

# Our response to the consultation on ethnicity pay reporting

## Consultation details

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## For more information please contact

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## Executive summary

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The Equality and Human Rights Commission (EHRC) is the statutory body that promotes and enforces the laws that protect our rights to fairness, dignity and respect in Britain.

As part of this role, we enforce the Gender Pay Gap Regulations (GPGR) and Public Sector Equality Duty (PSED), and develop research and policy recommendations to help identify and tackle the root causes of gender, ethnicity and disability pay gaps.

We have drawn on our research to inform this consultation response. This includes:

- [our 2017 report Fair opportunities for all: a strategy to reduce pay gaps in Britain](#) which made a number of recommendations for addressing workplace inequalities faced by ethnic minorities
- insight from consultation with government, employers and representative bodies to inform this response

The Gender Pay Gap Reporting Regulations (GPGR, 2017) have driven an important national debate on fairness at work. The meaning and causes of pay gaps, as well as the potential solutions, are now better understood than ever.

This new awareness has created the context and infrastructure for progressive employers to begin to take action reducing a range of workplace inequalities, and we welcome the greater focus on barriers faced by ethnic minorities.

Our response therefore focuses on the ways in which any mandatory reporting could best drive practical action in reducing ethnicity pay gaps. This includes highlighting some notes of caution.

## **Assess impact of gender pay gap reporting on driving change**

Firstly it is important to note that, while awareness of the issues has been undoubtedly raised by the gender pay debate, further evidence on the direct effectiveness of transparency measures in driving reductions in pay gaps will be required.

We recommend that UK Government engage with the Scottish and Welsh Governments and other relevant partners, such as the EHRC and professional bodies, networks and policy experts, to assess the impact of gender pay gap reporting on driving change to workplace policy and practice. This should then shape any approach to further mandatory reporting on other pay gaps.

## **Supporting employers in improving staff ethnicity reporting rates**

Secondly, the scarcity and complexity of employee ethnicity data in comparison to gender may necessitate a different approach. As the consultation questions suggest, for any mandatory ethnicity pay reporting to be effective it will need to be based on comprehensive and meaningful data that is feasible and appropriate for employers to collect and use.

Our recent research showed that only 3% of employers could currently report their ethnicity pay gap in a way that would allow meaningful analysis while protecting confidentiality, especially in areas where there are smaller ethnic minority populations.

Data that is not based on Census categories risks resulting in a binary White versus Ethnic Minority classification, which risks masking the often significant range of barriers and outcomes faced by different groups, such as by Bangladeshi as opposed to Indian men, or by British as opposed to foreign-born ethnic minorities. This may not provide the evidence required as the basis for effective action to drive reductions in pay gaps.

As such we recommend that the UK Government in liaison with the Scottish and Welsh Governments, should produce rigorous guidance and other tools to support

employers in improving their staff ethnicity self-reporting rates. It should incentivise and influence employers to follow this guidance on an ongoing basis, and identify reasonable targets for self-identification rates. Any initial mandatory requirement could be for those employers who are not already required to publish such information to do so, alongside contextual information and an action plan demonstrating how they will increase self-reporting.

Once these consistent classification, collection and reporting systems are in place to support employers, and the evidence is in place that mandatory reporting drives effective employer action, Government should consider focusing any approach to mandatory reporting on requiring employers subject to the gender pay gap regulations (GPGR), who are not currently required to report in this way, to also monitor and report on ethnicity and in recruitment, retention and progression within the workplace.

While this focuses on different indicators of inequalities to the ethnicity pay gap itself, it nonetheless provide important evidence of the workplace barriers faced by ethnic minorities as a basis for targeted action. Again, alongside these figures, employers should publish:

- an analysis of the factors underlying any gaps
- their policies and practices relating to them
- an action plan for tackling them with time-bound targets

The Government should work with the EHRC and Office for National Statistics (ONS) to develop the best methodology for employers to collect this data ahead of April 2021.

### **Looking beyond employer responsibility**

We should also note that many of the causes of ethnicity pay gaps are beyond the direct control of employers. These include differences in subject and career choices, education attainment and access to apprenticeships, and the uneven distribution of economic activity and job opportunities across Britain. We reiterate

our recommendation for Government leadership in a holistic approach to tackling these issues and, ultimately, workplace inequalities for ethnic minorities.

### **Our role**

Finally, we would point out that our experience on the GPGR has shown that our statutory powers, which are best suited to strategic interventions at the systemic level, may not be designed to most effectively allow us undertake this form of regulation.

