



WOMEN AT WORK 2018

ENDERS|ANALYSIS

Enders Analysis

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EXECUTIVE SUMMARY

In 2018, the UK is celebrating the centenary of the Representation of the People Act 1918. Certain women (over 30 and property holders) were granted the right to vote in parliamentary elections, alongside all men over 21. All women over 21 then gained the vote in 1928, making the UK a full parliamentary democracy.

The power of the vote enabled women to join the public policy debate to advance social and economic goals of crucial importance to them. Women were no longer disqualified from standing as an MP (1918) or joining the professions (1919). Removing these legal barriers proved to be just the start.

The advent of free education in the post-war period spread literacy. The option of paid work allowed women to craft their own destinies, despite substantial cultural barriers to doing so, many shared by both men and women. Many of these 'stereotypes' melted away in the second half of the 20th century in the wake of the feminist movement as women challenged the 'same old' and claimed new identities and roles, widening their aspirations.

Legislative milestones include The Equal Pay Act 1970, enshrining the principle of equal pay for work of equal value, and The Sex Discrimination Act 1975 banning gender-related discrimination in the workplace. Other policy enablers include free healthcare, (maternity and now paternity leave), publicly funded childcare and child benefits. Accumulating their effects over many decades now, these policies have fostered rising female labour participation rates, a core driver of the post-war expansion of the UK economy. At the end of 2017, 15 million women were at work, 70% of women of working age.

Women have achieved for three decades the educational goals that should allow them to enjoy similar career paths as men, with the exception of Science, Technology, Engineering and Maths (STEM) skills. The UK has a scarcity of graduates with STEM skills, and public policy is rightly aligned with increasing their number, male or female. Even the women acquiring STEM skills choose other career paths, presumably they will be more rewarding.

The national *gender pay gap* of 14% in 2017 (for full-time workers) points to an imbalance lurking under the surface of a society with apparent 'equal opportunity'. It is on an improving trend, being down 3 pp since 2007. In 2017, the gender pay gap was low for young people, many of whom earn the National Living Wage. Women

at work over 40 today earn on average 15-19% less than their male counterparts. Lifecycle analysis explains part of the full-time pay gap by the arrival of children, when women were more likely than their partners to take time off from work and to return to work part-time.

Most of childcare and household work is still performed by women, a reality that goes to the heart of workplace patterns. Part-time work may be seen as a solution, although those in such positions experience no wage progression and rarely are awarded bonus pay. These gaps in women's work lives dovetail with gaps in training and experience, explaining, but only in part, why women are then less well represented in the 'executive pipeline'.

Like many societies, the UK has yet to reconcile through public policy the competing demands on women of being workers and mothers. There is a wider social issue here, because low rates of maternity compromise population growth, a driver of the UK's natural rate of economic growth. Society as a whole reaps the benefits of countering the drift towards an aging population. Yet women may bear a 'motherhood penalty', whereby employers consider all women to be less desirable employees.

The good news is that, between 2007 and 2017, there was no change in the 30% share of women occupying full-time roles as 'managers, directors and senior officials'. Women have held their share of such positions in a group that has shrunk from 4.3 million to 2.9 million since the 2008-09 recession, as companies shed redundant layers of management.

"For my generation of women in their mid-60s, there were precious few models in business. But the emerging women's movement propelled us on, conscious of, but equally oblivious to, any glass ceilings, making it up as we went along, propelled by our mothers' shattered dreams and therefore thankfully blinkered to all road blocks."

Dame Gail Rebuck,
Penguin Random House

The scarcity of women in the 'executive pipeline' of FTSE companies has been highlighted by the *Hampton-Alexander Review*, successor to the *Davies Review*. The latter piloted a voluntary initiative to put women on boards leading to 27.7% share of women on FTSE100 board positions, compared to 12.5% in 2011. The argument is that businesses are more effective if their boards have a 'diversity' of viewpoints represented. However, almost all women on boards are Non-Executive Directors (NEDs) and just 10% of Executive Directors of the FTSE100 companies were women. The *Hampton-Alexander Review* has the aim of 1 of 3 roles on boards of the FTSE100 being occupied by women by 2020, with more women in the roles of Chair and Executive Director. This goal would be made much easier to achieve with an 'executive pipeline' of female leaders in waiting.

2018 marks a new start for female employees of large employers, including companies listed on the FTSE. All private and public large employers must report their gender and bonus pay gaps. With roughly 9,000 employers to report by early April 2018, just about 1,000 have already submitted. Reports paint a picture already familiar from the national evidence: roughly 30% of management roles are held by women, driving underlying gender and bonus pay gaps. Most leaders promise change.

Although the Equality Act 2010 forbids discrimination in favour of any group (with the exception of disabled people), employers may lawfully take 'positive action' on encouragement, training, recruitment and promotion. The principle is that merit remains the basis for hiring and promotion, but an employer may break a tie between two equally qualified candidates to select the one which is under-represented in the workforce.

Companies in the Creative Industries (CI) will benefit from engaging with these initiatives. They sell creative products and services to audiences across the UK, whose diversity in terms of gender, race or sexual orientation would ideally be reflected in what they read, watch or listen to. Just like other companies, there is a benefit to employers in the CI from releasing the talent of women and making their businesses more effective by ensuring they too are represented in management roles and on boards.

But there is more. Cultural products vehicle stereotypes from one generation to the next, but they also have the potential to challenge and shatter them. In 1792, the first British feminist Mary Wollstonecraft asked why

France's *Declaration of the Rights of Man and of the Citizen* of 1789 meant literally that.¹ Why was 'liberté, égalité, fraternité' denied to the female population?² Today's society-wide soul-searching on the situation of women promises to further cleanse cultural products of stereotypes. The stories told by women will be heard more often.

Creating one's own business is another promising avenue for women. About 20% of the UK's 5.7 million small and medium-sized enterprises (SMEs) are female-led, often dovetailing with self-employment. High levels of connectivity and comfort with e-commerce make Amazon, eBay, Etsy, Facebook and Google important platforms for female entrepreneurs. Digital tools give female entrepreneurs the flexibility to work remotely.

There is untapped potential for women to become much more prominent business owners. For this to happen, women must overcome oft-cited barriers such as lack of self-confidence or missing skills for finance, where networks, role models and mentoring are helpful. A crucial enabler is for UK society to shatter the stereotypes (such as the derogatory 'mumpreneur') that may prevent female entrepreneurs from following their paths to success.

"Today, there is a pervasive myth of perfection – as an executive or as a mother – which often sets up unrealistic internal self-assessment for women. I say to my mentees: be ambitious but remember that to be 'good enough' propels most men."

Dame Gail Rebuck,
Penguin Random House

A WOMAN'S CAREER PATH

STARTING OUT

"When I talk to people starting out in the careers, I always focus on the importance of 'stepping in front of the work' - saying yes to every opportunity, having a voice, building confidence and making yourself visible"

LINDSAY PATTISON, CHIEF TRANSFORMATION OFFICER, WPP



CLIMBING THE LADDER

"When I started out in work it was so long ago that there was a woman prime minister. It was obvious to me that every other boss would be a woman within 5 or 10 years. 30 years later there it is obvious that there are invisible barriers ensuring inequality at work"

SUE UNERMAN, CHIEF TRANSFORMATION OFFICER, MEDIACOM

MOTHERHOOD

"I do recall having my son in his carrier on the conference table when he was about 6 weeks old, but it was during the final stages of the project and he certainly didn't seem to mind!"

KRISTIN DOLAN, FOUNDER & CEO OF 605



HITTING THE GLASS CEILING

"Nearly every woman experiences the Glass Wall at some stage of their career. Meetings they're not included in, or the casual conversations that accelerate careers that they don't participate in"

SUE UNERMAN



BREAKING THROUGH

"When I moved into my first 'C-Suite' role at a Fortune 500 telecommunications company, they supported me with an excellent (female) executive coach who focused on toughening me up a bit"

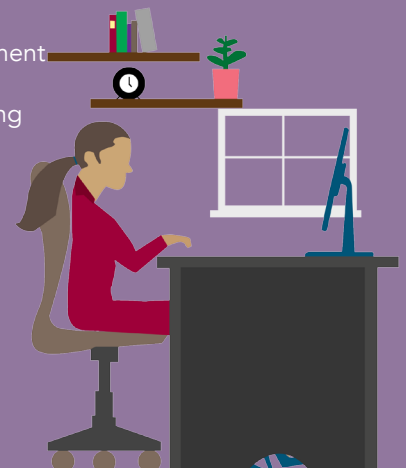
KRISTIN DOLAN



FORGING HER OWN PATH

"I think we should be promoting self-employment as a positive solution to achieving flexible working hours and a work-life balance"

ALISON CORK, ENTREPRENEUR AND FOUNDER OF MAKE IT YOUR BUSINESS



GENDER PAY GAP

OVERVIEW

The partial suffrage in 1918 and the universal suffrage in 1928 opened up the prospect of economic rights being exercised more widely. For women, this meant the opportunity to be independent of the condition of mother and housewife, for which destiny education was considered a wasted expense and even a positive danger.

100 years on, much has changed. Women may still constitute just over half the population of the UK, but they are now more educated than men. More women than ever before are at work: 15 million at the end of 2017, 40% of the workforce.

