Employer had enough information to know that an employee with type 2 diabetes was disabled

In *Cunningham v BBC* the EAT has held that an employer had enough information to have known that an employee with type 2 diabetes was disabled and that her late night working pattern placed her at a substantial disadvantage. In turn, the BBC had been under a duty to make reasonable adjustments and its failure to remove the employee from a late night shift must now be scrutinised again.

What happened in this case?

The Claimant had worked for the BBC since 1987 as a presentation announcer/director for BBC Scotland. She worked according to a rota, mixing early shifts (from 5am), late shifts (the BBC Scotland Late shift finishing around midnight, and the BBC One Late shift finishing at 3am), and day shifts.

In March 2023, the Claimant told the BBC she had type 2 diabetes and was suffering with fatigue. She was referred for an occupational health (**OH**) assessment and then signed off sick for around four weeks. OH advised the BBC that the Claimant's health would improve with treatment in the future and recommended that she be removed from early and late shifts and be given regular rest and meal breaks. Around the same time, the Claimant told the BBC that shift working was causing problems including disrupted sleep, irregular meals and lack

of routine. She asked for adjustments to accommodate her condition, which she explicitly referred to as a "disability". The BBC removed her from the early shift and the BBC One Late shift, but not the BBC Scotland Late shift.

In June 2023, the Claimant made a broadcasting error that triggered a formal disciplinary investigation. The BBC ultimately took no formal action, but the Claimant found the process distressing and went off sick in August 2023. A further OH referral was made, which advised that she should also be taken off the BBC Scotland Late shift.

The Claimant brought claims for discrimination arising from disability (in relation to the disciplinary process) and failure to make reasonable adjustments (in relation to not taking her off the BBC Scotland Late shift). Both claims require an employer to have either actual or constructive knowledge of the employee's disability at the relevant time.

The Employment Tribunal (**ET**) dismissed both claims. It found the BBC neither knew, nor could reasonably have known, that the Claimant was disabled during the relevant period (being June to November 2023). In any event, the BBC had not breached its duty to make reasonable adjustments, since adjustments had been made. Further, the ET found that the broadcasting error was not caused by the Claimant's disability and that, even if it had been, the disciplinary process was a proportionate means of achieving a legitimate aim.

The Claimant appealed on three grounds, arguing the ET erred in:

- its approach to assessing knowledge of disability, by failing to consider what the BBC actually knew, what further enquiries it should have made, and what those enquiries would have revealed;

- failing properly to consider the reasonable adjustment of removal from the BBC Scotland Late shift; and

- finding that her disability played no role in the broadcasting error that led to the disciplinary process.

What was decided?

Ground 1: Knowledge of disability

The EAT concluded that the BBC knew, or ought to have known, that the Claimant was disabled throughout the relevant period. It said the ET had fallen into error on several fronts.

Type 2 diabetes is inherently a long-term condition, and the BBC's own OH report from May 2023 had flagged *ongoing* monitoring and the possibility of *future* medication. If the BBC was genuinely unsure whether the condition was long-term, it should have sought clarification from OH.

The ET had also approached the "substantial adverse effect" limb incorrectly. It weighed what the Claimant could do

against what she could not, when the correct approach is to look at incapacities, not capabilities. Compounding this, the ET treated evidence that the Claimant's symptoms were improving or being managed as a reason to doubt that she was disabled at all. This was the wrong question: where a condition is being treated or managed, the correct question is to ask what the effect would be *without* that management.

Further, the ET's finding that there was "nothing" to suggest disability could not be reconciled with its own findings of fact that the BBC had actual knowledge of the diabetes diagnosis and the exhaustion it caused, that OH reports had recommended "reasonable adjustments", and that the Claimant had said she needed an accommodation for a "disability". Language of this kind should have prompted further enquiry into disability status.

Ground 2: Reasonable adjustments – the BBC Scotland Late shift

The EAT held that the ET had failed to consider whether removing the Claimant from the Scotland Late shift was a reasonable adjustment and this amounted to an error of law.

The EAT identified a series of related errors in the ET's reasoning. Most importantly, the ET failed to make clear findings on the nature and extent of the substantial disadvantage that late shifts caused to the Claimant. Without this, it was difficult to assess whether removing her from that shift was a "reasonable" step.

