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**FLAC Guide: The Review of the Equality Acts,**

**Making a Submission to the Review,**

**& The Key Issues Under Review**

***Introduction***

Ireland has previously acted as European leader in terms of progressive and transformative equality legislation and Civil Society has always played a key role in shaping and developing the equality framework.

Ireland’s large and diverse civil society community has a long history of working to achieve a more equal society. Civil Society’s vision for a more equal society must inform the Review process and the review must reflect how discrimination and inequality is experienced if it is to be effective. The success of the ongoing consultation depends on the voice of Civil Society being heard and responded to.

The Review of the Equality Acts is a hugely important opportunity for all groups and individuals who are concerned with promoting equality and combatting discrimination, and the current consultation process provides the opportunity to set the agenda for the Review.

The purpose of this Guide is to provide practical information on the operation of the Equality legislation and to suggest and highlight issues that Civil Society Organisations may wish to consider when they are engaging with the Department of Children, Equality, Disability, Integration and Youth’s ongoing consultation process in respect of the Review.

**The deadline for submissions to the consultation is**

**Wednesday, 8 December 2021.**

**This Guidance note contains three sections:**

**Section 1 (The Review Process)** provides general information about the Review process, the issues and legislation which it will examine, and the ongoing Consultation process (more detailed information in relation to the Review Process is included in a Briefing Note prepared by *Equality ACTion*, a joint project of IHREC and FLAC)

**Section 2 (Making a Submission)** provides guidance for Civil Society organisation who are preparing (or considering to prepare) a Submission to the Consultation.

**Section 3 (Key Issues under Review)** provides information in respect of key issues which come within the scope of the Review, and includes FLAC’s recommendations in relation to those issues.

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***Section 1: The Review Process***

In June 2021, the Minister for Children, Equality, Disability, Integration and Youth announced a comprehensive Review of the Equality Acts.

The Review will consider Ireland’s two primary pieces of equality legislation:

* **The Employment Equality Acts 1998-2015**
* **The Equal Status Acts 2000-2018**

(In this document they will be called the Equality Legislation when talking about both pieces of legislation, and the Employment Equality Acts or the Equal Status Acts when talking about them separately)

The Review will also consider other legislation related to the promotion of Equality, and Ireland’s anti-discrimination framework. This may include, for example:

* **The Workplace Relations Act 2015** (which provides the legal basis for the operation of the Workplace Relations Commission, the tribunal that hears most discrimination complaints)
* **The Intoxicating Liquor Act 2003** (which deals with certain discrimination complaints against licenced premises)
* **The Irish Human Rights and Equality Commission Act 2014** (which provides for the Public Sector Equality and Human Rights Duty, as well as for the powers and functions of the Irish Human Rights and Equality Commission)

***1.1 The Equality Acts***

The Equality Legislation prohibits discrimination in employment, goods and services, accommodation and education on nine grounds of gender, marital status, family status, age disability, sexual orientation, race, religion, and membership of the Traveller community.

In addition, the Equal Status Acts prohibit discrimination in the provision of accommodation services against people who are in receipt of rent supplement, housing assistance, or social welfare payments (the Housing Assistance / “HAP” ground).

**The Equality Legislation prohibits:**

* Discrimination, subject to some exemptions, including indirect discrimination (discrimination in effect) and discrimination by association.
* Sexual harassment and harassment, and victimisation.
* Discriminatory advertising.

The Employment Equality Acts provide for equal pay for like work.

**Positive Action**

The Equality Acts allow for positive action to promote equality or to cater for the special needs of persons.

**Reasonable Accommodation**

The Equality Acts require the reasonable accommodation of people with disabilities. There are different standards in both Acts.

*The Equal Status Acts - Nominal Cost Exemption*

The Equal Status Acts only require those selling goods or providing services to provide reasonable accommodation or special treatment or facilities where without these it would be impossible or unduly difficult for a person with disabilities to avail of the goods and services. However, there is no obligations to provide reasonable accommodation where this would cost more than **a nominal cost.**

*The Employment Equality Acts - Disproportionate Burden Exemption*

The Employment Equality Acts place a much heavier onus on employers to provide reasonable accommodation to enable a person with a disability: to have access to employment; to participate or advance in employment; to undertake training. This is unless the accommodation would impose a **disproportionate burden** on the employer.

**Exemptions**

There are numerous general and specific exemptions in the Equality Legislation, some of which apply to some grounds, some which apply to all grounds, and some which apply to specific areas covered.

**Resources**

The Equality legislation is complex. The legislation can be accessed on the Law Reform Commission Website:

* [Employment Equality Acts 1998-2015](https://revisedacts.lawreform.ie/eli/1998/act/21/front/revised/en/html)
* [Equal Status Acts 2000-2018](https://revisedacts.lawreform.ie/eli/2000/act/8/revised/en/html)

IHREC and Community Law and Mediation have published extremely helpful guides to the provisions of both Acts. These resources provide information relation to:

* The exemptions and exceptions contained in the Equality Legislation.
* Practical information in relation to taking an equality case to the Workplace Relations Commission (under the Workplace Relations Act 2015), or the District Court (under the Intoxicating Liquor Act 2003) for certain discrimination claims against licensed premises.

These resources can be accessed here:

* [IHREC “Your Rights” Guides to the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018](https://www.ihrec.ie/your-rights/).
* Community Law and Mediation [Equal Status Acts Guide](https://communitylawandmediation.ie/publications/equal-status-acts-guide/) and [Employment Equality Acts Guide](https://communitylawandmediation.ie/publications/employment-equality-acts/).

**The Public Sector Equality and Human Rights Duty**

Section 42 of the Irish Human Rights and Equality Act 2014 provides for the **Public Sector Equality and Human Rights Duty**. Under this legal obligation, all public bodies in Ireland have responsibility to have regard to the need to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans.

This [IHREC webpage](https://www.ihrec.ie/our-work/public-sector-duty/) contains several helpful resources on the duty and how it should be implemented, as well as the full text of section 42 of the 2014 Act.

***1.2 The Purpose of the Review***

Ireland’s main pieces of Equality legislation have been in place for over twenty years. The Review is the first ever comprehensive review of those pieces of legislation.

The Review will examine several important matters in relation to the legislation, including:

* How well the Equality Acts are working, and how effective they are at promoting equality and combatting discrimination.
* How aware people who experience inequality and discrimination are of the legislation.
* Whether the nine protected grounds under the Acts cover everyone who experiences discrimination, and whether more grounds should be added. The Review will specifically examine the introduction of a socio-economic status ground.
* Whether the existing nine grounds cover everyone they should. This will include an examination of the definitions of the gender and disability grounds.
* Whether the legislation protects people who are discriminated against on a combination of grounds (intersectional discrimination).
* The exemptions to where the prohibition on discrimination in the Equality Legislation apply, and whether some of these exemptions should be changed or removed.
* Whether there are barriers that stop people asserting their rights under the Acts, including by making discrimination complaints.
* The use of “non-disclosure agreements” when discrimination cases are settled.

***1.3 The Consultation***

In July 2021, the Department of Children, Equality, Disability, Integration and Youth launched a public consultation in respect of the Review. **The deadline for submissions to the consultation is Wednesday, 8 December 2021.** Written submission should be sent to [equalitypolicy@equality.gov.ie](mailto:equalitypolicy@equality.gov.ie) by that date.

The Department’s Consultation webpage states that the “views of the public are sought on”:

1) The functioning of the Acts and their effectiveness in combatting discrimination and promoting equality;

2) The degree to which those experiencing discrimination are aware of the legislation and whether there are obstacles which deter them from taking an action;

3) The scope of the current definitions of the nine equality grounds. This will include consideration of the gender ground, the disability ground and whether new grounds should be added, such as the ground of socio-economic discrimination;

4) Whether the legislation adequately addresses intersectionality or the intersection of discrimination across a number of grounds;

5) Whether existing exemptions in the legislation should be modified or removed;

6) Any other issues arising from the legislation.

The Department’s statement announcing the Review referred to this consultation as the “first phase of a public consultation process” and noted that “further consultation will continue in the autumn”.

The information published by the Department in respect of the Review is available here:

* Press Release - Department of Children, Equality, Disability, Integration and Youth, [*Minister O’Gorman announces review of the Equality Acts*](https://www.gov.ie/en/press-release/24864-minister-ogorman-announces-review-of-the-equality-acts/).
* Consultation Webpage - Department of Children, Equality, Disability, Integration and Youth, [*Consultation on the Review of the Equality Acts*](https://www.gov.ie/en/consultation/066b6-review-of-the-equality-acts/).

***Section 2: Making a Submission***

The Department has sought the views of the public under five different headings. Some the headings are quite broad, and there is also a significant amount of overlap between the issues which could be addressed under certain headings.

Civil Society Organisations and individual making submissions are not required to structure their submissions around these headings and can raise issues which they do not believe fit under one of the five headings (as the views of the public are also sought on “any other issues arising from the legislation”).

It is vital that NGOs and individuals should set out their experiences of discrimination and inequality, as well as their experience and awareness of the Equality legislation and taking discrimination cases.

NGOs and individuals who do not have access to legal expertise should not be put off from making submissions. It is not necessary to provide technical, legal detail in submissions.

This consultation is the “first phase” of the consultation process, and the first phase of the Review process as a whole. In their submissions, NGOs and individuals can highlight issues which they feel would benefit from further consultation and examination, and their willingness to engage with the Department as part of that process.

