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AN EQUINET  
PERSPECTIVE

**INNOVATING AT THE INTERSECTIONS.  
EQUALITY BODIES TACKLING  
INTERSECTIONAL DISCRIMINATION**

**E** Equinet  
European network  
of equality bodies

*Innovating at the Intersections. Equality Bodies tackling Intersectional Discrimination* is published by Equinet, European Network of Equality Bodies.

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# EXECUTIVE SUMMARY

The **issue of intersecting grounds** is a relatively recent focus for anti-discrimination and equality work. Yet, it holds a potential to challenge norms and stimulate innovation in the field of equality. It is still under-developed in theory, policy and practice. Debate has shifted over time from a focus on multiple discrimination to one on multiple identities and, most recently, to a focus on intersectionality.

**Multiple discrimination** involves discrimination on a combination of grounds. **Multiple identity** emphasises the existence of intersectional groups of people and the importance of responding to their specific situation, experience and identity. **Intersectionality** is where different grounds interact in a manner that makes them inseparable. It redirects attention from creating new subgroups to action on structures of power and exclusion.

A number of equality bodies have taken **strategic approaches** to placing intersectionality on their own agenda and that of policy makers. They have advocated for legislation to address intersectionality, commissioned specific research, and established intersectionality as a priority focus over one specific year.

The dominant area of work by equality bodies on intersectionality is **research**, with an emphasis on building a knowledge base for work on intersectionality and bringing this into public and political debate. While there is a theory that responding to intersectionality works best in their promotion work, equality bodies report **limited promotion work** in supporting good practice on intersectionality. They report a significant amount of **enforcement work**.

Equality bodies **implementing legislated provisions** in relation to multiple discrimination in their jurisdictions are most prominent in this. However, such work is also reported

where **there are no such legal provisions**. Much of this work is based on a multiple discrimination perspective with cases based on more than one ground.

**Under-reporting of multiple discrimination** is a concern that has been taken up by some equality bodies. The engagement of equality bodies **with civil society organisations** has supported their intersectional work. In turn, equality bodies have also worked to stimulate an intersectional perspective among these organisations.

**Intersectionality involving the ground of gender** is a dominant focus in the work of equality bodies. Equality bodies expressed a particular concern about powerful and negative intersections of gender stereotypes with stereotypes on other grounds. These intersections lead to particular disadvantage for specific groups of women.

A focus on intersectionality is encouraged in that it enables equality bodies to have an understanding of and respond effectively to the **real life experiences of people experiencing discrimination**. It allows them to better understand and address issues of structural discrimination. However, there are **barriers to this work**. The absence of legal provisions on intersectionality is limiting. The number of multiple discrimination cases remain low and this is a disincentive to broader action on intersectionality. Under-reporting of such discrimination is a significant problem. The lack of human resources is a perennial barrier and lack of expertise can be an issue. The institutional architecture is also a potential barrier with multi-ground equality bodies seen as better equipped to address intersectionality.

Ongoing debate and exchange among equality bodies on the issue of intersectionality would assist in **building a shared understanding of the concept** and, through that, further realising its potential. Equality bodies could usefully build their own capacity and practice to view and review their work through an intersectional lens. The core requirement in advancing the issue of intersectionality remains one of

knowledge, understanding, and visibility. This is the area that equality bodies could usefully continue to direct and expand their attention. There is a challenge to further develop the work of equality bodies in supporting good practice in intersectionality by employers and service providers. This could valuably include forms of partnership with employers and service providers and with relevant civil society organisations.

**Legislative change** could further progress issues of intersectionality. Provisions on multiple discrimination in equal treatment legislation at European Union and Member State levels would provide a starting point and a stimulus for further action in this field. These provisions would need to be accompanied by enhanced sanctions for such discrimination. Legislative change could go further in addressing the difficulties in finding a comparator. This could be achieved by clarifying that naming a comparator is only one way of proving discrimination. Further change should make it possible to take all aspects of an individual's identity into account under the individual grounds.

At the level of policy, **mainstreaming processes and targeted measures** at European and Member State levels should include a capacity to address issues of intersectionality.

# 1. INNOVATING AT THE INTERSECTIONS IS ABOUT...

## THE ISSUE

**The different grounds covered by equal treatment legislation intersect.** People hold more than one of the personal characteristics that are used in defining each of the different discrimination grounds of **gender, age, sexual orientation, racial or ethnic origin, religion or belief, and disability**. People can and do seek protection from discrimination on more than one ground. This has implications that go beyond taking action to combat discrimination. It is relevant to how diversity is managed and accommodated and how equality is promoted and achieved.

“Discrimination, like traffic through an intersection, may flow in one direction and it may flow in another. If an accident happens at an intersection, it can be caused by cars travelling from any number of directions, and, sometimes, from all of them”.<sup>1</sup>

Crenshaw vividly captures the notion of intersections and their relevance to issues of discrimination with this image. She was an early critic of the single ground approach to equality. She explored how the grounds of race and gender intersected and created specific realities for Black women that single ground approaches to equality were not effective in addressing.

This issue of intersecting grounds is a relatively **recent focus for anti-discrimination and equality work**. It is still under-developed in theory, policy and practice. It is a source of some debate as to what it means, its focus, and its

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<sup>1</sup> Crenshaw K., Demarginalizing the intersection of Race and Sex : A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, in University of Chicago Legal Forum, 1989.

implications. The debate has shifted over time **from a focus on multiple discrimination to a focus on multiple identities** and, most recently, to a **focus on intersectionality**. These concepts, and in particular that of intersectionality, are important in holding a potential to challenge norms in the field of anti-discrimination and, therefore, to stimulate innovation.

These concepts overlap in the research and analytical work that has been done and there is not a clear line of development through the three concepts. This can serve to confuse. However, they do serve as markers in the developing debate on responding more effectively to the fact that people live their real lives at the intersections of the grounds rather than being confined within single grounds.

## **MULTIPLE DISCRIMINATION**

The European Institute for Gender Equality (EIGE) defines multiple discrimination as

“any combination of forms of discrimination against persons on the grounds of sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation, gender identity or other characteristics, and to discrimination suffered by those who have, or who are perceived to have, those characteristics”.<sup>2</sup>

The **concept of multiple discrimination** was initially pursued out of an ambition to enhance the pursuit of gender equality and to secure a recognition of the particular situation, experience and needs of women who are members of various social groups. Alongside this, there has always been a concern among those working on gender equality about the focus on multiple discrimination and the move, inherent in this, from a single ground approach. It was and still is feared

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<sup>2</sup> See: <http://eige.europa.eu/rdc/thesaurus/terms/1297>.



that such a development could dilute the gender equality agenda within a broader range of different goals.

The European Union adopted the concept at an early point and named multiple discrimination in both the **'Race' Directive**<sup>3</sup> and the **'Framework Employment' Directive**<sup>4</sup> in 2000. Recital 14 of the 'Race' Directive states, "In implementing the principle of equal treatment irrespective of racial or ethnic origin, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination". However, **multiple discrimination is not defined**, nor is it provided for in the main provisions. There is no reference to the concept of multiple discrimination in the **two gender equal treatment Directives**.<sup>5</sup>

A **European Commission report in 2009**, by the European Network of Legal Experts in the field of Gender Equality, took a gender specific perspective on multiple discrimination in analysing "legal perspectives on discrimination against women based on grounds additional to their sex (multiple discrimination against women)".<sup>6</sup> It defined multiple discrimination as including "all instances of discrimination on several of the discrimination grounds contained in Article 13 EC and in other instruments" and that multiple

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<sup>3</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>4</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>5</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services & Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

<sup>6</sup> Burri S. & Schiek D., Multiple Discrimination in EU Law: Opportunities for legal responses to intersectional gender discrimination?, European Network of Legal Experts in the Field of Gender Equality, European Commission, Luxembourg, 2009.

discrimination against women was “any discrimination against a woman which does not only involve gender”.

The report found **limited case law** on multiple discrimination up to 2009 at European Court of Justice level and across the Member States of the European Union, involving the Courts and, in some instances equality bodies. At Member State level, it found that cases clustered around **five combinations**: twenty one cases were reported on grounds of gender and racial or ethnic origin, seven of which related to Roma women; nine cases were reported as combinations of gender and family status/reconciliation of paid and family work (including part time work); eight cases involved grounds of gender and age; three cases related to grounds of gender and religion; and three cases involved gender and the position in employment.

The report identifies examples of multiple discrimination from reports of casework in different Member States. Employment-related cases involving gender and ethnic or racial origin include cases of sexual and racist harassment and refusal to employ or promote or dismissal of women perceived as minority ethnic or poor working conditions for immigrant women employed as cleaners or domestic workers. Cases outside of employment included women perceived as belonging to a minority being denied adequate protection against domestic or institutional violence and cases of involuntary sterilisation of Roma women.

