



# Department for Business, Energy & Industrial Strategy

Market Frameworks  
Department for Business, Energy &  
Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

T +44 (0)20 7215 5000 - Public enquiries  
+44 (0)20 7215 6740 - Textphone (*for  
those with hearing impairment*)  
E [foi.requests@beis.gov.uk](mailto:foi.requests@beis.gov.uk)

[www.gov.uk/beis](http://www.gov.uk/beis)

Our ref : FOI2022/27704

28<sup>th</sup> November 2022

Dear Mr Pat Harrington,

Thank you for your email of 11th November where you requested the following information:

- **Please provide a list of all those so far named under the scheme and where this is published. Please provide any documents relating to the implementation of the scheme such as budgets and minutes of meetings.**
- **Please provide statistics as to how many employers have paid the award after you have contacted them informing them of a possibility that they will be named on the list.**
- **Please provide statistics as to how many employers have made representations to you about their possible inclusion on the list.**
- **Please provide copies of press releases that you have so far issued.**
- **Please provide statistics breaking down the number and amount of additional penalties on employers who have failed to pay an Employment Tribunal award for each year the employment tribunal penalty scheme has been in operation.**

Under the Freedom of Information Act 2000 ('the Act'), you have the right to:

- know whether we hold the information you require
- be provided with that information (subject to any exemptions under the Act which may apply).

Please see answers to your questions below. We have taken each question in turn. Please note, the figures used in this response are derived from locally held management information and have not been quality assured to the same standard as published official statistics. As such they may be changed or adjusted in the future.

**1. Please provide a list of all those so far named under the scheme and where this is published. Please provide any documents relating to the implementation of the scheme such as budgets and minutes of meetings.**

The Government has not publicly named employers through the employment tribunal award naming scheme. Naming businesses is being kept under consideration by the Government.

Section 35(1)(a) exempts information from being released if it relates to the formulation or development of government policy. The information you have requested relates to the formulation and development of policy regarding the Employment Tribunal unpaid awards penalty naming scheme.

The use of section 35(1)(a) is subject to a public interest test. We understand there is a public interest in information about the naming scheme, this is an area still under Ministerial consideration and subject to ongoing development. Disclosure could provide better insight into the policy and the reasoning behind it. Decisions that Ministers make may have a significant impact on the lives of citizens and there is a public interest in deliberations on this topic being transparent.

However, against this there is a strong public interest in ensuring that Ministers and officials can discuss policy options fully and frankly and for the space in which such discussions take place to be protected. If this information were made public, we believe the nature of such frank discussion and debates on key public policy issues would be inhibited, and the Department would be prevented from taking decisions based on the fullest understanding of the issues involved.

Related to this, material regarding the implementation of the naming scheme by its nature will include sensitive personal information. Section 40(2) exempts information from disclosure if that information constitutes personal data of someone other than the applicant, and if disclosure of that information would contravene any of the data protection principles at Article 5 of the UK General Data Protection Regulation (UK GDPR). In this case, we believe disclosure would contravene the data protection principle in Article 5 (1) (a) of the UK GDPR which provides that Personal Data shall be processed "lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness, transparency')".

Section 40(2)(a) and section 40(3)(a)(i) apply to information whose disclosure would contravene any of the data protection principles in the UK GDPR. This exempts information constituting the personal data of living individuals, the release of which would be in breach of the Department's obligations in respect of the Data Protection Principles as set out in Article 5 of the UK GDPR.

The definition of personal information to which section 40 applies is wide and can include references that relates to an identified or identifiable individual. In this case, the Department considers that the composition of Investigation report contains personal data relating not just to the person subject to the investigation but other named parties as well. This information falls within the ambit of the Data Protection Principle at UK GDPR Article 5(1)(a) and must not be processed unless at least one lawful basis for processing at Article 6 of the UK GDPR is met. Our view is that we are unable to satisfy a lawful basis for processing at Article 6. The exemption from the duty to disclose personal data where

to do so would breach a data protection principle is an absolute exemption; the public interest test in section 2 of the Act does not apply.

**2. Please provide statistics as to how many employers have paid the award after you have contacted them informing them of a possibility that they will be named on the list.**

**1123** awards have been paid, representing almost **£6.5m** in previously unpaid awards being recovered for claimants since the process started in 2016.

**3. Please provide statistics as to how many employers have made representations to you about their possible inclusion on the list.**

For the period between **December 2018 and November 2022**, BEIS received **27** representations against possible inclusion on a naming list. This number only includes representations made specifically in response to potential naming. This does not include where respondents have replied only with proof of payment to show that they are not eligible for a penalty.

**4. Please provide copies of press releases that you have so far issued.**

The Government has not publicly named employers through the employment tribunal award naming scheme and therefore there are no press releases available.

**5. Please provide statistics breaking down the number and amount of additional penalties on employers who have failed to pay an Employment Tribunal award for each year the employment tribunal penalty scheme has been in operation.**

Year	Penalties issued	Total value of penalties (£)
2016/17	41	74,125.36
2017/18	78	152,910.82
2018/19	167	225,137.06
2019/20	334	558,227.40
2020/21	332	531,094.94
2021/22	435	972,777.04
2022/23 (to date)	129	203,191.58

## Appeals procedure

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be addressed to the Information Rights & Records Unit. It would be helpful if you can tell us why you are dissatisfied with the response to your request so we may address this during the internal review.

Information Rights & Records Unit  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London

SW1H 0ET

Email: [FOI.Requests@beis.gov.uk](mailto:FOI.Requests@beis.gov.uk)

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. Complaints can be made to the Information Commissioner via their website at: <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>.

Yours sincerely,

**Market Frameworks**