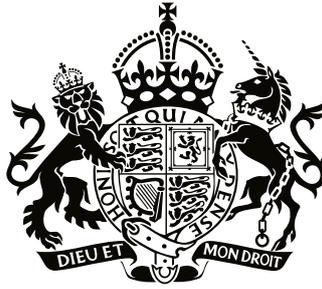




Office for
Equality and
Opportunity

Call for Evidence – Equality Law

CP 1291



Call for Evidence - Equality Law

Presented to Parliament by Seema Malhotra MP,
Minister for Equalities by Command of His Majesty

April 2025

CP 1291



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Introduction

Equality is at the core of this government as it is central to its missions to break down barriers and make work pay. It is part of the work every department does. The Rt Hon Bridget Phillipson MP, Minister for Women and Equalities and Secretary of State for Education, leads the Office for Equality & Opportunity, working with the wider equalities ministerial team:

- The Rt Hon Baroness Smith of Malvern, Minister of State for Women and Equalities
- Rt Hon Sir Stephen Timms MP, Minister for Social Security & Disability, and Minister of State for the Department for Work and Pensions
- Seema Malhotra MP, Minister for Equalities, and Minister for Migration and Citizenship
- Dame Nia Griffith DBE MP, Minister for Equalities, and Parliamentary Under Secretary of State, Wales Office
- Lord Collins of Highbury, Government spokesperson for Equalities and Parliamentary Under Secretary of State (Africa), Foreign, Commonwealth & Development Office

Ministers are engaging with stakeholders and are committed to ensuring policy is developed based on the best possible evidence, and the practical experience of business, workers and civil society.

The government is seeking evidence and views on a number of areas of equality policy. The government wants to identify barriers to opportunity and seek expert views on how to overcome these barriers. Only by breaking the barriers to opportunity can we empower people to flourish, bringing all their skills, talent and creativity to work, spurring on growth and powering our economy.

In some cases, we are looking for evidence and views about areas of the existing legal framework. This will help us to better understand how the law is working in practice. In others, we are seeking evidence and views on areas of possible equality law reform that the government is considering.

By addressing issues like pay discrimination, combined discrimination, and workplace harassment, we aim to create a more equitable environment.

As anyone can recognise, it is just and fair that everyone is treated with respect at work or when using services, free from the burden of harassment and discrimination. Improving equality improves opportunity, meaning individuals can achieve according to their talents regardless of their background. It also means businesses can employ the best person for the job, leading to increased productivity, innovation, and economic resilience. This is why equality is a cornerstone to the strong foundations the UK economy needs for long-term and sustainable growth.

We are seeking to identify ways to improve equality and diversity in the workplace not only so that everyone can achieve their potential based on their own hard work and talent, but to also address market failures within our labour market that prevent companies from recruiting, retaining and promoting the best people for the job. We know that inefficiencies in effective job matching means companies are often prevented from fully utilising the skills, experience and talents of the UK workforce. We want to understand ways that equality policy can help companies maximise their productivity whilst minimising administrative burdens.

We invite responses from people and organisations with a wide range of perspectives at this early stage. This will ensure that future policy development is informed by diverse input, which will help to create an economy where everyone can succeed.

Scope

We are looking for evidence and views on the following areas:

- the prevalence of pay discrimination on the basis of race and disability
- making the right to equal pay effective for ethnic minority and disabled people
- measures to ensure that outsourcing of services can no longer be used by employers to avoid paying equal pay

- improving the enforcement of equal pay rights by establishing an Equal Pay Regulatory and Enforcement Unit, with the involvement of trade unions
- improving pay transparency
- strengthening protections against combined discrimination
- ensuring the Public Sector Equality Duty (PSED) is met by all parties exercising public functions
- creating and maintaining workplaces and working conditions free from harassment
- commencing the socio-economic duty

For the purposes of this Call for Evidence, evidence relates to:

- a written summary by the respondent of published research or evidence
- unpublished research or data analysis within an organisation
- examples of best practice or good practice
- examples of practice that could be improved

This does not include:

- external links to sources provided by respondents to research, evidence, or case studies, for example journal articles, statistics, academic papers, and media sources.

We are inviting responses from anyone with evidence on the above areas, including:

- academics and researchers
- people interested in or affected by those areas
- employers
- public authorities
- representative organisations of groups affected by those areas
- any other interested stakeholders

Respondents can either:

- provide responses to all the policy areas outlined in this call for evidence
- focus on specific areas

As well as this call for evidence, the government is consulting separately on its commitment to introducing mandatory ethnicity and disability pay reporting for larger employers.

Other measures to strengthen equality protections and requirements are included in the Employment Rights Bill. These include:

- requiring large employers to produce action plans setting out what they are doing to improve equality and address pay gaps, including by supporting female employees going through menopause
- requiring large employers to provide pay gap information about providers of outsourced services

- strengthening the legal duty for employers to take all reasonable steps to stop sexual harassment before it starts
- requiring employers to create and maintain workplaces and working conditions free from harassment, including by third parties
- extending the time limit for Employment Tribunal claims under the Equality Act 2010 from 3 to 6 months

Unless specified otherwise, we are not looking for views or evidence on these measures in this call for evidence.

About this call for evidence

Duration: This call for evidence will be open for 12 weeks.

Enquiries to:

Postal address:

Equality Framework Team

Cabinet Office

1 Horse Guards Road

London

SW1A 2HQ

Email: EqualityEvidence@cabinetoffice.gov.uk

How to respond:

We encourage you to respond online if possible.

Please read the [Call for Evidence document](#).

Then submit your responses online: [Call for Evidence: Equality Law survey](#)

Please email EqualityEvidence@cabinetoffice.gov.uk if:

- you would like to respond via email
- you have any other enquiries specifically relating to this Call for Evidence including requests for the document in an alternative format

If you would like to respond by post, please mark your correspondence 'Call for Evidence: Equality Law response' and send it to the postal address.

Providing more than one response

You can provide more than one response to the Call for Evidence. For example, if you are a university research group, you might provide two separate responses – one response as a representative organisation and one response as an individual academic.

If you have any complaints or comments about the Call for Evidence process you should contact the Cabinet Office.

Extra copies and alternative formats

Alternative formats of this Call for Evidence are available online. This includes:

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Please contact us for paper copies or alternative formats of this Call for Evidence document.

Braille and Audio CD are also available on request.

Requests for alternative formats can be made via post, email or telephone at 0808 175 6420

Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the UK General Data Protection Regulation (UK GDPR).

Your data

Purpose

The purpose for which we are processing your personal data is to gather evidence from expert stakeholders. The evidence collected will play a vital role in shaping future policies that ensure everyone can succeed in a fair and equitable environment, by

providing insight into a number of areas. This will help gain evidence at an early stage from a wide range of perspectives and to inform future legislative decisions.

To do this we will:

Collect information on some personal characteristics of individual respondents including sex, race and disability (amongst other data). This information will aid and contextualise the analysis of the Call for Evidence, allowing us to identify if there are gaps in the response and moreover, to contextualise evidence provided by specific groups, amongst similar insights.

We will also collect the names of organisations, and employer and employee representative bodies or networks. This is to understand the groups participating in the Call for Evidence and who they represent.

In addition to this, we will use personal data as part of administering and supporting respondents with alternative modes of response. This includes, for example, a list of people who have requested a Braille or audio CD copy. This will ensure we reach a wide range of respondents which is vital to getting the best possible insight.

The personal data will help us to collate high-level findings and identify key themes, adding crucial detail and context to the results, but will not be used to identify individuals.

The data

We will process the following personal data to support the above purposes:

- Name of respondent's organisation, network or representative body if applicable
- Information on personal characteristics: Ethnicity, Conditions or illnesses that affect individuals, Disability, Sex
- Submissions in response to Call for Evidence questions.

In general, the data we are collecting does not aim to identify individuals and their responses. However, where you request an alternative mode of response, we will need to process your personal data to administer this process and provide you support. This will require the processing of the following data:

- Name
- Address
- Email Address
- Mobile/Phone Number

Legal basis of processing

The legal basis for processing your personal data is:

Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. In this case that is a Call for Evidence to inform legislation and policy.

Sensitive personal data is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

The legal basis for processing your sensitive personal data is:

Processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department; the exercise of a function conferred on a person by an enactment; or the exercise of a function of either House of Parliament. In this case this is a Call for Evidence to support the understanding on issues relating to legislative change.

Recipients

Your personal data will be collected via our online platform. This platform will therefore receive and hold your personal data.

Your personal data will be shared by us with our contracted external research company who will analyse the Call for Evidence responses, as instructed by the Cabinet Office.

As your personal data will be stored on our IT infrastructure it will also be shared with our data processors who provide email, document management and storage services.

Retention

Your personal data will be kept by us for the following periods:

A list of people who have requested alternative formats will be kept during the Call for Evidence period to ensure digital and hard copies that are requested are sent to individuals during the Call for Evidence period. This list and associated personal data will be deleted at the end of the Call for Evidence period. This is six months from the close of the process.

Responses will be retained for the duration of the Call for Evidence, and will be destroyed 3 calendar years after the Call for Evidence has concluded, or when the information is no longer required to be stored for active use for legislative development, whichever is first.

Your rights

You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

You have the right to request that any inaccuracies in your personal data are rectified without delay.

You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.

You have the right to object to the processing of your personal data.

International Transfers

As your personal data is stored on our Corporate IT infrastructure, and shared with our data processors, it may be transferred and stored securely outside the UK. Where that is the case it will be subject to equivalent legal protection through an adequacy decision, reliance on Standard Contractual Clauses, or reliance on a UK International Data Transfer Agreement.

As your data will be shared with our Survey Platform Supplier who provides survey hosting services to us, it may be stored securely outside the UK. Where that is the case it will be subject to equivalent legal protection through an adequacy decision by the UK Government.

As your data will be shared with Cabinet Office contracted researchers who provide analysis of the Call for Evidence response services to us, it may be stored securely outside the UK. Where that is the case it will be subject to equivalent legal protection through an adequacy decision by the UK Government.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, or 0303 123 1113, or icocasework@ico.org.uk. Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact Details

The data controller for your personal data is the Cabinet Office. The contact details for the data controller are: Cabinet Office, 70 Whitehall, London, SW1A 2AS, or 0207 276 1234, or you can use this [webform](#).

