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**Response to the Gov.uk's Consultation on Equality
(Race and Disability) Bill: mandatory ethnicity and
disability pay gap reporting.**

June 2025

Response of the Employment Law Committee of the Birmingham Law Society to Equality (Race and Disability) Bill: mandatory ethnicity and disability pay gap reporting.

This response has been prepared by the Employment Law Committee of the Birmingham Law Society. The Society is the largest local law society with some 9,000 members from all branches of the legal profession and practising in all aspects of law. The response represents the collective views of the Employment Law Committee whose members include specialists in Employment from all branches of the legal profession.

Extending mandatory pay gap reporting to ethnicity and disability

Q1. Do you agree or disagree that large employers should have to report their ethnicity pay gaps?

Strongly Agree

We agree that large employers should be required to report such pay gaps in anticipation that it would be a transparent positive step towards the aim of greater transparency and ultimately change. We believe that the positive benefits for employers will be that in identifying whether there are any pay gaps within their organisation they will be led to try and understand those gaps, and then consider what steps are necessary to address them in order to attract and retain staff. For employees, they can find out about any reported pay gaps and will be able to make informed decisions when speaking with existing or prospective employers, and can make better decisions about their jobs and career choices.

It is clear that the reporting on these two protected characteristics will create an additional administrative burden for businesses. This is both in respect of the likely time and the resulting costs to the business of putting processes in place to collate and report on the data. We agree with the acknowledgement in the consultation document that “there are also distinct considerations for ethnicity and disability, particularly in data collection and analysis”. We note that high

rates of compliance may be difficult to achieve given these complexities and would encourage a clear and straightforward approach to be implemented to maximise compliance rates. One potential area of difficulty stems from the necessity for employees to self-declare, and that some employees may prefer the option of not declaring at all. This would result in data being of marginal use and could have significant negative repercussions for employers whose reputation could unfairly suffer if the data is not clear or comprehensive.

Using fewer or simple categories may be a solution here, and more likely to yield a declared (as opposed to an undeclared) categories within protected characteristics e.g. here, race. On the one hand, this might lead to a higher number of employees declaring their characteristics, but on the other hand, this would result in data with less granularity, and potentially of less use. Consideration must also be given to the issues that employers will face once they have the data, for example the complexity of taking steps to address pay gaps where straightforward fixes are unlikely and the cost implications for businesses could be high.

A requirement to report therefore doesn't necessarily equate with any change to pay equality, and care should be made to look at the steps beyond the reporting, such as action plans and enforcement.

Q2. Do you agree or disagree that large employers should have to report their disability pay gaps?

Neither agree nor disagree

Response as per Q1, with the following caveat. There is a significant concern with the proposed approach to disability pay gap reporting because the proposal relies on employees self-declaring whether they think they meet the s.6 Equality Act 2010 ('EqA') definition of a disability. (see further, response to Q31 below).

It is noted that in people of working age there is currently a (relatively) high prevalence of poor mental health ('MH'), some but not all of which could be classified as a disability under the EqA. Many working individuals with MH conditions decide not to disclose (as do some individuals with physical health conditions). This is because significant stigma is still attached to the label of disability within employment settings, including at the recruitment and

promotion stage. Quite simply, for a disabled person, declaring their disability and asking for adjustments is often perceived as something that puts them on a fast track to a deterioration in working relationships and/or the termination of employment, regardless of the protections set out in the EqA. So although in reality many employers treat disabled employees fairly, employees are wary of raising their condition as an issue. We believe that unless there are very clear assurances around data protection for individuals we believe that getting meaningful statistics on disability will require a careful and nuanced approach.

Further information relevant to this point is set out in the answer to Q31 below.

Geographical Scope

Q3. Do you agree or disagree that ethnicity pay gap reporting should have the same geographical scope as gender pay gap reporting?

Somewhat Agree

We agree that such reporting, if introduced, should be mandatory for larger employers and not for smaller organisations. Large organisations with more than 250 employees are used to reporting on the gender pay gap, so they will be familiar with the concept of such reporting. However, there will be many differences with this type of reporting, and it will likely be an administrative burden that brings with it cost implications for many which should not be overlooked. If such reporting is introduced, then it should be made as straightforward as possible to decrease the burden.

Q4. Do you agree or disagree that disability pay gap reporting should have the same geographical scope as gender pay gap reporting?

Somewhat Agree

Response as per Q3.