Government should consult with the EHRC to review its enforcement powers so that they are proportionate, properly funded and fit for purpose in enforcing any regulations on workplace inequalities.

## Our consultation response

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### Employer benefits to reporting pay data

#### 1. What are the main benefits to employers in reporting their ethnicity pay information?

Pay gaps are a measure of the difference in average hourly pay between different groups and a good indicator of inequality in access to work, progression and rewards. There is an equality argument for closing pay gaps: no one should be disadvantaged by their gender, ethnic origin or disability status.

In our latest [Is Britain Fairer?](#) report, published in October 2018, we found that there are substantial differences in pay gaps across different ethnic groups, with White British employees earning a median hourly rate of £11.67, compared to £9.93 for Pakistani workers and £9.24 for Bangladeshi workers. It also found that people from ethnic minorities tend to earn less, overall, than White British people.

Our [2017 Fair Opportunities for all; A strategy to reduce pay gaps in Britain](#) strategy drew on [our research The ethnicity pay gap \(Longhi & Brynin, 2017\)](#) which highlights multiple factors that contribute to pay gaps, including:

- differences in subject and career choices
- education attainment and access to apprenticeships
- the uneven distribution of economic activity and job opportunities across Britain
- prejudice and bias in recruitment, promotion and pay

We would like to reiterate the recommendations made in this strategy that highlighted a holistic approach to tackling inequalities for ethnic minority groups in the workplace is needed to effect real change. This should include government leadership in publishing statistical information on the scale of and trends in ethnicity pay gaps for full-time and part-time workers.

The Department for Business, Energy and Industrial Strategy (BEIS) analysis (2016) highlighted significant economic benefits to decreasing ethnicity pay gaps. Improving employment rates and workplace progression for people from ethnic minorities could contribute £24 billion per year to the economy.

As well as the benefit to the wider economy, there is a clear benefit to employers in increasing the participation and progression of ethnic minority staff. The McKinsey & Company 'Delivering through Diversity' report (2018) found that organisations with the most ethnically and culturally diverse teams were the most profitable, being 33% more likely to outperform their peers on profitability.

The benefits of increased ethnic and cultural diversity are not only profit focussed, but are shown to improve customer orientation, employee satisfaction and increase the attractiveness of an organisation to top talent.

Therefore are already precedents for detailed approaches on ethnicity data monitoring and analysis as being a way for public sector employers to support good decision making and deliver policies that meet different people's needs. It will be necessary that any new legislation on ethnicity reporting should review and improve on the requirements of these specific duties.

In Wales, devolved public authorities are listed under the Equality Act 2010 (Specific Duties) (Wales) Regulations 2011. A listed authority is required to have due regard to the need to have equality objectives to address the causes of any pay difference that seem reasonably likely to be related to any of the protected characteristics. They are also required to publish an equality objective to address any gender pay gap identified.

In Scotland, most public authorities are listed under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended). A listed authority is required to take steps to gather and publish information on the composition of its workforce and on the recruitment, development and retention of employees with respect to relevant protected characteristics.

Listed authorities with more than 20 employees are also required to publish gender pay gap information along with a statement on equal pay which must specify its equal pay policy and information on both vertical and horizontal occupational segregation for women and men; people who are disabled and those who are not; and people who fall into a minority racial group and those who do not.

These duties were introduced to support employers in assessing whether they are discriminating unlawfully in any of their employment functions, and help identify actions to remedy this.

### **Type of ethnicity pay information to be reported**

#### **2. What type of ethnicity pay information should be reported that would not place undue burdens on businesses but allow for meaningful action to be taken?**

Multiple choice:

- One pay gap figure comparing average hourly earnings of ethnic minority employees as a percentage of white employees
- Several pay gap figures for different ethnic groups, using standardised ethnicity classifications
- Ethnicity pay information by £20,000 pay band
- Ethnicity pay information by quartile
- All of the above
- Other (please state) [selected answer]
- Don't know
- Please state what type of ethnicity pay information should be reported.

As the enforcement body for the 2017 Gender Pay Gap Regulations we have seen unprecedented attention given to the inequalities that women face in employment, resulting from increased transparency on workplace practice. Employers have told us that these regulations have been an influential lever in initiating more conversations on the barriers women face in the workplace are happening at board level than ever before.

The CBI's 2018 Employment Trends Survey showed that 93% of businesses said they were taking action to close the gender pay gap and increase diversity in their workforce, compared to 67% in 2017.

