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Response to DWP Call for Evidence and Good Practice on In-work Progression

Response from the Employment Lawyers Association

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INTRODUCTION

1. The Employment Lawyers Association (“ELA”) is an unaffiliated and non-political group of specialists in the field of employment law. We are made up of about 6,000 lawyers who practice in the field of employment law. We include those who represent Claimants and Respondents/Defendants in the Courts and Employment Tribunals and who advise both employees and employers. ELA’s role is not to comment on the political merits or otherwise of proposed legislation or calls for evidence. We make observations from a legal standpoint. ELA’s Legislative and Policy Committee is made up of both Barristers and Solicitors who meet regularly for a number of purposes, including to consider and respond to proposed new legislation and regulation or calls for evidence.
2. A Working Party, co-chaired by Louise Skinner and Robert Davies was set up by the Legislative and Policy Committee of ELA to respond to the DWP’s Call for Evidence and Good Practice on in-work progression. Members of the Working Party are listed at the end of this paper.
3. References in this paper to the views of ELA are intended to be inclusive of the views of the minority as well as the majority of ELA members. Whilst not exhaustive of every possible viewpoint of every ELA member on the matters dealt with in this paper, the members of the Working Party have striven to reflect in a proportionate manner the diverse views of the ELA membership.

EXECUTIVE SUMMARY

4. The Working Party has drawn from extensive experience in advising employer and employee clients in connection with employment matters, many of which touch on issues connected with in-work progression. The Working Party recognises that it is unable to comment on all aspects of the Call for Evidence in detail, and we have not provided answers to question 8 and the additional question regarding Job Centres on this basis. Likewise we have not been able to comment on regional variations in Question 1. We wish to emphasise at the outset that in our view, “progression” can mean a range of things, not just

vertical promotion. It can also include horizontal movements, increased pay, increased job security, and improved job quality (e.g. satisfaction, work/life balance, flexibility), and we have addressed these themes in more detail in our submission.

5. Barriers to progression are multi-layered, and differ according to many factors including sector, geography and the characteristics of particular individuals or groups within the workforce. The Covid-19 pandemic has impacted many parts of the workforce, and the lowest paid individuals are often the most detrimentally affected as they are less able to work from home, and are often engaged in service industries (such as catering, events and retail) which have been severely impacted by social distancing measures and forced closures. This will inevitably result in progression opportunities for some parts of the workforce being even more limited than they were prior to the pandemic. There are likely to continue to be very considerable pressures on such businesses in the short and medium term and Government will need to continue to intervene to help businesses and workers.
6. Particular focus should be paid to the groups identified in our submission below which face more significant disadvantages in terms of progressing to better paid, more senior opportunities, including women, ethnic minorities, younger and older workers, and disabled workers. Our experience suggests that the types of changes and interventions which are being contemplated via the Call for Evidence require clarity and persistence on the part of employers and the workforce, whether unionised or not and change can be catalysed through government messaging. There is an important role for Government to continue to highlight the advantages to be gained from supporting the development of such workers, particularly so in the aftermath of the pandemic.

QUESTION 1

What are the specific barriers to progression in the areas of retail, hospitality, construction business support services, and care work in different regions of the UK? Are transparent pathways to progression in place in these sectors in different regions, and if not, why not? What constraints, business or otherwise, hold employers back from prioritising progression in their business models? How has the impact of COVID-19 changed attitudes to progression, if at all?

7. Many of the industries/sectors listed are or are perceived as low-paid, low-skilled environments. That is by no means an accurate reflection of the individual sectors as a whole: however, several roles within the retail, hospitality

and care work sectors feature in lists of low paid UK jobs, such as this 2018 list <https://careersmart.org.uk/occupations/worst-paid-jobs> (Similar lists for 2019 and 2020 are provided on various web-sites). The retail and hospitality sectors often attract younger individuals who may treat their involvement/work as temporary, often alongside education, and sources of work and experience rather than careers. The care sector, pre-Covid 19, has tended to be viewed as the province of older, and migrant workers: it is a sector which features high rates of staff turnover and vacancies. The care home sector has been and is under intense financial pressure. It features a variety of operating models, ranging from small single homes to nationwide care providers; albeit with increasingly tight operating margins.

8. Certain of these sectors are vertically fragmented. Vertical fragmentation occurs in sectors such as retail where there is a Head Office function which is located away from individual stores. The experience of the Working Party is that vertical fragmentation can influence career progression pathways – for example, clearer pathways being identified by those working in retail if they are working in the Head Office function as opposed to those working in individual stores. Head Office employees tend to have greater visibility of and access to training opportunities and a clearer path to progression than store-based employees. Further, the performance of individual stores may have a greater bearing on the scope for staff progression. Some large retailers are starting to embed learning portals for interested store employees to address this vertical fragmentation but the onus for accessing these opportunities is still left in the hands of individual employees. In the experience of some members of the Working Party, employees at store level within some retail organisations do not have ready access to the technology needed to take up learning opportunities, nor is sufficient emphasis placed upon learning and development through paid training time to train during normal working hours. A cohesive drive to encourage uptake, together with the provision of better access to learning and development resources, could be helpful.
9. In our view, it is important that the potential of those perceived as ‘bottom of the pyramid workers’ is more widely assessed and recognised. That would involve well-promoted schemes for access to on-going education opportunities, to workplace learning and development, better access to technology and to training resources. We consider that this would be beneficial to all the sectors listed. The affordability and source of funding for such steps is a policy matter and without straying into such policy matters the immediate challenges of Covid-19 for the retail, hospitality and care sectors would indicate sector-wide dialogue via the CBI, TUC and other representative bodies to be vitally important.

10. Little evidence yet exists as to the impact of Covid-19 on attitudes to progression. It is widely recognised that business confidence has been significantly and negatively affected, as have financial resources in many cases. We anticipate that this is likely to have a negative short-term impact on attitudes towards the scope for progression generally by virtue of financial pressures, with the lowest-paid, lowest-skilled workers being most detrimentally affected.
11. That said, the care sector has been acknowledged throughout the UK as a vitally important sector which has performed with courage and compassion in the management of some of the most vulnerable members of society during lockdown. Consequently the experience of Covid-19 may lead to an improvement of its attractiveness as a sector. Also, those workers currently in the labour market (the focus of the Call for Evidence) who have had the experience of managing the acute operational challenges and pressures presented since March 2020 may be seen as having particularly valuable skills and experience which may encourage employers actively to seek to retain such workers. Likewise retail workers who may have been able to provide insights and suggestions as to store-level innovation borne out of operational necessity.
12. The Working Party is also aware that particular focus has been applied by construction sector clients to ensure that apprentices continue to be supported which has made significant demands on L&D personnel alongside the pressures placed on HR and line management.