***1) The functioning of the Acts and their effectiveness in combatting discrimination and promoting equality.***

**Key Questions:**

* **What is working and what is not?**
* **What needs to be changed?**
* **What is missing from the Acts that should be covered?**

Each individuals and groups’ experience of the “functioning” and “effectiveness” of the Equality Acts will be different. Their submissions should set out their own experience (or the experience of their members / those who they represent) of trying to enforce their rights under the Equality Acts, or taking discrimination complaints under the Acts.

*What has gotten better and what has gotten worse during the 20 years of the Equality Acts? Have new forms of inequality and discrimination emerged during this time? What are the key issues relating to inequality and discrimination which must now be addressed?*

Submissions could consider how the Review of the Equality Acts could respond to the issues identified, and how the Equality Acts could (and why they should) be concerned with combatting the experiences of inequality and discrimination highlighted.

Submission could make a number for recommendations, for example:

* The need to change the definitions of existing grounds of discrimination,
* The needs for new discrimination grounds to be added to reflect experiences of discrimination. (See Section 3.2 in relation to the protected grounds).
* The need to remove exemptions to the legislation which currently mean that the prohibition on discrimination does not apply in certain key areas. (See Section 3.1 below in relation to the Exemptions to the Equality legislation).
* Whether the financial compensation and other remedies provided for in the Acts are adequate both in terms of providing compensation for experiences of discrimination and preventing discrimination from occurring. (Section 3.7 below contains information in relation to the “redress” provisions of the Equality legislation)
* Is there sufficient Equality Data available to fully understand the extent of certain forms of inequality, and the effectiveness of measures to promote equality? (Section 3.9 below contains further information re Equality Data)
* How effective is the Public Sector Equality and Human Rights Duty? (Further information on the Public Sector Duty is included below at Section 3.9.)

***2) The degree to which those experiencing discrimination are aware of the legislation and whether there are obstacles which deter them from taking an action.***

**Key Questions:**

* **Do people know about their Equality Rights and how to assert them?**
* **Are the Acts accessible and clear?**
* **What should be done to promote awareness, and to make asserting the Right to Equality easier?**

Submissions should address the extent to which Civil Society Organisations and those they represent, are aware of the Equality Acts and the rights they provide (e.g. the right to Equal Pay, the right to Reasonable Accommodation, the right to make a complaint in respect of discrimination in accessing goods and services, accommodation, education and employment, and the right not to be victimised for making a complaint).

*If there is a lack of awareness about what the equality legislation provides for, why this is the case?*

Submissions may also highlight the barriers that groups and individuals face in accessing legal information, advice and representation. (Section 3.8 below includes a discussion of knowledge of legal rights).

Submissions should also address specific issues or barriers which prevent or deter those who may experience discrimination from trying to enforce their rights. Submissions may consider highlighting:

* The need for targeted outreach information campaigns about Equality Rights.
* The inaccessibility and complexity of the Equality Acts (Section 3.3 below discusses the need for the Equality Acts to be clear, coherent, and accessible).
* The absence of Legal Aid for discrimination complaints,
* The lack of dedicated legal services for groups that come within the equality legislation. (See further - Section 3.8 below re Access to Justice).
* The strict time limits for discrimination complaints, and the two month written notification requirement in the Equal Status Act. (Section 3.5 below contains a discussion of these issues)
* The fact that certain discrimination complaints against pubs, hotels and restaurants are heard by the District Court instead of the Workplace Relations Commission. (See Sections 3.8 below).
* Does the Workplace Relations Commission need to better investigate claims of discrimination so that it does not depend on the claimant to gather all of the evidence and make legal submissions? How and why should it provide accessible procedures for discrimination cases? (See further - Section 3.8 below re Access to Justice).

***3) The scope of the current definitions of the nine equality grounds. This will include consideration of the gender ground, the family status ground, the disability ground and whether new grounds should be added, such as the ground of socio-economic discrimination.***

**Key Questions:**

* **Who is currently protected by the Equality Acts and who is not? Are some people who experience inequality and discrimination excluded?**
* **What new grounds should be added and why?**
* **Do the existing nine grounds need to be amended to provide better protection?**

Submissions may the address whether the current grounds afford protection all groups who experience inequality and discrimination, and how and why the grounds should be extended to include certain groups:

* Are other new grounds needed, such as socio-economic status, and criminal convictions?
* Do the current definitions of the existing grounds need to be changed to provide better protection, for example, the family status ground does the family status ground protect all carers?

(Section 3.2 below contains further information on key issues concerning the scope of the existing grounds, and contains information on the addition of new grounds.)

***4) Whether the legislation adequately addresses situations where discrimination is experienced on the basis of a combination of grounds (Intersectional / Multiple Discrimination)?***

**Key Questions:**

* **Do people experience inequality and discrimination on the basis of more than one ground, or on a combination of grounds (e.g. Do Traveller women or older people with disabilities, experience specific forms of discrimination?**
* **How and why should those people be protected by the Equality Acts?**

Submissions should set out how discrimination is experienced, and highlight instances where discrimination occurs on the basis of more than one ground, or where discrimination on one ground is exacerbated because the person who experiences the discrimination is also the member of another protected group.

Such examples of intersectional discrimination may include:

* Discrimination on the basis of two or more grounds which are already included in the Acts, for example Roma Women (who are protected on the grounds of race and gender).
* Discrimination on the basis of an existing ground (or grounds) and other grounds which are not currently included in the Equality Acts (such as socio-economic status). For example, people from the Traveller community who experience discrimination on the basis of their socio-economic status (e.g. because of their address).

(Section 3.2 contains more information in relation to intersectional discrimination).

***5) Whether existing exemptions in the legislation should be modified or removed.***

**Key Questions:**

* **The Equal Status Acts do not clearly apply to Government Departments and Public Bodies carrying out their functions – Is discrimination experienced in this context? Should the Acts apply to the functions of public bodies such as An Garda Síochána and the Irish Prison Service and in relation to Direct Provision?**
* **The Equal Status Acts do not apply to discriminatory provisions in legislation or the effects of such legislation. For example, it is not possible to challenge a provision of the social welfare code or housing legislation as being discriminatory. Is there legislation which has a discriminatory impact on certain groups? Should the effects of such legislation come within the scope of the Acts?**

There are a large number of exceptions to the Equality Acts. Some exemptions apply to all discriminatory grounds and areas covered, some apply to individual grounds, and others apply to specific areas covered in the legislation.

Section 3.1 provides information in relation to the exemptions to the Equal Status Act which remove the functions of public bodies (such as An Garda Síochána and the prison services) from coming within the scope of that legislation, and the exemptions which mean that discriminatory laws (and their effects) cannot be challenged under the Acts.

Submissions should highlight why public bodies should not discriminate against certain groups, and give examples of areas where such discrimination may occur. Submissions should also highlight the impact of discriminatory legislation on certain groups.

Finally, Section 3.1 provides an analysis of the overall effect of the exemptions to the Equal Status Acts. The combination of the exemption for legislation, and the exemption for the functions of public bodies, have the combined effect of excluding a considerable amount of State activity from the prohibition on discrimination. This includes State activity in in areas that most impact on the protected groups, such as housing, welfare and healthcare. Submissions should highlight why prohibiting discrimination in these areas is important for certain groups.

***Section 3: Key Issues under Review***

This section provides an overview of the issues which are currently under Review, and FLAC’s recommendations in relation to those issues.

**3.1 The Prohibition on Discrimination – Where it Applies and Where it Does Not**

**Key Issues and Recommendations:**

* **The Equality Acts contain numerous general and specific exemptions. A full review of all the exceptions is needed to see whether they are necessary and proportionate and whether they reduce the effectiveness of the Acts.**
* **The exemptions to the Employment Equality Acts which reduce the protection for people working in other people’s homes need to be removed.**
* **The definition of vocational training needs to be broadened.**
* **The exemption in the Employment Equality Acts which allows for a lesser rate of pay for people with disabilities should be removed.**
* **The Equality Legislation must clearly and comprehensively prohibit discrimination in key areas of State activity such as housing, healthcare and social welfare.**
* **The Equal Status Act should clearly prohibit discrimination by Government Departments and Public Bodies when they are carrying out their functions, for example An Garda Síochána and the Irish Prison Service.**
* **The Equal Status Acts should be amended to provide a remedy for discriminatory legislation, and its affects.**

***What Approach should the Review take to the Exemptions to the Acts?***

There are a large number of exceptions to the Equality Acts. Some exemptions apply to all discriminatory grounds and areas covered, some apply to individual grounds, and others apply to specific areas covered in the legislation.

The Review presents an opportunity for a full re-evaluation of the exemptions to both Acts, and to examine whether they are rational, necessary and proportionate.

FLAC recommends that such an approach should be taken by the Review.

***Exemptions to the Equal Status Acts***

A combination exemptions discussed below, as interpreted by the Courts and WRC, have the effect of excluding a considerable amount of State activity from the prohibition on discrimination. The effects of these exemptions are also discussed in further detail below

***Exemption for the Functions of Public Bodies***

The definition of “services” in section 2 of the Equal Status Acts is broad enough to include services provided by public bodies. However, the definition does not extend to the performance of the general functions of public bodies, which cannot be described as services. As a result, it is unclear to what extent the Equal Status Acts apply to public authorities performing public functions which may not come within the definition of “services” but which may nonetheless have a great impact on lives. For example, areas like immigration, taxation, and the prison service. It has been established that the “controlling functions” of An Garda Síocháná, including the investigation and prosecution of crimes, do not come within the scope of the Equal Status Acts.

