

Ethnicity Pay Reporting Team
Department for Business, Energy and Industrial Strategy
Spur 1, 1st Floor
1 Victoria Street
London
SW1H 0ET

By email: ethnicitypayreporting@beis.gov.uk

14 January 2019

Dear Sirs

**ICSA response to the Department for Business, Energy and Industrial Strategy (BEIS)
consultation on Ethnicity Pay Reporting**

We welcome the opportunity to comment on new proposals on Ethnicity Pay Reporting.

ICSA: The Governance Institute is the professional body for governance. We have members in all sectors and our Royal Charter purpose is to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With more than 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance. ICSA is the professional body that qualifies Chartered Secretaries, which includes company secretaries. Company secretaries have a key role in companies' governance arrangements, including the development of governance policies. Our members are therefore well placed to understand the consequences of the new proposals on Ethnicity Pay Reporting.

In preparing our response we have consulted, amongst others, with members of the ICSA Company Secretaries Forum, a group of company secretaries from more than 30 large UK listed companies from the FTSE 100 and FTSE 250. However, the views expressed in this response are not necessarily those of any individual members of any of this group, nor of the companies they represent.

We set out below some general comments, followed by our responses to the specific questions set out in the consultation document.

GENERAL OBSERVATIONS

We support the expressed aim of providing equality of opportunity for everyone, regardless of their ethnicity or background, to enter into work, progress and achieve their potential based on merit. However, we have some concerns over the proposals and, particularly, the potential complexity of reporting and how the resulting statistics will be used.



Reporting

- a) We are concerned that the consultation underestimates the challenge of recording accurate data on ethnicity. Ethnicity cannot be categorised as simply as is suggested by Annex A, which sets out Ethnic group classifications used in the 2001 and 2011 censuses. There are now many more mixed/multiple ethnic backgrounds than indicated by those categories. A large number of employees in Great Britain identify as another European nationality, and would not regard themselves as covered by the category of 'any other white background'. Again many of these European nationals are also of mixed/multiple ethnic backgrounds. The consultation makes it clear that, unless otherwise stated, it defines the term 'people from ethnic minorities' to mean non-white ethnic minorities, but there is no longer any clear distinction between white and non-white ethnicity amongst people of mixed/multiple ethnic backgrounds.
- b) We also believe the consultation underestimates the difficulties in collecting data on the ethnicity of the workforce. Companies are increasingly uncomfortable about asking their employees for details of their ethnicity, not least because it is not relevant to an employee's suitability for employment or promotion. Indeed, large multi-national companies are frequently unable to hold this data on their employees as asking employees for this information is prohibited in a number of overseas jurisdictions. For many larger companies it will be necessary to have categories of 'not disclosed' or 'unknown'.
- c) We are told that companies are concerned such reporting requirements will continue to expand, to cover any number of physical characteristics where there may be perceived discrimination including factors such as age, disability and religion.
- d) Perhaps our most important concern is that the proposals may result in increasing the divisiveness in our society, rather than breaking down the barriers and delivering a cohesive society, as suggested by the consultation. Some companies have reported an increase in hostility towards work colleagues who are non-UK nationals since the EU Referendum in 2016. We believe the focus should be on ensuring non-discriminatory practices and policies within organisations, covering all individual characteristics, including gender, ethnicity, age, disability and religion. We would support a requirement that companies publish their policies on equality and equal opportunities and believe the majority already do.

None of this is to say that the data should not be collected; as noted below it may be helpful for many organisations, but it is important that the difficulty of collecting accurate data and, consequently, the limitations on the information that can be inferred from it are clearly understood.

The use to which the reported data is put

- e) One of the most disappointing aspects of the first round of gender pay gap reporting was the conflation both in the media and by politicians of a pay gap with unequal pay. A number of people indulged in rhetoric to the effect that organisation x pays women y pence for every pound it pays men. The Government should take great care in explaining the new legislation to ensure, as far as possible, that there is no excuse for such misunderstandings of the meaning of these figures.

RESPONSES TO SPECIFIC QUESTIONS ON ETHNICITY PAY REPORTING

A: Ethnicity pay reporting

Q1 What are the main benefits for employers in reporting their ethnicity pay information?

There are many factors that contribute to an individual's performance and progression within an organisation, but ethnicity is not – or should not be - one of these factors. We are concerned that reporting on pay levels based on ethnicity does not take account of the combination of factors that contribute to success and advancement in the workplace, and focuses only on ethnicity as the determining factor.

