Mind the Gap: Pay Transparency Provisions in the EU

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The European Commission seeks to strengthen the principle of equal pay for work of equal value between men and women through pay transparency and enforcement mechanisms.

It believes that its preferred package of legislative action – to ensure transparency of salary information, strengthened pay reporting, and the implementation and enforcement of the existing legal framework – will deliver threefold benefits.

First, we can expect improved job satisfaction and engagement among workers. Second, employers will enjoy increased employee retention, increased “attractiveness” and profitability. Third, society as a whole will benefit from a higher level and greater perception of equality.

The purpose of this paper is to outline legislation imposed by the UK government to increase awareness and improve pay equality, briefly examine the apparent pitfalls of top-down action plans to reduce gender pay gaps, and show lessons the EU can learn.

Introduction

Pay gap data is hard to calculate and hazardous to interpret. Different versions of the pay gap (between full-time workers, part-time workers, mean, median) will result in different answers and trends.

The pay gap does not result from men and women doing the same job and being paid unequally. In the UK, there has been an Equal Pay Act since 1970 to prevent this. It results in part from men and women doing different jobs, and the consequent gaps in average pay. Most would agree that there are legitimate reasons why some roles will pay more than others, given that they differ in the skills required, the inherent attractiveness or unattractiveness of the work, and the degree of responsibility, among other factors. If women and men do different jobs then pay differentials are inevitable – as there are between any two groups where members have different employment patterns.

Narrow pay gaps are not unequivocally positive. When Germany reunified in 1990, the gender pay gap fell sharply. This was because low-paid women in Eastern Germany lost jobs in large numbers (Hunt, 1997)[1]. Italy has a narrower gap than the UK; but around 20 per cent fewer Italian women aged 15-64 are employed because the high cost of employing low-skilled workers means only relatively highly-skilled and better-paid women are in work.

The official calculation for the UK’s 2020 gender pay gap is at a record low of 7.4 per cent for full-time workers, with a negligible GPG for women aged 22-39 (Office for National Statistics, 2020). The gap increases later in life, with evidence suggesting the bulk of the gap is a result of time taken off to raise children. Vagni (2021) found women who have children earn up to 45 per cent less than those who do not in the six years after the birth of their first child, usually due to working shorter hours, switching to less demanding jobs, missing out on promotion opportunities, or a combination of the three. This is often consciously chosen, and may increase utility, if not pay.

The Gender Pay Gap Reporting Measures

The Gender Pay Gap Regulations came into force in the UK in April 2017. The legislation requires all private and voluntary sector employers with 250 or more employees to publish data on their gender pay gap, the latter defined as ‘the difference between the average earnings of men and women, expressed relative to men’s earnings’.

Large companies are required to publish their pay gap figures every year, by 30 March for public authority employers and by 4 April for businesses and charities. However, enforcement for the reporting year 2019/20 was suspended in March 2020 at the start of the Coronavirus pandemic. For the reporting year 2020/21 all employers have until 5 October 2021 to submit their GPG information and no enforcement action will be taken if they report by then.

The figures, which companies must calculate and report, include:
1) Mean gender pay gap in hourly pay
2) Median gender pay gap in hourly pay

[1] Low paid workers are typically low paid because of low productivity. In the German Democratic Republic low productivity businesses were protected by the planning system; once they had to face market competition, they collapsed.

3) Mean bonus gender pay gap
4) Median bonus gender pay gap
5) Proportion of males and females receiving a bonus payment
6) Proportion of males and females in each pay quartile

The figures for hourly pay, bonuses, and pay quartiles are published as standalone statistics, without context, and are publicly available.

Within a year of the first gender pay gap data filed by companies, mathematically impossible and erroneous reporting had gone uncorrected, with critics claiming a lack of sanctions 'undermined efforts to address pay inequality'[2]. 1,557 companies missed the midnight deadline on 4 April (Gov.uk, 2021).

During discussions of the gender pay gap debate, rarely is the point made that a gender pay gap in favour of women warrants equal attention to one in favour of men.

Comparing GPG reporting to official data

The UK Office for National Statistics headline measure for the gender pay gap is calculated as the difference between median gross hourly earnings (excluding overtime) as a proportion of median gross hourly earnings (excluding overtime) for men.

In April 2017, the ONS gender pay gap based on median hourly earnings for full-time employees decreased to 9.1 per cent, from 9.4 per cent in 2016. It was the lowest since the survey began in 1997.

Yet some of the GPG reporting, published in April 2018, was notably out of line with this data. It revealed both negative gaps and GPGs exceeding 60 per cent (Gov.uk, 2021).

Official data from the ONS then placed the 2018 gender pay gap at 8.6 per cent for full-time workers, in favour of men, and -4.4 per cent for part-time workers, in favour of women. GPG reporting data reported in the second year again ranged from negative gaps to gender pay gaps exceeding 50 per cent.

In that year, 78 per cent of reported median GPGs favoured men, 14 per cent favoured women, and 9 per cent of employers reported a median GPG of exactly 0 per cent (Government Equalities Office, 2019). 88 per cent of reported mean GPGs favoured men, 11 per cent favoured women, and 1 per cent of employers reported a mean GPG of exactly 0 per cent.

