



UMEÅ UNIVERSITY

**Equality for the few:
A critical analysis of the Equality Act 2010 (U.K)
from the perspective of gender equality in the
workplace.**

By Jennifer Gardner

Supervisor Katak Malla

Master thesis, 30 hp
Master's programme Law, Gender and Society 120 hp
Spring term, May 2018

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Abstract

The Equality Act 2010 is designed to protect individuals from discrimination in the workplace in England, Scotland and Wales. However, in the year 2018, women in the U.K are paid 18.4% less on average than men, and this gap in average earnings has stagnated, showing a concern for the future. Furthermore, women are not reaching senior or managerial roles in equal measure, displaying an underrepresentation in powerful positions and hinting towards a lack of access to opportunities. This demonstrates that discrimination against women in the workplace is a problem and the Equality Act may not be protecting women adequately. However, I believe that this problem is not addressed sufficiently in current research literature. Therefore, this thesis is a Socio-legal research project from a feminist perspective, to analyse the effectiveness of the Equality Act 2010. This research conducts a critical analysis on the Act from the perspective of gender equality and aims to answer the research question: *To what extent does the Equality Act 2010 create equality for women in the workplace?*

The results find that although the Equality Act 2010 has improved gender equality in the workplace, improvements and further legislation is still necessary. The conclusion can be summed up into two different statements: Firstly, *Money talks*. Powerful business and politics limit the scope of the Equality Act to adequately protect women's interests in the workplace. This is discussed through issues such as regulatory burdens, the lack of legislation surrounding bonus payments, and the lack of conviction behind the new Gender Pay reporting initiative. Secondly, *Equality for some, not all*. Those who can financially afford equality are more likely to achieve it compared to vulnerable members of society. This is manifested through issues such as the difficulties of launching a court battle, cuts to legal aid, austerity, intersectionality and wider social policy. This research also identifies larger principle questions that need to be addressed such as, *who really holds the power in the U.K?*

Equality for the few:

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1. Background and introduction

The Equality Act 2010 is described by the Government in the United Kingdom as legislation that, ‘legally protects people from discrimination in the workplace and in wider society’. It combines several old discrimination acts into one, ‘making the law easier to understand and strengthening protection’ (Government Equalities Office, 2013). It also includes new protected characteristics of discrimination, in order to reflect the U.K’s diverse society. From the perspective of women in the workplace, the pay gap between men and women in the U.K is the smallest it has ever been, and women represent more top positions than before.

However, despite praise for the Equality Act, women are still paid an eye watering 18.4% less on average than men, and this is evident across all age groups, working hours and industries (Labour Market Statistics, 2018). Worryingly, this gap in average earnings has not changed much over recent years, showing a concern for the future. Furthermore, women are not reaching senior or managerial positions to the same extent as men. For example, only 28% of board positions in the top 100 companies of the U.K are occupied by women (Hampton-Alexander review, 2017), displaying an underrepresentation in powerful positions and hinting towards a lack of access to opportunities. These statistics demonstrate that discrimination against women in the workplace is a problem.

Inequality in the workplace is a problem for everyone, not only women. Inequality of any type leads to a reduction in professional diversity and a reduced talent pool. For instance, if a woman is not given the same opportunities as a man in a company, she is more likely to remain under-employed and her skills are not used to their full potential; damaging business. This damage is extended if the male employee promoted above her is less able to do the job. Inequality in the workplace also has a negative effect on the socio-economic wellbeing of

those who are discriminated against, in the case of women this is 51% of the U.K population and this has a much wider effect on the national economy. Finally, inequalities in economic and social power result in bias decisions at societal level, where power and control are used to benefit those who hold it and oppress the rest.

2. Aim

Following the identification of the problem, the aim of my research is to critically analyse the Equality Act 2010 from the perspective of gender equality in the workplace. I will consider all aspects of the Equality Act 2010 to answer the overarching question; *To what extent does the Equality Act 2010 create equality for women in the workplace?*

The reason I have chosen this topic is because I believe it is not addressed adequately in research literature, yet the statistics and issues raised prove that this is an area in desperate need of further research. Therefore, my research will apply general legal theory, and theory from a range of other social subjects, to analyse the Equality Act 2010 in the U.K and the effects on women's equality in the workplace.

Using relevant feminist theory, my research will critically analyse the Equality Act 2010 through three different themes, each highlighting a different aspect of the overall question. The first theme is the objectivity of the Equality Act 2010 and the idea of black letter law. Secondly, I will investigate how the law functions within the context of gender equality in the workplace. Thirdly, how does the Equality Act 2010 fit in the wider U.K society, and how can it be used in conjunction with other measures to fix inequality. Considering this analysis, I will also make recommendations regarding improvements to the Equality Act 2010 and in what way equality for women in the workplace can be improved.

Following the themes identified above, the research questions that will guide my thesis are:

Overarching question:

To what extent does the Equality Act 2010 create equality for women in the workplace?

Individual research questions:

1. To what extent is the Equality Act an objective piece of legislation?
2. To what extent does the Equality Act promote equality and justice for women in the workplace?

3. What is omitted from the wider arena of the U.K legal system, that leads to gender inequality in the workplace?

I expect to find that the Equality Act 2010 is not an objective piece of legislation from the outset. Based on my knowledge of how laws are made and enforced in the U.K, I anticipate many technical legal issues such as the attitudes of officials who write the law and omissions in the text of the legislation. Furthermore, I expect that the Equality Act 2010 does not adequately protect women within the workplace against all types of discrimination. This is a very large piece of legislation, which attempts to protect an even larger amount of people in multiple situations so full coverage is very difficult. Therefore, it seems unlikely that the Act is comprehensive enough to guarantee women's equality in the workplace, particularly when current statistics are considered. Finally, the wider legal and social system in the U.K is dated and fractionated, and I expect that there are many key issues missing from legislation, which could improve gender equality. There are also many factors of the social and welfare system, which are harmful in the quest for full gender equality in the workplace and therefore I am certain there is room for improvement.

3. Previous research

Literature relating to Equality Law in the U.K is available in short supply, and it tends to date back to before the Equality law was enacted in 2010, rather than focusing on the effects we see today. There is a gap in the research focusing on women's equality in the workplace, specifically. However, one of the best examples of relevant literature is the 2018 article, 'Defining the limits of discrimination law in the United Kingdom: Principle and pragmatism in tension' by O'Conneide and Liu. This article represents the field of Discrimination law and it focuses on the U.K Equality law over the course of the 20th Century, to the Equality law 2010 that is in place today. This article highlights the 'principled' and the 'pragmatic' approach to law in the U.K; the disagreement between the two approaches, and the effect this has on the legal system, which is discussed in more detail under theme two. This research offers a new approach with which to assess the Equality Act 2010 and enriches my research. It also highlights further considerations for me as a researcher when writing my thesis, such as political motivations.

The other main influence on this field of research is from W, Mansell (2015) 'A critical introduction to law'. This book is an introductory book to law, in the field of socio-legal studies based in the U.K, that reflects on law as a neutral entity. This research covers the creation of law and legal systems, the use of law, property law and equality law to name a few. Although these theories are not directly relevant to the Equality Act 2010, it raises many relevant considerations for this area of research within the relevant geographical area.

Outside of the two pieces of literature identified here, there is a severe lack of credible research on the topic of the Equality Act 2010 or gender equality in the workplace in the U.K. Therefore, the most relevant previous literature for my research comes from legal feminist scholars and feminist theorists, such as Carol Smart. This relevant literature is identified and explained under each theme separately to seamlessly combine theory and analysis. This allows my analysis to be more in-depth and it makes it easier for the reader to follow.

4. Methodology

My methodology section is split into three clear parts; theory, delimitations and structure. These three parts covers how my research is conducted and what account has been made for limitations in the research process.

The topic of my research is gender equality and for the purpose of this research, gender equality in the workplace refers to the opportunities and conditions afforded to women in their place of work. Opportunities and conditions can refer to a range of factors, such as promotions, rewards for labour and safe working environments and this definition is designed to cover all aspects of working life.

I will also include factors such as the gender pay gap, which is defined by the U.K Government as the difference in average earnings of men and women. It does not account for differences in pay for comparable jobs, which has been illegal in the U.K since the Equal pay Act 1970 (Government Equalities office, 2016).

