



# **Response to the UK Government consultation on closing the gender pay gap**

## **September 2015**

### **1.0 Introduction**

Close the Gap is a partnership initiative working in Scotland on women's participation in the labour market. Partners include Scottish Government, Scottish Enterprise, Highlands and Islands Enterprise, Skills Development Scotland, Equality and Human Rights Commission, and Scottish Trades Union Congress. The breadth of the partnership recognises that the gender pay gap is an economic issue as well as an equality issue, and that narrowing the pay gap would return aggregate gains to the UK economy.

Close the Gap has been operating since 2001 and works with employers, employees and policymakers to encourage and enable action to address women's inequality at work. The gender pay gap is the key indicator of women equality in the labour market, and we have almost 15 years' experience of working with a wide range of stakeholders to promote positive activity to tackle its causes. We therefore welcome the opportunity to respond to this consultation.

This response does not represent the views of any one individual partner, but the experience of working across the private, public and voluntary sectors in Scotland on women's labour market participation.

### **2.0 Consultation questions**

***Q1: Publication of gender pay gap information will encourage employers to take actions that will help close the pay gap. Do you strongly agree, agree, neither agree nor disagree, disagree or strongly disagree?***

Neither agree nor disagree.

The publishing of gender pay gaps is a small step towards addressing women's inequality at work. At the very least, it will ensure that accountability in the private and voluntary sectors reflects accountability in the Scottish public sector where listed public bodies are already required to publish their pay gap, as well as an equal pay statement and information on occupational segregation in their organisation. However, the reporting of headline pay gaps alone will not necessarily encourage employers to take action to address pay gaps. Without a requirement to take action to address identified gaps, it is extremely unlikely that many employers will voluntarily do so.

Research by Close the Gap into employer action on equal pay showed that while 94% of those employers we surveyed had an equal pay policy in place, less than a third had undertaken an equal pay review, and only 3% had taken any action to address pay gaps.<sup>1</sup>

This undue complacency among employers is also evidenced in the Government Equalities Office research on reporting of gender pay gap data where the vast majority of employers surveyed had no current, past or planned future involvement in pay reviews because they considered that they already provided equal pay<sup>2</sup>. This demonstrates a lack of understanding about the causes of the gender pay gap, and specifically a lack of recognition that factors other than discrimination in pay systems contribute towards the pay gap. Pay gaps as a result of pay discrimination may result in litigation. However, if gaps are determined by occupational segregation and employers are not persuaded of the business case for gender equality, there is no clear driver for action. We are therefore strongly of the view that transparency measures, such as reporting headline gender pay gaps, should exist alongside a requirement to take action to address identified gaps.

It is critical that a clear methodology should be used for identifying gaps in an organisation. Headline pay gap figures can obscure inequalities that persist in one particular area of an organisation, and it may be more helpful to require employers to publish a wider range of indicators. This may include full and part-time pay gaps, and occupational segregation information such as the

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<sup>1</sup> Close the Gap (2013) *Missing Out on the Benefits: Summary of research on the reporting of the gender pay gap in Scotland* <http://www.closesthegap.org.uk/content/resources/Missingoutonthebenefits-CTG.pdf>

<sup>2</sup> Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London

representation of women at senior and management levels, and the distribution of women and men across the business.

There is no consensus on measurement of the pay gap. With regards to averages, Close the Gap prefers the mean to be used, as opposed to the median. The mean is the international standard, which affords comparisons internationally. The arguments in favour of using the mean are well-rehearsed: it avoids the problem of the median, which does not capture the difference in men's and women's pay caused by the exceptionally high earnings of a small number of (almost exclusively) male workers. Having a clear methodology will enable more robust sectoral comparisons, and will make it easier to measure progress.

**Q2: Transparency on gender pay will have an impact on:**

***(a) Encouraging girls and women to consider working in a wider variety of occupations and sectors.***

The publishing of gender pay gaps will not have the direct effect of reducing occupational segregation. Encouraging girls and women into non-traditional subjects and careers requires sustained, meaningful actions from a range of stakeholders including Government, schools, careers advisers, colleges, universities, and employers.

***(b) Encouraging employers to develop their female talent.***

Some employers may identify women's under-representation at senior levels as a contributing factor to their pay gap, and may be encouraged to undertake work around removing gendered barriers to address this. However, the evidence shows that voluntary measures do not compel employers to take action on equalities.

