

**Third party harassment provisions repealed from 1 October**

With effect from 1st October 2013, the [Enterprise and Regulatory Reform Act 2013 \(Commencement No. 3, Transitional Provisions and Savings\) Order 2013](#) repeals the third party harassment provisions set out in S.40 of the Equality Act 2010 (EA 2010). Under these provisions, an employer is liable for harassment of its employees by third parties, such as customers or clients, over whom the employer does not have direct control. Liability in relation to third party harassment, however, only arises when harassment has occurred on at least two previous occasions, the employer is aware that it has taken place, and has not taken reasonable steps to prevent it happening again. From a legal perspective, the only protection which will be available from 1 October in such circumstances is that described by the House of Lords in *Pearce v Governing Body of Mayfield School* [decided in 2003] that while an employer's failure to prevent third parties committing acts of sexual/racial harassment might amount to discrimination by the employer, it will only do so if the employer failed to take such steps because of the employee's sex/race (or in the more general context of the current legislation, any other relevant protected characteristic covered by the harassment provisions set out in [S.26 of the EA 2010](#)).

Removal of PHI benefits was age discrimination

In *Whitham (W) v Capita Insurance Services Ltd*, W was on long-term sick leave. He received benefits under permanent health insurance (PHI) provided by a third party insurance company. He was told that the payments would stop when he turned 55. A tribunal found that this amounted to both direct and indirect discrimination* so it was for the employer to prove that the act was a proportionate means of achieving a legitimate aim if it was to escape liability. The tribunal rejected the employer's justification argument, i.e. it was a proportionate means of achieving the aim of admitting as many employees as possible to the PHI scheme. The principal aim was purely budgetary as the employer was only prepared to put a certain amount of money into the PHI premium payment and it stopped W's membership of the PHI on the ground of cost when it found out that the insurance company was not prepared to indemnify the employer any further. A cost alone argument is not acceptable – equal treatment cannot depend on how much money happens to be available – and as far as direct discrimination is concerned, the additional requirement that the aim must be consistent with the social policy aims of the UK was not present.

* The Equality Act 2010 (Schedule 9 paragraph 14) does provide a statutory exception to the age discrimination provisions to allow employers to stop providing access to insurance or a related financial service to employees when they reach age 65, or the state pension age, whichever is higher. So employers need to justify withdrawing PHI at any age lower than the exception allows for.

Cable announces review of executive search code of conduct

Business Secretary Vince Cable has announced that Charlotte Sweeney, previously International Head of Diversity and Inclusion for Nomura International PLC, is to review the Voluntary Code of Conduct that the executive search industry uses during the board appointment search process. The Voluntary Code, established in July 2011, was a recommendation of Lord Davies' following his review into Women on Boards in the same year. Written by the executive search community, it sets out nine key principles of best practice to follow throughout the search process. The review will look to test the strength of the Code and develop areas of accountability, as well as identifying the practical changes that have been made to the recruitment process as a result of the Code. The review will also look at whether women are still accounting for 30% of the initial long-lists of candidates submitted to company Chairs by executive search firms.



Government accepts findings of PSED review

The Government has published the outcome of the independent [review](#) of the Public Sector Equality Duty (PSED) and in an accompanying ministerial statement has confirmed that it has accepted the findings. The PSED was introduced through the Equality Act 2010 to ensure that public bodies take account of equality when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees. The review was established to examine whether the PSED is operating as intended. The review has not considered repeal of the PSED, but the Government agree with its conclusion that a full evaluation should be undertaken in 2016 when the Duty will have been in force for five years. The review has however identified a number of issues associated with the implementation of the PSED and makes recommendations for the Equality & Human Rights Commission (EHRC), for contractors, for public bodies and for Government, which the Government would like to see implemented, in particular to reduce procurement gold plating by the public sector.

Single fee remission scheme to be introduced

The Government has published its [response](#) to the consultation on proposals for a wide-ranging reform of the fee remissions system. The remission system ensures that access to justice is maintained for those individuals on lower incomes who have difficulty paying a fee to use court or tribunal services and who can therefore access court or tribunal services free of charge or at a reduced rate. The current fee remission system has three elements, each with different eligibility criteria. The response confirms that the principal change to be introduced will be a single remissions system in all courts and tribunals and the UK Supreme Court. The Government will also introduce a disposable capital (e.g. savings) test for assessing an applicant's financial eligibility for a remission, but will not require applicants to provide evidence of their disposable capital when applying for a fee remission. The Government intends to implement the changes by Statutory Instrument by October 2013. During October the Judicial Reviews launched by UNISON and Fox and Partners calling for the scrapping of tribunals fees, are expected to be heard.