4.1 Theory

My study is a Socio-legal research project, utilising a critical analysis approach from a feminist perspective. These three different approaches (Socio-legal research project, critical analysis approach and feminist perspective,) are closely linked throughout my research and offer depth and meaning to my thesis when used in combination. My feminist perspective is a focus on the experience of women in the workplace, where women want equality of opportunity, respect and reward. This is not a political stance but an epistemological pattern through which to apply my research methods in a measured way.

Through a Socio-legal approach, I will consider law as an applied science: law in action. This methodology allows my research to draw upon theory from a range of different subjects such as feminist theory, feminist legal studies and general legal theory, and apply a critical analysis method to the study. Socio-legal studies also consider external influences of the law

on society, such as issues relating to power, control, social and cultural influences that are manifested through social systems, institutions and practices, therefore the range of external influences on women in the workplace can be considered from all angles, guaranteeing a full analysis. This approach differs to other law and society approaches because it views law as a constant development, 'in constant interaction with an inseparable from the external- legal factors, which contribute to its social environment', (Banakar, 44: 2015). For this reason, I think this approach can add a new dimension to the analysis and research literature of the U.K legal system, that we have not seen before.

A critical analysis of the Equality Act 2010 involves the breaking-down of the law and the use of critical thinking in order to analyse it. For my thesis, this involves systematically breaking down the Equality Act to assess its validity. The structure follows the different parts of the analysis in each small detail; I start with the origins of the Act, it's creation and motivations before moving on the language, content and finally the omissions. A critical analysis approach can be used in a variety of subjects and forms around the world and it looks slightly different with each use. Therefore, a specific definition for this theory is difficult to come-by, but most cross-curricular scholars agree that it involves a critical reading of the text and a deep analysis, followed by evaluation. The reason I have chosen to conduct a critical analysis is because through this methodology, I can examine all parts of the Equality Act 2010 and my results show an evaluation of its effectiveness, in relation to my chosen perspective.

4.2 Delimitations

One limitation of the use of critical analysis is the inevitable subjectivity displayed by me, the researcher. To address this issue, I have chosen a 3-step approach to the research questions in order to clearly define one question from another. This way, the analysis that I make can be developed slowly and closely with the text, rather than leaving room for assumptions and subjective interpretations to be made. More details about the 3-step approach can be found in the structure explanation.

I have also chosen a narrow and well-defined topic of study to avoid being overloaded with too much information. The danger of a study project that is too wide means that the analysis can leave gaps and make 'leaps' from one interpretation to another and this is not systematic, as is required of a critical analysis.

Subjectivity can also be avoided by using the same epistemological approach for all issues identified in the research, regardless of preconceived ideas or expectations. Through utilising the same, repeated principle I hope to eliminate the negative effects of subjectivity, to the best of my ability.

Relating to the specific wording of the Equality Act 2010, I do not include a word-by-word analysis report on the Act. Instead, I have included general themes and examples that I have identified, following a close reading of the legislation. The reason behind this decision is that an in-depth report will not add anything worth while to my analysis and disrupts the rhythm of my write up. However, I understand this is not ideal from a results perspective as it makes comparisons with other legal texts more difficult. I believe my analysis and evaluation will be more valuable in this context.

I also refer to the U.K throughout this research however the Equality Act 2010 is only enforced in England, Scotland and Wales. Northern Ireland have independent laws. However, I have chosen to keep this as an analysis of the U.K because most statistics and gender equality data is gathered on a national level and therefore it does include Northern Ireland. Therefore, to allow for rich and wide-ranging statistics, that can be compared nationally and internationally, it is necessary to address the U.K as one entity.

Finally, my final theme three covers other aspects of the British legal system and society that affect gender equality in the U.K. However, there are so many factors that influence professional working practices that covering all factors is a task too large for this thesis. I have used my discretion to pick the factors that are most influential however, I understand that this is a subjective opinion and difficult to quantify. Therefore, there may be factors that are missing or overvalued in the final theme and to account for this, I have made general principles and suggestions rather than recommendations for specific actions.

4.3 Structure

There are many aspects of the Equality Act 2010 in need of scrutiny and for this reason my thesis will take place through three main themes relating to different aspects. The theoretical framework and relevant literature is identified under each theme individually. The first theme relates to the objectivity of law. The original Equal pay law of 1970 was the first time that women in the U.K were legally entitled to the same pay as men: equal pay for equal work. This law was written against a politically charged backdrop by a male group of MP's and although it has since been repealed in favour of the Equalities Act 2010, much of this original make-up still stands. Moreover, when the law is broken down and analysed, the wording of the Equality Act leaves room for loopholes and is subject to interpretation, along with each characteristic of discrimination being considered in isolation rather than from an intersectional perspective. All original legislation and members lists have been digitised by the U.K Parliament and therefore I am able to access and analyse this text and statistics online.

Other aspects in need of critical analysis are highlighted in my second theme, which has a focus on women's equality in the workplace and looks at how the law works in action. Key issues include regulatory burdens, barriers to launching a court case, sexual harassment and the financial implications of seeking justice in a court of law. Primary sources for this theme include the Equality Act 2010 itself, Trade Union reports available online and a comparison of the data with other Western countries and European statistics. The Equality Act 2010 is a total of 251 pages, but it covers all types of discrimination and situations. Therefore, I have focused mainly on sections 13 to 27 (Chapter 2: Prohibited conduct) and sections 64-80 (Chapter 3), which cover Equality of Terms; Sex equality, Maternity equality, Disclosure of information and supplementary because this is the only part of the Act that is relevant to the perspective of gender equality in the workplace.

Finally, the third chapter looks at this problem from a wider perspective with a focus on what is not there, rather than what is. This wider perspective focuses on issues relating to power and cultural values. In the U.K for example, there is no legal requirement for companies to publish gender pay figures and no charges have been brought against companies that display

gender pay differences on an employee wide scale. The welfare state and barriers for women entering the workforce also shape societies view on gender roles, which in turns affects their role in the workplace. Primary evidence used to inform this theme includes data surrounding childcare statistics and maternity benefits from OECD reports and official Eurostat reports, also gender pay reports held on a central government base available for public viewing online and reports and statistics relating to the effect of austerity in the U.K.

5. Theme one: Law is a man's game

Theme one will consider law as a social phenomenon that has developed over time and through different contexts, rather than law as an unquestioned and perfect presentation of justice. To adopt this rational, I will answer the question: 'To what extent is the Equality Act an objective piece of legislation?' To clarify the term objective, I have chosen to follow a simple definition that can be understood around the world; *'not influenced by personal feelings or opinions in considering and representing facts'* (Oxford English Dictionary). This question will be applied through several different aspects of the Equality Act 2010, starting with the Equal Pay Act 1970. I will also break down and analyse the wording of the Equality Act 2010 because limitations in law are often linked with technical faults of the legislation itself. I will also consider how the law works in action i.e. the effect on society, rather than in theory.

To introduce this theme, one must recognise that the Equality Act 2010 offers the most diverse and wide ranging legal protection that the U.K has ever seen. It protects individuals in employment, job seekers and the self-employed through nine protected characteristics; age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. It is the first time that gender reassignment has been protected by law, and the first time that discrimination by association or perception has been outlawed. For this reason, the Equality Act was warmly welcomed by the legal system in 2010 and is often used to protect subjects through employment tribunals today. However, 8 years on from the enactment, equality in the workplace has started to stall and therefore we must look at the law from the perspective of an objective piece of legislation to see where improvements can be made.

5.1 The Equal Pay Act 1970

The struggle for equal pay and conditions in the workplace has been on the political agenda since the mid-nineteenth century. The first Equal Pay Act was introduced in 1970, which has since been repealed in favour of the Equality Act 2010. The Equal Pay Act 1970 originally

stated: *'for men and women employed on like work the terms and conditions of one sex are not in any respect less favourable than those of the other'* (Equal Pay Act 1970, Chapter 41). In other words, women and men must be paid the same for like jobs. The original make-up of the Equal Pay Act 1970 has been followed closely and largely repeated in the current Equality Act 2010, which is why I have chosen to start my analysis here. By understanding and analysing the original Act, much of the analysis is still relevant to the current legal situation.

