Article

IJDL

International Journal of Discrimination and the Law
2023, Vol. 0(0) 1–31

DOI: 10.1177/13582291231176513
journals.sagepub.com/home/jdi
Sage

Muslim women in the workplace and the Equality Act 2010: Opportunities for an intersectional analysis

Catriona Cannon

Abstract

The interplay of religion and gender is a relevant factor in the labour market disadvantage experienced by Muslim women. Despite widespread recognition of the importance of addressing disadvantage through an intersectional lens, the domestic equality law framework in Britain continues to adopt fixed and discrete classifications of status inequality, undermining protection for Muslim women in the workplace. This paper uses doctrinal and socio-legal method to expose the disregard in the application of British equality law in its international human rights context to the interaction of religion with gender and to present opportunities for development through case law of an intersectional analysis of disadvantage. After highlighting the labour market disadvantage experienced by Muslim women and making the case for an intersectional response, the paper will assess the application of the British equality law framework in relevant cases and will highlight its contribution to the emergence of a 'conflict' narrative. This paper will argue that there is, however, scope in human rights, proportionality and harm analyses to highlight experiences of discrimination at the vector of religion and gender. It will conclude that litigants who avail of these opportunities can contribute to development of law and policy which better reflects lived experience.

Keywords

Equality, religion, gender, intersectionality, UK

School of Law, University of Glasgow, Glasgow, UK

Corresponding author:
Catriona Cannon, School of Law, University of Glasgow, Stair Building, Professors' Square, Glasgow G128QQ, UK.
Email: Catriona.cannon@glasgow.ac.uk

Introduction

In the search for a rationale to explain the low participation and progression rates of Muslim women in the labour market, it is imperative to consider evidence of disadvantage which ensues from the interplay of their religion and gender. Despite the importance of assessing and addressing disadvantage through an intersectional lens being firmly established in feminist literature, the domestic equality law framework in Great Britain continues to adopt an approach described as 'atomised',[1] the application of which undermines legal protection for Muslim women in the workplace.

This paper uses doctrinal and socio-legal method to, firstly, expose the disregard in the application of British equality law in its international human rights context to the interaction of religion with gender and, secondly, to present opportunities in the common law for the development of an intersectional analysis of disadvantage. Drawing on secondary literature from the social sciences, this paper will begin by highlighting the nature and causes of disadvantage experienced by Muslim women in the labour market. After making the case for an intersectional response to address this disadvantage, the paper will assess the impact of the 'single-axis framework'[2] in British equalities law on relevant cases and will highlight its role in contributing to the emergence of a 'conflict' narrative which regards religion and gender as clashing rights. Such a narrative, it will be argued, detracts attention from understanding and tackling the workplace disadvantage experienced by Muslim women on account of the interaction of their religion and gender.

The paper will next contend that in the absence of any present political will for legislative change in this area, it is incumbent on litigants and their counsel to take advantage of opportunities in the present legislative framework, hitherto under-utilised, for raising intersectional considerations before the judiciary. Revisiting the case law discussed earlier in the paper, it will investigate the scope provided by human rights, proportionality and harm analyses in litigation to highlight experiences of discrimination at the vector of religion and gender and will conclude that in these opportunities lie the possibility of the beginnings of a new consciousness which can and should inform law and policy development to better reflect the lived experiences of discrimination suffered by Muslim women. Finally, this paper will offer practical guidance to litigants and their representatives on strategies with the potential to advance both individual (litigant) interests and wider social justice goals.

Muslim women: Nature and causes of disadvantage in the labour market

There is limited data on the discrimination and disadvantage experienced by Muslims in the UK (Women and Equalities Committee, 2016: 13-14)[3] but despite this, it is clear from published data on employment and pay rates that Muslim women suffer significant disadvantage in the labour market. It was reported (Women and Equalities Committee, 2016: 5-6) that the unemployment rate among Muslims in 2015 in Great Britain was 12.8%: more than double the unemployment rate at the time of the general population (at 5.4%).[4] Data from the annual population survey revealed that in 2018, 39% of those aged

16–64 in England and Wales who were economically inactive identified as Muslim and, significantly, 56% of women who identified as Muslim were economically inactive (ONS, 2020). Also notable, is the finding from research conducted by Dr Nabil Khattab using data from the Labour Force Survey (2002–2013) that Muslim women are 71% more likely to be unemployed than white Christian women with equivalent educational attainment and language aptitude (University of Bristol, 2015).

Available data further suggests that even those Muslim women in secure employment suffer disadvantage in progression and pay. Data from the 2011 Census and the Labour Force Survey revealed that in England and Wales, only 16% of Muslims were occupying 'top professions' compared with 30% of the general population, with only 40% of those Muslims in top professions being women (see Reynolds and Birdwell, 2015: 29). It has also been found (Longhi and Platt, 2008: 23) that Muslim women in employment suffer from a high pay gap when compared to Christian men:[5] reported to be as high as 22.4% in the period 2004–7.

Broadly, two themes have emerged in possible explanation for the employment and pay disparity affecting Muslim women. The first is that Muslim women are the victims of discrimination, both at the recruitment stage and during employment. The second refers to expectations from religion and family which can serve as impediments for Muslim women's progression at work. Each of these themes is discussed below.

Discrimination

Several studies have identified evidence of perceived discrimination against Muslim women in the workplace (Arifeen and Gatrell, 2020; (Francois-Cerrah, 2012); Women and Equalities Committee, 2016; Koura, 2018; Masoon, 2019; Moore, 2021; Opara et al., 2020; Reeves et al., 2013; Seta, 2016). In a study conducted by Reeves et al., 44% of Muslim women interviewed wore the hijab at work and of those women, 62% reported that they had witnessed and/or experienced discrimination (Reeves et al., 2013: 55). The study participants were found to have, 'experienced more negative than positive interactions and consequences' (Reeves et al., 2013: 59) when wearing the hijab at work. Several of those who chose not to wear the hijab explained this choice by reference to 'the perceived intolerance or discrimination' they would face if they were to manifest their religion at work in this way (Reeves et al., 2013: 57-58). Arifeen and Gatrell found that some of the Muslim women participating in their study were concerned about the negative impact wearing the hijab at work might have on their career because they consider it had with it a 'stigma' and that they may be considered as (in the participants' words) 'outsiders' or 'different' (Arifeen and Gatrell 2020: 231). Some Muslim women have also reported feeling 'pressurised to change their appearance or anglicise their name in order to access employment' (Francois-Cerrah, 2012). Research in the UK, moreover, found that 50% of Muslim women interviewed who wore the hijab considered they had been subjected to religious discrimination in decisions taken on career advancement opportunities and that the outcome of these decisions had been influenced by their wearing of the hijab (see Seta, 2016: 19). The threat of discrimination for manifesting religion through dress acts a deterrent to seeking and remaining in employment and has been cited

as a contributor to some Muslim women choosing instead to work in their community or undertake their own business endeavours (see Seta, 2016: 20). As the hijab portrays the female employee's religion to the outside world, it has been cited as a reason Muslim women suffer disproportionately from hate crime (Awan and Zempi, 2015: 22 referring to Taras, 2012). Concerns about working somewhere that is perceived to possess negative attitudes towards minorities or faith communities has been described as a 'chill factor' which discourages applications from Muslims for particular jobs (Mustafa and Heath, 2016).

Negative stereotyping of Muslim women is often cited as a reason in explanation for employment disparity (e.g. see Koura, 2018). Opinion polls carried out across Europe have evidenced a stereotypical view of Muslim women as, 'a homogeneous group supporting domestic violence, and terrorism, homophobia, gender inequality, traditional gender roles' (Seta, 2016: 15). Some media outlets across Europe, meanwhile, depict Muslim women 'as a threat to national traditions and values, such as gender equality or values of secularism' (Seta, 2016: 14).[6] As these sentiments can be underlined in the messaging of political parties, the importance of public officials and applicants for public office avoiding any contribution to stereotyping which can cause 'hostility and suspicion' against those who are considered to be Muslim, has been raised (Amnesty International, 2012: 5). Employment prospects of Muslim women may be hampered by the so-called 'stereotype threat' which has been explained as the 'phenomenon whereby members of a negatively stereotyped group can feel an anxiety at the prospect of being negatively stereotyped that can affect performance' (Reynolds and Birdwell, 2015: 84). Muslim women are 'falsely stereotyped as submissive, weak and oppressed' (Ali et al., 2017: 1165) and incorrect 'social assumptions' about their career ambitions have been identified as a contributor to the challenges experienced by Muslim women in attaining senior positions (Arifeen and Gatrell, 2020: 222).

Indeed, the negative experiences of Muslim women in the workplace are likely to be under-reported, with findings from studies in Europe which suggest knowledge of the justice system – and/or trust in it – may be limited (Seta, 2016: 9, 31). It has also been posited (Petersen, 2020: 34–9) that 'social, cultural and religious norms and practices' might deter religious minority women from accessing justice.

Religion and family

The progression of many Muslim professional women may be affected by expectations from their religion and family, referred to by Arifeen and Gatrell (2020) as, 'glass chains'. Arifeen and Gatrell report the findings of qualitative interviews with Muslim professional women which revealed the challenges facing some Muslim women in relation to navigating expectations from their religion and family around interactions with men and informal networking and socialising at work for career progression (Arifeen and Gatrell, 2020: 227–9). These challenges were exacerbated when social and business relations involved the consumption of alcohol (Arifeen and Gatrell, 2020: 229–230; see also Reynolds and Birdwell, 2015: 85–6)). One participant of the study is reported to have 'held back from opportunities to socialise and network, despite being aware that such

refusal "excludes you" and could be career limiting' (Arifeen and Gatrell: 2020: 230).[7] In the same study (Arifeen and Gatrell, 2020, 228–9), some participants indicated that certain male-dominated work environments required assertiveness which, the authors noted, does not sit comfortably with certain Islamic perspectives of ideal female qualities.

It has been reported (Reynolds and Birdwell, 2015, 37) that according to the 2011 Census in England and Wales the reason given for economic inactivity in almost half of the cases of economically inactive Muslim women was 'looking after the home or family'. The norms and social practices concerning gender roles in some Muslim communities may account for some of the disparity. It has been asserted that relating work with being a mother is particularly difficult for Muslim women (Arifeen and Gatrell, 2020: 231 referring to Dale, 2005). Muslim women, for example, might find it harder to postpone starting a family until such time as their careers are established in light of expectations arising from the 'symbolic importance of motherhood in Islam' (Arifeen and Gatrell, 2020: 231). Indeed, a study (referred to in Seta, 2016: 19) of recruitment exercises in the UK found as many as 1 in 8 women of Pakistani origin were asked about marriage and family plans, as compared to only 1 in 30 white women.