The ET had reasoned that there was no medical evidence that the Claimant could not work evenings, but that was not the

adjustment in issue. The Claimant's proposal concerned late shifts specifically, not early-evening work, so this finding did not engage with what was actually being asked.

Separately, the ET failed to address whether it was reasonable for the BBC to keep the Claimant on late shifts while it queried OH's initial advice, and nor did it examine the BBC's reading of that advice as meaning the BBC Scotland Late shift did not count as a "late shift" for adjustment purposes.

This issue has been remitted to a new ET for fresh consideration.

Ground 3: Discrimination arising from disability – the disciplinary process

The Claimant had challenged the ET's finding that her disability had played no material part in the broadcasting error, arguing that this was inconsistent with the separate finding that she was disabled from 7 June 2023 onwards.

However, the EAT disagreed. A general finding of disability across a period is not the same as a finding that a claimant was actually experiencing symptoms on a particular day. There was no contradiction in finding that the Claimant was disabled generally, while also finding that this specific incident was not caused by exhaustion.

The EAT emphasised that the threshold for perversity is very high. The question is not whether the EAT would have reached the same conclusion, but whether no reasonable tribunal could

have done so on the evidence. The ET was entitled to weigh the Claimant's explanation against the contemporaneous evidence, and its conclusion was one the ET was permitted to reach. Therefore, this ground of appeal failed.

What does this mean for employers?

When considering whether an employee is disabled, it is important to remember that you can be liable for disability discrimination even where you do not have *actual* knowledge that the employee is disabled. Although actual (or imputed) knowledge of the disability is required for *direct* disability discrimination, this is not the case for other disability-related legal claims. No knowledge is required for claims of indirect disability discrimination, disability-related harassment or victimisation. And for two of the most common disability-related claims – discrimination arising from disability and failure to make reasonable adjustments – liability may arise where the employer has actual, imputed or "constructive" knowledge of the disability.

Constructive knowledge of a disability will be fixed on an employer where it would have known facts relevant to an employee's disability had it been reasonably diligent. In other words, an employer will not benefit from "turning a blind eye" to the issue. To this end, employers should take the following practical steps where there is a possibility an employee is disabled:

- **Investigate:** gather as much information as possible to understand the individual's health. This includes things like GP certificates, correspondence and notes of

your own interactions with the individual and notes of return-to-work meetings. It is advisable to reflect on this at an early stage and keep the position under review. Don't treat improving or managed symptoms as evidence *against* disability.

- **Alarm bells:** do not ignore "alarm bells" such as the employee labelling themselves as "disabled" – this does not necessarily mean that they are disabled, but it should prompt further enquiries.

- **Decide when to obtain specialist advice:** consider carefully when its right to obtain specialist OH advice. Depending on facts, it may be appropriate to wait, but the position should be kept under review. Over time, the individual's condition may evolve from one which does not meet the disability test, to one that does.

- **Give clear instructions when seeking specialist advice:** when instructing specialist advisers, take care to summarise accurately the knowledge of the individual's health and ask the adviser to provide a view on whether the individual is disabled by reference to the different elements of the disability test in the Equality Act

2010.

- **Follow up where necessary:** where the specialist advice is imprecise, incomplete or contradicts other evidence, this should be followed up and further advice sought. Do not assume that silence on an issue means the employee is not disabled. In any event, OH reports should not be viewed as determinative, but should be treated as part of the overall picture.

- **Be pragmatic and don't be afraid to make adjustments**: making adjustments will not necessarily be viewed as a concession of knowledge of disability and may help to resolve the issue in hand. Where you have information which suggests that an individual may be disabled, it would be sensible to address the issue of adjustments proactively. Where OH advises that adjustments should be made these should usually be taken forward. Again, where there is any uncertainty about what is being recommended, clarify with OH rather than taking the least favourable interpretation for the employee.

Cunningham v BBC

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Point of no return: EAT considers when entitlement to a discretionary bonus crystallises

In *Chandrashekarappa v Wipro Ltd* the Employment Appeal Tribunal considered whether an employee was entitled to full payment of a promised bonus in circumstances where the employer had sought to change the terms of the scheme after he had met the relevant criteria.

