



Potential Intersectional Discrimination Cases

Citizens Advice research for the
GEO

May 2009

Contents Page	
Executive Summary	3
Introduction	4
Research Methodology	6
Quantitative Findings	8
Number of cases	8
Field of discrimination	8
Combinations of protected characteristics	8
Dropped grounds	11
Analysis of Direct Intersectional Cases	12
Number of characteristics	12
Status of cases	12
Analysis by characteristic, sector and industry	12
Forms of Direct Intersectional Discrimination	15
Consequences of lack of legal protection	17
Indivisible intersectional discrimination cases	17
Difficulties with comparators	18
Difficulties with grievances	19
Complaint process	20
Changing the legislation	21
Outcomes of cases	21
Likelihood of settlement	22
Vexatious Claims	22
Client experience of the redress seeking process	23
Other findings	24
Harassment and indirect discrimination	24
Indirect discrimination	25
Harassment	25
Pregnancy and maternity	26
Marriage/ Civil Partnership	27
Conclusions	28
Appendix One – Glossary of Key Terms	30
Appendix Two – Direct Intersectional Discrimination case studies	32
Appendix Three – Research Questionnaire	35
Annexe One – Analysis of cases	39
Annexe Two – Analysis of Other Findings – Out of Scope cases	43

Executive Summary

In April 2009, the Government Equalities Office (GEO) commissioned Citizens Advice to conduct research to identify the potential for intersectional multiple discrimination cases. The research aimed to:

- gain a greater understanding of the potential for intersectional multiple discrimination cases, and further background on the nature of these claims;
- examine what has been the experience of those individuals who feel they have been subject to intersectional discrimination, both in relation to the protected characteristics included in the combined discrimination they have experienced and their experience in seeking remedy; and
- create a wider example base of intersectional multiple discrimination.

In summary the research found:

- 7.7% of discrimination cases were estimated to involve more than one protected characteristic, with 4% involving intersectional discrimination, the majority of cases are in the field of employment.
- Multiple discrimination takes forms that are specific to the individuals' particular combination of characteristics, for example Black men being subjected to stereotypes and prejudices relating to sexual prowess and aggression, resulting in discrimination against them.
- Clients with discrimination issues were most likely to have experienced unfair or constructive dismissal, or unfair treatment in grievance and complaints processes. Specific combinations of characteristics also faced specific forms of unfair treatment, for example older disabled workers singled out for redundancy.
- Advisors report significant inadequacies exist with the current provision that requires multiple discrimination cases to be dealt with on one or more individual ground. In particular it can be impossible to separate particular combinations of prejudice and stereotypes and subsequent less favourable treatment into specific separate legal cases. It can therefore be impossible to prove discrimination has taken place.
- In addition, the requirement to use comparators under the separate grounds enables the employer to deny less favourable treatment, no matter how they have actually treated their employee.

Introduction

In *Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*¹ the Government recognised that many people were calling for protection from multiple discrimination and asked for evidence of people having difficulties in securing legal redress in such circumstances. Many of those responding to the consultation highlighted the problems the absence of any multiple discrimination provision can cause and argued that the law must be changed to reflect the fact that people's identities are multi-faceted and complex.

In the Government's white paper *Framework for a Fairer Future – The Equality Bill*² and in the Government's response to the consultation, *The Equality Bill – Government Response to the Consultation*³, the Government committed to further explore how they could allow multiple discrimination claims to be brought without making the law overly complex and unduly burdensome on those with responsibilities under the law.

In April 2009 the Government Equalities Office (GEO) published a discussion document *Assessing the impact of a multiple discrimination provision*⁴, seeking views on the implications and impact of including a provision to protect people from multiple discrimination⁵.

The document proposed a provision for multiple discrimination which would enable direct discrimination claims to be brought which combined two of the following protected characteristics:

- Age
- Disability
- Gender reassignment
- Race
- Religion or belief
- Sex
- Sexual orientation.

For a claim to be successful, the claimant must be able to demonstrate that less favourable treatment occurred *because of* the combination of characteristics alleged.

The provision which the GEO described excluded claims for pregnancy and maternity or marriage and civil partnerships as well as claims involving indirect discrimination and harassment. Any claims of victimisation would be considered

¹ Available at www.equalities.gov.uk/PDF/DLRConsultation.pdf

² Available at www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf

³ Available at www.equalities.gov.uk/PDF/EqBillGovResponse.pdf

⁴ GEO, "Equality Bill: Assessing the impact of a multiple discrimination provision A discussion document." April 2009.

⁵ Equality Bill 2008 -09 [Bill 85] as introduced in the House of Commons on 24 April 2009.

under other provisions as they relate to specific protected acts, rather than relating to protected characteristics.⁶

To support their considerations, the GEO commissioned Citizens Advice to conduct research with front line Citizens Advice Bureau Advisors to:

- gain a greater understanding of the potential for intersectional multiple discrimination cases , and further background on the nature of these claims;
- examine what has been the experience of those individuals who feel they have been subject to intersectional discrimination, both in relation to the protected characteristics included in the combined discrimination they have experienced and their experience in seeking remedy; and
- create a wider example base of intersectional multiple discrimination.

⁶ GEO, "Equality Bill: Assessing the impact of a multiple discrimination provision A discussion document." April 2009 p.14

Research Methodology

54 Citizen Advice Bureaux (CABx) were contacted, and 30 appointments for interviews were made during May 2009. In some instances more than one Advisor was interviewed from the same Bureaux. A total of 23 structured telephone interviews provided useful data for the study.

A set of research questions was agreed by the GEO and Citizens Advice. These provided the structure for the interviews. A copy of the questions can be found at Appendix Three.

There were two parts to the questionnaire. The first part asked Advisors to estimate the total number of discrimination cases seen during the last year and to consider and estimate the potential for direct intersectional discrimination cases. The second part of the questionnaire was a structured analysis of a sample of cases Advisors had worked on.

Before each interview, the GEO definition of multiple intersectional discrimination was read to the interviewee, who confirmed that they understood the definitions used throughout the questionnaire. The definition is as follows:

Multiple discrimination occurs when a person is treated less favourably because of more than one of the protected characteristics. It can be experienced in several different ways. When the discrimination involves more than one protected characteristic and it is the unique combination of characteristics that results in discrimination, in such a way that they are completely inseparable, then this is known as intersectional multiple discrimination and the current discrimination law framework does not always provide a remedy for it.

For example, a Black woman passed over for promotion by her employer because she is a Black woman would have to bring separate claims of discrimination because of race and sex. However, she may not succeed in either claim if her employer can show that Black men and white women are not discriminated against and therefore her treatment was not because of race or sex alone.

All specific cases were provided by interviewing caseworkers in the local Citizens Advice Bureaux (CABx). Not all of the interviewees had a central data set available to them to provide evidence as required in the first part of the questionnaire. As such the figures in this report are accurate from the information we received. For example, there were 55 cases identified as potential intersectional discrimination but, in only 52 of these the protected grounds were identified, and Advisors only provided further case specific detail in 28 cases. Of these 15 cases met the GEO definition.

When comparing the total estimated discrimination case figures to Citizens Advice centrally held data sets for the individual CABx, there were no significant variations in relation to total number of discrimination cases estimated and total cases recorded at their CABx. In general Advisors underestimated the number of discrimination issues seen in their CABx. One CABx over estimated discrimination issues by *n.7*.

Overall due to high number of underestimations, all figures reported as estimates were included.

There was also no significance in the characteristics of the intersectional cases reported when compared to the overall recorded Equal Opportunities profile of the local area and the CABx. This indicates no significant trends in the individual CABx profile to suggest the results of our findings are influenced, for example, by the high density of specific communities.

