GENDER PAY GAP REPORTING
REFLECTIONS ON A GAP YEAR

Monica Kurnatowska and Paul Harrison of Baker McKenzie look back at the first year of gender pay gap reporting.

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (*SI 2017/172*) (2017 Regulations) came into force on 5 April 2017 and required all employers with 250 or more employees to publish details of their 2017 gender pay gap by 4 April 2018.

This article:

- Looks back at the first reporting year and reflects on what has been learned.
- Explores some of the latest thinking on the causes of the gap and what can be done to narrow it.
- Considers the international context and potential future developments.

The article focuses on the private sector, although public sector organisations were also required to report their gender pay gap.

LEGAL REQUIREMENTS

The 2017 Regulations set out the information to be reported, how it is to be calculated, where it must be published and who must sign it off as accurate (*see feature article "Gender pay gap reporting: planning for a gap year", www.practicallaw.com/9-639-0989*) (*see box "Summary of the reporting requirements"*).

The key requirements of the 2017 Regulations are that employers must:

- Compare the average hourly rate of pay of women to that of men in aggregate, that is, across the whole organisation. The comparison is between the average woman in the organisation and the average man. It is not a comparison between employees who do similar jobs.
- Make a separate calculation of the average gap in bonus pay.
- Rank employees in order of hourly pay, then split them into four equal groups and report on the percentage of women compared to men in each of the four pay quartiles. This reveals the distribution of women within an organisation's pay scales.
- Submit the data to a central government website, where they are made available for public use, and display them on the organisation's website where they must be kept for three years (*www.gov.uk/report-gender-pay-gap-data*).

Timing of reports

Employers were required to publish their first year's data between 5 April 2017 and 4 April 2018. Most employers waited until the

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end of the reporting year before publishing their data, with half of all employers publishing in the final week, according to the BBC's final analysis (*www.bbc.co.uk/news/business-43668187*). It appears that many organisations reported later than they had originally planned. This may have been caused by the intense media scrutiny and negative publicity surrounding the earliest reports (*see "Public reaction" below*) but for some there were also challenges in ironing out anomalies in the data. Surprisingly, around 1,500 employers missed the deadline, many of which then filed late reports (*see "Non-compliance" below*).

Summary of the reporting requirements

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (*SI 2017/172*) require employers to publish six different metrics:

- The percentage difference in the mean and median hourly pay of women compared to the mean and median hourly pay of men. Employers must base the calculation on hourly pay rates over the employer's pay period (for example, a pay week or month) which includes 5 April each year.
- The percentage difference in the mean and median bonus paid to women compared to men, based on all bonuses paid in the 12 months up to 5 April each year.
- The percentage of men and women who received a bonus.
- The percentage of women and men in each pay quartile. Employers must rank employees in order of hourly pay, then split them into four equal groups and report on the percentage of women compared to men at each of the four pay quartiles.

Hourly pay is widely defined to include all pay and allowances, and even a pro-rated portion of any bonus which is paid in the relevant pay period. However, it does not include overtime or the value of benefits in kind.

Bonus includes income from shares as well as cash bonuses and commission.

The published data must include consultants with personal work contracts where the employer has, or can reasonably obtain, the data for them, but not members of a legal partnership.

Employers must upload these metrics to a government website, where the public can search for data relating to individual companies and to companies within identified sectors (*https://gender-pay-gap.service.gov.uk/Viewing/search-results*). Employers must also publish the metrics on their own website and retain them for three years so that trends can be identified.

The data must be signed off as accurate by a director, or the equivalent in organisations that are not companies.

THE DATA

According to an analysis by the Financial Times, published shortly after the deadline, 78% of employers publishing gender pay gap reports had a pay gap in favour of men and the median gap in median hourly pay was 9.7% (*available to subscribers at www.ft.com/content/896928e4-3897-11e8-8b98-2f31af407cc8*).

Baker McKenzie has carried out an analysis of the gender pay gaps published by FTSE 100 companies, where the median gap in median hourly pay is 14.6%. Average gaps published by all companies varied by size (*see box "Average published gaps in hourly pay by company size"*).