QUESTION 2

Where progression pathways and other initiatives have been instituted, what impact has this had on a business, its productivity and the locality in which it is situated? We would particularly welcome case studies and examples.

13. Through our work advising employer and employee clients, we are aware of businesses introducing a number of progression initiatives including those identified below (these are not, in our experience, confined to particular regions):
 - 13.1. Setting and communicating career pathways, i.e. a clear route of the different sequential or non-sequential opportunities within the organisation, to details of the skills and knowledge needed to progress to those opportunities;
 - 13.2. Sponsorship, i.e. a more senior individual who actively champions the individual;

- 13.3. Mentoring, i.e. a relationship based on guidance, encouragement and support based on the mentor's own experiences;
 - 13.4. Coaching, i.e. performance-driven relationship focused on getting predefined results, with coaches often being external providers ;
 - 13.5. Seeking out potential talent through invitations for self-nomination (although risk that this is self-selecting and therefore risks exacerbating unconscious bias);
 - 13.6. Providing access to internal and external networking opportunities;
 - 13.7. Specific training (whether targeted at particular groups of employees or otherwise) to enable employees to gain the knowledge and skills required to make the most of progression opportunities; and
 - 13.8. Schemes whereby employees can work alongside or shadow more senior members of staff.
14. Anecdotally, we understand from clients that progression pathways and related initiatives have a positive impact on employee recruitment and retention, as well as engagement and productivity. Sponsorship and mentoring are reported to be particularly effective (see response to question 7). This is because not only do such initiatives help the individual understand the routes open to them and help them to gain the skills and network required to progress, but also can directly impact and improve the individual's confidence to seek progression opportunities.
15. However, there is a risk that the positive benefits are only experienced by those employees who actively benefit from these initiatives either by being selected by their employer (which carries an inherent risk of conscious or unconscious bias) or self-selecting (which risks leaving behind those employees who are currently missing out on and/or could most benefit from progression opportunities). It is important for businesses not only to introduce pathways and other initiatives to increase progression but also to ensure that such initiatives are available, and perceived to be available, to all employees. These aspects are highlighted as being highly relevant to aspects of gender equality in "What Works – Gender Equality by Design" by Iris Bohnet: ISBN 9780674089037. The latter publication makes clear that different factors and different weighting of factors may be relevant to the analysis of attempts to address inequality in respect of race and other protected characteristics ("...evidence from field should serve as an invitation to experiment with similar design features in another...." Page 14)

QUESTION 3

What are the benefits to business of identifying and nurturing existing talent? What approaches [or methods] do business use to achieve this and which are the most effective?

16. Many business have talent or leadership pools. However there needs to be transparency as to how these operate and that they operate in a fair way and according to equal opportunities policies.
17. Benefits include the nurturing and retention of existing staff and helping them reach their full potential. This in turn saves recruitment costs. The downside is that if these are not operated effectively and transparently, it can lead to unfairness and discrimination.
18. By way of example, the Employment Appeal Tribunal has recently overturned an Employment Tribunal decision that a senior NHS manager had not been discriminated against on the grounds of age when she failed to secure two promotions because she was not a member of the respondent NHS Trust's 'talent pool' ([Ryan -v- South West Ambulance Services NHS Trust \[2020\] UKEAT 0213 19 0610](#)). The facts of the case were as follows:
 - 18.1. Many NHS Trusts see it as a key responsibility to promote talented managers and to retain successful ones. The trust in this case had a 'talent pool' to meet this objective, which it operated as 'a diversion' from Agenda for Change (the collective terms and conditions applicable within the NHS which specifies job bandings and incremental salary progression via a pay spine reflecting seniority and skills).
 - 18.2. There were three routes into the 'talent pool'. A score of 'exceeds expectations' in appraisal, a successful challenge to an appraisal if an employee initially scored below that, or successful self-nomination where a member of staff could put their name forward twice a year.
 - 18.3. The claimant was in the 55-70 age group. Statistics showed 12% of trust staff, or 1 in 8 were in that group. However, that age group comprised only 6%, or 1 in 17 of the 'talent pool'. The ET found a group disadvantage based on those figures.
 - 18.4. The claimant's case related to two potential promotions above her job band 7. The respondent appointed to both roles directly out of their 'talent pool'. She alleged a reduced likelihood of being in the 'talent pool' due to her age.
 - 18.5. However, although it accepted the group disadvantage, the ET found that, because she had not appealed her appraisal and had not self-nominated, she had not suffered an individual disadvantage and so had not established indirect age discrimination.

- 18.6. The EAT overturned this decision on appeal and held that the ET had not been entitled to look at the fact that she had not appealed the appraisal or self-nominated and had not properly followed the Supreme Court's reasoning on indirect discrimination in *Essop / Naeem*.
 - 18.7. Having found that the group disadvantage was a reduced likelihood of being in the 'talent pool' due to age, the EAT held that the ET should have clearly found that this was also the individual claimant's disadvantage. No further enquiry was required, as that should have been enough to establish indirect discrimination, unless the respondent had a justification defence.
 - 18.8. The respondent did succeed with a justification argument in the ET, based on the need to promote talented staff and retain experienced staff. However, the EAT overturned this decision as well, pointing out the lack of evidence that had been available for the ET to reasonably reach this conclusion.
 - 18.9. The decision is notable from an employment law perspective for explaining in clear terms the practical components of an indirect discrimination claim, and highlights the particular impact on career progression arising as a result of the protected characteristic of age.
19. There is perhaps an inherent but not insurmountable tension between a legitimate aim of implementing an effective and economic approach to the identification of potential candidates for progression, effective talent pools (not being merely "for show") and ensuring that protected characteristics do not result in less favourable treatment. The decision does not suggest that talent pools are inevitably discriminatory, merely that unless operated with regard to all relevant protected characteristics, that there is a material risk that indirect discrimination may arise.
 20. The Working Party has experience of advising employer clients in multiple sectors (including those listed in question 1) which publish vacancies and promotion opportunities throughout their workforces as a matter of course. A balance needs to be struck, operationally, between promotion from within and the benefits that can come from lateral external recruitment.

