Equality law call for evidence

Evidence by Business Disability Forum, June 2025

# About Business Disability Forum and our response

Business Disability Forum (BDF) is a business membership organisation, representing over 600 businesses. We work with businesses, Government, and disabled people to improve the life experiences of disabled employees and consumers by removing barriers to inclusion. We are focussed on making policy as practical as possible to businesses so they can increase inclusion for disabled people in how they operate. Our policy and research team works with our member businesses, and the disabled people who work in and with them, to discuss and debate policy proposals, identify the challenges, and propose as practical solutions as possible that work for everyone.

In this response, we are commenting on two topics listed in the call for evidence: equal pay (including pay transparency), and the Public Sector Equality Duty. To help gage members views on equal pay, we held a discussion group with **13 members** of our Disability Data Monitoring Working Group, and considered it within the context of this group having worked on disability workforce and pay gap reporting for the last four years, and having informed BDF’s response to the Equality (Race and Disability) Bill consultation earlier this month (June 2025). We also had informal depth discussions with **less than ten members** about equal pay. We have not carried out research on equal pay and pay transparency; we used this small discussion group and other informal conversations to get a sense of what members who are working on equal pay, pay transparency, and pay data in their organisations think.

Since this call for evidence is running at the same time as the Equality (Race and Disability) Bill, the Pathways to Work consultation, and the Keep Britain Working Review – in which we collectively involved 207 members – we did not have time to do a more formal piece of research on the areas of this call for evidence that we would otherwise have liked to.

# Equal pay

## The ramifications for disability workforce and pay gap reporting

If equal pay rights are going to be extended to the protected characteristic of disability, this has significant implications for the standardised definition of disability that the government chooses for disability pay gap reporting. Our research – and discussions during the disability pay gap roundtables organised by the Disability Unit during May 2025 – revealed that the Equality Act 2010 definition of disability was not a favoured one amongst employers by which to collect employees’ data. However, if the government commences equal pay rights for the protected characteristic of disability, the legal definition of disability would absolutely have to be used. This is because, if a disabled individual wanted to bring an equal pay claim, they would (we presume and if implemented exactly as equal pay is for sex), have to identify a comparator who isnotdisabled. Then, at tribunal, the first assessment for the case to proceed would be to decide whether the individual bringing the claim and the identified comparator is disabled and non-disabled respectively for that claim to progress – and that process, of course, would have to use the legal definition of disability. It would be completely unworkable to implement a standardised definition of disability for pay gap reporting that was different to the definition under which someone could bring a disability related equal pay claim.

Therefore, it is important that the government works backwards from whether they intend to implement equal pay before deciding the standardised definition (or not[[1]](#footnote-1)) that they will implement for disability pay gap reporting.

## Provisions in the Equality Act 2010 already exist for disabled people to bring a claim of pay discrimination

Employees can already bring a claim of disability discrimination (usually direct, sometimes indirect) if they believe they are being treated unfavourably because of their disability – including if they think they are being paid less than a non-disabled person because of their disability, or even without a comparator (if, for example, they have not being given a pay rise, promotion, or other pay or benefit opportunity because of their disability). Therefore, some of our members felt that a claim of direct discrimination because of a disability is, potentially, technically easier for disabled employees to attempt to make – particularly since, when using these routes of direct or indirect discrimination, the disabled individual would not need to identify a comparator (a non-disabled person); they just need to prove that the unfavourable treatment is because of their own disability. One member who had worked on pay policy with a trade union said:

*“As someone who spent a lot of time 18 years ago looking at equal pay legislation going into the creation of the Equality Act, I find [the potential to expand equal pay to disability and race] baffling. Some experts in equal pay and discrimination law back then were arguing for the scrapping of the equal pay provisions rather than extension of them! Men or women should be able to make much more straightforward claims of direct or indirect sex discrimination if they believed they were being paid differently to a woman or man in a similar position. The decision not to pursue this [scrapping this element of legislation] was a pragmatic one in terms of upsetting existing case law and some liking the remedies if an equal pay case ever eventually succeeded.”*

## Identifying a non-disabled comparator

In a disability equal pay claim, there is also the difficulty of having to know as far as possible that the comparator chosen by the individual bringing the claim really does not have a disability. In issuing an ET1 form to begin the claim process, the individual would have to name the comparator, but it would not be until the case reaches tribunal that the process of deciding whether both the individual and the comparator are and are not disabled respectively takes place. It would be only after this process has taken place that the individual would know that they have identified a suitable comparator. If, after having submitted an ET1 and having reached the tribunal, the tribunal decides their comparator is in fact disabled as per the Equality Act – for example, if the comparator has a non-visible, undisclosed long-term condition that substantially affects their day to day lives (but is not evident at work to the individual bringing the claim) – the individual bringing the claim would potentially get their claim dismissed at that stage.

