

Chancellor of the Exchequer
His Majesty's Treasury
1 Horse Guards Road
London
SW1A 2HQ



23 January 2024

Dear Chancellor

Concerns about FCA and PRA Diversity & Inclusion proposals

We would like to make you aware of new Diversity & Inclusion (D&I) rules that have been proposed by the Financial Conduct Authority (FCA) in their consultation paper [CP23/20](#). The Prudential Regulatory Authority (PRA), part of the Bank of England, has also made D&I proposals. The PRA consultation paper is [CP18/23](#).

The FCA/PRA are proposing that large firms they regulate will be required to collect employee data and set targets to tackle any underrepresentation of demographic characteristics. The characteristics for data collection and where targets might be set must include age, sex OR gender, disability, ethnicity, religion and sexual orientation. The data would be provided by employees on a voluntary basis and reported back to the regulator/disclosed to the market. Additionally, the regulators suggest companies could voluntarily collect data and set targets on parenting responsibilities, carer responsibilities, gender identity and socio-economic background.

We are concerned that these proposals are not consistent with the Public Sector Equality Duty (PSED) to foster good relations between the protected characteristics. In particular, the proposals will not require firms to collect data on the protected characteristic of sex. Instead, the regulators have said firms can choose whether to collect data on sex or gender (i.e. gender identity). We note that new guidance on the PSED released on 18 December 2023 by the Government Equalities Office states: *“Unless there is a clear correlation with a protected characteristic, considering demographics that are not protected characteristics will not help you to comply with the duty. In fact, it could obscure compliance in your supporting records.”*¹

The FCA has already introduced rules that we believe undermine the importance of the protected characteristic of sex. In 2022 it introduced a new Policy Statement (PS22/3) which requires listed companies to report and disclose the % of women on the board against a 40% target. However, it has said in relation to this requirement: *“we have made it clear that companies can report either on the basis of sex or gender identity.”*² Emerging evidence suggests that many large companies, if left to make a choice, will choose gender identity and not sex when counting women. In their April 2023 report, EY analysed 80 of the FTSE 250 companies and found only around a third were reporting women on the board on the basis of sex. Our own research into the FTSE 100 identified at least 19 companies reporting women on the board on the basis of gender identity³. This number may be set to rise as more FTSE 100 companies come under scope of PS22/3.

If the FCA/PRA go ahead with their proposals in CP23/20 and CP18/23 more companies may abandon collecting sex data and move towards a gender identity approach. We believe this would not be consistent with protecting the rights of employees and in particular understanding and tackling structural sexism in the financial sector. Evidence given by the FCA to the Treasury Select Committee meeting on Sexism in the City on 17 January 2024 emphasised the importance of having consistent data and the enabling role the regulator should play in collating that data.⁴ However, the data

¹ [Public Sector Equality Duty: guidance for public authorities - GOV.UK \(www.gov.uk\)](#)

² 1.22 of [PS22/3: Diversity and inclusion on company boards and executive management \(fca.org.uk\)](#)

³ [Reporting against the new Diversity Listing Rule \(ey.com\)](#) and SEEN in the City blog article [Sex and the FTSE 100 \(seeninthecity.org\)](#)

⁴ <https://parliamentlive.tv/event/index/233f64c7-0f03-4c91-9a0c-110e4b24d201> [14:25 time stamp]

collected on women under its proposed rules will be hampered by inconsistency. We also note that the FCA/PRA are not proposing any data collection that relates to the protected characteristic of pregnancy & maternity. The proposals are therefore a missed opportunity to gather accurate data on women in the financial sector and could risk coercing firms into erasing data that could help them ensure they are not unlawfully discriminating.

CP23/20 and CP18/23 are now closed to any further comments and the FCA/PRA are currently deliberating on the responses to the consultations. Appendix II provides detail on the regulators' proposed data fields for sex/gender and gender identity. An extract of our consultation response to the FCA is provided at Appendix III and our full response can be found here: [FCA CP23/20 \(seeninthecity.org\)](https://www.seeninthecity.org). It should be noted that a number of our members work for the FCA/PRA and share our concerns about the approaches of these organisations to D&I.