What happened in this case?

The Claimant worked for the Respondent, Wipro Ltd (a large IT outsourcing organisation), as a Practitioner Sales Hunter Manager. Since 2019, the Claimant had been working on a valuable deal with the John Lewis Partnership (a new customer). This was signed on 26 June 2020 and was considered to be a great success for the Respondent.

Employees at the Respondent were entitled to various sales incentive arrangements set out in 'Variable Pay Plans' (**VPPs**), which were presented to staff each financial year and could vary between years. Each VPP would contain 'Sales Incentive Policies' (**SIPs**) which would vary between occupations and individuals, and individual SIPs would be sent to staff members to be accepted by them.

For the financial year running April 2020 to March 2021, the Claimant claimed that his line manager, Mr Garg, told him prior to the presentation of the VPP that there was to be a new 'kitty bonus' available to individuals (including the Claimant). Mr Garg reportedly said that if he was successful in winning the John Lewis Partnership business, he would receive this bonus, and this would make the Claimant one of the highest-paid salespeople globally. The Tribunal later noted that this was substantially confirmed by witness evidence.

At a presentation on the year's VPP in March 2020, the 'kitty bonus' did not form a core part of the presentation but was referenced in a footnote as follows:

> *"A kitty of up to 1% of new logo invoicing against first 12 months can be paid to Practitioner Sales Hunter/Hunter manager contributing to deal win based on SL [sector lead] head approval. Applicable to DOP and CIS role holders."*

The bonus was not referred to in the section of the VPP that dealt with discretionary bonuses. The presentation contained a disclaimer that it was not a substitute for any policy, and

that any final policy would override it in case of a conflict.

Any further terms on which the 'kitty bonus' would be paid were not documented until the SIP was reissued for the second half of the year. This was a new approach, as the Respondent's SIPs had otherwise applied for a full financial year, and the move towards splitting financial years had not been anticipated in the original SIP for the year. The Respondent's explanation to staff was that this reflected the challenging business climate due to COVID-19 and allowed for revision of targets. One of the changes introduced was that the cap on commission overall had changed from $300,000 for the whole year to $150,000 for each half year.

A week after the John Lewis Partnership deal was signed, Mr Garg wrote to a senior colleague (Mr Desai) proposing the Claimant for a "*1% commission for the JLP deal*" and referring directly to the terms of the 'kitty bonus' as set out in the presentation. This was approved by Mr Desai and copied to HR. In later correspondence, Mr Desai noted that he could only send a congratulatory email to the Claimant (and make the payment) once it was approved by more senior management, and HR confirmed they were obtaining details for the payment to "*set clear expectations*".

In subsequent discussion, another member of HR (responsible for compensation and benefits) shared an email indicating that the 'kitty bonus' was for 1% of invoiced revenue as a discretionary reward, paid out at the end of the year subject to approval from the Global Head, and that it was subject to a $150,000 cap. Further discussion followed involving Mr Garg, Mr Desai and others, during which it was raised that no cap had been mentioned in the communications about this bonus and that employees would "*feel short changed*". It was also the

first time that approval from the Global Head had been mentioned as being necessary. There was suggestion of lifting the cap to $300,000 for the Claimant, as well as awarding him a separate ‘large deal bonus’ to help make up for any shortfall.

On 20 October 2020, draft figures for the calculation had been sent to the Claimant which did not indicate any cap applying. A few days later, he was able to access the revised SIP for the first time, which mentioned the $150,000 cap and Global Head approval being applied. Later, on 15 December 2020, the Claimant was informed that he would receive 1% commission for the John Lewis Partnership deal but with the cap applied. He had also received separate confirmation that he would receive $41,000 as a deal bonus.

The Claimant did not raise any complaint until July 2021, the ‘kitty bonus’ having been paid to him in February 2021; this was much earlier than expected, given that revenue from the transaction would not be apparent until December 2021. His complaint was raised as part of a discussion on incentives generally, as the Claimant was concerned about his treatment in relation to variable pay compared to other staff, as well as disputing the new approach of splitting SIPs into half-years rather than full years. By December 2021, when he had originally expected to receive the full ‘kitty bonus’, he believed that the full amount had not been paid and he therefore issued proceedings in the Employment Tribunal.

