of constitutional and administrative law
A standard of review?
A test of the scope of a right?
A test of objective justification in cases of indirect discrimination

What is proportionality?

A fair balance?
A form of reasonableness?
A structured test:
  - Legitimate aim
  - Appropriate/suitable to achieve the aim
  - Necessary/least intrusive means
  - Proportionality *stricto sensu*
ECHR Version of Proportionality

"the means chosen for achieving [the] objective correspond to a real need on the part of the undertaking, are appropriate with a view to achieving the objective in question and are necessary to that end." (Bilka)

Note that all of this relates to the means, so mere legitimate aim is assumed.

Balancing of some kind is expected to differentiate weak from strong aims.

CJEU Version of Proportionality
CJEU approach: specific cases

Sex discrimination/equal pay
Age discrimination
Disability discrimination
Clashing rights
Free movement

View from the UK
Allonby represents most familiar version:
  Legitimate aim
  Real need
  Balance between real need and disparate impact

Requirement of “necessity” gone from this formulation, replaced by balance
Balance much weaker than necessity unless impact taken very seriously
GMB v Allen version: anything “necessary” to a legitimate aim is proportional
The future and other questions

From *Elias* to *Homer*: the UK trend of harmonizing CJEU and ECtHR tests
More specification of legitimate aims?
The growing importance of evidence and forms of proof
What are the limits of relevant impacts?