



**CONSULTATION SUBMISSION**

## **Ethnicity pay reporting: consultation**

Response from the Institute for Employment Studies, January 2019

## Introduction

The Institute for Employment Studies (IES) are pleased to respond to this BEIS consultation on ethnicity pay reporting. Since we were established in 1968, we have become a leading UK independent centre for research and evidence-based consultancy in employment, labour market and human resource policy and practice – with equality and diversity issues always core to our agenda.

IES has a strong interest in the introduction of mandatory reporting of ethnicity pay gaps, stemming from our long history of helping organisations to examine how protected characteristics, particularly gender, may be impacting on pay levels and what can be done to address this. We have worked with national bodies such as the [Equality and Human Rights Commission](#) on researching ‘what works’ in closing gaps, and have assisted a wide range of employers with job evaluation, pay structure reforms, pay progression measures and wider cultural reform and diversity programmes to address the causes and consequences of pay gaps. Our [gender pay hub sets out more detail on our work in this area](#).

IES responded to the Government Equalities Office’s (GEO) [previous consultation](#) on introducing mandatory reporting of gender pay gaps in 2015, and have since worked with the GEO and employers to support its implementation.

We are pleased now to offer our thinking and evidence on extending the requirement to cover ethnicity. This response is informed by discussions with employers, representative and professional bodies and other institutes; a roundtable in November on ethnicity pay reporting; and a review of the literature and our own work on diversity and inclusion, talent management and pay and rewards.

## Key Points

IES believe that there are significant potential benefits – for the UK economy and society, employers and employees – in making a success of reporting on pay gaps by ethnicity (as there have been through gender pay reporting). Greater transparency at national and employer level is associated with lower pay gaps. It does not close gaps on its own but plays a key role in driving actions which do. Just three years after the equivalent consultation, we now have more than 10,000 employers reported on their seven required gender pay gap statistics for 2017/18 on the government’s listing website, and more than 400 have already reported ahead of the second deadline in April 2019. More importantly, evidence seems to be emerging that employers are doing more now to understand their gaps and take action to address them.

The success of gender pay reporting can be repeated, and so we support the introduction of mandatory reporting of pay gaps by ethnicity.

Our work for EHRC has found that average pay gaps on the basis of ethnicity and of disability are, holding other factors constant, wider than those for gender. It is therefore critical that actions are taken to address these gaps, while recognising that there is

significant interaction between different characteristics (meaning that actions also need to look beyond any one dimension of inequality).

However, while IES strongly supports the mandatory publication of ethnicity employment and pay gap information, the practical and cultural barriers to doing so are undoubtedly greater than they have been on gender. In our view this will require more time to prepare for these changes, and more support for employers, than the 12 months afforded on gender pay reporting. The [EHRC](#) recently found that only 3% of employers measure their ethnicity and disability pay gaps, while the [McGregor Smith Review](#) one-year on update showed a disappointing lack of progress. This illustrates the need to make reporting compulsory rather than voluntary, but also the distance which many employers will have to travel in order to get their data collection and statistical analysis into a fit state to report on.

In addition, the quality of data on ethnicity is often worse than on gender and the categorisation of it into ethnic groups is inevitably more complex. For example, the government's own [Annual Survey of Hours and Earnings](#) does not currently break down its national pay data by ethnicity, and the availability of sub-national, occupational and sectoral benchmarks will be even more important here than for gender, so that appropriate comparisons can be drawn between employers' ethnic diversity and the diversity of the wider population in those areas, industries and/ or occupational groups. The issues, pay gaps and appropriate responses will be different if an employer is in Leicester, Lewisham, Lancashire or Lewes will vary and their pay gaps will need to be assessed.

In ethnicity even more than for gender, it is also critically important that reporting takes account of employment *participation* as well as *pay*. Many ethnic minority groups face significant barriers to employment entry, with employment rates significantly below the national average. So as well as reporting on pay, reporting should also enable assessment in gaps in the levels of employment of ethnic groups. In addition, in some cases positive action by employers to increase employment – most notably through specific outreach initiatives within minority ethnic communities – will also lead to initially lower pay and therefore higher gaps for those groups. It is critical then that reporting recognises employment participation does not inadvertently discourage positive outreach and engagement activity by employers.