Addressing the disadvantage: The need for an approach which recognises the religion-gender relationship

The interaction of religion and gender is at the core of each of the possible reasons discussed above for the disparity in the employment prospects of Muslim women. The hijab is worn only by women as an expression of the Islamic belief that women ought to dress modestly.[8] The expression of their religion to the outside world through dress gives rise to particular stereotypes of Muslim women.[9] The expectations relating to socialising and networking among male colleagues are relevant to the experiences of Muslim women, as is the assigned gender role in the home. Properly understood, the experiences of Muslim women in the workplace should not be equated to the experiences of Muslim men, or the experiences of non-Muslim women.

Muslim women, of course, 'should not be considered one homogeneous group' (Women and Equalities Committee, 2016: 16), and it is acknowledged that several circumstances – aside from the interaction of their religion and gender – are influential on their labour market and workplace experience. It has been said (Women and Equalities Committee, 2016: 16) that, 'Muslim women's experience of the labour market varies depending on many factors, including: migrant heritage, migration status, which generation they are, and whether they were born into the faith or have converted'. Muslims are also an ethnically diverse group (Muslim Council of Britain, 2015: 24) and outcomes have been found to vary by ethnicity (Women and Equalities Committee, 2016: 16).[10] Also affecting the economic activity levels of Muslim women is their geographical location: a disproportionate number of Muslims live in areas of deprivation,[11] a factor relevant to labour market outcomes (Women and Equalities Committee, 2016: 22L; see also Feng et al., 2015). Educational attainment, likewise, influences employment opportunities (Women and Equalities Committee, 2016: 16, 25–33),[12] though barriers for ethnic minorities in the transition from education to work have been identified (Morris, 2015). Even controlling for factors such as age, migration status, socio-economic

status, education and ethnicity, the nature, cause and effect of the interaction of religion and gender is complex and personal to the individual. Not all of the factors outlined above in explanation of the employment disadvantage experienced by Muslim women will apply to the same extent (or, even, at all) to all Muslim women. A study of workplace experiences (Reeves et al., 2013) involving Muslim women who wore the hijab and Muslim women who did not wear the hijab, for example, found that a higher proportion of the former reported having experienced or witnessed discrimination. The argument made in this paper that the interplay of religion and gender is relevant to explaining the unique experiences of Muslim women is without disregard for the many other factors and characteristics which also impact on the lives of Muslim women. It asks, however, that the phenomenon of a religion/gender intersection is recognised as a starting point to addressing the disadvantage faced by Muslim women in the labour market. More broadly, the argument made in this paper lends support to engagement in law and policy with disadvantage on a basis which is individual in nature and which focuses instead on the multiple influences on experience.

Of course, the idea that the interaction of religion and gender is relevant to the lived experience of Muslim women is hardly a new one. 'Intersectionality' theory is one of the hallmarks of what is often referred to as 'third-wave feminism' which first emerged in the 1990s in the United States (Dudjerija et al., 2020: 13-4). Although earlier feminist writings on intersectionality have been identified,[13] the article by Kimberley Crenshaw published in 1989 (Crenshaw, 1989) which explored black women's experience of gender, class and race, is often cited as the most influential in the development of the theory. Over 30 years have passed since Crenshaw encouraged acknowledgment of the multi-faceted nature of disadvantage. In these 30 years, literature on intersectionality theory has grown exponentially creating a strong evidence base for recognising the multiplicity of identity and experience (for example, see Hancock, 2007; Lutz et al., 2011; Opara et al., 2020; Yuval-Davis, 2006).

In this paper, the focus lies with the intersection of gender and religion and begins from the premise that 'historical and cultural variations of gender and its intersections with … religion … have intricately constructed women's … identity' (Dudjerija et al., 2020: 10). The UK Government has acknowledged to a limited extent that an intersectional approach to addressing disparities suffered by Muslim women is appropriate. Recognition was given to the unique experiences of Muslim women in a report published in 2016 on 'Employment opportunities for Muslims in the UK' which stated:

> The impact of the very real inequality, discrimination and Islamophobia that Muslim women experience is exacerbated by the pressures that some women feel from parts of their communities to fulfil a more traditional role. (Women and Equalities Committee, 2016: 5)

To address the identified impact on Muslim women of inequality, discrimination and Islamophobia, the report (Women and Equalities Committee, 2016: 5) recommended that the Government 'introduce a role models and mentoring programme aimed at Muslim women to help them realise their potential in employment, Organisational equality, diversity and inclusion ('EDI') policies could also be effective in addressing some of the barriers to full participation by Muslim women and others whose religious, familial or

personal values restrict their engagement with work opportunities. Arifeen and Gatrell (2020: 233), for example, propose that workplace training and support on the religious and familial expectations affecting the participation of Muslim women in the workplace is a practical step which organisations could take to support Muslim women and promote understanding among colleagues. Mentoring and EDI efforts are laudable, but they do not go nearly far enough to combat the intersectional disadvantage which Muslim women can suffer in the workplace. A fundamental change to how we approach discrimination and disadvantage in law and policy is desirable if real progress is to be made (Hannett, 2003: 76; see also Ast and Spielhaus, 2012 for a European perspective on legal and non-legal strategies which could be deployed to address intersectional disadvantage experienced by Muslim women). However, despite the widespread recognition in academic literature over the last 30 years of intersectionality theory, our human rights and domestic anti-discrimination law continues to afford protection on an atomised basis.

Gender and religion in the human rights and equality framework

Freedom of religion and belief (FORB) and gender equality are both recognised in international human rights law.[14] Of particular relevance to our domestic law is the European Convention on Human Rights (the 'Convention') in which the right to FORB is enshrined.[15] Whilst the UK has not ratified the protocol to the Convention which contains a free-standing right to religious and gender equality,[16] all rights in the Convention, including the right to FORB and the right to a family and private life,[17] must be enjoyed without discrimination on grounds of sex or religion.[18] The right to FORB and to gender equality are significant but presented, largely, in international human rights law, as stand-alone rights (Ghanea, 2017: 1-2; Petersen, 2020: 10). The largely stand-alone nature of FORB and gender equality rights in international human rights law is reflected in our domestic protections against discrimination. Whilst the consolidation in Great Britain of its anti-discrimination laws in 2010 into a single equality act held promise for the re-alisation of benefits from recognition of the inter-connectedness of the various protected characteristics, the atomised approach to protection adopted by the Equality Act 2010 (the 'EA') significantly impedes its potential in this regard. The framework of the EA is constructed around 9 specified protected characteristics, religion and sex included.[19] Discrimination (including harassment) because of any of these characteristics is prohibited by the terms of the EA[20] and any claim for discrimination (whether direct or indirect) or harassment must specify which protected characteristic is engaged. There is no provision in force in the EA which permits a claimant to argue that the treatment they were subjected to was discriminatory or otherwise unlawful because of characteristics (such as religion and sex) *in combination*. When the EA was passed, it did contain a limited provision which would – had it been brought into force – have allowed a claimant to frame a case of direct discrimination because of two protected characteristics in combination.[21] This provision, however, was not brought into force when the EA received Royal Assent and there is no indication that the present Government intends to bring it into force. A claimant, then, who considers they have been discriminated against on grounds of more than one characteristic, must bring separate discrimination complaints

alleging they suffered both, for example, sex discrimination and religious discrimination, (or, as the case may be, harassment related to sex and harassment related to religion). These complaints will be considered separately by the adjudicating tribunal though can be pled on the same claim form and considered at the same hearing.[22] Critics of this atomised approach in our domestic anti-discrimination law, argue that requiring claimants to frame their cases as, for example, sex discrimination and/or religious discrimination, fails to appreciate the true nature of experiences of prejudice and discrimination (Hannett, 2003). On a practical level, critics fear that requiring cases to be pled as separate discrimination complaints when treatment is perpetrated on grounds of two or more characteristics in combination presents obstacles for success (e.g. see Hannett, 2003). This argument is based in part on the requirement (at least, theoretically) for a comparator to be identified who would have received more favourable treatment (Hannett, 2003, 81–4; see also the UK report written by Aileen McColgan in Burri and Schiek, 2009: 125–7).[23] If someone were to allege that they were treated less favourably because they were a Muslim woman, for example, but required to allege sex discrimination and religious discrimination separately, concerns arise that the respondent would be able to defeat both claims by pointing to a Muslim man and to a non-Muslim woman who were treated no more favourably. The comparator exercise is relevant also to complaints of indirect discrimination (though not harassment).[24] Others consider these concerns are overstated. Robison (2013:17–8) argues credibly that there are signs the traditional insistence on comparators in discrimination complaints is giving way, at least in the higher courts, to a more focused consideration of the reason for the impugned treatment. Robison also points to domestic jurisprudence which is authority for findings of discrimination where one protected characteristic is *a* reason for the treatment, regardless of whether it was the sole reason (Robison 2013: 16–7). On this analysis, provided the treatment could be demonstrated as at least in part on grounds of religion and in part on grounds of sex, the claimant would have reasonable prospects of success. Indeed, the tribunal case of *O'Reilly v BBC & anor*[25] appears to support this contention: although the tribunal was not satisfied that age discrimination had been made out on the facts, it appeared willing to accept that had part of the reason for the treatment complained of been sex, and part age, a finding of both sex and age discrimination could be made. The employment appeal tribunal decision of *Ministry of Defence v Debique*[26] is further demonstrative of the potential for our domestic law to accommodate indirect discrimination complaints pled on two grounds (albeit separately). Debique, who came from St Vincent and the Grenadines and who was a single mother, was successful before the employment appeal tribunal in both her indirect sex discrimination and indirect race discrimination complaints based on an argument that it was the combined effect of the Ministry of Defence's policy that she be available for duty 24 hours a day, seven days a week and its policy on foreign nationals coming to the UK to care for children of service personnel which put her at a particular disadvantage.[27]

Whilst these developments in the jurisprudence are welcome, they do not offer a complete solution. They require something of a manipulation of experience to frame a plausible complaint (though see opinion of Halrynjo and Jonker, 2016 on the relevance of expressly naming and framing intersectionality in law). This, it is suggested, has the potential to discourage some claimants from accessing justice and to harm those who do

seek to utilise the justice system. It also reduces the visibility of intersectional experiences which can have a negative impact on policy initiatives designed to address these real needs. In any event, these arguments have not been pursued yet in the higher courts: indeed, the lack of any case law in the appeal courts which cites *O'Reilly* or *Debique* in support of an intersectional approach to anti-discrimination law is suggestive that the arguments are not being pursued at all.

