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UK Finance response to BEIS Government Consultation on Ethnicity Pay Reporting

Introduction

UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

We are a signatory to the HM Treasury Women in Finance Charter and view the widespread support for the Charter from across financial services as emblematic of the pro-diversity and inclusion stance adopted across our membership. We consider that progressive employment practices should be seen as defining a well-run company in modern Britain.

We welcome the opportunity to comment on the BEIS consultation on ethnicity pay reporting. We are supportive in principle of the initiative and have provided answers to the specific questions below. In discussion with members, a question that has been put to us is whether it is right to use “white” as the benchmark for comparing “other ethnicities”. While a binary approach has the benefit of simplicity, it provides only a starting position and there is a case for suggesting that a better approach might be to compare all categories used against an overall employee average hourly earnings.

Chapter 1: Understanding the pay context

As Chapter 1 makes clear, it is important to appreciate that ethnic pay disparities are not primarily about people from non-white ethnic groups being paid differently for the same job. The Equalities Act 2010 and preceding legislation largely eradicated this type of discrimination. Disparities therefore tend to be down to other, not as explicitly discriminatory factors resulting in people from ethnic minorities being placed at a disadvantage.

Chapter 2: Ethnicity Pay Reporting

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

It provides a means by which employers can display their intention to adopt policies and practices consistent with providing a modern workplace in which all employees are provided with an equal opportunity to thrive. As with the gender pay gap initiative, we consider that a statutory ethnicity pay reporting requirement would raise awareness and get the conversation going on what the issues may be and the remedies available.

We should add that the work done to date on the gender pay gap has been largely positive and, at societal level, surfaced issues that need to be addressed. Our hope is that any future mandated reporting of an ethnicity pay gap would have a similar positive impact. However, we feel it is important to note key differences in the complexity of classification and distribution of attributes that make unintended consequences of ethnicity pay gap reporting more likely (and potentially more severe). Each gender is equally represented (making up very close to 50%) in every socio-economic group. This is not true of ethnicity. As a consequence, gender pay results are less likely to be confounded by underlying wealth distribution than ethnicity pay.

To be more precise, the over-representation of ethnic minorities in socio-economically disadvantaged groups and the higher propensity people from many of those groups to have low paid jobs, may lead to effects that are a consequence

of the UK's mixed track record on social mobility being attributed to ethnicity. It also needs to be appreciated that individuals identifying as BAME make up approximately 13% of the UK population. As such, in any ethnicity pay reporting comparisons are likely to be made on the basis of smaller numbers even in reasonable sized organisations. As a consequence, the reported gaps will be subject to much higher levels of natural variability.

2. What types of ethnicity pay information should be reported that would not place undue burdens on business but allow for meaningful action to be taken?

We see a need for a balance between simplicity and complexity if the outcome is to be the mandating of meaningful information that does not involve disproportionate cost and effort, also bearing in mind that:

- binary reporting based purely on whether 'white' or 'other' ethnic grouping provides only a starting point;
- providing a breakdown, within public reporting, of the ONS 18+1 is overly granular and for smaller entities (even within a larger group) would risk individuals being capable of identification.

We therefore recommend that BEIS consider basing the statutory reporting requirement upon the 5 broad ONS categories. In our view this would enrich the benchmarking data within the public domain without encountering the difficulties associated with adopting an overly granular approach.

We would then question the approach of using "white" as the benchmark against which "other ethnicities" are compared. It has been suggested to us that a better approach might be to rank all categories against an average overall employee average hourly earnings. We then consider that BEIS should make strenuous attempts to avoid the information required being overly complex. With this in mind, we would recommend mandated ethnicity pay reporting:

- mirroring the ordinary pay provisions of the gender pay gap regulations;
- adopting the same 'by legal entity' basis; and
- the same annual reporting timeline.

We would not however recommend that the bonus pay provisions be replicated for this purpose as these have known shortcomings that many consider necessitate additional disclosure and/or narrative explanation, particularly as a result of the statutory disclosure omitting a pro rata element.