Importantly, there is less research on 'what works' in addressing pay and participation gaps by ethnicity than there is for gender, and this is a more complex and less understood terrain. We would therefore recommend further work to improve the evidence base, test interventions, and learn from and share these.

Overall, we suggest a phased approach to implementation, consistent with the six point roadmap approach advocated by McGregor-Smith, giving employers at least one year's notice to prepare and then possibly phasing implementation by employer size, as occurred successfully with the five-year roll out of [pensions auto enrollment](#).

Our proposed approach is summarised in the table below.

| Employers          | April 2019 to March 2020             | April 2020 to March 2021   | April 2021 to March 2022  |
|--------------------|--------------------------------------|--|---|
| Over 5,000 staff   | Clean data and prepare for reporting | -Implement reporting covering:<br>--Mean and median hourly earnings of all ethnic minority employees as a percentage of all white employees;<br>--Mean and median bonus earnings similarly;<br>--Ethnic minority staff proportion compared to white employee proportion in each earnings quartile (as is done for gender – showing the average pay in each quartile should be voluntary).<br>-Voluntary narrative report including recommendations for further breakdown of base pay and bonus figures into ONS 5+1 or 18+1 categories | As 2021 but reporting by 18+1 categories becomes mandatory component            |
| 250 and over staff |                                      | Continue to prepare  | Implement as for larger employers but using ONS 5+1 categories rather than 18+1 |

Finally, we were somewhat concerned by the absence of any reference to disability pay gap reporting, but note the recent publication of voluntary guidance by the Department of Health and Social Care and the Department for Work and Pensions. In our view there is scope to go further on disability pay reporting, and strong case to consult on mandatory reporting should voluntarism fail to lead to significant improvements.

## Consultation Questions and Responses

### Chapter 2: Ethnicity Pay Reporting

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

##### The benefits of diversity

IES believes that there are major benefits for the UK economy and society, and for employers as well as employees, in reporting on their ethnicity pay gaps, especially in light of the apparent success of the mandatory gender pay gap reporting so far. All of IES's research to date supports the efficacy of greater transparency at a national and employer level in closing pay gaps, and McKinsey's 2018 study of the economic benefits of a diverse workforce, [Delivering through Diversity](#), highlights the benefits which employers should expect from closing their pay gaps. This focused on improved business

performance overall, both in terms of profitability and value creation, based on a strong correlation between diversity in leadership and industry-leading profitability. IES believes based on the research evidence that more diverse employment practices will also contribute to higher employee engagement and greater loyalty to the organisation. The McGregor Smith review highlighted some of these benefits, and many employers we work with are well aware of these benefits in their own context.

### The benefits of reporting pay information

For organisations that accept and value the advantages of diversity in their workforce, collecting, analysing and reporting their ethnicity pay information will help enable employers to target their interventions more effectively and create actions plans to close their pay gaps. It should help organisations to consider their causes, highlighting any relevant areas such as recruitment and promotion biases, and take steps to address them.

### The challenges

IES has found in our work that reporting on ethnicity pay information presents a number of challenges for employers which were not as applicable to the introduction of gender pay reporting, and these will need to be accommodated as the government progresses their proposals.

Our assessment would be that the obstacles to collecting, analysing and reporting the pay data are substantially greater for employers. Although IES supports the government's proposal to make the reporting mandatory, which will force employers to overcome these obstacles, the government will need to offer the appropriate time and support in order to make this project a success.

In discussions particularly with our clients in the HR departments of large organisations, there was a consensus that employers are concerned about the much greater complexity of the issues surrounding ethnic diversity, as compared to gender. Employers reported currently having much poorer data than they did for gender when that requirement was introduced, and also variations in the categories used for internal data monitoring. As with disability, staff can be reluctant to provide this information for fear of how it will be used.

Employers also agreed that there was a much greater cultural obstacle to overcome, in the form of more reluctance to engage with the discussion about ethnicity in the workplace. We heard examples of their colleagues feeling uncomfortable, reluctant to engage for fear of saying the wrong thing, and deflecting the issue away from ethnicity to discussing socio-economic factors instead. This was less of an issue for a large employer we talked to in south London, but nonetheless everyone recognised that 'gender' has been a much longer-running conversation, which colleagues were much more comfortable discussing.