Companies need to recruit and retain the best people. Workforce diversity is important for all organisations as it increases performance and profitability. To achieve both these objectives it is necessary for companies to demonstrate equality and fairness in both pay and progression. As part of this, companies will wish to be as transparent as possible over both pay and opportunities, to attract the most able people to their workforce. Many companies choose to report on their equality and fairness in their treatment of employees, not just in relation to ethnicity but on all aspects of diversity, and this should be encouraged.

Reporting ethnicity pay information may contribute to companies' ability to attract the best people if it is included as part of its overall reporting on equality and fairness and to the company's understanding of any areas of concern within the organisation. Overly rigid reporting requirements may, however, make the data less useful and susceptible to misinterpretation.

Q2 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?

The consultation document acknowledges that it is not possible for organisations to obtain complete data on the ethnicity of its workforce. It also recognises that ethnic minorities tend to be focussed in London and other large towns and cities. They tend to be younger than the general workforce and the consultation acknowledges that pay increases with age.

There are many ways in which ethnicity pay information can be broken down and reported and we believe it should be left to the company to report in the way that is most appropriate for their circumstances. It would be preferable for companies to report on the information they are able to obtain and in a way that is not misleading, in the context of its individual circumstances and those of the workforce. We feel that the options suggested in the consultation may be too rigid and therefore open to producing misleading data without the appropriate contextualisation.

We would suggest, rather, that the issue be addressed by requiring companies to report on their policies on equality and equal opportunities, and to describe how these policies work in practice.

Q3 What supporting or contextual data (if any) should be disclosed to help ensure ethnicity reporting provides a true and fair picture?

Again, we believe it should be left to individual companies to provide supporting or contextual data or other disclosure, appropriate to the individual circumstances of the organisation. Every organisation will be different and the reporting requirements suggested under consultation question 2 do not allow for the

difficulties in reporting on incomplete and inaccurate data, as discussed under our response to that question.

We believe a more flexible approach of reporting on policies and practices, as discussed above, would be more meaningful. This reporting could include workplace initiatives such as mentoring programmes to support all people to reach their full potential.

Q4 Should an employer that identifies disparities in their ethnicity pay in their workforce be required to publish an action plan for addressing these disparities?

It would seem inappropriate for an organisation to be required to publish an action plan due only to having identified disparities in ethnicity pay in the workforce.

Any identified disparity in pay as a result of ethnicity should, of course, be addressed. However it is important to understand the reasons for the disparity before taking action. If the reason for the disparity in pay is based on the ethnicity of the workforce, this would be illegal under current legislation. However if other factors are identified, such as a difference in the average age of the ethnic component of the workforce and white members of the workforce, then this should be monitored but no immediate action might be necessary. If there are factors identified that are disproportionately hindering the progress of ethnic minorities, companies can, and should, implement initiatives such as mentoring programmes to ensure equal opportunities for all within the organisation. We believe companies should be encouraged to publish such initiatives and believe the majority would view this as a positive contribution to attracting the best people to their organisation.

Ethnicity data and classifications

Q5 Do you currently collect data on ethnicity at your workplace? If yes, do you use standard ethnicity classifications for reporting? If so, which ones?

No. As a membership body employing a small workforce this does not seem necessary.

Q6 What do you think are the most effective approaches for employers to improve employee self-reporting or declaration rates?

This question might be better responded to by a larger company, but we believe it will be essential for companies to explain the purpose for which the information is being sought. Low rates should not be seen as symptomatic of a problem as employees may not bother to respond if they do not perceive a problem.

Q7 How should self-reporting or non-disclosure rates be reflected in the information reported by employers?

Employers should report non-disclosure rates as part of their reporting process.

Q8 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?

A standardised approach may be helpful in terms of statistical analysis but, as noted in our general comments above, the ethnic mix in many companies is significantly wider than that provided for in the UK census arrangements.

Q9 Please outline steps that should be taken to preserve confidentiality of individuals.

We suggest that companies with large employee bases will be better placed to respond to this question.

Next steps and government support for employers

Q10 What size of employer (or employee threshold) should be within scope for mandatory ethnicity pay reporting?

This should be the same as for gender pay reporting to avoid creating complex reporting requirements.

Q11 What support measures do you think would be useful for employers?

We believe all the suggestions around guidance, training courses, tools and support would be helpful for employers to develop their practices in this area, particularly for smaller organisations.

If the proposals are to be implemented, a trial or phased approach would be helpful in identifying problems at an early stage. However, it should not be assumed that all problems can be identified by organisations that only operate nationally.

We hope you find our comments helpful and would be happy to expand on any of these points should you wish to discuss them further.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Swabey', written in a cursive style.

Peter Swabey
Policy & Research Director