

Government consultation on the Equality (Race and Disability) Bill: mandatory ethnicity and disability pay gap reporting

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) is a trade union and professional association representing over 25,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business leaders and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation. Our response is based on our view as a trade union and the views of our members, obtained through discussions at ASCL Council, with relevant advisory groups, and prompted and unprompted emails and messages.
3. When considering the impact of any proposals on different groups, it is ASCL's policy to consider not only the nine protected characteristics included in the Equality Act 2010, but also other groups which might be disproportionately affected, particularly those who are socio-economically disadvantaged. We have answered any equality impact questions on this basis.

B. Key points

4. As a trade union, we are supportive of the introduction of mandatory ethnicity and disability pay gap reporting, and hope that this will help to make workplaces more inclusive and address equalities issues experienced by employees with disabilities and from ethnic minority backgrounds.

C. Answers to specific questions

Question 1: Do you agree or disagree that large employers should have to report their ethnicity pay gaps?

5. Yes.

Question 2: Do you agree or disagree that large employers should have to report their disability pay gaps?

6. Yes.

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?

7. Yes, it would make sense for the geographical scope to be the same as that of the gender pay gap reporting.

Question 4. Do you agree or disagree that disability pay gap reporting should have the same geographical scope as gender pay gap reporting?

8. Yes, it would make sense for the geographical scope to be the same as that of the gender pay gap reporting.

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?

9. We agree that the same 6 measures should be used.

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?

10. We agree that the same 6 measures should be used.

Question 7: Do you agree or disagree that large employers should have to report on the ethnic breakdown of their workforce?

11. Agree. However, the proportion of employees who chose not to disclose personal data needs to be reported alongside this, as we know that not everyone will feel comfortable, or want, to share this information with their employer.

Question 8: Do you agree or disagree that large employers should have to report on the breakdown of their workforce by disability status?

12. Agree. However, as for Question 7, the proportion of employees who chose not to disclose personal data needs to be reported alongside this, as we know that not everyone will feel comfortable or willing, to share this information with their employer for fear of discrimination¹.

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?

13. Agree, please see answer to Question 7.

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?

14. Agree, please see answer to Question 8.

¹ [Findings of the 2021 to 2022 Disability Workforce Reporting consultation](#)

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?

15. Agree. The government or relevant body should provide guidance and resources to support employers in formulating and producing plans. However, there should be some flexibility in formulating these plans. Employers should involve recognised trade unions and worker representatives; the best ideas will come from existing employees themselves. The lived experience of under-represented groups needs to be heard and acted upon.

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?

16. Agree. The government or relevant body should provide guidance and resources to support employers in formulating and producing plans. However, there should be some flexibility in formulating these plans. Employers should involve recognised trade unions and worker representatives; the best ideas will come from existing employees themselves. The lived experience of under-represented groups needs to be heard and acted upon.

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?

17. Disagree. Due to the large number of salary grades/bands in use in education, and two separate pay systems for teachers and support staff, we think that this could result in small numbers in some categories which may be identifiable or could be statistically small enough to not be reported on. Employers could still carry out this analysis but not be required to publish it. Reporting the breakdown of the workforce by seniority could help to identify where there are issues in representation. This is already collected and reported on for headteachers, so collection arrangements need to ensure that no duplication of work / data collection is carried out.

Question 14: Do you agree or disagree that public bodies should also have to report on recruitment, retention and progression by ethnicity?

18. Neither agree nor disagree. We think that this information would be useful, but again have concerns about reporting smaller numbers and making employees identifiable, or not having meaningful data to report due to not reporting on fewer than ten employees in a category. Again, employers could analyse this information. Additionally, for schools this information could be collected as part of the annual School Workforce Census (SWC). The Department for Education could then publish sector-wide statistics.
19. Data for maintained schools is reported via local authorities as the public body, so this would not be comparable with academy trusts. Collecting via the SWC would allow comparison.
20. Schools, colleges and trusts are covered by the Public Sector Equality Duties (PSED) and as such should already be analysing pay progression by all protected characteristics.

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?

21. Recruitment data could include applications vs appointments. Retention data could look at the proportion of leavers overall, then broken down by the protected characteristics of sex, ethnicity and disability, as this data is not reported on in the gender pay gap reporting.
22. A key piece of data is an employee's reasons for leaving, but employees may be unwilling to disclose this information to an employer in case it impacts on their reference. Pay progression is already covered by the PSED, but potentially something around career progression / promotion could be included.

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?

