



**One Family Submission to the Review of the Equality Acts**

**December 2021**

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## Summary Recommendations

1. Expand the definition of “carer” under the family status ground to encompass the full diversity of carers (resident and non-resident carers, and carers providing continuing or intermittent care).
2. Expand the definition of “member of a family” to include non-marital families, one-parent families and shared parenting families.
3. Include protection for the prioritisation of a child’s best interest where it intersects with a parent’s interest in the Equality Acts.
4. Amend the Equality Acts to include clear specific protections for transgender, non-binary and intersex people, for the avoidance of doubt in Irish law, Equality legislation should also be amended to cover acts targeted at individuals based on actual or perceived sex characteristics, gender identity and gender expression.
5. Expand the age ground to under -18s in the Equal Status Act by removing the age limit.
6. Include an additional ground of socio-economic disadvantage as per the working contained in the Equality Miscellaneous Provisions Bill 2021 and adding the use of a hypothetical comparator.
7. Amend the Equality Acts to explicitly allow for claims for discrimination on dual or multiple intersecting grounds, with reference to a single hypothetical comparator.
8. Set the time limit for discrimination complaints from the date of knowledge of the discrimination, or from the date a grievance procedure in relation to the discrimination has ended and extend this period where there is reasonable cause for delay in bringing a complaint.
9. Remove the notification period currently required by the Equality Acts, or make it an optional requirement.
10. Remove the caps on compensation for discrimination claims under the Equality Acts and ensure discrimination on multiple grounds receive sufficient compensation.
11. Adopt UNCERD, CEDAW and EU Fundamental Rights Agency recommendations to extend the scope of the Legal Aid Board to cases take under the Equality Acts.
12. All discrimination cases under the Equality Acts should be heard at the WRC in the first instance, subject to the cap on awards being removed. Consideration should be given to changing the name of the WRC to reflect its role in hearing cases under the Equality Acts.

13. WRC should put specific equality proofed procedures in place to ensure it is accessible to everyone afforded protection under the Equality Act. This should include supporting the self-advocacy of complainants.
14. Strengthen the investigative powers of the WRC and revert to a similarly inquisitorial approach as that taken by the Equality Tribunal.
15. Enhance the WRC procedure by allowing for an interim order to be put in place to protect complainants while their case is awaiting a hearing.
16. Remove exemption for general functions of public bodies and legislation from the Equality Acts.
17. Consider prohibiting discrimination on the basis of housing status, protecting against discrimination on the basis of a person's status as a home-owner, renter, social tenant, in receipt of housing assistance, Traveller accommodation resident, direct provision resident or homelessness.
18. Create a statutory obligation for all public policy to be equality proofed, with specific consideration paid to each of the grounds protected in the Equality Acts.
19. Adequately resource IHREC to fulfil their Public Sector Duty enforcement powers. Examine the introduction of specific duties which apply to certain State bodies and dissuasive sanctions for not fulfilling obligations under the Act.
20. Introduce measures which put a duty on public bodies to collect and report on equality data. Give IHREC specific enforcement powers in this regard.
21. Ensure IHREC has adequate resource to fulfil all its functions under the 2014 Act, including the ability to take "own name proceedings" and its inquiry powers.
22. Resource bodies such as IHREC and Citizens Information and NGOs to provide education, awareness raising and training on the rights and protections offered under the Equality Acts.

## 1. Introduction

One Family welcomes the opportunity to make a submission to the Department of Children, Equality, Disability, Integration and Youth on the review of the Equality Acts. The Equality Acts have provided protection for people in one-parent families, while also serving as important statutory recognition that all family types deserve equal treatment. Yet, in practice one-parent families do not enjoy the same status, outcomes or opportunities as others in society. Ireland has a long and shameful past when it comes to the protection and treatment of one-parent families. The stigma, treatment and generational wrongs visited on people parenting alone and their children was the direct result of how the State acted.<sup>1</sup> While the Mother and Baby Homes may be gone, some of the attitudes which cultivate stigma, otherness and unequal treatment of anyone outside of the traditional two-parent marital family type, remain embedded in our structures, institutions, policies and in wider society today. Reviewing and strengthening our Equality legislative framework presents an opportunity to at long last provide adequate protection and ensure equal treatment for one-parent families.

### 1.1. Summary

One-parent families, whether headed by a mother or father who is parenting alone or sharing parenting, are often discriminated against because of their family type and/or their gender. We recommend protection against discrimination on these grounds should be strengthened. One-parent families consistently experience the worst outcomes in Irish society and One Family believes there should be an additional ground preventing discrimination for those who are socio-economically disadvantaged. We are aware through our frontline services that many families experience multiple, over-lapping and connected inequalities and believe there should be specific measures to respond to intersecting discrimination on multiple grounds. Recourse and remedy under the Acts should be made more accessible to ensure every person protected can access justice. Finally, One Family recommends that Ireland's equality infrastructure and services should be strengthened. Throughout this submission we will incorporate case studies from our frontline services.

## 2. About One Family

One Family is Ireland's organisation for people parenting alone, sharing parenting and separating. We were established in 1972 as Cherish and provide specialist parenting and family support services around Ireland. We train professionals on working with one-parent families and we promote policies that actively support diverse families. We offer a range of specialist child and parent focused services that assist families as they seek to support themselves and their children. Children are at the core of our work and we seek to improve their lives by empowering, supporting and up-skilling their parents. We campaign against child poverty, for reform of the family justice system and for the State to recognise and cherish all families equally, regardless of their marital status. More information on One Family can be found at [www.onefamily.ie](http://www.onefamily.ie).

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<sup>1</sup>An Taoiseach (Micheál Martin), Report of the Commission of Investigation into Mother and Baby Homes: Statements- *Dáil Éireann*, Vol 1003 No. 1, 13 January 2021, <https://www.oireachtas.ie/en/debates/debate/dail/2021-01-13/10/>

## 2.1. Who Do We Mean When We Refer to One-Parent Families?

One Family is committed to achieving equality and respect for all families. We believe that children do best when they have positive relationships with their parents and other adults in their lives. Whatever their family form, it is the quality of the relationships that matter, not the legal structure of the family. While we acknowledge that every family is unique, when we refer to one-parent families we mean families parenting alone, sharing parenting or parenting through or following separation.

## 3. About One-Parent Families

One in five people in Ireland live in one-parent family, while one in four families is headed by a lone parent. There is a steady increase in diverse family types in Ireland and this is replicated throughout Europe.<sup>2</sup> There were approximately 218,817 lone parents and 356,203 children in one-parent families in Ireland in 2016.<sup>3</sup> Almost 90,000 were single; a further 50,496 were widowed, while the remaining 68,378 were separated or divorced. The number of divorced people in Ireland nationally increased from 87,770 in 2011 to 103,895 in 2016. The vast majority (86.4%) of one-parent families are headed by mothers but many families share parenting of their children.<sup>4</sup> There is limited demographic data on shared parenting in Ireland; however, many of the families categorised as 'households headed by one adult' likely have some level of shared parenting.

