Executive Summary

1. The TUC is the voice of Britain at work. With 52 affiliated unions representing over 5.5 million working people from all walks of life, over half of whom are women.

2. The TUC has long campaigned on issues relating to equal pay and the gender pay gap and has welcomed the government’s gender pay gap reporting proposals. The TUC has also recently campaigned on issues facing women over the age of 50 in the workplace.

3. ASHE data reveals that the full time gender pay gap widens for women in their 40s and is twice as large for women in their 50s as it is for women overall. Women in their 50s earn nearly a fifth less than men of the same age - the widest gender pay gap of any age group.

4. While progress has been made in closing the full time gender pay gap, the part time pay gap remains alarmingly wide. Women are more likely to work part time than men across all age groups and the proportion of women who work part time rises steadily with age and peaks for women over the age of 50.

5. The lack of well-paid, high quality part-time work with progression and promotion opportunities is a significant factor in the wider gender pay gap for women over 40.

6. The TUC believes it is essential that we address the wide range of issues behind women’s low pay throughout the course of their working lives. This means ensuring a better supply of well paid, high quality part-time jobs, more genuinely flexible work available as a day one right, tackling the gendered dimension of caring and good quality, affordable childcare.

7. Half of women aged 50-64 work in the delivery of public services (public administration, education, and health) compared to one quarter of women aged 16-25. Redundancies, pay freezes, and increased contracting out of services featured prominently in the stories the TUC gathered from older women as part of the Age Immaterial project. Given the high proportion of women over the age of fifty in working in the public sector, it is imperative that the
Government heeds the TUC’s call for fair pay for public sector workers and the one per cent cap on public sector pay rises is lifted.

8. The fact that the gender pay gap widens around the time that many women have children and widens as women get older is linked to barriers women face in the workplace when they become mothers and carers, from discrimination, to difficulties in accessing flexible work, to lack of well-paid part time work.

9. Problems of low pay, lack of job security and weak employment rights are exacerbated for those in precarious forms of work such as zero-hours contracts or agency work. Older women struggle to access training opportunities, particularly those working part time, which may be one of the factors making it difficult for them to progress out of low paid work. Being a woman and working part time for an extended period increases the likelihood of being low paid over the long term\(^1\).

10. An aging population and cuts to health, social care and childcare services mean that many women, but particularly women over the age of 50, are constantly performing an impossible act of juggling care and paid work. In addition to the ‘motherhood penalty’ and the long-term impact of maternity and caring responsibilities on women’s lifetime earnings, TUC polling found that caring for grandchildren had an impact on older women’s working lives and earnings.

   How effective will the Government’s proposals announced so far be in reducing the gender pay gap faced by women over 40 and are there changes to these proposals that would help to reduce the gender pay gap for this group more quickly or effectively?

11. In 2014 the TUC published a report\(^2\) on issues facing women over 50 in the workplace which highlighted the fact that while the

\(^1\) [http://www.resolutionfoundation.org/media/media/downloads/Starting_out_or_getting_stuck_FINAL_1.pdf](http://www.resolutionfoundation.org/media/media/downloads/Starting_out_or_getting_stuck_FINAL_1.pdf)

\(^2\) [Age Immaterial TUC 2014](https://www.tuc.org.uk/sites/default/files/Age_Immaterial_Women_Over_50_Report_2014_LR.pdf)
gender pay gap has diminished over time for younger women, the pay gap that opens up around the time that many women have children never closes.

12. The government’s proposals are a welcome step in the right direction in terms of obliging employers to measure and publish gender pay gaps. The TUC and unions support the enactment of s.78 of the Equality Act and have argued that voluntary approaches such as *Think, Act, Report* are insufficient.

13. However, the TUC has been clear in its view that gender pay gap reporting does not represent a panacea and that more must be done to address the causes of gender pay gaps and to tackle unequal and unfair pay practices.

14. In its response to the Government Equalities Office consultation on the proposed gender pay gap reporting procedures, the TUC has argued that in order for the gender pay gap reporting process to be meaningful and to have an impact, it must involve using a standard measure of the pay gap, it must allow for narrative to explain gaps, including a measure of the part time pay penalty, gaps in bonuses, gaps between and within grades, and gaps by ethnicity and disability too.