The Claimant continued to work for the Respondent, later submitting a grievance relating to not being invited to an important offsite meeting. He claimed that he was being sidelined due to his Tribunal claim. He later resigned in May 2022, citing that the workplace had become untenable for him

due to ongoing retaliation for his claim. He lodged a second Tribunal claim on 27 September 2022.

It was later documented in the case that if the ‘kitty bonus’ had been paid in full rather than being subjected to a cap, it was worth £516,082 instead of the $150,000 that the Claimant had received.

Employment Tribunal Claims

The Claimant brought claims for unlawful deduction from wages, race discrimination, victimisation, constructive unfair dismissal, and wrongful dismissal. One of the claims relating to unlawful deduction from wages related to the imposition of the cap on the ‘kitty bonus’.

In this regard, the Tribunal concluded that:

- In order to proceed as a claim for unlawful deductions under Section 13 Employment Rights Act 1996 (**ERA 1996**), the full amount of the ‘kitty bonus’ needed to be wages that were properly payable to the Claimant. The fundamental question was therefore whether he had a legal entitlement to payment of the ‘kitty bonus’ in an amount that was higher than what he actually received.

- The entitlement to a quantified or quantifiable amount

had not arisen until it was formally communicated to the Claimant that the decision had been made, as further approval was needed beyond Mr Desai's authorisation. It had therefore crystallised on 15 December 2020, and at that point the payment was communicated as being subject to the cap.

- This meant that nothing above the cap was 'properly payable', and failure to pay the uncapped 'kitty bonus' was not an unlawful deduction from wages.

The Tribunal dismissed the other claims, finding that the allegations in relation to other incentive payments were out of time, the burden of proof for race discrimination had not been shifted in the circumstances, the allegations of victimisation were not substantiated, and he was not found to have resigned in response to a repudiatory breach of contract.

What was decided?

The Claimant appealed the decision on three grounds, each of which overlapped to a significant extent (as noted by the EAT).

The essential nature of all three was that the Tribunal had incorrectly relied upon approval criteria that had only

occurred to the Respondent (and been communicated to him) after the announcement of the bonus parameters and after Mr Desai had communicated his approval of the bonus within those parameters. His case was that after that approval had been issued on 1 July 2020, there was a legal entitlement to a quantifiable sum (being 1% of the revenue invoiced), and the Respondent no longer had discretion to introduce any additional conditions such as a cap or additional level of approval.

The EAT characterised the essential question as therefore being as follows (**emphasis added**):

> *"whether, having informed the Claimant on 1 July 2020 that he was to receive the full 1% of the JLP revenues for the year, the Respondent was entitled, prior to the point at which the payment was subsequently due to be made (i.e.. after the relevant JLP figures had been determined) to change the basis of the calculation from that which had been communicated in July 2020. In other words,* ***although the level of the payment could not on any view be determined prior to December 2021 (when the JLP were first known), was the Respondent able to apply conditions to the bonus arrangements after 1 July 2020 and before December 2021****?"*

The EAT concluded that:

- There was no entitlement to any specific quantified sum any earlier than December 2020, when the capped bonus

was communicated to Mr Chandrashekarappa, or indeed prior to the actual revenues being known later in December 2021.

- However, at the point at which Mr Desai had approved Mr Garg's recommendation on 1 July 2020, the terms under which approval was being sought were clear and Mr Desai's approval was entirely consistent with the parameters at that time. It was at this point that the Claimant had become entitled to the bonus, a sum equalling 1% of the revenues from the John Lewis Partnership transaction. This would be payable only once quantification could be made (i.e. once revenues were known), which would be in December 2021.

- The EAT found that the Respondent had not been entitled, when making that quantification at a later date, to move the goal posts from where they had been on 1 July 2020 at the time of Mr Desai's approval of the full 1% 'kitty bonus'. They could not revisit the payment level and belatedly introduce a cap which had not been communicated when introducing and explaining the policy. As a result, the declaration of the bonus and quantification made in December 2020 / December 2021 had been one that the Respondent was not entitled to make.

