



## **Close the Gap briefing for Members' Business: International Women's Day Break the Bias**

**March 2022**

Close the Gap is Scotland's expert policy and advocacy organisation working on women's labour market participation. We have been working with policymakers, employers and trade unions since 2001 to influence and enable action to address the causes of women's inequality at work.

### **1. International Women's Day**

Close the Gap welcomes the annual International Women's Day debate in the Scottish Parliament. This year's theme, 'break the bias', highlights that gender stereotyping and discrimination are key barriers to the realisation of women's equality. This remains true in the Scottish labour market, with discrimination continuing to characterise many women's experiences of employment. This is particularly true for specific groups of women including Black and minority ethnic (BME) women and disabled women. Women's experiences of discrimination and bias within the labour market restricts their ability to enter and progress within good quality employment, contributing to women's financial precarity. This briefing highlights key aspects of women's discrimination in employment including pay discrimination; pregnancy discrimination; and the experiences of BME women at work.

International Women's Day is an opportunity to consider the actions that are necessary to make progress towards gender equality in Scotland. Despite increasing focus on the gender pay gap, including the publication of Scotland's first gender pay gap action plan in 2019, we are still very far from meaningful progress on the inter-related barriers women face in entering and progressing in employment. Substantive action is required by the Scottish Government, its delivery agencies and employers to address the biased and discriminatory policy and practices which continue to underpin women's inequality in the labour market.

### **2. Black and minority ethnic women's experiences of the labour market**

Close the Gap published research in 2019 on the labour market experiences of BME women in Scotland.<sup>1</sup> *Still Not Visible* captures data on key aspects of employment across

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<sup>1</sup> Close the Gap (2019) *Still Not Visible: Research into Black and minority ethnic women's experiences of employment in Scotland*

recruitment, development and workplace culture. The main conclusion drawn from this research is that **BME women continue to face high levels of racism, racial prejudice, discrimination and bias in the labour market which ultimately impacts their ability to secure, retain and progress within sustainable, good employment.** The key findings include:

- Almost three-quarters of respondents reported they had experienced racism, discrimination, racial prejudice and/or bias in the workplace.
- 47% of respondents believed they had experienced racism, discrimination, racial prejudice, and/or bias when applying for a job.
- 42% of respondents indicated they had experienced bullying, harassment or victimisation because they are a BME women.

Despite this, **just over half (52%) of respondents who had experienced racism, discrimination or harassment in the workplace said they did not report it. Of those who did report, less than a quarter were satisfied with how their complaint was handled.** Reasons for not reporting included feeling that their line manager would not support them; feeling it would not make a difference; and thinking that their complaint would not be kept confidential. These findings highlight critical failings in current reporting mechanisms and suggests poor employer equalities practice. Close the Gap's work on compliance with the public sector equality duty (PSED) and gender pay gap reporting regulations has highlighted that employers are not yet prioritising work on equalities, and intersectional approaches to equalities work remain minimal. There is little evidence that employers are taking action to advance equality for BME women at work.

These findings highlight the need for substantive action by employers and policymakers to tackle the causes of BME women's inequality at work. Close the Gap will shortly be publishing guidance for employers, to enable them to address BME women's inequality through improved recruitment practice; fostering a workplace culture which feels inclusive to BME women; offering improved flexible working; supporting BME women with caring responsibilities; and creating gender and race-sensitive development opportunities. This guidance has been informed by engagement with BME women and reflects their lived experiences.

### **3. Pregnancy and maternity discrimination**

Research by the Equality and Human Rights Commission (EHRC) found that pregnancy and maternity discrimination remains widespread in the Scottish labour market. **Almost half of mothers in Scotland (46%) said that pregnancy and maternity discrimination has negatively impact on their employment, status or job security.**<sup>2</sup> Women reported not being informed about promotion opportunities; being denied training opportunities; threatened with dismissal or put under pressure to hand in their notice or leave. During

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<sup>2</sup> Equality and human rights commission (2016) 'Three out of four Scottish working mothers say they've experience pregnancy and maternity discrimination' Available at - <https://www.equalityhumanrights.com/en/our-work/news/three-out-four-scottish-working-mothers-say-they%E2%80%99ve-experienced-pregnancy-and>

the pandemic, research by the TUC also found that pregnant women, women on maternity leave, and women returning to work after maternity leave were facing increasing discrimination in the workplace.<sup>3</sup> **One in four pregnant women and women on maternity leave experienced discrimination or less favourable treatment at work including being singled out for redundancy or furlough.** The research also found that pregnant women's health and safety rights were being routinely breached during the crisis, leaving women feeling unsafe at work or without pay when they were unable to attend their workplaces.

