



Ageing in an Age of Permacrisis

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Abstract

Through the lens of the Uncertain Futures project, this article uncovers what is like to grow old in an age of permacrisis, how inequalities are impacted by crisis and how crises can exacerbate existing inequalities facing older persons. The article seeks to uncover the role of the law in tackling these inequalities and the normative obstacles to achieving equality. These include the exceptionalism often associated with age-based discrimination and the lack of recognition and protection against forms of multiple and intersectional discrimination. The article highlights the impact of these normative gaps in perpetuating intergenerational stagnation of inequality and argues for the importance of a robust right-based approach to equality to achieving a more certain and secure future for older persons, even in times of permacrisis.

Keywords Equality law · Ageing · Intersectional discrimination

1 Introduction

For many, growing old is often characterised by uncertainty, precarity, vulnerability and insecurity. This is magnified in times of crisis and turns retirement, which is often portrayed in popular culture as a golden time of life, into something which is far removed from these idealistic aspirations. The *Uncertain Futures* project set out to uncover the inequalities facing older women in Manchester with respect to work

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(both paid and unpaid) but it ended up discovering so much more. It highlighted that the reality of retirement for older women was, for many, one which was peppered with insecurity and uncertainty and that the reason for this lay in the interplay and intersection of certain core inequalities based around age, gender, socio-economic background, migration status and disability. In addition, the project took place during the heart of the Covid-19 pandemic and was also able to assess the impact of one particular crisis on these existing inequalities. *Uncertain Futures* ultimately identified the exacerbating impact of crises on existing inequalities. It also prosaically and more generally highlighted the interconnection between ageing, crisis and moments of existential decision making. It identified that precarity and vulnerability are not just labour market outcomes of crisis [1] but also intensifies ‘ontological precarity’ particularly for older persons. [2]

The question then remained as to what role the law could play in overcoming these inequalities many of which stemmed from discrimination, both singular and intersectional. An examination of the law reveals that while there is a robust equality law regime in place through the Equality Act 2010, there are normative gaps in this system which perpetuate these inequalities. Firstly, there is an exceptionalism applied to age-based forms of discrimination which are not applicable to other areas of discrimination law. This has the effect of downplaying the impact of age-based discrimination and ageism and weakening the protections afforded. Secondly, there is no protection afforded to multiple or intersectional forms of discrimination. Given the results of the *Uncertain Futures* project highlighted so dramatically the impact of intersectional discrimination, the lack of protection means that certain unique forms of discrimination go unprotected and, as a result, economic, social and health inequalities widen. More concerning, the analysis of the law and the results of the *Uncertain Futures* project together indicate that, unless robust action is taken, this will lead to intergenerational stagnation such that future generations, subjected to similar levels of permacrisis, will suffer similar, if not more uncertain, fates. The law, therefore, plays a central role in supporting pathways to more certain futures.

The article begins with an overview of the *Uncertain Futures* project and what it is like to grow older in an age of permacrisis. It then uncovers both the core inequalities impacting on older women as well as the tangential challenges brought about as a result of the Covid-19 crisis. The article concludes that crises, such as the Covid-19 crisis, exacerbate existing inequalities significantly. The second part of the paper focuses specifically on the role of the law in tackling inequality through the lens of the Equality Act 2010. While the legislation is relatively robust, the article identifies two normative gaps: the exceptionalism applied to age-based discrimination and the lack of multiple or intersectional discrimination provisions. It analyses the impact of these gaps particularly with respect to intergenerational stagnation. The article concludes with a call for a rights-based approach to tackling inequality, in combination with other multidimensional policy changes, to ensure intergenerational solidarity and a more certain future for all.

