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# **Evaluation of the Implementation of the Equality Act 2010:**

## **Report 2 - Awareness and Impact of the Equality Act**

### **CRSP 620**

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# Contents

Acknowledgements	5
Authors	6
Executive Summary	7
1 Introduction	10
1.1 The Equality Act 2010	
1.2 Report Structure	
2 Attitudes To Equality In Employment Practice	12
3 Awareness Of The Equality Act 2010	19
4 Engagement With The Equality Act	21
4.1 Information Seeking And Guidance	
4.2 Provisions Contained In The Equality Act	
5 Conclusions	29
5.1 Findings Relevant For Policy And Practice	
Annex A: Methodology	30
Annex B: Multivariate Analysis Results	32

# List of tables and figures

Table 2.1	Support for legislation to prohibit action presented in scenario 3 (gender), by organisation size and sector	14
Table 2.2	Support for legislation to prohibit action presented in scenario 4 (upper age), by organisation size and sector	15
Table 2.3	Support for legislation to prohibit action presented in scenario 5 (disability), by organisation size and sector	17
Table 3.1	Awareness of the Equality Act	19
Table 3.2	Awareness of the Equality Act, by organisation size and sector	19
Table 3.3	Awareness of the Equality Act by whether policy updated in last year	20
Table 4.1	Whether sought information about the Equality Act, by organisation size and sector	21
Table 4.2	If likely to need further information, by current awareness of the Equality Act	22
Table 4.3	Adequacy of organisation's knowledge of Equality Act, by current awareness of the Act	22
Table 4.4	Whether taken steps to recruit under-represented groups in past two years, by organisation size and sector	24
Table 4.5	Whether know meaning of positive action, by organisation size and sector	25
Table 4.6	Whether organisation has recent experience of taking positive action, by organisation size and sector	25
Table 4.7	Awareness of limits on questions about disability in recruitment, by current awareness of the Equality Act	28
Table 4.8	Awareness of limits on questions about disability in recruitment, by current awareness of the Equality Act	28

Table A I	Organisation size by sector	30
Table B I	Mean score for gender, age and disability scenarios (higher score is higher support)	32
Figure 2. I	Support for legislation that prohibits discrimination	13

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# Executive summary

## Introduction

This report presents findings from a telephone survey that collected evidence on British organisations' understanding of the Equality Act 2010. It is one of a series derived from this research, which was commissioned by the Government Equalities Office (GEO). This report focuses in particular on awareness of the Act and its impacts.

The Equality Act consolidates the previous nine pieces of equality legislation based on protected characteristics to create, for the first time in Britain, unified equality legislation. The nine protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The primary research objective is to provide evidence of levels of engagement with, and understanding of, the provisions of the Equality Act and to gauge how these vary by characteristics such as organisation size and sector.

The telephone survey involved 1,811 establishments (with two or more employees) across England, Scotland and Wales and encompassed the private and public sectors as well as the voluntary, community and social enterprise (VCSE) sector. At each establishment, interviews were conducted with the most senior person responsible for staff or personnel issues. Fieldwork was conducted between November 2011 and January 2012.

## Key Findings

The survey presented respondents with scenarios that they might face in areas such as recruitment and promotion, which were related to provisions of the Equality Act. For each, they were asked to rate the organisation's support for equality legislation in this context. These scenarios revealed that there was widespread support for legislation that prohibited discrimination, in these specific contexts, on the basis of characteristics such as sexual orientation and faith (Figure 2.1).

One scenario involved recruiting a male candidate for a job over an equally qualified female because it was assumed the woman would start a family soon. In medium and large organisations, and in the public and VCSE sectors, there was a similar level of support for legislation that prohibits this action (Table 2.1). Furthermore, while support for legislation to prohibit this was somewhat lower in micro- and small organisations, and in the private sector, even here around three-quarters of organisations wholeheartedly supported it.

Another scenario related to advertising a job which placed an upper limit on the age of applicants who will be considered. Compared with the gender example, there was a lower level of support for legislation that prohibits this type of discrimination.

Support was lower still for the scenario where a disabled employee was refused promotion because they had taken substantial sick leave in the previous year. The drop in support for the disability example compared with the gender example is particularly pronounced in the public and VCSE sector, reflecting their almost total support for gender equality legislation.

There was also a link with whether or not the organisation's approach to equality was motivated by a concern with how it was viewed by others (i.e. the community, customers and suppliers). Establishments that were concerned with their image were more likely to value equality legislation (as represented by these scenarios) than those that were not (Annex B).

The Equality Act 2010 had been in operation for over a year at the time of the fieldwork. Despite this, two-thirds of respondents said they knew nothing about its contents and a further 20 per cent knew only a little (Table 3.1). Awareness was higher where the organisation had updated its equality policy in the previous 12 months; however, even here, only a minority of respondents (28 per cent) reported that they were well informed about the Act and its contents (Table 3.3).

Among those who had some knowledge of the Equality Act, a minority (40 per cent) had sought information or guidance about it (Table 4.1). Information seeking increased with organisation size, and was most prevalent in the public sector. The most common source of information was government websites (mentioned by 21 per cent; Section 4.1). Respondents were generally satisfied with the quality of the information they had acquired.