## 4. Family Status

The inclusion of family status as a ground for discrimination was most welcome; however, it has failed to adequately protect people in one-parent families from unfair treatment because of their family type. Recent research from the Central Statistics Office found 48 per cent of lone parents experience judgemental attitudes of exclusion, while 41 per cent reported feeling lonely some or all of the time.<sup>5</sup> There is little data collected on shared parenting families and, partially as a result, they are almost wholly invisible in national and local policy. In 2017 One Family published the first national shared parenting study which found parents felt discriminated against because of their shared parenting family status.<sup>6</sup>

Discrimination, stigma and exclusion have direct negative impacts on the well-being of families. Public policy is frequently directly or indirectly discriminatory against one-parent families and it can have wide ranging consequences for families as they are unable to access supports and services when they need them. For example, one of the main criticisms to the cuts and changes to the One Parent Family Payment, which were carried out from 2014 onwards, was that they were designed and implemented ignoring the additional practical and financial challenges of parenting alone. The decision to

<sup>2</sup> Central Statistics Office, (2016). *Census 2016 Profile 4 – Households and Families*.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Central Statistics Office, (2021). *Pulse Survey – Life at Home 2021: Renters, Lone Parents and Adults Living Alone or with a Parent*. [online] Available at:

<https://www.cso.ie/en/releasesandpublications/FP/FP-PSLHRLPLA/pulsesurvey-lifeathome2021rentersloneparentsandadultslivingaloneorwithaparent/>

<sup>6</sup> One Family, (2017). *National Shared Parenting Survey*. [online] Available at:

<https://onefamily.ie/media-policy/one-family-campaigns/national-shared-parenting-survey/>

abolish the features of the OFP which support lone parents to take up part time employment without providing access to affordable childcare was severely detrimental to these families and increased child poverty and deprivation.<sup>7</sup>

We believe the definition of what constitutes a family in the Equality Acts is too narrow and should be expanded to include all family types and all members of a family, regardless of their marital or habitation status. The Irish Constitution does not provide recognition of the value or protection of all family types. The Citizens Assembly on Gender Equality recently recommended Article 41.3 of the Constitution is amended to protect private and family life, with the protection afforded to the family not limited to the marital family.<sup>8</sup> This recommendation highlights the lack of protection afforded to non-marital families. Furthermore, the lack of protection granted for these family types under the Constitution underlines the need for greater protection by the Equality Acts. A decade ago, the Equality Rights Alliance (of which One Family were members) called for an expansion of the definition of family carers and we echo this call today.<sup>9</sup>

### **Case Study 1 – Employment Discrimination on Family Status Grounds**

Miriam is parenting her two children alone. She is training to be a teacher part-time. At the end of her training she had to complete a work experience placement in a secondary school. As she was coming to the end of her placement a job opportunity was advertised in the school. She was eligible so applied for the position. The interview panel was made up of the principal and members of the school Board of Directors. The interview went well, until towards the end the principal asked about her children. He asked if she was successful in her application, how she would manage childcare for her children. Taken aback she replied she would manage the same as any parent. The principal continued to probe about how her status as a one-parent family could impact her ability to attend work reliably and do her job. She did not get the position and felt this line of questioning impacted the decision. She knew she was being discriminated against but did not feel she had the resources to pursue the issue further- what was the point?

In practical terms the family status ground is seldom used. For example, in 2020 the Workplace Relations Commission (WRC) received just 23 complaints under the Equal Status Act (ESA) on the ground of family status. In 2019, complaints under the ESA on the family status ground amounted to just 3.5 per cent of all complaints. This is not to say that discrimination is not taking place. We see every day through our frontline work with families the almost constant discrimination they experience because they do not fit the model of the two-parent marital family.<sup>10</sup>

<sup>7</sup> Millar, M. and Crosse, R. (2016) *Lone parents and activation, what works and why: a review of the international evidence in the Irish context*. Galway: Institute for Life Course Studies, NUIG.

<sup>8</sup> Press Release by Citizens Assembly on Gender Equality, (2021). [online} Available at: <https://www.citizensassembly.ie/en/news-publications/press-releases/recommendations-of-the-citizens-assembly-on-gender-equality.html>

<sup>9</sup> Equality Rights Alliance, (2011). *A Strengthened Equality and Human Rights Infrastructure in Ireland*. Equality Rights Alliance: Dublin.

<sup>10</sup> Workplace Relations Commission, (2019). *Employment Equality Complaints*.

Traditionally, one-parent families have made visible the usually hidden work of all primary parental care work. This has never been more relevant than during the Covid-19 pandemic when one-parent families have faced immense additional challenges navigating the practicalities of social distancing, maintaining employment during school and childcare closures, increased food and energy bills, lack of access to support relationships, home-schooling and isolation.<sup>11</sup>

The discrimination experienced by one-parent families was brought to the fore during pandemic restrictions when one-parent families were denied access to shops with their children, some parents struggled to maintain access arrangements with their children, and other parents lost employment or wages due to solo caring responsibilities. Currently, people parenting alone face additional challenges in maintaining employment, training or education due their children's frequent absences from school or childcare due to illness or because they are a close contact. They often have no option for familial support due to social distancing and there are no supports for these parents from Government.

**Recommendation 1:** Expand the definition of "carer" under the family status ground to encompass the full diversity of carers (resident and non-resident carers, and carers providing continuing or intermittent care).

**Recommendation 2:** Expand the definition of "member of a family" to include non-marital families, one-parent families and shared parenting families.

## 5. Gender Equality

The Citizens Assembly on Gender Equality published its recommendations earlier this year; it contained wide ranging measures covering areas such as constitutional amendments, leadership and politics, childcare, care, domestic violence, pay and social protection, and technology and media.<sup>12</sup> One Family supports these recommendations and believes they should be implemented without delay. While people parenting alone and sharing parenting experience discrimination based on family status, oftentimes the discrimination they experience is also gendered.

### 5.1. Gender Inequalities in One-Parent Families

The majority of lone parents in Ireland are women; according to the most recent Census data 86 per cent of lone parents are women, while 14 per cent are men.<sup>13</sup> Lone parents who are mothers often point to the gendered stigma and judgement they encounter. Much of this judgement is associated with welfare dependency and the perception of mothers parenting alone as free-loaders; however, One Family believes there is a constant undertone of judgement around female sexuality, which has deep roots in how we treated unmarried mothers and their children for decades in Ireland.<sup>14</sup> The spectre of institutional gender discrimination and violence in Ireland still looms over mothers today.