***(c) Encouraging employees to take up flexible working or shared parental leave.***

There is no evidence that the publishing of pay gaps will encourage more employees to take up flexible working or shared parental leave. There is already a high demand from women for flexible working, particularly from those wanting to progress into senior positions where it is rarely found. Our experience is that the resistance to the take-up of flexible working is on the part of employers rather than the employees. For employees to be encouraged to

take up flexible working, policies need to be developed and implemented equally across an organisation.

A high take-up of shared parental leave will require a step change in workplace cultures which in many organisations are unsupportive of male employees working flexibly to share caring responsibilities. Research by ILM found that 58% of fathers feel that their employer is supportive of taking just two weeks paternity leave, and this drops for 2% for male managers. 25% of those surveyed feel that their employer is actively opposed to shared parental leave.<sup>3</sup>

***(d) Encouraging employers to support flexible working or shared parental leave.***

There may be some employers who undertake an analysis, and identify inflexible working as a barrier to women's equal participation, and take steps to support employees to work flexibly. However, entrenched male-oriented workplace cultures, which do not promote flexible working or support the sharing of caring responsibilities, present a significant barrier to this happening on a voluntary basis. The introduction of shared parental leave is a welcome step but the impact of it is yet to be seen, and the Government's own estimate puts projected take-up between 2-8% of families with new babies. Just 10% of new fathers take more than two weeks' paternity leave, and this drops to 2% for managers.<sup>4</sup>

***(e) Encouraging employers to adopt good practice on how to manage and support a multigenerational workforce.***

The pay gap increases with age and peaks at 20.5% for women aged 50-59.<sup>5</sup> The wider pay gap for older women is not a cohort effect; instead older women face a range of barriers which prevent them from participating equally in the labour market. Providing flexible working is a key way of allowing employees with caring responsibilities, either for children or sick or older people, to work, and to ensure that older women are not underemployed in undervalued, insecure, low-paid jobs. However, research shows that becoming a good practice

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<sup>3</sup> Institute of Leadership and Management (2014) Shared Opportunity: Parental leave in UK business <https://www.i-l-m.com/~media/ILM%20Website/Documents/research-reports/shared-leave/ilm-shared-parental-leave-report%20pdf.ashx> accessed September 2015

<sup>4</sup> Ibid.

<sup>5</sup> Close the Gap (2015) *Gender pay gap statistics* [http://www.closesthegap.org.uk/content/resources/1430321086\\_CTG-Working-Paper-14--Gender-Pay-Gap-Statistics.pdf](http://www.closesthegap.org.uk/content/resources/1430321086_CTG-Working-Paper-14--Gender-Pay-Gap-Statistics.pdf)

employer is a low priority for employers, with only 3% of those surveyed identifying it as a factor that may prompt them to look at their gender pay gap.<sup>6</sup>

***(f) Helping those who have a stake in the organisation, including investors, shareholders, and clients.***

Developing good practice on gender equality results in a positive corporate image, which leads to improved recruitment and retention, and being able to attract from a wider pool of talent. Companies with gender diverse senior management teams are more innovative, and that there is an explicit link between financial performance and gender diversity, resulting in increases in return on equity and total return to shareholders.<sup>7</sup> There is however no evidence which shows stakeholders driving change in relation to advancing equality.

***(g) Helping employers to address equal pay in their organisation.***

Our experience, and research, suggests that employers are less likely to take action on gender equality when it is not mandatory<sup>8</sup>. Few employers are currently undertaking work to identify and address pay gaps voluntarily. Without being required to tackle pay gaps after publishing their pay gap, narrowing the pay gap will be very slow.

***Q3: Employees or other interested parties (e.g. shareholders) may want to gauge how an employer's gender pay gap compares with similar organisations. How important do you think comparability is? Not at all important, very unimportant, somewhat important, neither important nor unimportant, somewhat important, very important, don't know.***

Somewhat important.

Being able to compare gender pay gaps with competitors, and on a sectoral level, can be a helpful driver for action.

However, headline figures mask underlying problems so comparison at this level is not always meaningful, and a narrative should also be provided to give context and more detail.

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<sup>6</sup> Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London

<sup>7</sup> Close the Gap (2007) *The relationship between actions to promote gender equality and profit*  
<http://www.closesthegap.org.uk/content/resources/The-relationship-between-actions-to-promote-gender-equality-and-profit.pdf>

<sup>8</sup> Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London

***Q4: Do you think the regulations should specify where the employer publishes their gender pay gap information, for example, in a prominent place on their website?***

Yes.

