Equality at work? Positive action in gender segregated apprenticeships

Professor Chantal Davies

Acknowledgements

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Executive Summary

1. This report is based on research commissioned by Young Women's Trust (YWT) carried out from June 2017 – April 2018. This research has focused on generating qualitative and limited quantitative data on the attitudes towards and use of positive action in relation to apprenticeships aimed at addressing gender inequality in the construction, engineering and ICT sectors in England. Data was collected via questions included in surveys carried out by YWT with young people and employers in July and August 2017; a series of focus groups; and semi-structured interviews held with sector bodies, employers, young women and wider stakeholders from September 2017 – January 2018. This data was triangulated with relevant literature and data from a roundtable discussion in March 2018 hosted by the Equality and Human Rights Commission (EHRC Roundtable) looking at the use of positive action in relation to underrepresentation on the grounds of disability, race and gender in apprenticeships across England, Scotland and Wales.

2. This research has been conducted as a means of following up recommendations made in a report published by the YWT in 2016 (Making Apprenticeships Work for Young Women). This report recommended that where it can be shown that the number of women undertaking apprenticeships in any given sector (for example construction, engineering and ICT) is disproportionately low, employers should consider whether they can take positive action to increase the participation of women.

3. As part of wider Government commitment to the growth of apprenticeships in order to meet the growing skills gap in the UK, there is a commitment to making apprenticeships accessible to the widest possible range of people. The broadening out of apprenticeships beyond sectors traditionally covered by them has led to an increase in female participation in recent years. For the year 2016/17 there were 54% female apprenticeship starts in England. However, this apparent gender parity disguises the fact that women remain underrepresented in sectors that are recognised as more 'valuable' and thus attract greater potential for progression and remuneration. Therefore, it can be seen that 86% of starts in 2016/17 were in four subject areas. Three of these areas are dominated by women thus accounting for the higher representation of women than men in apprenticeship starts. However, in the fourth area, Engineering & Manufacturing, women made up just 5,960 of the 74,870 starts. Equally, when other sectors are considered the gender disparity

is similarly blatant. In relation to Construction, Planning and the Built Environment, the gender disparity was at its most glaring with 20,580 male apprentice starts in 2016/17 compared to just 630 female starts. Less stark but still of relevance is Information and Communication Technology in which there were 13,020 male starts compared to just 2,450 female starts in 2016/17.

4. As a result, there is an increasing recognition of the business, ethical, legislative and economic reasons for addressing gender segregation in the labour market more generally and apprenticeships. In light of this, there are numerous studies and reports that provide clear recommendations on how this can be achieved in light of an emerging evidence base on what works. Many of these recommendations go beyond positive action (as framed in this report) and focus on mainstreaming equality, improving education initiatives, implementing wider anti-discrimination good practice and a focus on ensuring inclusivity. However, with the drive towards addressing gender segregation in apprenticeships and a call to address the growing skills gap, there is a need for stakeholders to effectively utilise the whole range of tools available. This research seeks to evaluate positive action as one tool to address gender underrepresentation in apprenticeships and beyond. In this regard, a permissive legal framework has existed around positive action in the UK for decades. Sections 158 and 159 of the Equality Act 2010 (EA 2010) currently set out the legal boundaries to acceptable positive action in the UK. However, in spite of this legal framework permitting the implementation of special measures to address underrepresentation, positive action remains a misunderstood and underused tool.

5. Findings in this research are presented around the understanding, attitudes, use and proposals for how to encourage better engagement with positive action in apprenticeships. Data analysis points to a number of findings that have implications for employers, policy and the development of legislation in this area. Almost all of those participating appeared to have an awareness of the term 'positive action'. However, many participants reported a lack of clarity and confusion around the detail of a definition. There was however a consistent awareness from some that the term may be controversial and may involve the risk of illegality. Whilst, there was an apparent knowledge that positive action could easily cross over into illegal 'positive discrimination', very few appeared to be aware or indeed referenced the legislative framework provided by the Equality Act 2010. Equally, very few were able to comfortably describe the distinction between 'positive action' and 'positive discrimination'. This lack of clarity around the law and what amounts to legal positive action appeared to encourage reticence to exercise positive action. Where an awareness of positive action existed, this was often from Equality, Diversity and Inclusion (EDI) practitioners and Human Resources (HR) specialists. However, even specialists expressed a lack of clarity in relation to the detail of positive action. Those who had awareness had often gained this knowledge from third

parties and in particular sector bodies. Equally, for larger employers the knowledge provided by their HR or EDI support was seen as vital.

6. In spite of confusion around the boundaries and legality of positive action, the majority of those participating expressed favourable attitudes towards the use of positive action to address the underrepresentation of women in gender segregated apprenticeships and employment more generally. However, whilst positive action was viewed as a useful tool to address gender segregation it was only considered effective if used appropriately and robustly with appropriate knowledge. In particular, it was considered that when used inappropriately the consequent lack of impact might perpetuate reticence to use. Further concern was expressed that positive action may lack efficacy if applied in a tokenistic and standardised manner. Such use may breed negative perceptions that positive action denigrates merit and opens up the risk of 'reverse discrimination'.

7. The data supported a lack of mainstream use of positive action initiatives in the workplace. The reasons given for non-use were broad ranging but largely replicated previous research findings. Reasons given for non-use, included fear of the best person not being recruited, fear of legal liability for 'reverse discrimination' and a belief that inclusive rather than preference based practice was a more appropriate and effective means of addressing gender disparity. Similarly, many participants linked the fear of 'getting it wrong' to a lack of clarity and guidance around legislation and definitions of positive action. Equally, some felt that positive action denigrates the principle of merit and concern was also expressed that targeted individuals themselves may not wish to have preferential initiatives applied to them.

8. The most frequently referenced obstacle to use was the lack of resources small and medium-sized enterprises (SME) had to undertake robust and effective positive action. Participants perceived that SMEs had very little awareness of positive action and that the potential consequences of gender disparity were unlikely to be a priority for the majority of organisations. Even where knowledge of positive action was perceived it was felt that SMEs would not be likely to have the resources necessary to implement effective positive action. This was particularly true where external guidance, funding and support were lacking. A number of suggestions were put forward in order to facilitate SME engagement including collaborative and partnership working with leadership and support being given by larger organisations and sector bodies. However, the procurement process was considered to be the most effective means of engaging SMEs with positive action. Nevertheless, it was recognised that procurement could only be used as a driver if larger organisations and the public sector more generally first demonstrate effective use and lead by example.

9. In light of the perceived obstacles to the use of positive action, participants considered specific actions that might be effective to address gender segregation in apprenticeships. Many considered that positive action initiatives could not be implemented in isolation but

instead that a strategic and holistic life cycle approach should be applied towards increasing representation of female apprentices and employees more generally in the relevant sectors. Similarly, many perceived there was little point in engaging more women into a sector only to then fail to retain them because initiatives had not been implemented to ensure retention. Thus, an holistic approach needed to include adherence to wider good practice in relation to equality and diversity as well as robustly implemented positive action measures. There was also a perceived need for employers to emphasise putting measure in place which promote and increase work life balance and flexibility for women with children as a means of encouraging engagement and aiding retention. The importance of early engagement with educators, careers advisors and parents was regarded as vital to support a life cycle approach to resolving gender segregation. It was considered this might involve providing additional support and funding across the life cycle in order to implement effective and joined up positive action and equality practice.

10. Linked to an overall approach towards addressing gender segregation in apprenticeships, data was also collected on attitudes towards more widely considered specific positive action initiatives. There were mixed views in relation to job adverts encouraging or targeted at appealing to women. Some felt that such adverts suggested a more welcoming space within which women could apply for non-traditional roles, whilst others felt that such adverts had become overly standardised and tokenistic increasingly lacking efficacy as a result. Some focused on the importance of the media and marketing campaigns and in promoting successful female visibility within gender segregated sectors. Equally, the use of female role models was seen as vital (particularly within an educational setting) to encourage young girls into apprenticeships in non-traditional areas. Similarly, gendered mentoring and facilitated female networking was viewed as effective. However, concern was expressed that inter-gender mentoring and networking may lead to a closing down rather than opening up of systemic knowledge and that inclusive rather than targeted mentoring and networking would be more effective at creating change.

11. Many focused on the use of quotas to drive forward gender representation in apprenticeships. More than any other measure participants were divided on the use of quotas with some viewing them as highly effective, some preferring the use of more moderate targets and others expressing concern about the use of any metric system to increase representation. Some were of the view that where quick and effective change is required, then quotas would be a painful but necessary initiative to force change and focus employer action in this area. Others considered that they could not be used in isolation and would only be effective as part of a wider holistic approach towards positive action and good practice. Similarly, others were adamant that the implementation of quotas was damaging to the progress of equality in segregated sectors and involved the denigration of merit and knee jerk tokenistic recruitment. In contrast, targets were largely viewed as an

effective means of ensuring leadership focus on underrepresentation and were perceived as a more proportionate option to open up dialogue on the need to introduce positive action.

12. An equally prominent specific form of positive action discussed was the 'tiebreak' under section 159 of the EA 2010. Contrary to previous research, many participants had a vague awareness of the tiebreak provision, possibly as a result of media focus at the time of implementation. However, very few understood either the detail or how this would apply in relation to their own sector or remit. This lack of understanding of the tiebreak was felt to be most readily linked by employers to positive discrimination and the consequent fear of legal liability resulting from 'reverse discrimination'. Many participants felt that the tiebreak was a way of redressing historic disadvantage created by unconscious bias and perpetuation of underrepresentation by previous reliance on a vague concept of 'fit'. However, there were concerns from some that care should be taken not to apply the tie break tokenistically and that efforts should be made to break down perceptions that the tiebreak discredits merit. It was recognised that a misplaced negative perception that the tiebreak applied in this way could lead to resentment in gender segregated sectors and do more harm than good. Equally concern was expressed that in practice it would be very rare that an employer would be able to determine candidates be 'as qualified as' each other. Likewise, concern was expressed that isolated use of the tiebreak was of little use without ensuring an holistic approach towards positive action in order to ensure a diverse pool of applicants at the recruitment stage. In spite of this generally positive attitude towards the tiebreak, none of the participants stated that they had formally utilised this provision nor where they aware of any usage from other organisations. However, some considered that such an approach was often informally taken in any event. In light of the recognised and embedded underrepresentation within the particular sectors, it was perceived that employers would be more likely to choose a woman in a situation where they had two candidates as qualified as each other without explicit reference to the tiebreak.

13. Unsurprisingly, in light of the variety and wealth of participant experience, there was a range of views on how to encourage engagement with positive action in relation to apprenticeships and beyond. There were polarised opinions around the need for more robust legislation particularly around the 'tiebreak'. Whilst some considered that the law should be strengthened to mandate rather than permit positive action, others felt that this would simply embed resistance and further discourage use. However, most participants agreed that there was a lack of employer clarity around the legislation and as such there was a necessity for clear guidance aimed at employers in order to encourage effective engagement. Some felt that a toolkit approach was the most effective means of providing this guidance. However, others urged caution in this regard as it was felt that this could encourage reliance on a standardised approach leading to tokenistic application of ineffective positive action. In any event, it was felt that such guidance needed to be

endorsed and promoted at the highest level in order to ensure widespread adherence. Equally important was the need for strategic knowledge transfer and promotion campaigns centred around the use of positive action. Some felt that sector bodies could most usefully take responsibility for this. Similarly, it was suggested that the development of collaborations and networks to disseminate information and support confidence building around positive action would be a means of promoting engagement. At a more general level, there was a call for more robust and accessible data collection on underrepresentation in apprenticeships at a sectoral level. There was also a call for the encouragement of greater leadership buy in to the importance of using positive action and at a macro level this should be driven by Government through to organisational leaders. It was suggested that Government buy in should also include the provision of funding to support relevant and appropriate action by organisations. Similarly, some felt that Government support could also take the form of more robust targets and use of the apprenticeship levy to encourage positive action. Overall, there was a sense that there needed to be a shift in approach towards positive action in order to ensure it could be used as an effective tool to address underrepresentation of women in apprenticeships in the future.

14. It is clear from this research that there is a fundamental confusion around the boundaries and legality of positive action in relation to apprenticeships and beyond. As a result, whilst there are isolated examples of effective use it is often misunderstood, applied in a standardised and tokenistic manner and is consequently ineffective even when utilised. This inefficacy then perpetuates the perception (even from those working within EDI and HR) that positive action is at best ineffective and at worst damaging. This research seeks to better understand both resistance to and use of positive action and explore ways in which it can be re-evaluated, developed and promoted as an effective and robust equality tool. Whilst positive action is just one means of addressing underrepresentation in gender segregated apprenticeships, it is argued that it can be an important and effective tool within an organisation's toolkit. With this in mind, pointers for action aimed at key stakeholders at organisational, sector and Government/policy levels are made (full details can be found in the final chapter of this report):

a) *Organisational level:* A reading of the data suggests that there needs to be a change in approach towards positive action by individual organisations (including education, training providers and employers). As such, pointers for action are made around the need for engagement with *individualised* and *robust* positive action as part of a wider holistic approach towards ensuring gender equality within apprenticeships. Equally, employers are encouraged to collaborate with others (including education/training providers and careers advisors) to develop knowledge-sharing networks in order to support and promote the use of positive action as a tool to address underrepresentation. Similarly, employers are encouraged to utilise the contractual procurement

process and targets to address gender segregation at an organisational level.

b) ***Sector level****:* Analysis of the data also points to a need for a more robust and informed approach towards positive action at a sector level. Whilst there are pockets of excellent work in relation to the sector-based promotion and use of positive action in apprenticeships in construction, engineering and ICT, it is considered that greater clarity and cohesion in this area would be of benefit. As such, pointers for action are made around the need for sector-based guidance on the use of robust, effective and individualised positive action. In particular, sector bodies are encouraged to promote evidence-based and innovative positive action as part of an holistic package to address gender segregation. Equally, sector bodies are called upon to promote and provide guidance on the use of the 'tiebreak' under section 159 of the Equality Act 2010.

c) ***Government/policy level****:* Data analysis also points to the need for greater engagement with positive action at government and public policy level in order to ensure sector and organisational engagement in relation to apprenticeships. Therefore, pointers for action are made around promoting government-endorsed guidance on individualised and robust use of positive action as part of a holistic package to address gender segregation. Government is also called upon to consider the use of public sector procurement as a tool to promote the use of positive action via the supply chain and the setting of national and sector-based gender targets in apprenticeships to push for greater engagement. Government is also called upon to implement a more robust system of data collection in relation to underrepresentation in apprenticeships in order to provide a transparent and effective foundation for the use of positive action.

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Introduction

Description and Rationale

This research explores the attitudes towards and the use of positive action aimed at addressing gender inequality in apprenticeships offered in sectors in which women are underrepresented in England.

This research has been conducted as a means of following up recommendations made in research undertaken by the Young Women's Trust (YWT) in 2016. The YWT report recommended that where it can be shown that the number of women undertaking apprenticeships in any given sector is disproportionately low employers should consider whether they can take positive action to increase the participation of women. It was therefore considered that in the context of apprenticeships, the overwhelming gender disparity in certain sectors and in particular the attitudes towards and use of positive action in resolving this gender disparity required further exploration. The engineering, ICT and construction sectors have therefore been chosen by the researcher and the YWT due to the stark underrepresentation of women in these sectors in England (see below).

This research concludes with appropriate specific recommendations on positive action in relation to gender segregated apprenticeships in England within the particular sectors explored. However, it is hoped that these may provide a foundation for the development of wider recommendations in relation to the effective use of positive action initiatives more generally across the protected characteristics and beyond apprenticeships in the UK.

Objectives

The principal aim of this research was to further current understanding of the perceptions and use of positive action in relation to gender segregated apprenticeships in the engineering, ICT and construction sectors in England with a view to using this information to establish guidance and recommendations to both the sector and more generally in relation to the effective and robust use of positive action.

The key objectives in achieving this aim were as follows:

a) To act on the recommendations of the Young Women's Trust 2016 research in relation to further exploration of the use of gendered positive action in relation to apprenticeships.

b) In light of a lack of qualitative information about the perceptions and use of gendered positive action by the engineering, ICT and construction sectors in relation to apprenticeships, to generate qualitative data about the perceptions, use and efficacy of positive action in the sectors.

c) To utilise this qualitative data to complement and develop the findings of existing gender equality data in relation to apprenticeships in the engineering, ICT and construction sectors.

d) To ensure that the qualitative data collected is analysed and is fed into appropriate and relevant recommendations and guidance for the engineering, ICT and construction sectors and other sectors in which high levels of gender segregation and disparity remains embedded.

Research questions

A critical analysis of the literature in this area pointed to a number of foundational research questions. In support of the aims and objectives of this research, the underpinning research questions were therefore as follows:

a) To what extent are employers and wider stakeholders in the engineering, ICT and construction sectors in England aware of the positive action legislation?

b) What are the perceptions of employers and wider stakeholders in the engineering, ICT and construction sectors in England towards the use of positive action in relation to apprenticeships?

c) Where employers in England have engaged in positive action in relation to apprenticeships, what objective has this been seeking to achieve, what has this involved and how effective has it been in achieving the objective?

d) How can the lessons from the above inform an effective and robust approach towards the use of gendered positive action initiatives in relation to apprenticeships in the engineering, ICT and construction sectors in England?

e) How can the above evidence and consequent approach inform more general approaches towards the use of positive action in relation to gender disparity in apprenticeships and early careers in England?

The researcher

This research was carried out by Professor Chantal Davies of the School of Law, University of Chester who, as Principal Researcher, took responsibility for the management and conduct of the research. Professor Davies worked with the YWT to combine their expertise in the area of equality and social justice in order to meet the key objectives of this research project.

After graduating with a Law degree from Oxford University, Chantal Davies qualified as a solicitor with Eversheds in Cardiff specialising in Employment, Human Rights and Discrimination Law. She then moved on to practice as a Senior Solicitor in Davies Wallis Foyster in Manchester. In 1998, she moved to work as a solicitor for the Equal Opportunities Commission (EOC) in Manchester heading up a Department tackling strategic and wider enforcement of the gender equality legislation. Whilst working as a solicitor for the EOC, apart from undertaking a number of major legal test cases, she also gave lectures and presentations. She has appeared on Legal Network television discussing the legal implications of the Part Time Workers regulations and on Einstein Network legal videos. She worked with the IPPR think tank on the possibility of setting up a Fair Employment Commission and was a member of the Euroneb Working Group on strategic enforcement. She has published a number of articles for various publications including the Equal Opportunities Review and has been involved in several projects

investigating issues of gender equality. Chantal has been a qualified solicitor for 18 years and her practice has specifically focussed on areas of equality and human rights law.

Chantal is now professor of Law, Equality and Diversity in the School of Law at the University of Chester. She is also a member of the University of Chester Diversity and Equality Committee, a Diversity Advocate and Disability Link Tutor demonstrating her continuing commitment and experience of equality issues in the HE context. She has also developed and is Director of the Forum for Research into Equality and Diversity. Her recent research focuses on the experiences of ethnic minority students within HE and the use of positive action by organisations in the UK. Chantal has also recently completed a funded project looking at the gendered obstacles to research activity faced by academics in the UK. She sits on the board of the Equality Challenge Unit and in this role has been working with them to develop institutional confidence in developing positive action initiatives within higher education.

Methodology

The research provides a multi-layered, qualitative exploration of the attitudes towards and the use of positive action initiatives aimed at addressing gender inequality by the engineering, ICT and construction sectors in relation to apprenticeships in England. The researcher has employed a reflexive attitude to this research and as such has considered her position as a female academic researcher with a background enforcing gender equality legislation. However, in relation to this project, it was considered that the researchers' attitudes, values, skills and approach were more important than her gender.

Data Collection

A variety of data collection tools were utilised. Although the majority of such tools were qualitative, some limited quantitative tools were applied as appropriate to develop an approach based on a limited mixed methods paradigm. Quantitative data was used to provide the foundations and background to the findings of the qualitative study.

Research data was collected by means of questions within two broader surveys conducted by the YWT and a series of focus groups and semi-structured interviews as set out in Table 1, below.

TABLE 1: Data Collection Methods

OBJECTIVE	DATA CLLECTION METHOD
To consider and assess the attitudes towards and use of positive action initiatives aimed at addressing gender inequality by the engineering, ICT and construction sectors in relation to apprenticeships in England.	**Questionnaires** Specific questions included as a broader study of young people and employers commissioned by the YWT.
	Focus Groups Focus Groups with employers, sector bodies, wider stakeholders and apprentices.
	Semi Structured Interviews Interviews with employers, sector bodies and wider stakeholders.
	Documentary Analysis Thorough review of relevant sector data.

An initial stakeholder engagement meeting and project launch was held in June 2017. This meeting was targeted towards organisations with interest in and/or overarching responsibility for apprenticeships in the engineering, ICT and construction sectors across England. This sought to enable sector buy-in to the

project and opened up possibilities for more effective implementation of any consequent recommendations. It also provided an opportunity to fine-tune the project research questions and direction. Three focus groups were held during this event with broad themes around positive action and apprenticeships explored.

A project steering group selected from the attendees at the project launch event and made up of YWT, stakeholder bodies and employers, was established and met twice in November 2017 and February 2018 in order to create a thematic structure and strategy for the data collection and analysis. This was intended to further support 'buy-in' by the sector and assist in the purposive sampling of candidates for participation. This Steering Group was utilised as a critical friend throughout the research process.

In July and August 2017, a series of questions around positive action were included in a more general survey being carried out by the YWT in relation to apprenticeships. Purposive sampling was then used to target a specific group of participants for interviews and focus groups. Employers, apprentices, sector bodies and wider stakeholders within the engineering, ICT and construction sectors were deliberately targeted. It was not intended for this form of sampling to be proportionate or representative of the group. These focus groups and interviews were carried out between September 2017 and January 2018.

Data Collection Analyses

A system of 'triangulation' was utilised in order to produce a more accurate and objective representation of the purpose of the study. Data from the survey was triangulated with data collected from the semi-structured interviews and focus groups. Data was also triangulated with a roundtable event hosted by the Equality and Human Rights Commission (EHRC Roundtable) in March 2018 on the use of positive action to address underrepresentation on the grounds of race, gender and disability in apprenticeships across the UK (see later). The steering group and YWT representative played the role of a critical friend through participation in a continuous discourse with the data and the interviewing researcher. In order to achieve this, the YWT representative and the researcher conducted regular review meetings to discuss and consider the data in order to ensure an objective approach to analysis.

A review of the literature together with data collected from the YWT surveys and the initial focus groups held at the launch day in June 2017 were analysed to determine emerging themes and to provide a thematic framework for discussion in the semi-structured interviews and later focus groups. In particular, a system of theoretical sampling was utilised. Theoretical sampling is a method of data collection based on concepts that are derived from the data. Concepts and themes were pulled from the initial data and were used to drive the next round of data collection (Strauss & Corbin, 2008). Data analysis was therefore on-going with themes emerging from the data rather than being imposed upon them.

A note should be made here about the issue of generalizability. Whilst the purposive sample used in this study did not achieve full generalizability, it is considered that the data collected has provided a vital addition to basic statistical data and as such is "important for the development of a nuanced view of reality, including the view

that human behaviour cannot be meaningfully understood as simply the rule-governed acts found at the lowest levels of the learning process, and in much theory" (Flyvbjerg, 2004).

Ethical issues

It is recognised that, as with all research, ethical approval was vital to ensure the appropriate conduct of the research.

It is understood that there may be concerns regarding the anonymity of data where the research population is small or where individual participants can be identified (Cousins, 2009). As such, it was considered that the establishment of a steering group should support the standard process of participants' signing consent forms and having information sheets.

In addition to the above, a full application for ethical approval was made to the Law School Research Ethics Committee within the University of Chester. Within this application, the following ethical safeguards were guaranteed:

- Participation in the research project was entirely voluntary.
- Standard consent forms were provided to all participants.
- A participant Information Sheet was provided to all invited participants.
- Survey data was fully anonymised to protect the identity of participants.
- Care was taken to ensure that none of those participating in the semi-structured interviews would be identified.
- Participants' names and details were not stored on hard drives.
- Identifier codes were used on data files. Participants and their identifier codes were stored separately in password protected data file.
- Copies of transcripts did not include participant's names and copies of transcripts were stored in a password protected data file.
- Data was managed in accordance with the Data Protection Act 1998 at all times.

The following guidelines were considered in relation to this project: Economic and Social Research Council, 2015; Socio-Legal Studies Association, 2009.

