Response to call for written evidence from the
Equality and Human Rights Commission

Inquiry to inform Government strategy on reducing the gender pay gap, focusing on policies aimed at reducing the pay gap for women aged over 40.

About the Equality and Human Rights Commission
The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an ‘A status’ National Human Rights Institution.

Find out more about the Commission’s work at: www.equalityhumanrights.com

1. How adequate are the Government’s proposals for tackling the pay gap faced by women over 40? What additional measures would be most effective in reducing the pay differentials faced by this group?

Many factors influence women’s employment opportunities and progress at work which are reflected in the pay gap. These are:
- gendered education and career choices
- occupational segregation with women confined to lower grades within organisations and concentrated in lower paid occupational sectors
- devaluation of work deemed a ‘female’ occupation
- non-continuous employment and a shift to part time work due to caring responsibilities, especially when children are young
occupational downgrading resulting from women working below their potential due to lack of quality part-time jobs and the absence of flexible career paths

- an unexplained gap sometimes attributed to direct or indirect sex discrimination and systemic disadvantage

Government has introduced a range of measures to tackle these causes of the gender pay gap. These include careers advice, encouraging girls into science, technology, engineering and maths (STEM) courses and career paths, encouraging improved work-life balance and shared parenting through shared parental leave and the right to request flexible working, childcare provision, and encouraging transparency of employer behaviour and actions evident in voluntary and proposed compulsory gender pay gap reporting. The effectiveness of these measures is considered below.

**Careers advice**

The Commission welcomed the new requirement in statutory guidance on careers for schools to consciously avoid gender stereotyping to ensure that boys and girls from all backgrounds and diversity groups consider the widest possible range of careers. The Commission’s research on the equality impact of careers guidance on young people’s destinations post-16 (2011) supported the conclusion of the Milburn Report that careers education should begin early to challenge gender stereotypes. The Commission has produced *Equal Choices, Equal Chances*, a free online education resource for primary schools to support this. In addition the Commission recommends that career guidance provides young people with information about pay rates in different sectors and jobs. Research on occupational segregation in 2006 found that 67 percent of women

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2 Department for Education, 2015. *Careers guidance provision for young people in schools*
4 Hutchinson, J; Rolfe, H; Moore, N; Bysshe, S; Bentley, K (2011) *All things being equal? Equality and Diversity in careers education, information, advice and guidance*; Equality and Human Rights Commission Research report 71.
surveyed were not aware of differences in pay rates between jobs usually done by men and women, and 57 percent said they would have considered a wider range of career options if they had known.

**Encouraging women into STEM**

The Women’s Business Council 2013 report\(^8\) suggested government look at what more could be done to support girls in making STEM subject and career choices and encouraging business leaders to become STEM Ambassadors. In response the government proposed to\(^9\):

- work with the British Chamber of Commerce (BCC), the National Careers Council and the Education and Employers Taskforce to establish local partnerships between schools and business,
- work with key stakeholders to support the development of a campaign aimed to provide parents with tools and information to help their children make well informed career and subject choices
- continue work with the Royal Society, the Royal Academy of Engineering, WISE and others to develop the Government-funded STEM Diversity programme,
- work with leading companies to set and evaluate the impact of aspirational targets to increase the number of STEM apprenticeships for young girls and to share good practice.

In 2014 Government set out national aspirations to double the number of women studying engineering and technology at undergraduate level by 2030; boost the number of women pursuing careers in engineering and technology; and increase the number of young people studying maths and physics at 18. To support this, it put in place the ‘Your Life’ national campaign and invited universities, industry and government departments to sign up to compact agreements. A number of universities have pledged support. The University of Aston, for example, has committed to 40% of its student mentors and tutors studying STEM subjects to be female and working with primary and secondary school teachers to ensure that at

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\(^7\) Equal Opportunities Commission. (2006). *Free to choose: Tackling gender barriers to better jobs. One year on progress report – Investigation into training and workplace segregation of women and men*


least 200 girls access STEM subject master classes and subject enrichment events at Aston every year.

