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KBS Covid-19 Research Impact Papers, No. 5

# UK Equality Law and Covid-19

## Employee vulnerability and employment relations in the workplace

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## Employee vulnerability and employment relations in the workplace

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## Summary

Covid-19 has exposed the vulnerability of many individuals at work and has accentuated how pre-existing inequalities in employment have remained unchanged, or have been exacerbated by the pandemic.

This paper contextualises the discussion of UK equality and anti-discrimination law within the Covid-19 crisis. It outlines the legal landscape germane to this discussion, including the Equality Act 2010, the Human Rights Act 1998, the Health and Safety at Work Act 1974 and the Flexible Working Regulations 2014. It reviews developing legal issues, putting forward a selection of relevant case law examples to demonstrate a variety of challenges in the employment relationship and the potential outcomes associated with the threat of inequality in the workplace.

The discussion includes policy concerns and implications relating to the UK Equality Law in the context of ongoing changes brought about by the crisis.

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# 1. Introduction

Both employers and employees have demonstrated resilience in their responses to the unforeseen circumstances brought about by the Covid-19 pandemic. Supported by Information and Communications Technologies, there have been a variety of operational alterations that businesses have had to make in order to survive the ensuing social and economic threats. For workers[1], the immediate impact came in the form of increased health-related concerns, home-working mandates, furloughs, and layoffs[2]. Employees not only witnessed the transformation of their working practices, but also grappled with adjustments to their home and family life. The degree of work-centred alterations needed were demonstrably shaped by shifting governmental stipulations, managerial decrees, and other contextual factors, such as individual life circumstances, job roles and industry sectors. Separate sets of issues became pertinent to workers whose roles were amenable to homeworking, individuals who had to stop work, and others who were on the frontline (e.g. in healthcare). Recent anecdotal evidence also suggests that after spending a concerted amount of time adapting to homeworking arrangements, the prospect of switching back to traditional office working brings its own set of complexities (e.g. health-related fears of commuting, disruptions to altered work and non-work routines)[3].

The sudden changes necessitated by the onset of Covid-19 uncovered certain positive aspects to employee experiences (for example, increased flexibility and work-life integration)[4]. While reflexive organisational capabilities were crucial in sustaining the continuity of businesses and in safeguarding employment, there have patently been several harmful effects stemming from the rapid transformations in working practices. For employees, the detrimental outcomes might have included facing fragmented employee relations[5], work intensification[6], decreased autonomy[7] and greater emotional exertion at work[8]. To compound these concerns, individuals continue to deal with outside-of-work pandemic-induced pressures such as health-related anxiety, erratic travel restrictions[9], additional childcare responsibilities and rising costs[10].

The crisis has exposed the vulnerability of many individuals in the workforce and has underlined how pre-existing inequalities in employment have remained unchanged, and indeed, been made worse as a consequence of Covid-19. With ongoing recruitment and retention challenges in several industries[11] and heightened concerns about worker health and wellbeing, it is vital that organisations engage with various aspects of employment law that might give rise to equality claims [spanning contracts of employment (including tele-homeworking), health and safety issues, privacy and data protection, the monitoring of workers, performance management, redundancies, and whistleblowing, among others]. Indeed, it is anticipated that in the coming years, the employment courts will see a rising number of cases relating to the aforementioned issues[12].

The current paper draws attention to the potential legal challenges presented by the pandemic. Equality-related concerns appear not only when employees work from their private home spaces but also when returning to traditional office premises[13]. Relatedly, varied models of work not only have a bearing on the lived experiences of staff but also raise broader issues relevant to legalisation-specific discrimination. It should be acknowledged that the majority of employment law cases commence and finish at employment tribunal level and are not subject to appeal. Based on a review of developing legal issues and using pertinent illustrative cases, the discussion points herein cover the following: an outline of the UK Equality Act 2010 and other noteworthy legislation that shapes the nature of work organisation; case law examples demonstrating the challenges and potential outcomes associated with equality issues in the employment relationship; and policy implications relating to UK Equality Law in the context of the pandemic.

**The crisis has exposed the vulnerability of many individuals in the workforce and has underlined how pre-existing inequalities in employment have remained unchanged.**

# 2. The legal framework

## 2.1 The Equality Act 2010

An array of legal provisions are applicable to equality issues arising from the Covid- 19 pandemic. The Equality Act 2010 prohibits discrimination on the grounds of the following protected characteristics:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Sex
- Sexual orientation
- Race
- Religion or belief

Discrimination, in employment or otherwise, can be direct and overt or indirect and covert. Prohibited conduct, which is unlawful under the Act includes direct discrimination; associative discrimination; perceptive discrimination; indirect discrimination; victimisation and harassment.

*Direct discrimination* occurs where a person is treated less favourably because of a protected characteristic. Discrimination by perception and association are also within direct discrimination. The Equality Act 2010 protects against discrimination suffered by an individual because of someone's perception of them or their association with someone who has a protected characteristic. Associative and perception discrimination do not apply in the case of civil partnerships and marriages, or pregnancy and maternity. *Indirect discrimination* is defined as the application of a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic.

*Victimisation* can apply to someone who may not possess a relevant protected characteristic. This is where someone is treated less favourably because they have done one of the 'protected acts', which includes for example, bringing discrimination proceedings, assisting in proceedings or making a complaint under the Act. It is sufficient if the protected act was an 'important cause' of the less favourable treatment or had a 'significant influence' on it. *Harassment* includes verbal/non-verbal behaviour which creates an intimidating, hostile, degrading, or offensive environment and is intended or has the effect of violating a person's dignity.

### Other relevant legislative caveats

#### Combined discrimination

Individuals clearly belong to diverse social groups (e.g. sex, sexual orientation, ethnicity, religion, age) and have intersecting social identities[14] which can shape their experience at work. The Equality Act 2010 (section 14) also contains a provision relating to combined discrimination, which means persons could bring a claim on the basis that they have two or more protected characteristics and that is why they have been discriminated against (also known as intersectional discrimination). However, this section has never been brought into effect because it has been regarded as too complex and onerous by the UK government.

#### Disclosure of health information and disability status

Under section 60 of the Equality Act 2010, an employer must not ask an applicant about their health or disability prior to offering them a position. Such questions can only be asked to find out whether the applicant would be able to participate in an assessment to test their suitability for the post; to make reasonable adjustments to enable the disabled person to take part in the recruitment process; to find out whether an applicant would be able to cope with functions intrinsic to the post, with any reasonable adjustments; to support positive action in employment for disabled people; and to assist an employer where there is a genuine occupational requirement to be disabled.

Health information gathered by an employer is deemed as "special data" under the Data Protection Act 2018 [General Data Protection Regulation (GDPR)]. Employees must give their consent and the information must have been freely made public by the employee. Any data processing by the employer must respect six principles of lawfulness; namely (i) processing of personal data for any of the law enforcement purposes must be lawful and fair; (ii) the purpose for which personal data is collected on any occasion must be specific, explicit and legitimate and the personal data collected must not be processed in a manner that is incompatible with the purpose for which it is collected; (iii) personal data must be adequate, relevant and not excessive in relation to the purpose for which it is processed; (iv) personal data undergoing processing must be accurate and, where necessary, kept up to date; (v) personal data must be kept for no longer than is necessary for the purpose for which it is processed; and (vi) data must be processed in a manner that includes taking appropriate security measures as regards risks that arise from processing such personal data (sections 87-91, Data Protection Act 2018).

#### Positive action

Section 158 of the Equality Act 2010 allows an employer to take action to compensate for disadvantages that it reasonably believes are faced by people who share a particular protected characteristic. It does not prohibit management from taking any action which is a proportionate means of achieving the aims of:

(i) enabling or encouraging persons who share a protected characteristic to overcome or minimise a particular disadvantage,

(ii) meeting the needs of those with protected characteristics (whose needs are different from persons who do not share that characteristic)

(iii) enabling or encouraging persons who share a protected characteristic to participate in an activity where their representation is disproportionately low.

#### Timeframe for bringing claims

A claim to an employment tribunal must generally be commenced within three months less one day from the date of dismissal. In discrimination cases, the time runs from the date of the last discriminatory act. An employment tribunal has discretion to extend the time limit where it is just and equitable to do so.

### 2.2 Human Rights Act 1998

The Human Rights Act 1998 makes the rights in the European Convention directly enforceable in UK courts. The Convention rights which are the most relevant to employment law include Article 4 – prohibition of slavery and forced labour; Article 6 – a right to a fair trial; Article 8 – the right to respect for private and family life, home and correspondence; Article 9 – right to freedom, conscience and religion; and Article 10 – freedom of religion. Under section 3 of the Act, legislation pertaining to equality law has to conform with the Convention. This section provides that so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with Convention rights.

The UK government is currently engaged in a consultation to reform the Human Rights Act 1998, and replace it with a Bill of Rights. The government claims that their proposals demonstrate a commitment to liberty under the rule of law. However, the reality is that the proposals contain retrograde steps which might weaken human rights law; including: removing the requirement on UK courts to take account of law from the European Court of Human Rights; introducing a "permissions stage" (a filter for so-called frivolous claims) for human rights complaints, where the claimant must establish they have suffered "significant damage"; and importantly, restricting the circumstances in which public authorities can be held accountable for human rights transgressions.

#### 2.3 The Health and Safety at Work Act 1974

The Health and Safety at Work Act 1974 places an obligation on an employer to provide a safe working environment for employees, workers and self-employed individuals. The employer has control over safety practices and the standards of behaviour expected from staff, which includes protecting workers from discrimination or harassment in the workplace. Employees are also placed under a duty to take reasonable care for their own health and safety and for that of others likely to be affected by their acts and omissions at work. The employee is under a duty to cooperate with the employer as far as is necessary to enable it to carry out its legal responsibilities.