Rarely is the point made during the gender pay gap debate that a gender pay gap in favour of women warrants equal attention to one in favour of men. Rarely are we told that negative gaps (gaps in favour of women) must be corrected. It raises the question: what is the ultimate goal of this policy, when so few employers report a mean or median GPG of exactly 0 per cent? If we eliminate all gaps in favour of men, but allow or encourage GPGs in favour of women, is society really, in a meaningful sense, more equal?

Reported GPGs and bonus gaps by gender

The gender pay gap, according to ONS data, has been steadily declining in recent years. By 2020, the gender pay gap had narrowed to 7.4 per cent. Despite the ongoing trend a recent LSE paper has claimed GPG reporting is 'making a difference', with employers affected by the legislation having narrowed the wage gap by 'almost a fifth on average' (Blundell, 2021). The research found that the effect was driven primarily by men at employers who had to report the gender pay gap experiencing slower wage growth than those at comparable organisations not covered by the reporting policy.

Measure	In favour of men	Zero	In favour of women
Median Pay	77.8%	8.6%	13.6%
Mean Pay	87.9%	0.8%	11.4%
Median Bonus	62.1%	20.5%	17.4%
Mean Bonus	75.0%	9.5%	15.5%

Source: gov.uk

Gender Pay Gap reporting issues

Office for National Statistics
The ONS figures are calculated by using the *median* hourly earnings of full-time and part-time workers, which avoids skewing the figures towards a relatively small number of very high earners. Calculating hourly earnings and excluding overtime helps to

[2] 'Lack of sanctions 'makes a mockery' of gender pay gap reports', *The Guardian,* 28 February 2019 (https://www.theguardian.com/society/2019/feb/28/lack-of-sanctions-makes-a-mockery-of-gender-pay-gap-reports).

control for the fact that men tend to work longer hours than women – which is often a contributing factor to the attribution of bonuses.

The ONS is thus able to achieve a more accurate reflection of pay differences. However, the statistical analysis is nonetheless limited, and it certainly cannot be viewed as a measurement of equal pay. This calculation would need to take into account a far wider range of factors: specific education, skill set, contacts etc.

> There is a risk in requiring organisations to publish GPG figures: some relatively blameless organisations could be cast as discriminatory and sexist while others (who actually treat women employees badly) could escape scrutiny due to their employment structure.

No breakdown
Gender Pay Gap Reporting suffers greater limitations. Unlike the ONS figures, it ignores the part-time/full-time distinction. We know that women are more likely to work part-time, and that the average part-time salary tends to be lower. The results are therefore almost guaranteed to show that men earn more.

The reporting measures do not take into account key *specific* differentials such as background, education or degree level. Worse, the statistics being published fail to factor in *broad* differentials such as job, age, or years of experience. Inevitably, therefore, they do not reveal any meaningful information about men and women doing comparable work. They cannot possibly be used to uncover any form of employer discrimination or non-compliance with the Equality Act.

In contrast to the ONS data, GPG reporting publishes bonus calculations without the additional information of 'total hours worked', making it impossible to determine whether the pay disparity is based on discrimination, or the number of hours an employee has worked.

Burdening businesses
That GPG reporting was suspended in 2020 and delayed in 2021 indicates an awareness that collating and publishing the data places a strain on companies. Failure to comply amounts to a breach of the Equality Act 2010 and would therefore open an organisation up to action by the Equality and Human Rights Commission (EHRC).

While sophisticated payroll software may streamline the process, mandatory gender pay gap reporting nonetheless imposes monitoring costs on businesses. To mitigate ill-feeling, many companies may feel the need to put the figures into context for customers, employees and other stakeholders. Indeed, the government strongly encourages it. Time and resource will also be devoted towards devising action plans that a company plans to take to address the gap.

These costs were acknowledged in the 2016 Equalities Impact Assessment (Department for Education – Government Equalities Office, 2016). It found that 'The annual recurring cost to the employers is the time spent by HR managers collating the data and producing the figures, and liaising with the chief executive in the clearance process… Employers may wish to voluntarily develop communications that supplement the figures with narrative to provide some context for the data.' The estimated total annually recurring costs for all employers in scope of the regulation was £3,849,404.

Nonetheless, Baroness Kishwer Falkner, Chair of the Equality and Human Rights Commission, said in February 2021: 'We know businesses are still facing challenging times. Starting our legal process in October strikes the right balance between supporting businesses and enforcing these important regulations' (Equality and Human Rights Commission, 2021).

The unintended consequences of Gender Pay Gap reporting

Misguided conclusions
Cross-country comparisons lay bare the dangers of interpreting GPG data. In 2017, Eurostat revealed that the unadjusted gender pay gap for the UK was over 20 per cent and in Italy just 5 per cent (Eurostat, 2019). But it is the small number of women in the workforce which contributes to Italy's low GPG: because of the high cost of employing low-skilled workers in Italy, female employed is biased towards relatively high-skilled (and better-paid) women (OECD, 2017).