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

We believe it's really important that numbers reported are placed into context and that they are seen as being in support of policies being pursued in order to achieve a more equal workplace. Whilst the statutory reporting can be expected to show that action is needed, it is also important that information provided is interpreted carefully and seen as part of addressing a longstanding problem. Percentages reported should be seen as an agent for change and should be viewed alongside initiatives being taken to address disparities.

With this in mind, we would consider it beneficial for BEIS or Business in the Community to publish guidance in support of the statutory reporting requirements. We would not see this as a matter for statutory requirement, but instead as a contextual piece aimed at supporting the generation of an informed dialogue.

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?

While we can see that a narrative is likely to be needed, we believe that the statutory requirement should focus upon the factual pay reporting requirement. Supporting guidance should be published on a non-mandatory, agreed basis updated in light of analysis as to what the information published is telling us about employer practices.

Chapter 3: Ethnicity data and classifications

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

While most employers of scale probably do collect data on ethnicity, it is unlikely to be on the same basis across organisations, and the response rate might very well be variable given the traditional reluctance on the part of many employees to respond to employer surveys on their ethnicity. This is distinct from gender where there is a statutory requirement to provide employers with gender information for HMRC purposes, specifically around pension entitlements.

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

As illustrated in the consultation, explaining the purpose of the data, assuring confidentiality and providing a 'prefer not to say' option each add credibility. It should still nevertheless be appreciated that a significant proportion of employees might still prefer to exercise their right not to respond to such surveys undertaken by their employers.

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

We see no difficulty in the disclosure of the percentage of employees taking part in the survey, whether as a precise percentage or on the basis of a banding. It would even be worth discussing whether employees preferring not to disclose should be presented as a "prefer not to disclose" reporting category so as to emphasise the bearing that individual choice may have on reported returns.

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?

As related above, while it is unlikely that data is currently gathered across organisations on a like-for-like basis, a common framework is needed in order to achieve any benefit from the exercise. For us, the balance lies in the statutory reporting requirement being based on a) the 5 broad categories used by the ONS for census purposes, and b) aligned to the ordinary pay provisions of the gender pay gap regulations.

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

Apart from care in terms of the data handling, and this includes for internal analytical purposes, confidentiality rests upon the statutory reporting requirement not being so granular as to risk confidentiality being brought into question. Consideration should therefore be given to a minimum disclosure rate or threshold of employees in each reported category. Drawing the right conclusions on categories, banding and scope would each minimise the prospect of disclosure conflicting with rights to privacy.

Chapter 4: Next steps and government support for employers

10. What size of employer (or employee threshold) should be written within the scope for mandatory ethnicity pay reporting?

We believe the employee engagement, data collection and analysis, and legal compliance involved in statutory reporting initiatives to be such that the requirement should be based on 250+ employees.

This, however, gives rise to questions about the timing of the requirement. If, as related in the introduction to the consultation, ethnicity pay gap data is currently collected in respect of only 11% of employees – with smaller organisations even less likely to collect data – then careful thought needs to be given to the timing of any new statutory requirement.

At a minimum, we would say that given the systems development and employee communications (and consultation) that this may involve, we would consider a reporting requirement e.g. for April 2020 to necessitate the publication of the final draft regulations as soon as possible after the consultation closes, and no later than the first half of 2019.

Alternatively, it may make sense to align the timing of the statutory obligation with the definition of the ethnic group classification for the 2021 census. Should this involve an extended lead time, we would see merit in BEIS publishing an early feedback statement following the consultation in order to ensure that organisations already providing voluntary disclosures are aware of how the future statutory requirement might impact what they do.

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

Clear, consistent methodology so that organisations could be confident that they were going about the data collection exercise in the right way. Also, a readily understandable official communication that they could reference or provide explaining the purpose of the initiative.

For further information about this submission please feel free to contact Paul Chisnall, Director, Finance & Operations Policy, UK Finance at paul.chisnall@ukfinance.org.uk