Despite the fact that most respondents had not sought information on the Equality Act, only a minority felt they were likely to need information on the Act in the future (18 per cent; Table 4.2). Three-quarters (75 per cent) felt their organisation's current level of knowledge was adequate (Table 4.3).

Equality Act provisions allow organisations to take steps to increase the diversity of their workforce at every level. Actions may include widening recruitment methods to reach groups that are under-represented. The Act also permits positive action in recruitment and promotion. This could include appointing a candidate with a protected characteristic in a 'tie-break' situation (i.e. where candidates are of equal merit). Overall, 14 per cent of respondents were aware that their employer had taken steps to recruit under-represented groups while ten per cent were aware that their employer had some experience of positive action; however, a similar proportion did not know.

The Equality Act imposes limits on questions that can be asked about health and disability at the early stage of the recruitment process. Among large organisations, half of respondents (52 per cent) had a detailed knowledge of these limits (Table 4.7); in medium-sized organisations this dropped to a third (32 per cent); in small establishments it was a fifth (20 per cent). Among respondents with a detailed knowledge of the Act, two-thirds (67 per cent) claimed a detailed knowledge of the provisions associated with these limits (Table 4.8). Where knowledge was deemed 'reasonable' only a third (34 per cent) had a detailed knowledge of these limits.

Some of these findings indicate a relatively low level of engagement overall with the Equality Act and the practices that it aims to promote. This does not detract from evidence of substantial support for some protections, possibly reflecting the cumulative effect of past legislation (Section 2). Specifically, respondents showed strong support for legislation prohibiting a range of practices, particularly those that discriminate on the basis of gender or sexual orientation (Section 2).



Larger organisations are more likely to engage with the Equality Act than small organisations or micro-enterprises. However, the link between size and action tends to be weaker than the link between size and awareness. This may imply that within firms there is a degree of risk aversion to being more active about promoting equality.

Organisations that have recently updated policies are more likely to feel well informed about the Equality Act than those with no policy (Section 3). In addition, having a policy is positively associated with awareness of the Equality Act, even where it has not been updated.

# 1. Introduction

The Equality Act came into force in Great Britain in October 2010 (with additional provisions being implemented in April 2011). The Government Equalities Office (GEO) is committed to evaluating the impact of the Act. As part of this commitment, the Centre for Research in Social Policy (CRSP) at Loughborough University, in partnership with the International Centre for Public and Social Policy (ICPSP) at Nottingham University and BMG Research, was commissioned to undertake a telephone survey of British employers.

The survey investigated organisations' understanding, and implementation, of equality legislation in general, and the Equality Act in particular. It also gathered evidence on the extent to which organisations supported legislation to prohibit workplace discrimination. Interviews, with the most senior person responsible for personnel issues, were conducted between November 2011 and January 2012. In total, 1,811 interviews were achieved from establishments across the private and public sector as well as the voluntary, community and social enterprise sector (referred to in these reports as VCSE). Findings are presented in three topic reports, of which this is the second. The current report focuses on awareness of the Equality Act 2010 and its impact on organisational practices. This is contextualised with an exploration of the extent to which organisations support provisions of the Act that may have a direct bearing on their day to day operations (for example, recruitment and promotion processes).

The first topic report in the series discusses establishments' understanding of, and engagement with, workplace equality legislation more broadly. It explores the structures in place for responding to equality issues, levels of support for the underlying principles, awareness of protected characteristics and recognition of situations where workplace discrimination might occur. The final topic report explores organisations' experiences of disputes and grievances relating to workplace equality and discrimination issues.

An accompanying technical report contains a more detailed presentation of the methodology and outlines the sampling frame, achieved sample and design for weights. It also contains the questionnaire on which the three topic reports are based.

## 1.1 The Equality Act 2010

The Equality Act 2010 consolidates the previous nine pieces of equality legislation based on protected characteristics to create, for the first time in Great Britain, unified equality legislation. The nine protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Among other things, the Act simplifies or clarifies the definitions of direct discrimination (including association and perception), indirect discrimination, harassment and victimisation and extends positive equality duties to public authorities which must have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different groups.

## **I.2 Report structure**

The first empirical section of this report (Section 2) investigates organisations' attitudes to equality legislation in 'everyday' contexts. For example, it outlines levels of support for equality legislation that prohibits gender discrimination in recruitment and compares this with support where the protected characteristic is (older) age. Section 3 explores awareness of the Equality Act and its provisions and includes a discussion of information seeking and information sharing. The final empirical section (Section 4) discusses the extent to which organisations were aware of, and had acted upon, specific provisions contained in the Act, such as the option of taking positive action in the recruitment context. Section 5 discusses the analytical findings within a social policy context.

Many of the tables in the topic reports present results broken down by organisation size and, separately, by sector; consequently, it is important to highlight that organisations within the different sectors tend to differ in size (Table A1 in Annex A).