Pay Gap Calculations

Q5. Do you agree or disagree that employers should report the same 6 measures for ethnicity pay gap reporting as for gender pay gap reporting?

Strongly Agree

We agree that employers should be required to report on the same six measures as they do for gender pay gap reporting. They are likely to already have in place means to gather and calculate the required statistics using these measures. Clearly, if the government's proposal that the GSS ethnicity harmonised standard is used, this will potentially mean smaller groups being identified and there may need to be aggregations of race categories in some cases to provide meaningful statistics.

Q6. Do you agree or disagree that employers should report the same 6 measures for disability pay gap reporting as for gender pay gap reporting?

Strongly Agree

As per Q5.

Q7. Do you agree or disagree that large employers should have to report on the ethnic breakdown of their workforce?

Somewhat agree

We agree that the more information an organisation is able to obtain and report on will likely give helpful insight into any pay gap. This will likely be beneficial for the organisation and also for employees to understand the fuller picture. Any further context that can be provided to help explain and interpret different aspects of the data is, therefore, helpful. However, we would urge caution to some extent as it could be a time consuming and costly exercise for a business to review and provide the additional detail of information, and extra commentary.

Q8. Do you agree or disagree that large employers should have to report on the breakdown of their workforce by disability status?

Somewhat Agree

As per Q7.

Q9. Do you agree or disagree that large employers should have to submit data on the percentage of employees who did not state their ethnicity?

Strongly Agree

We agree with this proposal, as it will provide additional explanation and context for the data. The reporting of the quantities of employees who choose not to disclose their data is potentially a useful metric, as where this accounts for a large percentage of employees it may disclose different background issues e.g. potentially, a workforce's lack of trust in the employer around retention or use of data, or other organisational issues. On the other hand, as also noted above, as employees will be required to self-declare and do not have to provide this information, the accuracy of the overall data could be impacted by the inclusion of this data point. Our view is that employers should, therefore, submit data on the percentage of employees who did not provide the personal information as this, of itself, can form part of the larger narrative.

Q10. Do you agree or disagree that large employers should have to submit data on the percentage of employees who did not state their disability status?

Strongly Agree

As per Q9.

Action plans

Q11. Do you agree or disagree that employers should have to produce an action plan about what they are doing to improve workplace equality for ethnic minority employees?

Somewhat Agree

We note that the proposal is that actions plans should be mandatory whereas in relation to gender pay gap reporting they are currently optional¹. We note the additional burden this could place upon some employers who are not currently providing action plans. However, if the mandatory reporting introduced were to follow the current suggested format for gender pay gap action plans, the requirements would not appear to be unduly onerous and to provide work significantly in excess of that required to provide the statistical break down. That said, we acknowledge that many employers may feel that the burden would be

¹ Although the changes proposed in the current Employment Bill would make providing an action plan mandatory.

significant and unacceptable leap i.e. going from an optional action plan and reporting on one protected characteristic to mandatory actions plans and reporting on three protected characteristics.

In terms of achieving the objective of achieving pay parity, requiring employers to set their plans to achieve this in an action plan is likely to help with transparency and is a good starting point for holding employers to account. Moreover, a requirement to provide an action plan could also give employees understanding about what action their employer proposes to take to rectify any disparities, could improve their loyalty, and could encourage them to engage constructively with their employer on these issues.

Q12. Do you agree or disagree that employers should have to produce an action plan about what they are doing to improve workplace equality for disabled employees?

Somewhat Agree

As per Q11.

Additional reporting requirements for public bodies

Q13. Do you agree or disagree that public bodies should also have to report on pay differences between ethnic groups by grade and/or salary bands?

Somewhat Agree

Given the nature of public bodies, and their duties under the public sector equality duty they should provide additional information. The information is likely to be held already and with the clear grading and salary banding structures within public authorities, this would certainly be feasible. In general, if more detail is given, it needs to be done in such a way that individuals cannot be identified (GDPR issues). It may also be beneficial to stagger the introduction of any additional reporting requirement to aid the implementation of systems to capture such data.

Q14. Do you agree or disagree that public bodies should also have to report on recruitment, retention and progression by ethnicity?

Somewhat Agree

Given the nature of public bodies, they should provide additional data relating to recruitment, retention and progression.

Q15. If public bodies have to report on recruitment, retention and progression by ethnicity, what data do you think they should have to report on?

In relation to recruitment, it would be useful for public bodies to report on the ethnicity of job applicants. This could also be done for internal recruitment exercises. Data at these two stages could be readily compared with (a) local population statistics, and (b) current workforce make up, and would help identify any differences in the ethnic composition of these two data sets. This in turn could inform recruitment and selection processes.

