



TUC EQUALITY AUDIT 2012



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FOREWORD

It is nearly 10 years since the TUC carried out its first audit of trade unions' equality structures and collective bargaining activities. Over that time we have seen some significant achievements in the workplace and steady improvements in how trade unions have responded to a more diverse workforce and membership.

This audit, which focuses on equality bargaining, covers three very difficult years from the beginning of 2009 to the beginning of 2012.

It is evident that in some workplaces unions have been on the defensive during this time, trying to protect earlier achievements and particularly vulnerable groups, whether it be ensuring redundancy and restructuring exercises do not wrongly target certain workers, reasonable adjustments remain in place for disabled workers or that flexible working is kept for parents and carers.

But it is encouraging to see that, even in these difficult times, there are still examples of unions successfully pushing to advance equality at work, for example, in getting employers to address women's low pay or carry out equal pay audits, achieving better than statutory pay for parents on maternity or paternity leave, agreeing policies to ensure better treatment of trans people at work, or getting agreement from some public sector employers on the unacceptability of far right or hate group membership.

As usual, the audit provides a rich source of examples of what can be achieved. I hope it informs and encourages unions in their collective efforts to secure more accessible and better work opportunities for all.

Brendan Barber
TUC General Secretary

EXECUTIVE SUMMARY

The biennial TUC Equality Audits began in 2003 following a TUC rule change committing the TUC and its affiliates to promoting equality in all aspects of their work. This 2012 audit, like those of 2003, 2005 and 2009¹, details the range of issues unions address in their search for improved equality for all workers in the collective bargaining arena.

A TOUGH CLIMATE

To set the scene for the 2012 Audit findings, the report begins with unions' views and reactions to the current climate for equality bargaining. This is in recognition of the fact that, compared with previous years, trade unions have faced unprecedented challenges in the period covered by the audit (2009 to 2012) as the effects of the recession and austerity began to bite.

A majority of the respondent unions expressed the view that overall it had become more difficult to negotiate and make progress on equality issues. And it is evident that some trade union activity has shifted to defending equality and seeking to protect certain groups from particular disadvantages in these difficult times.

Almost half of the unions said they had issued guidance to their negotiators covering issues such as how to assess the equality impact of redundancy or restructuring proposals and how to campaign against cuts from an equality perspective. The TUC has also produced a range of guidance and materials on equality and cuts during this period.

Two in five unions cited examples of equality policies being diluted as a result of current economic pressures and the more difficult negotiating climate. Others said that although equality policies had not been watered down there were problems with their implementation in practice. For example, a supplementary survey of workplace reps found that three in ten reps thought that it had become harder to access flexible working, while only one in ten said it had got easier.

But despite the tougher climate, measures to advance equality in unionised workplaces are still underway. The report documents some significant negotiated improvements over the past two years and unions reported advances in all areas covered by the audit – evidence that TUC affiliates have not let equality slip off the bargaining agenda.

UNION GUIDANCE TO NEGOTIATORS

Unions have continued to issue new or updated guidance across all equality areas. The issue on which unions have most commonly issued guidance for negotiators in the past three years is flexible working and work/life balance. While the law has provided a platform for improvements in this area and the government proposes to extend the statutory right to request to all employees in 2014², it is evident that unions have been keen to seek enhanced workplace agreements on this now.

Disability appears to have stepped up the list of union priorities since the 2009 audit. Three in five unions have up-to-date guidance or materials for their officers and reps on disability, compared to just over a half in 2009.

Another area many unions have focused on is general equality bargaining covering all the protected characteristics. This category includes guidance on equality law and many unions produced new materials to keep officers and reps up to date with the new Equality Act and the new Public Sector Equality Duty (PSED) that has extended the previous public duties' requirements to all protected characteristics.

A similar number of unions have up-to-date materials available under the heading working parents, parents-to-be and carers. This includes maternity leave and pay, paternity leave and pay, childcare support and parental leave. Again, some new or updated materials in this area may have been motivated by changes in the law with the implementation of Additional Paternity Leave and Pay (APL&P) in April 2011, allowing a mother to transfer some maternity leave and pay to the father or her partner.

NEGOTIATED SUCCESSSES

The area where most unions report having achieved negotiated success in the last three years is that of women's pay and employment, particularly in securing employers' agreement to carry out equal pay audits and take steps to improve the pay of the lowest paid, which is predominantly women in many workplaces. Equal pay has remained the stand-out bargaining priority mentioned by most unions, too (see *Table 1*).

Table 1: Negotiated successes

Topic	% current guidance/policy (% in 2009)	% negotiated success (% in 2009)
Flexible working or work/life balance	69 (65)	44 (44)
Disability	61 (54)	47 (35)
General equality bargaining	58 (65)	39 (16)
Working parents and carers	58 (58)	42 (51)
BME workers	56 (58)	42 (35)
Harassment and bullying	56 (61)	39 (33)
Women's pay and employment	53 (63)	50 (30)
Religion and belief	50 (42)	22 (23)
Age	50 (49)	47 (37)
LGB workers	44 (56)	28 (33)
Trans workers	44 (35)	14 (16)
Migrant workers	36 (35)	22 (23)

A significant number (almost half) of unions reported reaching new agreements with employers on age. As examples given in the report show, some of these deals were in response to the removal of the statutory Default Retirement Age (DRA) in 2011.

The same proportion reported having negotiated agreements with employers on disability, notably around reasonable adjustments. However, in the section on the current climate for equality bargaining there are concerning instances where unions have suggested disabled workers are being targeted for redundancy or are suffering particular disadvantages from cost-reduction exercises.

Unions have had a reasonable degree of success on flexible working too, with 46 per cent reporting that they have achieved better than statutory agreements, particularly in terms of widening the eligibility criteria for requesting flexible working beyond parents and carers. However, again, this success needs to be balanced against the examples and views expressed by unions that suggest it is getting harder to access flexible working in practice in some workplaces as a result of workforce reductions and a more insecure economic environment.

In addition to the above, more unions appear to have struck deals with employers under the headings

general equality bargaining, harassment and bullying and BME workers than in 2009.

But fewer unions report having reached new agreements on working parents and carers than in the 2009 audit. This is perhaps surprising, given the recent change in the law with the introduction of APL&P and unions' past success in negotiating family-related leave and pay packages that are above the statutory floor. A supplementary survey of union workplace representatives reported in Appendix C finds that only a small handful of employers have adapted their occupational maternity pay schemes to accommodate fathers or partners who are taking APL.

There are also slightly fewer unions reporting new deals on accommodating religion or belief at work or to support equality for LGB&T workers and migrant workers than in 2009.

1. Unusually, this audit covers a three-year rather than a four-year period. This is as a result of the General Council's decision last year to bring the audit forward by a year as at that time it was anticipated that the 2013 Congress, when the audit was due, could be a smaller-scale event without time to give the audit proper consideration.

2. Although the 26 weeks' service qualifying criteria will remain.

SECTION 1

INTRODUCTION

The TUC Equality Audit 2012, like its predecessors covering collective bargaining, reveals the range of issues unions address in their search for improved equality for all workers in the employment arena.

This report covers the period from the beginning of 2009 to the beginning of 2012 – three very tough years for unions and their members, with austerity biting and the election of the coalition government with its focus on deficit reduction and deregulation of the labour market to minimise ‘burdens on business’.

The bulk of the report is descriptive, providing a picture of the agenda the movement is now following on bargaining in each of the equality areas. It also provides examples of good practice agreements on a wide range of equality topics.

The report gives figures of the number or proportion of unions issuing guidance on each of the topics, and also shows the equivalent figure for the 2009 audit. However, the two figures are not directly comparable. To a certain extent, the audit reflects the subjective view of the individual completing it. This is often a different individual from the person who returned the previous audit questionnaire.

As the next section in this report on the climate for collective bargaining shows, most unions feel it has been harder to get employers to address equality issues. However, despite the tougher climate, this report suggests unions and their negotiators have not abandoned the push for equality. Every single area audited has seen some action by some unions and in all cases unions collectively have been able to report some negotiated success.

The audit was carried out by the Labour Research Department (LRD) through a questionnaire distributed to all TUC affiliates in November 2011 for response by end of January 2012. It asked for examples of both up-to-date policies and guidance on the range of equality bargaining topics, and details of good negotiated agreements.

The main survey was supplemented by two other pieces of work by the LRD in an effort to obtain workplace level information. One covered family-related leave and pay and flexible working; the other focused on mental health at work.

Information gleaned from all these parts of the research is incorporated at various points within this report, where appropriate.

Section 2 of this report sets out the context for

collective bargaining on equality in recent years, including the impact of cuts and austerity.

Section 3 describes how unions monitor their membership, decide upon equality bargaining priorities, communicate those priorities to their officers and reps, and how they monitor the outcome of their bargaining efforts.

Section 4, the main section of the report, looks at the extent to which unions have up-to-date negotiating advice or policies on equality to support bargaining. It also sets out where unions have achieved success in the past three years in putting the guidance or policies into practice – in other words in reaching successful agreements in the workplace.

The unions were first asked whether they had current policies, guidelines or briefing materials or had put in claims on a range of equality topics. In some cases these documents may have been drawn up some years ago but are still up to date. However, in its description of the material, this report concentrates on examples of documentation drawn up since the TUC Equality Audit 2009, which was the last audit covering equality bargaining.

The unions were then asked what they had achieved in the workplace on the same range of equality issues since the 2009 audit. Therefore, the information set out here is restricted to agreements negotiated in the last three years, though clearly many agreements reached before 2009 are still in place.

THE RESPONSE

The response to the national union survey was very slightly lower than that of 2009. In total, 36 of the TUC's 54 affiliate unions replied, or 67 per cent, compared with 72 per cent in 2009³.

The largest unions were as usual more likely to respond to the audit than smaller ones. However, unlike in 2009, three unions with more than 10,000 members did not respond this time. The proportion of the TUC's membership covered by the survey was 97.3 per cent. In 2009 the equivalent figure was 99.3 per cent. Lists of which did and did not respond are set out in Appendix A.

3. OURS is counted as part of NGSU, with which it merged in 2011.

SECTION 2

THE CLIMATE FOR EQUALITY BARGAINING

The last three years have clearly been a tough period for unions to negotiate on equality. For most, it has been more difficult to get employers to address equality issues. Thirty respondents answered a direct question on this, 17 of which said it had become more difficult, with just four saying it had got less difficult. Ten said it had stayed the same.

This is a different picture from that revealed in the 2009 audit, when unions were fairly evenly mixed on whether it had become more or less difficult, and half said it had stayed the same.

On the upside, the improved equality legislation over the last decade or so – still largely in place at the time of the audit – has continued in some cases to allow unions to put pressure on employers to do more to address equality at work. Nautilus, for example, says it has become easier to discuss equality because of the “increased awareness of employers of the legal requirements”.

However, in most cases this is outweighed by the economic crisis, austerity and public sector spending cuts, giving employers a reason – or excuse – to avoid equality improvements. As the CWU says: “In the face of austerity, companies see equality as an easy target.”

On top of this is the less positive political climate created since the replacement of the Labour government by the Conservative-LibDem coalition, with its emphasis on cutting purported burdens on business. UNISON points out: “The coalition policies... and so-called Red Tape Challenge is undermining fairness, equality and rights of workers.” In a similar vein, Unite says: “Employers feel more supported with the coalition government to attack workers’ rights. Also, many employers are focused elsewhere and they do not see equality as a priority.”

The CSP response spells out how the two sides of the story affect negotiations in the NHS: “The Equality Act and the fact that we deal with NHS employers... means that equalities issues are on the agenda [but] the need for efficiency savings means that any improvements have to be cost neutral so makes it difficult to get improvements above and beyond the need for legal compliance.”

A fuller list of union comments on the climate for equalities bargaining is set out in Appendix B.

Unions that organise in more than one sector were asked in which sectors it had become most and least difficult to address equality issues.

For the GMB the most difficult sector in which to get employers to address equality issues is the public sector, as “employers are feeling confident, even ‘gung ho’, in challenging the trade union role in the workplace”. In the private sector, GMB said its reps have been successful in engaging employers by arguing the importance of legislative compliance and the moral case for reducing conflict and improving workplace harmony.

