



EQUALITY ACT 12 YEARS ON

FOREWORDS

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FOREWORD

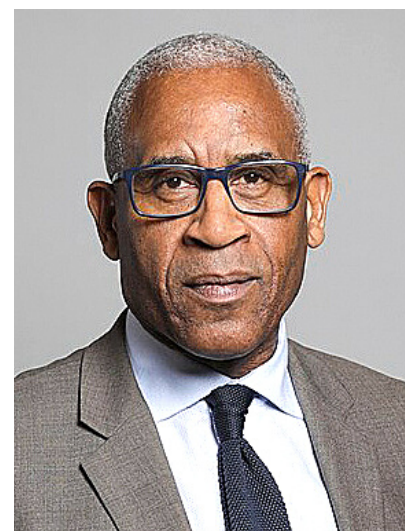
In July 2020, I ended my tenure as chair of the United Kingdom Government's Race Equality Unit Advisory Board. The Unit, which was created by the former Conservative Prime Minister Theresa May, was established with the objective of looking into the lived experiences of Black Asian Minority Ethnic (BAME) individuals and to set out the reality of racial disparities in the UK, or "uncomfortable truths" as Prime Minister May said. After the Unit found these truths, Ministers then had to change practices or explain why it was reasonable to 'Stop and search' Black people nine times more than white people for example.

When Boris Johnson came to power, the laser focus on closing racial disparities not only became a non-priority, but the issue of tackling deep seated racial inequalities was weaponised to claim it had come at the expense white working-class people. In the new political climate, it quickly became clear that my actions to fight racial and social injustice would not fit with the new direction of No.10.

Eventually, the Black Lives Matter protests after the murder of George Floyd and the disproportionate impact of Covid -19 on BAME communities did force No.10 to set up the Commission for Racial Disparities. However, rather than acknowledge the concerns of BAME communities and create a strategy to effectively deal with systemic racial inequalities that were laid bare by Covid and the BLM protests, No.10's man, a long-time race inequality denier, Dr Tony Sewell, produced a controversial report with its major headline that "Institutional racism no longer exists." The report was dismissed as dishonest, divisive, and deeply politicised. Unfortunately, instead of having an honest healing conversation about our nation including addressing the past and how it negatively impacts the present, we're instead stuck with the worst, faux culture wars that pits white working class against BAME communities.

The Equality Act review is part of the healing conversation that we urgently need with the review being bold and brave. It has a clear North Star which looks at complex areas of equality to see how they intersect and interact to ensure we can better live together.

Dr. Bi's vision of a reformed Equality Act, which draws on exemplars of equality legislation from South Africa and Canada, provides welcome relief from the trend that aims to downplay discrimination in the UK. She recognises the importance of expanding the scope of the Equality Act, but rejects the idea that this must come at the expense of grounds of characteristics already protected by the Equality Act, including, for example, race and religion. Dr. Bi advocates for stronger enforcement of the sections of the Act which pertain to discrimination on the grounds of existing



Lord Simon Woolley

protected characteristics, whilst also advocating for the addition of new socioeconomic and sociocultural characteristics, including weight, accent, hair, and socio-economic background. She notes, however, that biological and socioeconomic or sociocultural characteristics are not entirely separate entities, and advocates for an intersectional interpretation of a reformed Equality Act, which would permit victims of discrimination to launch a claim of discrimination on the grounds of biological characteristics and on specific socioeconomic or sociocultural characteristics. Moreover, her report makes an important contribution to the conversation pertaining to legal aid reform and case submission fees which I strongly agree must be reconsidered in order to ensure access to justice.

Overall, this report is the most comprehensive review of the Equality Act to date and its publication marks a landmark moment in the evolution of equality legislation in the UK. Dr. Bi's recommendations provide strong grounds upon which an updated version of the Equality Act should be modelled and should be warranted ample consideration by the government.

Our nation should not be having two competing conversations; one that is based on unity and another on division. The latter may win votes in red wall seats, but at what price? After the tumultuous past 18 months, its incumbent on all of us to come together and ensure equality and equity for all in society.

Thank you Dr. Bi for your contribution to the healing conversation that we need.

Lord Simon Woolley

Lord Simon Woolley

FOREWORD

In 2020, I was promoted to the role of Liberal Democrat Spokesperson for Women and Equalities, which enabled me to be a strong voice for many underrepresented people including women, Black, Asian and ethnic minority people, LGBT+, and disabled people.

In recent years we have been witnessing the undermining of equality laws on the Government's part through the construction of the hostile environment, the implementation of the widely criticised Nationality and Borders Bill, the shameful u-turn on conversion therapy, the banishing of refugees and asylum seekers to Rwanda, the abolishing of the Human Rights Act, to name but a few examples. Slowly but surely, this Government is stealing the rights of every member of our society.

Over the twelve years we have also witnessed growing austerity, which has culminated in the Cost-of-Living Crisis in recent months. This is having hugely unequal impacts on women, Black, Asian and ethnic minority people and disabled people. Millions of adults and children across the UK have been plunged into poverty, torn between eating or heating their homes. We have witnessed homelessness and food bank use rise exponentially. At the same time, we are also emerging from a devastating pandemic, which has also unequally impacted equality groups.

Such events, when coupled with the Government's overwhelmingly regressive approach to equality, has unfortunately exacerbated cases of discrimination. It is therefore more important than ever that the law reflects and protects people's lived experiences of inequality.

Holding the government to account on equality law is more important than ever before, and this is something I am working hard towards.

The Liberal Democrat Party is and always will be the Party for equality and we are proud of The Equality Act but we know there is more to be done to ensure it is properly upheld, enforced and, protects specific groups of people who slip through the gaps.



Wera Hobhouse MP, Liberal Democrat Spokesperson for Women and Equalities

This report “Equality Act 12 Years On”, has identified the gaps with regard to the failure to protect against growing inequality, and recognises the importance of reviewing the Equality Act for our times.

Sadly, this is now an urgent matter given the proposed erasure of the Human Rights Act by the current Justice Secretary.

Dr Bi proposes that the current protected characteristics ought to be strengthened. She assesses the current characteristics as predominantly rooted in biological characteristics which overlook the socio-cultural aspects of human life, which can and do give rise to discrimination. She therefore proposes that new protected characteristics should be added. Dr Bi also recognises a number of unenforced aspects of the Equality Act including dual discrimination, the socio-economic duty and the public sector equality duty, both of which are critical in ending poverty and socioeconomic status-based inequality, and upholding the tenants of intersectionality.

Dr Bi also proposes the absorption of the Human Rights Act into the Equality Act by way of expanding the definition of equality. Equality must be viewed as a fundamental cause for and product of human rights.

This report is therefore the beginning of a much-needed conversation about how our equalities law can protect us in the face of growing attempts to weaken individual, and societal rights.

The Liberal Democrat Party is committed to upholding The Equality Act and the Human Rights Act, and reviewing these proposals as part of our work building a more equal and fair society for all.

Wera Hobhouse MP

Liberal Democrat Spokesperson (Women and Equalities)

AUTHOR'S NOTE

In 2015, I began a teaching support role at a Birmingham school to enable me to fund my PhD studies. In the second week of my employment, a teacher showed a class of 11-year-olds a video of 9/11, that preceded with an 18-rated caution message. The footage showed victims jumping to their deaths on that tragic day. The pupils were unable to comprehend whether what they were viewing was a lived reality or a movie, as 9/11 not only preceded their births, but some of them also had special educational needs. The school was quick to interpret my concerns about student welfare as 'objecting to 9/11 being taught on the curriculum' and immediately dismissed me, leaving me with no recourse to appeal. I filed a case to the Employment Tribunal thereafter, and in 2017, I won my case on the following grounds: public interest disclosure act, unfair dismissal and victimisation.

Race discrimination was ruled out at the outset of the case as the Judge decided that 'Muslims were not a race'. While religious discrimination proceeded to be heard at the full tribunal, the Tribunal decided that I had not been religiously discriminated. The reason the Tribunal cited was that a hypothetical comparator such as a Jewish or Christian teacher would not be treated the same way. I repeatedly argued that such comparators would only receive similar treatment if three factors were also active in the comparator; first a visible marker of religious identity, as I was a visible Muslim woman by wearing the hijab, second, that there be a Trojan Horse Affair equivalent where right wing members of the respective communities were alleged to be taking over state schools, and third, a 9/11 equivalent where the perpetrators were aligned with the extreme fringes of the respective communities. Without these three factors, a comparator of Jewish or Christian faith would not receive similar treatment. The Employment Tribunal refused the appeal on numerous occasions, despite strong evidence supporting the religious discrimination claim.

Sadly, my story is one of many struggles for justice in equality with many others struggling to acquire justice for disability, race, sex, age discrimination, to name a few. Through my struggle however, I was exposed to the broader shortfalls within the Equality Act 2010 legislation and wanted to ensure others do not undergo such treatment. As a result, I founded the Equality Act Review in 2018.



Dr Suriyah Bi, CEO Equality Act review

The primary aim in doing so was to strengthen the Act through regular reviews to better protect people from inequality and discrimination, and create a fairer and equal society. This report has thus been six years in the making, as at the time of writing, my case remains ongoing in the Employment Appeal Tribunal (EAT).

The first edition of the report was published online in July 2021. We were delighted with the support received from Parliamentarians, at the online launch event, which was attended by David Lammy MP, Marsha de Cordova MP, and Wera Hobhouse MP. In the last year we have continued to add to the review in a number of ways, which include but are not limited to women's reproductive health, disabilities, and the implications of the hostile environment, the 'cost of living crisis', and the erasure of the Human Rights Act for the concept of equality, as well as the role and functioning of the Equality Act 2010.

While the current review at the heart of this report is by far the most comprehensive and detailed review in the Act's twelve-year history, it is by no means an absolute and finite review. The Equality Act Review aims for this process to be iterative and consultatory in partnership with the public, and researchers, academics, and professionals in the field of equality law and legislation.

Since the Equality Act Review's founding in 2018, we have been an entirely unfunded grassroots organisation, employing lived-experience-based-leadership and anthropological research methods, to centre narratives of the marginalised.

This report would not have been possible without the support and dedication of a number of volunteers since the organisations founding. A special thanks to Anisa Mahmood, Daniel McElroy, Gabriella Alvarez, Diana Mollart, Nidah Kaiser, Claudia Mulholland, Rebekah Clark, and Olivia Allison. Thank you also to SOAS University of London for covering the cost of printing of the report for the launch event.

EXECUTIVE SUMMARY

Background

1. The Equality Act Review was founded in 2018 with the aim to strengthen the Equality Act 2010.
2. Since 2018, we have been carrying out a review of the Act.
3. We have used four key methodologies to so: conduct a literature review of research and publications in the field as well as the discussions regarding reforms of the Act over the past decade, a public consultation which took place between January 2020 and March 2021, and semi-structured interviews with individuals who have experienced discrimination in multiple ways, and expert consultations with academics, researchers, and practitioners.
4. The review is intended as an iterative process and is by no means absolute.
5. This is the largest and most in-depth review of the Act conducted in the Act's history.

Key Findings

6. The Equality Act 2010 focuses on protecting biological characteristics, rendering social/cultural/economic characters as less important and even as a matter of choice, creating conditions for epistemological violence through equality legislation. We know far too well that poverty and homelessness are not a choice, rather engineered products of the highly unequal institutional and systematic structures of society.
7. The equality act must become much more agile in order to address sociological aspects of human life and experience, which also give rise to vulnerability and prejudice.
8. The South African and Canadian equality legislations operate inclusive lists, which the UK should adopt.
9. In this current ten-year review, we identified six areas of reform:
 - (a) Strengthen current protected characteristics (based on/rooted in biology);
 - (b) Enforce unratified sections of the Act;

- (c) Introduce new protected characteristics (based on sociocultural and socioeconomic identity markers);
- (d) Access to the Act must be protected by way of reconsidering case submission fees and legal aid;
- (e) The Act must recognise blind spots such as the unregulated employment industries and ensure all workers in any size organisation(s) are protected under the Equality Act;
- (f) Extend the application of the act beyond the binary of direct and indirect discrimination, by including context-based discrimination.

Areas of Reform

10. **First, strengthen current protected characteristics** including disability, race, and religion or belief, and sex. For disability, we presented evidence that the DWP were discriminating against a bereaved widow by withholding Bereaved Widows Allowance despite her deceased husband being a long-term disabled person. With regards to race, we argue that racialised groups should also be included in section 9 of the Act. For religion, we argue that 'perceived religion or belief' should be added to Section 10. In regards to sex, we argue the Act should be amended to reflect recent change in legislation that provided misogyny with hate crime status, to ensure that misogyny in the workplace is also addressed in the same way. We also ask that companies with less than 250 employees also report their gender pay gap on an annual basis, a requirement currently only reserved for organisations with over 250 employees. Regarding sex, we also call for fathers to be provided shared parental leave on full pay.

11. **Second, to enforce currently unenforced provisions within the Act** such as Section 1 Socioeconomic Duty, Section 14 Dual Discrimination, and Section 9 Caste discrimination. For Socioeconomic Duty, we argue that the rise in poverty levels and simultaneous deterioration of longevity outcomes, which are positively correlated with poverty levels, it is necessary to ensure we can equalise the experience of life span, health, and overall quality of life. Regarding Dual Discrimination, Section 14 has not been enforced due to the current Government's belief that it would cause greater cost to businesses, however, we have presented strong evidence as to intersectional discrimination. Further, the Canadian and South African equality legislations are model forms of equality law which allows for multiple discrimination claims to be brought. This is particularly important, as human beings are complex beings and rarely are solely one identity marker at any given time. In relation to Section 9 and Caste discrimination, the Government has decided not to enforce this as there are a limited number of cases brought forward. Through our research however, we have presented ethnographic data that supports Caste extending beyond Hindu communities to a broader set of South Asian communities in the UK, and the impact of caste discrimination on people's livelihoods as well as marital choices.

12. **Third, to introduce new protected characteristics** including socioeconomic background, homelessness, weight, accent and regional background, hair (texture and style), immigration status, and caste. We make the case for new protected characteristics to be added to the Act due to the current protected characteristics being largely related to and/or rooted in biology. Human beings are complex individuals and their sociocultural and socioeconomic background affects also contributes to attitudes, prejudices, and stereotypes which can also lead to discrimination. We presented data linked with weight, accent and regional background, hair (texture and style), immigration status, and caste, to support their addition to the Act.

13. **Fourth, access to the Act must be protected in that complex socio-legal factors** such as high fee rates for filing cases in all courts must be reconsidered, as well the cuts to legal aid. If enforcing the Equality Act and seeking justice within its framework exacerbates additional protected characteristics such as disabilities – particularly mental health - how effective is the Act? There must be a consideration of the broader parameters within which the Act is situated. If the conditions around the Act further complicate experiences of discrimination and limit equality, we must consider the provisions that can be put in place for those seeking to access and enforce the Act, and prevent their vicarious victimization and marginalization for doing so. Without such provisions to protect access to and practice of the Act, the Act's remit is wafer-thin.

14. **Finally, we ask that the Act accommodates for blind spots** including unregulated employment industries such as the gig economy. We present research that demonstrates workers in the restaurant and takeaway industry face exceptionally difficult working conditions, severely under-paid and lacking employment rights to lunch breaks, to name a few examples. We ask that the government ensures that all businesses regardless of their size and nature to adhere to the Equality Act.

15. **To extend the Act's application beyond the binary of indirect and direct discrimination to consider context-based discrimination.** In the discussion chapter of the report, we considered whether the binary between direct and indirect discrimination should be interrogated. We agreed that discrimination law should operate beyond binaries and also consider context-based discrimination (as cited by Bi (2019) in the case of *Miss Bi v EACT*).

Recommendations to implement reform

16. In order to action the above-mentioned areas of reform, we recommend that the UK Equality legislation adopt a new approach to protected characteristics, which we outline below.

17. The first diagram below outlines two streams of protected characteristics; the column on the left maintains the nine protected characteristics based on and/or rooted in biology, the column on the right includes newly added protected characteristics.

18. This model allows for the UK equality legislation to align with the South African and Canadian contexts, which comprise a wider range of protected characteristics.

19. Throughout the report we have suggested that protected characteristics are identity markers that do not operate completely in isolation from other identity markers and aspects of human identity. In light of this, the second diagram below demonstrates the intersections between these two columns, which would enable multiple grounds of discrimination to be brought forward.

20. For instance, a case of discrimination may comprise of discrimination on multiple grounds of race and socioeconomic background, regional background and accent, sex and caste, religion or belief, weight and socioeconomic background, pregnancy and maternity and immigration status and so on and so forth. The model below would allow for these forms of discrimination to be brought forward not in isolation, but as a collective.

21. It is important to highlight that we have also suggested amendments to the current protected characteristics listed in the column to the left as part of the proposed reforms. Examples of reforms include allowing for alcohol dependence to be recognised as a disability, racialised groups to be recognised as part of race, and misogyny to be included within sex discrimination to ensure the legislation is water-tight for employment and public sector organisations, as well as public spaces, to name a few.

22. The adoption of such a model for UK equality legislation would allow for equality law to mitigate for institutional and systematic inequalities to be reduced, paving the way for a more equal and fair society.

Diagram 1: Model representing two column approach to protected characteristics, as part of Equality Act 2010 reforms.

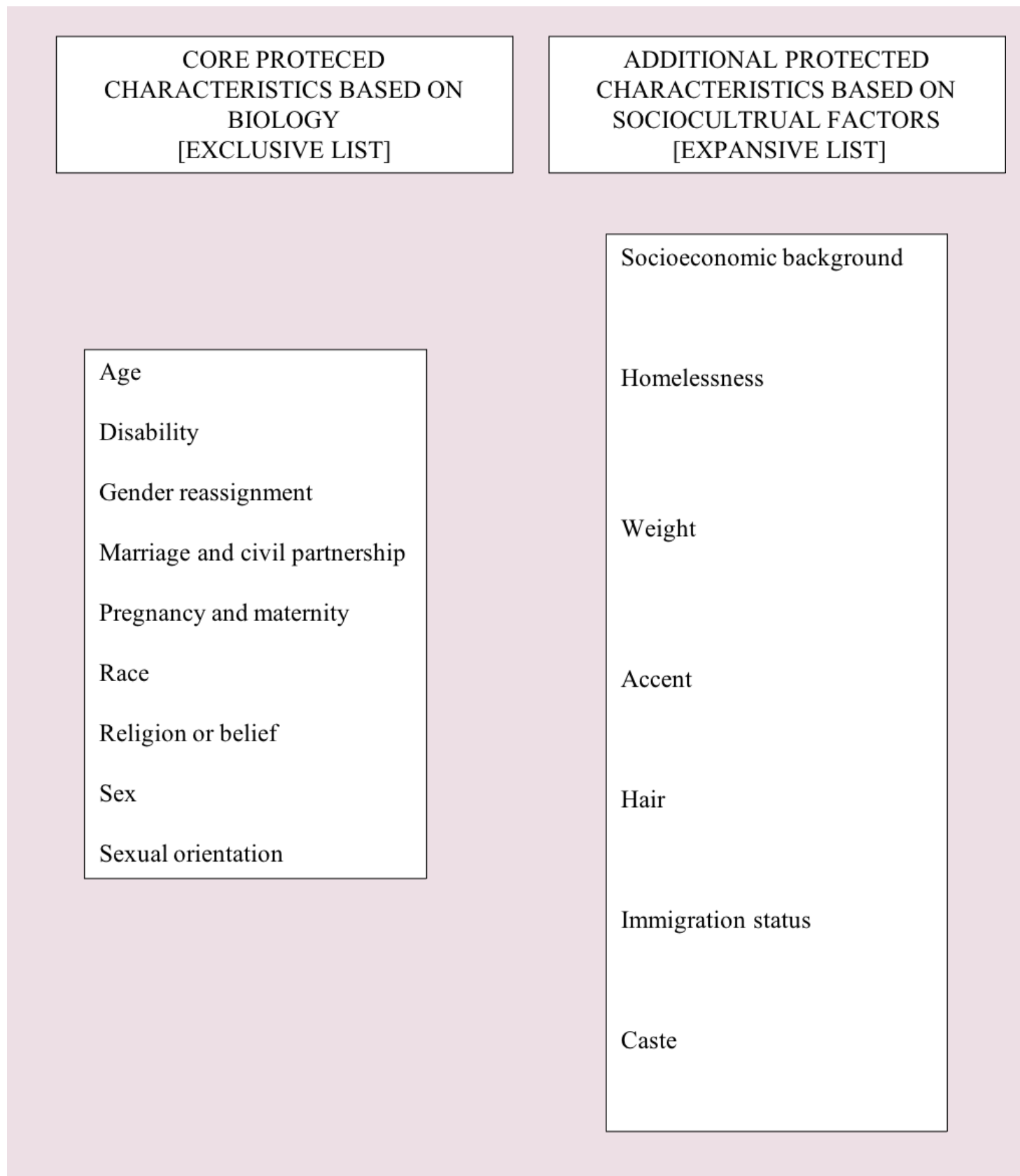
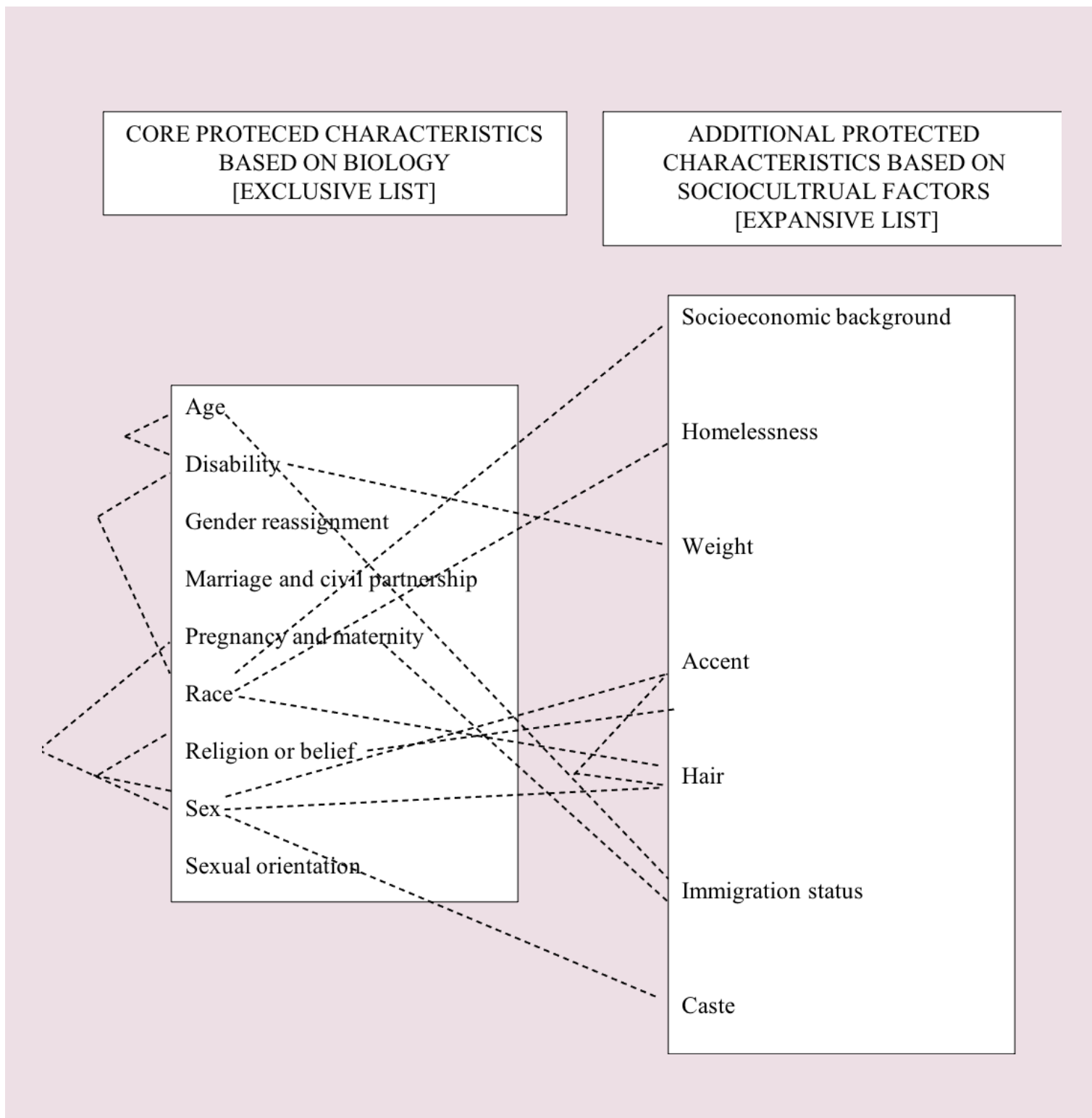


Diagram 2: Model representing intersectionality and multiple grounds of discrimination as part of the Equality Act 2010 reforms.