In higher education, the Equality Challenge Unit’s Athena Swan Charter\textsuperscript{10} has driven improvements in gender pay and progression across STEM. Higher Education Institutions (HEIs) are assessed against a standard and research bodies only consider funding applications from institutions achieving a particular standard. The Athena Swan Charter was extended in 2015 to cover academic roles in arts, humanities, social sciences, business and law, professional and support staff, and trans staff and students.

**Shared parental leave**

The Commission’s *Work and Care* report (2009)\textsuperscript{11} found that parents want to share work and childcare and fathers want to spend more time with their children. The Commission’s *Working Better* research (2009)\textsuperscript{12} suggested that if parents share caring responsibilities this might also alleviate the impact of parenting on women’s career and pay. In April 2015 the Government introduced shared parental leave allowing fathers to share up to 50 weeks maternity leave with the child’s mother or partner.\textsuperscript{13} The Commission found little evidence that shared parental leave would encourage men to become more involved in child care and so reduce the impact of maternity leave or part time work on women’s careers.\textsuperscript{14} Paternity pay is significantly lower than the UK average weekly wage and below the minimum wage. This is likely to be too low to encourage parents to share their child care roles more evenly, because of the drop in pay most men will incur. In addition, small and medium-sized businesses (SMEs), which make up the majority of employers in the UK are unlikely to supplement the basic additional paternity pay. By the government’s own estimates, just 2-8% of fathers will take up shared parental leave.\textsuperscript{15}

\textsuperscript{10} Equality Challenge Unit (2014) *Advancing women’s careers in science, technology, engineering, mathematics and medicine: evaluating the effectiveness and impact of the Athena SWAN Charter*


\textsuperscript{12} EHRC (2009): *Working Better: Meeting the changing needs of families, workers and employers in the 21st century*

\textsuperscript{13} Children and Families Act 2014

\textsuperscript{14} Equality and Human Rights Commission (2013) *Children and Families Bill 2012 - 13, House of Lords, Committee Stage Briefing*
The right to request flexible working
Government extended the right to request to all employees with 26 weeks service from June 2014. As yet there has been no evaluation of the impact of this and the extent to which men and women request flexible working. The Commission and BIS’ research on pregnancy and maternity\(^{16}\) found that almost nine in 10 (88%) employers felt that the right to request flexible working was reasonable with 6% feeling it was unreasonable. Two thirds (67%) of employers found the right to request flexible working easy to facilitate. Mothers reported that while most flexible working requests were granted, half of them that had a request for flexible working approved said they experienced negative consequences as a result (51%). Finding ways to open up flexible and part-time work opportunities across all jobs, including those at senior management levels, is one of the key challenges for reducing the gender pay gap for the over 40s.

Childcare provision
The high cost of childcare in the UK is a key reason that many women decide to work part-time\(^{17}\). The cost of sending a child under two to nursery part-time (25 hours) is now £115.45 per week in Britain, or £6,003 per year, which is a 5.1 per cent rise since 2014.\(^ {18}\)

The Childcare Bill currently passing through parliament proposes doubling the amount of free childcare to 30 hours a week for all working parents of 3 and 4 year olds, with some 2-year-olds in England also eligible for a free place. It is unclear whether this will have an impact on women’s decision to reduce their hours, as the cost of child care is so high. However, IFS research\(^ {19}\) on the introduction of free part-time early education places for 3 year olds found a positive impact on mothers’


\(^{19}\) IFS (2014) *The impact of free early education for 3 year olds in England*
employment with around 6 more mothers in work for every additional 100 funded places.

**Voluntary gender pay gap reporting**

To encourage companies to identify, publish and take action to reduce their pay gap, government set up the voluntary Think, Act, Report (TAR) initiative. There are 270 employers involved, and five published their gender pay gaps. There has been no evaluation of the impact of voluntary reporting on reducing pay gaps in companies, but the low participation rate suggests that a policy based on transparency needs to also rely on penalties or incentives to drive employer engagement.\(^{20}\)

**Compulsory gender pay gap reporting**

The Government’s proposals for tackling the pay gap by requiring companies with over 250 employees to publish gender pay information, and recent announcements to extend this to the public and voluntary sector organisations, are an important step forward in making employers aware of gender pay gaps in their workforces.