Sexual orientation and religion and belief data is not collected in all cases other than where it pertains to the discrimination being experienced, so it is not possible to validate these cases against Equal Opportunities Profiles. For the purposes of the research we have therefore assumed they are valid.

We have assumed for this research that all estimated cases are valid and reliable, as is the more detailed specific case data.

Due to confidentiality and privacy clauses in settlements or because the case is live and ongoing, we cannot publish all of the interviews or cases or provide a cross referenced list of evidence attributable to individual CABx. Cases and interviews marked with an asterisk * identify evidence which contributed to the research, but which cannot be published in full for these reasons. The following referencing is used throughout: C indicates a case, whereas I indicates an interview.

Citizen Advice Bureaux interviewed for the research

The following CABx provided data for the study:

Barking and Dagenham	Plymouth
Bristol	Royal Vale
Charnwood	Salford
Denbighshire	Solihull
Dudley	Southampton
Great Yarmouth	Stevenage
Hull	Warrington
City of London	West Wiltshire wide
Maidstone	Wolverhampton
Newport	Worcester

The authors would like to thank and acknowledge all those who gave up their time to contribute to the research.

Quantitative Findings

This section gives the findings from the Advisors' estimation of the total number of discrimination and intersectional discrimination cases seen in the last year.

Numbers of cases

From the 23 interviews, the total number of discrimination cases seen in a year was estimated at 1375.

In total, 7.71% (*n.106*) of cases were estimated as involving more than one protected characteristic in the discrimination.

4% (*n.55*) of these estimated cases were identified as potentially involving intersectional discrimination, that is discrimination where two or more protected characteristics result in discrimination in one instance.

3.71%, (*n.51*) of the these estimated cases can be regarded as additive cases; where there are two or more instances of discrimination involving two or more protected characteristics.

Field of discrimination

Of the total estimated intersectional cases 80% were in employment, 6.67% in education and 13.33% involved public functions (all were cases involving the Police). From these figures it should not be assumed that there are less instances of discrimination in non-employment areas, rather, the figures reflect the limited advice provision available.

Combination of protected characteristics in intersectional discrimination cases

In 52 of the estimated intersectional discrimination cases Advisors identified the protected characteristics: 88 % involved two of the protected characteristics; and 12% involved three or more of the protected characteristics.

Of the estimated 15 different combinations of discrimination reported: 8 of these cases involved race and another characteristic; sex and disability was involved in 7 of the combinations; and age was involved in 6 combinations.

Intersectional discrimination cases involving religion and belief always involved race and were specific to people who are Asian and Muslim.

In cases involving more 3 or more grounds 75% involved a race claim, with 66% of these cases involving an age and/or a disability claim.

Table 1 overleaf outlines the combinations of protected characteristics.

Table 1: Estimated intersectional cases and combination of protected characteristics

Combination of protected characteristics	Number of cases involving 3 characteristics	Number of cases involving 2 characteristics	% of total estimated cases
race/religion		13	26.00%
race/sex		12	24.00%
race/disability		5	10.00%
sex/disability		4	8.00%
age/disability		4	8.00%
race/disability/age	2		4.00%
age/race		2	4.00%
age/sex		1	2.00%
age/sex/disability	1		2.00%
disability/sex orientation		1	2.00%
race/religion/age	1		2.00%
race/sex/disability	1		2.00%
sex/sex orientation		1	2.00%
race/religion/disability	1		2.00%
sex orientation/race		1	2.00%
Total number of cases	6	44	100%
% of total number of estimated cases	12.00%	88.00%	100%

Dropped grounds

17% of the estimated intersectional cases dropped one ground of discrimination during the resolution process. Analysis showed that common reasons for dropping one ground include: the tribunal not accepting one ground due to it not having been raised at the grievance stage by the employee or being incorrectly stated by the employee at this stage; difficulties with comparators; legal difficulties when separating out the treatment to prove discrimination on both grounds; and clients' fears of stigma and embarrassment caused by potential public exposure, particularly in relation to sexual orientation.

Had more intersectional cases not settled prior to an Employment Tribunal (ET), the proportion of cases which dropped one ground before an ET is likely to be higher. A direct effect of few two or three ground discrimination cases proceeding to court is that there is very little case law.

Analysis of Direct Intersectional Cases

This section gives the statistical findings from the detailed analysis of the cases that, when looked at in detail, met the specific GEO definition of direct intersectional discrimination. Of 29 case studies recorded by the researchers:

- 15 cases met the GEO definition of direct intersectional discrimination and were explored in more detail.
- 11 of the 15 cases that met the GEO definition also included incidents of harassment - 9 in employment and 2 in public functions.

The other 14 case studies gathered fell outside the scope of the study and were either a combination of indirect and direct intersectional discrimination; were intersectional harassment cases; were additive cases or were pregnancy cases. These are explored in more detail in the 'Other Findings' section.

Number of characteristics

Of the 15 cases identified which met the GEO definition of direct intersectional discrimination: 20% involved three protected characteristics; the other 80% involved two protected characteristics (there were a notably higher percentage of three characteristics in the actual cases studied by the researchers than in Advisors' estimations above). The combination of sex and race was present in over a quarter of the cases identified, followed by age and race cases. See Table 2.

Status of cases

Currently 33.33% of the direct intersectional cases examined are ongoing. Of the closed direct intersectional cases, 33.33% settled prior to an ET hearing, 16.67% of cases were lost by the claimant and 16.67% of claimants dropped their cases during the remedy seeking process. For the purpose of our analysis we have assumed that the 13 employment cases which are presently in settlement negotiations will settle.

Analysis by characteristic, sector and industry

20% (*n.3*) of the cases involving direct intersectional discrimination in employment were found in the manufacturing industry, with events and hospitality and catering providing 13.3% of cases respectively (*n.2*).

Public function cases involving direct intersectional discrimination involved a secondary school, the Police and social security provisions. See Table 3

100% of manufacturing cases (*n.3*) involved direct intersectional discrimination on grounds of race and sex.

53.3% of the direct intersectional employment cases involved race in combination with another characteristic (*n.8*); 26.6% of cases involved sex in combination (*n.4*);

26.6% of cases, involved disability in combination (*n.4*); 20% of cases involved age (*n.3*) and 13.3% (*n.2*) of cases involved sexual orientation.

In 100% of public function case (*n.3*) race was a characteristic involved in the direct intersectional discrimination, and in two out of the three cases race was combined with religion.

See Annexe 1 for more information and tables of analysis.

Table 2: Direct intersectional discrimination cases and protected characteristics.

Field	Protected Characteristics	Number of cases involving 2 characteristics	Number of cases involving 3 characteristics	% of total number of intersectional cases
Employment	sex/race	4		26.6.%
Employment	age/race	2		13.33%
Employment	race/religion	1		6.67%
Employment	age/disability	1		6.67%
Employment	sexual orientation/sex	1		6.67%
Employment	disability/sexual orientation	1		6.67%
Employment	age/disability/ race		1	6.67%
Employment	race/ religion/ disability		1	6.67%
Public Functions – Social security	race/disability	1		6.67%
Public Functions – Police	race/ religion	1		6.67%
Education – General secondary	age/race/religion		1	6.67%
Total number of cases		12	3	
% of total cases		80%	20%	100%

Forms of Intersectional Discrimination

The following referencing is used throughout: **C** indicates a case, whereas **I** indicates an interview. Cases which correspond to these references can be found at Appendix Two. Due to confidentiality issues we cannot publish detailed case studies of cases which are live as indicated by an asterisk, and we cannot publish a list of Advisors cross referenced to the interviewee number.

