Written evidence from Ms Sheila Wild (CGP003)

Gender pay gap

Key points

- Medium sized employers (250-1000 employees) have had some difficulty in getting to grips with the data collection and analysis.

- Some aspects of the regulations are unclear: why partners are excluded; what constitutes a bonus and what an allowance, and the way in which the regulations treat childcare vouchers. These points could helpfully be clarified.

- It will be important to continue to provide employers with information, advice, and most importantly, examples of good practice across all the factors that can contribute to a gender pay gap.

- Organisations who have committed to an open discussion of the data with their workforce are more likely to take remedial actions.

- The extent of compliance is unknown.

- There is a widespread perception that the Equality and Human Rights Commission does not have the resources to enforce the reporting requirements, and this perception may weaken the effectiveness of the regulations.

- Employers learn best from each other, and the development of sectoral benchmarks and of the most appropriate and effective interventions, is something which should be encouraged.

- Rather than introducing a new requirement to take action to close the gender pay gap, it would be more productive to focus on:
  - Making the current requirements clearer and more robust
  - Developing and making public a list of the organisations who fall within the scope of the regulations, and,
  - Requiring employers to share the background data with their employees.

In combination, these reforms would increase understanding of the factors that contribute to the gender pay gap, and would provide an informal means of verifying both that those who should report are doing so, and that the reports themselves are as accurate as they can be.


**Introduction**

1. My name is Sheila Wild. I run Equal Pay Portal the key online source of information on gender pay issues for equalities professionals; prior to this (and for over three decades) I led on gender pay at the Equal Opportunities Commission, and latterly, the Equality and Human Rights Commission (the EHRC). Since retiring from the EHRC in 2011 I have been working with organisations across the public and private sectors, most recently on the gender pay gap reporting regulations. In collaboration with Acas and with Eversheds Sutherland I have been advising employers on how best to communicate their gender pay gaps, and in 2017 I wrote the CIPD guide to gender pay gap reporting.

2. I therefore have some insight not only into how the new gender pay gap reporting regulations are being received by employers, but also into how regulations to do with the gender pay gap have played out over time.

**The Committee’s questions**

*Whether the annual information related to pay required under the Equality Act 2010 is sufficient? Should any further information be required?*

3. While the headline figures currently being required draw attention to the gender pay gap, both nationally and at an organisational level, they do not of themselves provide sufficient information to inform future action. But, provided that the data which backs up the figures is accurate (see below), it will enable employers to begin to address the contributory factors, and/or to recognise that some of these require closer examination. However, it is important to stress that not too much weight should be placed on the first set of figures. This is because in dealing with gender pay issues it is necessary to be able to identify patterns, not just in the comparisons between men’s and women’s pay, but across the business. For example, does an increase in the number of people hired correlate with a widening or a narrowing of the gender pay gap? How has outsourcing affected the figures?

4. In considering whether the information currently being required is sufficient, it is helpful to ask some supplementary questions: to what extent are employers able to collect and analyse the data necessary to calculate the figures being required? How great is their understanding of the data itself? And to what extent are employers sharing the background data with their employees?

   **To what extent are employers able to collect and analyse the data necessary to calculate the figures being required?**

5. My experience suggests that medium sized employers, that is, those employing 250-1000 employees, have had some difficulty in getting to grips with the data collection and analysis. This may have nothing to do with the gender pay gap; it may quite simply
be because organisations of this size are not as accustomed as are larger firms to collecting and interrogating data in this way.

6. Looking at employers more generally, while the official Acas guidance is admirably clear, some aspects of the regulations themselves are unclear. People are having particular difficulty in understanding, for example, why partners are excluded; what constitutes a bonus and what an allowance, and the way in which the regulations treat childcare vouchers – which most organisations find counterintuitive. All three examples will impact on the organisation’s pay gap, and uncertainty over what or how to report is creating some anxiety.

7. In my view, it would be premature to ask employers to come up with more information until the current requirements have bedded down – probably three to five years, a time period which would also enable patterns within the distribution of pay as between men and women to become apparent. It would also, of course, be helpful if those parts of the regulations that are causing confusion could be made clearer.

**How great is employer understanding of the data itself?**

8. Again, I draw a distinction between medium and large organisations. In the main, large organisations understand what their data is telling them, and, just as importantly, what it is not telling them.

9. However, for medium sized organisations (with possibly less experience, and certainly less time and with fewer resources to allocate to developing a better understanding of what contributes to the gender pay gap) there is a real risk that that their interpretation will be conditioned by the media’s take on the ‘causes of the gender pay gap’. For example, a medium sized manufacturing company may conclude that its pay gap is due to a lack of women in senior roles, without also recognising that the pay system itself favours men, in that a range of additional payments are made to employees working in traditionally male areas. A closer examination of the pay system might suggest either that the original justification for the additional payments no longer holds up, and that they should be discontinued, or that the justification also applies to employees working in traditionally female areas and that the additional payments should be extended to these workers.