The promise to introduce Equal Pay legislation in the 1970's had been in the Labour Party manifesto for the 1964 general election under Section 2. Plan for Industry, '(g) The right to equal pay for equal work' (Labour Party Manifesto, 1964) and was backed heavily by Trade Union support during the 1960's, situated to the left of British politics at the time. There were also many famous strikes in the late 1960's, such as the Ford machinists strike in Dagenham (1968) before the Act was finally enshrined in U.K law by the Labour Government. It can be argued that Labour used this promise of Equal Pay Law to win votes and ultimately power. This raises questions relating to the development of law and society and is an example of how society and popular opinion create laws, rather than being a separation of state and society. In this instance, the involvement of politics and politicians' use of popular opinion did result in positive effects for women's equality in the workplace, however the involvement of politics in this way raises issues relating to the objectivity and motivations behind the legal process.

Crucial to the myth that law is objective and separate from society, are the arguments made by Mansell, that 'the role of law is created and maintained by people in an institution, but they exert the law over other people as though the institution existed independently of people' (Mansell, 2015: 24). In the case of the Equal Pay Act 1970, it was the politicians on the left who used the promise of equality to gain power and they drafted a legitimate piece of legislation in a shape that pleased their voters; it was the voters who shaped the institution. Once the Act was enacted, and even today with the majority of this legislation still in force, this Act transcends into a legal sphere where it is considered to be independent from influence or bias, unquestioned. Linking back to the definition of Objective, Equality law *was* based on personal opinions and feelings yet represented as individual fact. Therefore, I would

argue that although The Equal Pay Act 1970 and more recently the Equality Act 2010, are certainly welcome additions to the legal system, they were not objective in their creation.

5.2 Who wrote the Equal Pay Act 1970?

Carol Smart observes that most lawmakers and lawyers are indeed male. Therefore, her analysis suggests that when a man and woman stand before the law, it is not the law that fails to apply objective criteria when faced with the feminine subject, but that the criteria itself is masculine: 'To insist on equality, neutrality and objectivity is thus, ironically, to insist on being judged by the values of masculinity.' (Smart 1992: 32). This theory is supported by feminist writers such as MacKinnon (1997) who supports this idea when she argues that ideals of objectivity and neutrality, which are celebrated in law, are masculine values (Smart 1992: 32). And in more recent literature, Criminal Law is investigated within a Swedish context by Monica Burman (2010) from the perspective of violence against women. She agrees that law around the world is not gender neutral and it is dominated by masculine discourses (Burman 2010: 176) and she successfully challenges the 'legal myths' of neutrality and objectivity. The 'law is masculine' argument is key to the analysis of the Equal Pay Act 1970 and the Equality Act 2010.

When new laws are made in the U.K, it is a Government bill that is written first, usually by the Government in power. In the case of the Equal Pay Act 1970, it was the Labour Party in Government at the time. Any new bill must be voted through the House of Commons, (elected Members of Parliament) and voted through the Houses of Lords (in 1968 they were unelected nobility) before being enshrined in law. In the case of the Equal Pay Act 1970, it was spearheaded by one of the few women MP's, Barbara Castle, who forced the bill through the House of Commons before the Labour Party lost the general election in 1970. This bill was unsuccessful in Castle's first attempts, so she rethought the bill and eventually sold it to Parliament as a measure for business efficiency, as well as equality, which would be beneficial for business' profits. Women's rights were a side effect of this bill; however, it was only through this channel that the bill was accepted by parliament and passed into law. Therefore, the motives behind the bill can be categorised as masculine; a means to maximise

business efficiency, (businesses mainly owned by men,) to maintain and extend financial profit and ultimately economic power. Although introduced by a woman, this bill was already radiating masculine properties.

More alarmingly, the Equal Pay Act 1970 was argued, amended and eventually passed by the House of Commons and the House of Lords in 1968. At this time, only 20 members of the House of Commons out of 650, were women (Kelly, 2018). And only 16 members of the 476 members in the House of Lords were women (Data platform, Parliament website). Both amount to a percentage of approximately 3%. This tells us that 97% of the input and influence behind the original bill was male, demonstrating the masculine objectives theorised by Smart. For this reason, I doubt how objective this law is, considering it was enacted almost entirely by men. I also question the values that are enshrined in both the Equal Pay Act 1970 and consequently the Equality Act 2010, and to what extent women are protected considering the original purpose of the law was to maintain masculine interests and enacted by men.

5.3 The Equality Act 2010 as a gender-neutral piece of legislation.

The original text of the Equal Pay Act 1970 was a huge step forward in improving women's position in the workplace, however, it was not a perfect piece of legislation. When the Equality Act 2010 superseded the Equal Pay Act 1970, it amalgamated many different Equality Acts into one. Therefore, much of this original text was merely copied over; including both the good parts and the loopholes. During this theme, I concentrate on Chapter 3 of the Equality Act 2010, entitled 'Equality of Terms'. This is the part of the Act that directly covers equality in the workplace under the headings; Sex equality, Pregnancy and maternity equality, Disclosure of information, and Supplementary.

The wording of the Equality Act 2010 is gender neutral, which is an issue highlighted by Hunter, who calls for women's experience and subjectivity to be put back into law (Hunter 2013). As discussed in the previous chapter, the Equality Act 2010 originated from a masculine perspective, written by mostly men. This highlights the lack of inclusion of women, and I argue that the gender-neutral language only extends this lack of recognition.

Referring to subjects of the law as ‘A’ and ‘B’ has both advantages and disadvantages, and in the case of non-gender law the advantages can be fairly argued. However, in equality law relating to gender specifically, which aims to protect women against masculine values, the lack of official sphere through which women are specifically represented fails to empower them and entrenched old values. The law should make space for women to be fully represented.

5.4 What is not said in the Equality Act 2010?

Starting at the beginning of Chapter 3 with section 64 of the Equality Act 2010, the Act defines employment adequately and enforces the rule, equal pay for equal work (section 65). I find it surprising, however, that there is no adequate definition for what ‘equal work’ is: *(1) For the purposes of this Chapter, A's work is equal to that of B if it is— (a) like B's work, (b) rated as equivalent to B's work, or (c) of equal value to B's work.*

(2) A's work is like B's work if— (a) A's work and B's work are the same or broadly similar, and (b) such differences as there are between their work are not of practical importance in relation to the terms of their work. (Equality Act 2010, Part 5, Chapter 3, Sex Equality, Section 65)

Referring to the text, the example above clearly states that two people’s work should be equal when rated by the same standards, however, the law fails to define who or how this work is rated and who defines the standards. There is not a standardised means by which to measure and no specification that the person doing the measuring should show any type of objective or measured approach to the rating. The term *broadly similar* is also a direct copy of text from the 1970 to the 2010 version and leaves a lot of room for interpretation. Broadly similar, in its very definition is a very vast concept, open to a subjective interpretation or extortion to suit discriminative motives.

Clause 6 in section 65 states: *(6) A's work is of equal value to B's work if it is— (a) neither like B's work nor rated as equivalent to B's work, but (b) nevertheless equal to B's work in terms*

of the demands made on A by reference to factors such as effort, skill and decision-making. (Equality Act 2010, Part 5, Chapter 3, Sex Equality, Section 65)

In the same way that there are loopholes in the choice of wording, this part of the text also lacks concrete standards by which to apply the law. For instance, the word ‘value’ is a very subjective and loose word that can be interpreted in a wide range of ways and therefore offers very little assurance that real equality can be applied. Moreover, factors such as *effort, skill and decision-making* are very difficult to measure or compare from one person to another. In this way, it makes bringing a case against an employer on these basis’ very complicated and difficult to prove or disprove, which is a huge limitation for this law.

Sections 65-80 of the Act continue in the same vain as the two examples above, with each term defined however the definitions lacking in detail. After reading the Equality Act 2010 closely, it almost seems as though the focus remains on productivity and efficiency of business, as was the main goal of the original Equal Pay Act 1970, rather than the equality of men and women in the workplace. After all, effort and skill lead to productivity and increased profits and if a woman can input these to the same level of a man then she must be paid, but more importantly the business owners will also profit. Based on the omission of certain criteria and the cloudiness of the language, I would be tempted to call the Equality Act 2010 not objective at all. In fact, it seems to have an alternative motive and lean in support of the employer rather than the subject of the law itself.