Case law and absent intersections

It is perhaps unsurprising given the legal framework described above that there has been little judicial consideration of intersectionality in British equality cases involving Muslim women.[28] Restricted by the rigidity of the single-axis framework of the EA and/or the largely separate treatment of FORB and gender equality in international human rights law, litigants who experience disadvantage on religious and sex grounds in combination appear to plead their cases, in the main, on religious equality or FORB grounds only (see Ast and Spielhaus, 2012: 5). The headscarf, in Islam, is considered by some to be a religious requirement of Muslim women and has been described as the 'paradigm symbol of intersectionality' (Ast and Spielhaus, 2012: 5). Yet, a close look at cases concerning the wearing of the Islamic scarf in employment or education settings in our domestic courts reveals not only that sex is rarely, if ever, pled as a ground of discrimination[29] but also that little attention in the judgments is paid to the intersectional issues the cases throw up.

Azmi v Kirklees Metropolitan Borough Council[30] concerned a Muslim bilingual support teacher who wore a veil which covered her head and face (except her eyes) when in the presence of adult males. The employment tribunal and employment appeal tribunal had to consider whether the requirement imposed by the school in which she taught that she remove her veil when teaching constituted either direct or indirect discrimination on the ground of religion. Despite observing the tribunal's acceptance that the religious belief of the claimant was held 'by a sizeable number of Muslim women'[31] the potential relevance of the inter-relationship between sex and gender is nowhere explored in the employment appeal tribunal's judgment. In *Bushra Noah v Sarah Desrosiers t/a Wedge*,[32] another case pled on religious discrimination grounds, the employment tribunal accepted the claimant's argument that she had been indirectly discriminated against on religious grounds when she was not offered a position in a hairdressing salon after she indicated that she wore her headscarf at all times. The tribunal recognised the gender aspect to the cause of the disadvantage in its acknowledgment of 'the practice of Muslim women of covering their hair when in the presence of adult males other than the woman's husband'.[33] There is, however, no evidence in the judgment that the gender aspect of the requirement on stylists to display their hair was considered in the tribunal's assessment of its proportionality. Although Noah won her case without this consideration, had the gender aspect of the requirement been more explicitly explored, the tribunal may not have found the matter to be as 'finely balanced'[34] as it did. It is, of course, possible that Azmi and Noah perceived the treatment they were subjected to as being inflicted solely on religious grounds as opposed to having a gender aspect.[35] As it is predominately women who work as teaching assistants and hairdressers, it is likely that Azmi and Noah were working (or

applying to work) alongside other women. This, of course, may have led them to comprehend that the disadvantage they experienced was solely (or mainly) related to their religion. Indeed, group disadvantage in separate sex discrimination complaints may have been difficult to establish. Had complaints on grounds of religion and gender in combination been possible, then a strict approach to the comparative exercise would likely have required Azmi and Noah to draw on hypothetical comparisons of disadvantage with non-Muslim men. Such an approach to comparison could certainly be criticised for its artificiality and lack of nuance[36] but it would, at least, have engaged consideration, and raised the visibility, of the gender aspect to the disadvantage experienced.

Halrynjo and Jonker studied 14 discrimination cases in Scandinavia and the Netherlands which concerned alleged discrimination connected to the wearing of the hijab and found that all 14 complainants cited religion as the main ground of discrimination (Halrynjo and Jonker, 2016). Reflecting on the complainants' descriptions of their experiences of discrimination, they observe:

> The complainants' descriptions of hijab discrimination … show a strong explicit focus on religion/religious identity, while the gender dimension is just taken for granted or opposed (as a matter of suppression of women within Islam). (Halrynjo and Jonker, 2016: 288)

The authors conclude that the 'gender dimension' 'is … not important in recognizing these women's experiences' (Halrynjo and Jonker, 2016: 289). It may, however, be that the separation of religion and gender in human rights and equality laws is influential on the perception of individual experience: in other words, a framework which requires grounds to be identified by claimants as engaged may encourage claimants to categorise their own experiences. As the authors observe, simply because the claimants in the studies expressed their experiences as interferences with their *religious* identities, does not mean that the gender dimension 'does not exist' (Halrynjo and Jonker, 2016: 298). Indeed, there have recently been two cases before the CJEU concerning the wearing of the Islamic veil, one of which was pled in the domestic courts on both religious and sex discrimination grounds.[37] If accepted that there is a gender dimension to these types of cases, then recognition of this in law and policy is surely important as a starting point to tackling the systematic disadvantage experienced by some groups because of multiple and interconnecting characteristics.[38]

'Conflict' narrative

Instead of promoting awareness of the intersectionality of disadvantage, the rigidity of the atomised approach to equality in international human rights law and domestic law has provided fertile ground for a narrative of conflict between religion and gender to emerge. In literature exploring the narrative of religion and gender as conflicting, rather than complimentary rights, attention has been drawn to the relatively separate treatment of FORB and gender equality in international human rights law (Ghanea, 2017: 1-2; Petersen, 2020: 10) (which, as shown here, is reflected in the British domestic equalities framework), and to the largely siloed work of advocacy groups representing the two rights

(Petersen, 2020: 10). State requests for ratification of reservations to gender equality in international treaties have been identified by Ghanea (2017: 2–4) as intensifying this conflict narrative.[39]

Malik (2008: 1, 6) has opined that although there are competing interests and conflicts in equality law and policy, their nature and extent is sometimes overstated. The harm in perpetuating the notion of 'conflict' between FORB and gender equality is that it diverts attention from due regard being paid to the inter-relationship between religion and gender and the actual experiences of many women (Ghanea, 2017).[40] Interferences with FORB may not affect both men and women in the same way; women with particular religious beliefs may experience sex discrimination in a different way than those without; and many experience discrimination on inter-connected sex and religious grounds (Petersen, 2020: 16).

Some would assert that it is accurate to portray FORB as being in conflict with gender equality. The Catholic doctrine which provides that women cannot be appointed to the priesthood, for example, surely offends the notion of gender equality in employment. The legal routes to gender recognition surely sit in direct opposition to religious views that sex is an immutable characteristic. Ghanea, however, has argued persuasively that there is a difference between FORB and religious norms (Ghanea, 2017: 5). She explains that religious norms can, of course, clash with gender equality, but observes that it does not follow from this that FORB and gender equality are conflicting rights. Indeed, if FORB is interpreted as the right to hold and manifest religious beliefs provided no undue interference with the rights of others, it sits alongside gender equality as opposed to sitting in opposition to it. Former UN Special Rapporteur Heiner Bielefeldt has said of freedom of religion or belief, that it is, 'a norm to which liberals and conservatives, feminists and traditionalists, and others, can refer in order to promote their various and often conflicting religious or belief-related concerns' (Bielefeldt, 2013: para 2). Bell (2020), meanwhile, posits that many religious norms of Catholic Social Teaching can be seen as consistent with anti-discrimination law principles, though he identifies some differences in the area of women's equality rights.[41]

Indeed, rather than regard restrictions on the wearing of the Islamic dress as the paradigm case of intersectional discrimination on religious and gender grounds, gender equality has been cited in justification of them (for a critique of the gender equality argument made to support banning the Islamic veil, see Howard, 2012).[42] A perception that the Islamic headscarf is irreconcilable with gender equality hinders recognition that discrimination arising out of the wearing of the headscarf in fact implicates both the woman's religion and her gender rights (Ast and Spielhaus, 2012, 5) and contributes to a narrative that religion and gender are conflicting or clashing rights. As Evans has said of headscarf bans common in workplaces and universities in some European countries:

> …the exclusion of women from important public spaces such as schools and universities is a peculiar way to achieve gender equality and has the potential to harm women's educational and employment rights in the name of gender equality. (Evans, 2006: 68)

The complexities of the relation between religious autonomy and gender equality are highlighted by the case of *R (on the application of Begum) v Denbigh High School Governors*[43] in which the House of Lords had to decide whether a school's refusal to permit a female Muslim pupil to wear the full-length jilbab to school amounted to a breach of her Article 9 Convention right to FORB. In delivering her opinion, Lady Hale observes that a 'dress code which requires women to conceal all but their face and hands, while leaving men much freer to decide what they will wear, does not treat them equally'.[44] Yet, she also acknowledges the various reasons (personal, religious, social and political) which might influence a woman's decision to wear religious dress and emphasises that where the wearing of religious dress is an exercise of free choice, there should be no interference in this decision. She opines, 'the sight of a woman in full purdah may offend some people, and especially those western feminists who believe that it is a symbol of her oppression, but that could not be a good reason for prohibiting her from wearing it.'[45] Relevant, however, to the court's decision that the school's uniform code had not breached Begum's article 9 rights to FORB, was the need to balance respect for Begum's religious autonomy with the desire, among other considerations, to protect those pupils who had indicated concern that if the jilbab were allowed, they would be pressurised to wear it against their wishes.[46] Thus, whilst gender equality features in *Begum* as an aspect of the justification for the interference in Begum's right to manifest her religion, its relevance is confined to the interest in protecting the autonomy of young, female, Muslim pupils who, because of their age, were considered more susceptible to outside and familial influences.[47] Whilst the court in *Begum* could be criticised for failing to give sufficient consideration to the intersectional impact of the uniform code on Begum,[48] its effort to recognise and safeguard the interests of those pupils who expressed concern over permitting the jilbab is notable for the appreciation it shows of experiences at the intersection of religion, gender and age.

Also relevant to a developing narrative of religion and gender equality as conflicting rights has been a series of high-profile decisions in the tribunals and courts concerning FORB or religious equality and gender equality (understood widely to include not only women's rights, but rights pertaining to sexual orientation equality and gender identity). The cases of *McClintock v Department of Constitutional Affairs,*[49] *Ladele v UK,*[50] *MacFarlane v UK,*[51] *Forstater v CGD Europe,*[52] *Bailey v Stonewall Equality Ltd and others,*[53] *Mackereth v Department of Work and Pension*[54] *and Mbuyi v Newpark Childcare (Shephards Bush) Ltd*[55] (which were all considered at appellate level) concerned human rights and equality interests ostensibly in competition in the workplace. Use of terminology such as, 'conflict', 'clash' and 'competing' in the reporting of these (and similar) cases,[56] meanwhile, serves to emphasise the tensions among the various interests and rights engaged. The growing narrative outlined in this section which depicts FORB and religious equality as being in conflict with gender equality, however, importantly inhibits the development of a discourse which pays due respect to the interaction of religion and gender in the lives of women of faith.