1. INTRODUCTION

Founded in 2018, the Equality Act Review's core aim is to strengthen the Equality Act 2010. A key strategy adopted to achieve a stronger and more inclusive equality legislation was the implementation of regular reviews of the Act, which would provide insight into the contemporary challenges in equality within society, based on which tailored recommendations for reform would be derived. At the heart of the organisation is lived-experience-leadership whereby the founder has direct experience of the shortcomings of the Act within the Employment Tribunals; a struggle that began in 2015, and through which the founder began to construct the vision for an Equality Act Review. The founder's anthropological training also has played a significant part in both the remit of the organisation and the intended reviews, which employ anthropological research methods (such as ethnography) to centre the narratives and voices of marginalised groups, within policymaking (see also Bi: 2021).

It is based on these aforementioned aspects that are integral to the organisation's founding, which have enabled the current review. The 'Equality Act Review 10 Years On' report is the largest and most comprehensive review of its kind that focuses on the UK's equality legislation. Using a mixed methods approach, namely comprising of (a) a public consultation survey that received 160 responses from individuals, academics and researchers, and practitioners between January 2020 and March 2021, (b) a literature review of research and discussions in the field over the past decade, (c) expert consultations with academics and researchers in the field, and (d) semi-structured interviews with individuals who have experienced discrimination based on a diverse range of identity markers. A major finding of the review is the Act at present solely protects characteristics that are based in some way, shape or form and/or are rooted in biology, muting the sociocultural and socioeconomic factors that can, and do give rise, to widespread levels of inequality and discrimination. This has led us to argue for additional protected characteristics that reflect the diverse and complex nature of human beings, including homelessness, weight, accent and regional background, hair (style and texture), immigration, and caste to be added to the Act. It is widely accepted the aforementioned identity markers negatively impact attitudes and prejudices, creating ideal conditions for heightened inequality and discrimination. In the findings chapter of the report, we consider each proposed protected characteristic on an individual basis, providing supporting research and evidence, including lived experiences.

As well as the introduction of new protected characteristics, we also present the case

for strengthening current protected characteristics, including disability, race, religion or belief, and sex. We believe the current protected characteristics have a number of shortfalls, which can benefit from being strengthened so that vulnerable groups are better protected from mistreatment on these grounds. In the findings chapter of the report, we consider the aforementioned protected characteristics on an individual basis, offering insights into lived experiences, detailing the proposed changes and their reasons. For instance, while misogyny was made a hate crime in the wake of Sarah Everard's murder in 2021, it should also be reflected and ratified within Section 11 of the Equality Act to protect women in workplaces. Another example includes rectifying Section 6 of the Equality Act which protects disabled persons. In the case we present, the Department for Work and Pensions refused a bereaved widow from Bereaved Widow's Allowance on the grounds that her husband did not pay National Insurance (NI) contributions. However, the deceased partner was a long-term disabled person and thus unable to work and pay NI contributions, which the DWP were aware of, as they issued regular Disability Allowance and Personal Independence Payment to the deceased. The DWP were refusing Bereaved Widows Allowance based on the husband's disability, which was the reason as to why he was not able to pay NI contributions. Such situations are seldom recognised, as individuals who are subjected to such treatment more than often do not have the recourse to take their cases to court, and seek justice. As a result, the legislation remains unchanged. This is one case out of dozens, which we highlight in this report to not only advocate for regular reviews, but to also call for immediate action to implement the reform.

A further area of reform the report underscores focuses on enforcing the unratified sections of the Act such as Section 1 Socioeconomic Duty, Section 14 Dual Discrimination, and Section 9 Caste discrimination. Currently, the government has decided not to enforce socioeconomic duty which refers to an organisations responsibility to reduce inequality. The government has also decided not to implement dual discrimination due to the cost to businesses, and it has decided not to implement caste discrimination due to a shortage of cases on the matter. Given the rise in poverty and the impact on people's quality in life as demonstrated by the significant discrepancies between life expectancy between people from affluent areas and backgrounds and people from less affluent and poorer backgrounds, it is ever more important to ratify Section 1 to reduce inequality in longevity and health, to name a few examples.

In addition, we highlight the Act as an entity must be protected by way of reconsidering case submission fees and legal aid. The lack of access to the Act due to financial means severely reduces the Act's remit and purpose if those it has been designed to protect, cannot use it in and for their protection. The Act must also recognise blind spots such as the unregulated employment market and require smaller organisations across industries, to also adhere to the Act. Finally, we also make the case to extend the application of the

act beyond the binary of 'direct' and 'indirect discrimination', by including context-based discrimination. It is important to stress that the review is intended to be an iterative process, and further reviews will be conducted at regular intervals over the next decade. The current report is therefore the first of many, and is intended to provide the government with lived-experience-based-evidence to support the case for reform of the Equality Act 2010, and offer practical solutions to implement the proposed reforms.

The report will now turn to consider to existing literature in the area of equality studies , after which the methodological foundations of the review are outlined in detail. Then, we will present the findings in an extensive chapter that is divided as per the aforementioned areas of reform. We then turn to the discussion wherein we present a two-strand model for reform demonstrated in a visual diagram. We believe the Equality Act 2010 should be modelled upon this, both theoretically and practically. The two-strand approach which encompasses both the biological (current) and socioeconomic/sociocultural (new) protected characteristics also allows for intersectional interaction, upon which multiple forms of discrimination claims can be brought forward. We then turn to offering final comments in the concluding chapter.

2. LITERATURE REVIEW

Upon receiving Royal Assent and becoming an Act of Parliament on 8 April 2010, the Equality Act 2010 represented the culmination of thirteen years of New Labour politics and policymaking aimed at bringing the UK in line with international and European Community standards, regarding equal rights and anti-discrimination legislation (Hunt 2012). For the first time in British history, the Equality Act 2010 (hereafter, “the Act”) consolidated into one law a hundred pieces of existing equality and anti-discrimination legislation, including the Equality Pay Act (1970), the Sex Discrimination Act (1975), the Race Relations Act (1975), the Disability Discrimination Act (1995), the Employment Equality (Religion or Belief) and Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006, and the Equality Act (Sexual Orientation) Regulations 2007.

A June 2008 report published by the Government Equalities Office, “Framework for a Fairer Future”, argued that a commitment to equality was simultaneously a commitment to individual rights, a cohesive society “at ease with itself”, and a prosperous economy (Government Equalities Office 2008, 6). It also identified the need to “declutter” the aforementioned existing legislation “so that those who benefit from the law, and those who need to comply with it, can see the wood for the trees” (ibid). Nonetheless, although the Government called for a landmark Equality Duty to be placed on the public sector and insisted upon increased transparency and enforcement (ibid), the primary legislation in its final form failed to live up to the grand gestures of the Fairer Future report.

Whilst the Act certainly represents a unification, simplification, and harmonisation of previous ‘piecemeal’ legislation, “strengthening protection was not intended to be the main objective” (Hand et al. 2012, 528). Indeed, despite the Fairer Future report’s assertion that equal opportunity and economic prosperity must be linked, Section 1 the Act refers to socio-economic duty, which requires the public sector to consider how their strategic decisions affect or create socio-economic inequalities, which has never been implemented and thus is not binding (Casla: 2019). The Public Sector Equality Duty (PSED) is stipulated in Section 149 of the Act but mainly spelled out in secondary legislation in England, Wales and Scotland, has extremely weak enforcement measures. Whereas the Fairer Future report made clear its commitment to granting tribunals the power to extend individual decisions into wider recommendations and, thus, influence systemic, structural change, the clause of Section 124 specifying this power was repealed by the Deregulation Act (Equality Act 2010). Enforcement of the Act has

been particularly emphasised by the Women and Equalities Committee (2019) as a barrier to achieving equality, as “employers and service providers are not afraid to discriminate, knowing that they are unlikely to be held to account” (Women and Equalities Committee: 2019, 268).

Both the period of Labour government prior to passage of the Act and the ten years of coalition and Conservative government since, have contributed to the unquestionable weakening of the Act and its protections against discrimination. In order to situate the report’s aims for conducting a ten-year review and its findings, the broader context is considered in the below literature review.

Early Reviews

2012

In 2011 and 2012 the Government Equalities Committee evaluated the implementation of the Equality Act 2010 (Perren.et.al: 2012). Employing telephone survey methodology, there was an investigation into organisations' understanding and implementation of both equality legislation, and the Equality Act 2010. A total of 1,811 interviews were conducted with the most senior member of staff for HR issues at organisations across the private, public, voluntary, community, and social enterprise sector. At the time the study was conducted, The Equality Act 2010 had been in operation for over a year. The study findings indicated relatively low levels of engagement with the Act, with two-thirds of respondents stating they knew nothing about its contents and a further twenty per cent (20%) stating they knew relatively little (Perren.et.al: 2012, 8). In organisations where the equality policy had been updated in the twelve months since the introduction of the Act, twenty-eight per cent (28%) reported that they had comprehensive understanding of the Act and its contents (ibid). Across all respondents however, there was significant support for the legislation protecting a range of discriminatory practices such as those including discrimination on the grounds of gender or sexual orientation (ibid). With regards to increasing diversity in the workplace, only fourteen per cent (14%) of respondents were aware that their organisation had taken steps to make recruitment more accessible. There was also a significant positive correlation with a larger sized organisation and greater understanding of the Act, whereas smaller organisations were less likely to be aware of the act and its requirements. Complimenting this study further, a Women and Equalities Committee report found in 2019 (Women and Equalities Committee: 2019) that enforcement of the Act remained low in organisations, for which knowledge and awareness was likely to play a role.

2015

In 2015, the 'Equality Act Review' five years on conference was organised by the Forum for Research into Equality and Diversity at the University of Chester, and the School of Law Social Justice at the University of Liverpool (Davies et.al: 2016). The conference was intended to bring together academics, researchers, and practitioners of the Equality Act and consider opportunities for a review of the implications and impact the Act had achieved within the first five years after being introduced (ibid). The conference received papers across a range of themes including but not limited to intersectionality, positive action, strategic enforcement, education, hierarchy of protected characteristics, which demonstrates that academic thinking around the evolution of equality legislation has been in development over the last decade. For example, Sigafos (2016) who presented at the conference highlighted that the Public Sector Equality Duty (PSED) had empowered some charities and service users, as charities were able to access the judicial review system to examine whether local governments had satisfied the PSED duty. However, it was predicted that the cuts to legal aid funding and judicial review reforms would weaken the impact of the Equality Act, its enforcement, and practice. Positive action was explored by a study conducted by Davies and Robison (2016) who argued that its practice had been deterred by caution on the part of those concerned about liability for reverse discrimination. They suggested that if positive discrimination was going to be employed in increasing diversity, greater efforts would have to be invested in reassuring employers and increasing awareness of the role of the concept.

Also discussed at the conference was the ageing population and their experiences. Blackham (2016) demonstrated that awareness activities around Equality Act have relatively neglected older populations, and proposed reforms to rectify this. In the context of racial and ethnic diversity in football at the coaches and manager level, Gardiner and Riches (2016) questioned whether the rule to make it mandatory to interview candidates from Black and Minority Ethnic backgrounds, similar to the American football system, should be introduced in the UK. They also examine the negative attitudes that prevent players from being open about their sexual orientation, arguing that positive discrimination is developing at a sedate pace, and therefore, propose that affirmative action may play a greater role in enabling social justice. With regards to disability discrimination, Roberts and Hou (2016) examined disabled student experiences in higher education against the backdrop of a rise in the 'consumer-student' position, and increasing cuts to Disabled Students Allowance. Roberts and Hou suggest there is scope for the consumer legislation to play a role in encouraging universities to meet their obligations towards students. This is particularly important as currently, there is a lack of clarity in the equality legislation for the remit of the Office of the Independent Adjudicator for Higher Education, who receive complaints when universities have failed. When organisations are found to be in breach of the Data Protection Laws, although complaints can be made to Information Commissioners Office (ICO), who may

decide to fine the offending organisation(s), however the ICO cannot award damages to complainants for which complainants are required to pursue civil litigation in the County Courts. It is therefore questionable as to the role of such organisations, who hold little power to enforce the Equality Law or the DPA in the case of the ICO, but nonetheless superficially appear as having the authority to do so.

Exploring religion and belief in the workplace, Griffiths (2016) proposed the notion of reasonable accommodation to allow employees to manifest their religion at work, provided no harm would be done to others, could help employers in becoming more socially inclusive. However, as Bi (2020a) notes for Muslim women in the workplace, wearing a headscarf can result in threats such as ‘to burn headscarfs’ by fellow colleagues, and service users refusing to be treated by a Muslim doctor, or refuse to allow their children to be taught by a Muslim teacher. Bi (2020a) also found that nearly 50% of Muslim women experienced islamophobia and discrimination in the workplace. In addition, alcohol culture was particularly highlighted as being a barrier to workplace networking and opportunities for career development. Thus, despite the 2016 discussions suggesting greater inclusivity of religious diversity in the workplace, the latter half of the decade has seen little improvement in this regard.

An additional characteristic which is usually overlooked and for which there is reduced awareness of is caste discrimination. Waughray and Dhanda (2016) showed that caste discrimination has been pursued by lawyers under the protected characteristic of race and while cases have been successful under this route, the Act should be amended to reflect the definition of caste falls within the remit of racial discrimination. A Government consultation on the issue was conducted in 2018 (UK Gov Equalities Office: 2018) but concluded that legislating on caste could cause further divisions, due to the controversial nature of the issue. It also argued that the low levels of cases of caste rising was a significant reason for not introducing explicit legislation. The Government has therefore adopted a highly reserved stance in relation to actioning legislative changes to the Equality Act 2010, despite there being discussions around amendments to better protect people.

Intersectionality

Scholars have highlighted in particular how Black women in America experience race, gender, and class as identities that reinforced the other, creating unfavourable conditions for Black women, particularly in employment, giving rise to concepts such as ‘double jeopardy’ (Beale: 1969) or ‘multiple jeopardy’ (King: 1988). In her seminal writing on Black women’s experiences of discrimination in America, Kimberle Crenshaw sought to contest this dominant discourse and cast light on the intersectional operation of discrimination along multiple axes; a milestone achievement for the inclusion of such

experiences in law. “Dominant conceptions of discrimination [have] condition[ed] us to think about subordination as disadvantage occurring along a single categorical axis” (Crenshaw: 1989, 140). Her articulation of intersectionality was able to expand legal theory with insights from women-of-colour experiences (Spade: 2013). The law in most cases however, continues to operate within the parameters of single-axis models of discrimination law, and therefore fails to address the lived experiences of those who experience discrimination on multiple grounds (Solake: 2011, 330, Smith: 2016, 74).

Much of the academic discussion on intersectionality centres on the interaction of race and gender, specifically the experiences of black women, and calls to expand intersectionality (Smith, 2016: 76). For instance, Bi (2019) argues intersectionality theory fails to account for religious identity as a valid marker of identity that can play a significant role in intersectional discrimination. She cites the rise of islamophobia post-9/11 as an important global event that placed Muslims in further marginalised positions, translating into discrimination in employment (see also Bi: 2020a). In her own experience of discrimination, Bi (2019) was dismissed for raising a safeguarding concern about a clearly marked 18-rated graphic video of victims of 9/11 jumping to their deaths, being shown to eleven-year-old students. This was interpreted by the school’s senior management team as Bi objecting to the teaching of 9/11 of the curriculum because she was a visible Muslim woman, and went as far as accusing her of being involved in the Trojan Horse affair, which was an alleged right-wing Islamist plot to take over British schools (Clarke: 2014, Bi: 2020f).

The Birmingham Employment Tribunal rejected that Bi was subjected to religious discrimination despite strong evidence that included meeting minutes from the school accepting the video should never have been shown and agreeing to no repercussions for the White teacher who showed the video, and private emails acquired through subject access requests, which demonstrated teachers at the school believed Bi to be associated with a right wing Islamist plot, which was later proved to be a hoax. In her paper, Bi (ibid) argues that courts have little knowledge of religion as an intersectional identity marker due to intersectionality as a theory being unavailable to religious minorities. She expands the theory further in a secondary way by showing how intersectionality theory while delineating single-axis discrimination to be harmful, does not consider the concept of proportionality, multiplicity, and variation within multiple-axis discrimination. For instance, a disabled Pakistani woman may be discriminated against in employment due to her disability, gender, and ethnicity however, the concept of proportionality allows for the ascertaining of the discriminatory incident to be sixty per cent (60%) due to disability, twenty per cent (20%) due to gender, and twenty per cent (20%) due to ethnicity. Intersectionality theory not only does not account for this, it lacks remit in translating to the Equality Act 2010.

Also attesting to the gap in intersectionality theory and discrimination law is Atrey (2019) who argues while there is a will to centre intersectionality within equality law, a framework is yet to be found, resulting in intersectionality remaining at the fringes of discrimination law (Solanke: 2016, Atrey: 2019). The lack of legislative will is highly visible through section 14 of the Equality Act, which although recognises discrimination on multiple grounds, has not been brought into force due to the prohibitive costs of enforcement, especially for businesses (HM Treasury: 2011). However, as Lord Philips postulated in the Supreme Court in 2009 the hypothetical case of an obese Black man who was refused service in a shop, and questioned upon which he was refused and thus discriminated (Atrey: 2019, 8), these cases are real and lived experiences for many people in Britain today (see also *Bahl v the Law Society* [Hudson: 2011, 4]). This hypothetical case in the Supreme Court was addressed according to a single-axis discrimination model, as a result of which it was decided that the man could not have been discriminated against on the basis of his race and weight at the *same time* (Atrey: 2019). Albeit hypothetical, the case advocates for why we now more than ever before require an Equality Act that allows for multiple grounds of discrimination to be brought, as it is not only the intersections between the nine protected characteristics that occur, but also between additional characteristics, as human beings are complex beings embedded in social, economic, cultural, and political contexts. Given that stereotypes and prejudicial attitudes can centre around factors such as poverty, obesity, homelessness, citizenship, accent, hair, immigration to name a few, any such practice of intersectionality within equality discourse must also take into consideration the aforementioned characteristics.

Socio-legal Complexities

As we have seen from the previous section, human beings are complex and are thus highly unlikely to be at any one time, their race, or ethnicity, or gender, in complete isolation from a fellow identity marker. The same is true of social situations that people come to embody such as socio-economic status, citizenship status, residential status, homelessness, and so on and so forth. Such intersecting complexities become entangled in the courts and this is particularly seen to undermine access to the Equality Act. For instance, due to austerity legal aid for the employment sector has been severely cut back, increasing the number of litigants in person (Pywell: 2019, see also Sigafu: 2016). Those from disadvantaged backgrounds, for example lower socio-economic and ethnic minority backgrounds with little exposure to the legal system and/or the law, are more likely to be at a disadvantage compared to their better-off peers. Bi (2019) demonstrates how in her navigation of the Employment Tribunals, she was denied legal aid despite financially qualifying for support due to her having an undergraduate degree from the University of Oxford, and at the time of pursuing litigation was a doctorate candidate. In her rebuttal, Bi (2019) argued that while she was 'educated', her pedagogy did not concern legal studies, and therefore she lacked knowledge and required support. Despite

robust appeals and support from her MP, the Legal Aid Agency denied her legal aid. As a British Muslim woman of Kashmiri heritage and low socio-economic background, Bi (2019) felt there was a 'cherry-picking' of her identities to suit the aims and objectives of individual parties. This entanglement of multiple identities and marginalities (see Bi: 2021c), deprives individuals from such backgrounds and trajectories, equal access to the Act in order to see its materialisation for social justice. The Equality Act is empowering in theory but disempowering in practice, which is exacerbated by the competing nature person's identities, pitting one's socio-economic and financial background against their recently acquired educational background and social mobility, which is yet to experience social capital translation (see Bi: 2020b).

