

Inclusive Britain

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# Will the government's Action Plan support private employers to create more inclusive and diverse workplaces?

**As the government sets out plans to make the UK a fairer and more equal society, Fieldfisher employment law expert Ranjit Dhindsa considers what its proposals mean for employers,**

In March 2021, Prime Minister Boris Johnson created a new commission to review race and ethnic disparities in the UK. The commission, chaired by Dr Tony Sewell, [published its report](#) in March 2022 that included 24 recommendations in areas covering education, health, police and the workplace.

"Inclusive Britain" is the government's attempt to translate the findings of the commission into "concrete action", through no less than 74 specific actions with a progress report to parliament scheduled for March 2023.

Here, we summarise these actions, which may be relevant to employers in the private sector.

## Actions

## Commentary

1. Strengthen the regulator that monitors discrimination in the UK, namely the Equality and Human Rights Commission (EHRC). The government has committed to investing in EHRC's enforcement powers, in particular, for investigations and supporting individual cases. It refers to the [Race Fund](#) it set up in November 2021, which provides £250,000 to EHRC to pursue cases referred to it by lawyers. See our summary of how this fund will work here: [EHRC's legal fund for tackling race discrimination: What employers](#)

It remains to be seen whether the investment in EHRC is sufficient to deliver meaningful change in the way discrimination is detected and dealt with in the UK.

The £250,000 Race Fund appears small and only capable of funding the pursuit of a handful of cases that meet certain EHRC criteria.

## Actions affecting Tech and AI

2. **Action 2** - The government has committed to clamping down on racist abuse online through its Online Safety Bill. Companies that fail to comply with their legal duties could face fines of up to £18 million or 10% of their qualifying annual global turnover of business disruption measures.

The focus on online racist abuse is welcome, as this is an area in which it has been difficult to allocate responsibility for tackling the problem. Employers will need to review the draft text of the bill to ensure they are compliant when it is enacted into law.

Employers also need to think about who is the appropriate person in the organisation to ensure compliance and ensure they are informed and equipped to take the

3. **Actions 72, 73 and 74** focus on AI to create an inclusive future.

**Action 72** sees the government committing to developing a national position on governing and regulating AI and setting this out in a White Paper

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**Actions 73** states the EHRC will advise on safeguards needed and issue guidance that explains how to apply the Equality Act to algorithmic decision-making.

**Action 74** requires the [Centre for Data Ethics and Innovation](#) to publish an algorithmic transparency standard for the public sector.

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Audits of AI systems are strongly recommended.

**4. Action 5** - The government has committed to avoiding lumping together different ethnic minority groups under the term "BAME", in its communications and will encourage other public sector bodies to do the same.

This is welcome, but does not go far enough. The private sector should also stop using the term "BAME", since it masks different experiences of ethnic groups in the UK.

Further, it is questionable whether the government's continued reliance on the rather blunt ONS survey of ethnic groups is sensible or logical. There is no agreed classification of ethnic minorities in the UK and many organisations rely on the ONS survey by default, but there is a strong argument for reviewing and updating this measurement of ethnic diversity.

**5. Action 16** - Ethnicity pay gap reporting will remain voluntary. The Department for Business, Energy and Industrial Strategy (BEIS) will publish guidance for employers who wish to report on ethnicity pay gaps in Summer 2022.

This is disappointing. There have been several calls from employers, trade unions and some politicians for mandatory ethnicity pay gap reporting. See our timeline [here](#). Given the lack of legal obligation but mounting societal pressure to be transparent about ethnicity pay, employers have some difficult questions to consider:

Will your organisation voluntarily report on ethnicity pay gap reporting in the same way it reports on gender pay gap reporting?

Will it go further and report on disability pay gaps and socio-economic pay gaps?

Employers should review the government's guidance, which should be published in Summer 2022, as this issue is likely to remain an area of scrutiny, even if it is not subject to official regulation.

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<b>Health and Social care</b>	
The government has committed to tackling health disparities. This will cover all health and social care providers.	
<p>6. <b>Action 18</b> states the Care Quality Commission (CQC) will be assessing how providers are addressing the experiences, progression and disciplinary actions in respect of ethnic minority staff in their workforce.</p>	<p>Are you a private sector organisation that provides services to the public sector? If so you may be asked questions as part of any procurement or compliance process, and therefore should become familiar with the CQC assessment.</p>
<p>7. <b>Actions 19</b> - Commits the Department of Health and Social Care (DHSC) to publish a new strategy on health disparities in a White Paper in 2022.</p>	<p>Organisations in the private sector that provide services to the public sector should review the White Paper when it is published to ensure they are up to speed with DHSC's strategic priorities.</p>
<p>8. <b>Action 20</b> states the DHSC will consider the findings of Professor Dame Margaret Whitehead's review of the way medical devices and technologies are designed and used and their impact on ethnic minority patients' diagnosis and treatment. A report is expected in 2023.</p>	<p>Companies involved in providing health and social care may wish to review the action points and consider if they have an impact on the organisation's internal processes and practices.</p> <p>This may require an audit of the way medical devices and technologies are designed.</p>
<p>9. <b>Action 48</b> - Apprenticeships. The government is committed to increasing the number of ethnic minorities taking up apprenticeships.</p>	<p>If your organisation has apprentices, have you carried out an audit of how diverse the apprenticeship group is, as part of a positive action strategy for your company?</p>
<p>10. <b>Action 69</b> - The government wants the Equality Hub to create an Inclusion at Work panel by Spring 2023. This will develop resources to help employers ensure fairness in their organisations</p>	<p>Further information and evidence will be useful for employers, but the most important step will be practical implementation of the strategies organisations have devised to deliver and maintain fair and equal treatment in the workplace.</p>

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<p><b>11. Actions 70</b> - The Government Equalities Office has been tasked to publish updated guidance on positive action by December 2022.</p>	<p>This is welcome. One of the most difficult issues for employers is understanding the difference between positive action and positive discrimination.</p> <p>See our article explaining the difference and common misconceptions <a href="#">here</a>.</p>
<p><b>12. Action 71</b> - The government has committed to developing a new scheme for employers, to provide an evidenced framework for improving diversity in the workplace.</p> <p>Organisations will be able to sign up to this voluntary scheme, which will be live by Autumn 2023.</p>	<p>The concept of this action is welcome, however employers and their advisers will need to see more details before judging its practicality.</p>

## Conclusion

There are a number of action points that directly impact private sector employers. Fieldfisher is already advising several organisations on reviewing internal strategies that deal with inclusion and diversity, and practical steps that can be taken to interrupt bias through positive action.

Where organisations have developed a strategy and put in place actions, we carry out audits and reviews to check the design and effectiveness of such actions. For those organisations that are yet to devise a plan for improving inclusion and diversity, we can assist by highlighting the main areas employers need to focus on and advising how to avoid common pitfalls.

Please get in touch with our Employment, Pensions, Immigration and Compliance team if you would like to discuss further.

*This article was authored by [Ranjit Dhindsa](#), Head of Employment, Pensions, Immigration and Compliance at Fieldfisher*