15. In order to expedite the closing of the gender pay gap for women over 40, the TUC would also like to see the reinstatement of the statutory equal pay questionnaire in s.138 of the Equality Act 2010. This procedure allowed an employee to ask their employer for more information about their pay and that of any potential comparators if they thought they were not receiving equal pay for equal work. If an employer failed to respond or was evasive in their response then inferences could be drawn against them in a subsequent tribunal claim. Gender pay gap reporting may raise questions for employees about their own pay and that of comparable colleagues which the statutory procedure would allow them to ask.

16. Crucially, the TUC believes that barriers to justice should be removed if women are to make full use of the rights accorded to them by the Equal Pay Act. The number of equal pay claims fell significantly when fees of £1,200 to lodge an equal pay claim and get it heard at tribunal were introduced in July 2013. In Q1 2013 there were nearly 7,928 equal pay cases but by Q1 2014 this had
dropped to 1,236 – a fall of 84%. Numbers of claims have increased since but the claims are still less than half what they were before the introduction of fees. The TUC would like to see employment fees abolished altogether.

17. Finally, it is worth noting that collective bargaining has an important role in closing the gender pay gap and should be promoted. The ILO and others have found that the gender pay gap is lowest in countries where collective bargaining coverage is high and companies are bound to a collective agreement. The European Commission estimates that a 1% increase in social dialogue ‘coverage’ reduces the gender pay by 0.16%. Therefore, promoting collective bargaining (rather than reducing trade union rights as this current government is seeking to do) is likely to lead to narrower gender pay differences in the workplace.

What could be done to improve the position of women aged over 40 regarding recruitment, retention, promotion and training?

18. The TUC has identified access to training as a crucial issue for women in the workplace, particularly older women and particular categories of women such as part-time workers and agency workers.

19. Recent TUC research into women’s experiences of casualised work highlighted lack of access to promotion and training opportunities for women in casualised employment. This was particularly relevant to those women in the higher and further education sector on fixed term and sessional contracts.

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3 Tribunal Statistics, January to March 2014

4 Employment Tribunal Receipts Tables, January to March 2015

5 Dr Jane Pillinger, Bargaining for Equality (ETUC, 2014)
20. One woman told the TUC: “A lot of the events that would be beneficial for my development, including contacts with key people and networking, are in the evening but I cannot attend because my children do not have regular childcare” (and she would not be paid to attend).

21. Another woman interviewed by the TUC reported that she was not given supervision of students, which is a prerequisite for career development in academia. She was told that this would not be fair on the students because “I will be out of here in a few years”. Several women reported that they felt that their casualised contracts meant they were seen as “dispensable” and not someone to invest in.

22. In 2011 the Chartered Institute for Personnel and Development reported that that older workers are much less likely to receive training, with 51% of those aged over 65 saying that they had received no training in the last three years, compared to 32% across all age groups. TAEN has found the lack of available training to be a significant barrier to older women jobseekers. TAEN’s research found that women jobseekers were significantly more likely than men to disagree with the statement “I have every opportunity to upgrade my skills to fit the needs of today’s employers”. Nearly half of the women surveyed disagreed with this statement compared to one third of men. The fact that women over 40 are more likely to work part time may well have a negative impact on their access to training in the workplace.

23. Improving access to learning opportunities is an area where trade unions have an important role to play. A recent Unionlearn project has explored the role of union learning reps (ULRs) in carrying out mid-life career reviews. The project involved training a cohort of ULRs to carry out mid-life reviews in the workplace. The TUC would also like to see the Unionlearn mid-life career review model being adopted more widely and the role of union learning reps in the workplace strengthened.

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6 Survey of Jobseekers Aged 50+, TAEN, 2012
24. The TUC would like to see greater government support for training programmes aimed at older jobseekers as well as the restoration of funding to the adult education sector which has long been a route for women to retrain and gain new qualifications after long periods out of the labour market or in low skilled, low paid work.

25. Women are far less likely to return to their pre-birth employment if there are no family-friendly arrangements such as flexible working, family leave or help with childcare in their workplace. One in six women change jobs after having a child and for the majority of those, this is because they could not access part-time work or hours to suit their needs in their previous job\(^8\).