Surveys by the Commission in 2010 and the Government Equalities Office in 2015, found that larger companies did not believe that a pay gap between men and women was justifiable. The 2015 research found that 63% of companies stated that ensuring there is no pay gap between men and women was a high or fairly high priority for them. However, two thirds of companies had no strategy at all for reducing the gender pay gap, and just 15 percent had a planned strategy. A reporting requirement when accompanied by an explanatory narrative will encourage companies to develop a plan to address their pay gaps.

On its own, reporting a pay gap will not necessarily lead to its reduction. However, increased transparency about gender pay differences may encourage responsible companies to investigate the reasons for any gap. Companies would need to analyse their pay data by gender, age, and full or part time status, and consider the proportion of women and men at different levels of a company to understand where their biggest pay gaps lie. Companies may also need to consider the possible impact of their

\(^{20}\) The Davies’ Review of Women on Boards set a target for 25% of women across FTSE100 company boards, supported by transparency through annual reporting and the risk of a compulsory quota if companies failed to reach the target. This approach has driven a significant increase in the number of women on boards and the FTSE100 met 25% target. (Women on Boards Davies Review: Five Year Summary (October 2015) *Improving the Gender Balance on British Boards*)
approach to recruitment, development, promotion, and remuneration and ways of attracting and retaining talented women at every level in their workforce to understand how their activities may lead to a pay gap. This analysis could usefully complement the pay gap data as part of an accompanying narrative.

The Commission has commissioned a review of interventions to tackle pay gaps across gender, race and disability. The review will look at evidence of effectiveness of interventions by government, employers and other relevant groups. We will share this report with the Committee when it is published. We will use the report to help us develop a new strategy to guide future work on pay gaps from 2016.

2. What actions would be most effective in improving recruitment, retention and re-training for women aged over 40?

Some women return to work after a period out of the workforce due to caring responsibilities. In 2009 the EHRC surveyed 1,500 men and women aged between 50 and 75 years old about their employment preferences and barriers to extending working lives.21 Most women and men wanted to continue to work beyond the state pension ages (62% of women and 59% of men). Eleven percent wanted career progression or promotion compared to 4% wanting to shift to a less demanding role.

The survey asked about the availability and use of flexitime, working from home, part-time hours, job-share and compressed working weeks. Use of flexible working arrangements was fairly widespread, with 43% of older men and 58% of older women using at least one of the flexible working options. Women were more likely than men to work part-time (38% compared with 14%).

Unemployment among the 50+ age group was primarily due to poor health, and also, for women, their caring responsibilities. Among the unemployed who wanted work, 37% of men and 50% of women stated that they needed a flexible hours arrangement to enable their transition back into work, such as shorter working weeks, shorter working days and casual employment contracts.

Many women want to progress their careers later in life and employers can help to facilitate this by providing more flexible career paths, enabling

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women to retrain or improve their networks, or providing flexible roles at all levels of a company. For example:

- a business consultancy firm introduced a more flexible “up or out” promotion system allowing people to stay in the same roles for longer periods of time without detriment to promotion opportunities to allow individuals to meet caring responsibilities.
- employers organise keeping-in-touch days for women on maternity leave, or provide opportunities for upskilling, refresher courses, and mentoring for women returning to the workplace after a period of absence.
- an accountancy firm helped women outside the workplace for caring or other reasons to maintain workplace networks and increased its percentage of female partners threefold. It also offers a database of flexible work arrangements including teleworking.
- A law firm created a legal director role as an alternative to partnership. This allowed talented employees who might not want to take the partnership path for lifestyle reasons, to continue working at a senior level, and meant the firm retained skilled staff.