Publishing gender pay gap information in an accessible place is crucial to ensuring that the measure is truly transparent. This ensures that the information can be easily located so that anyone who wants to find it can. We would favour the publishing of pay gap information in a prominent place on a company's website.

***Q5: Which of the following measures showing the differences in the pay of male and female employees are you currently able to calculate from existing data and systems?***

- (a) An overall gender pay gap figure by calculating the difference between the earnings of men and women as a percentage of men's earnings.***
- (b) Gender pay gap figures broken down by full-time and part-time employees.***
- (c) Gender pay gap figures broken down by grade and job type.***
- (d) None of the above.***

Close the Gap has worked with a range of private sector employers for nearly 15 years. We have supported large private sector employers to undertake equal pay reviews, develop and implement actions to address pay gaps, and remove barriers to women's progression. In our experience, employers are able to access information from existing data and systems to calculate the overall pay and as well as the full and part-time gaps, and also pay gap figures by grade and job type. The part-time pay gap figure is an important indicator of women's equality at work, as the lack of quality part-time work is a key barrier to women's equal representation at senior level. It is also essential that employers look at pay gaps by grade and job type to identify any occupational segregation issues, and develop actions to address the concentration of women in undervalued, low-paid jobs.

***Q6: Do you think that any additional narrative information published by employers should be:***

- (a) Voluntary and not set out within the regulations or non-statutory guidance.***

***(b) Voluntary, not set out in the regulations but set out in non-statutory guidance.***

***(c) Set out within the regulations.***

***(d) Other, please specify.***

(c) Set out within the regulations.

Publishing an accompanying narrative is critical to demonstrating an understanding of an organisation's gender pay gap. Without meaningful analysis which includes results in the identification of where specific problems exist, the publication of a headline gender pay gap can be meaningless and is unlikely to lead to change in practice.

Requiring employers to publish a narrative will also encourage employers to undertake a robust and meaningful analysis of their pay gaps. In turn this will give employers a broader understanding of the causes of the pay gap, and of where women are disadvantaged in their organisation. Developing an understanding of the issues that are specific to their own workplace can also lay the groundwork for starting to develop an action plan to address gaps.

***Q7: How often do you think employers should report gender pay gap information?***

***(a) Every year***

***(b) Every two years***

***(c) Every three years***

***(d) Other***

(a) Every two years.

Calculating the gender pay gap every two years will ensure that employers will have up to date data to work with. This timescale also provides adequate time to develop and implement actions to address pay gaps, and to measure progress.

***Q10: Private and voluntary sector employers in Great Britain with at least 250 employees may fall within the scope of the proposed regulations. Do you think this threshold is appropriate?***

No.

A threshold of 250 employees excludes small and medium enterprises which account for 99.9% of private sector companies in the UK<sup>9</sup>, and most voluntary sector organisations, as 62% of these have fewer than 50 employees.<sup>10</sup>

Women are more likely to work in smaller organisations, both in the private and voluntary sectors. 68% of voluntary sector employees are women.<sup>11</sup> Evidence shows that smaller employers are less likely to have good equalities practice in place<sup>12</sup> because of they are unlikely to have a separate HR function or equalities competence within the business. Smaller employers are also less likely to have undertaken an equal pay review or taken any action to address unequal pay.

In our experience, the employers that are already taking steps to deliver work to narrow the pay gap tend to be large organisations. Extending the regulations to cover all employers would ensure that the majority of female employees are benefit from the new measure.

***Q11: The cut-off period for any calculation of the gender pay gap will need to be specified in the regulations. Which of the following do you consider preferable?***

***(a) 1 January***

***(b) 6 April***

***(c) 1 October***

***(d) The year-end date for each business***

***(e) No preference***

***(f) Other***

We have no view on the cut-off date for publishing pay gap information. If the regulations set out a date by which the information should be published, it should be clearly communicated to employers that there is flexibility within the timescale in that it would be acceptable for them to publish before the date, if this better aligns with their internal reporting processes.

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<sup>9</sup> Department for Business, Innovation and Skills (2014) *Business Population Estimates for UK and the Regions 2014*

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/377934/bpe\\_2014\\_statistica\\_l\\_release.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377934/bpe_2014_statistica_l_release.pdf) accessed September 2015

<sup>10</sup> NCVO *UK Civil Society Almanac* <http://data.ncvo.org.uk/a/almanac15/workforce/> accessed September 2015

<sup>11</sup> Ibid.

