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

## Report 3 - Disputes and Challenges

### CRSP 621

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# Executive summary

The Government Equalities Office commissioned research to explore organisations' understanding of, and responses to, the Equality Act 2010. This was undertaken by the Centre for Research in Social Policy at Loughborough University in partnership with the International Centre for Public and Social Policy at Nottingham University and BMG Research. Telephone interviews were conducted with respondents from 1,811 organisations across Britain. This report outlines the structures that organisations had in place for addressing employee claims of discriminatory or unequal treatment. It also explores the basis for recent disputes as well as outcomes.

A large majority (83 per cent) of organisations had established grievance procedures. This was the same level as found in the 2004 Workplace Employment Relations Survey. Procedures have become almost universal in small, medium and large organisations (Table 2.1). Even in micro-enterprises (with between two and nine employees) three-quarters (76 per cent) had procedures in place.

In micro-enterprises, employee grievance procedures were more common in the public and VCSE (voluntary, community and social enterprise) sectors combined than in the private sector. The likelihood that an organisation had formal procedures in place was greatest where a majority of the workforce was female (Annex B; Table B1).

In micro-enterprises that had neither a written policy on workplace equality issues nor a conscious approach, only one third had grievance procedures in place (Table 2.2), leaving the remainder with no equalities procedures at all. This contrasted with 62 per cent where there was a conscious approach and 95 per cent where there was a written policy.

Of the 1,811 organisations that took part in the study, only 171 had dealt with one or more employee complaints about unequal treatment or discrimination in the three years prior to the survey (Table 3.1). The likelihood of having experienced a dispute increased with organisation size but was not associated with sector.

Over one third of these 171 workplaces (63 cases) reported more than one dispute across this time frame, with the largest number being ten. Where more than one dispute was reported, follow up questions were asked of the incident that was considered the most serious. Although not all disputes related to protected characteristics, the most common basis for a complaint was unequal treatment relating to ethnicity (54 cases); and the second most common was disability (25 cases). Where a complaint related to a protected characteristic, the most common claim was that offensive remarks had been made (54 cases).

Of the 171 disputes that were considered in detail, 144 had been resolved at the time of the interview. Of these, 38 had been resolved within a week; however, 54 cases continued for more than a month. Managers sought advice or information from outside the organisation in just over half of the all resolved cases (77 of the 144). From the organisations' perspective, around one third (53 of the 144) were significant while 43 were difficult to resolve. Only 13 respondents reported that their organisation was dissatisfied with the outcome while nine were dissatisfied with the process.

Of the 144 resolved cases, 28 were settled by way of a compromise contract while 14 involved an Employment Tribunal. Three-quarters (21 cases) of those settled by compromise contract were resolved within three months. Of those that involved an Employment Tribunal, just two were known to have been resolved within three months (in four cases, the resolution time was unknown).

# I. Introduction

## Background

The Government Equalities Office commissioned a telephone survey to explore organisations' understanding of, and responses to, the Equality Act 2010. The research was undertaken by the Centre for Research in Social Policy at Loughborough University in partnership with the International Centre for Public and Social Policy at Nottingham University and BMG Research.

Analysis of the survey data is presented in three topic reports. The current report considers structures that organisations had in place for addressing employee grievances (i.e. claims of discriminatory or unequal treatment) and explores their experience of such disputes in the previous three years. The first report in the series (*Organisations' Approaches to Equality*) investigates workplace equality structures as well as variations in organisations' ethos regarding equality. The second report (*Awareness and Impact of the Equality Act*) focuses on awareness of the Act and its impact on practice. The series is complemented by a technical report (*Equality Survey 2011*) which details the sampling and weighting strategies, response rate, and full questionnaire content.

Fieldwork took place between November 2011 and January 2012 across England, Wales and Scotland and interviews were achieved with 1,811 establishments. These spanned micro-enterprises (with between two and nine employees) and large establishments (with 250 or more employees). The private and public sectors were included as well as the voluntary, community and social enterprise (VCSE) sector. Some analysis is limited to the subset of organisations (numbering 144) that reported resolving an employee grievance in the previous three years. In light of this small sample, analysis relating to this section is undertaken on unweighted data and the number of cases involved in each outcome is stated.