<sup>11</sup>Darmody, M., Smyth, E. & Russell, H. (2020). *The Implications of the Covid-19 Pandemic for Policy in Relation to Children and Young People: A Research Review*. ESRI.

<sup>12</sup>Press Release by Citizens Assembly, (2021).

<sup>13</sup>Central Statistics Office, (2016). *Census*.

<sup>14</sup>One Family, (2020). *Submission to the Citizens Assembly on Gender Equality*. [online] Available at: <https://onefamily.ie/wp-content/uploads/2020/03/Citizens-Assembly-on-Gender-Equality-submission-2-20.pdf>.



Lone parents who are fathers are often overlooked and invisible to policy relating to one-parent families and parenting in general and they report being unfairly treated in family law proceedings due to their gender.<sup>15</sup>

There is a lack of data and evidence, policy, institutional understanding and support for shared parenting in Ireland. Both mothers and fathers who are sharing parenting feel that society, including policy and law makers, treats them unfairly because of their gender.<sup>16</sup> Examples include mothers feeling they experience more social and official scrutiny as a woman, and fathers feeling they aren't considered an equal parent.

This gender inequality can undermine the shared parenting relationship, and in some cases, causes an unworkable situation which requires legal remedy.<sup>17</sup> Shared parenting arrangements which are instructed by the Courts are often not equitable from a gender perspective, with stereo-typical notions of the different roles of mothers and fathers as care givers influencing decisions. Primary care giving by mothers and secondary care giving by fathers is not the best solution for every family; every family is different and the best interest of the child should always be paramount.<sup>18</sup>

#### **Case Study 2 – Gender discrimination in accessing homeless services**

Patrick has joint legal custody of his daughter Freya; however Freya stays with him on weekdays and some of the weekend as her Mam has poor mental health and finds her day to day care a challenge. This works well for their family until Patrick was informed his landlord was selling his rented apartment. Patrick couldn't find another place to live and was forced to couch surf with friends and family. He registered as homeless in the hope to access a family hub but was distressed to find he is not eligible for family accommodation and will only be considered as a solo adult male for emergency accommodation by the Local Authority. He believes if he was a woman he would have been treated differently.

## **5.2. Gender Equality and the Best Interest of the Child**

While the Equality Acts protect people from discrimination on gender grounds, the Constitution, the Children and Family Relationships Act 2015, Children First and case law all require prioritising a child's best interest when the interests of parents and children intersect. We are aware of issues related to families and parents where a gender equality approach in legislation, policy or practice over-rides a child's best interest approach. For example:

- a) **Automatic guardianship for unmarried fathers:** there is an argument from a gender equality perspective for automatic guardianship for all fathers and that children deserve a legal relationship with their parents irrespective of whether they are married or not. This argument has great appeal and merit until you consider all the instances in which a child may be conceived or born into,

<sup>15</sup>One Family, (2017).

<sup>16</sup> Ibid

<sup>17</sup> Ibid.

<sup>18</sup>One Family, (2020).

including acts of conception that are crimes. This issue is not simple or straightforward and this is why we don't have automatic guardianship in Ireland. Without knowing the individual circumstances of each child, it is impossible to protect their interest with a blanket automatic guardianship of all fathers even though this may be appropriate in the vast majority of cases.

- b) **Parental Leave Benefit Act:** this Act was introduced in November 2019 by the Department of Social Protection and the Department of Justice to provide greater gender equality in the provision of parental leave for parents of newborn babies. However, in focusing on facilitating gender equality for both parents in the care of their babies, the Government has discriminated against children with only one parent. Under the legislation each parent can access seven weeks paid leave, meaning children in one-parent families receive half the dedicated time with a caregiver as parents in two-parent families during a vital time in their early development. There is an added gender dimension when one takes into account most lone parents are women. Mechanisms used in other jurisdictions, such as transferable leave to another caregiver such as a grandparent or permitting one-parent families to access the full leave entitlement should have been incorporated. One Family understands the motivation for not permitting transferable leave is to avoid fraudulent transfer of leave in two-parent families. Thus a well-meaning gender equality approach coupled with a conservative approach to fraud prevention has resulted in a poorer outcome of opportunity for some babies and their parents.
- c) **National Childcare Scheme:** the purpose of the Scheme is to provide quality education and care for young children; however, in practice it primarily operates to provide childcare to women to participate in education and employment. While the latter is critically required by people parenting alone, the emphasis should be on a quality educational experience for young children. There is a wealth of evidence of the benefit of early childhood care and education for children's social, cognitive and emotional development; the benefits for children experiencing poverty and disadvantage are even more pronounced.<sup>19</sup> It is therefore, imperative that early years care and education is not linked to a parent's participation in education or employment but instead is linked to children's needs and best interests.

**Recommendation 3:** Include protection for the prioritisation of a child's best interest where it intersects with a parent's interest in the Equality Acts.

### 5.3. Gender identity

One Family recognises the diversity of gender identities and expressions experienced by family members in Ireland and we work regularly with service users who identify as parents of either gender or no gender. We believe this is an important aspect of gender that needs to be considered in all aspects of society, legislation, policies and services in order to ensure the full human rights of transgender people and to ensure their good physical and mental health. We also recognise increasingly that parents need

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<sup>19</sup>Hayes, N. (2008). *The Role of Early Childhood Care and Education – An Anti-Poverty Perspective*. Combat Poverty Agency: Dublin.

appropriate services to support their children on their individual journey of gender identity and these services, particularly healthcare services, are currently lacking in Ireland.

Transgender, non-binary and intersex people are not currently referenced in the gender ground in equality legislation. The Acts are currently being interpreted to include transgender, non-binary and intersex people, however, this does not provide adequate protection in law. One Family supports the calls of the Irish Human Rights and Equality Commission and others that equality legislation should explicitly prohibit discrimination against transgender, non-binary and intersex people. The *European Network of Legal Experts in Gender Equality and Non-Discrimination* note that there are multiple advantages to a single, “broad” gender ground (as opposed to the addition of “separate” protected grounds relating to gender identity and expression):

“Advantages of [one inclusive gender ground] include the fact that the causes of many forms of discrimination of both cisgender people, women in particular, and trans and intersex people, may have similar roots (i.e. gender bias, stereotypical thinking on gender roles, etc.). [A single ground] also offers better opportunities to deal with intersectional forms of discrimination on these particular grounds.”<sup>20</sup>

**Recommendation 4:** Amend the Equality Acts to include clear specific protections for transgender, non-binary and intersex people, for the avoidance of doubt in Irish law, Equality legislation should also be amended to cover acts targeted at individuals based on actual or perceived sex characteristics, gender identity and gender expression.