It is such entanglements that create further entanglements, such as the displacement litigants in person experience due to the inequality within the legal practice, which serves as a battleground for legal professionals to distinguish themselves (Leader: 2020). A cultural shift in the way the LiPs are treated in the courts can further limit access to the Equality Act, rendering it ineffective. The strain on mental health for litigants in person (Pywell: 2019) is also acute, denying them not only access to justice during the litigation process but also in the aftermath of litigation. In other words, if enforcing the Equality Act and seeking justice within its framework exacerbates additional protected characteristics such as disabilities – particularly mental health - how effective is the Act? There must be a consideration of the broader parameters within which the Act is situated. If the conditions around the Act further complicate experiences of discrimination and limit equality, we must consider the provisions that can be put in place for those seeking to access and enforce the Act and prevent their vicarious victimisation and marginalization for doing so.

Inclusive v Exclusive Lists

Intersectionality and socio-legal complexities carry implications for the number of characteristics that are given protected characteristic status within the Equality Act 2010. The UK operates on a closed list, with a fixed number of characteristics, which limit the practice of intersectionality, as single-axis discrimination claims can be brought in court, and current protected characteristics do not incorporate broader identity markers such as obesity, homelessness, and poverty, which can give rise to prejudice and discrimination, and for which there is a rich body of supporting data. In the US, courts determine the grounds that should be protected as The Fourteenth Amendment of the US Constitution is entirely open-ended. The US Supreme Court has devised a three tier framework with the strictest scrutiny applying to race (EU: 2012, 8). The Canadian and South African approaches differ from the US approach, as the equality legislation includes a wide range of protected characteristics, allowing the courts to expand them so that they may include further ground (ibid). Equality law of countries such as Canada and South Africa operate on open-ended lists, thus allowing for greater inclusivity. The

The Indian constitution also operates on a fixed list of grounds. In 2012 however, the Delhi High Court expanded the grounds by following the Canadian and South African frameworks. While the UK operates its equality legislation on a closed list with fixed protected characteristics, it could take inspiration from its global peers who appear to be a number of steps ahead with their open-ended lists.

The US, Canada and South Africa also accommodate for intersectionality in their respective equality legislations. In the US, the equality jurisprudence limits two grounds per discrimination claim (Atrey: 2019, 12). Due to the majority of litigation centering around discrimination on the basis of sex, race, colour, national origin, and religion, the legislation fails to include weight and sexual orientation, preventing intersectional interactions between the latter and former protected characteristics (ibid and EU: 2012, 8). In Canada's case, intersectionality is accommodated to an extent within Section 15(1) of the Canadian Charter of Rights and Freedoms protects Canadians from discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability (Atrey: 2019, 13). While Section 15 is general and broad enough to include multiple grounds of discrimination and this intersectionality, the supreme Court of Canada has yet to deliberate a claim based on multiple grounds (Atrey: 2019, 14). The Appellate Courts were able to consider a case of multiple grounds of discrimination in *Falkiner* however, each ground was once again considered independently, limiting understanding of and between multiple grounds of discrimination (ibid).

Diverging significantly from the US and Canada's example, the South African Constitution prohibits indirect and direct discrimination on one or more grounds, including, age, religion, race, ethnic or social origin, conscience, belief, culture, gender, sex, pregnancy, marital status, language and birth (ibid). Unlike the US and Canadian frameworks which consider each ground independently in multiple ground claims, the South African legislation has greater flexibility in approaching intersectionality and multiple ground claims. For example, in *Hassam v Jacobs*, the denial of inheritance for Muslim women in polygynous marriages was found to be unfair discrimination on the basis of gender, religion, and marital status (Atrey: 2019, 15). The South African Constitutional Court recognised the multiple elements of disadvantage in this case which rendered group disadvantage to be more acute, as polygynous marriages were regarded to be lower status, patriarchy was more severe, and the historic discrimination against Muslims and Muslim culture and traditions. An open-ended and inclusive list of protected characteristics enabled the court to take a broader view and practice intersectionality in this case. This is a starkly alien approach taken by the Employment Tribunal in the case of *Bi v E-Act Academy* (Bi: 2019), where despite the claimant appealing on the basis of context as well as evidence, religious discrimination was denied. Perhaps if there was to be a shift in the culture around single-axis discrimination in the UK cases such as *Bi's* (2019) would be better accommodated from both a theoretical, practical, and legislative lens.

Parameters for further reforms

The parameters of further reforms to the Equality Act 2010 are wide-ranging, and previous sections of this chapter have hinted to some of these possibilities. While the previous sections may have provided theoretical frameworks and structures for potential reviews, the contents – thick description as Geertz (1973) refers to – requires a ‘lived experience’ approach. A decade of austerity cherry-topped with a global pandemic certainly assists in casting a much wider net for equality and discrimination laws from a ‘recentering the margins’ approach (Bi: 2021c). 10 years of austerity under a Conservative Government witnessed a campaign of budget cutting across public services to the detriment of the most vulnerable members of society, and as a result, many branches of inequality have transpired. We know that between 2019-2020, 14 million people in the UK were in poverty, 8 million being working-adults, 4 million children, and 2 million pensioners (Goulden: 2020). Britain has lost its generous social safety net and egalitarian ethos and has, according to the UN, inflicted ‘unnecessary misery in one the richest countries in the world’, and it is from this epicenter, from which reformations to equality should be conceptualised.

Homelessness

A direct implication of this rise in poverty has led to a significant increase in rough sleepers. The charity Shelter found a 250% rise in the number of unsheltered homeless (UK Gov: 2018). While the link between unemployment and homelessness is demonstrated (see Hughes: 2020), homelessness can continue to perpetuate unemployment (see ERSA: 2015, Fothergill et.al: 2012). It is the latter which is lacking protection by the Equality Act 2010. In Fothergill et.al’s (2012) work we encounter an interlocuter named Alex, who expressed “I did not want to put that I live in a bloody hostel!” on his job applications, as he felt that this may lead to him being discriminated against (see Fothergill et.al: 2012). To enable empowered employment (see Bi: 2020a) for those faced with homelessness, this may be an area of focus any future reforms to the Equality Act 2010 consider. Further, protecting homelessness would speak to Section 1 of the Equality Act which concerns socio-economic inequalities. Commencing this would require public bodies to exercise their functions in a manner that would reduce inequalities. However, this has never been brought into force in England. If this was enforced, Local Authorities would have had to ensure homeless people were provided emergency housing and housed within a reasonable time of being made homeless. [HSBC bank accounts for homeless]

Poverty

Through austerity cuts we have also seen a steep rise in the use of food banks and rise in

food insecurity. The Trussell Trust, which is the UK's largest food bank charity found a 5,146% increase in emergency food parcels being distributed since the 26,000 people food parcels in 2008 and the 1.3 million in 2018. According to the trust the rollout of universal credit, bedroom tax, benefits freeze, increases in benefit sanctions and cuts to disability benefits, had significant effects on families depending on food banks (Trussell trust: 2019). Trends observed in the UK since the onset of the pandemic and subsequent lockdown in March 2020, demonstrate that Covid-19 has exacerbated existing inequalities and expanded the reach of poverty in the UK. Many families have been left struggling to put food on the table. Despite being the sixth richest country in the world, Sustain UK estimates that 8.4 million people in the UK are currently living in food poverty, with BAME, disabled and elderly individuals disproportionately affected. A study by the Trussell Trust found that there was an 81% increase in need for support from a food bank in the second quarter of 2020 compared to the same period of the previous year. The study also found that between April and June 2020, 100,000 households received support from a Trussell Trust food bank for the first time (Trussell Trust: 2020).

In September 2020, footballer Marcus Rashford launched the Child Food Poverty Task Force, petitioning the government to implement three key recommendations from the National Food Strategy, pertaining to the provision of free school meals. Following a high-profile media campaign, the government responded to the demands of the Child Food Poverty Task Force, extending the free school meal programme into the school holidays. This response, however, has been insufficient as demonstrated by the poor standard of free school meal parcels issued by the DfE (Guardian: 2021), and led the Equality Act Review to join the Environment, Food and Rural Affairs Committee to call upon the government to urgently appoint a Minister for Food Security. The recent campaign to make school uniform more affordable lends further support to poverty being a form of discrimination.

The question that arises then is, should food poverty and/or poverty be protected by the Equality Act? We could look to Section 1 of the Equality Act which concerns socio-economic inequalities as possible resolve. However, as noted above, this has never been enforced. Had it been enforced, prior to schools transitioning to remote learning during the Covid-19, education authorities would have had legal obligation to ensure children on free school meals were provided meal vouchers or an effective replacement, as well as access to adequate technology and Wi-Fi. It would also have caused the government to exercise caution when deciding to predict grades using an algorithm which proliferated postcode lottery education system (Bi: 2020).

Muslims and Racialisation

Another possible site for reformation is inspired by the discourse on racialisation (Gans: 2016, Meer: 2013, Modood and Meer: 2009, Modood: 1994, Bi: 2020) particularly in

relation to Islam and British Muslims. Post 9/11 the levels islamophobia and anti-Muslim sentiment have intensified (Bi: 2019), resulting in increased physical attacks on Muslims, particularly visibly Muslim women who wear the hijab and/or niqab (Abu-Lughod: 2002, Dwyer: 1999, Tarlo: 2007, Afshar: 2008, Haddad: 2007, Chakraborti and Zempi:, Jiwani: 2005, Perry: 2014, Ipsos Mori: 2017). Bi (2019) argues sociological theories of 'multiple jeopardy' (King: 1988) and intersectionality (Crenshaw: 1988) fail to account for religion as a valid identity marker that intersects with other identity markers such as race, class, and gender, to impose heightened levels of unfavourable conditions for minority persons, particularly in the labour market. Given the high rates of Islamophobia and anti-Muslim sentiment, she posits intersectionality ought to be subjective for each community, as for British Muslims, religion has become the heavier weighted factor in the equation of intersectionality, resulting in a negative religio-sociocultural capital that operates to the disadvantage of Muslims (Bi: 2019).

Additional research that demonstrates the disadvantage British Muslims experience include high rates of poverty with figures suggesting that 50% of Muslims live in the bottom 10% of social housing in the UK (Modood: 2006, MCB: 2015), and British Muslims on average earn £350 less each month compared to members of any other religious group (Heath and Li: 2015). The argument that many scholars have put forward is, British Muslims face a racialisation due to their culture which functions as a race. As Balibar puts it, "culture can also function like nature..." (1992: 22) and how one's religion or culture is understood can also assume a racist character. A hierarchy of cultures has been seen to be kin to asserting a shared biological inferiority (Dunn et.al: 2007, 567). Considine (2017, 6) has argued "racialisation is a process by which Muslims are identified and labelled through racial differentiation, such as genetics of skin colour, and also through perceived cultural features such as religious symbols or a head covering."

Section 9 of the Equality Act 2010 protects race which is defined on the grounds of colour, nationality, ethnic or national origins. It does not include racialisation as a social process, as a result of which British Muslims can fall into a race group. This lack of protection under section 9 has come to fore in *Miss S Bi v E-ACT* (see Bi: 2019) where the claimant included race discrimination due to being Muslim, but this was struck out of the employment tribunals at the first case management hearing due to "Muslims are not a race." While some definitions of Islamophobia argue that islamophobia is a form of racism, the lack of translation within the parameters of the Equality Act render definitions merely superficial. This area of literature and significant body of hate crime recordings may suggest an area of reform within Section 9 of the Equality Act to include racialised groups [and culture, as in the South African legislation.]

Intersectionality

Similar to Section 1 of the Equality Act which has not been commenced, Section 14 also lacks commencement, which prevents the bringing of claims on multiple grounds. In this chapter, the notion of intersectionality was discussed at length. Without regurgitating the same material here, it is important to highlight that Section 14 may be a site of reformation by way of enforcement. Recent developments in the intersectionality literature by Bi (2019) and Atrey (2019) certainly advocate the significance and timely nature of recognising within the UK equality legislation, the intersecting nature of identity markers not only between those currently protected within the Act, but also the characteristics not currently protected. Thus, reform by way of enforcement of Section 14 would go hand in hand with reforms to the Equality Act more broadly, by including further protected characteristics that go beyond the mainly biological characteristics that have received protection.

Conclusion

This chapter has served to provide an overview of the Equality Act 2010 and its coming into legislation, early discussions of reviews, key issues that have been addressed (to some extent) elsewhere in the world, but for which the UK is currently lagging behind, and outline some parameters for further reforms. Emerging from this literature and discussion is the idea that current protected characteristics are largely rooted in biological characteristics, which we argue is a tunneled approach to equality in contemporary society, as we know that our biological characteristics intersect with the social. Thus, the project is not only limited to sites of reform within the current legislation, but additions of protected characteristics rooted in the socio-cultural. The task now is to conceive an Equality Act legislation that allows for the aforementioned reformations, as well as enforcement. The open-ended lists adopted by South African legislation is one way to approach this task, and certainly, in going forward this model will be a source of inspiration. With any reform that is advised as part of this review, it is important to consider the ways in which gatekeepers and practitioners of the Equality Act will put this into practice. As we know from the make-up of the legal sector, Judges are largely from White, middle-class backgrounds, and are thus likely to lack the contextual knowledge and experience of the complex myriad that is discrimination, in the UK. For the PSED, we should consider the need for diverse jury panels that sit alongside Judges to deliberate on cases, and provide a more grounded perspective as to the way discrimination operates at the grassroots level.

3. METHODOLOGY

Introduction

The vision for this report and review of the Equality Act 2010 led to the founding of the Equality Act Review as an organisation in 2018. For the past three years the vision of the organisation has been integral to this report and vice versa. For the report in particular, the methodological component has always been rooted in anthropology, particularly feminist ethnography which I adopt across all research endeavours. This involves practicing reflexivity and considering one's own positionality (see Abu Lughod: 1990). Extending from this is my own positionality as a woman of the margins, which inspires me to practice ethical anthropology (see also Scepther-Hughes: 1990) through researching those at the margins (see Bi: 2021c), and by writing with them and not about them. Having firsthand experienced the negative impacts of the delay in research leading to policy action felt at the grassroots, and acutely experiencing the flaws of the Equality Act in my own case in the employment tribunals, I was determined to learn if others had similar experiences with the Equality Act failing to protect them. Central to this project then, was lived experiences, which as I have argued elsewhere (ibid) comprise a reservoir of stored energy that can trigger the economy of emotions and bring about change. The methodology underpinning this project relies on narrative but weaves these together with statistical data acquired through a survey, interviews with academic and researchers in the field. It is important to note however, that as the first report and public consultation on the subject, it is certainly not the last. With limited resources and entirely voluntarily led, our reach with regards to the public consultation will inevitably be limited. However, we hope that this report leads to further awareness of our work and inspires organisations, charities, activists, and those affected by the Equality Act 2010 to submit to the public consultation in future, thereby diversifying our future data set.

Public consultation

The Public Consultation was designed as a survey to engage both individuals and organisations as to their views regarding reviewing the Equality Act. Google forms was used to design the consultation, which comprised of 25 questions for individuals and 16 for organisations, depending on the positionality of respondents they would be directed through the respective pathway of the survey. The survey was shared via social media, emailed to all MPs and requesting for them to send the details out to their constituents, and also emailed to law firms specialising in equality matters. We received 160 responses to the consultation from a number of public sector organisations, law firms, university

research groups, MPs, and individuals. The public consultation went live in January 2020 and closed for analysis and subsequent inclusion in this report, in March 2021. Due to the coronavirus pandemic, the uptake of the consultation has been affected. A number of organisations and academics which we wished to engage with, have understandably prioritised pandemic related issues. We hope to be able to engage a greater number of organisations and academics in future public consultations.

Expert consultations

At the outset of the publication and circulation of the public consultation, we hoped to conduct semi-structured interviews with organisations and academics. However, due to Covid-19, much of our initial work was halted. For instance, a roundtable with academics at the London School of Economics was scheduled and later cancelled. We have nonetheless been able to conduct expert consultations with a number of academics in 2020, which include Dr Shreya Atrey of Oxford University, Dr Mishana Hosseinioun of Oxford University, Dr Sarah Wadd of Bedfordshire University, and Dr Suhraiya Jivraj of Kent Law School at the University of Kent. Dr Shreya Atrey was able to share insights based on her research expertise of intersectionality and the Equality Act. Particularly helpful were the references to the inclusive list of protected characteristics practiced by the South African and Canadian constitutions. Dr Mishana Hosseinioun provided insights to the development of the Equality Act in the UK and its shortcomings in legal practice and translation. She also kindly recommended key texts from scholars at Oxford which were helpful in our research and literature review phase. Dr Sarah Wadd and her team introduced us to their work around alcoholism as a disability, which was of great interest. Dr Suhraiya Jivraj provided rich insights from her work on intersectionality, religious identity, and the rights of children and parents, and the Equality Act. She also signposted the author to legal case studies which demonstrated resistance towards the bringing of a claim on multiple grounds. We also received contributions from Professor Erez Levon and his team at Queen Mary's University of London, which we included as a research spotlight within the findings section of the report. academics could not be engaged, we relied on becoming familiar with their work to equip us of their contributions.

Literature review

Often considered as integral to any research project to ensure the research is grounded in the broader literature and define the project's contributions to the field, a literature review was integral to the methodology for two reasons. First, since the author is not a legal professional but has experience of practicing the law as a litigant in person, it was paramount for the author to ensure any arguments put forward – particularly for reforming the Equality Act – were able to be made confidently and rooted within the relevant legal landscape. The literature review therefore was integral to the methodology of reviewing the Act and took place over eight months between 2020 and 2021. Secondly,

a literature review enabled the author to fill in knowledge gaps in place semi-structured interviews with academics and legal professionals, which were limited due to the pandemic.

Case studies

The vision for this project was built around the author's own case study in the employment tribunals, for which the Equality Act 2010 and the way it was interpreted by the Judge failed to protect her on the grounds of religious discrimination. In order to realise the broader project, further case studies were acquired through the three-year period since its inception. Incorporating lived experiences of individuals where the Equality Act has failed to protect vulnerable persons is rooted in recentering the marginalised and their voices, which are more than often muted for long periods of time. For any reformations to the Act to be recommended, those at the margins who the Equality Act has failed must be heard so that the revised Act offers adequate protection. Case studies were referred to the Equality Act Review through the public consultation and an individual basis where we have assisted vulnerable persons with advice as per their rights under the Equality Act. The findings chapter will feature case studies around characteristics including disability, caste, socioeconomic background, obesity, accent, immigration status.

Semi-structured interviews

Semi-structured interviews were hindered during the pandemic however, thirteen were conducted prior to the pandemic between 2018 and 2020, and a four during the pandemic via Zoom during 2020. These semi-structured interviews were conducted with individuals who while had experienced discrimination were not able to access justice in the way they wished to do so as a result of the structure of the Equality Act 2010. Of a total seventeen semi-structured interviews, three were based on religious discrimination, two on racial discrimination, three were based on multiple forms of discrimination, one was based on caste discrimination, one on obesity discrimination, one on accent, two on immigration status, two on disability discrimination, one on homelessness, and one on gender discrimination. These interviews, as the findings chapter will outline in more detail, provided insights into lived experiences of the Equality Act 2010 failing to protect.

Ethical Considerations

All data was and continues to be handled according to the Data Protection Act 201 and case studies have been anonymised where appropriate. The author (also principal researcher) has been extensively ethics trained at Oxford University, SOAS University of London, and University College London, having received ethics approval for a number of research projects. She has also successfully completed additional training courses such as

the protecting Human research course developed by the NIH Office of extramural research, and the HSCIC's Information Governance Course. The researcher therefore carried out this research to the highest possible ethical standards, in dealing with interlocuters and handling their data, to designing and collecting data from the public consultation survey.

Presentation of results

The presentation of results which we will see in chapter four, comprises a combination of statistical data from the public consultation, narratives, and lived experiences from case studies and semi-structured interviews, and academic literature. The nature of this project is such that a combination of methods is required to make recommendations for reformation and justify them. The findings chapter will include spotlight research and case studies, which will also contribute to the recommendations for reformation.

4. RESEARCH FINDINGS

This chapter will present the research findings in two ways: (a) in the form of statistical data from the public consultation, (b) merge qualitative insights from semi-structured interviews with respondents, case studies, and expert consultations in sub-chapters that focus on different areas of reform for the Equality Act 2010. In each chapter, excerpts from interviews will be weaved into the text so that we are actively ‘writing with’ the respondents and not ‘about them’, This approach will allow an empathy and lived experience approach to legislation, as statistical data while is powerful in indicating group behaviours, it is the nuanced accounts of individual experiences of those at the margins that are most helpful in proposing reforms to the Equality Act 2010.

4.1 Public Consultation Data

The Public Consultation was live between January 2020 and March 2021 and received a total of 160 responses from across the UK, including individuals from a wide range of backgrounds and organisations. Of the 160 responses, 153 were from individuals and 7 were made by organisations. Of the 153 individuals, 78.4% (120) said that they had experienced discrimination in the workplace and 21.6% (33) stated that they had not experienced discrimination in the workplace. When asked of the grounds on which discrimination was experienced, respondents provided a range of answers, including multiple grounds.

Chart 1: % of respondents who have experienced discrimination in the workplace.