2 Ageing in an Age of Permacrisis

What is it like to get old at a time of permacrisis? Do existing inequalities remain or are they exacerbated by crises? This section of the article examines this very question through the voices of women over fifty years who lived through the Covid-19 crisis (hereinafter referred to as the ‘pandemic’) in Manchester, UK. These women have lived through multiple crises in their lives whether at a national level (e.g. the sudden rise in pension age or economic recessions) or on a personal level (e.g. migration, and loss) and were in a unique position to highlight not only the inequalities which they face and the impact of crises on these inequalities. Through these narratives we can learn a lot about the inequalities which they face, the obstacles caused by these crises to overcome these inequalities and how crises, like the pandemic (and actions taken to mitigate its health impacts), exacerbate these inequalities creating very uncertain futures for older people. The project is primarily focussed on older women. However, some of the inequalities faced by these women are not unique to women and have equally applicable impacts on men. Additionally, as will be identified later in the article, the impact on older persons also has a unique impact on younger people through a process referred to as intergenerational stagnation. This section of the article will provide an overview of the *Uncertain Futures* project itself (hereinafter referred to as ‘*Uncertain Futures*’) (Sect. 2.1), an analysis of the aspirations and reality of growing old in a permacrisis (Sect. 2.2), an assessment of existing inequalities impacting on older women (Sect. 2.3) and an investigation on the impact of the pandemic on these inequalities (Sect. 2.4). This section of the article concludes that older women face numerous and intersectional inequalities which are critically exacerbated by crisis.

2.1 *Uncertain Futures*: An Overview

Uncertain Futures is a unique participatory art and research project which set out to address inequalities facing women over 50 in Manchester relating to work (both paid and unpaid) [3]. In particular, it was curious to understand and unpick how interconnected issues of gender, age, labour, socio-economic background, migration status, disability, race and ethnicity impact women's life experiences. The project was formed through the vision of American artist and academic Suzanne Lacy, working with Learning Manager, Ruth Edson, at Manchester Art Gallery. The team was supported by interdisciplinary academic researchers from Manchester Metropolitan University [4], the University of Manchester [5] and an Advisory Group of fifteen women over the age of fifty years. This Advisory Group represented a diverse group of older women (ages ranging from fifty to eighty years of age) who were active in their communities, from different racial and ethnic backgrounds, some of whom had newly migrated to the city and others who had lived in Manchester all of their lives [6]. The project comprised of three key areas of work: a series of aesthetic productions organised and presented through three exhibitions at the Manchester Art Gallery [7]; a rigorous participatory research project involving the interviewing of 100 diverse women from across Manchester [8], accompanied by various public presentations and a final report [9]; and an activist organising project culminating in a

Manifesto of Rights for Older Women [10], aimed at raising the level of awareness about intersectional issues of inequality around work and ageing.

2.2 Growing Older in an Age of Permacrisis

Before examining the impact of a specific crisis, such as the pandemic, it is important to understand the experience of growing older in an age of permacrisis. *Uncertain Futures* provided a unique insight into this phenomenon through the voices of older women themselves. These narratives indicate, like the title of the project itself, that there is a great deal of uncertainty, precarity and indeterminacy for older women in growing older creating a real sense of insecurity in their future lives.

While the aspirations of growing older and retiring were almost universally positive, these rarely matched the reality of these experiences for many older women. These modest aspirations almost invariably included stability (particularly in housing and food), financial security, good health and well-being, as well as being able to participate in certain activities such as travel, exercise, spending time with family or work. Often this reflected their pre-retirement lives and there was a sense that a maintenance of their existing standard of living was a reasonable and modest aspiration [11].

While for some women this modest aspiration also reflected their daily reality due to a good retirement income, secure housing, and partnerships which guaranteed dual income/pension, this was not the reality for many, if not most, of the women we interviewed as part of the project. As a result of repeated inequalities and crises throughout their lives, from discriminatory pension schemes, to sudden changes to pension ages, from severe financial recessions to crises like the pandemic, from having to seek asylum in the UK from abroad to struggling to access the labour market as refugees, many women reported that their experience of ageing and heading into retirement was far from ideal. Indeed, their experience was one which was permeated by instability (particularly around housing and food), limited financial security, and a lack of ability to interact with chosen activities. This was exacerbated where the women came from migration backgrounds where access to pension systems in their own country was limited, where they had limited or no knowledge of the UK pension system and had not been resident long enough in the UK to build up sufficient contributions to obtain an adequate state pension. Many women chose not to retire in order to maintain their current standard of living or in order to ensure some measure of financial security. The narratives indicated that women could not afford to retire, expected to have to remain in work in order to survive and often experienced only minimal standards of living [11]. This concern was not purely financial. There was also a great deal of health and care-giving-related concern which the stress of retirement at such a minimal level did not help. Women expressed concern about whether they would be healthy enough in retirement to enjoy it, whether they would have the financial resources to pay for the care that they may need and how they would be able to maintain any standard of living when they would potentially be too unwell to work and make sufficient money.