26. The TUC welcomes the additional funding which has been allocated to the apprenticeships system in recent years. While much of the government’s focus has been on addressing problems of youth unemployment, NEETs, and the skills shortage, much of the growth in apprenticeships has been amongst the 25+ age group. This has been largely due to the withdrawal of Train to Gain funding and employers using apprenticeship funding streams to train existing members of staff, particularly in sectors such as retail\(^9\). This process, known as “conversion” may serve employers well but it does not provide true retraining opportunities to older women who may wish to change careers. The TUC would like to see greater government and employer investment in on the job training and as well as funding for high quality careers advice and training opportunities for those women seeking to return to the labour market after a break.

Is there any evidence that women aged over 40 face particular barriers to promotion? If so, what could be done to address this problem?

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\(^8\) Maternity and Paternity Rights and Women Returner Survey (BIS, DWP 2009/10)

The fact that the gender pay gap widens for women over the age of 40 suggests that they may not have the same access to promotion opportunities as their male counterparts or younger women.

Unions have reported that older women members are overtly and covertly discouraged from applying for new jobs. A recent survey of teachers over 50 by union NASUWT found 40 per cent had seen job adverts that suggested older teachers should not apply.

A recent report by Ros Altman for DWP found that women over the age of 45 faced additional barriers to promotion. Largely the report attributed this to attitudinal and discriminatory barriers regarding older women’s perceived relevance in the workplace. The report noted that men do not face these barriers until they reach the age of 55.

In addition to these attitudinal and discriminatory barriers, the TUC Age Immaterial project found that many women over the age of 50 felt unable to go for promotions as they were stuck in part-time, low skilled jobs and, due to multiple caring responsibilities, were unable to seek full time employment which may have more promotion prospects.

Transparent recruitment processes are vital. New jobs within a workplace should be advertised and open to all. Employers should ensure that all employees are given the training, coaching and encouragement in order to develop their skills and progress in their careers. Part-time workers are often overlooked.

By advertising the fact that flexible working is an option, employers may attract a wider range of candidates who may otherwise have felt unable to take on new responsibilities which may require longer, or different working hours.

Are there particular difficulties in narrowing the gender pay gap for women working in predominantly female sectors and non-professional roles? Are there any evidence based measures which could effectively address these issues?

Evidence suggests that women working in non-professional roles and in lower paid jobs are more likely to access part time work but less likely to have access to the full range of flexible working that workers, both men and women, in more senior and professional roles have.

Furthermore, women in sectors such as retail are more likely to report underemployment – that is they want to work more hours than they currently do - which has a significant impact on earnings and ability to progress or seek promotion in the workplace. According to the Labour Force Survey, part-time workers are more likely to say they are underemployed than full-time workers. Those in lower-skilled jobs (e.g. cleaning, waitressing and bar work) and sales and customer service jobs are the most likely to report underemployment. Nearly a quarter of sales assistants and retail cashiers say they would like more hours than they currently have. This is likely to reflect the growth in zero-hours and very short-hour contracts in these areas in recent years. In 2014, over a quarter of retail workers were contracted to work between one and 15 hours a week11.

Occupational segregation combined with the low value placed on feminised areas of work such as childcare and social care serves to exacerbate the gender pay gap. The TUC has long called for a well-funded, national careers service, greater government and employer efforts to encourage girls into traditionally male sectors such as STEM sectors, and more efforts to encourage boys into traditionally female sectors such as care, as well as educational interventions, such the NUT’s *Breaking the Mould*12 project, to challenge gender stereotypes in schools, are all important steps in breaking patterns of occupational segregation. The TUC supports the Women’s Budget Group’s call for investment in “social infrastructure”13 as a means of constructing a more egalitarian economy, coping with the growing need for paid care work, and increasing the social and monetary value placed on “women’s work.

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12 https://www.teachers.org.uk/educationandequalities/breakingthemould
Should the regulations on gender pay reporting be extended to organizations with fewer than 250 employees?

36. Yes. Although s.78 of the Equality Act 2010 refers to employers with 250 or more employees, the TUC believes the government should consider lowering the threshold to employers with **at least** 150 employees. If not when the regulations are commenced then the threshold should be progressively lowered over time. Having a threshold of 150 employees would also mean there was a common threshold across the economy as it would mirror the equality information reporting requirements for public authorities under the Public Sector Equality Duty.

37. Recent research for the Government Equalities Office showed that there is little difference between companies with 150-249 employees and those with 250 or more employees in attitudes towards gender pay gap reporting (e.g. 47% of large companies and 46% of medium companies were open to internal reporting).