Flexible working opportunities are vital in enabling women with caring responsibilities to balance earning and caring. However, **only 27% of jobs in Scotland are currently advertised with flexible options** and women are often reluctant to ask about flexibility during the recruitment process because of a legitimate fear of discrimination. Even when women's flexible working requests are accepted, this can still lead to experiences of discrimination. **Around half of mothers (51%) who had their flexible working request approved said it resulted in negative consequences as they were treated less favourably as a result.**<sup>4</sup> This research aligns with evidence around the impact of the "motherhood penalty" which remains a significant cause of occupational segregation, including women's under-representation in senior roles, and the gender pay gap.

This highlights the prevalence of negative employment practice around pregnancy and maternity rights. Indeed, **more than a quarter (27%) of employers felt pregnancy put an unreasonable cost burden on the workplace and almost 1 in 5 (18%) employers felt it was reasonable to ask prospective employees about their plans to have children at an interview.**<sup>5</sup> Much of the legislation protecting pregnancy and maternity rights at work, originated in, or were strengthened through, EU membership.<sup>6</sup> Close the Gap is therefore concerned about the threat that Brexit presents to women's equality and rights at work.

#### 4. Pay discrimination

Employer complacency around whether employment practice is sensitive to gendered concerns is particularly acute around pay discrimination. The equal pay review is the methodology by which employers can review their pay systems and practice to check for discrimination, and is the only way employers can be sure that they are providing equal pay.<sup>7</sup> Research by Close the Gap on employer action on the pay gap found that while **94% of employers surveyed had an equal pay policy, less than a third had undertaken**

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<sup>3</sup> TUC (2020) *Pregnant and precarious: new and expectant mums' experiences of work during COVID-19*

<sup>4</sup> EHRC (2016) 'Three out of four Scottish working mothers say they've experience pregnancy and maternity discrimination' Available at - <https://www.equalityhumanrights.com/en/our-work/news/three-out-four-scottish-working-mothers-say-they%E2%80%99ve-experienced-pregnancy-and>

<sup>5</sup> Ibid.

<sup>6</sup> Civil Society Brexit Project (2019) *Brexit and Women's Rights*, available at: <https://www.civilsocietybrexit.scot/wp-content/uploads/sites/49/2019/05/csbp-briefing-may-2019-womens-rights.pdf>

<sup>7</sup> The equal pay review was developed by the then Equal Opportunities Commission, and enhanced by the Equality and Human Rights Commission. See <https://www.equalityhumanrights.com/en/advice-and-guidance/how-implement-equal-pay>

**an equal pay review, and only 3% had taken any action to address pay gaps.**<sup>8</sup> Research by the UK Government Equalities Office<sup>9</sup> also found that **62% of employers had no current, past or planned future involvement in pay reviews because they considered that they already provided equal pay.**

The problem of equal pay is most keenly exemplified by the protracted implementation of Single Status in local government. It is estimated that **once claims are settled, the total cost across Scotland's councils will be £2 billion.**<sup>10</sup> **More than 21,000 equal pay claims remain outstanding across Scottish local authorities,**<sup>11</sup> and workers could potentially make new claims against councils. The systematic undervaluing of stereotypically female roles in local government serves as a sharp example of the financial and reputational risk to employers of not taking action on equal pay. The public sector equality duty requires public sector employers to proactively take action to address the inequality and discrimination that women and other protected groups face in employment. However, performance of the duty has steadily deteriorated with an increasing number of employers not complying with reporting requirements and there is little evidence of any meaningful change on women's equality at work.<sup>12</sup>

High profile equal pay challenges are also now emerging in the private sector with women shopfloor workers pursuing equal pay claims comparing themselves to male warehouse staff. For example, **women checkout workers are pursuing an equal pay claim against Asda, with the supermarket reportedly facing backdated pay claims totalling £8 billion.** Similar parallel claims are currently being pursued by women workers at Tesco, Next, Sainsburys, Morrisons and Co-op.<sup>13</sup> This demonstrates the problems arising from the absence of job evaluation based on equal value principles and their consolidation into pay structures.