The project results indicated that growing old in an age of permacrisis is financially, socially, and emotionally very insecure and precarious for many older women.

2.3 Mapping Existing Inequalities Affecting Older Women

The research conducted through the *Uncertain Futures* project concluded that crises essentially exacerbate existing inequalities such that where inequalities already exist, the effects of these are amplified during periods of crisis. The research also indicated that existing inequalities faced by older women stem from multiple sources and often have an intersectional effect which means that it is often difficult to isolate or unpack the various layers of inequality from a legal perspective (this will be discussed more fully below in Sect. 2). Focusing primarily here on one of these inequalities [12], namely discrimination [13], *Uncertain Futures* uncovered multiple and intersectional forms of discrimination as strong drivers of inequality for many women and this discrimination could stem from multiple sources including *inter alia* age, sex, disability, migration status, race and ethnicity, and sexual orientation.

The women we interviewed indicated, in particular, that age and ageism played a significant role in their ability to access and maintain employment with age stereotyping by employers leaving many women feeling undervalued and lacking in confidence [14]. Age combined with other grounds of discrimination, such as race, ethnicity, language abilities, lack of qualification recognition and migration status, played a direct role in many women's inability to secure paid employment which would have led to more secure futures. Where women were able to secure paid work, this often tended to be poorly paid, insecure or invisible work which widens social and health inequalities [15]. Migration law in England denies asylum seekers the right to work for at least the first twelve months after their arrival in the UK [15, 16] and this coupled with language acquisition difficulties, and lack of qualification recognition ensures that many women in these positions are destined to be financially insecure extending into their retirement.

Another acute form of discrimination identified arises from disability or long-term ill-health. When combined with age, women reported that the combination of their age and health conditions effectively either removes them from the labour market entirely or reduces their paid employment options exacerbating existing health and economic inequalities [16, 17]. It was also reported that employment support services were often not flexible enough to adapt to the needs of the diverse women they represented offering inappropriate work opportunities, limiting their work options or declining them support entirely [17]. Menopause, while not a protected characteristic and not always considered a disability in a legal sense, was also a significant issued for older women in accessing work opportunities and/or remaining in paid work. The combined impact of gender, age and potential disability is that many women opt out of paid work or seek to reduce their hours which essentially fragments their working lives and creates less certain futures [17].

2.4 Mapping the Effect of Crises on Existing Inequalities on Older Women: the '+Effect'



(Photograph of the Research Matrix on the wall of Manchester Art Gallery, 2021–2025. Credit: Michael Pollard photographer)

As part of the participatory element of the project, the team created a research matrix identifying key research themes. One of the main questions asked during the interview was specifically in relation to the pandemic and the impact of this crisis on the lives of women. The research matrix created identifies different dimensional aspects of the inequalities impacting on women's lives. Firstly, it indicates at the core the existing inequalities which fundamentally impact on the day-to-day experiences of older women (which have been discussed above in Sect. 2.3). Secondly, it indicated the additional challenges which feed into and exacerbate the impact of these existing inequalities. The project coined the phrase the 'Covid + effect' to highlight the magnified effect of the crisis on existing social, health and economic inequalities. This term, the '+effect' could arguably be used to describe the magnifying impact of any crises on inequalities more generally.

Many of the challenges identified outside of the core matrix inequalities flowed directly from the pandemic itself. The pandemic forced many older women out of paid employment due to lack of work opportunities, poor or unsafe conditions or redundancy [18]. Women also felt forced out of work by the increased caring responsibilities arising from the pandemic towards their children (many of whom had to be home-schooled), partners, spouses, parents and other dependent family members.

