Written evidence from the Fawcett Society (CGP0010)

About us

1. The Fawcett Society is the UK’s leading membership charity campaigning for gender equality and women’s rights. Our vision is a society in which women and girls in all their diversity are equal and truly free to fulfil their potential; creating a stronger, happier, better future for us all.

2. We publish compelling research to educate, inform and lead the debate; we bring together politicians, academics, grassroots activists and wider civil society to develop innovative, practical solutions; we work with employers and in schools and we campaign with women and men to make change happen.

Summary

3. The Fawcett Society recognises the gender pay gap as a productivity gap at base, representing an underuse of women’s skills and expertise in the labour market. As such, Fawcett welcomes the introduction of the gender pay gap regulations, which require employers over 250 or more people to publish their gender pay gap statistics. We believe this is a significant step in the right direction and an essential component to tackling the gender pay gap. However, it is also Fawcett’s position that the regulations, while important, do not translate into full transparency, as women are not being provided with the data necessary to identify unequal pay (where they are illegally being paid less than men working in the same job or a job of equal value), and bring equal pay claims.

4. In the following response to the committee’s inquiry into the gender pay gap regulations, we highlight the fact that the statistics required under the regulations do not respond to the diversity of women’s experiences and associated pay gaps. As such we recommend the Government take an intersectional approach to gender pay gap reporting, providing employers and Government with a fuller picture of how the gender pay gap is affected by other protected characteristics. We recognise there are challenges to collecting this data, particularly around data availability and privacy issues for groups that are smaller in number in particular workplaces. More work needs to be done on how an intersectional approach to pay gap data can be taken. We also recommend the threshold be lowered to apply to employers of more than 50 people, so that fewer women are excluded. We also recommend that employers publish gender pay gap data for salary deciles rather than quartiles. We also think it essential that senior partners, for example in law firms, financial service providers, and consultancy firms, are included in employers’ published gender pay gap statistics.

5. We are concerned that while GEO and ACAS guidance strongly encourages employers to publish an action plan and narrative alongside their headline gender pay gap figures, not all have. Fawcett’s position is that employers of 250 or more people should be legally required to publish action plans alongside their gender pay gap statistics and the regulations should be amended to this effect.

6. An unintended consequence of gender pay gap reporting is that conversations around equal pay have been legitimised, and are now happening where previously they might not have. Fawcett welcomes this and thinks that, as part of employers’ responsibility to regulate their pay structures to reduce and avoid inequalities, mandatory equal pay audits must be introduced, every three years, for employers of more than 250 people.¹
7. We are also concerned the Equality and Human Rights Commission (EHRC) may lack the necessary resources to follow up with proper enforcement action for non-compliant employers – both those who fail to publish and those that are suspected of publishing inaccurate data. We therefore recommend the Government support the EHRC’s enforcement work with additional funding.

8. The sanctions the EHRC can levy on non-compliant employers have extensive timeframes, obliging the EHRC to go through the courts. This could lead to a very drawn out, resource intensive process. As such we recommend that civil penalties are provided for.

9. Finally, we recommend measures aimed a tackling the wider causes of the gender pay gap. Among these are introducing a reserved period of leave for second carers, paid at a rate which makes it affordable to take; job roles being advertised as flexible by default unless there is a strong business case not to; increasing the availability of quality, part-time work, and tackling occupational segregation.

Is the data related to gender pay gaps required under the Equality Act 2010 sufficient?

10. That employers of 250 or more people are required to publish the mean and median gender pay gaps, the mean and median gender bonus gaps, and the proportion of men and women in each salary quartile, is a step in the right direction that Fawcett welcomes. Fawcett particularly supports the publication of bonus gender pay gaps. In some workplaces, the bonus pay gaps are more than double the gender pay gap, which in at least some cases are likely to be unjustified, suggesting discriminatory practices may be involved. Bonus gender pay gap data highlights the impact of bonus inequality for women and indicates the need for transparent bonus structures.

11. Fawcett also notes the valuable insights that have been gained following the publication of firm level gender pay gap data. For example, analysis has found that as of 29th March 2018, 78% of companies have a median hourly gender pay gap. In other words, 78% of companies that had published by that date paid men more than women. While the Annual Survey of Hours and Earnings (ASHE) already allowed for a sectoral analysis of the gender pay gap, which lead to the identification of finance and insurance as having the worst gender pay gap, firm level data has allowed for a comparison within sectors. For example, the worst performers in the airline industry, among major banks, educational institutions, and retail were identified in the press. With firm level data now available, we are now in the position to identify firms with similar characteristics, compare their gender pay gaps and action taken to address them, and develop and encourage best practice sharing.