23. Disagree. Due to the large number of salary grades/bands in use in education, we think that this could result in small numbers in some categories which may be identifiable or could be statistically small enough to not be reported on. Employers could still carry out this analysis but not be required to publish it. Reporting the breakdown of the workforce by seniority could help to identify where there are issues in representation.

Question 17: Do you agree or disagree that public bodies should have to report on recruitment, retention and progression by disability?

24. Neither agree nor disagree. We think this information would be useful but again have concerns about reporting smaller numbers and making employees identifiable or not having meaningful data to report due to not reporting on fewer than ten employees in a category. Again, employers could analyse this information.
25. Additionally, for schools this information could be collected as part of the annual School Workforce Census (SWC) in England, and the School Workforce Annual Census (SWAC) in Wales, and for colleges, via the FE Workforce Staff Data Collection. The Department for Education could then publish sector-wide statistics.
26. Data for maintained schools is reported via local authorities as the public body, so this would not be comparable with academy trusts. Collecting via the SWC would allow comparison.
27. Schools, colleges and trusts are covered by the Public Sector Equality Duties (PSED) and as such should already be analysing pay progression by all protected characteristics.

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?

28. Recruitment data could include applications vs appointments. Retention data could look at the proportion of leavers overall, then broken down by the protected characteristics of sex, ethnicity and disability, as this data is not reported on in the gender pay gap reporting. Pay progression is already covered by the PSED, but potentially something around career progression/promotion could be included.

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?

29. Neither agree nor disagree. It would seem to make sense for all pay gap reporting to have the same reporting dates, but this could create a workload issue for employers. We would suggest an impact assessment be carried out to ascertain what the advantages/disadvantages would be in keeping the same reporting dates compared with having different ones.

Question 20: Do you agree or disagree that disability pay gap reporting should have the same reporting dates as gender pay gap reporting?

30. Neither agree nor disagree. It would seem to make sense for all pay gap reporting to have the same reporting dates, but this could create a workload issue for employers. We would suggest an impact assessment be carried out to ascertain what the advantages/disadvantages would be in keeping the same reporting dates compared with having different ones.

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?

31. Yes, this would seem sensible, especially if was through the same reporting system so that employers did not need to create separate accounts.

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?

32. Yes, this would seem sensible, especially if was through the same reporting system so that employers did not need to create separate accounts.

Enforcement

Question 23: Do you agree or disagree that ethnicity pay gap reporting should have the same enforcement policy as gender pay gap reporting?

33. Agree. Consistency would be sensible where possible and appropriate.

Question 24: Do you agree or disagree that disability pay gap reporting should have the same enforcement policy as gender pay gap reporting?

34. Agree. Consistency would be sensible where possible and appropriate.

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?

35. Neither agree nor disagree. As stated elsewhere in our response, schools, colleges and trusts already submit data via the relevant annual workforce census. A government webpage² explaining how national Census data is used, states the following:

² [How we use Census data](#)

Problems using Census data

Using Census data can be problematic because:

*ethnicity categories are usually updated every Census, so datasets that use the 2001 Census ethnic categories have to be altered so they match more recent categories
population figures for each area only include permanent residents and not visitors*

Example:

In our data on the school teacher workforce, the ethnic groups follow the 2001 Census classification. However, the 2011 Census moved 'Chinese' from the 'Any Other' ethnic group to 'Asian/Asian British'. This means that figures using 2011 Census categories can't be compared with any using 2001 Census categories for 'Any Other' and 'Asian'.

36. This suggests that the data collected in schools in England is based on the ethnic groups from the 2001 Census, but the GSS harmonised standards for ethnicity are based on the 2021 Census data. If this is the case, then we would need to understand what would be proposed for schools and colleges, not only to prevent duplication of work but also to ensure that only one ethnicity category is recorded for each member of staff. So, due to concerns around this, we are unable to agree or disagree with the GSS harmonised standards being used but feel that clarification is needed on this.

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?

37. Agree. One of the binary classifications should be used as a minimum.

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.

38. Agree. There should be at least 10 employees in any group being reported on. This helps to ensure employers comply with General Data Protection Regulations (GDPR) and helps to produce statistically robust data. It may also help give confidence to employees in those groups to disclose information as it is less likely that they will be identifiable. However, where numbers are small, this could mask any issues that do exist.

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.

39. Agree. This would at least allow some form of analysis to take place and may still highlight issues that employers need to address via their action plans.