## 6. Age Ground

The Equality Acts prohibit discrimination based on age; however section 3(3) (a) of the Equal Status Acts contains a significant exemption, meaning people under 18 cannot take a claim of discrimination on the basis of their age. This exemption is “unduly broad in that it also exempts discrimination *as between* children of different ages. For instance a health authority could decide that speech therapy will only be afforded to children under 6, introducing an arbitrary cut-off point for access to a vital service. Such a decision cannot be challenged using the ESA because of section 3(3)(a)”.<sup>21</sup>

The issue of people under 18 being exempt from the Equal Status Acts also comes into play when parents’ rights are contrary to the best interests of the child. For example, family law courts can sometimes promote the rights of parents to have contact with children they do not live with, over the safety of the children. Due to a lack of resources to ensure all relevant information is brought into private family law cases, courts may not always be aware of all the issues taking place in a family and we are aware of instances of court-ordered contact with an abusive or negligent parent. In these cases

<sup>20</sup>European Network of Legal Experts in Gender Equality and Non-Discrimination (2018), *Trans and intersex equality rights in Europe – a comparative analysis*. Available at: [https://ec.europa.eu/info/sites/default/files/trans\\_and\\_intersex\\_equality\\_rights.pdf](https://ec.europa.eu/info/sites/default/files/trans_and_intersex_equality_rights.pdf)

<sup>21</sup> Judy Walsh, *Equal Status Acts 2000-2011: Discrimination in the Provision of Goods and Services* (Lonsdale Law Publishing, 2013) page 59.

Tusla are unable to act on a child protection notification to change a court-ordered action. Children have rights and views independently of their parents and they deserve the same protection against discrimination as adults. The Equality and Rights Alliance (of which One Family was a member) called for a need to "...redefine the age ground, without age limits, to include people under eighteen."<sup>22</sup>

**Recommendation 5:** Expand the age ground to under -18s in the Equal Status Act by removing the age limit.

## 7. Socio Economic Status

The Programme for Government commits to examining a new ground of discrimination, based on socio-economic disadvantaged status to the Employment and Equal Status Acts.<sup>23</sup> One-parent families are consistently among the poorest and most disadvantaged in the State.

### 7.1. Socio-economic Disadvantage and One-Parent Families

One-parent families are consistently over-represented in measurements indicating poor outcomes and well-being, such as poverty, deprivation, homelessness, fuel poverty, living standards. There have been countless significant independent and Government commissioned research reports published in relation to one-parent families since 2016 alone, including a 2017 Joint Oireachtas Committee on Social Protection report which made wide ranging recommendations.<sup>24</sup> This report is referenced in the Programme for Government commitments towards lone parent families.<sup>25</sup> All indicate that the poorer outcomes experienced by one-parent families urgently need to be addressed.

Across the EU, one-parent households are among those with worst material and well-being outcomes.<sup>26</sup> One-parent households in Ireland have amongst the lowest equivalised income in the EU.<sup>27</sup> One-parent families are among those most at risk of poverty in Ireland; 34% of one parent families are at risk of poverty compared to 14% of the overall population and they are more likely to live in consistent poverty (19% compared to 5.5% of overall population) or to experience deprivation (43% compared to 17.8% of overall population). In 2016, the United National Committee on the Rights of the Child expressed deep concern at the 'significant increase in the number of children living in consistent poverty' and specifically referred to one-parent households.<sup>28</sup>

The Social Welfare and Pensions Act, 2012 introduced substantial changes to the One Parent Family Payment (OFP). These changes applied to both new and existing recipients

<sup>22</sup> The Equality and Rights Alliance (2011), *A Roadmap to A Strengthened Equality and Human Rights Infrastructure in Ireland*. Available at: <http://17october.ie/the-equality-rights-alliance-reports/>

<sup>23</sup> Government of Ireland, (2020). *Programme for Government- Our shared future*. Government Publication Office: Dublin.

<sup>24</sup> Joint Oireachtas Committee on Social Protection, (2017). *Report on the Position of Lone Parents in Ireland*. Government Publication Office: Dublin.

<sup>25</sup> Government of Ireland, (2020).

<sup>26</sup> Eurofound, (2019). *Household composition and well-being*. Publications Office of the European Union: Luxembourg.

<sup>27</sup> Society of Saint Vincent de Paul, (2019). *Working, Parenting and Struggling?*

<sup>28</sup> Central Statistics Office, (2020). *Survey on Income and Living Conditions (SILC) 2019*.

and the age at which the youngest child ceases eligibility was reduced from 18 to seven years. These changes were made alongside a commitment to reforms of childcare, which were not implemented. As a result of this policy change, thousands of one-parent families were pushed into poverty.<sup>29</sup> Prior to the One-Parent Family Payment reforms/cuts in Budget 2012, lone parents were disproportionately poor and working in part-time low paid work and 98% of OFP recipients were female. Since the reforms in 2012 these issues have been further exacerbated. Approximately half of all Working Family Payment recipients are lone parents, which indicate how reliant these families are on state income supports to stay in work. Lone parents in Ireland are also now five times more likely to experience in-work poverty than other households with children.<sup>30</sup>

Over time our society has evolved to focus and place value primarily on a person's ability to participate in the labour market. Social welfare is largely conditional on ability and availability to work. Unpaid care work is not only undervalued but largely denigrated in a society where self worth is tied to employment. For lone parents this approach has completely ignored their caring responsibilities towards their children. The result is the exceptionally high rates of poverty, deprivation and discrimination experienced by one-parent families.

### **Case Study 3 – Social exclusion and poverty**

Maria is parenting her two children alone. She lives in a disadvantaged estate and struggles to make ends meet. She has experience managing large teams before she had to give up work to care for her children. She has tried to get a job but there are few jobs in the area she lives in. When she looks outside her local area for work she feels judged for the estate she's from and her accent. Her local Intreo office only sends her low-paid, low-skilled job opportunities or on entry level courses. Her youngest child is about to turn thirteen and she worries what the changes to her social welfare entitlements will mean for their family. The children's costs have risen as they moved into their teenage years. Her housing and utilities costs have seemed to rise exponentially in recent years; she is worried about losing her home. She can't afford to hold out for something better and accepts a low-paid, unskilled role. Maria knows if she wasn't in a one-parent family she wouldn't be struggling financially. She feels trapped; her education and employment opportunities are limited because of her poverty and this in turn makes it harder for her to improve her circumstances.

## **7.2. Developments towards a Socio-Economic Ground**

There have been two Private Members Bills introduced in recent years proposing to prohibit discrimination on the basis of socio-economic status. The most recent, the Equality Miscellaneous Provisions Bill 2021 is the more effective, practical and enforceable of the two. This Bill could be strengthened in practice by including a

<sup>29</sup>Joint Oireachtas Committee on Social Protection, (2017).