Theoretical Context

Apprenticeships

General

Since the 1990s, work-based training in the UK has undergone several periods of transformation. In 1994, the 'Modern Apprenticeship' scheme was launched in England aimed at 18-19 year olds who would work towards an NVQ Level 3 qualification (Mirza-Davies, 2015). The scheme was amended in 2004 with the introduction of Level 2 and 3 Apprenticeships and a removal of an upper age limit (Mirza-Davies, 2015). Two years later, higher-level apprenticeships were introduced (Mirza-Davies, 2015). The Government published English Apprenticeships: Our 2020 Vision (HM Government, 2015a) in 2015 announcing a target of three million apprenticeship starts by 2020 (HM Government, 2015b). The commitment to growing apprenticeships was largely a response to the Leitch Report (Leitch, 2006), which had recommended a necessity to address the skills deficit in the UK by focussing on growth across the skills spectrum.

The Welfare Reform and Work Act 2016 now stipulates that the Government must report on progress in relation to the apprenticeship target on an annual basis. As part of this commitment to apprenticeship growth, the Government also introduced a new Apprenticeship Levy commencing in April 2017 (see below). In July 2016, responsibility for apprenticeships was transferred to the Department for Education from its previous home with the Department for Business, Innovation and Skills.

Essentially, apprenticeships are paid employment that provide both on and off the job training. Skills policy (other than the Apprenticeship Levy which applies across the UK) is a devolved issue and different considerations will apply in relation to Scotland and Wales. Apprentices are entitled to general employment rights and to be paid at least the apprentice rate of the national minimum wage (HM Government, 2018a). This salary is paid both for time training and normal working hours (HM Government, 2018b). The Apprentices, Skills, Children and Learning Act 2009 (ASCLA 2009) now provides a framework for apprenticeships in England and Wales. This Act distinguishes a formal 'apprenticeship agreement' from a traditional contract of apprenticeship. The latter is governed by common law rather than statute. In the event of an arrangement not being in compliance with the ASCLA 2009, then it will default to a traditional contract of apprenticeship. Nevertheless, an apprentice is considered an employee whether the arrangement is governed by statute or common law.

At present in England there exists two different types of scheme that ensure the quality of apprenticeship programmes (i.e. standards and frameworks). Standards were introduced as a replacement to frameworks in 2014 and as such the latter are currently being phased out gradually (Powell, 2017b). Similarly, as a means of ensuring high-quality apprenticeship standards, the Institute for Apprenticeships was established under the Enterprise Act 2016 (Powell, 2017b). Apprenticeship frameworks and standards have been funded in the same way in England since May 2017 and are associated with a relevant funding band. For employers paying

the Apprenticeship Levy (see below), these funds will be used to pay for apprenticeship training and assessment (up to the funding band limit). For those who don't pay the Levy, a system of co-funding will apply with the employer paying 10% of the cost and the Government contributing the remaining 90% (up to the funding band limit) (Powell, 2017b). In order to support the development of these standards, the Government has also introduced 'Trailblazers'. These are self-selecting groups of employers (although sector, trade and professional bodies can be involved but not lead) who are responsible for developing the new standards (Institute for Apprenticeships, 2018).

Apprenticeships usually take between a minimum of 12 months and up to four years to complete (Powell, 2017b). At the end of their apprenticeship contract, apprentices may receive a recognized national qualification (HM Government, 2017). In England, There are a range of levels of qualification and study as follows:

TABLE 2: Apprenticeship Qualification Levels (England)

NAME	LEVEL	EQUIVALENT EDUCATIONAL LEVEL
Intermediate	2	GCSE
Advanced	3	A level
Higher	4,5,6 and 7	Foundation degree and above
Degree	6 and 7	Bachelor's or master's degree

(HM Government, 2018b)

In order to apply for an apprenticeship an individual must be over the age of 16 living in England and not already in full time education (HM Government, 2018b). New apprenticeships are termed 'starts' and the completion of an apprenticeship is termed an 'achievement' (Powell, 2017a). An apprenticeship cannot be certified complete unless an apprenticeship agreement with an employer has been signed setting out the framework or standard being followed (Powell, 2017b).

Apprenticeship participation has been gradually increasing in England since 2011/12. In 2016/17, 912,200 people participated in an apprenticeship in England up by 12,800 people from 2015/16. However, in 2016/17 there was a decrease in apprenticeship *starts* down 18,100 from the previous year to 491,300 (Powell, 2017a). This downward trajectory has continued into 2017/18 with 114,400 apprenticeship starts reported for the first quarter of the year. This represents a decrease of 26.5% compared to the first quarter of 2016/17 (HM Government, 2018f). This reduction in starts is likely to correspond to the funding changes introduced in 2017.

Apprenticeship Levy

The Apprenticeship Levy (which applies across the UK) was introduced in April 2017 requiring all employers with a pay bill of over £3 million per year to pay 0.5% of the value of the employer's pay bill less an allowance of £15,000 per annum. The Apprenticeship Levy is paid into a service account and these funds have to be spent on apprenticeship training and assessment with a registered training provider (the Register of Apprentice Training Providers was established in May 2017) (Powell, 2017b). A 10% top-up to the employer funds will by applied by the Government. For the year 2017-18, The Department of Education have stated that they expect approximately 19,000 employers to pay the Levy generating £2.7 billion in funds (Powell, 2017b). Nevertheless, the vast majority of employers will not pay the Levy and will pay for apprenticeships through a system of Government co-investment (Sub-Committee on Education, Skills and the Economy, 2017).

Evaluation

In its Vision 2020 Report (HM Government, 2015a), The Department for Business Innovation and Skills had reflected on the success of apprenticeships since introduction and recognized that the majority of participants felt that apprenticeships had improved employability. Equally, employers generally report that apprenticeships improve quality and design and increase productivity (Powell, 2017b). This is supported by findings from a recent YWT survey of apprentices (YWT, 2017) in which the vast majority of those surveyed considered that apprenticeships are a good way to develop professional skills and increase employability. As is recognized by Lanning in the introduction to a 2016 Chartered Institute of Personnel and Development report (Lanning, 2016), the UK has some world-class apprenticeships comparable to those countries renowned for their vocational training. In addition, there has been a significant and welcome increase in the number of higher-level apprenticeship courses in recent times (Lanning, 2016:p.5). Indeed, changes to apprenticeships introduced since 2014 have aspired to go some way towards meeting criticisms from those such as OFSTED (2015) and the Sutton Trust (Kirby, 2015) who had raised concerns about an endemic lack of high quality apprenticeship training. In particular, Kirby (2015) reported that apprentices achieved only marginally better lifetime earnings than those with basic secondary qualifications. Nevertheless, recent developments and in particular the rolling out of the 2020 Vision and targets, changes to apprenticeship funding, accountability and quality structure and the introduction of the Institute of Apprenticeships has been the subject of necessary and unsurprising critique.

In particular in February 2016, the Parliamentary Sub-Committee on Education, Skills and the Economy launched an inquiry into apprenticeships (Sub-Committee on Education, Skills and the Economy, 2017). The remit for this inquiry was to consider how the Government could achieve its target of three million apprentices by 2020 and also consider the efficacy of the Institute for Apprenticeships and evaluate the introduction of the Apprenticeship Levy. The inquiry received 184 written submissions and held five oral evidence sessions, hearing from seven witness panels (Sub-Committee on Education, Skills and the Economy, 2017). Whilst the Sub-Committee was supportive of the Government's efforts to expand and rationalise apprenticeship provision, they also clearly stated that 'it must

ensure that apprenticeships are not seen to be the solution to every skills problem' (Sub-Committee on Education, Skills and the Economy, 2017:p.6). Equally, they expressed concern regarding a lack of focus on sectors where training or up skilling are most needed, stating that the three million target and Apprenticeship Levy are 'both blunt instruments that risk being unduly focused on simply raising participation' (Sub-Committee on Education, Skills and the Economy, 2017:p.35). In particular, the report recommended that the Government publish an annual document setting out skills shortages on a national, regional and sector basis and use these to set clear targets for prioritization of apprenticeship uptake in these areas.

Indeed, since 2015 it has been the unilaterally imposed Government target of three million starts that has faced the most criticism. Smithers criticizes the target for focusing on volume, not quality stating that '…it is seen as perfectly okay both for young people to end up in low-cost, low-quality places with limited prospects' (Smithers, 2016:p.20). Similarly, Keep and Relly (Keep & Relly, 2016:p.29) express concern that the target will become the 'be all and end all' and that meeting it will be at the cost to quality of apprenticeships.

Similarly, the Government imposed Apprenticeship Levy on employers across the UK has faced criticism. As recognized by Keep and Relly (2016:p26), the unilateral imposition of a compulsory levy which is unsupported by many employers has created resentment and signifies a move away from a 'voluntarist' approach to training embedded in the previous political landscape (Keep & Relly, 2016:p.25)

From a broader perspective, there is criticism that the focus on numbers together with the new system of standards (via the Trailblazer initiative) does little to prevent a long-term problem of apprenticeships being used to accredit 'the established skills of people who have been in a job for some time' (OFSTED, 2015). Fuller et al. (2015) are concerned that apprenticeships are often targeted at existing employees rather than new entrants. As Lanning states, 'the focus on older and existing employees may also undermine the case for the strong educational content and structured work experience that are important for young people entering the labour market for the first time, but less so for adults who are already in work and have (in theory) been through the education system' (2016:p.5). This problem of employers utilizing apprenticeships to 'rebadge' existing poor quality training has been widely recognized particularly in the service, care and retail sectors (e.g. OFSTED, 2015; CIPD, 2016; Fuller et al., 2015).

The other major area of criticism in relation to apprenticeships is the embedded gender segregation in particular high value sectors leading to persistent disadvantage to women. It is this that forms the focus of this report and to which we now turn.

Gender segregation

A recognition of the embedded skills gap and the ancillary Government commitment to growing apprenticeship numbers has seen an emerging focus on the need to increase the diversity of those participating in apprenticeships across the UK (HM Government, 2015a). The commitment to increased diversity set out in the 2020 Vision saw the establishment of the Apprenticeship Diversity Champions

Network (ADCN) in 2017. The ADCN is made up of a range of employers focused on championing diversity in apprenticeships and addressing underrepresentation in this area (HM Government, 2018c). The Government are committed to utilising the ADCN to focus on addressing gender underrepresentation in industries where improvement is needed (including STEM apprenticeships) (HM Government, 2017).

Background context

An expansion of the traditional apprenticeship sectors has led to apparent gender parity in participation in recent years. However, numerical parity ignores the patterns of female representation in apprenticeships with women still absent from sectors generally considered more 'valuable' and 'lucrative' (Raikes, 2015). This occupational segregation in apprenticeships is mirrored more generally across the labour market (see inter alia Campbell et al., 2011; Fuller et al., 2005). Traditionally, the engineering, ICT and construction sectors have been and continue to be dominated by men (Miller et al., 2005; Fuller and Unwin, 2013; Fuller et al., 2015; Newton and Williams, 2013).

In 2017 women made up 24% of all people employed in STEM in the UK. There were 48,449 women (11% of the overall count) in Engineering Professional Occupations in 2017 (a rise of 12,000 from 2016). The number of men in such occupations dropped by 36,000 between 2016 and 2017. Women made up 27% of those working as Science and Engineering Technicians (a rise of 22,000 from 2016). Similarly, whilst women made up 17% of the total of ICT Professional Occupations (11,000 fewer than in 2016), there was a rise in labour market participation in relation to ICT technicians with women making up 19% of the total (a rise of 3,000 from 2016) (WISE, 2017).

There were 54% (262,820) female apprenticeship starts in England in 2016/17 compared to 46% (228,520) by men. Female domination of apprenticeships commenced in 2010/11 and the pattern has continued each year following (Powell, 2017a). By way of explanation, data shows that 86% of starts in 2016/17 were in four subject areas with over half in the top two areas (Health, Public Services and Care: 138,850; Business Administration and Law 138,480; Retail and Commercial Enterprise 74,740; Engineering and Manufacturing Technologies 74,870). Women dominate three of these areas, which accounts for the higher representation of females in apprenticeships overall (see Figure 1 below). However, when the wider sectors are considered, embedded lack of female representation can be seen. Therefore, for Construction, Planning and the Built Environment, there were 20,580 male apprentice starts in 2016/17 compared to just 630 female starts (HM Government, 2018d). Equally, in Information and Communication Technology there were 13,020 male starts compared to just 2,450 female starts in 2016/17. Equally notable, for the first quarter of 2017/18 there have been 81,970 starts under the new apprenticeship standards with 57% male representation. Similarly, men made up 67% of the 42,880 advanced level starts for the first quarter of 2017/18 and 54% of the 15,630 higher-level starts for this period are male (HM Government, 2018h). This is likely to further impact on the experiences and representation of female apprentices since this may point to a focus on the creation of new standards at advanced and higher levels in male dominated sectors.

FIGURE 1: Apprenticeship starts in top four subject area in England for 2016/17
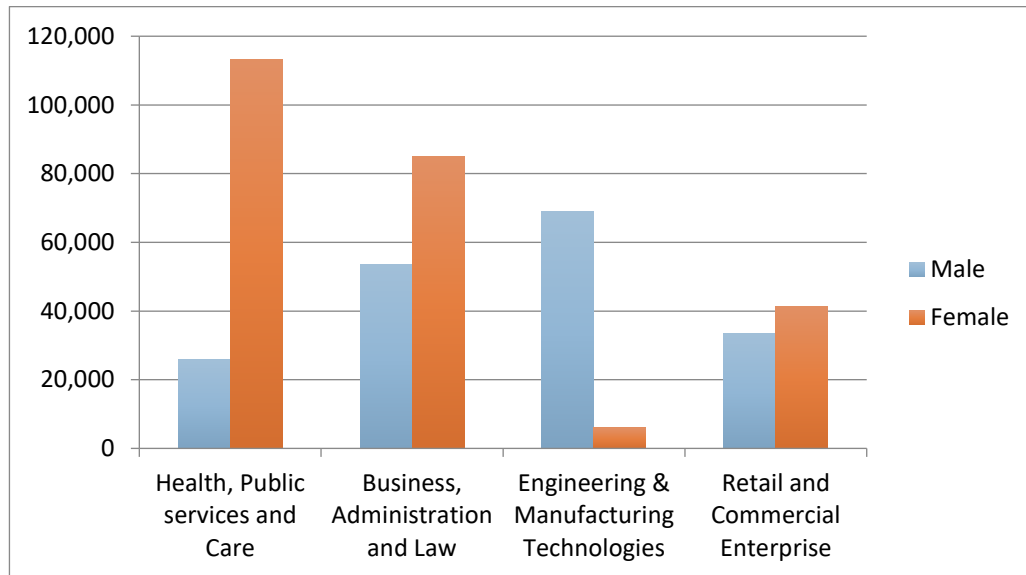
Source: HM Government, 2018d.

This gender disparity is reflected more generally across sectors in relation to the gender pay gap. The Apprentice Pay Survey 2016 in England was conducted by the Department for Business, Energy & Industrial Strategy and looked at 9,422 telephone interviews with apprentices conducted from June 2016 – July 2016. Among Level 2 and Level 3 apprentices in England the median basic pay was £6.70 per hour and the mean £6.99. When considered across the sectors Hairdressing had the lowest median of £3.34 per hour and Management had the highest at £8.75 per hour. When broken down by gender, young female Level 2 and 3 apprentices received mean hourly pay of just £6.85 an hour compared with £7.12 for their male counterparts. In addition, male apprentices were more likely to be working and training for more than 50 hours a week (15% compared with 11 % of women) (Apprentice Pay Survey, 2016). The gender pay gap is also borne out by YWT research, which has found that amongst current and recent apprentices the average hourly wage for women, weighted by apprenticeship level is £6.67 compared to £7.25 for men (YWT, 2017). Equally, research from the Sutton Trust (2017) has shown that the financial returns for men undertaking a level 3 apprenticeship are greater than for women. Men who start an apprenticeship earn about 37% more than those who left education with A-levels only, whilst the equivalent uplift for women is just 9%. Young Women's Trust research (2017) has also shown that women are less likely to be employed after completing an apprenticeship.

Organisations focusing on increasing gender representation in the relevant sectors

Set against this context, across the various sectors there are numerous organisations who have been working to increase gender representation in engineering, ICT and construction both within apprenticeships and within employment more generally. The following provides a very brief overview of some of the key work in this area. It should also be noted that increasingly there is a cross over between engineering, ICT and construction and often organisations are dealing with and representing all three areas. It is often no longer always appropriate to pigeonhole particular organisations into any specific sector.

Of note in relation to engineering is of course Women in Engineering and Science (WES) and Women in Science and Engineering (WISE). WES has been working to support women in engineering since 1919 and provides support and advice targeted at women within the sector regularly offering a range of bursaries and grants. Similarly WISE campaigns for gender balance in science, technology and engineering and have recently produced (together with the Institution of Civil Engineers (ICE) and the Science, Engineering and Manufacturing Technologies Alliance (SEMTA) an apprenticeship toolkit to support organisations in a lifecycle approach towards promoting gender diversity. As Ann Watson (Chief Executive of SEMTA) describes it, 'It's a cross-sector push to get in one place all of the really good stuff that's being done to boost female representation in engineering, so that the whole sector can learn and benefit'. Similarly, the UK Resource Centre for Women in Science, Engineering and Technology (UKRC) was set up in 2004 with an aim of increasing the participation and the position of women in science, engineering and technology.

In relation to construction a similar proliferation of activity focused at increasing female representation can be seen. Organisations such as Women into Construction, the National Association of Women in Construction as well as focused gender specific work by sector bodies such as the Construction Industry Training Board (CITB) and Build UK provide vital momentum and focus around the need to increase female representation across the sector. Equally, in relation to ICT, bodies such as Women in Telecoms and Technology, DevelopHer UK, London Girls in Tech, Tech Women UK, TechUK, Code First: Girls, TLA Women in Tech, Women in IT are leading the away in providing support and development opportunities for women in the sector.

Numerous awards and events targeted at celebrating the success of women within engineering and construction now exist. Examples include: the European Women in Construction & Engineering Awards; Women in IT Awards; Women in Construction Awards; the DevelopHer Awards; the EveryWoman in Technology Awards; the WISE awards. Female success across the sectors is being celebrated and paraded as an example to aspiring young girls. There are numerous targeted bursaries, scholarships and initiatives targeted at young women. For example, the WEST Fund (based in Sheffield in memory of Ros Wall who was instrumental in developing a number of projects to encourage girls into STEM careers) makes a number of bursaries to offer support to women who are working or wish to work in non-traditional roles. Similarly the Royal Academy of Engineering has been running a programme to increase diversity and inclusion across the engineering profession.

Equally, many companies and universities now offer scholarships to women wishing to work in STEM areas. For example, JP Morgan offer a scholarship aimed at (but not exclusive to) women interested in a career in technology. International Women in Engineering Day is yet another campaign aimed at raising awareness and the profile of women in engineering.

Nature of gender segregation

With a growing focus on underrepresentation in engineering, ICT and construction and an increasing monopolisation of work aimed at addressing this, it is important to understand the nature of this segregation.

The issues facing women in engineering, ICT and construction can be broken down into several categories. Firstly, it is widely recognised that women within these sectors face both horizontal and vertical segregation (Miller et al., 2004; Miller, 2005; Fuller et al., 2005; Fuller & Unwin, 2013; Reisel et al., 2015). Horizontal segregation refers to the underrepresentation of a particular gender in a particular profession or sector often associated with the collection of women in jobs and sectors that attract inferior pay and opportunities for progression and development. Vertical segregation occurs where one gender is underrepresented at the higher end of the career ladder within a sector with evidence of gendered obstacles to career progression. The two forms of segregation are of course interconnected in that one form impacts and perpetuates the other and cannot be seen as separate phenomenon (Imdorf et al., 2015). Aside from issues of segregation, there is evidence that women within the engineering, ICT and construction sectors also face wider disadvantage caused by direct and/or indirect discrimination and at times overt harassment (see inter alia: The Smith Institute, 2014; Watts, 2007; Griffiths et al., 2007). Often it is argued that it is this systemic and overt discrimination that leads to embedded segregation (see later). This has been a criticism particularly levelled at construction (which has the lowest representation of women). In particular, it has been argued that the aggressive, competitive and hierarchical leadership existing within construction leads to women being subjected to prejudice, ridicule and harassment in their working environment (The Smith Institute, 2014; Bagilhole et al, 2000). In ICT however a more fundamental issue appears to be retention so that the number of women leaving the ICT industry exceeds the number entering in the UK (Moore, 2008; Griffiths et al., 2007). Similarly, whilst the numbers of women choosing STEM occupations are increasing and almost as many girls as boys are now sitting GCSEs in STEM subjects with girls outperforming boys in STEM qualifications at all levels, girls are still not choosing STEM subjects at A Level and at degree level (Deloitte, 2016).

It would appear from the statistical data that wider labour market occupational segregation is not only reflected in apprenticeships but may well be reinforced by it (Thomson et al., 2005; Campbell et al., 2011; Fuller et al., 2005; Fuller et al., 2013). Thus in many ways this means that it is even more important to target measures to address gender segregation at the level of apprenticeships in order to try and rectify the wider embedded problems (see later). The implications of gender segregation can be clearly seen in relation to pay disparity in those areas in which women are collected. Occupational segregation is recognised as a core factor contributing to the gender pay gap (Wright, 2015; Miller et al., 2004; Miller, 2005).

This pay disparity in gender segregated sectors is unsurprisingly seen in apprenticeship pay as well. Equally, in the general labour market women are more likely to be collected in those low paying sectors (Hupkau et al., 2017; EHRC, 2015; Department for Business, Energy & Industrial Strategy, 2016; Fuller & Unwin, 2013).

Reasons for gender segregation in apprenticeships and beyond

The reasons for gender segregation in particular sectors are a knot that numerous studies have attempted to untangle. Many of the reasons for lack of female representation cross over sectoral boundaries and can be largely categorised as either demand or supply related issues. The demand side centres on the employer and the practices and choices they make in relation to their particular organisation. In contrast, supply side arguments focus on the perceptions and choices of the women who may or may not decide to engage with a particular sector (Adu-Oppong & Kendie, 2017).

Many of the arguments for underrepresentation of women in gender segregated sectors have focused on both employer and individual stereotyped views of who can and can't carry out a particular role within a specific sector. Although arguably becoming less relevant in recent times, many employers still consider that women are not capable of performing a job at the level of their male counterparts. This is particularly true within the construction sector (The Smith Institute, 2014) where it is reported that employers will often hold overtly discriminatory views as to the suitability of women to carry out an operational role. This is often perpetuated by the lack of willingness by some employers to recognise gender segregation as a problem instead attributing lack of representation down to a simple issue of female choice (Fuller et al., 2005). It has also been argued that employer perceptions as to the lack of compatibility of women with particular roles may result in them utilising this as a quick and efficient recruitment screening practice (Adu-Oppong & Kendie, 2017; Bagilhole, 2014).

This perception of a binary gender divide in relation to certain roles can equally be seen in the attitudes of young girls as to the appropriateness of particular sectors for employment. This is particularly true of young school age girls who have frequently been found to perceive engineering (for example) as a 'man's subject' (Sagebiel and Dahmen, 2006; Bagilhole et al., 2008; Barnard et al., 2012). Some studies have shown that as girls move through school they steer away from subjective views as to what are male and female roles. However, whilst they are happy to see this as relevant to the choices other girls make, they are seemingly not willing to then choose for themselves to pursue a role in a gender segregated sector (OFSTED, 2011; Fuller et al., 2005). It has also been argued that teachers may be unconsciously perpetuating the issue by perceiving a gender deficit in the subjects that they teach and are therefore focussing on 'helping' girls develop confidence and interest rather than concentrating on improving substantive knowledge and skills (Fuller et al., 2013a). It may also be that teachers are inadvertently promoting to girls a perception of a male domain in certain careers (Miller et al., 2004) and potentially favouring boys by perceiving them to be achieving better than girls even when this is not the reality (National Foundation for Teacher Education Research, 2013; Institute of Physics, 2013). Similarly, the

perpetuation of segregation as a result of gendered perceptions and poor advice from teachers, career advisers and parents of young school age girls is viewed as a fundamental problem. The lack of accessible and reliable information for young girls is widely considered to be one of the main contributors to the continuing gender segregation across sectors (The Smith Institute, 2014; Fuller et al., 2005; Miller et al., 2004; Newton & Williams, 2013).