## Report structure

Section 2 outlines procedures in place for addressing workplace disputes. As well as analysing differences by organisation size and sector, it considers whether the composition of the workplace (in terms of gender and ethnicity) is associated with the existence of formal procedures. In Section 2, percentages in tables and charts are based on weighted data and are accompanied by unweighted bases.

Section 3 explores factors associated with having been involved in a dispute over the previous three years. It also focuses on the subset of establishments that have been involved in a dispute and considers the content of the grievance, its resolution, recourse to the Equality Act, and the impact that the dispute had on the organisation. Section 4 presents conclusions.



## 2. Procedures

Successive governments have advocated the formalisation of procedures for addressing workplace disputes (including both workers' grievances and employers' disciplinary issues). The existence and use of formal channels may facilitate the resolution of workplace conflict and avert its escalation, including recourse to an Employment Tribunal. By 1990, grievance procedures were found to be almost universal in the public sector and in large organisations (Millward et al., 1992).

Analysis of the 2004 Workplace Employment Relations Survey (WERS) revealed that 83 per cent of managers reported having formal procedures in place for dealing with employee grievances (Saundry and Antcliff, 2006; Table 2). It also showed that employers with an ethnically diverse workforce were most likely to have formal procedures in place (ibid: Table 36).

**Table 2.1 Formal grievance procedures, by size and sector**

	Organisational Size				Sector		
	2-9	10-49	50-249	250+	Private	Public/VCSE	Total
	%	%	%	%	%	%	%
Yes	76	97	99	100	80	95	83
No	24	3	1	0	20	5	17
Respondents	821	499	332	159	1369	442	1811

Base: All organisations (1,811)

Analysis of the current survey (Table 2.1) identifies that 83 per cent of organisations had formal grievance procedures in place, the same as in 2004 (WERS data). Established procedures have become the norm in small, medium and large organisations. Even in micro-enterprises (with between two and nine employees) three-quarters (76 per cent) had a procedure in place. There was also a high level of coverage among public/VCSE sector employers.

Binary logistic regression was undertaken to explore factors associated with the existence of formal procedures among micro-enterprises (821 establishments), when other variables are taken into account. Organisations with ten or more employees were excluded from the analysis on the grounds that formal procedures were almost universal (see Table 2.1). The model included the composition of the workforce (in terms of gender and ethnicity) and controlled for organisation size and sector (see Annex B).

The likelihood of formal procedures being in place was much greater where the establishment was part of a multi-site organisation, compared with where it was a sole site workplace. Compared with workplaces where no more than five per cent of workers were women, those where women were in the majority were significantly more likely to have a formal grievance procedure in place. Formal procedures were more likely where between six and 25 per cent of the workforce had a black or

minority ethnic (BME) background. However, the likelihood of having a grievance procedure in place was similar for both the reference category (where between zero and five per cent of the workforce were BME) and those where more than 25 per cent of the workforce had a BME background. The likelihood of having formal procedures was greater in the public/VCSE sectors than in the private sector<sup>1</sup>.

As Table 2.2 outlines, almost all micro-enterprises that reported having a written policy relating to workplace equality also had a formal procedure for responding to disputes and grievances. Where there was a conscious approach to equality matters (but no written policy) 62 per cent had a procedure. Among those with neither a written policy nor a conscious approach, only 33 per cent had a grievance procedure in place.

**Table 2.2 Formal grievance procedures among micro-enterprises, by whether they have a written policy or known approach**

	Column percentages			
	Written policy	Known approach	Neither	Total
Yes	95	62	33	77
No	5	38	67	23
Respondents	412	362	38	812

Base: All micro-enterprises (812)

<sup>1</sup> Statistically significant if public and VCSE categories are combined

## 3. Discrimination issues

### 3.1 Experience of disputes

Respondents were asked whether, in the previous three years, any grievances had arisen concerning unequal treatment or discrimination. This grievance could be directed at individuals or groups and could include anything from informal complaints to alleged systematic discrimination.