The effect of this was that many women needed to find alternative work or work which was more flexible and could fit around these increased caring responsibilities [18]. In many cases this work was not good work and most of these so-called ‘opportunities’ amounted in essence to low-paid jobs or jobs at zero-hour contracting. Many women who were made redundant or in need of new work opportunities recognised that they would need to retrain in order to access work. While this was possible for some women, the opportunities were extremely limited and often outside of the economic means of many. There was also a considerable digital divide with access to work often dependent on skills in social media, and general information technology skills or equipment which were not available to all. These issues, identified in the matrix as the digital divide, retraining requirements, low-paid jobs, redundancy, and zero-hour contracts, magnified existing social, health and economic inequalities and perpetuated the discrimination already faced by many women.

Other obstacles also emerged as creating a ‘+effect’ on existing inequalities. These challenges were not linked directly to the pandemic but were obstacles which pre-dated the pandemic but which became more amplified during the crisis. These challenges, identified in the matrix as loss, the lack of value of unpaid work, caring responsibilities, working from home, health issues, long covid and isolation all exacerbated existing social, health and economic inequalities and perpetuated the discrimination faced by many women.

Connected specifically to the theme of work, many women found themselves either outside the labour market as a result of pandemic or as a result of having to make difficult choices with respect to their caring responsibilities. Many women who were already carers before the crisis and those who had to take on additional responsibilities during the crisis indicated the increased physical and emotional toll of these responsibilities on them. The research indicated that women already contribute significant amounts of unpaid work and contributions to society in a variety of roles (as community volunteers, neighbourhood keepers, carers, entrepreneurs) [19] but this was increased considerably during the crisis. Women were often front-line workers volunteering in roles which were unpaid but had considerable social and economic significance. However, there is a lack of recognition of this unpaid work both experientially and economically which means that women often do this work with little or no recognition of their contribution.

Connected to this is the issue of caring responsibilities. Women still take on the majority of caring roles but the pandemic certainly had the effect of increasing these responsibilities. Older women reported working from home with children or grandchildren to home-school, spouses or parents or siblings to care for and with limited or even less support than would usually be available. In addition, their workplace responsibilities (where these remained) often were increased or more pressurised due to the nature of the crisis, exacerbating existing physical and mental ill-health. Working from home, even without additional caring responsibilities, caused an increase in mental stress and often lack of space added to the sense that there was no disconnect from work at home.

One of the key themes which women spoke about as causing inequality in their lives was the issue of health, both physical and mental. Long Covid featured prominently in some of these discussions as well as the amplification of existing health

conditions due to a lack of availability of health services during the pandemic. Health and disability (as already discussed in Sect. 2.3) play a key role in social and economic inequalities and the Covid+ effect prominently features in our research. Connected to the issue of health is that of loss. Loss can significantly alter future life trajectories in a variety of ways, particularly where that life has already been fragmented (as is the case for many women). Naturally this can occur with or without a crisis but during the pandemic there was, naturally, a greater risk or sense of loss and some of the women we spoke to had directly experienced loss as a result of the pandemic. The effect is life-altering in many cases, changing not only the vision of their future and retirement but the reality also [20]. Adapting swiftly to a new reality while also dealing with the emotional impact of loss had a considerable effect on existing inequalities. Finally, aside from the increased mental and physical load of work, trying to access paid work, increased caring responsibilities, juggling health issues, disability and loss, the pandemic also caused a significant level of social anxiety and isolation as a result of lockdowns and other measures put in place to combat the spread of the virus.

The pandemic, as one crisis of many which has affected this particular demographic group, highlighted starkly the compounding effect or ‘+effect’ on inequalities when crisis strikes.

3 The Role of the Law in Tackling Inequalities

The results of *Uncertain Futures* indicate that crises exacerbate and magnify existing inequalities and that existing issues such as discrimination on grounds of age, sex, disability, race and ethnicity are amplified by the impacts of these effects. The research matrix highlights the fact that discrimination is impacted by these additional compounding factors widening existing inequalities. Naturally, the law is only one tool in tackling social and economic inequalities but given the centrality of the inequalities highlighted in the matrix as the central core inequalities (age, gender, class, migration, race, and disability) the law certainly has a particularly important role to play in eliminating or, at least, reducing these inequalities.

