

## **RSS RESPONSE TO CONSULTATION ON THE EQUALITY (RACE AND DISABILITY) BILL: MANDATORY ETHNICITY AND DISABILITY PAY GAP REPORTING**

**10 June 2025**

This is the Royal Statistical Society (RSS) response to the government's consultation on the equality (race and disability) bill: mandatory ethnicity and disability pay gap reporting.

The RSS is a membership organisation and charity, advocating for the importance of statistics and data. The Society was founded in 1834 and is a learned society and professional body for statisticians and other data professionals in the UK and internationally. The Society has over 11,000 members in the UK and across the world. As a charity, we champion the key role of statistics and data in society, and work to ensure that policy formulation and decision making are informed by evidence for the public good. Equity, diversity and inclusion (EDI) are key interests of ours and work in this area is led by our EDI advisory group ([https://rss.org.uk/about/equity-diversity-and-inclusion-\(edi\)/](https://rss.org.uk/about/equity-diversity-and-inclusion-(edi)/)). We also produce research on EDI topics such as diversity in grant funding (<https://rss.org.uk/news-publication/publications/our-research/>).

Our main point in response to this consultation is that ethnicity and disability pay gap reporting should take the form of pay quarter breakdowns, rather than single statistics eg mean or median. Single statistics can hide important trends and risk leading to perverse outcomes. For example, an organisation's disability pay gap is likely to be larger if they have more disabled employees, but the goal should obviously not be to minimise this gap by reducing employment of disabled employees. Consideration of pay quarter breakdowns can provide more insightful information about pay across the organisation's payscale and can encourage organisations to adopt a practice of continuous improvement in relation to their specific equality goals. The Disability Confident Level 3 could be a useful starting point for ethnicity and disability pay gap reporting, rather than gender pay gap reporting (<https://www.gov.uk/government/publications/disability-confident-guidance-for-levels-1-2-and-3/level-3-disability-confident-leader>).

Several of our concerns with regards to pay gap reporting relate to the context in which this is completed and interpreted. Firstly, there is often a lack of statistical expertise in reporting teams (eg, HR teams). We call for better processes to involve statistical experts where needed, and improved 'sanity checks' in the reporting system. Secondly, there is a wider lack of understanding on pay gap reporting – many people mistakenly think this can measure unequal pay (<https://yougov.co.uk/economy/articles/21410-most-brits-have-wrong-idea-what-gender-pay-gap>). Organisations can therefore be unfairly criticised based on pay gap statistics. Statistics in this area will often involve fairly small sample sizes, a high proportion of missing data and large confidence intervals, so caution is needed in interpretation.

We also have concerns over the aim of this exercise – we agree that organisations should undertake pay gap reporting and produce plans for improvement, but we stress that like-for-like comparisons are often not possible in this area, due to variation based on factors such as local demographics and organisation sector/area. We caution against use of league tables. Instead of mandating fixed reporting categories, a degree of flexibility in how questions are asked and which categories are collected and aggregated may allow employers to maximise the useful insights they can gather from this exercise. The ultimate purpose of this exercise should be to learn what works and what does not work when seeking to improve equality and diversity in the workplace.

We also have several concerns around the specific reporting criteria and processes. We believe that:

- The minimum number of categories that should be reported is three, not the proposed two. There should always be an 'unknown' category (eg disabled, not disabled, unknown) for people who have not provided this information. This is crucial to see the full picture. (In gender gap reporting this was not an issue as employers knew this information, but this is not applicable here: employers will have to ask employees and they can refuse to provide information.)
- The minimum number of people in a category for data to be published in the public domain should be 50, not 10, to protect individual's identities and also to ensure that data is robust enough for conclusions to be drawn. This information will be in the public domain and many people will seek to draw conclusions from it: it is important to ensure that data from small sample-sizes aren't over-interpreted.
- The portal through which gender pay gap information is submitted should be improved, to include sanity checks, prior to being used for ethnicity and disability data. This is important as this data will be more complex, with more categories. An overview of data entry errors and suggested sanity-checks can be found here: <https://www.linkedin.com/pulse/what-happened-gender-sharp-analysis-issues-surrounding-gpgr-cemxe/>.

