

Client Alert

Global Human Capital and Compliance

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DEI hard: new reports reveal UK workplace diversity challenges

This month has seen the publication of two UK government-backed reports relating to diversity and inclusion in the workplace. [The Treasury Committee](#) has published its report in relation to barriers faced by women in financial services, including the progress on removal of the gender pay gap and the role of the government and regulated firms combatting sexual harassment. [The Parker Review Committee](#) has published its annual report for 2024, reporting on ethnic diversity of senior management in FTSE 350 companies and the UK's largest 50 private companies. The key takeaways from these reports are set out below.

We also highlight some other employment developments over the past month, including a pertinent case on [discrimination against an employee dismissed for anti-Zionist views](#), some good news on [taxation of IR35 contractors](#), and [new guidance on menopause in the workplace](#) and recapping the newly announced [increases in Employment Tribunal awards and statutory payments](#).

DISCRIMINATION AGAINST AN EMPLOYEE DISMISSED FOR ANTI-ZIONIST VIEWS

As employers continue to deal with conflicts of personal views in the workplace, a case relating to a dismissal of an employee in October 2021 is a useful guide. The employee was an academic, focusing on “concentrations of power in society”. As part of his teaching, he expressed highly critical views about what he described as “political Zionism”, whilst not opposing Jewish self-determination or rights more generally. He was dismissed following an investigation after complaints by Jewish students.

The Tribunal upheld his complaint that he had been unlawfully dismissed for a philosophical belief, as his views regarding “political Zionism” met the tests in *Grainger v Nicholson*, including that his view was sufficiently coherent and thought-through to amount to a protected ‘philosophical belief’, and that it was worthy of respect in a democratic society.



Interestingly, however, the Tribunal reduced the compensation awarded by 50% to reflect the fact his conduct contributed to his dismissal in directing comments at students and student bodies who complained about him. His compensation was also reduced to reflect the fact there was a chance that the University would have been entitled to lawfully dismiss him at a later date, based on comments he made specifically alleging that “Jews are not discriminated against”.

The Tribunal would have accepted the University issuing a warning against him; it was dismissal that was found to be disproportionate. This raises the question of whether, if he continued to express his views in the same way following that warning, the Tribunal would have upheld a subsequent termination even though it would still have related to a ‘protected belief’. Employers will continue to walk a fine line in assessing both whether a view is protected, and whether that protection has been forfeited as a result of the way it is expressed.

Miller v University of Bristol ET/1400780/2022.

NEW GUIDANCE FOR EMPLOYERS ON MENOPAUSE IN THE WORKPLACE

On 22 February 2024, the Equality and Human Rights Commission (EHRC) published new [guidance](#) on menopause in the workplace, with the aim of helping employers understand their legal obligations when supporting workers experiencing menopausal symptoms.

The guidance does not change employer’s legal obligations – menopause symptoms were already recognized as potentially amount to a disability within the protections of the Equality Act 2010 if they have a long-term and substantial impact on a woman’s ability to carry out normal day-to-day activities. But it gives practical guidance around potential workplace adjustments as well as practical advice on having conversations about the menopause. It also recommends that employers introduce menopause policies that outline the support available in the workplace.

Labour’s proposals include changing the law to allow claims based on a combination of two protected characteristics, which would allow a woman penalized because of menopause to potentially claim discrimination based on the combination of her age and gender, when a claim would not succeed based on age or gender alone. Should Labour win the next election, this could also bring a new focus to menopause issues in the workplace.

TAXATION OF OFF-PAYROLL (IR35) CONTRACTORS

In good news for companies engaging contractors via an intermediary, where the UK Tax Authority, HMRC, assesses IR35 as applying, the tax and National Insurance Contribution which the end user company would otherwise have had to pay will now be formally set off against payments made by the contractor or the intermediary. Previously, this was assessed case by case and the contractor and intermediary could potentially apply for a refund of the tax and National Insurance they had paid, leaving the end user company liable. We recommend that end users build in active diligence processes to their standard contract terms with contractors to ensure payroll taxes are in practice being paid. If they do, these new HMRC rules mean that these arrangements now involve less risk.

SEXISM IN THE CITY INQUIRY FINDS “NOT MUCH” HAS CHANGED

The Treasury Committee’s inquiry into “Sexism in the City” was launched with the aim of evaluating whether progress has been made since its predecessor committee investigated “Women in Finance” in 2018 which reported a number of barriers faced by women in financial services. Among other things, these included an underrepresentation of women in senior roles and a large difference in average pay between men and women.