QUESTION 4

How important for progression is enabling and empowering people to change jobs compared to ensuring established progression pathways within specific employers/sectors? What are the barriers to people in low pay from progressing by changing jobs and/or sectors? What interventions would best empower people to overcome these?

21. We would anticipate that enabling people to change jobs is important for some forms of progression, although not necessarily vertical progression. For example, the ability to move from a traditionally low-paid sector into a higher-

paid sector would likely result in job progression in the form of increased pay. We note the information contained in [Baroness McGregor-Smith's 2017 report "Race in the Workplace"](#) ('McGregor-Smith Report) and suggest that particular account ought to be taken of Graphs 24 [and](#) 25 at pages 71 – 73 and the responses of individual and employers to the issue of factors which were considered to hinder BME progression at work. Whilst not specifically focused on low pay sectors/individuals we consider that these factors are likely to be highly relevant.

22. Such barriers to changing jobs and/or sectors would include:
 - 22.1. Actual or perceived need from the individual that they need specific qualifications or experience;
 - 22.2. Perception from the employer that individuals in certain job roles or sectors do not have adequate qualifications or experience;
 - 22.3. Lack of access to training opportunities to acquire the necessary skills in order to contemplate applications;
 - 22.4. Research as to the experience of those with certain protected characteristics such as women or ethnic minorities, who are disproportionately represented in low paid jobs and disproportionately less well represented in higher paid jobs has shown that these groups are more likely to experience a lack of confidence ([McGregor-Smith Report](#) / My Confidence);
 - 22.5. Actual or perceived loss of flexibility;
 - 22.6. External responsibilities such as caring that limit the types of roles and sectors in which the individual may be able to work;
 - 22.7. Perception from employers to a particular individual's experience particularly regarding cross-sector applications; and
 - 22.8. Cash-flow difficulties that might arise from moving from weekly or fortnightly pay cycles to monthly pay in arrears.

23. Interventions by employers would include:
 - 23.1. Creating a progression culture with a top-down commitment to enabling and supporting development and progression and combining that with visible leadership and commitment to diversity and inclusion;
 - 23.2. Ensuring that initiatives such as those outlined in response to question 2 above are open to all employees and not just those selected by the employer or who self-select;
 - 23.3. Ensuring that pathways are clearly articulated to all employees;
 - 23.4. Unconscious bias training for managers and making career development of line reports a measurable objective as part of line management objectives;
 - 23.5. Making all jobs potentially subject to flexible working arrangements as the default assumption; and
 - 23.6. Supporting access to training and, where applicable, membership of relevant professional associations and institutes.

24. We recognise that there will be immense financial pressures in the aftermath of Covid-19 in particular. However, the experience of lockdown, the innovation that that has forced certain retail and hospitality businesses to be able to function even at reduced levels may encourage greater preparedness to accept flexible working arrangements as a norm.

QUESTION 5

What role does transport and connectivity play in workers in low pay not taking up higher paid jobs and other opportunities for progression such as training and apprenticeships? Similarly, do other considerations, such as childcare, play a role in not taking up higher paid jobs and opportunities that could be vital to progression?

Transport & Connectivity

25. Physical connection: The availability (and cost) of regular and reliable public transport influences the radius within which lower paid workers may be able to work. If progression can only be achieved by virtue of a role outside that radius it will likely be a literal and mental barrier. Once living in an area of poor transport or connectivity it is then harder to progress.
26. Connectivity can also relate to good Wi-Fi access. Recent experience during lockdown indicates that more senior employees could more readily adapt to agile and remote working arrangements if they had the benefit of good Wi-Fi/ Laptops/ Remote working Apps etc. In contrast lower paid workers would not necessarily have the same scope because the nature of their work might necessitate physical attendance as might the lack of suitable homeworking conditions
27. Transport and connectivity can play a part in social mobility. A further powerful reason why people do not move may be more entrenched from a perception of a lack of opportunity. Those that are prepared to move – the “Anywheres” could be argued to exert a very strong influence within British culture and society. They follow a trajectory of success based on passing exams, doing well at school, acquiring experience, networks and qualifications at university, and can be flexible about where they may pursue work opportunities post-University
28. In contrast “Somewheres” comprise a larger demographic group which is more rooted and connected to their physical locale (60% of British people live within twenty miles of where they lived when they were fourteen – see *The Road to Somewhere: The New Tribes Shaping British Politics*) This, (which may be linked to education or class indirectly), is what joins them together; they earn,

live, work and vote in widely differing ways to the “Anywheres”. They are typically more local in outlook and do not see progression or success in the same terms as the “Anywheres”.

Childcare

29. In the UK in 2020 primary childcare responsibilities still tends to be the responsibility of women ([ONS Families in the Labour Market](#)). This has been highlighted with the Covid-19 pandemic: early research suggests ([The Lancet - The Indirect impact of Covid-19 on women](#)) that the pandemic has affected women more than men including the effect of working from home alongside their role as the primary carer of children and dealing with their children being off school.
30. There may well be a difficult choice between childcare and taking higher paid jobs which may mean more travel, being away from the home longer at both ends of the day and “extra” work being required of the individual. This may change with more agile working becoming a norm post-Covid. However, childcare provision is still important: put simply it is impossible to work if the consequence is an unsupervised toddler. For those workers who are in low paid jobs the cost of childcare makes it unaffordable and/or not worth going to work at all. This can force women with caring responsibilities into a cycle of low paid work.

QUESTION 6

Women, younger workers, older workers, ethnic minority background workers, and disabled workers are identified as most at risk of staying in low pay. What are the reasons for this? At what stages would interventions help each of these types of workers seek out and avail progression opportunities?

31. This is a complex, multi-faceted question and our thoughts on the various aspects are summarised below adopting a broadly common format. The pretext of the question suggests that the initiative needs to be taken by the workers. We would suggest that the scale of the issue is such that a collaborative approach involving employers, workers and potentially local and central government is necessary. We have commented initially on discrimination in each category of worker because it was highlighted by 60% of respondents in Graph 24 p.72 of the [McGregor-Smith Report](#). The only other factor that was referred to by more individual respondents was “Lack of connections to the “right” people” which is likely to be as a result of social disadvantage connected to the historical consequences of protected characteristics.