Our recommendations are:

- Ethnicity and disability pay gap reporting should centre around pay quarter breakdowns rather than mean or median pay gaps.
- A better process is needed to involve statistical expertise or upskill reporting teams in pay gap reporting.
- Efforts are needed to improve wider understanding of pay gap reporting and the distinction between this and unequal pay.
- Pay gap reporting should not be used for benchmarking or league table purposes as like-for-like comparisons are often not possible.
- Organisations should be afforded a degree of flexibility in how questions are asked (eg categories for ethnicity) and how data is aggregated, to maximise the insights that can be gained.
- The minimum number of categories that should be reported is three, not the proposed two.
- The minimum number of people in a category for data to be published in the public domain should be 50, not 10.
- The platform through which pay gap information is to be submitted should include 'sanity checks' to reduce data entry errors.
- Collecting data around the type of adjustments needed by people with disabilities (rather than the type of impairment) could help employers know what support to offer. <sup>1</sup>

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<sup>1</sup> Please note that for ease of reading we are displaying this introductory section at the forefront of this paper, but when responding to the online consultation form we submitted this information as part of the first free text question.



### **Extending mandatory pay gap reporting to ethnicity and disability**

**Question 1. Do you agree or disagree that large employers should have to report their ethnicity pay gaps?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Question 2. Do you agree or disagree that large employers should have to report their disability pay gaps?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Please add any comments you have about the proposal to extend pay gap reporting.**

We agree that pay gap reporting should be extended to ethnicity and disability. There are merits to mandatory reporting, such as Parliamentary confirmation of the importance of recognising and tackling pay disparities in representation of various groups across an employer's pay scale, and fairness across all employers. The RSS could play a role in bringing together groups of users/potential users of pay gap data with the statisticians who will be processing the reports from employers into government-published statistics, to help ensure that needs are understood and met.

Typically, it is best statistical practice to look at multiple factors (eg pay grades, full-time equivalent status, permanent versus temporary contracts, location as well as gender, ethnicity and disability) together and in the same way, using the same reporting methods. This is because pay gaps apparent in specific reporting exercises may reflect multivariate factors eg groups of employees of the same sex and ethnicity. However, in this instance, some employers will likely not have the sample sizes or statistical skills to be able to do this.

Additionally, in this instance, we have further concerns around gender pay gap reporting and applying this approach to disability and ethnicity. Our key recommendation is that pay quarter breakdowns should be at the heart of reporting, as this approach allows insights from across the organisation's pay scale to be acknowledged. Pay quarter reporting involves splitting employees into four equally sized groups, ranked from highest to lowest hourly pay, to see the proportion of individuals at different pay levels in the organisation (<https://www.gov.uk/government/publications/gender-pay-gap-reporting-guidance-for-employers/closing-your-gender-pay-gap>.) Condensing pay gap reporting to a single summary statistic (mean or median) can result in important trends and insights being hidden, or can even give the opposite impression to the reality (aka Simpson's Paradox). This, and several of our other recommendations, are explained further in a blog by RSS fellow Nigel Marriott, expert in the diversity reporting space: <https://marriott-stats.com/nigels-blog/my-recommendations-for-ethnicity-and-disability-pay-gap-reporting/>.

Some of our concerns centre around the context in which pay reporting will be conducted and interpreted. Pay gap reporting is seldom carried out by a dedicated statistical team, and staff members conducting the exercise – for example from an HR team – may not have statistical expertise.

Pay gap reports are often based on small sample sizes (the median reporting employer is estimated to have around 600 employees <http://bit.ly/4dFwGJG>) and have large confidence intervals (estimated to be up to +/- 25% <https://marriott-stats.com/nigels-blog/gender-pay-gap-and-life-on-mars/>). Employers and users of the data need statistical understanding to interpret the results accordingly.

We call for statistical support in preparing and interpreting pay gap reports. We have previously called for a clearer process for involving statisticians where producers may find working with ethnicity data challenging (<https://rss.org.uk/news-publication/news-publications/2022/general-news/rss-responds-to-consultation-on-standards-for-ethn/>). We have heard reports of errors being submitted in gender pay gap reporting (<https://www.linkedin.com/pulse/what-happened-gender-sharp-analysis-issues-surrounding-gpgr-cemxe/>). Including sanity checks in the data entry portal may help with this. Support and in-built sanity checks are likely to be more important with ethnicity and disability data as this is more complex than gender data (for example as there are more categories and more missing data).