The contact details for the data controller's Data Protection Officer are:

dpo@cabinetoffice.gov.uk.

The Data Protection Officer provides independent advice and monitoring of Cabinet Office's use of personal information.

Geographical scope

The geographical scope ('territorial extent') of the legislation discussed in this document is England, Scotland and Wales.

About you

1. Please tell us in what capacity you are primarily responding:

As an individual

As an academic, or on behalf of an academic or research organisation

As a large enterprise, with at least 250 employees

As a small or medium enterprise, with fewer than 250 employees

As a large public authority, with at least 250 employees

As a small or medium public authority, with fewer than 250 employees

On behalf of a civil society organisation
or group on behalf of an organisation that
represents employers

On behalf of an organisation that represents
employees – for example, trade unions

Other

[If answering 'As an individual', skip to
question 3 to 5

If answering 'As an academic', skip to next section

Otherwise question 2]

**2. If you are responding on behalf of an employer
or another organisation, what is its name?**

[Skip to next section]

3. What is your sex?

- Female
- Male
- Prefer not to say

4. What is your ethnic group?

(Choose one option that best describes your ethnic group or background)

White

- English / Welsh / Scottish / Northern Irish / British
- Irish
- Gypsy or Irish Traveller
- Roma
- Any other White background, please describe

Mixed or Multiple ethnic groups

- White and Black Caribbean
- White and Black African
- White and Asian
- Any other Mixed or Multiple ethnic background, please describe

Asian or Asian British

- Indian
- Pakistani
- Bangladeshi
- Chinese
- Any other Asian background, please describe

Black, Black British, Caribbean or African

- Caribbean
- African
- Any other Black, Black British, or Caribbean background

Other ethnic group

- Arab
- Any other ethnic group, please describe

Prefer not to say

5. a. Which of the following descriptions do you identify with?

(Tick all boxes that apply)

- Disabled
- Neurodiverse
- Deaf
- Having one or more physical or mental health conditions or illnesses lasting or expected to last for 12 months or more
- None of the above
- Prefer not to say
- Other _____

b. Do you identify as having conditions or illnesses that affect you in any of the following areas? (Tick all boxes that apply)

- Vision (for example blindness or partial sight)
- Hearing (for example deafness or partial hearing)
- Mobility (for example walking short distances or climbing stairs)
- Dexterity (for example lifting and carrying objects, using a keyboard)
- Learning or understanding or concentrating
- Memory

- Mental health (for example depression, anxiety, post-traumatic stress disorder)
- Stamina or breathing or fatigue
- Socially or behaviourally (for example autism spectrum disorder (ASD) which includes Asperger's, or attention deficit hyperactivity disorder (ADHD))
- None of the above
- Prefer not to say
- Other _____

1. Equal pay

Over 50 years after the Equal Pay Act 1970 and 15 years after the Equality Act 2010, it is clear that equal pay has still not been achieved. The current equal pay framework, which prohibits pay discrimination on the basis of sex, is often inaccessible. This results in a lack of justice for women. Additionally, those who suffer pay discrimination on the basis of race or disability face significant barriers to pay justice.

That is why this government is committed to ending pay discrimination at work. We will:

- make the right to equal pay effective for ethnic minority and disabled people
- establish an equal pay regulation and enforcement unit with the involvement of trade unions
- ensure that outsourcing of services can no longer be used by employers to avoid paying equal pay.

There are different ways these commitments could be fulfilled.

We are looking for evidence and views on 4 areas early into policy thinking:

- the prevalence and patterns of pay discrimination on the basis of race, disability and sex in Great Britain

- making the right to equal pay effective for ethnic minority and disabled people
- ensuring that outsourcing of services can no longer be used by employers to avoid paying equal pay
- improving enforcement, including through the implementation of the Equal Pay Regulatory and Enforcement Unit with the involvement of trade unions

Prevalence and patterns of pay discrimination

Patterns of inequality and discrimination on the basis of race, disability and sex differ across the economy. This includes varied labour market outcomes between and within groups. Nevertheless, in almost all cases, ethnic minority groups receive lower average wages than would be expected given their demographic, educational, occupational, family and health characteristics¹. Similarly, the ONS finds that, after accounting for selected personal and work characteristics that affect pay, a disability pay gap exists across most impairment types². It is therefore important that we understand how discrimination may be contributing to these inequalities.

In doing so, the different patterns and scenarios that may be experienced by different groups should be accounted for. Some types of pay discrimination

¹ Mirza, H. and Warwick, R. (2022), 'Race and ethnicity', IFS Deaton Review of Inequalities, <https://ifs.org.uk/inequality/race-and-ethnicity-chapter>

² Office for National Statistics (ONS), released 17 October 2024, ONS website, article, Disability pay gaps, UK: 2014 to 2023

may be more commonly associated with racial discrimination, while disabled people may more commonly report others. For example, discrimination claims have been brought before the Employment Tribunal alleging that criteria applied in performance-related pay or bonus schemes discriminated against disabled employees, but this may be less likely in relation to racial discrimination.

To ensure that the steps we take are effective, we want our interventions to fully account for the particular contexts and patterns of pay discrimination on the basis of race, disability and sex. Importantly, we would welcome evidence as to where these patterns and scenarios may differ in relation to pay discrimination on the basis of one of these protected characteristics as compared to another.

Questions for respondents

6. Do you have evidence about the prevalence of pay discrimination on the basis of race, disability and sex in England, Scotland and Wales and/or the effectiveness of existing measures in reducing pay discrimination? *[Yes, No]*

[If yes, question 7 to 8. If no, skip to question 9]

7. What evidence is there on the prevalence of pay discrimination on the basis of race, disability and sex in England, Scotland and Wales? We are particularly interested in evidence relating to:
- the overall prevalence

- how levels and patterns of pay discrimination may differ across different situations, sectors, employer types or types of work
- how these levels and patterns of pay discrimination may differ where the discrimination is based on sex, race or disability

8. What evidence is there as to the effectiveness of existing measures in England, Scotland and Wales in reducing pay discrimination on the basis of race, disability and sex?

Making the right to equal pay effective for ethnic minority and disabled people

This government is exploring the impacts of pay discrimination at work and potential ways to address these. This government wishes to understand the barriers to redress faced by those who may have experienced pay discrimination on the basis of race or disability. As part of our work to address this, we will make the right to equal pay effective for ethnic minority and disabled people.

Creating effective equal pay rights

At present, with only narrow exceptions, sex discrimination claims in relation to contractual pay must be brought as equal pay claims. These have their own, bespoke, legal requirements and procedures. In contrast, someone who has experienced race or disability discrimination in relation to contractual pay is able to bring a claim under the

Equality Act 2010's direct discrimination or indirect discrimination provisions. In the case of disability, they may also be able to bring claims under the Act's discrimination arising from disability or reasonable adjustment provisions. However, we are aware of only very limited examples of such cases being brought, compared with thousands of equal pay claims brought each year.

This discrepancy could suggest that the equal pay scheme offers a stronger form of redress than is available to people experiencing pay discrimination because of their race or disability. However, we are aware that there may be many reasons why claims of pay discrimination on the basis of race or disability are rare and so we are inviting views and evidence.

We are committed to ensuring that the steps we take to make the right to equal pay effective for ethnic minority and disabled people represent a meaningful strengthening of protections against discrimination. This could mean enabling new avenues for race and disability claims, such as the ability to make comparisons with colleagues doing work that is different but of equal value, and new remedies, such as permanent changes to workers' contracts. When taking any such steps, we will seek to remove barriers to redress for claimants.

In particular, we are giving close consideration to whether the existing equal pay scheme provides the right model for an expanded set of equal pay

rights, whether these should instead be given force by an amended version of the scheme, or whether a different approach may be best. In deciding how to make the equal pay scheme work better for everyone, we are giving particular attention to whether the rules of procedure governing how equal pay claims are heard and the use of job evaluation schemes could be simplified, or adjusted if needed, to reflect new claim types.

For clarity, we have included an explanatory overview of the different provisions discussed in this section at Annex F. All of these provisions currently apply across Great Britain and we anticipate that any changes would also be applied across Great Britain.

Equal pay protections, the relevant rules of procedure and job evaluation schemes are explained in Annex F.

Questions for respondents:

9. Do you have evidence about actions the Government could take, and those it should avoid, to make the right to equal pay effective for ethnic minority and disabled people? *[Yes, No]*

[If yes, question 10. If no, skip to question 13]

10. What evidence is there to establish the steps that should or should not be taken to make the right to equal pay effective for ethnic minority and disabled people?
11. What evidence is there of the changes needed to make expanding the equal pay scheme to claims on the basis of race and disability effective, if this approach were taken?

We would be particularly interested in:

- advantages that the equal pay scheme may offer claimants that are not available to those currently bringing claims for race or disability pay discrimination, and how they could be extended
- disadvantages that claimants may face under the equal pay scheme that are not currently faced by those bringing claims for race or disability pay discrimination, and how they could be removed
- any unintended consequences that could arise from such an approach, and any steps which could reduce the risk of these
- any changes that may be needed to the procedure for equal pay claims to ensure it is fair and effective
- any changes that may be needed to job evaluation schemes in equal pay claims to ensure that they are fair and effective

12. What evidence is there regarding any potential barriers that individuals could face in making equal pay claims and approaches to address these barriers?
13. Do you have evidence about the way the law works regarding employer and employee rights and responsibilities in relation to pay when reasonable adjustments are made? *[Yes, No]*
[If yes, question 14. If no, skip to question 15]
14. What evidence is there as to the effectiveness of the law on employer and employee rights and responsibilities in relation to pay when reasonable adjustments are made?

We would be particularly interested in:

- areas of the law that may not be clear to employers or employees
- scenarios relating to reasonable adjustments and pay in which employees or employers may not feel clear as to what the law requires
- any potential steps that could be taken to improve the clarity and effectiveness of the law in this area

Ensuring that outsourcing of services can no longer be used by employers to avoid paying equal pay

The equal pay scheme in the 2010 Act provides that an employee is entitled to contractual terms, including those related to pay, that are as favourable as those of someone of the opposite sex (a 'comparator') if they are employed to do equal work.