Introducing intersections into Equality Act analysis

A fundamental change to the framework of human rights and equality law in Great Britain is needed to fully appreciate the experiences of those who suffer discrimination on multiple grounds (Hannett, 2003). Any such fundamental change to the framework in the foreseeable future, however, is unlikely: the decision not to recognise intersectional discrimination in a very limited way through s14 of the EA being indicative of present political feeling. Indeed, calls for amendments to European Directives to overcome impediments to protection for multiple discrimination which arose out of research commissioned by the European Commission (Burri and Schiek, 2009) failed to lead to any developments at the regional level (see Onufrio, 2014: 128).[57]

Whilst a framework which invites an open and full analysis of intersectional discrimination is surely preferable, in its absence, it is argued here that litigants and their counsel ought to avail of opportunities within the existing framework to plead their cases in a manner which permits the intersectional context to permeate the judicial analysis of their discrimination complaints. Fredman has previously advocated for 'a capacious interpretation of grounds' in EU anti-discrimination law to tackle multiple discrimination (Fredman, 2016: 69–70) and has identified some evidence of this approach being taken in decisions of the CJEU (Fredman, 2016: 71–9). She argues (2016: 71), 'For a genuine intersectional approach, litigants need to illuminate the ways in which relationships of power interact in vertical, diagonal and layered ways so that the most disadvantaged are the most protected, rather than the converse'. It is argued in this section that opportunities exist for litigants to do this through the application of the Equality Act 2010 in its human rights context and that these opportunities have, hitherto, been under-utilised.

Proportionality

Proportionality is a concept in our human rights and equality laws which appears in various guises. A proportionality analysis, of course, is required in claims under the EA of indirect discrimination: a provision, criterion or practice which is otherwise discriminatory will not be unlawful if it is determined to be 'a proportionate means of achieving a legitimate aim'.[58] Proportionality is further key to analysis of the exceptions to direct discrimination in the EA: an employer can apply in relation to work a requirement for a person to have a certain protected characteristic if, having regard to the nature and context of the work, it is an occupational requirement and a proportionate means of achieving a legitimate aim.[59] The proportionality concept is further engaged in decisions under the EA by the requirement that the judiciary interpret the EA so far as possible in accordance with Convention rights (particularly those, qualified in scope).[60]

Jurisprudence on the proportionality analysis in the application of domestic anti-discrimination law has developed over the years, influenced by decisions of the Court of Justice of the European Union (the 'CJEU') (and its predecessor)[61] and decisions of the European Court of Human Rights (the 'EctHR') on cases brought before it concerning alleged State breaches of those Convention rights which are qualified in scope, including the Article 9 right to FORB. An interference with the right to manifest one's religion or

belief will not breach article 9 if it is found to fall within the ambit of Article 9(2) which permits those interferences 'prescribed by law' and 'necessary in a democratic society' 'in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others'. 'Necessity', then, is to be determined according to the proportionality principle. So too does Article 14 of the Convention, which requires that Convention rights, such as the right to FORB, are enjoyed without discrimination on status grounds, invoke proportionality considerations: discrimination occurring when different treatment or adverse impact on status grounds cannot be justified as a proportionate means of achieving a legitimate aim. The proportionality analysis under the Convention infiltrates the domestic anti-discrimination law not only through the interpretative principle, but also in the requirement that public authority employers (and the courts as public authorities) comply with the Convention.[62]

It follows that there is a wealth of jurisprudence for our domestic courts on the proportionality analysis, as it applies in cases concerning equality in employment. Writing in 2008, Aaron Baker persuasively argued that integral to the proportionality analysis, as it had then been applied by the CJEU and the ECtHR, is consideration of the *impact(s)* of the discriminatory rules in question (Baker, 2008). In a critique of Strasbourg jurisprudence on proportionality, Baker found that the ECtHR, 'routinely takes into account impacts not only on the claimant but also on the claimant's group, upon society and upon the general interest in non-discrimination' (Baker, 2008: 320–1). Baker makes a compelling case for the Strasbourg approach to proportionality to influence future judicial interpretation of proportionality in domestic cases under our anti-discrimination law.

It is argued here that consideration of the 'impact(s)' of a measure in the proportionality analysis is a key gateway to considerations of intersectional concerns under our current single-axis framework. If discrimination framed as being on religious grounds has a gender dimension, then this dimension will infuse the impact of the discriminatory measure and should, therefore, be a relevant consideration in the balancing exercise as part of the proportionality analysis. Once attention turns to the justification of a discriminatory measure and consideration of its *impact*, there is nothing to suggest that the analysis ought to be restricted to experiences and effects which relate directly to the ground on which the complaint is pled and any attempt to artificially separate these from those experiences and effects which do not so relate but which nevertheless flow from the discriminatory measure would be artificial and futile. Indeed, the impacts considered in the balancing exercise need not only relate to the complainant him or herself but can extend to impacts on the complainant's group or society in general (Baker, 2008: 323–6). Baker highlights that the aims of anti-discrimination law include the avoidance of social exclusion and economic harm (Baker, 2008: 325). So understood, the proportionality analysis ought to assess an employer's discriminatory measures against their wider social and economic impacts (Baker, 2008: 323–6). Thus, a complaint that an employer's uniform policy prohibiting headscarves amounts to indirect discrimination on grounds of religion ought, in its consideration of whether the rule which has disparate impact on Muslims is justified, consider the social and economic impacts of the rule which may include the impact of excluding Muslim *women* from the workplace. Through such

representations, there is scope for the structural inequalities which occur at the intersection of protected characteristics to be recognised.

Some support for the prospect of the proportionality analysis being used to consider intersectional issues in cases pled on a single ground basis can be found in the recent CJEU decisions of *IX v Wabe eV*[63] and in *Mt Muller Handels GmbH v MJ*[64] which both concerned the dismissal of employees who refused to remove their headscarves at work. The CJEU referred to the need for a balancing exercise when determining whether the claimant suffered indirect religious discrimination and asserted that the exercise should include all fundamental rights engaged.[65] Although the CJEU in *Wabe and Muller* did not direct the domestic courts to consider the gender dimension of the employers' measures in their balancing exercises, it is arguable that if all fundamental rights and principles are relevant to this exercise, the principle of non-discrimination on grounds of sex enshrined in European and International law could come into play to assess the gender implications inherent in religious dress code bans at the balancing stage, even where the case has not been pled on sex discrimination grounds.

The proportionality analysis, therefore, as it infiltrates our anti-discrimination law in various guises, presents an opportunity to invite considerations of intersectionality into cases framed on a single ground. If we turn now to the cases considered above, we can see that this opportunity was missed, with scarce attention being afforded to the *impacts* of the discriminatory measures.

This is most marked in the case of *Azmi*.[66] The employment appeal tribunal, tasked with considering whether the employment tribunal had approached the question of proportionality correctly in its assessment that the requirement on Azmi to remove her veil whilst teaching was a proportionate means of achieving a legitimate aim, focused solely on whether the tribunal had 'conducted the kind of stringent investigation of the alternative means of achieving the aim'.[67] Of sole importance to the epmloyment tribunal and employment appeal tribunal was whether the dress requirement could be said to be the least restrictive means of achieving what had been found to be a legitimate aim of the school.[68] Thus, attention was given to the impressive number of alternatives considered and explored by the School. No mention whatsoever, however, was given to the discriminatory impacts of the rule, either on Azmi herself, or on Muslim women in general.

Discriminatory impacts are vaguely referred to and supposedly weighed in the balance in the tribunal's conclusion in *Noah*[69] that the employer's rule on head coverings at work was not a proportionate means of achieving what was accepted by the tribunal to be a legitimate aim. The fact, however, that only one paragraph[70] was devoted to considering discriminatory impacts in the midst of a total of 14 paragraphs devoted to the application of the proportionality concept to the facts, gives some indication as to the value the tribunal considered it added to the analysis. In that single paragraph, there is ambiguous reference to the prohibition of head coverings in the workplace having a 'general and particular effect'.[71] There is, however, no further particularisation of the nature of the impact, other than an acknowledgment that being ruled out for further consideration for a job amounts to an impact.[72]

In *Begum*.[73] the proportionality of the uniform code was considered in the House of Lords, with Lord Bingham of Cornwall delivering the leading judgment. Notably,

nowhere in his judgment is there any mention of the impact of the dress code on Begum, the group to which she belonged (defined narrowly as those who wished to wear the jilbab for religious reasons), or society at large. Lord Hoffman's opinion, meanwhile, gives no consideration whatsoever to the means adopted by the school, focussing instead on the legitimacy of the aim being pursued.[74] Lady Hale, in turn, discusses the social cohesion objective of the uniform policy and the religious diversity accommodated within it together with the concern expressed by other girls that they would be pressurised to wear the jilbab by their families if it were allowed.[75] These are all relevant considerations in the assessment of whether the dress code requirement was 'necessary' and the efforts to recognise the intersectional experience of those young Muslim pupils who feared they would be pressurised to wear the jilbab have already been highlighted. However, what is absent from the analysis is a stringent approach to balancing. What were the impacts on Begum of the dress code? What were the impacts on other girls with the same religious belief as Begum? What were the wider societal and economic impacts for female Muslims desiring to wear Islamic dress in education and in the workplace? In the failure to acknowledge and reflect on the impacts of all those affected by a discriminatory rule, there lies a missed opportunity to raise awareness and understanding of the lived experiences of all those who suffer at the intersection of religion and gender.

Article 14

The significance of Article 14 of the Convention is often downplayed, with reference to its dependent nature: Article 14 can only be relied on when the facts of the case engage a Convention right. There is no 'right to employment' as such in the Convention and although the ECtHR has held that Article 8 of the Convention can, in certain circumstances, be engaged by a refusal to employ someone,[76] it does not follow that all employment cases fall within the ambit of Article 8 (see O'Connell, 2014, 216–7).[77] If, however, discrimination is inflicted on a person at least in part on religious grounds, leading to the loss or restriction of a work opportunity, it is strongly arguable that the facts of the case will engage Article 9 of the Convention and, in turn, Article 14.[78] It is argued here that Article 14 provides a window of opportunity through which intersectional considerations can permeate employment equality claims pled on a single ground. A complaint, for example, that an employer's rule or policy on dress code interferes with an employee's right to manifest their religion or belief could give rise to an Article 9 complaint against a public authority employer. If the rule also had an adverse impact on women, then litigants in their complaints against public sector employers would be advised to consider pleading breach of Article 9 in conjunction with article 14: enjoyment of the Convention rights must be without discrimination on grounds of sex.[79] Counsel in *Begum* (and the similar case of *R (on the application of X) v Headteachers and Governors of Y School*)[80] could potentially, then, have argued their complaints on the basis of breaches of Article 9 as well as Article 14. Whilst this may not have led ultimately to the courts finding in their favour, it would at least have widened the discussion and raised awareness of the gendered nature of the impact of the dress rules in question and the relationship between gender and FORB.

It is also feasible, however, through the courts' interpretative obligation under the Human Rights Act 1998, for Article 14 non-discrimination considerations to influence cases brought in the domestic courts against private employers.[81] If Article 9 of the Convention is engaged in a claim of religious discrimination under the EA, our domestic courts must read and give effect to domestic anti-discrimination law in a manner which is, so far as possible, compatible with the Convention – and this includes compatibility with Article 14 when it is engaged in cases within the ambit of Article 9. Thus, in *Azmi*[82] and *Noah*,[83] counsel for the claimant could have invited the court – in interpreting the indirect religious discrimination provisions under the Employment Equality (Religion or Belief) Regulations 2003 – to have regard to the need to ensure the claimants' (qualified) Article 9 right to manifest their religion was secured without discrimination on *any* status ground, including sex. This might at the very least have provided the employment tribunal and employment appeal tribunal with more reason to consider the disproportionate impact of the dress code on Muslim *women* in its assessment, for example, of the proportionality of the rule or in the determination of any appropriate remedy, notwithstanding that a separate sex discrimination complaint was not pled.