We also call for efforts to improve public understanding on pay gap reporting, and the distinction between this and 'unequal pay'. A 2018 YouGov poll found that just 30% of Britons could correctly choose the right definition of the term 'gender pay gap'. Of those who said they had heard of the term before, two thirds still thought it meant unequal pay (<https://yougov.co.uk/economy/articles/21410-most-brits-have-wrong-idea-what-gender-pay-gap>). Pay gap reporting cannot measure unequal pay, just the pay of different groups of people throughout the pay range of an organisation. However, employers can be criticised unfairly based on a misinterpretation that these statistics reflect (un)equal pay. An example and explanation of this can be found here: <https://marriott-stats.com/nigels-blog/pay-gap-12-conflating-equal-pay-with-gender-pay-gap/>.

Finally, we have concerns over the use of a single summary statistic being used to benchmark organisations, for example in league tables. While this may be less prevalent in the private sector (where success is usually defined by factors such as profit, sales, share price, growth etc), in the public sector benchmarking often occurs based on league tables. We caution against using league tables based on pay gap reporting for public bodies – organisations should instead focus on continuous improvement, relative to their past pay gaps and where they want to be in the future. Often differences between employers (for example relating to if they are multinational, or where in the UK they are based) mean that like-for-like comparisons cannot be made. Additionally, incentives to reduce pay gaps to appear better relative to other organisations can be perverse – for example, the fastest way for an organisation with more members of a minority group at junior levels to 'improve' their pay gap statistic would be by decreasing employment of

those employees, which is clearly not the intended consequence. The RSS has previously explained the challenges associated with league tables and calculations that do not permit direct comparisons in relation to Research Excellence Framework league tables (<https://rss.org.uk/RSS/media/News-and-publications/Publications/Reports%20and%20guides/rss-press-release-ref-league-tables-report-11-05-2015.pdf>).

### **Geographical scope**

**Question 3. Do you agree or disagree that ethnicity pay gap reporting should have the same geographical scope as gender pay gap reporting?** (*Strongly agree; **Somewhat agree**; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Question 4. Do you agree or disagree that disability pay gap reporting should have the same geographical scope as gender pay gap reporting?** (*Strongly agree; **Somewhat agree**; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

Please add any comments you have about the proposed geographical scope.

### **Pay gap calculations**

**Question 5. Do you agree or disagree that employers should report the same 6 measures for ethnicity pay gap reporting as for gender pay gap reporting?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; **Somewhat disagree**; Strongly disagree; Don't know or unsure*)

**Question 6. Do you agree or disagree that employers should report the same 6 measures for disability pay gap reporting as for gender pay gap reporting?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; **Somewhat disagree**; Strongly disagree; Don't know or unsure*)

**Question 7. Do you agree or disagree that large employers should have to report on the ethnic breakdown of their workforce?** (***Strongly agree**; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Question 8. Do you agree or disagree that large employers should have to report on the breakdown of their workforce by disability status?** (***Strongly agree**; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Question 9. Do you agree or disagree that large employers should have to submit data on the percentage of employees who did not state their ethnicity?** (***Strongly agree**; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)



**Question 10. Do you agree or disagree that large employers should have to submit data on the percentage of employees who did not state their disability status? (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)**

**Please add any comments you have about the proposals for calculating pay gaps.**

On the measures to be reported – we believe that quarter breakdowns can provide the most insightful and useful measure of disparities in representations of categories of employees across an employers pay scale and should be prioritised in reporting. Mean and median hourly pay can provide false impressions of the underlying data, whereas reporting on quarter breakdown allows information across the pay range of the organisation to be considered. Condensing pay gap reporting to a single summary statistic (mean or median) can result in important trends and insights can be hidden. Pay quarter breakdowns lend themselves naturally to a narrative and actions, whereas single statistics do not.

Reporting quarter breakdowns bears similarities to the level 3 Disability Confident (Voluntary) (<https://www.gov.uk/government/publications/disability-confident-guidance-for-levels-1-2-and-3/level-3-disability-confident-leader>) where employers have to report the breakdown of their workforce by disability status. We recommend that this is done by splitting the workforce into four groups and looking at pay in each of these quarters, as it is with gender pay gap reporting.