The Musicians’ Union (MU), on the other hand, says the higher level of equality legislation relating to the public sector still makes it easier than in the private sector.

The NUJ is having most difficulty in local and national newspapers and other areas of the printed press, which are enduring massive cutbacks because of the recession coupled with the switch away from this type of media. The union is faring better in the broadcasting sector. The BBC, despite cutbacks, is still a developing part of the media and so is an easier place to negotiate equality, the union reports.

The RMT says it is most difficult to engage with employers in the sectors where the union is less organised, such as road and sea transport, because “the union has less power of persuasion and employers see any unnecessary (i.e. not statutory minimum) provision as an additional cost”. In the rail industry, on the other hand, the union is well organised and is in a position to negotiate better deals.

Unite, on the other hand, says negotiating over equality has become more difficult in all sectors, “even in some of the well organised workplaces”.

More than two in five unions (15) went as far as to say there had been instances of equality policies being diluted in the last two years in workplaces where they negotiate, while a couple of unions said the problem is more related to the implementation of policies. Below are some comments on this.

Table 2: Impact of spending cuts and austerity

	Percentage with up-to-date policies or guidelines
Campaigning against cuts from an equality perspective	31
Assessing the equality impact of redundancy and restructuring proposals	33
Avoiding discrimination in redundancy selection criteria and procedures	31
Equality impact of pay and progression freezes	22
Equality impact of pension reform	33
Equality impact of reduced facility time	19
Impact of cuts and austerity on mental health and stress at work	28
Total	34

EXAMPLES OF DILUTION OF EQUALITY POLICIES AND PRACTICES

UCU

Employers are not undertaking equality impact assessments and this requirement is now being diluted in the new Public Sector Equality Duty.

Association of Educational Psychologists

Changes to occupational sick pay; tightening of policies on how and when leave can be taken; changes to car allowances, which has been particularly detrimental to solitary workers who are disabled or female.

RMT

A train operating company in the south-east is systematically withdrawing flexible working arrangements even where they are longstanding and essential to those employees with care responsibilities.

CWU

In some organisations, workers who have disability issues have had a tendency to be managed out of the organisation.

NUJ

Many policies still remain on paper but implementation is getting harder as managements and NUJ chapels concentrate on cuts in staff numbers and wages and lack of pay increases.

UNISON

There has been a reduction in meaningful Equality Impact Assessments being completed and equality objectives are being diluted. Cases and examples of bad practice have been sent to the EHRC.

NASUWT

Under the coalition government, the Department for Education has cancelled all social partnership structures in education, diluted its guidelines on bullying and failed to carry forward the agreement on recording incidents of bullying and harassment.

Britannia Staff Union

Branch network staff wishing to go part time (usually for caring reasons) are often initially being told they have to work all day Saturday to secure a change in hours.

PCS

The Forestry Commission has cut the period allowed for career breaks from five years to two. Elsewhere staff have been refused permission to work term-time only. The union has also encountered attacks on trade union facilities time and on trade unionists' time off to attend courses.

MATERIALS ON THE EQUALITY IMPACT OF SPENDING CUTS AND AUSTERITY

To see how unions are attempting to safeguard workplace equality in the current climate, the 2012 audit questionnaire asked about guidelines or policies

TUC guidance on cuts and equality

The TUC has produced a number of briefings to highlight the impact of cuts and austerity on equality, particularly the cumulative impact of things like workforce reductions, changes to terms and conditions, welfare benefit reform and cuts in public services.

It has also sought to build links with voluntary sector and campaign groups such as Disabled People Against the Cuts. And it held an 'Equality Deficit' conference in November 2011 for trade unionists, campaigners and voluntary and community groups to forge links and enable experiences to be shared between different groups.

The following briefings and toolkits are available from www.tuc.org.uk:

- *Disabled People Fighting the Cuts:* sets out the impact the cuts are having on disabled people and suggests ways to campaign against them.
- *Women and the Cuts Toolkit:* gives guidance on how to gather information, produce an equality and human rights impact assessment and use it for campaigning and media work.
- *Public Sector Duty Toolkit:* gives guidance on how to use the public sector equality duty to hold public bodies to account.

In addition, the TUC and a number of unions are working with the Runnymede Trust on a research project mapping the impact of the cuts on different groups within the public sector workforce by gathering information from union branches. This research will be published in

criteria and procedures (11 unions). The Chartered Society of Physiotherapists' negotiators' guidance on redundancy in the NHS, for example, points out the ways in which selection criteria can be directly or indirectly discriminatory and therefore unlawful.

Other topics in this area that are the subject of guidance materials are: the impact of cuts and austerity on mental health and stress at work (10 unions); the equality impact of pay and progression freezes (eight unions); and the impact of reduced facility time on equality (seven unions).

NASUWT produced materials highlighting the particular negative impacts on different equality groups from the coalition government's cuts and education policies.

In the NHS, Unite has looked at the equality impact of the cuts that are leading to redundancy and reorganisation and having an impact on health services. Unite is also conducting a survey of members to discover the impact on its BME members.

unions have produced to help negotiators deal with the equality impact of spending cuts and austerity measures (see Table 2).

Almost half of unions (17) have produced materials on these issues, including 11 (31 per cent) who have produced guidance on assessing the equality impact of employers' redundancy and restructuring proposals. Twelve have produced material on negotiating over the equality impact of pension reform.

Also relatively common is material on campaigning against cuts from an equality perspective (11 unions) and on avoiding discrimination in redundancy selection

SECTION 3

STRUCTURES AND PRIORITIES FOR EQUALITY BARGAINING

This section outlines the framework within which trade unions are operating when pursuing equality bargaining; for example, the composition of their membership and how they determine bargaining priorities, train negotiators on equality issues and monitor outcomes.

THE COMPOSITION OF UNIONS' MEMBERSHIP

Unions were asked to provide estimated figures for the proportion of various groups in their membership (see Table 3). The responses revealed that the proportion of unions with disaggregated membership figures has increased for each protected characteristic (except for women where it has remained the same). Nevertheless there are still many gaps, with few unions monitoring disability, sexual

orientation, gender identity or migrant worker status.

Among those unions that gave membership breakdowns, the proportion of women ranges from two per cent in UCATT to 96 per cent in the British Dietetic Association (BDA). Across the unions there is an (unweighted) average of 46.2 per cent female membership (compared with 45.2 per cent in 2009).

For BME members, the proportion ranges from two per cent in Prospect, FBU, NASUWT and BALPA to 50 per cent in BFAWU, with an average of 8.7 per cent.

The proportion of members identifying as disabled ranged from 0.1 per cent in UCU to 10 per cent in Community, with an average percentage of 2.6 per cent.

The proportion of members identifying as lesbian, gay or bisexual ranged from zero in the AEP to 1.6 per cent in UCU, with an average of 0.8 per cent.

The proportion of migrant members ranged from zero in the BDA to 20 per cent in the road transport

union, URTU, with an average of 4.3 per cent.

Just four unions had figures for trans members, ranging from zero in Napo to 1 per cent in PCS.

The proportion of members aged under 26 spreads from 0.24 per cent in ASLEF to 30 per cent in URTU, with an average of 8.9 per cent. For over 50s, the range is 10 per cent (FBU) to 72 per cent (Society of Radiographers), with an average of 33.9 per cent.

THE GENERAL BARGAINING FRAMEWORK

Fewer unions deal solely with one bargaining unit in 2012 than did so three years before (two, or six per cent, compared with five, or 13 per cent, in 2009). Other than that, differences between the two audits were minor, with just under one-third of unions dealing with between 50 and 200 units and more than two-thirds (24) having bargaining units in the public sector (see Table 4).

Most unions have a fairly centralised system for setting their collective bargaining objectives. Asked how much the union tries to set a bargaining agenda at national level to be implemented throughout the union, 63 per cent replied either 'strongly' (19 per cent) or 'very strongly' (44 per cent).

PRIORITIES FOR EQUALITY BARGAINING

The setting of the equality bargaining agenda is a rather less centralised process than for the bargaining agenda in general, with only 44 per cent saying they try 'strongly' (22 per cent) or 'very strongly' (22 per cent) to set the agenda at national level.

This is perhaps one reason why the majority of those completing the questionnaire said they consulted other bodies or officers within the union in doing so. Of those answering this question 26, or 72 per cent, said they consulted others.

Unions typically have a range of methods for identifying their key priorities on equality bargaining. The most common method is through conference or executive committee decisions, a route cited by 97 per cent.

Other important methods of identifying equality priorities are through discussions between officials (cited by 67 per cent of unions) and on the basis of recommendations from equality bodies in the union (64 per cent). Just over half (53 per cent) said priorities are based on surveys or discussions with affected groups of members, e.g. black or LGB&T members. For example, in TSSA the Equalities and Diversity Organiser sets a strategy after liaison with all teams and groups, including self-organised groups.

Table 4: How many units unions bargain with

Number of bargaining units	Number of unions dealing with this number	In 2009
1	2	5
2-10	6	4
11-50	3	5
51-200	10	12
201-500	6	5
501-1,000	2	2
Over 1,000	5	7

Thirty-six per cent of unions said they used input from workplace or branch equality reps.

As well as asking how priorities in bargaining for equality are set, the questionnaire asked what they were and what they were likely to be in the future.

The responses were as diverse as the occupations and sectors that unions represent. But the one area that stands out as a priority for quite a number of unions, as in 2009, is equal pay and equal pay audits – most commonly for women but also for the other protected characteristics.

Other issues prioritised by a range of unions are career/pay progression, especially for women and BME workers, and using equality law, particularly the Public Sector Equality Duty (PSED). These issues had been envisaged as priorities for the future by respondents to the 2009 TUC Equality Audit.

Pensions equality, maternity leave and pay, race equality/fighting the far right, age equality and disability equality were also mentioned by several unions.

Looking to the future, the stand-out issue is, again, equal pay and equal pay audits. Other issues assuming increasing significance are flexible working and work-life balance, with some mentioning the problem of staff having more work to do because of others being made redundant, and ensuring compliance with the PSED, particularly relating to job cuts in the public sector. A number of unions also cited improving the progression of minorities in their industry.

Table 3: Number of unions providing figures on membership breakdown		
Category of membership	Number of unions providing data	In 2009
Women	34 (97%)	34 (97%)
BME	21 (60%)	15 (48%)
Disabled	14 (39%)	10 (29%)
LGB	6 (17%)	5 (13%)
Transgender	4 (11%)	1 (2%)
Migrant	5 (14%)	1 (2%)
Aged under 26	28 (80%)	21 (60%)
Aged over 50	27 (77%)	22 (60%)

Table 5: Training

Training issue	National paid officials (%)	Local/regional paid officials (%)	Lay negotiators (%)
General equality bargaining	44	39	53
Disability	39	36	44
Flexible working/work-life balance	33	33	47
Religion or belief	31	25	31
Working parents, parents-to-be and carers	28	28	36
Black and minority ethnic workers	22	22	39
Equal treatment for LGB workers	19	14	33
Transsexual and transgender workers	19	14	28
Migrant workers	17	22	25
Women's pay and employment	17	19	33

COMMUNICATING POLICIES

The audit questionnaire asked how equality policies were communicated to each of three possible levels of negotiators: national full-time officials, local full-time officials and lay negotiators.

Different mechanisms are more prevalent for the different groups. For national officials, the most common method of communicating equality policies/guidelines is at officer meetings; 72 per cent do this.

For local officials the most common method is through education and training (58 per cent) and for lay negotiators it is equally through education and training and via general circulars and the website (72 per cent in both cases).

TRAINING

The questionnaire asked specifically about equality training provided to the three main levels of negotiators (see Table 5). Lay negotiators are the most likely

recipients of such training. The most common topics for training are general equality bargaining, disability and flexible working/work-life balance.

MONITORING ACHIEVEMENTS

One of the most common means of monitoring collective bargaining success in terms of deals negotiated by national officers is by formal report back to the union's national, sectoral or industrial conferences or executive committee, although less than half of unions (44 per cent) say this is done.

Other most common methods for monitoring national officers' negotiations are through informal discussions (also 44 per cent) and informal report back to equality officers/committees (42 per cent). These are also the most common means used for agreements reached by lay negotiators.