Thus, it is argued that litigants and their counsel ought to have regard in religious discrimination complaints which engage Article 9 of the Convention (or in sex discrimination complaints which engage Article 8), to whether the non-discrimination provision in Article 14 of the Convention might assist them in exposing any relevant gender (or, as the case may be, religious) dimension to the treatment complained of or harm suffered.

Harassment

The definition of harassment in the EA offers further scope to introduce considerations of intersectional prejudice and disadvantage into judicial decision-making. Harassment is proven (under the EA) where there is unwanted conduct related to a protected characteristic which has the purpose or the effect of violating another person's dignity or creating a prescribed environment.[84] When determining whether the conduct has such an effect, it is necessary to consider not only the perception of the claimant but also the other circumstances of the case and whether it was 'reasonable' for the conduct to have the effect it did.[85] Firstly, any assessment of whether conduct has the effect of violating a person's 'dignity' must appreciate that the gender dimension to a comment which is related to religion might have a significant impact on whether or not the claimant perceives their dignity to have been violated. How one perceives their inherent worth is inescapably bound up with the multiple aspects of their identity.[86] Secondly, in determining whether the effect the claimant experienced was reasonable, the perception of the claimant and all relevant circumstances, including the context in which it was made must be considered. There is, in this, a clear invitation to look at aspects of the case which do not necessarily pertain to the ground on which the harassment complaint is brought. Whether or not it is reasonable for particular conduct related to religion or sex to have the effect of violating another's dignity or creating a humiliating, offensive, intimidating or degrading environment, might conceivably depend on the gendered or religious context of the conduct. It

has been posited that 'meaning' is attached to words by 'the societal hierarchy and norms which shape the persons' sentiments long before the employer employee relationship is formed' (Pate, 2017, 180). Gendered or religious context can, then, bear significance in religious or sex (sexual) harassment complaints and ought to be identified by litigants and counsel and brought to the attention of the judiciary in relevant cases.

Although not a case on the Islamic scarf, or indeed on religious discrimination, the case of *Richmond Pharmacology v Dhaliwal*[87] is a striking example of a case of intersectional harassment pled and analysed on a single ground basis. The claimant argued successfully that a comment made to her by a colleague brought to mind a stereotype relating to 'forced marriage' – 'that women of Indian ethnic origin were liable to be pressurised into marriage irrespective of their own wishes'[88] – and that it amounted to racial harassment. The stereotypical comment, however, sat squarely at the intersection between race and gender: whilst forced marriage can affect both girls/women and boys/men, it has a disproportionate effect on the former and is recognised as a form of violence against women and girls.[89] The gendered nature of the comment found to amount to racial harassment in this case appears at least to have been recognised: the tribunal acknowledges that the impugned comment was based on a stereotype concerning *women* of Indian ethnic origin and that it was reasonable for the claimant to find it offensive. It is difficult, however, to discern from the brief reasoning of the tribunal what effect, if any, the gender dimension had on the tribunal's finding.

Remedy

In advocacy for compensation, we see another opportunity not taken in the cases to introduce considerations of intersectionality. If a claimant is successful in a complaint under the EA before the tribunal, the tribunal may order the respondent to pay the claimant compensation.[90] The overarching principle in calculating compensation is that the claimant ought to be returned to the position he/she was in before the unlawful act took place.[91] Such an overarching principle invites the tribunal to look closely at the loss caused by the unlawful act alongside principles of causation and remoteness. Whilst it is true that the tribunal is concerned only with the loss engendered by the act which has been found in the relevant proceedings to be unlawful,[92] once this link is drawn, it would seem that the focus moves to the particular situation of the individual claimant. This paper argues that in a complaint of religious discrimination, the gender of the claimant may be relevant to the tribunal's assessment of loss, regardless of whether the claimant has pled a sex discrimination case. After all, it is an accepted rule of tort law that the tort-feaser must take the victim as he/she finds them.[93] The so-called 'eggshell skull' rule has traditionally been used to ensure the wrongdoer remains responsible for the full impact of the wrongful act on any individual, even if the victim was more vulnerable to injury because of, for example, a pre-existing condition. To be clear, it is not suggested here that being of the female gender renders a victim more vulnerable to loss or injury. Rather, it is posited that being of the female gender may be a relevant contextual factor in respect of the victim's experience of loss or injury suffered as a result of religious discrimination.[94] The Ontario Human Rights Tribunal in the case of *SH v M [...] Painting*[95] has opined thus:

> The intersectional nature of a complainant's experience does not simply translate into a greater award of damages as compared to someone who identifies with only one prohibited ground. It is … a way for the Tribunal to understand the complexity of the complainant's experience … It can similarly be useful as a framework for assessing the impact of the discrimination [on] the complainant's dignity, feelings and self-respect.

By means of example, in assessing the compensation to be paid to the claimant in the case of *Richmond Pharmacology v Dhaliwahl,*[96] it ought to have been open to Dhaliwahl to lead evidence of the injury the impugned comment caused her, *as a woman* of Indian origin. Her experience of the comment made to her which invoked stereotypes of forced marriage cannot sensibly be extracted from the aspects of her identity which render her experience of hurt unique. Moreover, if she is to be put back in the position that she would have been in had she not been subjected to the wrongful act, then it is surely incumbent on the tribunal to have regard to all aspects of her identity which are relevant to her experience of loss or injury in its assessment of remedy.

It is not only in the assessment of an injury to feelings or injury to health following on from a finding of religious discrimination that the claimant's gender may be a relevant consideration. So too might it hold relevance in the calculation of financial loss. The importance of an intersectional analysis in the calculation of financial loss flowing from a discriminatory dismissal or hiring decision has been discussed in the literature in the context of age and gender. Alon-Shenker and MacDermott have described the position of older women in the labour market as 'precarious' (Alon-Shenker and MacDermott, 2019, 561) and have argued persuasively that this should be reflected in the remedy awarded following a discriminatory dismissal (Alon-Shenker and MacDermott, 2019, 544–5). There will be some objection to this proposition. Older women are vulnerable in the labour market to decision-making by prospective employers based on prejudicial stereotypes. The potential for a victim of discrimination to be subjected to further discrimination by third parties in her quest for new employment following a discriminatory dismissal ought arguably to be a factor which breaks the chain of causation.[97] Still, if the goal of compensation is to put the individual back in the position that she would have been in had she not been subjected to the wrongful act, then a contextualised approach which takes account of the unique circumstances of historically disadvantaged groups is not just advisable, but also necessary. If there is reliable evidence that it is more difficult and will take longer for older women to find new employment, then it can hardly be argued that this is not a reasonably foreseeable loss which should be compensated. In the same way, the employment prospects of Muslim women, of which there is statistical evidence, should be pled in evidence as a relevant consideration in the calculation of financial loss in a religious discrimination complaint arising from the dismissal of a Muslim woman from employment.

Though a true intersectional analysis of a complaint is precluded by the single-axis approach taken in the EA, claimants who plead their cases on a single ground deserve a remedy which compensates them for the loss or injury caused by the unlawful act. If the claimant's experience of the unlawful act inflicted is shaped by a characteristic such as her gender, there would appear to be nothing precluding her from presenting evidence of this to the judiciary in a complaint of discrimination based on another ground. In this lies an

opportunity for remedies to more accurately reflect the harm experienced and for an increased awareness and understanding of the intersectional experiences of discrimination.

Conclusion

The single-axis, atomised approach of British domestic equality law in its international human rights context, which regards religion and gender as separate protected characteristics and asks claimants to frame their cases as violations of one in isolation from the other, frustrates the development of a discourse on the interactions between religion and gender which could lead to more effective law and policy in recognition that, as Petersen (2020: 16) has highlighted, interferences with FORB may not affect both men and women equally; women with particular religious beliefs may experience sex discrimination in a different way than those without; and many experience discrimination on inter-connected sex and religious grounds. It, moreover, contributes to an unhelpful narrative which can be discerned in domestic case law and related reporting of religion and gender as competing or conflicting rights.

It has been argued in this paper that there are, however, opportunities in the EA for litigants and their counsel to bring relations between religion and gender to the attention of the judiciary in relevant cases. This, it has been argued, is possible through leading evidence on the full impact of impugned measures for consideration as part of the proportionality analysis required under the EA and for the purposes of remedy. The potential for article 14 to be relied on either directly or indirectly through the interpretative tool when there is discrimination on sex grounds in the enjoyment of FORB or discrimination on religious grounds in the enjoyment of Article 8 rights to autonomy has also been posited. Finally, the breadth of circumstances relevant to determining the reasonableness of an employee's reaction to unwanted conduct in a harassment complaint provides important scope for litigants to imbue into complaints pled under the single-axis framework considerations which better reflect the lived experiences of those whose experience of disadvantage is multi-faceted.

This paper has sought to highlight that litigants and their counsel have already in their armoury tools to influence development of the common law towards a more synergistic understanding of disadvantage. Litigants and their counsel ought in the first instance, consider whether a complaint under the EA ought to be brought on grounds of more than one protected characteristic. Next (and whether the decision is taken to plead the case on a single ground basis or otherwise), consideration ought to be given to whether the Convention is engaged and, if it is, whether Article 14 can be deployed to advance an additional equality dimension either directly or through the interpretive principle. In preparing arguments pertaining to issues of justification or necessity, counsel ought to investigate the full impacts of the impugned treatment or behaviours on their client and their client's group (variously defined) and lead evidence on these accordingly. Finally, in preparing submissions on the effect of behaviours and on remedy, counsel ought to consider the various equality dimensions influential on the unique harm (past and future) suffered by their clients and make these known to the relevant decision maker.

The single-axis framework of British equality law need not operate as a constraint which shapes and restricts complaints into fixed and discrete classifications to the exclusion of relevant dimensions of experience. Our litigants and counsel can and must resist this. Giving a voice to, and inviting remedy for, distinctive experiences of prejudice, discrimination and disadvantage will best serve litigants' individual interests. The benefits of this approach, though, are not limited to the interests of those individuals who adjudicate in the courts and tribunals. In asking the judiciary to take cognisance in its decisions of all relevant equality dimensions in any case, the wider public interest will be served through the norms espoused in its decisions.[98]

Dismantling the closed ground, single-axis framework and replacing it with a more flexible route to justice reflective of unique experiences of harm may still be preferable. However, in the absence of political will at present for any such fundamental change, the suggestions in this paper offer some hope that, in the meantime, the actions of litigants and their counsel might start a shift in the present narrative on religion and gender towards the beginnings of a new consciousness around experiences of disadvantage and prejudice.