5.5 Intersectional omissions

The Equality Act 2010 was recently updated to no longer require a person to be under medical supervision in order to fall within the definition of gender reassignment and this is a crucial step towards gaining equality under the law for LGBTQ employees. *‘A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.’* (Equality Act 2010,

Part 2, Chapter 1, Section 7) However, people who choose to adopt a temporary appearance of the opposite sex are not covered by this definition and transvestites are among those affected. There are also key minorities missing from the list of protected characteristics such as language, caste, life illnesses and genetic predisposition to name a few. These definitions that are omitted from the Equality Act 2010 are not directly related to gender but they do suggest that it is not a wholly objective piece of legislation as it does not protect all subjects under state law.

For those characteristics that are covered under the Equality Act 2010, it is not straightforward protection for those who exhibit more than one protected characteristic, such as a woman of colour or a gay woman, for instance. There is provision for dual characteristics where the Act states, '*A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.*' (Equality Act 2010, Part 2, Chapter 14, Section 1). But the victim must prove each characteristic separately and the characteristics must be ranked, one first and the second follows. This means that if a gay woman of colour is discriminated against in the workplace, she must decide which of her characteristics define her in the first position and prove number one first, before proving the next characteristic separately. Unsurprisingly, this requires twice the amount of work, evidence and expense when most likely the discrimination that occurred happened together as one action, possibly repeated in a variety of ways.

Shamefully, protection for a gay woman of colour stops there. She is not protected for a third characteristic and therefore must rank her characteristics carefully because part of her identity and possibly the reason for her discrimination, is not protected. She loses one third of her identity to fit into the legal mould. Noticeably, the white male is fully represented and offered full protection by default because the law is centred around him. This is a huge problem for the Equality Act 2010, in the way that it cannot combine characteristics to ensure that subjects of the law are treated as individuals and reflect the diverse society of the U.K. Instead, it requires a homogenous and inflexible approach to the law which fails to offer legitimate cover and over simplifies the subject.

5.6 Theme one: Summary

This chapter aims to answer the question: to what extent is the Equality Act an objective piece of legislation? There are many factors relating to the creation and implementation of this law that can answer this. This law was the first of its kind and a historic step towards women's equality in the workplace. The Equality Act 2010 has also been passed into U.K law legally, through parliament and with the support of the public, which suggests that it should be an objective piece of legislation. However, the black letter interpretation of law means that it is often not questioned, challenged or improved in the way that it should. Factors of the Equality Act 2010 that should be challenged are the political motivations of the Equal Pay Act 1970 and its inability to separate itself from society from the outset. Other factors that suggest the law is not objective include the masculine motivations behind the bill and the 97% male dominated implementation. The choice of gender neutral terms can be argued to be an improvement to the law's objectivity yet also to entrench old problems and there is a severe lack of intersectional considerations. In my opinion, more important than this choice of words are the values that are demonstrated through a close reading of the text, which suggest that there are hidden agendas behind this law and that it does not exhibit the objectivity that it claims to hold. In summary the law is masculine in its conception, implementation and interpretation.

6. Theme two: 28% of the power

Theme two will answer the next research question: To what extent does the Equality Act promote equality and justice for women in the workplace? This theme adds a feminist perspective to my research, by looking at the law as a way to alter conditions for women. Equality and justice for women in the workplace means to treat women in the same way that any other person is treated, not to treat her differently because of her sex. Therefore, within the context of the workplace, Equality means equality between men and women; in professional opportunities, power structures within the workforce and rewards for labour. When equality is not afforded to women, it is the ambition that the law corrects inequality through the access to and support for justice.

On a general level, the gender pay gap in the U.K is one of the smallest it has ever been, and women have more opportunities in the workplace than ever before. The Equality Act 2010 has improved equality because it covers the topic of ‘work’ in part 5 and outlaws against direct discrimination, indirect discrimination, harassment and victimisation. It also has subsections especially for pregnant woman and women on maternity leave. This covers a wide range of topics relating to the workplace and is a positive step towards promoting gender equality. However, women still occupy only 28% of top board positions in the FTSE 100. This suggests that there are limitations with the Equality Act 2010 and this chapter will analyse to what extent these limitations hinder equality for women in the workplace or fail to promote justice. I will introduce various topics, such as harassment in the workplace, regulatory burdens, legal quotas and limitations to launching court battles, all centred around the key theoretical argument that the law is sexist.

6.1 The law is sexist

Smart’s theory that law is sexist is applicable for my discussion surrounding equality of women in the workplace. The law is sexist theory argues that the law allocates fewer resources to women in their fight for justice; they are judged by different standards than men and the harms afforded to them are not recognised under the law (Smart 1992: 31). This is

evident in the Equality Act 2010 as explored in the example below. The act specifically outlaw's discrimination against another person on a range of protected characteristics and defines direct discrimination as: *Direct discrimination. (1)A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others* (Equality Act 2010, Part 2, Chapter 2, Sex Equality, Section 13)

Regarding sex discrimination, two factors are noted especially; breastfeeding and, '*b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth*' (Equality Act 2010, Part 2, Chapter 2, Sex Equality, Section 13). This is the first example of how the law allocates more resources to men than women. It specifically outlines that men cannot be discriminated against in connection with pregnancy or childbirth. Therefore, this legal right is clearly displayed and can be upheld in a court of law. Yet, apart from breastfeeding, there are no specific clauses to protect women against a range of more common discriminations. For instance, where is the specific clause to protect a pregnant woman during the recruitment process? This isn't even found within Section 18, 'Pregnancy and maternity discrimination: work cases'. So, my question is, why is this not included but the male distinction is? Furthermore, the wording for protection against direct discrimination, *A treats B less favourably than A treats or would treat others*, is problematic. It refers to *favourably* and *treat*, two unquantifiable terms and leaves the law open to interpretation and therefore difficult to enforce. This shows that the law is sexist and does not support women in their fight for justice and equality in the workplace under all circumstances.

The law also fails to account for equal pay adequately. The law makes it is illegal to pay a man and a woman differently for like work however bonus' are not accounted for and yet these make up much of the difference in pay among senior ranks. The NHS reported in 2015 that, 'out of those receiving [bonus'] for the first time in 2015 just 65 were women while 252 were men' (Mail online, 2017). Linked to this report is the idea that men are more likely to ask for a bonus as this is seen as an aggressive, masculine trait and therefore they are more likely to be granted it, which is discussed in more detail in Theme Three. However, this practice is not outlawed and yet it is a significant factor contributing to the gender pay gap. Another factor is that the size of a bonus is not set and it is easily determined based on

subjective factors, such as *effort* or *skill*, as discussed in the previous theme. Therefore, the manipulation of larger bonuses for men is both possible and common place under the current Equality Act 2010 because there is no protection against bonus pay. This does not encourage fair reward or encouragement for labour and therefore fails to promote equality. Another area of the workplace in need of further legislation is the issue of harassment.

6.2 Harassment in the workplace

Harassment in the workplace is not afforded enough resources to keep women safe, and the harms afforded to them are not fully considered under the law. The Equality Act 2010 rules against harassment of any type in the workplace under Chapter 2, Part 2, Section 26 however a recent report by the BBC found that women aged 18-34 are most at risk of sexual harassment at work, with 43% having experienced it and 40% of women overall (ComRed poll for the BBC, 2017). The Equality and Human Rights commission claims that, ‘corrosive working cultures have silenced the voices of victims and normalised sexual harassment’ (Equality and Human Rights Commission, 2018).

A reason this is still a problem is because there are gaps in the legislation, such as no codes of practice that employers must abide by to protect employees. When a claim is made of sexual harassment is made, there is very little structure an employer must follow to account for the accusation in a suitable way. For this reason, many claims of sexual harassment in the workplace are not followed through correctly and victims are unlikely to report for fear of rejection. If the Equality Act 2010 included a minimum requirement for employers to take to properly address instances of harassment, this would be one step towards affording victims the safety and dignity they deserve. The results of the lack of legal structure mean that victims of harassment, especially sexual harassment who are usually women, are devoid of power in their working environments. In practical terms, this means a lack of advancement, low self-esteem, reduced performance and some leave the workforce all together. This has a negative effect on women’s access to professional opportunities and therefore equality in the workplace. It also damages societies view of gender roles and normalises inappropriate

behaviour, allowing a disempowerment in all areas on society and culture, not just in the workplace.