Equally, a perception that occupational segregation exists within a sector may influence choice of employment sector and thus perpetuate segregation (Miller et al., 2004). It may also be that perceptions around harsh and difficult working conditions in traditionally gender segregated roles may prevent female engagement (Watts, 2003; Adu-Oppong & Kendie, 2017; Gurjao, 2007). However, it may also be that the reality of embedded difficult working conditions particularly within sectors such as construction acts as a deterrent to women. In construction, the need for physical strength working in poor weather and outdoors may deter female participation (The Smith Institute, 2014; Clarke et al., 2015; Gurjao, 2007). Equally, an embedded 'macho culture' (both perceived and evidenced) may mean that women are less likely to consider a role in construction or indeed the wider segregated sectors (Dainty et al., 2000; Wright & Conley, 2016; Griffiths et al., 2007). Where that 'macho culture' and 'banter' becomes threatening and involves harassment and bullying, this can be even more difficult for women to deal with. Several studies have pointed to women facing harassment and overt sexism within male dominated workplaces (The Smith Institute, 2014; Watts, 2007; Griffiths et al., 2007). Similarly, inflexible working structures and a lack of a family friendly environment in gender segregated sectors may contribute to the lack of participation and retention of women within the workforce (The Smith Institute, 2014; Clarke et al., 2015; Fielden et al., 2000; Adu-Oppong & Kendie, 2017; Miller et al., 2004).

Whilst, it could be argued that the lack of representation of women in the pool for selection in gender segregated sectors is a significant issue, the recruitment process itself is often seen as a further barrier to gender diversity. In addition to the problem of unconscious bias and non transparent and discriminatory selection processes (Adu-Oppong & Kendie, 2017), often recruitment practices in sectors such construction are based on word of mouth and informal networks which inevitably disadvantages women (The Smith Institute, 2014; Wright & Conley, 2016; Newton & Williams, 2013).

Reasons to address gender segregation

As a result of a greater awareness of the nature of gender segregation and emerging exploration of the reasons for this, in recent years there appears to be a general acceptance of the need to break down gender segregation both within the labour market more generally and also in relation to apprenticeships.

For many years, focus has been on the business case for diversity particularly within those sectors where we can see a clear gender divide. There are numerous facets of the business argument. However, most centre on the improved productivity and motivation that gender diversity can offer (see inter alia: Cox and Blake, 1991; Barnard et al., 2010; Allen et al., 2007; Women and Work Commission, 2009). In particular, the Women and Work Commission (2009)

estimated that removing barriers to women in gender segregated sectors could be worth between £15 billion and £23 billion to the UK economy. The benefits of diversity for creativity and innovation have been particularly noted in relation to engineering, with the Royal Academy of engineering stating that diverse teams produce better results and lead to more innovative outcomes (Royal Academy of Engineering, 2009). Equally, the ethical and social justice considerations around gender diversity are often overlooked in favour of the business case but are no less important. Legislative considerations are also central to arguments supporting the need to address underrepresentation within the labour market and within apprenticeships. In light of the requirements of the Public Sector Equality Duty under the Equality Act 2010(see later), this is a particularly relevant issue to public sector employers and also links into issues around procurement (Wright & Conley, 2016; McCrudden, 2012; Davies & Robison, 2016).

However, over the last decade and particularly in light of the impending exit of the UK from the EU, it is the arguments around skills shortages that appear to be most persuasive as a driver to improve female representation in segregated sectors. It is within those areas where we see an underrepresentation of women that the most significant skills shortages are seen (Fuller et al., 2005; Campbell et al., 2011; Miller, 2005). In relation to apprenticeships, as we have seen the Government have recognised the importance of increasing the numbers of apprentices in England to three million starts by 2020. This has been criticised as a blunt tool and that focus would be better placed on those sectors in which there are skills shortages and which are inextricably linked to the need to address gender segregation in these areas.

How to address gender segregation

In light of this increasing recognition of the business, ethical, legislative and economic reasons for addressing gender segregation in the labour market, there are numerous studies that offer recommendations on how this can be achieved. Many of these recommendations go beyond positive action (as framed in this report) and focus on mainstreaming equality, improving education initiatives, wider anti-discrimination practice and a focus on ensuring inclusivity. The following presents a brief summary of more general recommendations emerging from emerging work around addressing underrepresentation in gender segregated sectors.

A recurring theme within these recommendations is the need for a holistic life cycle approach towards addressing the issue. Thus, there is a recognition that isolated initiatives and action are likely to have little positive effect on participation rates in gender underrepresented sectors (Miller et al, 2004; WISE, 2014; Gatsby Foundation, 2010; Nuffield Foundation, 2012; OFSTED, 2011). Inevitably this means that initiatives should be introduced as early as possible in schools and colleges in order to establish norms and mitigate segregation. Recognised beneficial activity in schools and colleges should include a range of mixed strategies aimed at encouraging girls to engage with subjects that have traditionally been male dominated. Schools should also tackle prejudicial behaviour from young boys (Fuller & Unwin, 2013). Partnerships should be made between employers and schools/colleges so that girls are provided with the opportunities to experience non-

traditional roles (Fuller & Unwin, 2013; O'Donnell, 2008; Miller et al., 2004; Newton & Williams, 2013). Equally, the opportunity for young people to see female role models in order to break down embedded perceptions around gendered work is vital (Amaratung et al., 2006; WISE, 2014; Fuller & Unwin, 2013). In recent years, much work has focused around the lack of appropriate and supportive careers advice from teachers and advisors particularly in relation to apprenticeships. Many have argued that gender segregation could be tackled by improved careers advice for young girls, which does not reinforce the gendered stereotypes around particular sectors (Newton & Williams, 2013; Fuller & Unwin, 2013; Amaratung et al., 2006). The important influence of parents on promoting career choices to girls should also be recognised with a need to focus on educating parents on the value and benefits of non-traditional careers and apprenticeships for their daughters (WISE, 2014; Amaratung et al., 2006; Newton & Williams, 2013).

Whilst focussing on outreach in education may improve the pool from which employers can select, by itself this will not address the problem of gender segregation. It is also necessary to address potentially discriminatory and non-transparent recruitment practices. Particularly seen in sectors such as construction and in smaller companies, there has been an embedded practice of informal and word of mouth recruitment often relying on old boys networks which inevitably impacts upon female participation (The Smith Institute, 2014; Clarke et al., 2015). Thus, there is a need for employers to use objective, formal recruitment practices that focus on ability rather than networks (Clarke et al., 2015). In this regard, many employers have found that utilising blind recruitment (i.e. removing names and gender from applications) and providing training to interviewers on unconscious bias have been extremely useful in promoting gender diversity (Clarke et al., 2015; Newton & Williams, 2013; WISE, 2014). The use of positive action by means of outreach to encourage women to apply for a particular role and the use of the Equality Act 2010 'tiebreak' provision (see later) may also assist in promoting diversity via recruitment (YWT, 2016; YWT, 2017; WISE, 2017).

In order to attract and retain women into non-traditional sectors, it is also important to ensure that working conditions support rather than discourage female participation. Primarily this means providing women with a working environment free from harassment and discrimination (The Smith Institute, 2014; Clarke et al., 2015; Newton & Williams, 2013). This may involve working to ensure cultural change and address exclusionary aspects of the sector. Creating a more inclusive, non-discriminatory environment may also assist in attracting more women into the non-traditional sectors by breaking down negative perceptions around working conditions. However, equal opportunities and harassment policies and procedures need to be properly implemented and not simply amount to 'empty shells' (Hoque & Noon, 2004). Improving working conditions may also involve proactive steps such as providing mentoring within the work place as well as promoting female role models and providing networking opportunities for women to engage with and share experience and support (The Smith Institute, 2014; Clarke et al., 2015; Newton & Williams, 2013; Amaratung et al., 2006; WISE, 2014; WISE, 2017). Equally, important in attracting and retaining women into non-traditional sectors is the provision of more structured and flexible working arrangements with support for childcare provision (Clarke et al., 2015; Ness, 2012; WISE, 2014; Graham et al., 2016). In particular, the current national minimum wage for apprentices is unlikely

to cover the additional costs of childcare to enable young parents to take up opportunities (Newton & Williams, 2013).

More generally, it is recognised that real change can only happen with the support of leaders, sector bodies and the unions (The Smith Institute, 2014; Clarke et al., 2015). Equally, welcomed by some is the use of targets to drive up and provide focus on resolving gender disparity (Clarke et al., 2015). Similarly, the importance of supporting initiatives and work aimed at breaking down gender segregation through the collection of data, wider evidence and regular and consist evaluation of efficacy is fundamental to success (Miller et al., 2004; Clarke et al., 2015, WISE, 2014; WISE, 2017).

More recently, an emerging dialogue has commenced around the value of public procurement as a means of addressing gender segregation and pay inequality (The Smith Institute, 2014; Clarke et al., 2015; Danson, Sosenko et al., 2013; Wright, 2015; Wright & Conley, 2016; McCrudden, 2007; McCrudden, 2012; BIS, 2014; Wright, 2014). It is argued that as a result of the Public Services (Social Value) Act 2012, the Public Sector Equality Duty (under the Equality Act 2010) and the positive action provisions in section 158 and 159 of the Equality Act 2010 there is now increasing awareness of the value of including requirements in relation to equality and gender representation as part of the contracting process (see later).

Positive Action

As seen in the previous section, the issue of female underrepresentation in engineering, ICT and construction continues to be an embedded problem particularly when considered against Government commitment to addressing the skills gap across the UK. Therefore, it is imperative that employers and wider organisations are encouraged to increase the diversity of their apprentices and employees more generally. This necessitates the use of a broad ranging toolkit aimed at addressing gendered disadvantage and disparity. It is argued that a much misunderstood and neglected tool in this armoury is positive action. This section will seek to consider the legal and theoretical framework around positive action in the UK.

Introduction

Positive action is often perceived to be a controversial term (Noon, 2010; Davies & Robison, 2016; Manfredi, 2017). Sections 158 and 159 of the Equality Act 2010 (EA 2010) expands upon previous legislation and sets out the current legal framework in relation to positive action in relation to the protected characteristics in the UK. Whilst anti-discrimination provisions appear to have been unable to mitigate entrenched inequality and underrepresentation in gender segregated sectors (Selanec & Sendon, 2012), there is still a reluctance by employers to utilise robust positive action as a tool to effect change (Davies & Robison, 2016).

Conceptualising positive action

There is an emerging dialogue around conceptualising positive action in the UK (see inter alia: O'Cinneide, 2009; Noon, 2010; Barmes, 2009; Fredman, 1997; Selanec and Seldon, 2012; Khaitan, 2015; Johns et al., 2014; Robison & Burrows, 2006; Davies & Robison, 2016). The phrase 'positive action' is frequently conceptually conflated with 'positive discrimination'. However, most would agree that whilst positive action involves the use of special measures to redress disadvantage in order to achieve 'equality of opportunity', positive discrimination seeks to achieve 'equality of outcome' by recognising the intrinsic disadvantage faced by those with a particular characteristic. In relation to positive discrimination, decision makers can justifiably use the characteristic as a legitimate criterion for evaluating individuals (Davies & Robison, 2016). However, to date both the domestic legislation and overarching EU framework prevents the use of positive discrimination as a legitimate tool to tackle embedded disadvantage and underrepresentation.

A broad definition of positive action would include any measure that exceeds standard anti-discrimination provision. This potentially permits the inclusion of measures beyond targeted preferential treatment and includes any neutral measures whose effects seek to address disadvantage and underrepresentation on the grounds of gender such as the implementation of flexible working (De Vos, 2007). In theory, such measures are often categorised as anti-discrimination measures aimed at avoiding indirect discrimination rather than positive action.

Selanec and Senden (2012) consider that a broad definition of positive action permits the inclusion of any neutral measure contributing to the removal of obstacles to equality in practice where there is an intent to mitigate disadvantage to women. However, many prefer to draw the conceptual boundaries more stringently, requiring some form of preferential treatment in order to fit within the definition of positive action (Fredman, 1997; Selanec & Senden, 2011). Attempts to conceptualise positive action have often involved attempting to create a typology of approach (see inter alia: McCrudden, 1986; Selanec & Senden, 2012). Selanec and Senden (2012:p.4-5) in particular have sought to provide a gradation classification of positive action based on preference for a protected group:

- Absolute preference: certain benefits are reserved exclusively for the underrepresented group;

- Strong preference: advantage to underrepresented group who satisfy some minimum eligibility criteria;

- Tiebreak preference: underrepresented group advantaged where they are equally qualified or equally deserving of benefit;

- Flexible preference: group advantages overridden by some other socially valuable reason (e.g. single parenthood, health etc);

- Weak preference: protected characteristic to be one of various criteria for selection, each of which is of more or less equal weight.

Arguably absolute and strong preference (as categorised above) cross the conceptual boundaries between positive action and discrimination. Traditionally, legislative provision in the UK has fallen comfortably within positive action, with some limited exceptions such as the Sex Discrimination (Election Candidates) Act. However, more recently the implementation of the 'tiebreak' provision pursuant to section 159 of the Equality Act 2010 has potentially shifted the conceptual basis closer to positive discrimination (see below).

The overarching EU framework

EU legislation and jurisprudence has provided a legal framework for the development of permitted positive action in the UK. EU law does not provide a definition of positive action. However, Article 141 (4) EC Treaty and Article 2(4) of Directive 76/207/EEC (Equal treatment of men and women) permits positive action measures in the employment field in relation to gender. Subsequently, Article 3 of the Recast Directive (2006/54/EC) amended the Equal Treatment Directive and implemented Article 157(4) of the Treaty on the Functioning of the European Union, which states:

> With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

As a result of this permissive stance towards positive action, EU jurisprudence has provided some determinable boundaries. Some have attempted to uncover a paradigm approach to positive action in EU jurisprudence (Robison & Burrows, 2006). However, the case law is difficult to navigate and attempts at definitive interpretation have been difficult (Selanec & Sendon, 2012). It is generally accepted that the Kalanke case commenced the dialogue on permitted positive action in the European Court of Justice (ECJ). The ECJ found that measures consisting of giving an employment preference to female candidates (who were equally qualified to men) in sectors in which women were underrepresented, went further than that permitted by the exception in Article 2(4) to the extent that such preferences were absolute and automatic. This was closely followed by the Marschall case, which sharpened the bluntness of Kalanke. Here the ECJ found that preferential treatment in a 'tiebreak' situation where female candidates for promotion were equally as qualified as male candidates (in sectors where they are underrepresented) did indeed fall within the scope of Article 2(4). Importantly Kalanke was distinguished from the positive action measure in Marschall. In particular, the latter situation included a so-called 'saving clause' that explicitly permitted the employer to override the gender preference for some other reason of social policy. Thus, it didn't guarantee absolute and unconditional priority for women. The discretion as to the reasons that would override a gender preference was left to member states. However, they did state that 'those criteria must not be such as to discriminate against female candidates' (at paragraph 33).

The requirement in the relevant ECJ jurisprudence that the male and female candidates possess equal qualifications in order for any preference to be applied has been problematic and controversial. Therefore, it was anticipated that this issue would be explored in greater detail in the case of Abrahamsson. Here, where candidates were 'sufficiently qualified' in a recruitment process then a preference was applied to those belonging to an underrepresented gender. The caveat to this was that the difference between the merits of the candidates must not be so great as to result in a breach of the requirement of objectivity in selection. The ECJ found that the measure was not permitted under the relevant Treaty exception. However, this was on the basis that the evaluation process was not sufficiently objective and that the measure did not include the Marschall 'savings clause'. Arguably, therefore this may still permit a broad definition of 'equally qualified' such that a preference can be used for an 'equally qualified' woman even if she can't demonstrate traditionally expected qualifications due to embedded disadvantage but is able to show skills and talents demonstrating potential (Selanec & Sendon, 2012). More recent case law has supported this basic framework provided by Kalanke and Marshall, whilst providing additional context. In Pedro Manuel Roca Alvarez, the Court of Justice of the European Union (CJEU) found that positive action measures which are 'under-inclusive' (in the sense that they only assist a proportion of a disadvantaged group and in this case breastfeeding women) may fall beyond the permitted margins of the law.

Unsurprisingly, the lack of a clear legislative framework is often reflected in a lack of a consistent engagement by member states across the EU. In 2005, the European Commission's Network of Legal Experts considered the use of positive action by member states. Many states provided for permissive positive action. However, positive action was rarely considered a social or political priority and often there

was little evaluation of measures that had been implemented. The UK response stated 'there was little systematic research of how far [positive action] provisions, which in all cases are voluntary, have been taken up in practice by employers and others' (McCrudden, 2005:62).

With the imminent departure of the UK from the EU, the boundaries on positive action applied by the EU and embedded in the Equality Act 2010 may now be subject to review.

The UK legislative framework

The positive action framework provided by EU law was clearly at the heart of the consultation process on the Equality Act 2010 (Hepple et al., 2000). Thus, the positive action provisions of the EA 2010 (emphasised in the Explanatory Notes to the Act, para 511 to 521), 'extends what is possible to the extent permitted by European law' (see Burrows & Robison, 2006). Section 158 EA 2010 sets out the general provisions in relation to 'positive action' and extends the circumstances when positive action measures can be taken beyond employment and training. Thus, pursuant to section 158(1), proportionate positive action measures are permitted if a person 'reasonably thinks' that –

- Persons who share a protected characteristic suffer a disadvantage connected to that characteristic,

- Persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or

- Participation in an activity by persons who share a protected characteristic is disproportionately low.

Equality and Human Rights Commission (EHRC) guidance states that in determining whether there is a need to tackle disadvantage or underrepresentation, organisational knowledge of the workforce or of the sector will suffice and complex statistical data is not necessary (EHRC, 2011:paragraph 12.14). If a person 'reasonably thinks' that there exists disadvantage, differing need, underrepresentation then they will be permitted to implement 'proportionate' measures aimed at overcoming or minimising the disadvantage, meeting differing needs, or enabling or encouraging participation of underrepresented groups (section 158(2)). The Explanatory Notes to the EA 2010 (para 512) provide that a proportionate approach should assess the seriousness of the disadvantage, the extent of the needs or underrepresentation, as well as whether there are other ways to achieve the intended aims.

In a recruitment and promotion process, section 158 will not apply and instead section 159 EA 2010 will be engaged. Section 159 only applies in an employment context and permits gender (or a wider protected characteristic) to be taken into account in recruitment and promotion. This is often colloquially referred to as the 'tiebreak' provision. Under section 159, an employer can take a protected characteristic into account in a recruitment and promotion situation in circumstances where:

- The candidate is 'as qualified as' another candidate (section 159(4)(a));

- The employer 'reasonably thinks' that the protected group is at a disadvantage or is underrepresented (section 159(1));

- The action is with the aim of enabling or encouraging protected groups to overcome or minimise the disadvantage or participate in that activity (section 159(2));

- The action is a proportionate means of achieving those aims (section 159(4)(c));

- The employer does not have a policy of automatically treating persons in the protected group more favourably in connection with recruitment or promotion (section 159(4)(b)).

Employers are advised to establish a set of transparent criteria against which candidates will be assessed when applying for a job, including a candidate's overall ability, competence and professional experience, together with any relevant formal or academic qualifications, as well as any other qualities required to carry out the particular job. Where two candidates are 'as qualified as' each other in respect of transparent criteria, then an employer is permitted to take a protected characteristic into account in deciding who to offer employment/promotion. The term 'as qualified as' is used rather than 'equally qualified'. The latter had been rejected during the consultation to the EA 2010 due to concern that this would suggest the provision was 'solely about the equality of qualifications per se' (per Baroness Royall, Hansard, 2010). Thus the considerations as to whether two candidates are 'as qualified as' each other link more substantially to concepts of 'equal value'. The latter has already been accepted into equal pay legislation and jurisprudence and as such should not present an insurmountable barrier to the use of the 'tiebreak' for employers (Manfredi, 2017).

In contrast to the body of EU case law, there has been very little UK case law to assist in fleshing out the legislation under the EA 2010. Interestingly, there are a couple of cases in relation to the pre EA 2010 situation. In Hughes v London Borough of Hackney [1988], the employment tribunal took a restrictive approach towards the implementation of positive action. Hackney had established a number of apprenticeships specifically for ethnic minority individuals. The tribunal ruled that Hackney had discriminated under the Race Relations Act 1976. A less stringent approach which specifically considered the pre EA 2010 positive action provisions of the Race Relations Act 1976 was seen in R (Kaur) v Ealing London Borough Council [2008]. In this case, the High Court stated that the positive action provisions of the 1976 Act should not be viewed as an exception to the law but rather adherence to a fundamental principle of equality that 'not only must like cases be treated alike but that unlike cases must be treated differently' (per Moses LJ at para 52).

Of more recent interest and not directly dealing with the positive action provisions of the EA 2010, is the case of Interim Executive Board of X School v Her Majesty's Chief Inspector of Education, Children's Services and Skills [2016]. Often the lawfulness of using segregation (particularly in relation to education and indeed apprenticeships) as a positive action measure is raised. The 2016 case made reference to this issue and involved a judicial review of Ofsted's policy requiring gender segregation in co-educational schools to be justified. The High Court had

held that in this case, a co-educational Islamic faith school was not discriminating in segregating on the basis of gender as there was no evidence of less favourable treatment of either boys or girls, in that they both lost the opportunity to socialise with the opposite gender during the school day. However, the point was made that if the gender segregation had involved 'less favourable treatment' then it would be unlawful direct discrimination (pursuant to section 13 of the EA 2010) 'unless a section 158 [or section 195] reason applies' (per Mr Justice Kay at para 86). The Court of Appeal however allowed Ofsted's appeal and found that strict gender segregation in a co-educational school is a detriment that involved less favourable treatment because it diminished the quality of education that the girl and boy pupils would receive but for their respective sex. Once again reference was made to the positive action provisions being a possible reason for this disparity, but in this case no argument was made for the application of section 158. In this regard it should be noted that in relation to race, section 13(5) of the EA 2010 expressly states that racial segregation will be 'less favourable treatment' for the purpose of establishing direct discrimination. Without further exploration by the courts it is difficult to see how section 13(5) might interact with section 158 but one must assume that the latter could still provide a defence to unlawful discrimination in these circumstances. However, the more complex considerations around racial segregation may well impact on whether such a measure will be viewed as proportionate.

Legislative links

Section 149(1) of the EA 2010 sets out the Public Sector Equality Duty (PSED). This requires public authorities to exercise their functions with due regard to the need to 'advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it'. This involves having due regard to the need to encourage persons who share a relevant protected characteristic to participate where participation by such persons is disproportionately low (section 149(3) EA 2010). As seen above, the legislation around positive action is clearly permissive rather than mandatory. However, there is an argument that in relation to the public sector, the marked similarities between the wording of the PSED and the positive action provisions of the EA 2010 mean that public sector employers are in effect required to have due regard to introducing positive action measures where relevant to alleviate underrepresentation (Davies & Robison, 2016). This was recognised by McColgan in the UK response to the European Network of Legal Experts, who stated 'it is likely in future that Section 149 may be relied on to push public authorities into utilizing their powers under Sections 158 and 159 of the Equality Act 2010 and, possibly, exerting pressure on private sector contractors to do likewise' (2012: 229).

Developing this argument further in an employment/apprenticeship context, there is an emerging dialogue around the need to link the PSED and public sector procurement. As far back as 2004, McCrudden explored the need to focus on the use of public procurement to achieve 'social outcomes'. Similarly, Danson et al., (2013), stated that public authorities via the procurement process should (in fulfilling their own obligations under the PSED) seek to influence the recruitment process in requiring that any successful contractor fulfil the requirements of the PSED. Thus, if due regard to the need to take positive action is considered to be

part of the obligations under section 149 EA 2010, then similarly public procurement should seek to encourage due regard to use positive action as part of this process.

In recent years there has been an increasing focus on procurement as a tool to drive equality standards through supply chains and in particular to address occupational gender segregation (The Smith Institute, 2014; Clarke et al., 2015; Danson et al., 2013; Wright, 2015; Wright & Conley, 2016; McCrudden, 2007; McCrudden, 2012; BIS, 2013; Wright, 2014). Whilst the PSED has provided some legislative drive towards promoting equality through public procurement, the more recent introduction of the Public Services (Social Value) Act 2012 which requires public authorities to consider additional economic, social and environmental benefits in the commissioning of services further supports the use of the procurement process as a tool to address female underrepresentation in relevant sectors.

Of particular note as a successful example of the use of procurement to address gender segregation is the recent Women into Construction (WiC) project recently evaluated by Professor Tessa Wright of Queen Mary University, London. The WiC programme had been established to increase the number of women working on the construction of the Olympic site for the 2012 Olympics (Wright, 2014). This programme required tier 1 contractors to meet contractual employment and apprentice targets around gender and diversity and required their sub-contractors to do the same. Importantly, as a result the percentage of women working on the Olympic Park site was more than double compared to the construction industry average (Wright, 2014).

Discussion and Findings

This section of the report provides detail regarding the key findings that have emerged from an initial analysis of the data collected between April 2017 and January 2018. Discussion and feedback on these findings is both welcome and crucial to the further development of the emerging body of research into the use of positive action in gender segregated apprenticeships in England. Table 3 (below) provides a brief overview of biographical details of interview and focus group participants setting out individual identifier codes that will be utilised throughout.