#### 2.4 The Flexible Working Regulations 2014

The law relating to the right to request flexible working is set out in ss 80F–80I of the Employment Rights Act 1996 and the Flexible Working Regulations 2014 (SI 2014/1398). The law provides that all employees with at least 26 weeks' continuous employment can request to work flexibly if the change relates to the number of hours, the times, or place of work. The employer must deal with an application "reasonably", and can only refuse a request on one of the following grounds: additional costs; detrimental effect on the ability to meet customer demand; inability to reorganise work amongst existing staff; inability to recruit additional staff; detrimental impact on quality; detrimental impact on performance; insufficiency of work during the periods the employee proposes to work; and planned structural changes. An employee can approach an employment tribunal if, for example, the employer does not deal with the application reasonably or rejects it on non-statutory grounds. The role of the employment tribunal is to decide whether the employer has considered the request seriously and that a refusal is for a permissible reason.

The following sections outline various equality issues that relate to each of the protected characteristics identified in the literature pre-Covid-19, and provide insights on some of the changes in employee experiences during and post-pandemic. The broad themes to emerge from the relevant caselaw analysis fall under four main categories: employee harassment, redundancy, flexible working, and mental and physical health in the workplace.

**The UK government is currently engaged in a consultation to reform the Human Rights Act 1998, and replace it with a Bill of Rights.**

# 3. Age discrimination

## 3.1 Pre- and post-pandemic employment concerns

Age discrimination in employment has historically been associated with older workers, however it is increasingly recognised as including stereotypical views and prejudicial treatment of *any* generation[15] within a given context. For example, certain industry sectors such as Information Technology (IT) and Finance have been identified as demonstrating a greater propensity to discriminate against older workers[16], and a disproportionate number of younger people are hired in 'unskilled and service roles'[17]. Younger workers often face the stereotype of being less dependable than their older peers[18].

With its ageing population, the UK has seen growing employment rates for individuals over the age of 55 since the 1990s[19]. Older employees are valued for their reliability, experience and acquired competences, but they nevertheless face a number of challenges in the workplace, including poorer accessibility to ongoing training and promotions[20], greater pressures to opt for retirement, and being typecast as less adaptable to change and more deficient in technological skills than younger workers[21]. In terms of gender, it is reported that older women face the 'double jeopardy' of negative assumptions relating to both gender and age[22]. Furthermore, older workers are more likely to report health concerns and disability[23].

Recent studies have suggested that the pandemic has had a disproportionate effect on younger workers. Individuals under the age of 25 are now dubbed as the 'Covid generation'[24] for a number of reasons, including their susceptibility to income loss, future job insecurity[25] and a disruption to their educational opportunities. Younger individuals are also employed in sectors that have been economically hit the hardest by Covid (such as, Leisure and Retail services). Simultaneously, however, there are concerns about the vulnerability of older workers post-pandemic.

Since the easing of restrictions towards the end of 2021, older workers have continued to exit the labour market[26]. Personal choice and sectoral impact explain some of these findings (for example, job and income loss in the Hospitality and Leisure industry), but their prospects for return-to-employment are viewed as poor. Race- and gender-related concerns have also been voiced, with outcomes being harsher for employees who are Black (particularly Black women, underlying the negative experiences of 'triple jeopardy'), or those who have a minority ethnic background[27]. With the number of age discrimination claims having increased in England and Wales since the Covid-19 lockdown and with flexible and homeworking options being viewed as a key component of employees re-joining the workforce[28], employers would be prudent in reviewing their support mechanisms for the groups concerned.

**Older employees are valued for their reliability, but they face challenges in the workplace.**

## 3.2 Relevant concerns and illustrations

### a. Age-related harassment at work

Organisations should ensure that the health and safety concerns of employees are taken seriously, particularly as the physical and emotional impact of the pandemic is likely to continue in the foreseeable future. Having tangible support systems in place to deal with staff welfare would bolster the confidence of concerned employees more purposefully. In Leigh Best v Embark on Raw (2020), the claimant (who was 52) alleged that she was harassed under section 26 of the Equality Act 2010 because her employer engaged in unwanted conduct relevant to the protected characteristics of age (and sex), which the tribunal upheld. The court also found that she was dismissed for making 'protected disclosures' (whistleblowing) about the safety procedures of the firm in the early days of the pandemic (where it could be argued that the organisation was potentially in breach of the Health and Safety at Work Act 1974). During this time, the employer also made particularly inappropriate comments about the claimant's age in the context of Covid-19. Amongst other derogatory remarks about her age and those relating to menopause, being aware of the claimant's sizeable anxiety about the virus, her employer recited a newspaper article and drew attention to content that implied that doctors and nurses might have to 'play God' by prioritising younger and fitter people for ventilator treatment because 'they are more likely to survive'. Overall, the tribunal were satisfied that the employer's ongoing comments created a degrading, humiliating and offensive environment for her at work – the purpose and effect of which violated her dignity.

### b. Retirement, redundancy and ill health

Situations involving the ill health of workers is an issue that employers must consider in a rigorous manner in order to satisfy their obligations with respect to both dismissal procedures and their responsibilities under the disability discrimination provisions of the Equality Act 2010. This matter is of heightened importance as a consequence of the Covid-19 pandemic. Employees of any age might suffer from 'long Covid'[29] (see also section 4) or have had other medical treatments delayed, which might require additional time off from work. An employer would need to handle these situations carefully and ensure that they comply with the expectations the law places upon them. Management should consult with individuals concerning the nature and likely length of their illness, seek medical advice relating to the condition, and consider whether suitable alternative employment can be offered. Simultaneously, organisational decisions regarding health risks and directives should not be made based on stereotypes that relate to individual age, but on the reported physical conditions[30]. In the context of the current discussion, a question that the courts might also have to consider is whether a time delay for bringing a claim caused by a person who suffered from long Covid, and any associated life pressures, constitutes a just and equitable reason to support an extension to bringing a claim.

In Mrs J Hutchinson v Asda Stores Ltd (2020), the claims for constructive unfair dismissal, age and disability-related harassment, direct age discrimination and discrimination arising from disability were well founded and succeeded. The claimant's manager was found to have asked her if she wanted to retire "on more than one occasion" after the claimant suffered ill health. Interestingly, the tribunal found that there were implied terms in the claimant's contract of employment suggesting: i) that she would be permitted to work until at least the age of 75 in order to accrue her benefits under the ASDA Pension Plan; ii) that the employer would not without reasonable cause act in a way that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee; and iii) that the employer would provide a safe working environment and take reasonable care for the health and safety of its employees. The courts suggested that Asda failed to handle the claimant's medical situation in a sufficiently sensitive, compassionate and comprehensive manner and that they should have made greater attempts to facilitate the intervention of occupational health services.

#### c. Managing younger workers

It has recently been contended that a large majority of employers (particularly in sectors such as public administration, legal services, and software), believe that 'it is more beneficial for younger employees to work in an office / workplace than from home'[31]. Given the continuation of flexible working arrangements, employers must guard against treating employees differentially on the grounds of age and basing operational decisions, such as the need to work-on-site, on unfounded assumptions about younger workers; for example, by perceiving that they are too young to handle responsibility [Miss Brooke Shanks v Heat Source Solutions Ltd (2019)] or too immature to work productively from home without supervision[32].

# 4. Disability discrimination

## 4.1 Pre- and post-pandemic employment concerns

People with physical and mental disabilities have poorer employment rates and are susceptible to discrimination and bullying in the workplace to a greater extent than the general population[33]. It has been acknowledged on an ongoing basis that access to homeworking is a key feature for disabled workers to improve both their employability and employment experiences[34]. Despite this understanding, remote working requests by disabled workers have historically been one of the most refused accommodations by organisations[35]. The disability employment gap also varies between groups; for example, it is highest for people with mental illnesses and severe/specific learning difficulties and for older disabled workers[36].

During the pandemic, disabled employees in the UK had higher than average redundancy rates than non-disabled workers (ONS, 2021b), with the disability employment gap set to increase post-pandemic[37]. With initial mandatory homeworking, for some disabled workers, locational flexibility was viewed as instituting a more inclusive workplace[38]. On the contrary, the International Labour Organisation (ILO) [2021] outlined how the widespread switch to digital working during the crisis could have resulted in the greater *exclusion* of people with disabilities, due to the lack of access to appropriate equipment or accompanying skills. Indeed, digital tools have limited utility for disabled workers without complementary special assistive technologies[39]. Additionally, while digital platforms (e.g. emails, chatrooms) enable the speedier exchange of information between individuals, their use makes it harder to interpret the nuances in interpersonal communication. The ensuing ambiguity can heighten threats of perceived harassment and make it harder to form social bonds at work[40].

Furthermore, access to healthcare and treatment for non-coronavirus related problems had a negative bearing on disabled people to a greater extent than the general population[41]. Disabled individuals were more likely to experience mental health deterioration as a result of Covid-19. Importantly, while work-from-home mandates might have improved the physical health of some employees with (physical and mental) comorbidities, the accompanying isolation could have had a detrimental effect on their mental health[42].

**It is projected that with further economic hardships stemming from the pandemic, people will experience significant mental health deterioration in the near future.**

Overall, the Office for National Statistics (2022) has revealed that the adult population's personal well-being scores are currently (February 2022) considerably lower as compared to pre-lockdown levels in February 2020. It is projected that with further economic hardships stemming from the pandemic, people will experience significant mental health deterioration in the near future. As of June 2021, the Trade Union Congress (TUC) have also appealed to the government for long Covid / post-Covid-19 syndrome to be recognised as a disability, and for Covid-19 to be seen as an occupational disease so that employees have access to legal protections[43]. This call follows the TUC's survey findings covering over 3,500 workers which states that over half of their sample reported having experienced some form of discrimination due to long Covid. The World Health Organisation similarly announced that Covid-19 has provoked social stigma and discriminatory behaviours towards individuals who are "perceived to have been in contact with the virus"[44].

