



Equality Bill: Assessing the impact of a multiple discrimination provision – A discussion document

Engender is a membership organisation working on an anti-sexist agenda in Scotland and Europe to increase women's power and influence and make visible the impact of sexism on women, men and society.

We welcome the opportunity to respond to this discussion document and include some comments below as well as responses to the consultation questions.

Overview

2.1 "It is increasingly recognised that some people can experience particular disadvantage because of a combination of protected characteristics." **This does not go far enough - it must go beyond triad of race / gender/ disability. It should include marital status and gender, pregnancy and maternity.**

2.3 "Currently the law does not always provide a remedy for an individual who experiences multiple discrimination." **There appears to be a lack of understanding about multiple discrimination as demonstrated by the examples provided which are not particularly helpful.**

2.5 "The law must be changed to reflect the fact that people's identities are multi-faceted and complex." **We absolutely hold to this.**

2.6 "Having examined the evidence available, we have developed a proposal for protection from multiple discrimination which would enable claims to be brought combining two protected characteristics, to be implemented in or after April 2011." **Why only two? We understand it is three in the USA and surely if we get it right it would be no more complex for 2, 3 or 5.**

2.7 " By limiting the grounds which can be combined to two, we are extending protection to the vast majority of those who need it, without placing an undue burden on businesses or making the law unduly complex." **Equalities and freedoms are not burdens. We consider this to be 'looking down the wrong end of the telescope' and not considering the burden carried by society if they get it wrong.**

What is multiple discrimination?

3.1 There is no protection for women from ‘glass ceiling’. No protection for young people particularly 16-18 year olds.

3.4 “For example, a lesbian experiences both **homophobia** and **sexist** bullying from her employer during the same incident. This is known as additive multiple discrimination.” **We are in little doubt that homophobia and sexism are related. This section indicates that discussions around indirect discrimination will be taken away and the examples given are not nuanced.**

3.11 “We therefore committed to further work to explore a remedy which would not unnecessarily complicate the law or place disproportionate burdens on businesses and organisations.” **There are at least 17 mentions of ‘burden’ in this document. We object to this language when discussing equalities.**

Multiple discrimination in practice:

Not a very sensible example – what about assumed Muslim men being searched in airports?

Multiple Discrimination: Proposed Equality Bill Provision

4.1 As before – should include youth in ‘Age’ and here marital status and pregnancy have been removed from the list of protected characteristics.

4.3 “In most cases involving (pregnancy and maternity or marriage and civil partnership), appropriate remedy can be found under a single strand claim, for example, sex or sexual orientation.” **We are unsure about this since assumptions, for example, about married BME women abound.**

Direct discrimination

4.5 “Our proposal is to limit multiple discrimination claims to direct discrimination only and not to enable claims of indirect discrimination or harassment to be brought on a combined basis. Any claims of victimisation would be considered under **other provisions** as they relate to specific protected acts, rather than relating to protected characteristics.” **We would like to know what the ‘other provisions?’ are There appears to be a lack of understanding of intersectionality and this has removed anything where you can tackle systemic (Institutional) discrimination or indeed any contentious issues.**

4.6 Referring to an “undue burden” and being “unwieldy” – **We do not believe these are good enough reasons. Limiting the attention paid to multiple discrimination will be burdensome and unwieldy for society and individuals!**

Enabling claims combining two protected characteristics

4.9 “Evidence indicates that enabling claims combining two of the protected characteristics would provide protection for the vast majority of people who experience multiple discrimination.” **Again this is not a good enough excuse as numbers are irrelevant here. Equality and Human Rights are not about numbers otherwise why bring in transgender legislation?**

4.10 **Always focussing on the cost to employers and businesses rather than the costs to society and individuals.**

4.17 “by limiting to two the number of protected characteristics which can be combined, we consider that it would be more likely that an actual comparator can be found than if a greater number of characteristics could be combined.” **But why not use the hypothetical comparators? This feels like an excuse...**

Defending a claim

5.7 “Our discussions with tribunal judges suggest that the addition of a multiple discrimination claim may increase the time needed to consider the case, particularly if new evidence was brought relating to the interaction of the strands, but the view was that this would not be a significant increase in time.” **We feel this is positive.**

5.11 “by limiting to two the number of protected characteristics which can be combined, we consider that businesses will not find this significantly harder than under current discrimination law when seeking **someone with the same protected characteristic** at issue in a single strand claim.” **We are unsure about this because despite being difficult you can use hypotheticals.**

Question A:

Do you agree with the conclusions set out in our Impact Assessment on the impact of multiple discrimination claims brought alongside single strands claims? If not, please explain why.