The obvious place to begin this assessment is with existing equality laws. Equality law in England and Wales is enshrined since 2010 in the Equality Act 2010 which encapsulated a range of existing equality legislation into one dynamic statute which has become the cornerstone of equality law and rights in England and Wales since that date [21]. With some minor adjustments, the law has evolved and developed to ensure that discrimination on a number of protected characteristics is prohibited, many of which correlate directly with the core inequalities identified in the research matrix of *Uncertain Futures*, namely, age, sex, race and disability. However, despite the existence of this very important legislative instrument, *Uncertain Futures* indicates that these inequalities still exist and are particularly relevant to in the lives of older women. Therefore, it is incumbent to examine the existing law to enquire as to whether there are particular gaps which prevent the effective exercise of the law. This article does not seek to delve into other potential obstacles such as legal costs or

lack of information, but recognises that these will also play a role alongside the more substantive issues addressed here.

3.1 Substantive Gaps in the Equality Act 2010

The research undertaken as part of *Uncertain Futures* indicates that there are two substantial gaps which affect older persons, particularly during times of crisis. These relate to the material scope of protection afforded to those who claim discrimination on grounds of age and to the lack of enforceable protection of either multiple or intersectional discrimination in the legislation [22].

Before delving into the complexities of the law, it is pertinent to give a short overview of the manner in which the Equality Act operates. The Act protects against multiple forms of discrimination (direct [23], indirect [24], harassment [25], victimisation [26] and instructions to discriminate [27]) on nine protected characteristics namely sex, age, race and ethnicity, religion, sexual orientation, disability, gender reassignment, marriage and civil partnership and pregnancy and maternity [28]. These protections apply across a variety of fields of life including employment, education, transport, healthcare, housing, provision of goods and services. Depending on the field in which the discriminatory action takes place, the Equality Act 2010 can be enforced either through the Employment Tribunal (for employment law claims) or the County Court (for all other claims). Taking court action can be expensive due to legal costs, fees (where relevant) and time commitments. This can be a significant barrier in itself to enforcement. There is also a potential informational deficit with respect to protections under the Equality Act which will not be explored further here but is potentially a significant factor in the lack of effectiveness of the legislation. In the next Sects. (3.1.1 and 3.1.2) the article will explore how two substantial normative gaps in the legislation contribute to the perpetuation of these inequalities particularly during times of crisis.

3.1.1 The exceptionalism of age-based discrimination

While for most cases of direct discrimination the claimant must identify that they have been subject to less favourable treatment on one or more of the prohibited grounds, the same is not true for age-based direct discrimination. Age is seen as exceptional due to a variety of reasons associated with its relative late arrival to the equality regime, the social norm of using age as a proxy for many social and administrative interactions, and the lack of historical disadvantage and political disenfranchisement associated with age [29]. While this is all disputable theoretically, the fact remains that age remains exceptional within our equality regime by allowing a respondent to justify their actions. Once a claimant has demonstrated that they have been subjected to less favourable treatment on grounds of age, the legislation permits the respondent to counteract this complaint by identifying a legitimate justification (for which a very wide range of justifications have been accepted) and by demonstrating that the use of an age proxy or an age limit in the case in question was necessary and appropriate to achieve this particular aim. This mirrors the European Directive from which the legislative provisions were derived [30].

A useful example of how this can work in practice is the case of *Elliot v Parliamentary and Health Services Ombudsman (PHSO)* (hereinafter referred to as the *Elliot* case) [31]. The case involved a voluntary redundancy scheme from the PHSO and a 64-year-old female employee. The scheme offered employees the opportunity to take a voluntary redundancy and receive a lump sum. Ms Elliot, like many of the older women interviewed as part of *Uncertain Futures*, admitted that she could not afford retire and had intended to stay working full-time for a further two years with a move to part-time work when she reached the age of 66 years. However, she did consider the voluntary redundancy scheme but eventually refused to take it as she believed the manner of calculation of the lump sum essentially amounted to direct age discrimination. This is because those employees over the age of 60 years (when pension from the PHSO became available) had the payment under the scheme capped at 6 months' pay which was substantially less than those who were younger would receive (one month of pay for each year worked). Indeed, a person aged 59 years and 11 months would essentially receive one month pay for each year worked, whereas a person who had just turned 60 would receive substantially less. This 'pension age cap', it was argued, put the claimant in a less favourable condition than her younger colleagues.