## 4.2 Relevant concerns and illustrations

### a. Leave for exceptional circumstances and work flexibility

In Ms Adeline Willis v Nat West Bank plc (2020), the claimant aged 44, was an employee of NatWest Bank and was chosen for dismissal on the grounds of redundancy, two days after her surgery to remove a malignant tumour. In a recorded phone conversation a few weeks into her diagnosis, the claimant's managers consulted with the Human Resource department about the termination of her contract because of the leave she sought for her cancer treatment[45]. Ms Willis was held to have been unfairly dismissed and discriminated against contrary to section 15 of the Equality Act 2010, which makes it unlawful for an employer to knowingly treat a person unfavourably because of anything arising as a consequence of that person's disability (where it cannot be shown that the action is a proportionate means of achieving a legitimate aim).

This legal provision is particularly pertinent to employers post-pandemic as employees might have had medical treatments delayed or extended as a result of Covid-19 and might require extended time off for medical treatment or recovery. If feasible, workers could be given time flexibility to allow them to have more control over *when* they engage in their agreed work hours to accommodate their outside-of-work commitments[46]. The need for such transformations in work routines could arise as a consequence of employees suffering from long Covid. Relatedly, organisations would need to revisit and alter how performance is measured and appraised such that it does not disadvantage particular groups of employees.

### b. Mental health and anxiety in the workplace

If an individual suffers from stress or anxiety at work, the employer should make reasonable adjustments to allay their anxiety. For example, as a result of virus transmission concerns, if an employee is uneasy about an organisation's hot-desking arrangements, the employer should take these concerns seriously. As a case in point, in Roberts v North West

Ambulance Service (2013), the claimant was deemed disabled due to the significant anxiety and stress that he experienced on an ongoing basis. He resigned from the organisation and claimed for constructive unfair dismissal and disability discrimination. He contended that as a result of the hot-desking arrangements at work, there was the failure to make a reasonable adjustment to ensure that a particular seat in the office was exclusively available for him in order to alleviate his feelings of anxiety that were generated by being physically close to other employees. While it was not always feasible to keep his preferred desk unoccupied, the organisation however had made provisions for other occupants to relocate when the claimant came on shift. The issue of reasonable adjustment is subject to questions of feasibility in the context of the facts of the case, and in this instance, the tribunal concluded that the employer had indeed made a reasonable adjustment.

In a recent case surrounding the health and safety implications of the pandemic, a claimant was held to have suffered disability discrimination and to have been unfairly dismissed for refusing to wear a face mask at work [Laura Convery v VW Dealership (2020)]. At the time, government guidelines indicated that a person did not need to wear a face covering if they suffered from a physical or mental illness or impairment, or disability and where wearing a face covering could bring about severe distress. While Ms Convery was in the process of seeing her GP about her circumstances, she outlined to her employer that there was 'no such thing' as an 'exemption certificate'. The court upheld the claimant's complaint, further stating that even though the employer had a legitimate aim to protect the health and safety of staff and customers, they did not act proportionately by dismissing the claimant (neither did they act in accordance with their own health and safety policy nor the government guidelines on exemptions). It is important to note that for an individual to be covered by the disability provisions contained in section 15 (discrimination arising from disability) and section 20 (reasonable adjustment), the employer must be aware of the existence of the said disability.

As a contrast to the former case, in Deimantas Kubilius v Kent Foods Ltd (2020), dismissing an employee on the grounds of refusal to wear a mask was deemed as a reasonable response by the employer. It was held that employees have a duty to obey all reasonable and lawful instructions issued by their employer, including those concerning Covid-19 safety measures – in this case, the requirement to wear a face mask at work. The decision herein was highly context specific, as the employee handbook imposed an obligation to follow health and safety instructions at customer and supplier sites, regardless of broader government guidance regarding face masks. Overall, employers should be mindful of the potential risks involved in inadvertently engaging in unlawful discrimination against people who are exempt from wearing face coverings or have legitimate reasons for not using them (e.g. sufferers from asthma). Reasonable adjustments in this regard might include organisational exemption from wearing masks, allowing employees to work remotely if possible, or providing a more private working space.

### c. Return-to-work premises and wider inferences about potential discrimination by association

In the context of the Covid-19 pandemic, health and safety issues might arise in connection with a return-to-work policy. Some employees might be hesitant to immediately revert back to working in an office post-Covid as a result of newly established caring responsibilities. Employers who either dismiss employees on this basis, or cannot justify the working on premises requirement, might face indirect disability discrimination by association [Follows v Nationwide Building Society (2018)].

For example, an employee might refuse to work on-site post-pandemic because they are concerned about a vulnerable person that they live with. A dismissal will be automatically unfair when implemented in such circumstances where the employee reasonably believes the danger to be serious and imminent. The following examples serve as a caution about acting precipitously and unfairly dismissing an employee under these conditions. While the claimants in the cases below brought an allegation of unfair dismissal to the courts, organisations should be aware that if the said (associated) vulnerable person has a medical condition which constitutes a disability, a dismissal/disciplinary action against the employee could theoretically be considered discrimination by association.

In Quelch v Courtiers Support Services Ltd (2020), it was held that the claimant was unfairly dismissed when he refused to return to work as he was genuinely concerned about passing the virus to his girlfriend who had a heart condition. The claimant's contractual place of work was the employer's Henley office. When the Covid-19 pandemic started in March 2020, the claimant was living in a one-bedroom flat with his girlfriend, who as a result of a heart condition and asthma, was classified as 'clinically vulnerable' under government guidelines. Given the potential vulnerability of his girlfriend to Covid-19, the claimant had a meeting with his line manager where it was agreed that the claimant could begin working from home. During the period in which the claimant worked from home, there were no performance issues or concerns. Despite this, and the fact that his line manager stated he had full trust in the claimant to continue working from home, Mr Quelch was asked to return to work in July 2020. When he refused, he was dismissed for gross misconduct. The Tribunal held that the claimant's dismissal had been contrary to section 100(1)(d) and (e) of the Employment Rights Act 1996, and therefore he had been automatically unfairly dismissed. Similarly, in Gibson v Lothian Leisure (2020), an employee with a clinically vulnerable father was automatically unfairly dismissed after he raised health and safety concerns about the lack of Personal Protective Equipment (PPE) and other failures to comply with government guidelines. The tribunal concluded that the claimant was dismissed / selected for redundancy in circumstances of danger which he reasonably believed to be serious and imminent.

# 5. Sex discrimination

## 5.1 Pre- and post-pandemic employment concerns

The existing literature outlines a number of workplace disadvantages faced by individuals on grounds of their sex, including gender pay inequality[47], impediments to progression[48] and sexual harassment[49]. Women reportedly suffer the negative effects of preconceived gender norms and discrimination in the workplace to a greater extent than their male counterparts. It has also been found that in the UK, gender equality relating to the division of labour is rare[50], with women tending to have disproportionate responsibilities of caregiving and unpaid domestic work.

Although unemployment levels increased by a similar proportion for both men and women as a result of the pandemic, the Institute for Fiscal Studies[51] estimated that women were a third more likely to be employed in sectors that were impacted by the lockdown (e.g. Retail and Hospitality), thus disproportionately impacting their earnings[52]. Moreover, the burden of care has been shouldered by women to a greater degree, spending more time on unpaid childcare and housework than men[53]. However, these traditional attitudes to the distribution of labour have been challenged as a result of the pandemic in particular contexts, with some studies suggesting a general increase in men contributing to housekeeping and care responsibilities[54].

In terms of the switch to digital working during the pandemic, there has been a surge in reports of online sexual harassment during Covid-19[55]. Additionally, the legal rights charity Rights of Women found that where sexual harassment had been reported to an employer, the internal Human Resource processes to handle such matters had been negatively impacted by the pandemic, leaving limited support for women in these circumstances.

## 5.2 Relevant concerns and illustrations

### a. Sexual harassment

In the context of homeworking, it is essential for an employer to take reasonable steps to protect staff from sexual harassment of a non-physical nature when working online, for example, when taking part in meetings on Zoom or Microsoft Teams or on other electronic modes of communication. In Miss S Sasheva v All Techmart UK Ltd and Mr A Uddin (2021), the claimant was subject to various episodes of sexual harassment of a non-physical nature which she found extremely distressing. Initially, the claimant worked in the same office as her manager and he constantly stared at her making her feel uncomfortable, so much so that the claimant commenced homeworking. The manager also sent her inappropriate text messages of an explicit sexual nature which she found distasteful. Finally, he started to 'hang around' outside her flat and Miss Sasheva therefore had to take the radical step of moving home for her safety. The tribunal found that the claimant felt so vulnerable that she had been left with no alternative but to resign from her employment because of the unlawful non-physical sexual harassment. It was concluded that the claimant had been subject to serious sexual harassment and that the employer had directly discriminated against her because of her sex. Organisations should be aware that online sexual harassment and coercion might be expressed in many additional forms in order to achieve sexual gains (such as using bribes and seduction, breaking into a target's personal computer, and sending threatening e-mails and viruses)[56].

### b. Time flexibility (allocated hours and when they are worked) and locational flexibility

As a result of the Covid-19 pandemic, more women *and* men are likely to embrace flexible working arrangements. Employers must treat flexible working requests in a consistent manner in accordance with the Flexible Working Regulations 2014 and not prioritise the needs of women over men. As outlined in section 2.4, if employers refuse such requests, their rationale should fall into one of the permissible categories[57]. In Pietzka v PWC (2014), a male employee requested flexible working to spend more time with his daughter. The request was refused, and the claimant was informed that his career progression would be negatively impacted by flexible working arrangements. The manager conveyed his position by querying why Mr. Pietzka would choose to put his family life ahead of his career. The claimant succeeded in his charges of sex discrimination.