The 2010 Act requires an actual comparator (rather than a hypothetical one) doing equal work or work of equal value before a sex equality claim can be made. The comparator must be someone who is employed by the same or an 'associated employer' and either:

- at the same establishment
- at a different establishment at which 'common terms' apply
- a single body is responsible for setting or continuing the contractual terms for both the claimant and comparator, and that body is in a position to ensure they are treated equally under such terms

Associated employers are defined under the 2010 Act as those where there are 2 employers and either:

- one is a company of which the other has control (directly or indirectly)
- both are companies of which a third person has control (directly or indirectly)

This means that someone working for one employer cannot compare their contractual terms with someone working for another unless either:

- one is effectively a subsidiary of the other
- both are subsidiaries of a third company

The existing requirements under the 2010 Act would therefore prevent many outsourced workers from comparing their contractual terms with those of ‘in house’ employees. This is because they are employed independently.

Although we know many employers in the business services sector have very high employment standards, there is evidence that particular instances of commissioning or outsourcing have sometimes exacerbated inequalities and disadvantage, including through the underpayment of staff³. We are therefore exploring how to ensure that such practices cannot lead to pay discrimination by removing the barriers and potentially enabling comparisons between outsourced workers and ‘in house’ employees in equal pay claims.

Doing so will be an important and positive change for both workers and employers. We know that most businesses rightly do not want to be associated with practices like using outsourcing to avoid paying equal pay. By modernising equal pay protections to reflect current employment practices we will raise standards

³ Equality & Human Rights Commission, (2022) Experiences from health and social care: the treatment of lower-paid ethnic minority workers.

and stop undercutting. This will allow businesses to compete in a 'race to the top'. By collecting evidence on how best to implement this, we will be able to carefully consider the views of workers, employers and civil society when developing this policy.

Scope

The term 'outsourcing' is not used in UK law and there is no ready-made model definition that could be used. We know that changing business models and employment practices may mean that any one definition of outsourcing may risk missing practices or arrangements which do not conform to a traditional outsourced service provider model.

Understood broadly, outsourcing could be taken to refer to a range of situations in which there is some kind of intermediation between workers and the organisations that need their work ('the principal'). This could include the use of traditional outsourcing of services through an external service provider but also the use of arrangements such as subcontracting, umbrella companies, labour providers or employment agencies. This may involve employees working for a principal company being transferred to an external provider to provide a service. It may also involve scenarios where those workers have never been employed by the principal company. In this document, we use the term 'outsourced workers' to refer to workers in all such scenarios.

Such practices can lead to the creation of complex labour supply chains. For example, an engineering business (the principal) may award a maintenance contract to another company, which then uses a labour provider to recruit the workers it needs. The labour provider could then use an umbrella company to pay the workers delivering the project. The workers would undertake the maintenance while wearing the uniform and complying with the requirements of the engineering business, while in fact being employed by the umbrella company, several contracts removed. Such scenarios show the need for careful consideration when deciding how best to define the scope of these protections.

At the same time, we are also aware of the need to ensure that legislative provisions do not place unreasonable expectations on companies and employers. We will continue to consider this carefully and would welcome views and evidence.

Liability

As well as allowing equal pay claimants to draw comparisons between outsourced and 'in house' workers (employed by the principal), it will also be important to establish where liability for such claims lies.

We know that liability in outsourcing arrangements can often be complex. There can be different perspectives on where one company's responsibilities should begin and another's should end.

For example, it could be argued that liability for discrimination in relation to contractual pay should always lie with an employee's direct employer. However, some situations also arise where workers' contractual terms are effectively dictated by another company, and so there may be a case for liability to lie with that company instead. Alternatively, the potential role of different companies leading to discriminatory pay practices could be recognised by a system of shared liability.

We would therefore welcome evidence about where liability should lie for equal pay claims made by outsourced workers.

Questions for respondents:

15. Do you have evidence about the prevalence and pattern of pay discrimination on the basis of race, disability or sex experienced by outsourced workers in England, Scotland and Wales and/or barriers to redress?

This would include where outsourcing leads to outsourced workers of a particular race, disability or sex being paid less than those employed directly by the principal company for equal work. *[Yes, No]*

[If yes, question 16. If no, skip to question 18]

16. What evidence is there on the prevalence and patterns of pay discrimination on the basis of race, disability and sex experienced by outsourced workers in England, Scotland and Wales?

We are particularly interested in evidence relating to:

- the overall prevalence
- how levels and patterns of pay discrimination may differ across different situations, sectors, employer types or types of work
- how these levels and patterns of pay discrimination may differ where the discrimination is based on sex, race or disability

17. What evidence is there about barriers to redress for outsourced workers experiencing pay discrimination?

18. Do you have evidence on whether outsourced workers should be able to draw comparisons between their work and pay with those working for a principal employer in an equal pay claim and/or evidence on where liability for equal pay claims by outsourced workers should lie? [Yes, No]

[If yes, question 19. If no, skip to question 21]

19. What evidence is there to establish whether outsourced workers should be entitled to draw comparisons between their work and pay with those working for a principal employer in an equal pay claim?

20. What evidence is there to establish where liability for equal pay claims by outsourced workers should lie?

Improving enforcement, including through the implementation of the Equal Pay Regulatory and Enforcement Unit

At present, enforcing the equal pay scheme under the Equality Act 2010 will in almost all cases require that individual employees themselves bring equal pay claims in the Employment Tribunal.

This has resulted in large numbers of equal pay claims being made in the Employment Tribunal. Since the year ending in March 2008, equal pay claims have typically exceeded 10,000 annually (except for the years ending March 2015 and March 2021). Equal pay claims have among the highest numbers of complaints across all Employment Tribunal jurisdictions (other high-volume complaints relate to breach of contract, unfair dismissal claims, unauthorised deductions, and working time directive claims).

Equal pay claims also tend to take longer to reach a conclusion. As a result, there are a high number of equal pay claims proceeding in the Tribunal system at any one time.

In the 10 years to March 2021 (the most recent year for which time series data is available) there have been over 200,000 equal pay claims made in the Employment Tribunal. However, less than 1% of all equal pay disposals were via a full hearing (except in the year ending March 2019). A disposal is the closure of a case when work has ceased to be done. This can be through a claim being withdrawn, settled, dismissed or being decided at a hearing. In the latest year ending March 2021, where data is available, under one-third of those that reached a full hearing were successful.

As described above, the vast majority of enforcement action requires individual complainants to bring their own claims through litigation. However, the Equality and Human Rights Commission (EHRC) can also enforce equal pay as the body responsible for enforcing the Equality Act 2010.

The EHRC has a range of litigation powers which are set out in the Equality Act 2006. These include:

- providing legal assistance (section 28)
- bringing legal proceedings in their own name (section 30)
- intervening in legal proceedings brought by others (section 30)

The Equality Act 2006 also gives the EHRC a range of powers that it may use in relation to breaches of the Equality Act 2010 (including breaches relating to equal pay), including:

- investigations (section 20)
- unlawful act notices (section 21)
- action plans (section 22)
- agreements (section 23)
- injunctions (in Scotland, interdicts) (section 24)

The EHRC has been able to use these powers to make some important interventions in support of equal pay. These include its 2020 investigation into whether the BBC was paying women and men equally for equal work. We want to use this Call for Evidence as an opportunity to consider how we could go further to enforce equal pay.

We are therefore considering carefully how enforcement of the equal pay scheme could be improved, including through the establishment of the Equal Pay Regulatory and Enforcement Unit with the involvement of trade unions.

We are currently considering the best institutional home for the unit, as well as its functions. There are a number of ways that a new unit could strengthen equal pay provisions, whether by building on the EHRC's existing role or through new functions. For example, a new unit could take actions such as:

- undertaking litigation by providing legal advice and representation to others, bringing legal proceedings in its own name, or intervening in legal proceedings brought by others
- making use of other enforcement powers, such as by pursuing investigations, entering

into statutory agreements with employers, seeking injunctions, issuing compliance notices and similar

- offering non-legal advice and assistance to individuals or groups who think they may have suffered from pay discrimination
- facilitating informal dispute resolution, such as through mediation, arbitration or collective conciliation
- providing training on equal pay and good practice for employers, HR professionals and employees
- undertaking research, monitoring and publishing reports and guidance to build understanding and best practice in relation to equal pay
- building capacity within allied sectors, organisations and communities to support them in challenging pay discrimination

To inform the development of the new unit's functions, approach, and institutional home, the questions below are seeking evidence on the effectiveness of the current enforcement framework.

Questions for respondents:

21. Do you have evidence on the effectiveness of current enforcement of the equal pay scheme and/or evidence on who should have standing to bring an equal pay claim? [Yes, No]

[If yes, question 22. If no, skip to question 25]

22. What evidence is there about the effectiveness of current enforcement of the equal pay scheme by the EHRC?

We are particularly interested in evidence relating to:

- the effectiveness of the EHRC's existing powers and their use of them
- whether there are any particular challenges associated with the enforcement of equal pay, as opposed to the Equality Act 2010 more broadly
- whether any changes to the EHRC's powers or functions, or the creation of additional powers or functions, are needed to support effective enforcement of equal pay

23. What evidence is there about the effectiveness of individuals bringing equal pay claims?

We are particularly interested in:

- the enablers and barriers for those who have experienced pay discrimination in seeking redress
- what can be done to remove barriers to redress
- whether any other changes are needed to ensure equal pay claims brought by individuals can be adjudicated effectively and fairly for all parties

24. What evidence is there that any person or organisation other than the individual complainant or the EHRC should be able to bring equal pay claims? Who should this be?

2. Improving pay transparency

Context

The government's Plan to Make Work Pay commits to finishing the business of ending pay discrimination at work and tackling the gender pay gap. As part of this, and as set out in the Plan, we are committed to a range of steps to expand and strengthen equal pay rights and pay gap reporting requirements. It is important that the steps we take with employers, trade unions and civil society toward fulfilling these commitments are informed by the best possible evidence base.

We need to examine the broadest possible range of potential options to achieve this, including pay transparency measures. We want to learn from the best practices already used by some employers, research from academics and the experience of other countries. This will ensure any potential policy options can maximise the benefits to employees and employers. Creating a fair and equal partnership between employees and employers is key to making work pay and generating long term economic growth.

We are therefore seeking to build the evidence base before deciding whether any changes in this area would be appropriate. It also means that we are particularly interested in understanding any potential operational or financial implications for businesses

that can be associated with pay transparency measures, as we recognise the vital role businesses play in our society. Taking full account of these will ensure that the delivery of our current and future commitments is both effective in promoting equality and beneficial for employers.