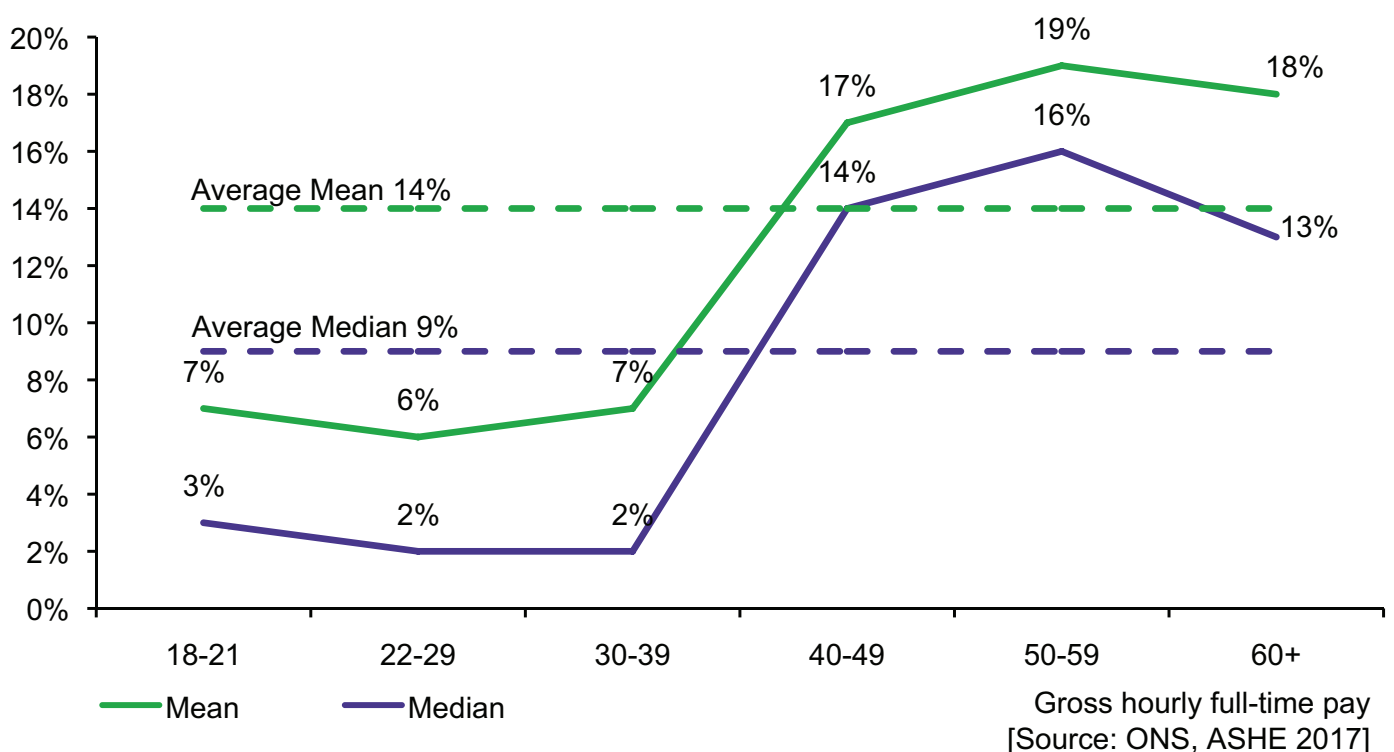
Since measurements began, on average, women have earned less than men in every age band. For those in full-time employment, women earn on average 14% less than men (mean gender pay gap).³ For the average woman, she can expect to earn 9% less than the average man (median gender pay gap). Though neither of these measurements make like-for-like comparisons (needed to compare equal pay for equal work) they do demonstrate a substantial difference, on aggregate, between women's career paths and pay, and men's.

Whether measured at national or company level, the gender pay gap does no more than illuminate whether there is an imbalance in the situation of women in the work force that should be a potential cause for concern.

Even for equally educated men and women, there are perfectly reasonable explanations why women at work may earn less than men. Reflecting the prevalence of 'traditional' roles in the home, women have for decades been more likely than men to take time out from the labour force or assume only part-time work upon the arrival of children. Part-time work has very little wage progression. Missing out on the training, honing of skills and accumulation of experience that leads to management roles may explain why women represented just 31% of 'managers, directors and senior officials' in 2017, the same share as more than a decade ago. Nevertheless, this is still a remarkable outcome when considering that the number of such roles shrank from 4.2 million to 2.9 million as organisations cut redundant layers of management.

Women may also experience workplace discrimination, despite legislative protections. **Pay matters**, because earnings from employment are a key measure of

Mean and median gender pay gap of full-time employees, 2017



career progress and success; and they contribute to a woman's autonomy and security throughout her life. We also believe that organisations are stronger when they actively build awareness of unjustified disparities in pay and promotion, and develop strategies to counter them. This is the opportunity presented to large employers in the UK by the new gender pay gap reporting requirement.

PAY GAP BY AGE AND GEOGRAPHY

The pay gap is low for young people, who are mostly in their first jobs and often are paid the minimum wage. Also significant is the low gender pay gap for women in their 30s. However, women in their 40s earn 14% less than men in terms of gross full-time weekly pay. These women entered the workforce in the 1990s. At 19%, the mean gender pay gap is higher still for women in their 50s, who entered the workforce in the 1980s, as we would expect of a workplace and a division of labour in the household that are informed to such an extent by history. The important goal for women at work is to avoid a repeat of history, over and over.

Examining the work-life balance and wages of men and women that entered the labour force in the early 1990s, the IFS found that women worked fewer hours in total than men over their working lives, mainly due to the arrival of children.⁴ Women take most of their time off from work when children are young, returning to part-time work when children go to school and become less dependent. Women who return to work after a career break earn around 2% less on average for every year

spent out of employment, increasing to 4% less each year for more highly-qualified women.⁵ The earnings reduction, by number of years out of work, accounts for about two thirds of the gender pay gap amongst graduates 20 years after the birth of their first child.⁶

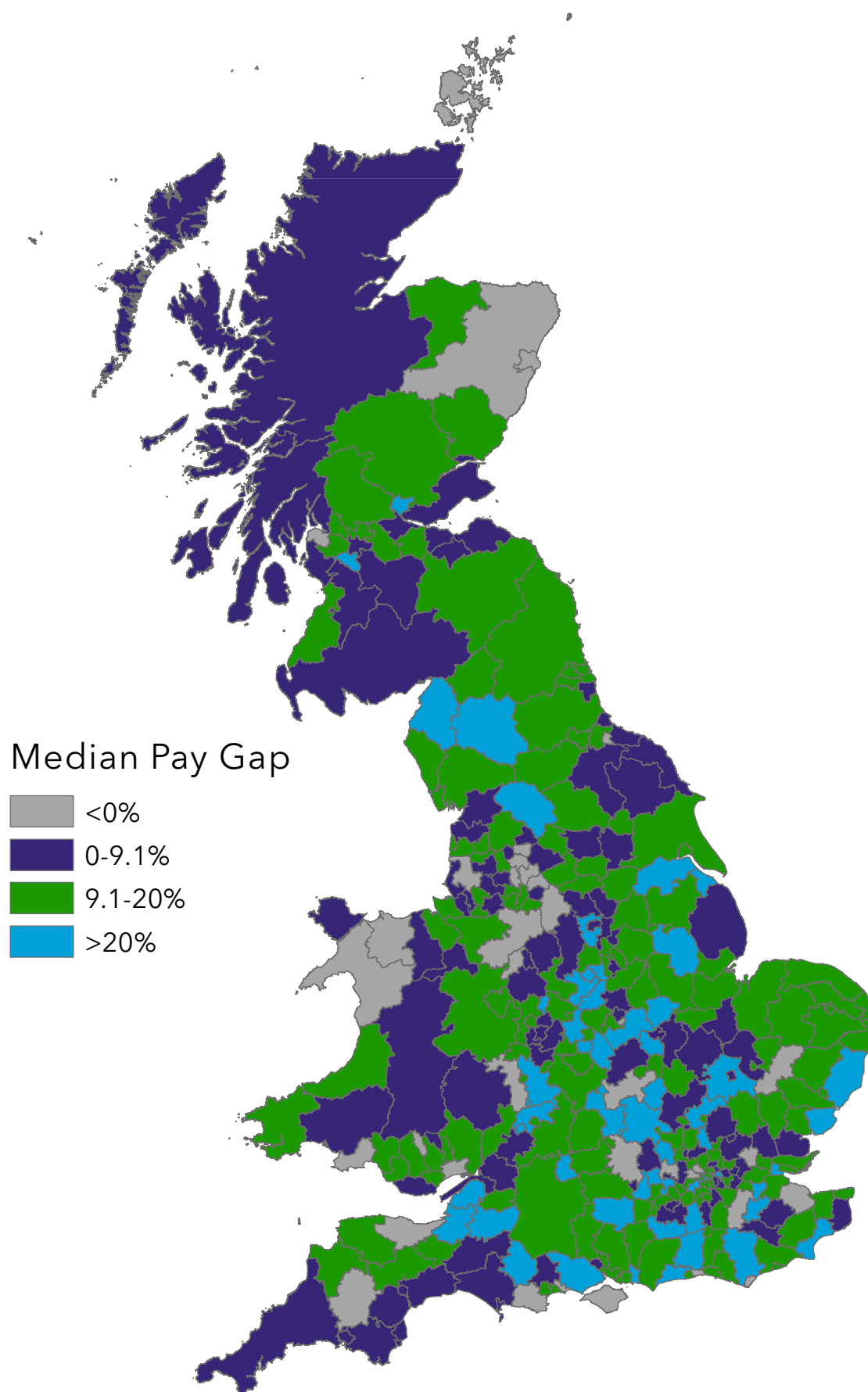
Over the past decade, the median pay gap has declined from 12.5% to 9.1%, but – even though this is the lowest pay gap recorded – the past few years have seen little progress. This is due to a difference by age groups. While the gap for women over 30 has been closing, for women aged 18-21 and 22-29 it has grown slightly, since 2007. The ONS also reports that holding all other factors constant, pay growth was lower for women than it was for men in 2017, and stopped growing for younger women.

There is not only age disparity in the gender pay gap, there is also disparity geographically, as the pay gap varies between a median of – 15% and 36%. Of the 370 local authorities that constitute Great Britain, 147 areas are below the median pay gap of 9.1%, 32 of which even have a negative median pay gap (these areas are predominately rural); yet only 9 areas have negative median *and* mean pay gaps. Whilst certain areas may appear more equal in terms of median earnings, affluent areas (often in the south of England) have a greater proportion of high-earning males which increases the mean pay disparity (e.g. Kensington and Chelsea, where the median pay gap is 21%, but mean is 47%).