## Identifying like, equivalent, or equal value work

In an equal pay claim, having identified a potential comparator, the individual intending to bring the claim must then prove that the comparator is doing “equal work”, defined in the Equality Act 2010 as work that is “like”, “rated as equivalent”, or “of equal value”[[2]](#footnote-2) to that of the identified comparator. This can be hard enough in itself. However, the government must be able to define – and it must be written in to the potential expansion of disability-related equal pay legislation – what constitutes a person’s role if that role has been subject to job carving or had targets and means of delivery adapted (for example) as a reasonable adjustment because of an individual’s disability. Members agreed with this. In one member’s words:

*“The only strength of the equal pay approach is that, if you manage to get through it all, finding an actual comparator doing equal work in the same employment at the same time as you who is paid more, you then have the remedy of an implied clause in your contract which automatically levels up your pay and you get back pay compensation. I think potentially for a disabled complainant though, where adjustments may have been made to tasks and a unique role may have been created for them, it may be particularly difficult to meet the actual comparator requirement.”*

In addition, in situations where employers mould a role to someone’s specific interests or expertise or where employers allow individuals to shape their roles via job crafting policies, it was unclear to our members how like, equivalent, or equal value work would be defined and assessed. For this reason, **the government – and the law – must be able to define whether a disabled employee’s adjusted job (as part of a reasonable adjustment) is still the same job as when the job is being performed by someone who has not had it adjusted.**

## Successful equal pay claims are often for multiple claims

One member raised that although tribunal statistics do not breakdown multiple and single cases by type of claims, there is an indication that multiple claims are more successful – or at least, less likely to be disposed.[[3]](#footnote-3) Further still, there was a view that multiple cases of equal pay have so far been multiple claims which are based on holistic or “traditional” perceptions, and long-term systematic unequal pay exists because of the types of vocations women typically fulfilled. In one employer’s words:

*“The vast majority of equal pay cases are about how women’s work is viewed – it’s about things like women doing more [family] care work, their traditional vocations, and lower value work that they have done for decades. I don’t think that exists in the same way for other protected characteristics.”*

## Equal pay audits

Good employers would undertake equal pay audits voluntarily within the means, regularity and time period, and sector/market nuances in which their organisation operates. Currently equal pay audits often come about as the result of a tribunal recommendation. Some members felt this was the ‘wrong way around’. In one member’s words:

*“The whole thing about requiring equal pay audits if there’s been an equal pay breach – a point made many years ago repeatedly when tribunals were given power to require an audit following a finding of unequal pay – is that it’s the equal pay audit that helps you identify the potential equal pay breaches and prevent equal pay claims. So, it’s requiring audits after the horse has bolted.”*

Many employers are already concerned about resourcing additional mandatory workforce and pay gap reporting requirements, so any attempt to mandate equal pay audits feels ‘too much’. There should instead be proactive encouragement – perhaps by the Equality and Human Rights Commission – for employers to undertake equal pay audits at a time that is manageable and sensible for them. We do not believe equal pay audits like this should become reportable by mandate. Businesses should be able to monitor, identify, and address unfairness in their organisations without having to do so publicly.

## Equal pay audit is different to auditing for “fair” pay

“Equal pay audit” refers to a very specific task. BDF would argue employers should be encouraged to undertake fair pay audits which keep hold of market competition, rewarding long tenure and continuous service loyalty, and reward performance (where appropriately managed and defined in an employer’s own policy). We would encourage fair pay audits to go a little wider than equal pay audits and while keeping performance motivation and sector competition; a good equal pay audit should by default look into these aspects of process as well as the final data output that a specifically defined “equal pay audit” typically requires. We would therefore encourage employers and government to work towards “fair pay audits” to make it meaningful while keeping up with business and sector nuances.