One in five unions (17 per cent) has no method for monitoring deals struck by national negotiators and the same proportion has no monitoring of deals

Table 6: Equality reps

	Encouraged (%)	In rule book (%)
Overall equality rep	22	28
Women's	11	11
Race	17	6
Disability	14	3
LGB&T	17	11
Youth	11	3

reached by lay negotiators.

The CWU has a policy in place whereby all its negotiators should run past the Equality Officer any agreement that potentially has an impact on equality.

EQUALITY REPS

Ten unions (29 per cent) now have provision for general equality reps in their rulebook. These are CWU, NUJ, NUT, UNISON, NASUWT, BECTU, Napo, Unite, ASLEF and NGSU. In addition BFAWU has rulebook provision for women's equality reps, Napo has provision for race equality reps and NUT and BFAWU have provision for LGB&T reps (see Table 6).

Some other unions encourage workplaces and branches to appoint/elect equality reps without having a formal rule.

The first Rules Conference 2011 of Unite following its formation agreed to add branch equality reps to the union rulebook. It now has more than a thousand equality reps covering one or more of the equality strands. The union is currently building up a database of union equality reps and will shortly set up an equality reps' network.

SECTION 4

GUIDELINES AND NEGOTIATIONS ON EQUALITY

This section of the report examines the types of guidelines and briefings unions produce for their negotiators on a wide range of equality issues. It also investigates the extent to which negotiations on these topics have led to agreements with employers over the past three years, with some examples of what those deals contain.

GENERAL EQUALITY BARGAINING

Overall, 21 unions (58 per cent) had up-to-date policies or guidance for their negotiators or had presented claims on general equality issues, such as equality law, making the case for equality and getting facility time for equality reps.

One of the key changes in the equality environment since the 2009 audit was the passing of the Equality Act 2010, and a number of unions updated their equality guidance to negotiators to reflect this. Thirteen unions had produced new materials on equality law.

The Act brought into effect a new Public Sector Equality Duty (PSED) from April 2011, which replaced the separate duties covering race, disability and sex and extended it to cover age, religion or belief, pregnancy and maternity, sexual orientation and gender reassignment. Ten unions had produced guides to the new duty.

In September 2011, UNISON published guidance for its branches and issued them with an 'Equality Duty Protocol', step-by-step guidance on how to deal with employers that fail to implement the duty.

Unite successfully challenged claims by local authorities that there was no longer any need to carry out equality impact assessments. The union said it also "always includes equality impact assessment in all negotiations around cuts and privatisations".

A number of unions issued comprehensive guides covering all equality bargaining issues. The NUJ, with the help of the Union Modernisation Fund, produced an *Equality Reps Handbook* and an accompanying

training course. The handbook covers equality legislation and suggests workplace actions on dealing with the full range of equality issues.

Similarly the CSP has produced an *Equality and Diversity Toolkit* with the aim of bringing together information and guidance on equality legislation and best practice in a user-friendly and accessible format. First published in March 2010 and updated early in 2012, it was commended in the TUC Communications Awards in 2011.

The RMT established a web-based source of advice to support vulnerable workers covering legal protections for individuals and advice on ensuring collective agreements do not inadvertently result in a discriminatory impact.

NASUWT has produced guidance for its reps on forced marriages, which covers the role of schools and school staff in dealing with incidences of suspected forced marriage. The guidance includes information on the definition and characteristics of forced marriage. Its launch included a presentation to the union's equality officers at a briefing session to ensure that the information was disseminated throughout UK branches of the union.

NASUWT has also carried out research into the misuse of capability and competence procedures in schools and colleges, examining the profile of capability/competency casework by gender, ethnicity, age and disability. The results of this research are being used to direct the union's collective bargaining on capability and competence procedures.

A new TUC Guide to Equality Law was published in 2011. It provides clear and comprehensive guidance on the Equality Act 2010 and the full range of family-related leave and pay rights and flexible working. It is available from the TUC's website (www.tuc.org.uk).

Table 7: General equality bargaining

	% with up-to-date policies or guidelines	In 2009
Equality law	36	30
Public sector equality duty	28	28
Equality and procurement	19	19
Materials to raise awareness and build the case for equality	44	33
Advice on recognition and facilities time for equality reps	17	23
Total	58	65

On equality reps, the PCS produced an equality reps' handbook, which sets out the role of branch equality officers, includes a model facilities agreement and provides guidance on important actions for equality reps and relevant legislation.

The CWU issued guidance to its equality reps suggesting they make more use of the statutory rights to representation linked to grievance and discipline, where there is an equality link.

Results (Table 7)

Fourteen unions had achieved results for members in this area since the 2009 audit.

In the NHS, the Equality and Diversity Council (comprising NHS trade unions together with representatives from NHS employers, the Department of Health, patient groups, regulators and the voluntary sector) has developed an Equality Delivery System designed to "help NHS organisations improve equality performance" and "embed equality into mainstream NHS business".

An equal opportunities statement issued by the Home Office in April 2011 widens the usual grounds for non-discrimination (such as gender and religion or belief) and includes "any other factor irrelevant to a person's work". It states:

"Home Office HR procedures (for example, for recruitment and selection, staff appraisals and career progression) are based on an assessment of an individual's ability and their suitability for the work. We are committed to providing all staff with opportunities to maximise their skills and achieve their potential, offering flexible working arrangements wherever possible."

More radically, it effectively bans staff from membership of hate groups, stating:

"The Home Office has concluded that membership of any group or organisation that promotes hatred in its philosophy, aims, principles or policies, based on gender, gender identity, race, disability, sexual orientation, religion or belief, is incompatible with the work and values of the Home Office."

NASUWT applied negotiating pressure that resulted in agreement that the Department for Children, Schools and Families undertake regular monitoring of the teaching workforce related to issues of diversity and equality. The union also participated in transparent pay policies and developing a model pay policy that requires schools to have systems that are compliant with the equal pay provisions in the Equality Act 2010.

The expansion of academy schools has led NASUWT to negotiate equal opportunities policies with two groups of academy schools – ARK and Oasis.

In the private sector, Usdaw reported Tesco's recent statement on equal opportunities in recruitment and selection. Among other things it pointed out that "giving everyone the same opportunity to get on may mean taking a different approach with different groups". For example, an Asian Network has been established to help understand issues affecting Asian staff.

Prospect worked with Draxpower to develop a new diversity policy, improve the training of managers on equality issues with a focus on gender and disability, and produce a survey to identify priority areas for action.

Four unions reported success in negotiating recognition and facility time for reps dealing with equality issues. The NUJ did so at the BBC and the CWU negotiated with Santander to get one day paid per month specifically for equality reps. Unite's representative agreement with RBS now provides for equal facilities and time off for workplace equality reps (as well as the union learning and safety reps).

It took a campaign and industrial action over facility time by NASUWT in 2010 to get an improved agreement with the Jersey State Employment Board that included time off for reps to deal with equality issues. The same union also negotiated time off for equality reps at the United Church Schools Trust.

**FLEXIBLE WORKING/
WORK-LIFE BALANCE**

Several unions, including the CSP, have issued guidance for their officers and reps on the statutory right to request flexible working, which also suggests negotiating to extend the availability of flexible working beyond parents and carers to whom the statutory right applies.

Usdaw's publication *Making Flexible Working Work for Usdaw Members* and the NUJ's *Flexible Working* briefing paper are very practical, providing tips to help employees better present their flexible working requests to maximise the chance of acceptance. Usdaw's document also encourages reps to use the flexible working agenda to organise the workplace.

Results (Table 8)

Sixteen unions reported they had negotiated agreements on flexible working since 2009.

Unite negotiated a 'transitional' flexible working policy at Age UK to cover the period of an office move. The policy is applicable to all permanent staff working under a contract of employment or on a fixed-term contract of 12 months or more. Flexible

	% with up-to-date policies or guidelines	In 2009
Flexitime	39	37
Job sharing	39	38
Reduced hours	47	47
Term-time working	25	30
Compressed hours	25	26
Flexible working for all workers	44	44
Tackling the long-hours culture	33	42
Total	69	47

options include variable hours, a compressed week, home working, part-time working, term-time working, annualised hours and job sharing.

Tesco's flexible working agreement with Usdaw differentiates between employees at different levels, stating that those working above certain grades will sometimes "need to display a degree of flexibility [to meet business needs] where required". For example, those on Level 3 and above "may be required to attend planned business meetings or respond to urgent business via email/ phone on the day/s they are not working".

To supplement the information on family-related leave and pay collated by the audit questionnaire with locally negotiated information, the LRD conducted a survey of union workplace reps on flexible working deals. Just under half of the respondents to that survey had negotiated a flexible working policy that is better than statutory.

The vast majority of improvements are around extending the eligibility criteria for those entitled to make requests. Most of them extend the right to request to any employee - subject to business or service needs.

At Hertfordshire Police (UNISON), an employee may make a request but if there is a conflict those covered by the statutory right to request get priority.

At Principality Building Society (Unite), all may apply for flexible working but those who are not parents or carers covered by the statutory procedure are not entitled to be accompanied at meetings to discuss the request or to appeal the decision.

Some agreements include types of flexible working other than those in the table above. For example, Two Sisters Food Group (Unite) allows for shift changing, while the agreement at Angus (UNISON) allows for home working, staggered hours, annualised hours and shift swapping as well as reduced hours, term-time working, compressed hours and standard flexitime.

At Avon Fire and Rescue Service (FBU), staff can request to work days only, nights only, weekdays only, etc.

Dacorum Borough Council (UNISON) has just introduced a new flexible working scheme in addition to the flexitime scheme. This allows remote working, working from home and working at different times. It is monitored by targets and outcomes to ensure the scheme is not abused.

Diamond Light Source (Prospect) has a very flexible system involving a flexitime scheme with no core hours. Instead, reasonable daily limits are agreed with the line manager.

Occasional examples were given where cuts and austerity have encouraged wider adoption of flexible working. An AEP rep at Bath and NE Somerset Council said the council's 'Change' programme is

Table 9: Working parents, parents-to-be and carers

	% with up-to-date policies or guidelines	In 2009
Maternity pay above statutory	47	49
Maternity leave above statutory	44	49
Paternity (maternity support) pay above statutory	47	47
Paternity (maternity support) leave above statutory	44	47
Additional Paternity Leave and Pay above statutory	42	n/a
Adoption leave and pay above statutory	47	47
Dependency leave/carers' leave above statutory	42	37
Parental leave above statutory	42	37
Childcare support (e.g. crèche facilities, childcare vouchers)	33	40
Time off for ante-natal support above statutory	39	35
Time off for fertility treatment	33	26
Total	57	58

n/a: not asked

encouraging flexible working to make a more efficient use of resources. And Mole Valley District Council (UNISON) allows staff to request unlimited unpaid leave, mostly for cost-reduction reasons.

However, only one in 10 reps in the survey said getting access to or maintaining flexible working arrangements had become easier in the last two years, while three in 10 said it had got harder.

WORKING PARENTS, PARENTS-TO-BE AND CARERS

Fifty eight per cent of unions responding to the audit have up-to-date policies or guidelines on negotiating support for working parents and carers.

There was a new statutory development in this area with the implementation of the Additional Paternity Leave and Pay Regulations from April 2011. APL&P enable mothers to transfer up to 26 weeks' maternity leave and any unused Statutory Maternity Pay or Maternity Allowance to the father or their partner from 20 weeks after birth. Two in five unions have issued guidance to their negotiators on this new scheme.

The RMT has issued a policy statement that urges negotiators to aim for all maternity and paternity leave to be paid at an individual's full rate of pay and for such payments to apply regardless of length of service and to contract workers as well as employees. It also suggests bargaining for more flexibility on how parental leave can be taken.

Usdaw has produced 'calculation guides' to help negotiators bargain for maternity and paternity pay above the statutory minimum. It goes through a simple step-by-step process for calculating what the cost would be to employers of such improvements.