In Thompson v Scancrown Ltd T/a Manors (2019), the claimant was employed as a sales manager in an estate agency and upon her return to work from maternity leave, she made an unsuccessful application for flexible working. The employer and the claimant could not resolve the dispute and she ultimately resigned from her position. The claimant succeeded in her charge of indirect sex discrimination based on the refusal of her flexible working request. The employment tribunal concluded that the employer had failed to demonstrate that the refusal of the proposed reduction of hours would have a detrimental impact on maintaining good customer relationships (which the employer initially claimed). Women being statistically more likely to be the main carers of children, it is possible that the court would accept that a refusal to allow remote working or instructions to cease a flexible work arrangement, constituted indirect discrimination.

If requests for homeworking are made, employers need to ensure that the request is also considered in a transparent manner. As illustrated in Hodgson v. Martin Design Associates (2019), the tribunal held that the refusal of a female employee's request to work remotely constituted direct discrimination, as several of her male colleagues had been permitted to work off-site. The claimant was able to establish to the satisfaction of the court that the majority of her work as office and marketing manager could have been completed remotely on account of the employer's virtual network. The approach that the employer adopted to the claimants' request was entirely at odds with those adopted for her male counterparts, who had both short-term and longer-term requests for remote working granted by the employer. Such inconsistent treatment of flexible/hybrid working arrangements would be difficult for an employer to defend.

# 6. Marriage and civil partnership discrimination and Pregnancy and maternity discrimination

## 6.1 Pre- and post-pandemic employment concerns

Marriage and civil partnership discrimination takes place when a person, because of their marriage or civil partnership, is treated less favourably than a person who is not married or in a civil partnership.

Unmarried workers, however, are not entitled to protection against discrimination under these provisions. In the UK, the marriage bar was commonly adopted by employers and survived in some professions even beyond the 1940s, effectively restricting married women from employment in certain roles such as teaching[58]. Marital or civil partnership status can indirectly shape the experience of work, where individuals in these relationships could also be a target of stereotypical assumptions and discrimination. In such instances, organisational culture and managerial conjectures about outside-of-work responsibilities, potential productivity, or flexible or shift working availability might influence an individual's opportunities and outcomes[59]. Furthermore, prior to the pandemic and in relation to pregnancy and maternity discrimination in the UK, the Department for Business, Innovation and Skills (BIS) and the Equality and Human Rights Commission (EHRC) [2018] reported that three in four mothers in their sample had a negative or possibly discriminatory experience during their pregnancy, maternity leave, and/or on return from maternity leave[60].

While the effects of the pandemic could be speculated about individuals who are married or in civil partnerships (e.g. by gender, age, and ethnicity), there are no concerted studies on these particular groups in relation to their work-related outcomes. Regrading pregnancy during Covid-19 however, a TUC (2020) survey found that a quarter of pregnant women in their sample faced discrimination at work, which included being unable to access health and safety risk assessments and being singled out for redundancy or furlough. Such treatment is even more concerning in industries or professions that are female dominated (e.g. care work), and where there has been confusing and conflicting advice regarding the longer-terms effects of vaccinations during pregnancy[61].

## 6.2 Relevant concerns and illustrations

### a. Health and safety during pregnancy

In a recent claim relating to pregnancy discrimination [Prosser v Community Gateway Association (2020)], a worker was found not to be discriminated against when she was sent home during the early stages of the pandemic with her return to work delayed, until adequate social distancing measures were in place. The tribunal understood that the decision made by the employer was appropriately informed by the requirements placed upon them by the government's public health advice and regulations during the first Covid-19 lockdown. The claimant also alleged that she had been discriminated against on grounds of pregnancy because the employer had initially failed to pay her for shifts as promised. It was concluded that whilst at first glance the late payment was unfavourable treatment, this was not because of the claimant's pregnancy but a genuine mistake on the employer's part which was generously rectified. The evidence was that the actions taken by the employer were designed to keep the claimant and her baby safe through the outbreak and that the employer had paid the claimant generously beyond the terms of her contract. The actions of the employer were deemed as being misinterpreted by the claimant. Litigation might have been avoided in this case if communication between management and the claimant had been clearer and the employer had ensured that the claimant understood the reasons for their actions and decisions, during an uncertain and unprecedented situation for all the parties concerned.

**Marital or civil partnership status can indirectly shape the experience of work.**

# 7. Sexual orientation discrimination and Gender reassignment discrimination

## 7.1 Pre- and post-pandemic employment concerns

Lesbian, gay, bisexual and transgender (LGBT) employees face several challenges in the workplace. While the debate surrounding the contextual differences in terminology and subtleties in their work experiences are outside the scope of this review, we touch on the broad work-related concerns that are highlighted in the literature. The difficulties encountered by LGBT employees range from microaggressions such as verbal and behavioural slights and indignities[62], having limited 'voice' mechanisms[63] to outright dismissal[64]. The process of gender reassignment, or the transitionary period, is also fraught with workplace prejudice and discrimination[65]. Transgender people are vulnerable to harassment at work and colleagues might demonstrate a lack of sensitivity during transitioning, where the employee might change their name and want to live with their identified gender. Social support during gender transitioning is paramount as stress levels could be heightened for individuals[66].

More generally, an analysis of nationally representative statistical data in the UK has previously suggested that men and women in same-sex relationships have higher rates of employment and greater earning power compared to the total population[67]. Also, using the National Statistics Socio-economic Classification data, recent research has found that gay men are more likely to have a managerial / professional post than heterosexual men[68]. However, LGBT groups are found to be less satisfied with their life than the general UK population[69]. Heteronormativity in certain industries (such as Finance or Construction) also makes it problematic for individuals to 'come out', as both overt and / or covert discrimination can be very real threats (e.g. in the form of exclusion at work or facing impediments to career progression)[70]. Relatedly, the National Institute of Economic and Social Research has highlighted a higher prevalence of mental health issues amongst LGBT individuals in contrast to the general population in the UK[71].

There are limited academic studies on the health-related and socioeconomic effects of Covid-19 on LGBT groups and those involved in gender reassignment[72]. It is known, however, that social distancing measures during the pandemic have had a detrimental effect on trans and gender diverse individuals as their usual support mechanisms have been inaccessible[73]. While poor mental and physical outcomes associated with physical distancing are of concern to entire populations, the experiences of discrimination and rejection of LGBT persons by their family, peers, and the community makes the issue particularly salient[74]. Furthermore, the pandemic resulted in impaired access to and / or the cancellations of gender-affirming surgeries and mental health services, possibly having longer-term negative repercussions for this group[75].

## 7.2 Relevant concerns and illustrations

### a. Harassment and discrimination

As stated previously, employers should review their equality policies and procedures and educate their staff to prevent harassing and discriminatory behaviour from occurring online or in person. While remote working has the potential to lower the number of episodes of bullying and harassment, preventing such behaviours should be paramount when considering the potential isolation of employees.

As an example, when Ms De Souza commenced employment with Primark, she informed the company that she was transgender [Miss A de Souza E Souza v Primark Stores Ltd (2017)]. Her birth name was Alexander and this appeared on her passport, but she stated that she would prefer being called Alexandra. The claimant was told that the company had to use her official name for pay, but she could use whatever name she liked on her name badge. However, the human resources department mistakenly changed her name on the company's IT system from Alexandra to Alexander, and her title from Miss to Mr. Despite using her preferred name for some weeks, a supervisor began calling her Alexander and laughed when corrected. She alleged that she was subject to an array of discriminatory and harassing behaviour and that her complaints were not taken seriously. The employment tribunal found that she had been constructively dismissed because of the harassment and that the lack of action by Primark had led to her resignation. The organisation failed to deal with the matter appropriately, which the tribunal held was direct gender reassignment discrimination.

### b. Updating leave policies to reflect inclusivity

In situations where an employee seeks to exercise a legitimate right for time off work [Allen v Paradigm Precision Burnley Ltd and Carl Wheeler (2018)], for example, maternity leave, parental leave, or for medical reasons such as gender reassignment or mental health, it is important for an employer to ensure that the individual is not subject to discriminatory treatment. Organisations should not make assumptions about the family life and outside-of-work commitments of individuals, and should review their work-life policies to assess their inclusivity of employees' sexual orientations and gender reassignment status. Such matters become even more salient post-pandemic where there has been a general disruption to service provisions and a potential increase in non-work-related burdens.

# 8. Race discrimination and Religion or Belief discrimination

## 8.1 Pre- and post-pandemic employment concerns

The 2017 McGregor-Smith review revealed that inequalities between ethnic minorities and their White counterparts manifest in several ways, including differences in pay, career progression opportunities and employability[76]. Other recent studies in the UK indicate that ethnic penalties in the labour market vary between different groups and that they display diversity in their respective 'group experiences' of employment. At one end of the spectrum, Black African, African and Middle Eastern, and Pakistani and Bangladeshi minorities are shown to be most consistently discriminated against (it is useful to note that these groups also tend to possess substantial employment gaps). At the other end, minorities of Western origin face minimal discrimination and ethnic disadvantage in the labour market[77]. It is evident that the migrant population in the UK is diverse with reference to their national and ethnic origins, religion, economic and educational backgrounds, and relatedly, their experiences and perceptions of discrimination[78]. In terms of religion, certain groups have demonstrated concerns about the accommodation being offered by companies, for example, with respect to dress and physical appearance, work-related leave for prayers or religious days, food requirements, and delivery of services that conflict with religious beliefs[79]. It is anticipated that ethnic penalties would be furthered in certain communities if reasonable accommodations for religion and / or belief are not made by employers[80].