<sup>30</sup>Society of St Vincent de Paul (2019)

hypothetical comparator. Recent research by Tamas Kádár clearly sets out how and why discrimination on the basis of socio-economic status should be prohibited in Irish law.<sup>31</sup>

The introduction of a socio-economic disadvantage status ground would recognise the unnamed but ever present discrimination experienced by many on low incomes or from socially disadvantaged backgrounds. It would give them the practical means to challenge discrimination and reduce stigma. If the norm is that discrimination based on socio-economic disadvantage is not tolerated, “...the stigma and stereotypes that underpin this discrimination, in turn get undermined and culture shifts.”<sup>32</sup> The Irish Human Rights and Equality Commission have recommended the introduction of a tenth ground of socio-economic status in all areas covered by legislation.<sup>33</sup>

**Recommendation 6:** Include an additional ground of socio-economic disadvantage as per the working contained in the Equality Miscellaneous Provisions Bill 2021 and adding the use of a hypothetical comparator.

## 8. Intersectional Inequalities

The Equality Acts do not adequately provide protection from intersecting discrimination on multiple grounds. Equality legislation specifies that complaints lodged on several grounds must be investigated as a single case but that a decision must be made on each of the claims.<sup>34</sup> In practice each ground is dealt with by adjudicators in turn, meaning a case must be established separately on each case. Despite this, compensation limits still apply.<sup>35</sup> In its 2019 submission to the UN Committee on Ending Racial Discrimination the Irish Human Rights and Equality Commission has recommended that Equality legislation should permit claims across multiple grounds.<sup>36</sup>

Discrimination is not always isolated to one ground; in reality discrimination is often felt most acutely by those who face multiple, overlapping oppressions. Many one-parent families experience both gender and family status discrimination; however, one-parent families are a diverse subsection of the population and experience discrimination based on all eight other equality grounds, alongside discrimination based on their family type. The Equality Acts are out of step with the lived experience of one-parent families.

<sup>31</sup>Tamas Kádár for the Equality and Rights Alliance (2016), *An analysis of the introduction of socio-economic status as a discrimination ground*, [Online] Available at: <https://equineteurope.org/wp-content/uploads/2020/07/Analysis-of-socio-economic-status-as-discrimination-final.pdf>

<sup>32</sup> ATD Ireland (2019), *Does It Only Happen to Me? Living in the shadows of Socio-Economic Discrimination*, available at: <http://17october.ie/wp-content/uploads/2019/09/SES-Discrimination-Report-ATD-Ireland-Sept-19.pdf>

<sup>33</sup>IHREC, (2019) *Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United National Committee on the Elimination of Racial Discrimination on Ireland's Combined 5<sup>th</sup> to 9<sup>th</sup> Report*. IHREC: Dublin.

<sup>34</sup> Walsh, J. (2018). *Ireland Country Report: Non-Discrimination*. European Commission: Luxembourg.

<sup>35</sup>Ibid.

<sup>36</sup>IHREC. (2019)



**Case Study 4 – Access to Housing**

Akuma moved to Ireland from Ghana several years ago. She shares parenting of her three children, but she has primary custody and they live with her most of the time. She rents her home, topping up her Housing Assistance Payment (HAP) to meet market rent rates. In recent years has been forced to move several times due to landlords selling their properties. Most recently the best she could find is a three month lease far from her work and children's schools. Each time she has moved she has faced considerable challenges finding a property. Akuma feels discriminated against because letting agents and landlords seem less interested in accepting one-parent families and tenants in receipt of HAP. She has a good job but still finds it difficult to find properties within her budget as a lone parent. Throughout her efforts to find new homes for her family she sees a pattern emerging; email communication goes well but when she speaks to a landlord/letting agent by phone or in person she is not successful in securing the property. She knows that her ethnicity and lone parent status are preventing her finding a suitable home for her family. She feels like time is running out and is terrified of becoming homeless.

While it is possible to make a complaint on more than ground, the Acts require that discrimination on each ground has to be proven separately. People's experience of inequality is tied to their identity as a whole, which cannot be artificially categorised into separate grounds.<sup>37</sup> Many groups who currently enjoy the protection of the Acts also experience disproportionate levels of socio-economic disadvantage and exclusion. The Acts should provide for experiences of intersectional discrimination on the basis of socio-economic status (and another ground or grounds) by introducing a socio-economic status ground.

**Recommendation 7:** Amend the Equality Acts to explicitly allow for claims for discrimination on dual or multiple intersecting grounds, with reference to a single hypothetical comparator.

**9. Access to Justice**

Access to justice is a fundamental human right and is recognised as such under a range of regional and international instruments. In the absence of access to justice, people are unable to exercise and vindicate their rights, have their voices heard, challenge discrimination, or hold decision-makers and executive power to account. Unless the right of access to justice is vindicated, the risk of social and economic exclusion is greatly increased.<sup>38</sup>

<sup>37</sup>Walsh, J. (2013). *Equal Status Acts 2000-2011: Discrimination in the Provision of Goods and Services*. Lonsdale Law Publishing: Dublin.

<sup>38</sup> United Nations, (2021) *Access to Justice* [online]. Available at: <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>

### 9.1. Time Limits and Notification Requirement

There is a six month time limit for making a discrimination claim under the Equality Acts. This is prohibitive. The Labour Court has the same strict time limit, even where an employee is delayed making a claim due to an internal grievance procedure.<sup>39</sup>

Furthermore, before a complaint can be lodged under the Equal Status Act, complainants are required to notify the respondent of their intention to make a complaint within two months of the alleged discrimination taking place. In cases where hearings were conducted at the Workplace Relations Commission (WRC) in 2019 and 2020 11.5 percent of cases were dismissed for failure to comply with notification requirements.<sup>40</sup> This clearly demonstrates that the notification requirement is a barrier to justice for a significant number of complainants.

**Recommendation 8:** Set the time limit for discrimination complaints from the date of knowledge of the discrimination, or from the date a grievance procedure in relation to the discrimination has ended and extend this period where there is reasonable cause for delay in bringing a complaint.

**Recommendation 9:** Remove the notification period currently required by the Equality Acts, or make it an optional requirement.

### 9.2. Redress for Discrimination Complaints

Currently, a person can receive an award of up to €15,000 for a discrimination claim under the Equal Status Acts heard by the WRC, regardless of how severe the discrimination or on how many grounds. There is also a cap of €13,000 on access to employment claims. These caps are at the extreme upper limit of what is awarded for a successful claim and many awards are much lower. Furthermore, the Equality Authority has noted there is a view among some respondents that the awards are simply the price of doing business and they do not present a sufficient deterrent.