Q16. Do you agree or disagree that public bodies should have to report on pay differences between disabled and non-disabled employees, by grade and/or salary bands?

Somewhat Agree

See Q13 above. Agreed, given the nature of public bodies, they should provide such information. However, it needs to be done in such a way so that individuals cannot be identified.

Q17. Do you agree or disagree that public bodies should have to report on recruitment, retention and progression by disability?

Somewhat Agree

See Q14 above. Agreed. Given the nature of public bodies, they should provide additional data relating to recruitment, retention and progression.

Q18. If public bodies have to report on recruitment, retention and progression by disability what data do you think they should have to report?

See Q15 above. In relation to recruitment, it would be useful for public bodies to report on the ethnicity of job applicants. This could also be done for internal recruitment exercises. Data at these two stages could be readily compared with (a) local population statistics, and (b) current workforce make up, and would help identify any differences in the ethnic composition of these two data sets. This in turn could inform recruitment and selection processes.

Dates and Deadlines

Q19. Do you agree or disagree that ethnicity pay gap reporting should have the same reporting dates as gender pay gap reporting?

Strongly Agree

Q 20. Do you agree or disagree that disability pay gap reporting should have the same reporting dates as gender pay gap reporting?

Strongly Agree

Q21. Do you agree or disagree that ethnicity pay gap data should be reported online in a similar way to the gender pay gap service?

Strongly Agree

Q21. Do you agree or disagree that disability pay gap data should be reported online in a similar way to the gender pay gap service?

Strongly Agree

Comments on this section:

We believe that the burden on employers would be less onerous if the reporting deadlines were the same as for gender pay gap reporting, as just one information gathering exercise would need to take place, albeit that the time and resources taken to complete that exercise would be greater.

The online reporting of the data should be the same. Although more complex and potentially subject to more nuanced comment and analysis, it is anticipated that online reporting of data on race and disability, would bring greater transparency and light to the issues.

Much like gender pay disparity, discussion and debate around race and disability pay disparity can sometimes be seen as pointless due to the lack of real-world relatable data on the issue. Providing this information online could – quite possibly – open up that debate.

One note of caution would be the greater need to consider steps to guard against identification due to potentially small sample sizes. Thought may also be needed as to whether the reporting format would need to be more closely prescribed or altered to ensure that the necessarily more complex data on race and disability will be accessible and clearly presented.

Enforcement

Q23. Do you agree or disagree that ethnicity pay gap reporting should have the same enforcement policy as gender pay gap reporting?

Somewhat Agree

Q24. Do you agree or disagree that disability pay gap reporting should have the same enforcement policy as gender pay gap reporting?

Somewhat Agree

The current requirement relating to gender pay gap reporting does not permit individuals to take action in relation to a failure to collate or publish those pay gap statistics. Instead, the duty can be enforced by judicial review and the Equality and Human Right Commission has power to investigate and levy unlimited fines under the Equality Act 2006.

A 2024 report by CIPD² reported that 17% of employers with over 250 employees were not complying with the requirements to report gender pay statistics.

It follows that there is no available enforcement right for individual employees in circumstances where their employer's published gender pay gap a pay show disparity to their disadvantage. This is not surprising in one respect, because it would be simplistic to suggest that individuals could accrue a cause of action on the basis of the reported statistics when the disparity may well have resulted from multiple intersecting factors.

² CIPD's Pay, Performance and Transparency 2024 Report, (supported by ADP, a global technology company providing human capital management solutions)

We nevertheless maintain that primarily, gathering and publishing disability and race gender pay statistics (like gender pay gap statistics) should primarily be seen as a useful 'tool' for employers in the overall processes driving equal pay forwards rather than a means to evidence pay disparity (and therefore potentially discrimination) for individual employees.

Having said that, it would undoubtedly be useful if it could be made clear to employers and employees alike, either by specific provision in the legislation/regulations or by clear guidance, that employment tribunals and courts could make reference to the published statistics to draw general, but rebuttable inferences when pay discrimination is claimed.

Ethnicity: data collection and calculations

Q25. Do you agree or disagree that large employers should collect ethnicity data using the GSS harmonised standards for ethnicity?

Somewhat Agree

We do not believe that new standards are necessary, and that the existing GSS harmonised standards are acceptable to use for race pay data collection. There is clearly a need for harmonisation of terminology and categorisation.