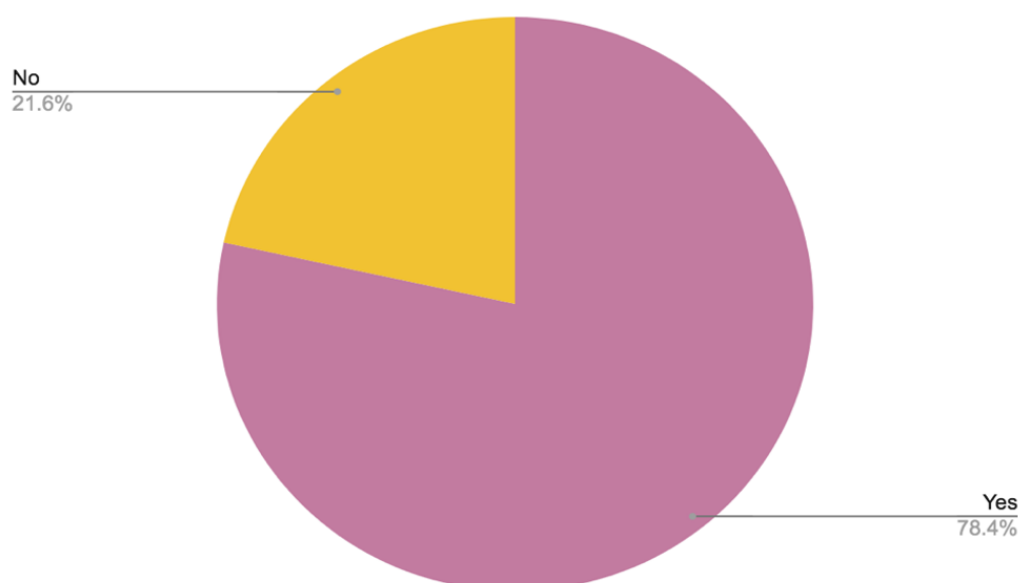
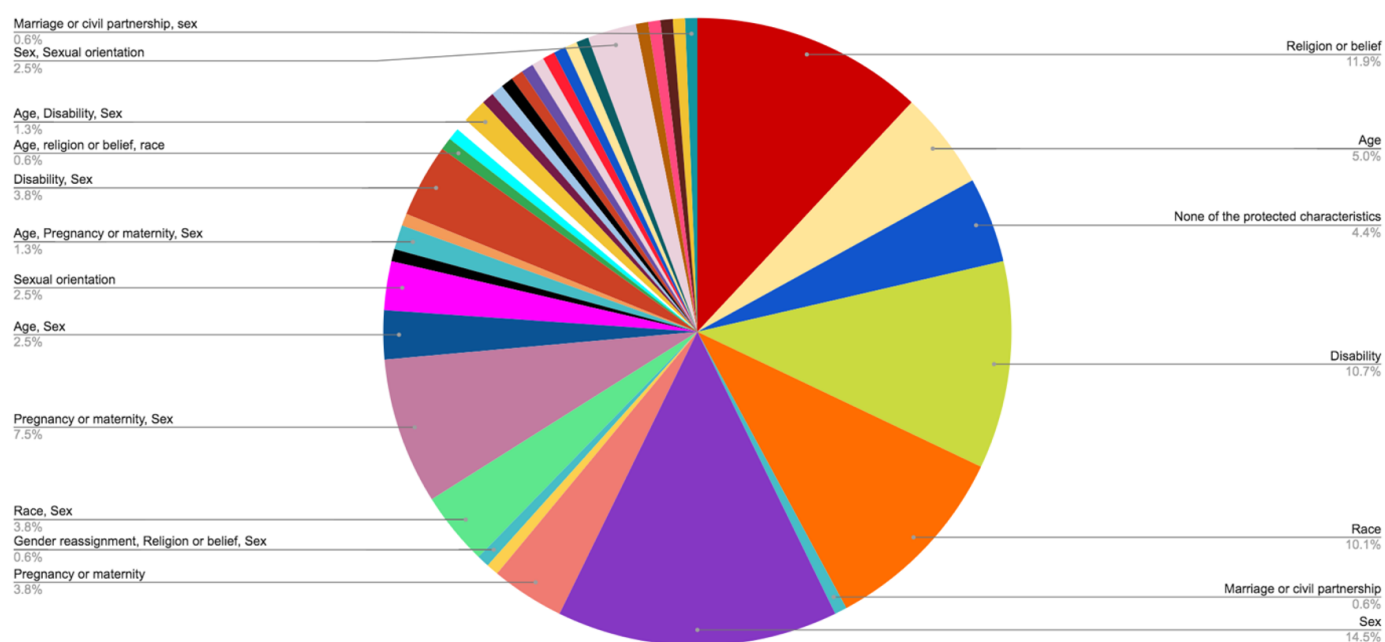


Chart 2: % of respondents discriminated as per protected characteristic.

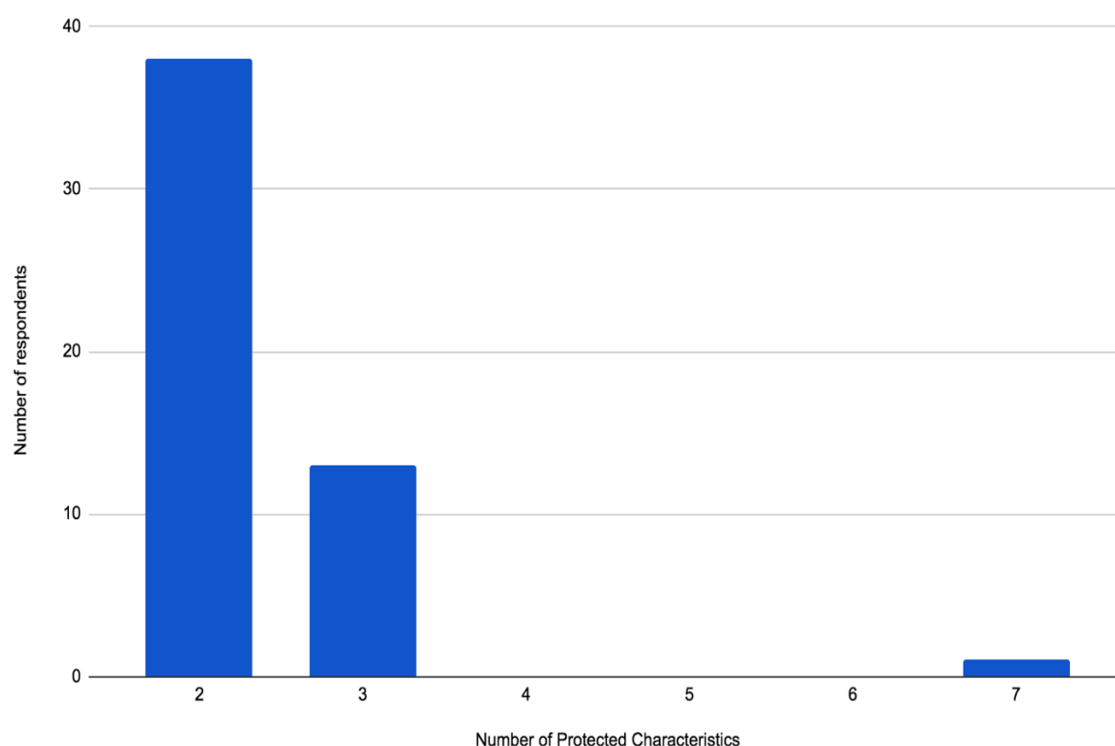


As shown above in chart 2, 14.5% (23) of respondents selected sex discrimination, 0.6% (1) selected marriage or civil partnership discrimination, 10.1% (16) selected race discrimination, 10.7% (17) selected disability discrimination, 5% (8) selected age discrimination, 3.8% (6) stated discrimination on the grounds of pregnancy or maternity, 2.5% (4) stated discrimination on the ground of sexual orientation, and 11.9% (19) selected religion or belief discrimination.

Strikingly, many respondents selected multiple grounds of discrimination. 0.6% (1) selected they were discriminated on both marriage and civil partnership and sex discrimination, 2.5% (4) stated they were discriminated based on both sex and sexual orientation, 1.3% (2) stated discrimination based on age, disability and sex, 0.6% (1) stated discrimination based on age, religion or belief, and race, 3.8% (6) stated they were discriminated based on disability and sex, 1.3% (2) stated they were discriminated on the grounds of age, pregnancy or maternity and sex, 2.5% (4) stated they were discriminated against based on their age and sex, 7.5% (12) said they were discriminated against based on pregnancy and maternity and their sex, 3.8% (6) stated discrimination on the grounds of race and sex, and 0.6% (1) stated discrimination on gender reassignment, religion or belief and sex, 0.6% (1) said they had experienced discrimination on the grounds of age, disability, race, marriage or civil partnership, religion or belief, sex, pregnancy or maternity, 0.6% (1) respondent said they had experience discrimination based on age, sex and disability, 0.6% (1) said they had experience discrimination based on disability and age, 0.6% (1) said they had experience discrimination based on age, race and sex, 0.6% (1) said they had experience discrimination based on sexual orientation and marriage or civil

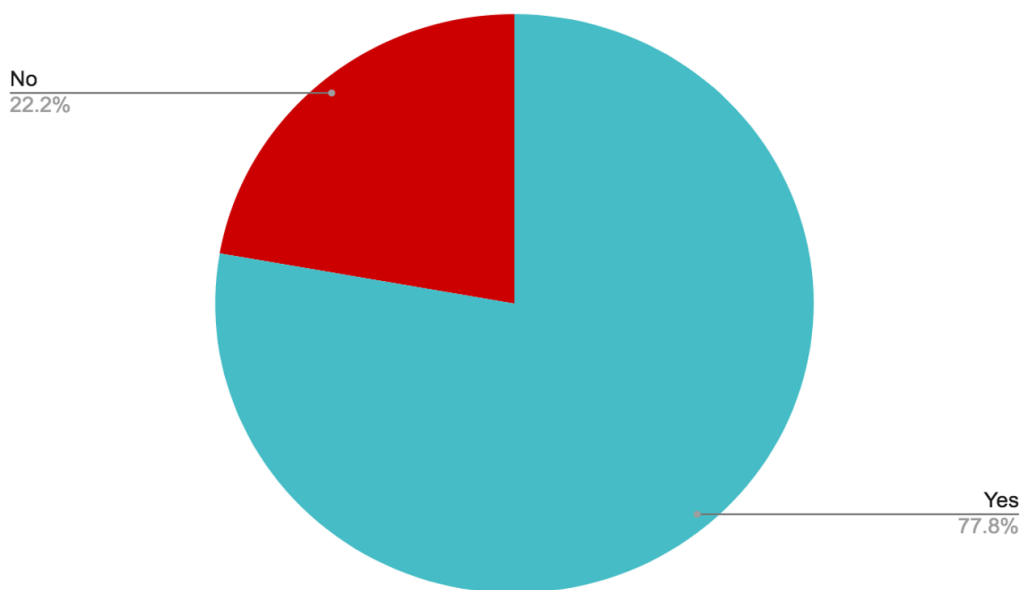
partnership, 0.6% (1) said they had experience discrimination based on religion or belief and pregnancy or maternity, 0.6% (1) said they had experience discrimination based on the grounds of disability, race and sex, 0.6% (1) said they had experience discrimination based on disability, pregnancy or maternity and sex, 0.6% (1) said they had experience discrimination based on sexual orientation and race, 1.3% (2) said they had experience discrimination based on religion or belief and sex, 0.6% (1) said they had experience discrimination based on disability and race, 0.6% (1) said they had experience discrimination based on race and disability. In other words, 52 of 120 (43%) respondents said they experienced discriminated on multiple grounds. 4.4% (7) respondents stated that they had not experienced discrimination on the grounds of any of the protected characteristics.

Chart 3: % number of respondents per number of protected characteristics.



Based on the chart 2 for each entry of multiple grounds of discrimination, we derived the number of responses per number of protected characteristics. We found 38 respondents said they were discriminated on two grounds, 13 respondents said they were discriminated on three grounds, and 1 respondent said that they were discriminated of 7 grounds. For an Equality Act legislation that does not allow for multiple grounds of discrimination to be brought to justice in the courts, this is a significant finding.

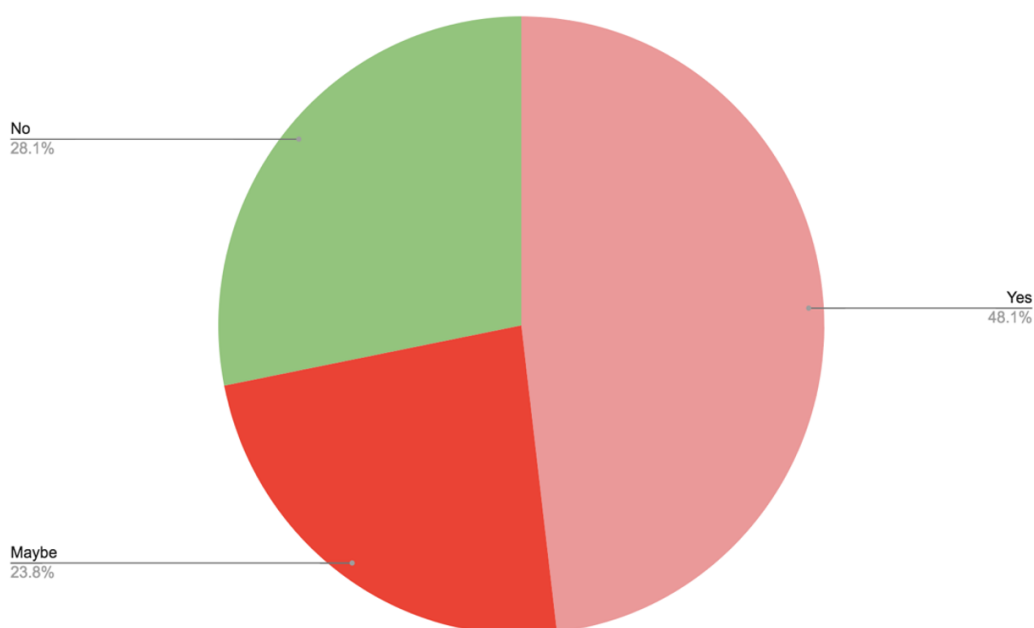
Chart 4: % of respondents who have experienced discrimination outside the workplace.



As part of the public consultation, individuals were asked whether they had experienced discrimination outside of the workplace. 77.8% said that they had experienced discrimination outside the workplace, while 22.2% said they had not.

Chart 5 below demonstrated of 160 respondents (both organisations and individuals), 48.1% responded in favour of reviewing the Equality Act, 28.1% responded against reviewing the Equality Act, and 23.8% said maybe the Equality Act should be reviewed.

Chart 5: distribution of views towards reforming the Equality Act.



The above data from the public consultation demonstrates nearly 80% of respondents had experienced discrimination in the workplace, 43% experienced discrimination on multiple grounds, and 50% of respondents believe the equality Act 2010 should be reviewed. At this very preliminary stage which has been entirely absent of narratives or lived experience, there is support for the Equality Act to be reviewed in relation to the protected characteristics, as well as in relation to multiple grounds. The next section of this chapter will weave in both qualitative and quantitative data per key themes, which arose from the research.

4.2 Case Studies and Evidence based Reforms

Following the presentation of quantitative data from the public consultation, this section of the chapter will focus on qualitative data gathered from the public consultation, case studies, semi-structured interviews, and expert consultations. There was no doubt as to reforms being necessary, as the data and evidence gathered during the research phase collectively pointed towards reforms being made by way of (a) strengthening already protected characteristics (b) adding protected characteristics (d) allowing for intersectionality by allowing claims on multiple grounds. In what follows we present case studies and narratives that support each of the aforementioned areas of reforms. Later, we present a diagram which demonstrates the reforms in visual form. While the areas of reform have been guided by research efforts since 2018, they are by no means conclusive. There will inevitably be areas of reform that are not highlighted in this current report, but which we hope to build and continue our research efforts in the near future, and focus on in future public consultations and reports on reviewing the Equality Act 2010.

4.2.1 Strengthening Current Protected Characteristics

In this section we suggest reform by way of strengthening three protected characteristics including disability, race, and sex.

Disability

Section 6 of the Equality Act 2010 provides disability protected characteristics status. Section 6(1) defines disability as “a person has a disability for the purpose of this Act if he (sic) has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.” A case presented to the Equality Act Review in 2018 included that of a bereaved widow who, while was granted Bereaved Parent’s Allowance, was denied Bereaved Widow’s Allowance from the Department of Work and Pensions (DWP). The reason provided by DWP was her late spouse failed to make National Insurance (NI) contributions. However, DWP were fully aware of her late spouse being a long-term disabled person who was in receipt of Personal

Independent Payments (PIP). It was evident then, the deceased was unable to pay NI contributions due to having long-term disabilities. By default, the DWP should have issued Bereaved Widows Allowance. Reserving the benefit for non-disabled people only is discriminatory. The DWP however, has been escaping such responsibility due to the lack of clear provision within Section 6 of the Equality Act 2010, which ensures protection for the family members of disabled persons. We therefore recommend that Section 6 include spouses and children of disabled persons to be protected from discrimination whereby they can qualify for benefits, as a result of their disabled parent or spouse.

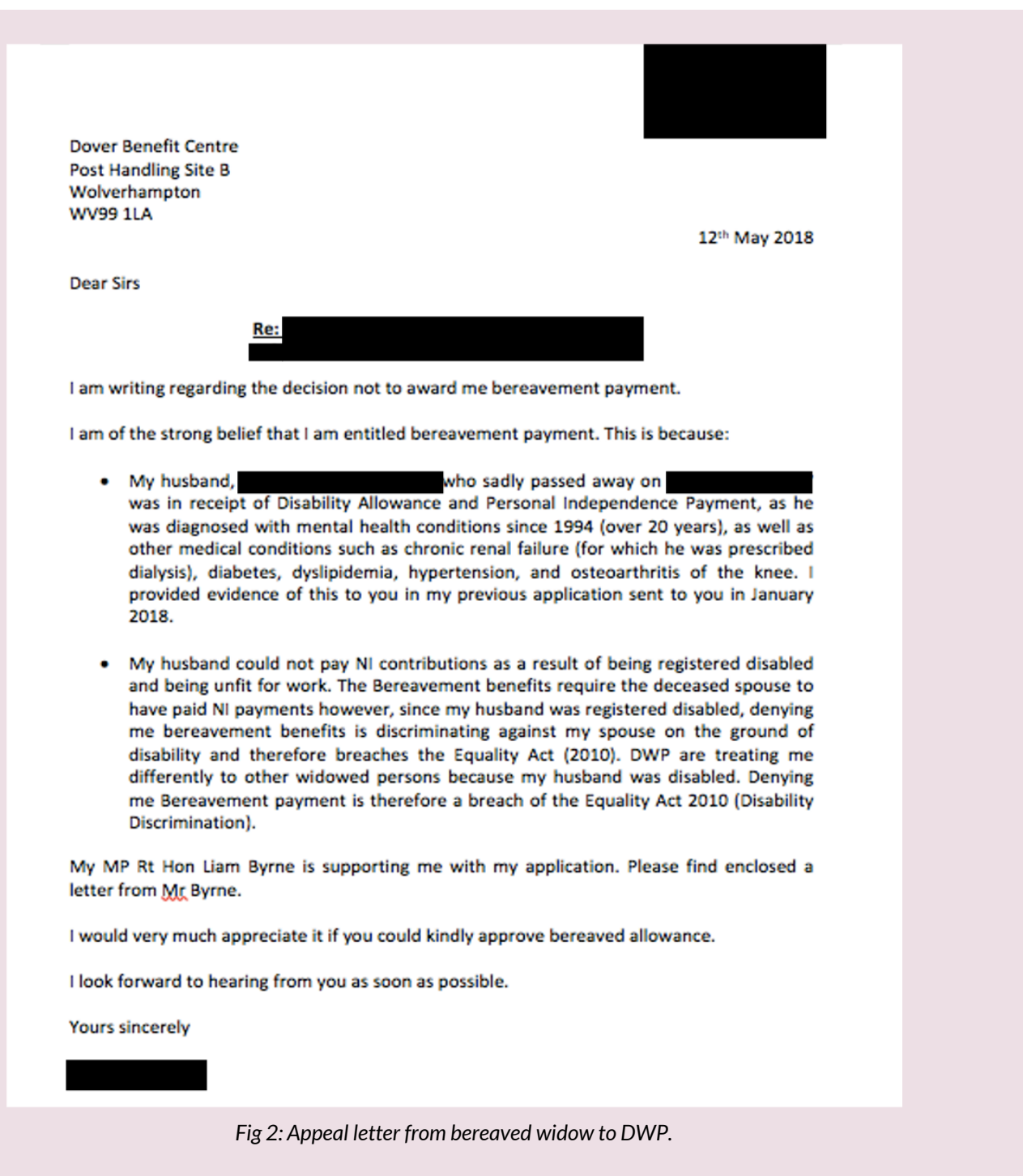


Fig 2: Appeal letter from bereaved widow to DWP.