**Table 3.1 Experience of disputes, by organisation size and sector**

	Organisational Size				Sector		
	2-9	10-49	50-249	250+	Private	Public/VCSE	Total
	%	%	%	%	%	%	%
Yes	4	8	18	36	6	9	6
No	96	92	82	64	94	91	94
Respondents	793	470	303	114	1304	406	1710

Base: All organisations excluding don't know (1,710)

Overall, a small minority (six per cent) reported that issues had arisen at their workplace (Table 3.1). In micro- and small organisations it was rare; however, disputes were reported for one in six medium-sized organisations (with between 50 and 249 employees) and one in three large organisations (with 250 or more workers). Multivariate analysis was conducted to explore characteristics associated with having experienced a dispute (Annex B); however, only organisational size was statistically significant.

### 3.2 Number of grievances and substance

Follow up questions were asked where a grievance had occurred in the previous three years. Of the 171 respondents reporting grievances, 16 could not say how many cases there had been. Of those that gave a figure, over a quarter (43 cases) recollected more than two across the previous three years. Five organisations were recorded as having more than ten incidents each. Four of these were in large organisations with 250 or more employees. Where more than one incident had occurred, subsequent questions focused on the incident deemed by the respondent to be the most serious.

Of the 171 respondents who reported a dispute, three-quarters (130 cases) identified the most serious as relating to one of the protected characteristics (or in one case, a combination of two). The two most common protected characteristics were ethnicity (32 per cent; 54 cases) and disability (15 per cent; 26 cases). Where a complaint related to a protected characteristic, the most common grounds were that staff had been bullied or offensive remarks had been made (43 per cent).

In two-thirds of cases, only one person was involved on the complainant side. In most of the remainder, two or three people were involved (however, the question wording could mean that these were supporters of a sole complainant, rather than a group with a grievance). For the small remainder of cases, the number of people involved on the complainant's side reached up to a 100.

## Outcomes<sup>2</sup>

Most disputes (144 of the 171 discussed) had been resolved by the time of the interview. Of these, 38 were resolved within a week while 54 ran on for more than a month.

Respondents gave resolved cases scores out of ten to reflect:

- The significance of the issue;
- The ease with which it was resolved;
- Satisfaction with the outcome; and
- Satisfaction with the process.

These were banded to reflect where a case was difficult to resolve (a score of between one and four) and where there was dissatisfaction with the outcome and with the process (again, a score of between one and four). The original item for the significance of the issue had been banded so that a score of one reflected the issue was trivial; consequently, a score of between seven and ten denotes that the case was viewed as significant by the employer. Around one third of resolved disputes (53 out of 144) were viewed as significant and 43 were difficult to resolve. A minority of respondents were dissatisfied with the outcome or with the process (13 and nine cases respectively). It should be noted that our survey respondents were providing the employers' point of view and the opinions of the employees making the complaint are unknown.

## Reference to legislation

Seven respondents reported that the complainant or their advisor(s) had referenced the Equality Act. Three of these concerned unequal treatment on the basis of disability; three related to ethnicity and one to gender. An additional three cases made reference to the Sex Discrimination Act and eight to the Disability Discrimination Act.

## Stages of the dispute

Resolution of a dispute often involves multiple stages. Respondents were read a list of possible stages or events and asked if they applied to the reference case. The question of whether the complaint went to an Employment Tribunal or court was not asked where the respondent had already indicated that the dispute had been settled by compromise contract.