6.3 Regulatory burdens: Bonuses and the gender pay gap

One reason for the relaxed legislation in the Equality Act 2010 is the reluctance of the U.K Government to use heavy legislation, even though regulatory burdens prevent women from gaining full equality or justice in the workplace. ‘Defining the limits of discrimination law in the United Kingdom: Principle and pragmatism in tension’ (O’Cinneide and Liu, 1992), claims that Equality law in the U.K demonstrates a tension between two different approaches; a ‘principled’ approach to law, which is the use of law to limit discriminatory behaviour. The second approach is a ‘pragmatic’ approach, which considers arguments against Equality law such as regulatory burdens and a loss of business efficiency. O’Cinneide and Liu claim that, ‘the development of British law in this context, pragmatic considerations have arguably been even more influential’ than the ‘principled’ approach (O’Cinneide and Liu 2014: 81). An example where this division shows is in the creation of the Equal Pay Act 1970, as discussed in the previous theme. The success of the Equal Pay Act 1970 was based upon business efficiency and improving profits, not on offering equality to women as a first principle.

This is a critical explanation as to why the U.K government has failed to control the fair payment of bonus’ to men and women. Generally, bonus’ are considered to be a motivating factor in generating business efficiency and driving companies in competitive markets. If the Government was to introduce legislation that controlled these, then there would be a lot of opposition from big businesses and powerful people (who are paid large bonus’). It would be very difficult legislation to pass and would be argued to limit business efficiency and harm U.K businesses both in their ability to compete internationally and to attract top talent from around the world; it would be very unpopular. Instead, there is a lack of legislation to regulate bonus payments and the gender pay gap remains.

This tension between regulation and big business is also evident in arguments we find against publishing gender pay gaps for large companies, which was introduced for the first time in

2017. This mandatory exercise was proposed when the Equality Act was published in 2010 but it was resisted for many years, until it was finally implemented last year, under limited circumstances. It is only applicable for companies who employ 250 members of staff or over and it must publish certain criteria, by any 'relevant employee'. A relevant employee follows the rather loose description of someone, 'who ordinarily works in Great Britain and whose contract is governed by U.K legislation' (Government Equalities Office, 2016: 8). They do not need to be of any official standing, code of ethics or qualification to calculate the legal document, consisting of large numbers of quantitative data. The lack of criteria or regulation also allows numbers and statistics to be arranged creatively, in a way to hide systematic discrimination in the workplace, if it exists.

For companies who fail to publish their gender pay gap on time, there have yet to be any formal sanctions brought against them although the Government claim to have the ability to impose unlimited fines. The BBC reported in April of this year that 1,500 companies failed to reach the 4th April deadline, including the Unite union who claim to be "at the forefront of the trade union campaign to achieve equal pay" (BBC.com, 2018). This lack of formal sanctions shows the lack of commitment by the U.K Government to impose regulation or do all they can to ensure gender equality in the workplace. It also demonstrates the insincere response from large companies. Worst still, there are no punishments available for companies who do display large gender pay gaps as we have already seen published in both 2017 and 2018. The lack of public awareness surrounding the gender pay gap, limited inclusion of companies, lack of direction and lack of punishment can all be categorised through a lack of regulation. This lack of regulation fails to promote gender equality in the workplace in a meaningful way.

6.4 Legal quotas

In relation to the reluctance of the U.K Government to impose further gender equality legislation, in order to improve women's experience in the workplace, legal quotas for women in the office has not been enforced. There are many arguments against having quotas for women in the workplace. Common arguments include the unfairness to men by having

spaces on company boards reserved for women. It is also seen as a complicated step as there are many different types of women and a whole gender cannot be summed up in one job posting. However, I argue that quotas for women would be a very positive step for women's equality in the workplace. By ensuring that there is space for women in senior and powerful positions, this gives more influence to women and enables change to take place from the top. It also empowers other women, creates positive role models for young women to aspire towards and offers diversity in the boardroom, which is beneficial for business and equality. Regretfully, the Lord Davies report 2011 decided not to introduce boardroom quotas for women but instead offered a voluntary 25% target by 2015 for the FTSE 100. Although this voluntary figure was reached, enforced legal quotas of 30-40% that were introduced in other European countries such as Norway, Germany and France have been more successful. The number of women in Executive positions in the U.K has also stagnated over recent years, suggesting that voluntary targets for boardroom members do not tackle the problem completely and women remain in only 28% of board positions for the foreseeable future. They continue to have fewer professional opportunities and an unequal share of the power.

6.5 Difficulty of launching a court battle

To answer the question relating to justice for women in the workplace requires an exploration of how to seek justice within this context. However, proving a case of sex discrimination with the use of the Equality Act 2010 is not easy. In the first instance, a woman must present evidence to the Employment Tribunal that her employer did discriminate against her based on her sex. Not many employers will admit to discrimination based on the employee being a woman and therefore primary evidence can be difficult to obtain. Instead, employers often find a different excuse to pay an employee less than another, such as experience, *effort* or *skill*.

There is a time limit by which a woman may launch a claim against her employer and this is a period of three months and one day. Although it is necessary to have a time limit, the period of three months and one day is a short period of time in which to prepare a case, seek legal counsel, be financially capable of launching a claim and if the discrimination has had a

negative effect on mental health then this can be a very stressful time and therefore a huge limit to seeking justice. A longer period, even just 6 months/ double the time, would be more courteous to a victim of discrimination and yet 6 months is still a very short space of time within a legal framework.

Another obstacle that women experience when seeking justice for sex discrimination in the workplace are the associated costs. There are costs for legal representation as free legal aid has been cut from Government spending twice since 2010, through the U.K's period of austerity. A new Act, Sentencing and Punishment of Offenders (Laspo) was also introduced in 2013, which severely restricts funding to many victims from the poorest backgrounds. Amnesty International reported that this new Act saw a drop from legal aid, which was granted in 925,000 cases in 2012, to only 497,000 after the Act was introduced, a drop of 46% (Guardian, October 2016). This lack of free legal aid is a barrier to justice for many women seeking assistance via the employment tribunal. It limits their access to legal guidance and representation and therefore leaves many women without support or the means by which to achieve justice when they have been mistreated in the workplace. Moreover, the lack of legal aid is not only prohibitive for women seeking justice in the case of equality in the workplace, cuts to free legal aid disproportionately affects women in all legal discourse such as family law, education law and domestic violence, 65% of those who will lose legal aid for family law cases are women; this increases to 73% of education cases (Women's resource centre, 2012). This does not directly affect women's equality in the workplace, but it does demonstrate the loss of power women experience in society, which will indirectly affect their position in professional life too.

In addition to the lack of affordable legal representation, 2013 also saw a decision to introduce fees of up to £1200 for claimants to pay for a tribunal hearing. As a result, the TUC report showed that women seeking a hearing based on sex discrimination was down 80% and the number of women pursuing pregnancy discrimination claims is also down by over a quarter (TUC report, 2014). These financial burdens are statistically proven to be a barrier to starting a claim, not least winning justice based on sex discrimination in the workplace. The effect of this is not only discrimination on an individual basis, but it allows this behaviour to continue by 'bad' employers and affects more victims over time. Moreover, the lack of

women who are speaking out and winning cases of discrimination in the workplace fails to change society's view surrounding gender equality and normalises this behaviour. By not promoting justice for women in this way, they remain powerless in the workplace and under the law and allows the cycle to continue; unchallenged.