Ethnic minority background workers

32. The Equality Act 2010 makes it unlawful to discriminate against job applicants and workers because of race. Despite this some ethnic minority workers continue to suffer unlawful discrimination at work, including in respect of their pay (e.g. being paid less for doing the same work, not being given pay rises) and progression in work (e.g. being unable to secure higher paid jobs and therefore entering into lower paid work, and being overlooked for promotion). Such discrimination would result in ethnic minority workers receiving and staying in low pay, ethnic minority pay gaps and such workers being unable to progress to higher quality work for higher wages.
33. Discrimination arises/continues as a result of many factors, which may be seen from discrimination case law :
 - 33.1. employers' ignorance of equality legislation;
 - 33.2. ethnic minority workers in low pay having limited access to justice to enforce their employment rights (e.g. being unable to afford to take legal advice or pursue legal action against their employer, limited resources of law centres/CABs etc.);
 - 33.3. workers being in fear of raising concerns because of victimisation (e.g. losing their job);
 - 33.4. systemic racism playing a role in determining pay and progression;
 - 33.5. ingrained social inequality; and
 - 33.6. unconscious bias, prejudice, stereotypes.
34. In respect of bias, the [McGregor-Smith Report](#) noted that:
 - 34.1. "even when overt discrimination is not present, there remains a lingering bias within the system which continues to disadvantage certain groups".
 - 34.2. "In the UK today, there is a structural, historical bias that favours certain individuals. This does not just stand in the way of ethnic minorities, but women, those with disabilities and others. Overt racism that we associate with the 1970s does still disgracefully occur, but unconscious bias is much more pervasive and potentially more insidious because of the difficulty in identifying it or calling it out."
 - 34.3. "organisations and individuals tend to hire in their own image, whether consciously or not. Those who have most in common with senior managers and decision makers are inherently at an advantage. I have to question how much of this bias is truly 'unconscious' and by terming it 'unconscious', how much it allows us to hide behind it. Conscious or unconscious, the end result of bias is racial discrimination, which we cannot and should not accept."
 - 34.4. "There is discrimination and bias at every stage of an individual's career, and even before it begins. From networks to recruitment and then in the workforce, it is there. BME people are faced with a distinct lack of role models, they are more likely to perceive the workplace as hostile, they are

less likely to apply for and be given promotions and they are more likely to be disciplined or judged harshly.”

35. Further, the EHRC’s report on [“The ethnicity pay gap”](#) noted that “Ethnic minorities may be discriminated against because of negative social attitudes towards them. Likewise, employers may deduce the quality of a job applicant from an ethnic minority background based on the perceived average quality of people with the same ethnic background (often called statistical discrimination). This might be the result of stereotypes – for example, a widespread belief that people from a certain background work less hard than others. If employers believe the stereotype they will be more likely not to offer a job to applicants from that ethnic background, or to only offer them lower-paid jobs. Even if within the same job people from different ethnic minorities were paid the same, we would still observe pay gaps if ethnic minorities were less likely to obtain higher-paid jobs.”
- 35.1. The report further uses the term “sticky floors” at the bottom of the wage distribution, which aptly describes ethnic minority workers being stuck in low pay. It is also notable that ethnic minority workers do not have access to the same legal tools that female workers have to enforce unlawful pay gaps. While equal pay legislation has only been partially successful at reducing the gender pay gap, the Government should consider whether the difference in protection between women and ethnic minorities is appropriate or defensible.
36. The [Government’s response](#) to The McGregor-Smith Report specifically noted the importance of unconscious bias and the need for training to address the issue through awareness and practical steps to eliminate and design such bias out of the system, so to speak. (See further *Bohnet* op cit.)

Progression

37. There are likely to be fewer opportunities for and limited career progression in low paid jobs which increases the risk of staying in low pay. This disproportionately impacts some ethnic minority workers as they are more likely to be in low-paid work / work in lower paid sectors e.g. retail, hospitality, unskilled manual labour, business support services and care.
38. For example, a 2017 report by the Joseph Rowntree Foundation: “Poverty and Ethnicity in the Labour Market” (<https://www.jrf.org.uk/report/poverty-ethnicity-labour-market>) identified that some BME groups are more likely to work in particular low-paid sectors such as sales, catering, hairdressing, textiles and clothing – occupations with limited progression opportunities. It also noted that “finding progression routes into better paid jobs in low-paid sectors can be particularly difficult, not least because opportunities are restricted (Barnard, 2014; Wood and Wybron, 2015)” and that “Only between 3–7% of workers from

low-paid sectors are able to move to better-paying sectors. Most remain in low-paying sectors and in this way become trapped.”

39. Even where there may be opportunities for progression, ethnic minority workers may face greater barriers to progression to better paid work, which increases the risk of them staying in low pay. Racism and unlawful discrimination (see above) and/or unconscious bias are likely to be important factors.
40. Unlawful discrimination is likely to result in ethnic minority workers:
 - 40.1. not having the same development, training and progression opportunities as non-ethnic minority workers;
 - 40.2. being overlooked for promotion because of their race. “Race in the Workplace” (see above) reported that ethnic minorities were more likely to be overqualified than white ethnic groups, but white employees were more likely to be promoted than all other ethnic groups; and
 - 40.3. progressing less and earning less than non-ethnic minority workers.
41. A lack of information on and clear pathways to progression, which would help to identify the steps to take to climb up the career ladder to better paid work, are also likely to be obstacles to progression.
42. Social mobility may also play an important part in this. For example, a lack of social networks and professional connections (i.e. knowing the ‘right’ people) and role models are also likely to hinder the efforts of some ethnic minority workers in moving out of low pay and progressing to better paid roles. Class is closely correlated with race, so it is difficult to disentangle the two effects.
43. The Joseph Rowntree Foundation refers to [research](#) which identified that ethnic minority groups tend to have unequal access to opportunities for development, often because of a lack of clear information on training opportunities or progression routes within their workplaces. This can be made worse if progression relies on opaque or informal processes, if there is a lack of BME role models or mentors at higher levels within their workplaces to provide support and advice, or if there is a gap between equality and diversity policies and practice in the workplace. (This is apparent from the responses at Graph 24.)

Type of work

44. [2018 ONS Research as to Ethnicity Pay Gaps](#) shows that there tends to be a greater proportion of ethnic minority workers in low paid jobs. Such work can often be of a temporary, casual or uncertain nature, sometimes with no guarantee of work (e.g. zero hour contracts), which are commonly found in the

gig economy. Ethnic minority workers are therefore more likely to move in and out of low paid work, often resulting in remaining at a similar level of low pay.