38. We also note the European Commission’s recent recommendation on transparency recommends a threshold of 50 employees for gender pay gap reporting. The higher threshold of 250 employees is only suggested if member states are adopting a requirement for full equal pay audits, which these regulations are not requiring.

Would voluntary measures regarding what employers do with gender pay gap information be sufficient to create change within organisations? What could be done to ensure that information about an organisation’s pay gap is translated into action?

39. No, voluntary measures are not sufficient. A recent report from Close the Gap on implementation by public authorities of the Scottish specific duties to publish gender pay gap information and equal pay statements highlights the scale of the challenge in getting employers to take action: "Many public bodies appear to view publishing their gender pay gap, or undertaking an equal pay review, as an end in itself. There were few examples given of
specific actions to tackle the causes of the pay gap.” An EHRC assessment from 2012 on English public authorities’ compliance with the English specific duty to publish at least one equality objective found that only 6.5 per cent had chosen an objective on the pay gap.

40. The TUC believes that the new law on gender pay gap reporting must require employers to do more than publish numbers. We believe there should be a requirement to publish an evidence-based analysis of the main causes of the gender pay gap in their organisation and what action they intend to take to narrow it. We would also like to see them report on progress in subsequent years against the action plan. Examples of gender pay reporting from other countries like Finland, Germany, Sweden and France highlight that this action-based approach is more common than a requirement to just publish statistics.

Which mechanisms would most effectively ensure that policies designed to narrow the gender pay gap are fully complied with? Is there evidence from other countries or policy areas of what might work best?

41. The TUC recognises that passing a new law on gender pay gap reporting is just the start of a process. There also needs to be: strong enforcement action; engagement with the workforce and trade unions; awareness-raising guidance for employers.

42. We need to learn from the experience of the Public Sector Equality Duty and recognise that if such positive legal duties are going to really drive change then there needs to be adequate powers and resources for enforcement. The EHRC needs new powers to issue compliance notices and to enforce those notices through civil penalties or court orders. Organisations that refuse to comply should be ‘named and shamed’ and compliance should be key to becoming a preferred bidder for public sector contracts. The EHRC needs an increase in its funding to take enforcement action on a scale that would encourage widespread compliance. The EHRC has rarely used its unique powers to enforce the equality information publishing duties under the PSED, partly due to lack of resources.
43. In terms of ensuring compliance with other laws that are designed to narrow the gender pay gap, the government must abolish employment tribunal fees as a matter of urgency. Since the introduction of fees in July 2013 there has been a substantial drop in equal pay (-58%), sex discrimination (-68%), part-time worker regulations (-80%) and pregnancy and maternity claims (-54%). Denying women access to justice means important rights that Parliament has passed to ensure equal participation and progress of women in the workplace are not properly enforced.

44. The new gender pay gap reporting regulations should specify that employers must take appropriate steps to make information available to the workforce (e.g. by posting on the company intranet, including in newsletters etc) and that they should consult with recognised trade unions. Research for the Government Equalities Office on gender pay gap reporting in 2015 highlighted that the biggest influence on employers is pressure from employees. This was some way ahead of other factors such as “wanting to be a good practice employer”. The importance of dialogue with the workforce in creating pressure for change is recognised in the EU Equal Treatment Directive (Article 21) and a recent European Commission recommendation on gender pay transparency also makes clear that transparency leads to action when it is aimed at encouraging dialogue between employers, employees and social partners like trade unions.\(^{v}\) The original framework for the coalition government’s voluntary Think, Act, Report scheme also explained: “Engaged employees are not only key to growth but they are key to understanding the nature of inequalities in the workforce, such as low female participation rates at certain levels or in particular jobs, and to developing effective solutions for addressing them.”\(^{vi}\)

45. Finally, as Close the Gap’s recent report concluded, the lack of action by Scottish public authorities following the implementation of the Scottish specific duties “is likely linked to public bodies’ poor understanding of data gathering, analysis and use as a process, and of the positive purpose of the duty itself”. It calls for updated guidance and investment in capacity-building sessions to improve awareness and understanding of the gender pay gap.

3 December 2015
i Close the Gap, Making Progress? An assessment of employers’ compliance with the Public Sector Equality Duty (November 2015)
ii EHRC, Assessment of the publication of equality objectives by English public authorities (2012)