6.6 Non-disclosure agreements

Non-disclosure agreements or confidentiality clauses are another reason why some discrimination and harassment cases are not brought to court and justice is not served. Non-disclosure agreements are often signed when an employee leaves a company and are legally binding. Alarming, they are often used in the case of sexual harassment cases in the workplace, to conceal inappropriate, discriminatory or illegal behaviour. Sometimes the use of these clauses even prevents the victim from reporting behaviour to the authorities. This is common practice in the U.K and the Women and Equalities committee launched an inquiry into this behaviour in January of this year. 'The use of non-disclosure has helped to harvest a culture in the workplace where sexual harassment is covered up and not spoken about' (Women and Equalities committee, 2018). This is dangerous for the workplace because it prevents open discussion or frequently reporting of inappropriate behaviour. Non-disclosure agreements also isolate incidents of harassment and prevent them from being reported to the authorities. This is harmful to equality in the workplace on two fronts: Firstly, it means that inappropriate behaviour goes unpunished and the behaviour is not condemned by either professional bodies or society as a whole; justice is not achieved. It also enables those who harass others to continue with this behaviour, affecting more victims over time.

In terms of women's equality in the workplace, I argue that non-disclosure agreements are damaging to women's credibility within workplace cultures, since this behaviour goes unaccounted for as if it is quietly accepted by society and normalised. It also damages women's confidence and opportunities in the workplace, not to mention that if a workplace fails to condemn this type of behaviour, it says more about their treatment of female employees and their rights to equality. Finally, non-disclosure agreements are a significant barrier to justice for women who have been treated unequally in the workplace.

6.7 Theme two: Summary

The Equality Act 2010 is a legitimate piece of legislature by which to achieve gender equality in the workplace and use in the court of law when equality is not afforded to an employee. However, there are limitations to the Equality Act 2010, which prevent equality and justice for some workers. So, to answer the question: To what extent does the Equality Act promote justice and equality for women in the workplace? I would argue that the Equality Act 2010 does take responsibility for different forms of discrimination in the workplace and outlaws certain types of behaviour, which is crucial in order to gain true equality. However, I would also argue that the law is sexist theory introduced by Smart is evident in this Act, through the resources that it affords to men but lacks for women. There is a lack of regulation surrounding key issues, such as harassment or gender pay, which would encourage further equality and women to advance to more senior positions, however they have not been regulated because 'pragmatic' approaches are considered more valuable for business, such as the failure to use legal quotas. Finally, the process of launching a claim against an employer based on sex discrimination is a time pressured, stressful and expensive process with very little support available. The use of non-disclosure agreements furthers injustice and inequality. This limits justice for the poorest and most vulnerable people in society. Ultimately, normalised gender discriminatory behaviour and a loss of power for women through the actions investigated here, lead to inequality in the workplace and a disempowerment of women in general.

7. Theme Three: Punished for having children

My final theme looks at the legal system in the U.K as an overview and asks: What is omitted from the wider arena of the U.K legal system, that leads to gender inequality in the workplace? Relevant theory to answer this question is that the law is gendered from Smart. This is a more philosophical approach, which questions how the law creates gender or how gender is shaped by law, and how we can use law to achieve justice independent of gender or the associated factors (Smart 1992: 33). The reason I have chosen to look beyond the Equality Act 2010, precisely to analyse it, is twofold: Firstly, it is difficult to fully analyse the effectiveness of a policy when the policy is not considered as part of the bigger picture of moving parts. In other words, no law is separate from the society in which it operates. Secondly, there are factors that negatively affect women's equality in the workplace, which are not linked directly to the Equality Act 2010. However, these factors could be addressed with the use of further legislation or amendments to the Equality Act 2010.

In the U.K, the Equality Act 2010 is largely enforced, and the enforcement of this law tells society that women are valued, and gender equality is an important part of a functioning state. However, legal and social decisions that are made away from the Equality Act 2010 can give the opposite impression and have a negative effect on women's equality in the workplace. Issues such as maternity leave, childcare and public spending cuts are some of the topics discussed here in more detail. This theme also reconsiders topics from previous themes, such as gender pay reporting from a new perspective, by applying Smart's philosophical approach. Having said this, there are so many factors in society that affect women's experience in the workplace that it would be an impossible task to consider them all. I have chosen those that I feel are most relevant to this study.

7.1 Gender pay reporting

The recent step of the U.K Government to call upon large firms to publish their gender pay reports is an enforcement of positive gender values. However, I argue that the gender pay reporting is voluntary and symbolic, rather than rigid and serious, and that it does not always

promote equality, as discussed in the previous theme. Here I consider what the effect of the gender pay reporting is on the wider society and our gender values.

There are ‘no penalties as such, but this will be reviewed if levels of compliance are not satisfactory’ (Equalpayportal.co.uk 2018), if companies choose not to publish their gender pay reports, this gives the impression that gender equality is idealistic but not valued in its entirety by the U.K Government. Furthermore, those companies that have published their gender pay gaps almost unanimously report gaps in the average pay of their men and women. Some of the biggest gaps belong to the retail industry, with Phase Eight reporting women’s mean hourly rate is 64.8% lower than men’s, travel giant TUI reporting that women’s mean hourly rate is 56.9% lower than men’s and a chain of schools named Schoolsworks Academies paying women’s mean hourly rate 36.4% lower than men’s (Gender pay gap report, April 2017). However, there is no punishment for companies that exhibit large gender pay gaps, which further trivialises the issue. Instead, the Government will publish sector-specific league tables of gender pay gaps in an attempt to *name and shame* the worst offenders, public humiliation being the best it can offer in the fight for equality. (These league tables are yet to be published at the time of writing.) I argue that until the U.K Government regulates this type of behaviour, introduces strict punishments and enforces them all, the gender pay gap will remain. Children will continue to learn that female educators are less valuable than their male counterparts and that their favourite shops pay big bonus’ to the men but not the women at the top. The message that is portrayed to society is that gender pay differences exist and this is okay. This is damaging to women’s equality in the workplace and in society overall.

All companies that are smaller than 250 employees are exempt from any reporting or public scrutiny. This means that thousands of small and medium sized businesses are ‘under the radar’, and their gender pay gaps are considered unimportant. This sends the message to society that large companies in the public have one rule and the rest of the country can play by another. This also highlights the separation between big corporate business and smaller businesses, which are of a different class structure altogether. Ultimately it leads to double standards for women who are unaccounted for and left behind, in the same way that intersectional women are not included in the Equality Act at all and women from low income

backgrounds do not have the possibility to gain justice through the law after cuts to legal aid and tribunal fees. Equality is afforded to some people but not all people.

7.2 Child care costs

The gender pay gap accounts for the average pay per hour of women and men. This does not mean that women are being paid a lower salary for the same jobs as men, but that women make up a larger portion of the part-time and lower skilled work, which receive smaller salaries. One of the main reasons for the difference in average pay is the type of work and hours worked for men and women, as women struggle to return to work after having children. The U.K has the second highest childcare costs in the Western world, according to the OECD report in 2011. The net cost of childcare as a percentage of the national wage in the U.K is 40.9%, which means the maternal employment rate is only 67.1%. Compared to 84.8% in Iceland or 84% in Denmark, where childcare costs are significantly lower, mothers in the U.K cannot afford to return to work (OECD, 2011). This has a knock-on effect on women's ability to progress in the workplace and achieve senior positions, or to work full time and ultimately to achieve larger pay packets. Offering free or subsidised child care by the state would be a way to tackle this inequality and to give women the opportunity to progress professionally. Flexible working hours offered to working women would also allow for a greater balance of work life and family life, encouraging women to stay in the workplace, take full time positions and aspire to new opportunities.

7.3 Parental leave

Linked to high childcare costs is the lack of incentive for fathers to stay at home with the children, whilst mothers return to work. Men receive 1-2 weeks paternity pay from the U.K Government and after this time they must return to work, whereas a mother is offered maternity leave and pay for up to 33 weeks, reinforcing different gender roles and values in society and ultimately limiting women's opportunities in the workplace. In other countries with much smaller gender pay gaps, such as in Sweden who were reported to have a gender

pay gap of 13.3% in 2016 compared to 21% for the U.K in the same Eurostat report (2018), it is a different set-up. In Sweden, the state offers 480 days of parental leave to be shared among the mother or father in the best way to suit the family. This allows fathers the opportunity to stay at home, whilst the mother works or vice versa and dispels the male 'breadwinner' stereotype. It also goes some way to change perceptions in society that roles are interchangeable and gender roles are not predefined, unlike in the U.K.