<sup>12</sup> Olsen and Walby (2004) *Modelling gender pay gaps*, Equal Opportunities Commission: Manchester

**Q12: The Government is considering a number of actions to help support employers implement the proposed regulations. How helpful do you think the following measures would be?**

- (a) Helping employers to understand the new regulations (e.g. through workshops or seminars).**
- (b) Helping employers to calculate their organisation's gender pay gap (e.g. through access to software).**
- (c) Helping employers with other types of supporting analysis (e.g. analysis of representation of women at different levels in the workforce).**
- (d) Helping employers to address the issues identified by a pay gap analysis.**
- (e) Other**

(a), (b), (c) and (d)

It is essential that employers fully understand their obligations under the regulations. Raising awareness of the requirements, and ensuring that employers understand the rationale for publishing their gender pay gap, will be key to success.

Our experience of working with public bodies in Scotland on the Scottish specific duties on the publishing of gender pay gap and occupational segregation has shown that employers require a significant level of support in order to meet their obligations and to perform well in this area.

Close the Gap produced guidance<sup>13</sup> for the sector on the public sector equality duty and the requirements of Scottish specific duties on gender and employment, equal pay and occupational segregation. We also delivered training and capacity building work, and supported individual organisations in the reporting process. In our experience, there were knowledge gaps in relation to the calculation of the pay gap; analysing gender disaggregated data; understanding and analysing occupational segregation information; and developing of actions to address pay gaps. This was also reflected in our assessment of public sector compliance with the duty.<sup>14</sup> Given that there is more equal pay activity in the public sector, and narrower pay gaps than in the

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<sup>13</sup> Close the Gap (2012) *Public Sector Equality Duty: Guidance for publishing information on gender and employment, equal pay and occupational segregation*  
[http://www.closesthegap.org.uk/content/resources/1374995703\\_CTG-PSED-guidance-for-employers-August-2012.pdf](http://www.closesthegap.org.uk/content/resources/1374995703_CTG-PSED-guidance-for-employers-August-2012.pdf)

<sup>14</sup> Close the Gap (2014) *Monitoring Scottish public bodies' compliance with the public sector equality duty*  
<http://www.closesthegap.org.uk/content/resources/CTG-Working-Paper-12---Monitoring-Scottish-public-bodies-compliance-with-the-public-sector-equality-duty.pdf>

private sector, it is extremely likely that private sector employers will require considerable support in this area.

***Q13: Do you think there are alternative ways to increase transparency on gender pay that would limit the cost for employers, for example reporting to the Government via the existing PAYE system?***

No.

We do not believe that reporting pay gaps via the PAYE system will increase transparency, as figures will not be publically accessible nor will they be shared with employees using this method. Using the PAYE system is unlikely to allow employers to provide a detailed narrative on their headline figure, and would also require significant additional resources within Government to process.

***Q14: Do you think that introducing civil enforcement procedures would help ensure compliance with the proposed regulations?***

Yes.

It is critical that any agency tasked with monitoring compliance is adequately resourced to undertake this work. The UK Government should provide increased resources to the Equality and Human Rights Commission to undertake the compliance work on pay gap reporting. Separate resources should also be allocated to the Commission in Scotland to undertake work with large private and voluntary organisations in Scotland.

***Q15: What do you consider to be the risks of unintended consequences of implementing section 78?***

Where employers publish their pay gap, and do not address the gaps, there is the potential for a negative impact on employee morale and workplace relations, and also a potentially increased number of equal pay claims.

***Q16: Do you consider there are any risks or unintended consequences that warrant dropping or modifying the implementation of section 78?***

Without being mandated to take action, there is a risk that companies will publish gender pay gap information but not undertake any work to address gaps. We are therefore of the view that companies should be required to develop an action plan to address unequal pay within as well as publishing pay gaps.

***Q17: How do you think Government can most effectively encourage young girls to consider the broadest range of careers?***

Occupational segregation is a cradle to labour market problem, and requires a range of interventions from a variety of stakeholders along the skills pipeline, and from employers. Existing and previous initiatives on increasing the number of girls and young women in non-traditional subjects tend to short-term and small scale. Although such initiatives can be successful, they impact a small number of girls and young women, and are expensive which makes it difficult to scale up on a national level. It is therefore critical that activity on occupational segregation is mainstreamed into the day to day delivery of all stakeholders. All policies and practices relating to Government-funded and public sector initiatives and programmes should be gender impact assessed to determine whether they are impacting differently on girls and boys, and young women and men.