The health impact of Covid-19 on different ethnic groups in the UK has been well publicised. Black and minority ethnic individuals have not only been highlighted as facing greater health risks relative to their White counterparts, but have also been found to avoid engaging in medical tests and treatments to a greater extent[81]. Furthermore, factors such as comorbidities, occupational influences, socio-economic status and household composition have been suggested as factors in shaping the health outcomes of minority ethnic groups[82]. Focusing on religion and belief, despite efforts by the UK government to engage with religious groups, there has been a distrust surrounding vaccinations by individuals in differing faith communities[83]. These issues have had a bearing on mandatory vaccination policies in certain occupations, particularly in healthcare.

## 8.2 Relevant concerns and illustrations

### a. Mandatory vaccinations

The UK government has not imposed compulsory vaccination mandates on its citizens. While initially proposed as obligatory for healthcare staff, the Care sector was the last to be granted exemption in March 2022[84]. Any idiosyncratic policy of compulsory vaccination for its employees by organisations would likely be viewed as oppressive or unreasonable[85], and could give rise to an action for breach of contract and be contrary to principles surrounding the equality law. While an employer might contend that they have an obligation to protect the health and welfare of all their workers under the Health and Safety at Work Act 1974, they would still need to explore worker fears and their personal vulnerability in this regard. Organisations must additionally be sensitive to employee concerns about the disclosure of medical information, and the processing of such data. As explained previously, section 60 of the Equality Act 2010 outlines that an employer must not enquire about health or disability issues prior to hiring workers. Existing employees might also be reluctant to share details about their disability or health status, citing a contravention of the disability provisions in the Equality Act 2010 or a breach of the implied duty of trust and confidence.

In Ms C Allette v Scarsdale Grange Nursing Home Ltd (2021), the claimant was dismissed from her position as a care assistant at a nursing home following her refusal to be vaccinated against Covid-19 in January 2021. She argued that it was against her Rastafarian beliefs to take any form of non-natural medication and further asserted that because she had previously contracted the virus, she believed that she had some immunity. The tribunal concluded that her refusal to have the vaccine was not connected with any religious belief, but was on grounds of scepticism about the safety of the vaccine. It was held that the claimant's refusal to be vaccinated was an unreasonable response to a reasonable management order. It is important to note that in this particular case, the claimant could neither prove her religious objection to be injected nor did she have a medical exemption. The tribunal concluded that the claimant knew she represented a risk to others, and her actions fell within the definition of gross misconduct set out in the employers' disciplinary policy. Her stance was therefore an action which, in the context of this case, amounted to a repudiatory breach of her contract of employment, therefore entitling a summary dismissal. It is useful to note that the claimant had not previously made the company aware that she objected to the mandates because of her beliefs. Indeed, the presiding Judge explained that the decision in this particular context could not serve as a general guide about the 'fairness' of dismissals with regard to objections to be vaccinated.

Employers would therefore be advised to carefully consider employee concerns about undergoing forced medical procedures. Any compulsion would be in contrary to specific tenets of the Human Rights Act 1998. In theory, employees might also qualify for disability discrimination, if as a result of a particular health condition, they refuse medical treatments such as vaccinations. This could be of particular importance if there was to be any serious side-effects from the drug for an individual, as pharmaceutical companies have been provided indemnity by the UK government in relation to the manufactured vaccines[86].

### b. Monitoring self-reported employee health and instructions to work on premises

Under the UK government's 'Plan for living with Covid-19' guidelines, employees are not required under legislation to self-isolate if they test positive for the virus[87]. This brings to the fore questions about how individual employee and employer concerns are likely to be dealt with in relation to return-to-work arrangements. With regard to worker health and vulnerability, it is useful to note that trade unions such as Unison have issued explicit guidelines for their Black members about employment and return-to-work, mentioning the possibility of employer breaches in Health and Safety and unlawful discrimination if employees are put in a vulnerable situation by being forced to work on premises. It has been suggested that businesses will vary in the amount of discretion they give to employees in determining how unwell they are with regard to staying away from work premises[88]. Here, it is important for organisations to be reasonable in their demands and also seek a balanced approach in 'policing' the health of their staff [Spragg v Richemont UK Ltd (2017)].

In a recent case [X v Y (2020)], a claim of discrimination on the grounds of belief about Coronavirus and its danger to public health was brought before the tribunal. Here, the claimant decided not to return to work premises on the grounds of health and safety concerns for herself and her partner in relation to Covid-19. Adopting the Grainger criteria, it was held that the claimant's belief in the fear of catching Covid-19, and a need to protect herself and others, did not amount to a philosophical belief for the purposes of section 10(2) Equality Act 2010. Instead, the tribunal concluded that the fear constituted a *reaction* to a threat of physical harm and a need to take steps to avoid or reduce that threat (therefore constituting more of an opinion than a belief).

**Other recent studies in the UK indicate that ethnic penalties in the labour market vary between different groups.**

# 9. Summary and conclusion

The case law analysis has revealed thematic issues relevant to litigation that employers, potential claimants, and legal advisors might consider. Employment tribunal decisions do not create binding precedent; however, they indicate the direction that the law is developing in and the wide range of circumstances within which litigation can occur. These decisions are helpful in determining the types of situations giving rise to legal disputes and reveals measures that employers might take to prevent claims from arising in the future. It should be noted that within the legal illustrations herein, several employment-related concerns might have overlapped, and indeed, would have showcased how discrimination can be multifaceted in nature (e.g. as a result of the intersecting identities of workers). While the experiences of discrimination are not only confined to those who hold a 'protected' status, but also to individuals who might possess other characteristics (e.g. in terms of their educational attainment, carer status, class and so on), the current legal framework in the UK relating to equality has been used to draw attention to the vulnerability of workers within the context of the pandemic. Furthermore, it is evident that the classification of employees on the basis of protected characteristics does not do justice to the variability of their experiences and the heterogeneity of circumstances surrounding individual cases. Such factors are important from a legal, experiential, and societal standpoint; however in order to focus the discussion, we highlight below the main themes that emerge from discrimination-based concerns generated by the Covid-19 pandemic.

### Redundancy

There is evidence to suggest that protected characteristics (such as one's age, sex, sexual orientation, pregnancy, and disability status) can shape employer assumptions about worker health and responsibilities. For example, some older claimants during the pandemic, felt pressurised by their line managers to consider retirement / redundancy options. If organisations are forced to rely on the logic of numerical flexibility for short-term sustainability or to reinvent their businesses post-pandemic, it could have potential negative consequences for older workers and other at-risk individuals on short-term or precarious contracts. Therefore when it comes to decisions about redundancies, organisations should ensure that they can demonstrate a genuine need for redundancy, and that the process used to decide who is made redundant is fair (based on skills and objective performance-related measures) and also transparent. When situations involve the ill health of workers, employers must consider the options in a rigorous manner, in order to satisfy their obligations with respect to both dismissal procedures and their responsibilities under the disability discrimination provisions of the Equality Act 2010.

In terms of workforce planning, with an increase in the need for workers to possess digital skills, if employers are concerned about the underrepresentation of a particular group within a department, it might be appropriate to implement positive action initiatives (e.g. training courses for specific groups) under section 158 of the Equality Act 2010. Doing so could help with redeployment efforts and safeguard the jobs of individuals vulnerable to redundancy.

### Harassment and victimisation

Harassment on the grounds of protected characteristics (such as age, disability, sexual orientation and sex) is a widely reported and significant problem in organisations. Victims of harassment can experience a number of negative outcomes such as a deterioration in mental health, an affront to their dignity, and a threat to their earnings and careers. Employers should be aware that there is no limit on the level of compensation that can be awarded in harassment cases. In Lokhova v Sherbank CIB (UK) Ltd (2015), an employment tribunal awarded an employee nearly £3.2 million for sexual harassment. In this case, damages were awarded for injury to feelings, aggravated damages[89] and the loss of future earnings.

It is important for employers to take proactive and preventative measures to protect workers from harassment, whether it occurs on work premises or online. There are a variety of management actions that could be taken to tackle the situation; these include staff training on defining and recognising harassment and information about the associated organisational policy; the introduction of whistle-blowing mechanisms; and the adoption of formal / informal support systems. Staff should also be made aware about the need for, and mechanisms of, evidencing online misconduct (e.g. by using screenshots)[90].

**Employment tribunal decisions do not create binding precedent; however, they indicate the direction that the law is developing**

## Health and safety

In order to gain protection from the disability discrimination provisions contained in section 15 (unfavourable treatment arising from disability) and section 20 (duty of reasonable adjustment), the employer must be aware of the alleged disability. However, organisations simultaneously need to be cognisant of employee concerns relating to the disclosure of health matters and the handling of such data. Section 60 of the Equality Act 2010 outlines that an employer should not enquire about health or disability prior to offering positions in the organisation. Current employees might also be reluctant to share details about their health status and being asked to do so could be in contravention of the Human Rights Act 1998.

During the Covid-19 pandemic, some workers might have felt compelled to complain about an employer violating governmental health and safety guidelines. Under the Public Interest Disclosure Act 1988, an employee can make a complaint (whistleblowing disclosure) about any wrongdoing if they believe that their health and safety is endangered. An employer should be proactive and adopt a whistleblowing procedure so that problems can be dealt with inhouse rather than them being escalated to an outside agency or a tribunal.

If an employee informs their employer that they are pregnant, the organisation should engage in a risk assessment to the employee and the unborn child. The risks might include heavy lifting or carrying; standing or sitting for long periods without adequate breaks; exposure to toxic substances; and long working hours. Where risks are identified, the employer should take reasonable measures to alleviate them; for example, offering the employee alternative work or different hours of work. Additionally, with regard to an individual's fear of Covid, organisations would ideally engage in voluntary risk assessments to mitigate any danger to workers who regard themselves as particularly susceptible to health risks and provide them with flexible working options (e.g. tele-homeworking), where possible.