Both the situation with childcare costs and parental leave are huge omissions from the U.K's legal system. I argue that these issues are outdated and damaging to society and women in the workplace. Legislation and social policies such as these create gender roles in society that place a different value on men and women. These values transcend into all areas of culture, such as media, education, the workplace and so on. Children see mothers staying at home, whilst the fathers work, and the cycle continues. Therefore, this legislation needs to be refreshed to reflect modern society in the U.K and the changing gendered perceptions. We need more support for families and opportunities for men to play larger roles in the family life. We also need legislation that encourages mothers back to work and allows flexibility for working parents. There are many examples across Europe and the Western world where this has been achieved yet the U.K still seem oblivious to this issue.

7.4 Austerity

From the perspective of legal theory, Mansell highlights significant barriers for women in the workplace, through socio-legal studies in the current Equality Law in the U.K. He focuses on the effects of austerity on women's weak position in the labour market and how this indirectly affects women's positions, pay and roles in the workplace and wider society (Mansell 2015). Women are affected by austerity more than men and this was proven in 2010 by the Fawcett Society, who campaigns and lobbies for equal pay. They made a review of the contemporary Government's austerity measures in 2010, which are still widely followed today. The review found that 72% of public sector cuts would be met from women's income, as would £6bn of the £8bn savings generated in one year (Conley, 2012). This is because women are the ones who make up a large proportion of work in public sector and lower-

skilled jobs and this is where the spending cuts hit hardest. For example, a separate report in 2011 found that, ‘women account for 76% of the drop in the number of employees in local councils in the South East and in 19 councils in England and Wales, women account for 100% of those losing their jobs’ (The Fawcett Society, 2011). These statistics demonstrate how the decision by the Government to target those in the public sector, part-time and lower skilled roles directly affect, women and sends a message to society about the value placed on these workers.

Furthermore, women are disproportionately affected financially by a real time slow in wages and pay freezes that are placed on public sector workers: ‘73% of remaining positions in the public sector that are subject to a pay freeze are held by women’ (Women’s Budget Group & Fawcett Society, 2011). A combination of these factors account for the effect that austerity has directly on women, but I do not believe this is a purposeful decision made by the Conservative Government. I argue that these cuts and pay freezes are measures taken to save money and the Government are not preoccupied with *who* they affect. As long as the bottom line for the national budget is in the black, those at the poorer ends of society who are affected the most, are ignored. Obviously, this is at odds with the public perception the Government offers, that they do care for equality in the workplace. Maybe some people’s equality is considered more important than others.

7.5 Universal Credit

Universal Credit was also introduced in 2012 because it was believed that the old social services system was disjointed and difficult to navigate. Therefore, Universal Credit changed the way that people could claim and get paid benefits. However there have been many protests and opposition to the changes because many people are now worse off than they were before, namely refugees who rely on benefits often as their sole source of income. Other people who are affected are low income families and single parent households; both of which are heavily popularised by women. More specifically for women, funding for women’s organisations and charities also face cuts and many will no longer be funded at all, meaning a drastically reduced network of support for women who are victims of domestic violence

among many other reductions. This pattern of cuts that disproportionately affect women entrenches inequality in all aspects of society, so it is no wonder that we still see inequality in the workplace too. On an intersectional scale, Government cuts such as the U.K has seen since 2008, affect ethnic minority and disabled women harder than any other type of women and hints at the institutional racism that can be found in many aspects of U.K society and equality law. This is an area is desperate need of further research.

For the vulnerable in society, austerity also affects them. According to Mansell, austerity has cut spending on most social services, which means that, ‘the role of caring for the very young, the elderly, the sick and the disabled, [falls] to the family...which is, of course, usually a euphemism for women’ (Mansell 2015: 114) This is another factor which prevents women from progressing in the workplace and leads to the gender pay gap among other inequalities. Possible solutions from this perspective, include more money to social services, who can look after the vulnerable. It also calls for a change in gender roles in society, where the primary caregiver is not assumed to be the woman and women’s roles in the workplace are valued more equally.

Generally, one can agree that austerity, pay freezes and changes to the benefit system all negatively affect women’s equality in the workplace. It directly affects them when women’s jobs are cut, or they are paid less, increasing the gender pay gap. On a philosophical level, it also sends the message to society that lower skilled or part time workers, those who work in the public sector or care giving roles are not as important as everyone else. They are the first to be left behind in the U.K’s quest for a balanced economy. Special legal protection is missing from the wider legal system to avoid this situation and social policy also has a lot to answer for.

7.6 Opportunities in the workplace

Many factors help to shape gender roles in society, such as austerity, parental leave and caregiver roles as discussed above. The perception of women and their stereotyped gender roles filters in to the workplace and informs perceptions of women workers, sometimes

exaggerated by masculine cultures in certain industries like the motor industry. This accounts for the lack of opportunity for women to gain promotions or senior positions in a company, yet it is difficult to measure, and many employers are not aware of its impact or even its existence. Possible solutions to tackle underlying stereotypes or discrimination would include job applications with no listed gender or a more quantifiable recruitment process, where applicant's suitability can be compared numerically. Education and workplace training would also be welcome to educate workers about the value that women can offer in the professional environment and to address negative attitudes or practices. But measures like this only scratch the surface. In my opinion, opportunities for women in the workplace can be improved by changing attitudes of those in power, usually *men* in power, or by putting more women in power to ensure change takes place from above. (Although, it is possible that even women in power can hold stereotypes and group women according to gender, rather than other identifying factors.) Ultimately, when men and women are valued in the same way and when women colleagues are trusted equally, then change will occur, but this cannot always be changed quickly or through legislation alone. This is a society issue, which starts with children and schools and transcends through popular media, culture and attitudes.

7.7 Do women ask?

On the other hand, opportunities should not be expected to be handed to women, particularly when they don't ask for it. Popular opinion suggests that women choose not to compete with men; they don't ask for the higher salary and they don't put themselves forward for promotions. This is a theory which is often cited by officials for a reason why women do not gain senior positions in the workplace, and the reason that they often paid less. This theory is reinforced by popular gender stereotypes, which view men as aggressive and ambitious and women as gentler in nature. This theory is difficult to study fully because the U.K do not record when women ask for pay rises or how often they are granted a pay rise when they ask. However, a study in 2016 by the Cass Business School and the Universities of Warwick and Wisconsin studied this situation in Australia, where this information is systematically recorded. The study entitled, 'Do women ask?' can be used in the context of my research because the Australian and British culture and economy have many similarities, however I

use it here as a theory, rather than a proven explanation. The results of this study debunk the myth that women are less likely to ask for a pay rise as it proves men and women ask at the same rate, but it did find that women are 25% less likely to be granted a pay rise, compared to men (Arts, Goodall, Oswald, 2016). From these results, it would suggest that there is systematic pay discrimination against women in the workplace and the U.K must find a way to address this issue, possibly using legislation. However, I would be cautious to cite this study alone and suggest that this is an example of gender stereotyping as we see in many different contexts, which cannot be solved using legislation alone. I would also suggest that culture in the U.K is different to Australia and certainly further investigation is necessary.

Interestingly, the study also found differences according to age, with men and women under the age of 40 receiving pay rises at the same rate. This result reinforces the idea that it is not systematic through all workplaces and that workplace cultures and gender roles are slowly changing. Perhaps the reason for the pay differences, which rest with the generations over 40 years of age, can be linked to traditional and old-fashioned gender roles rather than existing ones. And through this change in culture, the future should see women gain further equality over time. Based on this summation, further legislation may not be useful and a focus on perceptions of gender through older generations would be a better alternative. One thing is for certain, the popular myth that women do not ask for pay rises and the study that says they do, prove that there are many theories and conditions which affect women's experience in the workplace and one approach alone will not fix this problem.

7.8 Theme three: Summary

This theme has considered a range of topics that affect women's equality in the workplace to answer the question: What is omitted from the wider arena of the U.K legal system, that leads to gender inequality in the workplace? Although I have used the same epistemological approach when selecting topics, as throughout all themes in this research, there will inevitably be topics not covered that are also important and I have taken account of this in my analysis by offering a cautioned judgement.