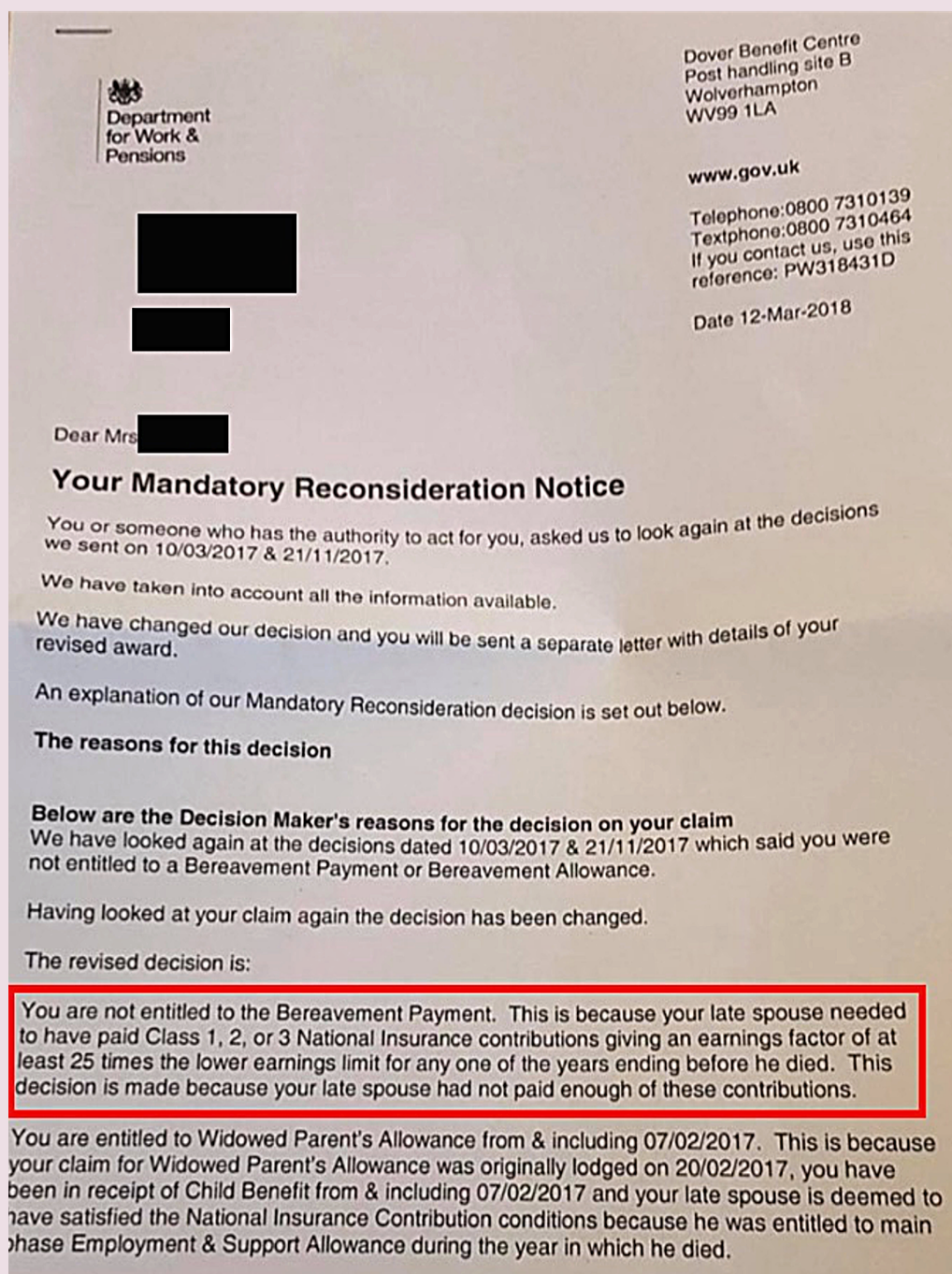


Fig 3: Response letter from DWP to Bereaved Widow.

A second area of amendment for Section 6 includes substance dependence, which is inspired by expert consultations between the principal researcher, Dr Sarah Wadd and Maureen Dutton at Bedfordshire University, Institute of Applied Social Research. Equality legislation in the US, Australia, and Canada provides protection to substance dependence as it is considered a disability, albeit to varying degrees. Dr Sarah Wadd and Maureen Dutton provide a nuanced insight to the prospect of including substance abuse in the Equality Act below. We support the addition of substance dependence to be added to Section 6 of the Equality Act 2010.

Equality for all? The case for including substance dependence in the Equality Act.

By Dr Sarah Wadd^[1] and Maureen Dutton, University of Bedfordshire, Institute of Applied Social Research

Drug dependence has been ranked as the most stigmatised health condition globally and alcohol dependence ranked as fourth [2]. Prejudice against people with substance dependence can lead to a loss of job or not being promoted or hired in the first place, even if the person is no longer drinking or taking drugs [3, 4]. Some landlords and homeless shelters refuse housing to people who are dependent on substances meaning they have no route off the streets [5, 6]. People living with substance dependence report being ignored, discouraged or shamed during efforts to access healthcare services [3, 7].

Despite being at high risk of unfair treatment and discrimination, people with substance dependence are not adequately protected by the Equality Act. Substance dependence is a recognised mental health condition. Other mental health conditions such as depression and eating disorders are included as disabilities in the Act but substance dependence is explicitly excluded. The Government has given three reasons for excluding substance dependence: the law is intended to protect people with disabilities and conditions that are not 'self-induced'; substance dependence may involve anti-social or criminal activity; substance dependence is not generally recognised as a disability [8, 9]. The Act does offer protection for health complications caused by a person's substance dependence but it does not offer protection for the substance dependence itself. This matters because it is the substance dependence that is most often at the core of discrimination.

There is evidence of public support for including alcohol dependence in the Equality Act. The University of Bedfordshire recently held a citizens' jury to find out whether 15 members of the public thought alcohol dependence should be included in the definition of disability for the purposes of the Act. The majority of the jury (11/15) voted that alcohol dependence should be included. The researchers also examined discrimination legislation and case law in the United States, Australia and Canada. Alcohol dependence constitutes a disability in each of these countries. However, in the United States, someone who is currently engaging in illegal drug use does not qualify as disabled. In Australia, drug dependence is recognised as a disability under federal law, but in New South Wales, it is lawful for employers to discriminate against a person if they are 'addicted' to an illegal drug at the time of the discrimination. In Canada, drug dependence is a disability under the Canadian Human Rights Act and people who are dependent on illegal drugs have the same right to be free from discrimination as anyone else with a disability.

Equality and freedom from discrimination are key human rights principles. Excluding substance dependence from the Equality Act perpetuates prejudice and disadvantage. Including substance dependence in the Act would put substance dependence on an equal footing with other mental and physical health conditions and show a strong commitment to reducing the stigma and inequalities experienced by those affected.

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Race

Section 9 of the Equality Act 2010 provides protected characteristic status to race. Section 9 (1) defines race as colour, nationality, ethnic or national origins. Unlike the South African constitution which includes culture as a protected characteristic, the UK Equality Act does not include culture as constituting or contributing to the formation of a racial group, nationality, or ethnicity. It is widely known in the social sciences however, that culture can be integral to racial, national, and ethnic identity (see Barth: 1969). For instance, Frederik Barth defined ethnic group as “...sharing fundamental cultural values, realised in overt unity in cultural forms...makes up a field of communication and interaction...” (1969: 10-11). The literature on racialisation adds to this further, as religious groups have been identified as having a cultural identity. For example, Balibar argues that culture can also function like nature (1992: 22). Considine (2017: 6) has argued “racialisation is a process by which Muslims are identified and labelled through racial differentiation, such as genetics of skin colour, and also through perceived cultural features such as religious symbols or a head covering.” Yet, section 9 of the Equality Act does not allow for Muslims to be seen as a ‘race group’ thereby reducing the Equality Act its current list of protected characteristics to simply biological and tunnelled visioned, eliminating the racialising processes that are widespread across Muslim and other minority groups such as the Roma (see Vincze: 2014).

Section 9 of the Equality Act 2010 protects race which is defined on the grounds of colour, nationality, ethnic or national origins. It does not include racialisation as a social process, as a result of which British Muslims can fall into a race group. This lack of protection under section 9 has come to fore in *Miss S Bi v E-ACT* (see Bi: 2019) where the claimant included a claim for race discrimination due to being Muslim, which was struck out of the Employment Tribunals at the first case management hearing. The reason provided was, “Muslims are not a race.” While some definitions of Islamophobia argue that Islamophobia is a form of racism, the lack of translation within the parameters of the Equality Act render definitions merely superficial. A case study which demonstrates the lack of provision for racialised groups is the author’s personal experience wherein she was unfairly dismissed after raising a concern about an 18-rated video showing images of people jumping to their deaths during the 9/11 attacks, to a group of 11 year-old school pupils. In part c of her pleadings (ET1 form) the author outlined the following:

C.Racial and religious discrimination

- 1.The Claimant's dismissal set out in above amounted to direct religion or race discrimination.
- 2.The Claimant is a practising Muslim which is overtly apparent because she wears an Islamic headscarf.
- 3.Because of the Claimant's religion, she was treated less favourably than an appropriate hypothetical comparator in that;
 - a.In the context of the footage being shows to the Year 7 children, the Claimant was taken to be objecting on religious grounds; or
 - b.in the alternative the Claimant's complaint was treated with general hostility because she is a Muslim and;
 - c.this complaint, if made by someone who was not a Muslim, would have been:
 - i.received in a different and more favourable context and, or alternatively;
 - ii.dealt with in a different and more favourable way and;
 - iii.a person who was not a Muslim would not have been summarily dismissed.

Keeping in mind the author represented herself as a litigant in person and does not have the benefit of hindsight and clarity of argument that four years of academic deliberation on the matter has afforded, in the pleadings it was clear there was a claim for both racial and religious discrimination. The author's Muslim identity was the source of both the religious and racial grounds. However, at the first case management hearing in February 2016, the Judge struck racial discrimination out of court due to "Muslims not being a racial group." Given that racialisation of Islam and Muslims is widely accepted in the social sciences literature, Section 9 of the Equality Act 2010 ought to be strengthened to include cultural identity and racialised groups. This would allow for racialised groups such as British Muslims to be afforded protection under Section 9 of the Equality Act 2010.

Religion or belief

Section 10 of the Equality Act 2010 provides protected characteristic status to religion or belief where “religion means any religion and a reference to religion includes a reference to a lack of religion”, and “belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.” Taking the same case as discussed for the previous protected characteristic of race, the author’s personal experience of unfair dismissal was brought to the employment tribunals on the grounds of racial and religious discrimination. While racial discrimination was eliminated by the Judge at the outset, the religious discrimination claim was able to progress. Evidence submitted in support of the religious discrimination claim included senior management team meeting minutes where it was accepted by teachers that the video should never have been shown, and ‘secret emails’ wherein teachers associated the claimant to be part of the Trojan horse affair and ‘having done this before’ [this being raising trouble in schools as part of the Islamist plot to take over state schools in Birmingham]. The author also argued that had she not been a visibly Muslim woman, she would not have been thought to be part of the Trojan Horse affair [which was later found to be a hoax], and been seen to be ‘objecting’ to the 9/11 video being on the curriculum. Since the public interest disclosure claim was accepted, in that the claimant was justified for raising the concern due to it being a safeguarding matter and posing a risk to the children’s mental wellbeing, the latter argument and position adopted by the school that the author had ‘objected’ to 9/11 being on the curriculum is further evidence of religious discrimination. There is no provision within the Equality Act that prevents respondents from making claims that are inherently discriminatory in nature. The argument adopted by E-Act Academies in this instance was discriminatory in nature.

In 2017, the Employment tribunal judge ruled that the case did not form religious discrimination despite there being strong evidence (aforementioned) and the reason cited was that a Jewish or Christian woman would have been treated in the same way (see also Bi: 2019). The author’s rebuttal has always robustly comprised of the argument that Jewish or a Christian woman would have only been treated in the same way as the author if three factors also existed: (a) that the Jewish or Christian woman were also visibly Jewish or Christian i.e. by way of a headscarf or religious marker), (b) that there was a Trojan Horse affair equivalent in the city where the Jewish or Christian woman were working and that the perpetrators of the said affair were to be of the Jewish or Christian communities, and (c) that there be a 9/11 equivalent where the perpetrators were widely known to be from the Jewish or Christian communities (see also *ibid*). Without these three factors, the Jewish or Christian comparator is invalid as the context within which the discrimination has occurred is not accounted for.

The question that now arises is: how can we account for 'context' in Section 10 of the Equality Act 2010 to better protect religious groups. One proposition is to outline clear guidance for comparators within Section 10. A second suggestion is to include a subsection that categorically speaks to the historic and contemporary persecution, marginalisation, and politicisation of religious groups. So for instance Section 10(4) could state "any reference that associates individual(s) to historic and/or recent event(s) that a religious group is known to have committed constitutes religion or belief discrimination" and "victimisation transpiring from religious identity constitutes as religious discrimination" and "religion or belief can be considered to be a disadvantage where recent public perceptions and attitudes have become heightened for particular religions and/or beliefs groups", and include "religion or belief discrimination includes whereby discrimination is enacted towards individual(s) because they are perceived to be of a certain religion." This later provision would categorically protect Sikhs from religious discrimination in instances where they are perceived to be Muslim and thereby are subjected to islamophobia (see also Sian: 2017).

Sex

Section 11 of the Equality Act 2010 addresses sex discrimination which is defined as "a reference to a person who has a particular protected characteristic is a reference to a man or to a woman, and a reference to persons who shared a protected characteristic is a reference to persons of the same sex." Section 11 is annexed by Section 64 - 71, which outline legislation on equal work and equal pay amongst other sub-factors. In 2017, the Equality Act 2010 was updated to include gender pay gap reporting, making it a mandatory requirement for all private and public body employers with 250 or more employees, to report pay gaps between employees based on sex. A number of high-profile cases have since been reported in the media, which have underscored the severity of the issue while at the same time promoting the importance of equal pay. In 2018, BBC China Editor Carrie Gracie took on her employer when she learnt she was paid substantially less than her colleagues and editors of the US and Middle East respectfully. In 2020, after raising a grievance, the BBC agreed to pay £361,000, all of which Carrie Gracie donated to The Fawcett Society and Equal Pay Advice Service (Guardian: 2020).

In 2020, the BBC faced with unequal pay claims by news reporter Samira Ahmed, who alleged that she was paid less than Jeremy Vine, despite the equal nature of their work. The difference in pay was found to be £700,000 and an employment tribunal found the BBC had acted unlawfully. While the BBC argued that Jeremy Vine's show had a higher profile with a larger audience compared to Samira Ahmed's Newswatch, the Employment Tribunal maintained the nature of work being equal and the aforementioned points of comparison as being irrelevant to the case at hand. Such landmark findings in high profile cases based on more recent amendments to the Equality Act 2010 (in 2017) demonstrate the importance of conducting regular reviews of the Act.

In 2021, the kidnapping and murder of Sarah Everard at the hands of a serving police officer sparked widespread calls for misogyny to be made a hate crime, which was fulfilled by Prime Minister Boris Johnson (Devlin: 2021). The decision has been hailed as a cornerstone in women's rights, however, many have highlighted the low levels of criminal convictions and the decriminalization of rape - since only 1.4% of rape cases resulted in a suspect being charged in the past five years - annuls the impact of the new legislation (Whitehead: 2021, Vera Baird: 2020). While the hate crime legislation has been updated to reflect the recent change, the Equality Act 2010 should also be amended to include misogyny as a hate crime within Section 11 of the Act. This would ensure both employers and public sector bodies also practice this shift in legislation, protecting women from misogyny within the workplace and within private and public body spaces.

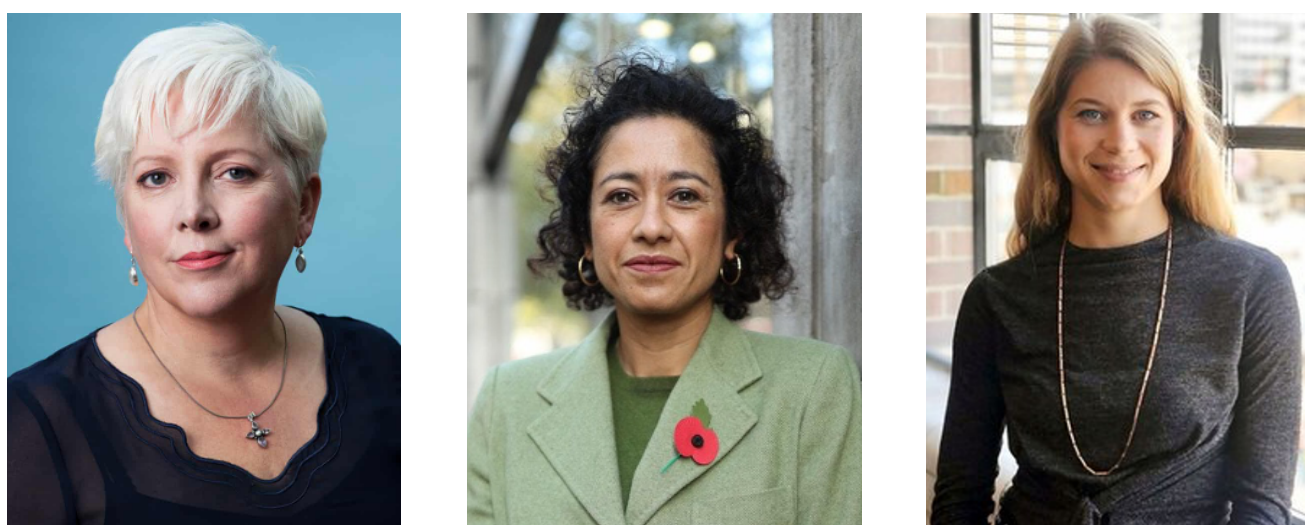


Fig 4,5,6: from left to right, Carrie Gracie, Samira Ahmed, and Sarah Evrard.

An additional area which requires further consideration is that of shared parental leave. The recent cases of *Capita Customer Management Ltd v Ali* and *Hextall v Chief Constable of Leicestershire Police* (2019), found that employers are not legally obliged to enhance shared parental pay. In both cases which were heard together in the Court of Appeal, male claimants who were employees argued that their employers by denying them the opportunity to take shared parental leave on full pay, discriminated against them as a result of their sex. Within the social sciences literature, there is substantial evidence that argues hegemonic masculinity (see Connell: 2000) can dictate negative perceptions about fatherhood, and particularly lead to 'absent fathers'. Of the many disadvantages, detriment to children's well-being is well documented. There is also a rich body of literature referring to children's health and wellbeing, and life outcomes when both parents are involved in their upbringing. Given both the impact on child's well-being and gender-power dynamic norms, there are wider benefits to extending shared parental leave for fathers.

Our public consultation findings showed that 14.5% of discrimination cases were on the grounds of sex. Significantly, sex was also part of 23.9% multiple ground discrimination cases, the single biggest protected characteristic in multiple grounds discrimination cases (see chart 2). Despite the aforementioned progress being made in the field, the figures suggest there are yet huge strides to take in order to achieve equality for sexes.

The following amendments could enable further protection for the sexes:

- (a) Make it mandatory for companies with 50+ employees to report their gender pay gaps, as there may be women who are at smaller organisations who are being significantly lower paid.
- (b) Amending the equality act to include misogyny as not only a hate in public places but also the workplace;
- (c) Allowing fathers to take shared parental leave at full pay

Some responses to the public consultation referred to women's rights on the ground of sex, expressing women were at risk of violence and abuse in instances where they share spaces with trans women. The Equality Act Review champions and supports trans rights while at the same time acknowledges those opinions.

4.3.2 Enforcement of Provisions

The Equality Act comprises of a number of duties that remain unenforced. In this section of the report, we consider the Section 1 on Socioeconomic Duty, Section 9(5) on Caste discrimination, and Section 14 on Dual Discrimination.

Section 1, Socioeconomic Duty

Section 1 of the Equality Act 2010 requires public bodies to exercise their functions "in a way that is designed to reduce the inequalities of outcome which result from socioeconomic disadvantage." Although the section was passed and is included as part of the Act, the government of the time decided it would remain unenforced. The potential to reduce social inequalities through the Act was thus, stifled at the outset. At the same time, over the last twelve years and particularly through the pandemic, the UK has experienced increasing levels of poverty despite being the sixth richest country in the world. This has culminated in the current Cost of Living Crisis we are seeing whereby inflation has risen to a 40 year high.

Sustain UK estimates that 8.4 millions people in the UK are currently experiencing food poverty. A study by the Trussell Trust found that there was an 81% increase in need for support from a food bank in the second quarter of 2020 compared to the same period of the previous year. In September 2020, footballer Marcus Rashford launched the Child Food Poverty Task Force, petitioning the government to implement three key recommendations from the National Food Strategy, pertaining to the provision of free school meals. Following a high-profile media campaign, the government responded to the

demands of the Child Food Poverty Task Force, extending the free school meal programme into the school holidays. This response, however, was found to be insufficient as demonstrated by the poor standard of free school meal parcels issued by the DfE (Guardian: 2021), and led the Equality Act Review to join the Environment, Food and Rural Affairs Committee to call upon the government to urgently appoint a Minister for Food Security. The recent campaign to make school uniform more affordable lends further support to low socioeconomic status and poverty being a form of discrimination.

Rising levels of poverty have also led to a significant increase in rough sleepers, with the charity Shelter finding a 250% rise in the number homeless persons (UK Gov: 2018). Further, protecting homelessness would speak to Section 1 of the Equality Act which concerns socio-economic inequalities. Commencing this would require public bodies to exercise their functions in a manner that would reduce inequalities. If Section 1 was enforced, Local Authorities would have had to ensure homeless people were provided emergency housing and housed within a reasonable time of being made homeless. In 2020, The Equality Act Review conducted research on the impact of predicted grades and found over 50% of pupils from a low-socioeconomic background lost out on their university offers in 2020, as a result of receiving under-predicted grades that did not reflect their true capabilities (Bi: 2020). One of the ways through which this was exacerbated was the employment of a government-based algorithm which took into account the past performances of schools, legitimising a postcode lottery system, as schools in affluent areas tend to perform better than schools in less affluent areas. While the government announced a U-turn on the use of the algorithm, thousands of students missed out on future educational prospects as a result of miscalculation. The absence of a centralised appeal system without the need to seek approval to appeal from assessment centres further exacerbated the results and severity of inequality in student grade experiences, in the Summer of 2020 (Bi: 2020). Had Section 1 been enforced, the government would have been legally required to ensure socioeconomic duty was implemented in the policy plans to predict grades from the outset, thereby protecting the future of thousands of young people.

As part of our research methodology, we interviewed individuals who believed they were discriminated against as a result of their socioeconomic status. Rabia told us:

“As a BAME PhD student from a low-socioeconomic background, I did not receive funding from my university...I had to work multiple jobs to fund my studies. When I received a fellowship at an Ivy League in America and I contacted my university for support to enable me to take up this wonderful and rare opportunity. I was told if you cannot afford it you should not go...they would not make this comment for another identity marker for example if I was Black, they would not tell me I should not take this opportunity because racism in America exists, so why is it that it is acceptable to say such a thing to people from poor backgrounds...universities are breeding grounds for socioeconomic inequality...”

Rabia, 30, London

Another interlocuter, Sam, from Manchester said:

“Coming from the inner-city parts of Manchester never really leaves you....take the example of healthy food, it's expensive to eat clean, to eat fair trade, supermarkets should not be allowed to charge extortionate prices for the healthiest items, which translate into better health outcomes for the more affluent, and poorer health outcomes for the less affluent...I want to raise children in a world where our socioeconomic background will not affect our life span....”

