



BIRMINGHAM LAW SOCIETY

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Ethnicity Pay Reporting

Government Consultation
October 2018

January 2019

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

Please state the reasons for your answer.

Employers already recognise and accept the need for gender pay gap reporting.

- There would be a continuation of the trend in Employment Law towards transparency which in turn impacts upon attitudes and tends to lead to change
- Ethnicity pay information will similarly provide a baseline to employers – employers must understand what the starting point is to gauge what actions are required of them to institute change.
- It will enable employers to assess whether a commitment to diversity in the workplace is in fact driving change.
- It will help to inform the reasons for the disparity which continues to exist in ethnic pay
- Create a more sophisticated approach to ethnicity, recognising that it is less likely to be a binary concept that has existed in gender pay gap situations.

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

Please indicate from the list below and state the reasons for your answers.

- a) One pay gap figure comparing average hourly earnings of ethnic minority employees as a percentage of white employees
- b) Several pay gap figures for different ethnic groups, using standardised ethnicity classifications
- c) Ethnicity pay information by £20,000 pay band
- d) Ethnicity pay information by pay quartile
- e) All of the above
- f) Other
- g) Don't know

Please state the reasons for your answer

There are two key competing arguments which meet business concerns about burden:

First: there is significant merit in replicating the gender pay gap reporting criteria because this would encourage compliance by employers both mandatory and (for small employers) voluntary.

The most accessible means of reporting ethnicity pay information in this way would be a single headline figure, which is also reflected by the gender pay gap reporting.

There is significant attraction therefore in (a) above which is a single pay gap figure seeking to compare average hourly earnings.

Secondly: information by pay band will highlight ethnic representation across the whole of the business structure. It will provide better insight beyond simple earning comparison. Multiple pay bands would of course provide more sophisticated information, and better guard against the perennial problem inherent in comparing a small group against a larger group where the potential margin of error can be significant. Obviously in the context of ethnicity pay gap reporting, the problem is more acute than in gender pay gap reporting given the size of the groups by their nature will be even smaller. For example, a very highly paid executive in company x might provide 'good' but skewed pay gap figures.

Further, an advantage with pay bands is that they allow an analysis of where within the structure different ethnic minorities are engaged within a business which in turn can prompt a discussion as to why that is the case.

On balance, the requirement to provide information by pay band will serve the purpose of the legislation in a more constructive way. It will however serve to increase the burden on employers as it is a mode of information gathering different from the current gender pay gap reporting. It is felt that this would be more transparent than using quartiles.

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

Please state the reasons for your answer.

Geographical data should be accessible. It is evident that the location of a workplace can of itself be the key reason for the make-up of a workplace, given that different ethnic minority groups can frequently be concentrated around particular geographical locations.

Size of workforce needs to be identified because data can be unduly distorted.

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?

Please state the reasons for your answer

An action plan is a means of encouraging employers to address the disparity that might be evident from its information. Further, such a plan is needed to reinforce the purpose of collecting the information and identifying disparity.

In order to avoid undue burden on business it should be regarded as an expectation rather than an obligation. An employer should be asked to express its justification in the event that no action plan was forthcoming.

Government could then establish a landscape for action plans (including who is going to be responsible for identifying and quantifying any improvements that are noted by employers) and could review in the future the benefits of making it compulsory.

5. Do you currently collect data on ethnicity at your workplace?

- a) Yes
- b) No
- c) Don't know

If yes, do you use standard ethnicity classifications for reporting? If so, which ones?

Please choose from the list below and state the reasons for your answer (see Annex A for more information).

- a) 2011 census: 5 standardised ONS ethnic classifications
- b) 2011 census: 18 standardised ONS ethnic classifications
- c) 2001 census: 5 standardised ONS ethnic classifications
- d) 2001 census: 16 standardised ONS ethnic classifications
- e) Other (please state what classifications you use)
- f) Don't know

Not applicable.

6. What do you think are the most effective approaches for employers to improve employee self-reporting or declaration rates? Please state reasons for your answer.

- Employers themselves have to overcome concerns that data collection is too intrusive, or an assumption that employees do not want to share information
- Positive messages in the workplace regarding the purpose of the information and the employer's strategy
- Re-enforcement of the employer's measures designed to preserve the confidentiality of its employees

7. How should self-reporting or non-disclosure rates be reflected in the information reported by employers? Please state reasons for your answer.

The better way is to highlight a simple headline percentage non-disclosure figure. It will enable employers to be informed as to whether they face obstacles.

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? Please state reasons for your answer

Whereas with gender categories were obvious, establishing common categorisation of ethnic groupings is much more of a challenge, but standardising classifications of ethnicity should be a key driver of the pay information.

- It will enable employers to compare themselves to others and to society more broadly.
- It will enable employers to accept and acknowledge that the burden is shared and can broadly be regarded as comparable.
- Such comparison is essential to enable employers to be motivated to change.

It is accepted that there are limitations to the ONS “5+1” broad categories however equally the incorporation of the 18 specific groups sitting beneath the ONS “5+1” would potentially lead to the sorts of analytical skewing referred to above, and more significantly to what could be a costly analytical burden if all of those individual pay gaps were to be analysed. It may well be that some employers would chose to use wider categories and this could be done in a comments box where employers are invited to comment on the reason for the pay gap.

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

- A limit on the number of classifications
- A minimum threshold, so that ethnicity is not referred to where for example there is less than 5 people with that particular ethnic background.
- The retention of an option of “prefer not to say”
- An appreciation that “trust” by employees in respect of information provided by them to HR would be safeguarded and not be misused.

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

- All employers
- Employers with 50+ employees (as recommended by the McGregor-Smith Review)
- Employers with 250+ employees (as for gender pay gap reporting)
- Employers with 500+ employees
- Other threshold

Please state the reasons for your answer

The most compelling answer and one which is likely to promote participation by business (and for the reasons underlying the gender pay gap process) is to adopt the current gender pay gap reporting process: 250+ employees.

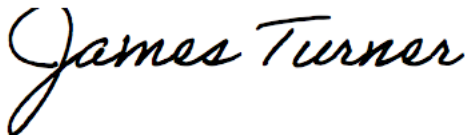
11. What support measures do you think would be useful for employers?

Please state the reasons for your answer

Employers would benefit greatly from practical tools:

- clear and accessible online guidance,
- Access to specific supportive guidance and training through an organisation such as ACAS.
- In practical terms, an accessible software package will enable an employer to comply with classification requirements: this can be achieved for example with a template designed for inserting figures.

10 January 2019



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