The Employment Tribunal in *Elliot* considered that this 'pension age cap' did amount to less favourable treatment on grounds of age. However, the PHSO argued that this treatment (the pension age cap) was justifiable on the basis there was a legitimate aim and it was proportionate to achieving this aim. The aim propounded by the PHSO related to the fact that they had to find a fair way to provide a financial cushion to employees who had been made redundant and there was less need for a 'financial cushion' where a pension was available to the claimant. However, as the work of *Uncertain Futures* demonstrates this is certainly not always the case. The Employment Tribunal in *Elliot* initially accepted that this could be a legitimate aim and that receiving a pension was a guaranteed source of income which would ensure that the claimant had a financial cushion post-redundancy.

The next question was whether this 'pension age cap' was a proportionate means of achieving the legitimate aim. Interestingly, many of the issues raised by the women in *Uncertain Futures* were identified by the Employment Tribunal as potentially contributing to a very difficult financial position for older persons post-retirement, such as the high cost of housing, difficulty in accessing employment for older age groups, the rise in the state pension age and the need to ensure they have some stability in their living costs. The gender dimension was also identified (although not framed as such): the caring role which the claimant also occupied in her private life (caring for a dependent child and older relatives), which is common to many older persons, was also identified as a factor contributing to uncertain and unstable future financial situations. The 'pension age cap' was disproportionate then considering all these factors as it was not a fair way of ensuring a fair financial cushion to employees who were invariably in very different financial circumstances.

While this case was resolved in favour of the claimant in this case, it demonstrates the wide discretion given to employers to develop legitimate aims which the claimant may not always be able to predict or effectively counterargue particularly where there are language or other barriers in place. Lack of legal representation in such cases

could be detrimental, but such representation is often costly or hard to access for many individuals. Proportionality can also require a great deal of statistical evidence to be presented by both the claimant and the respondent. This was certainly the case in *Elliot* where civil service, pension and carer-related statistics were drawn upon to assess the appropriateness of the measure. Again this raises access issues for claimants in preparing effective and robust claims.

One positive aspect in this case was the recognition by the Employment Tribunal judge of the intersection of factors here which contributed to the lack of proportionality of the measure particularly the intersection in this case of age and gender. This recognition is something which is not officially protected by the Equality Act 2010, but which clearly plays a role in denying equality to older persons. In this case, the gender aspect was framed directly in age terms by the Employment Tribunal judge: they referred to the fact that the claimant, like many older persons over the age of 60 years, was caring for children who were living or returning to live at home and often also had older parents to care for (as was the case for the claimant in this case). This was framed in an age-based way which did not, therefore, require the Employment Tribunal judge to consider this as an intersection of age and gender. However, this does highlight how beneficial recognition of multiple and intersectional discrimination can be in combatting discrimination claims (see Sect. 3.1.2)

3.1.2 Lack of Multiple and Intersectional Discrimination Protection

The *Elliot* case strategically highlights the lack of protection against multiple discrimination (discrimination on a combination of grounds acting separately) and intersectional discrimination (several grounds operating and interacting with each other simultaneously and creating a unique discriminatory situation) under the Equality Act 2010. Had such a provision been available it is likely it would have (a) opened up further grounds for the claimant to base their claim on, namely sex, and (b) could have identified that this particular provision adopted by the employer created a unique form of discrimination against older women in particular. Section 14 of the Equality Act 2010 does provide for protection against multiple discrimination but this section has not yet been brought into force, leaving this particular area of discrimination entirely unprotected.