We are seeking views and evidence to better understand the impact of increased pay transparency on women, people from ethnic minority backgrounds, people with disabilities and other groups in the workplace.

Measures to improve pay transparency can involve employers:

- providing the specific salary or salary ranges of a job on the job advert or prior to interview
- not asking candidates their salary history
- publishing or providing employees with information on pay, pay structures and criteria for progression
- providing employees with information on their pay level and how their pay compares to those doing the same role or work of equal value
- identifying actions that they need to take to avoid equal pay breaches occurring or continuing

The current legal requirements for pay transparency are limited to gender pay gap reporting and, where there has been an equal pay breach, equal pay audits. Since 2017, organisations with 250 or more

employees in Great Britain have been required to publish specific gender pay gap data on their own website and the government reporting service annually. However, this information is limited to comparisons of the average pay and bonuses of men and women across an organisation. As such, it does not involve the sharing of information about an individual's pay or an organisation's pay structure. The government has announced its intention to introduce pay gap reporting on the basis of ethnicity and disability. It has also begun the process of legislating to introduce a requirement for organisations to publish an equality action plan alongside their gender pay gap data. Current requirements in relation to pay audits are summarised in the following section.

Evidence shows that, when salary parameters are ambiguous, women are less likely to negotiate starting salaries and pay rises.⁴ As they are also less likely to benefit from informal salary information-sharing, this typically results in lower starting salaries for women. Women can also receive smaller pay rises once in a job where salaries are not transparent.

While research to date has focussed on the experiences of women and ethnic minority people, where introducing pay transparency has been shown to reduce pay gaps significantly^{5,6}, there is reason

⁴ Toosi and others [Who can lean in? The intersecting role of race and gender in negotiations](#), Psychology of Women Quarterly (2019)

⁵ Leibbrandt and others, [Do women avoid salary negotiations? Evidence from a large-scale natural field experiment](#) Management Science (2015)

⁶ Forth, J. and others, [The role of the workplace in ethnic wage differentials](#) (2022)

to believe that transparency may be beneficial for other groups who face similar barriers, including disabled people and other underrepresented groups. This is because, without transparency, it can be hard for underrepresented candidates to know what they need to make progress, or to question unfair employment practices.

Pay transparency measures also have the potential to prompt employers to resolve underlying equal pay issues. Preventing organisations from asking about salary history means that they will have to set the parameters for pay negotiation. Similarly, to be in a position to confidently publish salary information in job adverts, employers will need to first undergo a job evaluation process, and ensure that they have a clear pay and reward structure. In so doing they may uncover disparities that are not based on objective differences in job requirements, and seek to rectify these.

Undertaking equal pay audits can also enable employers to examine their pay systems, eliminate instances of unequal pay that cannot be justified and thereby decrease the risk of equal pay claims being brought.

However, we know that some of these steps are not always a straightforward process for employers and that some can involve a cost burden. We are therefore giving careful consideration as to whether additional pay transparency measures would be proportionate

and effective in improving pay equality in Great Britain. We would welcome evidence regarding pay transparency to help inform this consideration.

Questions for respondents

25. Do you have evidence about the possible impacts of introducing pay transparency measures on pay equality on the basis of sex, race or disability and/or on employers? *[Yes, No]*

[If yes, question 26. If no, skip to question 28]

26. What evidence is there about the possible impact of pay transparency measures on pay equality on the basis of sex, race or disability?

We are particularly interested in:

- the impact on pay equality across different sectors, types of work, or types of pay, such as bonuses
- whether certain pay transparency measures are more effective in addressing discrimination on the basis of one characteristic than another (for example sex rather than race or disability)
- whether a voluntary, mandatory or combined approach to pay transparency for employers may be more effective at improving pay equality
- whether there are any risks associated with introducing pay transparency and if so, how these could be mitigated

27. What evidence is there on the possible implications of introducing pay transparency measures for employers?

We are particularly interested in:

- the implications for employers of different sizes
- the implications for employers in different sectors, for types of work or for types of pay, such as bonuses

Equal Pay Audits

We also welcome views and evidence on the effectiveness of the Equality Act 2010 (Equal Pay Audits) Regulations 2014. Under these regulations, employers who have been found by an Employment Tribunal to have committed an equal pay breach are ordered to carry out an equal pay audit. At present, an equal pay breach can only be found where an employer is found to have discriminated in relation to pay on the basis of sex or relating to maternity, as opposed to another protected characteristic.

An equal pay audit involves a systematic evaluation of an employer's pay and reward systems to ensure that further breaches do not occur or that existing breaches do not continue. The audit must identify any differences in pay (including non-contractual pay) between men and women doing equal work in the same employment, provide reasons for any

differences and set out an action plan for eliminating those differences, where they cannot be explained or justified otherwise than by reference to sex.

Employment Tribunals are required to order an employer who has been found to have committed an equal pay breach to carry out an audit, unless the Tribunal judges that one of the following exemptions applies:

- an audit completed in the previous 3 years meets the requirements
- it is clear without an audit whether any action is required to avoid equal pay breaches occurring or continuing
- the breach gives no reason to think that there may be other breaches
- the disadvantages of an audit outweigh the benefits

Until recently, the requirement to carry out an equal pay audit also did not apply to businesses with fewer than 10 employees or that were new (meaning that they began carrying on activities within 12 months prior to the claim). Both of these exemptions from the regulations were for a period of 10 years from the date when the regulations came into force, expiring on 1 October 2024.

Where an employer fails to comply with an order of the Employment Tribunal to carry out an audit, the tribunal has the power to order the respondent to pay a penalty of up to £5,000. An Employment Tribunal

has the power to impose further penalties of up to £5,000 (repeatedly if appropriate) until the order is complied with.

The previous Government held a consultation on the details of equal pay audits in 2013, including proposals for the requirements that were later brought forward in the Equality Act 2010 (Equal Pay Audits) Regulations 2014. Some respondents to the consultation thought that the regulations should go further than what is provided for in section 139A of the Equality Act 2010. Among the suggestions was that the proposed £5,000 maximum penalty for non-compliance with an order to carry out an equal pay audit, was too low and the regulations should specify a sliding scale of penalties depending on the number of employees affected.

To help inform future development on Equal Pay Audits, we would welcome any evidence related to the Equality Act 2010 (Equal Pay Audits) Regulations 2014.

Questions for respondents

28. Do you have evidence about the effectiveness of the Equality Act 2010 (Equal Pay Audits) Regulations 2014? *[Yes, No]*

[If yes, question 29. If no, skip to question 30]

29. What evidence is there about the effectiveness of the Equality Act 2010 (Equal Pay Audits) Regulations 2014?

We are particularly interested in:

- the effectiveness of the regulations' requirements as to when an equal pay audit must be carried out, and the exemptions to these
- the frequency with which Employment Tribunals are ordering equal pay audits to be carried out
- the effectiveness of the consequences set out in the regulations for employers who fail to comply with an order to carry out an equal pay audit

Following the extension of the right to make equal pay claims to ethnic minority people and disabled people, the government is considering whether the requirements to undertake equal pay audits should be expanded to cases where pay discrimination has been found in relation to race and disability, alongside sex and maternity. As part of this change, equal pay audits would require employers to not only identify any differences in pay on the basis of sex, but also on the basis of race and disability.

We are therefore seeking evidence of what the impact of such an expansion might be.

30. Do you have evidence on the possible impact of requiring employers to undertake equal pay audits in cases where pay discrimination has been found in relation to race or disability? *[Yes, No]*

[If yes, question 31. If no, skip to question 32]

31. What evidence is there on the possible impact of requiring employers to undertake equal pay audits in cases where pay discrimination has been found in relation to race or disability?

We are particularly interested in:

- the impact on pay equality on the basis of race and disability
- potential risks associated with an expansion, and where these exist, how risks could be mitigated

3. Strengthening protections against combined discrimination

Context

People hold multiple protected characteristics and we acknowledge that some people may experience discrimination due to a combination of these protected characteristics ('combined discrimination'). For example, Muslim women or women experiencing the menopause may be treated less favourably by an employer or service provider because of their particular combination of protected characteristics.

We are concerned that the current legislative framework does not provide adequate protection for people who experience discrimination based on a combination of protected characteristics. As the law stands, an employee or service user who is treated less favourably because of a combination of protected characteristics must seek to bring discrimination claims based on each separate protected characteristic, even if they relate to a single alleged act of discrimination. As a result of this, it can be difficult and complicated to get a legal remedy.

The government is committed to strengthening protections against combined discrimination and we will address this longstanding gap in the law.

We have committed to commencing section 14 of the Equality Act 2010, which prohibits direct discrimination because of a combination of two protected characteristics. In 2009, the Citizens Advice Bureau conducted research in order to inform the provisions of the (then) Equality Bill. Of the 28 potential cases considered in this study for which sufficient detail was supplied, 15 were found to meet the statutory definition set out in section 14 of the Equality Act 2010⁷.

Annex B sets out section 14 in full and explains which types of claims could or could not be brought if commenced. Commencement of the provision will help to ensure that the full reality of claimants' experience is recognised, and that discrimination law can better address the disadvantage suffered by people who experience combined discrimination.

We are giving careful consideration to how we bring this provision into force and are seeking evidence and views on the prevalence of discrimination because of a combination of protected characteristics and the existing scope of the provision.

⁷ Citizens Advice (2009) Potential Intersectional Discrimination Cases: Citizens Advice research for the GEO.

Questions for respondents:

32. Do you have evidence about the prevalence of combined discrimination in England, Scotland and Wales and/or the effectiveness of actions that can be taken to protect individuals against combined discrimination and accessing redress? *[Yes, No]*

[If yes, question 33. If no, skip to question 39]

33. What evidence is there on the prevalence of combined discrimination in England and Wales and Scotland?

We are particularly interested in:

- the overall prevalence of combined discrimination
- how levels and patterns of combined discrimination may differ across different situations, sectors or regions

34. What evidence is there as to whether there is currently sufficient legal protection against discrimination based on a combination of protected characteristics?

35. What evidence is there on access to redress in cases of combined discrimination?

36. What evidence is there as to the effectiveness of commencing section 14 of the 2010 Act in protecting against combined discrimination and providing redress for those who have experienced it?

We are particularly interested in evidence relating to how the provision might be interpreted in courts and tribunals once commenced.