## Transparency is not always a good or helpful thing for businesses to thrive

This is also relevant to pay transparency. Transparency is not the epitome of fairness in pay. Transparency can also dampen market competition and interfere with recruiting for expertise and within timeframes that many (particularly private sector) businesses use to thrive, keep up productivity, and develop and sustain competition in their product/service offer and in recruiting prospective candidates. Offering someone a higher salary because of their experience, availability, and the level of task does not automatically mean unfairness or discrimination because of a protected characteristic.

There may, of course, be situations where a disabled person, a person from a lower socio-economic background, or a woman (for example) may argue that they could not develop the benefit of having that experience of because of the life situations specific to that protected characteristics, but this is not the same as equal pay, it does not automatically mean there is discrimination on the employer’s behalf in pay. **Inequalities in society are not the same as inequalities created by employers or an employer being discriminatory. Neither does mandating pay transparency overcome such disparities. In a similar way that pay disparity does not mean pay discrimination, a pay gap does not necessarily mean there are grounds for an equal pay claim.**

## Conclusion

Our members were not at all against increasing pay fairness, ensuring that employees have means to challenge what they are paid, or to further consider what better transparency might mean within the organisation and sector in which they operate.However, employers did say there was a ‘middle ground’ sometimes. For example, pay transparency does not necessarily mean the only option available is to mandate (or encourage) all employers to publish their salaries publicly. Transparency can also mean an employer being transparent to their own employees, but not to the wider public on an employers’ website, for example.

Further still, as with our disability workforce and pay gap reporting research and consultation response, employers felt equal pay was instead potentially yet another distraction away from focusing employers on removing barriers and making adjustments and really helping employers “get to grips” with that first before seeing what else needs to be implemented. In one employer’s words:

*“I see no benefit at all or how this would alter our [employer] practices in any way to disability or reward. What would have a massive impact is investment in Access to Work and our whole health infrastructure.”*

One of the key actions employers in the discussion group did feel they needed to work on internally, though, is individual managers’ pay practices. For example, where some managers needed someone in quickly, they often agree to higher pay when asked (predominantly by men) but not offering it when available when it was not asked for (typically to women). Therefore, employers were under no illusion that they were perfect, and neither were they refusing to work on this further. But there are other ways to improve practices in this area other than more mandatory requirements on employers and producing more legislation (particularly with the nuances and complexities of equal pay for disability), and to assume than the only method of transparency is full, publicly available salary and bonus disclosure.

# The Public Sector Equality Duty

We have not at this time undertaken any specific research on the Public Sector Equality Duty. However, we have planned a project for our members which will commence in Autumn 2025 on the PSED from the perspective of being an employer and a provider of products and services. The element we are most interested in is where the failures have been when organisations have been challenged on whether or how they have fulfilled their duties under the PSED and to improve organisations’ confidence to produce fit for purpose and meaningful equality analysis. We therefore do not have any specific research insights or robust evidence at this time, but we are happy to share the development and the findings of the project with the government.

We are doing this project to address three issues, which we have expanded on in the following sections:

1. The PSED does not set out clear expectations of what compliance looks like for organisations.
2. Organisations use different language and methods for equality analyses because there is no guidance or clear standard of what constitutes a good quality, robust analysis.
3. The commencement of the Procurement Act 2023 has made meaningful compliance with the PSED more urgent than ever.

## What constitutes compliance with the PSED is not clear

Organisations feel the PSED does not set out clear expectations of what compliance looks like, meaning that organisations are not wholly clear on whether they have done enough to fulfil the PSED in any specific situation. We know of occasions where our members feel they have fulfilled the Duty but where they have been challenged on it, either informally by a member of the public or by a court case. More work needs to be done by the government to provide clarity on what constitutes fulfilling the PSED, and when this needs to be done and, very specifically, how. Currently, the PSED provisions in the Equality Act 2010 are too vague for organisations to be confident that they are complying with them, let alone complying meaningfully and effectively.