Difference in full-time gender pay gaps by age group, 2007 and 2017

	2007		2017		Percentage point change	
	Median	Mean	Median	Mean	Median	Mean
All employees	13%	17%	9%	14%	-3%	-3%
18-21	2%	5%	3%	7%	2%	2%
22-29	0%	3%	2%	6%	2%	2%
30-39	6%	11%	2%	7%	-4%	-4%
40-49	19%	22%	14%	17%	-5%	-5%
50+	18%	21%	16%	19%	-1%	-2%

Gross hourly full-time pay [Source: ONS, ASHE 2007 and 2017]



GENDER GAP IN OCCUPATIONS

One of the largest contributors to the overall gender pay gap is occupation, accounting for 23% of the hourly pay gap according to the ONS. Women tend to work in lower paying jobs, such as secretarial activity or care services (e.g. healthcare, education and not-for-profit). Inversely, the occupations with the highest share of men tend to be higher income (e.g. skilled trades, chief executives). In the past decade, the pay gap has decreased in most occupations, but increased in professional, associate professional and technical occupations, where the share of women is between 30-35%.

A promising development, though, is the fall in the mean and median pay gaps among the UK's 2.9 million full-time 'managers, directors and senior officials' between 2007 and 2017. Note however that these gender pay gap figures do not include bonus pay, typically made to this group of workers. Women accounted for 31% of the group in 2017, the same share as in 2007, so no improvement. However, this is actually quite remarkable when considering the shrinkage in that segment, dropping from 4.3 million in 2007 to 2.9 million in 2017, as companies shed redundant layers of management.

"I think that women are culturally conditioned to take a supporting role rather than forging ahead and taking risk. Until there is a massive cultural shift in the way girls and boys are brought up then we are going to have a problem."

Diane Banks,
Creative industries entrepreneur

Choosing the public sector is also a factor. Men occupy a higher share of jobs in the private sector (58% men) than the public sector (66% women), partly due to the nature of public services. Health and education are primarily female occupations. Across 11 government departments reporting their gender pay gaps in 2017-18,⁷ 61% of workers in the lowest quartile are women, the two middle quartiles saw an almost 50/50 split, and the top quartile was 53% male.⁸ Unlike the private sector, where salaries are more negotiable, the public sector requires equal pay for the same 'job', pay being determined by 'salary bands', within which negotiation is limited. So the pay gap in the public sector (9% across

Difference in full-time gender pay gaps by occupation, 2007 and 2017

	2007		2017		Share of women	Percentage point change	
	Median	Mean	Median	Mean		Median	Mean
All employees	13%	17%	9%	14%	40%	-3%	-3%
Managers, directors and senior officials	23%	26%	15%	18%	31%	-8%	-8%
Professional occupations	3%	9%	11%	15%	45%	8%	6%
Associate professional and technical occupations	9%	14%	12%	15%	38%	3%	1%
Administrative and secretarial occupations	7%	9%	6%	9%	66%	-1%	0.1%
Skilled trades occupations	26%	21%	25%	21%	8%	-1%	-0.4%
Caring, leisure and other service occupations	8%	11%	7%	9%	78%	-1%	-2%
Sales and customer service occupations	6%	7%	4%	7%	49%	-2%	-0.2%
Process, plant and machine operatives	21%	20%	20%	18%	11%	-1%	-2%
Elementary occupations	16%	14%	13%	12%	28%	-4%	-2%

Gross hourly full-time pay, share of full-time employees [Source: ONS, ASHE 2007 and 2017]

these 11 departments) is driven primarily by the lower number of women in executive positions.

MOTHERS AT WORK

The pay gap widens when women reach their mid-30s. As noted above, life cycle analysis indicates that many women take time off to become primary caregivers for children. Some leave the workforce for good, while others return part-time, following maternity leave. The vastly different experience that men and women have of the work-life balance, during parenthood, goes to the root of the gender pay gap among graduates.

Twenty years ago, men with dependant children were more than 1.4 times more likely to be employed than women with dependant children. In 2017, that figure is still 1.25. In the UK, 83.2% of men with dependent children (4.5 million) are in full-time employment. For women, that figure is just 33.9%, meaning there are 1.2 million women who are 'economically inactive' because they are looking after the family at home, and 2.5 million women with dependent children working part time.

When speaking of the 'motherhood penalty', we mean gender stereotypes that employers may apply when recruiting and promoting women, as well as the cost to a mother's career in additional experience, training and salary forgone, due to demands of childcare. Managers, who are often men, may assume that a women has a

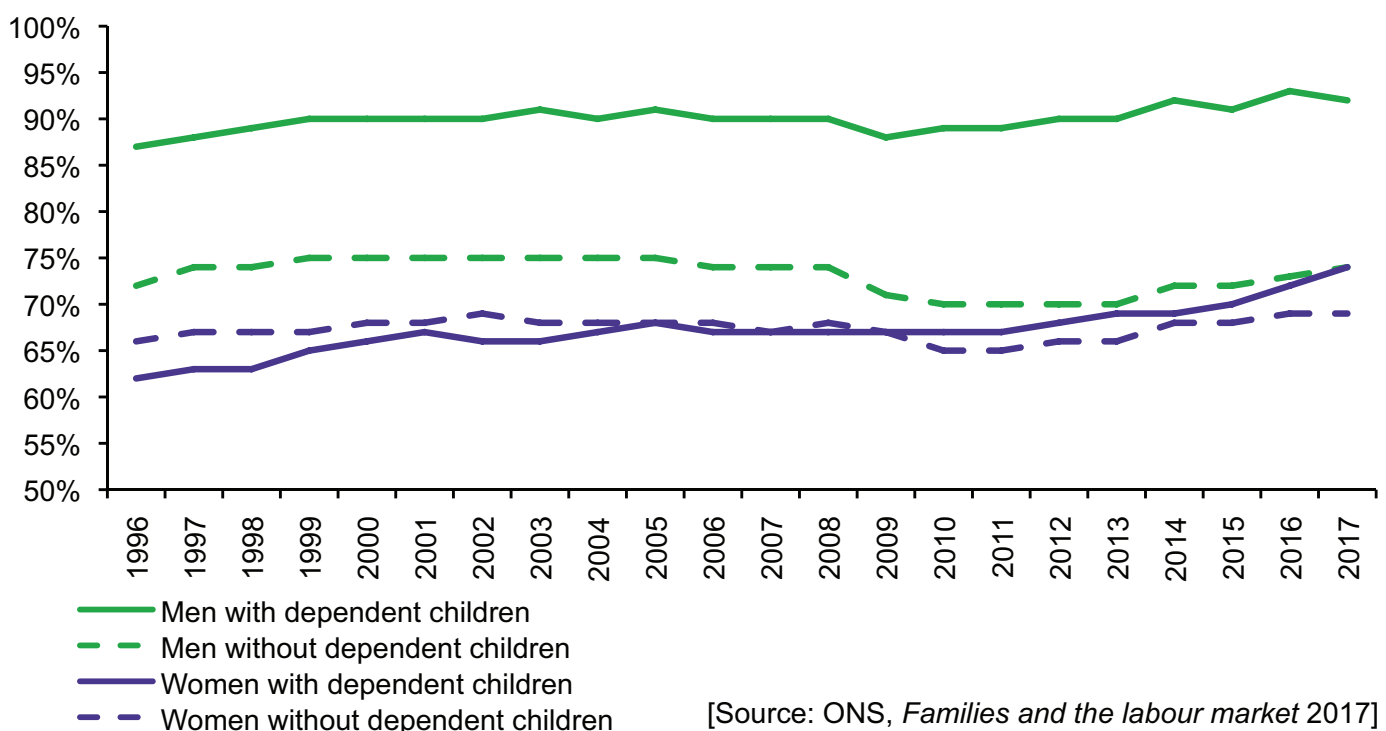
"I was one of the first women at my company to take a maternity leave and come back from it. My employer, however, was very clear that they would support their talent, and ensure that the person they'd invested in in terms of training and coaching until she was pregnant was absolutely an investment to continue nurturing when she returned to work."

Sue Unerman,
Chief Transformation Officer, MediaCom

lower commitment to work because she is presumed to (a) intend to have children, (b) be the primary care-giver for those children (*if* she does have children), and (c) take time off work to do so.⁹ These assumptions discourage managers from investing in and promoting women because they are presumed to be 'on the mommy track'. This aspect of the motherhood penalty may affect *all* women at work, not just mothers.

In our view, tackling the 'motherhood penalty' is doable, but both practical and cultural barriers need to be examined. Shared parental leave has been available since April 2015, but its uptake is only about 2%.¹⁰ If

Employment rates of men and women with/without children



more men took parental leave, wage disparity would decrease.¹¹ Men would take a greater share of the cost of work forgone, and the stereotype that women *will* take time off (leading to prejudices against investing in women) would be dispelled. At the end of the day, many families choose the option that makes sense financially, and fathers (often older) are often already further along in their careers and earning higher salaries. For a traditional family unit, the opportunity cost of taking shared parental leave is usually higher than the opportunity cost of taking maternity leave; another disincentive to share household duties.

The persistence of the idea on the part of employers, that maternity is a cost, is especially pernicious. Many women successfully assume the responsibilities of full-time work and family life without any loss of commitment or ambition. True, mothers returning to work may seek flexibility which the employer may not be able to accommodate. A survey of working mothers found that 18% had left a job due to the inability to obtain flexible working.¹² Employers may simply judge that a male worker is less complicated to deal with than a female of child-bearing age—but prejudices relating to that assumption cannot continue to go unchallenged.