We urge you to take action and investigate the FCA and PRA's activity in relation to setting rules around D&I including the proposals in CP23/20 and CP18/23 noting that both organisations are bound by the PSED and have a significant influence on the activity of the UK financial sector which employs a large number of people. We have also written to the Equality and Human Rights Commission asking the same.

Yours faithfully

SEEN in the City
www.seeninthecity.org

Appendix I – About SEEN in the City

Appendix II – FCA/PRA's proposed data fields for sex/gender and gender identity

Appendix III – Extract of SEEN in the City's response to the FCA's D&I proposals CP23/20

Appendix I – About SEEN in the City

'SEEN in the City' (SITC) is a network of people who work in the financial services sector and advocate for rights and protections that relate to sex. SEEN is an acronym for Sex Equality & Equity Network. Our aims include promoting and supporting sex equality and equity between women and men in our workplaces. Although much of our work is focused on addressing inequalities for women including lesbians, we are not a women-only network and include both women and men.

Our members span a range of larger and smaller firms including retail banks, investment banks, insurance companies, brokerages, law firms and regulators covering a range of roles, specialisms and differing levels of seniority. We are a national network covering all of the UK and have members in a range of locations.

Appendix II - FCA/PRA's proposed data fields for sex/gender and gender identity

Sex

If an in-scope firm chooses to collect data on sex, the options for this data field are:

- Male
- Female

Gender

If an in-scope firm chooses to collect data on gender, the options for this data field are:

- Man
- Woman
- Non-binary
- Prefer to use another term

It would be voluntary for in-scope firms to collect both sex AND gender data but mandatory to collect only one of these.

Gender Identity

In-scope firms may voluntarily collect data on employees' gender identity in addition to sex/gender. The options for this data field are:

- Gender identity same as sex
- Gender identity different to sex

Data fields have been taken from the draft regulatory return templates provided by the FCA/PRA as part of their consultation materials. These templates may be seen as best practice by firms for collection of demographic characteristics.

We do not consider the approach proposed above to be adequate. Please see Appendix III for an articulation of our concerns.

10. To what extent do you agree with the list of demographic characteristics we propose to include in our regulatory return?

STRONGLY DISAGREE

No requirement to collect sex data

- We are deeply concerned by the proposal that firms choose whether to collect and report on sex or gender.
- In addition to being perhaps the most fundamental demographic variable, sex is also protected in the Equality Act 2010 and it is surprising that despite referencing the Equality Act 2010 in a number of places, this key protected characteristic, that underpins the assessment of how women are progressing in the workplace is not proposed as a mandatory field. One of the main reasons for lack of advancement of women is structural sexism. If data on sex is not collected, structural sexism cannot be measured and addressed.
- We therefore consider it vital that firms and regulators use the correct terminology and collect data on sex which is the relevant protected characteristic in the Equality Act 2010, and not on gender which is not a protected characteristic. The relevant protected characteristics for these purposes are sex and gender reassignment. The conflation of these two protected characteristics not only diminishes the value of the data, but also has the effect of introducing self-identification of gender. SITC notes that the UK 2021 Census collected data on sex and gender identity separately. Indeed, the distinction between the two categories was considered sufficiently important by the UK Courts to justify granting permission for a judicial review of the Office for National Statistics’ (ONS) guidance on how to complete the Census, which appeared to permit participants to answer the sex question based on gender self ID. The Court also made an interim order that the relevant part of the guidance be amended, following which the ONS agreed to change the guidance on a permanent basis.⁵ We also suggest that it is unwise to cement new rules in this area whilst a government review into data collected by public bodies is underway.⁶ We note that this review has been launched in response to the dereliction of duty by many institutions to properly collect data on sex.
- SITC also notes that many of those with “gender critical”⁷ beliefs (which is itself a protected characteristic under the Equality Act) reject the concept of gender, believing that it is based on the imposition of stereotypes on each sex. Any requirement on or by firms to require those individuals to identify their gender is therefore potentially discriminatory.
- As part of diversity strategies, firms may wish to use the positive action provisions of the Equality Act. The ability to do so in respect of female recruitment and progression is dependent on having good quality data in respect of the protected characteristic of sex.
- SITC further recommends that any FCA or other regulatory requirement to collect and provide data should not aggregate data on sex and gender. First, under GDPR there is a clear basis for collecting data on sex, whereas that is not the case for gender which is