They further determined that the question of the Claimant's entitlement was a simple 'yes or no' matter, which did not require further factual analysis. The EAT therefore declined to remit the matter back to the Employment Tribunal, and instead substituted their own finding that "*the Claimant was entitled to 1% of the JLP year one revenue less the sterling equivalent of $150,000 that was paid to him*".

What does this mean for employers?

This decision highlights an important consideration for employers – when does an employee's entitlement to their bonus actually crystallise?

Whilst each case will always turn on its own facts, this decision makes clear that a discretionary bonus can become a legal entitlement much earlier than the date on which the amount can be quantified. If criteria are communicated to the employee and subsequently met, it unlikely to be open to the employer to retrospectively add further conditions.

This is therefore a helpful word of caution for employers that, before announcing any bonus or other incentive schemes, they should ensure that communications contain (or refer to) all applicable terms and conditions, and that they are comfortable that the proposals are commercially viable for the period covered by the incentive plan.

Chandrashekarappa v Wipro Ltd

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ICO publishes new guidance on dealing with data protection complaints

As of 19 June 2026, data controllers – including employers – must have a data protection complaints process that meets the requirements set out in the Data (Use and Access) Act 2025 (DUAA 2025). In connection with this, the Information Commissioner's Office (the ICO) has published guidance on dealing with data protection complaints. In this briefing, we summarise the key points from the guidance from the perspective of employers handling staff data protection complaints.

What are "data protection complaints"?

Where an employee considers that you have breached data protection law because of the way you have handled their personal data, they may raise a data protection complaint. This could cover things like:

- the way you have responded to a data subject access request (a **DSAR**);
- the security measures used to store their personal data; or
- how their personal data has been used.

However, where an employee is complaining about other matters, alongside *exercising* their data protection rights, this will not count as a "data protection complaint". For example, an employee may raise a grievance about discriminatory treatment and submit a DSAR alongside it – the grievance is not a data protection complaint and nor is the DSAR (although if the DSAR is mishandled this could lead to a data protection complaint later on).

Employers also need to be mindful that grievances may contain a mix of complaints about both employment and data protection matters. Where this is the case, you will need to take care to deal with the data protection element in line with the DUAA 2025 and the ICO's guidance. In particular, data protection complaints must be concluded without undue delay. For example, where the data protection complaint is bound up in a lengthy grievance about multiple employment matters, you may prefer to respond to everything in one go. However, if the data protection complaint could be resolved sooner, then you must do this.

The guidance also provides that where you are uncertain about

whether an individual is raising a data protection complaint, you should ask them to clarify. Although this is not a strict legal requirement, the ICO says it expects data controllers to do this where needed, unless they have a good reason not to.

How should you prepare to handle data protection complaints?

In terms of preparation, these are several key parts of the guidance for employers to consider.

- **Give staff a way to complain to you:** the first step is to make sure there is a channel available for receiving data protection complaints. The guidance says that, for example, a form (electronic or paper), email address, phone line, online portal, live chat, or even an in-person option would all satisfy this obligation.

- **Tell staff they can complain:** you must inform staff that they can complain to you about data protection matters (and to the ICO). At the very least, this should be done at the point of collecting personal data (e.g. via a privacy notice using clear and plain language) and when responding to a DSAR.

- **Consider a written complaints procedure:** this is not a

requirement, but the guidance says employers could adopt a written complaints procedure which makes it clear how to complain and what to expect. However, the guidance also underlines that employers do not need to reinvent the wheel: existing written procedures may be adapted to address data protection complaints. (e.g. a privacy notice or grievance procedure). Some employers may decide to keep things simple and deal with data protection complaints through existing grievance procedures, however, there are some potential downsides to doing this. For example, employee grievances tend to be dealt with by line managers, HR and, sometimes, in-house employment lawyers. Yet a data protection complaint may require specialist data protection input, for example, from a Data Protection Officer, information governance specialists and/or IT teams. The danger is that the complaint is treated purely as an employee relations issue and important data protection compliance considerations are missed. Therefore, you should consider the best approach and, where a single channel is chosen, take steps to ensure that data protection complaints are dealt with carefully and with input from appropriate stakeholders.

- **Consider if there are other legal frameworks and obligations to comply with:** as discussed above, data protection complaints will often overlap with other issues, such as employment or whistleblowing complaints. If you are handling the data protection element alongside other issues, you should not hold back resolution of the complaint so as to deal with everything in one go. If you are able to resolve the data protection complaint more quickly, then you must do

so.