Companies are often concerned about the feasibility of senior part time roles. Timewise Foundation runs the Power Part Time List to showcase senior level role models for part time and flexible working. Government set up the Quality Part-time Work Fund in 2006 to “support new initiatives aimed at achieving a culture change, so that more senior jobs particularly in the skilled occupations and the professions are more open to part-time and flexible working.” It funded twelve projects, covering different sectors and organisations of different sizes. Key findings from the evaluation included:

- Organisations with a recognised need for part-time workers are more likely to actively encourage more quality part-time work.
- The costs (potential or actual) of introducing quality part-time work were the need for extra training and management, and for effective

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22 Equal Opportunities Commission, (2007) Enter the Timelords: Transforming Work to meet the future
23 Power Part Time list 2015 http://timewise.co.uk/power-part-time/
24 (Department for Communities and Local Government (CLG), 2009: 31)
25 Clare Lyonette and Beate Baldauf, Institute for Employment Research, University of Warwick, November 2010 Quality part-time work: an evaluation of the Quality Part-time Work Fund
communication between part-time workers, colleagues and line managers.

- The benefits were increased commitment and loyalty, improved retention and work satisfaction, and reduced sickness and absenteeism. In all cases, benefits outweighed costs or at least costs and benefits were in balance.

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

The Annual Survey of Hours and Earnings (ASHE) 2015 data shows that the pay gap for full-time employees is relatively small when men and women are in their 20s and 30s, and then widens when they reach their 40s, when men are paid substantially more on average than women. The pay gap for full and part-time employees together, is larger and emerges when women are in their 30s and widens when women are in their 40s and 50s. The ASHE data also shows that the percentage share of women in employment begins to drop from the age of 26 and only begins to increase again from the age of 40.

Academic research shows that women with very young children are less likely to work: in 2014, 63% of women with children under 4 years were working, compared to 74% of women with children aged 5-16 and 83% of women with no dependent children. The ASHE report concludes that the over 40s pay gap ‘is likely to be connected with the fact that women who have children often take time out of the labour market.’

The impact of parenting on women’s employment and progression opportunities is well-documented. Women often choose to work reduced hours or take lower level jobs below their potential to balance their work

and caring responsibilities (‘occupational downgrading’). This is because of the lack of flexibility in jobs and career pathways, and the lack of part-time work in high level jobs\textsuperscript{31}. Mothers who prefer to work part-time find that it is harder to remain in a higher status job if they work less than four days a week\textsuperscript{32}. It is not known why employers do not make more senior jobs available on a part-time basis, and whether women are also choosing against more senior roles as they feel these are incompatible with their family role. Employers could potentially alleviate occupational downgrading if they redesigned jobs and promotion pathways to allow for flexible/part-time higher status roles (see question 2).

The Commission, in partnership with the Department of Business, Innovation and Skills commissioned surveys of around 3,000 women and 3,000 employers to understand the impact of pregnancy and maternity in the workplace\textsuperscript{33}. We published the first findings in Summer 2015, and will publish the final reports in Winter 2015/16. Our evidence shows that women start to experience difficulties, disadvantage and potential discrimination at work when they announce their pregnancy and on return from maternity leave, that directly and indirectly affect their status, security, job and progression opportunities. This is likely to affect the experience of women in their 40s. The Commission will be publishing its recommendations on how Government, employers and regulators can contribute to improving women’s experience of pregnancy and maternity at work, and the experience of mothers at work. More open approaches to flexible working and flexible paths to career progression will benefit men as well as women, and others with caring responsibilities. We suggest that these recommendations should form part of the strategy to tackle the over 40s gender pay gap.


The Commission’s **pregnancy and maternity research** shows that employers’ expressed commitment to supporting mothers at work is not always reflected in women’s description of their experience. More than four in five employers (84%) felt it was in the interests of their business to support pregnant women and those on maternity leave and that it was important to provide support because it increased staff retention.