- 37.** What evidence is there as to the effectiveness of any other actions to protect against combined discrimination and provide redress for those who have experienced it?
- 38.** What evidence is there on the prevalence of the following types of discrimination on the basis of a combination of protected characteristics in England, Scotland and Wales?
- indirect discrimination
 - harassment
 - victimisation
 - discrimination on the basis of a combination of protected characteristics that includes pregnancy and maternity and/or marriage and civil partnership

4. Ensuring the Public Sector Equality Duty is met by all parties exercising public functions

The Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010 applies to public authorities in England, Scotland and Wales. It requires public authorities, and non-public bodies exercising public functions, to have due regard to the need to:

- (1) eliminate discrimination
- (2) advance equality of opportunity
- (3) foster good relations between different people

This applies to their day-to-day work, including in shaping policy, in delivering services and in relation to their own employees. It ensures that equality issues are proactively considered to remove or minimise disadvantage, and encourage greater participation in public life by those with different protected characteristics. The government is committed to upholding these requirements and to strengthening equality impact assessments.

PSED is commonly enforced and cited in judicial review claims. Claims can be made by a person or group with standing or sufficient interest in the matter where they feel PSED is not being complied with.

PSED can also be enforced by the EHRC, who can:

- assess an organisation's compliance with the duty
- require an organisation to remedy the failure to comply within 28 days
- apply for a court order if they still fail to comply

We want to ensure that PSED is working effectively where non-public bodies are exercising public functions, including those in the private and voluntary sectors.

We are seeking views and evidence on the extent to which non-public bodies are complying with the requirements of PSED when exercising public functions and whether there are barriers preventing them from doing so or additional steps necessary to enable compliance.

Questions for respondents:

39. Do you have evidence about the compliance of non-public bodies with PSED when exercising public functions? *[Yes, No]*

[If yes, question 40. If no, skip to question 41]

40. What evidence is there about the compliance of non-public bodies with PSED when exercising public functions?

We are particularly interested in:

- overall compliance by non-public bodies when exercising public functions
- evidence as to how compliance or noncompliance has had an effect on outcomes
- the barriers and enablers for non-public bodies in complying with PSED
- the level of clarity as to when a non-public body is or is not exercising a public function, and so when PSED does or does not apply
- the effectiveness of enforcement of PSED in relation to non-public bodies when exercising public functions
- additional proportionate steps which could better enable compliance by non-public bodies while promoting value for money

5. Creating and maintaining workplaces and working conditions free from harassment

Harassment in the workplace is prohibited under the Equality Act 2010. Its provisions are summarised at Annex C.

Effective steps to prevent workplace sexual harassment

Despite the protections provided by the Equality Act 2010 against sexual harassment in the workplace, evidence indicates that it remains a serious problem. For the year ending March 2023, 26.5% of people aged 16 years and over who said they had experienced sexual harassment in person in the last 12 months said that they had experienced it at their place of work.⁸

We will therefore strengthen protections against sexual harassment and harassment in the workplace. Through the Employment Rights Bill, we will:

- strengthen the legal duty in section 40A of the Equality Act 2010 so that it requires employers

⁸ ONS, [Experiences of harassment in England and Wales: December 2023](#) (viewed on 12 September 2024)

to take *all* reasonable steps to stop sexual harassment before it starts ('the preventative duty')

- require employers to create and maintain workplaces and working conditions free from harassment, including by third parties

As part of this, we will enact a power enabling regulations to specify steps that employers must take to prevent sexual harassment. Regulations will also be able to specify matters to which employers must have regard when taking steps for the purposes of the Equality Act 2010's sexual harassment provisions.

The government will only bring forward such regulations where this is proportionate and there is a clear evidence base supporting the efficacy of particular steps in preventing workplace sexual harassment.

In 2021, the Women and Equalities Unit (formerly the Government Equalities Office) published a literature review⁹ setting out the existing evidence on workplace sexual harassment and identifying gaps in the literature. The literature review provided a comprehensive picture of the existing evidence base, including where different theories for intervention showed promise, but also found that there were significant evidence gaps (summarised at Annex D). In particular, the review found that the evidence

⁹ [Government Equalities Office. Literature review of sexual harassment in the workplace \(2021\)](#)

could not support a clear understanding of ‘what works’ to reduce and prevent sexual harassment in the workplace. Therefore, better evidence of what actually works to reduce sexual harassment in the workplace is needed. As part of this call for evidence the government wants your input as to whether there is evidence of effective steps employers can take to reduce and/or prevent sexual harassment and where work to strengthen the evidence base should be prioritised.

Questions for respondents

41. Do you have evidence on effective steps that can be taken by employers to reduce/prevent sexual harassment in the workplace? [Yes, No]

[If yes, question 42. If no, skip to question 43]

42. What evidence is there on effective steps or specific issues that employers should take into account when trying to reduce/prevent sexual harassment in the workplace?

We are particularly interested in:

- effective steps that employers can take in relation to company culture, staff training, how policies are enforced, reporting systems and procedures, and recording and investigating complaints
- how best practice may potentially differ according to employer size, sector, or other factors

- where there may be gaps in the evidence base, noting those identified by the literature review

Scope of protections against sexual harassment

The scope of workplace protections in the Equality Act 2010 covers individuals who have an employment contract, an apprenticeship contract, or a contract to personally do work. Protections also apply to a variety of wider work relationships beyond employment, such as contract workers, police officers, partners, barristers and advocates, public office-holders and those seeking or undertaking vocational training.

In 2021, the the Women and Equalities Unit (formerly the Government Equalities Office) held a consultation¹⁰ on measures to address workplace sexual harassment. As part of this, it explained that the Equality Act 2010's workplace protections are explicitly linked to employment status. As such, there was concern that they did not cover all interns, freelancers, or other workers without a traditional employment contract. They also do not cover volunteers. The consultation set out to gather evidence on whether it would be appropriate to extend these protections to interns and volunteers.

We think that the consultation responses provided a clear picture of the range of matters that needed to be taken into account when considering extending sexual

¹⁰ Government Equalities Office, [Consultation on sexual harassment in the workplace: government response](#) (2021)

harassment protections to interns. However, we would like to further explore the issues raised in relation to extending protections to volunteers.

This government believes that all volunteers should be able to carry out their wide range of social action without experiencing sexual harassment. We know that our objective is shared by voluntary organisations up and down the country, who work hard to create safe, supportive and welcoming environments for volunteers. We intend to work in partnership with the sector in tackling sexual harassment. We are therefore mindful of the issues raised in relation to extending protections to volunteers, as set out in Annex E.

There is a wide diversity of volunteering activity across the country, involving many different relationships between volunteers and the organisations that engage them. Most volunteering is informal and intermittent in nature. For example, this could include volunteering at a school fundraising event on an ad hoc basis. However, some types of volunteering are more formal, such as providing administrative support to a charity. This wide range of activity may pose difficulties in implementing a blanket arrangement.

We are therefore committed to ensuring that any steps taken to protect volunteers against sexual harassment avoid placing unreasonable or unworkable expectations on voluntary organisations.

Questions for respondents

43. Do you have evidence regarding expanding the Equality Act 2010's workplace protections to volunteers and/or evidence on other approaches that could be taken to protect these volunteers from experiencing sexual harassment? [Yes, No]

[If yes, question 44. If no, skip to question 46]

44. What evidence is there regarding expanding the Equality Act 2010's workplace protections to volunteers?

We are particularly interested in:

- the effect on different types of volunteers
- whether protections should be extended to all or only particular categories of volunteers
- the potential challenges or unintended consequences for organisations of expanding protections to different groups of volunteers
- whether some types of organisations may be more likely to be adversely affected by the expansion than others
- steps that could be taken to mitigate potential risks and challenges

45. What evidence is there about other approaches or steps that could be taken to protecting volunteers from experiencing sexual harassment while volunteering?

Other

The above outlines where we are taking action and the areas we are exploring as we seek to prevent workplace sexual harassment. However, as set out in the manifesto, we will use every tool available to target perpetrators and address the root causes of abuse and violence. We would therefore also welcome evidence as to any other steps respondents feel should also be considered to prevent workplace sexual harassment:

Questions for respondents

46. Do you have evidence on other effective interventions that the government should consider to address the problem of workplace sexual harassment? [Yes, No]

[If yes, question 47. If no, skip to question 48]

47. What evidence is there of other effective interventions the government should consider to address the problem of workplace sexual harassment?

6. Implementing the socio-economic duty

Context

The government is committed to ensuring that everyone, no matter their background, can thrive.

In 2022/23, 14% of people in the UK were in absolute low income (absolute poverty) before housing costs are included and 18% after¹¹. This includes 2.6 million children (18%) before housing costs and 3.6 million after housing costs (25%)¹².

The Plan for Change states that opportunity for children today is too often limited, and their background can have a decisive impact on the life they are able to build¹³.

As part of our work to address this, we are seeking evidence on how we will commence the socio-economic duty in the Equality Act 2010.

The socio-economic duty (the duty) requires specified public authorities, when making strategic decisions such as deciding priorities and setting objectives, to

¹¹ Department for Work and Pensions (2024) [Households Below Average Income: an analysis of the UK income distribution: FYE 1995 to FYE 2023](#)

¹² Francis-Devine, B. (2024) [Poverty in the UK: Statistics](#)

¹³ HM Government (2024) [Plan for Change: Milestones for Mission-led Government](#)

give “due regard” (consider) to how their decisions might help to reduce the inequalities associated with socio-economic disadvantage.

Being ‘socio-economically disadvantaged’ means living in less favourable social and economic circumstances than others in the same society. This can include having a low income or living in a deprived area.

The decisions that public authorities could make, may be, for example, in education, health, or housing. It will be for public authorities, subject to the duty, to determine whether they might be able to reduce any socio-economic inequalities through their decision making. The precise text of the duty can be viewed at the [legislation.gov page](https://www.legislation.gov.uk).

The duty has never been commenced in England, but was commenced in Scotland in 2018 and in Wales in 2021. In addition, a number of public authorities in England have voluntarily adopted the duty, either in full or in part.

For example, Merseyside Fire and Rescue Service (MFRS) voluntarily adopted the duty in 2021. As a result of using the duty the MFRS realised that individuals experiencing socio-economic disadvantage were underrepresented in firefighter applications due to the requirement to have a driving licence. They removed the driving licence requirement for prospective firefighters and now offer bursaries for successful applicants from 20 deprived areas of

Merseyside. This led to an additional 195 applications in 2022, 48 per cent of which came from the 10 per cent most deprived areas of Merseyside¹⁴.