- **Train relevant staff about data protection complaints:** you will need to decide who handles these complaints. Crucially, staff who receive complaints should know how to spot a data protection complaint and where to escalate it. A data protection complaint could arise in a grievance, disciplinary concern, a flexible working request, or even in an ordinary email or message. Therefore, line managers and HR are likely to need data protection training.

What should you do when you receive a complaint?

Once a data protection complaint has been received, an employer should consider the following points.

- **Acknowledge the complaint:** you must acknowledge receipt of a data protection complaint within 30 days. The purpose of the acknowledgement is simply to confirm that the complaint has been received and will be investigated. The way the acknowledgement is given can reflect how the complaint was made, such as by email, letter, phone, or another method, provided it is appropriate in the circumstances. A record of the acknowledgement should also be kept to demonstrate compliance with the timeframe. The 30-day period begins

the day after the complaint is received, and if the final day falls on a weekend or public holiday, the deadline moves to the next working day.

- **Gather the information:** the next step is tobegin gathering all relevant information needed to assess the complaint properly. This involves reviewing the facts carefully, speaking to relevant members of staff, and comparing what has been said in the complaint with your own records. You should also check whether you have complied with your own policies and procedures. If the complaint is unclear (which is a possibility where complaints have been generated using AI tools), you should seek clarification as soon as possible so that you can identify what needs to be investigated. It may also be helpful to ask the employee what outcome they are seeking, as this may allow the matter to be resolved more quickly.

- **Investigate the complaint without undue delay:** you must begin your investigation as soon as you receive the complaint. You should not wait for the 30-day acknowledgement window to lapse. The investigation must be carried out without “undue delay”, meaning there must be no unjustifiable or excessive postponement. However, there is no fixed timeframe for completing an investigation since what is reasonable will depend on the complexity of the issues raised, the scale of the complaint, and whether the complainant is experiencing

harm that may be ongoing while the matter is unresolved. You must ensure that the level of investigation carried out is appropriate and proportionate to the circumstances and be prepared to justify the approach taken.

- **Keep people informed:** throughout the investigation, you must keep the employee informed of progress without undue delay. This may mean providing updates on the status of the investigation, expected timeframes, and any delays that arise, rather than detailing every investigative step taken. If the investigation is likely to take some time, you should ensure that the employee knows it is being dealt with, and it may be helpful to provide a point of contact for queries.

- **Record your actions**: you should keep a clear record of the entire process, including when the complaint was received, how and when it was acknowledged, any relevant discussions and documents, the outcome of the complaint, and any actions taken as a result. These records act as evidence that you have complied with your obligations and may be requested by the ICO. However, personal data related to complaints must not be retained for longer than is necessary.

What should you do when you have finished your investigation?

- **Provide an outcome:** once the investigation is complete, you must provide the employee with an outcome without unjustifiable or excessive delay. You should explain what you have done to resolve the complaint and any actions taken as a result. Importantly, you should provide enough information to allow the employee to understand how you have reached your conclusion. If the employee is unhappy with the outcome, the guidance suggests providing more details or offering a review process. The guidance also provides that it is good practice to tell the employee again at this stage that they have the right to complain to the ICO and provide their contact details.

- **Review the lessons learned:** once you have provided an outcome, you should review what happened and consider if there is anything you can learn or improve on to prevent future complaints.

What are the consequences of failing to respond to a complaint?

The potential consequences of failing to comply with the new data protection complaint requirements include:

- **Monetary penalties:** the ICO may impose a monetary penalty on controllers who fail to comply with the new complaint-handling obligations The maximum penalty is £17.5 million or 4% of total annual worldwide turnover, whichever is higher.

- **Complainant escalation to the ICO**: the complainant can escalate their complaint directly to the ICO, which must then investigate.

- **ICO enforcement action**: the ICO can issue information notices, assessment notices, enforcement notices, and conduct investigations into complaint-handling practices.

- **Legal claims:** individuals who suffer material or non-material damage (including distress) as a result of data protection breaches have the right to claim compensation from the data controller.