These figures all show the "average of averages" and do not reflect the underlying individual data, nor do they reflect data from most companies with fewer than 250 employees. They should not be taken as an alternative assessment of the national median gender pay gap in the UK economy as a whole, which is currently 18.4% according to the Office for National Statistics. However, these figures may nonetheless be valuable for employers that wish to know whether their own gender pay gap figures are above or below the average published gap.

Unsurprisingly, pay gaps vary considerably by sector. The construction, finance and insurance sectors had the largest gaps, whereas health, accommodation and food had the lowest (*www.bbc.co.uk/news/business-43668187*).

Within each sector, it had been anticipated that it might be easier to draw comparisons, and that new norms and benchmarks would begin to emerge. However, in reality, meaningful comparisons between individual organisations are proving hard to draw. This is mainly because an organisation's gender pay gap is heavily influenced by the profile of the workforce it has in Great Britain, and will therefore depend on the nature of the business activities that it carries out in Great Britain, whether it has its head office here and the extent to which it has outsourced or offshored functions such as manufacturing or support services.

The gender pay gap is also influenced by an organisation's group structure: some groups with multiple entities chose to report for all entities in Great Britain regardless of size, while others chose only to report those entities actually in scope. It is particularly hard to make comparisons between large multinationals with very diverse businesses and while there are some similarities within sectors, many large organisations do not fit neatly into a single sector.

Bonus gaps also varied by sector. As widely predicted, the bonus gaps were high among investment banks, with bonus gaps exceeding 50% being typical.

COMPANY REPORTS

The 2017 Regulations require organisations to publish details of their gender pay gap in two places: the central government website and their own website. While the government displays only the raw data, organisations can

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publish a fuller report on their own website. Typically, leading organisations invested significant time in building the reports that they published on their own websites. Baker McKenzie has tracked and analysed reports from over 180 leading private sector organisations across different sectors and including the FTSE 100.

Key drivers of the gap

The vast majority of the organisations whose reports Baker McKenzie analysed commented on how their gender pay gap reflected the under-representation of women in technical roles (for example, those requiring science, technology, engineering and maths (STEM) qualifications) or in senior leadership positions, or both. The higher proportion of men in higher-paid and more senior roles became a near-universal theme running through the published reports.

The pay quartile data tended to support this, typically showing the lower proportion of women in the higher pay quartiles compared to the lower pay quartiles. In some organisations this was particularly stark; one of the larger gaps was reported by Phase Eight with almost exclusively female store workers and a handful of men in senior headquarters roles. The reverse was sometimes true in organisations with a large body of predominantly male workers in certain functional roles; for example, Diageo Great Britain's median hourly pay gap in favour of women was attributed to the higher proportion of men in field sales and manufacturing roles.

Distorting effect

The 2017 Regulations contain some quirks (*for background, see feature article "Gender pay gap reporting: planning for a gap year", www.practicallaw.com/9-639-0989*). These include:

- The treatment of salary sacrifice schemes. Employers must base the hourly pay calculation on the employee's post-sacrifice pay, which is arguably an unfair approach since it overlooks the potential for employees to make different choices over how much salary to swap for benefits.

- Bonuses showing up in hourly pay. The hourly pay calculation includes a portion of any bonus paid in the relevant pay period, which has the potential to distort the data.

Average published gaps in hourly pay by company size

Company size (number of employees)	Mean (%)	Median (%)
Fewer than 250	11.2	8.8
250-499	14.3	10.2
500-999	13	9.1
1,000-4,999	12.4	8.2
5,000-19,999	13.8	8.7
20,000 or more	12.2	5.1

Average gaps are based on data available on 25 April 2018 from the government's gender pay gap reporting website (*https://gender-pay-gap.service.gov.uk/*).

- Bonus pay calculation. The calculation ignores the impact of part-time working and arguably penalises employers that have positively encouraged greater flexibility. It also brings in any bonus paid in the relevant 12-month period, even if it relates to an earlier period of time.