<sup>2</sup> The remaining results in this section are based on unweighted data

**Table 3.2 Stages and events associated with the dispute**

	<b>Cell counts</b>
	<b>N</b>
Verbal complaint	75
Written complaint	91
Informal discussions held	104
Matter referred to formal grievance procedure	98
Formal meetings between management and complainant	108
Management sought external advice or information	77
Complainants advised or supported outside of formal meetings	87
Complaint subject to external mediation	30
Complaint went to employment tribunal	14
Settlement : was by compromise contract	28
Settlement : required apology	46
: required restoration or improvement of work arrangements	36
: required financial compensation	24
: resulted in formal statement	39
: resulted in signed agreement	31

Base: where dispute had been resolved (144 cases)

Verbal complaints were made in around half of disputes (Table 3.2) while slightly more involved a written complaint. Most grievance cases (72 per cent) involved informal discussion and most (75 per cent) involved formal meetings between management and the employee(s). In just over half of cases, management sought advice or information from outside the organisation. One in ten disputes led to an Employment Tribunal. Of those that involved an Employment Tribunal, just two were known to have been resolved within three months (in four cases, the resolution time was unknown).

### **Compromise contracts**

A compromise contract, or agreement, is a private, mutually agreed mode of settling a dispute between an employer and employee. They are an alternative to resolution by Employment Tribunal and ACAS (the Advisory, Conciliation and Arbitration Service).

Only 28 cases involved disputes settled by compromise contracts. They were fairly evenly spread among organisation sizes, with five relating to micro-enterprises, six occurring in small organisations, nine in medium sized establishments and eight in large organisations. Most (20 cases) were in the private sector. Three-quarters (21 cases) of those settled by compromise contract were resolved within three months

When offered the statement, ‘the organisation finds compromise contracts useful’, one respondent disagreed, three were neutral and two did not know, while the remaining 22 agreed. When read the statement, ‘the organisation finds compromise contracts sufficient for addressing issues relating to equality’, six disagreed and 16 agreed (with four neutral and two selecting don’t know).

### Organisations’ response to the dispute

Where the dispute had been resolved, the experience led a quarter of organisations to modify their practices or procedures. There was no evidence that this response was associated with organisation size (Table 3.2).

**Table 3.3 Response to outcome, by organisation size**

Modified practice	Organisational Size				Column percentages
	2-9	10-49	50-249	250+	Total
Yes	33	16	23	26	24
No	67	81	73	62	70
Don’t know	0	3	5	12	6
Respondents	27	31	44	42	144

Base: where dispute had been resolved (144 cases)

## 4. Conclusions

This report has found that the great majority of organisations of all sizes have procedures in place for addressing employee claims of unequal treatment or discrimination; however, only a small minority have needed to use such procedures recently, and only a handful of complaints have referred to the Equality Act. This does not mean that the Act or the procedures are failing, as ideally they can be seen as protective instruments to encourage good equalities practice. However, a very low use of grievance procedures could also indicate that employees have low awareness of, or are reluctant to use, the channels open to them.

The research has explored the extent to which particular characteristics affect the likelihood that organisations have grievance procedures and have used them recently. In larger organisations, such procedures are all but universal, and are more likely to have been used than in smaller ones. This latter finding must be interpreted with caution, since simply having more employees would increase the chance of having at least one grievance case, and employees in large organisations may have more points of comparison that allow them to feel that they are being discriminated against. Among very small establishments, those that are part of a multi-site organisation are far more likely to have formal procedures in place than those that are a sole site workplace. In addition, establishments employing mostly women were more likely to have such procedures. Procedures were more likely in organisations where between six and 25 per cent of employees were from a black or minority ethnic background. Among the reported grievance cases, ethnicity featured more frequently as grounds than gender.

## 5. References

Millward, N., Stevens, M., Smart, D., and Hawes, W.R. (1992) *Workplace Industrial Relations in Transition*, Aldershot: Dartmouth.

Saundry, R. and Antcliff, V. (2006) *Employee Representation in Grievance and Disciplinary matters – making a difference?* Employment Relations Research Series 69. London: DTI.