***Exemption for Legislation which Discriminates***

Section 14 of the Equal Status Acts excludes from challenge any action that is required by legislation. In practical terms, this means that any legislation, or the provisions of any legislation, which discriminates on one of the nine grounds or which has a disproportionately negative impact on certain groups falls outside the scope of the Equal Status Acts and cannot be challenged under the equality legislation.

A recent High Court judgment appears to exempt any policy that is derived from legislation as well, which makes this an extraordinarily wide exemption. In (*AB v Road Safety Authority*), the High Court adopted a broad interpretation of the section 14 exceptions to the Equal Status Act, and decided that the Road Safety Authority had not discriminated against a woman living in Direct Provision by refusing her application for a drivers licence, on the basis that a piece of secondary legislation (a statutory instrument) required her to provide evidence of “normal residence” in the State. FLAC commented that this decision “enlarged the scope” of the exemptions in section 14 to a worrying extent.

***Direct Provision and Immigration and Asylum Applications Exemption***

Section 14(1)(aa) of the Equal Status Acts contains another broad exemption to the Equal Status Acts, which means it does not apply to certain actions by public authorities “in relation to a non-national”

This exemption appears to have been inserted “to ensure that asylum and immigration applications, and the non-statutory direct provision system for international protection applicants, would not be open to challenge under the Equal Status Act”:

“At its most benign, this provision creates very significant uncertainty about the extent to which third-country nationals may rely on the protection of the legislation against public authorities. At its worst, this provision serves to shield public authorities from complaints of race discrimination by third-country nationals, including applicants for international protection…

In short, the amendment to Irish law…significantly impedes the ability of non-nationals to challenge discriminatory conduct on the part of public authorities and, in this way, creates a material risk that domestic law is inconsistent with the State’s obligations under CERD. Having regard to the breadth of this exception, the lack of practice in this regard since 2004 – in particular, the dearth of cases of race discrimination against public authorities – is itself a concern that migrants are unwilling to challenge discriminatory practices.” [[1]](#footnote-1)

***The Effect of the Exemptions to the Equal Status Acts – A Barrier to Combatting Structural Disadvantage and Discrimination***

These exemptions to the scope of the Equal Status Act largely leave even those who are a member of a “protected group” under the Equality Acts, largely unable to challenge discrimination by public bodies, and discrimination in key areas of State activity such as housing, healthcare and social welfare. Combatting discrimination in these areas is vital to tackling socio-economic disadvantage and to upholding socio-economic rights.

For example, FLAC has previously highlighted the discriminatory effect of the so-called “criminal trespass” legislation on Travellers. Other groups have highlighted the discriminatory effects (for Travellers and other groups) of the law in relation to school-admission policies. FLAC has also expressed concern at instances of institutional discrimination against Travellers by local authorities and An Garda Síocháná. However, these matters cannot currently be challenged under national equality law.

In 2019, the UN Committee on the Elimination of Racial Discrimination (UNCERD) highlighted a range of deficiencies in the “legislative framework for the elimination of racial discrimination”, including:

* “The unclear definition of “services” in section 5 of the Equal Status Acts, which may exclude the provision of services provided by public authorities such as the police, the prison service and the immigration service”
* “Preclusion of complaints against legislative provisions in Section 14 of the Equal Status Acts” [[2]](#footnote-2)

The UN Committee on the Elimination of Discrimination against Women (UNCEDAW) have also called on Ireland to “ensure that an effective remedy is available for discrimination that has a legislative basis”.[[3]](#footnote-3)

The Equal Status Acts should be amended so that the definition of “services” includes the functions of public bodies, and the blanket exemptions for the State under section 14 of the Equal Status Acts should be removed.

(For further discussion of measures aimed at combatting structural / systemic discrimination, see Section 3.9)

***Exemptions to the Employment Equality Acts***

***People Working in other People’s Homes***

The Definition of Employee (section 2 of the Employment Equality Acts) contains an exemption to who is considered an “employee”. As a result, “so far as regards access to employment”, the Acts do not apply to “a person employed in another person’s home for the provision of personal services for persons residing in that home where the services affect the private or family life of those persons”. The result is that people who do domestic or childcare work may not be fully protected against discrimination.

***Equal Pay for People with Disabilities***

The Employment Equality Acts contain important “Equal Pay” provisions. However, section 35(1) of the Employment Equality Acts states that it not discriminatory to pay a person with a disability a lesser rate of pay if their output is less than that of a person without a disability. IHREC have previously called for this exemption to be removed, with a report of the Equality Authority (one of IHREC’s predecessor bodies) stating that section 35(1) undermines the positive provisions of the Acts such as Reasonable Accommodation.

This exemption should be removed.

***Vocational Training***

Section 12(2) of the Employment Equality Acts contains an unnecessarily narrow definition of “vocational training”.[[4]](#footnote-4) This means not everyone engaged in such training is protected by the Employment Equality Acts. It is likely that Ireland is not complying with our equality obligations under EU law in relation to vocational training.[[5]](#footnote-5)

The definition of vocational training in the Employment Equality Acts should be amended in line with EU law.

(FLAC is currently examining the exemptions to the Employment Equality Acts, including the religious Ethos Exemptions, in greater detail. We will circulate more information on these exemptions to relevant groups once this process is complete.)

**3.2 The Grounds – Who is Protected by the Equality Acts and Who is not?**

**Key Issues and Recommendations:**

* **The Equality Acts currently cover nine grounds. Some of the existing grounds (including Gender, Age, and Family Status) should be amended to adequately protect groups within these groups who experience discrimination.**
* **The Equality Acts should be amended to include further grounds such as “socio-economic status” and Criminal Convictions.**
* **The Equality Acts should be amended to provide protection against discrimination on the basis of a combination of more than one ground (intersectional discrimination).**

The Equality Acts prohibit discrimination on the nine grounds of gender, marital status, family status, age disability, sexual orientation, race, religion, and membership of the Traveller community. The Equal Status Acts were amended in 2016 to prohibit discrimination against people who are in receipt of certain housing assistance payments in the provision of accommodation services (“the HAP ground”).

No “full” new ground (or “protected characteristic”) has been added to either piece of legislation since they were introduced.

***The Existing Grounds – Who is Covered?***

Section 2 of the Equal Status Acts and Section 2 of the Employment Equality Acts set out definitions of six of the nine grounds. There has been some criticism of the grounds, on the basis that they do include certain groups, or that certain groups are not clearly provided for.

The Equality and Rights Alliance have noted that: “Some of the grounds already covered by the equality legislation need to be redefined to ensure that they adequately address the groups, within these grounds, that experience discrimination”.[[6]](#footnote-6)

***The Gender ground***

The gender ground, as currently defined, does not reference transgender, non-binary and intersex people. However, the definition has been interpreted in a way which includes transgender people. This is required by EU law. IHREC have stated that the Equality legilation “should explicitly prohibit discrimination against transgender, non-binary and intersex people”.

FLAC’s submission to the Review of the Gender Recognition Act 2015 recommended that the equality legislation should be amended to “prohibit discrimination based on gender identity, gender expression and sex characteristics. Gender identity should be defined to include protection for those that identify as intersex or non-binary”:

“FLAC recommends that both the Equal Status Acts and the Equality Acts are amended to include clear specific protections for transgender people, for the avoidance of doubt in Irish law, Equality legislation should also be amended to cover acts targeted at individuals based on actual or perceived sex characteristics, gender identity and gender expression.

A clear statement of legal protection would ensure that transgender persons, including their employers, service providers and the public in general would understand the protection offered by the law and eradicate any doubts about who may be covered by the law or not. It would also ensure that gender identity and gender expressions are protected from discrimination. Gender expression would further protect those persons who do not identify with a gender or who fall into the non-binary category, or those who present on a hormonal or anatomical basis as non-binary but identify according to a specific binary model.”[[7]](#footnote-7)

FLAC recommends that gender ground in the equality legislation should be extended to include a prohibition on discrimination based on gender identity, gender expression and sex characteristics. The *European Network of Legal Experts in Gender Equality and Non-Discrimination* note that there are multiple advantages to a single, “broad” gender ground (as opposed to the addition of “separate” protected grounds relating to gender identity and expression):

“Advantages of [one inclusive gender ground] include the fact that the causes of many forms of discrimination of both cisgender people, women in particular, and trans and intersex people, may have similar roots (i.e. gender bias, stereotypical thinking on gender roles, etc.). [A single ground] also offers better opportunities to deal with intersectional forms of discrimination on these particular grounds.”[[8]](#footnote-8)

***The Disability ground***

The current definition in the equality legislation is inclusive in that the majority of disabilities are included: “the definition encompasses transient conditions, people perceived as having a disability, and people who may have had disabilities previously”.[[9]](#footnote-9)

The Disability ground has been subject to criticism for adopting a medicalised approach.

However, the inclusive nature of the current definition means that people with disabilities generally do not have to prove that they come within the definition of disability which makes it easier to bring claims of discrimination or failure to provide reasonable accommodation.[[10]](#footnote-10)

Further, the current definition is more broad than the minimum definition which is required by EU law and potentially, the definition set out in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which states: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. This definition uses the word “includes” – so while it may apply to more people than those who have a “long-term impairment”, they are not specifically mentioned in the definition. The current definition in the Equality legislation is not limited to long term impairments (although many of the conditions described will inevitably be long term).

It is understandable that there is a wish to move towards the social model of disability and the definition included in the UNCRPD but there are practical reasons why there needs to be caution about the adoption of the UNCPRD definition in the equality legislation. The current definition has the advantage of being inclusive –the vast majority of disabilities are included and claimants generally do not have to spend time and resources having to prove that they come within the definition.