However, the evidence suggests that for women, declaration of a pregnancy is the start of a series of difficulties at work:

- Around one in nine mothers (11%) reported that they were either dismissed; made compulsorily redundant, where others in their workplace were not; or treated so poorly they felt they had to leave their jobs. If scaled up to the general population this could mean as many as 54,000 mothers a year.

- One in five mothers reported they had experienced harassment or negative comments related to their pregnancy or flexible working from colleagues and/or their line manager. If scaled up to the general population this could mean as many as 100,000 mothers a year.

- One in 12 mothers (8%) felt treated with less respect by their line manager after their pregnancy, and one in ten (9%) said they were treated worse on their return to work after maternity leave than they were before their pregnancy.

- A quarter of mothers (25%) felt their needs as a worker with a young baby were not supported willingly by their employer

This research suggests some of the drivers of the pay gap that emerges when women are in their 40s:

- **Employer attitudes:** Although most employers said it was in their interest to support pregnant women, some made assumptions about the commitment of women with children to their careers:
  - A quarter of employers (25%) thought it was reasonable to ask women about their plans to have children at recruitment stage;
  - 7% of employers disagreed that mothers returning to work from maternity leave were just as committed to work as other members of the team;
  - 17% believed that pregnant women and mothers were less interested in career progression and promotion;
12% felt that female employees who had more than one pregnancy were difficult for the workplace.

- **Reduced status, pay and opportunities at work:** A significant number of women reported that their pregnancy or return to work after maternity leave led to reduced status and opportunities for training or development following. For example:
  - One in 10 mothers failed to gain a promotion they felt they deserved, rising to 14% of mothers earning over £30,000;
  - 8% experienced a reduction in salary or bonus, rising to 11% of mothers earning over £30,000;
  - 6% were denied access to training;
  - 5% received a pay rise or bonus less than their peers or colleagues;
  - 4% were demoted; and
  - For mothers on maternity leave, one in 10 mothers were not adequately informed about career development opportunities.

- **Impact of flexible working:** Most employers (84%) said they granted all the requests for flexible working from women who were pregnant, or returning from maternity leave. Nearly seven in ten (68%) mothers said they had made a request for flexible working. However, half of mothers who had their flexible working request approved said they experienced unfavourable treatment as a result (51%):
  - Around one in three (29%) said they were given fewer opportunities than other colleagues at the same level.
  - Around one in six said they received negative comments from their employer or colleagues (16%); were given more ‘junior’ tasks than previously (15%); or, felt their opinion was less valued (16%).
  - Negative consequences were more likely to be experienced by mothers earning more than £30,000 (56%), mothers in professional occupations (57%) and single mothers (64%).
  - Almost two in five mothers would have liked to request flexible working but did not because they worried about the potential harm to their future career prospects (41%).
Ethnic minority mothers (49%), those earning £60,000 a year or more (67%); those in managerial, director or senior official roles (52%); and, those working in the finance (65%) or transport and communication (54%) sectors were more likely to have liked to request flexible working but did not.

These experiences have an impact on women’s opportunities to progress to more senior roles. The lower number of women in better paid, senior roles has an impact on the pay gap. The impact of the absence of a pipeline of women to senior roles is evident in the Commission’s **Inquiry into the appointment and recruitment of women to FTSE 350 boards**, which will report in early 2016. Since 2011, the percentage of women on FTSE100 boards has increased from 12.5 to 26.1%, and on FTSE250 boards from 7.8% to 19.6%\(^{34}\). Over the same time period the number of women in Executive Director roles has increased from 5.5 to 9.6% for the FTSE100, and in the FTSE250 from 4.2 to 5.2%. Data from our survey of FTSE 350 companies found that men outnumber women by 4:1 in the band of most senior management and executive roles: companies reported 1,440 women compared to 4,746 men in these roles, or an average of six women and 21 men in each organisation.