A number of organisations commented on how their data were skewed by the calculation approach required by the 2017 Regulations. For example, 3M explained how its hourly rate gap was skewed by the exercising of stock options within the relevant pay period. Some also observed that their female employees sacrifice a higher proportion of their salary for employee benefits, and Johnson Matthey disclosed that its median pay gap before employees voluntarily participated in its benefit plans by way of salary sacrifice was almost 5% lower than its post-sacrifice pay gap.

The requirement to include unadjusted bonus figures for part-time workers (that is, without adjusting them to full-time equivalent figures) came up repeatedly as an issue, with many organisations providing additional data to show how great an impact this had on their analysis. For example, the Bank of England pointed out that, if adjusted and worked out on a full-time basis, its mean bonus gap would have reduced from 23.6% to 17%. BT similarly stated that if it adjusted for part-time workers, its median bonus gap would have reduced from 11.2% to 3.5%. Tesco, Next and TSB all made similar points.

Areas of uncertainty

The 2017 Regulations also contain areas of uncertainty. Some of these are addressed in the joint guidance published by Acas and the Government Equalities Office (the joint guidance) (*www.acas.org.uk/index.aspx?articleid=5768*). The joint guidance was revised following its initial publication and the revised joint guidance deals with a number of issues which had not been covered in the previous version, including the treatment of one-off sign-on or retention payments, expatriates on assignment to Great Britain and pension contributions.

Despite the lengthy revised guidance, the requirements of the 2017 Regulations remain unclear in certain respects; for example, how certain types of flexible benefit scheme should be treated. In addition, there are some areas where judgment calls need to be taken; for example, in relation to calculating working hours for employees who typically work much longer hours than the basic working hours set out in the contract.

Employers did not tend to share the judgment calls they took on these issues in their published reports. This is unsurprising, since the impact of these issues was typically very small in comparison with, for example, the under-representation of women in senior levels or even the distorting impact of the calculations. Since there is no scope for civil litigation, no case law will emerge on the correct calculation approach, so the various areas of uncertainty are unlikely to be clarified in future. Baker McKenzie's experience of advising on these areas found that organisations tended to err on the side of caution and to steer clear of bold arguments or overly complicated approaches.

Groups of companies

The 2017 Regulations provide for separate reporting for each group company with no obligation for group companies with fewer than 250 employees to report. The revised joint guidance confirmed that groups of companies may wish to volunteer information about the gender pay gap within their overall

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group in addition to the pay analysis for each in-scope company. Groups of companies typically published consolidated data. A few groups decided against doing so, such as Johnson & Johnson, but this tended to be the exception rather than the norm.

A common approach was to publish a single report on the overall gender pay gap across the group with pay analyses for each in-scope entity listed separately, usually at the back of the report; for example, reports published by BAE, AXA, Capita, Centrica, GE, Lloyds Banking Group, National Grid, Pearson, Shell and SSE.

Many groups of companies volunteered additional data relating to individual out-of-scope group companies or included out-of-scope entities in their consolidated figures (*see below*).

Voluntary disclosures

A significant number of organisations went beyond the requirements of the 2017 Regulations and made voluntary disclosures of additional data, such as consolidated figures, data relating to out-of-scope companies or individuals, and more detailed pay data. Overall, the level of voluntary disclosure was striking and indicates that, even if there are pockets of non-compliance by some companies, a substantial number of organisations chose to go beyond the requirements.

Many groups of companies volunteered additional data relating to individual out-of-scope group companies or included out-of-scope entities in their consolidated figures, for example Shell, Novartis, Honeywell and Lendlease. A few organisations volunteered information about out-of-scope employees, such as the BBC which volunteered its median pay gap if employees in Northern Ireland were to be included.

EY and KPMG both disclosed their ethnicity pay gap in addition to the gender pay gap, while Marks and Spencer committed to including ethnicity, disability and age in its pay gap monitoring by 2020.

Towards the end of the reporting year, partnerships came under pressure to volunteer data about their partners as well as employees, even though the 2017 Regulations exclude partners from the calculations. Many partnerships subsequently volunteered their pay gaps if partners were to be included, including all of the "Big Four" accountancy firms.