The adoption of the UNCRPD definition may make it harder for people with all kinds of disabilities to prove discrimination/failure to provide reasonable accommodation and may remove a cohort of people who are currently protected from the scope of the prohibition of discrimination and requirement to provide reasonable accommodation. It will undoubtedly lead to respondents to cases requiring claimants to provide proof of the social elements of the definition- what barriers they experience and how it hinders their participation in society. This has been the experience in the UK and places a very significant burden on claimants who are trying to bring claims.

Any recommendations to amend the language used in the Disability ground should ensure that the current protection provided is not reduced.

***The Age Ground***

There is a significant exemption to the age ground under section 3(3)(a) of the Equal Status Acts, which means that people under 18 cannot take a claim of discrimination on the basis of their age. This exemption is “unduly broad in that it also exempts discrimination *as between* children of different ages. For instance a health authority could decide that speech therapy will only be afforded to children under 6, introducing an arbitrary cut-off point for access to a vital service. Such a decision cannot be challenged using the ESA because of section 3(3)(a)”.[[11]](#footnote-11)

The Equality and Rights Alliance previously highlighted a need to: “Redefine the age ground, without age limits, to include people under eighteen”.[[12]](#footnote-12) FLAC agrees with this recommendation.

***The Family Status Ground***

The definition of “family status” is defined so as to include some “primary resident” carers. The Equality and Rights Alliance previously highlighted a need to: “Expand the definition of ‘carer’ under the family status ground to encompass the full diversity of carers (resident and non-resident carers, and carers providing continuing or intermittent care)”.[[13]](#footnote-13)

The definition of “member of a family” in the definition does not include members of unmarried couples or cohabitees, the Equality Authority previously called for an amendment to the Acts to “include unmarried couples”.

FLAC agrees with these recommendations.

***The Religion ground***

The “Religious Belief” ground under the Acts is defined to include “religious belief or outlook”. This may not provide adequate protection for non-religious or “philosophical” beliefs:

“National legislation does not refer to philosophical beliefs. It appears from the wording of the provisions concerning discrimination on the religion ground that the belief in question must be a religious one, and so the provisions do not adequately prohibit discrimination on the grounds of religion *or* belief.”[[14]](#footnote-14)

***Potential New Grounds – Who else should be Covered?***

IHREC (as well as its predecessor bodies, the Equality Authority and Irish Human Rights Commission), have called for the addition of grounds relating to:

* Criminal Conviction
* Political Opinion/Political Party Membership
* Trade Union Membership
* Unemployment
* Socio-Economic Status
* Social Security

Two Private Members Bills have been introduced recently proposing to prohibit discrimination on the basis of socio-economic status. At the FLAC seminars in June, Siobhán Phelan SC examined the definitions of socio economic status contained in the two Bills from 2017 and 2021, and concluded that the definition in the 2021 Bill was preferable, more workable and more enforceable. Tamas Kádár (Head of Legal and Policy at Equinet, the European Network of Equality Bodies) agreed with this analysis. Siobhán Phelan SC also suggested the Bill could be improved by allowing for a “hypothetical comparator.”

FLAC and IHREC have both expressed recent support for the addition of a “socio-economic” status ground, and FLAC is a member of the *Add The 10th* coalition. The urgent need for the introduction of the ground was made clear in a 2019 Report by *ATD Ireland* which (per Niall Crowley in his foreword) “powerfully chronicles the damaging experience of daily lives persistently crashing up against stigma and stereotyping of socio-economic status”.[[15]](#footnote-15) Recent research by Tamas Kádár also clearly sets out how and why discrimination on the basis of socio-economic status should be prohibited in Irish law.[[16]](#footnote-16)

FLAC believes the addition of a socio-economic status ground, and grounds relating to previous criminal convictions and Trade Union membership, would significantly improve the scope of the equality legislation.

*Other Status*

International and European Human rights law also include additional grounds. The European Charter of Fundamental Rights and the European Convention on Human Rights, as well as international treaties to which Ireland is subject, contain a number of additional grounds, which are not contained in the Equality Acts, including the grounds of language, political or other opinion social origin, property, birth or other status. The incorporation of those additional grounds into the national equality framework would “achieve more comprehensive protection and coherence between the various instruments”.[[17]](#footnote-17)

***Discrimination on a combination of grounds (Intersectional Discrimination)***

The Equality Acts do not adequately provide for situations where discrimination has occurred on the basis of more than one ground or a combination of grounds (such as discrimination against older LGBT people, or Roma women). While it is possible to make a complaint on more than ground, the Acts appear to require that discrimination on each ground has to be proven separately. In effect, this may exclude complaints on the basis of more than one ground where the discrimination occurred on the basis of a combination of grounds.

In FLAC’s 2019 Annual Report, FLAC highlighted the intersectional and gendered nature of the discrimination frequently faced by Roma women, particularly those who outwardly express their Roma identity by wearing traditional clothing including headscarves and full-length skirts. FLAC has also previously noted how Traveller women are exposed to multiple and intersectional forms of discrimination on grounds of gender and ethnicity and can be subjected to various forms of violence against women and discrimination.

The Equality Acts do not clearly provide for such situations and, as a result, may be out of step with many people’s lived experiences of discrimination, which often occurs as a response to their identity as a whole and cannot be distinctly and artificially categorised into separate grounds.[[18]](#footnote-18) Many groups who currently enjoy the protection of the Acts also experience disproportionate levels of socio-economic disadvantage and exclusion. The Acts should provide for experiences of intersectional discrimination on the basis of socio-economic status (and another ground or grounds) by introducing a socio-economic status ground.

FLAC recommends amending the Equality Acts to provide for intersectional discrimination.

**3.3 Other Key Concepts including the Definitions of Discrimination – Is the legislation accessible and clear?**

**Key Issues and Recommendations:**

* **The Equality Acts should be clear, coherent, and accessible. A full review of the structure of the Acts, and the definitions of important concepts is needed to achieve this.**
* **Key concepts such as Direct Discrimination, Indirect Discrimination, Victimisation, Positive Action and Reasonable Accommodation, should have one clear, robust and accessible definition in the Equality Acts.**

The Equality Acts prohibit several forms of discrimination, including indirect discrimination and discrimination by association, sexual harassment and harassment, and victimisation. Both Acts also prohibit discriminatory advertising.

However, it is not always clear what constitutes discriminatory conduct. The definitions of discrimination, as well as several other key concepts, are defined in multiple ways across the Acts. The Equality Authority noted that the structure of the Equality Acts is “awkward, opaque and inaccessible”. Equality Authority research expressed a preference for single clear definitions of key concepts which apply across all grounds. FLAC agrees with this and recommends a full review of the structure of the Acts, as well as its accessibility and coherence.

Key Concepts which require attention include:

***The Definitions of Direct & Indirect Discrimination***

Neither of these two core concepts are defined in the Equal Status Acts. The current structure (which does not provide one clear definition of each concept) is confusing and inaccessible. Further, there a number of definitions of Indirect Discrimination contained in the Employment Equality Acts.

The Equality Authority stated that the Equality Acts should clearly adopt the definition of “indirect discrimination” from the EU Equality Directives. Such an approach is particularly important in light of a Supreme Court judgment which adopted an interpretation of “indirect discrimination” which may be at odds with EU law. That case, called *Stokes v. Christian Brothers High School Clonmel,* related to a school-admission policy which was challenged on the basis that it constituted indirect discrimination against a perspective student who was a member of the Traveller community. The Supreme Court stated that in order to prove a case of indirect discrimination, statistical analysis is required in order to establish that a person belonging to a protected group is at a ‘particular disadvantage’ compared with others. There is no similar requirement under EU law:

“EU law clearly envisages that statistics are not the only way in which a case of disproportionate impact can be made out... EU law emphasises that statistical evidence is just one means of proof and highlights the importance of not compromising the achievement of the objective pursued by EU equality law and thus depriving it of its effectiveness”.[[19]](#footnote-19)

FLAC recommends that the definition of “indirect discrimination” in the Employment Equality Acts is amended in line with the EU Equality Directives. The burden of proof for indirect discrimination cases should be clearly provided for in the Acts (in line with EU law), and the legislation should state that statistical evidence is not required in all indirect discrimination cases.

***The Definition of Victimisation***

The protection against victimisation for bringing a claim is one of the most important provisions in the equality legislation. Both Acts contain “victimisation” provisions – which provide protection for people who have made discrimination claims from retaliation from the respondent to their claim (e.g. the employer or provider of goods and services).

However, the Equal Status Acts and Employment Equality Acts contain completely different definitions of “victimisation”. In the Equal Status Acts, victimisation is defined a “ground”. This is confusing (and potentially contrary to EU law). The definition of victimisation in the Employment Equality Acts is hard to find and is contained in a subsection of a section that deals with other matters.

FLAC recommends that victimisation should be defined clearly and consistently in both Acts.

***Positive Action***

The positive action provisions are a key element of the Equality Acts. The Acts allow for positive action to promote equality or to cater for the special needs of persons. Positive Action is “a crucial element of the legislative framework, which should operate to safeguard measures that treat people differently in order to advance equality of opportunity”.[[20]](#footnote-20)

Again, there are several positive action provisions in both Acts, with different definitions. The Equal Status Acts contain numerous provisions which have the potential to be positive action measures but which are not clearly defined. The Equality Authority noted that:

* The provisions on positive action in relation to employment are ambiguous and do not clearly and explicitly allow positive action in recruitment on all grounds.
* In some instances it is not clear who the measures are aimed at, or what they aim to achieve.