UNISON has a policy to negotiate for paid leave for both men and women to undergo fertility treatment and for such leave not to be treated as sickness absence. It is currently drafting a model agreement based on best practice in this area. In addition, it has adopted a policy to negotiate for equal treatment for parents having children through a surrogate.⁴

⁴ A person who has a child through surrogacy has no statutory rights to either maternity or adoption leave. They can apply for a parental order once the child is six weeks old but they are then entitled to only statutory parental leave, which is 13 weeks' unpaid leave that can be taken up to child's fifth birthday.

Results (Table 9)

Fifteen unions (43 per cent) reported negotiated successes in this area since the 2009 audit. This was most commonly on provision of better maternity pay (33 per cent of unions reported such deals).

At least a quarter of unions reported having negotiated agreements with employers that provided for maternity leave, paternity leave and pay and adoption leave and pay at above the statutory level.

In addition, eight unions (22 per cent) said they had reached deals on APL&P that improved on the statutory scheme. It is perhaps surprising, given that this is the most recent change in family-friendly rights, that there has not been more activity in this area.

Usdaw's agreement with Morrisons, which was implemented from November 2011, made improvements to maternity, adoption and paternity leave and pay (and also family bereavement leave) as part of the company's well-being agenda. Women on maternity leave now receive full basic pay for 12 weeks, at least 50 per cent of basic pay for 14 weeks and 13 weeks at SMP. In addition, mothers who return to work after maternity leave receive an extra 'top up' payment after being back at work for 13 weeks. This is not available to those who do not return and there is a clawback policy should the employee leave within 12 months of returning. New fathers are entitled to four weeks' paternity leave, with two weeks at full pay and two weeks at half pay. In the case of multiple births, fathers have an entitlement to an additional two weeks' paternity leave on full pay.

RMT reports on a number of negotiated improvements to leave and pay for new parents since the 2009 audit. For example, at Chiltern Railways maternity was increased from 12 weeks at full pay and 27 weeks at SMP to 15 weeks on full pay and 24 weeks at SMP. At Serco and Merseyrail, new fathers are now entitled to three weeks' paternity leave on full pay.

Nine unions have struck agreements on childcare support. Prospect reports a deal at National Power Grid that provides access to tax-free childcare vouchers and the ability to purchase additional leave.

To supplement the information on family-related leave and pay in the 2012 TUC Equality Audit, the LRD surveyed local union negotiators and analysed material on its Payline database to investigate further recent developments in this area. A report is provided at Appendix C.

WOMEN'S PAY AND EMPLOYMENT

Half of the respondent unions (18) have policies or guidelines on negotiating for improved pay and employment opportunities for women, compared to

**Table 10:
Women's pay and employment**

	% with up-to-date policies or guidelines	In 2009
Equal pay audits	25	33
Equal pay for work of equal value	25	40
Tackling women's low pay	22	20
Improving part timers' pay and benefits	14	33
Positive action on occupational segregation	11	28
Workplace policies on domestic violence	19	35
Women's health and safety at work	43	n/a
Total	50	63

n/a: not asked

63 per cent of those responding to the 2009 audit.

Equal pay was cited as a top priority for a number of unions responding to this year's audit. One of these is the NUJ, which has produced campaign and briefing materials and an equal pay toolkit for reps.

In the NHS, the E&D sub group (joint trade union and employers group) has worked with advice from the Equality and Human Rights Commission to produce a pay equality toolkit, which was launched in summer 2011. It is designed to help NHS organisations undertake equal pay audits, because, as the employers' side declares: "NHS Employers believes that whilst it is not a stated legal requirement under the Equality Act 2010, NHS organisations would find it very difficult to fully comply with their

responsibilities under the Act without undertaking equal pay audits."

ASLEF has produced a guide covering a full range of employment issues affecting women on the railways. *Women at Work – a guide for ASLEF representatives* has 20 sections covering a comprehensive range of matters such as toilet facilities for women, maternity issues and domestic violence.

The 2012 audit questionnaire contained a question on women's health and safety that was not included in the 2009 audit.

Four in 10 unions have produced guidance on health and safety issues that are particularly relevant to women. These include the CSP's *Hazards Checklist for Pregnant Members*, UNISON's guide *The Menopause and Work*, Usdaw's guide on safe journeys to work and the NUJ's website section on women's safety. The NUJ advice is very specific to journalists' work and covers working alone both inside and outside the workplace, reporting in war zones and reporting riots and civil disorder.

Results (Table 10)

Eighteen unions reported success in negotiating agreements aimed at improving women's pay and employment since the 2009 audit.

Nine said they had reached agreement with employers for equal pay audits to be carried out. BT's Equal Pay Review for 2012 led to agreement with Prospect that 0.3 per cent of the paybill would be set aside for equal pay adjustments. The money will be paid to an anticipated minimum of 4,000 people who are paid at a low level in their pay range.

Unite reports that the Royal Bank of Scotland has been engaging with the union on carrying out an equal pay audit to highlight any disparities in pay between men and women doing similar roles. As part of the outcome of the 2011 salary negotiations, the bank agreed to share the initial analysis of its equal pay audit with Unite during the first quarter of 2011. The next step will be to ensure that the bank quickly tackles any gender pay gaps and bias in its pay processes.

In addition, the National Australia Group agreed with Unite as part of the 2011 pay settlement that an equal pay audit would be carried out and any issues arising would be addressed within the year.

The NUJ has reached an agreement with Lexis Nexis for an equal pay audit to be carried out.

PCS won an important legal victory in its long running claims for equal pay between staff employed at two civil service agencies of the Department for Transport. It won the right to compare the pay of staff employed at the DVLA with that of the Driving Standards Agency. The DfT had sought to argue that such cross-agency comparisons were not possible.

Eight unions said they had agreed measures to tackle low pay that mainly affects women, such as

minimum flat-rate increases for people in the lowest grades. RMT has negotiated such pay deals with East Coast, Virgin West Coast and Merseyrail.

Prospect's 2011 pay settlement with Accenture included an additional budgeted amount for proportionately higher pay increases for those who are low in their pay range.

Unite persuaded HSBC to abolish 'Band A' in its pay system, which was dominated by longer-serving, female, often 'key-time' staff living in rural and poorer urban areas who have limited career prospects.

Five unions reported success in improving part-timers' pay and benefits. UCU, which has long worked to stop excessive use of part-time hourly paid contracts, reached an agreement with the University of Bradford in 2011, limiting the use of such contracts. According to the union, it will mean many existing employees on these contracts will be offered standard part-time contracts with the university.

Seven unions reported success in negotiating workplace policies for dealing with domestic violence.

Usdaw negotiated a policy with the Co-op Group, which supports both victims of domestic violence and perpetrators who are committed to seeking professional help. The employer agrees to develop training programmes to raise awareness of the issue among Co-op staff and equip managers to identify if an employee is experiencing difficulties. It also agreed to provide staff with initial support and offer them referrals. The policy acknowledges victims of domestic violence may have performance problems such as chronic absenteeism or lower productivity and pledges that, when dealing with these, "the Co-operative will make reasonable efforts to consider all aspects of the employee's situation and/or safety problems".

Nine unions said they had succeeded in getting employers to address matters related to women's health and safety. For example, Prospect reached an agreement with the Marine Management Organisation on women's workwear and protective personal equipment. The NUJ had agreed a policy with the *Newcastle Chronicle* on the safety of women journalists leaving work after late shifts.

BLACK AND MINORITY ETHNIC WORKERS

Fifty-six per cent of unions had up-to-date guidelines or policies for negotiators relating to BME workers.

UNISON produced guidance for its branches and an associated training course on *Challenging Racism in the Workplace*, taking account of new legal provisions in the Equality Act 2010. It proposes a three-step plan to challenge discrimination and

	% with up-to-date policies or guidelines	In 2009
Dealing with racism and the far right	39	33
Monitoring access to employment, training and promotion opportunities by ethnicity	36	40
Positive action to address under-representation	31	33
Monitoring grievances and disciplinaries by ethnicity	28	24
Equal pay audits covering ethnicity	25	21
Total	56	58

promote equal opportunities and good race relations in the workplace. In short, the steps are:

- gather information from BME members in the workplace to uncover any discriminatory practices that have been taking place covertly
- evaluate the information from that process and develop a branch action plan to tackle problems
- negotiate solutions with management.

It also provides guidance on drawing up race or single equality schemes with employers, including pressing them to monitor the composition of the workforce and carry out equality impact assessments. It identifies and gives guidance on a number of bargaining issues that are of particular relevance to BME workers. These are: recruitment and selection; training; promotions and acting up; short-term, temporary and agency working; pay and working conditions; and performance assessment, disciplinary action and redundancies.

Usdaw pressed Tesco to help it increase the participation of black and Asian members in the Tesco/Usdaw negotiating and consultative structures. After the success of an earlier management-union programme to increase the diversity in those structures, Usdaw felt the efforts would flounder if there were not sustained action to ensure it continued.

In the run-up to the union's 2011 elections to the structures it therefore asked Tesco for:

- help to identify stores with large numbers of black and Asian workers
- a commitment from senior management to the aims and objectives of the programme
- paid release for black and Asian members to attend union 'get-togethers' designed to encourage/support them

- to get involved in the structures
- paid release for experienced black and Asian reps to attend the get-togethers.

Results (Table 11)

Two in five unions (15) said they had reached agreements with employers on issues affecting BME workers since the 2009 audit. Most commonly these covered dealing with racism and the far right in the workplace, with eight unions reporting that they had negotiated such agreements in the past three years.

PCS reports that the Prison Service and Home Office now prohibit staff from being members of far-right organisations. Prison Service policy states that staff are not permitted to be members of the BNP, the National Front, Combat 18 or any other group or organisation promoting racism. Similarly, the FBU has agreed statements with a number of fire and rescue services regarding membership of far-right organisations.

NASUWT reported that it has secured a commitment from the Secretary of State for Education to introduce a ban on members of the BNP and other far-right groups from working in education. In addition, schools now have the clear right to address racist, bigoted and other forms of prejudice-related behaviour by teachers.

Five unions reported that they had agreed positive action measures with employers to address under-representation of BME workers. One was Prospect, which worked with Northern Power Grid and the National Skills Academy for Power to address under-representation and said that this has had "a significant impact on the ethnic diversity of new graduate and HNC-level recruits".

Three unions succeeded in getting employers to

	% with up-to-date policies or guidelines	In 2009
Time off for English training	17	12
Employment on collectively agreed terms	19	14
Compliance with statutory employment standards	19	14
Use of agencies	19	14
Prevention of unreasonable deduction from wages	14	12
Recognition of foreign qualifications	19	19
Total	36	35

monitor BME workers' access to employment, training and promotion opportunities. For example, Unite worked with South East BMW's human resources department to develop a strategy for monitoring the relative progress and development of BME workers.

MIGRANT WORKERS

Thirty-six per cent of unions have up-to-date bargaining guidance or policies on topics related to migrant workers.

Usdaw's guidance to members on organising migrant workers covers internal union efforts to encourage migrant workers to get involved but also suggests what should be asked of employers. This includes: access to translators where necessary; access to training courses, such as English for Speakers of Other Languages (ESOL) or Skills for Life; and extended leave arrangements. It points out, for example, that the typical one day's leave to attend a funeral is unlikely to be sufficient for migrant workers.

Results (Table 12)

Eight unions (22 per cent) reported concluding successful negotiations on issues related to migrant workers since the 2009 audit.

Usdaw's emphasis on negotiating access to language training has borne fruit at Keystone Distribution and Sainsbury's Supply chain where detailed learning agreements make specific reference to ESOL. In addition, more than 200 of its members at a Morrison's distribution site in Sittingbourne, Kent, were given paid time off to attend ESOL classes.

UNISON also reached an agreement covering language courses and workplace learning with Veolia. Unite has secured time off for English language training at DHL, particularly for warehouse agency workers, as part of an equal opportunities commitment.

On agency working, RMT secured a deal with East Coast to bring its (agency) gateline staff in-house. This brought "huge improvements in all terms and conditions" to these previously lower-paid staff.

The union intended to put in a similar proposal to franchise-holder Abellion to cover all agency staff including gateline, security and cleaning workers. The RMT points out that its action in bringing services in-house benefits all disadvantaged groups as they are disproportionately represented among the lower-paid agency staff.