**Age and gender discrimination** was most frequently found in cases relating to different statutory pension ages for women and men, which led to early compulsory retirement of women. Age limits for certain occupations were also compounded by gender where collective redundancies affected older women disproportionately.

Cases involving **gender and religious discrimination** related to the wearing of the hijab and to whether women-only sessions in public swimming pools which are intended to facilitate access by minority ethnic and other women whose

religious views prohibit mixed-sex bathing were justified, or constituted unjustifiable discrimination against men. In employment cases, it included women being dismissed or denied employment for wearing a headscarf.

The **Strategy for Equality between Women and Men 2010-2015** of the European Commission defined multiple discrimination as “any combination of discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.<sup>7</sup> One concrete action was proposed on this, to promote gender equality “in all initiatives on immigration and integration of migrants”. The Strategy also stated that “to reach the Europe 2020 objective of a 75% employment rate for women and men, particular attention needs to be given to the labour market participation of older women, single parents, women with a disability, migrant women and women from ethnic minorities”. However, the concept was not drawn fully through the various elements of strategy.

The current **Strategic Engagement for Gender Equality 2016-2019** of the European Commission references multiple disadvantage rather than multiple discrimination in committing that “particular attention will be paid to the specific needs of groups facing multiple disadvantages, e.g. single parents and older, migrant, Roma and disabled women”.<sup>8</sup> The only concrete action proposed on foot of this, however, is “integrating a gender perspective into the implementation of the European Migration Agenda, addressing barriers to the employment and career progression of migrant women; helping Member States to make full use of the possibilities offered by the European Social Fund (ESF) in this area”.

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<sup>7</sup> Strategy for equality between women and men 2010-2015, COM(2010) 491 final, European Commission, Luxembourg, 2011.

<sup>8</sup> Strategic engagement for gender equality 2016-2019, Commission Staff Working Document, SWD(2015) 278 final, Brussels, 2015.

## MULTIPLE IDENTITY

The concept of **multiple identity** emphasises the existence of intersectional groups of people and the importance of responding to their particular needs. The concept overlaps with multiple discrimination in that a key concern is to address the multiple discrimination experienced by these intersectional groups. However, the focus on the specific situation, experience and identity of these groups demands greater ambition that would also include action to accommodate their particular diversity and identity, and progress equality in their particular situation and experience.

The Ontario Human Rights Commission reported significant legal developments in 2001, including “a recognition by the Supreme Court that an intersection of grounds can be recognised as a new analogous ground where social context, historical disadvantage and essential human dignity are involved”.<sup>9</sup>

Research carried out in 2003 by equality bodies in **Ireland, Northern Ireland and Britain** emphasised “the complexity and fluidity of identity. People construct their identity from more than one source. Multiple identity groupings have specific experiences, situations and identities that need to be addressed within equality strategies”.<sup>10</sup> The European Institute for Gender Equality, in defining intersectionality as the analytical tool to explore this phenomenon, identifies that, “people live multiple, layered identities derived from social relations, history and the operation of structures of power”.<sup>11</sup>

The European Commission opened up a **multiple identity perspective** in research on multiple discrimination



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um Chearta an Duine  
agus Comhionannas  
Irish Human Rights and  
Equality Commission



Equality and  
Human Rights  
Commission



Equality Commission

FOR NORTHERN IRELAND

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<sup>9</sup> Discussion Paper on an Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims, Ontario Human Rights Commission, Canada, 2001.

<sup>10</sup> Zappone K. ed, Re-Thinking Identity – The challenge of diversity, The Joint Equality and Human Rights Forum, Dublin, 2003.

<sup>11</sup> See: <http://eige.europa.eu/rdc/thesaurus/terms/1263>.

commissioned as part of the European Year of Equal Opportunities for All in 2007.<sup>12</sup> The report was prepared for the European Commission by the **Danish Institute for Human Rights**, an Equinet member body. This research, within its focus on multiple discrimination, emphasised identity, intersections of identity, and the importance of multiple identity groups with a focus on the situation, experience and identity of “intersectional groups”.

It identified that members of intersectional groups were “increasingly establishing their own movements, communities and NGOs”. The reasons cited for this included “single ground NGOs’ difficulties, and sometimes failure, in being inclusive and representative of all members, as well as the need of intersectional groups to identify, speak up, and articulate their own interests”. Black and minority ethnic women, disabled women, older women, young minority ethnic men, disabled LGBT people, older LGBT people, young LGBT people, and older disabled people were viewed as intersectional groups particularly vulnerable to multiple discrimination. It noted that **data gaps** mean certain intersectional groups remain invisible.

Its recommendations included that “research institutions should develop the conceptual tools to analyse the experience, situation and identity of intersectional groups” and that “the European Commission should develop funding sources for multiple-ground NGOs”. It suggested that equality bodies need to “develop integrated approaches to their efforts that encompass work on single grounds, work that links all six grounds simultaneously and work that addresses intersectional groups”.

It provided the establishment of ‘The Equalities National Council of Black and Minority Ethnic Disabled People and Carers’ in Britain as an example of good practice, where people with intersectional identities are forming new social

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<sup>12</sup> Tackling Multiple Discrimination: Practices, policies and laws, European Commission, Luxembourg, 2007.

networks. This was established in 1997 and provides independent living advocacy services which cut across service provision such as health, social care, criminal justice system, housing, education, employment, and welfare benefits. Its establishment represents an intersectional voice and it was founded on the need for an agency which deals in a cross-cutting manner with the needs of disabled people from Black and minority ethnic communities.

The European Commission report in 2009, by **the European Network of Legal Experts in the field of Gender Equality** offered a useful snapshot of the history of the intersectionality debate that points out the emergence of this focus on multiple identity:

“Although the intersectionality debate had its origin in legal discourse, it rapidly developed into a notion used more generally within women’s studies, an interdisciplinary field integrating sociology, cultural studies, political and economic science together with the odd legal scholar. The notion may have been first used in order to develop better law and politics. It soon took on other missions. For example, it was used to criticise the capacity of law to mirror any social reality adequately. In the wake of ‘post-modern’ social theory, the notion of intersectionality was increasingly used to theorise identities, rather than to move away from identity politics. Sociological quests into law as a practice that was generally ill-suited to establish change became a dominant feature of some intersectionality research. ‘Modern’ intersectionality theory was criticised because it mainly reflected on law as a medium of performing identities, instead of exploring the potential of equality law to contribute to overcoming disadvantage”.

## **INTERSECTIONALITY**

The most recent work published by the European Commission, authored by Sandra Fredman with the

European Network of Legal Experts on Gender Equality and Non-Discrimination, expands the debate beyond the focus on identity and intersectional groups by focusing on **intersectionality, structures of power, forces of exclusion**.

Fredman distinguishes intersectionality in suggesting multiple discrimination can manifest itself in **three ways**:

- **Sequential multiple discrimination**: when a person suffers discrimination on different grounds on separate occasions.
- **Additive multiple discrimination**: when a person is discriminated against on the same occasion but in two different ways.
- **Intersectional discrimination**: when discrimination does not simply consist in the addition of two sources of discrimination and “the result is qualitatively different, or as Crenshaw terms it ‘synergistic’”.<sup>13</sup>

This understanding of intersectionality is reflected in the European Institute for Gender Equality definition of intersectional discrimination as “taking place on the basis of several personal grounds or characteristics/identities, which operate and interact with each other at the same time in such a way as to be inseparable”.<sup>14</sup>

Fredman identified a **shift in the work on intersections between the grounds from a focus on “creating new groups” to a focus on “structures of power and exclusion”**. She argued that “discrimination law should focus on relationships of power in order to determine who to protect and how” and suggested that the aim of intersectionality should, therefore, be “to capture and address the wrongs suffered by those who are at the confluence of all these relationships”.

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<sup>13</sup> Fredman S., Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, 2016.

<sup>14</sup> See: <http://eige.europa.eu/rdc/thesaurus/terms/1262>.

Her approach was that, “rather than constructing further sub-groups, existing grounds should be construed as sufficiently capacious to address the confluence of power relationships which compounds disadvantage. In other words, discrimination on grounds of gender can refer to all relationships of power and disadvantage experienced by women, including women with disabilities, older women, Black women, gay women or any combination of these characteristics”.

Fredman identified that “intersectional experiences of disadvantage remain largely invisible, despite growing attention to the issue”. She found that national experts involved in the study reported **little case law involving intersections**, whether or not the State has made explicit provision for such discrimination in its equal treatment legislation. The absence of such a provision has not precluded cases from referring to multiple discrimination. About thirteen of the States surveyed for this research make explicit mention of multiple discrimination in their legislation. Statutory provision on this issue tends to have a focus limited to enhanced compensation.