The Equality Authority recommended:

* Positive action should be allowed as a general exception with a single definition for all grounds and all sectors.
* There should be one coherent aim for positive action, namely the achievement of full equality in practice.
* The provisions need to be clear as to their scope and the various activities that they cover.

FLAC agrees with these recommendations.

***Equal Pay***

Section 29 of the Employment Equality Acts creates an entitlement to Equal Pay. However, issues around access to information and satisfying the Burden of Proof make claims for equal pay very difficult. The Employment Equality Acts do not allow a person making an Equal Pay claim to use a “hypothetical comparator”, instead they must identify another specific person doing like work for greater pay. This is extremely difficult in many cases and impossible in some.

FLAC recommends amendments to the Equal Pay provisions of the Employment Equality Acts which allow for a “hypothetical comparator” in Equal Pay cases and strengthened rights to pay information from employers (across all grounds). FLAC also recommends that “pay gap” information legislation is extended to all grounds (the current legislation, the Gender Pay Gap Information Act 2021, only applies to the gender pay-gap). FLAC also recommends that “pay gap” information legislation should apply to a greater number of employers (the current legislation only applies to large employers).

***Codes of Practice***

IHREC have a significant power under section 31 of the Irish Human Rights and Equality Commission Act 2014 to produce “Codes of Practice” in relation to the promotion of equality and the elimination of discrimination, and in relation to matters arising from the Equality legislation. These Codes provide guidance on the application of the core concepts of the Equality legislation, and they can be used as evidence in discrimination cases. These Codes of Practice require the approval of the Minister for Children, Equality, Disability, Integration and Youth before they take effect.

There are currently three Codes of Practice awaiting the approval of the Minister, including one concerning Harassment and Sexual Harassment in Employment. The ongoing delays in approving new Codes of Practice have not been explained.

Codes of Practice are a vital tool for giving effect to the principles contained in the equality legislation. FLAC believes a new Code of Practice in relation to Harassment and Sexual Harassment in Goods and Services should be introduced, as well as a comprehensive Code of Practice on Reasonable Accommodation.

The Review of the Equality Acts should also examine other mechanisms for the approval of Codes of Practice (such as approval by IHREC), which would avoid delays in their coming into effect.

**3.4. Reasonable Accommodation**

**Key Issues and Recommendations:**

* **The Equal Status Acts impose a very minimal obligation to provide reasonable accommodation.** **The obligation to provide Reasonable Accommodation is only imposed on those providing goods or services where, without the accommodation, it would be impossible or unduly difficult for a person with disabilities to avail of the goods and services.** **The minimal obligation is removed when the provision of the accommodation would cost more than a nominal cost.**
* **An obligation to provide reasonable accommodation, except where it would impose a disproportionate burden (as provided for in UNCRPD), should be incorporated into the Equal Status Acts. The “nominal cost” exemption should be removed.**
* **The Equal Status Acts and the Employment Equality Acts should both contain clear, “free-standing” Reasonable Accommodation provisions – which provide that a failure to provide Reasonable Accommodation is unlawful discrimination.**
* **An up-to-date and comprehensive Code of Practice on Reasonable Accommodation should be urgently drafted and brought into effect.**

Section 4 of the Equal Status Acts imposes a very minimal obligation to provide reasonable accommodation. This was introduced as a response to the concerns by the drafters, who were very anxious to come up with a definition that would satisfy what the Supreme Court had said when they were asked to assess an earlier version of the legislation (and decided that the Reasonable Accommodation provisions were unconstitutional).[[21]](#footnote-21)

The obligation to provide Reasonable Accommodation or special treatment or facilities is only imposed on those selling goods or providing services, where without these it would be impossible or unduly difficult for a person with disabilities to avail of the goods and services, unless this would cost more than a nominal cost. So there is no obligation to provide Reasonable Accommodation where it is possible, or just difficult, for a person with disabilities to access the goods or services. The minimal obligation is removed when the provision of the accommodation would cost more than a nominal cost.

IHREC have expressed concern at the minimal “nominal cost” burden which applies to providers and goods and services, and has noted the lack of clarity as to what a “nominal cost” means.

The Reasonable Accommodation provisions of the Equal Status Acts should be reconsidered in light of the UN Convention on the Rights of Persons with Disabilities – which Ireland has now ratified. The UNCRPD contains much more robust provisions than are currently provided for in Irish law – and it does not provide for a lesser obligation on providers of goods and services. FLAC recommends that an obligation to provide reasonable accommodation, except where it would impose a disproportionate burden (as provided for in UNCRPD), should be incorporated into the Equal Status Acts. The “nominal cost” exemption should be removed.

Section 16(3) of the Employment Equality Acts places a much heavier onus on employers to provide reasonable accommodation to enable a person with a disability: to have access to employment; to participate or advance in employment; to undertake training. This is unless the accommodation would impose a disproportionate burden on the employer.

The Equality Authority previously highlighted that the Employment Equality Acts do not clearly set out that a failure to provide reasonable accommodation is, of itself, unlawful discrimination. The Equality Authority recommended that the Acts should clearly prohibit a failure to provide reasonable accommodation as a “free-standing” from of unlawful discrimination: “to ensure that an effective remedy is provided for the failure to provide reasonable accommodation and to ensure clarity, consistency and coherence the definition of discrimination in the EEA be amended include a refusal or failure by an employer or prospective employer to do all that is reasonable to accommodate the needs of a person with a disability”.

Buckley and Quinlivan note that the UNCRPD could provide the basis for a complete transformation on the Reasonable Accommodation provisions in the Equality Acts. For example, they note the guidance provided in the UNCRPD on what constitutes a “disproportionate burden” in the context of reasonable accommodation.

They also note the guidance provided on the practical meaning on the Reasonable Accommodation section of the UNCRPD provided by the UN Committee on the Rights of Persons with Disabilities.[[22]](#footnote-22) For example, the guidance of the Committee supports making a failure to provide reasonable accommodation, of itself, an act of discrimination which is prohibited. The Committee has recognised that reasonable accommodation is an essential part of the duty of not to discriminate against people with disabilities. The Committee also states that “Reasonable accommodation requires the duty bearer to enter into dialogue with the individual with a disability [in relation to the accommodation required]”.

The implementation of these recommendations is particularly important in light of the Supreme Court judgment in *Daly v Nano Nagle School*.[[23]](#footnote-23) In that landmark decision, the Supreme Court clarified that reasonable accommodation can involve a redistribution of any task or duty in a job, as long as not disproportionate in the context of the employment in question. The Supreme Court also set out an expectation of consultation of employees on reasonable accommodation. The judgment states that, while not mandatory, “a wise employer will provide meaningful participation” not only with the person seeking reasonable accommodation but also with other employees in relation to the role.

Many of these matters could be clarified by a Code of Practice in relation to Reasonable Accommodation. IHREC have drafted a Code of Practice in relation to Reasonable Accommodation, but it has not been approved by the Minister yet. (See further: Section 3.9 in relation to IHREC’s power to draft Codes of Practice in relation to Equality Law).

**3.5. The Time Limits Under the Equality Legislation**

***The Time Limit for Discrimination Complaints***

The Equality Acts set a six-month time limit for making discrimination complaints. This time limit is very restrictive. The Labour Court has decided that the same strict time limit applies even where an employee is delayed in making their complaint because they are using an internal grievance procedure.[[24]](#footnote-24) The time limits may be extended up to 12 months where there is reasonable cause.

FLAC recommends that the time limits for discrimination complaints should run from the date of knowledge of the discrimination, or from the date a grievance procedure in relation to the discrimination ended, and should be extended where there is reasonable cause for the delay in bringing the complaint.

***The Notification Requirement for Complaints under the Equal Status Acts***

Before a complaint can be lodged under the Equal Status Acts, section 21(2) of that legislation requires a complainant to notify the respondent of their intention to make a complaint. This notification must be made within two months of the alleged incident of discrimination. An analysis undertaken by FLAC of all published WRC decisions on Equal Status complaints between 2015 and 2019, shows that the number of complaints which were unsuccessful on the basis of a failure to comply with the notification requirement is increasing year on year.

Further research undertaken by FLAC also suggests that the notification requirement is unique to complaints under the Equal Status Acts. The WRC deals with complaints under several pieces of legislation, none of which have a similar notification requirement. The requirement is similarly out of step with discrimination complaint mechanisms in other EU jurisdictions. Any justification for the notification requirement is unclear. In practice, it represents an arbitrary administrative barrier to the prosecution of discrimination complaints.

The Notification Requirement for Complaints under the Equal Status Acts constitutes a very significant barrier to pursuing a discrimination claim. There is no justification for the requirement and it has no equivalent in any other legislation. It should be removed or made optional.

**3.6 District Court Jurisdiction for Certain Complaints against Licensed Premises**

Where a person considers that they have been discriminated against on or at the point of entry to a licensed premises, they must apply to the District Court (rather than the WRC) for redress. The transfer of jurisdiction from the expert tribunal for equality matters to the District Court (under section 19 of the Intoxicating Liquor Act 2003) came about “following pressure exerted by vintners’ organisations”. Walsh has noted that the consequence of this change has been a significant drop in complaints in that area.[[25]](#footnote-25)

The consequence of this change is that certain discrimination claims are not heard by the expert tribunal for such cases. The District Court is a much more formal setting than the WRC, and it is a wholly adversarial setting. It applies strict and technical rules of evidence. The WRC, by comparison, has an investigative function and is a less formal setting. The change of jurisdiction to the District Court creates a significant risk of costs for those bringing discrimination claims, even for claims that only fail on the basis of a technicality. For many protected groups under the Equality Acts, the District Court is a daunting environment with negative connotations arising from the fact that the Court also deals with matters such as evictions and criminal proceedings. IHREC have noted that, for Roma and Travellers, the transfer of jurisdiction for some discrimination complaints to the District Court has acted as “a barrier to justice”.