Under sections 20 and 21 of the Equality Act 2010, employers are required to make reasonable adjustments for employees with disabilities, where a disabled person is placed at a substantial disadvantage in comparison with other workers (this includes physical and mental health conditions). The disadvantages suffered might also be due to medical concerns associated with long Covid, if they are eventually recognised as a disability under legislation. Employees might need time off for medical treatment; reduced hours of work; a phased return to work, or a change in the nature of work. Additionally, employers must allow workers who have been ill with Covid just prior to, or during, a period of annual leave to take a replacement holiday. In some cases, however, the reasonable adjustment requested by an employee, for example, to work mainly at home might not be feasible in the context of particular jobs because the available work involves direct contact with the public or dealing with confidential information [Secretary of State for Work and Pensions ors v. Wilson (2011)].

In relation to health mandates such as compulsory vaccination, it is recommended that employers thoroughly engage with employee concerns about undergoing forced medical procedures. Not only would health-related directives / being compelled to opt for a particular medical procedure be in contrary to specific tenets of the Human Rights Act 1998 but could also raise concerns in relation to other strands of the Equality Act 2010 (such as religion and belief or disability discrimination). Reasonable adjustments might be considered by organisations for certain workers in this regard, such as granting permission to carry out work remotely, if feasible.

**An employee can make a complaint about any wrongdoing if they believe that their health and safety is endangered.**

### Flexible working (time and location)

A major implication of Covid-19 has been the shift to more flexible work arrangements, and it seems likely that employers will receive an increase in the number of flexible working requests in the future. Organisations should be aware that if they commit procedural errors in dealing with such requests or unreasonably refuse a flexible working request, an employee might be entitled to resign and claim constructive unfair dismissal and a breach of the flexible working regulations [Clarke v Telewest Communications plc (2004)].

There have been reports of workers being stereotyped with regard to their home environment and responsibilities (e.g. care commitments). Stemming from Covid-19, some workers might request homeworking due to concerns about a vulnerable person that they live with or due to other caring responsibilities. An employer who receives such a request should carefully consider the circumstances, as refusing to grant work flexibility might constitute discrimination by association [Attridge v Coleman (2007)][91]. Treating and granting flexible working requests differentially, for example by favouring applications made by women over men, can constitute direct discrimination. Management should similarly refrain from making assumptions about *potential* performance-related issues with respect to homeworking where these are not justified. Any entitlement to flexible working should be built into the worker's contract of employment so that the number of work hours and *when* they are worked is clearly defined. Such an understanding is relevant to issues such as work breaks and start and finish times to ensure that employees avoid breaching their contract of employment[92].

Closely related to flexible tele-homeworking is the concern of employee monitoring. Any proposed method of monitoring staff should be legitimate, proportionate and transparent. Employment contracts should state the nature and extent of monitoring (publicising this within the organisation) and explain the legitimate interests that the employer is attempting to advance. Engaging employees in dialogue and obtaining consent for digital monitoring should ideally be an ongoing process[93]. As with any personal health information, there are potential litigation risks for employers if they do not comply with data protection rules pertaining to employee information.

Several workplace inequalities have been accentuated by the Covid-19 pandemic. In reviewing the case law associated with the Equality Act 2010 and other relevant UK legislation, not only are insights offered into how employment courts have dealt with recent cases, but also questions are raised about how employment law might develop in response to the crisis post-pandemic. Moving forward, with shifting governmental guidelines on the management of diseases, it would be good to query how the law should respond to employers eliciting information about the personal health of employees and using the potential vulnerability to Covid-19 as a justification for doing so[94]. An individual's right to privacy would clearly need to be balanced with health and safety obligations of the employer, which without policy debate and a sense of direction, could be onerous for both businesses and legal entities.

Under any conditions of health data gathering, workers would need to be aware of how the data is being processed, its ramifications, and if and when the exercise might constitute a breach of the GDPR data regulations. It is open to question as to whether the law should impose greater and more specific restrictions on medical testing of employees to glean information on one's private health status. The extent of discretion for employers should be reflected upon and any mandates be outlined in the contract of employment. With the current fragmentation of the employment relationship and the adoption of homeworking / hybrid working models, the role of union representation could become more challenging, but theoretically, even more essential. Additionally, given the possibility of a new UK Bill of Rights replacing the Human Rights Act, there is a likelihood of alternative interpretations being applied to longstanding jurisprudence. It is the duty of legal representatives and other stakeholders to question the extent to which the current provisions and future proposals might protect workers against any unfairness and injustice, particularly when businesses themselves are faced with exogenous shocks.

**A major implication of Covid-19 has been the shift to more flexible work arrangements**

# References


Adam, R. (2002). Is e mail addictive?. *Aslib Proceedings*, 54(2), 85-94.

Adams-Prassl, A., Boneva, T., Golin, M., & Rauh, C. (2020). Inequality in the impact of the

coronavirus shock: new survey evidence for the UK. Available at: https://www.repository.cam.ac.uk/handle/1810/305395

Afshari, L., Hayat, A., Ramachandran, K. K., Bartram, T., & Balakrishnan, B. K. (2022). Threat or opportunity: accelerated job demands during COVID-19 pandemic. *Personnel Review*. Published ahead of print.

Aksoy, C. G., Carpenter, C. S., Frank, J., & Huffman, M. L. (2019). Gay glass ceilings: sexual orientation and workplace authority in the UK. *Journal of Economic Behavior & Organization*, *159*, 167-180.

Alexandra Beauregard, T., Arevshatian, L., Booth, J. E., & Whittle, S. (2018). Listen carefully: transgender voices in the workplace. *The International Journal of Human Resource Management*, *29*(5), 857-884.

Ashkanasy, N. M., Härtel, C. E., & Daus, C. S. (2002). Diversity and emotion: the new frontiers in organizational behavior research. *Journal of Management*, *28*(3), 307-338.

Aydin, E., & Ozeren, E. (2020). Inclusion and exclusion of sexual minorities at organisations: evidence from LGBT NGOs in Turkey and the UK. *Journal of Organizational Change Management*, *33*(3), 567-578.

Ball, C., & Flynn, M. (2021). Trade union responses to ageing workplaces: lessons from the UK. *Work, Aging and Retirement*, *7*(4), 273-287.

Barak, A. (2005). Sexual harassment on the internet. *Social Science Computer Review*,*23*(1), 77-92.

BBC (2021). 'The Gospel Truth?' Covid-19 vaccines and the danger of religious misinformation. Available at: https://www.bbc.co.uk/news/av/health-56416683

BBC (2022a). Compulsory Covid jabs for care home staff scrapped. Available at: https://www.bbc.co.uk/news/health-60575519

BBC (2022b). Covid vaccines: The unvaccinated NHS workers facing the sack. Available at: https://www.bbc.co.uk/news/uk-60104140

Blackham, A. (2019). Young workers and age discrimination: tensions and conflicts.*Industrial Law Journal*, *48*(1), 1-33.

Blundell, R., Costa Dias, M., Joyce, R., & Xu, X. (2020). COVID 19 and inequalities. *Fiscal Studies*, *41*(2), 291-319.

Booker, C. L., & Meads, C. (2021). Sexual Orientation and the Incidence of COVID-19: Evidence from Understanding Society in the UK Longitudinal Household Study. In *Healthcare* (Vol. 9, No. 8, p. 937). Multidisciplinary Digital Publishing Institute.

Boyle, C. (2021). Preparing your organisation for an employment tribunal post Covid. Available at: https://www.peoplemanagement.co.uk/experts/legal/preparing-your-organisation-for-employment-tribunal-post-covid#gref

Brooks, S. K., Webster, R. K., Smith, L. E., Woodland, L., Wessely, S., Greenberg, N., & Rubin, G. J. (2020). The psychological impact of quarantine and how to reduce it: rapid review of the evidence. *The Lancet*, *395*(10227), 912-920.

Charles, N., & Aull Davies, C. (2000). Cultural stereotypes and the gendering of senior management. *The Sociological Review*, *48*(4), 544-567.

Chiu, W., Chan, A.W., Snape, E., & Redman, T. (2001). Age stereotypes and discriminatory attitudes towards older workers: an East-West comparison. *Human Relations*, *54*(5), 629-661.

CIPD (2022). Labour Market Outlook: Winter 21–22. Available at: https://www.cipd.co.uk/knowledge/work/trends/labour-market-outlook#gref

CIPHR (n.d.). CIPHR survey reveals employers' attitudes towards staff working from home. Available at: https://www.ciphr.com/press-releases/68-of-employers-are-considering-pay-cuts-for-remote-workers-ciphr-survey-shows/

Cominetti, N. (2021). A U-shaped crisis: the impact of the covid-19 crisis on older workers. Resolution Foundation. Available at: https://www.resolutionfoundation.org/app/uploads/2021/04/A-U-shaped-crisis.pdf

Deloitte (2020). Corporate restructuring strategies in postpandemic recovery: Crisis management considerations for distressed markets. Available at: https://www2.deloitte.com/us/en/pages/consulting/articles/corporate-restructuring-post-pandemic.html

Deole, S. S., Deter, M., & Huang, Y. (2021). Home Sweet Home: Working from home and employee performance during the COVID-19 pandemic in the UK. Available at: https://www.econstor.eu/bitstream/10419/231328/1/GLO-DP-0791.pdf

Donnelly, R., & Johns, J. (2020). Recontextualising remote working and its HRM in the digital economy: an integrated framework for theory and practice. T*he International Journal of Human Resource Management*, 32(1), 84-105.

Duncan, C., & Loretto, W. (2004). Never the right age? Gender and age based discrimination in employment. *Gender, Work & Organization*, *11*(1), 95-115.

Ellis, S. J., Bailey, L., & McNeil, J. (2015). Trans people's experiences of mental health and gender identity services: a UK study. *Journal of Gay & Lesbian Mental Health*,*19*(1), 4-20.