TABLE 3: Participant codes and biographical details of interview and focus group participants

CODE	GENDER	SECTOR	STATUS	FUNCTION
SSI1	Female	Engineering	HR	Employer
SSI2	Male	Construction	Executive	Employer
SSI3	Male	Construction/Engineering	Executive	Employer
SSI4	Female	ICT	Policy	Sector Body
SSI5	Female	Construction	Learning and development	Sector Body
SSI6	Male	Construction/Engineering	Learning and development	Employer
SSI7	Female	Construction/Engineering	Learning and development	Employer
SSI8	Female	Engineering	EDI Specialist	Sector Body
SSI9	Female	Engineering	Executive	Sector Body
SSI10	Female	Construction	Executive	Sector Body
SSI11	Female	Construction	Learning and development	Employer
SSI12	Female	Construction	Learning and development	Employer
SSI13	Male	Engineering	EDI Specialist	Employer
SSI14	Female	Engineering	Learning and development	Employer

SSI15	Male	Unassigned	Learning and development	Unassigned
SSI16	Female	Unassigned	EDI Specialist	Unassigned
SSI17	Male	Engineering	Policy	Sector Body
SSI18	Female	Unassigned	Unassigned	Unassigned
SSI19	Female	Construction	Executive	Sector Body
FG1	Female	Various	Various	Young Women
FG2	Female/male	Various	Various	Various
FG3	Female	Various	Various	Young Women
FG4	Female/male	Unassigned	Various	Various
FG5	Female/male	Unassigned	Unknown	Various
FG6	Female	Unassigned	Unknown	Various
FG7	Female	Unassigned	Various	Young women

The key findings considered in this report are presented and should also be read in the context of existing UK based studies into gender segregation within apprenticeships and the labour market more generally (see 'Theoretical Context' above). As such, the following section provides a descriptive and comparative analysis of the data collected in relation to the wider national dialogue in this area.

The findings in this section are outlined and discussed in relation to key themes that emerge from analysis of raw data. These findings are based on an analysis of data gathered from a variety of sources:

- Data from a YWT survey of 4010 young people across the UK between 4th – 14th July 2017;

- Data from a YWT survey of 800 HR decision makers across the UK between 5th April 2017 – 3rd May 2017;

- 3 focus groups with representatives of employers, sector bodies and apprentices held in June 2017 at a project launch event;

- 3 focus groups with young women held in November 2017 at a YWT engagement day;

- 1 focus group with STEM representatives held within a higher education context in January 2018;
- 19 individual interviews with representatives from sector bodies, employers and policy makers from across England representing engineering, ICT and construction sectors undertaken between September 2017 and January 2018.

Data has also been triangulated with Roundtable data from an Equality and Human Rights Commission (EHRC) roundtable event held in March 2018 (see below).

Young People Survey

Between 4th July and 14th July 2017, Populus Data Solutions (on behalf of the YWT) undertook an online survey of 4010 young people (aged 18-30) from across Great Britain (Young People Survey). Sixty-seven per cent of respondents considered that women still faced discrimination in the workplace in contrast to just 13% who disagreed. When broken down 75% of women agreed compared to 58% of male respondents. Similarly, 20% of men disagreed compared to just 6% of women. When asked a more overt question as to whether they felt there was no such thing as gender discrimination in today's society only 7% agreed with this statement compared to an overwhelming 73% who disagreed. When broken down by gender, 13% of men agreed with this statement compared to just 9% of women. Equally, 67% of men and 79% of women disagreed.

Employer Survey

Between 5th April and 3rd May 2017, YouGov Plc undertook an online survey (on behalf of the YWT) with 800 HR decision-makers from across the UK (Employer Survey). Fifty eight per cent of respondents were male and 42% were female. Respondents came from a variety of sectors. However, for the purposes of this research, the IT industry represented 5% of respondents, 6% were from the Professional, Scientific and Technical sector and 3% were from construction.

EHRC Roundtable discussion

In December 2018, the Equality and Human Rights Commission (EHRC) commissioned the YWT and the University of Chester to produce a review of the existing evidence on the use of positive action as a tool to address underrepresentation of ethnic minority groups, disabled people and women in gender segregated sectors in relation to apprenticeships in England, Scotland and Wales. It also hosted a roundtable discussion (the Roundtable) with academic, government and policy experts in this area in March 2018. The EHRC, YWT and Professor Chantal Davies led this Roundtable. Consequently a report was produced for the EHRC (pending publication in Summer 2018) summarising the theoretical context in this area and analysing the data collected at the Roundtable event. Interim findings from the research upon which this report is based were used to develop a thematic framework on which to base discussions at the Roundtable event. A series of pointers for action and implications for the development of

practice, policy and legislation in the area of positive action and apprenticeships were included within the EHRC report. Importantly it should be noted that the remit of the EHRC work was wider than the YWT project upon which this report is based in that it focussed on underrepresentation on the grounds of gender, disability and race. Equally, it covered England, Scotland and Wales and in particular took into account the distinct apprenticeship contexts within each of the three nations. Thus the two projects are distinct and should be read alongside each other in compliment.

Key findings in summary from the EHRC Roundtable include:

1. **Terminology:** Unsurprisingly, participants felt that there was an issue with the lack of a consistent definition of positive action. Most participants felt that defining and limiting positive action as requiring a 'preference' was unhelpful and may lead to alienation of others and resentment from wider critics as well as potential beneficiaries. Equally, it was widely felt that there needs to be a consistent definition to delineate the boundaries of positive action as compared to positive discrimination and this needs to be effectively and widely disseminated to employers and beyond.

2. **Efficacy and obstacles:** Most participants considered that positive action in theory is an effective measure to address disadvantage and underrepresentation in relation to apprenticeships and beyond. However, almost all felt that in its current form it lacks efficacy and the obstacles to use result in a tool which is often used in a way which lacks impact or worse creates resentment and detracts from it's core purpose. The considered obstacles to effective use are numerous. Participants felt that the lack of a consistent adequate guidance/code of practice means that employers both lack awareness and/or confidence to implement effective positive action measures. Often this confidence is based on a fear of legal liability, which can arise from a conceptual confusion between positive action and positive discrimination.

3. **Forms of positive action:** Participants explored a range of specific positive action measures and explored their utility in relation to apprenticeships. It was generally felt that low-level outreach initiatives focussing on encouraging underrepresented groups to apply for apprenticeships are useful. However, there was concern about the tokenistic standardised approach towards things such as targeted adverts. Equally, there was concern that utilising isolated positive action measures is unlikely to be effective and that a lifecycle holistic approach is preferable. Participants were more polarised in relation to the use of quotas and most considered that less rigid targets would be more effective as a means of driving employers to engage in positive action. Participants unsurprisingly concentrated on the use of the 'tiebreak' under section 159 EA 2010 and considered its lack of use across the three nations. It was generally considered that a lack of understanding of the tiebreak means that employers often link it to positive discrimination and are therefore reticent to utilise for fear of legal liability based on 'reverse discrimination'. The terminology of 'as qualified as' was also questioned as a criteria for use of section 159 and suggestions for review were made.

4. **The legislative framework:** All participants felt that the law on positive action in the EA 2010 lacks clarity and therefore contributes to a lack of confidence and use of such measures by employers. However, participants differed in their view of whether the law needs to be strengthened in this area. Some participants felt that if we are committed to progress and resolving underrepresentation and disadvantage, positive action should be mandatory rather than simply permissive. Others felt that the law requires clarification but that it is not relevant or useful to mandate such action particularly when there is such confusion and inconsistency in current use. However, most participants support attempts to strengthen the link between the PSED and positive action and felt that this was a means of ensuring the use of positive action via the procurement process.

5. **Promotion of positive action:** Participants considered that more effective and strategic promotion of positive action is necessary in order to ensure the use and impact on underrepresentation in apprenticeships. In addition to the need to ensure more robust guidance on the use of positive action, it was felt that once again it is necessary to consider underrepresentation in apprenticeships more holistically. Participants recognised that in relation to engaging employers in the use of positive action, the crucial focus should be on SMEs. In particular, the exacting resource challenges that SMEs face in implementing positive action was emphasised. Participants felt that the Apprenticeship Levy may provide the opportunity for government led promotion of the use of positive action. However, this would only be relevant to those who are able to make use of the Levy. Equally, many participants made reference to the use of public sector procurement as a tool to advance the use of positive action.

Data collected at the EHRC Roundtable event will be triangulated with the data collected in this project where relevant and appropriate. However, the EHRC report should be read in full in relation to the wider issues.

Understanding and attitudes towards positive action

Almost all of those participating in interviews and focus groups had an awareness of the term 'positive action' and were willing to proffer what the term meant to them. However, many participants expressed a lack of clarity and confusion about how to define positive action with some referencing it's multi-faceted nature and 'elastic' form:

> *I didn't actually know what it was, no idea what positive action meant as a statement but it turns out that from my opinion lots of people are doing it. (FG1)*

> *So it would have to be relatively elastic, you probably note from my ramblings that I think it's difficult to have one definition. (SSI15)*

> *I suspect it means something different to everybody. (SSI19)*

Equally, there was an awareness from some that the term may be controversial and may involve the risk of illegality:

> *I've been worried about breaking any legislation…for example can we…advertise for females solely you know, I don't know whether that would even be legally possible or not. (SSI16)*

Attempts to define usually did not reference the Equality Act 2010 explicitly (with one exception). Rather, participants used a variety of 'equality' focussed rhetoric to attempt to capture the essence of what positive action meant to them such as 'fairness', 'equal opportunity', 'empowerment'. The analogy of creating a 'level playing field' was referenced on several occasions:

> *I probably couldn't give a very defined definition as such, but to me, positive action is creating a level playing field so that no one is disadvantaged in any way from progressing or moving forward to taking part in something, (SSI9)*

> *Positive action is about levelling the playing field and enabling, in this case women, who are disadvantaged in terms of finding employment, find ways to help them to have opportunities on an equal basis. (SSI10)*

> *It would locate itself around a formal way to talk about empowerment, to talk about capacity, building the individual, about creating the space, creating the platform, creating the voice mechanism for people to feel that they had a level playing field. (SSI15)*

Equally there was a focus on the need for positive outcomes and positive change:

> *To me, I think probably it's a process that has a positive outcome. (FG3)*

> *I think good, this idea of trying to actively do something but I think that's the key to make a positive change here. (FG6)*

Most participants focussed on positive action as a standalone approach. However, one participant (SSI4) discussed the need for positive action to be 'project based…with actionable and definable outcomes', recognising the need for action rather than just tokenistic interventions. This appeared to recognise the need for evidence, evaluation and a project based approach towards implementation. This supports data from the EHRC Roundtable in which participants discussed the need for more robust, consistent and widely promoted guidance around 'proportionality' and in particular the need for an evidence-based evaluation of positive action measures.

Whilst many focus group and interview participants made an attempt to describe positive action in elastic and fairly vague terms, they seemed far more comfortable attempting to define by providing examples of types of positive action. Examples, such as encouraging underrepresented applicants to apply for roles via focussed advertising, providing targeted mentoring, additional training for women were used:

> *We want our workforce to represent that, so we would go out and we'd target female publications to try and open our audience a bit more broadly. (SSI7)*

> *Things like actively recruiting female apprentices, and having a lot of sort of on-site mentoring schemes that are dedicated for specifically getting women into construction. (FG5)*

We can train and develop and give them an insight that will hopefully aid them and develop them to go ahead in their application and give them that insight into the business. (SSI1)

The latter participant clearly recognised that the boundaries of positive action were difficult to define and therefore provided an example of activities that wouldn't be permitted as valid positive action:

We can't ring-fence any positions or we can't provide or do any apprenticeships for females only. (SSI1)

Reference to the legal boundaries of positive action was a consistent theme. Many participants expressed an awareness that there was a thin line between positive discrimination and positive action and recognised that the former fell into the realms of illegality:

I'm aware that positive discrimination is illegal. (SSI10)

Positive action is lawful, discrimination is unlawful. (SSI16)

I think it's fairly clear that you can't….positively discriminate. (SSI3)

However, many participants also made reference to the fact that there was considerable confusion around the difference between the two concepts. Some referenced their own personal confusion in this regard:

I had like an idea of it but again the distinction between positive action and positive discrimination kind of confused me. (FG1)

Others, however, made reference to the conceptual confusion but in objective terms focussing on external misunderstandings and conflation of positive action and discrimination:

I would say the understanding amongst the general public is low about the difference between positive action and positive discrimination. (SSI9)

Well, a lot of people get the differences between positive discrimination and positive action wrong. (SSI13)

So it's, I think it probably gets confused sometimes with positive discrimination but it's not the same thing, (SSI17)

Whereas most simply referenced a distinction between the terms, a couple of participants went further and attempted to describe the conceptual differences:

Whereas positive discrimination is about actively discriminating against a particular group of people in favour of another group of people, positive action is instead about giving people within a particular group or more than one particular group, a leg up so that they can kind of compete on a more level playing field, that's the best way I can describe it, I think. (SSI17)

I understand positive action to be trying, employers trying to take down the barriers or deliberately reach out to populations that are underrepresented in their workplace and encourage them to apply, as opposed to I guess... I guess the automatic leg-up that's associated with positive discrimination. (SSI18)

Some participants however seemed unaware that there was a distinction between the terms and when asked to define positive action described it in terms of affirmative action and/or positive discrimination. These participants also seemed unaware that there was a legal boundary issue in relation to the use of positive action:

> *Well for me it's about positively… it's not discrimination, it's more positive discrimination. (SSI1)*

> *I would associate it with affirmative action, but I don't know if that is correct. (SSI2)*

> *I would define it as like…positive discrimination, so that's the first thing that pops into my mind, (FG1)*

> *I would assume it means positive discrimination. (SSI5)*

Linked to this is an awareness of the law around positive action. Only one participant had specifically referenced the Equality Act 2010 in her definition of positive action (see above). However, as above many had understood that there were some legal boundaries around positive action and that the line between legal and illegal may roughly correspond to definitional differences between positive action and positive discrimination. A couple of interview participants had little or no awareness of any specific legislation around the use of positive action:

> *I don't have any knowledge of the law around positive action…I think the limitations are often cultural and perception based rather than specifically actual limitations. (SSI4)*

> *I'm not aware of any specific legislation that looks solely at positive action. (SSI12)*

However, many had a general awareness of the fact that law existed to permit employers to use positive action in employment but were not clear of boundaries around this:

> *So, well, I have to be honest and say that I knew that the law did provide for employers to be able to use positive action in some circumstances but I kind of didn't know much about the letter of the law, so what specific things could and couldn't be used. (SSI17)*

> *I understand that it's not illegal to do positive action and positive discrimination is, but beyond that I don't really know where it stands on it. (SSI18)*

Equally, this awareness of the law but a lack of knowledge around detail had led some to be concerned about exercising positive action:

> *I've been worried about breaking any legislation saying you know for example can we, you know, advertising for females solely you know, I don't know whether that would even be legally possible or not. (SSI16)*

This lack of awareness and confusion around terminology was also discussed at the EHRC Roundtable and participants anecdotally reported that many employers appear to assimilate positive action and positive discrimination. In this regard, it

was felt by Roundtable participants that this might also be a reason why many employers appear reticent to utilise positive action for fear of unwittingly straying into the territory of positive discrimination.

For those that did express an awareness of the law and had previous knowledge of the boundaries around positive action, this information had been gained from various sources. For some participants who had a HR or EDI role or where from a sector body which focussed on gender representation, the knowledge of positive action and the legislative framework came from the necessity to develop awareness for the purpose of their individual role:

> *I would say it's from, for a number of years, not just my role, but working with employers, Government and a whole variety of individuals working in STEM over the last thirteen years. (SSI9)*

> *It's a very basic requirement for a job of mine, you know, if you're in charge of EDI at any level it's a very basic knowledge requirement. (SSI13)*

For those for whom an understanding of positive action was central to their role, there was a correlation with the level of awareness of positive action. For others, awareness of positive action had come from their individual interest in equality that had led to personal research into positive action and the development of general knowledge in this area. One participant interestingly linked his knowledge to his political interests and values:

> *My own interest, to be honest with you, I've always been kind of politically interested, I've always been interested in current affairs…it's always been an area that I've had an interest in anyway because it kind of chimes with my own values and my own political outlook. (SSI17)*

Supporting the findings of Davies & Robison (2016), others emphasised the importance of third party organisations and in particular sector bodies as a means of providing detail and knowledge around the use of positive action:

> *Also then we partner with organisations, Young Women's Trust as you know, and with WISE. (SSI1)*

> *I've attended various seminars and things like that through people like WISE and the Women in Construction is another one which we've sort of looked at… (SSI3)*

> *I remember talking about it, I think, when we might have done our fairness, inclusion and respect training, which is part of our training to join CITB…I think it might have been part of that. (SSI5)*

For those participants representing employers, knowledge and awareness of positive action and the legal framework often came from in-house legal provision or a dedicated HR or EDI function:

> *We have a legal team here that, you know, we have regular meetings with, we get legal updates. (SSI1)*

> *If in doubt we would check with our HR or legal teams, so for me personally I'm familiar with all our various processes around people, recruitment,*

> *attraction…we are such a large organisation we have access to advice all the time on the legalities of things… (SSI14)*

More informally, the importance of networks and the opportunity to discuss issues with women in the relevant sectors was given as a means of developing an interest and awareness of positive action:

> *I mean mainly due to…actually talking to people…three women engineers and one woman from our Accounts Group, so talking to them as well. (SSI3)*

> *And also probably around some of the conversations I have like this one, where we're thinking about diversity in our sector, which is one that's particularly bad for diversity. (SSI5)*

The majority of participants expressed supportive views and attitudes towards the use of positive action to address the underrepresentation of women in gender segregated apprenticeships and employment more generally:

> *So I think apprenticeships need probably, you know, more positive action than in some of the other areas that we deal with at the moment. (SSI3)*

> *I think it's a good thing…I do believe important action such as making sure that there's no all-male shortlists or having diverse interview panel, or even having, you know, ensuring that the job application isn't gendered…so that kind of stuff I believe is really, really important and positive in the way that it's allowing more come to come into and potentially explore careers in our industry. (SSI4)*

This was supported generally by data from the Young People Survey in which respondents were asked whether they felt that employers should take action to encourage people from disadvantaged or underrepresented groups to apply for jobs. Overall, 74% considered that they should compared with 13% who disagreed. When broken down there was a gendered difference in approach with 70% of male respondents and 78% of female respondents believing employers should take action compared to 18% of males and 9% of females who felt that employers should not take such action.

There was a less obviously favourable view towards the need for positive action in the Employer Survey data. Respondents were provided with a brief factual definition of positive action and 60% of all respondents agreed that there was a need for employers to take positive action in the UK whilst 18% disagreed with this. Whilst 59% of respondents from the private sector agreed, 65% of those from the public sector agreed. Particularly notable were 74% of respondents from the construction sector agreed with this statement in comparison to just 7% who disagreed. However, for Profession, Scientific and Technical respondents, 51% agreed compared to 18% who disagreed. Similarly, just 44% of those in the IT industry agreed with the statement compared to 21% who disagreed. When broken down by gender, 64% of females compared to 58% of males agreed with the statement. Equally, 21% of male respondents compared to 13% of female respondents disagreed. However, when asked to what extent they considered positive action measures would be effective in addressing disadvantage and underrepresentation in the workplace, responses were more nuanced. Sixty-three per cent of respondents considered that positive action would be effective whilst 19%

disagreed. Sixty-seven per cent of female respondents agreed compared to 61% of male respondents. In comparison, 22% of male respondents compared to 14% of female respondents disagreed that positive action would be an effective means of addressing disadvantage and underrepresentation. Overwhelmingly 73% of respondents in the construction sector agreed that positive action would be effective compared to just 6% who disagreed. In the IT industry there was a less overwhelmingly positive response with 54% agreeing and 22% disagreeing. Similarly, in Professional, Scientific and Technical sector, 54% of respondents agreed that positive action was effective compared to 23% who disagreed.

Interview and focus group participants also expressed attitudes towards necessity and efficacy of positive action. One interview participant (SSI17) expressed the view that positive action was a necessary form of drastic action to deal with an embedded problem:

> *Yes, I mean from my personal point of view I think it is very necessary because I think to change the tide or how our workforce looks currently, it does need some quite drastic action. (SSI17)*

For others, they considered that positive action was a useful tool to address gender segregation but applied a caveat that it was only an effective tool if used appropriately and robustly and with the appropriate knowledge:

> *Yeah…if you truly understand what are the benefits of positive action, and what people from various backgrounds can bring, in terms of adding diversity and value to the workforce, you're not just going to be giving out handouts…but you have to understand the issue first. (FG1)*

> *I think it can be definitely used appropriately and if it is used appropriately I think it can be very beneficial. (SSI9)*

> *I think a bit of both, which is probably not a very straightforward answer, because I think it depends how it's used, and who is using it, and their understanding of it. (SSI11)*

Such concerns were reinforced in the EHRC Roundtable with participants reporting that there was a lack of real commitment from employers and organisations to use robust positive action. Thus when used inappropriately, Roundtable participants felt that the consequent lack of impact may arguably perpetuate reticence to use as employers do not wish to invest in measures that have little effect.

Some interview participants felt that positive action lacked efficacy because it was often applied in a tokenistic manner without any real focus or interest beyond demonstrating surface adherence to equality and diversity:

> *A lot of companies and organisations start making them a bit token and think that they are doing a lot and they reach out to me and say "we'd like more women in our organisation, can you do that for us?" So it's, that's not what we do. (SSI4)*

Again, EHRC Roundtable participants had expressed a similar concern that standardised surface and tokenistic approaches towards positive action may well lead to a failure of the initiative and once again result in a disinclination for employers to engage.

Another interview participant felt that employers tended to focus on using positive action to increase representation of those from ethnic minority groups and low socio-economic groups in order to cut costs and access cheap labour:

> *It might be a cynical view, it might be only a personal opinion but I find diversity drives, especially for large commercial companies, as really a cost-cutting measure, it allows them to get cheap labour from poor backgrounds…A kid from a disadvantaged background is more likely to ask for less money than a kid from a more affluent background because he understands what his worth is, and I see that, I see that a lot. (SSI2)*

Linked to this was a view from those participating (who were more likely to be beneficiaries of relevant positive action initiatives), that they would not wish to be viewed as the 'token' female and would be concerned if such measures were applied to them:

> *It creates self-doubt at times, you know, am I, am I really good, is that why I'm here or are people sort of trying to throw me a bone? So yeah, I suppose it creates a bit of self-doubt, I don't know how the recipients of our diversity drive would feel. (SSI2)*

> *I've got the skills to do what they brought me there to do, I know I am that person, but at the same time I think my colleagues are thinking that I'm not, and I just, this is me, I don't want nobody to think here that, you know, that I'm not capable, or I'm just here because the manager favoured me or whatever, I don't like that. (FG1)*

> *For me it annoys the hell out of me and that's me being, because I always thought that have I really got the merit, it does make me question myself, have I got the merit? Have I got the ability? Will I be pushed into something? Am I going to be set up to fail? (FG2)*

For another participant with a significant background in EDI, he felt that positive action was not necessary or relevant if adherence to equality and diversity was applied. In particular he felt that if recruitment and selection processes were conducted in a consciously robust and non-discriminatory manner, this would solve the problem without the need to rely on positive action:

> *Well, you don't need it if your selection process is correct, so the problem isn't that women aren't applying for jobs, it's that they don't get through the selection process… In actual fact it does more damage than it does good. And the other issue is that, again, you know, because there's a strong cultural belief in meritocracy, people believe in special favours and discrimination, etc, etc, etc. So, you know, I think the, it's the wrong approach, it's just putting the emphasis on the wrong syllable completely and it just misses the wood for the trees. (SSI13)*

Once again, EHRC Roundtable participants had supported this and had discussed the need for a wider definition of positive action moving away from targeted and preference based restrictions towards a broader definition including any action that has a purposefully advantageous effect on a disadvantaged group. Therefore, Selanec and Sendon's (2012) wider conceptual description of positive action would

be preferred and would cover any measure that intentionally and consequentially benefits women by resolving underrepresentation.

Obstacles to use of positive action

The use of positive action has long been a controversial aspect of equality and diversity practice. The data from the Employer Survey suggested a lack of mainstream use of such initiatives in the workplace. When asked about use of positive action, 24% of respondents to the survey stated that they had used it in the past and intended to use in the future, 4% stated that they had previously used it but did not intend to in the future, 15% stated that they haven't previously used but intended to do so in the future and 26% stated that they hadn't used it in the past and did not intend to use it in the future. Thirty-one per cent of respondents didn't know or couldn't recall using positive action suggesting a lack of awareness in this area. Notably, of those who stated that they would not use positive action in the future, there were only 4% who had previously used and consequently stated that they would not use in the future perhaps due to negative experiences of the impact. The 26% who stated that they hadn't used in the past and wouldn't in the future therefore did not necessarily base their disinclination to use on previous specific personal experience. More positively, overall 39% of respondents considered they would use positive action the future. This accords with previous findings by Davies and Robison (2016) in this area.