According to ESRI research Irish Travellers are 38 times more likely to report discrimination in shops, pubs and restaurants than white Irish people. The exclusion of Travellers from pubs, restaurants and hotels, deprives them of the opportunity to celebrate life’s important events, such as births, christenings, birthdays and weddings in the same manner as the wider population. The removal of the Equality Tribunal’s jurisdiction has had a disproportionate impact on Travellers, as prior to the introduction of section 19 of the 2003 Act the majority of cases of discrimination on licensed premises were taken by Travellers.

In 2019, the UN Committee on the Elimination of Racial Discrimination expressed its concern at the disproportionate impact of the transfer of jurisdiction to the District Court for certain discrimination complaints on Travellers and Roma. They noted that unlike other discrimination complaints, which are heard in the comparatively informal environment of the WRC, it was necessary to initiate “complex court proceedings” to make a discrimination complaint against a licenced premises. This, they concluded, “may effectively hinder Travellers and Roma from accessing justice and remedies for the racial discrimination they have experienced”. In 2019, UNCERD recommended that complaints in relation to discrimination that occurs on or at the point of entry to licensed premises should be heard by the WRC.

The very low level of discrimination claims made in the District Court under the 2003 Act demonstrates that section 19 does not provide an effective remedy.

FLAC recommends the repeal of section 19 of the Intoxicating Liquor Act 2003.

**3.7. Compensation and Remedies (Redress) for Discrimination Complaints**

**Key Recommendations:**

* **There are several kinds of orders which can be made by an Adjudicator against a Respondent (an Employer or Provider of Goods and Services) who has unlawfully discriminated. The Equality legislation should provide that the orders made in successful cases should: effectively compensate the victim(s) of discrimination; and act as a deterrent against future acts of discrimination. The Acts should specifically allow for Orders that have an impact beyond the complainant(s) in order to have a deterrent effect**
* **The limits on the amount of financial compensation for discrimination complaints should be removed. At the moment a person can only receive an award of up to €15,000 for a discrimination claim under the Equal Status Acts heard by the WRC. This is regardless of how severe the discrimination, or its effects, are. There is also a cap of €13,000 on compensation for discrimination in access to employment claims (for example, a case in relation to discrimination in recruitment or at an interview)**
* **FLAC also recommends that the Equality legislation should be amended to provide guidance on what kind of “Orders for a Specific Course of Action” can be made against Employers and providers of goods and services. These orders have the potential to be transformative, but there is currently a lack of clarity about what kind of orders can be made.**
* **The Equality legislation does not allow for someone to apply to court to get an order preventing something happening or requiring something to happen, while waiting for the case to be heard by the WRC. In some cases, this may allow damage to occur which cannot be undone, by the time the case is heard. “Interlocutory” or “injunctive” orders would be extremely useful in such urgent cases, such as those concerning refusal of a school place, where the compensation will not provide a meaningful remedy when the case is eventually heard. Such order would also be useful in cases of ongoing discrimination or harassment. The legislation should be amended to provide for “interlocutory” or “injunctive” orders (i.e. orders made before a discrimination case has been heard in full and decided upon).**
* **FLAC recommends that the Equality Acts are amended to provide for the mandatory anonymised recording of the outcomes in settlement agreements reached in respect of complaints under the Acts.**
* **FLAC recommends that the Equality Acts should be amended in line with the provisions of Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021 – which proposes to prohibit the use of “non-disclosure agreements” in settlement agreements reached on foot of certain complaints under the Employment Equality Acts, except at the request of a relevant employee. The use of NDAs should also be prohibited in cases under the Equality Acts against public bodies.**

Section 82 of the Employment Equality Acts set out the “remedies” available on foot of a successful discrimination complaints. These include orders for compensation to be paid as well as:

* orders for employers who have discriminated to take specific courses of action
* orders for equal treatment in whatever respect is relevant to the case
* orders for reinstatement or re-engagement

Section 27 of the Equal Status Act provides for the remedies of compensation and orders that a certain course of action must be followed by a provider of goods and services who has discriminated.

***Limits on Financial Compensation***

There are maximum limits on financial awards by the Workplace Relations Commission and the Labour Court. In the context of employment, the limits are a maximum of two years’ pay, calculated on the basis of the complainant’s weekly pay at the time the case was referred. Where the complainant was not an employee (in the case of a discriminatory interview, for example) the maximum award is €13,000. In unequal pay cases, compensation may be awarded in the form of pay arrears, up to a maximum of three years prior to the referral of the case.

The maximum award under the Equal Status Acts is €15,000 for cases heard by the WRC or District Court.

Claims under the gender ground are treated exceptionally, they can be taken directly to the Circuit Court and can attract higher compensation awards. This exception was specifically introduced to ensure compliance with EU law. While there are no caps on the award the Circuit Court may make in such cases, IHREC have noted that “the individual may face other barriers such as increased costs, particularly if the claim is lost”. Very few cases are taken to Circuit Court, which means that it is not an effective remedy.

EU law requires sanctions for discrimination to be effective, proportionate and dissuasive. Dr Judy Walsh has raised concerns as to whether the financial redress provided for in the Equality Acts meets these standards:

“It is questionable whether the remedies available in the context of non-gender-ground discrimination could generally be described as ‘effective, proportionate and dissuasive’ sanctions. As noted above, a cap of EUR 13 000 applies at the access or recruitment stage. The ceiling of EUR 15 000 under the ESA may be inadequate for particularly egregious violations of the law in situations such as discriminatory denial of access to education. Interest is not payable on compensation awards under ESA or for non-gender-ground EEA cases. Moreover, the general compensation limits apply even where a case of discrimination has been made out on several grounds or in cases of established discrimination as well as harassment.”[[26]](#footnote-26)

Both the Equality Authority and Irish Human Rights Commission expressed concern at the effect compensation caps in discrimination cases have on the right to an effective remedy and recommended their removal. The Equality Authority noted that it was their experience that “some employers are aware that they can 'buy off' a discrimination claim involving access to employment for relatively small amounts of money”.

More recently, IHREC has recommended that the ceiling on compensation under the Equality Acts should be removed. In doing so, the Commission noted that “similar limitations on compensation in other EU Member States have been found to be incompatible with EU law”.

The limits on the amount of financial compensation for discrimination complaints should be removed. This would allow for discrimination complaints on all grounds (including gender) to be heard by the WRC at first instance.

***Orders for a Specified Course of Action***

As noted above, an order for specified course of action is a remedy under the Equality Acts. Walsh has praised the effectiveness of such sanctions on the basis that “the remedy can be tailored to the particular circumstances of the case”. These orders have the potential to have a transformative effect and to prevent potential future acts of discrimination by requiring measures such as equality training or re-examination of policies.

However, a Circuit Court judgment (in Deans v. Dublin City Council) has created some uncertainty about whether an Adjudicator can make an order for a specified course of action which imposes a general obligation on the Respondent or which goes beyond the facts of a specific case.

However, as already noted, EU law requires sanctions in Equality law to be effective and dissuasive (to act as a deterrent). The Equality legislation should be amended to provide that the orders made in all successful cases should act as a deterrent against future acts of discrimination, and to specifically allow for Orders that have an impact beyond the complainant.

***Injunctions (Court Orders before a discrimination claim is decided)***

There is no mechanism for injunctions to be granted in discrimination matters. These are orders made by a Court or tribunal at an early stage, before a case has been heard in full or decided on. Such orders may be particularly helpful in cases where there is a risk of ongoing harassment or discrimination, or a risk of discriminatory dismissal. In some cases, compensation may not be an effective remedy. For example, in a case about the admission of a child to a school, compensation alone will not suffice as a remedy, but it may be too late to order to admit the child to the school after the case is heard and decided.

The Equality Authority commented that “problems in relation to remedies [including the cap on redress] are exacerbated in that there is no provision to apply for any type of interlocutory relief pending the hearing of the claim”. On that basis the Authority recommended that “the legislation should allow applications for interlocutory relief in cases under the equality legislation”.

***Mediation***

Provided both parties consent, discrimination complaints may be referred to the WRC’s mediation service prior to being heard by an Adjudication Officer. Mediation is held in private and the agreement is not published.

The Fundamental Rights Agency has stated that mediation processes for discrimination complaints must “ensure that the victims’ interests are adequately protected”:

“Mediation has the advantage of avoiding the legal costs and delays associated with judicial proceedings as well as the conflict and polarisation that may arise during dispute settlement mechanisms in general. However, it is also essential that the settlements achieved reflect the outcomes available through regular dispute settlement channels and that the interests of the victim are adequately protected.”

That research notes that “not possible to have an overview of whether mediation allows for effective, proportionate and dissuasive sanctions across the EU since, for the most part, the results of cases are not made public”.[[27]](#footnote-27) To ensure that mediation is effective (and provides for sufficient redress), FLAC recommends that the Equality Acts are amended to provide for the mandatory anonymised recording of the outcomes in settlement agreements reached in respect of complaints under the Acts.