As well as focussing on quarter breakdowns, we also recommend reporting on percentage of employees receiving a bonus. Both of these questions (quarter breakdowns and percentage of employees receiving a bonus) should have three categories (including an 'unknown' eg 'disabled', 'not disabled', 'unknown'). This would reduce the employer burden, by necessitating reporting of two measures rather than six. For HR staff, who may have limited statistics knowledge, these two statistics should be more straightforward to calculate as they involve counting, as opposed to the other pay/bonus gap statistics which require understanding of statistical concepts.

Another reason that single summary statistics should be avoided is because they hide trends when pooling data from different entities. Legal entities over 250 employees must report separately. When organisations with several large legal entities provide separate statistics for each entity, and these are then compared against the aggregated statistics, important differences can be masked and trends can disappear or be reversed (also known as 'Simpsons paradox'). An example of this with respect to pay gap reporting can be found here, where two individual legal entities reported pay gaps favouring men, but when the statistics were aggregated for the whole company (the two legal entities plus a third with fewer than 250 employees that did not have to report separately), the pay gap was reported to favour women: <https://marriott-stats.com/nigels-blog/does-novartis-have-a-gender-pay-gap-or-not/>. This can be impacted by differing pay scales across



entities and different ratios of women and men. This may be more common with ethnicity pay gap reporting, due to demographic differences between London and the rest of the UK. Use of pay quarter breakdowns would help avoid this issue.

On submitting data on non-responders – we agree that employers should submit data on the percentage of employees who did not provide ethnicity or disability information. It is sound statistical practice for data to be submitted on the percentage of people who have not responded, to provide information about the coverage of data – either to provide reassurance or to signal poor data. This is crucial to understand the whole picture, especially if eg there is a difference in the percentage of people willing to provide this information across the pay scale. As per our recommendations this would be included as an extra category in the pay quarter breakdown rather than a separate metric to report. This is also necessary to allow questions 7 and 8 on the breakdown of employees to be reported on the basis that 100% = total number of employees.

### **Action plans**

**Question 11. Do you agree or disagree that employers should have to produce an action plan about what they are doing to improve workplace equality for ethnic minority employees?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Please add any comments you have on this proposal.**

We agree that employers should interpret their data and create plans for improvement, but have concerns over the nature of these action plans.

When developing action plans to improve pay gaps, it is challenging for organisations to know the likely timescales it will take to address disparities, especially where these may rely on external factors eg market trends and demographic changes. The timescales are likely to be long (eg approximately 25 years <https://marriott-stats.com/nigels-blog/swap-numbers-tell-you-how-many-years-it-will-take-you-to-close-your-pay-gap/>). It is important to exercise caution and ensure that employers do not set unrealistic targets, that they feel pressure to meet as they are being held to account on, that could only be met with illegal positive discrimination. One reason why employers may not realise the length of timescales involved may be due to confusion over pay gaps and unequal pay.

Instead, continuous improvement towards a goal should be promoted. This should include consideration of the statistical cycle, namely defining the problem, measuring it, analysing, improving it, and controlling it (eg putting in place measures and management systems): <https://marriott-stats.com/nigels-blog/pay-gaps-9->



[how-to-close-your-gender-pay-gap-with-dmaic-2/](#). Employers should be making comparisons against themselves – their past performance and their future goals.

In determining what ‘improvement’ means, employers must have put consideration into what equality means to them. For example there can be different definitions of gender equality (<https://marriott-stats.com/nigels-blog/why-the-nhs-holds-back-gender-equality/>), ranging from women and men having no barriers to work in the roles they desire, or being paid the same for the same role, or having an equal ratio of men to women in the sector or a company. It is important for each employer to be clear on what measures of ‘equality’ should be used as performance indicators.

It would be helpful for employers to document what they have tried that does and does not work, to share these learnings so that employers can learn from each other. This, as we see it, is the ultimate goal of the pay gap reporting exercise, rather than the action plan per se.

If employers are to be required to develop action plans, it is important that the government provides clear guidance to ensure that the planned action is appropriate.

**Question 12. Do you agree or disagree that employers should have to produce an action plan about what they are doing to improve workplace equality for disabled employees?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don’t know or unsure*)

**Please add any comments you have on this proposal.**

We agree that employers should interpret their data and create plans for improvement, but have concerns over the nature of these action plans.