## 2. Attitudes to equality in employment practice

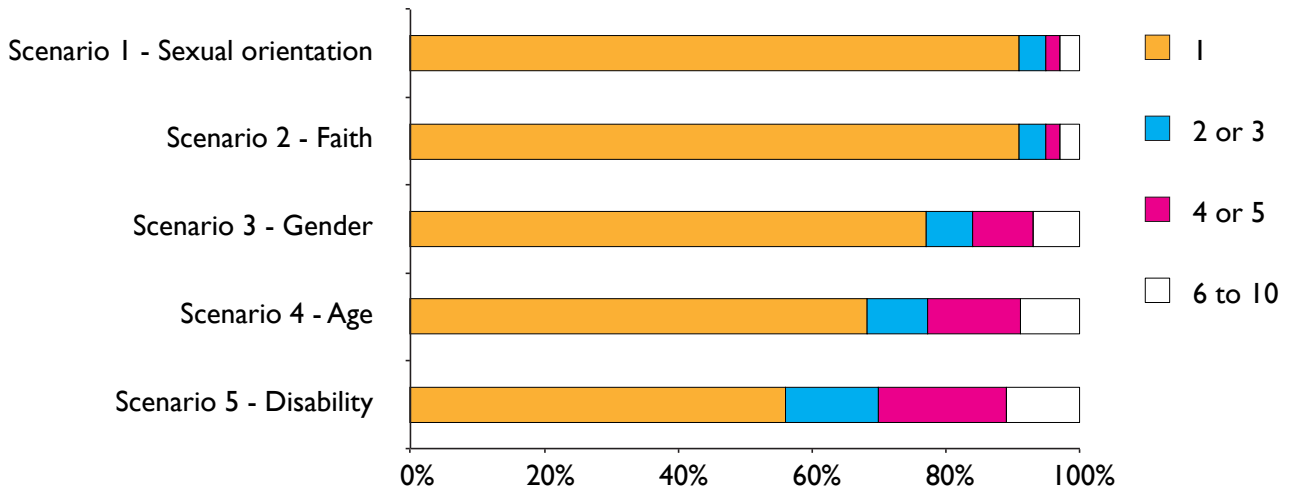
As noted in Section 1.2, the Equality Act covers nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Respondents were told that provisions in the Equality Act 2010 made certain behaviours by employers unlawful and were given scenarios that could occur in the workplace. They were asked how strongly their employer believed that the behaviour reflected in each scenario should be prohibited by equality legislation. A score of one meant the organisation believed totally that the behaviour should be prohibited while ten meant it believed totally that it should not be prohibited.

The scenarios included in the analysis are:

- 1 Selecting someone for redundancy on the basis of their sexual orientation;
- 2 Refusing to promote a woman because her husband is of a particular faith;
- 3 Recruiting a male candidate for a job rather than an equally qualified female candidate because the employer assumes the female candidate may have a child in the near future;
- 4 Advertising a job which places an upper limit on the age of applicants who will be considered;
- 5 Refusing to promote a disabled employee because s/he had taken substantial sick leave in the previous year.

In Figure 2.1, scores have been banded for ease of interpretation.

**Figure 2.1 Support for legislation that prohibits discrimination**



Base: All respondents excluding don't know (1794)

Discrimination based on sexual orientation and faith in these specific scenarios was unacceptable for the vast majority of organisations; approximately 90 per cent of employers were identified as believing totally that it should be prohibited by equality legislation. Fewer employers had this level of commitment for legislation that prohibits discriminating against women of child-bearing age in the recruitment process (77 per cent). There was even less support for the prohibition of upper age limits in job advertisements (68 per cent). The scenario that was least likely to be totally supported by employers was where an employer refused promotion to a disabled employee on the grounds that they had taken substantial sick leave in the past year (56 per cent).

For each scenario when respondents returned a score of between six and ten (i.e. their organisation did not support equality legislation in relation to the scenario) they were asked why. Analysis of these responses is included in the following individual sections.

## Gender discrimination

**Table 2.1 Support for legislation to prohibit action presented in scenario 3 (gender), by organisation size and sector**

Column percentages

Original score	Organisation Size				Sector			Total
	2-9	10-49	50-249	250+	Private	VCSE	Public	
	%	%	%	%	%	%	%	%
1	73	82	93	92	74	87	90	77
2 or 3	8	6	2	4	8	6	1	7
4 or 5	12	5	2	0	11	2	1	9
6 - 10	7	7	3	4	7	5	8	7
Respondents	803	492	329	157	1347	168	266	100

Base: All respondents, excluding don't know (1,781)

In large establishments (with 250 or more employees) and medium-sized ones (with 50 to 249 workers) there was a clear ethos of not discriminating on the grounds of gender in recruitment. Even in micro-enterprises (with between two and nine workers) three-quarters (73 per cent) reported a firm commitment to gender equality in recruitment. In the private sector, three-quarters of organisations viewed gender discrimination in recruitment as unacceptable; this rose to approximately nine out of ten in the public and VCSE (voluntary, community and social enterprise) sectors. There was, however, a core of micro-enterprises, and private sector businesses, that rejected this consensus, with approximately one out of five identified as either half-hearted (with a score of four or five out of ten) or openly unsupportive (with a score of six or more).