Fredman analyses a range of intersectional experiences including: gender in disadvantaged minority ethnic groups; in Roma, Sinti and Traveller communities; age; domestic workers; sexual orientation and gender identity; and disability. She applies **a framework for substantive equality** in this where equality has four complementary functions:

1. **The need to redress disadvantage** (the redistributive dimension).
2. **The need to address stigma, prejudice, stereotyping and violence** (the recognition dimension).
3. **The need to facilitate participation and voice** (the participative dimension).
4. **The need to accommodate difference through structural change** (the transformative dimension).



In her analysis of gender and disadvantaged minority ethnic groups she explores what she terms “these directions of power”. In relation to:

- **Redressing disadvantage:** women in disadvantaged ethnic minorities might experience disadvantage which is both shared with the majority women and intensified through racism and discrimination on grounds of ethnic origin. At the same time, ethnic minority women experience discrimination specific to their social location, in a way not shared by ethnic majority women. Such disadvantage is shared with men in their communities. However, women may experience these deprivations in a more intense way than the men in their community, since they are likely to be tied to the home and the community by childcare and other domestic obligations.
- **Addressing stigma, prejudice, stereotyping and violence:** stereotyping within the community of women as primarily child-bearers and home-makers is overlaid by stigma and prejudice experienced as ethnic minority women in the wider society. In addition, when domestic violence occurs, women in these communities might find it difficult to report it to the police, through fear of a combination of racism and sexism by the police or because they are concerned in case reporting violence will reinforce negative stereotypes and expose their own communities to racist treatment, including deportation or injury.
- **Participation and voice:** The absence of political or other representation on behalf of members of the community as a whole might be compounded for women by the absence of decision-making powers within their communities.

- **Accommodation of difference:** Lack of accommodation of cultural differences might be intensified for women, both in that working life is based on a dominant male norm, but also in that as an ethnic minority, there may be language, dress, and other cultural barriers. Women in such communities may have even fewer opportunities to gain the language skills needed to interact with majority ethnic communities, or their cultural or religious dress requirements might act as a greater barrier than in the case of men in her community.

## EQUALITY BODIES

Equality bodies emerge from the research conducted for the European Commission over the past decade as **valuable actors in developing work on intersectionality**. Their roles in supporting casework on multiple discrimination or in hearing and deciding on cases of multiple discrimination were extensively explored in country reports from members of the European Network of Legal Experts in the Field of Gender Equality in the work by Burri and Schiek.<sup>15</sup> These authors, however, identified a concern that “equality bodies with responsibilities for individual strands of discrimination are detrimental to the aim of addressing multiple discrimination”.

Particular prominence was given to the contribution of equality bodies through research and data development in the work by the **Danish Institute of Human Rights**.<sup>16</sup> They noted, however, a concern that only a few equality bodies “have developed strategies or action plans, or promotional or awareness-raising activities to target multiple

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<sup>15</sup> Burri S. & Schiek D., Multiple Discrimination in EU Law: Opportunities for legal responses to intersectional gender discrimination?, European Network of Legal Experts in the Field of Gender Equality, European Commission, Luxembourg, 2009.

<sup>16</sup> Tackling Multiple Discrimination: Practices, policies and laws, European Commission, Luxembourg, 2007.

discrimination”. They further recommended that equality bodies include this focus in their promotional work and “encourage innovation among service providers and employers in responding to multiple discrimination”. They also suggest the need for equality bodies to engage in training judges, lawyers, journalists, employers, trade unions, and service providers on preventing and responding to multiple discrimination and in training their own staff on recognising and handling cases of multiple discrimination.

They noted that the “level of understanding and awareness of multiple discrimination is quite developed among national equality bodies that cover more than one ground because, in their daily practice they meet and deal with individuals seeking redress on the basis of multiple grounds”. They also reported a concern that “in order to address multiple discrimination effectively, it is necessary to have national equality bodies that cover all protected grounds in all fields”.

Fredman identified the **importance of equality bodies’ research on intersectionality**, providing data and information on complaints of multiple discrimination, and casework decisions recognising multiple discrimination.<sup>17</sup> She also suggested that “the extent to which multiple discrimination can be fully addressed might depend on whether there is a single equality body or ombud, as against several different ground-specific bodies”.

Her recommendations emphasised the need to generate **greater awareness and sensitivity** to intersectionality and that this “requires equality bodies and other civil society organisations to pay specific attention to raising awareness of the issues and to monitor intersectionality through their reports and other investigatory powers”.

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<sup>17</sup> Fredman S., *Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, 2016.

## 2. THIS IS BASED ON ...

### ROUNDTABLE AND SURVEY

This *perspective* is based on a roundtable discussion of Equinet's Policy Formation Working Group, with the cooperation and input of Equinet's Gender Equality Working Group, and on a survey of the Equinet membership, which is made up of 46 equality bodies in 34 European countries. The text of the survey questionnaire is included in Appendix Two to this *perspective*.

**Twenty three equality bodies from twenty one European countries** responded to the survey out of a possible forty five equality bodies in thirty three jurisdictions.<sup>18</sup> Equality bodies in **six countries** reported some provisions in their legislation concerning multiple discrimination with proposals for this in draft legislation in a seventh.<sup>19</sup> However, despite this limited number of countries with such a provision, **eighteen equality bodies** in seventeen countries identified that they have worked on issues of intersectionality.<sup>20</sup> This has included work of enforcement by equality bodies in **six countries** where the equal treatment legislation makes no explicit provision for multiple discrimination.<sup>21</sup>

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<sup>18</sup> Austria, Belgium (2), Bulgaria, Britain, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Malta, Northern Ireland, Poland, Portugal, Romania, Serbia, Slovak Republic, and Sweden.

<sup>19</sup> Austria, Bulgaria, Croatia, Finland (preparatory works only), Germany, Malta (in preparation), Serbia, and Sweden (preparatory works only).

<sup>20</sup> Austria, Belgium (1), Britain, Bulgaria, Croatia, Czech Republic, France, Germany, Greece, Hungary, Ireland, Malta, Northern Ireland, Poland, Portugal, Serbia, Slovak Republic, and Sweden

<sup>21</sup> Belgium (1), Czech Republic, France, Greece, Ireland, and Northern Ireland.

## **PRIORITISING INTERSECTIONALITY**

Three of the equality bodies reported that the issue of intersectionality was of **high importance** in their work, six reported that it was of **low importance**.

Intersectionality was seen as important for helping “to grasp a real understanding of the personal experience of discriminated people. It also reveals very specific situations that are hidden when several grounds are involved, cumulated and sometimes in competition”. For another equality body, multiple discrimination is understood as important for “producing serious and grave consequences for groups that are already in a less favourable position in society”. For the third body, the reason was evidence based in that “research commissioned shows that social groups can experience discrimination and barriers due to having multiple identities”.

For some equality bodies the **absence of any provision** on multiple discrimination in equal treatment legislation has meant that intersectionality has low priority. This is especially pronounced in contexts where equality bodies have limited resources. **Lack of expertise** in what is viewed as a complex area is identified as another factor in diminishing the priority accorded to intersectionality. A **low level of awareness** of the concept of multiple discrimination among the general public is also cited as a factor in that people subsequently do not present such cases to the equality body. The **lack of cases on multiple discrimination** is another reason that work on intersectionality gets low priority.

## **UNDERSTANDING INTERSECTIONALITY**

The equality bodies responding to the survey offered no developed definition of intersectionality. The definitions offered were varied and did not appear to draw from any published position. Only one organisationally agreed definition was reported, outside of definitions in equal

treatment legislation, and this was “the interplay between and integration of grounds of discrimination”. Nonetheless nearly all the equality bodies reflected a familiarity with the concept and an operational understanding of it.

Many equality bodies communicated an understanding of intersectionality in terms of the concept of multiple discrimination. Explicit provision on multiple discrimination in equal treatment legislation tended to encourage this focus. Multiple discrimination was understood as discrimination based on a combination of more than one characteristic. This combination is viewed as having a cumulative impact on the person. One equality body pointed to a broader focus on intersectionality in suggesting that this creates a “very specific situation”.

A number of equality bodies communicated a more expansive understanding of intersectionality in terms of inequality or “structural inequality”. This was described in terms of “mutually constitutive inequalities that produce an effect which is different from what each of their dimensions would produce separately, and also different from the addition of their separate parts together” by one equality body. Another identified it as a product of “structural factors that underlie the various forms of discrimination, which can lead to specific situations of discrimination, going beyond the concept of multiple discrimination”. Another noted that an “intersectional approach required taking account of the political, historical, and cultural context and the specific positions of certain vulnerable groups”.

**This broader concept of intersectionality appears to emerge from the promotional or communication work of equality bodies rather than their enforcement work.** This is probably influenced by the fact that **intersectionality, as opposed to multiple discrimination, is not provided for in equal treatment legislation** in any of the countries from which equality bodies were reporting.