Some organisations, such as Aviva, Land Securities, Standard Life Aberdeen, Virgin Media and Virgin Money, also provided breakdowns of their gender pay gap by pay quartile. The attraction of publishing this analysis is that it can help to support a statement that the organisation's pay gap is driven by the lack of women in senior roles and not by discrimination between employees at the same level.

A few organisations went further and published in-role gaps for certain roles, such as John Lewis which disclosed a 1.4% gap within its supermarket and sales assistant roles, or provided figures intended to show what the pay gap would be if the impact of job role were stripped out, such as the Bank of England and Marks and Spencer. The few organisations that published these average in-role or adjusted gaps typically disclosed very small gaps. Google may well have gone the furthest in openly explaining how it carries out pay equity analysis to reduce any statistically significant pay gaps in its global workforce to zero.

Equal pay audits

Equal pay audits aim to identify unlawful pay discrimination within an organisation; that is, where women are being paid less than men for doing equal work and this cannot be justified. They can also identify pay differences which are lawful but unfair.

A number of leading organisations mention carrying out an equal pay audit as part of their action plan to help address the gender pay gap. An equal pay audit can be a useful way of identifying any pockets of gender bias, particularly the lingering impact of historic decisions which may have been biased, and any pay practices which adversely affect either gender. They can also provide insight into what actually drives pay within the various employee populations included in the audit, which is often not what an organisation initially predicts to be the key drivers of pay.

Equal pay audits can also help prepare employers for any challenge to their pay practices, which may be more likely as a result of the publicity around the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (*SI 2017/172*), and identify where they should target efforts. However, it is crucial to consider the issue of legal privilege from the outset since, without the protection of legal privilege, equal pay audits may be disclosable in litigation. Employers may ultimately wish to refer to the fact that they have carried out an equal pay audit to show their commitment to equality and back up claims that their pay gap is not driven by discrimination. However, some may wish to begin with a privileged report to understand the risks of publication.

Any shift in the gender pay gap brought about by an equal pay audit is unlikely to be the complete answer but can be achieved more quickly. This is important, given that other initiatives designed to address the representation gap will take much longer to pay off.

PUBLIC REACTION

The earliest gender pay gap reports fell under intense media scrutiny and attracted significant negative publicity. The Financial Times, in particular, reported in December 2017 on the implausibility of some of the data, causing at least one company to recalculate its data several times (*available to subscribers at www.ft.com/content/ad74ba76-d9cb-11e7-a039-c64b1c09b482; see also article published in May 2018 at www.ft.com/content/d5bd26a4-5436-11e8-b24e-cad6aa67e23e, respectively*). As explained above, this may have influenced the timing of the first year's reports.

Two trends

Overall, there were two interesting trends. Firstly, as predicted, there was widespread public confusion between breach of equal pay laws and the gender pay gap as happens when, for example a 20% pay gap is wrongly thought to mean that women are paid 20% less than men for the same job. This confusion was compounded by articles such as those describing a day of the year when women in an organisation effectively stop earning relative to men. In the face of