IHREC has recommended the ceiling on compensation under the Equality Acts should be removed and has noted that similar limitations on compensation in other EU Member States have been found to be incompatible with EU law.<sup>41</sup> Indeed, EU law requires sanctions to be effective, proportionate and dissuasive and One Family shares Dr. Judy Walsh's concerns as to whether these caps meet this criteria.<sup>42</sup>

**Recommendation 10:** Remove the caps on compensation for discrimination claims under the Equality Acts and ensure discrimination on multiple grounds receive sufficient compensation.

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<sup>39</sup> Walsh, J. (2020). *Ireland Country Report: Non-Discrimination*. European Commission: Luxembourg.

<sup>40</sup> Ibid.

<sup>41</sup> IHREC. (2019).

<sup>42</sup> Ibid.



### 9.3. Access to Legal Aid<sup>43</sup>

Legal Aid is unavailable in discrimination cases under the Equality Acts, regardless of the severity of discrimination, harassment, sexual harassment or victimisation the case is concerned. The Legal Aid Board is precluded by law from providing representation before many quasi-judicial tribunals. This includes the Workplace Relations Commission which deals with most discrimination complaints under the Equality Acts.

Discrimination cases can be extremely complex, and can involve dealing with complicated areas of national and EU law. Employers and businesses can often afford to pay for private legal representation in equality cases before the WRC; however persons making complaints often cannot, meaning the process is unequal from the start.

In 2019, UNCERD expressed its concern “about the absence of legal aid available for claims of racial discrimination under equality legislation brought before the Workplace Relations Commission, which results in non-equality of arms as respondents are mostly represented by legal counsels”. CEDAW and the EU Fundamental Rights Agency have also made similar recommendations.

**Recommendation 11:** Adopt UNCERD, CEDAW and EU Fundamental Rights Agency recommendations to extend the scope of the Legal Aid Board to cases take under the Equality Acts.

### 9.4. Access to the WRC

While most discrimination cases are heard by the WRC, some, including claims against licensed premises and some claims under the gender ground can be heard at the District Court. The WRC replaced the Equality Tribunal. Unlike the Equality Tribunal, which was inquisitorial in nature, the WRC is more adversarial. It is set up to deal with employment cases and as such, doesn't have specific procedures in place to deal with equality cases. Indeed, in the Workplace Relations Bill (2015), the WRC's equality function is not mentioned in its terms of reference. The WRC's title is confusing, indeed a lay person would be forgiven for not realising its role in non- employment related equality cases.

The WRC involves an overly legalistic forma compared to the previous system in which the Equality Tribunal supported the self-advocacy of those taking a complaint. Furthermore, the lack of investigative power at the WRC means the burden of making complex legal arguments and providing proof rests with the complainant, a particularly challenging task in light of the lack of legal aid provision at the WRC. Furthermore, some remedies are futile given the need for urgency (for example, admission to school or evictions) and there is a need for an interim measure to be introduced to protect such complainants during the eight month wait for a case to be heard at the WRC.

**Recommendation 12:** All discrimination cases under the Equality Acts should be heard at the WRC in the first instance, subject to the cap on awards being removed. Consideration should be given to changing the name of the WRC to reflect its role in hearing cases under the Equality Acts.

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<sup>43</sup>FLAC, (2021). *FLAC Guide: The Review of the Equality Acts, Making a Submission to the Review and the Key Issues Under Review*. [online]. Available at: <https://www.flac.ie/publications/flac-guide-the-review-of-the-equality-acts-making/>

**Recommendation 13:** WRC should put specific equality proofed procedures in place to ensure it is accessible to everyone afforded protection under the Equality Act. This should include supporting the self-advocacy of complainants.

**Recommendation 14:** Strengthen the investigative powers of the WRC and revert to a similarly inquisitorial approach as that taken by the Equality Tribunal.

**Recommendation 15:** Enhance the WRC procedure by allowing for an interim order to be put in place to protect complainants while their case is awaiting a hearing.

## 10. Exemptions

While the definition of services in section 2 of the Equal Status Acts is broad enough to include services provided by public bodies; however, it does not extend to the general functions of public bodies, which cannot be described as services. It is therefore unclear to what extent the Equal Status Acts relate to public bodies. Similarly Section 14 of the Equal Status Acts excludes any action required by legislation from challenge under the Acts.

In practice this means legislation, and possibly any policy resulting from that legislation, is precluded from challenge under the Equality Acts. Essentially, we have a system in which the State need not abide by its own equality legislation. This is an area which particularly affects one-parent families. It is One Family's experience, over the last 50 years that some of the worst discrimination against people in one-parent families has been at the hands of the State.

### Case Study 5 – Social Welfare Housing Inspections

Stephen and Agnieszka share parenting of their 6 year old daughter Barbara. They formerly lived together and Stephen moved out when they separated. They share custody but as Barbara lives with Agnieszka most of the time, she applied for One Parent Family Payment (OFP). Stephen and Agnieszka have a good relationship. Barbara stays with Stephen on weekends but he lives close by and calls to the house regularly. Agnieszka has started a part-time course to retrain in Human Resources and Stephen sometimes picks up Barbara after school and drops her home if Agnieszka's course doesn't finish on time. On one such occasion a social welfare inspector called to Agnieszka's home. Stephen was unsure if he should permit the inspector to enter the house, but was worried Agnieszka might suffer so did so under duress. As a result of seeing Stephen at the house the inspector trawled through Agnieszka's Facebook profile and downloaded old pictures of the pair when they were a couple. Agnieszka was presented with the pictures as evidence she was fraudulently claiming OFP. A decision was made against her and she lost her payment. She had to drop out of her course and take a low-paid, zero hours job. Agnieszka felt angry and, although she knew it wasn't Stephen's fault, losing OFP in such a confrontational manner and the knock on effect it had on her income, having to drop out of college and juggling childcare and work placed a strain on their relationship.

### 10.1. Social Protection and Taxation

Many one-parent families engage with the Department of Social Protection (DSP), for income support, in-work supports and children's supports. We have previously outlined examples of discriminatory social protection legislation (Parental Leave Benefit Act) and policy (cuts to One Parent Family Benefit); however, there are many more. In 2014 the 'One-Parent Family Tax Credit' was replaced with the 'Single Person Child Carer Credit' (SPCCC). Unlike the scheme it replaced, only one parent is eligible for the SPCCC. In practice this means that many fathers who are sharing parenting have no recognition of their caring responsibilities. A similar rule applies to Child Benefit which is paid by DSP to mothers in most instances.

Another inequality is access to education. Income supports for one-parent families are often linked to the age of a parent's youngest child. For example, currently, for a parent in education once their youngest child is over 14 years old, transfer to BTEA is compulsory if they want to continue with their education as they have moved from Jobseekers Transitional Payment to Jobseekers Allowance. As a result of this forced transfer, access to a SUSI maintenance grant is denied to these parents.<sup>44</sup>

Another inequality relates to PhD scholarships. The Minister for Social Protection, Heather Humphreys recently removed the means testing of PhD scholarships for recipients of Disability Allowance on the basis that it was unfair and disadvantaged a group (people with disabilities) who already face considerable barriers in accessing education.<sup>45</sup> The same means test, however, remains for one-parent families on One Parent Family Payment or Jobseekers Transitional Payment.