In spite of the high-profile equal pay cases in retail, the UK gender pay gap reporting regulations have, however, generally had the perverse effect of making pay discrimination as a cause of the pay gap more invisible. In attempting to clarify the difference between the pay gap and equal pay, comms around pay gap reporting from UK Government and the regulator Equality and Human Rights Commission, implied that pay discrimination was not relevant to gender pay gap reporting. This is borne out in the findings of Close the Gap's assessment of employer pay gap reporting. **Of 200 Scottish employers reports that Close the Gap assessed, only one mentioned an equal pay**

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<sup>8</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>9</sup> Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London

<sup>10</sup> Ward, Sarah (2021) '21,000 pending equal pay claims against Scottish councils', *The Times*, available at <https://www.thetimes.co.uk/article/21-000-pending-equal-pay-claims-against-scottish-councils-3gbrn6r6d>

<sup>11</sup> Ibid.

<sup>12</sup> Close the Gap (2021) <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-response-to-the-Scottish-Governments-call-for-views-on-the-review-into-the-effectiveness-of-the-Public-Sector-Equality-Duty-in-Scotland-Stage-2.pdf>

<sup>13</sup> Scottish Government (2021) *International Mechanisms to Revalue Women's Work: Research exploring and evaluating international mechanisms that aim to revalue or result in the revaluation of women's work*

**review, and one mentioned job evaluation.**<sup>14</sup> Pay discrimination is not the only cause of the gender pay gap, but it is an important driver that is increasingly dismissed.

## 5. Older women's employment and Covid-19

At the start of the pandemic, job disruption was having a disproportionately negative impact on young people's employment. However, this trend has now reversed with older workers being more affected by Covid-19 job disruption. **At the end of the job retention scheme, older workers accounted for the majority of furloughed staff,**<sup>15</sup> and **10% of those who were made redundant during the crisis were aged 60 or over.**<sup>16</sup> This is significant as older workers tend to take longer to return to work than their younger counterparts; are less likely to move into new industries and sectors; and often return to employment on lower pay.<sup>17</sup>

Prior to the pandemic, older women already experienced multiple barriers to good quality employment on the ground of age and gender, and were also more likely to be experiencing poverty. For example, research by Age UK found that **1 in 5 female pensioners in 2021 were living in poverty.**<sup>18</sup> Older women are more likely to have dual caring responsibilities, providing care for ageing parents while also supporting their children or grandchildren. These caring responsibilities, which increased over the course of the Covid-19 crisis, makes it difficult for them to enter employment or increase their working hours. The pandemic could therefore have significant consequences for older women's economic and labour market equality.

The Institute for Employment Studies highlight that there has been a sharp decline in economic activity among women aged over 65. Older women are moving into retirement, rather than unemployment, and many older women are reporting that they are not seeking to return employment due to long-term sickness. **Among older workers who were made redundant during the pandemic, nearly six in ten were neither in work nor searching for work six months later.**<sup>19</sup> While concerns about the pandemic catalysing huge rises in unemployment have not come to pass, rising economic inactivity among older women is a growing concern. Addressing this should be a priority for Scottish Government and labour market policymakers in the aftermath of the pandemic.

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<sup>14</sup> Close the Gap (2018) *The Road to Change? An assessment of Scottish employer reporting of the UK gender pay gap regulations*, available at: <https://www.closesthegap.org.uk/content/resources/The-Road-to-Change.pdf>

<sup>15</sup> Resolution Foundation (2021) *Post-furlough blues What happened to furloughed workers after the end of the Job Retention Scheme?* Available at <https://www.resolutionfoundation.org/publications/post-furlough-blues/>

<sup>16</sup> IFS (2021) 'COVID has shown that inequality is about more than jobs or earnings' available at <https://ifs.org.uk/publications/15821>

<sup>17</sup> Ibid.

<sup>18</sup> Age UK (2021) *Pensioner Poverty: Making ends meet: why pensioner poverty is still an issue*

<sup>19</sup> Institute for Employment Studies (2021) *Labour market statistics, October 2021* available at <https://www.employment-studies.co.uk/system/files/resources/files/IES%20briefing%20paper.1%20-%20Labour%20Market%20Statistics%20October%202021.pdf>