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. **Yes**
- b. Several pay gap figures for different ethnic groups, using standardised ethnicity classifications. **Yes**
- c. Ethnicity pay information by £20,000 pay band. **No**
- d. Ethnicity pay information by pay quartile. **Yes (as for gender, proportion of staff)**
- e. All of the above.
- f. Other. **Yes (see below)**
- g. Don't know

IES supports the methodology currently used for Gender Pay Reporting as representing a well-balanced trade-off between a certain level of detail to encourage auditing and action planning but without creating undue administrative burdens for businesses. IES also believes that ethnicity pay reporting should seek to mirror that for gender as closely as possible, so as to minimise confusion and error and also to ensure that issues of intersectionality can be considered.

The core statistics therefore should be:

- i. Mean and median hourly earnings of all ethnic minority employees as a percentage of all white employees;
- ii. Mean and median bonus earnings similarly;
- iii. Ethnic minority staff proportion compared to white employee proportion in each earnings quartile (as is done for gender – showing the average pay in each quartile should be voluntary).
  - o Statistics (i) and (ii) should then be further broken down by ethnic category using the ONS 2011 classifications, possibly making this a requirement in subsequent years and/or for larger employers (we comment on this further below).

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

IES believes that it is vital that employers consider and voluntarily disclose contextual information alongside the ethnicity pay reporting in respect of areas such as representation, gender, age and location. Most of this information will already be held by most employers, and so should represent little or no additional burden in terms of data collection, and there is ample evidence of the importance of accounting for the intersectionality of these factors when assessing the nature and scale of an organisation's pay gaps and how best to address them. The prioritisation of actions will also vary by employer, with some for example needing to focus on improving their ethnic minority

representation to closer to the national/local proportion before they can take serious action to ensure that any revealed pay gaps are closed. We understand that in the USA employers are required to report on ethnic minority representation in their workforce but not currently their pay.

As with gender however, there is a risk in making this too onerous and complex a requirement. So we favour the use of a **voluntary narrative report** here too, with employers guided, possibly with more detailed guidance than for gender, as to the sort of information to include. We believe that around two-thirds of employer have uploaded narrative reports with their gender pay statistics and although the quality of them varies, they do generally indicate that these employers are considering why they have gaps and how best to act to address them.

Key information which is required to understand and address ethnicity pay gaps effectively includes the following.

### Gender

Our work with EHRC showed at the national level not only different pay gaps for different ethnic groupings compared to white employees, but also significant differences within these groups according to gender. An excellent more recent analysis IES has discussed with our policy friends at UCEA is found in the results of their report on the intersectionality of gender and ethnicity in higher education employers. [UCEA found](#) that on balance ethnicity was more consequential than gender when determining one's level of disadvantage, but that being a woman from an ethnic minority background could compound this disadvantage significantly, depending on the ethnic group in question.

### Age

IES also recognises the difference in expected salaries and progression between younger and older staff. An employer with, for example, a large number of younger staff in junior positions, should be able to explain how this contributes to their pay gap data in an action plan.

### Location

Providing location information could prove problematic insofar that employees who commute long distances to an office, or work remotely, may skew the data. However, there was a strong consensus in our meetings with employers that an employer needs to be benchmarked against their local demographics, instead of a national average, so that an employer say in Spalding would not be held to the same representation standards as one in London. This is one of the reasons that while we favour self-targeting of improvements in closing ethnicity and gender pay gaps, and believe that universal generic sizes are neither fair nor effective.

IES considers the use of NUTS2 regional divisions to be appropriate for this purpose.

It would be especially helpful for employers if, when they upload their pay data onto the relevant government website, they were in return provided with ONS data which compared their data with the local regional average. We know of some recruitment firms who offer apps which provide this service to their clients and if the government could also

provide this it would be a great return for employers on the time they invest in the process; the benchmarking information would also help employers when producing their action plans.

### Other data

IES also considers an employee's GB-born or overseas-born status and disability status as important intersectional factors which have a demonstrable impact on the pay of various ethnic groups, but recognises that collecting this data will provide their own unique sets of challenges, and so does not recommend that this data is made a requirement alongside ethnicity data, but encouraged as an inclusion in the narrative reports.

#### **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?**

No.