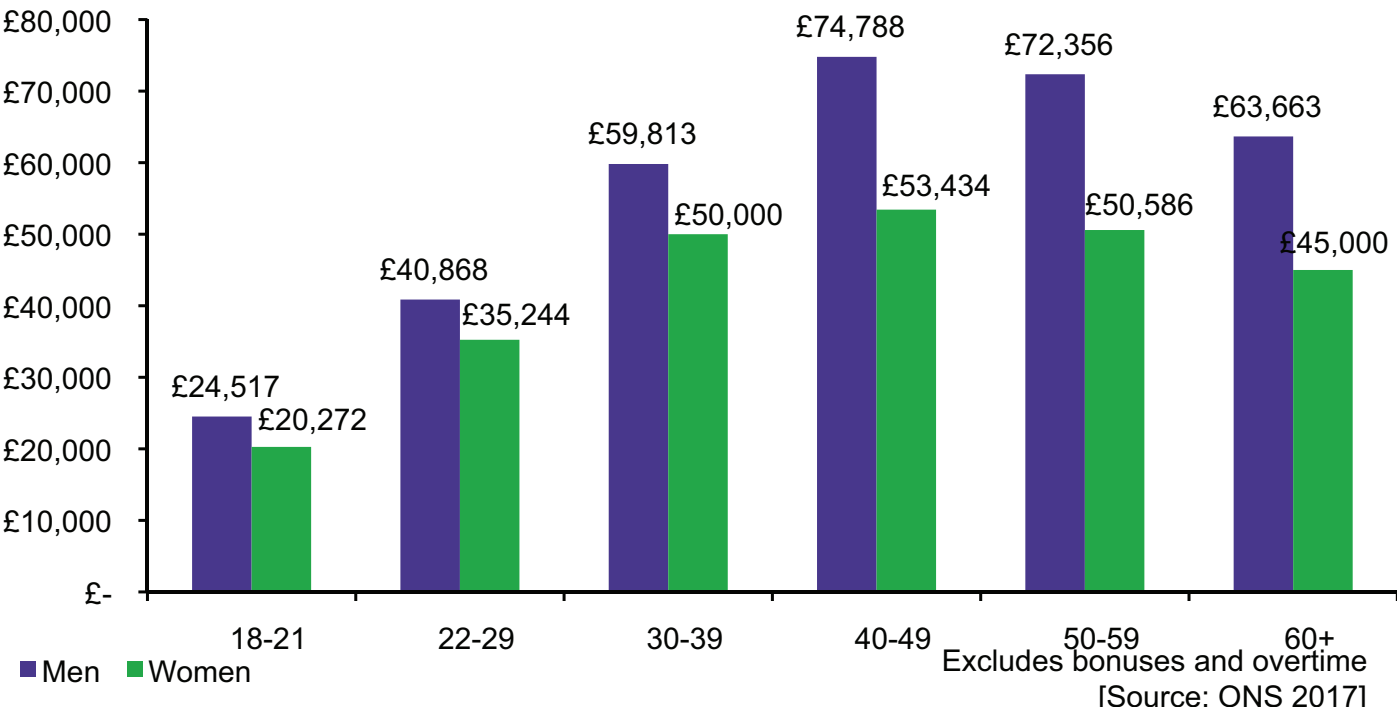
THE GLASS CEILING

The advancement of women up the educational ladder over the past few decades has been remarkable, and they have entered the workforce in much greater numbers since. This has been a factor in the narrowing of the pay gap. And women as noted above kept their 31% share of ‘managers, directors and senior officials’, despite the shrinkage of the number of such roles in the past decade.

The Chartered Management Institute reports that the gender pay gap for managers stands at 27%, an average of £12k a year including bonuses, increasing to £34k at director-level positions – this is worse than the 24% mean pay gap. Women are more likely to fill junior management positions at the base of a glass pyramid, whilst men are more likely to hold senior positions (currently 74% male).

Even in sectors with a higher share of women, like health and education, leadership positions are predominately held by men. From the very beginning, women are promoted at a slower rate: entry-level women are 18% less likely to be promoted than their male peers,¹³ and this continues as the representation of women declines, at each rung of the ladder. This helps explain why, combining these effects over the decades of the average person’s tenure in the workplace, women end up earning much less than men, in absolute terms.

Average salary for men and women in the 90th percentile of earnings

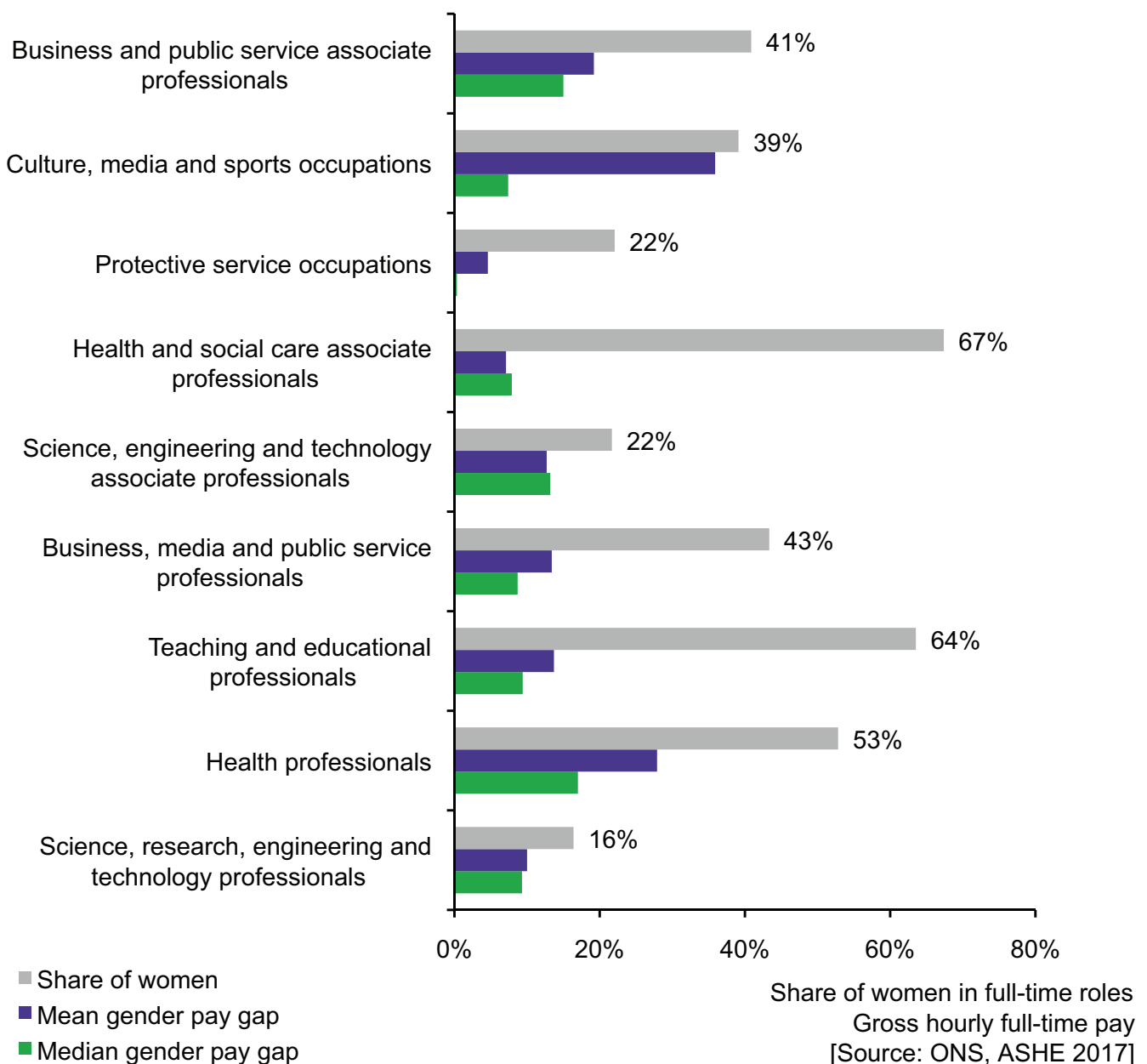


In other sectors, a striking pay gap is driven by the gender make-up of certain fields. In culture, media and sport, women account for 39% of full-time professionals, yet the mean pay gap is the highest of all professional sectors at 36%. This is driven by the exceptionally highly paid male athletes (e.g. male footballers). The median pay gap is a much more reasonable 7%. Within male-dominated fields, like STEM fields, the share of women is tiny (16%) and leadership is almost entirely male. STEM jobs also tend to have the highest vacancies, putting these salaries up further.

“Tackling the gender gap in tech needs to happen at all stages of the funnel, from GCSEs right through to higher education and into the workplace. Digital tools ought to have made the workplace more flexible, but it feels like we’re not fully realising the potential of the technology at our disposal.”

Sarah Wood,
co-founder of video marketing agency Unruly

Full-time median and mean gender pay gaps for professionals, 2017



WOMEN ON BOARDS

OVERVIEW

The *Davies Review* target – of 25% female share of FTSE 100 board positions – was achieved in 2016 (26.1%), setting a new target of 33% for 2020. Its successor *Hampton-Alexander Review* continues the initiative to achieve gender balance in top positions in business.¹⁴

Women composed 27.7% of FTSE 100 companies' board members in 2017, up from 12.5% in 2011. With 1 in 3 FTSE 100 board appointments in 2017 going to a woman, the aim of 33% for 2020 is attainable, provided momentum is maintained. There are only 8 all-male boards left in the FTSE 350, down from 152 in 2011.

Disappointingly, the share of women holding Executive Director positions on boards is just shy of 10%, and progress is much slower. The *Hampton-Alexander Review* is encouraging businesses to address the 'glass ceiling' in the executive pipeline to overcome this barrier.

The UK rejects quotas, which are considered 'unlawful discrimination' under the Equality Act 2010 (see below). The UK's voluntary approach contrasts with the quotas for women on boards adopted by Norway (40%) in 2003, followed by Spain in 2007; Belgium, France, Italy and Netherlands in 2011 and Germany in 2016. Evidence for 2004-14 points to the success of quotas

"The company may not have a tradition of more than one or two women on the board, so promoting more women might feel just too radical despite all the business reasons for diversity. The status quo needs more challenge. We need a fundamental shift in the way things work. No more waiting."