12. Fawcett believes that gender pay gap data should be published for salary deciles rather than quartiles, as this is no more burdensome to employers once they have collected data on pay.

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3 Ibid.

and will provide employees with a more nuanced picture of pay trends in their workplace. There is also no requirement to publish the associated salary ranges for each salary quartile, so currently, employees are not even able to identify which quartile they fall into. We also believe that senior partners, for example in accountancy and consultancy firms, should be included in employers’ published gender pay gap data. This would of course have to be carried out with due regard the privacy of employees.

13. It is also Fawcett’s view that these headline figures do not provide employers with sufficient information to identify the causes of the gender pay gap. They also do not enable women to identify a comparator or bring equal pay claims. These concerns speak to a separate but related issue, that of unequal pay, where individuals working in the same jobs or jobs of equal value are paid different salaries, which is illegal, unlike the gender pay gap in and of itself. Fawcett recognises different policy tools are needed to address the two issues, and recommends the reintroduction of equal pay questionnaires to help address issues of equal pay.

14. Additionally, the Office for National Statistics (ONS) does not collect and publish intersectional gender pay gap data, and companies subject to the gender pay gap regulations are not obliged to publish gender pay gap data for other characteristics such as disability, ethnicity, or age. Better data is urgently required to ensure policy genuinely reflects the diversity of women’s experience and the nuanced causes of the pay gap for different women. However, the research that does exist demonstrates that, while the overall picture is complex, women with multiple protected characteristics tend to experience greater gender pay gaps.

15. Fawcett Society research has found significant gaps between women of colour and their white counterparts. For instance, Pakistani and Bangladeshi women earn on average 26.2% less than White British men. The EHRC has found that many disabled people receive lower pay. For example, women with a physical, activity-limiting disability earn on average 6.1% less than non-disabled women. On age, the Women and Equalities Select Committee (WESC) examined the gender pay gap in 2016, with a particular focus on women over 40 years old. They observed that the gender pay gap widens considerably among older workers, and is largest for women aged 50-59. They also observed that ‘...the Government does not have a coherent strategy to address the issues underlying this gap and ensure younger women do not encounter the same difficulties as they age.’

16. It is also clear that motherhood is an important driver of the pay gap for many women, which coheres with the pay gap widening as women age. The Institute for Fiscal Studies has found that the gender pay gap widens over twelve years after a child is born to 33%, due to


\[8\] Ibid. P.8.

\[9\] Ibid. P.5.
lost wage progression for women. Research from the IPPR found that mothers in full-time work at age 42 face a motherhood pay gap of 11%, and when factors such as education, class etc. are controlled for, they still face a gap of 7%. Women continue to undertake the majority of caring responsibilities, consequently they are more likely to work part-time (42% vs. 14%) or in jobs below their skill level that offer them the flexibility they need.

17. As such we recommend the Government take an intersectional approach to gender pay gap reporting, providing employers and Government with a fuller picture of how the gender pay gap is affected by other protected characteristics as well as part-time and full-time status. This would of course have to be done with due consideration to privacy and the rights of individuals to withhold their personal data from their employer. We are also concerned that gender pay gap regulations have not been implemented for Northern Ireland, as such we recommend equivalent provisions be made in Northern Ireland.

18. We are also concerned that the current threshold of 250 employees excludes too many women. The Government predicts the current regulations will only cover 34% of the UK workforce. Reporting regulations in France apply to organisations with over 50 employees and in Sweden to those with over 25 employees. As such, we recommend the regulations be amended by 2020 to lower the threshold to employers with over 50 employees.

Compliance and accuracy of data

19. Following the deadline for gender pay gap reporting (4th April for private and voluntary sector employers and 30th March for public sector employers), as of 10th April 2018, 10,317 employers published their gender pay gap statistics, with the EHRC estimating that 1,500 qualifying companies failed to file their gender pay gap data before the deadline. The GEO originally estimated that 9,000 firms would be subject to the gender pay gap reporting regulations, however, over 10,000 employers have now reported, indicating these estimates may not be reliable.