Although IES would encourage any employer to publish an action plan to address their pay disparities, we do not advocate that this policy should be mandatory at this stage. Our understanding from those parts of the public sector where it is already supposed to be mandatory to publish action plans (as part of their wider equality duties) is that it is not an effective tool; it gives no indication as to the quality of the actions that are being undertaken. Because of this, we would favour mandatory equal pay auditing (EPA) for both gender and ethnicity, rather than mandatory action plans, as being a generally better driver of effective actions to close gaps. Actions are only effective if they are well thought through and address the root causes in each organisation. Sectors with good EPA coverage, (such as Higher Education, over 80%) and where gender pay auditing has also been extended to ethnicity (in over half of the cases), are where we are seeing the most actions with the greatest effectiveness being taken.

Hopefully we will now see the proportion of private sector employers undertaking an EPA voluntarily increase, but if not, we believe that making this a mandatory requirement for gender, ethnicity and other protected characteristics should be seriously considered.

## **Chapter 3: Ethnicity data and classifications**

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

a) Yes

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

i) 2011 census: 5 standardised ONS ethnic classifications

o *(IES is considering moving to this system)*

ii) 2011 census: 18 standardised ONS ethnic classifications



- (*IES intends to move to this system*)
- iii) 2001 census: 5 standardised ONS ethnic classifications
- iv) 2001 census: 16 standardised ONS ethnic classifications
  - (*IES currently uses this system*)
- v) Other (please state which classifications you use)
- vi) Don't know

IES's HR team currently collect ethnicity information which conforms to the 2001 ONS census definitions, using resources produced by CIPD. However, IES is now looking to change this to the 2011 definitions in light of this consultation.

IES believes that the ONS 18+ is the best set of standardised classifications currently available and so recommends its use in the implementation of this proposal. However, IES also recognises the shortcomings of the classification system in terms of inability to capture important 'gradation' information, (i.e. that the darker one's skin, the greater the level of disadvantage they are likely to experience), and the difficulties of self-identification for people of mixed-race backgrounds, or those from overseas who are used to a different classification system.

We also recognise that particularly for smaller employers such as ourselves, five categories may be a more realistic initial starting point (see below).

## **6. What do you think are the most effective approaches for employers to improve employee self-reporting or declaration rates?**

- i. Employers clearly explaining what the data is being collected for and how it is going to be used, including explicit references to closing ethnicity pay gaps.
- ii. Employers clearly explaining how the confidentiality of respondents will be protected.
- iii. Including questions on protected characteristics on job application forms and induction paperwork, as well as administering an online portal so that employees can update their details at any time - supported by periodic nudges to do so.
- iv. Including a 'prefer not to say' option.

Improving employee information is a general requirement for many UK employers and generally cannot be achieved overnight. New HR systems are improving the analytical capability but depend on the quality of the data on the system. Often data gathered on recruitment is poor for ethnicity and disability and needs to be improved subsequently. Employers we have spoken to stress the need to regularly go back to employees asking them to update and improve the information and this should be recommended.

Government might commission more research and publish case study information from best practice employers in this area to help guide and inform other employers.

**7. How should self-reporting or non-disclosure rates be reflected in the information reported by employers?**

IES recommends including a mandatory field for a precise figure in the report. The alternative may be employers simply indicating the quartile their disclosure rate falls within. I.e. '0-25% response rate, 26-50%, etc.' However, a precise figure (e.g. 67%) would be more useful data, and assuming that employers would need to calculate the precise figure in order to tick an approximate-figure box, there should be no extra burden in providing this.

Employers should also reflect the proportion of respondents who selected 'prefer not to say' in order to ensure a more accurate representation of the data, and to indicate the level of opposition to the collection of ethnicity data from employees.

**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?**

IES believes that a standardised approach to classifications is essential to making the results of reporting usable and comparable. Reporting must be consistent for any individual employer over time, so that definitions are not changed from one year to the next, and so employer cannot present a false picture of progress. Furthermore, reporting must be consistent between employers, so that an employer cannot misrepresent their findings by choosing classifications which mask the scale of their pay gap.

IES recommends the ONS 2011 18+1 classification system be used in light of the wide range of levels of disadvantage that different ethnic minorities experience, even though they may fall within the same category of the broader ONS 5+1. For example, ethnically Pakistani and Bangladeshi employees are consistently found to experience the highest levels of disadvantage, which would be masked if they were grouped into a category with ethnically Indian employees.