This reflects the challenges companies face in developing a pipeline of women into more senior roles. Our evidence suggests a dearth of initiatives in this area. More flexible paths to career development may help alleviate the longer term impact on women’s pay and seniority that results from career breaks or part time work. Our report will identify some initiatives to develop the pipeline of female talent, such as senior management targets, mentoring and shadowing initiatives, board secondment and specific development training positions for women in senior positions.

4. 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?

One of the key drivers of the gender pay gap is the different type of employment that women choose (‘occupational segregation’). Research indicates that the higher the proportion of women in an occupation, the lower the average pay. Pay is lower in ‘feminised’ occupations, and men

in these occupations also receive lower pay than they would have done otherwise\textsuperscript{35}.

Fewer than 35\% of women fall into the managers, directors and senior officers category (with average weekly wages of around £470), whereas in caring, leisure and other services around 83\% of workers are women, and the average earnings in this sector are around £160\textsuperscript{36}.

Women hold the majority of minimum wage jobs (some 59\%), and female part-timers hold 41\% of minimum wage jobs, almost twice as high as their share of all jobs\textsuperscript{37}. Women are one of the primary direct beneficiaries of the national minimum wage (NMW)\textsuperscript{38}. The Low Pay Commission shows that the gender pay gap among the lowest paid has fallen since the introduction of the NMW from 12.9\% in 1998 to 5.5\% in 2014\textsuperscript{39}. Other research\textsuperscript{40} suggests that the introduction of the NMW helped reduce the overall pay gap by compressing the pay gap more at the bottom of the earnings distribution than further up. However, if the minimum wage is raised to the living wage, the gender pay gap is estimated to reduce by only 0.8\%\textsuperscript{41}.

The difficulty of improving pay in feminised industries is illustrated by the Commission’s findings on the commercial cleaning sector in England, Scotland and Wales, published in 2014 as \textit{The Invisible Workforce: Employment Practices in the Cleaning Sector}\textsuperscript{42}. Almost 80\% of the

\begin{itemize}
\item[39] LPC (2015) op.cit.
\item[41] Fawcett Society. (2014) \textit{The Time To Act Is Now: Fawcett’s Gender Pay Gap Briefing}.
\item[42] Equality and Human Rights Commission (2014) \textit{The Invisible Workforce}:
cleaning workforce is female and part time, and over a quarter are aged between 45 and 54 years. Median pay is very low with around one quarter of all workers earning the minimum wage in 2013, rising to around one third among female part-timers.

We found that outsourcing and contracting have a direct impact on employment practices and the working conditions of cleaning operatives. Procurement is often driven by lowest price; this puts cleaning firms under enormous pressure to deliver a high quality service at the lowest cost possible and this may have an impact on pay and employment conditions of their largely female and migrant workforce.

The Commission convened a cross-industry taskforce to produce practical solutions to support the industry in addressing these issues. These include: principles for responsible procurement demonstrating how procurement might drive improvements in the working conditions of cleaning operatives; information about rights at work for workers and their managers, and posters about the role of cleaners and dignity at work. It will be reviewing progress in a year’s time.

The Commission’s pregnancy and maternity research suggests that the mothers most likely to report disadvantage were in higher paid, professional occupations. For instance, mothers earning more than £30,000 (56%) and mothers in professional occupations (57%) were more likely to report that they experienced negative consequences as a result of flexible working.

However, the women in the predominantly female, non-professional care, leisure and other service occupations sector experienced higher levels of disadvantage or potential discrimination, reporting stress, harassment, poor treatment and feeling under pressure to hand in their notice. For instance, 15% of mothers in this profession felt so poorly treated by their employer that they felt they had to leave their job (compared to the average 9%).

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*Employment Practices in the Cleaning Sector.* EHRC.


It may be useful to consider how employers’ attitudes to women of childbearing age have an impact on employers’ decision about the recruitment, retention and promotion of mothers or women of childbearing age. For example, a quarter of employers (25%) thought it was reasonable to ask women about their plans to have children during a recruitment exercise. Where employers had managed a pregnant employee in the last 3 years, employers were less likely to hold this attitude (18%). This issue is considered in more depth in the final reports to be published in Winter 2015/16. The findings also show that small businesses find it harder to facilitate the statutory rights of pregnant employees and are more likely to think these rights are unreasonable. More attention could be given to ensure such employers have consistent, easily available information about how to manage employees who are pregnant, on maternity leave or returning to work; and about different forms of flexible working.