## 3. BEING SYSTEMATIC...

Equality bodies reported a range of **strategic approaches** to addressing the issue of intersectionality and confronting the complexities involved. There is a particular challenge **to develop an understanding of intersectionality, establish how best an equality body might approach the issue, and stimulate political and public debate on the issue.**

### GIVING INTERSECTIONALITY PRIORITY FOCUS



The **German Federal Anti-Discrimination Agency (FADA)** developed a particular and strategic approach to the specific issue of multiple discrimination. It made this issue a priority focus for its work in 2010.

FADA published **two research reports on multiple discrimination**. The first report sought to establish an understanding of the topic from a theoretical and legal perspective: *'Multidimensional discrimination – terms, theories, and legal analysis'*. The second report sought to understand the experiences of multiple discrimination: *'Multidimensional discrimination – an empirical analysis using auto-biographical narrative interviews'*.

FADA then built on this research work by preparing and publishing a report for the Parliament: *'Multidimensional discrimination'*. This report aimed to inform policy makers, and also the general public, on issues of multiple discrimination and what responses were required. Further progress on issues of multiple discrimination in Germany has, however, proven difficult despite this body of work.



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Equality and  
Human Rights  
Commission



Equality Commission

FOR NORTHERN IRELAND

## BUILDING A SHARED KNOWLEDGE BASE

The **Equality Authority and the Irish Human Rights Commission** (now merged as the Irish Human Rights and Equality Commission), the **Equality Commission for Northern Ireland** and the **Northern Ireland Human Rights Commission**, and the Disability Rights Commission, Commission for Racial Equality and Equal Opportunities Commission in Britain (now merged as the **Equality and Human Rights Commission**) cooperated to explore, better understand, and establish ways they could work on the issue of intersectionality. Their focus was on the specific issue of multiple identity.

They commissioned research projects on specific intersectional groups in the different jurisdictions and then published an overview report on the outcomes of this research under the *title 'Rethinking Identity: the challenge of diversity'*. One research project was commissioned by each equality body to inform the overview report. These projects explored the particular situation, experience and identity of five multiple identity groups: Black and minority ethnic women, Black and minority ethnic people with disabilities, disabled women, young gay, lesbian and bisexual people, young minority ethnic men, and lesbian, gay and bisexual disabled people.

The overview report analysed the implications of the new knowledge developed on intersectionality generally and for equality bodies and human rights bodies in particular. Two key starting points were the need to recognise that:

- Strategies to accommodate diversity need to look beyond homogenous groups and acknowledge diversity within these groups.
- Policy needs to acknowledge how the complexity of people's identities have shaped how they experience discrimination and inequality, and that the combination of oppressions experienced by multiple identity groups "produced something quite unique".



The bodies involved were encouraged to open up work on this area by raising debate on and ensuring visibility for multiple identity groups and by promoting equality strategies that are relevant to the particular situation, experience and identity of these groups. This joint work was implemented in 2003 and the equality bodies involved continue to work on intersectional issues up to the present day in their new merged formats. An effective foundation was laid in 2003.

### **PURSUING A LEGAL BASIS**



A number of equality bodies **have pursued legislative change** as the opening gambit in their strategy to take on issues of intersectionality. The NCPE in Malta had proposed the inclusion of provisions on multiple and intersectional discrimination in their equal treatment legislation. The draft Equality Bill includes such provisions. Legislative change provides the foundation for future work on this issue. The Equality Commission for Northern Ireland has likewise sought change in the equal treatment legislation in Northern Ireland.

## 4. MAKING IT VISIBLE...

Equality bodies address issues of intersectionality in **casework, communication work, policy work, promotion work to support good practice, and research**. The dominant work to date by equality bodies on this issue appears to be in the field of research with an emphasis on building a knowledge base for work on intersectionality and bringing this into public and political debate.

This emphasis on research, data development, and policy work, reported in the work of equality bodies, accords with Fredman's research.<sup>22</sup> She noted, "More attention has been given to multiple discrimination by equality bodies, or their equivalent in the States covered in this report. This is particularly important in relation to the research and information being disseminated by these bodies". She suggested, "the most effective strategies were seen to involve equality bodies, or ombuds, focusing on intersectional disadvantage in their monitoring and data gathering work, followed up by policy measures specifically shaped by such issues".

### CONDUCTING RESEARCH

**Nine equality bodies** responding to the survey provided evidence of a significant body of research and data development initiatives.<sup>23</sup> The full range of research reported by equality bodies is set out in **Appendix One**.

The research reported covers a **wide range of intersections**: gender and racial or ethnic origin (6); gender and disability

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<sup>22</sup> Fredman S., *Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, 2016.

<sup>23</sup> Belgium (1), Czech Republic, France, Germany, Hungary, Ireland, Northern Ireland, Poland, and Portugal.

(5); age and racial or ethnic origin (2); age and disability (1); racial or ethnic origin and disability (1); gender and age (1); gender and physical appearance (1); gender and religion and socio-economic status (1); and gender and multiple grounds (1). A predominant focus on gender intersecting with other grounds is evident.

The research addresses a **range of settings** where intersectionality is relevant: employment (6); health and care settings (5); education settings (4); housing (1); access to justice (1); and general settings (5). While employment is a particular focus, education and health and care settings are also significant.

## RESEARCH LEADING TO POLICY WORK

In many cases, this research was a precursor to policy work in bringing the situation documented in the research to the attention of policy makers. Nine equality bodies in eight countries highlighted their policy work on intersectionality.<sup>24</sup>

**FADA in Germany**, as described above, developed studies on the understanding of intersectionality and on the experience of intersectionality and presented a report on intersectionality based on these to the Parliament.

The **Public Defender of Rights in the Czech Republic** made a direct link between the intersectional issues researched and subsequent policy work on those issues.

Research done by the **Equality Commission for Northern Ireland**, that includes an intersectional dimension, feeds directly into the implementation by public bodies of the public sector duty to have due regard to equality in carrying out their functions.

The **Office of the Commissioner for Human Rights in Poland** convinced public institutions and experts in the field of

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<sup>24</sup> Belgium, Britain, Czech Republic, Germany, Ireland, Northern Ireland, Malta, Portugal and Slovak Republic.



violence against women to address the specific needs of older women and women with disabilities on foot of research it published.

Three equality bodies reported taking an intersectional approach to gender in their contributions to the **CEDAW monitoring process** in their countries.<sup>25</sup> These contributions address a **wide range of intersections**: gender and disability (3); gender and racial or ethnic origin (3); gender and age (3); gender and religion (2); gender and sexual orientation; gender and gender identity; gender and caring responsibilities; gender and economic disadvantage; gender and family status; gender and marital status; and gender and immigration status. One of these equality bodies reported including a focus on gender and disability in its parallel jurisdiction report under the UNCRPD.<sup>26</sup>

**In Portugal, the Commission for Citizenship and Equality (CIG)** reported a particular role in relation to supporting the development and implementation of the national action plan for gender equality. This includes a range of intersectional actions with a focus on gender and disability, gender and age, and gender and racial or ethnic origin.



## LINKING RESEARCH AND ENFORCEMENT

While the dominant link for the research work done is to policy-making, there are also **links with the legal work of the equality bodies themselves**.

**Unia (Interfederal Centre for Equal Opportunities) in Belgium** was a partner in a study on access to justice from an intersecting gender and racial or ethnic origin perspective coordinated by a research team of the Université Libre de Bruxelles, part of which was based on an analysis of complaints received by Unia.



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<sup>25</sup> Ireland, Northern Ireland, and Slovak Republic.

<sup>26</sup> Northern Ireland.



The **Equality and Human Rights Commission in Britain** reported legal work in an inquiry on disability hate crime, which included a focus on intersection of disability and age and gender, and led to policy recommendations.

## DATA DEVELOPMENT WORK

**Data gaps** present significant barriers in taking an effective approach to intersectionality. Equality bodies need to collect and analyse data from an intersectional perspective and to promote this approach to other relevant bodies. Five equality bodies reported significant work in relation to such data development.<sup>27</sup>



REPUBLIC OF CROATIA  
OMBUDSMAN

The **Office of the Ombudswoman in Croatia** produces data on discrimination complaints they receive in relation to multiple discrimination. These are predominantly related to employment and the workplace.



The **Public Defender of Rights in the Czech Republic** produces data on multiple discrimination cases in its annual report.



CiG  
Comissão para a Cidadania e Igualdade de Género  
Presidência do Conselho de Ministros

The **CiG in Portugal** supported the development of a registration tool on domestic violence experienced by migrant women.



Unia  
Interfederal Centre  
for Equal Opportunities

The Diversity Barometer on discrimination in housing, employment and education developed by **Unia (Interfederal Centre for Equal Opportunities) in Belgium** includes intersectional data on gender.

The **Equality Commission for Northern Ireland** pursued a similar approach in its *Key Inequalities in Northern Ireland* work. It has also developed ground specific Position Papers for policy makers on gender, sexual orientation and racial or ethnic origin that include a multiple identity perspective.