However, for smaller ethnic minority populations and particularly in smaller employers, the more specific classification system may result in them being structurally excluded from pay reporting, if ONS 18+ was combined with setting a minimum threshold for reporting in order to ensure confidentiality (discussed in response to question 9). As a result, there should be a caveat in the standardisation of classifications for employers to exercise their discretion to choose the level of specificity which best fits their organisation, although the government should make clear that ONS 18+ should be the 'default'. ONS 5+1 could be the default option for smaller employers and/or in the first year of reporting, before the more detailed categories are used.

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

Responses should be anonymised and the security of the information guaranteed through a robust information security management system, as would be required by CyberEssentials, GDPR legislation or ISO 27001.

There should be a clear minimum threshold for the number of respondents from any one ethnic group being reported, and responses should be suppressed if they fail to meet this threshold in order to protect their confidentiality.

Setting this minimum reporting threshold will not be an exact science, and will need to strike a balance between effectively ensuring confidentiality and making sure smaller ethnic minority populations are not excluded.

IES would support a minimum 10 respondents per category, with clear parameters set for employers to exercise their discretion and choose a threshold which is appropriate for their workforce.

### Protecting smaller ethnic minority communities

The smallest ethnic population in the UK, according to the [2011 ONS census](#), is Gypsy or Irish Traveller (0.1%, 58,000), followed by Arab (0.4%, 240,000). An organisation with 250 employees employing at the national average for representation would only expect to hire 1 Arab employee, and so Arab and Gypsy/Irish Travellers could be structurally excluded from any ethnicity pay reporting. This will likely be offset to an extent by the concentration of smaller ethnic populations in certain geographic areas, and reinforces the importance of adapting expectations for local demographics, but nonetheless serves to illustrate the vulnerability of smaller communities to being marginalised.

In practice, a Gypsy/Irish Traveller employee would most likely be conscious that they might be the only such employee in the organisation, and may simply mark 'prefer not to say' rather than risk their confidentiality, no matter the steps taken by their employer to assure them.

## Chapter 4: Next steps and government support for employers

### 10. What size of employer (or employee threshold) should be within scope for mandatory ethnicity pay reporting? Please state the reasons for your answer.

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

IES believes that a 250 employee threshold is currently most appropriate for ethnicity pay reporting, as the priority should be to match the requirements as closely as possible to those for gender pay reporting. Furthermore, there are more categories to cover for ethnicity than gender, and a larger employee population will help to facilitate meaningful reporting.

However, the government should consider a phased implementation of reporting obligations, possibly starting with a 5000+ employee threshold, at least for the detailed ethnic category breakdowns and working with the largest employers before rolling out across SMEs down to 250 employees.

If the gender pay threshold is lowered in the future, then so should the ethnicity (and hopefully in future disability) reporting requirements.

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

IES is convinced of the need to implement mandatory ethnicity reporting with as much engagement from employers as possible, while placing minimum burdens upon them and providing them with the maximum level of support. In order to achieve this, IES recommends a staged approach to implementation, and probably 3 years in the implementation timeline to give time for employers to collect the data, analyse it, and then prepare their reports. The timescale will give employers an opportunity to prepare and experiment with different interventions with the aim of improving their pay gap data before they have to report it.

The GEO/BEIS/EHRC/ACAS should be resourced to provide maximum support for businesses, benefitting from their experience in doing so during the implementation of mandatory gender pay reporting. Similar ACAS guidance should be produced and case study examples provided.

Larger employers (5000+ employees) should be worked with as pilot cases and market leaders to help as part of the staged approach, with the government evaluating the results of this level of implementation before making adjustments and rolling the requirement out possibly on a phased basis down to employers of 250+ employees.

Other ways IES would recommend that the government could provide support include:

- i. Publicity campaigns to increase awareness of business benefits and to increase public confidence in submitting this data, highlighting the confidentiality provisions, etc - leveraging the press to help raise awareness.
- ii. Offering 'Success Profiles' of Public sector organisations which are already reporting on ethnicity pay.
- iii. A dedicated government helpline for employers.
- iv. Online forums.

- v. E-learning materials, FAQs, and other practical guidance tailored for a range of businesses.
- vi. Training events or workshops run by ACAS, GEO, etc.
- vii. Case study write-ups.