Some examples of activity that could start to address occupational segregation in subject and career choice include:

- Taster sessions and work placements for girls in non-traditional subjects;
- Awareness raising for parents on gender stereotyping, and the impact it has on young people's choices;
- Equality training, including specific capacity building on occupational segregation included in teacher training;
- Capacity building for teachers on occupational segregation and the gender pay gap;
- Capacity building for careers advisers on occupational segregation and the gender pay gap; and
- Positive role models showing women in male-dominated occupations.

Close the Gap's *Be What You Want* campaign<sup>15</sup> is targeted at young people aged 11-14, and aims to encourage them to make informed decisions about subject and career choices by raising awareness of occupational segregation and gender stereotyping. We developed comic strips and posters depicting young people in a range of scenarios when making decisions about their future, which were sent to every primary and secondary school in Scotland. We have also developed a continuing professional development resource for teachers on occupational

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<sup>15</sup> [www.bewhatyouwant.org.uk](http://www.bewhatyouwant.org.uk)

segregation which will be piloted with schools in partnership with Skills Development Scotland and Education Scotland.

***Q18: How do you think the Government can work with business to support women to return to work and progress in their career after having children?***

Pregnancy and maternity discrimination

Initial findings from research by Equality and Human Rights Commission and Department for Business, Innovation and Skills has found that 54,000 women are forced out of their jobs each year because of pregnancy and maternity discrimination.<sup>16</sup> This represents a significant increase from findings of similar research carried out in 2005 which suggested that 30,000 per year lost jobs because of pregnancy discrimination<sup>17</sup>. This shows that women returning to work after having children face considerable barriers and discrimination in a range of ways.

Women who have experienced discrimination are now further disadvantaged by the introduction of tribunal fees which makes it more difficult to access justice. This has precipitated an 83% drop in equal pay claims and 77% drop in sex discrimination claims.<sup>18</sup>

Employers should collect data on women returners and their destinations, analyse to identify potentially discriminatory practices. They should also gather information through exit interviews with women leaving after having children to establish the barriers to their continued employment with the organisation.

Flexible working

The regulations on flexible working was extended to all employees this year, and this is to be welcomed. However, the regulations are weak in that the business reasons for refusing a request to flexible working are broad, and employers are able to refuse a request very easily. The regulations should be strengthened to

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<sup>16</sup> Equality and Human Rights Commission (2015) *Pregnancy and Maternity-related Discrimination and Disadvantage – First Findings: Surveys of employers and mothers*  
[http://www.equalityhumanrights.com/sites/default/files/publication\\_pdf/Pregnancy-and-maternity-related-discrimination-and-disadvantage.pdf](http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Pregnancy-and-maternity-related-discrimination-and-disadvantage.pdf) accessed September 2015

<sup>17</sup> Adams, L., McAndrew, F., and M. Winterbotham (2005) *Pregnancy discrimination at work: A survey of women*, Equal Opportunities Commission: Manchester

<sup>18</sup> UNISON *Massive drop positive proof that tribunal fees are pricing workers out of justice*  
<https://www.unison.org.uk/news/article/2014/06/massive-drop-positive-proof-that-tribunal-fees-are-pricing-workers-out-of-justice/> accessed September 2015

ensure that employees who want to work flexibly can. Government should support employers in this by

Employers should be encouraged to consider flexible working options such as part-time working, jobshare and compressed hours in the design of jobs. This may require awareness raising and capacity building to ensure that employers have an increased understanding of how their organisation can benefit from flexible working.

### Childcare

Childcare is the most immediate barrier to women's participation in the labour market. The provision of quality, accessible childcare is patchy, and the prohibitively high costs mean that many women leave their jobs. UK Government should work with employers to encourage them to consider enhancing family friendly workplace policies by providing employees with a childcare allowance, or enabling them to access childcare vouchers.

### ***Q19: How do you think the Government can make sure that older working women are able to fulfil their career potential?***

Older women experience discrimination and disadvantage in the workplace a range of ways. They are more likely to be concentrated in low-paid, undervalued work such as cleaning, caring and retail, and experience limited options for training and development. Part-time, low-paid women are the group of employees least likely to receive training.

Sex and age discrimination mean that any older women find it difficult to re-enter the labour market if they have taken time to care, or have been made redundant. Many older women are also forced into leaving their jobs because they are unable to work flexibly to combine work with unpaid caring.

UK Government should encourage employers to take an intersectional approach to their employment practice to ensure that the design of policies and practices takes the experiences of older women into account. Older women need flexible working to be able to participate in the labour market, and to progress in the workplace. Employers should also value and invest in their older female workers to ensure that their skills are effectively utilised.