FIGURE 2: Use of positive action by employers (Employer Survey)
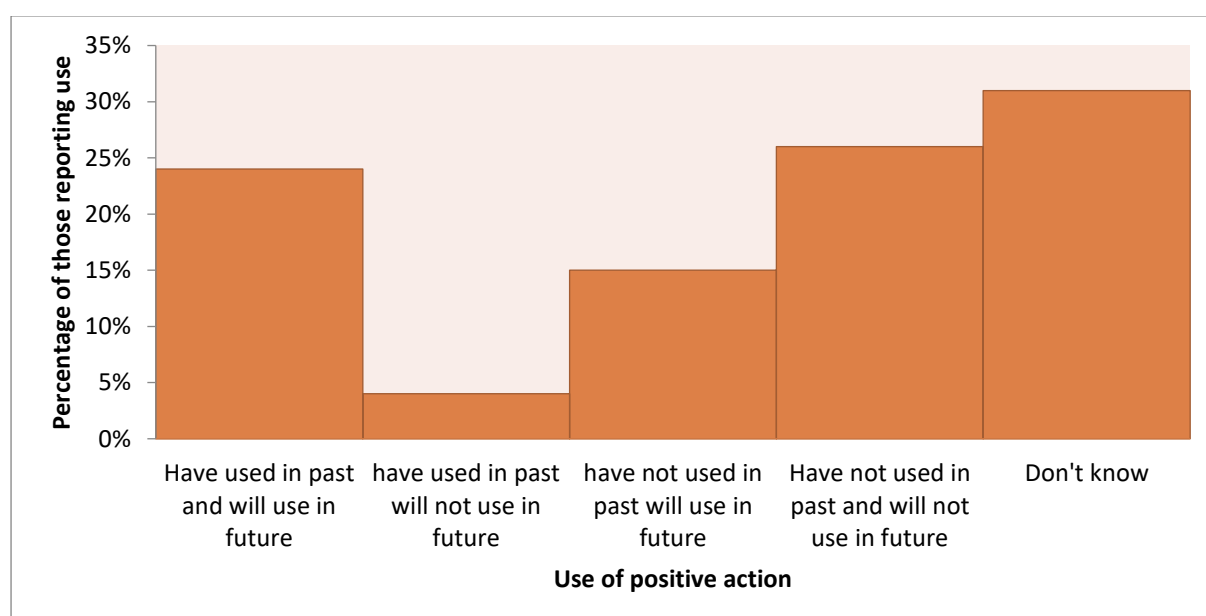
Out of those respondents to the Employer Survey who had not used positive action in the past and did not intend to use in the future (n=211), respondents were asked to select from a range of reasons for non-use and were able to choose several options. Forty per cent stated that positive action was not necessary within their organisation. Slightly fewer (38%) stated that they believed positive action had not been used due to a fear of the best person for the role not being recruited. Twenty three per cent of respondents considered that positive action had not and would not be used due to a belief that it is not effective at redressing

disadvantage/underrepresentation. Just 14% considered that their lack of inclination to use was related to a lack of understanding and knowledge about positive action and 8% stated that they felt that they feared the legal consequences of using positive action. The only notably gender difference in responses was seen in relation to those who stated that positive action was not necessary (44% of male respondents compared to just 31% of female respondents) and in relation to the fear of the best person not being recruited (41% male respondents compared to just 32% female respondents). Similarly, 27% of female respondents to this question were not aware why positive action was not being used in their organisation compared to just 14% of male respondents. This may suggest a greater lack of awareness by female HR decision makers as to the obstacles to positive action perceived by those in leadership positions within their organisations. There was little discrepancy from the overall figures in relation to the particular sectors. However, of note in relation to respondents within the construction sector, only 9% (compared to the overall figure of 38%) feared that the best person would not be recruited and only 4% (compared to the overall figure of 23%) believed that positive action was not effective. Equally notable, was that 42% of respondents to this question from the construction sector and 43% of those from the Professional, Scientific and Technical sector gave 'other/don't know' as the reason for non-use (compared to the overall figure of 22%).

FIGURE 3: Reason for non-use of positive action by employers (Employer Survey)

For those respondents to this question in the Employer Survey who gave 'other' as a reason for non-use of positive action, limited qualitative responses were sought from these respondents. Sixty-one respondents overall provided wider reasons for non-use of positive action. Perhaps unsurprisingly, the majority of these respondents (54%) stated that they would not seek to use positive action due to the small size of their organisation, the lack of any potential to recruit further or the fact that they did not have a recruitment function within their organisation. Less prominently, 11% of respondents stated that they would not seek to use positive action as they recruited on merit irrespective of individual characteristics. The majority of these were male respondents:

40

We employ the best person qualified for the job whoever they are. (female respondent)

We employ according to ability not ethnicity, gender etc. (male respondent)

As a professional HR Consultancy we do not need to take positive action. We appoint the most able candidates, not from "fear" of anything but because if no suitably able candidate was available there would be no appointment at all. Protected characteristics do not enter into the equation; positively or negatively. (male respondent)

It doesn't matter who that person is, if they are right for the company or position then they will earn our respect and employment, we don't need assistance in meeting quotas! (male respondent)

Should always employ the best person for the job irrespective of 'ability'. (male respondent)

We need to recruit based on skills not the need of the applicants. (male respondent)

We are a small organisation and this wouldn't be our primary objective in recruiting staff. (male respondent)

We are a small business and need to have the flexibility to recruit the best person for the job. (female respondent)

Just two respondents stated that they did not feel the need to utilise positive action as they already had a diverse and representative organisation. Six respondents stated that they applied very specialised recruitment due to the particular nature of their organisation and it would not be possible to use positive action due to this. A very small number of respondents (all of whom were male) expressed explicit dislike of positive action and consequently would not use:

Misguided left wing policy. (male respondent)

Not enough is being done to help white ENGLISH people in this country. (male respondent)

Positive action is discriminatory by design. (male respondent)

A belief that the best person would not be recruited. (male respondent)

Interview and focus group participants also explored obstacles and limitations on use of positive action. Beyond their personal attitudes towards positive action (see above), participants were encouraged to explore their experiences of external obstacles towards positive action which they may have anecdotally witnessed or otherwise perceived. Some of these obstacles replicated those that they had personally identified with but mostly they were attitudes that the individual participants did not share.

As above, a recurring perception was that a fundamental obstacle to the exercise of positive action was the view of many employers that inclusive rather than preference based practice was more appropriate and effective as a means of addressing gender disparity:

So one of the programmes we run is specifically for females that were coming to the business for a week, they get a good understanding of the business…And the idea of that is to disperse their perception of what manufacturing and engineering is. Now some of the managers feel that that should be open to males as well as females, a point which I take onboard and I can totally understand that, to give them the opportunity to see the organisation as a fit for them as well. (SSI1)

I think there might be potentially a fear of either missing out on an excellent candidate from another group, or actually, the fear of upsetting that group of people, by feeling like this is very much targeted, as opposed to just making sure that it is inclusive for everyone. (SSI12)

Closely linked to this was a perceived fear that some employers may have around targeted positive action resulting in positively discriminating and the potential risk of legal liability. This mirrors discussion in the EHRC roundtable:

I think that could be one reason why employers who might be willing to go down that route and aren't is because of the fear of getting it wrong. (FG4)

I think the danger there is positive discrimination, I think is just as bad to positively discriminate against a man as it is to discriminate against a woman…two wrongs don't make a right…I don't think that positive discrimination is the way to get more women into science, or into scientific jobs. (FG6)

I struggle to think of other areas around equality legislation where there is such a lack of confidence as kind of around the use of positive action…And I think it is that fear that links into the question that you're asking before around positive discrimination, is that they really fear getting it wrong, of being discriminatory. (SSI16)

Many participants linked this fear of 'getting it wrong' and crossing over the line between legal positive action into illegal positive discrimination with employer confusion around the nature of positive action and how to practically implement it. In particular, a recurring perceived obstacle for employers was the lack of clarity and guidance around the legislation and conceptual boundaries around positive action:

That's where I think the challenge would come in, the practical aspects of it, but it's just getting over that…I think everybody would absolutely see it as a benefit to the organisation, the right thing to do, it's just the 'how?' bit isn't it that needs to be developed. (SSI16)

I would say that a barrier, for me, I think, is people's lack of understanding of what it means. What they can do and what they can't do. (SSI12)

Another participant felt that the issue was more embedded than a lack of specific knowledge of detail and was more about a complete ignorance of positive action per se particularly in relation to SMEs (see later):

You slide down the sub supply chain and you go to SMEs and sometimes micro companies…I wouldn't benefit them with the view that they were anti

positive discrimination, because I would say they were ignorant of it as a concept in the first place. (SSI15)

One EDI specialist located much of this ignorance regarding positive action and practical implementation, in the lack of training of HR professionals who he argued would more usually be given responsibility for positive action initiatives:

And HR professionals don't get enough training in it, CIPD is very much to blame around this, you know, they do teach HR professionals what the law is, but they have no nuanced understanding of issues such as unconscious bias, occupational psychology, etc. (SSI13)

More broadly (and replicating some of the barriers seen in relation to the 'tiebreak' below), many participants perceived that employers did not wish to be seen to denigrate the principle of meritocracy and this could prevent them from using targeted positive action:

I think as soon as you start to talk about positive action on these things, people immediately think…what you're saying is you're going to employ somebody just because they are female or just because they are black, whatever, and actually not because they're the best person for the job. (SSI3)

At the same time I don't want to do that because surely it's a question of I want somebody to apply for the job because they're the right person for that job, not because they're a woman, I don't need that. (FG6)

Linked to the meritocracy objections, some participants reported (both subjectively and as external observations) that an obstacle to positive action was a perceived reticence of targeted individuals to have preferential initiatives applied to them in such a way that may suggest a disregard of the merit principle. Again this replicates the negative attitudes towards the 'tiebreak' (seen below):

if I was given a job that I think usually I would not be able to get, based on the fact that I have some sort of a disadvantage, that's when I'd think well… am I actually worth, do I have the resources to do that job. (FG1)

People might feel like they fall into a stereotype…so it might actually make them feel singled out in that way. (FG7)

This too had been a discussion point in the EHRC Roundtable with participants expressing concern that applicants for apprenticeships may feel that they were being targeted as a 'token' in order to enable the employer to increase representation of a particular group.

In spite of awareness of the skills gap and the need to increase diversity in order to meet this, more concerning was interview and focus group participant's perception that employers still hold traditional views as to the lack of 'fit' for women in relation to particular jobs and therefore have a disinclination to address gender disparity. This was particularly evident from those organisations in the construction sector in which ground level work may not be perceived as 'women's work':

I think it's really more about how people convey what they perceive to be a male dominated environment, so you know, if you take the fact that most of our staff work in contracts which require them to work 24/7, 365 days of the

year, often in inclement weather, over weekends and so on, I think you still get people believing that that doesn't fit a woman [laughs]… I suspect they don't see that woman fit into that mould. (SSI14)

I've come across it in kind of the unconscious bias sort of conversations that people have, you know, the jokey conversations that people will just say…well I was only joking about that… and OK, they may have been only joking about that but it still has an unconscious bias on the way they think and the way they act. (SSI3)

However, the biggest perceived obstacle towards the use of positive action was in relation to SME use (see later) and in particular the cost of implementing robust and effective initiatives in this regard:

Positive action does cost money. So, you know, everything…the networking, the mentoring, the particular focus groups and the extra training, it all costs money. (FG2)

Resources…not having…the amount of people or finance to be able to do the amount of positive action that potentially needed to kind of change things. (FG4)

They don't have the resources or the finances to be able to go out and do those programmes easily because…you're looking to recruit say…one apprentice a year and you've got a business of like eight people, it is difficult to see how you would have the resources to go out and speak to people in schools or to see how that is going to lead to you getting a balance of apprentices. (FG5)

Positive action costs money and so, so that's the main obstacle I would say, you know. All the extra support, yeah, there's a financial implication there so the companies are fine for us to do it and to take the hit I suppose, but wouldn't particularly want to do that themselves so that's it really. (SSI10)

In particular, this was linked to a lack of employer confidence to put robust positive action in place, which would inevitably have cost and resource implications:

I think, to ensure that we are able to apply and use this consistently, and confidently, so that we were confident we were making the right decision… for the organisation, we would have to have a really robust training method that wrapped around this…and I think that's a huge barrier. Both in terms of the cost of the training, but also the actual application of this. (SSI11)

Positive action and SMEs

Most interview and focus group participants made reference to the distinction between large and small employers when discussing the obstacles and use of positive action in relation to apprenticeships in gender segregated sectors. All but one such participant made reference to the greater difficulties faced by SMEs in engaging with positive action. This sole participant felt that lower volume recruitment might mean that it would be less complex to utilise measures to encourage female participation:

I suppose in these smaller organisations it does depend literally on the size of them, I think lower numbers, without doing volume recruitment it may be an easier challenge, you know, to take, and to solve, because they're not having to use volume tools for recruitment to filter out… (SSI1)

However, others were of the view that SMEs had very little awareness of positive action or even the potential consequences of gender disparity on the skills gap and therefore it was unlikely to be in their line of vision let alone a priority*:*

In terms of small employers I would say knowledge of positive action would be very very low…in terms of their knowledge of some of the wider bits of legislation you would struggle to find that the majority are able to understand that. (FG2)

Where knowledge of positive action was perceived, there was a recurrent view that SMEs would not have the time or budget necessary to implement effective measures:

They don't have that budget, or that brand, to be in that sort of position so they just struggle. (SSI1)

With SMEs it is difficult because of their lack of time and resources and energy that needs to go into these sort of initiatives. (SSI4)

SMEs don't have the in-house recruitment capacity that maybe some of the larger organisations do, and they don't have the capacity in terms of resources to maybe advertise in the same way. So it's not that they're not willing…it is because they just don't have the resources to do the recruitment in the same way as the larger organisations. (SSI9)

This was a discussion reinforced in the EHRC Roundtable with participants expressing concern that the cost and resource commitment of developing robust positive action is often prohibitive to SMEs particularly without external guidance and support. It was felt that this has been further exacerbated by the lack of funding and consequent disappearance of those organisations that have previously supported smaller employers to engage in positive action.

Some interview and focus group participants recognized the importance of addressing the lack of engagement of SMEs with the gender segregation issue. In particular, it was recognized that the majority of employers would fall into this category and therefore for any real change to occur it is vital to determine how to mitigate gender disparity in these organisations:

I mean, more than 95% of employers within the sector are small or medium or micro and the majority of the people working within the sector work for companies of that size as well, so actually only a minority of the sector works for the household-name engineering employers like your Airbuses and so forth. (SSI17)

That's really crucial isn't it?...I can't remember the figures of the numbers who are employed in SMEs, it's huge isn't it? So if we don't, whatever we do doesn't persuade them then we're really losing out. (FG2)

Participants explored the ways in which it would be possible to engage SMEs, not only in the gender disparity debate but also in relation to encouraging the use of positive action. One suggestion (which a large organisation had already attempted to utilise) was to encourage the diverse range of apprentices they were attracting to their organisation to apply elsewhere within the supply chain. This would therefore provide a pool of diverse talent for SMEs to potentially select from:

> *Well we encourage all our applicants that have not been successful through the process, whether female or male, and…we have quite a few mechanisms in place that direct them to our suppliers who are working on our product, giving maybe opportunities for apprenticeships elsewhere. (SSI1)*

Another participant suggested going one step further and for larger employers (with the resources to commit to clear equality and diversity objectives and positive action) to assist in recruiting talent for SMEs in order to provide a pre-assessed pool of diverse apprentices:

> *If we can give small employers pre-assessed pools of technically competent people, they're very diverse across big projects like this, you will find that they will select competent people. If you don't give them that way to do it, they will do what they always do, which is friends, family networks. (SSI13)*

This theme of larger employers assisting and supporting SMEs was continued, with suggestions for larger organisations (with developed HR functions) to work with SMEs to cultivate their understanding and knowledge around the need for diversity and positive action:

> *We are obviously a very large company, and we can offer our expertise to them. We can give them advice and guidance…educate them on what we are doing with apprenticeships, the early careers programmes that we have…support them to create their own programmes. (SSI11)*

Equally, the importance of sector bodies providing sector-based solutions and advice targeted at smaller employers was referred to:

> *I think the sector generally recognises it has an issue here and there are so many examples of good practice now out there, it's just about maybe tying some of those examples together and finding sectoral programmes that can be used to solve what is ultimately a sectoral problem. (SSI17)*

Another participant made reference to the need for sector-based collaboration whereby large and small organisations could partner up to create change:

> *That's both big and small organisations, so it's that partnering element that says, "We're all going to do this together to change the sector," rather than change one specific organisation. (SSI12)*

EHRC Roundtable participants had discussed similar approaches in relation to SMEs. Roundtable participants had suggested that a system of collaborative cost sharing to introduce measures might assist some SMEs in particular sectors. Equally, larger employers may be able to assist SMEs in developing initiatives in order to reduce resource concerns. It was suggested that successful examples of positive action are often linked to the provision of particular funding. In this regard, it was considered that government or sector body grants or funding could be used

to support honest, open and transparent employer (in particular SME) engagement in using positive action to address underrepresentation. Roundtable participants also proposed that easier access to data and training for SMEs should be facilitated in order to enable more effective implementation of positive action measures. This training should be free at the point of delivery in order to support use. In this regard, there is also a need to provide more robust and accessible data on underrepresentation at a sectoral level in relation to apprenticeships.

Interview and focus group participants also explored the use of charters as a means of encouraging engagement with diversity objectives and gender representation. In particular, one participant gave the example of the Tech Talent Charter that companies would sign to commit to positive action in order to increase diversity in the tech sector. Notably, it was suggested that small and larger employers had engaged with this charter in equal measure:

> *This is one of the first kind of industry-wide organisations that have really looked at pinning down some actionable outcomes when it comes to diversity in tech…SMEs can sign up and have this on their website and have it advertised that they're a part of this without long processes to get it done. (SSI4)*

However, by far the most consistent suggestion for engaging with SMEs was via the contractual process utilizing obligations via supply chains and procurement (both public and private sector). As we have seen, there are more extensive legislative frameworks dictating 'social value' obligations in relation to the public sector, but there is still a significant possibility for large private sector organisations to utilize procurement to drive through change in relation to gender representation. Many of the participants felt that procurement would be an effective means of ensuring smaller organisations engaged with positive action in order to meet defined diversity goals:

> *In truth, the only way I believe you would change their hearts and minds is if when we issue contracts you make it a clause within the contract…you'd have to drive it with something much stronger in the contract. (SSI16)*

> *I think it's the right to do, I think you can write it into contracts…I think we have to step up to the plate and force this through frankly. (SSI14)*

> *The biggest construction client is the Government, so if the Government lets these bastards get away with it, which is what they are, then we need to make the Government accountable at procurement level. (SSI15)*

> *I think procurement is a wonderful tool to use in terms of kind of, you know, promoting the use of positive action. (SSI16)*

One participant made reference to the business case in relation to procurement. He suggested that requiring obligations around using positive action in the procurement process means that it automatically becomes a business case which is much more persuasive for organisations than simply trying to sell it as a moral or ethical obligation:

> *If a small company wanted to pitch for…something that was happening in their local area, through their local authority, and then they said, "And as part*

> *of that you must deliver one apprentice as part of this and that's got to be a female", then suddenly it becomes a business case and if they're going to win that big project, then they just have to get a female on board, you know, they then start to see the business case for it, I think. (SSI5)*

A number of participants however recognised that in order to effectively utilise procurement obligations, there needed to be willingness for Government and large private organisations to support SMEs in these obligations. In this regard, there was a strong awareness of the lack of resources available to SMEs and suggestions were made around supporting partnership work, sharing of expertise and experience in order to enable fulfilment of relevant obligations:

> *…obviously it's hard work for them to get those females in. It's probably quite a daunting thing you know. They would say, "We don't get those applications, we don't know where to start looking for those applications," whereas at least we've got some experience to go, okay we'll partner up on this…(SSI17)*

> *I think for us, we do a lot of supply chain engagement…working with the smaller construction companies…and I think it's about saying, you know, "We wouldn't necessarily work with you, unless we can see that you align to our values, and this is something we believe strongly in…" But also… we are obviously a very large company, and we can offer our expertise to them. We can give them advice and guidance, and something we do quite frequently is go out to the smaller companies, go out to our supply chain, and support them and educate them on what we are doing with apprenticeships. (SSI11)*

EHRC Roundtable participants had also considered the importance of procurement as a driver to push for positive action. However, participants had expressed caution and the need for guidance in this regard to consider different approaches to procurement across sectors and location. Concern was also expressed that SMEs may argue that a requirement to engage in positive action via procurement obligations will effectively cut them out of public sector contracts due to the inevitable additional resource obligations. Therefore, it was felt by Roundtable participants that resource burdens on SMEs in this regard should be recognised and absorbed as far as possible via the procurement process.

One interview participant expressed a note of caution stating that larger organisations couldn't place pressure on SMEs via the supply chain if they hadn't yet resolved the issue within their own organisation. Therefore, in order for procurement to be used effectively it requires change at the top levels before expectations can be placed on SMEs:

> *A lot of the larger organisations are still trying to get their houses in order before they can really be in a place to make any demands or to look at their supply chains or to support their supply chains. (SSI9)*

This too had been picked up on by EHRC Roundtable Participants who felt that unless public bodies and large organisations demonstrate leadership and use of more robust positive action, it will continue to be underused by smaller organisations. This was particularly the case in relation to the more controversial elements such as the 'tiebreak' (see below).

How to address gender segregation in apprenticeships

Interview and focus group participants were asked to conduct an exercise in 'blue sky' thinking to determine what actions they felt would be successful in address gender segregation in relation to apprenticeships in the England. They were informed that such suggestions did not need to adhere to the limitations of the law in this regard. As data collection developed, ideas of previous participants were introduced to new participants in order to determine their attitude towards efficacy in this regard. In this way, the emerging data was triangulated with the attitudes of those being interviewed and engaging in focus groups.

In relation to the interview and focus group data collected, one of the consistent themes to emerge was the attitude that no one positive action measure would be able to address the issue of gender segregation. In other words positive action initiatives should not exist in isolation but should be a part of a holistic life cycle approach towards increasing the representation of female apprentices and employees in the relevant sectors:

> *I think positive action needs to be looked at through, you know, each element of a woman's career. (SSI4)*

> *I think you've got to more fix the problem than just try and say well we're going to invite 50/50. (FG1)*

> *I'm not sure that there is just one or two things, I think it's, it's long-haul. (SSI10)*

> *So I think it's just making sure that we look at things holistically, not just… when we had positive actions, we can have positive action programmes targeted at women, we can have positive action programmes targeted at BAMEs, I don't think positive action is just singularly one issue. (SSI14)*

This is also reflected in the literature in this area (see inter alia: Miller et al., 2004; WISE, 2014; Gatsby Foundation, 2010; Nuffield Foundation, 2012; OFSTED, 2011). Similarly, this had also been explored in depth at the EHRC Roundtable with participants reflecting that the use of isolated positive action initiatives are unlikely to have any determinable impact on underrepresentation in relevant sectors.