Education/Qualifications

45. The level of education or qualification of some ethnic minority workers may also limit access to higher quality work with higher wages and keep such workers in low skilled/ low paid jobs. [Research demonstrates](#) narrowing but still present gaps as to educational outcomes by ethnicity.
46. For example, families with higher paid jobs are more likely to be able to afford to live in areas with or have economic access to better education for their children (whether state or private), resulting in higher levels of education or qualifications. Social inequality might therefore hard-wire more limited workplace opportunities for different generations of lower paid families.
47. [The Living Wage Foundation and New Economic Foundation 2020 research](#) has identified disproportionate BAME representation in low paid and insecure work. In its [report on Persistent Low Income](#) published in September 2019, the DWP has identified that workers from ethnic minority backgrounds are particularly likely to find themselves on persistently low pay. It is therefore more likely that such workers will be disadvantaged in respect of their education and having the necessary qualification and skills to access higher quality work with higher wages. It is also noteworthy that lack of qualifications and skills is cited by more employer respondents at Graph 25 than individual respondents at Graph 24 of the [McGregor-Smith Report](#).
48. Ethnic minority workers in the UK will include foreign workers who may have education and/or qualifications gained abroad. These may not be accepted or recognised by some UK employers. This is likely to contribute to such workers being able to only access and remain in low paid jobs, despite being over-qualified for these roles.
49. Ethnic minority workers lacking proficient English language skills also face heightened risk of staying in low skilled / low paid work.

Ethnicity pay gap / Lack of transparency in pay

50. It is acknowledged that disparities in pay exist between some ethnic minority workers and white workers. For example, the ONS's recent [Ethnicity pay gaps: 2019](#) report found that the median ethnicity pay gap for hourly pay stood at 2.3%. It also found that most of the minority ethnic groups analysed continued to earn less than White British employees although, in 2019, those in the Chinese, White Irish, White and Asian, and Indian ethnic groups all earned higher hourly pay than White British employees. However, many other ethnic

groups including Bangladeshi, Pakistani and Arab consistently earned less than those of White British ethnicity over the same time period. It also identified that the ethnicity pay gap differs across regions and is largest in London (23.8%) and smallest in Wales (1.4%).

51. The lack both of transparency in pay practices and of any mandatory approach to ethnicity pay gap reporting allows disparities in pay to persist and is likely to contribute to ethnic minority workers remaining in low pay.
52. There is a clear case for mandatory ethnicity pay gap reporting which would be a vital first step in seeking to eliminate pay disparities between ethnic groups. It would not only help to identify, understand and raise awareness of the problem of disparities in pay and ethnicity pay gaps, but will also be critical in promoting transparency overpay practices, holding employers accountable and enabling employers to take informed, decisive and positive action to close these gaps and achieve fair and equal treatment in pay for all regardless of ethnicity. We hope that further progression will be made imminently by the Government in this respect. ELA commented in detail on the likely benefits of ethnicity pay gap reporting in 2019 [here](#).

Younger Workers Skills

53. Younger workers are likely to be at risk of staying in low paid work as they are frequently employed in roles and low skilled work which may not equip them with the necessary skills for higher skilled and higher paid work. The lower rate of the National Minimum Wage for younger workers may be intended to increase opportunities for younger workers to enter the workplace (see further paragraph 6.26) but may also have the unintended consequence of conditioning an expectation of lower pay amongst some younger workers.
54. In its report "[Stuck at the start](#)" the TUC found that young workers are concentrated in jobs where they struggle to acquire the skills that they need to progress their careers. Further, the [Resolution Foundation](#) found that before the 2008 recession, and even more so in the years since, young workers have moved into lower skilled occupations. It also referred to the [ONS's findings that 52%](#) of young non-graduates are in lower-skilled work such as cleaning, security, plant and machine, or sales and caring jobs.
55. Employers may also be reluctant to invest the time and money in training young workers for more skilled roles with better pay.

Education/Qualifications

56. Levels of education are also likely to impact the pay levels young workers receive. The [Resolution Foundation](#) highlighted that non-graduates with a Level 3 qualification (A level) have higher hourly wages than those with a Level 2 qualification (GCSEs). Until younger workers are able to attain greater qualifications to progress to higher skilled and higher paid work, they are more likely to stay in lower skilled and lower paid jobs.

Job Security

57. Low paid jobs can often be of a temporary or insecure nature (e.g. zero hour contracts, agency work), which lack job security. This may result in younger workers wanting to take fewer risks, choosing to remain in low paid work than moving more frequently between jobs which is often a crucial way to secure higher wages. Indeed, the [Resolution Foundation](#) found that job-to-job moves are one of the key drivers of pay progression and that such moves began to slow from the early 2000s. Younger workers' lack of experience may also weaken their bargaining position in moving between roles. In addition, the [Low Pay Commission](#) found that the main reason for setting a lower wage for younger workers was in order to protect their employment prospects, as evidence shows that younger workers are at risk of being "priced out" of jobs. If young workers spend time out of work they are more likely to experience a scarring effect, meaning they suffer lower wages for potentially several decades.

Apprenticeships

58. Another factor of staying in low pay may be due to apprenticeships. [The Low Pay Commission Report in 2020](#) revealed that more than 18% of those apprentices surveyed were not receiving the minimum wage. This means that around one in five apprentices earn less than their legal entitlement. While apprenticeships are to be encouraged as an important entry point to the job market, steps should be taken to ensure they are properly regulated and that minimum standards are met.

Older Workers

59. The Equality Act 2010 makes it unlawful to discriminate against job applicants and workers because of age. Unlawful discrimination at work can include bias and stereotypes.
60. Older workers may remain in work with low pay as a result of age bias in recruitment. Negative stereotypes, including that older workers are less productive or lack technological/digital skills, may affect an older worker's

employment prospects and discourage older workers from leaving lower paid work and apply for higher paid jobs.

61. Anecdotal evidence suggests that, in fact, taking on older workers can prove to be a real asset to employers. B&Q, the DIY store, has become a leading example of the benefits of recruiting and maintaining older workers, as recognised by the [Society of Occupational Medicine](#). The company achieved increased profits, lower staff turnover and led to positive cultural change and improved career progression in all areas of its workforce.