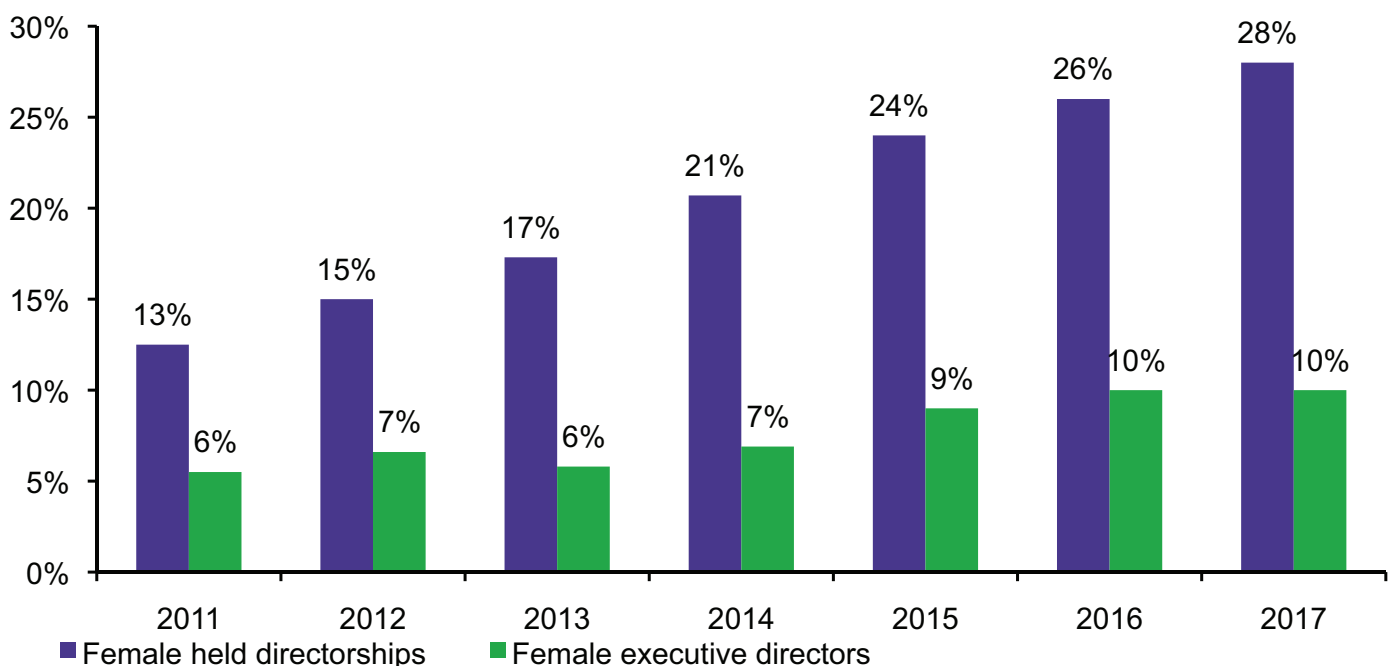
Sue Unerman,
Chief Transformation Officer, MediaCom

at raising the share of women on boards above the EU's average by 2014 (25%), except for Spain (lacking sanctions for non-compliance), although the effect on firm performance is mixed.¹⁵

REPORTING REQUIREMENTS

Under the Companies Act 2006, UK companies are required to report gender diversity figures and associated redress policies. These obligations have been superseded by new mandatory reporting requirements for large employers, in effect from 2017-18 (see below).

Female FTSE 100 board position holders (% of total board positions)



[Source: Cranfield School of Management, *The Female FTSE Board Report 2017*]

The boards of FTSE 100 companies contained 1,062 roles for Executive Directors and Non-Executive Directors (NEDs) in 2017, of which c. 25% are Executive Director roles. Despite composing 27.7% of these boards, most female board members are NEDs. There are only 25 female Executive Directors within the FTSE 100 and 38 in the FTSE 250. (This is not to belittle in any manner the contribution of NEDs to business effectiveness.) The last report of the *Davies Review* recommended the appointment of more women in the roles of Chair and Executive Director.

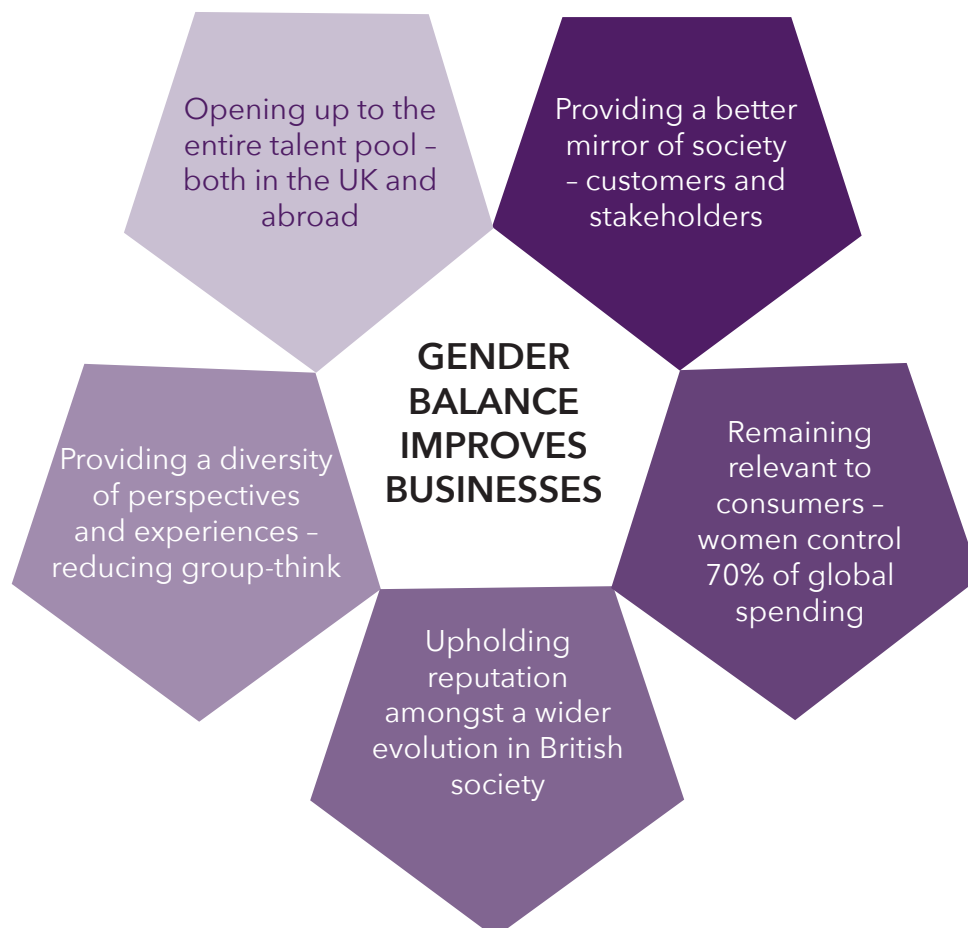
The Voluntary Code for Executive Search Firms was created in 2014 to support FTSE 350 companies in creating more diverse boards. It was one of the recommendations of the *Davies Review*.¹⁶ The Code requires executive search firms to present lists of candidates of which 1 of 3 are women. Although the pool of executives among FTSE 100 companies may be low, there are plenty of qualified female candidates from other walks of life, such as entrepreneurs, academics and leaders in the not-for-profit sector. Under the Equality Act 2010, companies may only take 'positive action' in favour of women in tie-breaking situations of equally qualified candidates (see below).

The *Davies Review* stated the business case for gender balance, which the *Hampton-Alexander Review* calls

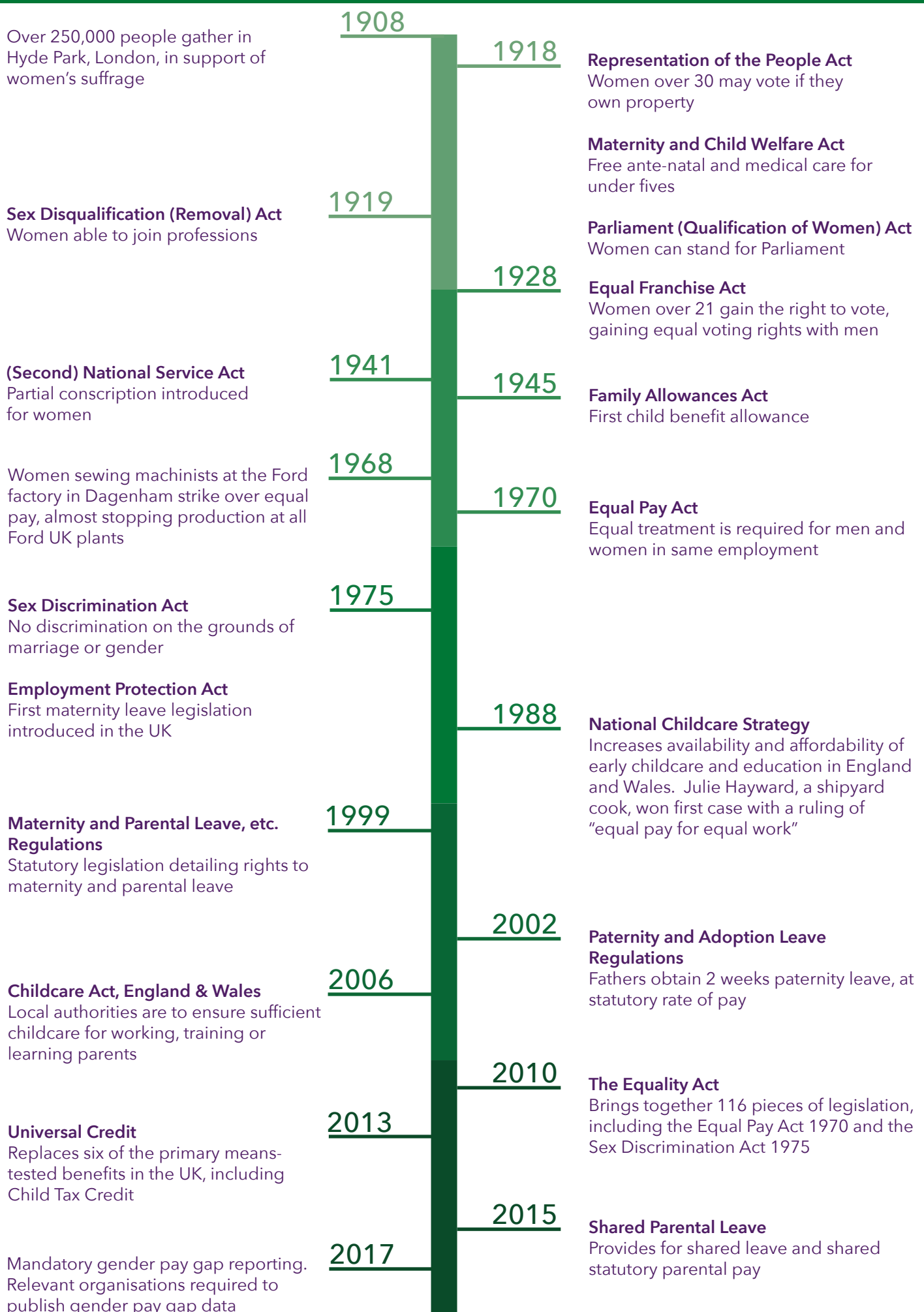
obvious. Yet, despite tremendous progress made over the past 7 years, there are also attitudinal barriers to the promotion of women inside companies. McKinsey's research reveals that, in companies where 1 in 10 senior leaders are women, having an obvious gender imbalance, nearly 50% of men thought women were already well represented in leadership.¹⁷ Within this group, 15% of men thought their gender made promotion difficult, especially white men (who are more often thought of as beneficiaries of structural bias, especially in organisations where top positions are predominantly men).