When developing action plans to improve pay gaps, it is challenging for organisations to know the likely timescales it will take to address disparities, especially where these may rely on external factors eg market trends and demographic changes. The timescales are likely to be long (eg approximately 25 years <https://marriott-stats.com/nigels-blog/swap-numbers-tell-you-how-many-years-it-will-take-you-to-close-your-pay-gap/>). It is important to exercise caution and ensure that employers do not set unrealistic targets that could only be met with illegal positive discrimination. One reason why employers may not realise the length of timescales involved may be due to confusion over pay gaps and unequal pay.

Instead, continuous improvement towards a goal should be promoted. This should include consideration of the statistical cycle, namely defining the problem, measuring it, analysing, improving it, and controlling it (eg





putting in place measures and management systems): <https://marriott-stats.com/nigels-blog/pay-gaps-9-how-to-close-your-gender-pay-gap-with-dmaic-2/>.

In determining what ‘improvement’ means, employers must have put consideration into what equality means to them. For example there can be different definitions of gender equality (<https://marriott-stats.com/nigels-blog/why-the-nhs-holds-back-gender-equality/>), ranging from women and men having no barriers to work in the roles they desire, or being paid the same for the same role, or having an equal ratio of men to women in the sector or a company. It is important for each employer to be clear on what measures of ‘equality’ should be used as performance indicators.

It would be helpful for employers to document what they have tried that does and does not work, to share these learnings so that employers can learn from each other.

It is also important to consider the context and the perspectives and desires of the people behind the numbers – for example, for some individuals with disabilities, securing or remaining in work might be the priority rather than focussing on progression. More people with disabilities in work could translate to a larger disability pay gap, but closing the disability *employment* gap (which is large in the UK) may be more important than focusing on the *pay* gap.

If employers are to be required to develop action plans, it is important that the government provides clear guidance to ensure that the planned action is appropriate.

### **Additional reporting requirements for public bodies**

**Question 13. Do you agree or disagree that public bodies should also have to report on pay differences between ethnic groups by grade and/or salary bands?** (*Strongly agree; **Somewhat agree**; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don’t know or unsure*)

**Question 14. Do you agree or disagree that public bodies should also have to report on recruitment, retention and progression by ethnicity?** (*Strongly agree; **Somewhat agree**; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don’t know or unsure*)

**Question 15. If public bodies have to report on recruitment, retention and progression by ethnicity, what data do you think they should have to report?**

**Question 16. Do you agree or disagree that public bodies should have to report on pay differences between disabled and non disabled employees, by grade and/or salary bands?** (*Strongly agree; **Somewhat agree**; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don’t know or unsure*)



**Question 17. Do you agree or disagree that public bodies should have to report on recruitment, retention and progression by disability?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Question 18. If public bodies have to report on recruitment, retention and progression by disability, what data do you think they should have to report?**

**Please add any comments you have about additional requirements for public bodies.**

This information could shed light on employment and progression gaps as well as pay gaps. This is especially important for disability reporting, where a pertinent focus may be on closing employment gaps.

### **Dates and deadlines**

**Question 19. Do you agree or disagree that ethnicity pay gap reporting should have the same reporting dates as gender pay gap reporting?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Question 20. Do you agree or disagree that disability pay gap reporting should have the same reporting dates as gender pay gap reporting?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Question 21. Do you agree or disagree that ethnicity pay gap data should be reported online in a similar way to the gender pay gap service?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Question 22. Do you agree or disagree that disability pay gap data should be reported online in a similar way to the gender pay gap service?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Please add any comments you have about the proposals for dates and deadlines and online reporting.**

We urge the government to improve the pay reporting portal. Inclusion of 'sanity checks' to help catch errors would be helpful – for example we have heard reports of employers entering pay quarter data the wrong way around (ie mixing up top vs bottom quarter). This is especially important as ethnicity and disability data will be more complex (eg with more categories and missing data) than gender pay gap data. An overview of errors and helpful error-catching suggestions can be found here: <https://www.linkedin.com/pulse/what-happened-gender-sharp-analysis-issues-surrounding-gpgr-yd9je/>.