Ultimately, there are many factors that affect women's equality in the workplace, beyond the Equality Act 2010 or the legal system. Some of the issues with equality in the workplace can be tackled with further legislation such as punishment to large companies who display a gender pay gap and in the case of negotiating pay rises. This is a recurring theme throughout my research that is missing from the legal system. However, wider social policy can both be blamed for inequality in the workplace and utilised to improve it. Social initiatives are needed to tackle existing social problems such as parental leave, childcare responsibilities and the effect of austerity to name a few. Overall, a better use of the U.K legal system to improve women's experience in the workplace, combined with social policy would be the most effective method to improve working conditions for women.

8. Conclusion

The Equality Act 2010 is a considerable piece of legislation that has granted significant equality to women. The Act itself covers many different characteristics and types of discrimination and as a result, women's equality in the workplace has improved since its implementation. However, levels of equality for women in workplaces across the country are still not equal to that of men and the rate of change has slowed. Women still experience a gender pay gap, fewer positions of power on top boards and in senior roles, and they make up a disproportionate amount of lower-skilled and part time workers. Based on this critical analysis, I can offer two main conclusions to answer the overarching question: To what extent does the Equality Act 2010 create equality for women in the workplace?

8.1 Money talks

'Law is a man's game' was my chosen title for Theme One, precisely because the white, male and his interests appear to be at the heart of the Equality Act 2010. The law was not made to protect women, it was designed to increase business efficiency and extend economic power, and it was enacted by men. This is reinforced by the wording of the Equality Act 2010, which fails to provide legal protection to women specifically, within the masculine legal system. The wording is subjective and open to interpretation, giving the impression that its main aim is still to promote high levels of output from both sexes and to benefit the pockets of the business owners, rather than to guarantee equality for women.

Closely linked to the need to improve business efficiency are the regulatory burdens following a pragmatic approach to U.K law. The relaxed legislation is part of an ongoing economic agenda to prevent the legal system from interfering with U.K business and their profits. The side effect of increased inequality in the workplace is considered less important. This is the reason why paying a man and a woman different salaries for like work is outlawed, yet the issue of bonus payments is a significant factor in creating the gender pay gap, and it is not protected against in the Equality Act 2010.

If the problem of regulatory burdens was solved and more legislative and legal sanctions were used, such as the use of legal quotas, I argue that equality for women in the workplace would improve. In turn, this would encourage a change in social attitudes towards women workers, for instance an acceptance of their skills and ambitions. It would also give other women more meaningful role models, which would inspire women into powerful senior positions. The result of changing attitudes in this way is that in the future, the workplace will be transformed into a more equal place, with greater opportunities and fair pay for women. In this idealistic world, there would be no more need for quotas or regulation because the workplace would have been given the support it needs to flourish in the 21st century and equality would be achieved. However, at the moment regulation and quotas are needed to shake off the failed traditions of the past and encourage equality and justice in the present.

Gender pay reporting is a step in the right direction to achieve equality in the workplace, however it has been slow to come to fruition and carries very little conviction. At the moment, it emits an idealistic vision of how the country should work for equality in the workplace, but it does not have the means by which to demand or enforce this vision. When gender pay gaps are reported, the U.K Government does not hold any companies to account. This seems to me to be a wish for greater equality in the workplace and certainly admirable intentions, but big business still holds more power than the U.K Government at this stage. Therefore, regulation cannot be introduced, enforced or further legislation passed since the U.K is still crippled by its pragmatic approach to U.K law. Ultimately, money and power rules the country and suffocates equality law.

Sexual harassment is the third main factor affected by the lack of regulation. The failure to stop or adequately address sexual harassment in the workplace is damaging to the perception of gender roles, women's confidence and their professional aspirations. Harassment legislation in the workplace is in dire need of reform and reinforcement if women's rights are to be upheld or valued. The use of non-disclosure agreements also fails to condemn inappropriate behaviour that leads to women's poor treatment, not to mention is a significant barrier to seeking justice. The issue of harassment appears to be hushed and tabooed because it is harmful to business. However, this harms women's equality and value in the workplace too. There is also a lack of legislation against bonus payments, which is a significant

contributor to the gender pay gap and the status of women in the workplace, who are not rewarded adequately for equal work. The main problem with legislation against bonus payments is that it affects the business owners in the most powerful positions nationally and therefore this legislation is out of reaching distance. In the end, only money talks.

8.2 Equality for some, not all

The Equality Act 2010 aspires towards equality, and I can see that there are certainly characteristics that are useful in the quest for equality in the workplace. However, through this research, I have experienced many situations where equality is divided by characteristics such as class or skill. The difficulties with launching a court battle, including cuts to legal aid and employment tribunal fees block justice for the poorest or most vulnerable victims of workplace discrimination. These barriers to justice demonstrate a lack of response by the Government to address inequality and suggest that equality is a two-tier system; afforded to the rich but less important for the poor. This does not fit with my reasoning of feminism or equality for women in the workplace, which should be an ideal that society does its best to uphold for all members. This belief is compounded through gender pay reporting applying only to big, successful businesses and not to smaller, less profitable ones.

Wider social policy and a lack of legislation in the U.K also entrenches old-fashioned gender values and hinders women's opportunities in the workplace. It seems that the U.K Government are reluctant to alter existing policies, which date back many generations. I wonder if this reluctance is linked to the lack of available funds to subsidise social policy such as childcare? This lack of funds widens the gap between the rich and the poor and leaves poorer women, who do not earn enough to cover full time childcare, with a bigger fight for equality compared to their affluent counterparts. Or are these omissions from legal policy because the Government is unable to pass family-friendly regulation at the expense of big businesses? One can only surmise the answer, and this is certainly an area of further research which would play a key part in the quest for equality in the workplace.

Cuts to lower-skilled jobs, part-time workers, caregivers and civil servants also directly affect women's opportunities, pay and social value in the workplace. Although I do believe that women are not intentionally the target for these cuts, the evidence that shows they are affected is irrefutable and the U.K Government has done nothing to correct this, which tells us a lot about their priorities. This lack of response is damning for their reputation. Furthermore, they continue with this policy of austerity at the expense of those most vulnerable in society, reinforcing the one rule for one and one for another.

The law also fails from an intersectional approach. There are nine characteristics that are covered by the law but many characteristics that are missing. Furthermore, the inability to combine characteristics or to consider more than two does not fully protect or represent real subjects of the law, outside the standardised white male. It fails minority or vulnerable subjects by not affording them protection for their whole identity, suggesting that their identity is simply not worth protecting. It also means that disabled and refugee women are the hardest hit by austerity measures and changes to the benefit system. This failure to protect the vulnerable and to disproportionately target certain types of women shows a disregard for those who fail to fit into the idealistic moulds of society and is not a true reflection of equality. Equality in the workplace should be afforded to everyone.

To sum up, I can finally answer the overarching question: To what extent does the Equality Act 2010 create equality for women in the workplace? My research cannot cover the breadth of reasons as to why women are not afforded the same opportunities as men or why they are not granted pay rises, but it can offer some suggestions. I argue that the Equality Act 2010 does do a generally good job at creating equality in the workplace as women's current position can testify to. However, if women are to continue on this trajectory to equality, improvements and revisions need to be made to improve the situation for women. Improvements to the text need to be made, a review of harassment legislation and the use of non-disclosure agreements, the consideration of legal quotas and enforcement of gender pay sanctions are all recommendations to start with. However, to achieve this lasting goal, the bigger questions surrounding regulation and who really holds the power in the U.K, needs to be addressed.

But my research has shown that it is not only the Equality Act 2010 that can take responsibility for women's current situation and we must look at the U.K's legal and social policy as a connected system. Legislation and social policy in combination also needs to be reconsidered from a truly equal perspective; one that values all people in society, regardless of class, race, age or indeed, a wealth of other characteristics or a mix of them all. The position of women from a social perspective needs to be brought into the 21st century rather than stuck in the traditions of the past. It needs to afford men and women the opportunity to stay at home with their children or return to work if they desire. It should encourage women into the workplace rather than allow them to be the first to lose their job when austerity hits. And overall, further legislation, social policy and education needs to change social attitudes towards women to enable this talented and ambitious 51% of the population to thrive in the workplace.

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