The study identified discrimination which was very specific to the individuals' particular combination of characteristics. The study found evidence of

- Black men being subjected to very specific stereotypes and prejudices relating to sexual prowess and aggression which had resulted in harassment and discrimination. (C2, C4)
- Muslim Asian males being subject to 'terrorist' stereotyping, harassment and discrimination in the workplace, in education, while travelling and in respect of public functions (the Police). (C6*, C9, C10*, C12*, C13*, I8, I9)
- Cumulative hostility based on a combination of misogyny and prejudice against people with mental health problems: a woman who developed a mental health problem experienced discrimination due to her being labelled 'a mad woman'. (I16)
- Gay people who don't conform to gender norms face a form of gendered homophobia not faced by gay people who do conform. For example a gay man is dismissed from his job because while they have no problem with homosexual staff the employer believes he acts too feminine. (C15*)
- Being young, disabled and mixed race resulted in disbelief and extensive questioning about their education and qualifications. (C7*)
- A gay disabled man reportedly dismissed because it was 'not right' for disabled people to have a sexual identity. (C1)
- A woman's age and race not taken into account when investigating a grievance that might have been recognised had direct intersectional discrimination been available. (C8)

The study also found trends which identified where direct intersectional discrimination would most likely occur. The study found that clients with harassment and discrimination issues were most likely to have experienced:

- Unfair treatment in the grievance and complaints processes. (C3, C4, C8, C9, C12*, C13*)
- Unfair or constructive dismissal. (C5, C6*, C7*, C10*, C15*)

For particular groups there were specific types of discriminatory treatment. This included:

- Non payment of wages for young overseas workers. (C11)
- High rental and agency charges for overseas female workers. (I21)
- Singling out older disabled people for redundancy. (I22, I17)
- Making older disabled employees retire rather than making them redundant. (I22, I17)

- Increased and unfair scrutiny of an older disabled employees' capability. (I22, I17)

Being a migrant worker, being pregnant and having poor mental health were all factors which, when combined with another characteristic, made clients very vulnerable to additive and intersectional harassment and discrimination.

Consequences of lack of legal protection

The study identified instances where direct intersectional discrimination cases were detrimentally affected by and at risk of being lost as a result of the current legal framework.

In cases involving direct intersectional discrimination, Advisors reported that:

- It can be impossible to separate particular combinations of prejudice, stereotypes and subsequent less favourable treatment into specific separate legal cases, particularly in cases involving less favourable treatment on grounds of race and religion (C6*, C9, C10*, C13*, I8, I9); race and sex (C2, C4); race and disability (C12*); and race, age and disability (C7). Consequently, solely on technical grounds, it can be impossible to prove discrimination has taken place.
- The requirement to use comparators under the separate grounds enables the employer to deny less favourable treatment, no matter how badly they have actually treated their employee. (C1, C5, C6*, C14)
- Employees who do not know they must clearly specify both grounds when raising a grievance, can later be prevented from taking their case to the ET with both grounds, despite the fact that most have no access to advice at the grievance stage. If multiple discrimination were covered by law employees experiencing it would be more likely to raise it in the grievance process. (C4)

These issues are explored in more detail below.

Indivisible intersectional cases

The study identified cases where direct intersectional cases could be lost due to the limitations of the current legislative framework. In cases involving prejudice, stereotypes and discrimination on a combination of grounds, it can be almost impossible to establish, as is currently required, whether such treatment would be regarded as discrimination by an ET on any individual prohibited ground. Advisors felt the requirement to take separate cases in direct intersectional discrimination cases often meant courts and tribunals were being straight-jacketed by a restricted definition of discrimination and could not take account or reach a conclusion on the full facts of such cases.

This was most clearly demonstrated in cases involving discrimination on grounds of race and religion and belief. In these cases Advisors indicated that they found it was almost impossible to separate the less favourable treatment into either race or religious discrimination. One respondent commented

“It was very difficult to determine whether the harassment and subsequent less favourable treatment [discrimination] was motivated by her headscarf (religion) or by her race. Are comments such as “We hate your people” racially or religiously motivated?” (I18)

Similarly in a case involving disability and ethnicity, where there was evidence of discrimination by a public function, the Advisor said

“It would be almost impossible to prove in court which ground is provoking the less favourable treatment: is the less favourable treatment for a reason relating to her

disability? Due to her race? Or due to her specifically because she is disabled and of that particular ethnic group?” (C12)*

In the case of a gay man who was regarded as not conforming to a gender norm, the Advisor reported

“The evidence of discrimination in this case is strong, however the choice of ground to present at an ET is more challenging – it’s not clear cut as to whether this is a sexual orientation or sex discrimination claim. Being able to use intersectional discrimination would for this case make it much easier to point to the discrimination. As it stands it may be that this case will fall through the gap” (C15)*

In another case involving a gay disabled man, the Advisor felt that the case would have been stronger had he been able to use intersectional discrimination

“as it was the two characteristics i.e. the man’s’ sexual orientation and disability, which determined his identity and it was both of these characteristics which had led to the employer no longer wanting to employ him. Had he just been gay or just been disabled, he would probably still have a job.”(C1)

In addition Advisors reported that in these cases there were difficulties in having to separate the grounds when preparing and presenting evidence and the legal case. Advisors considered that this diluted the strength of the case overall.

“in trying to separate out the grounds to prove the treatment you tend to lose the emphasis and the essence of the discrimination. You dilute both the issues and the treatment, with the consequence that you may end up presenting two weak cases and losing both’ (I20)

One Advisor summed it up

‘Because intersectional discrimination is not recognised in a court of law at present, a possible course of argument is not available. Thus the employer is enabled to deny the discrimination occurred.’ (I23)

Difficulties with comparators

The study identified that in direct intersectional discrimination cases, having to work within the current legislation with its requirement for single-ground comparators meant that employers were able to deny cases of discrimination.

The following cases explicitly identified the lack of appropriate comparator as an issue.

- After being told by his employer that he was getting “too old and slow”, a 50 year old disabled construction worker started to have his capability intensely scrutinised. At this time he started to receive orders to go to jobs which required two people, and although this was common practice in the organisation, he had not been required to do such jobs previously. Had this case got to court the Advisor believed the case would have been lost as the employer could have compared the client’s treatment to a younger disabled worker and an older non-disabled worker, making discrimination hard if not impossible to prove for technical reasons. (C14)

- A white British woman was working for a small manufacturing company. After the management of the company was transferred to Indian men she began to be treated less favourably by not being invited to meetings necessary to her role, having her views and authority undermined and being unfairly criticised for her work. This culminated in her being dismissed. Although the discriminatory treatment stemmed from her being a white British woman and her employers' specific prejudices against white British women, the case would have lost at the Employment Tribunal. The employer would have been able to defend the discrimination claim through comparing the client's treatment to that of a Black woman and a white man. (C5)
- A gay disabled man was dismissed from his job in a Housing Association. This was alleged to be for reasons of poor performance. The client strongly believed that the real reason for his dismissal was because he was a gay disabled man and the employer had taken a dislike to him, thus the client believed his combination of characteristics had resulted in him being dismissed. In this case the employer could have compared his treatment with a straight disabled colleague and non-disabled gay colleague and thus denied the discrimination was occurring. This case settled prior to the ET hearing; however had this case progressed to Employment Tribunal the Advisor felt that this case would have lost as an appropriate comparison could not be made. (C1)

In cases such as these, where there are concerns about comparators and where advice is available, Advisors will advise the client to settle prior to an Employment Tribunal. Early settlement means that the client is denied their hearing in court; compensation levels are reduced; the settlement remains private resulting in a lack of case law and as a result a lack of public awareness. Additionally Employment Tribunals would not be able to make wider recommendations regarding changes the employer must make (as is proposed for other areas of discrimination in the Equality Bill). Thus, as it stands, the law does not provide adequate remedy for these cases.