Relatively few respondents gave a concrete reason for their employer not supporting legislation that prohibited gender discrimination: where they did, the reasons given were predominantly economic and often referred to the particular impact on a small business:

*"It should not be legislated as it could destroy my business".*

(Owner/partner, 10 - 49 employees, private sector)

*"It puts employers in a vulnerable position where they can be taken advantage of financially by their employees. In a larger organisation it would be easier to accommodate."*

(Owner/partner, 10 - 49 employees, private sector)

Some indicated that they, or their organisation, would discriminate:

*“Depends on how much you have to spend on training and investment. If they are likely to disappear due to having children then you should hire the male candidate.”*

(Chairperson, 2 - 9 employees, private sector)

*“If they are equally qualified then you have to find another reason to employ the males.”*

(Finance director, 10-49 employees, private sector)

## Age discrimination

**Table 2.2 Support for legislation to prohibit action presented in scenario 4 (upper age), by organisation size and sector**

Column percentages

Original score	Organisation Size				Sector			
	2-9	10-49	50-249	250+	Private	VCSE	Public	Total
	%	%	%	%	%	%	%	%
1	65	75	82	87	66	76	83	68
2 or 3	9	8	7	4	10	7	1	9
4 or 5	17	8	6	9	14	11	11	14
6 - 10	9	9	5		10	6	5	9
Respondents	808	491	330	158	1352	169	266	100

Base: All respondents, excluding don't know (1,787)

Support for age equality legislation increased with organisation size and was stronger in the public and VCSE sectors than in the private sector. However, across the board, the level of support was lower for the age equality scenario than the one for gender equality. Where support was lowest (in micro-enterprises and in the private sector) around two-thirds of establishments were identified as being whole-heartedly supportive of legislation that prohibits upper age limits in job advertisements.

Verbatim responses to the age-related scenario commonly justified age discrimination on the grounds that the work was physically demanding. Some respondents were additionally concerned with the risk of harm:

*'In working with the old, we need people who is (sic) very strong and have their wits about them. We need to be sure no-one is being put at risk due to challenging behaviour.'*

(Managing director, 10-49 employees, private sector).

**Others perceived economic costs for the company:**

*'There are certain jobs that are heavy manual labour. I wouldn't want to employ an 'older' person for that job because they'd wind up taking sick leave.'*

(Manager, 2-9 employees, private sector).

*'In a profession such as ours it will cost us on training roles and progression.'*

(Manager, 10-49 employees, private sector).

*'The pension scheme would be far too excessive as the people in the same band would be earning less. It would be more expensive to employ them compared to a younger person.'*

(Managing director, 2-9 employees, private sector).

**Some felt that older workers would not suit the organisation's image:**

*'In our work it's about image and music skills. We would not employ someone whose image would not fit in with the organisation.'*

(Manager, 10-49 employees, private sector).

*'Certain age limits would not be able to communicate my level of fashion.'*

(Owner/partner, 2-9 employees, private sector).

**It is clear that many respondents were not recognising that the legislation does not force employers to appoint inappropriate candidates. One, however, observed,**

*'They'll either have an open or a covert screening process. It's better to not waste people's time.'*

(Managing director, 2-9 employees, private sector).



## Discrimination affecting disabled people

**Table 2.3 Support for legislation to prohibit action presented in scenario 5 (disability), by organisation size and sector**

Column percentages

Original score	Organisation Size				Sector			
	2-9	10-49	50-249	250+	Private	VCSE	Public	Total
	%	%	%	%	%	%	%	%
1	53	60	66	75	54	63	66	56
2 or 3	14	13	10	13	15	13	8	14
4 or 5	21	18	16	8	20	14	16	19
6 - 10	12	9	8	4	11	10	10	11
Respondents	789	478	326	158	1324	165	262	100

Base: All respondents, excluding don't know (1,751)

If the 'totally supportive' scores (i.e. one out of ten) are compared to those for gender equality, then the percentage point reductions, by sector, for disability are considerable; 20 percentage points for the private sector; 24 percentage points for the VCSE and public sectors. Support for disability legislation, in this specific context, is marginally higher outside the private sector; however, the gulf between support for gender legislation and disability legislation is also higher outside the private sector. This indicates that evidence of good practice in the public and VCSE sectors is not grounds for complacency. An all-round commitment to equality has not yet been embedded in the public and VCSE sectors - notwithstanding that the private sector has further to travel overall.

The scenario of the disabled employee who was not promoted because s/he had taken substantial sick leave prompted the largest number of free text responses. Without exception, no distinction was made between sick leave related to the employee's disability and unrelated sick leave, although it must be remembered that explanations were only solicited where employers were unsupportive of legislative protection for each scenario.

'Fairness' in the workplace was viewed as treating everyone the same regardless of personal characteristics. Some clearly had no understanding of their responsibilities under the Equality Act:

*'It would be irrelevant whether they were disabled or not. If someone, regardless of their background, was taking a large amount of sick leave, we'd have to consider whether promotion was something that was appropriate.'*

(Manager, 2 - 9 employees, private sector)

*"If someone's taken substantial sick leave in that time, this may be reason enough not to promote them irrespective of having any disability."*

(Managing Director, 2 - 9 employees, private sector)

*'If they can't do a job due to an illness they can't get a promotion. They need to be at work doing the job and earn the promotion on merit.'*

(Manager, 2 - 9 employees, private sector)

*'No point employing someone who won't be there. Wouldn't treat an able bodied person any differently in this regard, you just need someone who will be there to do the job.'*

(Personnel Manager, 250+ employees, private sector)

*"Attendance is a big part of whether you should be promoted or not. I wouldn't promote anyone with bad attendance no matter their circumstances."*

(Manager, 2 - 9 employees, private sector)

## Overall patterns

The differing responses to the three scenarios are illuminating because the premise for each is the 'risk' of future disruption or expense. In the contexts represented by the scenarios, establishments appear more willing to countenance risks linked to gender than to older age or disability.