We are seeking evidence to support the implementation of the socio-economic duty in England. This could be from any adoption of the duty or similar, for example, in Scotland, Wales, and its voluntary adoption by some public authorities in England. We are also interested in wider evidence as to how we can ensure the duty is as effective as possible in leading English public authorities to consider how they can reduce socio-economic disadvantage within their decision making.

Questions

48. Do you have evidence on the effectiveness of the socio-economic duty in Scotland and Wales and/or its voluntary adoption by some public authorities? [Yes, No]

[If yes, question 49. If no, survey ends]

49. What evidence is there on the effectiveness of the duty in Scotland and Wales and its voluntary adoption by some public authorities in England?

We are particularly interested in evidence relating to:

- how effective the duty has been in improving

¹⁴ Isaac, M. and Lopez, A. (2023) [The socio-economic duty in action: case studies from England and Wales. Just Fair and Greater Manchester Poverty Action.](#)

the consideration of how decisions might reduce the inequalities associated with socio-economic disadvantage

- reasons why implementation of the duty has or has not been effective in reducing socio-economic disadvantage
- how effective the duty has been across different public authorities, populations, or other categories
- how effective the duty has been in capturing the decisions that are most relevant to and impactful in reducing socio-economic inequality
- whether any outcomes occurred which were not originally intended and, if so, what and how significant they were
- what the enablers and barriers for effective implementation have been
- the effectiveness of the enforcement regime
- whether the steps taken by public authorities to meet the duty have been proportionate and promoted value for money

50. Other than commencing the provision, are there any proportionate steps that could be taken to ensure the duty is as effective as possible in leading public authorities to give active, high-quality and informed consideration to reducing the inequalities that result from socio-economic disadvantage?

51. What evidence is there about effective approaches public authorities can take to giving proactive, high-quality and informed consideration to reducing the inequalities that result from socio-economic disadvantage?

We are particularly interested in:

- use of data and evidence
- the participation of socio-economically disadvantaged groups in decision making
- monitoring and evaluation of the impact of decisions
- transparency and accountability mechanisms and procedures

Annex A: Full list of questions

1. Please tell us in what capacity you are primarily responding:

As an individual

As an academic, or on behalf of an academic or research organisation

As a large enterprise, with at least 250 employees

As a small or medium enterprise, with fewer than 250 employees

As a large public authority, with at least 250 employees

As a small or medium public authority, with fewer than 250 employees

On behalf of a civil society organisation or group

On behalf of an organisation that represents employers

On behalf of an organisation that represents employees – for example, trade unions

Other

[If answering 'As an individual', skip to question 3 to 5

If answering 'As an academic', skip to next section

Otherwise question 2]

2. If you are responding on behalf of an employer or another organisation, what is its name?

[Skip to next section]

3. What is your sex?

- Female
- Male
- Prefer not to say

4. What is your ethnic group?

(Choose one option that best describes your ethnic group or background)

White

- English / Welsh / Scottish / Northern Irish / British
- Irish
- Gypsy or Irish Traveller
- Roma
- Any other White background, please describe

Mixed or Multiple ethnic groups

- White and Black Caribbean
- White and Black African
- White and Asian
- Any other Mixed or Multiple ethnic background, please describe

Asian or Asian British

- Indian
- Pakistani
- Bangladeshi
- Chinese
- Any other Asian background, please describe

Black, Black British, Caribbean or African

- Caribbean
- African
- Any other Black, Black British, or Caribbean background

Other ethnic group

- Arab
- Any other ethnic group, please describe

Prefer not to say

5. a. Which of the following descriptions do you identify with?

(Tick all boxes that apply)

- Disabled
- Neurodiverse
- Deaf
- Having one or more physical or mental health conditions or illnesses lasting or expected to last for 12 months or more
- None of the above
- Prefer not to say
- Other _____

b. Do you identify as having conditions or illnesses that affect you in any of the following areas? (Tick all boxes that apply)

- Vision (for example blindness or partial sight)
- Hearing (for example deafness or partial hearing)
- Mobility (for example walking short distances or climbing stairs)
- Dexterity (for example lifting and carrying objects, using a keyboard)
- Learning or understanding or concentrating
- Memory
- Mental health (for example depression, anxiety, post-traumatic stress disorder)
- Stamina or breathing or fatigue
- Socially or behaviourally (for example autism spectrum disorder (ASD) which includes Asperger's, or attention deficit hyperactivity disorder (ADHD))
- None of the above
- Prefer not to say
- Other _____

6. Do you have evidence about the prevalence of pay discrimination on the basis of race, disability and sex in England, Scotland and Wales and/or the effectiveness of existing measures in reducing pay discrimination? [Yes, No]

[If yes, question 7. If no, skip to question 9]

7. What evidence is there on the prevalence of pay discrimination on the basis of race, disability and sex in England, Scotland and Wales? We are particularly interested in evidence relating to:

- the overall prevalence
- how levels and patterns of pay discrimination may differ across different situations, sectors, employer types or types of work
- how these levels and patterns of pay discrimination may differ where the discrimination is based on sex, race or disability

8. What evidence is there as to the effectiveness of existing measures in England, Scotland and Wales in reducing pay discrimination on the basis of race, disability and sex?

9. Do you have evidence about actions the Government could take, and those it should avoid, to make the right to equal pay effective for ethnic minority and disabled people? [Yes, No]

[If yes, question 10. If no, skip to question 13]

10. What evidence is there to establish the steps that should or should not be taken to make the right to equal pay effective for ethnic minority and disabled people?

11. What evidence is there of the changes needed to make expanding the equal pay scheme to claims on the basis of race and disability effective, if this approach were taken?

We would be particularly interested in:

- advantages that the equal pay scheme may offer claimants that are not available to those currently bringing claims for race or disability pay discrimination, and how they could be extended
- disadvantages that claimants may face under the equal pay scheme that are not currently faced by those bringing claims for race or disability pay discrimination, and how they could be removed
- any unintended consequences that could arise from such an approach, and any steps which could reduce the risk of these
- any changes that may be needed to the procedure for equal pay claims to ensure it is fair and effective
- any changes that may be needed to job evaluation schemes in equal pay claims to ensure that they are fair and effective

- 12. What evidence is there regarding any potential barriers that individuals could face in making equal pay claims and approaches to address these barriers?**
- 13. Do you have evidence about the way the law works regarding employer and employee rights and responsibilities in relation to pay when reasonable adjustments are made? [Yes, No]**
[If yes, question 14. If no, skip to question 15]
- 14. What evidence is there as to the effectiveness of the law on employer and employee rights and responsibilities in relation to pay when reasonable adjustments are made?**

We would be particularly interested in:

- areas of the law that may not be clear to employers or employees
- scenarios relating to reasonable adjustments and pay in which employees or employers may not feel clear as to what the law requires
- any potential steps that could be taken to improve the clarity and effectiveness of the law in this area

15. Do you have evidence about the prevalence and pattern of pay discrimination on the basis of race, disability or sex experienced by outsourced workers in England, Scotland and Wales and/or barriers to redress?

This would include where outsourcing leads to outsourced workers of a particular race, disability or sex being paid less than those employed directly by the principal company for equal work. [Yes, No]

[If yes, question 16. If no, skip to question 18]

16. What evidence is there on the prevalence and patterns of pay discrimination on the basis of race, disability and sex experienced by outsourced workers in England, Scotland and Wales?

We are particularly interested in evidence relating to:

- the overall prevalence
- how levels and patterns of pay discrimination may differ across different situations, sectors, employer types or types of work
- how these levels and patterns of pay discrimination may differ where the discrimination is based on sex, race or disability

- 17. What evidence is there about barriers to redress for outsourced workers experiencing pay discrimination?**
- 18. Do you have evidence on whether outsourced workers should be able to draw comparisons between their work and pay with those working for a principal employer in an equal pay claim and/or evidence on where liability for equal pay claims by outsourced workers should lie? [Yes, No]**

[If yes, question 19. If no, skip to question 21]

- 19. What evidence is there to establish whether outsourced workers should be entitled to draw comparisons between their work and pay with those working for a principal employer in an equal pay claim?**
- 20. What evidence is there to establish where liability for equal pay claims by outsourced workers should lie?**
- 21. Do you have evidence on the effectiveness of current enforcement of the equal pay scheme and/or evidence on who should have standing to bring an equal pay claim? [Yes, No]**

[If yes, question 22. If no, skip to question 25]

22. What evidence is there about the effectiveness of current enforcement of the equal pay scheme by the EHRC?

We are particularly interested in evidence relating to:

- the effectiveness of the EHRC's existing powers and their use of them
- whether there are any particular challenges associated with the enforcement of equal pay, as opposed to the Equality Act 2010 more broadly
- whether any changes to the EHRC's powers or functions, or the creation of additional powers or functions, are needed to support effective enforcement of equal pay

23. What evidence is there about the effectiveness of individuals bringing equal pay claims?

We are particularly interested in:

- the enablers and barriers for those who have experienced pay discrimination in seeking redress
- what can be done to remove barriers to redress
- whether any other changes are needed to ensure equal pay claims brought by individuals can be adjudicated effectively and fairly for all parties

24. What evidence is there that any person or organisation other than the individual complainant or the EHRC should be able to bring equal pay claims? Who should this be?

25. Do you have evidence about the possible impacts of introducing pay transparency measures on pay equality on the basis of sex, race or disability and/or on employers? [Yes, No]

[If yes, question 26. If no, skip to question 28]

26. What evidence is there about the possible impact of pay transparency measures on pay equality on the basis of sex, race or disability?