This undermines people's trust in being able to seek justice through the legal system: one client who had to settle prior to an ET due to this type of comparator issue was, the Advisor reported, *'furious that she had to settle'*. (I18)

Difficulties with grievances

The study found a number of cases where the direct intersectional discrimination was not identified at the grievance stage. This has serious implications for this study as often it is the individual who will raise a grievance without support and will not recognise the true nature of the discrimination, especially as the current law only addresses single characteristics. Currently, if after receiving advice and support a discrimination claim is lodged on two or more grounds the case can be lost at a pre hearing review as 'the employment judge did not think the grievance had been properly stated'. (I12)

- A Black man left his job after he raised a grievance which was not upheld. The client had raised a grievance following this claim of sexual misconduct. The client strongly believed that the sexual misconduct claim and the lack of appropriate investigation of his grievance were because he was a Black man. In this case the Advisor was clear that the client had been subjected to less favourable treatment because of the employer's prejudice against Black men and stereotypes relating to Black men and sexual aggression. (C4)

There was also evidence to suggest that when issues are identified, grievance investigations do not take into account different characteristics and how they intersect. Grievances may

therefore be dismissed when they might be upheld. For example:

- A young East Asian woman who worked in a multinational company had her grievance of sexual harassment dismissed. It was clear from the facts of the case that the harasser had deliberately exploited her age and race to facilitate situations after work where she could be sexually harassed. The Advisor was certain that her harasser knew that due to her age and race the client would not refuse invitations to social events; and the harasser engineered several situations where he could abuse the client. When the employer investigated the client's grievance, the employer found that as she had not refused social invitations she was 'complicit' in the harassment and they dismissed her complaint. In not considering the combined effect of her race and age when investigating the client's 'compliance' with the harassment the Advisor formed the view that the employer had directly discriminated against her on grounds of her age and race, by ignoring the fact that as a young woman from a particular ethnic background she would feel unable to refuse; and by expecting her reaction to be the same as that of an older British woman.(C8)

In these cases Advisors formed the view that had employers recognised intersectional discrimination earlier in the grievance process, investigations could have been more effective and court action would have been avoided, resulting in reduced costs for employers and the tax payer, and less stress and negative consequences for the employee. (I9, I12)

Complaint Processes

In Public Function and education cases involving a complaint of less favourable treatment, all Advisors were attempting to resolve the main issue through formal complaints procedures. Advisors will advise a client to outline the less favourable treatment and discrimination arguments in addition to the main complaint .e.g. failure to provide a Local Authority administered grant, to lever action from the service provider. (C9, C12*, C13*)

As with employment cases, Advisors felt that public authorities would take such complaints more seriously and would resolve them more quickly, if 'intersectional discrimination' was recognised as a form of prohibited discrimination. (I8)

In respect of both grievances and complaints

'Being able to use intersectional discrimination as a legally recognised term would, where multiple intersectional discrimination occurs, better identify the bad practice and strengthen the case from the outset – to have the terminology would aid grievances, complaints, and hearings' (I9)

Changing the legislation

Advisors were asked to consider whether changing the legislation to include direct intersectional discrimination would make a difference to the:

- Outcomes of cases
- Likelihood of settlement
- The volume of vexatious claims
- Client experience

Outcomes of cases

Advisors were asked to consider whether changing the legislation to include direct intersectional discrimination would make a difference to the outcomes of cases.

Of the total number of respondents, 48% felt that had they been able to use direct intersectional discrimination the outcomes of cases would have been different, implying they would have either not settled prior to, or they would have won at ET. This increased to 95.4% when the detailed intersectional cases were reviewed, for the reasons outlined above.

One respondent commented, being able to use intersectional discrimination

“Certainly would have simplified the process and given greater confidence of winning the case” (I15)

Some Advisors felt that if intersectional discrimination were allowed the Employment Tribunal would be easier to follow, with less bureaucracy, less lines of argument and less seemingly disjointed facts and evidence being presented. (I2, I4)

Of the total number of respondents, 9% did not think the outcomes would have been any different using direct intersectional discrimination. However, only one Advisor who had a direct intersectional discrimination case felt it would have made no difference, but this was due to legal technicalities i.e. time limits, rather than the unfair treatment experienced by the client. (I3)

44% did not know if the outcomes would be different. The high level of don't knows is due to Advisors feeling they were unable to comment without seeing the legal provisions first, one Advisor summed this up

“As with most things I cannot assess this until we have the small print and know what has to be legally established.” (I3)

Advisors were quick to point out that should the definition of intersectional discrimination be included in the law it would need to be accompanied by training and guidance for the public, intermediaries, the judiciary and ET panel members. (I14).

Likelihood of settlement

Advisors were asked to consider whether changing the legislation to include direct intersectional discrimination would make a difference to the likelihood of settlement.

39% did not know if using direct intersectional discrimination as a claim would result in an increase in settlements prior to a hearing; 13% thought the employer would be less likely to settle; 1% thought it would make no difference; while 33% thought employers would be more likely to settle prior to a hearing.

The high level of don't knows was due to Advisors feeling unable to comment without seeing the small print of the legislation.

33% of respondents felt that cases involving more than one claim would be more likely to settle before a hearing.

However, of the 13% who thought direct intersectional discrimination would result in the employer being less likely to settle was partly due to the specific strands involved in the case. For example Advisors reported that cases involving sexual orientation often do not get to a court hearing and do not settle before court

"particularly if they (the employer or service provider) believe the claimant will not welcome public exposure and loss of confidentiality about their sexual orientation." (I14)

Likelihood of settlement also partly depends on the employer's pre-existing stance:

"I found out later that this employer never settles" (I5)

"Depends on the solicitor – some will never settle" (I9)

"... it was a care home, and they always settle as they do not want to damage their reputation" (I10)

"Employer did not want to go to tribunal" (I2)

Vexatious claims

Advisors were asked to consider whether changing the legislation to include direct intersectional discrimination would make a difference to the volume of vexatious claims.

The majority (91%) of respondents considered all their cases to be genuine. This may in part reflect the nature of cases seen in CABx. The small number of vexatious cases tended to arise where a claimant had exhausted all other ways to challenge a dismissal. Advisors did not believe vexatious claims would rise if intersectional discrimination claims were allowed.

Client experience of the redress seeking process and outcome

Advisors were asked to consider whether changing the legislation to include direct intersectional discrimination would make a difference to the client experience of the redress seeking process and the outcome for clients.

57% of respondents thought that claimants' experience of the redress seeking process would be better if they had been able to use intersectional discrimination. 17% of respondents did not think it would make a difference and 26% of respondents did not know. The don't knows were again as a result of not knowing the detail of the legal provisions.