A linear regression model was performed on a composite measure of support for workplace equality in practice; this was done to assess which factors were still influential when other factors were taken into account. This was derived from the mean of respondents' support for legislation relating to the scenarios for gender, age and disability and was computed so that a higher score denotes a higher level of support. The results are presented in Annex B.

Establishment size was positively associated with support, as was being part of a multi-site organisation. The only other significant factor was the measure of whether the organisation's approach was influenced by a concern with how it was perceived by the community, customers and suppliers. Where this concern was reported, support for workplace equality was higher than where it was absent.

## 3. Awareness of the Equality Act 2010

**Table 3.1 Awareness of the Equality Act**

	Column percentages
	%
Haven't heard of Equality Act 2010	34
Heard of it but don't know anything about it	32
Know a little about it	20
Reasonably well informed about the Act and its provisions	12
Detailed knowledge of the Act and its provisions	3
<b>Total</b>	<b>100</b>

Base: All respondents (1,811)

At the beginning of fieldwork for the survey, the Equality Act had been in effect for just over a year. Despite this, a third of respondents had never heard of it and a further one third had heard of it but knew nothing about it (Table 3.1). Just 12 per cent reported being reasonably well informed about the Act and its provisions while three per cent considered that they had a detailed knowledge of its provisions.

**Table 3.2 Awareness of the Equality Act, by organisation size and sector**

	Organisation Size				Sector			
	2-9	10-49	50-249	250+	Private	VCSE	Public	Total
	%	%	%	%	%	%	%	%
None/only heard of it	74	53	31	17	70	51	51	66
A little	17	27	30	9	19	27	22	20
Well-informed/ detailed knowledge	9	20	39	74	12	22	28	14
Respondents	821	499	332	159	1369	170	272	100

Base: All respondents (1,811)

Almost three-quarters of micro-enterprises (with two to nine employees) knew nothing about the Act. In small establishments (with ten to 49 employees) just over a half knew nothing about it. Even in large organisations (with 250 or more employees) around one in six respondents knew nothing about it.

**Table 3.3 Awareness of the Equality Act by whether policy updated in last year**

Column percentages

	No policy	Updated past year	Not updated	Total
	%	%	%	%
None/only heard of it	86	44	62	66
A little	11	28	24	20
Well-informed/ detailed knowledge	3	28	14	15
Respondents	523	781	332	100

Base: All respondents excluding don't know (1,636)

Knowledge of the Act was highest where establishments had recently updated their policy; however, even among this group, only 28 per cent felt they were well informed about its provisions while 44 per cent reported knowing nothing about it. Organisations with a policy that had not been updated in the previous year had a greater level of awareness than those with no policy.

Information on whether the organisation had a written policy for equality and discrimination issues and (where it had) whether the policy had been updated in the previous 12 months is discussed in detail in the first topic report in the series.

## 4. Engagement with the Equality Act

### 4.1 Information seeking and guidance

A section of the questionnaire was administered to the minority of respondents who reported some knowledge of the Equality Act (i.e. they either knew a little, were well-informed, or had a detailed knowledge of its provisions). Analysis presented in sub-section 4.1 is restricted to these respondents.

**Table 4.1 Whether sought information about the Equality Act, by organisation size and sector**

Column percentages

	Organisation Size				Sector			
	2-9	10-49	50-249	250+	Private	VCSE	Public	Total
	%	%	%	%	%	%	%	%
Yes	31	42	58	80	38	34	57	40
No	69	58	42	20	62	66	43	60
Respondents	239	230	228	140	549	104	184	100

Base: All respondents who knew at least a little about the Equality Act (837)

Among respondents who knew about the Equality Act, 40 per cent had sought information or guidance about its content and implications. Information seeking increased with organisation size. More than half of medium-sized establishments (with 50 to 249 employees), and the large majority of large establishments (with 250 or more workers), had taken this step.

Where organisations had sought guidance, the most common sources of information were government websites (21 per cent); professional bodies (17 per cent); legal firms (14 per cent) and specialist consultants (14 per cent). When asked if they had sought information from the Government Equalities Office, a small number (11 per cent) reported that they had done so. Where respondents had sought information from any source, two-thirds rated the quality of information acquired as eight out of ten or above (where 10 indicated very satisfied).

Where information had been acquired it was usually shared with colleagues (76 per cent). Having sought information or guidance, around half (47 per cent) reported that they (and their colleagues, if appropriate) had spent no more than half a day familiarising themselves with the Act.

**Table 4.2 If likely to need further information, by current awareness of the Equality Act**

Column percentages

	Awareness of Equality Act			
	A little	Reasonably well informed	Detailed knowledge	Total
	%	%	%	%
Yes	21	14	14	18
No	47	68	59	55
Possibly	32	18	27	27
Respondents	391	323	113	100

Base: All respondents who knew at least a little about the Equality Act - excludes don't know (827)

Respondents who knew only a little about the Act were somewhat more likely to feel that they would need (further) information or advice in the future than those with a greater awareness; however, only around one in five gave this response, while almost half felt they would have no need for future advice (Table 4.2).