However, while visibility is welcome and important, pay gap data alone will not be enough to drive reductions. More nuanced analysis and understanding of the impact of pay gaps transparency is needed to show its effectiveness in reducing inequalities. The aim of measuring pay gaps is not just to assess their size, but to understand their causes and identify potential solutions to addressing them. This understanding will support us to work towards a society in which people are not disadvantaged in terms of access to education and work opportunities.

The EHRC is interested in extending this public focus from the gender pay gap to make employers aware of the drivers of inequality in work for some ethnic minority groups. One important first step for employers to do so will be by collecting data on staff ethnicity.

The Gender Pay Gap Regulations took an indirect approach to tackling inequalities faced by women in employment, by reporting on the gender pay gap only, which has had success in garnering public attention and spurring action from employers. However, we have yet to see the evidence the impact of this initial activity. We would recommend caution when looking at the applicability of the approach taken by these regulations when applied to complex areas, such as ethnicity.

Gender pay gaps is based on arguably more simple, binary data, and this approach would be less effective with ethnicity reporting – especially given that

there is no legal obligation on employees to report their ethnicity. Research has highlighted differences in pay gaps across different ethnic groups, meaning that binary White vs Ethnic Minority reporting, which for confidentiality reasons may be increasingly likely in areas with small ethnic minority populations, may mask inequalities faced by certain groups.

[Our recent Measuring and reporting on disability and ethnicity pay gaps research \(Adams et al, 2018\)](#) found that just 3% of organisations could report their ethnicity pay gaps today, despite 77% of employers telling us that diversity is a priority and that they are committed to supporting employees with protected characteristics. Most employers surveyed were not collecting data on staff ethnicity or were doing it inconsistently, meaning that they do not yet have the information they need to produce effective solutions to address pay gaps faced by ethnic minority staff. As the consultation suggests, in order for any mandatory ethnicity reporting to drive change in the workplace inequality, it will need to be based on comprehensive or meaningful data that is feasible and appropriate for employers to collect and use.

The research showed that employers are more likely to be collecting data on the recruitment, retention and progression of their overall workforce, but may need additional support and guidance in analysing this in terms of ethnicity. By collecting and reporting on recruitment, retention and progression across ethnicity, employers are most likely to have the tools they need to identify some of the known barriers ethnic minority employers face in the workplace, such as discrimination in recruitment and promotion decisions.

This has been reflected in the specific duties for listed public authorities in Scotland and Wales. Our research also shows that employers are already collecting this data, which act as better proxies for the root causes of pay gaps, and should be easier for employers to analyse and take action upon.

### **Our recommendations:**

1. In the first instance the UK Government should provide clear guidance on the classification system to be used for ethnicity monitoring by private and

voluntary organisations across Britain and English public bodies, in partnership with the Office for National Statistics and the EHRC, and practical guidance for different types/sizes of these employers on how to collect, report on and use the data.

2. Initial legislation should focus on requiring employers who are not already required to publish ethnicity information to publish their self-reporting rates and breakdown of staff by ethnicity, alongside an action plan setting out any contextual information that supports their figures and the steps they are taking to improve self-reporting rates.
3. The Government should work along with key partners to develop other support for relevant employers in improving their staff ethnicity self-reporting rates, using the above guidance and other tools.
4. It should also identify the thresholds for an acceptable level of self-reporting to allow for robust data analysis and encourage all relevant employers with 250 or more employees to meet this threshold by **April 2020**.
5. Meanwhile the UK Government should engage with the Scottish and Welsh Governments, relevant partners, such as the EHRC and other professional bodies, networks and policy experts, to assess the impact of gender pay gap reporting on driving change in workplace policy and practice. This should then shape any approach to further mandatory reporting on other pay gaps.
6. Once consistent classification, collection and reporting systems are in place to support relevant employers to use robust employment data effectively, and the evidence is in place that mandatory reporting drives effective employer action, the Government could then:
  - Require relevant private, voluntary and public sector employers with 250 or more employees to monitor and report on the ethnicity of their staff and differences in recruitment, retention and progression by grade or level for ethnic minority staff within the workplace by **April 2021**.

- Require those employers to also publish a narrative and action plan with time bound targets, informed by analysis of their ethnicity data. This analysis should help explain the factors underlying the data and focus on how to make substantive improvements to the workplace, looking at the recruitment, retention and progression of ethnic minority staff.