Equality and Human Rights Commission (2018). Pregnancy and maternity discrimination research findings. Available at: https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings#:~:text=The%20EOC%20reported%20that%20almost,forced%20out%20of%20their%20jobs

Engjom, H., van den Akker, T., Aabakke, A., Ayras, O., Bloemenkamp, K., Donati, S., ... & Knight, M. (2022). Severe COVID-19 in pregnancy is almost exclusively limited to unvaccinated women–time for policies to change.*The Lancet Regional Health-Europe*,*13*, 100313.

Fernández-Reino, M. (2020). Migrants and Discrimination in the UK. Available at: https://migrationobservatory.ox.ac.uk/wp-content/uploads/2020/01/Briefing-Migrants-and-Discrimination-in-the-UK.pdf

Fletcher, J. R. (2021). Chronological quarantine and ageism: COVID-19 and gerontology's relationship with age categorisation. *Ageing & Society*, *41*(3), 479-492.

Foster, D., & Fosh, P. (2010). Negotiating 'difference': Representing disabled employees in the British workplace. *British Journal of Industrial Relations*, *48*(3), 560-582.

Foster, D., & Hirst, N. (2020). Legally disabled? The impact of Covid-19 on the employment and training of disabled lawyers in England and Wales: opportunities for job-redesign and best practice. Available at: http://legallydisabled.com/wp-content/uploads/2020/11/Covid-report-TLS-Oct-2020-FINAL.pdf

Gato, J., Barrientos, J., Tasker, F., Miscioscia, M., Cerqueira-Santos, E., Malmquist, A., ... & Wurm, M. (2021). Psychosocial effects of the COVID-19 pandemic and mental health among LGBTQ+ young adults: a cross-cultural comparison across six nations. *Journal of Homosexuality*, *68*(4), 612-630.

Germain, M. L., & McGuire, D. (2014). The role of swift trust in virtual teams and implications for human resource development. *Advances in Developing Human Resources*, *16*(3), 356-370.

Ghumman, S., & Ryan, A. M. (2013). Not welcome here: discrimination towards women who wear the Muslim headscarf.*Human Relations*, *66*(5), 671-698.

Government Equalities Office (2018). National LGBT Survey. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722314/GEO-LGBT-Survey-Report.pdf

Grimshaw, D., & Rubery, J. (2015). The motherhood pay gap: A review of the issues, theory and international evidence (Conditions of Work and Employment Series). International Labour Organization.

Hambler, A. (2016). Managing workplace religious expression within the legal constraints. *Employee Relations*, 38(3): 406-419.

Hirst, N., & Foster, D. (2021). COVID is changing the way we work – and for disabled people too. Available at: https://theconversation.com/covid-is-changing-the-way-we-work-and-for-disabledpeople-too-150670

HLAA (2020). Remote workplace communications access: recommendations for employers during times of expanded telework. Available at: https://www.hearingloss.org/remote-workplace-communications-recommendations-employers/

Holland, P. (2021). Will Disabled Workers Be Winners or Losers in the Post-COVID-19 Labour Market?.*Disabilities*, *1*(3), 161-173.

Hudson-Sharp, N., & Metcalf, H. (2016). Inequality among lesbian, gay bisexual and transgender groups in the UK: a review of evidence. *London: National Institute of Economic and Social Research*.

Hupkau, C., & Petrongolo, B. (2020). Work, care and gender during the Covid 19 crisis. *Fiscal Studies*, *41*(3), 623-651.

IFS (2020). Sector shutdowns during the coronavirus crisis: which workers are most exposed?. Available at: https://ifs.org.uk/publications/14791

Jones, B. A., Bowe, M., McNamara, N., Guerin, E., & Carter, T. (2021). Exploring the mental health experiences of young trans and gender diverse people during the Covid-19 pandemic. *International Journal of Transgender Health*, 1-13.

Keys, C., Nanayakkara, G., Onyejekwe, C., Sah, R. K., & Wright, T. (2021). Health inequalities and ethnic vulnerabilities during COVID-19 in the UK: A reflection on the PHE reports. *Feminist Legal Studies*, *29*(1), 107-118.

Konur, O. (2002). Access to employment by disabled people in the UK: Is the Disability Discrimination Act working?. I*nternational Journal of Discrimination and the Law*, *5*(4), 247-279.

Li, Y., & Heath, A. (2020). Persisting disadvantages: A study of labour market dynamics of ethnic unemployment and earnings in the UK (2009–2015). *Journal of Ethnic and Migration Studies*, *46*(5), 857-878.

Li, Y., Devine, F., & Heath, A. (2008). Equality group inequalities in education, employment and earnings: A research overview and analysis of trends over time. Manchester: Equality and Human Rights Commission.

Lockwood, G. (2008). A legal analysis of sexual harassment employment tribunal cases 1995 2005. *International Journal of Law and Management*, *50*(6), 316-332.

Lockwood, G., & Nath, V. (2021). The monitoring of tele-homeworkers in the UK: legal and managerial implications. *International Journal of Law and Management*, *63*(4), 396-416.

Major, L.E., & Machin, S. (2020). Covid-19 and social mobility. LSE Working Paper. Available at: http://eprints.lse.ac.uk/104673/

Mason, B., Edwards, M., Bajorek, Z., & Bevan, S. (2021). The impact of COVID-19 on older workers with long-term health conditions. Centre for Better Ageing. Available at: https://workingwithcancer.co.uk/content/files/Impact-of-COVID-on-workers-long-term-health-conditions.pdf

McDonald, P. (2012). Workplace sexual harassment 30 years on: a review of the literature. *International Journal of Management Reviews*, *14*(1), 1-17.

McGowan, V. J., Lowther, H. J., & Meads, C. (2021). Life under COVID-19 for LGBT+ people in the UK: systematic review of UK research on the impact of COVID-19 on sexual and gender minority populations. *BMJ Open*,*11*(7).

McGregor-Smith, R. (2017). Race in the workplace: the McGregor-Smith review. Report for the Department for Business, Energy and Industrial Strategy. Available at: https://www.gov.uk/government/publications/race-in-the-workplace-the-mcgregor-smith-review

McMunn, A., Bird, L., Webb, E., & Sacker, A. (2020). Gender divisions of paid and unpaid work in contemporary UK couples. *Work, Employment and Society*, *34*(2), 155-173.

Middlemiss, S. (2015). Relationship problems: Employer's liability for marital discrimination?. *Common Law World Review*, *44*(1), 51-70.

Nath, V., & Lockwood, G. (2021). Implications of the UK Equality Law for tele-homeworking: COVID-19 and beyond. *International Journal of Law and Management*. Published ahead of print.

NHS (2022). Long-term effects of coronavirus (long COVID). Available at: https://www.nhs.uk/conditions/coronavirus-covid-19/long-term-effects-of-coronavirus-long-covid/

OECD (2021). Caregiving in Crisis: Gender inequality in paid and unpaid work during COVID-19. Available at: https://www.oecd.org/coronavirus/policy-responses/caregiving-in-crisis-gender-inequality-in-paid-and-unpaid-work-during-covid-19-3555d164/#section-d1e91

ONS (2021a). Coronavirus and redundancies in the UK labour market: September to November 2020. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/labourmarketeconomicanalysisquarterly/december2020

ONS (2021b). Coronavirus (COVID-19) and the different effects on men and women in the UK, March 2020 to February 2021. Available at: www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/articles/coronaviruscovid19andthedifferenteffectsonmenandwomenintheukmarch2020tofebruary2021/2021-03-10

ONS (2022a). Reasons for workers aged over 50 years leaving employment since the start of the coronavirus pandemic. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/reasonsforworkersagedover50yearsleavingemploymentsincethestartofthecoronaviruspandemic/2022-03-14

ONS (2022b). Coronavirus and the social impacts on disabled people in Great Britain: March 2020 to December 2021. Available at: https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/articles/coronavirusandthesocialimpactsondisabledpeopleingreatbritain/march2020todecember2021

Parry, E., & Tyson, S. (2009). Organizational reactions to UK age discrimination legislation. *Employee Relations*, *31*(5), 471-488.

Perry, E. L., Hanvongse, A., & Casoinic, D. A. (2013). Making a case for the existence of generational stereotypes: A literature review and exploratory study. In J. Field, R. J. Burke, & C. L. Cooper (Eds.), *The SAGE Handbook of Aging, Work and Society*, Thousand Oaks: Sage, pp.416–442.

Peruzzi, M. (2015). Contradictions and misalignments in the EU approach towards the gender pay gap. *Cambridge Journal of Economics*,*39*(2), 441-465.

Platt, L. F., & Lenzen, A. L. (2013). Sexual orientation microaggressions and the experience of sexual minorities. *Journal of Homosexuality*, *60*(7), 1011-1034.

Porter, F. (2020). UK government grants Pfizer civil legal indemnity for COVID-19 vaccine. Available at: https://www.jurist.org/news/2020/12/uk-government-grants-pfizer-civil-legal-indemnity-for-covid-19-vaccine/

Posthuma, R. A., & Campion, M. A. (2009). Age stereotypes in the workplace: common stereotypes, moderators, and future research directions. *Journal of Management*,*35*(1), 158-188.

Powell (2021). House of Commons Library briefing paper: Number 7540, 24 May 2021: Disabled people in employment.

Public Health England (2020). Beyond the data: Understanding the impact of COVID-19 on BAME groups. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892376/COVID_stakeholder_engagement_synthesis_beyond_the_data.pdf

Rights of Women (2021). Rights of Women survey reveals online sexual harassment has increased, as women continue to suffer sexual harassment whilst working through the Covid-19 pandemic. Available at: https://rightsofwomen.org.uk/news/rights-of-women-survey-reveals-online-sexual-harassment-has-increased-as-women-continue-to-suffer-sexual-harassment-whilst-working-through-the-covid-19-pandemic/

Rogers, G. (2021). Why there has been an influx in staff making discrimination claims. Available at: https://www.peoplemanagement.co.uk/voices/comment/why-there-has-been-influx-staff-making-discrimination-claims

Rubery, J., Grimshaw, D., & Figueiredo, H. (2005). How to close the gender pay gap in Europe: towards the gender mainstreaming of pay policy. *Industrial Relations Journal*, *36*(3), 184-213.