**Table 4.3 Adequacy of organisation's knowledge of the Equality Act, by current awareness of the Act**

Column percentages

	Awareness of Equality Act			
	A little	Reasonably well informed	Detailed knowledge	Total
	%	%	%	%
As good as needed	73	81	65	75
More needs to be done	27	19	35	25
Respondents	384	325	114	100

Base: All respondents who knew at least a little about the Equality Act - excludes don't know (823)

Although a majority of respondents had not actively sought information on the Equality Act, three-quarters felt their organisation's awareness of the Act was as good as was needed (Table 4.3). At each level of current knowledge of the Act, this was the response of a clear majority. Additional analysis (not shown) revealed that, overall, 84 per cent of respondents felt that the introduction of the Act had not raised the importance of equality matters in their organisation. A similar number (77 per cent) reported that it had not affected the establishment's operations or practices. When asked why not, 70 per cent stated that their organisation had been fully compliant already.

## 4.2 Provisions contained in the Equality Act

This section considers behaviours (at organisation level) and knowledge (at respondent level) that relate to four key provisions in the Equality Act. As these questions were asked of all respondents, analysis is based on the whole sample. The Equality Act allows organisations to:

- Take steps to attempt to increase diversity in their workforce both overall and in different areas (e.g. in management). This could take the form of skills training or mentoring offered only to under-represented groups.
- In addition, employers are permitted (but not required) to operate a policy of positive action in recruitment and promotion. Where there are two equally qualified candidates for a position they may favour the candidate that has a protected characteristic in order to alleviate disadvantage or under-representation within their workplace.
- Under the Equality Act, secrecy clauses within employment contracts cannot be enforced by an employer. These clauses prohibit workers from discussing their salary with their colleagues.
- The Act also places certain limits on the questions that may be asked about health and disability when recruiting staff.

### Under-represented groups

Respondents were asked whether their organisation had taken deliberate steps in the previous two years to increase the employment of groups of people who were felt to be under-represented in the workforce. Given the relative newness of the Act it is to some extent to be expected that they would have done so. In addition, analysis in the previous section of this report reflects that organisations - to varying degrees - are supportive of equality measures for specific groups.

**Table 4.4 Whether taken steps to recruit under-represented groups in past two years, by organisation size and sector**

Column percentages

	Organisation Size				Sector			
	2-9	10-49	50-249	250+	Private	VCSE	Public	Total
	%	%	%	%	%	%	%	%
Yes	11	19	24	40	10	28	30	14
No	54	62	63	44	58	49	43	56
No new employees	28	9	4	4	24	9	17	22
Don't know	8	10	9	12	8	14	9	8
Respondents	821	499	332	159	1369	170	272	100

Base: All respondents (1,811)

Only a small minority (14 per cent) of all respondents reported that their organisation had taken steps to recruit under-represented groups (Table 4.4). This was least common in micro-enterprises (with between two and nine employees), although many of these enterprises had not taken on new staff in the previous two years so the opportunity had not arisen. In addition, some micro-businesses will be family firms who might seek to recruit only family members while others will recruit from relatively small geographical areas which will limit the pool of available applicants and possibly their diversity. Where steps had been taken, the most common targets were black and minority ethnic groups (44 per cent); people with disabilities (32 per cent); diverse age groups (23 per cent) and women (20 per cent).

### Positive action in recruitment and promotion

Respondents were told that the Equality Act allows employers to take positive action in recruitment and promotion to counteract under-representation in their organisation. Examples given included employing a male primary school teacher to counteract the under-representation of men in that environment. Respondents were asked whether they had heard of the term 'positive action' in that context. Just over a third of respondents (37 per cent) had heard of the term positive action with that meaning (Table 4.5).



**Table 4.5 Whether know meaning of positive action, by organisation size and sector**

Column percentages

	Organisation Size				Sector			
	2-9	10-49	50-249	250+	Private	VCSE	Public	Total
	%	%	%	%	%	%	%	%
Yes	34	39	57	78	34	57	44	37
No	66	61	43	22	66	43	55	63
Respondents	821	499	332	159	1369	170	272	100

Base: All respondents (1,811)

A third of respondents (34 per cent) thought that their organisation would consider practising positive action while the same number (34 per cent) thought it would not (analysis not shown). The remainder were divided between those that felt their employer might (18 per cent) and those who did not know (13 per cent). Ten per cent confirmed that their organisation had recent experience of taking positive action; however, 13 per cent did not know (Table 4.6).

**Table 4.6 Whether organisation has recent experience of taking positive action, by organisation size and sector**

Column percentages

	Organisation Size				Sector			
	2-9	10-49	50-249	250+	Private	VCSE	Public	Total
	%	%	%	%	%	%	%	%
Yes	9	9	15	22	8	16	17	10
No	79	74	72	61	80	62	65	77
Don't know	12	18	14	17	12	22	18	13
Respondents	821	499	332	159	1369	170	272	100

Base: All respondents (1,811)

Where an organisation had no recent experience, or where the respondent did not know, fewer than a third (30 per cent) of respondents felt that their employer would consider practising positive action. A larger number (36 per cent) believed their organisation would not consider it (with the remainder answering “maybe” or “don't know”).

Where employers would not consider positive action, respondents were asked why. The reason given most often (for 57 per cent) was that the candidate would be chosen purely on merit. The open text responses often included the rationale that there was never a situation when two candidates were genuinely equal. Occasionally, an employer would say that they would do whatever was best for their

business; however, by far the most frequent explanation was that positive action was discriminatory and unfair. Three respondents said that if there was no other way of deciding, they would toss a coin.