From the majority of respondents who felt that a direct intersectional discrimination provision would improve the redress seeking process for the client, respondents commented:

"Yes being able to use intersectional discrimination would improve the process. The claim would be more about the issue rather than the boxes that are ticked" (I11)

"Any circumstance attempting to bring a discrimination claim that makes the process for remedy easier would make a tremendous difference. It's very time consuming to prepare a (discrimination) case with three lines of argument involving three protected characteristics." (I14)

"It certainly would have simplified the process and given greater confidence to the client" (I2)

Other respondents who felt legal provisions protecting discrimination in intersectional cases would not make a difference to the client experience commented:

"A lot of the clients know they have experienced discrimination, but will rely on advice about the process. It goes over their head as to how it is run, they are mainly just angry with the situation and interested in the outcome. The whole experience is stressful and unpleasant and they would rather avoid it" (I11)

'No it would not make any difference. Their (the clients) experiences of the process is that the situation is coming back to haunt them. Most people hate the process and will drop out" (I14)

There was no opportunity within the scope of the research to seek the views of claimants directly about their experiences of the process and outcome. Not surprisingly, in the view of Advisors, claimants are reportedly satisfied when it appears there is a remedy available to them; however if the case is lost at the grievance or ET stage, or they have to drop a discrimination ground, they are likely to be less happy with the process.

Other Findings

This research focused on identifying cases that fit the proposed provision for direct intersectional discrimination i.e. direct discrimination occurring in the same instance due to the combination of two protected characteristics, excluding indirect discrimination and harassment and excluding the characteristics of pregnancy/maternity and marriage/civil partnership.

However, to the limited extent possible, the research did gather the views of Advisors and also identified a number of cases of multiple discrimination which fall outside the GEO's proposed legal remedy for intersectional discrimination. In total 14 additional cases involving combined characteristics and indirect discrimination and/or harassment were identified: 12 cases were in employment, 2 cases were in public functions.

Cases involving harassment and indirect discrimination

Overall, 65% of the Advisors raised the issues of protection from intersectional harassment and indirect discrimination, and 59% raised pregnancy and maternity cases. Advisors reported that if the legislation does not cover these issues at the intersectional level, cases will be needlessly complicated by the need to run part of the case under direct intersectional discrimination provisions and part of the case under separate strands. This would make cases about *'ticking boxes rather than the issues'* and dilute the full impact of the discriminatory treatment the person has experienced. (111). It would also mean that some of the most vulnerable workers, including migrant workers vulnerable to exploitation, could be denied fair access to justice.

From 14 additional cases which fell outside the scope of the GEO definition of direct intersectional discrimination:

- 9 cases involved intersectional harassment. 75% (n.7) in employment and 25% (n.2) in public functions involving the Police in both instances.

If the cases which involved direct intersectional discrimination and intersectional harassment cases are considered together:

- 69% (n.20) of all cases involved harassment.
- 46 % of the 14 additional cases (n.6) involved intersectional indirect discrimination – all in employment.
- 64% of these cases involved intersectional harassment. 75% of these cases were in employment and 25% in public functions. All of the additional public function cases (n.2) involved the Police and Asian Muslim men.

Of the 14 additional cases: 36% involved the protected characteristics of race and religion (n.5); 29% of cases involved sex and disability (n.4).

Statistical analysis of the out of scope cases can be found at Annexe Two.

Indirect discrimination

Although the study focused on finding cases which met the GEO definition of direct intersectional discrimination, Advisors raised six cases involving combinations of indirect and direct intersectional discrimination and nine cases involving intersectional harassment. It is clear to the authors that further research would identify more cases.

- In one case a disabled woman requested flexible working due to both her disability and her childcare responsibilities. Her request was refused. In this case it can be argued the less favourable treatment she received was due to a combination of indirect discrimination on grounds of her sex and direct discrimination on grounds of her disability. The Advisor considered that her treatment was due to her combined characteristics, and separating the issues into separate discrimination claims was compromising the strength of her case. (I1)
- An Advisor reported an employment based harassment case involving a Pakistani woman who started wearing a headscarf to work, the harassment experienced directly related to both her race and religion and indirectly to the combination of her sex and religion. This example highlights that the combination of indirect sex and religious-based discrimination would also occur if the harassment or less favourable treatment (discrimination) related to other specific female and male items of faith-related clothing e.g. a veil or a turban. (I18)
- An Advisor reported gender concentration in certain occupations may also result in indirect discrimination, for example more women are likely to be nurses, and therefore less favourable treatment against East Asian nurses might be shown to be an intersectional combination of direct discrimination on race grounds and indirect discrimination on sex grounds. As the employer targets these women overseas to work in the UK, it is both their sex and race which make them vulnerable to the exploitation. (I21)
- An Advisor reported that in pregnancy cases indirect age discrimination often occurs due to the 12 months service requirement for legal protection. (I10)

Harassment

Advisors report that many discrimination cases start with or include some form of harassment, in particular verbal abuse and bullying, which is often the precursor to less favourable treatment. This is evidenced by the cases described below.

Of the 15 cases of direct intersectional discrimination which met the GEO definition and were studied in detail, further analysis showed that 12 (80%) also included incidents of harassment.

It was outside the scope of the research to capture in full all of the harassment issues of the in-scope and out of scope cases, however the study clearly identified an additional 9 cases which were outside the scope of the GEO definition, all of which involved a combination of intersectional harassment. When combining the in-scope and out of scope cases, harassment featured in 69% of all cases reported to the researchers.

Examples to illustrate cases of intersectional harassment and intersectional indirect discrimination cases are outlined below. These are drawn from interviews and case studies:

- A gay disabled man with HIV complained that the employer had treated him less favourably by not fully investigating and addressing his multiple grievances in respect of verbal abuse and

harassment on grounds of sexual orientation and less favourable treatment relating to his disability. In this case the client felt that because he was a gay man with HIV he was less valued by the employer and it was the combined characteristics of his sexual orientation and his HIV status which was driving both the harassment and the lack of attention to his complaints.(117)

- One very complicated case involved intersectional direct discrimination and intersectional harassment on multiple combinations of grounds. The case involved sexual orientation, race and religion. Under the current process he had to bring over 50 separate claims. The Advisor in this instance thought that had he been able use intersectional discrimination it would simplify the process benefiting both the employer and the claimant. (111)
- When a Pakistani Muslim woman decided that her religion required her to wear a headscarf to work she complained that she was subjected to discrimination and harassment by staff at the supermarket which she cleaned. She had been told “I hate you and your people”, equipment had started to go missing for which she was blamed along with allegations of declining performance which she felt was budget related. This case settled prior to an Employment Tribunal, however had this case gone to court the Advisor felt that he might have lost both the race and religious harassment cases as it was difficult to establish whether the reported harassment was either racially or religiously motivated, it certainly appeared to be due to a combination of both and it was difficult to separate the treatment into the separate grounds for the legal case. (118)
- A male Pakistani Muslim Engineer with a stammer, was continually bullied and harassed due to his race, religion and stammer. Bullying telephone calls to him from colleagues, asking ‘is this the terrorist hotline’ worked to harass him on grounds of his disability, race and religion. (120)
- Mr O, a 50 year old Pakistani Muslim, was followed and verbally abused by Police in the middle of the street in full view of his neighbours, following a minor traffic offence which had occurred 5 miles previously. Following this incident he has seen the Officers hanging around his local neighbourhood ‘looking for sport’. To add insult to injury, Mr O complained that, despite informing the Police about damage to his property and threats from other persons involving knives, the Police have not once made a follow up call or visit. He believes the Police are treating him less favourably because the Police view people such as him as ‘terrorists.’ (C9)

Pregnancy/maternity

59% of Advisors raised cases of race/pregnancy and age/pregnancy related intersectional direct and indirect discrimination. As one Advisor put it

“Pregnancy cases involving migrant workers just keep coming through the door” (113)

“Young women who do not have the year’s service and suffer complications during pregnancy and are dismissed from their employment have no remedies available to them. Yet, it is because of their sex they are pregnant and their age which indirectly discriminates against them and the reason they do not have not the 12 months service” (110)