20. It is important that the EHRC has access to the data they need to identify employers who have failed to publish their gender pay gap data, and follow up with appropriate enforcement activity. As of March last year, the Government was not able to say that they intend to use HM Revenue and Customs data in order to help identify non-compliant business, and did not say how they planned to identify non-compliant employers. We are

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therefore concerned that there is a lack of quality and robust data that can be used to identify non-compliant employers and follow up with appropriate enforcement action. The Government must ensure the EHRC has the data necessary to identify qualifying employers that fail to publish.

21. In addition to employers who may be non-compliant due to failure to publish, employers may fail to be compliant if they publish inaccurate data. As of 10th April, 53 employers reported a 0% average mean and median gender pay gap, which is statistically improbable. In January, the Financial Times published an article on employers that submitted statistically improbable data, and reported that some employers revised their statistics following publication of the article.\textsuperscript{19} Hugo Boss UK, the clothes retailer, reportedly changed its gender pay gap data three times.\textsuperscript{20}

22. We are concerned that inaccurate reporting of the kind described above may undermine the effectiveness and objectives of the gender pay gap regulations. While we support following up with employers who publish statistically improbable data as well as those who fail to publish, we recognise this will be resource intensive. We therefore recommend this activity be supported through additional funding for the EHRC from the Government.

23. GEO and ACAS guidance urges employers to publish an action plan and narrative alongside their headline statistics. However, as of 5th April 2018, only 73% of employers published a link alongside their data and not all of those are to a genuine action plan. While ACAS and GEO guidance is not legally binding, and as such employers that have not published action plans are not acting unlawfully, Fawcett’s position is that qualifying employers should be required to publish action plans alongside their gender pay gap statistics and the law should be amended to this effect.

Effectiveness of sanctions for non-compliance

24. As we argued in our response to the Government Equalities Office (GEO) consultation on the implementation of section 78, rigorous enforcement and meaningful penalties for non-compliance are essential if the regulations are to have an impact on the gender pay gap. We support the use of potentially unlimited fines – for non-compliant employers, this emphasises and monetises the risk of not acting in accordance with the law.

25. We also support the use of a targeted approach, contacting a tranche of non-compliant employers for each industry. We would encourage contacting non-compliant organisations of different sizes. This would ensure that women working for smaller organisations benefit from enforcement action.

26. While the EHRC can apply to the courts, which can then levy unlimited fines for non-compliance, we are concerned that the timeframes for each stage of enforcement action are cumbersome and lengthy. Given that the requirements placed on businesses under the gender pay gap regulations are relatively clear and straightforward, we would support a shorter enforcement process, including the exploration of civil routes to levying fines.

\textsuperscript{20} Ibid.
Models that are used for non-compliance with the National Minimum Wage by HMRC may be relevant.

27. We also support simplifying the enforcement process. In particular, we would support moves to eliminate the need to apply for a court order to enforce the regulations. The EHRC should be given the power and resources to carry out enforcement activity that would have a more immediate impact on those who do not comply.

**Further requirements on employers to address gender pay gaps**

28. Transparency is essential in tackling the pay gap, but publishing average pay gap data alone is not sufficient to close the gender pay gap and address the underlying causes.

29. As mentioned above, while we welcome GEO and ACAS guidance which strongly encourages employers to publish action plans alongside their headline stats, we are concerned that this is not mandatory. Without a published high quality action plan, it is unlikely that publication of the gender pay gap data on its own will close said gap.

30. It is the responsibility of employers to regulate pay structures to reduce and avoid inequalities, and this is key in tackling the gender pay gap. Therefore, in addition to mandatory action plans to close the gender pay gap, we recommend that mandatory equal pay audits be conducted every three years, initially for employers of 250 or more people.\[21\] These must be conducted transparently and the data made public.