Nautilus, which is seeking to organise migrant workers in the British shipping industry, has developed recruitment materials targeted at them. It reports that it has reached agreements with employers to ensure adherence to international benchmarks on pay and conditions.

Unite had success at getting change at government level to benefit migrant workers. It reported that, together with other organisations, its campaign for the rights of migrant domestic workers has succeeded in restoring the Overseas Domestic Worker Visa, which provides a vital safeguard for vulnerable and often isolated workers. Its members in Gibraltar have, after a long campaign, also reached agreement with the Gibraltar government on decent living and working conditions for Moroccan people living there.

LESBIAN, GAY AND BISEXUAL WORKERS

Sixteen unions (44 per cent) had up-to-date guidance and policies on equal treatment for lesbian, gay and bisexual workers.

Among other things, the new PSED in the Equality Act 2010 has required public sector organisations and those providing public services to have due regard to the need to eliminate unlawful

Table 13: Equal treatment for lesbian, gay and bisexual workers

	% with up-to-date policies or guidelines	In 2009
Family-friendly policies for same-sex partners	33	42
Equivalent pension benefits for civil partners	22	47
Equivalent pension benefits for all same-sex partners	25	35
Access to other benefits for civil partners	17	28
Access to other benefits for all same-sex partners	22	26
Tackling homophobia and biphobia in the workplace	39	42
Monitoring by sexual orientation	25	19
Total	44	56

discrimination and harassment and to advance equality of opportunity for LGB&T people from April 2011. UNISON's updated factsheet on LGB workers' rights advised its branches on steps employers could take to demonstrate compliance with the PSED in relation to sexual orientation.

These include:

- ensure job advertisements state a commitment to LGB equality
- ensure there is a robust equality policy that explicitly mentions sexual orientation
- adopt a harassment policy that is sensitive as to whether or to whom LGB workers wish to 'come out' and that makes specific reference to homophobic and biphobic harassment, including a confidential complaints procedure and steps to tackle such harassment
- check that family-friendly and work-life balance policies contain inclusive language, such as 'parents' rather than 'mothers' and 'fathers', enable LGB workers to access them without having to 'prove' their entitlement, and do not discriminate
- ensure employers' IT firewalls and filters don't automatically block emails with words such as 'lesbian', which some do
- press for LGB equality policies to be publicised widely, to include an action plan and to be monitored
- ensure staff and line manager training includes LGB issues.

UNISON also has a detailed Model Statement on Sexual Orientation and Gender Identity.

The NUJ's model agreement on LGB&T rights emphasises a commitment to stamping out homophobia but also states that "assumptions will not be made that partners of staff and students are always of the opposite sex". It proposes that LGB&T issues are included in all equality training, internal attitude surveys and monitoring of harassment complaints.

Results (Table 13)

Ten unions (28 per cent) reported that since the 2009 audit they had reached deals with employers on LGB equal treatment, including seven who had negotiated family-friendly policies that make specific reference to same-sex partners.⁵

For example, the NUJ's agreement with the BBC has a preamble to its paternity leave clauses that states: "The following provisions apply to partners of the parent/primary carer, including those of the same sex."

Similarly, Usdaw's paternity leave agreement with Tesco states that the entitlement is available to an employee who is the father of the child, is married to or is the partner or civil partner of the child's mother or father, or is married to, or is the partner or civil partner of the child's adopter.

5. Same-sex partners have access to the same statutory family leave and pay rights as opposite-sex partners but it is good practice for employers to specifically reference them in their own policies and agreements on maternity, adoption and paternity leave and pay.

TRANS WORKERS

Sixteen unions (44 per cent) have current guidance or briefings on policies and practices related to transsexual and/or transgender workers.

In some unions the guidance in this area is presented within guidance on issues facing LGB workers, but a number of unions provided examples of materials dedicated solely to trans issues.

Some unions had updated their guidance to keep up with the law since the 2009 audit. The Equality Act 2010 extended the protection of trans workers to cover those who decide to live permanently as the opposite gender to their birth sex but have not undergone and do not intend to undergo a medical procedure to reassign their gender.

ASLEF's *Best Practice Guidelines for Transgender Workers* and UNISON's fact sheet *Transgender Workers' Rights* both set out the unions' own policies, a summary of the relevant law and detailed measures for negotiations with employers. These include: the process for dealing with an individual undergoing gender reassignment; communicating with fellow workers; arranging time off and other aspects related to the medical process; records and confidentiality; redeployment and retirement if requested; use of single-sex facilities; dress codes; and use of pronouns (whether they are known as 'he', 'she', etc).

Results

Five unions reported that they had achieved success on this issue since 2009, including the FBU. The TUC Equality Audit 2005 reported on two groundbreaking policies the FBU had agreed with individual fire brigades, and now it has agreed a detailed policy document at national level with the Chief Fire Officers Association (CFOA).

The policy, entitled 'Trans: a practical guide for fire & rescue services', states that "not only is discrimination towards transsexual people unlawful, it wastes talents and lives and must be considered unacceptable by everyone who subscribes to the values of the Fire & Rescue Service". It provides detailed guidance to Fire & Rescue Services on good practice covering:

- employing and retaining trans people, including a "robust Equality Impact Assessment process which considers issues relating to gender identity and gender reassignment and which involves consultation with trans community groups"
- recruitment and interviews, which starts with job adverts that should state that applications from trans people are welcome. However, it says that "trans equality groups currently advise that employers do not monitor gender history or gender identity in the recruitment process"

- Criminal Records Bureau disclosure applications: there is a "special process for trans people who are concerned about the confidentiality of their gender history but still ensures that any previous criminal history cannot be hidden"
- changing gender identity, including: an action plan for handling the transition at work; absences from work; communication with colleagues; change of name; use of facilities; uniform; harassment; confidentiality; and record keeping
- a glossary of terms and a summary of the law.

NASUWT negotiated a gender reassignment policy for staff at the United Church Schools Trust (UCST) and the United Learning Trust (ULT), which run academy schools. These policies cover: the definition of trans; the process for gender reassignment; legal protections; time off for medical treatment; reasonable adjustments for someone who is or has transitioned; pensions and insurance; and bullying and harassment. NASUWT has also worked with the DCSF to produce specialist guidance on sexist, sexual and transphobic bullying.

DISABILITY

Twenty-two unions (61 per cent) had current guidance or policy on negotiating around disability. While this commonly relates to the provision of reasonable adjustments (applying to 17 unions), 15 unions had materials on adopting the social model of disability and 14 on provision of disability leave.

Udaw's pamphlet *Supporting Disabled Members* covers the legal rights of disabled workers as incorporated in the Equality Act 2010. It shows reps how they can use the law to negotiate reasonable adjustments and help protect disabled employees from bullying and harassment and other acts of discrimination. The union has published a separate leaflet explaining how the Equality Act 2010 has improved the rights of disabled people.

NASUWT has produced a model disability leave policy, which was informed by the expertise and experiences of disabled teachers.

UNISON also has a model agreement on disability leave, whose purpose is "to provide disabled employees with reasonable paid time off work for reasons related to their impairment". It explains that disability is distinct from sick leave, and includes time when an employee is well but absent from work for a disability-related reason. It gives a range of examples of reasons for the leave, including training with a guide dog, recovery time after dialysis treatment, physiotherapy and time while the employee is suffering from depression, stress or mental illness.

UNISON has also published a detailed guide for

Table 14: Disability		
	% with up-to-date policies or guidelines	In 2009
Adopted social model of disability	42	30
Advice on reasonable adjustments	47	42
Provision of disability leave	39	30
Redeployment and retraining for those developing impairments	36	33
Monitoring of employment, training and promotion opportunities	31	28
Positive action to tackle under-representation	31	30
Mental health at work	36	n/a
Total	60	54

n/a: not asked

safety reps called *Disability and Health and Safety*. This covers the relevant legislation and presents 'tools' that can be used to help ensure the workplace is safe and healthy for all, including risk assessments, reasonable adjustments, disability leave and the Access to Work and Two Ticks schemes. It also has a comprehensive list of actions that UNISON branches can take to ensure that 'health and safety' is not used to discriminate against disabled people.

A number of unions have produced materials on specific disabilities, such as Usdaw's guidance on supporting members with asthma. UNISON has detailed guidance on *Working with HIV*, which sets out how to fight discrimination against people with HIV/AIDS and how to negotiate with employers to

ensure the condition is treated as a disability. The FBU has published very thorough guidance for its officials and members on dyslexia. It provides details of the different types of dyslexia and the process that the union believes should be followed in supporting members who have or are suspected of having the condition.

Results (Table 14)

Almost half of unions (17) reported that they had negotiated new agreements or policies with employers on disability since 2009, most commonly (13 unions) being those that were aimed at ensuring effective reasonable adjustments were made.

Usdaw's agreement with The Co-operative, "Managing Colleagues with Disability", suggests examples of adjustments that might be appropriate. These are:

- adjustments to working hours, including adjustments to the length of shift and start or finish times
- allocation of some duties to other employees
- amending systems of working to assist employees
- adjustments to equipment.

It adds: "The Group encourages every manager to give full consideration to any suggested adjustment and to explore all ways to retain and develop our employees."

CWU reports that it has negotiated a 'disability passport' (along with similar documents for other groups such as carers) with BT. It enables those with special needs that might impact on their work to explain their circumstances in their own words and to discuss what help they might need. The passport helps ensure continuity of reasonable adjustments should line managers or job roles change. It is voluntary to complete and the information recorded is kept confidential. The Royal Mail is piloting a similar project called RAM, standing for 'reasonable adjustment made', which is held on a 'RAM card'.

NASUWT has negotiated a disability leave policy for schools in Somerset.

The FBU says a number of fire and rescue services have introduced HIV/AIDS policies, while Prospect reports that the Department for Transport has recently adopted such a policy.

The 2012 audit questionnaire added new questions on disability that asked about guidance and negotiations on mental health at work. Over a third of unions said they had produced such guidance and five unions said they had reached agreements with employers on mental health.

Prospect, for example, has worked with Centrica to improve the company's response to staff with medium to long-term mental and physical impairments. It also says the new diversity policy

Table 15: Religion and belief		
	% with up-to-date policies or guidelines	In 2009
Dress codes and uniforms	36	33
Organisation of working time to take account of religious holidays or practices	31	26
Workplace prayer facilities	33	26
Accommodating different dietary needs	28	28
Total	50	42

agreed at Draxpower station focuses on the treatment of staff with mental illness.

To supplement the information on union guidance and negotiating on mental health at work in the 2012 TUC Equality Audit, the LRD carried out a survey of union reps and negotiators to investigate developments in this area. An article based on the survey, which was published in *Workplace Report* magazine in May 2012, is reproduced in this report at Appendix D.

RELIGION AND BELIEF

Half of unions (18) had up-to-date policies or guidance on negotiating around religion and belief, these most commonly (in 13 cases) covering dress codes and uniforms and in 12 cases the provision of workplace prayer facilities.

Eleven unions had materials on organisation of working time to take account of religious holidays or practices. One is the CWU, which has published a document giving an overview of employment rights and practical guidance on leave linked to religious observance.

Results (Table 15)

Eight unions reported that they had reached collective agreements on religion or belief issues since the 2009 audit.

Most commonly, these set out arrangements for observing religious holidays or practices. For example, NASUWT has negotiated a policy with the United Church Schools Trust and the United Learning Trust for reasonable time off for religious festivals and also flexible working arrangements that can be used to observe religious festivals.

Four unions said they had reached agreements

with employers on prayer facilities, including Unite at BMW, which had secured a designated area on site for Muslim workers to wash their feet before prayer (rather than the previous practice of using a sink shared by other workers).

AGE

Half of the unions (18) had up-to-date guidelines on age equality covering younger and/or older workers.

The most commonly produced materials relate to retirement – perhaps not surprisingly since the period covered by this audit saw the removal of the statutory Default Retirement Age (DRA), which had permitted employers to forcibly retire employees on or after their 65th birthday provided they followed the correct procedure. Twelve unions had produced materials giving guidance to their negotiators on the removal of fixed retirement ages and 11 had given guidance on ensuring provision for flexible retirement options.