Progression

62. Notwithstanding the tangible benefits, employers may also be less likely to invest time and money in developing the skills of older workers or retraining them to enable them to progress to higher skilled and higher paid work, mistakenly believing that this would not be a valuable long-term investment due to their age. (See also paragraphs 3.4 – 3.10.) Retraining is essential as technology continues to advance and workplaces become more digital.

Caring responsibilities

63. A further consideration for older workers' career and pay progression is increased caring responsibilities. Research by the Institute for Fiscal Studies (<https://www.ifs.org.uk/publications/10358>) found that one reason for the gender pay disparity between men and women over 40 is that women begin to take time out of work to care for children or elderly relatives, which affects their earnings when they return to work.

Disabled workers

64. There could be many reasons for lack of progression among the disabled community, including the following:

Discrimination

65. The Equality Act 2010 makes it unlawful to discriminate against job applicants and workers because of their disability. It also requires employers and prospective employers to make reasonable adjustments to reduce the effect of a job applicant's disability when applying for a job and an employee's disability so that they can do their job. Discrimination includes direct/indirect discrimination, bias, stereotyping (e.g. disabled people being unable to carry out certain work) and failure to make reasonable adjustments. Some disabled people continue to suffer unlawful discrimination at work, including in respect of their pay (e.g. being paid less for doing the same work, not being given pay

risers) and progression in work (e.g. being unable to secure higher paid jobs and therefore entering into lower paid work, being overlooked for promotion). Such discrimination would result in disabled workers receiving and staying in low pay, disability pay gaps and such workers being unable to progress to higher quality work for higher wages.

66. The [TUC Report on Disability and Employment Gaps](#) suggests that discrimination, negative attitudes and structural barriers are holding back disabled people both in educational achievement and progress in work. Various similarities can be seen with issues raised in the [McGregor-Smith Report](#).

Part-time work

67. Workers with a disability may be more likely to work part-time and not necessarily through choice. The [TUC Report on Disability and Employment Gaps](#) also found this to be the main identifiable cause of the disability pay gap. Further, the [Equality and Human Rights Commission's 2017 research report](#) on the disability pay gap found part-time work to be the most important factor.

Education/Qualifications

68. The level of education or qualification of some disabled workers may also limit access to higher quality work with higher wages and keep such workers in low skilled/ low paid jobs.
69. [The ONS Report on Disability, well-being and loneliness 2019](#) showed that on average non-disabled people had higher level qualifications than disabled people and disabled people were less likely to have a degree than non-disabled people.

Progression

70. There are likely to be fewer opportunities and limited career progression in low paid jobs, which increases the risk of staying in low pay. This disproportionately impacts disabled workers as they are more likely to be in low-paid work / work in lower paid sectors (e.g [The Disability Pay Gap - EHRC](#) found that disabled people are overrepresented in lower-paid occupations.
71. The [TUC Report on Disability and Employment Gaps](#) (and the [SMF Report on the Disability Pay Gap In London](#) both suggested that disabled people's over-representation within lower-paid occupational groups, and their being less likely to be in managerial and professional roles, meant that they may also have less opportunity for career progression.

72. Even where there may be opportunities for progression, disabled workers may face greater barriers to progression to better paid work, which increases the risk of them staying in low pay. Prejudice and unlawful discrimination (see above) coupled with unconscious bias are likely to be important factors.
73. Some disabled workers may need to spend time out of work for health reasons, which may negatively impact their prospects for progression even if proportionately the duration and frequency of absences are not materially longer than periods taken by non-disabled workers.
74. We consider that the unconscious biases that are faced by disabled workers are likely to be extensive, and possibly more extensive than those in respect of race. The [TUC Report on Disability and Employment Gaps](#) illustrates the breadth of impairments that may attract protection as disabilities whether physical or mental, and this extends the degree to which ignorance can generate biases, particularly so for intersectional issues – the palpable lack of visible role models in the workplace can become exacerbated in relation to BAME disabled workers.

Women

75. Gender disparity in the labour market and in the workplace is ingrained and manifests itself in various ways. One of these is that women are particularly at risk of becoming trapped in low pay work.
76. This response looks at why women may become trapped in this way, and the ways in which current employment law may either reinforce the impediments or obstacles to women moving out of low pay, or, alternatively, play a supporting role in overcoming them. It does not seek to address the complex and wide ranging reasons that gender disparity - and sexism even - exists in our society at large and in our workforce and workplaces, and does not recommend proposals for change, from either a policy or legal perspective.

Discrimination

77. The Equality Act 2010 makes it unlawful to discriminate against job applicants and workers because of sex, both directly and indirectly. Despite this, discrimination at work against women continues.
78. Discrimination arises/continues as a result of many factors:
 - 78.1. employer's failure to comply with equality legislation, including because it may not fully understand it;
 - 78.2. workers being in fear of raising concerns because of victimisation (e.g. losing their job);

- 78.3. systemic sexism/misogyny playing a role in determining recruitment to certain positions and in pay and progression;
- 78.4. ingrained social inequality (starting in the early years of childhood);
- 78.5. bias, both conscious and unconscious (including structural and historical bias), prejudice, stereotypes, including about:
- 78.6. the gendering and value of certain roles, with many low paid roles being seen as naturally “women’s work”;
- 78.7. the abilities and commitment of (a) working mothers and (b) part time workers; and
- 78.8. female workers in low pay having limited access to justice to enforce their employment rights (see further below).

Limitations on Equal Pay claims and Gender Pay Gap Reporting

- 79. In the most recent Gender Pay Report, published by the Office for National Statistics (ONS) on 3 November 2020, a female worker in the bottom 10% of earners can expect to experience a gender pay gap of 2.3.
- 80. The advent of the Equal Pay Act 1970 enshrined the principle of equal pay for equal work between men and women, now found in the Equality Act 2010. Mandatory gender pay gap reporting was introduced in the UK for large employers in 2017. However, there are significant limitations to the usefulness of the possibility both of equal pay claims and gender pay gap reporting as a tool for supporting a move out of low paid work, including:
 - 80.1. Equal pay claims are notoriously (and perhaps unavoidably) technical and difficult to bring, and are most effective when brought as a “class action”. Unless an organisation resolves to eliminate gender pay gaps or unless claims are brought gender pay gaps remain unaddressed in the large majority of workplaces.
 - 80.2. Pay gap reporting is, at best (and of necessity), a blunt tool and without any real enforceability;
 - 80.3. Gender pay gap reporting is mandatory only for employers with 250 or more employees. There is limited general pay transparency, which would be needed so as to help women in low pay work with the information and insight needed in order to move out of low paid work;
 - 80.4. Equal pay claims are based upon comparison with men’s pay and on the jobs in question being comparable, which can very much limit the scope of the claims and, arguably. This does not address the issue of women being silo’d into low pay areas – the historical example, which is still present, can be demonstrated by airlines where a higher percentage of men become better paid pilots and a higher percentage of women become less well paid cabin staff. This is the gender pay gap in its wider sense.
 - 80.5. In addition, whilst it is possible to bring ‘equal value’ claims there is no overriding requirement for wages to be fair or proportional to their value to

society. Perception of “value” may well be tainted by ingrained perceptions of the value of jobs traditionally done by women (many of which are low paid, such as cleaning and caring).