ICO Guidance: How to deal with data protection complaints

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Government consults on new employment rights for unpaid carers and parents of seriously ill children

On 9 June 2026, the Department for Business and Trade launched a consultation on potential new employment rights for unpaid carers and parents of seriously ill children. In this briefing, we consider the proposals and what they mean for employers.

What are the proposals affecting carers?

The consultation looks at whether the current framework for supporting carers is working effectively and whether additional rights are needed.

Currently, those with caring responsibilities have a right to take up to one week's unpaid carer's leave in a 12-month

period – you can read more about this right in our detailed briefings here and here. Carers may be able to take other relevant forms of leave where they meet the eligibility requirements, such as unpaid time off for dependant emergencies, unpaid parental leave or neonatal care leave. Employees may also request temporary or permanent flexible working arrangements. The consultation asks whether these rights are sufficiently understood and whether further guidance would help both employers and employees navigate them more effectively.

In terms of new rights, the consultation sets out three key proposals:

- **Extending unpaid carer's leave:** one of the simpler proposals under consideration is an increase to the current entitlement of one week's unpaid carer's leave per 12 months to between six and ten days or more. This change would address a concern raised by many carers, namely that one week's leave simply does not go far. Also under consideration is the possibility of widening the purpose of carer's leave to allow carers time off to rest and recuperate or maintain their own health and wellbeing. The Government is seeking evidence on the impact of any increase, particularly on smaller employers and businesses where covering absences at short notice can be more difficult.

- **Paid carer's leave:** back in its *Make Work Pay* plan, the Government committed to considering the case for

introducing paid carer's leave.The Government's view is that unpaid leave is of limited value to some carers because they simply cannot afford to take unpaid time away from work. It is, therefore, exploring whether a paid entitlement would help carers remain in employment and make greater use of this right. A number of options are under consideration, including the length of any entitlement, the rate of pay and the evidence employees may need to provide.

- **A statutory right to return:** a significant proposal is the introduction of a statutory right to return following an extended period of carer's leave of up to 12 months. The proposal is broadly modelled on the protections that apply following return from maternity leave. An employee would be able to take a longer period away from work to deal with intensive caring responsibilities, while retaining the right to return to their role, or, in some circumstances, a suitable alternative role, on the same terms and conditions. The Government is considering whether the right should apply to all carers, or only in limited situations, such as end-of-life care or where a parent is caring for a seriously ill child. For employers, this proposal is likely to have much greater practical implications than a simple enhancement to the carer's leave entitlement because it would require the employment relationship to be preserved throughout what could be a potentially lengthy absence.

What are the proposals affecting parents of seriously ill children?

The consultation also considers whether new employment protection should be introduced for parents and carers of seriously ill children.

Currently, there is no specific statutory right for employees to take paid leave when a child receives a serious health diagnosis. While parents may be able to rely on existing rights (for example, paid annual leave, unpaid carer's leave, unpaid time off for dependant emergencies or unpaid parental leave) there is no equivalent to the specific paid leave entitlement that is available to parents of babies receiving neonatal care.

The proposal – often referred to as "Hugh's Law" in memory of Hugh Menai-Davis who died from cancer aged six – would create a new statutory paid leave entitlement following a child being diagnosed with a serious illness. One of the most important questions will be how "serious illness" is defined. The broader the definition, the more people will potentially qualify, the narrower the definition, the greater the risk that families facing genuine difficulties are excluded. The Government is seeking views on how this should be defined, as well as the length of the leave entitlement.

What does this mean for employers?

At this stage, not very much. The Government is consulting on possible options rather than proposing definite legislative changes, and no decisions have yet been taken. However, the

consultation suggests a shift towards treating caring responsibilities as a workplace issue requiring more structured support, rather than relying primarily on flexible working and existing unpaid leave arrangements.

Many employers already provide support through flexible working arrangements, compassionate leave policies or enhanced carer's leave. This may be a good opportunity to review those arrangements and consider whether they would remain appropriate if statutory rights are expanded in the future.

The consultation closes on **1 September 2026**. Employers, representative bodies, carers and parents are all encouraged to provide evidence and feedback before the deadline. The Government will publish its response in due course and any legislative changes are unlikely to be introduced before 2027.

Consultation on employment rights for carers and parents of seriously ill children

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