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<sup>27</sup> Belgium, Croatia, Czech Republic, Northern Ireland, and Portugal

# 5. ENFORCING OR PROMOTING...

## PROMOTION WORK

The roundtable discussion on intersectionality, convened in preparing this *perspective*, suggested that, to date, the focus of equality bodies on intersectionality **works best in promotion work, supporting good practice and informing policy**. This is in part due to **barriers to enforcement in equal treatment legislation** that either does not address multiple discrimination or deals with it inadequately. In part, it is due to the challenge **to build greater understanding of intersectionality** and the practical implications of intersectionality before it can emerge fully as an enforcement issue. This viewpoint accords with the research commissioned by the European Union.

Fredman stated,

“Litigation because of its expense and the length of time it requires, is a less effective way of addressing intersectionality than proactive measures. Mainstreaming and other proactive measures are particularly valuable because they allow public bodies to take the initiative and target those who are disadvantaged in several different ways”.<sup>28</sup> Her analysis pointed to the need to focus on “structures of power and exclusion”.

In this context, **“mainstreaming and proactive measures which can target the most vulnerable groups are in principle better able to deal with structural issues than litigation”**.

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<sup>28</sup> Fredman S., *Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, 2016.



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The research conducted by the **Danish Institute for Human Rights**, in its core recommendation to equality bodies, emphasised their role in promoting good practice. They recommended: “Social Partners and National Equality Bodies should **encourage innovation among service providers and employers in responding to Multiple Discrimination** by, for example, funding pilot projects. Case studies of good practice in employment and service provision must also be developed and promoted”.<sup>29</sup>

The equality bodies responding to the survey, however, only reported **limited promotion work in supporting good practice on intersectionality**. Training that included an intersectional perspective has been provided by four equality bodies.<sup>30</sup> Good practice advice on intersectional issues has been supported by **the Irish Human Rights and Equality Commission**, with a focus on gender and racial or ethnic origin, and **the Defender of Rights in France**, with a focus on gender and sexual orientation.

## ENFORCEMENT WORK

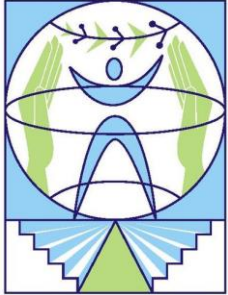
Equality bodies reported a **significant amount of enforcement work of an intersectional nature**. Much of this work is based on a **multiple discrimination perspective with cases being taken or heard on more than one ground**. There is an expressed concern that such cases should attract higher levels of compensation. This approach is also seen as increasing chances of success in casework and, sometimes, the case can be won on a ground other than that initially alleged.

This approach by equality bodies reflects the “**additive multiple discrimination**” approach noted by Fredman where a single incident of discrimination is based on more than one

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<sup>29</sup> Tackling Multiple Discrimination: Practices, policies and laws, European Commission, Luxembourg, 2007.

<sup>30</sup> Bulgaria, Britain, France, and Malta.



ground, rather than the distinct “**intersectional discrimination**” approach she identifies where the result of discrimination on more than one ground is a qualitatively different experience.

Equality bodies with **legislative provisions** in relation to multiple discrimination in their jurisdictions **are most prominent in reporting enforcement work**.<sup>31</sup> The **Commission for Protection against Discrimination in Bulgaria**, for example, deploys a specific and enlarged five member panel in such cases.

The legal department of the **Equality Ombudsman in Sweden**, where reference to multiple discrimination was made in the preparatory work for the equal treatment legislation, receives complaints from individuals. The legal department analyses the cases from an intersectional perspective with a view to detecting possible mutually reinforcing connections between circumstances that correspond to prohibited grounds of discrimination. This approach of applying an intersectional perspective is pursued in all the work processes of the Equality Ombudsman to ensure that the impact of such interactions between the grounds is given consideration.

Enforcement work on multiple discrimination was also reported by equality **bodies in four other countries where legislation specifically referencing multiple discrimination is not in place**.<sup>32</sup> In France, for example, the equality body highlights that one of the ways intersectionality is taken into consideration in case law is by “contextualizing the case”. This involves taking the full context of the complainant into consideration when building the case, including other grounds of discrimination than the initial one named, as well as the socio-economic situation and the particular conditions under which the discrimination took place.



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<sup>31</sup> In particular Austria, Bulgaria, Croatia, Serbia, and to a lesser extent Sweden.

<sup>32</sup> France, Greece, Ireland, and Northern Ireland.



Equality bodies, in the survey, pointed to **barriers moving beyond this additive multiple discrimination approach to take an intersectional discrimination approach** in a context where equal treatment legislation is **comparator based**. The unique space occupied by people at the intersections between the grounds does not allow for easy identification of a comparator. This limits the efficacy of casework that goes beyond an accumulation of single grounds.

Fredman also writes of “the ubiquitous problem of the need to find an appropriate comparator”.<sup>33</sup> While Burri and Schiek suggest “the most prominent barrier is generally recent acknowledgement of the problem”, they too suggest, “the barrier that is most difficult to overcome is a ‘comparator approach’ to discrimination”.<sup>34</sup> They suggest that the definition of discrimination “should be expanded by clarifying that naming a comparator is only one way of proving sex discrimination”. This would reflect the approach developed in pregnancy related discrimination cases.

## **COMMUNICATION: ADDRESSING UNDER-REPORTING**

**Under-reporting of multiple discrimination cases** is a particular issue as it is a more complex form of discrimination. The problem is escalated when this form of discrimination is not mentioned in the equal treatment legislation.

The **Ombud for Equal Treatment in Austria** published specific information on the provisions in national law with examples of discrimination cases and legal remedies in relation to multiple discrimination.

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<sup>33</sup> Fredman S., Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, 2016.

<sup>34</sup> Burri S. & Schiek D., Multiple Discrimination in EU Law: Opportunities for legal responses to intersectional gender discrimination?, European Network of Legal Experts in the Field of Gender Equality, European Commission, Luxembourg, 2009.



The **Commissioner for Protection of Equality in Serbia** regularly takes steps to publicly highlight successful cases of multiple discrimination as these are defined as severe forms of discrimination in the law.



The **Equality Ombudsman in Sweden** published two manuals in 2011 on access to justice that include an intersectional approach, '*Roadmap to Equality – Empowerment and Access to Justice*' and '*A Roadmap to equality – inspiration for local discrimination work*'.

#### COMMUNICATION: AWARENESS

**A limited number of awareness raising activities were reported by equality bodies.**



**Unia (Interfederal Centre for Equal Opportunities) in Belgium** has received much positive feedback for its documentary « *Voyage sans retour* » on older migrants.<sup>35</sup> This is a sensitive portrait of older people talking about their experience of arriving in Belgium to work in the mines and factories and about how they conceive the end of their life in Belgium. It includes a specific focus on the experience of women. Unia uses this communication tool to raise awareness about older migrants, former workers with low education, who may have special care needs. It is now preparing recommendations for medical staff and health care workers to take account of these needs.

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<sup>35</sup> See: <http://unia.be/fr/articles/les-migrants-de-la-premiere-generation-sortent-de-lombre> (French version) and <http://unia.be/nl/artikels/de-eerste-generatie-migranten-treedt-uit-de-schaduw> (Dutch version).

# 6. ENGAGING WITH OTHERS ON THE MATTER

## CIVIL SOCIETY ORGANISATIONS

The engagement of equality bodies with civil society organisations can support an intersectional perspective. The **Public Defender of Rights in the Czech Republic**, for example, identified how joint work with non-governmental organisations (NGOs) provides valuable support in its work on intersectional issues.



Equality bodies can also **stimulate civil society organisations to take an intersectional perspective**. The **Equality Ombudsman in Sweden** invites a large number of civil society organisations for consultation each year. The consultation focuses on disseminating information, gathering knowledge, and creating communication channels. This EO-Dialogue takes place as seven one-day meetings based on each of the seven non-discrimination grounds. A new approach is being introduced by inviting organisations representing a specific ground to the meetings related to other grounds, as well as inviting organisations whose focus is already intersectional.



Civil society organisations often organise **around a single ground**, promoting and representing the interests of a particular group experiencing inequality. The 2007 research conducted by the **Danish Institute of Human Rights** recommended that, “to address the needs and represent the interests of intersectional groups, the European Commission should develop funding sources for multiple-ground NGOs”.<sup>36</sup>



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<sup>36</sup> Tackling Multiple Discrimination: Practices, policies and laws, European Commission, Luxembourg, 2007.

# 7. GENDER INTERSECTIONS LEADING THE WAY

## GENDER INTERSECTIONALITY

**Intersectionality involving the ground of gender** is a particular and dominant focus in the work of equality bodies. This reflects the long history of intersectional work on this ground. Equality bodies expressed a particular concern about powerful and negative intersections of gender stereotypes with stereotypes on other grounds. These intersections lead to particular disadvantage for specific groups of women. Gender stereotypes combining religious stereotypes and stereotypes of Black people were identified as being of particular concern.