In particular, many interview and focus group participants felt that the there was little point in trying to engage more women into a sector only to then fail to retain them because initiatives had not been put in place to ensure retention. Again this is reflected in the wider literature (see inter alia: The Smith Institute, 2014; Clarke et al., 2015; Fielden et al., 2000; Adu-Oppong & Kendie, 2017; Miller et al., 2004). This holistic approach suggested by participants was not just in relation to the development of positive action initiatives but was also a need for wider good practice in relation to equality and diversity in order to improve things like recruitment and the work environment more generally:

> *With that they're attracting women into the workplace more, what are they doing to keep the woman there, because in my experience of like you can work agencies and stuff, I think a lot of them are heavily driven by quotas and*

it's like they get the young people in, and then when you're in they don't really do much with you. (FG7)

They are keen to join but then we lose them – firstly it is really difficult to enter the industry (it is actually very complicated and difficult) and then we lose them by the way we work. Lack of flexibility, adversarial working environment, long hours, poor organisation, poor people management. (SSI19)

If you want to attract, you know, women, like I said rather than doing 50% of applicants have to be women, it needs to be an environment where woman feel safe and they feel valued and they feel that they are part of, you know, they feel that they are equal to their counterparts and I can't think of many workplaces where I've felt the same as that way. (FG1)

Some focused on the need for employers to emphasise putting measures in place which promoted and increased work life balance and flexibility for women with children as an aid to retention:

This isn't all about attraction actually, we need to retain the women we've already got, so it's about having flexible working policies and so on. (SSI14)

We did our research and one of the top reasons people were not coming into the sector was a lack of flexibility… as women are still primary carers most of the time, and it is doubly important that those shifts in practice be made in order to attract women in. I think there's labour force data which shows women are far more likely to enter sectors with more flexibility, and that's an easy problem to solve, or it should be. (SSI13)

One participant recognised the importance of increasing flexibility and/or part-time working for women returning from maternity leave but felt that this would lead to concern from employers that this may open the flood gates to wider requests for flexibility which they would be unable to manage:

But the fear is at the moment that if a woman who comes back to work has certain privileges, quote, unquote, then that might turn off a load of other people who also might want flexible working or part-time working but don't have the same circumstances. (SSI4)

In this regard, some participants referred to the inclusive practice as being more beneficial than targeted positive action. Some felt that inclusivity could be more effective as it avoided the preferential emphasis of positive action, which would result in resentment from others and a lack of engagement from those it was intended to benefit (see above):

If we can retain more women, perhaps can develop more women, great, but we won't lose sight of the fact that we've also got, you know, a really healthy positive workforce and really good policies now on what we're trying to do about up skilling existing employees and that shouldn't matter whether they're BAMEs or whites or male or female or whatever…ironically it just creates barriers [laughs], that we come out and talk about how we might want to increase females, and suddenly we have people on a blog and saying,

what about men, instead of it being seen as a good thing people would see the negative in that, you know. (SSI14)

I don't think so, I just think I mentioned inclusion, I think we have to be careful, although we're trying to achieve what we're trying to achieve, I think some of the things I've come across, it's maybe where we have to be very careful that we actually are inclusive as opposed to, you know, letting our focus be drawn too much, and quite rightly so it should be focused on the gender and imbalance, but as well as social mobility, just make sure we're an inclusive organisation. (SSI1)

I come back to I have been supported throughout my career by both women and men massively, so it's not just about women helping other women, it's about everybody helping everybody else. (SSI19)

But certainly if we get the pastoral care right for apprentices, we will get more people from protected or underrepresented groups in the sector. So for me it's about sort of how you make everyone included and welcomed and supported in the sector, not simply just going, let's give extra help to the people that feel the least comfortable. (FG5)

Another core theme emerging from the data was the problem of recruitment and the lack of an appropriate diverse pool from which to select (see above in relation to obstacles to tiebreak and positive action more generally). In this regard, many participants focussed on the need for early engagement with children and young people via education and careers advice. This again has been supported by the wider literature (see inter alia: Newton & Williams, 2013; Fuller & Unwin, 2013; Amaratung et al., 2006):

We have to start with education and I suppose gender education with children at all levels. So opening up the eyes of girls to the fact that they can do this kind of work and they can do it well and can enjoy it, yeah. (SSI10)

I think one of the things that's sort of slightly outside of our control is, you know, we would, we need, we need the school to really, and parents, to have much more positive roles to get more, more girls into those careers. So yeah, because we're limited by who we can choose from at the moment. (SSI3)

I think at secondary school there probably needs to be sort of better career advice, and sort of more awareness of the number of opportunities available within construction, aside from sort of the physical labour tasks, and that's…probably one of the reasons why most people don't consider construction. (SSI2)

This was reinforced by EHRC Roundtable participants who recognised that apprenticeships sit within a complex lifecycle and as such it is necessary to engage with a range of stakeholders including educators, careers advisors and also parents. The latter group is also recognised as a core influence on career choice in the literature (see inter alia: WISE, 2014; Amaratung et al., 2006; Newton & Williams, 2013). This was discussed by one focus group participant who focused on the importance of engaging and providing wider information to parents as key influencers:

I guess this perception that kind of apprentices are for men…in my opinion kind of stems from when…they're a young age, you know, their upbringing, not just in school but, you know, parents as well…that's kind of where that stereotyping for genders starts and it's important to educate the parents that…nowadays there's a lot more options for females and within, especially sectors like technology they can actually follow that route and they won't be kind of held back by their gender. (FG4)

Linked to this was a focus on giving young people (and in particular girls) the opportunity to undertake experience in order to promote and encouragement engagement in non-traditional sectors:

So if you give a young person the chance to go out and work on a building of something, they find that more interesting than sitting in a class. (FG2)

Equally, the use of positive female role models in schools to encourage engagement was viewed as an important measure:

We do a lot of work in primary schools and secondary schools, we have a lot of sort of female role models in all kind of areas of engineering. (SSI13)

However, one focus group participant sounded a note of caution that a targeted emphasis on those in education may result in a lack of focus on educating and encouraging older women into the segregated sectors:

I think we have to focus on a whole range of age groups, so you know, yes you're quite right, you know, children, you know, primary school or secondary school, university school, but then on the other hand you don't want to sort of say to women over 21, well mate, sorry, can't help you, you're done for. (FG6)

The importance of utilising work experience schemes with a mandated 50/50 gender balance was also seen as a useful means of encouraging female participation:

I would say the larger end of the scale in engineering when it comes to kind of pre-apprenticeship programmes, the things like work experience, so Rolls Royce are a really good example of this, they now mandate 50/50 gender balance on all of their work experience programmes for school children, it's a really good way of doing it as well because it says to the boys on the programme, as well as the girls, that this is important again, that everybody needs to be involved. (FG5)

Another interview participant felt that it should be the responsibility of Government to ensure that adequate funding and support is given to schools in order to ensure consistent promotion of gender segregated sectors:

I think that there should be a lot more investment, I think that there needs to be some type like Government drive where they're forced to put money into Early Years creative education with girls to encourage them to go into areas where they're underrepresented. (SSI18)

Suggestions for specific positive action initiatives

Many interview and focus group participants explored specific forms of positive action as hypothetical rather than actual applications as a means to address gender segregation.

Data had also been collected as part of the Young People Survey on attitudes towards specific forms of positive action. Respondents were provided with a range of positive action measures and asked to state whether or not they felt that such measures would be effective at addressing female underrepresentation in gender segregated sectors (such as engineering, ICT and construction). The results can be seen broken down by gender in Table 4 below:

TABLE 4: Young People Survey attitudes towards specific positive action measures

POSITIVE ACTION MEASURE	MALE AGREE	FEMALE AGREE	MALE DISAGREE	FEMALE DISAGREE
Workplace open days for women	55%	70%	17%	8%
Work experience schemes for women	62%	77%	14%	6%
Support for women before they apply for jobs	63%	75%	13%	4%
Support for women writing CVs/job applications	55%	69%	15%	7%
Free one on one telephone or online support for women to help with confidence and employability	55%	66%	16%	7%
Advertising vacancies where women are more likely to see them	66%	73%	11%	6%
Using language/images in adverts which may particularly appeal to women	48%	53%	18%	17%
Setting targets for the recruitment of women	42%	58%	33%	16%
Mentoring/support networks for women once they have been appointed	60%	75%	14%	5%

There was a gendered distinction in attitudes throughout with the percentage of women agreeing with the efficacy of suggested specific measures at consistently higher rates than male respondents. Work experience schemes, advertising and mentoring/support networks for women were overall most popular with setting targets and using appealing images/language in adverts and targets least popular overall.

Interview and focus group participants also focussed on the specific initiatives around recruitment. Perhaps due to visibility as part of the recruitment process, one of the recurring references within the interviews and focus groups was to adverts for apprenticeships targeted at encouraging women to apply for roles within the relevant sectors. One participant stated that subjectively an advert targeted at encouraging women to apply for a role would create a more positive representation of the employer and potential suitability of the work environment for women:

> *I think it can especially be effective for like people who might not be feeling confident when they're considering applying to the job in the first place because my initial thought would be OK, then maybe I have a higher chance of getting this position and…maybe they might be more likely since I will be applying through this scheme to have flexible arrangements or more consideration of things related to my being a woman. (SSI18)*

However, in relation to adverts, EHRC Roundtable participants had expressed concern that the encouraging words found in adverts has become overly standardised and tokenistic and as such increasingly lacks efficacy. Equally, some were concerned that such use of adverts may suggest an employer is trying too hard to resolve an embedded problem within their organisation.

Several interview and focus group participants focused on the importance of the media in promoting female participation. In particular, they referred to the importance of outreach media campaigns to promote female visibility within gender segregated sectors. It was felt that such outreach encouraged women to apply for roles in non-traditional sectors. Equally, participants referenced the importance of representing gender diversity in marketing material in order to encourage girls to apply for apprenticeships:

> *We'd always laugh about it when…the physics department was doing a new prospectus and they got students to come for photos for the prospectus, they would be like, oh can we get some girls to come for the photos please, and some students from different backgrounds, and things like that…and we'd laugh about it because it's like, you know, okay, that is not what our lecture hall looks like because there's three women and two guys around that table, but at the same time it's kind of, okay, that the girls who are looking at the prospectus and applying, that's good for them to see. (FG7)*

One participant made reference to the negative impact of the media in representing stereotypical views of women and the damage this would have on female participation in the workforce:

> *Societally one of the biggest things, I think, is the role of the press and media which, I think, is, unfortunately, becoming more destructive, is becoming, you know, it's objectifying women, is unfortunately remaining unchallenged and unaccountable. (SSI15)*

The use of campaigns centring on the provision of awards for successful women within non-traditional sectors was also viewed as a means of inspiring and encouraging female participation. The use of female role models to inspire and encourage gendered participation was also seen by many participants as vital to

break down stereotypes and so that women could justifiably feel (in the words of SSI5) 'that could be me':

> *Some of the strongest things, I think, are inspiring role models, particularly in a sector where, such as construction, where people have a very fixed stereotype of what our, the construction sector is and isn't. (SSI5)*

> *I also think it's about the visibility of females that are currently working in our industry, as a whole…and making sure that they are present for young women that do want to get into the industry, and that they have those opportunities to see those people in their platform, having conversations with them, potentially learn from them, and how they feel about that industry, working in it, when it is an underrepresented group. (SSI12)*

For some, the use of role models in an educational setting in order to encourage young girls was particularly important:

> *I think, for me…it would be having representatives or having female representatives going into schools and colleges and doing some kind of talks on the kind of things they do, the typical day in the life of, a way to break away that fear factor and make it feel a genuine acceptable career for young women. (SSI17)*

Linked to the importance of role models was the use of female mentors to support and develop females seeking to participate and participating in gender segregated sectors:

> *I think mentoring is good as a woman who's been in the field and has progressed through her career, who is mentoring a younger woman coming into the field, if you're going to work every day, and you're surrounded by mostly men, like that is this like do I fit in here, do I have a place here. (FG7)*

> *I think the mentoring is a really good idea. (FG6)*

However, once again EHRC Roundtable participants had expressed concern regarding inter-group mentoring which some felt could lead to a perpetuation of disadvantage. It was considered by some that female-to female mentoring could be criticised as attempting to 'fix' the person rather than 'fix' the system. Equally there was concern that inter-group mentoring could lead to a closing down rather than opening up of systemic knowledge and networks which could potentially enable those from disadvantaged groups to access and progress within the labour market. More generally, it was considered that inclusive rather than targeted mentoring is more effective at creating change.

Once women are in the workplace, initiatives that facilitated female networking and sharing were viewed by some focus group participants as effective in promoting a diverse workplace in which women could female a sense of belonging and security:

> *So if you have say a woman's group that you can sort of have a meet up, and if you have like events that women, a lot of women go to, to sort of discuss being a woman in that field. That can make you feel like, okay, there are other people like me here. (FG7)*

> *To increase the women that is coming in and also to enable them to feel more safe in the workplace, that people should have more discussions, maybe if it's only once a month, maybe if it's only like quarterly, something like that, do you know what I mean, so that people should, views can be shared. (FG1)*

A number of participants focused on the use of positive action within the application process as a means of increasing female representation in apprenticeships (see also earlier discussion regarding tiebreak). In particular, a couple of interview participants believed that developing recruitment campaigns just targeted at women would be effective in addressing the gender disparity. However, both were aware of the limitations that the existing legislation imposed in this regard:

> *I suppose if we were just looking at focusing on the female, gender only, I mean if the legislation wasn't in place it'd be absolutely ideal to be able to allow them to, you know, come to apply for a female apprenticeship scheme, and alongside another apprenticeship scheme to make it inclusive, but as opposed to them being swallowed up into the big hoard of candidates that come through that are predominantly males. (SSI1)*

> *I mean if we specifically wanted to address it in our company then we would, you know, we could try and recruit specifically from those groups, so we could, if we weren't limited by laws, we could say OK, we will only take female graduates for the next five years; and that would probably go a long way to progressing our imbalance in our engineering side of things, as similarly with our sort of apprentices and technician roles. (SSI3)*

Others were more moderate in their approach to recruitment and suggested that the ability to formulate a 50/50 gendered shortlist would be beneficial in improving female representation:

> *It would be great if there were at least half men, half women at an interview for each role and that be the standard. (SSI4)*

> *From a recruitment perspective, when we're looking at shortlists, to ensure that we have a balanced shortlist, and to not proceed past a particular stage of recruitment until we have that. Obviously its much harder to do in practice, but in an ideal world, we would be able to present a perfectly balanced shortlist to a Hiring Manager, so that we ensure, or we were confident enough that we had completely searched thoroughly through the market to get the best people in front of that person, and the Hiring Manager has an informed view on who to hire, both based on a merit perspective, but also through the diversity lens, of who actually fits, from an organisational perspective. (SSI12)*

Although not strictly positive action and rather a tool to address unconscious bias and discriminatory attitudes, blind recruitment was also referred to as an initiative which would improve gender representation in recruitment (see below):

> *I think, to be honest, name and age-blind recruitment, actually, application forms is the one thing that would make a massive difference, it's already making a huge difference where, in other sectors and where it comes to things like university admissions. (SSI17)*

Quotas

Quotas are generally defined to be numerical goals that must be achieved in a certain time framework (Selanec & Sendon, 2012) and could either be viewed as a form of positive action in themselves or a means of persuading for use of wider positive action measures to achieve the metric set. In light of the restrictions placed on equality law by the EU, and the terms of the Equality Act 2010, it is generally accepted that quotas would not be considered a legal and/or proportionate intervention. In addition, there is a considerable amount of criticism and controversy around how effective quotas would be in any event. Targets however are generally defined as a softer aspirational mechanism with no mandatory enforcement mechanism. If implemented carefully and based on evidence are often considered to be an effective means of encouraging the use of positive action measures to meet aspirational objectives. Indeed, we have seen above that the Government is increasingly relying on targets not only to encourage the increase in apprenticeships more generally but also to set numeric goals in relation to the protected characteristics. Some have criticised this as providing an over focus on the driving up numbers without sufficiently focussing on the reasons for the discrepancies (see inter alia: Sub-Committee on Education, Skills and the Economy, 2017; Keep & Relly, 2016; Smithers, 2016).

Many interview and focus group participants discussed the use of targets and quotas as a form of positive action. Whilst there was a clear awareness of the use of targets and quotas, there was a spectrum of level of understanding. A few were unclear about the detail of the terminology:

> *I don't know if I know enough about it, really, to make a comment on it. (SSI5)*

Some (whilst expressing confidence regarding the terminology), used the term quota but when discussing the detail were clearly referring to a soft target approach:

> *I think, you know, where we've had sort of voluntary quotas, I don't think the results have been fantastic. (FG5)*

More than any other measure, participants were divided on the use of quotas with some viewing them as highly effective, some preferring the use of more moderate targets and others expressing concern about the use of any metric system to increase representation. For those who considered strict quotas to be an effective tool of redress, there were a number of reasons given. Some felt that a metric would provide a far more solid basis for action in this area:

> *I think it'd set a good, you know, benchmark for organisations small and large to be driving towards…and I think it'd be a good metric for the organisation itself to be measuring itself on…I think it'd be far more sturdy to have an actual quota there, this is the amount of females, I think it would be a good idea. (SSI1)*

> *Quotas are more definitive aren't they. (SSI2)*

Others were of the view that if we want to see quick and effective change quotas may be a painful measure but one that is necessary to force organisations into taking action on an issue which it is vital to address as rapidly as possible:

I think it might be uncomfortable and a bit painful at the beginning, but as you get the cultural change and that becoming the norm, it might the way to kind of instigate it…I think at the moment we're kind of being forced to really consider all avenues because we're going to potentially be in trouble if we can't get access to a wider group of people. (SSI17)

I think it drives people to take positive action [laughs], because otherwise it would be what it's always been, which is go out and see what you get, whereas actually with a quota it's easier to say well that's our ambition so that's what we'll do and it tends to get people to pay attention and raise the bar. (SSI14)

In some instances, they are almost a blunt instrument to say, "You need to do this because everything that you've done before isn't working". (SSI15)

I think quotas are very interesting…if you look at the, some of the advances in Nordic countries, particularly if you look at senior representations, board representations, you know, these areas, they're driven by quotas, and they have moved, change really quickly, do you know what I mean? What they have done is, they have focused people's minds and they have driven change that may have taken decades, if it had happened at all, really, really quickly. (SSI16)

Another interview participant felt that the introduction of quotas created a consistency of approach across sectors and normalised behaviours in order to persuade for change. This was viewed as particularly relevant to SMEs who may otherwise be reluctant to engage with measures to address underrepresentation:

As I said before, not only is every company kind of aware that everyone else is doing it, but also that as this is part of their contract, there's, and then engagement with us would be so much easier, or an organisation like us that could, that can help them achieve the quota. (SSI10)

Others felt that a mandatory quota (rather than a voluntary target) was important to focus the mind of organisations who when presented with voluntary initiatives were unlikely to engage in any effort to promote greater gender diversity:

Quotas really focus the mind, you know, with construction companies as long as it's voluntary it will be "yeah, well we tried". (FG2)

We have a lot of targets in my industry, we always find loopholes for why those targets aren't met. (SSI2)

Some were more moderate in their approach towards the implementation of quotas and whilst perceiving them to be beneficial also recognised that as an isolated initiative they were unlikely to be effective. Therefore, (linked to the discussion on holistic provision above), they recognised that the quota could be useful but only as a driver to get organisations to engage with the use of more extensive positive action and good practice:

Quotas often look at senior women and then that's just sort of ticking a box, whereas it needs to be cultivated through the pipeline so you need to start looking at your graduate recruitment, then your promotion, then your

retention of women and then the progression, and that's the overall aim, rather than starting with just a quota. (SSI4)

I think a lot of the time we're putting in quotas and then we don't think about what we need to do beforehand…if you are going to put in quotas the quota isn't enough, there has to be other stuff underneath, because unless you've got that pipeline of talent going up through an organisation, or…enough supply for people to be applying for it, for apprentices, yeah, apprenticeships, the quota is almost meaningless. (FG5)

We have to do the post quotas activity as well, otherwise it can become such a high hurdle that when women do get over it because we've taken positive action, they're designed in to fail because there's no support and they just fall off the cliff of the quota. (SSI15)

Others were adamant that quotas should not be considered and were viewed as a negative provision that could be damaging to the progress of equality in the segregated sectors. Much of the concern in this area came from the perception that the imposition of quotas would involve the denigration of merit in the recruitment process and knee jerk recruiting by managers to meet the quota resulting in undermining the process:

I think the main reason is… the perception of being deserving of your spot…if there is a certain goal to have a number of women on your Board of Directors or in your senior management team but I think that if you have a quota and you're not meeting that quota then that perhaps leads to quick and uninformed hiring that may be a bit more harmful in the long run. (SSI4)

A major problem with the quotas can be that if you're searching around to fill the quota, are the people actually outputting at the level that you need, because if they're not then you actually are undermining the whole process. (FG5)

Again, it just feels, and I'm sure people would feel that some women just got their roles because they were women. (SSI9)

Equally, other participants felt that quotas represented an empty and disproportionate tokenism that could be used as misplaced evidence of having resolved the gender segregation issue:

So I just think that a quota is kind of like a sledgehammer thing, kind of like we'll smack a quota on there and that'll show that we've sorted it. (FG5)

It just suggests to me they're just trying to tick boxes without really any thought about what makes a good workforce. (SSI5)

Similarly, EHRC Roundtable participants had discussed the use of quotas at length. A couple of participants pointed to potential learning from Scandinavian and Scottish approaches to quotas in particular contexts. Some felt that quotas enable critical mass to increase quickly in order to assist those benefiting to progress into leadership positions and change the system from within. This potentially leads to sustainable access and progression for traditionally disadvantaged and underrepresented groups. As such, it was questioned whether applying quotas at the apprenticeship level is useful or relevant in this context. Rather, Roundtable

participants considered that placing a quota to change critical mass at leadership level is more relevant in order embed systemic change. More broadly, concern was expressed that quotas are a blunt instrument and result in disproportionate consequences for other disadvantaged groups.

Although some interview and focus group participants clearly felt (as above) that soft targets were unlikely to have any impact and that therefore mandatory quotas were a more appropriate tool for action, others were of the view that aspirational targets were a more appropriate and proportionate option which would at least focus minds and open up necessary dialogue around gender segregation:

> *I think that it's an easy thing that people can put in place and say we have to hit this target, and then it at least opens up that conversation and it at least makes people think a bit more. (FG1)*

> *Having an ambitious target I see no harm in, it's just not having your feet held to the fire as you hit 19% not 20%. (SSI14)*

Similarly, EHRC Roundtable participants had felt more comfortable with the use of targets as opposed to quotas. Targets were viewed as an effective means of ensuring leadership focus on underrepresentation data thus encouraging the development of effective measures to address this. However, participants felt that care is required to ensure that imposing priority targets in certain areas doesn't detract from other areas of embedded disadvantage.

Awareness, attitudes and obstacles to use of the tiebreak in apprenticeships

As seen above, under section 159 of the Equality Act 2010, an employer can apply the 'tiebreak' in certain recruitment and promotion situations. Thus, the employer may take an individual's protected characteristic into account in relation to recruitment and promotion as long as the candidates are 'as qualified as' each other and the employer 'reasonably thinks' that the protected group is at a disadvantage or is underrepresented. The employer must only apply this 'tiebreak' with the aim of enabling or encouraging protected groups to overcome or minimise the disadvantage or participate in the activity and the action is a proportionate means of achieving those aims. Section 159 was introduced late into the EA 2010 in in April 2011 (several months after the Act was implemented) and received a considerable amount of press and media coverage. Much of this media coverage did not fully represent the permissive (rather than mandatory) nature of the provision and indeed in many cases misrepresented the provision as permitting positive action to be used irrespective of merit. Indeed, one interview participant specifically referenced the misleading media representation in this area:

> *I remember at the time that a lot of the media coverage from the media outlets you'd expect to pursue this sort of line, was along the lines of under Harriet Harman's proposals, men will be able to be actively discriminated against. So that was the line that the media took, which was very interesting, I think. (SSI17)*

This analysis is therefore considered against this contextual background.

Awareness of tiebreak

Interview and focus group participants were provided with a very brief objective summary of section 159 EA 2010 and were asked if they had any previous awareness of this. Some participants had little or no awareness of the tiebreak provision. The majority however had a vague awareness of the tiebreak provision but didn't necessarily understand the specifics or how it would apply in relation to their own sector or remit. In light of the widespread media coverage in 2011, it is perhaps unsurprising that participants would have had a background awareness of this provision. This suggests that media campaigns highlighting this form of positive action may have been successful in highlighting the issue but sadly did not provide the accurate and robust supporting information:

> *One, heard of it and, two, less knowledgeable about the actual application of it. (SSI15)*

> *Yes I vaguely remember it, but do explain it to me, yeah, now you've said that, yeah. (SSI19)*

Others were clearly aware of the tiebreak before it was specifically raised in the interview. Indeed, some had described the tiebreak when asked to define what the term 'positive action' meant to them:

> *Okay so as I understand it, positive action is legal…for instance if you, a company is engaged with positive action, for instance if they have two CVs that are exactly the same background and the same, you know, the same qualifications, then they can choose the woman, but only in that situation. (SSI10)*

> *I was of the understanding that, as an example, if you have two candidates for a job interview, they have the exact same qualifications, they have the exact same abilities, they performed equally as well at interview stage, if one of them was a female and one of them was a male, you could choose the female candidate purely based on your desire to increase the females in your organization. (SSI11)*

This lack of understanding of the detail of the tiebreak had been debated in the EHRC Roundtable. It was generally considered that a lack of understanding of the tiebreak means that employers often link it to positive discrimination and are therefore reticent to use for fear of legal liability based on 'reverse discrimination'. As such, Roundtable participants felt that employers may perceive the lower level measures under section 158 to be more user friendly and a safer approach to positive action.