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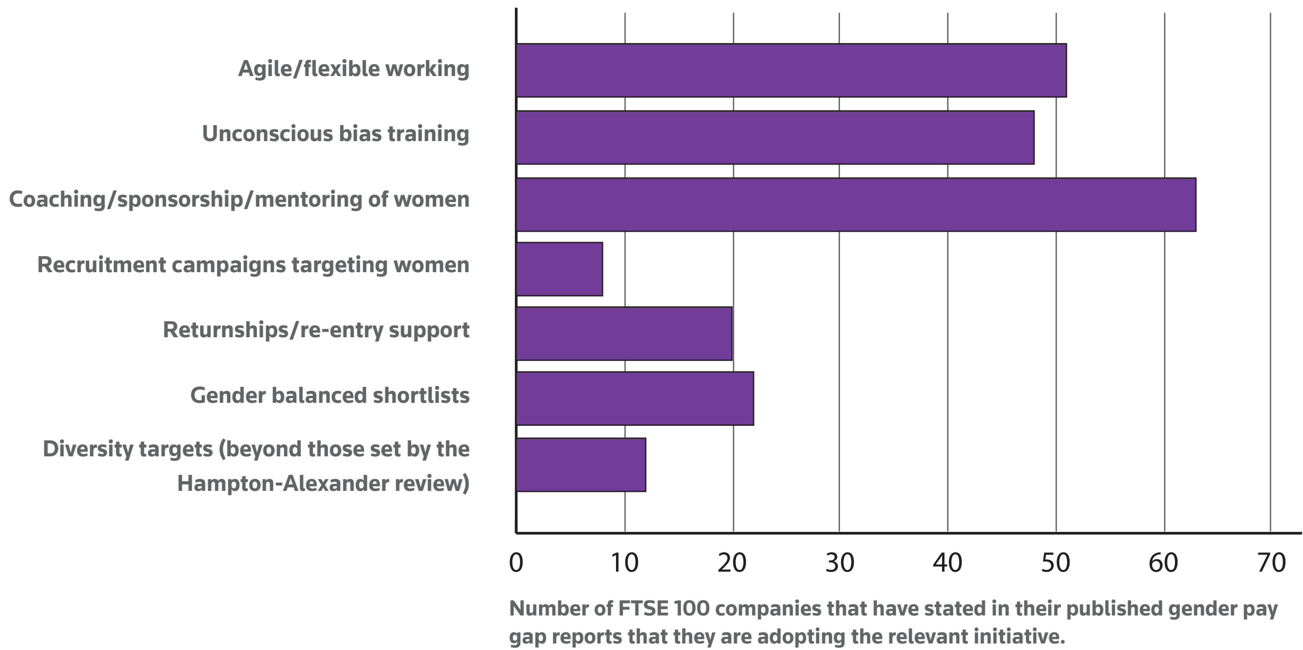
Diversity initiatives in the FTSE 100



Number of FTSE 100 companies that have stated in their published gender pay gap reports that they are adopting the relevant initiative.

this confusion, organisations continued to stress that the gender pay gap is largely a representation gap, and does not mean that they are discriminating against women or paying them less than men performing the same work.

Secondly, as this representation message took hold, there was a growing reaction against it. There appeared to be a shift from the representation gap being regarded as an acceptable explanation of the gender pay gap to being acknowledged as a core part of the challenge. For example, an opinion article published in The Guardian in March 2018 illustrates this shift (*www.theguardian.com/commentisfree/2018/mar/24/gender-pay-gap-figures-inequality*).

Public pressure

Perhaps most importantly, the gender pay gap became a national headline story. This is especially significant because, although it is too soon to assess the long-term impact of the 2017 Regulations, their goal is to achieve change through public pressure. The idea is that employers will take action aimed at reducing their gender pay gap, but the 2017 Regulations do not require them to do so, nor do they stipulate how they might do so. Instead, the 2017 Regulations require that employers be transparent about their existing pay data, with the intention that employers will then come under pressure to take action.

While there has undoubtedly been some confusion over the question of equal pay and gender pay, the media reporting of the gender pay gap has shone a light on some of the causes, and may prompt employees to raise more questions over, for example, their employer's general pay practices or individual decisions about pay or promotion.

CAUSES OF THE GAP

As discussed above, the gender pay gap is largely a representation gap, although discrimination can be one of the contributing causes (*for background, see feature article "Gender pay gap reporting: planning for a gap year", www.practicallaw.com/9-639-0989*). More research into the root causes of the gender pay gap has been published over the first reporting year.

For example, in January 2018, the UK Centre for Economic Policy Research published a paper titled "Children and gender inequality: evidence from Denmark", which explored the root cause of gender inequality in earnings using data for the entire population of Denmark (*https://cepr.org/active/publications/discussion_papers/dp.php?dpno=12594*). The paper concluded that almost all of the current gender gap in earnings is due to having children. The paper showed how having children influences women's choice of occupation, promotion to manager and choice of sector, and how it pulls them towards family-friendly employers, creating a gender gap in earnings of around 20% in the long run. Interestingly, the paper also concluded that a woman's career versus family preferences are transmitted through generations, from parents to daughters, but not to sons.