Hundreds of respondents gave explanation of why their organisation would not consider positive action. Some were owners, and so were speaking on their own behalf, while others were employees. However, it was very rare for employees to explicitly voice their organisation's position, or to indicate that this differed from their own. Owners and employees appeared to hold similar views about the inherent 'fairness' of basing decisions on merit. Sometimes, this was contrasted with the perceived pressure to 'tick boxes' and 'fill quotas' (phrases used by six and seven respondents respectively).

Some explanations indicated that the organisation's approach to recruitment, whilst being motivated by a sense of fairness, risked discriminating against people with protected characteristics.

*'I feel the situation of two equally qualified candidates is unlikely to crop up, but I would prefer to judge on personality if so.'*

(Managing Director, 50 - 249 employees, private sector)

*"I would always go for the best qualified, if they were equally qualified on paper/after interview I would then go for who I feel would fit in best. You can't quantify who that would be theoretically or generally. But you shouldn't be told whether you should take on a woman instead of a man (or vice versa) to deal with under-representation."*

(Owner/partner, 2 - 9 employees, private sector)

*"Should always choose the best candidate on capability not on race or equality. They (sic) got to fit in with the community, we have no coloured people here, we are all white."*

(Owner/partner, 2 - 9 employees, private sector)

*'The male got the job because he'd been with company longer .... not for any other reason. They had to give him his chance before anyone newer had a go.'*

(Manager, 2 - 9 employees, private sector)

*'It doesn't apply, because this is a fairly small area where people know each other and we just send out information by word of mouth. People who are looking for part-time work just come along and we take them from there.'*

(Treasurer, 2 - 9 employees, VCSE sector)

Only three respondents raised the concern that practising positive action opened them up to claims of having treated the unsuccessful candidate unfairly. The first, from the staff diversity advisor in a large public sector organisation, spells out the organisation's concerns:

*"We think it's very risky, it would be open to challenge. In the male primary teacher example, the female candidate could well make a claim, and the decision would be very hard to justify. The way the law is written, having two 'equally qualified' candidates, just demonstrating that point is subjective and therefore very difficult to defend. So for that reason we have decided not to use positive action."*

(Staff Diversity Advisor, 250+ employees, public sector)

*'It's too dangerous, you are never going to get two people who are exactly the same apart from a protected characteristic.'*

(Personnel Manager, 50 - 249 employees, private sector)

*'It would open us up to claims and issues. People should be employed on their merit alone.'*

(Personnel Manager, 2 - 9 employees, private sector)

## **Secrecy clauses**

Of the 1,811 respondents interviewed, just 68 confirmed that their employer had ever had secrecy clauses; of these nearly all reported that their organisation still had them.

## **Limits on questions about disability and health in recruitment**

Respondents were asked whether they were aware that the Equality Act puts certain limits on the questions that can be asked about health and disability at the initial stage of recruitment.

**Table 4.7 Awareness of limits on questions about disability in recruitment, by organisation size and sector**

Column percentages

	Organisational Size				Sector			
	2-9	10-49	50-249	250+	Private	VCSE	Public	Total
	%	%	%	%	%	%	%	%
Detailed knowledge	11	20	32	52	14	16	26	15
Generally aware	38	47	52	39	39	61	41	41
No	51	32	16	9	47	23	34	44
Respondents	821	499	332	159	1369	170	272	100

Base: All respondents (1,811)

Only a minority (15 per cent) had a detailed knowledge of this provision, while a further 41 per cent reported being 'generally aware'. Levels of awareness differed by organisation size; in micro-enterprises, only around one in ten (11 per cent) had a detailed knowledge (Table 4.7). In large organisations, this rose to just over half (52 per cent). Awareness was higher in the public sector; however, even here, a third (34 per cent) were unaware of this provision.

**Table 4.8 Awareness of limits on questions about disability in recruitment, by current awareness of the Equality Act**

Column percentages

	Awareness of Equality Act				
	None	A little	Reasonable	Detailed	Total
	%	%	%	%	%
Detailed knowledge	9	20	34	67	15
Generally aware	37	52	49	29	41
No	55	28	18	4	44
Respondents	974	394	329	114	100

Base: All respondents (1,811)

Awareness was high among people with a detailed knowledge of the Act (Table 4.8). Among those with no knowledge of its contents, more than half (55 per cent) had no idea that this provision existed.

# 5. Conclusions

## 5.1 Findings relevant for policy and practice

The results outlined in this report show variable levels of engagement overall with the Equality Act and the practices that it aims to promote. Two-thirds of respondents had little or no awareness of the Act itself (Section 3). This was not necessarily problematic as there was substantial support for some protections, possibly reflecting the cumulative effect of past legislation (Section 2). However, among the subset that knew something of the Act, only a minority had sought further information or guidance about its content and implications (Section 4.1). Just one in seven respondents worked for organisations that had taken steps to recruit under-represented groups (Section 4.2). Most did not know the meaning of positive action, and only one in ten reported that their employer had recent experience of this (Section 4.2).

This lack of engagement with the Act and its provisions does not mean that organisations oppose or feel negatively towards equality practices. As noted in our first report, the great majority see the moral case for promoting equality in employment. More specifically, respondents showed strong support for legislation prohibiting a range of practices, particularly those that discriminate on the basis of gender or sexual orientation (Section 2).