Another cause of occupational segregation is girls’ career aspirations and decisions. An Ofsted report, *Girls’ Career Aspirations* (2011)\(^{46}\), showed that from an early age girls held conventionally stereotypical views about jobs for men and women. They retained those views throughout their schooling despite being taught about equality of opportunity in access to future careers. A Commission report on the equality impact of careers education and guidance on young people’s destinations post-16 (2011)\(^{47}\) also showed that primary school children had high educational aspirations but gendered influences began very early, with boys in primary school interested in sports and girls in performance arts, hairdressing and nursing.

5. **Should the regulations on gender pay reporting be extended to organisations with fewer than 250 employees?**

Of the 4.7 million businesses in the UK, only about 6,800 have more than 250 employees and so would be required to report their pay gap; about 60% of employees work for smaller businesses that would be unaffected by this provision\(^{48}\).


\(^{47}\) Hutchinson, J; Rolfe, H; Moore, N; Bysshe, S; Bentley, K (2011) *All things being equal? Equality and Diversity in careers education, information, advice and guidance*; Equality and Human Rights Commission Research report 71.

Some European countries have extended pay reporting provisions to organisations with fewer than 250 employees; for example:

- In **Sweden** businesses with 25 or more employees have to conduct an equality action plan every three years, which has contributed to a gender pay gap of only 3% for women working in male dominated occupations.

- In **Austria** companies with more than 150 employees must provide gender pay gap information every other year to employees, detailing the pay gap for each occupational group or pay grade.

- In **Finland**, the Equality Act requires employers with more than 30 staff to produce an equality plan to share with employees every other year. This plan must include a pay survey, reporting the gender pay gap within job roles and pay grades.49

These examples suggest that pay reporting may not be too burdensome and could encourage smaller sized employers with more limited resources to assess and understand the causes of their pay gaps. However, the Think, Act, Report initiative also suggests that transparency and reporting needs to be complemented with penalties or incentives to ensure employer engagement (see question 1). It may be useful to look at how to improve smaller employers’ knowledge about pay practices, pay gaps and equal pay through improved advice and information; and through the requirements of the supply chains of larger companies.

The Commission is updating and simplifying its guidance on equal pay for employers, and subject to the final shape of the gender pay reporting regulations, would also be happy to draft guidance for employers about how to measure and report on gender pay gaps.

6. **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?**

There is little evidence to suggest that a purely voluntary approach to reporting gender pay gap information would bring about change in company practice.

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The EHRC surveyed 900 private and voluntary organisations in 2009\textsuperscript{50} and found that employers would be reluctant to report and address pay gaps voluntarily. Most employers admitted that they would only consider measuring the gap if employees complained or took action against them or if legislation required it. Of the 23\% of organisations that had conducted a formal gender pay review, only 3.7\% reported this internally and 1.3\% reported this externally.

In 2015, the Government Equalities Office surveyed private sector employers with 150 or more employees\textsuperscript{51}. Of the 31\% that had conducted a formal gender pay gap review, 13\% had reported on it, which equates to 4\% of employers overall. Reporting was slightly more likely to be internal (10\% of those conducting formal reviews, equivalent to 3\% of all employers) than external (7\% of those conducting formal reviews, equivalent to 2\% of all employers). Reporting to an external audience was typically through their annual report or on their website.

Section 78 of the Equality Act 2010 only requires a company to report a pay gap. To encourage action, the Commission believes a voluntary narrative is a useful complementary document allowing an employer to explain the causes of pay gaps in the company, and setting out steps to remedy any pay gap. Being held publicly accountable for actions may help create change in organisations.