In its report "Women in the Workplace 2017", published in October 2017, McKinsey & Company explored the recruitment and progression of women in corporate America, based on information from 222 companies employing 12 million people and a survey of over 70,000 employees (*www.mckinsey.com/featured-insights/gender-equality/women-in-the-workplace-2017*). It demonstrated how significant earnings divergence happens within companies as men outpace women in terms of promotion, with the representation of women dropping off at every step and the biggest gap being the first step up to manager. It also demonstrated how women and men are equally likely to leave their jobs but that men are more likely to leave for promotion, as opposed to a job at the same or a lower level. The report concludes that progress in addressing these diversity challenges is slowing, and may even be stalling.

ACTION PLANS

In addition to explaining the key drivers of their gender pay gap and setting it in context, leading organisations typically used their

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gender pay gap reports to set out the action they are taking or planning to take in order to address their gender pay gap or to improve diversity more generally (*see box "Equal pay audits"*). It is striking how much is already being done (*see box "Diversity initiatives in the FTSE 100"*).

Many companies that rely on STEM skills have launched female-focused recruitment initiatives and are investing in programmes that aim to inspire girls and young women into pursuing STEM subjects and to challenge stereotypes. Rolls Royce explained how it has increased the proportion of women in its apprentice and graduate intakes by working alongside schools and universities to encourage women to take up STEM subjects. Interestingly, GKN committed to review the ergonomics of work stations to remove heavy lifting so that manufacturing jobs become more attractive to women. G4S has committed to do more in its recruitment advertising to challenge stereotypical views of careers in the security industry.

Given the latest research on the extent to which parenthood causes the gender pay gap, it is worthwhile considering what organisations are doing to address this. Employers that genuinely appeal to working parents may steal a march on their competitors. Many companies already offer flexible working and generous maternity benefits but workplaces are arguably not optimised for family-friendliness. Some organisations explicitly reported on their efforts to address this. Aviva has recently decided to offer both men and women six months of fully paid parental leave. Lloyd's Banking Group takes the particularly forward-thinking approach of requiring that all new vacancies be advertised in a way that specifies how they can be performed in an agile way and has rolled out agile working training to all managers. Telefonica (O2) has committed to address differences in work-life patterns between men and women, and states that it will encourage more men to take up flexible working.

It is interesting to see how "returnships" are now beginning to emerge; that is, programmes designed to encourage and assist employees who have taken a career break to return to work. For example, Accenture recently launched its leading Break|Through Programme and Goldman Sachs has also expanded its returnship programme globally. To build the evidence base on this type of initiative, in March 2018 the government published a report titled "Employer research on returner programmes" (*https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/694479/Employer_research_on_returner_programmes.pdf*).

It is also interesting to see how leading employers are targeting the issue of recruiting and progressing women into senior positions. A number of organisations have set targets. For example, Channel 4 has set a goal of having a 50:50 gender balance in its top 100 earners by 2023 (currently 66% men and 33% women), SSE aims to increase the number of women earning over £40,000 a year to at least 25% by 2025 and Virgin Media aims to have a 50:50 balance of men and women at all job levels by 2025. Some organisations have gone further and reported that they are operating, or plan to operate, gender-balanced shortlists for senior roles. However, depending on how this is operated, it risks discriminating against male candidates and should be approached with caution.

In September 2017, the Boston Consulting Group (BCG) published some thought-provoking research titled "Proven Measures and Hidden Gems for Improving Gender Diversity" (the BCG report) on the effectiveness of diversity action plans (*www.bcg.com/pt-br/publications/2017/people-organization-behavior-culture-proven-measures-hidden-gems-improving-gender-diversity.aspx*). The BCG report explores which initiatives get results, which initiatives are underrated but highly valued, and which initiatives are unlikely to move the needle. It cautions against only asking a (largely male) senior leadership team about the issues as this may result in some hidden gems being overlooked.

One particularly interesting point from the BCG report is that male leaders typically cited recruiting as the biggest challenge whereas women ranked recruiting as the least important issue, with progression and advancement being the most important. The BCG report also offers some frank views on measures which do not create real change. Here, it contrasts sponsorship and mentorship, pointing out that mentorship is often not effective as it frequently descends into chats over coffee. Crucially, the BCG report also highlights the measures that work at most organisations, including those that involve CEO leadership and men at all levels.