10. Media coverage of the headline figures has been largely unaccompanied by any detailed commentary. In some instances the organisation’s accompanying explanatory narrative has been ignored. The Bank of England, for example, explained that the shortage of women in its ranks was part of a much wider national shortage of women economics graduates, but none of the press coverage mentioned this; the media, far from calling for renewed efforts at a national level to increase the supply of female economists, pilloried the Bank for the its failure to get women into senior roles. This is not only unfair, it is unhelpful, as it diverts attention from the complexity and deep rooted nature of some of the reasons for the gender pay gap.
11. Media focus is skewed towards a lack of women in certain occupations and at certain levels; very little attention is being paid to the impact on the gender pay gap of the shortfall of men in, say, caring occupations, or in lower paid jobs more generally. While it is of course important to ensure that everyone, whether male or female, can reach their full potential at work, the eradication of the gender pay gap calls for a more even distribution of work as between men and women in individual workplaces and across the economy as a whole. And, very little media attention is being paid to the contribution that pay systems themselves may make to an organisation’s gender pay gap.

12. For many under-resourced organisations, the media will be a key source of information, and to counter the potentially misleading impact of media biases it will be important to continue to provide employers with information, advice, and most importantly, examples of good practice, across all the factors that can contribute to a gender pay gap. As one way of doing this is to include a mention of such initiatives within the narrative element of the report, one option the Committee might wish to consider is making a narrative element compulsory, and thus available to all employers through the viewing service website.

To what extent are employers sharing the background data with their employees?

13. Little is known about the extent to which employers are sharing background information with their workforce. While Acas and others, including myself, encourage organisations to do this as part of their communications plan, there is no requirement on employers to do so, and a recommendation to this effect is something the Committee may wish to consider. It is noticeable that those organisations who have committed to an open discussion of the data with their workforce are more likely to take remedial actions such as revitalising their approach to flexible working, phasing out allowances, or reviewing their whole system of bonus payments.

What is the extent of compliance? Is the information accurate?

14. We quite simply do not know the extent of compliance. The viewing service website overestimates the number of employers having reported, in that it shows a number of duplications; some of these are due to group entities reporting both as a group and as component companies, but for others there is no obvious reason for the duplicate entry. Another glitch in the counting arises because in the public sector some institutions, such as universities, report differently according to whether they are based in England, Scotland and Wales.

15. The situation is further confused by the differing reporting dates for the public and private sectors – how many of the employers reported as having published their figures by the 4th April were from the private or voluntary sectors, and how many from the public sector? Has the extent of private sector compliance been over or under
estimated? The assessment of the levels of compliance is also not helped by the fact that, as of March 2018 there was no central list of employers covered by the regulations [See Freedom of Information Act Request, Government Equalities Office Ref. 2018-0007601].

16. All of this means that the numbers of employers thought (i) to be within scope, and (ii) to have reported, are at best, estimates. In the interests of transparency and comparability, and to ensure that any enforcement action is properly targeted, it is essential that a list of organisations within scope of the regulations be agreed and made public; that the reasons for duplicate reports be investigated; and that the anomalies in respect of public sector reporting are ironed out.

17. At an organisational level, the accuracy of the information, that is, the extent to which all the relevant employees have been included, and that all the relevant payments have been accounted for and are correct, can only be ascertained by scrutinising the data itself, and, short of enforcement action being initiated by the Equality and Human Rights Commission, the regulations do not provide for this. A requirement to share the background data with employees would provide a relatively light touch means of ensuring the accuracy of the figures being reported, and one which is in accord with what many employers are already doing.

How effective are the sanctions for non-compliance with reporting requirements?

18. Again, it is too soon to say. While some have argued that the sanctions are inadequate, I think their greatest weakness lies in the widespread perception that the Equality and Human Rights Commission does not have the resources to enforce the regulations. The majority of employers caught by the regulations will comply as best they can. Those who fail to submit a return can be fairly easily dealt with, but determining whether the published figures are accurate, accidentally inaccurate, or wilfully misleading will call for a thorough examination of the data by someone with expertise in payment systems, data collection and analysis, and equal pay. Such examinations will be time consuming and expensive, and it seems unlikely that the EHRC will have the wherewithal to examine more than a handful of instances.

19. Another relevant consideration is the coincidence of employment tribunal fees having been removed at about the same time as the gender pay gap reporting regulations came into effect. The removal of fees has led to a greater willingness to pursue equal pay claims, and despite the assurances given while the regulations were being developed, that ‘this is not about equal pay’ the situation at the BBC has shown that making a gender pay gap public may well be about about equal pay.

20. If it is indeed the case that the EHRC will be unable to resource the enforcement of the regulations, then this needs to be addressed. Failure to do so will reduce the credibility
of the regulatory framework. Even so, there must be a strong possibility that the most effective enforcement will be via equal pay claims taken through the Employment Tribunal.

What requirements, if any, should there be on companies to address gender pay gaps?

21. In my experience, once employers get used to collating information on a regular basis, they very quickly understand the need for action, and I am reluctant, at this very early stage to suggest that further requirements be introduced. Employers learn best from each other, and I have been encouraged by the speed with which a diverse range of industries are disseminating information about the gender pay gap in their sector. The development of sectoral benchmarks and of the most appropriate and effective interventions is something which should be encouraged.

22. Rather than introducing a new requirement to take action to close the gender pay gap, I think it would be more productive to focus instead on making the current requirements clearer and more robust, in developing and making public a list of the organisations who fall within the scope of the regulations (and are therefore expected to report their gender pay gap figures), and in requiring employers to share the background data with their employees. In combination, these reforms would increase understanding of the factors that contribute to the gender pay gap, and would provide an informal means of verifying both that those who should report are doing so, and that the reports themselves are as accurate as they can be. It will also be important to continue to provide opportunities for employers, ideally on a sectoral basis, to share their experiences of tackling the gender pay gap.

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