The work developed by equality bodies on gender intersectionality is important in its own right. Equality bodies see it as vital in giving a voice to particular groups of women and empowering them to raise their issues. This work also offers the potential for the experience of and learning from intersectional work on gender to provide a gateway to developing an intersectional approach in relation to other grounds.

## GENDER INTERSECTIONS

Intersections can be identified **between the ground of gender and all the Article 19 grounds of age, disability, religion or belief, racial or ethnic origin, and sexual orientation** in the work of equality bodies. The gender intersections worked on by equality bodies go well beyond this to include other characteristics, in particular the ground of socio-economic status. **FADA in Germany** recently published a survey on discrimination experiences in Germany

that found that gender or gender identity formed a central cross-cutting category in these experiences.

### **Gender or Gender Identity as a Cross-Cutting Category**

**The Federal Anti-Discrimination Agency in Germany** published research on experiences of discrimination based on a poll of about 18,000 people conducted in 2015. Gender or gender identity played an important part in nearly half of the described instances of age discrimination (41.1%), in nearly a third of described instances of discrimination due to socio-economic circumstances (30.5%), and over a quarter of described instances of sexual orientation discrimination (28.2%). Gender and gender identity is also evident as a factor in experiences on other grounds: religion or world view (16.6%) racist reasons or ethnic origin (15.5%) and disability (10.1%). The report also notes that instances of discrimination due to socio-economic circumstances and religion often go hand in hand with discrimination due to origin or racial discrimination.



### **LABOUR MARKET SETTINGS**

The **labour market** is a key site for the work of equality bodies on gender intersections. This has encompassed **intersections of gender and age, gender and family status, gender and pregnancy, gender and religion, and gender and racial or ethnic origin in particular**. It has included a particular focus on **domestic workers** who tend to be migrant women, in particular in a project supported by the **Irish Human Rights and Equality Commission**. This project combined the labour market setting with another key setting for work on gender intersections, caring work. Other gender segregated fields of employment also provide key settings for work on gender intersections, including the cleaning sector.



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### Gender and Racial or Ethnic Origin

The **Irish Human Rights and Equality Commission (IHREC) in Ireland** supported a project on homecare workers in 2014, initiated and led by a non-governmental organisation, the Migrant Rights Centre (MRCI). The Project highlighted the impact of poor employment practices affecting the employment rights of home care workers, who are mainly women from a certain age, socio-economic status and ethnic background. It ran focus groups with over 100 homecare workers, including undocumented migrants, and produced employment guidelines for home care workers.

The guidelines highlighted specific issues at the intersection of gender and racial or ethnic origin, as well as immigration status. Policy recommendations were made to improve the employment conditions of home care workers. The project had an advisory committee composed of representatives of the MRCI, the Health Service Executive, the Carers' Association, the Care Alliance, Age Action, SIPTU (trade union), the National Women's Council, the Workplace Relations Commission, and IHREC.

### EDUCATION SETTINGS

Education is identified as another important setting for work on gender intersections. While this has not yet been an area of significant intervention, a concern for gender and religion and gender and racial or ethnic origin intersections in education settings is articulated by equality bodies.

### ACCESS TO JUSTICE SETTINGS

Access to justice has been another setting for work by equality bodies on gender intersections. **Unia (Interfederal Centre for Equal Opportunities)** in Belgium was a partner in

a research project on the particular issues faced by minority ethnic women in seeking to make use of anti-discrimination legislation.

The **Equality Ombudsman in Sweden** published two manuals on access to justice that included an intersectional approach with a focus on gender intersections.

#### **Gender and Racial or Ethnic Origin**

**Unia (Interfederal Centre for Equal Opportunities) in Belgium** was a partner in a study on access to justice from an intersecting gender and racial or ethnic origin perspective coordinated by a research team of the Université Libre de Bruxelles, part of which was based on an analysis of complaints received by Unia. This research focuses on the factor of gender in shaping perceptions and choices among minority ethnic groups and their reaction to and use of anti-discrimination legislation when faced with racial discrimination.



The **Equality Ombudsman in Sweden** published two manuals on accessing justice: "*Vägar till rättigheter*" (*A Roadmap to equality – inspiration for local discrimination work*) and "*Växthuset*" (*Roadmap to Equality – Empowerment and Access to Justice*). The manuals take an intersectional approach in their preparation. This was found to be necessary in order to adequately address questions such as: What do we mean by discriminatory structures and practices? How are they constructed? How do they work? Why do certain regulations drive discriminatory practices? What other elements can we detect in addition to rules and routines that contribute to discrimination? The actions recommended also reflect an intersectional approach. They were developed on the basis of seminars conducted with the relevant groups. They are particularly concerned with the intersections of ethnicity and gender and of ethnicity and sexual orientation or identity.



## SETTINGS OF TARGETED PLANNING AND PROVISION

Intersectionality involving the ground of gender has been found by equality bodies to be important **in policies and programmes** that specifically target women. The **CIG in Portugal** stimulated a focus on intersections between gender and disability, age and racial or ethnic origin in the development of the '*V National Plan for Gender Equality and non-Discrimination 2014-2017*'.

A number of equality bodies have brought a wide range of intersections with gender to bear in their work of contributing to the **monitoring of CEDAW** in their countries. The **Office of the Commissioner for Fundamental Rights in Hungary** reports that the Deputy Commissioner responsible for Minority Rights has raised concerns regarding sexual and reproductive rights of Roma women with the CEDAW Committee in the follow-up procedures to the concluding observations on the combined seventh and eighth periodic state report. She noted that Roma women suffer multiple discrimination on the basis of their gender and ethnicity, among other factors, in access to healthcare and quality education. This results in a poor level of awareness about reproductive health and rights, which is escalated by disadvantaged social status and geographical obstacles. These concerns were taken up by the CEDAW Committee

The **Office of the Commissioner for Human Rights in Poland** and the **Equality and Human Rights Commission in Britain** reported bringing an intersectional perspective to bear in seeking to influence public institutions responsible for addressing gender-based violence.

### Gender and Age & Disability & Other Grounds

The **Office of the Commissioner for Human Rights in Poland** conducted and published a research report on "*Preventing violence against women, especially older women and women*





*with disabilities. Analysis and recommendations”* in 2013.<sup>37</sup> Research on violence against women is quite well developed in Poland and the equality body sought to add some new perspective on the issue. There were previously no studies focused on older women and women with disabilities in terms of victim support systems. This had an influence on public institutions and experts working in this area.

The **Equality and Human Rights Commission in Britain** chaired a working group of the European Commission Advisory Committee on Equal Opportunities for Women and Men, to produce an ‘Opinion’ on the development of an EU strategy on violence against women and girls.<sup>38</sup> Along with other members of the working group, the Commission ensured that specific attention was given in the Opinion to the needs of different groups of women, with one of the principles being: “Securing equality between all persons and addressing diverse needs. Ensuring that all initiatives and practices are reviewed thoroughly for their equality implications to ensure that they leave no woman or girl behind – without discrimination on the grounds of race, ethnicity, disability, access requirements, age, trans status, social class, religion or belief, or sexual orientation.” This was considered essential to ensure that the Opinion reflected how intersectionality impacts on women’s experience of violence, and that policy should be developed accordingly.

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<sup>37</sup> See:

<https://www.rpo.gov.pl/sites/default/files/HUMAN%20RIGHTS%20DEFENDER%20BULLETIN%202014%2C%20No%203%20SOURCES.pdf>

<sup>38</sup> See: [http://ec.europa.eu/justice/gender-equality/files/opinions\\_advisory\\_committee/2010\\_12\\_opinion\\_on\\_eu\\_strategy\\_on\\_violence\\_against\\_women\\_and\\_girls\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/opinions_advisory_committee/2010_12_opinion_on_eu_strategy_on_violence_against_women_and_girls_en.pdf)

# 8. THE FACTORS THAT INFLUENCE...

## FACTORS THAT ENABLE

The key factor identified by equality bodies that enables a focus on intersectionality is the potential held by such a focus **to capture the reality of people's situations and experiences and to inform more effective responses by equality bodies to this reality.**

Equality bodies are attracted to working on the issue of intersectionality, or to “putting on an intersectional lens” as one equality body put it, **because it offers a window into the real lives and experiences of people, offers a better understanding of issues, and translates into better support for people that are exposed to discrimination.** It is an approach that can be used to analyse existing **power relations in society** and secure a more **precise picture of discrimination** from a broader perspective. It enables **a focus on structural discrimination** and gives a better understanding of **hidden and complex realities.**

One equality body identified a danger to this enabling factor in minimal interpretations of the concept being imposed through an emphasis on litigation. It stated, “although intersectionality has started to acquire a narrower meaning of discrimination experienced on more than one ground, its usefulness is also in the broader interpretation of discrimination that it offers. Namely, it describes the experience of subordination and discrimination which cannot be grasped by existing categories”.