***Non-Disclosure Agreements***

The Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021 proposed to prohibit the use of “non-disclosure agreements” in settlement agreements reached on foot of certain complaints under the Employment Equality Acts, except at the request of a relevant employee. FLAC has previously expressed its concern at the use of strict confidentiality clauses in the settlement of proceedings against the State, including cases under the Equality Acts. FLAC has dealt with a number of cases where the State body will settle a claim on terms favourable to the client but only on the basis that both the terms and the fact of the settlement are confidential. Both the clients and their legal advisors are bound by such settlement terms and cannot even reveal that a particular case has in fact been settled. The settlement of such claims may be of interest to a wider group of people, other legal advisers and the public in general. There is a significant power and resources imbalance between the parties to these settlements and the issue at stake may be of great importance to the applicants. Strict confidentiality clauses prevent legitimate discussion of action or inaction by the State and also make it more difficult for other victims to obtain supporting evidence for similar complaints.

FLAC fails to see how settlement agreements which include a term that the fact of the settlement of proceedings must remain confidential can possibly be in the public interest, and recommends that the provisions of the Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021 are implemented and extended to apply to claims under the Equal Status Acts against the State .

**3.8 Access to Justice**

**Key Issues & Recommendations:**

* **Legal Aid is generally unavailable in discrimination cases under the Equality Acts, regardless of the severity or complexity of the case. Civil Legal Aid should be made available for discrimination cases heard by the Workplace Relations Commission.**
* **FLAC has expressed concern at the absence of awareness of Equality Rights which arise from the Equality Acts, and how they can be enforced. FLAC has called for bodies such as IHREC, the Citizens Information Board, the Legal Aid Board, and relevant NGOs to be resourced to provide information and to conduct targeted and outreach information campaigns in relation to Equality Rights.**
* **Relevant NGOs cannot take “representative actions” under the Equality Acts. FLAC has called for the Equality Acts to be amended to ensure that that representative NGOs are given unambiguous legal standing in appropriate cases.**
* **FLAC recommends that all discrimination cases should be heard by the WRC at the first instance.**
* **FLAC recommends that the WRC should put in place specific procedures for discrimination complaints – which are equality-proofed – to ensure that the WRC is as accessible as possible for all groups who are protected under the Equality Acts.**

Access to justice is a fundamental human right and is recognised as such under a range of regional and international instruments. While it has no single precise definition, access to justice includes knowledge of and access to the legal system as well as whatever legal services are necessary to achieve a just outcome. Access to justice includes access to legal aid. It also encompasses states’ obligations to vindicate and protect human rights and access to fair systems of redress, effective remedies and just outcomes.

In the absence of access to justice, people are unable to exercise and vindicate their rights, have their voices heard, challenge discrimination, or hold decision-makers and executive power to account. Unless the right of access to justice is vindicated, the risk of social and economic exclusion, is greatly increased.

***Absence of Legal Aid for Discrimination Cases***

The Legal Aid Board is precluded by law from providing representation before many quasi-judicial tribunals. This includes the Workplace Relations Commission which deals with most discrimination complaints under the Equality Acts.

This means Legal Aid is generally unavailable in discrimination cases under the Equality Acts, regardless of the severity of discrimination, harassment, sexual harassment or victimisation the case is concerned.

Discrimination cases can be extremely complex, and can involve dealing with complicated areas of national and EU law. The WRC must not apply national law where it is inconsistent with EU law, which adds to the legal complexity of the cases it hears. Even where only national law is concerned, equality law is complex. It may be extremely difficult, for example, for an unrepresented person to identify the right comparator in an equal pay claim, or present arguments about the application of the exemptions for the functions of public bodies and discriminatory legislation in the Equal Status Act. Unrepresented victims of discrimination, harassment, sexual harassment or victimisation must deal with these issues while sitting across from the Employer or Provider of Goods and Services who they have taken their case against.

Employers and businesses can often afford to pay for private legal representation in equality cases before the WRC; however persons making complaints often cannot. Where a person alleging discrimination does not have such financial means and is faced with an experienced legal team on the other side, this can give rise to an inequality of arms in practice

In 2019, UNCERD expressed its concern “about the absence of legal aid available for claims of racial discrimination under equality legislation brought before the Workplace Relations Commission, which results in non-equality of arms as respondents are mostly represented by legal counsels”. That Committee recommended:

“…that the State party extend the scope of the Legal Aid Board to the areas of law that are particularly relevant to Traveller and other ethnic minority groups, including by designating the Social Welfare Appeals Office and Workplace Relations Commission as prescribed tribunals under Section 27(2)(b) of the Civil Legal Aid Act 1995.”

CEDAW and the EU Fundamental Rights Agency have also made similar recommendations.

***Knowledge of Legal rights, Entitlements and Services***

Knowledge of legal rights, entitlements and services and access to legal information empowers people to enforce their rights, challenge inequalities and discrimination and combat social exclusion. However, FLAC has previously expressed concern at the absence of awareness of Equality Rights which arise from the Equality Acts, and how they can be enforced.

FLAC has called for bodies such as IHREC, the Citizens Information Board, the Legal Aid Board, and relevant NGOs to be resourced to provide information and to conduct targeted and outreach information campaigns in relation to Equality Rights.

***Representative Actions***

The Equality Acts operate on an individual complaints model. Article 7(2) of the EU Race Equality Directive provides that:

“Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.”

However, Ireland’s equality legislation does not provide for “representative actions” by NGOs.

The EU’s Fundamental Rights Agency (FRA) has stated that one of the ways by which the existing frameworks to combat discrimination on the grounds of race and ethnic origin could be strengthened is to widen access to complaints mechanisms” by allowing NGOs to take discrimination cases on behalf of those they represent.[[28]](#footnote-28)

The FRA research made compelling findings as to the benefits of resourcing civil society organisations to undertake litigation, and relaxing the rules of legal standing to empower such groups to pursue representative actions:

“The role of such civil society organisations, which may include NGOs, trade unions or equality bodies themselves, is particularly valuable in facilitating the enforcement of discrimination law for several reasons. Firstly, their participation may help to reduce the financial and personal burden on individual victims, giving them greater access to justice. Secondly, particularly where the permission of the victim is not required, the ability to enforce the directive is enhanced since, as noted below, members of ethnic minorities are often unaware of their rights or available procedures or unwilling to pursue claims. Thirdly, if claims can be brought even in the absence of an identifiable victim, it allows cases to be chosen on a strategic basis in order to address those practices that result in discrimination against large numbers of individuals… The ability of civil society organisations to provide assistance or engage in litigation is dependent upon expertise and resources… [In] Sweden and the UK, NGO advice centres receive funding or other forms of support from equality bodies. Although civil society organisations appear to play an important role in referring cases to equality bodies and participating in litigation, a lack of human and financial resources constitutes a significant limitation on their capacities, and public funding is mostly sparse or unavailable.”

In light this, FRA recommended that:

“Consideration could be given to taking measures that widen access to complaints mechanisms, including: broadening the mandate of equality bodies that are not currently competent to act in a quasi-judicial capacity; relaxing the rules on legal standing for NGOs and other civil society organisations; increasing funding for voluntary organisations in a position to assist victims. In light of the fact that victims are often reluctant to bring claims, allowing civil society organisations, including equality bodies, to act of their own motion in bringing claims to court or conducting investigations, without the consent of a victim, or without an identify able victim, could constitute an important step towards facilitating enforcement.”

FLAC has called for the Equality Acts to be amended to ensure that representative NGOs are given unambiguous legal standing in appropriate cases.

***Dedicated Legal Services***

In relation to the promotion of equality and the elimination of discrimination, the European Commission has stated that “real change often requires a critical mass of cases”.[[29]](#footnote-29) The Commission’s guidelines for Equality Bodies suggest that promoting the achievement of a critical mass of casework under each protected ground should be amongst such body’s aims.

FLAC has called for the introduction of dedicated legal services for those who enjoy the protection of the Equality Acts. While these services cannot be viewed as an alternative to a comprehensive system of civil legal aid, they seek to address unmet legal need to the greatest extent as their resources allow, as well as bringing strategic litigation which has the potential to benefit communities as a whole. FLAC believes that its Traveller Legal Service (based on a partnership of Traveller organisations) provides a rights-based model which should be replicated in respect of other groups.

***Access to the Workplace Relations Commission***

Most discrimination complaints are heard by the Workplace Relations Commission (the WRC). But, as discussed above, some cases against licenced premises are heard by the District Court, and cases on the gender ground may be heard by the Circuit Court.

FLAC recommends that all discrimination cases should be heard by the WRC at the first instance. This measure can only be introduced in respect of cases on the gender ground if the cap on financial redress for discrimination cases heard by the WRC is removed.

In addition to the absence of legal aid for WRC cases, FLAC has also previously highlighted certain access to justice concerns around the WRC’s processes:

The WRC was established after the Equality Tribunal was disestablished. The majority of cases before the WRC concern employment law. Unlike the Equality Tribunal, the WRC does not have specific processes for dealing with discrimination complaints. Only one WRC complaint form exists and it is tailored to employment complaints, although it is necessary to use it to submit a complaint under the Equal Status Acts. The form contains compulsory fields in relation to employment which are wholly irrelevant to complaints under the Equal Status Acts. The WRC’s name may also be a source of confusion for people seeking to make discrimination complaints.

FLAC recommends that WRC should put in place specific procedures for discrimination complaints – which are equality-proofed – to ensure that the WRC is as accessible as possible for all groups who are protected under the Equality Acts.

FLAC also recommends that the WRC’s power to investigate claims is strengthened. This would reduce the burden on complainants to make technical legal arguments and to provide evidence.

FLAC has also recommended that the WRC adopt an “Equal Treatment Bench Book”. Courts and Tribunals in the UK use an Equal Treatment Bench Book – which is a guide for judges and decision-makers on how to ensure equal treatment for all those who come before the Court or Tribunal. The Bench Book is intended for use by the judiciary but it is also an important reference point for the legal profession and members of the public alike.