BCG has separately published its reflections on closing the gap between men's and women's retention rates by focusing on the quality of the day-to-day working experience and driving up job satisfaction as a result (*https://hbr.org/2017/05/how-we-closed-the-gap-between-mens-and-womens-retention-rates*). This suggests that organisations should explore the contentment gap as well as focusing on more conventional initiatives.

Actions for employers

Employers should:

- Calculate their second year's data and consider the timing of its publication.
- Focus on how to reduce the gender pay gap in the future, although since the gap is largely a representation gap there are no quick fixes in most cases and progress is likely to be slow.
- Consider an equal pay audit, although this will not solve the gender pay gap by itself.
- Prepare for a drive towards even greater transparency over processes and decisions.
- Seek to stay ahead of global regulatory and investor demands.

NON-COMPLIANCE

Approximately 10,500 employers have now filed their first year's data, including nearly 300 organisations with fewer than 250 employees which have published their data voluntarily. The government originally indicated that around 9,000 employers

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would be in scope. Nonetheless, about 1,500 employers are thought to have missed the 4 April 2018 deadline for reporting their first year's data.

The 2017 Regulations do not contain any civil or criminal penalties for employers that fail to publish their reports or that publish them late. As a result, the 2017 Regulations have been criticised for lacking teeth but, as a government minister stated in the House of Commons Committee debate on the 2017 Regulations, "we feel that competition in sectors, as well as the risk of brand and reputational damage, will drive compliance... Relying on fixed penalties from the outset could encourage some employers simply to pay fines rather than to undertake the necessary pay analysis and do the donkey work in making the proposals work".

There appeared to be something of a crisis of confidence in the effectiveness of the transparency approach in the final weeks of the first reporting year, when a significant proportion of employers had yet to submit their reports. The UK Equality and Human Rights Commission (EHRC) took a robust position, publishing a detailed enforcement strategy shortly before the deadline for the first year's reports and committing to take action against non-compliant employers (*www.equalityhumanrights.com/sites/default/files/gender-pay-gap-enforcing-the-regulations-march-2018.pdf*). The strategy reads as though the EHRC was gearing up to tackle mass non-compliance and, with hindsight, this may have been unnecessary.

There is in fact some debate over whether the EHRC is technically able to invoke its enforcement powers against non-compliant employers. The EHRC has the power to take corrective action over any act which is contrary to a provision of the Equality Act 2010 (the 2010 Act). The 2017 Regulations are made under the 2010 Act, but it is questionable whether a failure to comply with them can be treated as contrary to the 2010 Act.

In any case, the EHRC has confirmed that it wrote to the 1,500 organisations that apparently missed the deadline for reporting, asking them to comply within 28 days or face further action. Many of those organisations have since filed late reports or have satisfied the EHRC that they are not within the scope of the 2017 Regulations. However, the EHRC has announced that it has started formal investigations into around 500 employers. Non-compliant employers also face being named publicly by the EHRC.

The EHRC's published enforcement strategy also states that it has the means to identify employers that submit statistically improbable data and will consider taking enforcement action against them where reasonable. However, it seems unlikely that the EHRC has the resources or intention to subject the data submitted by most employers to any significant degree of scrutiny. At least initially, the focus will be on employers that do not file reports at all.

THE FUTURE

The second year's data must be based on a snapshot taken at 5 April 2018. Some employers will already have calculated their second year's figures but, at any rate, it is now too late to influence them. The deadline for reporting the second year's data is 4 April 2019. Around 150 organisations have already published their second year's data ahead of the deadline (*see box "Actions for employers"*).

Timing of reporting

Organisations that can show a reduction in their gender pay gap may be attracted by the idea of publishing the data sooner rather than later. For organisations where the gap remains the same or has widened, however, the timing of publication is a difficult issue. It may be unattractive to wait until the deadline to publish disappointing results, so there is an argument for publishing quickly. On the other hand, employers that wait until the end of the reporting year may be able to publish their second year's data with an early indication of their third year's results, which may show improvement. In the long run, however, it seems likely that organisations will look to synchronise their gender pay gap reports with their annual reports.