"'The Art of War' shows us that knowing oneself and believing in oneself are critical success factors. And then building a network of allies around you – to sponsor, champion & support you 'in stealthy battle' is crucial."

Lindsay Pattison,
Chief Transformation Officer, WPP



LEGISLATIVE TIMELINE



THE EQUALITY ACT 2010

OVERVIEW

The UK has long had legislation providing employees avenues of redress to combat gender-based discrimination. Any less favourable treatment of women in terms of pay has been prohibited since The Equal Pay Act 1970 and many forms of workplace discrimination on the basis of gender were explicitly banned by the Sex Discrimination Act 1975.

Relevant legislation has now been consolidated in The Equality Act 2010. It is principally used by employees with 'protected characteristics', such as sex, pregnancy, age, disability and race, to lodge claims against employers at the Employment Tribunal alleging direct discrimination.¹⁸ Exceptions to the law include jobs demonstrably requiring a person of a certain characteristic (e.g. a Roman Catholic priest, or an actor/actress in a particular role). Another exception is 'positive action' (below).

In 2016-17, the Employment Tribunal dealt with over 24,000 gender-related claims (equal pay, sex discrimination, pregnancy and maternity-related). The bulk were equal pay claims, which can be made on the basis of salaries, non-discretionary bonuses, overtime, flexible time, sick pay, access to pension schemes and redundancy pay, to name a few. A recent trend in this area is the rise of multiple claims based on a single set of facts, allowing groups of female workers to claim together.

A new development for fiscal year 2017-18 is the requirement for large employers to report their gender pay gaps by no later than early April 2018, implementing Section 78 of The Equality Act. This regime aims to encourage all companies to become equally aware of diversity. Some 9,000 large employers will be required to report by April; only 1,000 had reported by mid-February 2018.

Under the Act, an employer is allowed to implement 'positive action' in favour of a person with a protected characteristic with respect to 'encouragement and training' and, since April 2011, for 'recruitment and promotion'.¹⁹ In recruitment for example, the employer can hire a woman, to remedy historic imbalance in management, when choosing between candidate employees who are equally qualified. Merit remains the acknowledged basis for hiring decisions. 'Positive discrimination' remains against the law, with some exceptions for discrimination in favour of disabled people over non-disabled people.

THE LAW IN PRACTICE

The Act protects an employee from being treated less favourably on behalf of their having a protected characteristic. Characteristics that are protected are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

The Equality Act 2010 defines discrimination in four ways:²⁰

- *direct discrimination*—treating someone with a protected characteristic less favourably than others
- *indirect discrimination*—putting rules or arrangements in place that apply to everyone, but that put someone with a protected characteristic at an unfair disadvantage
- *harassment*—unwanted behaviour linked to a protected characteristic that violates someone's dignity or creates an offensive environment for them
- *victimization*—treating someone unfairly because they have complained about discrimination or harassment

If a female employee believes she has been discriminated against by her employer, she is advised to first seek to address the issue with her employer. The next step is to notify the Advisory, Conciliation and Arbitration Scheme (ACAS) for 'Early Conciliation', then, if the dispute is not resolved, lodge a claim at the Employment Tribunal (ET). An employee may lodge a single claim, or may join a multiple claim with co-workers, dealt with administratively as if it was a single claim, but counted as a number of single claims.

EMPLOYMENT TRIBUNAL FEES

In July 2013, fees were introduced for complainants to lodge their claims and to advance them to a hearing,²¹ which could be wholly or partly reduced for claimants of limited means. These fees were usually on top of fees paid for legal representation. They created a disincentive for employees to bring claims. Coinciding with budget cuts at the Ministry of Justice, the Government argued at the time that fees would incentivise settlements and reduce the number of groundless claims thrown at employers.²² The result was a reduction in the number of gender-related claims,²³ although already on a downward trend. Following a legal challenge from trade union Unison in July 2017, the Supreme Court found the fees to be an unlawful interference with the common law right of access to justice; they quashed the fees and ordered that they be reimbursed.

In 2016/17, there were just over 24,000 gender-related claims dealt with by the ET, of which 72% concerned equal pay. The stakes are high in such claims because if successful, workers may reclaim up to five years of foregone compensation and future compensation is adjusted. Many such claims are part of multiple claims, and prominent proceedings in the ET's pipeline include claims on behalf of the mainly female retail workers at Asda, Sainsbury's and Tesco.

The complainant, usually a female worker in equal pay cases, bears the burden of proof. Evidence can be gathered from co-workers and employers under an ET disclosure order. The Equality Act 2010 improved the regime by making it unlawful for an employer to prevent or restrict employees from discussing pay, thus making pay-related confidentiality clauses unenforceable. However, the employer still enjoys far better access to information than the employee pursuing a claim.

ACAS CONCILIATION

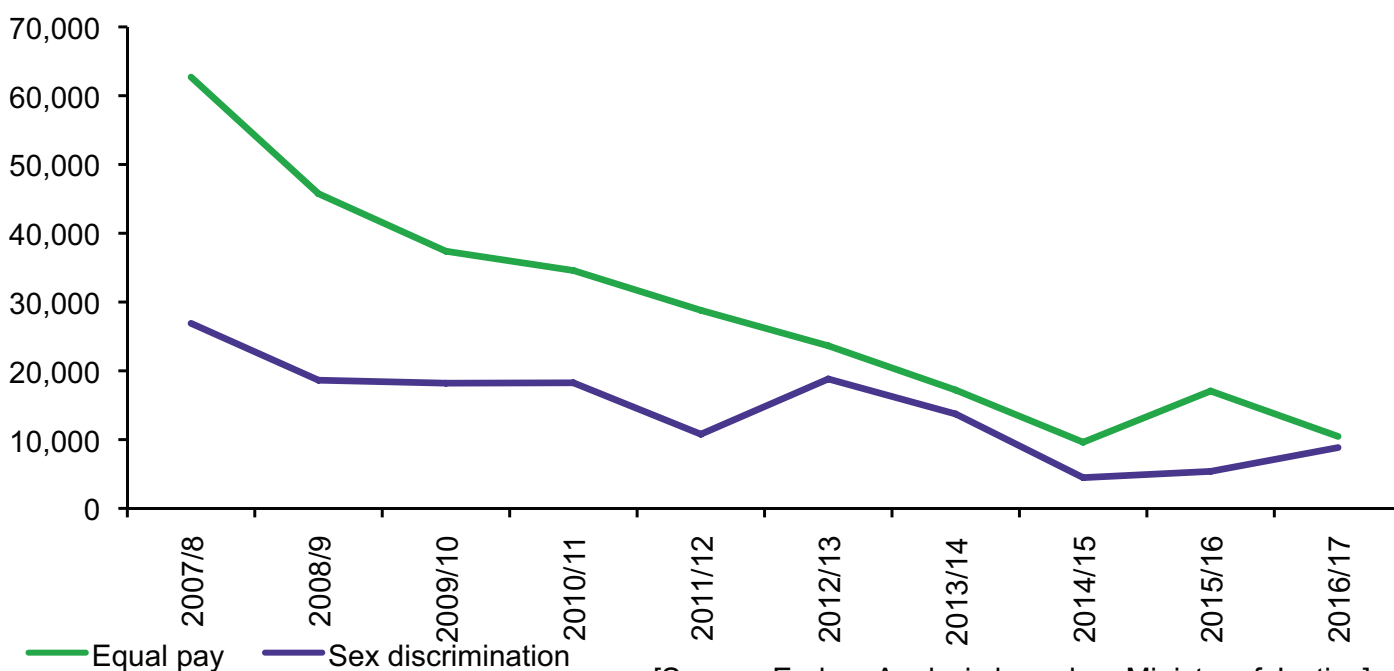
Wherever possible, the ET encourages disputes between employees and employers to be settled using the free services of ACAS.²⁴ Since April 2014, ACAS has handled all claims to attempt conciliation, prior to their being lodged at the ET. ACAS's services remain available to the claimant throughout the ET proceedings. Of the 24,000 gender-related claims

disposed of by the ET in 2016-17, ACAS resolved some 4,500 (18%), including 50% of pregnancy-related claims. Pregnancy continues to be challenging for women in the workplace.

ACAS conciliation is a confidential service, so it cannot be determined whether the settlements reached were fair or proportionate to the complaint. Furthermore, the employer is not bound to change what may be a generalised set of discriminatory practices, affecting their entire female workforce. For these reasons, it is difficult to characterise the cases resolved through ACAS as necessarily successful for women.

New rules of procedure for the ET, introduced in July 2013, were designed to help vexatious claims be struck-out and encourage a greater proportion of non-vexatious claims to be settled prior to a substantive hearing. Among the c. 24,000 gender-related claims the ET disposed of in 2016-17, 15% were struck-out, and withdrawals of claims by employees accounted for another 20%, highlighting the helpful role that case management discussions and preliminary hearings played in managing plaintiffs' expectations of success. Dismissal upon withdrawal accounted for 44% of disposals, presumably because employers moved to settle claims with a strong chance of success before a substantive hearing took place. At the end of the day, only c. 350 gender-related claims were disposed of at the hearing stage, and, of those, just 30% were successful.