Larger organisations are more likely to engage with the Equality Act than small organisations or micro-enterprises. Three-quarters of large organisations, compared to fewer than one in ten micro-organisations felt well informed about it (Section 3). Similarly, three-quarters of larger organisations but only one-third of small ones knew the meaning of positive action (Section 4.2). The majority of large organisations, but only one in nine respondents from micro-organisations, had detailed knowledge that the Act limits questions about health and disability at an early stage of recruitment. While size has a continuous effect (i.e. there is progressively less engagement with progressively smaller organisations) it is only among large organisations (with over 250 employees) where the majority give positive responses. For example, among medium-sized employers (with between 50 and 249 employees), only two-fifths are well-informed about the Act (Section 3) while only around one-third have a detailed knowledge of disability limits in recruitment (Section 4.2). Perhaps not surprisingly, organisations that have recently updated policies are more likely to feel well informed about the Act than those with no policies (Section 3). In addition, having a policy is positively associated with awareness of the Act, even where it has not been updated.

The link between size and action tends to be weaker than the link between size and awareness. Only four in ten large organisations had taken steps to recruit under-represented groups in the past two years (Section 4.2). While this was higher than average, large organisations also have more opportunities to take such steps because recruitment is likely to be more of a routine activity. This may imply that within firms there is a degree of risk aversion to being more active about promoting equality. Possibly businesses (of all sizes and sectors) are unclear of the legal support for positive action in these limited circumstances.

# Annex A: Methodology

A survey of 1,811 establishments was conducted by BMG Research using Computer-Assisted Telephone Interviewing (CATI) between November 2011 and January 2012. At each establishment, interviews were conducted with the most senior person responsible for staff or personnel issues. Single person enterprises were excluded from the study. Organisations were drawn from across the private and public sectors, as well as the voluntary, community and social enterprise (VCSE) sector. All standard industrial categories were covered with the exception of Agriculture, Forestry and Fishing and Mining and Quarrying. They included single-site establishments, branches and head offices across England, Scotland and Wales. Establishments were over-sampled in Scotland and Wales; consequently, the achieved sample comprised 354 organisations in Scotland, 353 in Wales and 1104 in England. The final dataset was weighted to reflect the actual geographical distribution of organisations by nation and English region. The accompanying technical report details the distribution of the achieved sample by establishment size and Standard Industrial Classification as well as by nation and region. The response rate was 44.5 per cent.

## A1.1 Presentation of the data

Percentages in the tables and charts are based on weighted data. These are accompanied by unweighted bases for each category of the grouping variable. These vary as not all questionnaire items are asked of all respondents. Percentages are presented as integers (i.e. they are rounded up or down) which may give rise to small rounding errors. In line with reporting convention, percentages that are greater than zero but less than 0.5 are denoted by an asterisk (\*). Where the 'don't know' category comprises less than five per cent of the responses, these cases are omitted from the tables.

**Table A1 Organisation size by sector**

Column percentages

Organisation size	Sector			
	Private	VCSE	Public	Total
	%	%	%	%
2 - 9	71	76	53	70
10 - 49	22	18	25	22
50 - 249	6	5	16	7
250+	1	1	6	1
Respondents	1369	170	272	100

Base: All respondents (1,811)

Organisations within the different sectors tend to differ in size (Table A1). Establishments in the private and VCSE sectors have a broadly similar distribution by size. In these two sectors, a substantial majority (71 per cent and 76 per cent, respectively) are micro-enterprises with between two and nine employees while around one in five are small establishments with between ten and 49 employees. Just seven per cent of private enterprises, and six per cent of those in the VCSE sector, have 50 or more employees. By contrast, the public sector comprises fewer micro-organisations (53 per cent) and many more medium and large organisations, i.e. with 50 or more employees (22 per cent).

## **A1.2 Multivariate analysis**

A multiple linear regression explored the characteristics associated with organisations' level of support for legislation to support workplace equality (Annex B). In the linear regression, a high score indicates a high level of support for workplace equality legislation.

# Annex B: Multivariate Analysis Results

**Table B1 Mean score for gender, age and disability scenarios (higher score is higher support)**


Independent variables	Beta	Std. Error
Constant		.17***
Size (Reference category 2 - 9 employees)		
10 - 49	.09	.10**
50 - 249	.07	.12***
250+	.03	.14**
Part of multi-site organisation (Reference category - not)	.16	.09***
Sector (Reference category Private)		
VCSE	.02	.16
Public	.04	.23
Nation (Reference category - England)		
Scotland	.02	.10
Wales	-.01	.12
Per cent workforce female (Reference category 0 - 5)		
6 - 25	.07	.22
26 - 50	.11	.20
51 - 100	.15	.19
Per cent workforce BME (Reference category 0 - 5)		
6 - 25	.02	.13
26 - 50	.07	.17
51 - 100	-.05	.31
Established 3+ years (Reference category less than 3 years)	-.07	.14
Influenced by how viewed (Reference category not)	.14	.14***
Influenced by staff/unions (Reference category not)	-.12	.17

Adj. R2 = .099

\*\* significant at p<0.01 \*\*\* significant at p<0.001

Base: All respondents (1,586)





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