Acknowledgements

The author would like to thank the two anonymous reviewers for their very helpful comments.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

ORCID iD

Catriona Cannon https://orcid.org/0000-0002-6813-7412

Notes

1. Status inequality in British equality law was described as 'atomised' by Hepple (2014: 35).
2. Crenshaw (1989: 140) uses the term 'single-axis framework' to describe the perception of disadvantage as 'occurring along a single categorical axis', in other words, based on race or based on gender, rather than intersectional experiences.
3. Lowe et al. (2022: 18) provide comment on data shortages concerning the experiences of women of faith, whilst Seta (2016: 9) discusses under reporting in Europe of discrimination against Muslims.
4. The unemployment rate of Muslims in Britain in 2016/2017 was 11.4% as compared to 4.7% of the general population (EHRC, 2019: 48). It was reported (ONS, 2020) that in the period 2012–2018, those who identified as Muslim had the lowest employment rate of all religious groups across England and Wales.

5. The study (Longhi and Platt, 2008) reports that 'Christian men' is used as the reference group, as representing, at the time, the majority religion.
6. See also the findings of a study (Hanif, 2021) conducted by the Centre for Media Monitoring (a project of the Muslim Council for Britain) on British media coverage of Muslims between 2018 and 2020.
7. Evidence has been gathered (Butler, 2012: 14–5) of views that absence from social events in pubs negatively impacts on job prospects and could increase the likelihood of selection for redundancy.
8. The All Party Parliamentary Group on Race and Community has acknowledged (Butler, 2012: 14) that women who experience prejudice for wearing the hijab face dual discrimination.
9. It is observed that, like Muslim women, Sikh men also wear religious dress. The employment rate for Sikh men, however, is notably higher than for Muslim women (see data from the Labour Force Survey 2006/08 reported in EHRC, 2010 at 405 and ONS, 2020). This may support the contention that the interplay of religion with (female) gender is relevant to the greater disadvantage experienced by Muslim women in the labour market.
10. See also data in Longhi and Platt, 2008: 36–7 which highlight a difference in predicted pay and pay penalties for Pakistani Muslim women as compared to Bangladeshi Muslim women.
11. According to an analysis by the Muslim Council of Britain (Muslim Council of Britain, 2022) linking 2021 census data with the index of multiple deprivation, 40% of the Muslim population of England live in the most deprived fifth of local authority districts.
12. It was reported (ONS, 2020) that having a degree or equivalent qualification had a greater influence on employment outcomes than religious affiliation. This finding was based on data from the annual population survey relating to adults aged 16–64 in England and Wales in 2018.
13. See commentary by Lutz et al. (2011: 1–4) on what they refer to as the 'Foundational Narratives'.
14. FORB is enshrined in article 18 of the United Nations Declaration of Human Rights (UDHR): Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. FORB is also guaranteed by article 18 of the International Covenant on Civil and Political Rights and the 1981 Declaration on the Elimination of all forms of Intolerance and Discrimination based on Religion or Belief. The UDHR recognises the right to gender equality, with article 1 stating that 'All human beings are born free and equal in dignity and rights' and article 2 providing that 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex…'. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), meanwhile, provides a definition of discrimination against women and requires signatory States to commit to taking certain measures to eliminate such discrimination.
15. European Convention on Human Rights (ECHR), Article 9: ARTICLE 9 Freedom of thought, conscience and religion. (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic

society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

16. ECHR, Protocol 12.
17. ECHR, Article 8.
18. ECHR, Article 14.
19. Equality Act 2010, (EA), s4.
20. EA, s13, 19, s26.
21. EA, s14. The APPG on Sex Equality (2018: 11) has argued in favour of s14 being revised and brought into force.
22. The claimant in *Bahl v The Law Society and others* [2004] IRLR 799 alleged she had suffered discrimination because she was a black woman. The Court of Appeal held that it was necessary for the tribunal to identify the evidence which would support a finding of sex discrimination and also the evidence which would support a separate finding of race discrimination.
23. EA, s23.
24. EA, s23.
25. *O'Reilly v BBC & Anor* (ET) 2200423/2010.
26. *Ministry of Defence* v *Debique* (EAT) [2010] IRLR 471.
27. The employment appeal tribunal approved of the tribunal's approach to the claimant's argument relating to the combined effect of the two policies and its approach of regarding the existence of both policies as relevant to the question of justification of each. Agreeing the combined effect of the two policies put women and those of Vincentian origin at a disadvantage which could not be justified, the employment appeal tribunal found in favour of the claimant in respect of both her discrimination complaints. The tribunal judge recognised the difficulties with adopting a rigid approach to discrimination complaints, acknowledging in the judgment at para 165 that, 'In general, the nature of discrimination is such that it cannot always be sensibly compartmentalised into discrete categories. Whilst some complainants will raise issues relating to only one or other of the prohibited grounds, attempts to view others as raising only one form of discrimination for consideration will result in an inadequate understanding and assessment of the complainant's true disadvantage. Discrimination is often a multi-faceted experience'.
28. Commenting on the international sphere: Ghanea (2017: 6) has said, 'There is a dearth of standards, sources and jurisprudence addressing intersections and synergies between women's rights to equality and FORB'. In the five discrimination cases concerning the wearing of the Islamic scarf which have come before the CJEU, only questions of religious discrimination have been considered (*Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* C-157/15*; Asma Bougnaoui Association de defense des droits de l'homme (ADDH) v Micropole Univers SA* C188-15*; IX v Wabe eV and MH Muller Handels GmbH v MJ* C-804/18 and C-341/19/Judgment, LF v SCRL Case C-344/20). (For a helpful discussion of *Achbita* and *Bougnaoui*, see Adams and Adentire, 2018; Hambler, 2018).
29. Ast and Speilhaus (2012: 5) observed this was true also of cases pled in the European Court of Human Rights and other European national courts.
30. *Azmi v Kirklees MBC* (EAT) 2007 ICR 1154.
31. *Azmi v Kirklees MBC* (EAT) 2007 ICR 1154, para 54.
32. *Bushra Noah v Sarah Desrosiers t/a Wedge* (ET) 2201867/2007.

33. *Bushra Noah v Sarah Desrosiers t/a Wedge* (ET) 2201867/2007, para 132.
34. *Bushra Noah v Sarah Desrosiers t/a Wedge* (ET) 2201867/2007, para 160.
35. It has been argued (Hannett, 2003: 71–2) from consideration of UK jurisprudence that claimants who experience discrimination on the basis of two or more protected characteristics mostly bring complaints of discrimination on a single ground only and, in those cases where the claimant pleads discrimination on two grounds, the tribunals or courts usually focus on only one ground or on the odd occasion assess the complaint as one of additive discrimination.
36. For a critique of different approaches to the comparative exercise in intersectional discrimination complaints, see Atrey, 2018.
37. *IX v Wabe eV and MH Muller Handels GmbH v MJ* C-804/18 and C-341/19/Judgment. The complaint before the domestic courts in *Wabe* included a complaint of sex discrimination as well as religious discrimination. It has been argued (Howard, 2022: 254–5) that there is merit in pleading discrimination complaints arising from bans on religious clothing as gender discrimination as the CJEU adopts a stricter approach to the proportionality and justification test in indirect gender discrimination cases than in indirect religion or belief discrimination cases.
38. The Scottish Government has recently published a report on using intersectionality in policy and analysis to address structural inequality (Government Social Research, 2022).
39. Also relevant may be the largely secular nature of women's groups and the conservative nature of many of the religious advocacy groups (Petersen, 2020: 10).
40. It has been argued by Ghanea (2017) that the depiction of FORB and gender equality as being in 'conflict' is misleading: rather, all human rights are (according to Article 1(5) of the Vienna Declaration and Programme of Action) 'universal, indivisible and interdependent and interrelated'. Ghanea (2017: 1) contends that 'It is essential to (re)vitalize the synergies between FORB and women's equality in order to advance each of these rights, to be able to address overlapping rights concerns, and to adequately acknowledge intersectional claims'.
41. It has also been observed (Petersen, 2020: 14) that 'most challenges' concern infringements of both FORB and gender equality, rather than FORB and gender equality in conflict.
42. Evans (2006) has drawn attention to how gender equality features in the decisions of the European Court of Human Rights in *Sahin v Turkey* (EctHR) 13279/05, [2012] 54 EHRR 20 and *Dahlab v Switzerland* (2001) ECHR 15 to refuse the claims of FORB breaches brought by, respectively, a Muslim teacher and a Muslim student who were prohibited from wearing their headscarves in their workplace and place of study. Evans criticises the ease with which the court reaches its conclusion that the wearing of the headscarf is 'imposed' by a precept in the Koran and comments that it 'seems to rely on the popular Western view – that the Qur'an and Islam are oppressive to women and there is no need to be more specific or to go into any detail about this because it is a self-evident, shared understanding of Islam' (Evans, 2006, 65).
43. *R (on the application of Begum) v Denbigh High School Governors* 2006 UKHL 15; 2007 1 AC 100.
44. *R (on the application of Begum) v Denbigh High School Governors* 2006 UKHL 15; 2007 1 AC 100, para 95.
45. *R (on the application of Begum) v Denbigh High School Governors* 2006 UKHL 15; 2007 1 AC 100, para 96.
46. *R (on the application of Begum) v Denbigh High School Governors* 2006 UKHL 15; 2007 1 AC 100, para 98. See also the Court of Appeal's judgment in the case of *R (on the application of X) v*

Y School (*R (on the application of X) v Headteachers and Governors of Y School* [2007] EWHC 298 (Admin), 2007 HRLR 20) which concerned similar facts to *Begum*. Relying heavily on the judgment in *Begum*, Silber J was persuaded by the school's argument that any interference with the school-girl's article 9(1) right was justified under article 9(2), at least in part because of its concern that were the schoolgirl permitted to wear the niqab at school, pressure would be put on other girls by their families to wear it.