We are particularly interested in:

- the impact on pay equality across different sectors, types of work, or types of pay, such as bonuses
- whether certain pay transparency measures are more effective in addressing discrimination on the basis of one characteristic than another (for example sex rather than race or disability)
- whether a voluntary, mandatory or combined approach to pay transparency for employers may be more effective at improving pay equality
- whether there are any risks associated with introducing pay transparency and if so, how these could be mitigated

27. What evidence is there on the possible implications of introducing pay transparency measures for employers?

We are particularly interested in:

- the implications for employers of different sizes
- the implications for employers in different sectors, for types of work or for types of pay, such as bonuses

28. Do you have evidence about the effectiveness of the Equality Act 2010 (Equal Pay Audits) Regulations 2014? [Yes, No]

[If yes, question 29. If no, skip to question 30]

29. What evidence is there about the effectiveness of the Equality Act 2010 (Equal Pay Audits) Regulations 2014?

We are particularly interested in:

- the effectiveness of the regulations' requirements as to when an equal pay audit must be carried out, and the exemptions to these
- the frequency with which Employment Tribunals are ordering equal pay audits to be carried out
- the effectiveness of the consequences set out in the regulations for employers who fail to comply with an order to carry out an equal pay audit

30. Do you have evidence on the possible impact of requiring employers to undertake equal pay audits in cases where pay discrimination has been found in relation to race or disability? [Yes, No]

[If yes, question 31. If no, skip to question 32]

31. What evidence is there on the possible impact of requiring employers to undertake equal pay audits in cases where pay discrimination has been found in relation to race or disability?

We are particularly interested in:

- the impact on pay equality on the basis of race and disability
- potential risks associated with an expansion, and where these exist, how risks could be mitigated

32. Do you have evidence about the prevalence of combined discrimination in England, Scotland and Wales and/or the effectiveness of actions that can be taken to protect individuals against combined discrimination and accessing redress? [Yes, No]

[If yes, question 33. If no, skip to question 39]

33. What evidence is there on the prevalence of combined discrimination in England and Wales and Scotland?

We are particularly interested in:

- the overall prevalence of combined discrimination
- how levels and patterns of combined discrimination may differ across different situations, sectors or regions

34. What evidence is there as to whether there is currently sufficient legal protection against discrimination based on a combination of protected characteristics?

35. What evidence is there on access to redress in cases of combined discrimination?

36. What evidence is there as to the effectiveness of commencing section 14 of the 2010 Act in protecting against combined discrimination and providing redress for those who have experienced it?

We are particularly interested in evidence relating to how the provision might be interpreted in courts and tribunals once commenced.

37. What evidence is there as to the effectiveness of any other actions to protect against combined discrimination and provide redress for those who have experienced it?

38. What evidence is there on the prevalence of the following types of discrimination on the basis of a combination of protected characteristics in England, Scotland and Wales?

- indirect discrimination
- harassment
- victimisation
- discrimination on the basis of a combination of protected characteristics that includes pregnancy and maternity and/or marriage and civil partnership

39. Do you have evidence about the compliance of non-public bodies with PSED when exercising public functions? [Yes, No]

[If yes, question 40. If no, skip to question 41]

40. What evidence is there about the compliance of non-public bodies with PSED when exercising public functions?

We are particularly interested in:

- overall compliance by non-public bodies when exercising public functions
- evidence as to how compliance or noncompliance has had an effect on outcomes
- the barriers and enablers for non-public bodies in complying with PSED
- the level of clarity as to when a non-public body is or is not exercising a public function,

- and so when PSED does or does not apply
- the effectiveness of enforcement of PSED in relation to non-public bodies when exercising public functions
- additional proportionate steps which could better enable compliance by non-public bodies while promoting value for money

41. Do you have evidence on effective steps that can be taken by employers to reduce/prevent sexual harassment in the workplace? [Yes, No]

[If yes, question 42. If no, skip to question 43]

42. What evidence is there on effective steps or specific issues that employers should take into account when trying to reduce/prevent sexual harassment in the workplace?

We are particularly interested in:

- effective steps that employers can take in relation to company culture, staff training, how policies are enforced, reporting systems and procedures, and recording and investigating complaints
- how best practice may potentially differ according to employer size, sector, or other factors
- where there may be gaps in the evidence base, noting those identified by the literature review

43. Do you have evidence regarding expanding the Equality Act 2010's workplace protections to volunteers and/or evidence on other approaches that could be taken to protect these volunteers from experiencing sexual harassment? [Yes, No]

[If yes, question 44. If no, skip to question 46]

44. What evidence is there regarding expanding the Equality Act 2010's workplace protections to volunteers?

We are particularly interested in:

- the effect on different types of volunteers
- whether protections should be extended to all or only particular categories of volunteers
- the potential challenges or unintended consequences for organisations of expanding protections to different groups of volunteers
- whether some types of organisations may be more likely to be adversely affected by the expansion than others
- steps that could be taken to mitigate potential risks and challenges

45. What evidence is there about other approaches or steps that could be taken to protecting volunteers from experiencing sexual harassment while volunteering?

46. Do you have evidence on other effective interventions that the government should consider to address the problem of workplace sexual harassment? [Yes, No]

[If yes, question 47. If no, skip to question 48]

47. What evidence is there of other effective interventions the government should consider to address the problem of workplace sexual harassment?

48. Do you have evidence on the effectiveness of the socio-economic duty in Scotland and Wales and/or its voluntary adoption by some public authorities? [Yes, No]

[If yes, question 49. If no, survey ends]

49. What evidence is there on the effectiveness of the duty in Scotland and Wales and its voluntary adoption by some public authorities in England?

We are particularly interested in evidence relating to:

- how effective the duty has been in improving the consideration of how decisions might reduce the inequalities associated with socio-economic disadvantage
- reasons why implementation of the duty has or has not been effective in reducing socio-economic disadvantage

- how effective the duty has been across different public authorities, populations, or other categories
- how effective the duty has been in capturing the decisions that are most relevant to and impactful in reducing socio-economic inequality
- whether any outcomes occurred which were not originally intended and, if so, what and how significant they were
- what the enablers and barriers for effective implementation have been
- the effectiveness of the enforcement regime
- whether the steps taken by public authorities to meet the duty have been proportionate and promoted value for money

50. Other than commencing the provision, are there any proportionate steps that could be taken to ensure the duty is as effective as possible in leading public authorities to give active, high-quality and informed consideration to reducing the inequalities that result from socio-economic disadvantage?

51. What evidence is there about effective approaches public authorities can take to giving proactive, high-quality and informed consideration to reducing the inequalities that result from socio-economic disadvantage?

We are particularly interested in:

- use of data and evidence
- the participation of socio-economically disadvantaged groups in decision making
- monitoring and evaluation of the impact of decisions
- transparency and accountability mechanisms and procedures

Annex B: Section 14, Equality Act 2010

Section 14 of the Equality Act 2010 prohibits direct discrimination because of a combination of 2 protected characteristics. It applies to cases of direct discrimination only, rather than indirect discrimination or harassment. The provision applies to claims on the grounds of any of the protected characteristics other than pregnancy and maternity or marriage and civil partnership.

14 Combined discrimination: dual characteristics

- (1) *A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.*
- (2) *The relevant protected characteristics are—*
 - (a) *age*
 - (b) *disability*
 - (c) *gender reassignment*
 - (d) *race*
 - (e) *religion or belief*
 - (f) *sex*
 - (g) *sexual orientation*

- (3) *For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately).*
- (4) *But B cannot establish a contravention of this Act by virtue of subsection (1) if, in reliance on another provision of this Act or any other enactment, A shows that A's treatment of B is not direct discrimination because of either or both of the characteristics in the combination.*
- (5) *Subsection (1) does not apply to a combination of characteristics that includes disability in circumstances where, if a claim of direct discrimination because of disability were to be brought, it would come within section 116 (special educational needs).*
- (6) *A Minister of the Crown may by order amend this section so as to—*
 - (a) *make further provision about circumstances in which B can, or in which B cannot, establish a contravention of this Act by virtue of subsection (1)*
 - (b) *specify other circumstances in which subsection (1) does not apply.*
- (7) *The references to direct discrimination are to a contravention of this Act by virtue of section 13.*

Annex C: Equality Act 2010 harassment provisions

Section 26 of the Equality Act 2010 defines 3 types of harassment.

The first type, set out in section 26(1) of the Equality Act 2010, applies to all the protected characteristics apart from pregnancy and maternity and marriage and civil partnership. It involves unwanted conduct which is related to a relevant characteristic and which has the purpose or effect of violating the victim's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the victim.

The second type of harassment, set out in section 26(2) of the Equality Act 2010, is sexual harassment, which is defined as unwanted conduct of a sexual nature that has the purpose or effect of violating an individual's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the victim.

The third type, set out in section 26(3) of the Equality Act 2010, is treating someone less favourably because they have either submitted, or failed to submit, to sexual harassment or harassment related to sex or gender reassignment.

A new preventative duty came into force on 26 October 2024, which is set out in section 40A(1) of the Equality Act 2010. It requires employers to take 'reasonable steps' to prevent sexual harassment of their employees. This places a positive and proactive legal obligation on employers to take reasonable steps to prevent sexual harassment of their workers. It is therefore an anticipatory duty, that requires employers to anticipate when sexual harassment may occur in the course of employment, and take steps to prevent it. The Equality and Human Rights Commission has published updated guidance to support employers with the new duty available here: <https://www.equalityhumanrights.com/guidance/sexual-harassment-and-harassment-work-technical-guidance>.

Annex D: Consultation on sexual harassment in the workplace (2021): summary of responses relating to volunteers

When asked whether sexual harassment should be treated the same as other unlawful behaviours under the Equality Act 2010 when considering protections for volunteers and interns, 80% of the consultation respondents agreed.

Respondents with particular knowledge of the voluntary sector were more likely to have answered no to this question, with 29% of respondents working in the sector opposed, compared with 13% of all respondents.

When asked about the potential negative consequences of expanding protections to volunteers, 50% of respondents felt that the introduction of legislative protections would have negative impacts. This rose to 75% across the voluntary sector organisations who responded. 34% of respondents to this question raised issues around the increased administrative burden on charities, with particular concerns around the impact on small organisations

and on volunteer managers. It was pointed out by several respondents that the compliance burden would often fall on volunteers.

Finally, when asked whether all volunteers should be included, and if not, which groups should be excluded and why, a narrow majority of respondents (53%) thought that, if legislative protections were extended then all volunteers should be included. Those that felt there was an argument for excluding some volunteers suggested that the exclusion should be based on the type of volunteering, with one-quarter of them suggesting that the type of organisation should also be taken into consideration. Respondents primarily considered that less formal, ad hoc roles could perhaps be excluded.