The lack of an independent child maintenance agency in Ireland is something One Family have long campaigned for. In its absence, child maintenance is a largely private arrangement fraught with difficulty. Many parents don't receive child maintenance for their child or don't receive it regularly, even where a court ordered arrangement is in place. Yet, where an agreement is in place child maintenance is means tested even when parents aren't receiving any payment. Oftentimes, parents will avoid seeking a child maintenance agreement for fear of it impacting their access to social protection. In some cases parents will claim they have sought child maintenance and accept a lower mean tested social welfare payment to avoid contact with an abuser or simply because they don't have access to the other parent. Ultimately, this inequality directly contributes to child poverty.<sup>46</sup>

**Recommendation 16:** Remove exemption for general functions of public bodies and legislation from the Equality Acts.

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<sup>44</sup>One Family, (2021). *Submission to the Higher Education Authority on the National Action Plan on Equity of Access for Higher Education*. [online]. Available at: <https://onefamily.ie/wp-content/uploads/2021/06/National-Access-Plan-Submission-One-Family-Final.pdf>

<sup>45</sup> Press Statement Department of Social Protection. (2021). *Minister Humphreys announces changes to the Disability Allowance means test for PhD students*. [online] Available at: <https://www.gov.ie/en/press-release/0d18a-minister-humphreys-announces-changes-to-the-disability-allowance-means-test-for-phd-students/>

<sup>46</sup>One Family, (2021). *Submission to the Child Maintenance Review Group*. [online] Available at: <https://onefamily.ie/wp-content/uploads/2021/03/One-Family-Submission-to-the-Child-Maintenance-Review-Group-3.21-1.pdf>

### Case Study 6 – Means Testing PhD Scholarships

**Dawn was delighted to win an Irish Research Council Scholarship to undertake her PhD in psychology full time. The scholarship covers her university fees; however, she discovered it is also means tested as income for Job Seekers Transitional Payment and she found she would therefore have to give up her JST Payment. She tried to claim Working Family Payment but as the scholarship is not taxable income she did not qualify for that either. She doesn't qualify for other support payments such as the Back to School Clothing and Footwear Allowance. Her childcare fees have also gone up because she is no longer eligible for an after-school support under the National Childcare Scheme. She has seen her income plummet and is distraught that winning a scholarship has left her financially worse off. Dawn has one child and is barely making ends meet for her family.**

**She told One Family:**

**"This barrier needs to be addressed and removed, it's such an obstacle to single parents (disproportionately female) accessing higher education and traps us in poverty. I'm living month to month; if I had two children and had to pay two lots of childcare, this would be impossible and I wouldn't have been able to continue my studies. I think there are too few of us to make proper noise to get the Government to listen; but government policies are the exact reason there are so few of us."**

## 10.2. Housing

One Family welcomed the "housing assistance" ground added to the Equal Status Act by the Equality (Miscellaneous Provisions) Act 2015; however, this does not go far enough to prevent discrimination of low income one-parent families in the private rental market. Recent research published by the ESRI and IHREC demonstrated that lone parent households reported some of the worse outcomes across a number of indicators; accessibility, affordability, security of tenure, cultural adequacy, quality and location.<sup>47</sup>

In 2021 Balakrishnan Rajagopal, UN Rapporteur on Adequate Housing, expressed shock at the treatment of one-parent families at the particular disadvantage faced by one-parent households on nearly all housing rights dimensions assessed in a report published by the Irish Human Rights and Equality Commission (IHREC) and the Economic and Social Research Institute (ESRI). The Rapporteur's view was that the findings raised a fundamental question of how society treats one-parent families who are "the most impoverished and..... (more often face significant).....arrears in paying for their housing costs and are among those with lowest security of tenure."<sup>48</sup>

<sup>47</sup> Russell H, Privalko I, McGinnity F & Enright S. (2021). *Monitoring Adequate Housing in Ireland*. IHREC: Dublin.

<sup>48</sup> The Irish Times, (2021). *Lone parents and children account for more than half of homeless families*. [Published 14 September 2021]

The starkest example of housing inequality for one-parent families is their consistent over representation in homelessness. We know from the official homelessness statistics, released each month by the Department of Housing, Local Government and Heritage, that one-parent families make up the majority of homeless families; however, what is not counted and therefore overlooked is the proportion of fathers counted as a 'single adult'. To maintain functioning shared parenting, fathers need access to safe, suitable accommodation to care for their children. These parents are overlooked in Government housing policy.

### **10.3 Discrimination Based on Housing Type**

One-parent families experience discrimination because of their housing status. For example, access to education supports, such as the SUSI grant, are often conditional on the type of housing support you avail of.<sup>49</sup> In the case of separated families, many family law orders allow for the family home to be retained until the youngest child turns 18. This means a parent who is secondary care giver and leaves the family home may retain an interest in that home but derive no material benefit. They may also be ordered to discharge the mortgage, leaving insufficient resources for their own housing needs. They are not entitled to social housing or HAP. Conversely, if the primary care giver parent leaves the family home, they are deemed to retain a beneficial interest in the family home and aren't entitled to housing support (unless domestic abuse is proven).

In 2014 Mortgage Interest Supplement closed to new applicants meaning a primary care giving-parent, who may have not been working or on minimal hours because of childcare, has no help to pay the mortgage. This ultimately leads them into the private rental market and puts them at greater risk of homelessness. In cases where there are mortgage arrears and a parent has left the family home, the residential-parent is unable to access the Mortgage Arrears Resolution process. It means the residential family cannot proceed without the consent of the non-resident parent, regardless of whether they can pay.