Sam, 33, Manchester

Both the above interview extracts present a powerful insight into the impact of socioeconomic background and life outcomes. In 2018, The Longevity Science Panel considered whether the socioeconomic gap was narrowing for life expectancy impact. It found there was a widening socioeconomic gap in mortality rates with males aged 60 to 89 years from the most disadvantaged fifth of the country, were 52% more likely to die in 2001 than the most advantaged fifth, but the equivalent figure had climbed to 80% in 2015. Similarly, for females aged 60 to 89 years, the most disadvantaged fifth were 44% more likely to die in 2001 than the most advantaged fifth, but the equivalent figure had risen to 81% in 2015 (Dunnell et.al: 2018). The Kings Fund found that those living in the most deprived areas spend nearly a third of their lives in poor health, compared with only about a sixth for those in the least deprived areas. Males in the most and least deprived areas spent 21.8 and 12.8 years respectively in poor health; for females, the corresponding figures were 27.3 and 15.3 years (Raleigh: 2021). Hence, not only do people living in the most deprived areas have the shortest life spans, they also live more years in poor health (ibid). By enforcing Section 1 of the Equality Act we can equalise experience of health, life-span, and quality of life.

Section 14, Dual Discrimination

Stemming from sociological discourse from the 1970s onwards, intersectionality theory (Crenshaw: 1989) has been recognised to exacerbate discrimination. While a number of critiques have been highlighted for intersectionality, such as the failure to encompass religion as an identity marker (see Bi: 2019), UK equality legislation has failed to allow intersectional discrimination to be brought to justice. This is particularly disjointed as the legislation recognises discrimination on multiple grounds through Section 14 of the Equality Act 2010, however, the government has decided not to enforce this aspect of the Act due to the burden of costs for businesses (HM Treasury: 2011). In 2009, Lord Philips postulated in the Supreme Court the hypothetical case of an obese Black man who was refused service in a shop and expressed that he could be discriminated on the grounds of both his weight and race (Atrey: 2019, 8). However, each ground for discrimination was considered singularly as per a single-axis discrimination model, determining that the man could not have been discriminated against on the basis of his race and weight at the same time (Atrey: 2019). Since such cases are mark real and lived experiences for many people in Britain today (see also Bahl v the Law Society [Hudson: 2011, 4]), we now more than ever before need an Equality Act that allows for multiple grounds of discrimination to be brought, as it is not only the intersections of the nine protected characteristics that occur, but also between broader characteristics, as human beings are complex beings embedded in social, economic, cultural, and political contexts. Given that stereotypes and prejudicial attitudes that can centre around factors such as poverty, obesity, homelessness, citizenship, accent, any such practice of intersectionality within equality discourse must also take into consideration the aforementioned characteristics.

As part of our study we interviewed people who believe they had experienced dual discrimination. Louise told us:

“When I told my line manager I was pregnant the first things he said was ‘Oh great you’ll be on maternity now, we’ll have to find a cover soon’, and rolled his eyes. I couldn’t believe he his response...in the six-month period before I took maternity leave I was given more admin heavy tasks, the projects I was leading were taken away and given to my colleagues, and I was kept out of the loop about developments and meetings...I would cry to my husband nearly everyday...the fact that I was pregnant could not have happened without being a woman. I believe he was discriminating against me because I was both a woman and pregnant...”

Louise, Bristol, 33

Leena told us:

“I suffer from fibromyalgia for which I take Gabapentin 300mg, a very strong medication. One of the side effects of the medication includes tiredness, which I cope with by drinking coffee, but it’s the flare-ups I experience which are particularly difficult to manage. I can barely get out of bed and my whole body is in a lot of pain. When I tried to explain this to my manager, she said “you brown people are so low on vitamin D why don’t you just take supplements and turn up to work like everyone else?” Her comment was discriminatory regarding both my disability and ethnicity. It was the fact that I was both Bangladeshi and disabled at the same time which is why she made this remark...she made me feel really low and her behaviour did cause me to question my ethnicity and think things like ‘if I was not brown perhaps I would not be in so much physical pain’...”

Leena, 25, Cardiff

In the above two cases, we learn how our interlocuters have been discriminated against based on multiple and intersecting aspects of their identity, at the same time. The Equality Act Review asks that the government enforce Section 14 of the Act to allow multiple grounds of discrimination to be brought to justice.

Recuperating the Intersectional Promise of Equalities Law

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Globally, feminists led the way, highlighting the need for law to acknowledge the specific lived experiences of women of colour and developing intersectional theory and practice to address legal gaps. However, ten years later, section 14 of the Act, which would enable individuals to bring ‘dual’ discrimination claims based on two protected characteristics is still not in force. This means that claimants still need to establish that the discrimination in respect of each protected characteristic would be successful if pursued separately (see for example the case of *Nwoke v Government Legal Service* (1996) 28 Equal Opportunities Review 6).

In this case the Tribunal found that Nwoke had suffered both race and sex discrimination but independently of each other. In the relatively few other cases brought on dual or multiple discrimination judges highlight the need to identify the specific ground on which discrimination has occurred rather than accepting that it is specific to two grounds such as race and sex intersecting (See *Bahl v Law Society* [2004] EWCA Civ 1070.) This is even though the EHRC’s measurement Framework for Equality and Human Rights (Oct 2017) includes intersectionality as one of its theoretical foundations defining it as identifying “distinct forms of harm, abuse, discrimination and disadvantage that could not be detected using an individual category”. The framework includes the specific examples of such harms and discrimination encompassing low employment rates for Black, Bangladeshi and mixed ethnicity women and social exclusion of older lesbians and gay men in care homes.

As well as being evidenced at the time by the work of the Equality and Diversity Forum, there is also more recent strong evidence of the role played by intersecting inequalities in Britain (Women’s Budget Group and Runnymede Trust Report, 2017). The Fawcett Society and Young Women’s Trust have also identified lack of enforcement of s.14 of the Act as a significant gap in the law’s ability to protect women from the impacts of multiple discrimination in their evidence to the All Party Parliamentary Group (APPG) on Sex Equality in 2016 (Invisible Women Report, 2018). In response, the APPG report stated:

“The government must recognise that multiple discrimination of protected characteristics can be intersectional and/or additive and make these unlawful to offer full protection to women.” (ibid).

The APPG’s recommendation is potentially far reaching. It recognises that discrimination can be experienced based on characteristics that are intersectional, namely mutually

constitutive and not separable. For example, it would enable a claimant who is a Black Muslim woman to bring a dual discrimination case without having to prove whether discrimination resulted specifically from her skin colour (race), her sex or her religious identity. However, the current case law demonstrates that there is little understanding amongst the judiciary of how to implement dual discrimination which makes the need to bring s.14 into force even more urgent. This is not only to augment protection on grounds of race and gender but also to promote understanding of how other grounds can and do intersect such as sexual orientation, race and religion.

In fact, these grounds have generated a significant body of case law perpetuating the public notion that they exist in conflict with each other, or that there is a trade-off between them. This situation is compounded further in situations involving minority religion, intensifying fraught debates on integration, community cohesion, and immigration, as seen in the 2019 controversy in the UK surrounding protests by Muslim parents outside a Birmingham school against their LGBT equality lessons. These debates are replicated elsewhere across Europe and beyond. In this polarised context tackling the inter-relationships of homophobia and Islamophobia/racism together, becomes practically impossible (Jivraj, 2016) [3].

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Section 9, Caste Discrimination

Caste is a complex and changeable concept whereby endogamous communities inherit certain positions and social identifications distinct from class, race, religion and ethnicity. The significance of caste identities varies across the British South Asian community in accordance with region, generations, and areas of life. According to Shah, caste consciousness is “an indispensable part of the associational life of Indians in the United Kingdom” (Shah 2015: 77), which highlights its vitality to the formation of public and private networks; business, employment, market and voluntary work; family status; arranged marriages; community and temple organisations, and other spheres of social, economic and political dominions of civic life.

As a positive form of association, caste affiliations are institutions of social capital among the UK's South Asian Community. The downside, however, is that caste differentiations can be socially segregating, hierarchical and exclusionary as historically noted with groups deemed ‘untouchable’. In defining ‘caste’, observers have highlighted the negative implications of narrowing down or broadening out its legal definition. While there lacks a clear and universally accepted definition, scholars have identified that ‘caste’ within the legal framework must include the terms of endogamy, hereditary status, and social stratification (Dhanda et al.: 2016). Caste consciousness is an indelible part of South Asian identities and persists even among second and third generation British South Asians, many of whom might have never stepped foot in the homeland. Caste awareness and pride amongst UK’s South Asian community is found to be articulated through subtle forms of prejudice and discrimination in public and private spaces. Sociological and ethnographic studies have documented varied forms of casteism, such as: unfair treatment at the workplace; refusal to conduct business and rental services (houses or private spaces) (Dhanda, 2015); denial of public services (taxis ride), and private healthcare (social caseworker refused to bathe a Punjabi patient from a different caste) (Metcalf and Rolfe 2010: 49, 74); bullying and use of casteist slurs in schools and colleges (Dhanda: 2017); featuring caste pride in British-South Asian pop culture (Takhar: 2017).

Demands from British Dalits, anti-caste discrimination groups, activists and campaigners, resulted in the 2013 Enterprise and Regulatory Reform Act (ERRA) which amended Section 9 (5) (a) of the Equality Act, 2010. Section 97 of ERRA necessitated the legal, statutory prohibition of caste discrimination as a subset of racial discrimination. The amendment bound the UK Government to include ‘caste’ as a protected characteristic under “an aspect of race” in the Equality Act 2010. The Conservative Government of the time resisted modifying the Equality Act, 2010, by relying on a 2014 Employment Appeal Tribunal (EAT) order. The case presented to the EAT was of *Chandhok v Tirkey*, wherein, Ms Tirkey, a domestic worker for Mr and Mrs Chandhok claimed that, her Adivasi status i.e. “lower caste descent” was inextricably linked to the unfair dismissal and discriminat-

ion she faced. The EAT's order established that, while caste was "not an autonomous concept within the Equality Act, 2010", Ms Tirkey's appeal comes under the "wide and flexible" definition of 'ethnic origins', which includes the concept of descent, in the Act (Langstaff: 2014).

Justice Langstaff emphasised that the judgement was limited to the *Chandhok v Tirkey* case and not a decision on the debate of whether caste has been incorporated within the current Equality Act (Langstaff, 2014). Parliament however, interpreted the EAT judgement as a suggestion of the existence of legal remedy for caste-discrimination within the legislation. This understanding indicated that the law could encompass appeals of caste-associated discrimination under the existing 'ethnic origins' aspect of Section 9 (race) of the Act (Baroness Williams: 2015). The Conservative Government's decision to deem unnecessary, the inclusion of protection against caste-discrimination in the Equality Act, led to the government-commissioned public consultation of Caste in Great Britain and Equality Law between 28th March 2017 and 18th September 2017.

This government-commissioned consultation failed to conduct its statutory duty, as set out by the 2013 Parliamentary Amendment, and address the previous arguments of the inclusion of secondary legislation of caste in Equality Law. Rather than building upon the question of how caste could be incorporated within the Equality Act, 2010, the public consultation negated the decade-long efforts in asking whether caste needed to be incorporated in legislation. This qualitative exercise laid out two options for participants: option a) development of case law, such as in the *Tirkey* case, to include caste within Section (9), under ethnic origins, of the Equality Act, 2010; or option b) specification of caste as a protected characteristic in the Act.

Not only was the premise of the consultation questioned, the stalled process and the result of the consultation announced by the UK Government in July 2018 has received heavy criticism by British Dalit academics, anti-caste discrimination organisations and civil society actors (Dhanda et al., 2016; Dhanda, 2017). The analysis of the 16,138 responses to the consultation found that: a) 60% of these were duplicated as part of 24 campaign responses, b) more than half of the responses presented arguments for case law rather than legislative change, c) a controversial and complex understanding of what 'caste' incorporates, due to the lack of a clear legal definition, which leaves it open to a variety of interpretations, and d) an "extremely low" volume of "genuine cases" of caste-discrimination that are brought before the courts. These factors against the backdrop of the *Tirkey* judgement failed to persuade the UK Government that the introduction of an explicit, secondary caste legislation into the Equality Act, 2010 was an appropriate and proportionate approach towards legal protection against caste discrimination. On the grounds of: a) the lack of evidence of legal cases, and b) equating the exceptionally divisive nature of, caste-legislation within the British South Asian community, to class-

legislation across the broader British society, the government rendered redundant and repealed its duty to include caste as an aspect of race within the Act (Government Equality Office: 2018).

As part of our research, we interviewed two individuals who had experienced caste discrimination. Suraj told us:

“I have a successful construction company and engaged a client a few years ago who had requested a loft extension, which we were happy to do. However, once he learnt I was a Dalit, he called to say he no longer required our services...a number of clients within the Midlands region have done the same...”

Suraj, 52, Nottingham

Amrit told us:

“As an undergraduate I babysat for families in the local area to earn a little extra...a family I had been babysitting for for over a year said they would no longer like me to babysit their children and specifically mentioned that it was because of my Dalit background, which they had learnt about from others in the community...”

Amrit, 24, London

Both Suraj and Amrit’s stories are common experiences and provide powerful testimonies for the case of adding caste as a protected characteristic. However, caste extends beyond the Hindu community as we see through the case of Fatima, who told us:

“At university I met the man of my dreams, we loved each other greatly...we were both British Muslims of Pakistani heritage. In fact, in Pakistan my parent’s village and his parent’s village were about an hour’s drive from one another...his family were Choudhry and my family were Khawajas, which was a lower caste to his family...his family did not agree to us being married...in the end he succumbed to the pressure of his parents and left me...I was heartbroken...I cannot believe in this day and age it is possible to discriminate against someone based on their caste identity, a social hierarchy common to South Asia which, as young people in Britain today who have not even been back home, are continuing to be defined by it...”

Fatima, 26, Birmingham

Fatima’s case demonstrates caste discrimination extends beyond Hindu communities to Muslim communities of South Asian background, and raises an important question; can we extend the equality act to the private sphere? While we will continue to deliberate on this question, at present, we suggest that separate to that of Section 9, case ought to be provided protected characteristic status within the Equality Act.

4.3.3 Additional Protected Characteristics (Homelessness and Poverty, Weight, Accent and Regional Background, Hair, and Immigration)

At present, the Equality Act Review provides protected characteristic status to nine identity markers; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Broadly speaking, much of these identity markers relate to the biology of persons in some way, shape, or form, which limit the Act's remit. As humans we are complex beings and more than our static biology and/or changing biology, and sociocultural aspects are just as significant in shaping our life outcomes and experiences. As we presented in the previous section, the enforcement of Section 14 Socioeconomic background and caste can better protect persons from being discriminated due to sociocultural aspects. The lack of enforcement suggests that poverty in particular, is a life choice (see also Farmer: 1994). This can be extended to identity markers such as homelessness, weight, accent and regional background, hair, and immigration, many of which intersect with one another and are generally viewed as lifestyle choices. The lack of consideration for such identity markers receiving protected characteristic status within the Act demonstrates the severe shortcomings of the Act, particularly since there is known discrimination arising from the aforementioned identity markers. In this section we turn to each identity marker that we are proposing to be added to the Act, and discuss the merits and justifications of providing protected characteristics status to each marker, which include: homelessness, poverty, weight, accent and regional background, hair, and immigration.

Homelessness

In 2018, the charity Shelter found a 250% rise in the number of unsheltered homeless persons (UK Gov: 2018). While some authors have demonstrated the link between unemployment and homelessness (see Hughes: 2020), homelessness can and does continue to perpetuate unemployment (see ERSA: 2015, Fothergill et.al: 2012). The lack of provision for homelessness within the Equality Act can and does give rise to discrimination. For example, In Fothergill et.al's (2012) work we encounter an interlocuter named Alex, who expressed "I did not want to put that I live in a bloody hostel!" on his job applications, as he felt that this may lead to him being discriminated against (see Fothergill et.al: 2012). To enable empowered employment (see Bi: 2020a) for those faced with homelessness, homelessness must be added to the Act as a protected characteristic to prevent homeless persons from being denied employment. The urgency with which this is required is visible in the lack of financial services available to the homeless. For instance, it was only in October 2020 that HSBC bank made the decision make accounts available to people without a fixed address, thus making financial services available to thousands of homeless persons (HSBC: 2018). Without a current bank account due to the absence of a fixed address, any hypothetical employment before October 2020 would

prove problematic for homeless persons, as it would not be possible to deposit their salary into a designated account. The types of jobs available for such individuals experiencing homelessness then, become limited and are likely to be precarious in nature (i.e. cash in hand work), exacerbating levels of precarity and vulnerability. By incorporating homelessness within the Equality Act, employers and public sector organisations and services, would be acting unlawfully if they subject homeless individuals to discrimination. A seismic legislative shift such as this would allow for significant progress to limit the number of homeless persons. Offering services such as bank accounts and offering employment, can make a positive impact on the lives of those experiencing homelessness.

Our research involved interviews with two individuals who had experienced discrimination due to homelessness. One interlocuter who we will refer to as Daniel to maintain anonymity, applied for a job at a mainstream supermarket who offered him an interview. He told us:

“I was offered an interview at a large supermarket chain and one of the senior people on the panel said that she noted I wrote down my address was a homeless shelter I was living in at the time. She asked me if this was correct or I had made a mistake, I told her it was the correct address...she looked straight at me and said 'well how do we know if we offer you a job you won't steal the food?' I was so hurt, all I was doing was trying to get my life back together...you won't be surprised to know that I didn't get the job in the end...”

Daniel, 33, London

The comment made by a member of the interview panel was discriminatory as the member associated homelessness with crime - theft of goods in particular. Our second interlocuter, who we will refer to as Kiran shared her story of which we include a an extract below:

“I never thought I would end up being homeless but there I was faced with it and thankfully after sleeping rough for many months, I was able to seek help at a local shelter. I was working with an employment coach who was helping me get into work...when I was applying for jobs, he advised me to put down an address of a friend rather than the shelter because lots of people in similar situations were being turned down, as companies realised the application is from someone who was homeless...in the end I asked one of my friends if I could put her address down but I selected the option on the application form for all letters and emails to be sent to me at my email address...”

Kiran, 27, Coventry

The interview extracts above demonstrate the different ways in which applicants who were experiencing homelessness were navigating employment. We suggest that in the same way recruitment forms have ethnicity, sexual orientation, and disability checkboxes, that homelessness is made available too. Some recruiters offer a 'two ticks'

scheme', which ensures that an applicant who has a disability (or disabilities) but meets the minimum requirements, is guaranteed an interview. An identical approach should be adopted for those experiencing homelessness, as this could help thousands successfully acquire employment.

Weight

Obesity is a global issue having nearly tripled worldwide since 1975, with more than 650 million people now living with obesity (World Obesity Federation: 2018). Due to its complexity and intersectional nature with a number of factors such as genetics, dysfunctional food systems, and social deprivation, no country in the world has yet been able to halt the rise of obesity in all ages (ibid). Research conducted by the World Obesity Federation in 2018 found that more than four in five adults in the UK believe that people with obesity are viewed negatively due to their weight, 62% believed people are likely to discriminate against someone with obesity. The report posited obesity discrimination was higher than other forms of discrimination, such as ethnic background, sexual orientation, or gender. The report also provided insights as to the nature of stigma and discrimination that people with obesity experience. For instance, nearly half of UK adults living with obesity stated that they felt judged in clothes shops or in social situations due to their weight. This was particularly acute in healthcare settings where 45% people living with obesity experienced feeling judged, and gyms where 32% of people living with obesity felt judged. The report also highlighted the proliferation of weight stigma in online settings such as social media. One in four people with obesity (23%) stated they have felt judged online due to their weight and in another study carried out by the world obesity federation found almost 10,000 tweets wherein stigmatizing language towards obesity was employed.

The lack of protection for weight within the Equality Act 2010 is a severe shortfall, which is likely to be affecting tens of thousands of people with obesity when seeking employment and/or who are already employed, as 28% of adults in England have obesity, and a further 36.2% are overweight but not obese (Baker: 2021). Public Health England estimates that there are 16 million days of sickness absence every year as a result of obesity (Bevan: 2019). Academic studies have also shown obese persons are more likely to be disadvantaged in the workplace, with lower starting pay, less hiring success, and lower employee ratings (see Flint.et.al: 2016, Van der Zeer: 2017). Beverly Sunderland, specialist employment solicitor commissioned research to better understand employment prospects of those with obesity. She found of 1000 employers, 45% said that they were less likely to recruit obese candidates (Sunderland: 2015). This echoes research by the World Obesity Federation (2018) which found 25% of UK adults admitted that out of two equally qualified candidates, the candidate with the healthy weight would be selected

over the candidate with obesity. With one in twenty-five children aged 10-11 years are severely obese (Embury-Dennis: 2018), it is forecasted by 2035 the number of adults who are morbidly obese will double (Matthew-King: 2018). It is thus evermore, important for obesity to be provided protected characteristic status within the Equality Act.

Within law, the Kaltoft ruling of the European Court of Justice has been the widely cited to be supportive of obesity and being overweight as 'protected characteristics' (Lahuerta: 2015). The case of Mr Kaltoft, Danish child minder of 15 years who was dismissed from his job, which he claimed was due to obesity. Since the success of this case, Britain has left the EU and so reliance of European Court precedence within UK equality legislation is likely compromised. In light of the recent geopolitical changes, it is of increasing importance that weight discrimination be provided protected characteristic status within UK Equality legislation.

As part of our research, we interviewed two individuals who had experienced weight discrimination in the workplace. The first interlocuter who we will refer to as Peter to ensure anonymity told us:

"I was constantly being met with passive-aggressive remarks by my supervisor...on one occasion, I had been delayed with a deadline for a project I had been leading and my supervisor called me in for a meeting to discuss the delay...I tried to explain that the project had been held up due to other teams not getting back to me with relevant data and information, he responded with "stop being fat and lazy" while pointing his finger at me, and get on with the work...I was mortified..."

Peter, 45, Leeds

Another interlocuter, Samina told us:

"Every time I would go into the kitchen at work for a coffee break or lunch break, I would be met with laughter and giggling and lots of stares...I felt as though every movement I made was been watched by colleagues in the kitchen...I tried to work out when the quieter times of the day to use the kitchen would be so that I could avoid all that hostility, but that meant taking lunch later or earlier..."