Annex E: Sexual Harassment in the Workplace: Evidence Gaps

In December 2018, the government commissioned IFF Research to gather robust data on sexual harassment in the workplace primarily, and public spaces. The [literature review](#) found evidence gaps that need to be addressed in order to enable the government to respond to and monitor the issue in the long-term.

The gaps in the evidence included:

- A clear understanding of ‘what works’ to reduce and prevent sexual harassment in the workplace. The lack of empirical evidence measuring the effectiveness of interventions and theoretical frameworks has resulted in an absence of best practice guidance for the government, employers and other organisations to make use of as they address sexual harassment in the UK workplace;
- A consistent, robust, evidence-based definition of sexual harassment which can be used to deliver an accurate level of incidence based on real (vs. perceived) sexual harassment and related behaviours, including secondary considerations of gender and racial harassment as linked to this;

- A robust body of evidence comparing incidence and experiences thereof amongst different demographic and social groups, particularly ethnicity, LGBT, and workplace position, with a specific need to robustly determine differences by age (as separate from gender), ethnicity and disability where evidence is limited;
- Evidence relating to the incidence and experience of sexual harassment for those age 16-17 who are working (part-time, full-time and/or voluntary);
- A robust body of evidence profiling perpetrators, with particular reference to detailed profiling and acknowledging the discrepancy between known vs. perceived sexual harassment behaviours;
- Further research on the behaviours and rationale thereof for bystanders who witness instances of sexual harassment and act/do not act;
- Further evidence on the existing reporting practices (or lack thereof) and their prevalence across UK business, and;
- Citizen-led perspectives on what legislation and change is needed to support system change in relation to workplace sexual harassment.

Annex F: Summary of existing legal framework around pay discrimination on the basis of sex, race and disability.

At present, if someone has suffered pay discrimination on the basis of race or disability they are able to bring a claim of direct or indirect discrimination against their employer. If the unfavourable treatment in respect of pay is because of something arising in consequence of a disability, they will also be able to bring a claim of discrimination arising from disability. If the pay discrimination could be considered a breach of the employer's duty to make reasonable adjustments, it may also be possible to bring a claim on this basis.

Section 70 of the Equality Act 2010 requires that sex discrimination claims in relation to contractual pay are brought as equal pay claims. This means that it is not possible to bring an indirect sex discrimination claim in relation to contractual pay and a direct discrimination claim can only be brought in narrow circumstances, such as where there is no comparator doing equal work.

Each of these claims, as currently provided for in the Equality Act 2010, is summarised briefly below.

Direct discrimination

Direct discrimination claims follow a two-stage process: at the first stage the claimant must prove facts from which it can be inferred that there has been less favourable treatment because of the protected characteristic. If the claimant does this, the burden of proof then shifts to the respondent to prove that discrimination has not occurred. In doing so, they must show that the less favourable treatment was, in no way whatsoever, because of the protected characteristic.

In a pay 'direct' discrimination claim, this would mean the claimant would need to prove facts from which it could be inferred that they had been paid less because of their protected characteristic. If they were able to do this, the employer would then need to show that the lower pay received by the claimant was not because of their protected characteristic.

Indirect discrimination

In an indirect discrimination claim the claimant must show:

- that there is a provision, criterion or practice that puts or would put persons sharing a protected characteristic at a particular disadvantage when compared with those who do not share the characteristic
- that they have this protected characteristic
- that the provision, criterion or practice puts or would put them at that disadvantage

If the claimant is found to have done this, the burden then shifts to the respondent who must show that any such provision, criterion or practice was a proportionate means of achieving a legitimate aim.

In a pay ‘indirect’ discrimination claim, the claimant would need to show that a particular policy, such as one of performance-related pay, led those with a protected characteristic – for example, disability – to be paid less. The claimant would then need to show that they have this protected characteristic and that they are also being paid less. If they were able to do this, the employer would need to show that the performance-related pay policy was a proportionate means of achieving a legitimate aim.

Discrimination arising from disability

Discrimination arising from disability occurs when an employer treats an employee unfavourably because of something arising in consequence of their disability, rather than because of the disability itself.

The claimant must show that there has been unfavourable treatment, the reason for the treatment, and that this was something that arose in consequence of their disability. In doing so, they do not need to use a comparator. If they are able to do this, the burden then shifts to the respondent to prove that the treatment was a proportionate means of achieving a legitimate aim.

For example, an employee's dyslexia means he cannot work as quickly as colleagues. He receives less pay because his performance is assessed as poor.

In a pay 'discrimination arising from disability' claim, the claimant would need to show:

- that there has been unfavourable treatment: the lower pay
- the reason for the lower pay: his slower working speed
- that the slower working speed was something arising in consequence of his disability: his dyslexia means he cannot work as quickly as colleagues

If he does this, the employer must then prove that their decision to pay the claimant less was a proportionate means of achieving a legitimate aim.

Reasonable adjustments

The duty to make reasonable adjustments requires employers to take positive steps to ensure that disabled employees are not put at a substantial disadvantage. This goes beyond simply avoiding treating disabled workers, job applicants and potential job applicants unfavourably and means taking additional steps to which non-disabled workers and applicants are not entitled. It can include adjustments to a disabled employee's pay, such as modifying performance-related pay arrangements.

When bringing a claim for failure to make reasonable adjustments, the claimant must establish that there is a provision, criterion or practice, workplace feature, or lack of an auxiliary aid which puts them at substantial disadvantage in comparison with persons who are not disabled. They must also identify that there is an apparently reasonable adjustment which could be made. If they are able to do this, the burden of proof then shifts to the employer to prove that they did not fail in their duty to make that adjustment.

For example, a claimant with dyslexia may argue that an employer's decision not to modify a performance-related pay policy to reflect their slower working speed amounted to a failure to make reasonable adjustments. In bringing the claim, the claimant would need to establish that the performance-related pay policy was causing them substantial disadvantage – in this case, by leading them to receive lower pay. They would also need to establish that a modification of the policy would be an apparently reasonable adjustment which the employer could make. If they were able to do this, the employer would need to prove that their decision not to modify the policy was not in fact a failure in their duty to make reasonable adjustments.

Equal pay

When bringing an equal pay claim, the law requires a four-stage approach to proceedings:

Stage 1: Selecting an appropriate comparator of the opposite sex

Stage 2: Proving that the comparator is employed to carry out equal work

Stage 3: Comparing the claimant's and the comparator's terms and conditions of employment

Stage 4: Assessing whether the employer can explain any discrepancy in pay ("the material factor defence") and whether the difference is due to sex discrimination

The claimant first has to show the employment tribunal that, on a balance of probabilities, they are receiving less contractual pay than a valid comparator doing equal work (stage 1 to 3). If they are able to do this, the employer must then prove, on a balance of probabilities, that the difference in pay was due to a material factor which is not tainted by direct sex discrimination (stage 4).

Differences between the provisions

The equal pay provisions allow claimants to bring cases and benefit from remedies that are not available under other provisions of the Equality Act 2010.

In particular, some aspects of the equal pay provisions could be argued to mean that equal pay claimants face fewer barriers to redress as compared to claimants alleging pay discrimination under the direct discrimination or indirect discrimination provisions:

- While an equal pay claim requires the claimant to demonstrate that a valid comparator of the opposite sex has a more favourable term, it

does not require them to prove this is because of their sex. By contrast, a direct discrimination claim requires the claimant to show facts from which it can be inferred that the contractual pay inequality is because of the protected characteristic in question. An indirect discrimination claim requires the claimant to identify a specific provision, criterion or practice and demonstrate that this causes them to be at a particular disadvantage compared to others who do not share their protected characteristic.

- At present, equal pay claimants are generally able to bring a claim within 6 months of the end of employment, while direct or indirect discrimination claims must be brought within 3 months of the act of discrimination.
- An equal pay claimant could seek to demonstrate pay discrimination by comparing their pay to that of a colleague doing work that is materially different but of equal value. By comparison, if someone brought a direct or indirect discrimination claim in these circumstances, they would need to provide evidence from which it could be inferred that a hypothetical comparator would have been paid more for doing materially similar work.
- In addition to damages, a successful equal pay claim can lead to a permanent change to the worker's contract and the employer being ordered to carry out a compulsory equal

pay audit. A tribunal is limited to awarding damages and making recommendations where claims for direct or indirect pay discrimination are successful.

However, pay discrimination can arise in a very wide range of contexts. The government is therefore giving close attention to any instances in which claimants in some particular circumstances may find aspects of the current direct or indirect discrimination provisions more conducive to bringing a claim. This could, for example, potentially arise where a claimant would benefit from the ability under the direct and indirect discrimination provisions to use a hypothetical comparator.

Rules of Procedure

The procedure for equal pay claims, as for all other tribunal claims, is governed by the Employment Tribunal Procedure Rules 2024.

Equal pay claims are brought in the same way as other claims and claims involving 'like work' or work rated as equivalent are dealt with according to the ordinary rules of procedure.

Special procedures apply where an equal pay claim raises a contention that the claimant's work was of equal value to that of a comparator. These are set out in Schedule 2 to the Employment Tribunal Procedure Rules 2024.

These rules of procedure allow the employment tribunal to choose to determine the question of equal value itself or to appoint an independent expert to prepare a report on that question. In a case where there has already been a job evaluation study that has given different values to the work of the claimant and the comparator, the employment tribunal must determine that the work is not of equal value unless it has reasonable grounds for suspecting that the study discriminated on the grounds of sex, or there are other reasons why it is not suitable to be relied upon.

Job evaluation schemes

Job evaluation schemes provide a means for employers to check and demonstrate they are providing equal pay for equal work by assessing the demands of a job in as objective a way as possible.

The courts and tribunals have set out, through case law, the standards a job evaluation must meet if it can be relied upon in defence of an equal pay claim. This means that, if carried out appropriately, the employer can use a job evaluation scheme to demonstrate that 2 jobs have not been rated as equivalent and are therefore not of equal value. It must:

- assess and score each job in terms of the demands made on the employee under 'job factors'. These factors must be clearly identifiable aspects of jobs that can be defined and measured, such as responsibility for people or physical demands. They must be

objective, measurable and relevant to the demands of the job.

- objectively assess the value placed on the work performed and, as far as possible, be explicit and comprehensive to avoid the results of the evaluation being influenced by subjective views.
- be non-discriminatory, recognise the skills of men and women equally, and be applied in a consistent and unbiased way.
- be up to date and documented, and it must be fully completed across the organisation.

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