Marriage/civil partnership

No cases involving marriage or civil partnership were identified. Advisors noted this may be due to the lower number of sexual orientation cases being brought overall due to the relative newness of the legislation and people's reluctance to pursue cases that may result in them being 'outed'. (I14)

Conclusions

The findings of this study identify a need for the legal framework to facilitate consideration of intersectional discrimination cases. Reasons for including intersectional discrimination in the legal framework include:

- The need to recognise the forms of prejudice, stereotypes and discrimination experienced by people with specific combined characteristics
- The lack of appropriate comparator in some current cases means that employers can win or force settlement on a technicality despite the merits of the case
- The difficulty when separating out treatment for the individual discrimination grounds and the legal case, as the harassment or discrimination is so closely linked to the combined characteristics, makes it likely an employer might win or force settlement due to legal technicalities and process
- The need to enable the courts and tribunals to examine the facts and reach conclusions on them without being straight-jacketed by a restricted definition of discrimination which is hard to justify
- The usefulness of introducing a specific legal language in respect of 'multiple' or 'intersectional discrimination' as a lever for change particularly in policy and non-court based complaints procedures
- The need to fully reflect the clients experience of discrimination by recognising the motivating force of inseparable characteristics
- To allow the courts to examine such matters and to build case law

The research also found that the majority of caseworkers believed, based on their experience, that intersectional discrimination should include direct and indirect discrimination and take account of harassment. A smaller majority felt that unprotected pregnancy cases should be covered.

To summarise, it was felt recognition of intersectional discrimination cases in the legal framework would:

- provide remedy where currently there is none e.g. where cases drop one ground, or where the case fails due to being unable to separate the treatment into protected characteristics, or where it is not possible to prove which of the separate grounds the discrimination is attributable to
- enable tribunals and courts to reach an appropriate finding on the facts before them
- improve employers' internal grievance and complaints procedures resulting in fewer cases proceeding to ET
- improve the redress seeking process for the client by not requiring them to specify separate grounds of discrimination and by requiring employers to better investigate grievances where protected characteristics are at risk
- not impact upon employers' willingness to settle prior to an Employment Tribunal
- reduce costs and resources for employers, Advisors and the tax payer

Advisors reported it is critical to the successful implementation of the proposed legal changes for guidance and training to be made available to the judiciary, the Employment Tribunal panel, employers, service providers, public authorities, Advisors, intermediaries and the general public.

Finally, despite this being a small-scale, short-term study with limited scope it has nonetheless identified a range of multiple discrimination cases for which there is currently no adequate remedy. It is reasonable to conclude that there will be many more cases of people suffering from multiple discrimination for whom there is no justice.

Cleon Hutton,
Olivia Jamison
Ali Harris
28th May 2009

Appendix One: Glossary of Key Terms

The following terms are used throughout the report.

Direct discrimination

Direct discrimination occurs where the reason for a person being treated less favourably than another is a protected characteristic⁷

Indirect discrimination

Occurs when a policy which applies in the same way for everybody has an effect which results in less favourable treatment for people with a protected characteristic because they have that characteristic. Where a particular group is disadvantaged in this way, a person is indirectly discriminated against, unless the person applying the policy can justify it.⁸

Multiple discrimination

Occurs when a person is treated less favourably because of a combination of protected characteristics. For example, Black women, or men of a particular religion, can face discrimination and disadvantage because of stereotyped attitudes or prejudice relating to particular combinations of protected characteristics.

Additive multiple discrimination

Additive multiple discrimination occurs when a person is treated less favourably because of more than one protected characteristic and, although the two forms of discrimination happen at the same time, they are not related to each other. For example, a lesbian experiences both homophobia and sexist bullying from her employer during the same incident. A remedy for these circumstances exists within current discrimination law

Intersectional multiple discrimination

Intersectional multiple discrimination occurs when a person is treated less favourably because of more than one protected characteristic and it is the unique combination of characteristics that results in discrimination, in such a way that they are completely inseparable. This often occurs as a result of stereotyped attitudes or prejudice relating to particular combinations of the protected characteristics. Currently no remedy exists within current discrimination law.

Protected characteristics

Discrimination law protects people from being treated less favourably because of certain characteristics. These are known as protected characteristics. The protected characteristics are defined within the recently introduced Equality Bill⁹ as:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex

⁷ Equality Bill 2008 – 2009 Volume 1 Explanatory note 71.

⁸ Equality Bill 2008 – 2009 Volume 1 Explanatory note 85

⁹ Equality Bill 2008 -09 [Bill 85] as introduced in the House of Commons on 24 April 2009.

- Sexual orientation

Pregnancy and maternity, marriage and civil partnership are not included in the provisions to protect against multiple intersectional discrimination.

Harassment

Occurs when a person is subject to hostile and degrading treatment, which can be verbal, non-verbal, physical and/or sexual, which has the purpose or effect of violating their dignity.

Vexatious claims

Are legal actions which are unmeritorious and have little reasonable prospect of success. Such claims may be brought in good faith but may be incorrectly alleged due to a lack of understanding. Vexatious claims may be brought solely in an attempt to prompt settlement.

Appendix Two: Case studies – Direct Intersectional Discrimination

C1: Employment - sexual orientation and disability

A gay disabled man was dismissed from his job as an Administration Officer in a Housing Association for reasons of poor performance. The client strongly believed that the real reason for his dismissal was because he was a gay disabled man and the employer had taken a dislike to him, thus the client believed his combination of characteristics had resulted in him being dismissed. In this case the employer could have compared his treatment with a straight disabled colleague and non-disabled gay colleague and thus deny the discrimination. This case settled prior to the ET hearing; however had this case progressed to Employment Tribunal the Advisor felt that this case would have lost as there were appropriate comparators available. This case was settled prior to ET.

C2: Employment – race and sex

A Black man was sacked his job in a residential care home after he complained about a Senior female Manager who was white, asking him “*if it was true Black men are well-hung?*” This question would not have been asked of a white or Asian man as the prejudice and stereotype is very specific to Black men. This case was dropped and did not proceed to ET.

C3: Employment – race and sex

A white British woman left her job at a small manufacturing company following the lack of investigation and action by her employer into a racially and sexually motivated assault by a colleague. At the time of the incident the employer advised her to “ignore him”. The woman believed that the employer discriminated against her by refusing to investigate her grievance because she was the only white British female in an organisation of Asian and Eastern European men. In the clients’ view it was clear that she had been subjected to less favourable treatment because of her employers’ prejudice against white British women. This case was settled prior to ET.

C4: Employment: – race and sex

A Black man left his job after he raised a grievance which was not upheld. The client had raised a grievance following a claim of sexual misconduct. The client strongly believed that the sexual misconduct claim and the lack of appropriate investigation of his grievance were because he was a Black man. In this case the Advisor was clear that the client had been subjected to less favourable treatment because of the employer’s prejudice against Black men and stereotypes relating to Black men and sexual aggression. The client lost this case.

C5: Employment – race and sex

A white British woman was working as an Office Manager for a small manufacturing company. After the management of the company was transferred to Indian men she began to be treated less favourably by not being invited to meetings necessary to her role, having her views and authority undermined and being unfairly criticised for her work. This culminated in her being dismissed. Although the discriminatory treatment stemmed from her being a white British woman and her employers’ specific prejudices against white British women, the case would have lost at the Employment Tribunal as the employer would have been able to defend the discrimination claim through comparing the client’s treatment to that of a Black woman and a white man.