The Government should work with the EHRC to identify the best methodology for capturing data on the recruitment and retention of ethnic minority staff, based on robust ethnicity data collected from employees and the assessment of the impact of gender pay gap reporting, ahead of April 2021. This should include considerations around what data is collected and the thresholds for reporting any ethnicity data, which the EHRC has already been considering as part of its consultation work.

### **Contextual supporting data**

#### **3. What supporting contextual data (if any) should be disclosed to help ensure ethnicity reporting provides a true and fair picture?**

Our research has shown that demographic differences between urban and rural areas significantly impact on recruitment from ethnic groups and ethnic minority pay. Therefore the Government should ensure that ONS/NRS working age population data for regions and nations, broken down into GSS harmonised ethnicity categories, is made available to employers. They should then be able to use this data as contextual information for their narrative and action plans.

Our research across gender, ethnicity and disability pay gaps highlighted that protected characteristics should not be looked at in isolation. Given the current political and public appetite for increased transparency in employment policy and practice, new legislation aimed at promoting this transparency, such as ethnicity reporting, should be developed to allow for additional analysis across and within different groups. This could build on initial EHRC analysis by Longhi and Brynin (2017), which compared the ethnicity pay of ethnic minority women with the pay of men from the same ethnic minority group and with the pay of White British men.

## **Who should publish an action plan?**

### **4. Should an employer that identifies disparities in their ethnicity pay in their workforce be required to publish an action plan for addressing these disparities?**

Gender pay gap figures published by employers have been an important step in making workplace inequalities more transparent. However, this data alone does not give us information about the possible causes of any pay gaps, nor how employers have analysed the data to understand these possible causes and draw together actions to mitigate them – nor, most importantly, what they plan to do to reduce them.

Publishing an accompanying narrative to pay gaps figures is a valuable opportunity for employers to publicly set out the reasons for any gaps they may have and explain what they intend to do to address them through a time-bound, target-driven action plan. In doing so employers can identify where they may be able address disadvantage and under-representation of ethnic minority staff through, for example, positive action provisions, which are permitted in the Equality Act 2010 so long as they are a proportionate means of minimising disadvantage and advancing participation.

Narratives and action plans are important tools for employers to demonstrate to staff, customers, shareholders their commitment to reducing inequalities in the workplace. They are also an opportunity for employers to demonstrate progress they have made in tackling the root causes of ethnicity pay gaps, evaluating any interventions they have identified for their effectiveness.

Therefore, new regulations on ethnicity reporting, as well as using more direct measures of experience in the workplace such as recruitment, retention and promotion, should also prioritise the importance of providing an accompanying narrative and action plan to ensure that the focus is on addressing the root causes of pay gaps, in order to drive meaningful change in the workplace.

For this reason we have recommended that all mandatory reporting (on staff ethnicity self-reporting in the first instance and on recruitment, retention and progression later down the line) should include an accompanying narrative and action plan with time-bound targets, informed by analysis of ethnicity data.

## **Our reporting**

**5. Do you currently collect data on ethnicity in your workplace? If yes, do you use standard ethnicity classifications for reporting? If so, which one?**

A) 2011 Census – 5 standard ONS ethnic classifications

**B) 2011 census – 18 standard ONS ethnic classifications [selected answer]**

C) 2001 census – 5 standard ONS ethnic classifications

D) 2001 census – 16 standard ethnic classifications

E) No

F) Other (please state which classifications you use)

G) Don't know

The EHRC collects data against the 18 2011 ONS census classifications, with the additional breakdown of White British in to English, Scottish and Northern Irish.

## **Improving employee self-declaration**

**6. What do you think are the most effective approaches for employers to improve employee self-reporting or declaration rates?**

Self-disclosure rates can act as proxy measure for trust and positive working environments within organisations. However, as it is not a legal requirement for organisations to collect data on an employee's ethnicity (except for listed public authorities in Scotland and Wales) our research has shown that those which are most successful in encouraging staff to share information on ethnicity tend to put

significant effort into demonstrating why they are collecting the data and how it will be used to drive meaningful change in the workplace.

Best practice actions for encouraging self-reporting rates found through our research included:

- Collecting ethnicity data at continuous stages throughout employment i.e. recruitment, 'on-boarding', appraisals etc.
- Consistent cross-organisation communication campaigns that encourage employees to self-report their ethnicity, outlining how this information will be used to embed equality, diversity and inclusion in organisational culture and change.
- Providing different formats for staff to provide this information, taking in to consideration that not everyone uses a computer

It will be important that employees know that it is their choice whether to self-report and there should always be a 'prefer not to say' option, as any information provided by employees must be given voluntarily. This wishes of anyone who chooses not to provide information must be respected and disclosure must not be connected in any way to reward or promotion.