The [report](#) published on 8 March 2024 identified “incremental improvements” but found that such gains are “frustratingly slow” and serious barriers remain. Key findings include:

- The average proportion of women holding senior roles has increased from 27% in 2016 to 35% in 2022.
- The financial services sector has the widest average gender pay gap of any sector in the UK (23.7% compared to 11.7% in all other industries), with only a small reduction in the gap of 1.7% over the past six years.
- There has been a disappointing lack of progress on sexual harassment and bullying, which are still prevalent.
- A “fear factor” persists around reporting sexual harassment and internal whistleblowing procedures are often ineffective.
- Non-disclosure agreements (NDAs) are still being used to “cover up” allegations of sexual harassment and abuse.
- The report recognises that there is “no silver bullet” but recommends:
 - Reducing the reporting threshold on gender pay gap data from 250 to 50 employees (at least for firms in financial services), and requiring those firms with a gap above a certain threshold to explain the gap and publish an action plan.
 - Mandating the inclusion of salary band information on job advertisements and ban prospective employers from asking for salary history.
 - Introducing legislation to tackle misuse of NDAs and strengthen protections for whistleblowers in sexual harassment cases.
 - Extending the scope of the Treasury’s Women in Finance Charter to link senior executive pay and bonuses to performance on diversity and inclusion.

The Committee has said that it welcomes the FCA and PRA’s proposals to strengthen their non-financial misconduct rules but is concerned that proposals to require firms to set targets to address under-representation and disclose diversity data will become a ‘tick-box’ compliance exercise, rather than drive actual cultural change. The Committee has recommended that the regulators drop their prescriptive plans for data reporting and target setting and instead focus their efforts on ensuring senior leadership of firms take greater responsibility for improving diversity and inclusion.

Based on the FCA’s response, we expect it to see further hardening of its stance on tackling misconduct such as bullying and sexual harassment, as well as potential restrictions on the use of NDAs where allegations are made.

LISTED FIRMS MAKING PROGRESS ON ETHNIC DIVERSITY

The Parker Review Committee was commissioned by the government in 2015 to make recommendations and to set targets to encourage diversity at the senior level of British business. The first report in 2017 made a series of recommendations and set a voluntary “One by ‘21” target. The aim was for all FTSE 100 boards to have at least one director from an ethnic minority background by December 2021. A “One by 2024” target was set for all FTSE 250 boards. Last year the Parker Review extended this target to the UK’s 50 largest private companies by the end of 2027.



Each year the Parker Review announces the results of a voluntary census of FTSE 350 companies. This is the first annual report to include data from the UK’s 50 largest private companies.

Key findings from this year’s report include:

- 96 of the FTSE 100 have met the target of at least one minority ethnic director on their boards. This is a significant increase from 2016, when only 47 FTSE 100 companies had a director from a minority ethnic group.
- 70% of the FTSE 250 have also met the target ahead of the December 2024 deadline.
- Large privately owned companies have been slower to progress diversity, with only 22 out of 50 surveyed reporting at least a single ethnic minority director.
- Ethnic minorities now hold 19% of all board directorships positions across the FTSE 100 and 13.5% across the FTSE 250.
- There are now 12 ethnic minority CEOs in the FTSE 100, an increase from 7 in 2022, and 7 Chairs, an increase from 6 in 2022.
- This year’s review studied senior management teams below the C-suite level for the first time and found that 13% in FTSE 100 companies and 12% in FTSE 250 companies come from ethnic minority backgrounds.

Overall the review has found that public companies have made “good progress” but there is still considerable work to be done, with private companies lagging behind.

Despite targets for boosting minority representation being voluntary, they provide an important benchmark for UK businesses generally.

INCREASES TO MINIMUM WAGE RATES, STATUTORY PAYMENTS AND TRIBUNAL AWARDS

Each year in April, we see an increase in various employment related rates and limits. We have set out a summary of the key changes to come into force this month:

<p>Increases to the National Minimum Wage and National Living Wage</p>	<p>From 1 April 2024, minimum rates are set to rise with new hourly rates as follows:</p> <ul style="list-style-type: none"> • For workers aged 21 + (i.e. the National Living Wage): £11.44 • For workers aged 18 – 20: £8.60 • For workers aged 16 – 17: £6.40 • For apprentices: £6.40 <p>This will be the first year that 21 and 22 year olds are brought onto the National Living Wage.</p>
<p>Family related benefits</p>	<p>From 8 April 2024, the weekly rate of statutory maternity, adoption, paternity, shared parental and statutory bereavement pay will increase from £172.48 to £184.03.</p>
<p>Statutory sick pay (SSP)</p>	<p>SSP will increase from 6 April 2024 to £116.75 per week (from £109.40).</p>



<p>Unfair dismissal / redundancy pay</p>	<p>From 6 April 2024, the statutory cap on a “week’s pay” used for calculating unfair dismissal awards and statutory redundancy pay will rise from £643 to £700. This means that the maximum statutory redundancy payment and basic award for unfair dismissal will increase from £19,290 to £20,000. The cap on the compensatory award will also increase from £105,707 to £115,115 (or one year’s pay, if that is lower).</p>
<p>Increase in the “Vento bands” for tribunal awards for injury to feelings in successful discrimination claims</p>	<p>For claims presented on or after 6 April 2024 in Employment Tribunals in England or Wales, the new Vento bands will be as follows:</p> <ul style="list-style-type: none"> • Lower band: £1,200 – £11,700 (for less serious cases); • Middle band: £11,700 – £35,200; and • Upper band: £35,200 – £58,700 (for the most serious cases). <p>The Vento bands only provide guidance and the Tribunals have the discretion to make awards for injury to feelings in excess of £58,700 for the most exceptional cases.</p>

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