The NUJ had produced a general *Age Equality* factsheet which, as well as summarising the relevant law on age and employment in the UK and the Republic of Ireland, provides advice for reps on negotiating on age equality. This suggests:

- checking agreements and policies are not discriminatory against particular age groups
- reviewing pay scales and benefits for unlawful age discrimination
- checking company pension schemes comply with age discrimination law⁶
- obtaining an employer commitment to age equality
- pushing for anti-discrimination

6. There are specific statutory exemptions from discrimination law for various age-related pension scheme rules.

Table 16: Age equality

	% with up-to-date policies or guidelines	In 2009
Adult rates of pay for younger workers	22	21
Removing age limits from recruitment	11	28
Removing fixed retirement ages	33	28
Flexible retirement	31	35
Age/service-related benefits	22	35
Health and safety of older workers	22	19
Total	60	54

- training for line managers
- monitoring job applications, promotions and training by age
- checking management recruitment materials for unlawful age discrimination.

Results (Table 16)

Since the 2009 audit, unions appear to have been fairly busy negotiating new agreements on age, with 17 (47 per cent) reporting bargaining activity in this area.

Despite the legal changes on retirement, PCS among others found itself dealing with cases where employers were trying to force staff to retire against their wishes. The Vehicle and Operator Services Agency was attempting to make four PCS members retire. However, the union got the decision overturned and the fixed retirement age removed.

Prospect has negotiated an 'Approaching Retirement' policy with BAE Systems, which aims to "promote a smoother transition to retirement". It comprises up to 26 extra days' leave for those who

are planning to retire, to be taken as one day per week during the 26 weeks up to retirement paid on normal pay (i.e. basic pay plus shift and contractual allowances where appropriate). The policy allows employees the opportunity to attend a pre-retirement course or receive counselling/support prior to retirement.

HARASSMENT AND BULLYING

Fifty-six per cent of unions have current policies or guidance on harassment and bullying policies referring to specific groups of workers.

ASLEF's very detailed guide, *More than Just a Union*, emphasises the equalities aspect of this issue and indeed it is subtitled *Respect, equal opportunities and equal treatment for all*. It includes the separate but linked topic of victimisation. It gives many illustrations of incidents that would constitute harassment against different groups, such as LGB workers and disabled workers, and sets out what can be done to prevent or remedy it.

ASLEF's guide also presents a 'best practice equality and harassment policy', which can be used by reps when negotiating harassment procedures with their employers. It includes a model equal opportunities statement, a detailed description of what 'equality of opportunity' does and does not mean, explanation of the terms 'discrimination', 'harassment and bullying' and 'victimisation', information on who is responsible for the policy and a detailed procedure for complaints.

The RMT has produced a model policy and procedure to help negotiators on this topic and a guide to representing or advising a member who is complaining of harassment or bullying.

Both UNISON and CSP have detailed guidance for negotiators and reps that gives pointers on how to approach management, checklists and awareness-raising activities, such as surveys of staff/members to assess the extent of bullying and harassment in the workplace.

Results (Table 17)

Fourteen unions (39 per cent) said they had negotiated new harassment and bullying policies with employers since the 2009 audit, though not all explicitly refer to the specific groups listed in the table. Nine of them had reached agreements that referred to gender, ethnic origin and/or disability; eight had reached agreements that referred to sexual orientation and/or age; and six had reached agreements that referred to religion and belief, nationality and/or gender reassignment. Four said they had also reached agreements that specifically referred to HIV status.

Usdaw had agreed a policy with Tesco in 2011

Table 17: Harassment and bullying

	% with up-to-date policies or guidelines	In 2009
Gender	42	47
Ethnic origin	42	44
Disability	39	44
Sexual orientation	42	47
Age	36	44
Religion and belief	33	44
Nationality	33	40
Gender reassignment	33	37
HIV status	22	30
Total	56	61

which notes that harassment and bullying is not always face-to-face but may be carried out via email or other means. It explains that it can be done via "automatic supervision methods – such as computer recording of downtime from work, or recording of telephone conversations – if these are not universally applied to all workers".

A comprehensive and detailed policy was negotiated between the RMT, including its 'harassment reps', and London Underground in 2010. It explicitly refers to all the protected characteristics and sets out both a formal and an informal process for dealing with complaints. Responsibilities are detailed for five different parties involved in the process, namely harassment advisers, accredited managers, employing managers, externally trained investigators and trade union harassment and bullying representatives, as well as employees themselves.

At the end of 2009 NASUWT worked with the then DCSF to produce specialist guidance on sexist, sexual and transphobic bullying in schools that provided guidance on dealing with the bullying of teachers as well as of pupils. It was also agreed that incidents of bullying of staff and pupils should be reported and recorded in schools. However, the union reports that the coalition government has failed to take this forward. NASUWT said it was continuing to lobby on the issue.

Unite has negotiated dignity at work policies with Stagecoach and the Community Relations Council since the 2009 audit.

APPENDIX A

UNIONS' RESPONSE TO THE 2012 TUC EQUALITY AUDIT

Table 18: Unions responding to the audit, ranked by membership at Jan 2011

Union	Membership	Union	Membership
Unite	1,414,154	TSSA	26,830
UNISON	1,374,500	NUJ	26,809
GMB	602,212	BECTU	25,375
Usdaw	398,859	SoR	23,389
NUT	308,447	BFAWU	22,127
PCS	292,091	ASLEF	18,867
NASUWT	282,890	FDA	18,421
CWU	208,714	Nautilus International	15,778
ATL	123,210	NGSU*	12,578
UCU	121,953	URTU	12,317
Prospect	120,349	Napo	8,568
UCATT	110,559	BALPA	8,423
RMT	77,031	ADVANCE	7,003
Community	67,488	BDA	6,783
FBU	43,306	AEP	3,341
CSP	36,901	BSU	3,328
Equity	36,501	NACO	1,999
MU	30,064	WGGB	1,207

* includes OURS, which merged with NGSU in 2011

Table 19: Unions not responding to the audit, ranked by membership at Jan 2011

Union	Membership	Union	Membership
EIS	59,371	NASS	2,418
POA	35,000	BACM-TEAM	2,365
ACCORD	28,902	AEGIS	2,227
SCP	8,888	NUM	1,713
Unity	4,595	YISA	1,365
ASPECT	4,206	SURGE	1,302
UCAC	3,946	BOS TU	1,221
HCSA	3,399	AFA	533
PFA	2,688	NACODS	350

APPENDIX B

THE CLIMATE FOR EQUALITY BARGAINING OVER THE LAST TWO YEARS

MORE DIFFICULT

Usdaw

Less money is available: store budgets are under pressure and this has led to the focus shifting away from the needs of employees to the needs of the business. In addition, economic uncertainty, cuts and the change of government have made it more difficult to bargain on equality.

Prospect

It has become increasingly difficult for people to get approval to work part-time or to job share. It appears that employers are becoming less likely to accept the on-costs and managerial effort of having two members of staff rather than one. This has been a growing issue in areas such as the Forestry Commission, the Scottish heritage bodies and the Scottish Research Establishment.

There is increased reluctance to make reasonable adjustments for disabilities, it being seen as simpler and cheaper to reach a Compromise Agreement to dismiss the individual. There are also reports that employers have moved to dismiss disabled workers quickly to avoid any discrimination claims, which has resulted in members being increasingly reluctant to raise grievances over such issues. Mental health issues seem to be growing; sometimes these have arisen in response to employer action on performance. In other cases there may be some quite serious mental health issues that can be very challenging to deal with from a union perspective as well as within the workplace.

CWU

In the face of austerity companies see equality as an easy target.

NUJ

Large redundancies and the reductions in the numbers of journalists employed in offices has meant that issues such as flexible working requests that do not have the legislative back up of issues such as disability and reasonable adjustments, for example, are becoming harder to achieve as the employer can easily point to the lack of cover for those wanting reduced hours. The employers use such arguments as lack of staff and available cash, and offset available funds for increases against any cost of equality issues. Employers are unlikely to give more-than-statutory benefits on maternity leave, etc. Chapels equally are unlikely to press for these when major issues such as redundancies and staff number reductions take up most of a chapel's energy.

UNISON

Employers are reluctant to negotiate on equality issues. Although the risk of legal action is an effective lever there is still a lack of political will and commitment to bring about change. The election of the coalition government has changed the political landscape for the worse. There is less imperative to negotiate and the coalition policies and attack on employment rights and maternity rights and the so-called Red Tape Challenge is undermining fairness, equality and rights of workers, their families and the protected equality groups.

NASUWT

Since the election of the coalition government, it has become significantly more difficult to get employers to address equality issues. The union has voiced opposition to a number of government actions and proposals, including cuts to, and the reform of, the Equality and Human Rights Commission (EHRC), the watering down of the Equality Act 2010, the abolition of the Women's National Commission, the inclusion of the Equality Act 2010 in the Red Tape Challenge and also the review of the Specific Duties in the Equality Act.

Now that it is no longer compulsory for employers to carry out an Equality Impact Assessment with the involvement of the trade unions, employers are failing to examine in depth the equality impact of their policies.

Lack of enforcement by the EHRC has meant that schools feel they can ignore the Equality Duties with impunity.

GMB

The climate is worse because of: a general backlash in the media; the policies of the coalition government; reduced facility time; employers not fully understanding the implementation of the Equality Act; and weak equality legislation.

Unite

Employers use the recession and government cuts as an excuse.

NGSU

The current economic climate means business is focusing on cost challenges.

PCS

The austerity measures have a huge impact on the equality agenda. The number of women out of work is at a 23-year high, with cutbacks in the public sector hitting women particularly hard. Having a Tory-led government in power has seen the equality agenda slide.

LESS DIFFICULT

MU

The climate has been improved because of the Equality Act, education, claims and case law.

NAUTILUS

Employers are increasingly aware of the legal requirements.

NO RESPONSE OR STAYED THE SAME

UCU

The climate is staying the same as the implementation of the Equality Act has been important over the last 18 months.

CSP

The Equality Act and the fact that we deal with NHS employers, who are probably more up on equalities issues than a lot of other employers, means that equalities issues are on the agenda. But the need to make efficiency savings and the major NHS reorganisation acts the other way. The need for efficiency savings means that any improvements have to be cost neutral, making it difficult to get improvements above the legal requirements unless they are already in place. For example, the NHS maternity pay agreement has been more generous than SMP for a long time but any further improvements would have to be cost neutral.

FBU

The government has made equality lower on the agenda for fire and rescue services. Austerity measures are also used to make cuts that are not given proper equality and impact assessments.

TSSA

We have worked harder and got better results.

APPENDIX C

WORKING PARENTS AND PARENTS-TO-BE: THE STATE OF COLLECTIVE BARGAINING

To supplement the information received from national unions as part of the 2012 TUC Equality Audit, the LRD analysed information on maternity and paternity leave and pay on the LRD's Payline database, which has more than 2,300 collective agreements recorded on it.

The LRD also carried out a brief survey of workplace reps to get an idea of trends in the development of family-friendly leave policies in recent years.

The survey indicated that there had been rather more activity in the area of paternity leave and pay in the last couple of years than on maternity leave and pay. Just under a quarter (24 per cent) had seen changes on maternity while more than a third (37 per cent) had seen changes to paternity leave and pay. This is perhaps not surprising as there has been a focus in recent years on encouraging more shared parenting and getting fathers to take more time out of the workplace. However, the negotiated improvements do not reflect the main change in the legal framework over the period of the survey, which was the introduction of Additional Paternity Leave and Pay (APL&P) and we are just at the very early stages of seeing any bargaining around this.

It is clear is that there is some confusion between ordinary paternity leave (leave taken around the time of the birth) and the new APL. Asked whether their employer provided better-than statutory pay for APL, more than a quarter of reps said they did, but in a number of cases the descriptions were actually about enhanced pay for ordinary paternity leave. In fact, the research found only 10 organisations that provided enhanced pay for fathers (or mothers' partners) while on APL, whereas 242 agreements provided enhanced pay for the ordinary paternity leave period.

In addition, while a large number said there had been improvements to paternity leave, these were almost all updates to existing policies to incorporate the statutory APL&P provisions.

MATERNITY LEAVE AND PAY

While almost one in four reps said there had been changes in maternity provision in their workplace in the past two years, in most cases this was merely to keep collective agreements up to date with statutory rights.