### **Enforcement**

**Question 23. Do you agree or disagree that ethnicity pay gap reporting should have the same enforcement policy as gender pay gap reporting?** (*Strongly agree; **Somewhat agree**; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Question 24. Do you agree or disagree that disability pay gap reporting should have the same enforcement policy as gender pay gap reporting?** (*Strongly agree; **Somewhat agree**; Neither agree nor disagree; Somewhat disagree; Strongly disagree; Don't know or unsure*)

**Please add any comments you have about the proposals for enforcement.**

The same treatment for the various types of pay gap reporting is necessary to ensure consistency and fairness, in line with sound statistical practice. However, we have not seen efforts to correct erroneous pay gap data in the public domain and we would like to see this.

### **Ethnicity: data collection and calculations**

**Question 25. Do you agree or disagree that large employers should collect ethnicity data using the GSS harmonised standards for ethnicity?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; **Somewhat disagree**; Strongly disagree; Don't know or unsure*)

**Please add any comments you have about the proposals for ethnicity data collection.**

We see the merits of using the GSS harmonised standards for ethnicity, as this allows consistency with other data, and GSS harmonised standards for ethnicity have been developed through consultation and testing. However, we would also encourage consideration of race pay gap reporting as per the Equality Act 2010 definitions. This would be in line with claims that can be brought – against race discrimination – and would also be in line with disability pay gap reporting. Additionally, non-British staff may view ethnicity differently to the way it is set out in the GSS standards, and may have difficulty identifying. This could lead to a lower response rate in this group. Asking questions in terms of race (White or not White) and nationality (British or not British) could help address this.

We also encourage consideration of whether flexibility is needed in how employers choose to ask their employees about ethnicity and collect this data. Different categories may be pertinent depending on the demographics of an organisation (for example, using a specific category for 'white-Polish' rather than just 'white-other' may provide useful insights in an organisation with a large proportion of this demographic, but not in other organisations). Flexibility in how questions are asked may allow employers to tailor categories to better reflect how individuals identify. We do not recommend like-for-like comparisons between employers

(as external factors eg local demographics influence ethnicity pay gaps), but if a consistent metric is chosen in order to allow this, we recommend a tailored approach, *in addition*, to allow employers to gain important insights into their workforce. Organisations should then use the same categorisation consistently year-on-year to enable tracking of progress.

### **Calculating and reporting ethnicity pay gaps**

**Question 26. Do you agree or disagree that all large employers should report ethnicity pay gap measures using one of the binary classifications as a minimum?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; **Strongly disagree**; Don't know or unsure*)

**Question 27. Do you agree or disagree that there should be at least 10 employees in each ethnic group being reported on? This would avoid disclosing information about individual employees.** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; **Strongly disagree**; Don't know or unsure*)

**Question 28. Do you agree or disagree that employers should use the ONS guidance on ethnicity data to aggregate ethnic groups? This would help protect their employees' confidentiality.** (*Strongly agree; Somewhat agree; Neither agree nor disagree; **Somewhat disagree**; Strongly disagree; Don't know or unsure*)

**Please add any comments you have about the proposals for calculating and reporting ethnicity pay gaps.**

On binary classifications – gender is defined as binary in the 2017 gender pay gap reporting regulations and the Supreme Court has recently ruled that this refers to sex. Employers know employees' sex for tax reasons. However, this is not the case for ethnicity – where employers do not already know this information and employees have the right to refuse to provide it. This means that ethnicity data will be trinary, not binary, as a minimum, as there will be an 'unknown' category eg 'ethnic majority', 'ethnic minority', 'unknown'. We also caution against including too many categories and pay gaps (eg 5 categories leads to 10 pay gaps to report), as this can overload employers and become statistically meaningless to users of the data.

On the minimum number of employees in a category to be reported on – we are pleased that efforts are being made to follow good practice in official statistics and avoid individual disclosure. We agree that a lower limit of 10 people per category is acceptable when the data is to be used by analysts and statisticians and, if put into the public domain in reports written by statisticians, will be accompanied by explanations. For example, the ONS estimates of UK pay gaps highlight that pay gaps where one category has 25 or less people are unreliable.



However, we have concerns in this instance, as pay gap statistics are often calculated and interpreted by people without statistical expertise, and are put into the public domain without accompanying explanations from statistical experts. People interpreting pay gap reporting (employers and other users of data) are less likely to have a strong statistical background and therefore it may be pertinent to have a larger number of people (eg 50) in each category to be able to report. This could help avoid conclusions being made on unsuitably small sample sizes.