Access to Justice

81. As mentioned above, there is a concern that female workers in low pay have limited meaningful access to justice to enforce their employment rights (e.g. being unable to afford to take legal advice or pursue legal action against their employer, limited resources of law centres/CABs).

Formality of Tribunal proceedings/need for legal representation

82. The Employment Tribunal can be daunting for unrepresented individuals and yet the cost of advice is often prohibitive, which is likely to limit access to justice. Cases that may set important precedents for women emerging from low paid work are likely to cover complex areas of law (for example, equal pay claims and claims of indirect sex discrimination) and need effective, and costly, legal representation, together with the time and resilience/commitment to persevere with stressful and time consuming litigation.

Delays in cases being heard

83. Employment Tribunals are currently seeing a significant backlog of claims which is a deterrent to issuing claims and a hindrance to the effective and prompt administration of justice, particularly of those claims with a low financial value. This has been exacerbated during the coronavirus pandemic, as set out further below.

Progression – low paid work as “sticky floor” for women

84. There are likely to be fewer opportunities and limited career progression in low paid jobs (in terms both of sectors and of roles) which increases the risk of staying in low pay. Women are more likely than men to find themselves in a minimum wage job, and are generally lower paid. Inherently, this makes progression out of low pay harder. Citing the work of Bukodi et al, the [Government Equalities Office’s report on Women’s Progression in the Workplace](#) recognised that “badly paid jobs are sticky floors for women, springboards for men.” Bukodi’s research suggests that “men are more likely to experience a steady upward trajectory, whereas women’s trajectories stall and they are much more likely than men to experience subsequent downward mobility back to their original level.”

Social Mobility

85. As per the [ONS Gender Pay Report](#), the gender pay gap has been found to vary substantially between regions. The report recognises that there are

numerous drivers of the gender pay gap and that factors beyond skill level and full / part-time working status need to be considered.

86. Considering why certain people and groups (including women) get trapped in low paid work raises fundamental issues of opportunity and social mobility. It is outside the scope of this Response to consider all the factors in play here, including upbringing, literacy, education and whole areas of psychology, such as unconscious bias, groupthink, reciprocal liking and confirmation bias to name but a few.
87. For the purposes of this Response, it is worth noting that current employment law offers little scope for workers to mount a challenge based on “classism” or discrimination on grounds of social class. The last Labour Government did open a discussion about how employment legislation can address socio-economic disadvantage, enacting section 1 of the Equality Act 2010 which contains a new duty on public sector bodies to address socio-economic disadvantage when making strategic decisions. This has not been brought into force, but it opens an interesting conversation on where the limits of legislation lie in advancing social mobility.

Lack of role models

88. As with most areas of work and life, it is harder to be what you cannot see, and women seeing other women trapped in low paid work may absorb the message that their own prospects are limited.

Lack of Proper Direction of Corporate Initiatives

89. Employers are focusing more and more on their Diversity and Inclusion initiatives and statistics. However, such initiatives are often built around the characteristics protected by law (such as race and gender) and they do not tend to stray into wider initiatives looking at issues of classism/social mobility and of easing a transition out of low paid work on a group-wide basis. Many would argue that this is not the task of the individual private employer, and that they are not in a position to bring about social reform, even if they were interested in doing so.
90. Corporate progression initiatives are often also focused on the higher earning quartiles in the workforce, for example, setting targets for female representation on the Board, or for women reaching director level. Workers on low pay and jobs seen as less skilled can be considered interchangeable and as a “human resource” and there is a tendency for them not to be the focus of discussions about career progression and of equality more broadly.

Education / Qualifications

91. The Higher Education Policy Institute (HEPI) data relating to 2020 university admissions indicates that women continue to progress to higher education at a greater rate than men. The most recent figures indicate that 56.6% of women progress to higher education compared to only 44.1% of men. Women have outpaced men in terms of university attendance for every year of the past decade.
92. Yet, despite this, it remains the case that there are more women in low paid jobs, and the risk of women getting trapped in low paid work is greater.

Women and the family

Maternity leave & childcare and other caring responsibilities - A fragmented employment history

93. 47% of female respondents to [Ipsos MORI's International Women's Day](#) polling expressed a belief that taking on childcare responsibilities had materially and detrimentally impacted their career.
94. More women are single parents than men. Women are also often the more economically and socially vulnerable in the case of relationship breakdown. Women often assume a greater role in caring for elderly relatives than men do. Considerations such as these make holding down and progressing in a job more difficult, particularly when combined with other obstacles to progression, such as poverty. Progression takes time and knowledge (for example, to search for better jobs or to upskill), which those living in precarious and grinding low-wage employment simply may not have. [Research](#) shows that more women carry more of the "mental load" involved in having a family. This is the unpaid work involved in managing a household and family. Also sometimes referred to as "worry work" or "cognitive labour," this can make it harder for women to focus on finding a route out of low paid work.
95. Women's employment history is often fragmented/broken by periods of maternity leave, or other caring responsibilities. Having periods away from full-time work can make it harder to progress in the conventional sense because of the stopping and starting, but also in terms of the concurrent reduced agility/flexibility to change jobs and a reduced chance to build up a personal network/meaningful mentoring relationships. Part of becoming "trapped" may relate to women being restricted in the hours they can work or the distance they can travel, and their general ability to negotiate from a position of strength.
96. The scope for women in insecure, low paid work to secure the right not to claim unfair dismissal, which currently depends on having two years' continuous

service, is also reduced if women take periods away from employment, which may be a factor in leading to a cycle of low paid jobs without progression.