## **FACTORS THAT BLOCK**

Intersectionality is, however, seen as a new and complex concept that is **difficult for equality bodies to engage with**. It is, in the words of one equality body, a concept that “requires increased visibility and knowledge”. The response by equality bodies has been to prioritise action in research and data development. However, **data gaps** remain and are identified as a barrier by equality bodies for action on intersectionality.

The **absence of legal provisions on intersectionality limit the work by equality bodies** on these issues. Such provisions, even limited provisions on multiple discrimination, in equal treatment legislation are a valued incentive for equality bodies to engage with intersectionality. However, such provisions should be accompanied by **additional sanctions** to compensate the severity of such discrimination and to incentivise multiple discrimination cases. This is important in a context where such cases are viewed as difficult to establish. It is also clear that requirements in relation to a **comparator** for cases under equal treatment legislation serves as a barrier to enforcement of such cases.

**The number of multiple discrimination cases remains low.** This is a disincentive to action on intersectionality. Under-reporting is an issue and it is necessary to build greater public awareness of intersectionality to enable more cases to come forward.

There are **issues internal to equality bodies** that limit action on intersectionality. The lack of human resources remains a constant problem. The lack of expertise can be an issue with this complex concept. The institutional architecture for equality bodies is a potential barrier. It is difficult to progress work on intersectionality where different equality bodies are mandated to deal only with a single ground of discrimination.

# 9. LOOKING TO THE FUTURE...

## EQUALITY BODIES

Equality bodies can point to a significant **track record of action on intersectionality**. It is clear that this focus is valued by them and by outside observers of their work. It is also clear that the full potential of intersectionality remains to be **uncovered and secured**.

Ongoing debate and exchange among equality bodies on the issue of intersectionality would assist **in building a shared understanding** of the concept and, through that, further realising its potential. A **wider stakeholder debate** on intersectionality also needs to be stimulated and supported if this concept is to gain traction and realise benefits for the wider policy, programme and practice based work in seeking to advance full equality in practice.

Equality bodies could usefully **build their own capacity and practice to view and review their work** through an intersectional lens. This requires some expertise and challenges equality bodies to enable staff to access training and develop the learning required. An intersectional lens could reshape the work being done by equality bodies in small but significant ways. This was evidenced in the experience of expanding the EO-dialogue in Sweden.

The **core requirements** in advancing the issue of intersectionality continue to be those of **knowledge, understanding, and visibility**. These are issues to which equality bodies could usefully continue to direct and expand their attention. **Research, data development, policy debate and public debate** are, therefore, key in further developing work on intersectionality. Equality bodies, in a context of scarce resources, might usefully establish a formal exchange

on the research work being done in order to keep each other informed of current plans and to share the outcomes of the research.

There is a challenge to further develop the work of equality bodies in **supporting good practice in intersectionality by employers and service providers**. There are only limited outputs evident in the work of equality bodies in this regard to date. A useful way forward on this would be to support intersectional practice in programme and service areas that are targeting a single ground and to promote and support good practice in taking account of diversity within that ground. This work could valuably include forms of partnership with employers and service providers and with civil society organisations working on equality issues.

#### **EUROPEAN UNION AND INDIVIDUAL JURISDICTIONS - LEGISLATION**

Legislative change will be important in securing further progress on intersectionality. **Provision on multiple discrimination in equal treatment legislation** provides a vital stimulus for action on intersectionality. It is clear that such provision must be accompanied by **enhanced sanctions for multiple discrimination** if such provision is to have an impact. However, the understanding of intersectionality developed in research, and evident in the broader work of equality bodies, suggests that care needs to be taken in **defining and advancing this legislative change**.

Legislative change would need to ensure care is taken when making provision for intersectionality in order to capture its full potential and to enable this potential to develop. It would demand a review of some current key concepts in anti-discrimination law, including how discrimination is defined and how the different grounds covered are understood. It would require **a coherence of protection**

**across the current grounds and new forms of joint action by single ground equality bodies.**

Burri and Schiek highlighted the importance of levelling up provisions across the grounds and addressing “different legal frameworks for different grounds” and of redefining discrimination to address difficulties in finding a comparator.<sup>39</sup> They pose a challenge in stating that “equality bodies with responsibilities for individual strands of discrimination are detrimental to the aim of addressing multiple discrimination”. Single ground equality bodies can test out this statement with a practice that encompasses intersectionality. They pointed to the need to make provision for multiple discrimination in all the EU equal treatment Directives **but argued against a definition of multiple discrimination**, suggesting that this would “prevent a flexible development of the concept”.

Fredman’s work suggests the need to re-examine how we understand the different grounds of discrimination. This, as suggested by one equality body, could point to a future **“post-category” approach to discrimination** where combating discrimination and promoting equality moves beyond a focus on defined grounds or groups of people.

Fredman stated “discrimination law should focus on relationships of power in order to determine who to protect and how. Since everyone has a range of identities, a relational view allows us to see that individuals might experience both privilege in relation to some characteristics and disadvantage in relation to others. Others, however, might experience disadvantage across all their relationships. In addition, the ways in which detriment or disadvantage is experienced might be significantly shaped by circumstances and context. The aim of intersectionality should be to

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<sup>39</sup> Burri S. & Schiek D., Multiple Discrimination in EU Law: Opportunities for legal responses to intersectional gender discrimination? European Network of Legal Experts in the Field of Gender Equality, European Commission, Luxembourg, 2009.

**capture and address the wrongs suffered by those who are at the confluence of all these relationships”**.<sup>40</sup> The emphasis on ‘multiple disadvantage’ rather than ‘multiple discrimination’ in the Strategic Engagement for Gender Equality 2016-2019 of the European Commission is of interest in the light of this analysis and could point to new developments within gender equality policy that further reflect this analysis of intersectionality.<sup>41</sup>

Fredman argued for a **“capacious” view** to be taken of the grounds such that “all aspects of an individual’s identity should be taken into account even within one identity ground”. Even within a single ground, “multiple intersecting power relations can be addressed”.

## **EUROPEAN UNION AND INDIVIDUAL JURISDICTIONS – MAINSTREAMING AND TARGETING**

**Mainstreaming processes and proactive measures** for equality have a particular capacity to directly address the structural and systemic issues that underpin inequalities. An intersectional analysis emphasises these structural and systemic issues and how they act, interact, and intertwine in subordinating and excluding different groups in society. European and Member State mainstreaming processes need to be further developed to include a capacity to address intersectionality. European and Member State action plans for equality, usually pursued on a single ground basis, need to adopt an intersectional lens. They should include actions to address the practical implications for policy and programmes of diversity within that single ground.

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<sup>40</sup> Fredman S., Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, 2016.

<sup>41</sup> Strategic engagement for gender equality 2016-2019, Commission Staff Working Document, SWD(2015) 278 final, Brussels, 2015.

## **A FINAL WORD**

The next generation of equal treatment legislation could emerge from **grappling with and effectively addressing the concept of intersectionality**. If this is to be the case, public and policy debate on intersectionality could usefully be progressed with that purpose in order to establish agreed parameters for this next generation of legislation. Such legislative change is a **long-term project** but could benefit from being launched at this **early stage**, given the potential in the concept of intersectionality that has been revealed by research and in the work of equality bodies. This is a potential to deepen a focus on systemic discrimination in terms of relationships of power and disadvantage, reinterpret our understanding of the grounds on which discrimination is prohibited, and open up definitions of discrimination that are not comparator based.



# REFERENCES

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# APPENDIX ONE

## Research by equality bodies on intersectionality

Equality Body	Research Initiative
Unia (Interfederal Centre for Equal Opportunities) Belgium (Research Partner)	<i>“The Use of Racial Anti-Discrimination in Belgium: A Gender Perspective”</i> A study on the factor of gender in shaping perceptions and choices among minority ethnic groups and their reaction to and use of anti-discrimination law when faced with racial discrimination.
Unia (Interfederal Centre for Equal Opportunities) Belgium	<i>Diversity Barometer</i> Regular measurement of discrimination rate in employment, housing and education. Offers a focus on gender intersecting with all other grounds covered.
Unia (Interfederal Centre for Equal Opportunities) Belgium	Socio-economic Monitoring Tracks ethnic segregation in the labour market and includes intersection with gender.
Public Defender of Rights Czech Republic	Research on Roma children in schools.
Public Defender of Rights Czech Republic	Research on sterilization of Roma women.
Public Defender of Rights Czech Republic	Research on older people with dementia.
Defender of Rights France	Perceptions of discrimination in employment covering gender and physical appearance.
Defender of Rights France	The situation of women with disabilities in employment.
Defender of Rights France	The experience of girls from minority ethnic groups in education.
Defender of Rights France	Perceptions of discrimination in employment covering gender and racial or ethnic origin.
FADA Germany	<i>Multidimensional discrimination – terms, theories and legal analysis.</i>
FADA Germany	<i>Multidimensional discrimination – an empirical analysis using autobiographical narrative interviews.</i>
FADA	<i>Experiences of Discrimination in Germany: Initial results of a</i>