Attitudes and obstacles towards the tiebreak

Data had been collected on attitudes towards the tiebreak in the Young People Survey. Respondents were given a brief description of the tiebreak and were asked for their attitudes towards this. The data on this particular measure is in stark contrast to attitudes towards the lower level positive action measures (discussed above). In relation to this measure, just 33% of respondents overall agreed that this would be effective compared to 35% who disagreed. Thirty-one percent chose to remain neutral or stated that they did not know. Only 10% 'strongly agreed' that the

'tiebreak' would be effective. When broken down by gender 39% of women agreed with the efficacy of this measure compared with 27% of men. In stark contrast 44% of male respondents disagreed with the efficacy of this measure compared with 26% of women.

However, (perhaps somewhat surprisingly) most interview and focus group participants' prima facie attitude towards the tiebreak was positive. In particular, some felt that the issue of gender segregation within the relevant sectors was so embedded that the tiebreak made sense as a means of addressing that:

> *If the emphasis is just to purely to reach the goal of increasing, you know, females then I think it does exactly that, it allows you to do that. (SSI1)*

> *I support it on a basic level, again like I think if things aren't happening organically you almost have to step in. (FG3)*

> *I don't personally have a problem with it and again I don't think that any employers within the sector would have a problem with it per se, it's just about getting as many people into the sector as possible. (FG5)*

> *Others felt that use of the tiebreak supported the business case argument around diversity and as such was a tool to ensure a more productive and relevant workforce by representing gender diversity within society:*

> *Again it goes back to what you were saying earlier about it just making business sense, you just want the best team possible to do the job that you'd want to do and if that's going to improve the balance of the team and improve their productivity in the way that they work then why would you not take that opportunity to change it. (FG5)*

> *You've got to choose on something, so that was what we choose on and it adds a diverse mix to your business, then why wouldn't you? (SSI19)*

> *All of the research I've read shows that more diverse teams perform better, so if I had a choice between two candidates who were equally good at the job and equally well-qualified and one increased the diversity of the team in the business, that's the one I would choose, for that exact reason. (SSI3)*

One participant referenced the moral/ethical argument for using the tiebreak by referring to it as a positive means of addressing historic disadvantage and redressing the balance:

> *On the day…your male and female applicants may have both, you know, perfectly balanced. Yes, they may have exactly the same academic credentials, they may even have gone to the same school but you need to consider, again, the wider cultural issues come into play here that the female applicant is going to have to have jumped over so many more hurdles to get to that point. So that, I think, is why the tiebreak is absolutely, you know, proportionate and actually necessary. (SSI17)*

This linked to the view that the tiebreak was a means of re-evaluating merit (Johns et al., 2014; Manfredi, 2017). Whilst in the past employers may have used 'fit' to distinguish between two equal candidates (thus perpetuating underrepresentation),

the tiebreak permits the balance to be redressed by the application of the protected characteristic of gender:

> *It but makes it more difficult for an employer to say "okay, well I've got two people who I think are equal, I will choose the person who is most in my image", which in the case of like a senior employer is more likely to be a white man. (FG4)*

> *If you've got people qualified, you then think about sort of team fits…because lots of different softer factors that then come in…equally qualified people, the team is all blokes and we'd really like to change that, here's an opportunity to do that, so that can go and more positively act to choose this female candidate. (FG5)*

> *Where you have two candidates who are…close in a competition, and then the conversation turns to fit and when you go and kick that, that's about similarity, not difference. (SSI13)*

One focus group participant argued that the tiebreak would improve recruitment practices as it would promote much needed transparency and objectivity into the process in order for employers to be able to determine where two candidates are as qualified as each other:

> *It makes the criteria explicit, you know, so if they're challenged they've actually got to say "well these are the reasons in that the two candidates are equal" and you've actually got to list them…it does bring it more out into the open, does make it more…more difficult. (FG4)*

However, the cautious positive attitude towards the tiebreak was mitigated by concern regarding the potential difficulties with use in practice. A number of participants expressed concern about tokenistic use whereby women would be perceived as having been recruited or promoted simply because of their gender. Some female participants internalised this and reflected how they would feel on having the tiebreak applied to them:

> *I think my view is…caution, because I think it sometimes suggests that…there is a risk of…a female assumed to be not as qualified but simply getting the job because they tick the right box. (SSI5)*

> *I wouldn't want a woman to feel, or anyone to ever think that she got the job because she's a woman and not because she won it on merit. (SSI9)*

This reflected concern of EHRC Roundtable participants who had felt that potential beneficiaries of the tiebreak might be fearful of tokenistic application perceived as discrediting merit.

However, one young female focus group participant was very much of the opposite view and felt that being the recipient of a tiebreak decision would empower her as a woman:

> *If I did find out that I got the post because I was a woman…I'd be like "great, I get to then be an example for more women and it's a step in the right direction". I'd feel kind of empowered by it because of the amount of times*

that you've probably been told like "oh strange that you're an engineer, you're a woman" kind of thing. (FG4)

Other participants however felt that the perception that the tiebreak may discredit merit (even if misconceived) may lead to resentment in gender segregated sectors and as such could do more harm than good:

I think the other issue is that, again, there's such a strong cultural belief in a meritocracy, that doesn't exist, even when you talk to the minorities and the women and disabled people, they don't want to rely on provision like that to be successful in the job. (SSI13)

If they start to feel like they're losing to women, like the men's rights movement…if that's rolled out everywhere what does that then do for the kind of the integration of men and women, like how do they come together. (FG3)

A common perceived obstacle for many participants (even those who were overwhelmingly positive about its application) was whether or not it could be applied in practice. This was due to a concern that having two candidates that could be determined to be 'as qualified as' each other would be a rarity. This mirrors the critical dialogue around the introduction of section 159 during the consultation period and post implementation:

I mean I think the tricky part in that whole conversation is always, you know, how do you judge people, two people to be absolutely equal, and that's the difficult thing. (SSI3)

I have never been in a situation that I have two people that they were identically qualified and I needed the legislation to help me pick the one over the other. I mean what is the likelihood of that? (FG2)

I think the likelihood of getting two CVs that are exactly the same, that can be judged to be the same, are, would be quite rare. (SSI10)

I would be surprised if you even got one of them where you had two candidates that were the exact same, because as I say, I've never seen it actually happen. (SSI11)

This reflected the discussion at the EHRC Roundtable. Here participants had questioned the criteria of section 159 due to the rarity of circumstances in which an employer might deem two candidates to be 'as qualified as' each other. Some Roundtable participants considered that section 159 would be better framed as 'sufficiently qualified' rather than 'as qualified as' since this would potentially enable employers to recruit from underrepresented groups on the basis of potential rather than experience. However, one participant expressed concern that this would encourage employers to pay less to employ a person from a disadvantaged group on the basis they are 'less qualified'. In turn this could further perpetuate the pay gap.

Similarly, some interview and focus group participants expressed concern that the tiebreak lacked utility as an isolated positive action measure since it's use presumed a diverse pool of applicants to select from. This links back into the discussion on holistic approaches above:

I think matching the local talent pool is quite a key sentence. You can't recruit somebody that's not, doesn't exist. (FG4)

I think it would be very good but we'd have to do something before because we're clearly not even getting them to that stage at the moment where they are even applying, they're not coming to the assessment centre so we'd have to do something earlier on to get them there. (SSI16)

Use of tiebreak

In spite of a generally positive attitude towards the tiebreak, none of the interview of focus group participants stated that they had formally utilised the provision nor where they aware of any usage from other organisations that they had dealt with. However, a couple of participants felt that (in light of the embedded segregation which exists within the relevant sectors and targets set particularly in relation to apprenticeships and diversity), should they face two candidates as qualified as each other, it is likely that a female candidate would be chosen in any event:

If I had a choice between two candidates who were equally good at the job and equally well-qualified and one increased the diversity of the team in the business, that's the one I would choose, for that exact reason. (SSI3)

If they were of equal merit I suspect right now given our targets we would appoint the woman anyway [laughs], so we might do it indirectly without realising there's a thing called tiebreak. (SSI14)

I think the one time we did have two equally good candidates we actually sat…and did a show of hands, you know, which one did we want. You've got to choose on something, so that was what we chose on and it adds a diverse mix to your business. (SSI19)

Another participant suggested that informal use would be a preferable option without the need for employers to formally refer to use of section 159:

And even if it has been used, employers might not necessarily want to shout about using it, that's the thing, they might not want to make a point of using it, they might just use it subtly in the background. (FG2)

Some participants felt that the lack of use was linked to a lack of understanding and guidance on how the tiebreak could be robustly utilised in practice. Particular reference was made to how the risk of reverse discrimination could be mitigated and how the term 'as qualified as' should be interpreted and applied:

My first thought was "ooh but that feels like it's risky to use people", like how do you ever definitively prove that two people are equality qualified …it would be very, very difficult I think to prove that two people are exactly equal. And then that being said, if you could prove that and you were going to try and use the tiebreaker, I think I'd kind of feel the opposite. (FG4)

The [Equality and Human Rights Commission] produced a code of practice, a sort of statutory code of practice and it talks about the tiebreak, it doesn't actually say very much about it…it doesn't actually sort of tell you much

about tiebreakers other than, you know, what you can do and what you can't do. (FG4)

It could be that this is just the people that I've spoken to, to be nervousness about what it actually means…in terms of the extent of the kind of similarities between the two candidates and how you in fact do that tie break and…what a lawful kind of implementation of the tie break looks like and what an unlawful implementation of the tie break looks like…I've looked at some of the guidance around this and it's kind of been couched in really quite offensive terms. (SSI16)

Similarly, the EHRC Roundtable had focussed on the lack of employer understanding of the tiebreak and participants had felt that detailed guidance on use of the tiebreak and also on how the criteria of 'as qualified as' can be applied in practice was needed in order to encourage effective and appropriate use.

Examples of use of positive action in practice and evaluation

This report is not intended to provide a case study approach towards positive action. There are a number of useful attempts to provide examples of use of positive action in gender segregated sectors (see inter alia: WISE, 2017; YWT, 2016; YWT, 2017). However, interview and focus group participants were asked to give examples of measures that they considered to amount to 'positive action' within their organisation and discuss how successful these had been at addressing gender underrepresentation. Many of the measures discussed may strictly fall outside of a narrow definition of 'positive action' in the sense that they did not involve the application of a preference or targeted initiative aimed at addressing gender disparity. Many of the initiatives discussed would more properly be categorised as 'inclusive provision' with the bi-product of redressing gender imbalance or more general 'anti-discrimination' provision. This again reflects the definitional and contextual confusion around positive action (see above). Nevertheless, it is considered important to reflect this activity within this report. In order to protect the anonymity of those participating in this research, such initiatives will be discussed in general terms.

A number of interview and focus group participants were aware of the importance of addressing the problem of unconscious bias and the impact this could have in relation to recruitment and beyond. A couple of participants discussed their implementation of 'blind CVs' as a means of breaking down gender bias which it was believed was perpetuating underrepresentation within their organisation and the sector more generally. One organisation in particular found that 17% more women were being offered interviews as a result of the implementation of this initiative. Another participant discussed the removal of psychometric testing in the recruitment process. Having discovered that their use of such testing appeared to be impacting on the success of women, they made the decision to remove this from their apprenticeship application process. Another participant sought to remove unconscious bias from an annual Awards Ceremony by ensuring diverse judging panels and providing all judges with unconscious bias awareness training.

Other organisations discussed the implementation of proportionate opportunities for women and men. Therefore, one participant had introduced one-to-one selection in relation to their work experience programme. Thus, in order for education providers to take the opportunity for the work experience initiative they would have to give this opportunity to equal numbers of boys and girls. Similarly, another participant had introduced a measure that required the organisation to ensure a 50/50 gender split at their apprenticeship assessment centre.

Other good practice initiatives included a network of organisations being set up to meet four times a year in order to discuss the importance of diversity and equality awareness in recruitment and retention. Another told of the returners programme that they had put in place that (whilst not gender specific) was aimed at getting young women back into work after a period of leave. Another organisation discussed how they had adapted their apprenticeship scheme by changing to a location they felt would be more conducive to female attraction and reducing the residential element in order to appeal to those (particularly women) who may suffer a disadvantage by having to live away from home for an extended period of time. Non-gender specific pre-assessment coaching was introduced by one organisation as part of their apprenticeship programme. They reported that women who may not have otherwise had the experience or confidence to apply for an apprenticeship had largely taken this up. Similarly, the same organisation had reviewed its marketing material to ensure that its language and imagery was as inclusive as possible and would in particular appeal to a female audience. At a more informal level, another organisation ensured that any work social events would commence at 3pm rather than after work in order to avoid discouraging women from participating in important social networking.

The above initiatives were not intended or introduced as gender specific measures but would have female benefit as a bi-product of implementation. A number of organisations had introduced initiatives that might properly fall within a preference-based definition of 'positive action' under section 158 Equality Act 2010. A number of participants had introduced experience packages specifically targeting females to provide opportunities of work shadowing, insight days and work experience in order to encourage applications for apprenticeships. This not only provided women with the opportunity to engage with a non-traditional area but also gave them a chance to develop confidence in the environment and dispel any negative stereotypes they may have perceived to exist. Others had introduced female only information courses in order to provide training in non-traditional careers to women who may otherwise lack the awareness or knowledge to apply. Unsurprisingly, some organisations discussed use of outreach in schools and utilising female role models to talk to young girls in education in order to encourage future engagement. One sector body had developed a fund to which employers could apply if they had a potential initiative they wished to pilot to encourage female participation within the relevant sector. At a recruitment level, many employers discussed the use of adverts that would appeal to and encourage women to apply as well as targeting inclusion in female publications to open up applications from a more diverse audience. Other more specific initiatives included targeted media campaigns such as blogs, videos, online resources aimed at encouraging females to apply for apprenticeships in gender segregated areas. One participant recounted how one SME had made the decision to reach out to women in her local area with an offer to

finance training and re-skilling into tech. This latter example was one of the few examples put forward by an SME.

What needs to be done to encourage use of positive action

More generally, interview and focus group participants explored ideas to encourage and promote greater use of positive action in the relevant sectors. Whilst some specific recommendations for particular use of positive action have been explored above, this section considers more generally how positive action as a concept to address gender underrepresentation in apprenticeships can be promoted. Once again, this data has been triangulated with the discussions at the EHRC Roundtable (see above).

A few participants made reference to the legislation around positive action and felt that effective use could only be promoted with the introduction of more robust law in this area. This was an aspect that had been more specifically mentioned around legislative change around the tiebreak (see above):

> *The legislation needs to be more robust, it has to be more robust. (FG2)*

This was a discussion reflected at the EHRC Roundtable. Here participants had felt that the legislative framework around positive action lacks clarity and therefore contributes to a lack of confidence and use by employers. However, Roundtable participants differed in their attitude towards the necessity of legislative change. Some participants felt that a commitment to progress and resolving underrepresentation and disadvantage requires the law to mandate rather than permit positive action. It was considered that there would have to be sufficient guidance, support and incentives in place to support and encourage employers to utilise a mandatory positive action tool. However, others considered that the law requires clarification but that it is not relevant or useful to mandate such action particularly in light of existing confusion and inconsistency of use. Some considered that the law could provide more direction in providing for use of positive action whilst not going so far as to mandate.

> *Other interview respondents felt that any strengthening of the law would further embed resistance and discourage use:*
>
> *Any strengthening of the law will just engender different resistance…strengthened resistance, I don't think the law's the answer. (SSI13)*
>
> *I'm, generally speaking, quite uncomfortable with using the power of the law to compel employers to do these sorts of things, just because I think in the longer term, you do better to encourage people to do these things themselves and to genuinely see the value of what they're doing rather than making them do these things begrudgingly. (SSI17)*

Nevertheless, many focus group and interview participants expressed confusion as to the boundaries of legal positive action (see above). Therefore, whilst few endorsed changes in relation to the legislation it was felt that there was a necessity

for clear guidance defining positive action and the relevant legislative provisions in order to provide the confidence for organisations to engage in effective use. The EHRC Roundtable had also endorsed this need:

> *I mean because the law is quite complex…you've got to get it right…the easiest thing is not to go down that route but…maybe there are things that need to be done to work with employers to show that…you can use this…you've got to be careful, you've got to get it right but you can use that measure. (FG4)*

> *I'm quite a practical person…I would like a genuine checklist, between what we can do in positive action, and what is positive discrimination…I can see how, in theory, it would work, but it's the application of what that looks like in our world. (SSI12)*

The Employer Survey also considered attitudes towards the legislative framework around positive action. Respondents were asked whether they considered the current law in the UK allowed organisations enough scope to undertake measures to increase diversity. Fifty-seven per cent agreed that it did whilst 6% disagreed. Interestingly, 38% neither agreed or disagreed/didn't know which suggests a lack of awareness of the legislative limits in this area. Sixty per cent of male respondents compared to 54% of female respondents agreed that the law provided sufficient remit to enable positive action, compared to 5% of males and 7% of females who disagreed. Within the Construction sector, 61% of respondents agreed that the law provided sufficient remit whilst just 3% disagreed. In contrast, 58% of respondents in the IT industry agreed compared to 1% who disagreed. Similarly, 52% of respondents in the Professional, Scientific and Technical sector agreed compared to just 1% who disagreed. A glaring 47% within this sector had no opinion/didn't know. This is surprising in light of campaigns carried out by organisations such as WISE and WES in this area. However, the WISE campaign for example makes little reference to the legislative framework and this may account for lack of awareness of the law in this regard.

A couple of interview participants felt that a toolkit approach based on case studies would be most effective in promoting positive action:

> *I think the most important thing…is a toolkit. So where do I begin? What are the things that I am allowed to do? What are the things that other organisations are doing? What has been successful? So case studies, toolkits and just an explanation of the available things that can be done. (SSI4)*

> *…a clear evidence base of what we can do, whether it's good practise examples, whether it's guidance…that employers will find useful and would actually support them to use it more confidently and more often to kind of address those disparities. (SSI16)*

However, EHRC Roundtable participants had urged caution here expressing concern that 'toolkit' approaches are often too heavily focussed on employers rather than educators and careers advisors. It was also suggested that too much encouragement of a standardised approach relying on mirroring the initiatives implemented by others is less likely to be effective since the employer will not have

tailored this to meet the particular need within their own organisation. The lack of a strategic and robust design of an appropriate measure aligned to clear objectives is more likely to lead to a failure of the measure and once again result in disinclination to engage.

Another interview participant cautioned that any such guidance needed to be endorsed and promoted at a high enough level in order to ensure widespread use across sectors. In reality this necessitated Government backed guidance:

> *I think yes, Government guidance, but I also think that if it got sort of an approval from the CBI, the FSB, the IAD and trade associations, for example, I know that's a big ask, but that would then be very much more widespread than just sort of an announcement or a report that didn't have that endorsement. (SSI9)*

In addition to formal guidance, some participants felt that strategic roll out of promotion and education for organisations in the use of positive action would be useful:

> *So that's the need to educate employers in what they're allowed to do and I guess that's the knowledge sharing events that people organise to, for companies to showcase what they've done and how it's worked. (FG2)*

Suggestions on how this knowledge could be disseminated included promotion via national sector-based information campaigns:

> *I think there needs to be a big push in various sectors, group advertising much like This Girl Can, which I think is the best evidence I've seen in the UK of something targeted at women on a macro basis, national UK basis, and the impact it had, plus the way they went about gathering the data. (SSI13)*

> *Currently I feel like positive action's probably seen as…one of those…inaccessible terms that you'd probably only know if you're already involved in it…I think if it was prioritised more and discussed more in parliamentary debates and such, and then in news articles…(SSI18)*

Similarly, some participants felt that sector bodies could take more responsibility for clarifying and promoting the use of positive action as a tool to address underrepresentation in apprenticeships:

> *I think, for us, so it's agencies and bodies such as the CITB, that we align ourselves very closely with, and we work very closely with in other ways, but they also have the sway and the influence over other organisations like ours. (SSI11)*

One interview participant felt that the CIPD should take more responsibility for promoting the use and understanding of positive action and EDI practice to the HR profession:

> *I think CIPD has a big role to play in the re-education of the HR profession…I think there needs to be a professional standard for diversity practitioners so that there is a developed understanding of things like positive action, analysis techniques, etc. (SSI13)*

However, it was also recognised that aspirationally a micro level approach from sector bodies would be more effective than national campaigns in promoting the use of positive action particularly in relation to SMEs:

> *…if we had enough people working for us, every single SME and micro-sized organisation within our sector, have an hour with them, explain to them what positive action is, why it's important for them and how they can use it to build a better workforce and a more prosperous future, I think that'll be the best way, ultimately, to do this. (SSI17)*

However, SSI17 recognised that in reality sector bodies face a capacity issue in that they are unable to provide micro level individual education and promotion to all SMEs within their remit and therefore it is impossible to separately access the majority of the sector:

> *…there's just a capacity issue, you know, the sectoral bodies just fundamentally don't have the capacity and the resource to get around that many SMEs in the way that they could get around the larger employers. (SSI17)*

In this regard, it was suggested by some participants that the creation of networks and partnerships (between groups of organisations within a sector) in order to disseminate information and support confidence building in the area of positive action would be a useful means of promoting engagement:

> *I think there needs to be more collaboration…I do think it would help tremendously…I think in a lot of cases we're trying to do it alone, each company have their own targeted approach but if we were to do it at an industry level it will have a much wider impact. (FG4)*

> *The opportunity for us to sit in a room with other construction companies is valuable, and have these sorts of conversations, because then we can learn from them. We can learn what good practice is happening within their business, we can understand the challenges, we can have conversations with them about the challenges we face, and they can give us ideas on how to overcome them. (SSI11)*

The EHRC Roundtable had also considered such collaboration as vital for promotion of positive action. The benefits of more partnership working between employers and training providers in particular had been endorsed by Roundtable participants as necessary in order to assist in developing collaborative positive action measures and ensure effective use.

A number of interview participants considered that the introduction of sector based charters/kitemarks aimed at encouraging the use of positive action may be an effective way of promoting engagement. However, caution was expressed that it would have to have appropriate status and bite:

> *It would have to be a Kitemark that everybody swung behind, and actually had real status and bite…I think it's a positive idea…it might be that that's what they have to report on, and their progress on that, to specific bodies…in order that it's not just a kind of dead Kitemark, but it's a Kitemark that actually drives real activity. (SSI16)*

One participant made reference to a recent charter introduced into the ICT sector called the Tech Talent Charter aimed at increasing diversity in the tech sector:

> *The crux of it is that when you sign up as a signatory you also commit to sending data about diversity in your business anonymously but then that data will be used as a standpoint for understanding whether there has been any progress with diversity in the tech sector, because at the moment the data is quite rocky. This is one of the first industry-wide organisations that have really looked at pinning down some actionable outcomes when it comes to diversity in tech. (SSI4)*

In particular, SSI4 reported that the signatories to the charter included a broad range of organisations including many SMEs. Thus it had appeared to access the elements of the sector traditionally difficult to engage with broad based information campaigns.

At a more general level, a couple of participants made a call for the collection of more robust sector based data to enable organisations to understand the scale of underrepresentation within their area and therefore develop appropriate measures in response:

> *I think another issue that may make some employers reluctant to use positive action generally…is the lack of good quality data, comparative data. (FG4)*

The EHRC Roundtable had reinforced this by discussing the need to provide more robust and accessible data on underrepresentation at a sectoral level in relation to apprenticeships and that this data should enable intersectional analysis and address the wider protected characteristics.