Part-time work

97. Research has shown that working part-time, spending a long time in a minimum wage job and having a history of unemployment all reduce the chances of women being able to move to 'high' pay.
98. [Ipsos MORI's 2020 International Women's Day polling](#) found that, among those polled in the UK, there existed a gendered part-time working gap of 12%. With 39% of female respondents and only 27% of male respondents having requested to work part-time within the past five years. Further, 27% of respondents believed that working part-time was more likely to detriment a woman's career. This compared to only 8% of respondents who expressed a belief that it was more likely to detriment a man's.
99. Anecdotally, we have seen that there can be an attitude amongst some employers (and employees) that part-time workers are less committed to their work than full time workers, and less ambitious.
100. Part-time work in the UK is often accompanied by low pay and low opportunities for progression. However, there is nothing intrinsic about part time work that means that this must be the case, and there is scope for a wider conversation in society about this.
101. The [Part-time Workers \(Prevention of Less Favourable Treatment\) Regulations 2000](#) prohibit discrimination of part-time workers, but, in our experience, these are not frequently invoked (the Government's [Tribunal Statistics Quarterly Report](#) sets out that in England for Q1 of 2020/21 there were 45 claims under the Part-Time Work Regulations, and only 303 claims for the whole of 2019/20). The Regulations are narrowly drawn so that they have a narrow application. They depend on the employer having a comparable full-time employee, which may well not be the case, and, of course, can only address actionable acts or omissions and not an overarching or systemic trend. As above, there are real obstacles to low paid workers achieving meaningful access to justice for low value claims.

Flexible Working

102. All qualifying employees have the right to make a request for flexible working which can only be rejected on certain specified grounds. However, sanctions for failure to comply with the Regulations are limited to eight weeks' capped pay. The claims are given more weight and have value when linked to claims of

indirect sex discrimination (see above) or constructive dismissal. These claims are not straightforward. They require a large investment of time, stress and resources to pursue. Whilst the Regulations have influenced change and have operated to ensure that requests are considered in many cases, the Working Party queries how useful they are as a means of levelling the playing field and opening up opportunities and choices for those trapped in low paid roles and struggling to make ends meet. On the other hand employers would be wary of further burdens being imposed upon them as, for some employers, the disadvantages of flexible working are becoming clearer during the pandemic. On the other side the pandemic has had the effect of making many other employers realise that flexible working can work both for business and employees.

103. There are proposals by the Government to make flexible working the default position unless the employer has a good reason otherwise. This, together with a seismic shift in the way in which flexible working generally is regarded as a result of pandemic, will be an interesting area of development and may ultimately help women move out of low paid work.
104. Currently (or at least, pre-Covid-19), flexible working is far from considered the default position in the UK. Anecdotally, we have seen that there can be a feeling among women that they should feel “grateful” for flexible working arrangements, and a wariness of “rocking the boat” when an arrangement works with their other responsibilities. In addition, while we do not have the data to back this up, it feels that bespoke flexible working arrangements are more a province of higher paid women who are able to advocate for themselves about work/life balance, rather than women earning national minimum wage or low pay, and who may be more likely to work on a shift or rota.

Coronavirus – the great disruptor

105. Research shows ([The Lancet - The Indirect impact of Covid-19 on women](#)) that the obstacles to equality between men and women mentioned above have been exacerbated by the Covid-19 pandemic (albeit with some limited exceptions).
106. It is already clear that those in insecure and low paid work are suffering disproportionately. The Covid-19 pandemic has resulted and is likely to continue to result, in reductions in pay (e.g. by being on the furlough scheme or accepting reductions in pay) as well as redundancies, particularly for workers in low pay sectors and in vulnerable work, which have been badly affected by the pandemic and its restrictions, such as retail, hospitality and leisure.

107. As per the Government's [most recently published statistics](#) on the use of the Coronavirus Job Retention Scheme (CJRS) (women continue to be furloughed at a higher rate than men. As of 31 August, 1.63 million women had been placed on furlough compared to 1.5 million men. Redundancies are inevitable as we move through 2020 and 2021 and we await the evidence as to Gender impact.
108. In the context of the ongoing Covid-19 pandemic, analysis published by the [Fawcett Society](#) suggests that women have been taking on additional caring responsibilities at a higher rate than men. With 21% of female respondents having delivered supplies to someone self-isolating compared to only 16% of men. We have also seen reports that women are suffering more than men with mental health problems attributed to Covid-19.
109. The nature of the interventions that may help address the above categories appear to require sustained changes in societal attitudes and awareness as much as those within individual workplaces. The former is macro-level policy and clearly the province of government policy. Without Government support the Working Party is of the view that it is asking a great deal of individual workers and employers to take the initiative.
110. Interventions need, ideally, to be visible and available at all stages of the recruitment process. Pay reporting requires data and matters to be investigated and measured. Clear, succinct narratives on where problems have been identified coupled with commitments to adapt and report back may help generate credibility, as will senior, Board-level commitments to entrenching and monitoring the development of the steps tailored to address intersectional issues of race, gender, disability and potentially, class. These actions should be encouraged across all sectors, not just those which feature low pay. That may help shift the perception of what is and should be the norm and create "spill over" effects that provide additional impetus within low pay sectors.

QUESTION 7

Do positive role models and mentorships offer those in persistently low pay the confidence and support to seek a way out of low quality, low pay jobs? We would welcome case studies and examples

111. Yes. The working party is aware of many examples of mentoring having left a significant impact on mentees with the result that they have progressed in their careers beyond their original aspirations. One contributor described her interaction with a law firm receptionist who left school at 16, without any A levels, to have a baby. The contributor encouraged her to study law through

the legal executive route, and that individual is now a successful solicitor. Having mentors that will take the time to support and invest time and effort in developing their mentees is likely to have a significant impact on career progression.

112. Another way in which self-confidence as well as networks can be developed is through the use of reverse mentoring schemes; where the expectation is that the more senior worker learns as much from the more junior worker's experience of the business and the sector
113. We are conscious that not all employers will necessarily have enough potential mentors, particularly within SMEs. One of the key concerns referred to in the [McGregor-Smith Report](#) is the impact that mentors who share a relevant protected characteristic can make. Likewise the need for access to networks. Therefore, cross-sectoral mentoring should be encouraged. Large employers might be encouraged to partner with SMEs and share both know-how and mentors.

QUESTION 8

[No response submitted].

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