In most companies, the gender pay gap is driven by a complex mix of factors, in particular the under-representation of women in senior or technical roles. That may be driven by a range of reasons, including a lack of career progression and degree or career choices, which gender pay gap reporting will do nothing to solve[3].

'Gaming' the system
The risk in requiring organisations to publish GPG figures is that it will lead to some quite blameless organisations being castigated as discriminatory and sexist, while other organisations (which may actually treat women employees quite badly) will escape scrutiny as characteristics of their employment structure and recruits may produce a low or negative gap.

[3] For instance, 35 per cent of STEM students in higher education in the UK are women. 'Women in STEM | Percentages of Women in STEM Statistics', *STEM WOMEN,* 22 January 2021 (https://www.stemwomen.co.uk/blog/2021/01/women-in-stem-percentages-of-women-in-stem-statistics).

This danger may in turn lead to employers trying to 'game' the situation by, for example, outsourcing unskilled work mainly done by females, or by turning contracted workers into freelancers, or hiring fewer women into junior roles to achieve the closest calculation to a 0 per cent pay gap. Such developments may not be in the interests of those whom policymakers wish to help.

Unfair castigation
The gender pay gap is not the same as a breach of equal pay laws, although a breach of equal pay law will certainly contribute to a gender pay gap. Despite various explainers of these differences, there were multiple examples of the two issues being confused following the publication of GPG reporting.

Following publication of gender pay gap data in 2017, EasyJet was widely demonised for its 45.5 per cent pay gap – the common assumption being made that sex discrimination was rife within the company. The Financial Times claimed that 'female employees… earn just over half what their male colleagues do'[4]. The Huffington Post wrote that EasyJet had the widest pay gap among firms with at least 5,000 employees[5]. That same year, the newly-appointed Chief Executive Johan Lundgren voluntarily took a £34,000 pay cut to match the salary of his predecessor, Carolyn McCall, following criticism over the company's pay gap.

But in both 2017 and 2018, the breakdown of the figures revealed a different story. EasyJet's cabin crew accounted for the majority of jobs within the organisation; of these roles, 71 per cent were held by women, paid a salary of under £24,000 per annum. In comparison, EasyJet pilots (only 5 per cent of whom were women, in line with broader trends in the aviation industry) accounted for 26 per cent of the jobs within the organisation, on an average salary of £98,000 per year. When comparing male and female cabin crew and male and female pilots in their respective roles, EasyJet reported that women earn what their male equivalents earn. It was simply not the case that women were being 'short-changed'.

A dangerous narrative
The Commission claims that the proposed Directive 'contributes to the implementation of the UN Sustainable Development Goals, in particular SDG 5 on achieving gender equality and empowering all women and girls' (United Nations Department of Economic and Social Affairs, 2015).

Publishing GPG data paints women as victims of workplace discrimination, destined never to know equal pay in their working lives. It does girls and young women no favours to infer that, no matter how hard they work or talented they may be, they will never be as successful as men.

Further, a fixation on pay as the only measuring rod of success ignores compensating differentials – which may, in some cases, explain salary differences. There is evidence that other non-pay aspects of work done by women are more attractive than those for men. Women spend less time commuting, are less likely to work unsocial hours, less likely to face physical danger at work and less likely to work outside or in isolated conditions (Joyce, R. and Keiller, A. N., 2018). In 2020-21, men accounted for 97 per cent of all fatal injuries at work (HSE, 2021). Wellbeing surveys suggest that women are on average happier at work[6].

Conclusion

While the GPG among women under the age of 40 is now close to zero, among 40–49-year-olds there is an 11.4 per cent gap, which increases commensurately with age.

A major contributor to the GPG is motherhood: specifically, women taking time out of work to have children and often returning into part-time work. The 'motherhood factor' helps to explain the pay gap increase over the age of 39, especially as women are waiting longer to have their first child.

For many women, motherhood is the priority, as well as different lifestyle choices in general that mean women tend to work fewer hours than men. Regulatory interference will not solve this issue (if "solve" is the right word – different lifestyle choices are perfectly legitimate).

Despite evident flaws, policymakers are coming under pressure to introduce mandatory ethnic pay monitoring along similar lines. This would be subject to many of the same pitfalls as gender pay gap reporting. These calls should be resisted; and gender pay gap reporting tossed onto the post-Covid regulatory bonfire.

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[4] 'EasyJet reveals 45% gender pay gap', *Financial Times,* 27 November 2017 (https://www.ft.com/content/924d86e8-d38a-11e7-8c9a-d9c0a5c8d5c9).
[5] 'EasyJet's Gender Pay Gap Gets Worse Despite Airline Hiring More Female Pilots', *Huffington Post,* 28 March 2019 (https://www.huffingtonpost.co.uk/entry/easyjets-gender-pay-gap-gets-worse-despite-hiring-more-female-pilots_uk_5c9ceb8fe4b03218ee1c37a7).
[6] 'Women surveyed are happier at work than men, despite being paid less', *Personnel Group,* 3 April 2018 (https://www.personalgroup.com/resources/blog/women-surveyed-are-happier-at-work-than-men-despite-being-paid-less).

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