Companies also need guidance on the types of actions they can take to address causes of their pay gap. For example, the recent JNCHES\textsuperscript{52} Higher Education report on equal pay reviews found that HEIs most frequently cited length of service as a justifiable reason for their gender pay gap. However, length of service can have a direct and negative effect on the pay of women who take time out for parenting; and very wide pay scales may result in unjustifiable differences in the pay of women and men doing equal work. The number of pay increments should reflect the amount that experience or length of service adds to an employee’s ability to perform that job well.

\textsuperscript{50} Equality and Human Rights Commission (2010). \textit{Proposals for measuring and publishing information on the gender pay gap: EHRC.}
\textsuperscript{51} IFF research (2015) \textit{Company Reporting: Gender Pay Data.}
\textsuperscript{52} Universities and Colleges Employers Association (UCEA) (2014) \textit{Results of the 2013 survey of equal pay reviews.} New Joint Negotiating Committee for Higher Employment Staff.
Remediable actions could include reducing the number of pay increments and width of the pay band as well as supporting women to retain their connection to the workplace through flexible work arrangements.

7. Which mechanisms would most effectively ensure that policies designed to narrow the gender pay gap are fully complied with?

Government is yet to publish proposed regulations and enforcement provisions for section 78 of the Equality Act (2010). In our view, an effective enforcement mechanism will be essential to ensure compliance with gender pay gap reporting. The absence of an enforcement mechanism would risk undermining the Government’s aim of increasing transparency of gender pay differences in the private and voluntary sectors and would be unfair to those who comply.

We consider that it would be helpful for employers voluntarily to publish additional narrative information alongside data on gender pay gaps. This would provide an employer with an opportunity to explain the causes of a pay gap, and set out its action plan to reduce it. The Commission’s research suggests that many employers would like the opportunity to explain any pay gap.53

An employer may have justifiable reasons for a pay gap unrelated to sex discrimination or equal pay issues. Factors that might contribute to a pay gap in an organisation include: the age profile, length of service of employees where this contributes to effective performance, occupational segregation, the proportion of women in senior roles, the rate of retention of women returning from maternity leave, the proportion of women working part-time, and any difference between part and full time pay rates.

8. Is there evidence from other countries or policy areas of what might work best?

In Sweden mandatory pay audits are prescribed by the Discrimination Act. Employers must collect prescribed data about pay, terms of employment and pay differences, analyse the data, and draw up a plan for achieving equal pay if pay differences are found.

The Equality Ombudsman is responsible for supervising the provisions on pay surveys in accordance with the Discrimination Act. The Equality

Ombudsman annually reviews a sample of employers. Employers are obliged to provide any information requested by the Ombudsman and to attend discussions with the Ombudsman. If an employer refuses to undertake a pay survey, or if case law is required to determine how provisions should be interpreted, the Equality Ombudsman can apply to the Board Against Discrimination\(^{54}\) to order a financial penalty. This option has seldom been exercised, but the threat of being reported to the Board, has persuaded recalcitrant employers to initiate pay surveys.

**Malta** does not have mandatory pay audits, but the National Commission for the Promotion of Equality (NCPE) conducts audits in companies that apply for an Equality Mark. NCPE awards the Equality Mark to organisations that demonstrate a commitment to foster gender equality at the workplace and in their provision of goods and services.

One of the criteria of the Equality Mark is equal pay for work of equal value. NCPE reviews company information based on an organisational chart indicating the sex of employees in each post, the job profiles of all posts within the company and the pay packages. If it discovers that posts with similar responsibilities have a different status on the organisation chart, or receive different pay, or that women are employed mainly at lower level, the NCPE asks for further clarification in case this is indicative that the company is not observing the principle of equal pay for work of equal value.

Currently there are 60 companies and government department/entities, employing over 15,800 persons, certified with the Equality Mark.

**4 December 2015**

\(^{54}\) The Board Against Discrimination is a new agency which has absorbed the Equal Opportunities Commission and the previous Board, and has the responsibility for examining applications for financial penalties and appeals against decisions on financial penalty orders.