Samina, 27, Birmingham

Both Peter's and Samina's narratives demonstrate the level of hostility that employees with obesity are subjected to within the workplace. Providing weight protected characteristic status within the Equality Act, would ensure that employers create a workplace culture which is accepting and nurturing of those with obesity.

Accent and Regional Background

The 'North-South' divide in Britain has long been cited as a source of multiple inequalities (see Burton: 2020, Proctor: 2020, Bambra et.al: 2014, Robbins: 2005, Durant and Monastiriotis: 2001, Blackaby and Manning: 1990), exacerbating lower levels of social mobility with fewer job opportunities available in the North. In recent years, the migration of large organisations such as the BBC and HSBC to the north have in part been motivated by rising London costs, but also due to the large and diverse talent pool in the north (see Bounds: 2015, Fuller: 2018). Despite the employment discrepancies between the North and South, and the chronic stagnation in social mobility over the past thirty years, studies in the social sciences have largely omitted accent as a point of study (Everon et.al: 2020). A recent report by Levon et.al. 2020) shows "...a stable pattern of accent bias has been in place for at least half century, with urban working-class and ethnic accents disfavoured and more standard accents favoured" (2020: 16). This is particularly pertinent in the area of employment, as earlier studies discovered a speaker with a Birmingham accent was judged to be less intelligent and thus less competent for a university lectureship than a candidate who spoke standard English without a particular accent (Giles et.al: 1975). Additional studies have found discrimination against non-native accents in the workplace, despite a high standard of comprehension and communicative effectiveness (Roberts et.al:

1992), which resonates with older studies such as that of Lippe-Green (1997) who argued that accent can operate as a legally permissible form of overt discrimination, and give rise to other forms of discrimination. More recent studies such as that by Baratta (2015) demonstrated candidates were actively suppressing regional accents in order to increase employment prospects. A study by the Chartered Institute of Personnel and Development found that over 75% of employers admitted to discriminating against candidates due to their regional accents, and only 3% of employers agreed that accent or dialect difference ought to be provided protected characteristic status (see Levon et.al: 2020).

As part of our research, we interviewed three individuals who had experienced accent bias. Amber told us:

"At university, my fellow classmate said "northern people sound dumb"...it was directly after I had finished speaking. I had a brummie accent and our tutor had a Scottish accent...both my tutor and I looked at one another awkwardly not knowing what to say in response, it was completely offhand and took us by surprise...there is a lot of discrimination towards students with different accents at the more elite universities..."

Amber, 25, Birmingham

A second interlocuter, David expressed:

“I’ve found that in the legal profession, having a strong Yorkshire accent is quite off-putting for clients and Judges too...I always get asked to repeat myself which is quite frustrating...I often feel as though my CV, my education, the universities I studied at make no difference...as soon as I open my mouth I can just witness the disapproval on people’s faces...it has caused me to contemplate leaving the profession as I do not feel I have a future when there is so much bias based on where I’m from...”

David, 30, York

At present, the closest ‘protected characteristic’ to accent is race or nationality, however this does not afford protection to individuals with different accents from within the UK. While this may provide protection for persons who are Scottish, Welsh, or Northern Irish, it will fail to apply to persons of Geordie, Brummie, or Cockney backgrounds who hold these accents (see Traczyk: 2020). Based on the literature in this area together with the interview extracts from our interlocuters cited above, we call for accent to be added to the Equality Act as a protected characteristic. Providing protected characteristic status to accent would enable employees with diverse accents better access to employment opportunities, without having to suppress a core aspect of their identity, which resonates with Lady Hale’s comment in the House of Lords in 2006; a protected characteristic is either immutable or so fundamental to human dignity that a person should not be compelled to change it (Traczyk: 2020).

Discrimination by proxy: The case for including accent in the Equality Act

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Accent is a strong signal of an individual's social and regional background. In response to even very short stretches of speech, people categorise speakers on the basis of their accents (as “Northern”, for example, or “working-class”) and then use these categorisations to make snap judgments about an individual's character, competence or suitability for employment [1-3]. Such stereotypical judgments can lead to discriminatory outcomes. A survey by the Chartered Institute of Personnel and Development found that over 76% of employers admitted to discriminating against applicants on the basis of their accents, and only 3% of employers nationally include accent or dialect differences as a protected category [4]. Relatedly, a study by the Social Mobility Commission determined that working-class candidates are often unable to gain access to elite professions despite having the relevant qualifications and skills because of informal ‘poshness tests’, including a candidate's accent and style of speaking [5]. As a signal of social background, accent can function as a proxy for discrimination against social class, ethnicity, gender, region, and age.

Discrimination on the basis of accent is not adequately addressed by the Equality Act. While discrimination against individuals with foreign and/or ethnic accents has been recognised as a possible form of direct racial discrimination [6], this protection has proved difficult to enforce in court and would in any case not extend to individuals who speak with a stigmatised native accent (and for whom the national origin protection does not apply).

And yet, research demonstrates that speakers of stigmatised British varieties face similar patterns of discrimination and exclusion as individuals with foreign and/or ethnic accents. A speaker with a Birmingham accent, for instance, was judged as less suitable for a job as a university lecturer than a speaker with a standard “Received Pronunciation” (RP) accent [7]. Similarly, a speaker with a Birmingham accent was also judged as more likely to be guilty of a crime than a speaker with an RP accent [8]. And in a recent large-scale study of accent judgments in job interviews [9], speakers with working-class Southern accents, particularly ethnic minority voices, were judged as less suitable for employment in a law firm than speakers of middle-class varieties despite identical job interview responses. The evidence is thus clear that bias against particular accents may systematically disadvant-

-age certain social groups from fair and equitable access to employment and services.

The Equality Act can directly address the problem of accent serving as a proxy for discriminatory behaviour by including accent as a protected characteristic. Doing so would not only raise awareness of accent bias as a widespread form of social discrimination in the UK [10]. It would also help to ensure that life outcomes are based on merit, rather than on discriminatory social stereotypes. This approach has recently been adopted by the French government [11], with a law currently making its way through the French Parliament that would prohibit discrimination on the basis of accent in both the private and public sectors. We strongly encourage the UK to adopt a similar approach.

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Hair

Hair discrimination has been argued to be a social injustice characterised by unfairly regulating, and insulting people based on the appearance of their hair (Mbilishaka et.al: 2020, Cox et.al: 2021). Professional Black women across a number of industries have regularly been dismissed from employment or threatened with dismissal for 'looking unprofessional' due to their natural black hair (Callahan, 2019; Leclair, 2018). A survey by the founders of the Halo Code found one in five black women experience societal pressure to straighten their hair for work, and more than half of black students have experienced name calling or uncomfortable questions about their hair at school (Young: 2020). A group of nurses and midwives recently published a paper (Cox et.al: 2021) highlighting both their and their black colleagues' experiences of hair racism in nursing, and nursing education. Examples included colleagues, supervisors, and teachers petting hair in front of other students and stating it resembled the teacher's puppy, telling a student to "tame" their afro during clinical sessions, a nurse with locks being asked to wash their newly washed hair before the next clinical day, and hair being seen as an infection control issue within healthcare settings, amongst others (Mblishaka et.al: 2020). Mblishaka (2020) found that hair texture, length, and style were discriminatory behaviours as they 'othered' Black Asian and Minority Ethnic persons compelling them to conform within a Eurocentric aesthetic value system. They also found that rejection connected to a person's hair led to feelings of sadness, underscoring the psychological impact of hair discrimination and thereby advocating for its protected characteristic status, to prevent hair-based bias and discrimination in public settings, such as schools and workplaces.

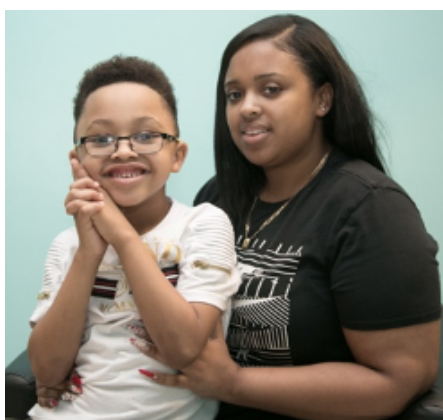
The rich body of research and studies (albeit we cite a selection) has led to change in the US equality legislation, with California and New York recently declaring hair discrimination to be unlawful (Adam and Gill 2020). California Senate Bill No. 188 called the "Crown Act" states that dress codes and grooming policies than ban naural hair 'including afros, braids, twists, and locks' have an unprecedented impact on Blacks persons. In the case for the legislation to be brought forward it was argued that such policies compel individuals to mask their ethnicity and conform to European norms (ibid). As such the Crown Act expands the definition of race to include 'traits historically associated with race' such as hair texture and protective hairstyles' including, 'braids, locks and twists'. At present, such an expansive definition of race is not available within the UK equality legislation. However, since the UK has in recent years seen a spike in cases of discrimination based on hair texture and style both within workplaces and educational settings, we consider the merits of doing so here.

In 2011, a case heard at the High Court involved a child excluded from school for having cornrows (*G v Head Teacher and Governors of St Gregory's Catholic Science College*). However, there is no law in the UK specifically banning hairstyle discrimination. Multiple cases have since been reported widely in the news. In 2015, Lara Odoffin who was 21 at

the time was told she would only be employed if she removed her braids (Ali: 2015). The employer is alleged to have told Lara “We cannot accept braids – it is simply part of the uniform and grooming requirements we get from our clients.” In 2017, twelve-year-old Chikayzea Flanders who came from a Rastafarian family, left Fulham Boys school in London after he was told on his first day to cut off his dreadlocks, or he would be suspended. He was able to return to the school after a successful legal case against the school, which led to the school accepting its policy was discriminatory (Davies: 2018). In 2019, five-year old Josiah Sharpe from the West Midlands was banned from the playground at his school during breaks and was eventually sent home from school due to his ‘extreme’ haircut, which is commonly known as a ‘fade’ (James: 2019). He was only allowed to return when his hair grew back to what the school believed to be an appropriate length. In 2020, Ruby Williams won a three-year legal battle with her school in Hackney, who had repeatedly sent her home due to their belief that afro hair was deemed to be against uniform policy (Virk: 2020). She was awarded £8,500 compensation in an out-of-court settlement after her family took legal action against The Urswick School in East London (ibid).



From left to right: Lara Odoffin (picture from The Independent), Chikayzea Flanders (picture from IB Times).



From left to right: Josiah Sharpe and his mother (picture from IAmBirmingham), Ruby Williams (picture from BBC).

The Halo Initiative was founded by a group of black activists to tackle hair discrimination in schools and workplaces (Young: 2020). In 2020, they launched the UK's first hair code which aimed to prevent hair discrimination based on hair style or texture. Upon launching the 'Halo Code', they have asked organisations and schools to commit to celebrating natural hair rather than penalise students and employees, with Unilever being the largest organisation to pledge their commitment to date (ibid). Halo co-founder Edkina Omokaro told the Guardian, "There is a widely held belief that black hairstyles are inappropriate, unattractive, and unprofessional...We've been suspended from school, held back in our careers, and made to feel inferior by racist policies and attitudes...forced to choose between education or career on the one hand, and cultural identity and health on the other" (Booth and Weale: 2020). In October 2020, Wera Hobhouse Liberal Democrat MP for Bath tabled a motion on hair discrimination (UK Parliament: 2020). The background information to the motion included:

"That this House believes that hair policies enforced by schools and employers either officially or unofficially are an all-too-prevalent form of racial discrimination; notes with alarm cases of black children being sent home from school because of their afros, black boys being told to cut off their dreadlocks, black women being turned down for jobs because they wear their hair in braids or cornrows, and black employees being told to chemically straighten their natural hair; calls on the Government to develop new guidance for schools and employers to prevent hair discrimination in policies and practices; further calls on the Government to launch an awareness campaign to help schools and employers understand their obligations not to discriminate in relation to hair, and to help individuals understand how to uphold their rights not to be discriminated against; and urges the Government to conduct a review to determine whether any further changes, including legal changes, are necessary to prevent hair discrimination." (UK Parliament: 2020).

The motion was signed by seventeen (17) Members of Parliament.

As a result of the studies, literature, experiences of individuals with diverse hair styles and textures, and the awareness of the both the extent of and the negative impacts of hair discrimination within policy circles, we propose that as part of the reforms to the Equality Act 2010, hair (both texture and style) should be provided protected characteristic status. This will go a long way to empower Black, Asian and Minority Ethnic communities, allowing them to be their authentic selves without having to conform to European norms. In addition, all schools and organisations should be required to remove any 'uniform' policies that penalise persons with diverse hair textures and styles, and deny them equal treatment.

Racialised Hair Discrimination: The case for including 'hair' in the Equality Act

By Stephanie Cohen, Legal and Political Organiser at the Halo Collective

Racialised hair discrimination has become a prominent issue in recent years within the UK. Afro textured hair and protective hairstyles such as locs, twists or braids have been stigmatised as 'undesirable' and 'unprofessional', as professional environments continue to enforce Eurocentric values onto those of black heritage, forcing them to conform. Research carried out by World Afro Day notes racialised hair discrimination to be a 'hidden' and systemic problem, most active in schools [1]. For example, 41% of children with Afro hair want to change their hair from curly to straight, implying the 'ideal' type of hair that is expected and accepted in such environments. Ruby Williams, a student from Hackney, experienced hair discrimination where her hair was deemed 'too big', as a result she was continuously sent home and excluded from her right to education [2]. Earlier this year, Pimlico Academy a Westminster based school, came under fire after their 'racist' uniform policy was protested against by its very own pupils. The school's new policy stated that 'afro haircuts which could block the views' of other pupils in class were not acceptable [3]. Given the cases of Williams and Pimlico Academy's students, both problematic policies influence the wellbeing of students, and a financial burden placed on the parents, particularly during these pressing times where many people have been put on furlough or made redundant [3].

Despite protection from the Equality Act 2010 [4] and guidance from the Equality and Human Rights Commission, the features listed under race are currently: colour, nationality, and ethnic origins – hair is not explicitly mentioned [5]. Although in previous cases, hair discrimination has been acknowledged as a form of indirect discrimination, the approach taken to determine such inequitable treatment comes with various barriers and challenges. The case of SG [6] involved a challenge to a school uniform policy that banned cornrows, a protective black hairstyle. Within the judgement of this case, the Court considered that the claimant's religious beliefs were a valid justification for having cornrows, making an exception to the policy. There was no mention of racialised hair discrimination, but simply the allowance of one's religious belief. Therefore, if the pupil were not to be prohibited from wearing their hair in such a way, the hairstyle would have had to be banned on the basis of this policy. The High Court failed to comprehend the disproportional isolation of a black hairstyle, where an insinuation is made that cornrows are not acceptable, thus deemed unprofessional in schools. This omission creates confusion where professional environments often fail to recognise 'hair' to represent a distinctive feature of someone of black heritage [5].

There have been attempts to address the issue of racialised hair discrimination in the UK. The Halo Collective, is indicative of this – a campaign built to eradicate and increase awareness of hair discrimination in workplaces and schools. Research carried out by the campaign has gathered that 58% of black students experience name calling or uncomfortable questions about their hair at school. Whilst 1 in 5 black women feel societal pressure to straighten their hair for work [6]. The Collective has since launched the Halo Code in December 2020, which explicitly protects employees (and schools) who come to work with natural black hair or hairstyles associated with their racial, ethnic, and cultural identities. Since the Code's arrival, over 30 schools in London and organisations including Marks and Spencer's, have adopted the Code [7]. Whilst this implies progress towards a more equitable society, more needs to be done to guarantee recourse for those affected by racialised hair discrimination.

The Equality Act can directly acknowledge the issue of racialised hair discrimination, which operates as a barrier for black people toward educational opportunities, such as schooling and employment. The Equality Act can address this issue by regarding 'hair' as a protected characteristic. This will increase the clarity of the law, as well as the UK's understanding of systemic racial issues amongst our current systems. Schools will no longer excuse their racist policies once this law is made clear [7]. A similar approach has been taken by parts of the United States through the creation of the CROWN Act 2020 [8]. The Act prohibits discrimination based on hair texture and protective hairstyles in professional environments and housing associations [8]. This implementation highlights the importance of hair discrimination amongst diverse cultures, where the signifying racial characteristic is acknowledged under US equality law. Although, the Act is only active in eight states, the enactment of this legislation continues to grow, as awareness increases [8]. Prior to the CROWN Act it was clear that there exist false conceptions of black hair, particularly in professional environments. For example, an Alabama Court held locs to be a mutable trait of self-expression. In this case the claimant's job offer was revoke due to her hairstyle, where the Court concluded that this hairstyle was simply a choice, not indicative of her racial background [8]. Courts fail to recognised the significance of black hairstyles, most of which present protective element towards maintaining healthy hair. As black hair is susceptible to breakage, it is vital for those with afro-texture hair to use hairstyles such as locs or braids to maintain this [9]. We strongly urge the UK to adopt a similar approach in order to effectively address racialised hair discrimination.

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Immigration

In an interview with the Telegraph in 2012, the then British Prime Minister Theresa May stated she “wanted to create a really hostile environment” for irregular migrants in the UK (Yeo: 2018). High immigration application fees, the policy of indefinite detention, the forced separation of families, are some examples of policies that embolden the hostile environment. Perhaps one of the hallmarks is the routine checks and official request to present papers as part of the everyday experience (ibid). For instance, regular citizens became panopticons of the state (see Foucault: 1979 and Bi: 2020) by checking immigration documents when attending the GP or a hospital, when opening a bank account, when getting married and more. The aims of the hostile environment was to discourage further immigration to the UK, to prevent those who do arrive in the UK from overstaying, and to prevent irregular migrants from accessing the benefits of citizenship. This peaked with the Windrush scandal; the hostile environment was blamed for the desperate situations in which people who had the right to be in the UK found themselves (Grierson: 2018). The Windrush citizens faced harassment, homelessness, threats of removal, hefty NHS treatment bills, and deportation after decades of living in the UK, and contributing to society (Gentleman: 2020).

The testimonies of Windrush citizens demonstrated they had lived in the UK for decades lost their homes, livelihoods, and basic social rights as essential providers began to screen them for their immigration status when providing services. Since then it has emerged that more than 80 Windrush citizens were wrongly deported, with an unknown number of other people left with no choice but to leave the UK (Liberty: 2019). Some citizens died before the Home Office was able to trace them and attempt to make amends. This wasn't a simple matter of people not having the right documents. In 1973, when the Immigration Act 1971 came into force, people settled in the UK were granted indefinite leave to remain, but a lack of provision of documents at the time has, half a century later, given rise to their 'illegality', in the view of the Conservative government.

While the Windrush generation's oppression was viewed within human rights framework, it also presented as an equality issue. However, within equality law, immigration status does not equate to nationality. In *Onu v Akiwu* and another; *Taiwo v Olaigbe* and another, the Supreme Court held that the mistreatment of migrant workers on the basis of their immigration status did not amount to direct race discrimination as a result of which, immigration does not equate to nationality under the Equality Act 2010. In order to secure protection for the immigrants, immigration status must become a protected characteristic status. This would also prove beneficial in securing the rights of many migrant men from South Asia who enter the UK, often through marriage migration, and undertake employment which pays cash in hand, and is void of equality and employment rights in the workplace. Examples include working twelve hours without a tea or lunch break, and on less than minimum wage, often as low as one pound per hour.



Amarnath Pendyala (right) was refused indefinite leave to remain four and a half years ago under unlawful policy and his case remains unresolved (Amar), Independent: <https://www.independent.co.uk/news/uk/home-news/migrants-highly-skilled-home-office-b1792763.html>

Immigration and lack of citizenship has also prevented pregnant migrant women from receiving adequate maternity care. In a report published by Maternity Action (Bragg et al.: 2019) and endorsed by the Royal College of Midwives (RCM), it was highlighted that healthcare workers found it difficult to provide care amidst the hostile environment, to pregnant women who are refugees and migrants. They report found that vulnerable mothers and their babies were put at risk due to NHS fees that began around £7,000 for antenatal, pregnancy and post-natal care, prevented undocumented migrant women in particular, from accessing care. Midwives expressed that some women delay requesting help and/or fail to have scans due to anxieties around being charged and/or detained. At the time of writing this report, it was reported by the Guardian (Kelly: 2021) that a asylum seeker was to sue the Home Office for neglect over her baby's death. It was reported that staff at the woman's asylum accommodation refused to call an ambulance when at 35 weeks pregnant, she experienced lower back pain and bleeding. The woman who asked journalists to refer to her as Adna, was quoted in the Guardian as having said:

"The man at reception kept saying I had to call for help myself, that they couldn't do it, but I couldn't talk because I was in too much pain," she said. "He was shouting at me, saying I was bleeding on their chair. I didn't know what to do and I felt like nobody was listening ... I was terrified. The connection I had felt to my baby was so strong, and I felt like it was disappearing."

Adna's lawyers have submitted a claim against the Home Office for negligence leading to personal injury, psychiatric damage, distress, and anxiety. Importantly, her lawyers also claim discrimination and breach of human rights under the Equality Act. They told the Guardian:

“Our client has experienced a catalogue of mistreatment, all linked to her being a woman, pregnant and black,” said Ugo Hayter, the lawyer representing Adna. “Having finally managed to access help from the authorities, while heavily pregnant and bleeding, she experienced dehumanising treatment.”

It is important to highlight lawyers identified Adna’s mistreatment as being linked to her being a woman, pregnant, and black. Not only does this provide grounds for multiple forms of discrimination taking place at the same time, the aforementioned identity markers are also situated within her immigration identity as an asylum seeker. Thus, allowing immigration protected characteristic status would further empower vulnerable persons, enabling them to bring multiple accounts of discrimination to the courts with a recognition of the role their immigration status played, in their (mis)treatment.

Duncan Lewis Solicitors

Public Consultation Submission

Under schedule 18 to the EA, the duty to have due regard to the need to advance equality of opportunity for those with protected characteristics of race when carrying out immigration and nationality functions does not apply in relation to nationality or ethnic/national origins. The effect of this is to limit the remit of section 149(1)(b), however this appears to be discriminatory on grounds of race.