## Equality analyses

Organisations use different language and methods for equality analyses. Some still use the terminology of “equality impact assessment” and others have updated their language since David Cameron, then Prime Minister, “called time” on equality impact assessments in a speech to the CBI in November 2012. The speech included the following words:

*“So I can tell you today we are calling time on Equality Impact Assessments. You no longer have to do them if these issues have been properly considered. That way policy-makers are free to use their judgement and do the right thing to meet the equalities duty rather than wasting their own time and taxpayers’ money.”[[4]](#footnote-4)*

However, the “freedom to use [organisations own] judgment” has, in practice, become a lack of clarity and consistency of quality on what it means to “do the right thing to meet the equalities duty”. BDF believes a meaningful and robust equality analysis (that is, something different and more meaningful to the historic “equality impact assessments”) are more important than ever and are a pivotal way that every organisation can understand the impact when managing, implementing, and changing workforces and products and services.

This can even hugely aid the government’s wider policy ambition of helping employers to make workplaces more inclusive, particularly as BDF has repeated and constant examples of where disabled employees are impacted by a change an organisation or a contract has made when it produces a new barrier and which they need more adjustments for at best, or which excludes them entirely from that environment or workplace.

We will equip our members to have a better understanding of the benefits of undertaking a meaningful equality analysis and how they can produce a fit for purpose approach to this, which sees an equality analysis as a crucial information-gathering and analytical decision-making process, not a document produced by one person at a desk (for example). The quality and depth of equality analysis even, from government departments alone, vary enormously. This in itself is evidence that there is not any statutorily defined method for carrying out, writing up, and communicating an equality analysis.

The Equality and Human Rights Commission (EHRC) used to have a good, helpful, authoritative resource on carrying out an equality analysis and assessing the impact on equality. However, this resource has become extremely difficult to find on their website or via an internet search and is therefore perceived by many organisations that an equality analysis is no longer really valued or even needed if the equalities watchdog is not making that guidance front and centre and updating it regularly.

## Public procurement law has changed

The commencement of the Procurement Act 2023 has made the need to comply with the PSED more urgent than ever. BDF worked with another disability charity when the Procurement Bill was being drafted and then debated because we felt there was no pointer or requirement in it for those designing tenders to ensure the PSED was being complied with in any contract. Neither is there any provision in the Act for any bidding contractor to define how it would comply with the PSED when delivering the contract, which necessarily includes how a contract will be made accessible and inclusive to disabled people, let alone meet the needs of other protected characteristic groups in the Equality Act 2010.

## Conclusion

BDF believes the PSED has more positive potential than is utilised or realised, and we believe that it needs to be upheld and protected. The one key action to help making that happen is clarity on what fulfilling, particularly the Specific Duties, looks like to the government and defining what a good quality and in depth equality analysis includes in order for an organisation to be compliant, but also to practically and meaningfully understand and remove inequalities and barriers for protected groups as much as possible in public contracts and during the delivery of public functions.

Contracts, workforce changes, organisational change, move to greater reliance on public local authority delivery – all of which has increased in our current labour market and public policy climate – rely on change taking place equitably and without adverse impact on equality. Therefore, the PSED is in a place where we could liberate its very potential to assist organisations to deliver equality and equitable outcomes for the public; but the government needs to (a) define what it looks like when those Duties are being fulfilled, and (b) ensure equality analyses are undertaken robustly enough for adverse impact on protected groups to be identified and then removed as much as possible.

# Further questions

To discuss our evidence further, please contact Angela Matthews, Director of Public Policy and Research, at [angelam@businessdisabilityforum.org.uk](mailto:angelam@businessdisabilityforum.org.uk)

1. BDF has argued against implementing standardisation for workforce and pay gap reporting. Our consultation response, although Cabinet Office already have this via that consultation, can be downloaded at this page: <https://businessdisabilityforum.org.uk/resource/disability-workforce-reporting/> [↑](#footnote-ref-1)
2. Equality Act 2010, sections 64-65. [↑](#footnote-ref-2)
3. Employment tribunal statistics for Q3 2024-2025 show that 9,600 single claims were disposed, while there were only 4,300 disposals for multiple claims. [↑](#footnote-ref-3)
4. This speech is available here: <https://www.gov.uk/government/speeches/prime-ministers-speech-to-cbi> [↑](#footnote-ref-4)