Equally, it was considered by one interview participant that there needed to be more extensive evaluation as to the impact of particular positive action measures in order to promote the efficacy as a tool for addressing underrepresentation:

> *I would really be interested to know if there's been kind of any evaluation done of that kind of work as to what impact that would have. (SSI16)*

Others felt that engagement would only be achieved by ensuring that there was buy in at a leadership level within organisations:

> *It definitely has to come from high up because otherwise everybody else lower down is a bit too busy and have their own lives and they tend to need that extra push from somebody above that they're like "now you need to do this and work on this and we need to sort this". (FG4)*

> *Within an organisation, it needs to be top-led, in my view, so we need more CEOs to stand up and say, "This is important, not just from a bottom line perspective, but because it actually matters." (SSI12)*

Similarly, in order to ensure change, ownership needs to be taken by men who have traditionally dominated the sector:

> *And I think within a sector where you've got one sector of the population being so dominant in terms of numbers, it is absolutely incumbent upon the people who are within that dominant group to do their bit and to more than do their bit. (SSI17)*

At a macro level, leadership on positive action has to come from the Government. Many participants made reference to the need for the Government not only to endorse guidance in this area but also to more generally promote robust and effective use by organisations:

> *It still needs that bigger voice, it still needs that government backing to put it out there…some government backing and promoting it out there as a campaign, I think that would hold some weight. (SSI1)*

> *There still needs to be more government interest, and there is government interest, I just think there needs to be more government action. (SSI12)*

Some participants felt that Government backing in this area needed to include the provision of funding to support relevant and appropriate action by organisations:

> *I suppose recognition that positive action costs money and that if we are serious about wanting a more equal workforce then you have to invest in it, to come from government but that it is something that needs funding. (SSI10)*

One interview participant linked this to the Apprenticeship Levy and suggested that this could be used to filter down funding. This again had been reiterated at the EHRC Roundtable:

> *But they could do things such as seeing how they collect the Apprenticeship Levy…perhaps they could put in things within that to say, "We'll put in an extra X if you make this apprentice a female, for example, or from an ethnic minority", or something like that…the Government obviously carries great power. (SSI5)*

It was also suggested that Government support could take the form of more robust targets in order to drive through the use of positive action as a change mechanism:

> *It appears to me that those organisations that are more interested in positive action are those that have external scrutiny around the diversity of the workforce and recruitment, and are looking at targets around that, so, and that is driving them to look for kind of positive solutions to how they address under representation rather than just kind of continuing with the status quo. (SSI16)*

In summary, SSI13 articulated the prevailing attitude towards positive action in that a fundamental shift in approach was necessary in order to effect change:

> *I think people have to stop doing the same things and expecting a different result, yeah, we've had positive action for twenty years, what's changed? Nothing. Why continue doing it? (SSI13)*

Conclusion and Pointers for Action

A full reading of the findings presented in this report points to a number of emerging themes from the data that have implications for the development of legislation, policy and practice in relation to the use of positive action in apprenticeships and beyond. The following provides a summary of the key findings from this research and concludes with some recommendations with a view to facilitating the use of positive action in apprenticeships to improve female representation in the engineering, ICT and construction sectors. However, it is hoped that these findings can be considered more generally in relation to wider employment and in relation to the use of positive action to address disadvantage and underrepresentation across the broader protected characteristics.

Summary

Almost all of those participating in interviews and focus groups appeared to have an awareness of the term 'positive action'. However, in line with previous research and debate at the EHRC Roundtable, many participants reported a lack of clarity and confusion around the detail of a definition. There was however an awareness that the term may be controversial and involve the risk of illegality. Whilst, there was a clear awareness that positive action could easily cross over into illegal 'positive discrimination', very few appeared to be aware or were able to comfortably describe the distinction between positive action and positive discrimination. Most felt more comfortable with providing examples of what positive action might cover rather than seeking to provide a concise definition. This lack of clarity around the law and the boundaries of legal positive action appeared to lead to a reticence to use. Those who appeared aware of positive action were often EDI and HR specialists. However, even those participants who specialised in this area expressed a lack of clarity in relation to the detail. As seen previously by Davies & Robison (2016), those who did have awareness had often gained this knowledge from third parties and in particular sector bodies. Equally, for larger employers the knowledge provided by their HR or EDI support was seen as vital.

In spite of confusion around the boundaries and legality of positive action, the majority of those participating in the interviews and focus groups expressed favourable attitudes towards the use of positive action to address the underrepresentation of women in gender segregated apprenticeships and employment more generally. This was supported generally by data from the Young People Survey. However, there was a less obviously favourable view towards the need for positive action from HR decision-makers in the Employer Survey. Nevertheless, in this regard construction sector respondents to the Employer Survey appeared to be far more supportive with 74% agreeing that there was a need for employers to take positive action in the UK. Interview and focus group participants supported the view of the EHRC Roundtable in stating that whilst positive action is a useful tool to address gender segregation it is only effective if used appropriately and robustly with relevant knowledge. In particular, the EHRC

Roundtable had argued that when used inappropriately, the consequent lack of impact of positive action might perpetuate reticence to use. Interview and focus group participants expressed further concern that positive action may lack efficacy if applied in a tokenistic and standardised manner. Such use may perpetuate negative perceptions that positive action denigrates meritocracy and open up the risk of 'reverse discrimination'.

In line with anecdotal evidence and previous research (Davies & Robison, 2016), data from the Employer Survey supports a lack of mainstream use of positive action initiatives in the workplace. For those who expressed that they hadn't previously used and didn't intend to use in the future, the reasons given for non-use were broad ranging but again largely replicated anecdotal and previous findings. Overall, the most popular reason for non-use given in the Employer Survey was the fact that those surveyed did not consider positive action to be necessary. However, another prominent reason for non-use was a fear of the best person not being recruited. Respondents to the Survey had a limited option to provide qualitative responses for their reason for non-use. The majority of these respondents stated that they would not seek to use positive action due to the small size of their organisation, the lack of any potential to recruit further or the fact that they did not have a recruitment function within their organisation. Some stated that they would not use positive action as they recruited on merit irrespective of individual characteristics.

The data collected from interview and focus group participants also explored wider use and perceived obstacles towards positive action. As discussed in the EHRC Roundtable, some participants felt that a fundamental obstacle to the exercise of positive action was the view that inclusive rather than preference-based practice was a more appropriate and effective means of addressing gender disparity. Equally, (and reflecting a minority view in the Employer Survey and in previous research (Davies & Robison, 2016), there were reports of employer fear that targeted positive action may result in positive discrimination and the potential risk of legal liability. Similarly, many participants linked the fear of 'getting it wrong' as a result of a lack of clarity and guidance around legislation and definitions of positive action. One felt that this lack of clarity was also seen at a fundamental HR level and a lack of training around EDI and positive action by the CIPD and other organisations. As seen in the Employer Survey, some participants felt that employer reticence was also due to perceptions that positive action denigrates the principle of meritocracy. As had been discussed in the EHRC Roundtable, there was also concern that targeted individuals themselves may not wish to have preferential initiatives applied to them.

However, one of the most frequently referenced obstacles to use was the lack of resources SMEs had to undertake robust and effective positive action. This had been explored in depth at the EHRC Roundtable and as above had been a fundamental reason for non-use in the Employer Survey. Most participants in the interviews and focus groups made reference to the distinction between large and small employers when discussing obstacles and use of positive action in relation to apprenticeships in gender segregated sectors. Participants perceived that SMEs had very little awareness of positive action and that the potential consequences of gender disparity were unlikely to be a priority for the majority of organisations. Even where knowledge of positive action was perceived, it was felt that SMEs would not be likely to have the resources necessary to implement effective positive action. The

EHRC Roundtable felt that this was particularly true without any external guidance, funding and support. However, both the Roundtable and interview and focus group participants felt that it was vital to address the lack of engagement of SMEs. A number of suggestions were put forward in order to facilitate this. One suggestion was for larger employers to support and assist SMEs to engage in addressing the issue of female underrepresentation and promote the use of positive action. Sector based advice and support was also seen as an important means of engaging SMEs. Collaborative working and cost sharing was also considered by some as a means of supporting SMEs to use positive action effectively. The EHRC Roundtable had supported this and also suggested that wider training and data on underrepresentation should be more readily accessible to SMEs. Charters were also referenced as a means of encouraging and rewarding engagement. However, the most consistent suggestion from interview and focus group participants was the use of the procurement process (in both the public and private sector). This had been reinforced at the EHRC Roundtable, although concern was raised that SMEs may argue that a requirement to engage in positive action via procurement obligations will effectively cut them out of public sector contracts due to the inevitable additional resource implications. Interview and Focus Group participants together with the EHRC Roundtable felt that procurement could only be an effective driver to use of positive action if there was a greater willingness for Government and private organisations to support SMEs in these obligations. In this regard, financial support and knowledge transfer/training provision was necessary. Similarly, it was recognised that procurement could only be used as a driver if larger organisations and the public sector more generally could demonstrate their own effective use of positive action and thus lead by example.

In light of the perceived obstacles to the use of positive action, participants in the interviews and focus groups were asked to consider what actions would be effective to address gender segregation in apprenticeships. Many participants supported discussion at the EHRC Roundtable and stated that isolated positive action initiatives were ineffective and needed to be part of a holistic life cycle approach applied towards increasing representation of female apprentices and employees more generally in the relevant sectors. Similarly, many participants felt that there was little point in trying to engage more women into a sector only to then fail to retain them because initiatives had not been implemented to ensure retention. Thus a holistic approach needed to include adherence to wider equality and diversity good practice together with robustly implemented positive action measures. Some focused on the need for employers to implement measures to promote and increase work life balance and flexibility for women with children in order to encourage engagement and retention. Equally, others were of the view that mainstreaming inclusivity was as important as targeted positive action as part of any holistic approach. The importance of early engagement with educators, careers advisors and parents was regarded as vital to support a life cycle approach to resolving gender segregation. This may involve providing additional support and funding across the life cycle in order to implement effective and joined up positive action and equality practice.

Data was also collected on attitudes towards specific positive action initiatives. The Young Peoples Survey pointed to a noticeable gender disparity in female and male attitudes across a range of specific positive action measures. Female respondents were consistently more positive about each of the positive action measures

suggested. Work experience schemes, advertising and mentoring/support networks for women were overall most popular with targets and use of appealing images/language in adverts and targets least popular overall. There were mixed views from interview/focus group participants and in relation to targeted adverts ranging from those who felt that it would create a more welcoming space within which women could apply for non-traditional roles, to those who felt that such adverts had become overly standardised and tokenistic increasingly lacking efficacy as a result. Some participants focused on the importance of the media and marketing campaigns in promoting successful female visibility within gender segregated sectors. Equally, the use of female role models was seen as vital (particularly within an educational setting) to encourage young girls into apprenticeships in non-traditional areas. Similarly, gendered mentoring and facilitated female networking was viewed as effective. This measure had been previously discussed at the EHRC Roundtable and concern had been expressed that inter-gender mentoring and networking may lead to a closing down rather than opening up of systemic knowledge and that inclusive rather than targeted mentoring and networking would be more effective at creating change. Beyond the boundaries applied by the legislation, some interview and focus group participants considered that targeted female recruitment campaigns and split gendered shortlists would be beneficial in improving female representation.

Many interview and focus groups participants focused on the use of quotas to drive forward gender representation in apprenticeships. There were some who appeared confused between targets and quotas as a form of positive action. More than any other measure participants were divided on the use of quotas with some viewing them as highly effective, some preferring the use of more moderate targets and others expressing concern about the use of any metric system to increase representation. Some were of the view that if quick and effective change is required then quotas would be a painful but necessary initiative to force change and focus employer action in this area. Others considered that isolated use of quotas would be ineffective and should only be considered as part of a wider holistic approach towards positive action and good practice. However, others were adamant that the implementation of quotas were damaging to the progress of equality in segregated sectors and involved the denigration of merit and knee jerk tokenistic recruitment. This largely reflected the range of attitudes towards quotas expressed at the EHRC Roundtable who had expressed concern that quotas were often a blunt instrument that could result in disproportionate consequences for other disadvantaged groups. Interview/focus group participants and the EHRC Roundtable had overall appeared to feel more comfortable with the use of targets rather than quotas. Targets were viewed as an effective means of ensuring leadership focus on underrepresentation and were a more proportionate option to open up dialogue on the need to introduce positive action.

An equally prominent specific form of positive action discussed by interview and focus group participants was the 'tiebreak' under section 159 of the Equality Act 2010. Contrary to previous research (Davies & Robison, 2016), many participants had a vague awareness of the tiebreak provision possibly as a result of media focus at the time of implementation in 2011. However, very few understood the specifics or how this would apply in relation to their own sector or remit. This lack of understanding of the tiebreak had been debated at the EHRC Roundtable and it was felt that this is the element of positive action most often linked to positive

discrimination and the consequent fear of legal liability for 'reverse discrimination'. Data had been collected on attitudes towards the tiebreak in the Young People Survey. Only a third of respondents agreed that the tiebreak would be effective in resolving underrepresentation in contrast to a significantly more favourable responses to the lower level positive action measures suggested (see above). In contrast and somewhat surprisingly, most of the interview and focus group participants had a prima facie positive attitude towards the tiebreak. It was widely felt that the tiebreak was a way of redressing historic disadvantage created by unconscious bias and perpetuation of underrepresentation by reliance on a vague concept of 'fit'. However, there were concerns from some that care should be taken not to apply the tie break tokenistically and that efforts should be made to break down perceptions that the tiebreak discredits merit. It was recognised that a negative perception from others that the tiebreak applied in this way could lead to resentment in gender segregated sectors and do more harm than good. This was reiterated in the EHRC Roundtable discussions. Equally interview/focus group participants and the EHRC Roundtable recognised that in practice it would be very rare that an employer would be able to determine candidates to be 'as qualified as' each other.

Similarly, participants expressed concern that isolated use of the tiebreak was of little use without ensuring a holistic approach towards positive action in order to safeguard a diverse pool of applicants at the recruitment stage. In spite of this generally positive attitude towards the tiebreak, none of the participants stated that they had formally utilised this provision nor was there awareness of any usage by other organisations. However, some stated that such an approach was being informally taken in any event. In light of the recognised and embedded underrepresentation within the particular sectors, it was argued that they would be more likely to choose a woman in a situation where they had two candidates as qualified as each other. Equally, interview/focus group participants and the EHRC Roundtable considered that lack of use of the tiebreak was due to a fundamental lack of understanding and consequent fear of 'reverse discrimination'. As such it was felt that detailed guidance on use and how to apply and interpret the term 'as qualified as' would promote effective use.

In addition to reflecting on specific forms of positive action, some interview and focus group participants also reflected on their own practice and evaluation of positive action initiatives. The report is not intended to provide a case study approach towards positive action. However, participants did discuss measures that would fall within a wide definition of positive action and also good practice in relation to equality and diversity more generally. In particular, participants discussed the importance of addressing recruitment issues and breaking down the negative consequences of unconscious bias. Notably, some participants discussed the positive impact of introducing blind CV's and re-evaluating the use of psychometric testing (which had been found to have a negative impact on female candidates). Others had introduced gender parity of numbers accessing work experience schemes and apprenticeship assessment centres. Other good practice initiatives included setting up collaborative networks to share awareness and experience of equality and diversity in recruitment and retention. Others had adapted practice to seek to address indirect disadvantage to women applying and undertaking apprenticeships and training. A number of organisations had also introduced initiatives that may properly fall within a preference-based definition of positive

action. Such measures included targeted work experience packages and training, engagement in outreach activities targeted at young girls, targeted adverts and media campaigns and use of female role models to attract young women into their organisation.

In light of the variety of sectors and wealth of experience of interview and focus group participants, most had a range of views on how to generally encourage engagement with positive action in relation to apprenticeships and beyond. There were polarised opinions around the need for more robust legislation particularly around the tiebreak. This polarisation was reflected in the EHRC Roundtable discussion. Whilst some considered that the law should be strengthened to mandate rather than permit positive action, others felt that this would simply embed resistance and further discourage use. However, most participants agreed that there was a lack of employer clarity around the legislation and as such there was a necessity for clear guidance for employers in order to encourage effective engagement. Some felt that a toolkit approach was the most effective means of providing this guidance. However, others urged caution in this regard as this might encourage reliance on a standardised approach that could lead to a tokenistic application of ineffective positive action. In any event, it was felt that such guidance needed to be endorsed and promoted at the highest levels in order to ensure widespread adherence.

Equally important was a strategic knowledge transfer and promotion campaign centred on the use of positive action. Some felt that sector bodies could most usefully take responsibility for this. Similarly, it was suggested that the development of collaborations and networks to disseminate information and support confidence building around positive action would be a means of promoting engagement. At a more general level, some interview/focus group participants supported discussion from the EHRC Roundtable and called for more robust and accessible data collection on underrepresentation in apprenticeships at a sector level. There was also a call for the encouragement of greater leadership buy in to the importance of using positive action and at a macro level this should be driven from Government level through to organisational leadership. It was suggested that Government buy in should also include the provision of funding to support relevant and appropriate action by organisations. Government support could also take the form of more robust targets and perhaps use of the Apprenticeship Levy. Overall, there was a sense that there needed to be a shift in approach towards positive action in order to ensure it could be used as an effective tool to address underrepresentation of women in apprenticeships in the future.

It is clear from this research that there is a fundamental confusion around the boundaries and legality of positive action in relation to apprenticeships and beyond. As a result, whilst there are isolated examples of effective use it is often misunderstood, applied in a standardised and tokenistic manner and is consequently ineffective even when utilised. This inefficacy then perpetuates the perception (even from those working within the area of equality, diversity and inclusion) that positive action is at best ineffective and at worst damaging. This research seeks to better understand both resistance and use of positive action and explore ways in which it can be re-evaluated, developed and promoted as an effective and robust equality tool. Whilst positive action is just one means of addressing underrepresentation in gender segregated apprenticeships, it is argued

that it can be an important and effective tool within an organisation's toolkit. With this in mind, the following recommendations aimed at key stakeholders in this area are made.

Pointers for action

The data has demonstrated that there are embedded problems at various levels in the understanding and implementation of positive action in relation to apprenticeships and beyond in gender segregated sectors. Based on the analysis set out in these conclusions and the report as a whole, these pointers for action are presented at micro (organisation/employer), meso (sector) and macro (government/policy) levels.

Organisational level

It is clear from the data that at a micro level, there needs to be a change in approach towards positive action by individual organisations (including education, training providers and employers). Therefore, it is proposed that:

I. Organisations should consider the use of positive action as a means to address underrepresentation of women within apprenticeships and beyond. In particular, organisations are encouraged to apply an individualised and robust approach towards developing positive action utilising the following as a suggested framework for action:

    a. Consideration of particular need, underrepresentation or disadvantage that the organisation wishes to address.

    b. Collection of evidence of that need, underrepresentation or disadvantage.

    c. Assessment of cause of that need, underrepresentation or disadvantage?

    d. Assessment of how the intended measure will address the need, underrepresentation or disadvantage.

    e. Development of a robust including application of objective and transparent criteria; inclusion of a 'savings clause'; inclusion of a 'sunset clause'.

    f. Consideration of whether other groups disadvantaged by the introduction of the measure and if so plans implemented to alleviate negative impact.

    g. If necessary, consideration of other potential ways for the organisation to address the need, disadvantage or underrepresentation such that it is less likely to adversely impact on other groups.

    h. Implementation of arrangements to review the impact of the measure.

    i. Implementation of dissemination arrangements to publish rationale and details of the measure and review mechanisms.

II. Organisations should seek to develop and implement positive action measures that seek to address their individual need and should treat standardised approaches with caution. However, organisations may consider adapting and utilising the following examples (non-exhaustive) of positive action:

   a. Targeted outreach work in schools and colleges to encourage young girls to enter into apprenticeships in gender segregated areas;

   b. Targeted work experience placements/taster events for young girls in order to promote access to apprenticeships in gender segregated areas;

   c. Use of accessible and appropriate female role models as part of outreach work/media campaigns;

   d. Introduction of a formal mentoring scheme for young female apprentices and potential apprentices. In this regard, mixed mentoring should be encouraged (although where requested women may prefer to be mentored by another woman and this should be accommodated) with focus being placed on the relevance of the expertise and experience of the mentor to the mentee rather than gender;

   e. Establishment of formal networks for women within the organisation and provision of resources to such networks and power to influence change where necessary;

   f. Introduction of measures focussed at mitigating disadvantage to women within the recruitment process. In particular, consideration of the use of blind CVs, the removal of psychometric testing etc.

   g. Introduction of flexibility within the workplace (including consideration of part-time provision) and in relation to apprenticeship arrangements in order to enable work-life balance and encourage women to participate.

III. Organisations should utilise positive action as part of a package of wider holistic measures to address female underrepresentation within their organisation. In particular, they should recognise the limited efficacy of isolated use of positive action and utilise alongside wider good practice in relation to equality and diversity, consideration of the need for inclusive practice to be mainstreamed throughout their organisation, increased focus on the need to ensure work-life balance and flexibility.

IV. Employers should consider working with education, training and careers providers to ensure that positive action and good practice in addressing gender segregation is fed through the apprentice life cycle.

V.   Larger employers should seek to collaborate and develop networks in order to support and assist in the development of effective positive action measures by SMEs.

VI. Employers should consider utilising the 'tiebreak' provision under section 159 of the Equality Act 2010 as part of a holistic package to address female underrepresentation within their organisation.

VII. Employers should seek to develop detailed and consistent collection of data relating to gender in apprentices and in the workplace more generally. This data should be analysed on a regular basis in order to assess trends and the need for action to address underrepresentation.

VIII. Employers should be transparent and publicly disseminate the evidence collected as the basis for utilising positive action as well as justification for taking such action and the evaluation mechanisms in place to determine efficacy.

IX. Larger employers should consider utilising the contractual procurement process to encourage their supply chain to address gender segregation within their own workplaces and to utilise positive action as a potential tool to address this.

X. Employers should consider use of organisation specific gender targets in order to drive the need to implement positive action measures to address underrepresentation.

XI. The use of positive action needs to be understood, ratified and promoted at a leadership level within an organisation.

Sector level

The data also points to a need for a more robust and informed approach towards positive action at a sector level. Whilst there are pockets of excellent work in relation to the use of positive action in apprenticeships in engineering, ICT and construction, it is considered that greater clarity and cohesion in this area would be of benefit:

I. Sector bodies should promote clear and consistent guidance on the use of positive action in relation to apprenticeships within their sector. This guidance should seek to promote a robust and transparent framework for action as suggested above (micro level recommendation I).

II. Sector bodies should seek to encourage an evidence-based use of individualised and innovative positive action by employers. Whilst case study and standardised suggestions for relevant measures are useful as confidence building examples, individual measures tailored towards the particular organisation and robust evaluation of efficacy should be encouraged.

III. Sector bodies should encourage the use of positive action as part of a holistic package to address female underrepresentation within the relevant sectors. This should include using positive action alongside wider good practice in relation to equality and diversity, consideration of the need for inclusive practice to be mainstreamed throughout the organisation, increased focus on the need to ensure work-life balance and flexibility

IV. Sector bodies should engage in media and promotion campaigns to encourage the use of positive action as a means of addressing gender underrepresentation in apprenticeships.

V. Sector bodies should particularly focus on the use of the 'tiebreak' under section 159 of the Equality Act 2010 as a tool to address underrepresentation in apprenticeships. In depth and robust guidance should be developed, disseminated and promoted by sector bodies on the use of the 'tiebreak'.

VI.   Sector bodies should encourage and support the development of employer collaborations and networks (particularly in relation to SMEs) focused at addressing female underrepresentation, sharing good practice and promoting the use of positive action.

VII.   Sector bodies should collaborate to consider a more effective means of accessing, informing and supporting SMEs to utilise positive action. This may involve discussions around cost sharing, funding and training.

VIII.   Sector bodies to consider (and/or continue) utilising awards and promotion campaigns to celebrate employer use of effective positive action.

IX.   Sector bodies to consider whether the introduction of charters/kitemarks to encourage the use of positive action would be appropriate/possible within their sector.

Government/policy level

An analysis of data clearly highlights the need for engagement with positive action at Government and public policy level in order to ensure engagement in relation to apprenticeships. Therefore, the following pointers at a macro level are made:

I.   There is a need for a reconsideration of the legislative framework around positive action under the Equality Act 2010. In particular there is a need to reassess section 159 of the Equality Act 2010 in order to reflect on the existing difficulties employers face with criteria 'as qualified as'.

II.   There is a need for specific Government endorsed guidance (possibly produced by the Equality and Human Rights Commission) on the use of robust and effective positive action. As above, this should encourage an individualised and holistic approach by employers towards positive action.

III.   Government needs to visibly support, publicise and promote the use of effective and robust positive action as a tool to address female underrepresentation in apprenticeships.

IV.   Government should consider the use of public sector procurement as a tool to promote the use of positive action in the supply chain. However, relevant support should be provided (in terms of funding, training and resources) to enable those within the supply chain to engage appropriately and effectively with positive action.

V.   Government should consider using realistic sector-based and national targets in relation to gender and apprenticeships in order to encourage the appropriate use of positive action by employers to meet these targets.

VI.   Government should explore the implementation of quotas to address female underrepresentation in particular sectors (particularly, if it is found that robust targets are unsuccessful). It is considered that the imposition of any such quotas should be at leadership as well as apprenticeship level in order to have any meaningful effect.

VII.   Government should implement a system of more effective data collection on gender underrepresentation in apprenticeships. Such data should continue to consider apprenticeship starts but should also focus on applications,

progression, retention, performance and future employability. This data should also permit for intersectional analysis and should be widely promoted, accessible and transparent.

VIII. Government should ensure that data collected (as above) is reviewed and analysed on a regular basis and utilised as a foundation for promoting and supporting positive action engagement.

IX. Government should consider the provision of funding/additional support to employers to enable and reward engagement with positive action. The Apprenticeship Levy may be considered as a means of addressing this.

X. Government to lead by example and encourage public bodies to engage in robust and effective positive action including use of the 'tiebreak' under section 159 of the Equality Act 2010 as relevant and appropriate.

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