The RSS has previously (2019) called for categories with less than 100 people in them to be flagged as unreliable in gender pay gap reporting: [https://rss.org.uk/news-publication/news-publications/2019/general-news-\(1\)/rss-releases-ten-recommendations-for-gender-pay-ga/](https://rss.org.uk/news-publication/news-publications/2019/general-news-(1)/rss-releases-ten-recommendations-for-gender-pay-ga/). However, we realise that this is a large number in the context of ethnicity and disability reporting, which is why we believe that the threshold could be lowered to 50 to still enable insights to be gathered. We recommend explanation being published alongside figures to flag where sample sizes are small.

We stress that we encourage employers to analyse the data available to them, including categories with less than 50 people, to gather as detailed insight into different groups as possible – but we believe that by placing a limit on which information is reported in the public domain we can convey the unreliability of information depending on small groups and can stop firm conclusions being made on the basis of this data in the public domain.

On aggregation – we strongly agree with the proposal to aggregate ethnicity categories to meet minimum sample sizes. We understand why following the ONS guidance on aggregating ethnic groups has been suggested, as this follows good practice established in official statistics and allows for comparability between employers. However, we have concerns about this and strongly caution against a sole focus on comparability (and enabling league table-type comparisons) in this instance. Like-for-like comparisons, without surrounding narrative, are not possible in this area, as workforce ethnicity is highly dependent on local demographics – for example whether a company has offices in London or not. Employers in areas with different demographics will be working towards different goals.

We recommend a degree of employer flexibility on how to ask employees for their ethnicity and disability, which categories to use and which aggregations of small categories to be used. This could enable employers to gain greater insight into their pay gaps, and could allow employers to use categories of ethnicity that resonate with their employees. For example, non-British staff may view ethnicity differently to the way it is set out in the GSS standards, and may have difficulty identifying.

**Question 29. Is there anything else you want to tell us about ethnicity pay gap reporting?**

#### **Disability: data collection and calculations**

**Question 30. Do you agree or disagree with using the ‘binary’ approach (comparing the pay of disabled and non-disabled employees) to report disability pay gap data?** (*Strongly agree; Somewhat agree; Neither agree nor disagree; Somewhat disagree; **Strongly disagree**; Don’t know or unsure*)

**Question 31. Do you have any feedback on our proposal to use the Equality Act 2010 definition of ‘disability’ for pay gap reporting?**

We agree with using the Equality Act definition – it should resonate across organisations, and has been developed with consultation and detailed scrutiny. It could also allow consistency and comparability with other data (though we do not recommend directly comparing employers as the nature of work [different across sectors/organisations] can impact disability employment gap).

It is quite a broad definition – covering eg someone with a long (eg two year) recovery from cancer as well as someone registered blind. People included in this definition may not identify as disabled, but we recognise that a common definition can be helpful for employers in terms of their duty of care to their employees.

We think it would also be insightful to collect data on subcategories of disability. Collecting data around the type of adjustments needed (rather than the type of impairment) could help employers know what support to offer. This could include 4 options – no adjustments; structural adjustments to the workplace environment (eg lift or lighting); technical support (eg assistive technology such as large print screens); personal assistance (eg sign language interpreter, guide dog). This may also be less intrusive to answer for employees than describing their disability, and may help people who do not identify as ‘disabled’ to see how answering this question could benefit them.

**Question 32. Do you agree or disagree that there should be at least 10 employees in each group being compared (for example, disabled and non-disabled employees)? This would avoid disclosing information about individual employees.** (*Strongly agree; Somewhat agree; Neither agree nor disagree; **Somewhat disagree**; Strongly disagree; Don’t know or unsure*)

**Please add any comments you have about the proposals for disability data collection and calculations.**

On binary classifications – gender is defined as binary in the 2017 gender pay gap reporting regulations and the Supreme Court has recently ruled that this refers to sex. Employers know employees’ sex for tax reasons. However, this is not the case for disability – where employers do not already know this information and employees have the right to refuse to provide it. This means that data will be trinary, not binary, as a minimum, as there will be an ‘unknown’ category.





On the minimum number of employees in a category to be reported on – we are pleased that efforts are being made to follow good practice in official statistics and avoid individual disclosure. We agree that a lower limit of 10 people per category is acceptable when the data is to be used by analysts and statisticians and, if put into the public domain, will be accompanied by explanations. For example, the ONS estimates of UK pay gaps highlight that pay gaps where one category has 25 or less people are unreliable.