# 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.

## AI.1 Presentation of the data

Percentages in the tables and charts are based on weighted data for the full sample and unweighted for small subsamples. These are accompanied by unweighted bases for each category of the grouping variable. 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.

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 AI).

**Table AI Organisation size by sector**

Organisation size	Sector				Column percentages
	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)

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).

Bivariate analysis presented in tables is complemented by (multivariate) binary logistic regressions which aim to establish the unique association between individual explanatory factors (such as sector) and the outcome variable having controlled for potentially confounding factors (such as organisation size).

## **AI.2 Multivariate analysis**

Binary logistic regression results are presented in Annex B. This multivariate technique is employed where the 'outcome' has only two possible values, for example, does the organisation have a written policy, yes or no? Predictors are measures such as organisation size and sector which are theorised to be associated with the outcome. For each predictor, or 'explanatory' factor, logistic regressions produce an odds ratio (OR) for each category which allows comparison across categories<sup>3</sup>.

Every predictor or 'explanatory' factor has a designated reference category which is not shown in the results table but which is understood to have a coefficient (or  $\text{Exp}(B)$ ) of 1.0. All other categories are shown in the model table. Other categories are shown with 'Exp(B)' denoting the OR. These reflect the relative amount by which the odds of the outcome increase or decrease for this category compared with the reference category. Those with a coefficient above 1.00 have an increased odds (or likelihood) of the outcome occurring while a category with a coefficient below 1.00 denotes a reduced likelihood. For example, for the predictor 'sector' the omitted reference category is always 'private'. If 'public' had an OR of exactly 1.00 then the likelihood of the outcome occurring would be the same in the public sector as in the private sector. An OR of above 1.00 would indicate that the likelihood of the outcome occurring was greater in the public sector; below 1.00 would indicate a lesser likelihood in the public sector. Asterisks denote where the difference between categories is statistically significant at  $p < 0.01$  (\*\*) or  $p < 0.001$  (\*\*\*). Only significant differences are reported in the commentary.

Some analysis is performed on micro-enterprises only (i.e. establishments with between two and nine employees). This reflects that the characteristic is almost universally present among larger organisations.

<sup>3</sup> The models presented throughout these topic reports use categorical predictors only.

# Annex B: Multivariate analysis results

**Table B1 Has formal procedures for addressing employee grievances (micro-enterprises only)**

Independent variables	Exp (B) odds ratio
<b>Part of multi-site organisation</b> (Reference category – not)	10.64***
<b>Sector</b> (Reference category Private)	
VCSE	3.12
Public	2.18
<b>Nation</b> (Reference category – England)	
Scotland	0.51
Wales	1.19
<b>Per cent workforce female</b> (Reference category 0 – 5)	
6 – 25	1.57
26 – 50	0.95
51 – 100	2.70**
<b>Per cent workforce BME</b> (Reference category 0 – 5)	
6 – 25	2.82**
26 – 50	0.91
51 – 100	0.90
<b>Established 3+ years</b> (Reference category less than 3 years)	0.67
<b>Had a dispute in past 3 years</b> (Reference category not)	3.21