Calculating and Reporting Ethnicity Pay Gaps

Q26. Do you agree or disagree that all large employers should report ethnicity pay gap measures using one of the binary classifications as a minimum?

Strongly Agree

Q27. Do you agree or disagree that there should be at least 10 employees in each ethnic group being reported on? This would avoid disclosing information about individual employees.

Strongly Agree

Q28. Do you agree or disagree that employers should use the ONS guidance on ethnicity data to aggregate ethnic groups? This would help protect their employees' confidentiality.

Strongly Agree

It is noted that in England and Wales there are likely to be some large organisations that have workforces largely or wholly drawn from a single ethnic group. The suggested solutions to dealing with this (binary classifications), using one of three methods, at present would appear to provide a workable solution to make sure that at least some useful data can be presented.

Getting such organisations to engage with pay disparity issues by mandatory reporting, and by using the binary classification method if necessary, could itself validate and endorse the experience of (a small group of) of minority ethnic employees and could encourage minority ethnic job applicants.

Using the rule of not reporting on ethnic groups with fewer than 10 members, and aggregating groups together to achieve some meaningful data appears to be a reasonable approach and has worked in practice already.

Q.29. Is there anything else you want to tell us about ethnicity pay gap reporting?

No

Disability: data collection and calculations

Comparing pay across employee groups

Q30. Do you agree or disagree with using the 'binary' approach (comparing the pay of disabled and non-disabled employees) to report disability pay gap data?

Strongly Agree

For reasons set out above (Q28) this approach is agreed.

Q31. Do you have any feedback on our proposal to use the Equality Act 2010 definition of 'disability' for pay gap reporting?

Please refer to our answer to Q2 above.

As noted in Q1 above, the s.6 EqA definition is complex: it requires an employee to have a physical or mental impairment that has a substantial, long-term adverse effect on their ability to carry out day to day activities. Decided case law provides that making a definitive determination of whether an individual satisfies the criteria in s.6 is something that only an Employment Tribunal, determining a claim of disability discrimination, can do.

Employees are unlikely to fully understand whether they are ‘disabled within the meaning of s.6 of the Equality Act 2010’. For example, ‘day to day activities’ includes tasks like walking up the stairs, personal care or reading – not solely their ability to carry out the job role or niche skills such as playing a musical instrument. The law also assesses the impact of a condition without considering the effects of any aids or treatment so that it essentially asks whether the condition has a substantial adverse effect without the aid or treatment. This may not be clear to employees. Also, some conditions are automatically deemed disabilities, while others – such as alcohol addiction – are explicitly excluded. However, an impairment resulting from an excluded condition can still be considered a disability. An employee will not necessarily know these nuances. Given the difficulties in assessing whether an employee meets this definition, employers will often refer an employee with a medical condition to an occupational health practitioner or their GP to obtain a medical opinion and assist in their management of the employee.

However, it would appear that the proposal being made is that when gathering statistics for disability pay gap reporting the decision as to whether to declare as disabled is being left to the employee without any checks or balances. Some employees may not think of themselves as disabled when a tribunal would have concluded that they meet that definition. While for other employees, the reverse could happen. A further issue arises in relation to the fact that disability is not necessarily a static characteristic, so although some individuals may have permanent disabilities others may have conditions that worsen to become a disability, or which can – over time – cease to be a disability. Data on disability – unlike race and sex – would need to be refreshed regularly.

All of the concerns above raise difficult questions about the ongoing accuracy of the data.

Is it expected that an employer would need to take steps to educate their workforce about the legal definition of a disability? If so, this means additional time and resources, with still no guarantee that the data would be accurate.

A further question arises regarding how self-declarations of disability, incorporated in the pay gap reporting, might impact upon employment tribunal claims brought against employers for disability discrimination. For an employer to be liable for direct disability discrimination, discrimination arising from a disability, or for a failure to make reasonable adjustments, they must have known, or should have known, about the employee's disability. The proposal raises questions about whether information gathered for the purposes of the pay gap reporting could be utilised as evidence about the employer's state of knowledge about a disability and potentially jeopardise a valid defence to an employment tribunal disability discrimination claim.

Q32. Do you agree or disagree that there should be at least 10 employees in each group being compared (for example, disabled and non-disabled employees)? This would avoid disclosing information about individual employees.

Strongly Agree

See Q27. above.

Q33. Is there anything else you want to tell us about disability pay gap reporting?

No