Number of sex discrimination and equal pay cases



[Source: Enders Analysis based on Ministry of Justice]

COMPANY REPORTING OF GENDER PAY GAPS

As noted above, a new development for fiscal year 2017-18 is gender pay gap reporting by large UK employers (those employing >250 employees), with the deadline of the end of March, for public sector employers, and early April for the private sector. Large employers are estimated to number about 9,000 and by mid-February 8 of 9 had yet to report.

This reporting implements Section 78 of The Equality Act 2010, and was brought in subsequent to the previous Government's Think, Act, Report initiative, launched in 2011, in which over 300 companies participate.²⁵ Certain participants reported inspiring 'positive action' case studies, such as BT Group's #womenintech programme, aimed at retaining female employees and developing a stronger pipeline of executives for their Technology business (TSO).²⁶

Under the new reporting requirements, large employers must each annually:

- publish their gender pay gap data and a written statement on their public-facing website;
- report their data to government online using the gender pay gap reporting service.

Gender pay gap data must include:

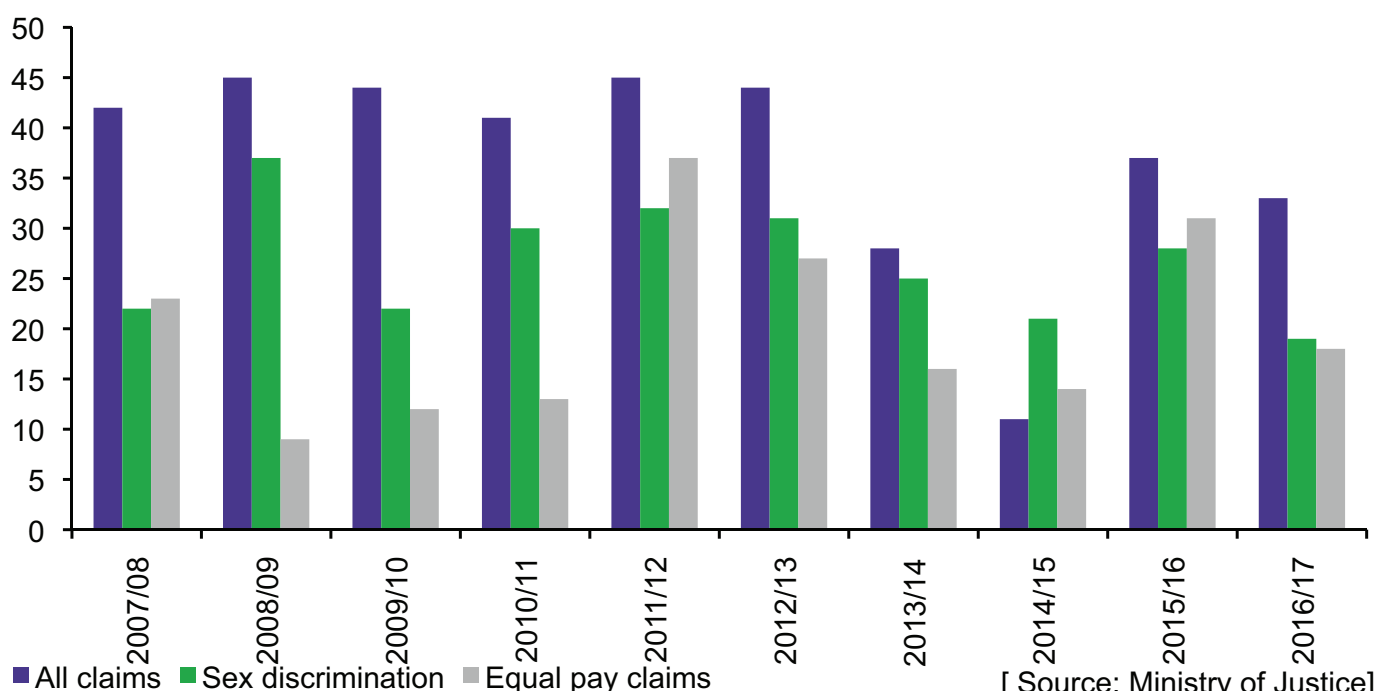
- the gender pay gap (mean and median averages), where part-time and full-time employees each count as single employees
- the gender bonus gap (mean and median averages)
- the proportion of men and women who receive bonuses
- the proportion of men and women in each quartile of the organisation's pay structure

A reported gender pay gap is usually a symptom of gender imbalance in an organisation. An organisation seeking to remedy the imbalance should start with an equal pay audit, to identify bottlenecks in hiring, training and career progression for women. This audit then informs policy directors in addressing these bottlenecks, which may include 'positive action' in encouragement, training, recruitment and promotion.

The Equality and Human Rights Commission²⁷ has enumerated the benefits of voluntarily undertaken equal pay audits:

- Eliminating unjustifiable pay gaps that might be grounds for action under The Equality Act 2010, and which could lead to a tribunal-imposed equal pay audit
- Knowledge of internal pay and progression practices, improving efficiency and employee satisfaction
- Attaining reputational benefits among existing and potential employees, as well as customers, suppliers and the wider community

% claims resolved through ACAS or successful hearing



The BBC is the first to have reported among UK broadcasters. Diversity has been among the objectives enumerated in the organization's Royal Charter for 20 years, expressed by the BBC's Diversity Policy for 2016-20,²⁸ covering women, LGBT and disabled persons. The BBC reported a 9.3% median pay gap and 10.7% mean gender pay gap. The BBC reports that the major driver of the gender pay gap is the higher share of women in the lower paid quartile and their lower share (41%) in the higher grades of the BBC. A gender pay review has also been undertaken by the BBC for correspondents, presenters and on-air editors in news and news-related areas. Its outcomes are designed to support the BBC's plan to achieve 50% representation of women in this group by 2020.

Other organisations already reporting their gender pay gap data and policies include Vodafone. Vodafone is aiming to be the world's best employer for women by 2025. Leadership is committed to female empowerment. As member of the 30% Club, by February 2018, 33% of Vodafone Group Plc Board members were women. Globally, the goal is to increase the representation of women in management and leadership roles to 30% by 2020 (up from 28% as at 31 March 2017), with policies to retain and develop a pipeline of female leaders. Vodafone reported a 16.9% mean gender pay gap and 24.3% median gender pay gap, explained by the higher share of men in higher-paid management roles, also leading to high bonus pay gaps.

"Diversity really matters – both for me and for the BBC. As an organisation, we represent everyone – all the cultures and diverse voices that make the UK what it is. Our business is storytelling and we must make sure we tell stories that people all across the country will recognise, will understand and will relate to. At its very core, our purpose is to represent everyone."

Tony Hall, BBC Director-General

Virgin Media reported a 9% mean gender pay gap and 17.4% median gender pay gap. The company cites the lack of female representation in STEM roles and leadership as explanatory factors. Three quarters of the roles in the top pay quartile are held by men. The company has a Balanced Network for career development and has launched an internal mentoring programme.

TalkTalk Group reports a 14.6% mean gender pay gap and a 14.1% median gender pay gap. Like Virgin Media, this telecommunications company notes the lack of representation of women in STEM occupations and in leadership, leading to just one third of staff being female. The company is taking 'positive action' strategies (see below) in recruitment and selection processes, such as gender balanced shortlists for senior roles and for Tech graduate and apprenticeship schemes.

Telefonica/O2 report 18.6% mean gender pay gap and 20.2% median gender pay gap. It highlights the low share of women in senior roles and the low share of men in the lower quartile, noting that half the women employed at the company work part-time. The company also recognises the need to improve the attraction and retention of women with STEM qualifications. In addition to internal initiatives, the company specifies 50:50 gender shortlists when recruiting for all senior positions.

ENABLING FEMALE ENTREPRENEURSHIP

The UK Government attaches great weight to entrepreneurship as a driver of future economic growth. The Women's Business Council (WBC), established in 2012 to help maximise the economic potential of women at every stage of their lives, reported progress towards objectives to date in 2017.²⁹ The WBC emphasises that equal opportunity is not merely a woman's issue by stressing how important it is to galvanise men to promote workplace cultural change.

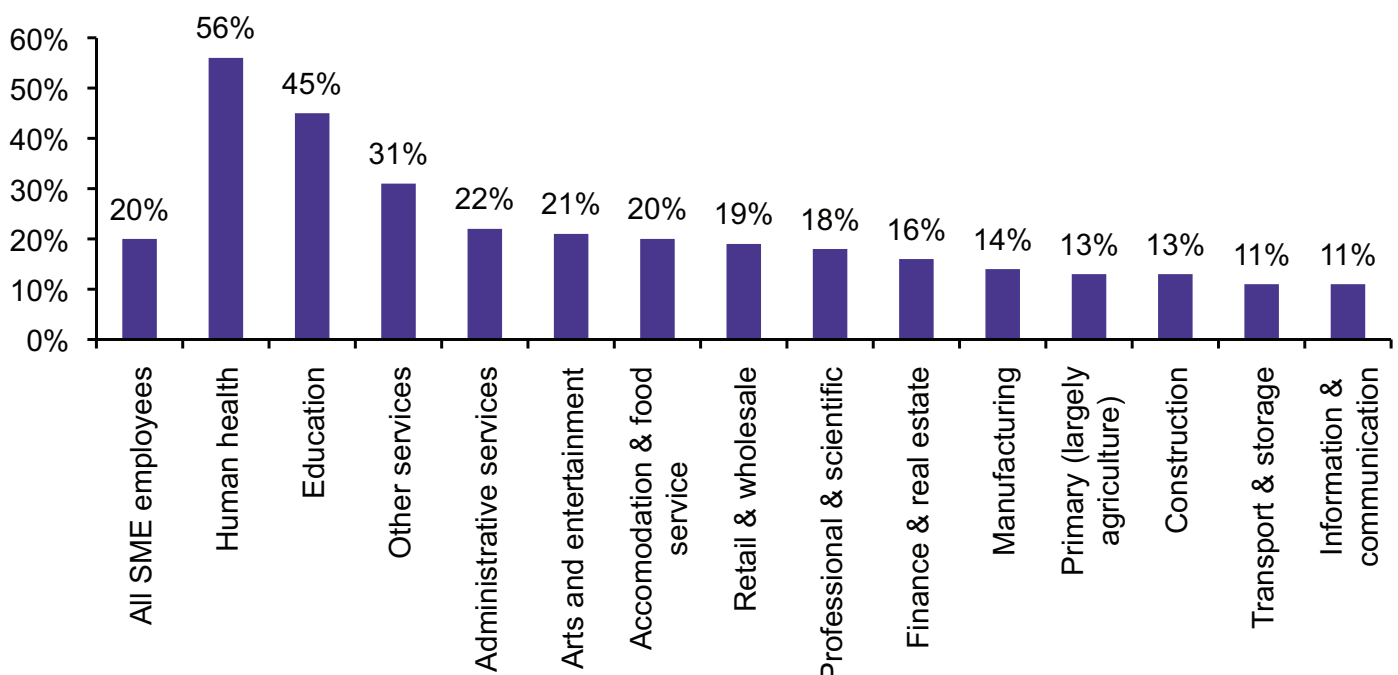
"When I started, there weren't any of these wonderful networking opportunities. Women didn't support other women and they felt they needed to be quite masculine. Now there are many really good networking events for women, offering so much support and encouragement. I have seen that change and I have seen us come on. Nowadays the opportunities are there!"