⁵ [UK gov’t concedes defeat to Fair Play For Women in census sex row | Reuters](#)

⁶ [Gender data collected by public bodies set for review | UCL News - UCL – University College London](#)

⁷ [Explanation of gender critical beliefs - Sex Matters](#)

arguably special category data. Second, collecting data on a disaggregated basis in relation to each protected characteristic would ensure that firms and regulators have better quality data for the purposes of their policy and decision making. It would also ensure that regulators are able to comply with their public sector equality duty under the Equality Act 2010, which requires them to “advance equality of opportunity between people who share a protected characteristic and those who do not share it”.

- A lack of sex-disaggregated data often leads to the needs of women being ignored. Women who variably experience periods, menopause, suffer endometriosis, suffer miscarriages, give birth, take time out on maternity leave, take on a larger share of caring responsibilities and domestic labour and are on average physically weaker and more vulnerable to predation and sexual assault than men. Even if none of these factors are relevant to a particular woman at work, the perception that they *might be* can cause discrimination and to monitor and tackle this we need accurate data on sex. As Caroline Criado Perez wrote in her book *Invisible Women: Data bias in a world designed for men* “when your big data is corrupted by big silences, the truths you get are half-truths, at best. And often, for women, they aren't true at all.”
- We note that 5.52 of the CP says that most firms are already collecting sex data and as such requiring sex data would not create an additional burden.

Corruption of data on sexual orientation

- Without a clear sex field, data on sexual orientation will be corrupted. Sexual orientation is defined in law in relation to sex. However, if gender is asked for instead of sex which is permissible under the proposals, it may lead, for example, to a straight woman who identifies as male, being misclassified as a gay man and so on. Sexual orientation is a vital data variable that needs to be recorded accurately to ensure the needs of lesbian, gay and bisexual people are properly understood alongside any barriers to their successful participation and progression in the workplace.

Gender data erases women

- We note that in the excel template for the draft regulatory return, the gender field has options man/woman/non-binary/prefer to use another term. This implies ‘woman’ and ‘man’ are gender identity or self ID terms. This is a controversial stance and we do not support this given the implications for women’s rights. A woman is an adult human female, it is a sex-based term. This definition is important for the protection of the rights of women and girls, in particular for privacy, safety, dignity and fairness.

Gender identity data field inadequate

- The voluntary gender identity question in the excel template for the draft regulatory return is aligned to that asked in the 2021 Census. However, we note that this question has yielded unstable results⁸. The gender identity question posed by the FCA may be even less useful than that adopted in the census given that in the census it was asked alongside a mandatory sex question. Here, a company may not ask sex in favour of gender (effectively gender identity) thus, data on how many males have a trans identity versus how many females will not be collected. We would support collecting data on gender identity as a

⁸ [Census records trans population in England and Wales – but accuracy is doubted | Transgender | The Guardian](#)

voluntary field in addition to mandatory sex data but the question design set out in the template is inadequate and we note firms are likely to see the template as best practice.