However, we have concerns in this instance, as pay gap statistics are often calculated and interpreted by people without statistical expertise, and are put into the public domain without accompanying explanations from statistical experts. People interpreting pay gap reporting (employers and other users of data) are likely to have less of a statistical background and therefore it may be pertinent to have a larger number of people (eg 50) in each category to be able to report. This could help avoid conclusions being made on unsuitably small sample sizes.

The RSS has previously (2019) called for categories with less than 100 people in them to be flagged as unreliable in gender pay gap reporting: [https://rss.org.uk/news-publication/news-publications/2019/general-news-\(1\)/rss-releases-ten-recommendations-for-gender-pay-ga/](https://rss.org.uk/news-publication/news-publications/2019/general-news-(1)/rss-releases-ten-recommendations-for-gender-pay-ga/). However, we realise that this is a large number in the context of ethnicity and disability reporting, which is why we believe that the threshold could be lowered to 50 to still enable insights to be gathered. We recommend explanation being published alongside figures to flag where sample sizes are small.

We stress that we encourage employers to analyse the data available to them, including categories with less than 50 people, to gather as detailed insight into different groups as possible – but we believe that by placing a limit on which information is reported in the public domain we can convey the unreliability of information depending on small groups and can stop firm conclusions being made on the basis of this data in the public domain.

We recommend a degree of employer flexibility on how to ask employees for their ethnicity and disability, which categories to use and which aggregations of small categories to be used. This could enable employers to gain greater insight into their pay gaps.

**Question 33. Is there anything else you want to tell us about disability pay gap reporting?**

### **About you or your organisation**

**Question 34. Which of the following are you responding as?**

- An employer or business- For example, employers who would usually be responding with views because the proposals might impact them, or the organisation might be in a position where they need to implement ethnicity and disability pay gap reporting either now or in the future.
- An organisation or network that represents either employers, employees or both  
This option covers responses by representative organisations or networks, for example trades unions. If your organisations want to provide an additional view as an employer you should complete a second response.
- **Another organisation - For example, organisations such as charities or Disabled People's Organisations who, despite being employers in some cases, may wish to respond in a different capacity. Research organisations with an academic interest in pay gap reporting and equal pay may also wish to respond under this option.**
- An individual - this might be people who are employees in organisations that might implement the proposals, or other people who have general views about the proposals. You may be responding on behalf of an employer or organisation, but also want to submit a second response reflecting your personal views.

**Question 35. Please provide your organisation's name**

The Royal Statistical Society

**Question 36. Please tell us about your interest in this consultation**

The Royal Statistical Society is a professional body for statisticians and data scientists and also a charity, aiming for data to be at the heart of decision-making. Statistics is inherent to pay gap reporting and the Royal Statistical Society wants data to be used correctly and for public good.

**Question 37. How many people does your response represent?**

- 1 to 24
- 25 to 249
- 250 to 999
- **1,000 or more**

**Question 38. Where does your organisation operate?**

- England
- Northern Ireland
- Scotland

- Wales
- England and Wales
- Great Britain (England, Wales and Scotland)
- UK (England, Wales, Scotland and Northern Ireland)
- International (UK and other countries)
- **Other (please specify):** The RSS operates in the UK and has members internationally.

**Question 39. What sector is your organisation based in?**

- Public sector
- Private sector
- **Voluntary sector (e.g. charity or a not-for-profit organisation)**
- Other (please specify):

**Question 40. What type of organisation are you?**

- Disabled people led organisation
- Disability charity or organisation
- Disabled staff network
- Ethnic minority organisation
- Ethnicity staff network
- Trade union
- **Other (please specify):** professional body for statisticians and data scientists

**Question 41. What industry is your organisation based in?**

- Agriculture and forestry
- Construction
- Education and research
- Energy and mining
- Entertainment
- Finance and banking
- Health and social care
- Hospitality and retail
- Information technology
- Legal
- Leisure and tourism
- Manufacturing



- Public sector
- Recruitment and human resources
- Transportation and logistics
- **Other (please specify):** professional body for statisticians and data scientists with members across many industries

**Question 42. What is your role in the organisation?**

- CEO or equivalent
- Head of employer network
- HR professional
- Diversity and Inclusion professional
- **Other (please specify):** Campaigns and Policy Manager