The government continues to make rapid changes to the immigration landscape, with minimal consideration to protected characteristics. The protected characteristics set out in the Equality Act do not specifically apply to migrants as a collective, however often, public decisions affect them as a cohort. The decisions by the government as part of the 'hostile environment' and beyond, are inherently racist but may not be understood as forming a single race.

Nationality or asylum status should be considered either as a protected characteristic in its own right or as an intersectional consideration to the protective characteristics. Where asylum seekers are lawfully in the United Kingdom, the 'comparator' should be a UK national, to ensure the rights of migrants are not excluded or degraded.

In *Hussein v Secretary of State for the Home Department & Anor* [2018] EWHC 213 (Admin) – The lock-in regime at Brook House IRC, in which the SSHD permitted G4S to restrict detainees to their cells for up to 13 hours a day, was found to constitute indirect discrimination to Muslim detainees, contrary to Art 14 ECHR (read with Art 9 ECHR), who was forced to undertake some of their mandatory prayers during the lock-in regime next to unscreened and unsanitary toilets, and in potentially cramped conditions. The Court also found the SSHD had failed to have due regard to her section 149 duty under the Equality Act 2010 with regards to the lock-in regime at Brook House IRC. Additionally, the Court found that the SSHD's policy of over 10 years of allowing smoking inside Brook House and other privately-contracted IRCs was unlawful and contrary to the Health Act 2006.

4.3.4 Complex socio-legal factors

Due to austerity, legal aid for the employment sector has been severely cut back, increasing the number of litigants in person (Pywell: 2019, see also Sigafoo: 2016). Those from disadvantaged backgrounds for example lower socio-economic and ethnic minority backgrounds with little exposure to the legal system and/or the law, are more likely to be at a disadvantage compared to their better-off peers. In Bi (2019) we learn how in her navigation of the Employment Tribunals, despite financially qualifying for support Bi was denied legal aid due to her having obtained a degree from the University of Oxford. In her appeal to the Legal Aid Agency, Bi (2019) argued that while she was indeed 'educated', her education did not relate to Law, and therefore she was wholly unqualified to represent herself, and required assistance. Despite several appeals and support from her MP, the Legal Aid Agency denied her application for legal aid. As a British Muslim woman of Kashmiri heritage and low socio-economic background, Bi (2019) felt there was a 'cherry-picking' of her identities to suit the aims and objectives of individual parties. This entanglement of multiple identities and marginalities (see Bi: 2021c), deprives individuals from such backgrounds and trajectories access to the Equality Act, in order to see its materialisation for social justice. Bi (2019) shows how the Equality Act is empowering in theory, but disempowering in practice, which is exacerbated by the competing nature of one's multiple identities, pitting one's socio-economic and financial background against their recently acquired educational background and social mobility, which is yet to experience social capital translation (see Bi: 2020b). In this way then, individuals from such backgrounds are denied social mobility, which increasingly becomes a distant reality.

It is such entanglements that create further entanglements, such as the displacement litigants in person experience due to the inequality within the legal practice which serves as a battleground for legal professionals to distinguish themselves and thereby LiPs are undermined (Leader: 2020). A cultural shift in the way the LiPs are treated in the courts can further limit access to the Equality Act, rendering it ineffective. The strain on mental health for litigants in person (Pywell: 2019) is also acute, denying them not only access to justice during the litigation process but also in the aftermath of litigation. In other words, if enforcing the Equality Act and seeking justice within its framework exacerbates additional protected characteristics such as disabilities – particularly mental health – how effective is the Act? There must be a consideration of the broader parameters within which the Act is situated. If the conditions around the Act further complicate experiences of discrimination and limit equality, we must consider the provisions that can be put in place for those seeking to access and enforce the Act, and prevent their vicarious victimization and marginalization for doing so.

In 2017 we witnessed a landmark decision by the Supreme Court, which proved to be a milestone for access to justice. In the case of *WR (on the application of Unison) v Lord Chancellor* in the Supreme Court found that the Government could no longer burden claimants with a fee of £1,200 to bring a claim against an employer, as it was a serious impediment to access to justice. The Government was required to cease employment tribunal fees immediately after the judgement and contact claimants who had paid the fees, to issue each individual a refund. The findings from this case should become a foundation upon which the fees system as a whole should be reconsidered. For example, beyond the Employment Tribunals, the County Courts, Court of Appeal and Supreme Courts also require fees to be paid in order to file claims. For equality legislation to be accessible equally and serve its purpose effectively for all, the fees regime must be reconsidered. In addition, the cuts to Legal Aid must be reconsidered for employment matters, as the existence of an Equality Act which protects people from discrimination in employment, is in many ways annulled by the lack of provision to bring such claims.

4.3.5 Blindspots

While the Equality Act Review is known and practiced by organisations and companies – albeit to varying degrees – in recent years, new forms of business models (such as the gig economy) have made it possible for the exploitation of workers. Examples include low wage, lack of breaks, precarious employment status, lack of sick pay and holiday pay and more. In 2018, the Supreme Court ruled in favour of Mr Smith who was employed by Pimlico Plumbers as an ‘independent contractor’ who suffered a heart attack as a result of which, required to reduce his working hours. An Employment Tribunal, Court of Appeal and Supreme Court ruled that is protected by equality law. A key factor involved in the decision making was the wearing of company uniform and driving of the company vehicle which indicated employee status as opposed to contractor status (see also EHRC: 2018). In another notorious case which has seen litigation for the best part of five years beginning with *Uber v Aslam* and others in 2016, in February 2021, the Supreme Court ruled that Uber workers are entitled to workers’ rights, which included minimum wage and holiday pay (Butler: 2021). While cases involving large companies appeal to the news cycle, smaller businesses in the inner-city areas, which also fail to uphold equality law, are seldom recognised for their breaches. Bi’s (2019) doctorate research explores the case of migrant husbands in the city of Birmingham who experience harsh working conditions in takeaways, restaurants, butchers and supermarkets, who experience difficult working conditions in that they lack lunch breaks, are offered less than minimum wage at often one pound an hour, which falls severely short of the national minimum wage, in cases of personal injury are not protected due to lack of payroll visibility, as the employment offered cash-in-hand. The government must do more to ensure that all businesses regardless of their size, uphold and practice equality legislation for their workers, which includes dignified working conditions. While the Modern Slavery Act (2015) has been

widely publicised, employees in the aforementioned circumstances do not qualify for protection under these circumstances. Thus, the Modern Slavery Act (2015) and Equality Act (2010) must be combined to protect vulnerable workers, who may not necessarily be coerced or forced into labour, but experience difficult working conditions which are not in accordance with equality or human rights legislation.

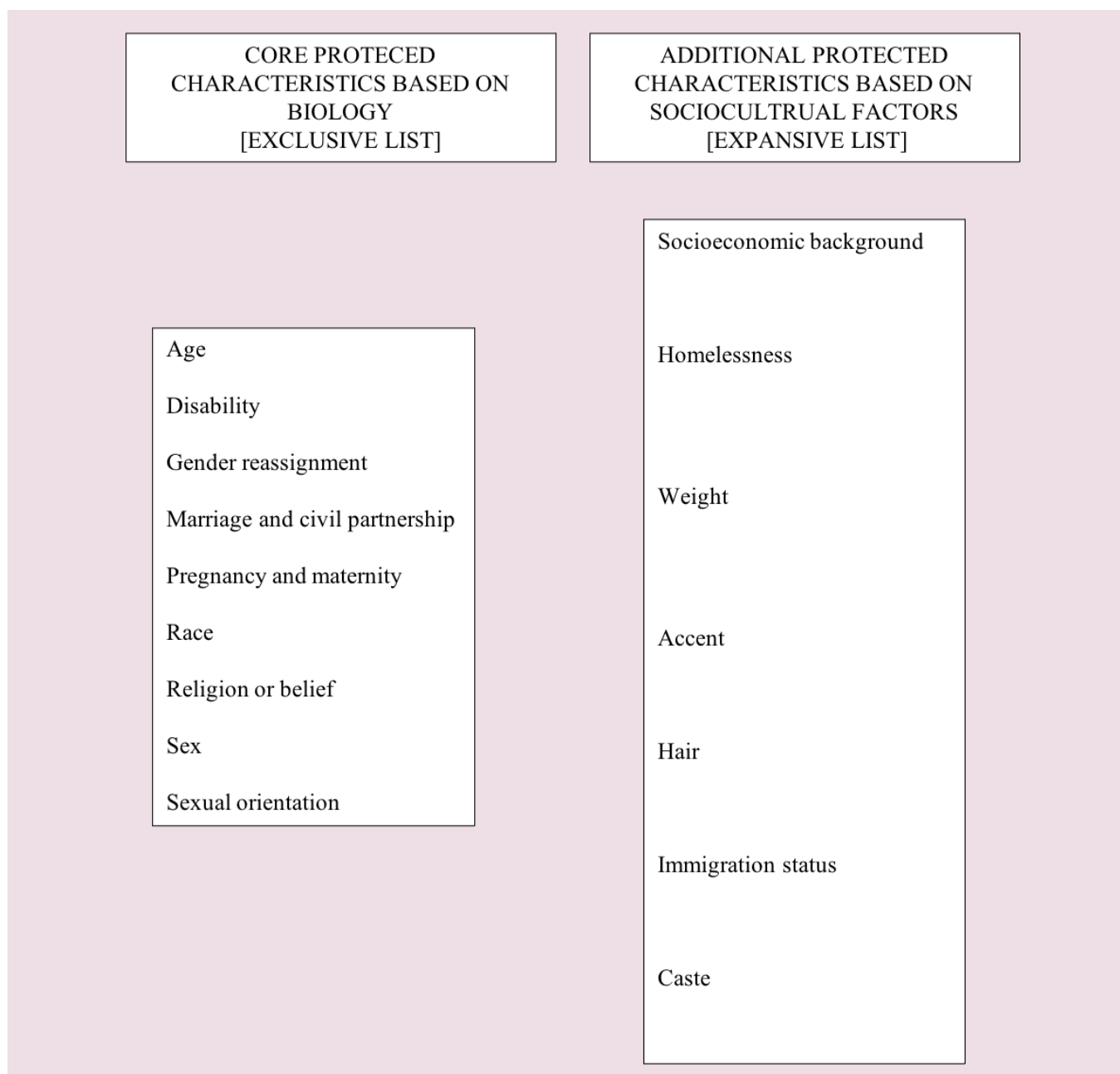
DISCUSSION

The report thus far has presented potential for further reforms for the Equality Act 2010 in three key ways; first to strengthen the existing legislation and protected characteristics, second to enforce the unenforced aspects of the Act, third to add new protected characteristics, fourth to consider enabling access to the Act by reconsidering legal aid cuts, and fifth to consider blind spots where the Act requires further awareness building and engagement activities to protect people from being discriminated against. Important questions have arisen through the trajectory of this task. For instance, in outlining the case for reforms to section 9 with regards to caste discrimination and when discussing the merits of including immigration as a protected characteristic, we presented the case of migrant men being subjected to domestic violence as a result of the weak positions they come to acquire in and through marriage migration (which also occurs with migrant women), the question of whether the Equality Act should be extended to the realm of the personal surfaced. Currently, the Equality Act's remit pertains to the public sector and employers, its extension to the realm of the private (such as marriage) has been an unintended consequence of our review task. While it is beyond the scope of our current report, we will continue to contemplate and deliberate on this particular subject.

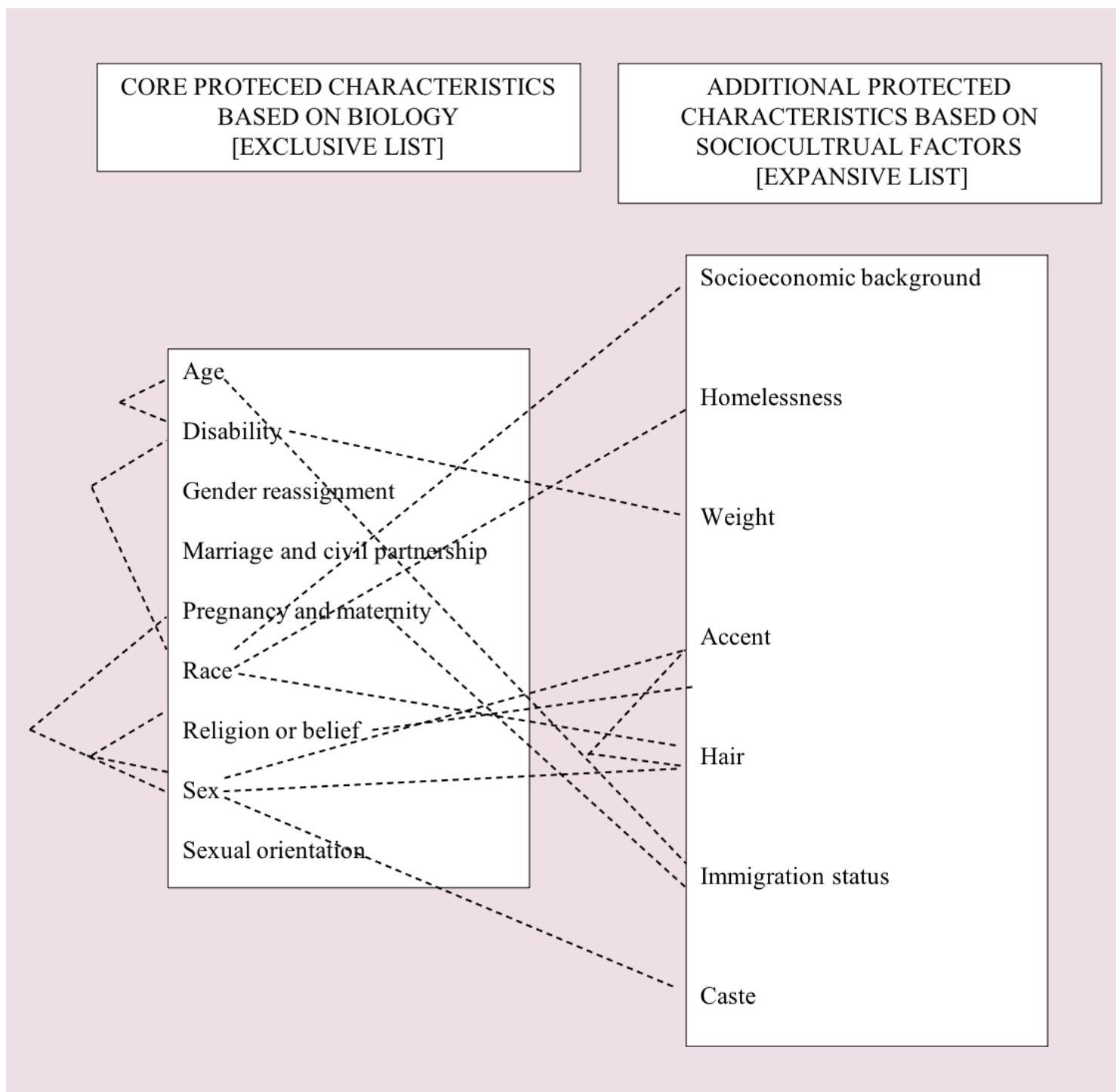
An additional possibility of further expanding the theoretical underpinnings of the Act include destabilising the binary between indirect and direct discrimination by introducing 'contextual discrimination'. In *Bi's* (2019) case, the Employment Tribunal Judge refused religious discrimination claim due to a hypothetical comparator of a Jewish or a Christian woman being treated the same way (i.e. unfairly dismissed and victimized). However, *Bi* (2019) argues without the existence of three key factors, namely, a visible marker of identity such as the hijab in the case of the Jewish or Christian woman, a trojan horse affair equivalents where the perpetrators were from the Jewish or Christian communities, and a 9/11 equivalent where the perpetrators were from the Jewish or Christian community, the Jewish or Christian comparator would not have been subjected to the same treatment. This case raises a compelling question; can there only be direct and indirect forms of discrimination? Does the notion of indirect and direct forms of discrimination posit a binary where discrimination may not necessarily conform to binaries? Such a theoretical advancement of Equality law could further empower marginalised communities with a broader, more inclusive, and representative equality legislation.

A further area of concern is the exclusive list of protected characteristics upon which UK legislation operates. We believe this list primarily protects characteristics that are

biological or biologically related, omitting thereby the socio-cultural aspects of human life. We therefore call for both an inclusive list of protected characteristics to be introduced and the ability for intersectionality within this inclusive list. In the two diagrams below, we demonstrate a model for a revised Equality Act which accommodates for the aforementioned amendments.



The above diagram outlines two streams of protected characteristics; the column on the left maintains the nine protected characteristics based on and/or rooted in biology, the column on the right includes newly added protected characteristics. This model allows for the UK equality legislation to align with the South African and Canadian contexts which comprise a wider range of protected characteristics. As we know from the literature review and findings section of the report, protected characteristics are identity markers that do not operate completely in isolation from other identity markers and aspects of human identity. The next diagram demonstrates the intersections between these two columns that would enable multiple grounds of discrimination to be brought forward.



The diagram above demonstrates the intersectional aspects of protected characteristics. For instance, a case of discrimination may comprise of discrimination on the grounds of race and socioeconomic background, regional background and accent, sex and caste, religion or belief, weight and socioeconomic background, pregnancy and maternity and immigration status, and so on and so forth. It is important to highlight that we have also suggested amendments to the current protected characteristics listed in the column to the left as part of the reforms. Examples of reforms include allowing for alcohol dependence to be recognised as a disability, racialised groups to be recognised as part of race, and misogyny to be included within sex discrimination to ensure the legislation is water-tight for employment and public sector organisations as well as public spaces, to name a few.

CONCLUSION

The concept of an Equality Act Review emanated from the lived experience of the founder of the Equality Act Review, Dr Suriyah Bi who was exposed to the shortcomings of the Equality Act through struggling to acquire justice in the Employment Tribunals. In envisaging the task, the organisation was born to facilitate and foster the review. At the time of writing, this review has been almost six years in the making, as the founder's struggle in the Employment Tribunals began in 2015 and continues in 2021.

In this report we have set out the parameters of the review by considering a literature review of the discourse over the past decade which has allowed a broader understanding of the various discussions that have ensued in this time frame. There has however, not been a review the size and scale of the current project.

We have presented the case for three key reforms to be made to the Equality Act:

1. First, strengthen current protected characteristics including disability, race, and religion or belief, and sex. For disability, we presented evidence that the DWP were discriminating against a bereaved widow by withholding bereaved widows allowance despite her deceased husband being a long-term disabled person. With regards to race, we argued that racialised groups should also be include in section 9 of the Act. For religion, we argued that 'perceived religion or belief' should be added to Section 10. In regards to sex, we argued the Act should be amended to reflect recent change in legislations that provided misogyny with hate crime status, to ensure that misogyny in the workplace is also addressed in the same way. We also ask that companies with less than 250 employees also report their gender pay gap on an annual basis, a requirement currently only reserved for organisations with over 250 employees. Regarding sex, we also called for fathers to be provided shared parental leave on full pay.

2. Second, to enforce currently unenforced provisions within the Act such as Section 1 Socioeconomic Duty, Section 14 Dual Discrimination, and Section 9 Caste discrimination. For Socioeconomic Duty, we argue that the rise in poverty levels and simultaneous deterioration of longevity outcomes which are positively correlated with poverty levels, it is necessary to ensure we can equalise the experience of life span, health, and the quality of life. Regarding Dual Discrimination, Section 14 has not been enforced due to the cost to businesses, however, we have presented strong evidence as to intersectional discrimination. Further, the Candian and South African

equality legislations are model forms of equality law which allows for multiple discrimination claims to be brought. This is particularly important, as human beings are complex beings and rarely are solely one identity marker at any given time. In relation to Section 9 and Caste discrimination, the Government has decided not to enforce this as there are few cases brought forward. However, through our research we have presented ethnographic data that supports Caste extending beyond Hindu communities to a broader set of South Asian communities in the UK, and the impact of caste discrimination on people's livelihoods as well as marital choices.

3. Third, to introduce new protected characteristics including socioeconomic background, homelessness, weight, accent and regional background, hair (style and texture) immigration status, and caste. We make the case for new protected characteristics to be added to the Act due to the current protected characteristics being largely related to and/or rooted in biology. Human beings are complex individuals and their sociocultural and socioeconomic background affects also contributes to attitudes, prejudices, and stereotypes which can also lead to discrimination. We presented data linked with weight, accent and regional background, immigration status, and caste and recommend that the UK Equality legislation develop a two-strand model of protected characteristics, one strand which supports the biology related and current list of protected characteristics, and the second strand which includes the sociocultural and socioeconomic identity markers that can give rise to discrimination. This two-strand model also accommodates for intersectionality, cross-links within and between the two strands can occur, and be reflected in legal application of the Act.

4. Fourth, access to the Act must be protected in that complex socio-legal factors such as high fee rates for filing cases in all courts must be reconsidered, as well the cuts to legal aid, which render the Act as functionless if those who require protection do not have the means to exercise its purpose.

5. We ask that the Act accommodates for blind spots such as the unregulated employment market such as the gig economy. We present research that demonstrates workers in the restaurant and takeaway industry face exceptionally difficult working conditions, severely under-paid and not provided rights to lunch breaks as a few examples. We ask that the government ensures that all businesses regardless of their size and nature to adhere to the Equality Act.

6. Finally, we suggest extending the Act's application beyond the binary of indirect and direct discrimination to consider context-based discrimination. In the discussion chapter of the report, we considered whether the binary between direct and indirect discrimination should be interrogated. We agreed that discrimination law should

operate beyond binaries and consider context-based discrimination too as cited by Bi (2019) in the case of *Miss Bi v EACT*. The above mentioned suggestions emanate from the current size and scale of the review, which has been conducted based on limited resources. The Equality Act Review aims to conduct regular and further reviews of the Act, and views the review as an iterative process. We also aim to publish a second public consultation in the coming years to further understand areas of improvement for the Act. We look forward to engaging current and future governments in relation to bringing into being the highlighted reforms in this report. The adoption of such a model for UK equality legislation would allow for equality law to mitigate for institutional and systematic inequalities to be reduced, paving the way for a more equal and fair society.

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