No requirement to collect pregnancy and maternity data

- We do not agree to the proposed exclusion of a data field for pregnancy and maternity. This is fundamental to the structural reasons why women exit from “junior to mid roles” (5.21) and is distinct to parental or caring responsibilities. It is vital to recognise the additional burden placed on women in relation to reproduction of the species and how this impacts work and the needs of female consumers.
- We note comments by the PRA in CP18/23 as part of the joint consultation that pregnancy and maternity is a short-term state (circa 9 months) that does not allow statistical analysis. We do not accept this. Firms could for example track and report longer term outcomes such as time remaining in employment since return from maternity leave, whether the exit was voluntary, grade at exit and pay. This data would yield potentially valuable information on the progression of women who have given birth versus other groups.
- We note further the suggestion to collect data on parental responsibilities as a more suitable long-term metric than pregnancy and maternity data. This does not capture the importance of maternal care and nurturing of babies e.g. breastfeeding and the toll this takes on a pregnant/post-partum women. This is important to capture and is a source of discrimination. We are also unconvinced that reporting on parental responsibility is helpful unless this is subdivided by sex, reflecting that typically the impact of parental responsibility on careers differs between men and women.
- It would also be helpful to understand the level or grade at which women become pregnant noting the pressure to put this off in certain careers where absence is seen as a detriment is a mental health burden on women.

Philosophical beliefs and politics excluded

- The excel template for the draft regulatory return excludes political views and philosophical beliefs which are an extremely important aspect of diversity in particular to meet the aim of avoiding groupthink. We note that philosophical beliefs are also included under the protected characteristic of religion and belief in the Equality Act so this template will encourage a further deviation from the law. Whilst there may be challenges to collecting data on beliefs, this has not been considered at all in the CP and some employees may wish to voluntarily provide this data.
- Furthermore, beliefs are an area where there is discrimination in society and preventing a discriminatory environment is important for healthy work cultures. Many of our members hold gender critical beliefs and there are a number of instances of members being discriminated against due to this as there is in wider society with a number of cases of discrimination proven at the employment tribunal⁹ with others still to be heard/judged¹⁰.

⁹ Denise Fahmy: [Gender-critical woman wins harassment claim against Arts Council England | Arts Council England | The Guardian](#), Allison Bailey: [Allison Bailey: Barrister awarded £22,000 after employer discriminated against her over gender critical views | The Independent](#) and Maya Forstater: [Maya Forstater: Woman gets payout for discrimination over trans tweets - BBC News](#)

¹⁰ Jo Phoenix: [Harassed, silenced & compared to a racist for my gender critical views \(crowdjustice.com\)](#), Rachel Meade: [Social Work News \(archive.ph\)](#) and James Esses: [Expelled from my university course for holding gender critical views \(crowdjustice.com\)](#) [Judgments in Phoenix and Meade were not available at time of submission to FCA]

The fear experienced by women in relation to the hostility directed at them at work due their ordinary views on sex and gender is a scourge that must be addressed.

The table below highlights issues versus the objectives of the CP/FCA:

CP Outcome/objective	Issue
A healthy culture	Tackling structural sexism will be important for healthy workplace cultures. This is not supported by the proposals with no requirement to collect sex data.
Reduced groupthink	Philosophical beliefs are an important aspect of diversity of thought and avoiding groupthink. These are not included or considered in the proposals. Data on pregnancy and maternity is also important in this regard.
New talent unlocked	Without accurate sex data to enable understanding the barriers faced by women, talent across both sexes will not be unlocked.
Greater understanding of & provision for diverse consumer needs	Not requiring data on sex and pregnancy and maternity will not enable understanding and meeting the needs of female consumers.
FCA Objective	Issue
Protecting consumers	The data fields proposed are flawed and will introduce potential blind-spots which could lead to decisions or workplace behaviours that put consumers at risk.
Enhancing market integrity	Sound decision-making (important for well-functioning markets) relies on a range of skills and experiences which will not be fully captured by the proposed data fields.
Promoting competition	The proposals are a missed opportunity to capture adequate data on women in particular, and thus enhance competitiveness of the sector with this improved knowledge.
Secondary international competitiveness & growth objective	