Need more multiple discrimination claims being brought. Just because claims have been limited to CAB is no excuse. Equality and Human Rights are about freedom and not about numbers... everyone counts. There is undue focus on equalities as a ‘burden’ this language should be avoided at all times.

Question B:

To what extent would you agree that the process for identifying a comparator in a multiple discrimination case would be no more onerous than in a single strand case?

This would not make any difference.

Question C:

Do you agree that the proposed multiple discrimination provision would not

require businesses or organisations to do more to avoid the risk of a multiple discrimination claim than they need to do to avoid single-strand claims? If not, please explain why. Please include what additional steps you think they would need to take.

Agree

Question D:

Do you agree with our assessment of how businesses and organisations will defend a claim, and the costs which will be incurred when they face a claim of multiple discrimination? If not, please set out how you think the process would differ from that described and how this would impact on the costs incurred.

Agree

Question E:

Do you agree with our conclusion that multiple discrimination claims should not take significantly longer to consider than single strand claims? Do you agree with our conclusions that cases including a multiple discrimination claim would not take significantly longer to consider than cases only including single strand claims? If not, can you describe how much longer you think these claims and cases would take to consider, and what would be the subsequent cost burden to businesses or organisations from this additional time in courts and tribunals?

Agree but remain unconvinced about the limit of only two characteristics – this should be left open. Equality is not a burden!

Question F:

In defending claims of discrimination, do you/does your organisation rely on evidence of the treatment of similar people within your organisation? How would a multiple discrimination provision impact on this? By limiting the combination to 2 characteristics, we consider that this approach will still be feasible. Do you agree?

We are small so would use hypotheticals and consider similar organisations.

Question G:

To what extent does your business or organisation demonstrate good practice in making sure you can point to the non discriminatory reasons for the decisions your business or organisation makes?

We record discussions

Question H:

Do you consider there would be any other costs involved in defending a claim of multiple discrimination which we have not addressed in these questions? Can you please describe what these costs might be?

No

Question I:

What would guidance need to cover to ensure that businesses and organisations are clear about what they do and do not need to do? What do you consider to be the best way to communicate this guidance? Where would you normally go for guidance on discrimination law?

Bullet point guidelines, clear definition between discrimination, additive discrimination and multiple discrimination. Email out a 'click game' type exercise. Go to EHRC for guidance...

Question J:

Do you think our estimation of up to two hours for familiarisation time is correct? If not, how much time do you think would be needed to familiarise your business or organisation with this provision? Can you please describe the size of your business or organisation?

Depends on starting point – assuming this is up to date- 2hrs is ok.

Question K:

We think that the large majority of people who have experienced multiple discrimination are already bringing cases relying on single strand claims and if a provision for multiple discrimination were introduced, that approximately 7.5% of the existing caseload would include a claim for multiple discrimination. From your business or organisation's perspective, do you agree with this conclusion? If not, please explain why.

Agree (probably)

Question L:

Were protection from multiple discrimination to be introduced, we estimate that there would be a 10% increase in the number of cases brought. From your business or organisation's perspective, would you agree with this conclusion? If not, please explain why.

Not sure... probably

Question M:

We conclude that there is likely to be a 20% increase in the number of cases that include a multiple discrimination claim which businesses or organisations choose to settle. From your business or organisation's perspective, would you agree with this conclusion? If not, please explain why.

Agree

Question N:

How can we work with businesses and organisations to discourage

unmeritorious claims of multiple discrimination?

Clear guidance on early response mechanisms. Handout for those considering it (Click exercise as discussed above)

Question O:

What can Government do, either through guidance or other means, to help individuals to understand their rights in relation to multiple discrimination?

TV ad.

Guide to employees sent out.

Click on exercise

Include in S2 life skills

Encourage to include in employment centres

Use Duty – procurement legislation

Question P:

Can you please describe how you think a multiple discrimination provision would affect your business or organisation? Please indicate the size of your business or organisation when answering this question.

Would enable us to better support BME women and disabled women, women trying to progress through the glass ceiling.

Question Q:

Do you consider that the proposed provision could have unintended consequences? If so, please explain what they are and how the risk could be reduced.

No marriage and pregnancy? Doesn't address systemic institutionalisation. The limit of only two characteristics and only direct discrimination doesn't go far enough.

Question R:

What benefits could the proposed provision have for you or your organisation?

Enormous – enable us to address women as half the population and not as a minority because it takes into account their diversity.

Question S:

Do you think the provision we are proposing would fill the gap we have described?

Partly – start but not far enough. Prefer option 2 – need indirect to address systemic sexism, racism, heterosexism etc. Institutional discrimination – hard fought for!

If you wish to contact us in relation to this consultation response you may do so by telephoning 0131 558 9596 or emailing our Policy Lead at Carol.Flack@engender.org.uk