**3.9 Combatting Systemic & Structural Discrimination**

**Key Issues & Recommendations:**

* **IHREC has the power to conduct inquiries, and to take proceedings in their own name. These powers are central to combatting structural and systemic discrimination. However, they have not been exercised by IHREC. The Review must address any issues (such as the way the powers are defined in legislation) which prevents IHREC from exercising them.**
* **The Review should also examine strengthening IHREC’s power to enforce the implementation of the Public Sector Equality and Human Rights Duty. The Review should also examine amending the duty to provide for “specific” duties which apply to certain Government Departments or Public Bodies.**
* **The Review should examine introducing measures which place a duty on public bodies to collect equality data, and giving IHREC specific enforcement powers in this regard.**

Council of Europe guidance explains structural or systemic discrimination in the following terms:

“Systemic discrimination tends not to be a matter of deliberate action. It is rooted in the way organisations go about their day-to-day business as policymakers, employers, or service providers. It is a product of the systems, structures, and cultures that organisations have developed and implement in their work. Systemic discrimination can operate across the full spectrum of employment, income, education, health, housing, culture, policing, public infrastructure, and beyond.”

For several reasons, it may be impossible, or extremely difficult for an individual to take a case challenging structural or systemic discrimination. Although instances of structural or systemic discrimination may affect many people, in some cases it may be impossible to identify a victim. Equality law must provide for measures which identify systemic and structural forms of discrimination, and which allow them to be challenged.

***The Powers and Function of the Irish Human Rights and Equality Commission (IHREC)***

The Irish Human Rights and Equality Commission (IHREC) has significant powers to conduct equality reviews, inquiries and to take proceedings in their own name (i.e. without an individual client). These powers are provided for in the Irish Human Rights and Equality Act 2014.

FLAC have previously noted that IHREC has never used their significant inquiry or “own name proceedings” powers. FLAC recommends that any legislative issues (problems with the ways these powers are defined in legislation) must be dealt with in the context of the Review of the Equality Acts, to ensure that IHREC can exercise these important powers which are vital to tackling systemic and structural forms of discrimination.

***The Public Sector Equality & Human Rights Duty***

Section 42 of the Irish Human Rights and Equality Act 2014, introduced the Public Sector Equality and Human Rights Duty, providing one of the most important national mechanisms for mainstreaming equality and human rights. It imposes a positive obligation on a broad range of statutory and public bodies to have regard, in the performance of their functions, to the need to eliminate discrimination, promote equality of opportunity and protect the human rights of its members, staff and persons to whom it provides services. This includes Government Departments and local authorities. By doing so, it has the potential to transform the culture of public bodies by mainstreaming equality and human rights in all aspects of their work.

In fulfilling their duties under the 2014 legislation, public bodies must consider the human rights and equality impact of their policies, delivery of services, budgets, procedures and practices.

The Public Sector Duty has now been in effect for over five years. However, FLAC has noted that there is limited evidence to date of the duty having delivered on its potential to create a shift in culture within public bodies and the delivery of public services:

“For many public bodies, the process of implementation and engagement with the public sector duty remains at the very early stages and the implications of the duty for the work of those bodies are largely unexplored. While public bodies are afforded flexibility in how they implement the duty, every public body has a statutory obligation under section 42(2) of the 2014 Act to first assess and address the human rights and equality issues relevant to its work in its strategic plan and, secondly, to report on developments and achievements in its annual report.”

FLAC believes IHREC should be resources to use their enforcement powers in relation to the Public Sector Duty. The Review should examine whether the duty could be strengthened, by giving IHREC greater enforcement powers and by introducing “specific duties” which apply to certain State bodies.

***The Importance of Equality Data***

IHREC have noted that “without measuring discrimination and inequalities in Ireland, it is extremely difficult to effectively target policy solutions”. IHREC has highlighted the considerable shortfalls in equality data in Ireland, and has repeatedly called for the collection of equality data as standard by public bodies, including “ethnic identifiers”. Collection of such data would, in part, assist in the implementation of the Public Sector Equality and Human Rights Duty.

The Fundamental Rights Agency have also noted that: “enforcing the prohibition on indirect discrimination is greatly facilitated by the existence of statistics disaggregated by ethnicity and other personal characteristics such as age”.

FRA have also noted that “…without collection of ethnically disaggregated data it is difficult to develop policies to prevent discrimination and promote equality. This renders it difficult to identify where problems exist, and also to measure the success or otherwise of measures to combat the latter”.[[30]](#footnote-30)

FLAC believes the Review of the Equality Acts should examine introducing measures which put a duty on public bodies to collect equality data, and giving IHREC specific enforcement powers in this regard.

**3.11 Racial Profiling**

Irish law contains no explicit prohibition against racial profiling by An Garda Síochána and other law enforcement officers.

IHREC have noted that:

“There are negative attitudes amongst Garda members towards minority ethnic groups, as well as reports of racial profiling in the use of stop and search powers, including reports from young minority ethnic people. Discrimination does not explicitly constitute a breach of discipline within the Garda Síochána (Discipline) Regulations 2007. Concerns have been raised about the ability of the Garda Síochána Ombudsman Commission to effectively address and investigate complaints of racial profiling by Garda members.”

GSOC may only investigate individual complaints rather than systemic issues. As a result, there is no complaint specific mechanism available to those who consider that they have been subject to racial profiling. As has been noted above, the functions of An Garda Síochána may not be challenged as discrimination under domestic equality legislation.

In 2019, UNCERD stated that:

“The Committee is concerned about the reportedly high incidence of racial profiling by the Gardaí (the police) targeted at people of African descent, Travellers and Roma and the disproportionately high representation of these ethnic minority groups in the prison system. It is also concerned about the absence of legislation proscribing racial profiling, the absence of independent complaint mechanisms dealing with racial profiling and the lack of statistics on racial profiling.”

UNCERD recommended that Ireland should “put in place an independent complaints mechanism to handle racial profiling”.

**FLAC has previously called for the introduction of legislative measures that would allow individuals, or groups representing their interests, to make complaints through the WRC in relation to discrimination, including discriminatory profiling, that would allow for such allegations to be investigated and remedied independently. FLAC recommends that the Equality Acts are amended to provide for such a mechanism.**

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   *Exceptions: Reconciling CERD and the Race Equality Directive*, Netherlands Quarterly of Human Rights (1/21). Available at: <https://journals.sagepub.com/doi/full/10.1177/09240519211055648> [↑](#footnote-ref-1)
2. UN Committee on the Elimination of Racism (2019), *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR. Available at: <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf> [↑](#footnote-ref-2)
3. UN on the Committee on the Elimination of Discrimination against Women (2017*), Concluding observations on the combined sixth and seventh periodic reports of Ireland*, Geneva: OHCHR. Available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en> [↑](#footnote-ref-3)
4. Section 12(2) EEA - In this section “vocational training” means any system of instruction which enables a person being instructed to acquire, maintain, bring up to date or perfect the knowledge or technical capacity required for the carrying on of an occupational activity and which may be considered as exclusively concerned with training for such.

   an activity. [↑](#footnote-ref-4)
5. Judy Walsh (2020), *Country Report: Non Discrimination, Ireland 2020*. European Commission Directorate-General for Justice and Consumers. Available at: <https://www.equalitylaw.eu/country/ireland> [↑](#footnote-ref-5)
6. The Equality and Rights Alliance (2011), *A Roadmap to A Strengthened Equality and Human Rights Infrastructure in Ireland.* Available at: <http://17october.ie/the-equality-rights-alliance-reports/> [↑](#footnote-ref-6)
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9. Judy Walsh, *Equal Status Acts 2000-2011: Discrimination in the Provision of Goods and Services* (Lonsdale Law Publishing, 2013) at page 22-3. [↑](#footnote-ref-9)
10. For further analysis, see: Shivaun Quinlivan & Claire Bruton, *Disability, EU law and the CRPD: A New Dawn?* in Charles O’Mahony & Gerard Quinn (Eds.), *Disability Law and Policy: An Analysis of the UN Convention* (Clarus Press, 2017). [↑](#footnote-ref-10)
11. Judy Walsh, *Equal Status Acts 2000-2011: Discrimination in the Provision of Goods and Services* (Lonsdale Law Publishing, 2013) page 59. [↑](#footnote-ref-11)
12. The Equality and Rights Alliance (2011), *A Roadmap to A Strengthened Equality and Human Rights Infrastructure in Ireland.* Available at: <http://17october.ie/the-equality-rights-alliance-reports/> [↑](#footnote-ref-12)
13. The Equality and Rights Alliance (2011), *A Roadmap to A Strengthened Equality and Human Rights Infrastructure in Ireland.* Available at: <http://17october.ie/the-equality-rights-alliance-reports/> [↑](#footnote-ref-13)
14. Judy Walsh (2020), *Country Report: Non Discrimination, Ireland 2020*. European Commission Directorate-General for Justice and Consumers. Available at: <https://www.equalitylaw.eu/country/ireland> [↑](#footnote-ref-14)
15. ATD Ireland (2019), *Does It Only Happen to Me? Living in the shadows of Socio-Economic Discrimination*, available at: <http://17october.ie/wp-content/uploads/2019/09/SES-Discrimination-Report-ATD-Ireland-Sept-19.pdf> [↑](#footnote-ref-15)
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27. European Union Fundamental Rights Agency (2012). *The Racial Equality Directive:*

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