31. Not only is it a moral imperative to close the gender pay gap, there is strong evidence that advancing women’s equality would have a significant and positive economic impact. Research from the McKinsey Global Institute found that if all countries match the rate of improvement of the fastest improving country in their region, as much as $12 trillion dollars, or 11%, could be added to the global GDP by 2025.\[22\] In a scenario where women play an identical role to men in labour markets, this figure jumps to $28 trillion, or 26%.\[23\] McKinsey went on to research the UK specifically, and found that if the UK achieved full gender parity in the workforce, this could add £600 billion to UK GDP by 2025. If every UK region matched the pace of the fastest improving region over the past decade, this could still add around £150 billion.\[24\]

32. McKinsey also conducted research on the impact of increased gender diversity among senior leadership teams on firm profits. The found that in the UK, greater gender diversity on the senior-executive team corresponded to the highest performance uplift in their data set. For every 10% increase in gender diversity, earnings before interest and taxation rose by 3.5%\[25\].

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\[23\] Ibid.

It is therefore transparently clear that, in addition to a moral imperative, there are significant economic benefits to closing the gender pay gap.

The wider causes of the gender pay gap and what must be done to address them

33. There is no one cause of the gender pay gap – important factors are discrimination, undervaluing roles predominantly carried out by women, the dominance of men in best paid positions, and unequal caring responsibilities.26

34. As previously stated, it is clear that motherhood is an important driver of the pay gap for many women. Fawcett recognises that while the introduction of Shared Parental Leave is an important step, to ensure more men take it and we rebalance caring responsibilities, we recommend the introduction of a period of leave dedicated to second carers, paid at a rate that makes it affordable for them to take it. Businesses should also be required to advertise job roles as flexile by default, unless there is a strong business case not to do so. More quality part-time work must be made available.

35. Occupational segregation along gender lines is apparent. Women make up 80% of care and leisure workers and only 8% of those working in better paid skilled trades.27 Women make up 61% of those earning less than the real living wage as set by the Living Wage Foundation;28 in 2017 only 6 Chief Executives in the FTSE 100 were women,29 and women make up only 10.4% of Executive Directors in the FTSE 100.30 While women make up 73% of the management workforce in entry-level roles, only 32% are directors.31

36. Women with degrees face a pay gap too, with the aggregate (full and part-time) gender pay gap for graduates ten years after graduation in the UK standing at 23%.32 Men also continue to dominate apprenticeships with the best earnings potential; in 2014/15, nearly 17,000 men started engineering apprenticeships while only 600 women did.33

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27 Ibid.


37. As such, more businesses need to become a real living wage employer and we need to challenge the segregation of men into higher-paying occupations and women into lower-paying occupations, starting with encouraging more women into STEM\textsuperscript{34} subjects at school age. We also need to increase the value placed on – and wages paid for – roles which women are highly represented in, such as care work.

Concluding remarks

38. Overall, we believe the gender pay gap regulations are a significant step in the right direction, with transparency being a key component to tackling the gender pay gap. However, we are concerned that there are data gaps that must be addressed. We therefore recommend the Government take an intersectional approach to gender pay gap reporting. We also recommend that the threshold of 250 employees be reduced to 50, starting from 2020 onwards and that gender pay gap data be published for salary deciles, rather than quartiles. It is also essential that senior partners e.g. in law and accountancy firms, be included in published gender pay gap statistics.

39. We are concerned that the EHRC may not have access to the data they need to identify employers who failed to publish their gender pay gap data and therefore follow up with appropriate enforcement activity. We recommend the Government explores how a database of qualifying employers can be developed to ensure the EHRC has the necessary data to identify qualifying employers that fail to publish. We also recommend that the EHRC be given the necessary funding to pursue follow up enforcement activity which target employers who publish inaccurate data as well as employers who fail to publish.

40. While we are supportive of the EHRC’s ability to levy potentially unlimited fines on non-compliant employers, we are concerned that the timeframes for enforcement activity, and the obligation to go through the court system are cumbersome and resources intensive. As such, we recommend exploring the provision of civil penalties that do not require the EHRC to obtain a court order before they can pursue enforcement activity.

41. We recommend that, in line with GEO and ACAS guidance, action plans are made mandatory. We also recommend full equal pay audits be conducted every three years, initially for employers of over 250 people. It is also essential that the wider causes of the gender pay gap are addressed. A reserved period of leave for second carers paid at a replacement rate that makes it financial viable for them to take it must be introduced. Job roles must be advertised as flexible by default unless there is a strong business case not to do so and more quality part-time jobs must be made available. Finally, occupational segregation must be addressed, starting with encouraging more women into STEM subjects at school age.

10 April 2018

\textsuperscript{34} Science, technology, engineering, and mathematics.