Schur, L. A., Ameri, M., & Kruse, D. (2020). Telework after COVID: a "silver lining" for workers with disabilities? *Journal of Occupational Rehabilitation*, *30*(4), 521-536.

Sevilla, A., & Smith, S. (2020). Baby steps: The gender division of childcare during the COVID-19 pandemic. *Oxford Review of Economic Policy*, *36*(Supplement_1), S169-S186.

Skills for Care (2021). The state of the adult social care sector and workforce in England 2021. Available at: https://www.skillsforcare.org.uk/adult-social-care-workforce-data-old/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-State-of-the-Adult-Social-Care-Sector-and-Workforce-2021.pdf

The Guardian (2021a). Tribunal claims for ageism at work increase since Covid lockdown. Available at: https://www.theguardian.com/money/2021/may/31/ageism-work-tribunal-claims-soar-covid-lockdown;

The Guardian (2021b). I took the Covid vaccine while pregnant – let's not pretend it's an easy decision. Available at: https://www.theguardian.com/lifeandstyle/2021/oct/05/pregnant-women-not-taking-vaccine

The Guardian (2022). NatWest employee dismissed days after cancer surgery sues for £2m payout. Available at: https://www.theguardian.com/business/2022/feb/17/natwest-facing-2m-discrimination-and-un fair-dismissal-claim

TUC (2021). TUC calls for long covid to be urgently recognised as a disability to prevent 'massive' Discrimination. Available at: https://www.tuc.org.uk/news/tuc-calls-long-covid-be-urgently-recognised-disability-prevent-massive-discrimination

UK Cabinet Office (2022). COVID-19 Response: Living with COVID-19. Available at: https://www.gov.uk/government/publications/covid-19-response-living-with-covid-19

Unison (2021). COVID 19 – know your rights: guidance for black members. Available at: www.unison.org.uk/content/uploads/2020/06/26128_Covid-19_guidance-for-Black_members_leaflet.pdf

Urquhart (2022a). A third of employers plan to scrap 'stay at home' requirements for Covid-positive workers, poll finds. Available at: https://www.peoplemanagement.co.uk/news/articles/third-employers-plan-scrap-stay-home-requirements-workers-test-positive-coronavirus#gref

Urquhart (2022b). What does 'living with Covid' mean for HR? Available at: https://www.peoplemanagement.co.uk/news/articles/what-does-living-with-covid-mean-hr

Van Ouytsel, J., Walrave, M., & Vandebosch, H. (2015). Correlates of cyberbullying and how school nurses can respond. *NASN School Nurse*, *30*(3), 162-170.

Vermeerbergen, L., Pulignano, V., Domecka, M., & Jansens, M. (2021). Working Hard for the Ones You Love and Care for under Covid-19 Physical Distancing. *Work, Employment and Society*, *35*(6), 1144-1154.

Vickerstaff, S., Phillipson, C., & Loretto, W. (2015). Training and development: the missing part of the extending working life agenda?. *Public Policy and Aging Report*, *25*(4), 139-142.

Ward, J., & Winstanley, D. (2006). Watching the watch: The UK fire service and its impact on sexual minorities in the workplace. *Gender, Work & Organization*, *13*(2), 193-219.

Watermeyer, R., Shankar, K., Crick, T., Knight, C., McGaughey, F., Hardman, J., ... & Phelan, D. (2021). 'Pandemia': a reckoning of UK universities' corporate response to COVID-19 and its academic fallout. *British Journal of Sociology of Education*, *42*(5-6), 651-666.

Whiting, R. H., Gammie, E., & Herbohn, K. (2015). Women and the prospects for partnership in professional accountancy firms. *Accounting & Finance*, *55*(2), 575-605.

Whittle, S., Turner, L., Al-Alami, M., Rundall, E., & Thom, B. (2007). Engendered penalties: Transgender and transsexual people's experiences of inequality and discrimination. Available at: http://www.pfc.org.uk/pdf/engenderedpenalties.pdf

WHO (2020). A guide to preventing and addressing social stigma associated with COVID-19. Available at: https://www.who.int/publications/m/item/a-guide-to-preventing-and-addressing-social-stigma-associated-with-covid-19?gclid=EAIaIQobChMIvo-BvL3l9QIVEYBQBh2v1QlQEAMYASAAEgKHO_D_BwE

Zwysen, W., Di Stasio, V., & Heath, A. (2021). Ethnic penalties and hiring discrimination: comparing results from observational studies with field experiments in the UK. *Sociology*, *55*(2), 263-282.

# Endnotes

1 For the purposes of this article, we use the terms 'worker' and 'employee' interchangeably; however, the focus of the current paper is on the rights of employees.

2 ONS (2021a).

3 Rogers (2021); Mason et al. (2021).

4 Deole et al. (2021).

5 Donnelly & Johns (2020).

6 Afshari et al. (2022).

7 Watermeyer et al. (2021).

8 Vermeerbergen et al. (2021).

9 The uncertain travel-related restrictions and erratic changes in (differing) global quarantining rules can induce stress in individuals seeking to meet their work-related and social / familial obligations. See also Brooks et al. (2020).

10 Blundell et al. (2020).

11 CIPD (2022); Skills for Care (2021).

12 Boyle (2021).

13 Mason et al. (2021).

14 Ashkanasy et al. (2002).

15 Perry et al. (2013).

16 Ball & Flynn (2021); Posthuma & Campion (2009).

17 Blackham (2019).

18 Chiu et al. (2001).

19 Cominetti (2021).

20 Vickerstaff et al. (2015).

21 Parry & Tyson (2009); Duncan & Loretto (2004).

22 Duncan & Loretto (2004).

23 Cominetti (2021).

24 Major & Machin (2020).

25 Adams-Prassl et al. (2020).

26 ONS (2022a).

27 Cominetti (2021).

28 The Guardian (2021a); ONS (2022a).

29 Long Covid is also termed as post-Covid-19 syndrome and can cause symptoms that last weeks or months after the infection. The condition might include brain fog, loss of concentration, cognitive impairment, and broken sleep (NHS, 2022).

30 While beyond the scope of this paper, some critics of government policy have questioned the selective focus of age-related quarantining during the pandemic [see Fletcher (2020) surrounding the debate].

31 CIPHR (n.d.).

32 Nath & Lockwood (2021).

33 Konur (2002); Foster & Fosh (2010).

34 Schur et al. (2020).

35 Hirst & Foster (2021).

36 Powell (2021).

37 Holland (2021).

38 Foster & Hirst (2020).

39 To exemplify, a DeafBlind employee may require screen-reading equipment in addition to other tools and services to access captioning (HLAA, 2020).

40 Adam (2002); Germain & McGuire (2014).

41 ONS (2022b).

42 Mason et al. (2021).

43 TUC (2021).

44 WHO (2020).

45 The Guardian (2022).

46 Foster & Hirst (2020).

47 Rubery et al. (2005); Peruzzi (2015).

48 Grimshaw & Rubery (2015).

49 Lockwood (2008); McDonald (2012).

50 McMunn et al. (2020).

51 IFS (2020).

52 The economic recession following the Covid-19 outbreak has also been dubbed as “shecession” and “momcession” because of the disproportionate negative economic effects on women more generally, and more specifically, on mothers who took on additional childcare obligations (OECD, 2021).

53 ONS (2021b).

54 Sevilla & Smith (2020); Hupkau & Petrongolo (2020).

55 Rights of Women (2021).

56 Barak (2005).

57 The grounds of refusal include additional costs; detrimental effect to meet customer demand; inability to reorganise work amongst existing staff; inability to recruit staff; detrimental impact on quality; detrimental impact on performance; insufficiency of work during periods the employee proposes to work; and planned structural changes.

58 Middlemiss (2015).

59 For example, see Whiting et al. (2015); Charles & Aull Davies (2000).

60 Equality and Human Rights Commission (2018).

61 The Guardian (2021b); Engjom et al. (2022).

62 Platt & Lenzen (2013).

63 Alexandra Beauregard et al. (2018).

64 Whittle et al. (2007).

65 Ibid.

66 Ellis et al. (2015).

67 Li et al. (2008).

68 Aksoy et al. (2019).

69 Government Equalities Office (2018).

70 Aydin & Ozeren (2020); Ward & Winstanley’s (2006).

71 Hudson-Sharp & Metcalf (2016).

72 Booker & Meads (2021).

73 Jones et al. (2021).

74 Gato et al. (2021).

75 McGowan et al. (2021).

76 McGregor-Smith (2017).

77 Zwysen et al. (2021); Li & Heath (2020).

78 Fernández-Reino (2020).

79 Hambler (2016).

80 Ghumman & Ryan (2013).

81 Public Health England (2020).

82 Keys et al. (2021).

83 BBC (2021).

84 BBC (2022a).

85 BBC (2022b).

86 Porter (2020).

87 UK Cabinet Office (2022).

88 Urquhart (2022a).

89 Aggravated damages provide compensation for mental distress or injury to feelings caused by the manner or motive with which a wrong was committed by the employer.

90 Van Ouytsel et al. (2015).

91 In this context, discrimination by association occurs where a non-disabled person claims that they have suffered discrimination because of their connection to someone with a disability. Ms Coleman claimed that she had been discriminated against on the grounds of her son’s disability because her employer refused to grant her the flexible working hours that she required to cope with both her job and her responsibilities as a carer.

92 Lockwood & Nath (2020).

93 Ibid.

94 It should be noted that as of 1 April 2022, employers no longer need to specifically consider Covid-19 in their risk assessments.

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