Employee challenges

The media attention on the gender pay gap has started a national conversation and employers can expect their employees to be discussing it. There is likely to be a general drive for even greater transparency, calls for more detailed breakdowns and assurances, and an increase in employees challenging pay or promotion decisions.

As discussed above, much of the national conversation has been about equal pay and pay discrimination. Although the gender pay gap is largely a representation issue rather than an equal pay issue, the media has tended to conflate the two. Employees are being encouraged in national and social media to speak to their colleagues about pay with a view to uncovering potential discrimination. In this context, employers should remember that section 77 of the 2010 Act makes pay secrecy clauses (clauses that ban employees from disclosing salary or bonus details) unenforceable to the extent that they prevent employees exploring the scope for making equal pay claims. Employees may also be more inclined to challenge pay and bonus awards, or ask for more clarity and assurances over how decisions have been reached.

The fact that the gender pay gap is mainly driven by the under-representation of women may now be more widely understood, but this may also prompt employees into challenging decisions. For example, employees may be more inclined to challenge promotion decisions, possibly pointing to the employer's pay quartile data to support arguments that there is a glass ceiling and that women are being out-promoted by men. Employers can also expect that their promotion, pay and bonus award processes will be under greater scrutiny from employees and their representatives.

Political pressure

Political interest in the gender pay gap issue remains high. In March 2018, a cross-party committee of Members of Parliament launched a fair pay inquiry to review compliance with the gender pay gap reporting regulations, along with controls on excessive executive pay (*www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/news-parliament-2017/corporate-governance-pay-launch-17-19/*). Also in March 2018, a different parliamentary committee proposed radical reform of parental leave to encourage more fathers to take time off, pointing out how parental leave and the gender pay gap are closely linked (*www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2017/fathers-and-the-workplace-report-17-19/*).

The government is likely to keep the 2017 Regulations under review and, in the longer term, it may amend some of the calculation requirements that have unfairly distorting effects, in particular the way in which part-time workers are dealt with in the bonus gap calculation. However, change seems

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unlikely in the short term since the rules need to remain consistent in order for meaningful comparisons between the first and subsequent years' data to be drawn. Certainly, there will be no change to the rules for the second year's data, publication of which has already begun.

The 2017 Conservative Party Manifesto stated that a Conservative government would expand the requirements to introduce ethnicity gap reporting for large employers, although this proposal did not make it into the subsequent Queen's Speech and it seems that it is not currently being pursued (*https://s3-eu-west-1.amazonaws.com/2017-manifestos/Conservative+Manifesto+2017.pdf*).

Investor pressure

Investors are also increasingly active in this area, no doubt partly because of the link between diversity and improved corporate performance. Investors may be most active in the US where, in 2017, nearly 30 high-profile companies faced shareholder proposals to disclose the extent of the gender pay gap in their organisation and their plans to close it (*www.ey.com/Publication/vwLUAssets/ey-2017-proxy-season-review/$File/ey-2017-proxy-season-review.pdf*). However, the gender pay gap is emerging as an issue for investors in the UK, where 79 major investors are currently backing the Workforce Disclosure Initiative, which calls on UK FTSE 50 companies and 25 mega-cap multinationals to disclose details of their gender pay gap and their action plan to address it (*https://shareaction.org/wdi/*).

Global employers

The gender pay gap is a global issue and other governments are considering new legislation or building on existing legislation to continue to drive change. Germany recently introduced an individual right of access to pay data of comparable employees, there are proposals for new pay transparency legislation in Canada, and the French government recently revealed plans to fine companies that do not close unjustified pay gaps. In the US, a number of states are prohibiting employers from asking about salary history in an effort to narrow the gap. Regulation on a global scale is likely to increase, and governments and non-governmental organisations around the globe will be keeping a watchful eye on the success of the UK approach. Global employers will need to keep abreast of these developments and consider whether to take a global approach to transparency or to comply with legal obligations on a country-by-country basis.

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