If a court orders a non-resident parent to discharge the mortgage, this mortgage payment is treated as maintenance by social welfare. There is a housing disregard of €95.23 per week, but as the housing disregard has not increased in over 20 years, it doesn't accurately reflect current housing costs. In many cases, the resident parent will forgo the mortgage payment as a result. This will eventually lead to a possession order, entry to the private rental market and places the family at risk of homelessness. As rent supplement is governed by supplementary welfare rules, all means are assessed. One of the conditions of OPF/ JST payments is that the recipient seeks maintenance, and many parents will fulfil this obligation by submitting a court order to social welfare. The first €95.23 of maintenance is deducted from any rent supplement ordered, regardless of whether maintenance is received or not. It can lead to rent arrears and possible eviction/homelessness because of missed maintenance payments

Another inequality we are aware of through our work with families is the varying treatment of child maintenance by various different State agencies, with some means testing child maintenance and others not. Even within individual schemes there are discrepancies in approach, for example in local authorities. Our research has found a different approach being applied by local authorities throughout the country with some

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<sup>49</sup> One Family, (2021).

means testing the receipt of child maintenance when a family applies for social housing or Housing Assistance Payment and others not. Equally, some local authorities deduct any child maintenance paid when assessing means to qualify for social housing supports, and others do not. In practice this means inequitable access to social housing for one-parent families depending on where they live.<sup>50</sup>

### **Case Study 7 – Housing Supports for Separated Families**

**Sean is divorced with two children aged eight and ten. He has joint custody and they live with him half the time. Sean bought a house with his ex-wife and has agreed that she will live there with his children until his youngest child turns 18. Sean is happy with this arrangement as his children are happy living in the family home and he doesn't want to do anything to upset or disrupt them. Finding a rental property with enough space for his children, near their school and social supports in his budget was difficult. He has a good job but the renting alone takes up most of his earnings and he has nothing left for activities or holidays with the children, or a social life of his own. He is lonely when the children aren't with him. He has made enquiries about State housing supports but as he retains interest in the family home he has been told he doesn't qualify for any assistance. He will be 60 years old when his youngest child turns 18; too old to get a mortgage. He worries about his future and believes he will end up requiring state support for housing which will be more costly than access to housing schemes now**

**Recommendation 17:** Consider prohibiting discrimination on the basis of housing status, protecting against discrimination on the basis of a person's status as a home-owner, renter, social tenant, in receipt of housing assistance, Traveller accommodation resident, direct provision resident or homelessness.

### **10.3. Structural Inequalities**

As we have shown, one-parent families face discrimination across a number of grounds throughout their interactions with the State. The cumulative effect of the multiple, overlapping and interwoven discriminations is persistent negative outcomes relating to wealth, housing, education, health, mental health, safety, employment and social exclusion. And so we see that the median net wealth of households with two parents and children (€136,800) is twenty-six times the net wealth of households with one parent and children (€5,200).<sup>51</sup> One-parent families are less likely to own their own home and have significantly lower levels of personal savings and lower net wealth when compared

<sup>50</sup>One Family. *Local Authority Approaches to Child Maintenance Paper (Unpublished)*.

<sup>51</sup>Central Statistics Office. (2019), *Household Finance and Consumption Survey 2018*



with averages.<sup>52</sup> One-parent households are more than twice as likely to be in rent or mortgage arrears as other households with children.<sup>53</sup>

One-parent families consistently represent the highest proportion of families living in emergency accommodation. The proportion of families in emergency accommodation who are one-parent families has remained around 55 per cent consistently since 2018 until June of 2021 when the Department of Housing, Local Government and Heritage stopped disaggregating its homeless data by family type.<sup>54</sup> These poor outcomes are the product of entrenched structural inequality. Public policy should not only not be exempt under the Equality Acts, there should also be a positive obligation placed on the State to ensure its policies are proofed against perpetuating or compounding such inequalities.

**Recommendation 18:** Create a statutory obligation for all public policy to be equality proofed, with specific consideration paid to each of the grounds protected in the Equality Acts.

## 11. Strengthening Equality Infrastructure

Elimination of inequality will only be as effective as the tools and structures designed to protect against discrimination. This should be achieved by improving data and evidence collection, strengthening the Public Sector Duty and increasing awareness and education.

### 11.1. Public Sector Duty and Data

The Irish Human Rights and Equality Commission Act 2014 makes provision for a statutory duty on public bodies to have due regard to the need to eliminate discrimination, promote equality of opportunity, and protect human rights in the implementation of all of their functions.<sup>55</sup> Positive duties such as this are essential in protecting against discrimination in situations with significant power imbalance between statutory bodies and agents and the public (such as the example presented in Case Study 5 above). They are also important in the context of high levels of under-reporting and barriers to taking on legal cases as previously outlined. Positive duties are also valuable in ensuring organisations make their commitment to and ambition for equality and non-discrimination clear and known, internally and externally.

Despite actively being in place for the past five years, there has been relatively low level of adoption and implementation of the Public Sector Duty across the public sector. Furthermore, data and evidence on the scale and type of discrimination is insufficient. Without measuring inequalities it is impossible to create appropriate, proportionate and effective policy responses. IHREC has highlighted the considerable shortfalls in equality data in Ireland, and has repeatedly called for the collection of equality data as standard by public bodies, including “ethnic identifiers”. Collection of such data would assist in the implementation of the Public Sector Equality and Human Rights Duty.<sup>56</sup>

<sup>52</sup> TASC. (2015). *The Distribution of Wealth in Ireland*, [https://www.tasc.ie/assets/files/pdf/the\\_distribution\\_of\\_wealth\\_in\\_ireland\\_final.pdf](https://www.tasc.ie/assets/files/pdf/the_distribution_of_wealth_in_ireland_final.pdf)

<sup>53</sup> Society of St Vincent de Paul. (2019).

<sup>54</sup> Department of Housing, Local Government and Heritage (2021). *Homeless Report June*.

<sup>55</sup> Government of Ireland, (2014). *Irish Human Rights and Equality Act*

<sup>56</sup> Russell H, Privalko I, McGinnity F & Enright S. (2021)

**Recommendation 19:** Adequately resource IHREC to fulfil their Public Sector Duty enforcement powers. Examine the introduction of specific duties which apply to certain State bodies and dissuasive sanctions for not fulfilling obligations under the Act.

**Recommendation 20:** Introduce measures which put a duty on public bodies to collect and report on equality data. Give IHREC specific enforcement powers in this regard.

**Recommendation 21:** Ensure IHREC has adequate resource to fulfil all its functions under the 2014 Act, including the ability to take “own name proceedings” and its inquiry powers.

### **11.2. Awareness and accessibility**

There is a shortfall in the provision of equality and rights information and awareness in Ireland. The result is some in society avoid their legal obligations, while others are not adequately protected. While many people are acutely aware of the inequalities they face and how their experience of discrimination impacts their lives, they may not know how to seek legal remedy or what their protections are under the Equality Acts. Poor literacy skills and digital skills are barriers to people accessing information about their rights under equality legislation. The process for receiving remedy or redress under the legislation and the information surrounding it is overly legalistic.

Education and awareness raising about equality and the Public Sector Duty are within the remit of IHREC; however there is an important role to be played by the civil and NGO sector. Such organisations have a unique understanding of the experiences of their representative group and service users. They also have access to people experiencing inequalities and expertise in education, communication and participation with the groups most impacted by discrimination.

**Recommendation 22:** Resource bodies such as IHREC and Citizens Information and NGOs to provide education, awareness raising and training on the rights and protections offered under the Equality Acts.

### **Ends**