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

40. There is no consensus of what constitutes an ethnic group. This is something that is subjective, with individuals self-identifying, and can evolve with cultural/religious influences.
41. The ONS guidance is based on data collected for GPES and HES. The negatives of the ONS guidance are that it may not capture cross-demographic data and could be tainted by data from the older demographic, the data may not be consistent in terms of

categories/coding, and individuals may not know how their ethnicity sits within the questions asked and opt not to provide data [using the 'not stated' 'not known' options]. There is also the added difficulty of the environment in which it can be collected. This is all impacting on the quality of the data produced.

42. The positive is that it is self-reported. This links with employees using self-identification when considering their respective ethnic group. It will be difficult to see how there can be a wider coverage of the population when gathering such statistical information.
43. Employers could potentially gather this information through employee surveys post-recruitment stage, created by appropriately trained personnel. This could help develop a culture of inclusivity, leading to employee engagement, though there is a question of how such systems would be resourced.
44. If the ONS guidance was to be used, the government would need to find a way to overcome the issues raised in paragraph 41.

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?

45. We agree with using a 'binary' approach but as referenced earlier in our response, we believe that it would also be helpful to consider those where the data is 'unknown' or 'prefer not to say'.

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

46. In Employment Tribunal (ET) claims the employer usually contests the employee's assertion that they are a disabled person within the legal definition set out in Section 6 of the Equality Act 2010. The issue of disability is usually determined by an Employment Tribunal Judge at a preliminary hearing. Therefore, if the same definition is adopted for the purposes of pay gap reporting, there is a risk of similar difficulties if there is no clear guidance as to when an employee is classed as disabled.
47. There is an added complication that, without clear guidance, employers may not engage in collating data on the condition(s) of an employee that may amount to a disability, to protect themselves from any legal challenge in the ET, where they may defend the claim by denying knowledge of the disability.
48. It is therefore important that the government provides clear guidance for employers to overcome these issues.

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.

49. We agree that there should be at least 10 employees in any group being reported on. This helps to ensure employers comply with General Data Protection Regulations (GDPR) and helps to produce statistically robust data. It may also help give confidence to employees in those groups to disclose information as it is less likely that they will be identifiable. However, where numbers are small, this could mask any issues that do exist.

50. Employers will need to take extra measures to ensure they are GDPR compliant when collecting this sensitive data and review their systems to ensure they appropriately safeguard the data to avoid any adverse impact on an employee's privacy rights.

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

51. Yes. This point applies to both ethnicity pay gap reporting and disability pay gap reporting. Gender pay gap reporting has focused employers not just on ensuring that there isn't direct discrimination related to equal pay for work of equal value, but to go beyond this and look at what they do to enable women to fill more senior positions.

52. In most cases gender pay gaps are as a result of more men filling higher paid roles. Employers who have closed or eliminated the gap have done so by resolving systemic issues of leadership development, fair promotion practices, female role models, flexible working, etc.

53. Introducing pay gap reporting around ethnicity and disability will encourage employers to take similar measures in these two areas. Workplaces will become more inclusive if those working higher paid, more senior positions are reflective of the entire workplace.

54. This would increase visibility of inequitable system behaviours, and of poor and discriminatory recruitment practices, including the use of precarious contracts such as temporary, fixed-term, agency, or zero-hours contracts.

55. We believe that employers should:

- a. Ensure communication across their organisations builds respect for under-represented groups and equitable professionalism. The Reykjavik index 2024³ shows the perception of women leaders is getting worse. It is incumbent upon employers to address this within their organisations.
- b. Ensure access arrangements are tailored to the needs of employees identifying a disability.
- c. Provide training on reasonable adjustments for all staff.

56. There will be an increased administrative burden, but in our view this will be more than offset by the benefits for employers who nurture the talent within their workforce.

57. The budgets of schools (and other public sectors) are already stretched. The government will need to provide resources to support the implementation of any new initiatives.

58. Finally, there needs to be consideration of intersectionality, where employees may fall into multiple categories, to ensure that this is not overlooked.

D. Conclusion

59. We have responded to this consultation on behalf of our members as individuals working as school and college leaders across the UK.

³ [The Reykjavik Index for Leadership](#)

60. Our members also act as agents of the employer who will be responsible for the implementation of these requirements. We know that the education funding crisis has led to reduced workforces and reduced budgets. We are therefore also mindful of the implications on workload of our members from the implementation of government initiatives and new legislation.
61. So, whilst we are supportive of this proposal, it must come with sufficient funding and other government support to ensure that it does not negatively impact school and college budgets or staff workload.
62. I hope that this response is of value to your consultation. ASCL is willing to be further consulted and to assist in any way that it can.

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