If a multiple discrimination claim had been available, the claimant could have adopted both an age and sex discrimination claim. Her sex claim could have been based on the fact that this ‘pension age cap’ was indirectly discriminatory in that the policy placed women at a great disadvantage than their male counterparts despite its neutral appearance. The evidence to support this can be seen in *Uncertain Futures*: women are more likely to have smaller pensions given their fragmented life courses, the gender-pay gap and the gender-pension gap and as a result the ‘pension age cap’ would have created a much less favourable scenario for women. Of course, as an indirect form of discrimination, it would also have been open for justification by the employer, but it would have added a further hurdle for the employers to overcome in the case. The lack of an enforceable multiple discrimination provision in the Equality Act 2010 means that in many cases, claimants and their legal representatives will opt to choose the safest and clearest claim rather than identifying multiple poten-

tial claims [32]. This reduces complexity and cost for claimants (as it raises only a single-issue discrimination claim). This means though that other very pertinent legal claims are not addressed, and cumulative and additive disadvantages continue to go unrecognised at a national level effectively limiting access to justice. The importance of this recognition was identified by Advocate General Kokott in her opinion in the case of *Parris* [33] (a case involving discrimination on grounds of age and sexual orientation) where she stated that “[t]he Court’s judgment will reflect real life only if it duly analyses the combination of those two factors, rather than considering each of the factors...in isolation”.

The *Elliot* case also identifies a need for a provision in the Equality Act against intersectional discrimination. The case illustrates the unique intertwining disadvantage of age and sex taken together which act to create a set of circumstances in which this particular older female employee was uniquely disadvantaged by the ‘pension age cap’ due to her fragmented working life, her caring responsibilities, the pension gap and the effect of the gender pay gap over multiple years. This led her to a situation of financial uncertainty and insecurity not necessarily felt by her older male colleagues. The Employment Tribunal in *Elliot* did make an attempt at an intersectional analysis presenting a litany of factors which contributed to the disadvantage suffered by the claimant in this case *albeit* that these factors were loosely connected to age at all times. Although not presented as a case of intersectional or even multiple discrimination, the Employment Tribunal judge interpreted the age discrimination protections rather creatively to achieve a just outcome in this case and to give the Equality Act 2010 a functional interpretation which is rather refreshing.

Despite this forward-thinking and functional approach by the Employment Tribunal judge in the *Elliot* case, the problem still remains that the Equality Act 2010 fails to protect against both multiple and intersectional discrimination which means that protection still evades many particular groups and impacts on the daily lives of individuals, particularly in times of permacrisis as *Uncertain Futures* highlights. The impact of these normative gaps are immense.

3.2 Impact of Protection Gaps in times of permacrisis

It is clear from the analysis above that a lack of protection, either through age exceptionalism or through a lack of normative protection of multiple or intersectional discrimination, can lead to freezing effects on claimants, can remove any adequate assessment of an intersectional social phenomenon, and can leave individuals unprotected and insecure. *Uncertain Futures* identified all of these concerns but also uncovered one other more challenging issue: the fact of intergenerational stagnation, which is particularly pertinent in times of permacrisis.

Intergenerational stagnation is defined in the context of *Uncertain Futures* as the maintenance of social and economic inequality between generations as a result of inaction against inequality. It is recognised that the challenges facing older women (highlighted and exacerbated by the pandemic) will also face younger women when they reach older age. In some cases, depending on social and economic conditions in the future, and potential additional new crises, younger women may even face worse conditions than the generation preceding them. The lack of secure long-term

housing, the continuing gender pay gap, the rising cost of childcare, the substantially higher debt burdens, the push towards self-employment, as well as increased longevity (which comes with its own costs) essentially places many younger women in much worse financial and social conditions than older women today. Measures such as auto-enrolment for pensions will have a limited impact on the gender pension gap but will not be sufficient to off-set the inequalities faced by women (particularly as this does not apply to those on low incomes or in self-employment which are dominated by women). These inequalities are further compounded for those from migration backgrounds and those living with disabilities. Intergenerational stagnation means that history will, unfortunately, most likely repeat itself.

There is a complex multidimensional set of circumstances, policies and laws which will need to be introduced to alleviate these challenges so that intergenerational stagnation can be effectively tackled. The law plays a small but crucial role in this. The normative gaps identified in the Equality Act 2010, if filled, could play a pivotal role in overcoming some of these stagnation issues. If age exceptionalism were removed, there would be clearer and more robust information available on the extent of age discrimination, there would be greater clarity on the law making claims more accessible to individual claimants, there would be greater awareness of the economic and social impacts of ageism and, like other grounds of discrimination, this could cause a social shift in how ageism is perceived and tackled. Additionally, if multiple and intersectional protections existed, this would allow for more unique discriminatory circumstances to be identified and effectively tackled, for policies to be more nuanced and for social change to come about as a result of greater understanding and awareness of the impacts of intersectional and multiple discrimination. Intergenerational stagnation could then be more effectively and strategically tackled as there would be a higher level of understanding of the complexity of the interplay between various inequalities.