47. Lady Hale approves at para 98 of the view expressed by Raday (2003: 709) that a balance needs to be reached between 'respect for individual autonomy and cultural diversity' on the one hand and the benefit of providing the 'opportunity for girls to choose the feminist freedom of state education over the patriarchal dominance of their families' on the other. For a critique of Lady Hale's opinion, see Roseberry, 2011: 197–9.
48. See below under Proportionality.
49. *McClintock* v *Department of Constitutional Affairs* (EAT) [2008] IRLR 29.
50. *Ladele v UK* (ECtHR) [2013] 57 EHRR 8.
51. *MacFarlane v UK* (ECtHR) [2013] 57 EHRR 8.
52. *Forstater v CGD Europe* (EAT) [2022] ICR 1.
53. *Bailey v Stonewall Equality Ltd and others* (ET) 2202172/2020.
54. *Mackereth* v *Department for Work and Pensions* (EAT) [2022] IRLR 721.
55. *Mbuyi v Newpark Childcare (Shephards Bush) Ltd* (ET) 3300656/2014.
56. Howard Kennedy (2019); Shoosmiths (2021); Burrows (2019); Birketts (2022); and Trowers & Hamlins (2017).
57. Onufrio (2014) argues in favour of a European Directive on multiple discrimination.
58. EA, s19(2)(d).
59. EA, Schedule 9, para 1(1)(b) and para 3(b).
60. Human Rights Act 1998 ('HRA'), s3(1).
61. Prior to the UK's withdrawal from the European Union relevant case law of the CJEU (and its predecessor) had a binding effect in our domestic courts. Though no longer binding, the Supreme Court may still have regard to decisions of the CJEU under the equality directives from which much of the domestic anti-discrimination law derives.
62. HRA, s6.
63. *IX v Wabe eV* C-804/18.
64. *MH Muller Handels GmbH v MJ* C-341/19/.
65. *IX v Wabe eV* C-804/18 and *MH Muller Handels GmbH v MJ* C-341/19/, para 84. The fundamental rights and principles the CJEU considered relevant in *Wabe and Muller* were the Charter rights of parents (Article 14(3)), to freedom of religion (Article 10) and to conduct a business (Article 16), in addition to the principle of non-discrimination in Article 21 (more particularly, the principle of non-discrimination on religion or belief grounds) (see discussion in Howard, 2022).
66. *Azmi v Kirklees MBC* (EAT) 2007 ICR 1154.
67. *Azmi v Kirklees MBC* (EAT) 2007 ICR 1154, para 64.
68. *Azmi v Kirklees MBC* (EAT) 2007 ICR 1154, paras 65–74.
69. *Bushra Noah v Sarah Desrosiers t/a Wedge* (ET) 2201867/2007.
70. *Bushra Noah v Sarah Desrosiers t/a Wedge* (ET) 2201867/2007, para 152.
71. *Bushra Noah v Sarah Desrosiers t/a Wedge* (ET) 2201867/2007, para 152.

72. *Bushra Noah v Sarah Desrosiers t/a Wedge* (ET) 2201867/2007, para 152. See comment above under Case law and absent intersections.
73. *R (on the application of Begum) v Denbigh High School Governors* 2006 UKHL 15; 2007 1 AC 100.
74. *R (on the application of Begum) v Denbigh High School Governors* 2006 UKHL 15; 2007 1 AC 100, paras 42–71.
75. *R (on the application of Begum) v Denbigh High School Governors* 2006 UKHL 15; 2007 1 AC 100, paras 92–99.
76. See *Sidabras v Lithuania* (Applications Nos 55480/00 and 59330/00) (2006) 42 EHRR 6
77. However, see the recent case of *T v Ministry of Defence* 2201755/2021 in which the Employment Tribunal held at para 77 that a complaint of post-employment disability discrimination came within the ambit of Article 8. According to the Employment Tribunal, the discrimination caused injury to feelings and distress, the claimant's psychological integrity was affected, and Article 8 was engaged. Although this is not a binding decision, if followed, it would considerably widen the scope for employment equality claims to engage Article 8. See commentary at Tyrer (2022).
78. Writing in 2004, Robert Wintemute (Wintemute, 2004) argued for a wide interpretation of when Article 14 can be engaged, submitting that it ought to be engaged whenever, 'the ground on which the decision to deny an opportunity is directly or indirectly based falls "within the ambit" of another Convention right'. Such a wide interpretation has enjoyed favour in the ECtHR. When the conjoined complaints brought by Eweida and others against the United Kingdom came before the ECtHR (*Eweida v United Kingdom* 2013 ECHR 37), all applicants argued that their religious discrimination in employment complaints engaged their Article 14 rights to non-discrimination on religious grounds under the Convention, relying on the fact that their complaints of indirect religious discrimination arising from their employers' policies fell 'within the ambit' of Article 9. The engagement of Article 14 was accepted in respect of three of the four applicants (and denied in the case of the second applicant, only because of a failure to first exhaust domestic remedies).
79. Alternatively, a woman's claim concerning dress code could potentially engage Article 8 (insofar as it encompasses the right to autonomy) (see Ast and Spielhaus, 2012: 17). If so, Article 14 could operate to ensure that the Article 8 right is provided without discrimination on religious grounds.
80. [2007] EWHC 298 (Admin), 2007 HRLR 20.
81. In the recent case of *T v Ministry of Defence* 2201755/2021 (ET), the tribunal considered that the claimant's disability discrimination complaint fell within the ambit of Article 8 and that Article 14 was engaged. It thus considered itself bound by the interpretative obligation in the HRA to read the EA in a manner compatible with Article 14.
82. *Azmi v Kirklees MBC* (EAT) 2007 ICR 1154.
83. *Bushra Noah v Sarah Desrosiers t/a Wedge* (ET) 2201867/2007.
84. EA, s26.
85. EA, s26(4).
86. Duderija et al. (2020: 7) comments, 'There is, in particular, a close relationship between gender and religion because people's self-perceptions and identity are formed and deeply rooted in

their culturally shared religious heritage even if this heritage is sharply criticised and/or rejected'.

87. *Richmond Pharmacology Limited v Dhaliwal* (EAT) 2009 ICR 724.
88. *Richmond Pharmacology Limited v Dhaliwal* (EAT) 2009 ICR 724, paras 20–1.
89. See Rights of Women (2014).
90. EA, s124. The tribunal can also make a declaration as to the rights of the claimant and respondent in the matter to which the proceedings relate and/or make a recommendation for the respondent to take steps to obviate or reduce any adverse effect on the claimant pertaining to the subject matter of the claim. An award then, may include compensation for injury to feelings and injury to health, as well as compensation for financial loss. In England (though not in Scotland), aggravated damages can also be awarded where, 'the discriminator has acted in a high-handed, malicious, insulting or oppressive manner' (Mansfield, 2014 para 33.36 referring to *Alexander v Home Office* 1988 ICR 685). Unlike in complaints of unfair dismissal before the tribunal, there is no statutory limit on the amount of compensation which can be awarded for a successful complaint under the EA.
91. *Ministry of Defence v Wheeler* (CA) 1998 ICR 242; *Abbey National Plc v Chagger* (CA) 2010 ICR 39 (see Mansfield, 2014, para 33.09).
92. *Chapman v Simon* (CA) 1994 IRLR 124.
93. *Owens v Liverpool Corp [1939] 1 KB 394*.
94. Conaghan (1996: 407–9) has argued that there is a 'social' aspect to injury and the gender group to which the individual belongs can influence the nature/extent of harm experienced.
95. *SH v M [...] Painting* 2009 HRTO 595 (Can.), para 83.
96. *Richmond Pharmacology Limited v Dhaliwal* (EAT) 2009 ICR 724.
97. Though see *Abbey National Plc v Chagger* (CA) 2010 ICR 397 in which the Court of Appeal accepted that compensation awarded to a dismissed employee could include losses the dismissed employee experiences in the job market on account of being unlawfully stigmatised by prospective employers for bringing litigation against his former employer.
98. In arguing for the 'important and extensive social functions' of civil justice, Genn (2004: 17, 74) comments, 'we need public adjudication to ground normative statements and to make them sufficiently clear that citizens and business can abide by the rules and avoid legal risk'.

References

Adams Z and Adenitire JO (2018) Ideological neutrality in the workplace. *The Modern Law Review 81*(2): 348–360.

Ali F, Malik A, Pereira V, et al. (2017) A relational understanding of work-life balance of Muslim migrant women in the west future research agenda. *The International Journal of Human Resource Management 28*: 1163–1181.

Alon-Shenker P and MacDermott T (2019) Intersecting age and gender in workplace discrimination complaints. *Comparative Labor Law & Policy Journal 41*(2): 521–562.

Amnesty International (2012) *Choice and Prejudice: Discrimination against Muslims in Europe*. London, UK: Amnesty International. Available at: https://www.amnesty.org/en/documents/eur01/001/2012/en/ (accessed 11 November 2022).

APPG on Sex Equality (2018) Young Women's Trust. *Invisible Women*. London, UK: Fawcett Society. Available at: https://www.fawcettsociety.org.uk/invisible-women (accessed 1 December 2022).

Arifeen SR and Gatrell C (2020) Those glass chains that bind you: how British Muslim women professionals experience career, faith and family. *British Journal of Management 31*(1): 221–236.

Ast F and Spielhaus R (2012) Tackling double victimisation of muslim women in Europe: the intersectional response. *Mediterranean Journal of Human Rights 16*(2): 357–392.

Atrey S (2018) Comparison in intersectional discrimination. *Legal Studies 38*(3): 379–395.

Awan I and Zempi I (2015) *We Fear for Our Lives: Offline and Online Experiences of Anti-muslim Hostility*. Birmingham, England: Birmingham City University, Nottingham Trent University and TellMAMA. (Accessed 8 December 2022).

Baker A (2008) Proportionality and employment discrimination in the UK. *Industrial Law Journal 37*(4): 305–328.

Bell M (2020) Bridging a divide: a faith-based perspective on anti-discrimination law. *Oxford Journal of Law and Religion 9*: 56–78. Available at: https://academic.oup.com/ojlr/article/9/1/56/5893541 (Accessed 8 December 2012).

Bielefeldt (2013) *Interim Report of the Special Rapporteur Heiner Bielefeldt on Freedom of Religion or Belief*. New York, UK: United Nations General Assembly. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/religion/A.68.290.pdf (accessed 1 December 2022).

Birketts (2022) '*Transgender and competing rights in the workplace',* Birketts, 21 July 2022 [Blog], Available at https://www.birketts.co.uk/legal-update/transgender-and-competing-rights-in-the-workplace/ (accessed 7 December 2022).

Burri S and Schiek D (2009) Multiple Discrimination in EU Law: opportunities for legal responses to intersectional gender discrimination? European Commission. Available at: https://eige.europa.eu/docs/3028_multiplediscriminationfinal7september2009_en.pdf (Accessed 8 December 2022).

Burrows E (2019) 'Gay cakes and dress codes – when beliefs and rights clash', HRD*, 6* May 2019 [Blog], Available at https://www.thehrdirector.com/features/diversity-and-equality/gay-cakes-dress-codes-beliefs-rights-clash232/ (accessed 7 December 2022).

Butler V (2012) *Ethnic Minority Female Unemployment: Black, Pakistani and Bangladeshi Heritage Women. APPG on Race and Community: First Report of Session 2012-2013*. London, UK: Runneymede Trust

Conaghan J (1996) Gendered harms and the law of tort: remedying (sexual) harassment. *Harassment Oxford Journal of Legal Studies 16*(3): 407–432.