Debbie Moore OBE, founder of Pineapple

Dovetailing with a marked trend to self-employment, the UK has continued to create businesses at a rapid pace since 2010, when the recovery from the recession started. The number of businesses rose by 1.2 million, to reach 5.7 million by 2017,³⁰ making business formation the largest contributor to job growth in the UK economy. Virtually all the increase was in sole traders (1 million of 1.2 million), typical of the skilled trades (i.e. construction workers) and occupations with a pro-cyclical profile (i.e. estate agent), but there is also an underlying positive structural trend in evidence since 2000.

Buried within this population of businesses are some 1.2 million female-led small-and-medium enterprises (SMEs),³¹ dovetailing with 1.6 million self-employed women. For many women, owning your business has obvious advantages: being your own boss, the flexibility to achieve a better work-life balance, realising a creative idea for a business, meeting local needs, and so on. Female business owners, disproportionately, provide health, education, social and other 'community' services (56% of health-related SMEs are female-led).³² This trend is the mirror image of wider labour market patterns of activity.

% of women-led SME businesses by sector



[Source: BIS, *Small business survey 2016*]

According to the Global Entrepreneurship Monitor (GEM), women in the UK are less likely than men to be engaged in total early-stage entrepreneurial activity (TEA), defined as owning or running a business that is less than 3.5 years old. In 2016, the share of the female working-age population engaged in TEA was 5.6%, compared to 8.8% for men. The Women's Business Council aims for growth in female TEA: if women had been able or enabled to form businesses at the same rate as men in 2016, the UK would have benefited from over half a million more businesses.

Stereotypes riddling female entrepreneurship, such as 'mumpreneur', stand in the way of female business owners, especially when they interact with service providers, such as in finance.³³ Female entrepreneurs tend to be younger than their male counterparts, are more likely to have businesses operated from home, and they are more likely to work part-time. But this is not to say that female entrepreneurs are not just as ambitious as male counterparts. A survey by Centre for Entrepreneurs of business owners found that 83% of women sought to grow a sustainably profitable business and to provide stability for their employees.³⁴

When questioned, female entrepreneurs have highlighted the following challenges: difficulties understanding, identifying and accessing finance; a general lack of confidence in their business and personal skills; and a lack of visible role models.³⁵ The Government-backed Start-Up Loan Company is providing low-interest (6% pa) loans of up to

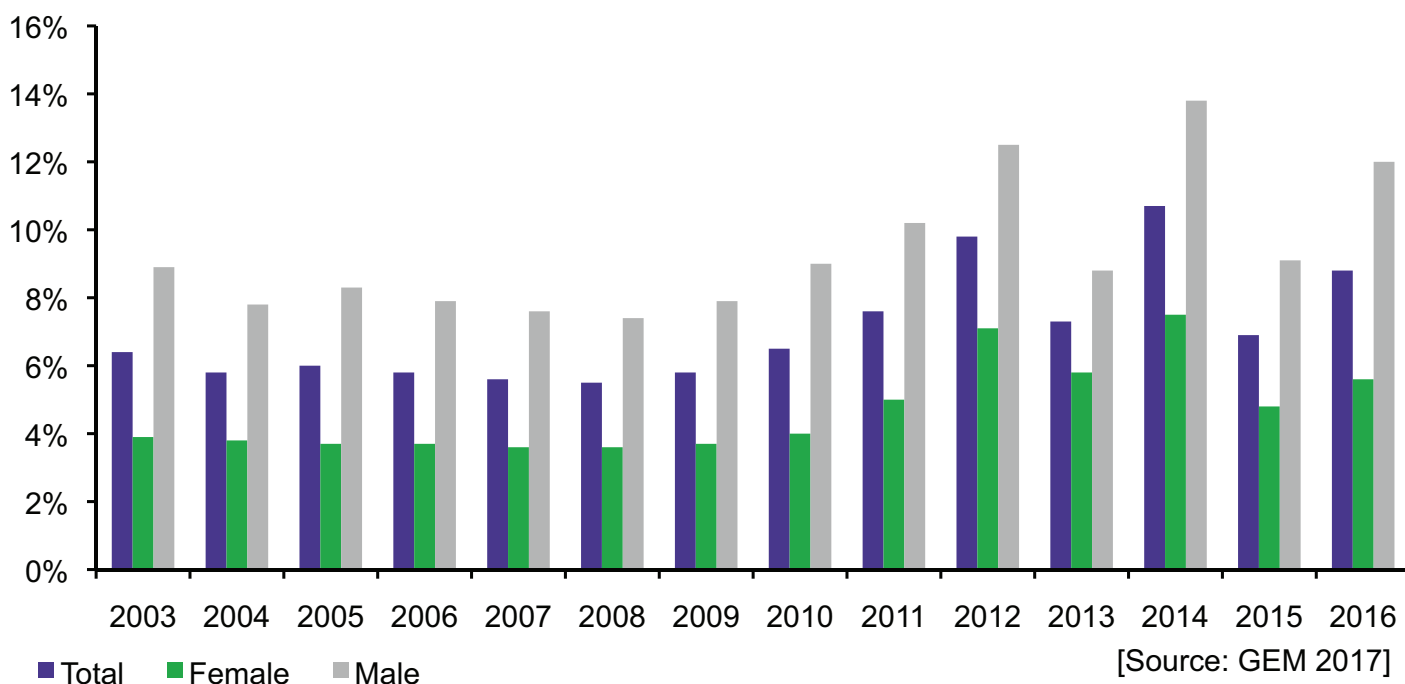
"Self-employment is an ideal way to achieve work-life balance, apart from inadequate maternity pay provision which forces women to work again before they really should."

Alison Cork,
entrepreneur, author and TV presenter

£25,000 and mentoring to thousands of companies. 39% of these loans, so far, have been to female-led businesses.³⁶ Networks of role models and mentors for female entrepreneurs are important frameworks, which help them to overcome the lower self-confidence of female start-up creators.

The UK economy has benefited a great deal from the business creation that has taken place since 2000, and female entrepreneurs have participated greatly in that expansion. There is room for a higher intensity of entrepreneurial activity, including fostering high-growth companies or 'scale-ups'.³⁷ This increase in entrepreneurial activity could be unleashed by the powerful digital channels that have become available by virtue of the UK's high levels of connectivity and comfort with e-commerce. Important platforms for women include: Etsy, the marketplace for artists and crafts people; Facebook, with its company pages; Google, with its marketing tools of search and assessment; and selling platforms like Amazon and eBay, among others.

Total UK early-stage (TEA) entrepreneurial activity



Role models matter to all women at all points in their careers. Networks enable women to build contacts both for founders and executives

"The choice [to become an entrepreneur] felt like a natural one; having worked for the same company for six years as a full-time employee working my way up over the years from runner to producer, I learnt a lot along the way. I felt like the time had come to do my own thing, to develop and make my own shows."

NIRA PARK, FOUNDER OF BIG TALK

BELLA FREUD
Founder of indie global
fashion brand Bella Freud

ANYA HINDMARCH
Founder of global
fashion accessories
brand Anya Hindmarch

ROKSANDA ILINCIC
Founder of global
fashion brand Roksanda

SARAH WOOD
Co-Founder of
Unruly (social
video campaigns)

THESE WOMEN ARE ALL
PART OF THE CREATIVE
ENTREPRENEURS NETWORK

NIRA PARK
Founder of Film
& TV production
company Big
Talk

AMANDA LEVETE
Architect who designed the
recently opened new wing of
the V&A and the new MAAT
Museum in Lisbon

CHARLOTTE TILBURY
Founder of
Charlotte Tilbury, the
world's fastest growing
beauty brand

"It was only coming to take funding that I saw there was an issue. One reason that we decided to go with our series A investors came down to how the founders were treated. We walked away from investors who would only talk to my male co-founders and not directly to me."

SARAH WOOD, CO-FOUNDER OF UNRULY

ENDNOTES

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³ In relation to the mean, the median selects the middle point of the population and removes the impact of outliers, invariably producing a more flattering picture of the gender pay gap. The most flattering picture, i.e. the lowest gender pay gap, is provided by the median hourly pay rate for all workers (9% in 2017 according to ONS (2017), "Annual Survey of Hours and Earnings, 2017 Provisional Results").

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¹³ McKinsey & Company (2017) Women in the Workplace 2017 <https://www.mckinsey.com/global-themes/gender-equality/women-in-the-workplace-2017>

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²¹ There were two levels of fee, reflecting the expected complexity of the case. For level 1 claims, the issue fee was £160 and the hearing fee was £230. Level 1 claims include claims for unpaid wages, holiday pay and redundancy payments. For level 2 claims, the issue fee was £250 and the hearing fee was £950. Level 2 claims include claims for unfair dismissal, discrimination and equal pay. Different fee levels applied to claims involving multiple claimants.

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²⁴ ACAS offers a mediation service and will also train mediators for companies; the service had an 89% success rate in 2016-17.

²⁵ The initiative encouraged companies to: (a) think about gender equality in their workforces, particularly in relation to recruitment, retention, promotion and pay, then (b) act upon it, and then (c) report, initiating a virtuous loop of awareness and progression.

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