However, there were one or two examples of newly enhanced provision. At the College of West Anglia, all women now receive the first six weeks at 90 per cent of pay whereas under the Statutory Maternity Pay scheme only women who have 26 weeks' service by the end of the 15th week before the expected week of childbirth (EWC) qualify for this.⁷ Norfolk County Council has also started to provide all women with full pay during the first six weeks of leave.

Other ways in which maternity provision has been improved include an arrangement at Staffordshire Fire & Rescue, where pregnant women fire fighters are given support to stay on their shifts if appropriate, where previously they were made to work days. At HSBC there is a right not just to request but a right to return to work at 0.5 of full hours if required.

On the downside, in September 2011 Plymouth City Council cut its previous contractual enhancements to maternity pay so women are now entitled to just the statutory minimum. Previously the Council had paid the first six weeks at 90 per cent of normal pay, followed by either 12 weeks at 50 per cent pay or 20 weeks at 30 per cent pay.

Payline records 256 collective agreements on maternity leave and pay that in some way go beyond the minimum statutory requirements. This represents 79 per cent of all current maternity agreements (325) recorded on the database.

7. Women who do not meet this service criteria are usually entitled to claim Maternity Allowance, which is a benefit paid at the flat rate of £135.45 a week throughout the 39 weeks for which statutory maternity payments are available.

Table 20: Percentage of maternity agreements above statutory minimum

Health	100
Finance and business services	94
Public administration	94
Energy, water, mining, nuclear	91
Education (F&HE)	91
Transport and communications	85
Other services	64
Retail, wholesale, hotels and catering	63
Manufacturing (engineering and metal products)	56
Manufacturing (other)	37
Manufacturing (chemical, mineral and metals)	33
All	79

This proportion is rather higher than was revealed in a similar exercise carried out for the 2009 TUC Equality Audit, when 58 per cent of collective agreements recorded were better than the statutory regime. This may be partly to do with some 'acceleration' of negotiated provisions to stay ahead of the statutory floor: the earlier research was carried out at a time when there had been recent rapid improvements in statutory entitlements.

Staff in large unionised organisations are much more likely than those in small ones to benefit from enhanced maternity provisions. In organisations with more than 300 employees, 84 per cent have better-than-statutory provision, compared with 59 per cent in organisations with fewer than 300.

Agreements in the public sector are more likely to beat statutory entitlements (93 per cent do so) than those in the private sector (where 66 per cent do so).

Enhanced maternity provision is also more prevalent in certain industrial sectors (see *Table 20*); however, the Payline data is less reliable here as it contains only a small number of agreements in some sectors. Those sectors faring less well are manufacturing, retail, wholesale, hotels and catering and other services.

The ways in which the agreements tend to surpass the legal minimum are as follows:

- they provide, in one way or another, for more maternity pay than the legal minimum, which is six weeks at 90 per cent of average earnings plus a further 33 weeks at a flat rate of £135.45 a week (or 90 per cent of average earnings, whichever is the lower) and/or
- they provide for some paid leave without the statutory service requirement of 26 weeks prior to the 'qualifying week'.

CONTRACTUALLY ENHANCED MATERNITY PAY

The enhanced maternity pay levels tend to come through providing women with a percentage of their normal contractual pay beyond the first six weeks, meaning women do not drop down at that point to the low flat rate SMP of £135.45 a week. Almost three-quarters (232; 71 per cent) of maternity deals stored on Payline provide for this.

Two thirds (215; 66 per cent) of all maternity agreements pay women at full pay for a period of their leave. The median number of weeks at full pay is 16 (this is often followed by a further period of enhanced pay, for example 50 per cent normal pay).

The best contractual maternity pay schemes provide a year of leave at full pay. There are four such deals on the Payline database, of which three are in the private sector, at Ford, Jaguar and Landrover (the latter two were previously owned by Ford), while the only such agreement in the public sector is at Registers of Scotland, where employees with a year's service are entitled to a year's leave on full pay.

Other good agreements are at Royal Mail Holdings (Quadrant Catering), which provides 40 weeks' maternity leave on full pay, and at five organisations with 39 weeks on full pay – the Cabinet Office, the Department for Culture, Media and Sport, Macmillan Publishers, the Scottish Court Service and Staffordshire Fire Brigade.

Most of these top deals are restricted to staff with one year's service, though at Ford and the Cabinet Office the service requirement is only 26 weeks.

Waiving service criteria

While the law provides for one year's maternity leave for all staff, irrespective of their service, it does not require employers to pay women during any of this leave unless they have 26 weeks' service by the end of the fifteenth week before the EWC (those who do not qualify are usually eligible for Maternity Allowance). However, some unions have managed to negotiate contractual pay for women who do not meet the service qualification for SMP; the Payline database includes 14 agreements along these lines.

Table 21: Percentage of paternity agreements above statutory minimum

Health	88
Public administration	85
Transport and communications	81
Manufacturing (chemical, mineral and metals)	80
Education	80
Other services	71
Manufacturing (engineering and metal products)	69
Finance and business services	67
Manufacturing (other)	61
Retail, wholesale, hotels and catering	55
Energy, water, mining, nuclear	46
Total	76

The best of these deals are at the Civil Aviation Authority, the Crown Prosecution Service and the Department for Business, Innovation and Skills, which all provide 26 weeks on full pay to all women regardless of service.

PATERNITY LEAVE AND PAY

Just under four in ten reps in the survey said there had been alterations in their paternity leave and pay arrangements in the last two years. These were overwhelmingly changes to accommodate the new statutory APL&P scheme.

However, there were a few examples of improved ordinary paternity leave and pay provision, including at City & Guilds Institute, where provision was increased from two weeks on full pay to four weeks on full pay.

At Plymouth City Council matters had gone the other way, as with maternity provision. The entitlement was reduced from one week at full pay (and one at Statutory Paternity Pay, which is £135.45 a week) to the statutory floor of two weeks at SPP.

Payline records 257 paternity leave agreements that go beyond the statutory minimum, accounting

for 76 per cent of the 340 paternity agreements on the Payline database. This proportion is rather higher than in 2009, when 63 per cent of our collective agreements were better than the statutory regime.

As with maternity, enhanced paternity deals are more common in large organisations than in small ones, though the differences are less wide than for maternity. In organisations with more than 300 employees, 80 per cent have better-than-statutory provision. This compares with 66 per cent in organisations with fewer than 300.

And agreements in the public sector are more likely to improve on statutory entitlements (84 per cent do so) than those in the private sector (where 67 per cent do so).

Enhanced paternity provision is also more prevalent in certain industrial sectors (see Table 21); again, however, the Payline data is less reliable here as it contains only a small number of agreements in some sectors. Those sectors faring less well than average are manufacturing (except chemical, mineral and metal products), finance and business services, retail, wholesale, hotels and catering, energy and water and other services.

The ways in which agreements improve upon the statutory minimum paternity provision are to:

- provide some pay above the statutory rate
- provide for more than 10 days' leave
- provide paternity leave without a service requirement
- allow paternity leave to be split, rather than taken as a single block of one or two weeks.

A total of 242 (72 per cent) provide for a period of paid leave at a percentage of salary, rather than at the flat rate for SPP providing full pay for between two and twenty days.

And 28 of the 340 Payline paternity agreements allow for more than 10 days' leave, the longest period of extra leave being 10 days and the median period of extra leave being five days.

The best deals are at City & Guilds of London Institute, Guernsey Post Office, Royal Mail (Customer Services) and Royal Mail Holdings (Quadrant Catering), which give full pay for 20 days. Another 14 provide full pay for 15 days. While many of these provisions are available only to those with a year's service, the Highways Agency gives full pay for 15 days irrespective of service.

Additional Paternity Leave and Pay

APL&P enables a mother to transfer up to 26 weeks of her statutory maternity leave entitlement and any used SMP or Maternity Allowance (MA) to the father of the child or her partner from 20 weeks after the birth. It came into effect for parents of children born on or after 3 April 2011.

Table 22: Examples of enhanced APL provision

Employer	Enhancement above statutory level
Bangor University	Paternity pay during weeks 20–26 after birth is at 50% of normal pay plus Additional Statutory Paternity Pay or 90% of normal salary if this is less
Bank of England	If the mother takes less than 26 weeks' leave, the father will get full pay for any unused weeks taken from 20 weeks after childbirth
Bath University	Eligible staff get up to six weeks at half pay
BT (NewGRID grades and managers, professionals and salespeople)	Any APL taken is paid at basic pay for two weeks, half basic pay for eight weeks and reverts to ASPP for the remainder.
Diamond Light Source Ltd	Full pay during weeks 20–26 after birth
Ecclesiastical Insurance	APL during weeks 20–26 after birth is paid at 50% of salary
Nestle UK	13 weeks at full pay
Oxford Mental Health Trust	If APL is taken in preference to maternity leave it will be paid at full pay for eight weeks and half pay for 18 weeks up to total of 26 weeks
The Scottish Parliament	APL during weeks 20–26 after birth are fully paid
University College London	Statutory except no service requirement to be eligible for leave, though 26 weeks' service is needed to be eligible for pay.

More than one in four reps in the survey said their APL provision was better, in pay terms, than the statutory minimum, but the information they provided did not bear this out. And as stated above, there was much confusion between ordinary paternity leave and pay and this new provision.

Nevertheless, combining information from the reps' survey and from the Payline database reveals a small amount of evidence of the beginnings of collective negotiations to improve upon statutory APL&P provision.

There were 10 agreements that improved on the statutory APL&P scheme (see Table 22), compared to the 257 agreements that improve on the statutory provisions for ordinary paternity leave and pay. Of this handful of agreements, the most common improvement was to provide contractually enhanced pay to employees taking APL between weeks 20 and 26 after childbirth. As few women employees return to work before 26 weeks' leave (13 per cent),⁸ relatively few fathers and partners may benefit from enhancing this period of APL.

There were a few agreements that provided

significant improvements on the statutory APL&P scheme, in particular, Nestle UK (13 weeks on full pay for an employee on APL), Oxford Mental Health Trust (eight weeks on full pay and 18 weeks on half pay), and BT (two weeks on full pay and eight weeks on half pay).

8. BIS/DWP Maternity and Paternity Rights and Women Returners Survey 2009/10.

APPENDIX D

MENTAL HEALTH AT WORK

The following is an article published in *Workplace Report* in May 2012 based partly on a survey of negotiators conducted for the TUC Equality Audit 2012.

A NEED TO NEGOTIATE OVER GROWING PROBLEM OF MENTAL HEALTH AT WORK

The 2012 TUC Disabled Workers' Conference noted that "discrimination against people with mental health impairments is still rife" and called for good workplace policies to prevent it. *Workplace Report* investigates what 'good policies' might include.

Disability equality legislation has been considerably strengthened in recent years, but it seems to have passed by those with mental health problems. According to a recent report by the OECD group of developed nations, people with a mental disorder are two to three times as likely to be unemployed as those without, while those who are in work are "struggling to cope".

The OECD says one in five workers suffers from a mental illness, such as depression or anxiety, and that three in four of those with mental illness report reduced productivity at work, compared to one in four workers without a mental disorder. Work absences are also much more frequent for workers with mental illness.

Ominously, about 30–50 per cent of all new disability benefit claims in OECD countries are now attributed to mental ill health.

The TUC points out that "people with mental health problems experience some of the most severe disability discrimination in the workplace". Indeed, a survey of 1,822 UK employers by online counselling and coaching firm Mentaline found one in five employers admitting that it would be less likely to employ somebody it knew had a history of mental illness. Two-thirds said they would be more sympathetic towards an employee with a physical than a mental illness. And two in five (39 per cent) of employers said that they "struggled" to take mental health issues seriously.

It is not surprising, then, that according to a 2010 survey by the mental health charity MIND of the one-fifth of UK workers who have called in sick because of stress, a staggering 93 per cent say they gave a different explanation for their absence.

Employees with certain mental health impairments are protected under the 2010 Equality Act (formerly contained within the Disability Discrimination Act). In such cases employers are obliged to make 'reasonable adjustments' to take account of their condition. However, to be covered by the legal provisions, a person would need to show their condition meets the legal definition of a disability.