Germany	<i>representative survey of the people affected.</i>
IHREC Ireland	<i>Rethinking Identity: The Challenge of Diversity</i> A composite study on the situation, experience and identity of a range of multiple identity groups.
IHREC Ireland	<i>Minority Ethnic People with Disabilities in Ireland</i> Situation, Identity, and Experience.
IHREC Ireland	Analysis of Census 2006 data including a chapter on 'Multiple Group Membership – Women, Men and Disability.
ECNI Northern Ireland	<i>Key Inequalities in Northern Ireland</i> Highlighted inequalities experienced by women due to their multiple identities.
ECNI Northern Ireland	<i>Key Inequalities – Education</i> Highlighted inequalities across a range of multiple identities, in particular gender, religion, and socio-economic status.
ECNI Northern Ireland	Inequalities in health and social care experienced by women with disabilities.
ECNI Northern Ireland	<i>Women with Disabilities in Northern Ireland</i> Situation, Identity, and Experience.
ECNI Northern Ireland	A study on childcare provision with a focus on grounds of gender, racial or ethnic origin, and disability.
Office of the Commissioner for Human Rights Poland	<i>Preventing Violence against Women, especially older women and women with disabilities – Analysis and Recommendations</i>
CIG Portugal	Developing a registration tool on domestic violence experienced by migrant women.

# APPENDIX TWO

## Survey questionnaire

### 1. Respondent Details

1.1 Name of respondent:

1.2 Contact details for respondent:

1.3 Name and location of equality body:

### 2. Perspective on Intersectionality

2.1 Does the equal treatment legislation make explicit provisions in relation to intersectionality and/or multiple discrimination? How is this defined? Are there particular sanctions provided for multiple discrimination?

2.2 What is your understanding of intersectionality? How do you define it for your work?

2.3 How important is the issue of intersectionality in your work and why is this so?

- High?
- Medium?
- Low?
- Not important?

2.4 Do you gather internal data to track intersectionality as it arises in the different areas of your work? Have you analysed this data? Could you briefly present any such analysis?

### 3. Action on Intersectionality, including Gender Intersectionality

3.1 Could you complete the table below to briefly identify actions you have taken on and intersectional basis or in response to issues of intersectionality:

Area of work and action taken (e.g. casework, promotion work, communication work, research, or policy work)	Grounds intersecting	Policy or practice field that was the focus for this action (e.g. education, employment, housing provision)	Issues that drove the need for this action

### 4. Good Practice on Gender Intersectionality

Could you describe in some detail one or two good practice actions you have taken where the ground of gender intersects with another ground

### 5. Issues in Addressing Intersectionality, including Gender Intersectionality

5.1 What are the factors that encourage and support you to take a focus on intersectionality in the work of your equality body? Are there any specific factors when it comes to gender intersectionality?

5.2 What are the difficulties you face in trying to take an intersectional approach within the work of your equality body? Are there any specific difficulties when it comes to gender intersectionality?

5.3 What are the benefits for your work in taking an intersectional approach? Why does your equality body take an intersectional approach? Are there any particular benefits when it comes to gender intersectionality?

# EQUINET MEMBER EQUALITY BODIES

## ALBANIA

Commissioner for the Protection from Discrimination  
[www.kmd.al](http://www.kmd.al)

## AUSTRIA

Austrian Disability Ombudsman  
[www.behindertenanwalt.gv.at](http://www.behindertenanwalt.gv.at)

## AUSTRIA

Ombud for Equal Treatment  
[www.gleichbehandlungsanwaltschaft.at](http://www.gleichbehandlungsanwaltschaft.at)

## BELGIUM

Institute for the Equality of Women and Men  
[www.igvm-iefh.belgium.be](http://www.igvm-iefh.belgium.be)

## BELGIUM

Unia (Interfederal Centre for Equal Opportunities)  
[www.unia.be](http://www.unia.be)

## BOSNIA AND HERZEGOVINA

Institution of Human Rights Ombudsman of Bosnia and Herzegovina  
[www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)

## BULGARIA

Commission for Protection against Discrimination  
[www.kzd-nondiscrimination.com](http://www.kzd-nondiscrimination.com)

## CROATIA

Office of the Ombudsman  
[www.ombudsman.hr](http://www.ombudsman.hr)

## CROATIA

Ombudsperson for Gender Equality  
[www.prs.hr](http://www.prs.hr)

## CROATIA

Ombudswoman for Persons with Disabilities  
[www.posi.hr](http://www.posi.hr)

## CYPRUS

Commissioner for Administration and Human Rights (Ombudsman)  
[www.ombudsman.gov.cy](http://www.ombudsman.gov.cy)

## CZECH REPUBLIC

Public Defender of Rights  
[www.ochrance.cz](http://www.ochrance.cz)

## DENMARK

Board of Equal Treatment  
[www.ast.dk](http://www.ast.dk)

## DENMARK

Danish Institute for Human Rights  
[www.humanrights.dk](http://www.humanrights.dk)

## ESTONIA

Gender Equality and Equal Treatment Commissioner  
[www.svv.ee](http://www.svv.ee)

## FINLAND

Non-Discrimination Ombudsman  
[www.syrjinta.fi](http://www.syrjinta.fi)

## FINLAND

Ombudsman for Equality  
[www.tasa-arvo.fi](http://www.tasa-arvo.fi)

## FRANCE

Defender of Rights  
[www.defenseurdesdroits.fr](http://www.defenseurdesdroits.fr)

## GERMANY

Federal Anti-Discrimination Agency  
[www.antidiskriminierungsstelle.de](http://www.antidiskriminierungsstelle.de)

## GREECE

Greek Ombudsman  
[www.synigoros.gr](http://www.synigoros.gr)

## HUNGARY

Equal Treatment Authority  
[www.egyenlobanasmod.hu](http://www.egyenlobanasmod.hu)

## HUNGARY

Office of the Commissioner for Fundamental Rights  
[www.ajbh.hu](http://www.ajbh.hu)

## IRELAND

Irish Human Rights and Equality Commission  
[www.ihrec.ie](http://www.ihrec.ie)

## ITALY

National Equality Councillor  
[www.lavoro.gov.it/ConsiglieraNazionale](http://www.lavoro.gov.it/ConsiglieraNazionale)

## ITALY

National Office against Racial Discrimination - UNAR  
[www.unar.it](http://www.unar.it)

## LATVIA

Office of the Ombudsman  
[www.tiesibsargs.lv](http://www.tiesibsargs.lv)

## LITHUANIA

Office of the Equal Opportunities Ombudsperson  
[www.lygybe.lt](http://www.lygybe.lt)

## LUXEMBURG

Centre for Equal Treatment  
[www.cet.lu](http://www.cet.lu)

## (FYRO) MACEDONIA

Commission for the Protection against Discrimination  
[www.kzd.mk](http://www.kzd.mk)

## MALTA

National Commission for Persons with Disability  
[www.knpd.org](http://www.knpd.org)

## MALTA

National Commission for the Promotion of Equality  
[www.equality.gov.mt](http://www.equality.gov.mt)

## MONTENEGRO

Protector of Human Rights and Freedoms (Ombudsman)  
[www.ombudsman.co.me](http://www.ombudsman.co.me)

## NETHERLANDS

Netherlands Institute for Human Rights  
[www.mensenrechten.nl](http://www.mensenrechten.nl)

## NORWAY

Equality and Anti-Discrimination Ombud  
[www.ldo.no](http://www.ldo.no)

## POLAND

Commissioner for Human Rights  
[www.rpo.gov.pl](http://www.rpo.gov.pl)

## PORTUGAL

Commission for Citizenship and Gender Equality  
[www.cig.gov.pt](http://www.cig.gov.pt)

## PORTUGAL

Commission for Equality in Labour and Employment  
[www.cite.gov.pt](http://www.cite.gov.pt)

## PORTUGAL

High Commission for Migration  
[www.acm.gov.pt](http://www.acm.gov.pt)

## ROMANIA

National Council for Combating Discrimination  
[www.cncd.org.ro](http://www.cncd.org.ro)

## SERBIA

Commissioner for Protection of Equality  
[www.ravnopravnost.gov.rs](http://www.ravnopravnost.gov.rs)

## SLOVAKIA

National Centre for Human Rights  
[www.snspl.sk](http://www.snspl.sk)

## SLOVENIA

Advocate of the Principle of Equality  
[www.zagovornik.net](http://www.zagovornik.net)

## SPAIN

Council for the Elimination of Ethnic or Racial Discrimination  
[www.igualdadynodiscriminacion.msssi.es](http://www.igualdadynodiscriminacion.msssi.es)

## SWEDEN

Equality Ombudsman  
[www.do.se](http://www.do.se)

## UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland  
[www.equalityni.org](http://www.equalityni.org)

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