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

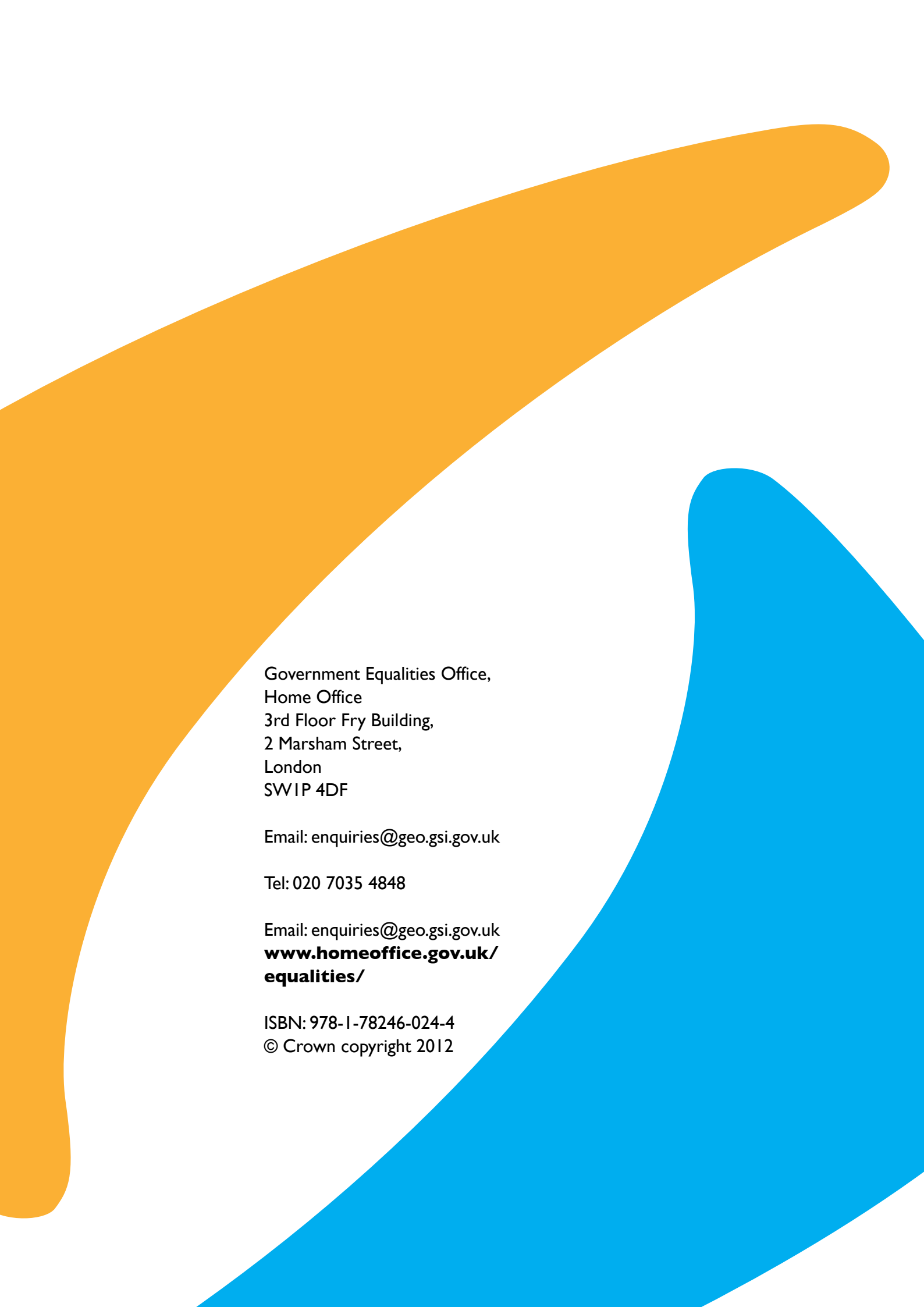
Base: All respondents in establishments with between two and nine employees (753)

**Table B2 Has experienced dispute in previous three years**

<b>Independent variables</b>	<b>Exp (B) odds ratio</b>
<b>Size</b> (Reference category 2 – 9 employees)	
10 – 49	1.67
50 – 249	3.76***
250+	12.8***
<b>Part of multi-site organisation</b> (Reference category – not)	0.94
<b>Sector</b> (Reference category Private)	
VCSE	1.52
Public	0.88
<b>Nation</b> (Reference category – England)	
Scotland	0.90
Wales	0.70
<b>Per cent workforce female</b> (Reference category 0 – 5)	
6 – 25	1.47
26 – 50	1.02
51 – 100	2.10
<b>Per cent workforce BME</b> (Reference category 0 – 5)	
6 – 25	1.91
26 – 50	1.23
51 – 100	0.89
<b>Established 3+ years</b> (Reference category less than 3 years)	1.33

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

Base: All respondents excluding don't know (1,710)



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