It will also be important that employers ensure that special category data they collect on their employees is kept confidential, stored securely and complies with the Data Protection Act (DPA) 2018 and the General Data Protection Regulations (GDPR) 2018.

Employers are supported in the collection of this data in terms of compliance with data protection legislation, in particular GDPR and DPA 2018.

We recommend that guidance to these laws is provided to relevant employers, to ensure that they are confident in legally collecting and storing ethnicity data for monitoring purposes and that they can demonstrate this to their staff, to enable confidence in self-reporting of ethnicity.

## **How to reflect self-reporting or non-disclosure rates in reporting**

- 7. How should self-reporting or non-disclosure rates be reflected in the information reported by employers?**

As above

## **Taking a consistent approach to reporting across companies**

- 8. For a consistent approach to ethnicity pay reporting across companies, should a standardised approach to classifications of ethnicity be used? What would be the costs to your organisation?**

Our research and consultation activity has highlighted that employers are not consistently collecting data on the ethnicity of their workforce. Employers may be using differing ONS/NRS census categories, their own classification systems developed internally, or not be collecting the data at all. Consistent classification systems will be needed to ensure that employers publish data that can be analysed and compared across sectors, nations, regions and time, in order to identify where progress is made.

We recommend that relevant employers with 250 or more staff collect workforce data against the full GSS harmonised ethnic classifications. As the census categories (and the harmonised principles) are expected to be amended for the 2021 census the Government should ensure that any guidance given to employers for collecting this data takes these changes into account.

We also recommend that the Government should publish national figures on ethnicity pay gap data, as it does for gender.

## **Preserving the confidentiality of individuals**

- 9. Please outline the steps that should be taken to preserve the confidentiality of individuals.**

As outlined above, employers should ensure that they are complying with GDPR and DPA in ensuring that data is collected confidentially and stored securely.

Data on specific ethnic minority groups should only be published if the employer has ensured that it does not reveal information that is attributable to individual employees. This will mean that employers may need to aggregate data to some extent, instead of broken down to the maximum number of ethnic classification groups.

As many employers may need to report in this way, given that some regions will have low ethnic minority working populations, it will be particularly important that they are collecting and analysing data that equips them to tackle inequalities faced by ethnic minority staff. As outlined above, collecting and reporting on recruitment, retention and progression data of ethnic minority staff will support employers to highlight some of the key drivers of ethnicity pay gaps, especially if they are only able to report on a binary level.

## Who should report

### 10. What size employer (or employee threshold) should be within scope for mandatory ethnicity reporting?

- A) All employers
- B) Employers with 50+ (as recommended by the McGregor-Smith review)
- C) Employers with 250+ employees (as for GPG reporting) [selected answer]**
- D) Employers with 500+ employees
- E) Other threshold

In the first instance new regulations should mirror the British gender pay gap regulations reporting thresholds. However, over 99% of organisations have fewer than 250 staff, and ethnic minority staff are more likely to work in small and medium enterprises. Therefore smaller organisations should be encouraged to

report voluntarily to demonstrate their commitment to tackling inequality in their organisation.

This is another reason why measures other than a binary ethnicity pay gap figure will be most effective in tackling inequality in the workplace, as organisations with fewer staff will have skewed or more volatile pay gaps. Therefore, a range of data measures such as recruitment, retention and promotion, with a clear focus on the narrative and action plan, will make ethnicity reporting more meaningful, even for smaller employers.

## **Supporting employers**

### **11. What support measures do you think would be useful for employers?**

We have outlined where guidance and support measures would be useful to support employers in implementing our recommendations throughout the document. In summary, we would recommend:

- Guidance and support in increasing employee self-reporting rates, including support in developing communications campaigns, identifying best practice case studies, and setting up working groups. Trade unions or employer representative bodies could play a role to play in building the confidence and skills of employers in doing this.
- Clear guidance on the classification system to be used for ethnicity monitoring by all types of relevant organisations, and practical guidance for different types/sizes of employers on how to collect, report on and use the data.
- Guidance on GPDR and DPA 2018 regulation relating to the legal collection and handling of ethnicity workforce data. It is advised that the Information Commissioner's Office (ICO) are involved in developing this guidance.
- That ONS/NRS working age population data for regions and nations, broken down by GSS harmonised ethnicity categories, is available for employers. Relevant employers should then be able to use this data as contextual

information for their narrative and action plans, using the catchment area that they draw employees from.