4 Conclusions

Uncertain Futures highlighted the precarity, vulnerability and insecurity of the lives of older women as they navigated growing older in a permacrisis. It uncovered the aspirations of older women as they headed towards or embraced retirement but more importantly, it recognised the fact that these aspirations rarely matched the reality. The research identified two distinct reasons for this: a core of intersectional and multiple inequalities based on age, socio-economic background, gender, disability and migration status which inhibit older women from achieving equality and a series of challenges presented by permacrisis or individual crises (like the pandemic) which either re caused by crises or are exacerbated by the impact of crises on their daily lives. The immediate impact of these core inequalities combined with the ‘+effect’ of these challenges emerging from crises are significantly widening the impact of economic, social and health inequalities in older persons more generally and in older women in particular.

The article then moves to analyse to what extent the law plays a role in combatting these inequalities. The Equality Act 2010 is a natural space in which to expect to find

protections which could alleviate some of these inequalities. While the Equality Act 2010 plays a pivotal role, the article identifies some normative gaps which, particularly in the context of ageing in a permacrisis, impact on the laws ability to make real change. The first is the exceptionalism attached to age which allows for justifications to be made for forms of direct discrimination based on age-based characteristics. The freezing impact on claimants and the wide discretion granted to respondents weakens the protection afforded to age-based equality generally. The second is the lack of protection afforded to multiple and intersectional discrimination which was identified in *Uncertain Futures* as creating unique forms of discrimination and inequality which cannot always be easily fit within the constraints of single ground complaint mechanisms as required under the Equality Act 2010. The *Elliot* case illustrates some of the creative responses which tribunals have made in an attempt to recognise this, but the case also demonstrates the constraints which a lack of such protection also imposes on judicial decision makers in such contexts.

The real caution in the *Uncertain Futures* tale and in the legal assessment of the constraints of the Equality Act 2010 is the fact that without multidimensional (including legal) change, there is a real risk of intergenerational stagnation particularly in the context of permacrisis. Crises may come and go but there are future real crises facing younger generations which will impact just as heavily on these cohorts and which only real change can ameliorate. There is a real need to recognise and develop intergenerational strategies which can successfully promote solidarity between generations and reduce inequalities in all age groupings. A strongly framed rights-based approach to equality which recognises the equal impact of direct discrimination across all protected characteristics, and the impact of multiple and intersectional discrimination is key to this success. Such an approach would also provide a unique opportunity to create a more inclusive, certain and competitive intergenerational environment representing the aspirations of all.

There is also a wider story to tell about the role of the law more generally arising from *Uncertain Futures* and the insecurity of a state of permacrisis. It engages narratives to craft a clear connection between ageing and permacrisis. This connection is founded on the precarity and insecurity which derive from both, and which have the effect of intensifying both market, and individual feelings of, vulnerability, insecurity and exclusion. The law plays a dual role in mitigating these effects and supporting a pathway towards more stable, secure and inclusive futures.

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21. The Equality Act 2010 merged nine existing equality laws into one cornerstone piece of legislation. The merged legislation included the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, Part 2, and the Equality Act (Sexual Orientation) Regulations 2007.
22. This is despite the presence of a provision on multiple discrimination existing in the Equality Act 2010 which has not yet been brought into force (s.14).
23. Equality Act 2010, s. 13.
24. Equality Act 2010, s. 19.
25. Equality Act 2010, s. 26.
26. Equality Act 2010, s. 27.
27. Equality Act 2010, s. 111.
28. Equality Act 2010, Part 2, Chapter 1.
29. The veracity of this exceptionalism is challenged in Dewhurst, E. 2023. Is age exceptional? Challenging existing rationales and exploring realities. *Harvard Human Rights Journal*. 36. 247–260.
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