As this is quite restricted, it is important for employers to have an inclusive workplace mental well-being policy to help achieve an environment supportive to those with mental health problems.

In the UK there have been many initiatives by mental health campaign groups and charities, such as MIND, the Richmond Fellowship and Mindful Employer (an employer scheme to help employees with mental health issues stay in work), to encourage employers to adopt positive policies towards employing people with mental health problems and supporting those in work.

Unions have also been on the case. The forthcoming TUC Equality Audit 2012 will show that one in three national unions have current policies or guidelines for their negotiators on the subject. And the TUC itself produced very practical guidance in *Representing and Supporting Members with Mental Health Problems at Work* in 2008.

Indeed, the Equality and Human Rights Commission itself urges unions to "negotiate and implement a mental health workplace policy" with employers. In a campaign pack for union representatives, it says: "By putting mental health on the bargaining agenda, reps can persuade managers and employers to adopt a less prejudiced attitude to mental health."

However, a survey of 170 union workplace reps carried out by the Labour Research Department for the TUC Equality Audit 2012 suggests that employers with comprehensive policies of this type are few and far between. Just under a quarter of the reps said their employer definitely had some sort of policy

commitment on good mental health in the workplace, but many of these were restricted to work-related stress. Although work-related stress policies are very important in themselves, they do not generally address the full range of mental health problems that hinder many people from participating fully in the workplace.

Workplace Report has examined the policies provided as part of the survey to establish some of the key points that are covered in the best workplace policies on mental ill health at work.

The first of four key points is:

- 1. An acknowledgement that many people with mental health problems can be excellent employees if they receive the necessary support and flexibility, and development of a workplace culture that goes with this and that encourages employees to be as open as possible about any mental health problems.**

Shop and distribution workers' union Usdaw has produced a briefing for reps on supporting members with mental health issues. This points out that "most people with a mental health problem would rather not tell anyone because they worry about the stigma and discrimination they may face. Seven out of 10 people with a mental health problem say they have suffered discrimination because of it."

But the union says members with mental health problems may nevertheless benefit from being open. It points out that they "may have poor attendance or performance and this may lead to them being disciplined under capability procedures or absence management policies. They may also find that aspects of their job make their condition worse."

One employer whose policy does take an inclusive approach is GKN Aerospace at Filton. The aims of its Mental Health Procedure include "to develop a culture that is supportive and non-judgemental of people with mental health problems" and to provide "assistance for employees in managing mental ill health in themselves and in others".

The procedure also states: "GKN Filton will not disadvantage unfairly an employee who admits to suffering from mental ill health issues. An employee will be considered for any position for which he or she has the necessary skills and experience and are fit to undertake."

GKN points out that, while it "has no control over external or personal factors", it is "committed to develop procedures, employee development measures and support systems to help all employees understand and

recognise the causes of mental ill health, and take positive steps to manage mental ill health effectively". It says this includes "encouraging employees to achieve a good work-life balance in order to enhance their well-being".

The policy has a detailed allocation of responsibilities for managing mental ill health, which it says "rests at all levels of the organisation". As well as roles for HR, business managers and occupational health, it specifies that: "Trade union representatives shall be responsible for the provision of representation and support as appropriate."

The Highways Agency policy also homes in on the culture of the workplace. It states: "The most important single adjustment a manager needs to make may well be about attitudes and assumptions to mental health."

Another important aspect of a progressive approach to dealing with mental health problems at work is:

- 2. Flexible sickness absence management procedures that record absence related to a person's mental disability separately from other sickness absence and allow time off for therapy or self help.**

The TUC says employees with mental health problems should be allowed flexibility around the standard sickness absence arrangements because they (as well as those with other disabling conditions) may have higher than average time off and so be caught out by sickness absence management policies.

Its guide *Representing and Supporting Members with Mental Health Problems at Work* says that sickness absence management procedures should allow for separate recording of absence related to a person's disability, including where that disability is due to mental ill health.

Just under one in four respondents to the Labour Research Department's survey of union reps said their employers allowed some form of leave to deal with mental health problems outside the standard arrangements (although this was sometimes on an informal basis rather than a laid-down policy).

One is St Helens and Knowsley Teaching Hospitals NHS Trust, whose policy states, under the heading Disability-Related Absence: "Where an absence occurs which is related to a disability, the absence may be considered a reasonable adjustment when it is to allow the employee time for treatment, assessment or rehabilitation. Such absences will not be recorded as an absence due to sickness but as a disability-related

absence. (The employee must be classified as disabled under the Equality Act 2010 and have previously disclosed their disability.)”

A rep from Dorset Fire and Rescue said their employer's practice was: “For those who have or who develop a disability as defined by the DDA (now the Equality Act), sickness absence related to their disability will be recorded separately from other sickness absence.” The position was similar at Devon and Somerset Fire and Rescue, Norfolk County Council, the London Borough of Haringey and Aberdeen University.

The policy at City and Islington College says: “Absences due to disability related reasons will be recorded separately from sickness absence records. HR will advise on all disability related cases in relation to trigger points and reasonable adjustments.”

It is also useful to have a provision for ‘disability leave’, allowing an employee and employer to plan for any regular attendances, such as for counselling appointments that have to take place during work hours. Electricity generator Sembcorp, for example, allows people to attend counselling where required, and a rep from delivery firm DHL said the company had agreed to this in an individual case, though this was a discretionary act rather than a policy.

HMRC has introduced a provision called Disability Adjustment Leave (separate from disability-related sickness absence) which provides “reasonable paid time off from work for disability related assessment, treatment or rehabilitation”, generally when the individual is otherwise fit for work. In the case of employees with a mental health disability as defined by the Equality Act, the leave might be available for counselling, psychotherapy or psychologist appointments.

The policy document says the leave “is usually for a fixed period or periods, that can be planned in advance by the jobholder and their line manager, and for which there is a fixed end date”. It adds that the leave “should be agreed for a specified reason and will mostly be a one-off or short term absence”.

Good mental health policies also cover:

3. Adjustments to the employee's working arrangements or job where appropriate to a person's condition, such as the offer of flexibility over working time or work patterns or a change in tasks.

One employer that sets out a comprehensive range of adjustments which might be applicable

to employees with mental health problems is the Highways Agency. These include:

- re-arranging responsibilities within the team, for example, exchanging a single demanding project for a job consisting of a number of smaller tasks
- transferring the employee to another job
- part-time working, job-sharing or flexible working hours
- additional support and a period of adaptation during changes of work organisation.

However, it also points out that “occasionally, people with mental health problems experience difficulties with concentration and/or memory”. In these cases, relevant adjustments may include providing partitions or reducing noise in the working environment, getting the line manager to provide written instructions or even making use electronic reminder solutions.

The Highways Agency guidance, along with that from a number of other organisations, also notes that people with mental health problems might be on medication that has side effects, such as lethargy in the mornings. It says “managers should allow for this and consider allowing for a later start”.

The final key part of a good workplace policy on mental ill health should include provision for:

4. Rehabilitation through flexible working and support for employees starting/returning to work after a period of absence due to mental ill health.

For those who have a long period of absence because of mental health problems, it is often particularly important to have some form of intervention programme to ease their return. The Royal Bank of Scotland (RBS) did have a ‘Back to Health, Back to Work’ policy, through which the employer paid for private treatment to facilitate earlier returns to work; although the formal policy has ‘stalled’, according to an RBS union rep, the bank still provides and pays for early intervention, including CBT (cognitive behavioural therapy), for mental health issues such as stress, depression and anxiety.

A number of large employers provide help through bought-in counselling services and employee assistance programmes, and also through occupational health (OH) departments where they have them. In particular, many emergency services, due the nature of the work, have such procedures, including the Royal Berkshire Fire and Rescue. The service refers

The law and mental disability

Under the 2010 Equality Act, an employer must make reasonable adjustments for a person defined as having a disability. A person is defined as having a disability if they have “a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities”.

The Employment Appeal Tribunal has given further guidance as to when a mental health condition is likely to be regarded as a disability under equality laws in the case of *J v DLA Piper UKEAT/0263/09*. It indicated that ‘reactive depression’, in the form of the “anxiety, stress and low mood” a person suffers as a reaction to adverse circumstances such as problems at work, is less likely to qualify, although each case must be examined on its own individual facts, in particular the severity of the condition. Meanwhile, ‘clinical depression’ will almost always be regarded as a disability.

In practice, the requirement for a condition to be ‘long-term’ will often limit the scope for adverse reactions to life events to amount to disability. An impairment has a ‘long-term’ effect if it lasts for at least 12 months, or for the rest of the individual's life. Recurring conditions may amount to a disability if they are likely to recur.

In terms of workplace policies, it may be best to have a catch-all clause such as that at the Highways Agency. Its guidance does not restrict the provision of reasonable adjustments to employees covered by the letter of the law, but states: “If someone has a mental health condition it is sensible to assume they may be covered by the DDA and to actively consider what adjustments, if any, are necessary to help support them do the job. Considering reasonable adjustments is the sign of a good employer.”

employees “under the strictest confidence to OH immediately where the employee reports they are suffering from stress, depression or anxiety or where their certification indicates they are absent from the workplace for this reason”.

A detailed Workplace Rehabilitation Policy is in place at St Helens and Knowsley Teaching Hospitals NHS Trust, which defines rehabilitation as “the restoration of the employee to the

fullest physical, psychological and vocational status consistent with that prior to their pre-absence status or to which they are capable”.

If the Trust's OH department recommends rehabilitation for someone returning to work following a period of extended sick leave, a rehabilitation co-ordinator will assess what measures are necessary. Possibilities relevant to those with mental health issues include: ‘job modification’, involving changes to hours, shift patterns and work organisation; ‘condition management’, which is support/advice to enable the individual to “optimise the self-management of their condition”; and other measures such as a buddy system, a mentor or supernumerary status.

While some of the organisations mentioned in this article have excellent policies relating to mental ill health, they tend to be few and far between and there is a need for more work to get the issues better understood and measures more widely adopted.

And clearly polices take things only so far: a number of reps responding to the survey pointed out that, while their employer had good policies on paper, they as union reps had to fight tooth and nail for them to be properly implemented in practice. One from a major electronics company said: “Although policies exist [in this company] they are not implemented as many managers are not aware of the signs or do not pay particular attention to their employees.” As ever, it will be up to union reps to make the policies stick.

Austerity and mental ill health

“The share of workers exposed to work-related stress, or job strain has increased in the past decade all across the OECD,” says the OECD report, adding that “increasing job insecurity and pressure in today’s workplaces could drive a rise in mental health problems in the years ahead”.

The OECD’s picture of a rise in mental health problems due to job insecurity is already borne out in the UK by surveys carried out by both the Chartered Institute of Personnel and Development (CIPD) and the Labour Research Department (LRD).

The CIPD’s latest (2011) annual sickness absence survey of employers revealed that, for the first time, stress has become the most common cause of long-term sickness absence in the UK and that there is a link between mental ill health and job insecurity. “Employers planning to make redundancies in the next six months are significantly more likely to report an increase in mental health problems among their staff (51 per cent compared with 32 per cent who are not planning redundancies).”

It revealed that the public sector was being worst hit. CIPD adviser Jill Miller said: “Stress is a particular challenge in the public sector where the sheer amount of major change and restructuring would appear to be the root cause.”

And the LRD survey of 170 union workplace reps carried out for the TUC Equality Audit 2012 also points to a growing problem of mental ill health in the workplace. Out of 102 reps able to report on the level of mental health problems in their workplace in the last two years, 60 per cent said there had been an increase. Two in five respondents (39 per cent) said there had been no change in that period and just one reported a decrease.

Union reps in the public sector were more likely to say there had been a rise in reported mental health problems, 75 per cent of those who could answer saying the number had increased in the last two years compared with 48 per cent in the private sector.

And reps in larger workplaces were significantly more likely to report a rise in problems: more than three-quarters of those who could answer (79 per cent) in workplaces with 500 or more employees said there had been an increase compared with 36 per cent from workplaces with fewer than 500.

Half of all the reps in the survey said the union had represented members with problems arising out of mental ill health over the last two years; another fifth did not know if it had.



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