Crenshaw K (1989) *Demarginalising the Intersection of Race & Sex: A Black Feminist Critique of Anti-discrimination Doctrine, Feminist Theory & Anti-racist Politics*. Chicago, IL: University of Chicago Legal Forum, pp. 139–167.

Dale A (2005) Combining family and employment: evidence from Pakistani and Bangladeshi women. In: Houston DM (ed), *Work–Life Balance in the 21st Century*. Basingstoke: PalgraveMacMillan, pp. 230–245.

Duderija DA, Alak AI and Hissong L (2020) *Islam and Gender: Major Issues and Debates*. London, UK: Routledge.

Equality and Human Rights Commission (2010) *How Fair is Britain? Equality, Human Rights and Good Relations in 2010 Manchester: EHRC*. London, UK: Equality and Human Rights Commission. Available at: https://www.equalityhumanrights.com/en/publication-download/how-fair-britain (Accessed 8 December 2022).

Equality and Human Rights Commission (2019) *Is Britain Fairer 2018: The state of equality and human rights 2018. Manchester: EHRC*. London, UK: Equality and Human Rights Commission

Evans C (2006) The'Islamic Scarf" in the European court of human rights. *Melbourne Journal of International Law 7*: 52–73.

Feng X, Flowerdew R and Feng Z (2015) Does neighbourhood influence ethnic inequalities in economic activity? Findings from the ONS Longitudinal Study. *Journal of Economic Geography 15*: 169–194.

Francois-Cerrah M (2012) *Muslim Women Face an Uphill Battle Against Prejudice to Find Work*. London, UK: The Guardian.

Fredman S (2016) *Intersectional Discrimination in EU Gender Equality and Non-Discrimination*. Luxembourg: Publications Office of the EU.

Genn H (2004) *Judging Civil Justice*. Cambridge, UK: Cambridge University Press.

Ghanea N (2017) *Women and Religious Freedom: Synergies and Opportunities*. Washington: United States Commission on International Religious Freedom.

Government Social Research (2022) *Using Intersectionality to Understand Structural Inequality in Scotland: Evidence Synthesis*. Edinburgh: Scottish Government.

Halrynjo S and Jonker M (2016) Naming and framing of intersectionality in Hijab cases — does it matter? an analysis of discrimination cases in Scandinavia and the Netherlands. *Gender, Work & Organization 23*(3): 278–295.

Hambler A (2018) Neutrality and workplace restrictions on headscarves and religious dress: lessons from *Achbita* and *Bougnaoui*. *Industrial Law Journal 47*(1): 149–164.

Hancock AM (2007) When multiplication doesn't equal quick addition: examining intersectionality as a research paradigm. *Perspectives on Politics 5*: 63.

Hanif F (2021) *British Media's Coverage of Muslims and Islam (2018-2020)*. London, UK: Muslim Council of Britain

Hannett S (2003) Equality at the intersections: the legislative and judicial failure to tackle multiple discrimination. *Oxford Journal of Legal Studies 23*(1): 65–86.

Hepple B (2014) *Equality: The Legal Framework*. London, UK: Hart Publishing.

Howard E (2012) Banning Islamic Veils: is gender equality a valid argument? *International Journal of Discrimination and the Law 12*: 147–165.

Howard E (2022) Headscarves and the CJEU: Protecting fundamental rights and pandering to prejudice, the CJEU does both. *Maastricht Journal of European and Comparative Law 29*(2): 245–262.

Howard Kennedy (2019) 'How should employers respond when faced with the clash of religious beliefs and sexual orientation?' *Howard Kennedy,* 3 April 2019, [Blog], Available at https://www.howardkennedy.com/en/latest/blog/how-should-employers-respond-when-faced-with-the-clash-of-religious-beliefs-and-sexual-orientation (accessed 7 December 2022).

Koura F (2018) Navigating Islam: the Hijab and the American workplace. *Societies 8*: 125

Longhi S and Platt L (2008) *Pay Gaps Across Equalities Areas: An Analysis of Pay Gaps and Pay Penalties by Sex, Ethnicity, Religion, Disability, Sexual Orientation and Age Using the Labour Force Survey*. London, UK: EHRC.

Lowe H, Huang S and Urkmezturk N (2022) *A UK Analysis: Empowering Women of Faith in the Community, Public Service and Media*. Available at: https://www.dialoguesociety.org/publications/a-uk-analysis-empowering-women-of-faith-in-the-community-public-service-and-media.pdf (accessed 11 November 2022).

Lutz H, Vivar MTH and Supik L (2011) Framing Intersectionality: an Introduction. In: Lutz H, Vivar MTH and Supik L (eds), *Framing Intersectionality: Debates on a Multi-Faceted Concept in Gender Studies*. Surrey: Ashgate, pp. 1–22.

Malik M (2008) *From Conflict to Cohesion: Competing Interests in Equality Law and Policy*. London, UK: Equality and Diversity Forum. Available at: www.equallyours.org.uk/edf-paper-from-conflict-to-cohesion/ (accessed 11 November 2022).

Mansfield G (ed), (2014) *Blackstone's Employment Law Practice*. Oxford, UK: Oxford University Press.

Masood A (2019) Doing gender, modestly: conceptualizing workplace experiences of Pakistani women doctors. *Gender Work & Organization 26*(2): 214–228.

Moore L (2021) We Must Do More to Protect Muslim Women in the UK. In *International Women's Day 2021: Challenging Health Inequalities*. London, UK: Public Policy Projects. Available at: https://publicpolicyprojects.com/eventbrite-event/international-womens-day-challenging-inequalities-in-health/ (accessed 11 November 2022).

Morris M (2015) *Supporting Ethnic Minority Young People from Education into Work*. New York, NY: Joseph Rowntree Foundation. Available at: https://www.jrf.org.uk/report/supporting-ethnic-minority-young-people-education-work (accessed 31 March 2023).

Muslim Council of Britain (2015) *British Muslims in Numbers: A Demographic, Socio-Economic and Health Profile of Muslims in Britain Drawing on the 2011 Census*. London, UK: Muslim Council of Britain. Available at: https://www.mcb.org.uk/wp-content/uploads/2015/02/MCBCensusReport_2015.pdf (accessed 31 March 2023).

Muslim Council of Britain (2022) *Census 2021: First Look*. London, UK: Muslim Council of Britain. Available at: https://mcb.org.uk/2021-census-as-uk-population-grows-so-do-british-muslim-communities/ (accessed 3 April 2023).

Mustafa A and Heath A (2016) *Written Submission from Dr Asma Mustafa (Oxford Centre for Islamic Studies) and Professor Anthony Heath, CBE, FBA (Centre for Social Investigation, Nuffield College, Oxford) (MIE0008)*. Oxford, UK: Nuffield College

O'Connell R (2009) Cinderella comes to the ball: art 14 and the right to non-discrimination in the ECHR. *Legal Studies 29*(2): 211–229.

Office for National Statistics (2020) *Religion, Education and Work in England and Wales: February 2020*. London, UK: Office for National Statistics

Onufrio MV (2014) Intersectional discrimination in the European legal systems: toward a common solution? *International Journal of Discrimination and the Law 14*(2): 126–140.

Opara V, Sealy R and Ryan MK (2020) The workplace experiences of BAME professional women: understanding experiences at the intersection. *Gender Work & Organization 27*: 1192–1213.

Pate R L (2017) The equal opportunity harasser, sexual harassment, gender-neutral words, and Ludwig Wittgenstein. *International Journal of Discrimination and the Law 17*(3): 180–194.

Petersen MJ (2020) *Promoting Freedom of Religion and Gender Equality in the Context of the Sustainable Development Goals: A Focus on Access to Justice, Education & Health: Reflections From the 2019 Expert Consultation Process*. Copenhagen: The Danish Institute for Human Rights. Available at: https://www.humanrights.dk/publications/promoting-freedom-religion-belief-gender-equality-context-sustainable-development (Accessed 8 December 2022).

Raday F (2003) Culture, religion and gender. *International Journal of Constitutional Law 1*: 663–715.

Reeves TC, Mckinney AP and Azam L (2012) Muslim Women's workplace experiences: implications for strategic diversity initiatives. *Equality, Diversity and Inclusion: An International Journal 32*(1): 49–67. Available at: https://www.emerald.com/insight/content/doi/10.1108/02610151311305614/full/html (Accessed 8 December 2022).

Reynolds L and Birdwell J (2015) *Rising to the Top*. London, UK: Demos. Available at: http://demos.co.uk/project/rising-to-the-top (accessed 11 November 2022).

Rights of Women (2014) *Forced marriage and the law.* Available at https://rightsofwomen.org.uk/get-information/family-law/forced-marriage-law/ accessed 9 November 2022.

Robison M (2013) Multiple discrimination: is s14 equality act needed? *Equal Opportunities Review 235*: 14–18.

Roseberry L (2011) The Assimilationist Anti-discrimination paradigm and the immigrant muslim woman: suggestions on how to re-conceptualise discrimination claims. Schiek D and Lawson A. *European Union Non-Discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination*. London, UK: Ashgate Publishing, pp. 191–208.

Seta D (2016) *Forgotten Women: The Impact of Islamophobia on Muslim Women*. Brussels: European Network against Racism

Shoosmiths (2021) 'What to do when protected characteristics clash? Five top tips for employers' *Shoosmiths*, *14* October 2021 [Blog], Available at https://www.shoosmiths.co.uk/insights/legal-updates/what-to-do-when-protected-characteristics-clash (accessed 7 December 2022).

Taras R (2012) *Xenophobia and Islamophobia in Europe*. Edinburgh: Edinburgh University Press.

Trowers and Hamlins (2017) 'Managing conflicting beliefs', Trowers & Hamlins, 11 January 2017 [Blog], Available at https://www.trowers.com/insights/2021/november/managing-conflicting-beliefs (accessed 7 December 2022).

Tyrer A (2022) 'T v Ministry of Defence: disability discrimination claim by former member of armed forces' *Stammeringlaw* (16 July 2022). Available at https://www.stammeringlaw.org.uk/t-v-ministry-of-defence/ (accessed 17 May 2023).

University of Bristol (2015) *Muslim Women Much More Likely to Be Unemployed than White Christian Women*. Bristol, UK: University of Bristol.

Wintemute R (2004) Within the ambit": how big is the "gap" in art 14 ECHR? Part 1. *European Human Rights Law Review 4*: 366–382.

Women, Equalities Committee: *Employment Opportunities for Muslims in the UK. Second Report of Session 2016-17*. London: House of Commons. Available at: https://publications.parliament.uk/pa/cm201617/cmselect/cmwomeq/89/89.pdf (Accessed 8 December 2022).

Yuval-Davis N (2006) Intersectionality and feminist politics. *European Journal of Women's Studies 13*: 193–209.