C6 *: Employment - race, religion and disability – case is live

C7*: Employment - age, disability and ethnicity – case is live

C8: Employment – race, age

A young Eastern Asian woman who worked in a multinational company had her grievance of sexual harassment dismissed. It was clear from the facts of the case that the harasser had deliberately exploited her age and race to facilitate situations after work where she could be sexually harassed. The Advisor was certain that her harasser knew that due to her age and race the client would not refuse invitations to social events; and the harasser engineered several situations where he could abuse the client. When the employer investigated the client's grievance, the employer found that as she had not refused social invitations she was 'complicit' in the harassment and they dismissed her complaint. In not considering the combined effect of her race and age when investigating the client's 'compliance' with the harassment the Advisor felt that the employer had directly discriminated against her on grounds of her age and race, by ignoring the fact that as a young woman from a particular ethnic background she would feel unable to refuse; and by expecting her reaction to be the same as that of an older British woman. This case was settled prior to ET.

C9: Public function – race/ religion

Mr O, a 50 year old Pakistani Muslim, was followed and given a serious 'talking to' by Police in the middle of the street in full view of his neighbours, following a minor traffic offence which had occurred 5 miles previously. Following this incident he has seen the Officers as hanging around his local neighbourhood '*looking for sport*'. To add insult to injury, Mr O, complained that despite informing the Police about damage to his property and threats from other persons involving knives, the Police have not once made a follow up call or visit. He believes the Police are treating him less favourably because the Police view people such as him as 'terrorists.' If he was a white Christian he feels his complaint would be swiftly dealt with

C10*: Employment case - race and religion – case is live.

C11: Employment – age and race.

A hospitality and catering company actively recruits overseas students aged between 21 – 25 years old to provide waiting staff for corporate events. All supervisors and managers at the company are older white British employees. The CAB has received a number of separate reports that the employer fails to pay the overseas student workers wages owed whereas Supervisors and Managers wages are paid, indicating direct race and direct age discrimination. The client lost the case.

C12*: Public function - race and disability – case is live.

C13 *: Public function– age, race and religion - case is live.

C14: Employment: age and disability

After being told by his employer that he was getting "too old and slow", Mr T, a 50 year old disabled construction worker started to have his capability intensely scrutinised. At this time he started to receive orders to go to jobs which required two people, and although this was common practice in the organisation, Mr T had not been required to do such jobs previously. Had this case got to court the Advisor believed the case would have been lost as the employer could have compared the client's treatment to a younger disabled worker and an older non-disabled worker, which would have suggested that the employer was not discriminating against the client. Case was dropped.

C15*: Employment case - sexual orientation and sex – case is live.

Appendix Three: Research Questionnaire

This research project seeks to:

- gain a greater understanding of the potential intersectional multiple discrimination cases, and further background on the nature of these claims;
- examine what has been the experience of those individuals who feel they have been subject to intersectional discrimination, both in relation to the protected characteristics included in the combined discrimination they have experienced and their experience in seeking remedy; and
- create a wider example base of intersectional discrimination.

The project is focussing on trying to identify cases of direct multiple discrimination on 2 grounds, but if you have cases of indirect or where the combination involves 3 or more grounds, please raise them. The focus is primarily on Race, Disability, Gender, gender reassignment, age, sexual orientation and religion or belief – however if you have cases involving maternity/marriage and/or civil partnerships please do raise them.

The information gained from this project will inform the GEO on what further steps to make on multiple discrimination.

Before I start asking questions – let me explain what we mean by multiple and intersectional discrimination

Multiple discrimination occurs when a person is treated less favourably because of more than one of the protected characteristics. It can be experienced in several different ways. When the discrimination involves more than one protected characteristic and it is the unique combination of characteristics that results in discrimination, in such a way that they are completely inseparable, then this is known as *intersectional* multiple discrimination and the current discrimination law framework does not always provide a remedy for it.

For example, a Black woman passed over for promotion by her employer because she is a Black woman would have to bring separate claims of discrimination because of race and sex. However, she may not succeed in either claim if her employer can show that Black men and white women are not discriminated against and therefore her treatment was not because of race or sex alone.

Do you have any questions before we start the questions?

1. How many discrimination cases have you been involved in?
2. What % of these involved multiple discrimination ?
3. What % of these were intersectional – i.e. two characteristics combined which results in a unique instance of discrimination?
4. What % of these were additive – i.e. two characteristics – two instances of discrimination?
5. Looking at how these cases were presented, what percentage were
Indirect
Direct
Multiple – indirect and indirect and/ or

direct/ direct and/or direct and indirect
6. Now, considering only those cases which meet the GEO definition of intersectional multiple discrimination, what % of these cases were in:
Employment
Goods and Services
Housing or
Education
Public Functions (is this possible?)
7. What is the common combination (re protected characteristics)?– may have a few combinations 2 grounds How does this differ for 3+ grounds Based on: Age Disability (including mental health) Gender reassignment Race Religion or belief Sex Sexual orientation
8. What % of these cases were 2 direct discrimination cases for the one situation?
9. What % of these cases were 3 or more direct discrimination cases for the one situation?
10. What % of the 2 strand cases dropped one ground of discrimination in favour of a stronger ground?
11.If you had been able to use intersectional discrimination (that is two or more characteristics combined) do you think the outcomes would have been different? – please describe how and why
12. In your opinion what % of multiple discrimination enquiries/cases you had were vexatious – i.e. ‘chancer’ cases – subconsciously (that is – ill informed)
13. In your opinion what % of multiple discrimination enquiries/cases you had were vexatious – i.e. ‘chancer’ cases – consciously ‘trying it on’
14. In your opinion cases involving multiple discrimination (under current law: involving two or more claims involving 2 ore more different protected characteristics running simultaneously) are they more or less likely to settle prior to tribunal or county court?
15. From your experience working with claimants who have been subject to discrimination due to two or more characteristics - if the EB included multiple discrimination do you think the claimant would have a better experience of the redress seeking process?

Individual Cases – looking here only at those cases which meet the GEO definition (direct/ direct) intersectional only. If no cases of direct/direct, ask about combinations including indirect and capture exceptional cases involving indirect discrimination.

Please tell us about each individual case where multiple discrimination could have been used (not limited to cases from past 12 months)

1. Case Ref No
2. Is the case open or closed
3. Can you tell us about the case
4. Context
reasons why client felt discriminated against
5. Area of discrimination – incl sectors and industry
Employment
GFS
Housing
Education
6. What characteristics (grounds)
Race (includes nationality)
Disability (includes mental health)
Sex Yes/No– did this relate to Maternity Yes/No
Gender Reassignment
Age
Sexual Orientation – did this relate to marriage or civil partnership Yes/No
Religion or belief
7. Are these 2 grounds or 3+ grounds case
8. What options for remedy were presented to the client and why?
Formal multiple cases at tribunal/court
Formal single cases – why not the multiple
Informal
Do nothing – why?
9. What did the client do and why?
Take multiple cases
Take a single cases – why did they drop the other
Followed informal process – case closed
Followed informal process then sought multiple action
Followed informal process then sought single action
Did nothing
10. In your opinion how strong was the case and what did you think was the likelihood of success? Did they settle? Prior to claim, after claim?
11. If this case could have been a multiple or intersectional discrimination case; in your opinion would it have strengthened the case or increased the likelihood of success?
12. What was the actual outcome of the client’s activity?
13. If the case was raised within the employment setting – and employers/ trade union was involved how was the experience for client?
14. From your experience with this case and the individual concerned please describe the clients experience of
The process for seeking redress
Clients satisfaction levels with the remedies available to them
Clients satisfaction with the outcome
10. If this could have been an intersectional discrimination case do you think the experience would have been different for the individual? –
11. Is there anything you would like to add about this case and any proposed change in the Equality Bill to allow multiple discrimination cases?

Annexe One: Analysis of direct intersectional cases

Table 3: Field and sector analysis of intersectional discrimination cases

Field	Number of cases	% of total intersectional cases	
Employment	12	80%	
Employment Standard Industry Classification (SIC) 2007 (ONS) 2	Number of total employment cases	% of total employment cases	SIC 2007 (ONS) 2
C: Manufacturing	3	25%	C 16.23 Manufacture of other builders' carpentry and joinery C24.20 Manufacture of tubes, pipes, hollow profiles and related fittings, of steel C26.11 Manufacture of electronic components
Q: Human health and social work activities	2	16.66%	Q 87.10: Residential nursing care activities Q. 86.21 General medical practice
I: Accommodation and Food Service activities	2	16.66%	I 56.21: Event catering activities I 56.21: Event catering activities
A: Agriculture	1	8.33%	A 01.63 Post-harvest crop activities
F: Construction	1	8.33%	F 43.22 Plumbing, heat and air-conditioning installation
K: Financial and insurance activities	1	8.33%	K 66.12 Security and commodity contracts brokerage
L: Real estate activities	1	8.33%	L 68.20/1 Renting and operating of Housing Association real estate
J: Information and communication	1	8.33%	J 62.01: Computer programming

Table 3: Field and sector analysis of intersectional discrimination cases

	Number of cases	% of total intersectional cases	SIC 2007 (ONS) 2
Public function cases	3	20%	
SIC 2007 (ONS) 2	Number of public function cases	% of total number of public function cases	
O: Public administration and defence; compulsory social security	1	33.33%	O84.30 Compulsory social security activities
O: Public administration and defence; compulsory social security	1	33.33%	O84.24 Public order and safety activities
O: Public administration and defence; compulsory social security	1	33.33%	O85.31 General secondary education

Table 4: Direct Intersectional cases, sectors and characteristics

Field	SIC Codes 2007 (ONS)	% of total number of employment intersectional cases	Number of cases	2 characteristics combination	3 characteristics combination
Employment	C: Manufacturing	25%	3	race/ sex	
Employment	I: Accommodation and Food Service Activities	16.67%	2	sexual orientation/ sex age/ race	
Employment	Q: Human health and social work activities	8.33%	1	race/sex	
Employment	F : Construction	8.33%	1	age/ disability	
Employment	L: Real estate activities	8.33%	1	sexual orientation/ disability	
Employment	K: Financial and insurance activities	8.33%	1	age/race	
Employment	J: Information and communication	8.33%	1	race/ religion	
Employment	A: Agriculture	8.33%	1		race/religion/ disability
Employment	Q: Human health and social work activities	8.33%	1		age/ disability/ ethnicity
Total number of intersectional employment cases involving two or three characteristics			12	10	2
% of total intersectional employment cases			100%	83.33%	16.66%

Table 4: Direct Intersectional cases, sectors and characteristics

Public function cases					
Public function cases as % of total number of intersectional cases		20%			
Field	SIC 2007 (ONS)	% of total number of public function intersectional cases	Number of cases	2 characteristics combination	3 characteristics combination
Education O85.31 General secondary education	O: Public administration and defence; compulsory social security	6.67%	1		age/ race / religion
Social Security O84.30 Compulsory social security activities	O: Public administration and defence; compulsory social security	6.67%	1	race/ disability	
Police O84.24 Public order and safety activities	O: Public administration and defence; compulsory social security	6.67%	1	race/religion	
Total number of cases involving 2 or 3 characteristics			3	2	1
% of total number of public function intersectional cases			100%	66.66%	33.33%

Annexe Two: Other Findings – Cases which fall outside of the GEO definition of direct intersectional discrimination

Table 5: Additional out of scope cases involving intersectional harassment and indirect discrimination

Field	Industry SIC 2007 (ONS)	SIC 2007 (ONS) 2	Type of case	2 characteristics	3 characteristics
Employment	G: Wholesale and retail trade; repair of motor vehicles and motor cycles	G47.19 Other retail sale in non-specialised stores	Indirect and Harassment		sex/religion/race
Employment	G: Wholesale and retail trade; repair of motor vehicles and motor cycles	G 47.11 Retail sale in non-specialised stores with food, beverages or tobacco predominating	Indirect	sex/disability	
Employment	N: Administrative and support service activities	N 82.20 Activities of call centres	Indirect	age/pregnancy	
Employment	Q: Human health and social work activities	Q87.10 Residential nursing care activities	Indirect	sex/race	
Employment	Q: Human health and social work activities	Q86.90 Other human health activities	Indirect	sex/ disability	
Employment	I: Accommodation and Food Service Activities	I 56.10/1 Licensed restaurants	Indirect	sex/ race	
Employment	N: Administrative and support service activities	N 82.20 Activities of call centres	Harassment	disability/sexual orientation	

Table 5: Additional out of scope cases involving intersectional harassment and indirect discrimination

Field	Industry SIC 2007 (ONS)	SIC 2007 (ONS) 2	Type of case	2 characteristics	3 characteristics
Employment	K: Financial and insurance activities	K 66.12 Security and commodity contracts brokerage	Harassment		race/sexual orientation/ religion and belief
Employment	F: Construction	F 42.11 Construction of roads and motorways	Harassment		disability/ race/ religion
Employment	G: Wholesale and retail trade; repair of motor vehicles and motor cycles Estate Agents	G46.18 Agents specialised in the sale of other particular products	Harassment / Victimisation		race/age/ disability
Employment	G: Wholesale and retail trade; repair of motor vehicles and motor cycles	G47.19 Other retail sale in non-specialised stores	Harassment		age/ disability/ sex
Employment	G: Wholesale and retail trade; repair of motor vehicles and motor cycles	G47.19 Other retail sale in non-specialised stores	Harassment	disability/sex	
Public Function	O: Public administration and defence; compulsory social security - police	O84.24 Public order and safety activities	Harassment	race/ religion	
Public function	O: Public administration and defence; compulsory social security - police	O84.24 Public order and safety activities	Harassment	race/religion	

Table 6: Additional cases, analysis of harassment, indirect and number of protected characteristics

	Number of cases	2 characteristics	3 characteristics
Total additional out of scope cases	14	9	5
% of total additional cases	100%	64%	36%
Total number of additional cases involving indirect discrimination and number of 2 or 3 protected characteristics	6	5	1
% of total additional indirect cases and protected characteristics and % of 2 or 3 protected characteristics	46%	83%	17%
Total number of cases involving harassment and number of 2 or 3 protected characteristics	9	6	3
% of total additional harassment cases and protected characteristics an % of 2 or 3 protected characteristics	64%	66.66%	33.33%
Total number of cases involving harassment in employment and % of 2 or 3 protected characteristics	7	4	3
% of total additional involving harassment in employment and % of 2 or 3 protected characteristics	75%	57%	43%
Total number of cases involving harassment – Public Function and % of 2 or 3 protected characteristics	2	2	
% of total additional cases involving harassment – Public Functions – all Police and % of 2 or 3 protected characteristics	25%	100%	

Table 7: Sector analysis of additional intersectional harassment and indirect discrimination cases

Sector Analysis – SIC 2007 (ONS)	No of cases	% of total cases
Employment Cases		
G: Wholesale and retail trade; repair of motor vehicles and motor cycles Estate Agents	5	38%
Q: Human health and social work Activities	2	14%
N: Administrative and support service Activities	2	14 %
I: Accommodation and Food Service Activities	1	7%
K: Financial and insurance activities	1	7%
F: Construction	1	7%
Public Function Cases		
0: Public administration and defence; compulsory social security -Police	2	14%
Total	14	100%