



## **Response to the UK Government's consultation on the *Good Work Plan: Proposals to support families***

### **Transparency: Flexible working and family-related leave and pay policies**

**October 2019**

#### **INTRODUCTION**

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

We welcome the proposal to increase employer transparency around flexible working and family-related leave and pay policies. Women's disproportionate responsibility for care and domestic labour significantly impacts their ability to enter and progress in employment on an equal basis with men. The workplace is still centred around "traditional" working patterns which do not accommodate caring roles. Women are twice as likely to give up paid work in order to care and provide 70% of unpaid care in Scotland.<sup>1</sup>

A lack of quality part-time and flexible work is one of the key contributors to the UK's persistent gender pay gap. Close the Gap research on flexible working found no early evidence of an increase in the use of flexible working since the extension of the right to request in July 2014<sup>2</sup>. This suggests persistent cultural resistance from employers to its use.

The business benefits of flexible working are well rehearsed. It helps employers to attract and retain the best talent, and get the most out of their workforce. Offering flexible working enables employers to recruit from a wider pool of talent which can increase diversity in their workforce, and foster a culture of

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<sup>1</sup> Engender (2015) *A Widening Gap: Women and Welfare Reform*

<sup>2</sup> Close the Gap (2019) *Flexible Working for All? The impact of the right to request regulations in Scotland*

innovation. It also contributes to reduced training and recruitment costs, and reduced stress levels, sickness and workplace absence.

Ensuring employers provide clear and publicly available information on their family-related leave and pay and flexible working policies, and recognise the business benefits of such, is crucial in tackling the gender pay gap and female employment gap, increasing paternal involvement in childcare and giving families more choice and flexibility around how they balance work with caring roles. We note that consideration should be given to how these new regulations will impact gender roles, and therefore gender equality more widely.

## **ANSWERS TO CONSULTATION QUESTIONS**

### **Section 1: Publishing family related leave and pay and flexible working policies**

#### **Question 1**

**Do you agree that large employers (250+ employees) should publish their family related leave and pay policies on their website?**

We **strongly agree** that large employers should publish their family related leave and pay policies on their website. This has clear benefits for the employer, and its current and prospective employees. By publishing these policies employers can use them to attract talent and demonstrate that they are a sector leader in family related provision. It is an opportunity for the employer to send a clear message that they support family-friendly working. This will also enable them to retain their talent, by ensuring current employees are aware of their entitlements.

#### **Question 2:**

**Do you agree that large employers (250+ employees) should publish their flexible working policies on their website?**

We also **strongly agree** that large employers should publish their flexible working policies on their website. As described in the response to question 1, increased transparency has clear benefits to for the employer and its current and future workforce. By communicating their policy on flexible working

employers can use this to encourage applications from a wider pool of talent and to build a reputation as a good employer. It will also ensure their current employees are aware of the employer's policy on flexible working and may support the development of a positive workplace culture around its use.

### **Question 3:**

#### **Do you agree that transparency of these policies will help employers to recruit and retain staff?**

We **agree** that employer transparency on these policies *can* help employers to recruit and retain staff, but this depends strongly on the content of the policies and their successful implementation.

Publishing policies on employer websites may act as an incentive to prospective employees, particularly if the policy goes beyond the statutory minimum and compares favourably with the policies of competitor employers. Regarding impact on retention, publishing these policies will enable employers to clearly communicate their policies to their existing workforce. However, if workplace practices do not align with policies this is unlikely to encourage retention among current employees. Transparency on its own is not enough.

Evidence suggests that employees are not always able to access their family related entitlements. 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>3</sup>. This shows that women returning to work after having children face considerable barriers and discrimination in a range of ways. The research also found that when mothers were allowed to work flexibly, around half reported negative consequences such as receiving fewer opportunities at work or feeling that their opinion was less valued.

Employer practice on flexible working is also variable. Close the Gap research on the use of flexible working found no early evidence of an increase in the use of flexible working since the extension of the right to request in July 2014<sup>4</sup>. This indicates the presence of ongoing cultural resistance to flexible working by employers. The research found that there were increases in the use of homeworking and flexi-time which are more equally used by men and women. However, there were also decreases in the use of term-time working and job

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<sup>3</sup> EHRC (2018) *Pregnancy and maternity related discrimination and disadvantage*

<sup>4</sup> Close the Gap (2019) *Flexible Working for All? The impact of the right to request regulations in Scotland*

sharing. This is a concern as these forms of flexible working are much more likely to be used by women, for example to balance caring roles with work. Employers' policies on flexible working must encourage and support genuinely flexible working which meets the needs of different groups of employees.

Effective policy implementation relies on line managers. It is essential that line managers understand and are able to implement family related and flexible working policies. Often the existence of a supportive line manager is key to employees' ability to access their entitlements under particular policies. It is also the case that the complexity of some policies is a barrier to their successful implementation, for example the complexity of implementing Shared Parental Pay<sup>5</sup>. Line managers should receive training to ensure they understand the purpose of the policy and how it should be implemented.

Employers are more likely to be able to access the recruitment and retention benefits of publishing their family related and flexible working policies if they have a workplace culture which supports their employees to take family related leave and to access flexible working without fear of repercussion, whether in their day-to-day working relationships or in their ability to progress in their career. Ensuring their policies support good practice is key to this.

Transparency from employers requires more than publishing their policies; they should also publish information on how flexible working is used in their organisation. For example, this could include the proportion of employees which use flexible working, and the types of flexible working in use in their organisation. Employers should gather data on the impact of their policies to enable this. This will allow employers to demonstrate a real commitment to flexible working.

#### **Question 4:**

**Do you agree that, where the employer has a policy on family related leave and pay which extends the statutory minima, reworking and publishing your internal policy document on a public-facing website would not be a significant or expensive task?**

We **strongly agree** that reworking and publishing a policy on a public-facing website would not be a significant or expensive task. Employers which have invested in the development of good quality policies in order to support their

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<sup>5</sup> House of Commons Women and Equalities Committee (2016) *Gender Pay Gap, Second Report of Session 2015-16*

employees and attract the best talent will wish to ensure that they are able to benefit from publicising them. The process of summarising and publishing their policies is likely to be far outweighed by the recruitment and retention benefits of greater transparency described in our responses to questions 1 and 2.

**Question 5:**

**Do you agree that, as for family related leave and pay, reworking and publishing your flexible working policy on a public-facing website would be simple and inexpensive?**

We **strongly agree**, in line with our response to question 4.

**Question 6: How helpful would the following information be if it was held (and viewable) on a central database – for instance the Gender Pay Gap Reporting Portal:**

**Whether flexible working may be available from the start**

**Approach to place, hours and times of work**

**Approach to informal flexible working (such as later starts to accommodate health and other appointments)**

**Enhancements to different types of family related leave and pay, for example:**

- **Maternity Leave and Pay;**
- **Paternity Leave and Pay;**
- **Adoption Leave and Pay;**
- **Shared Parental Leave and Pay;**
- **parental leave taken in respect of older children;**

**or, any other contractual enhancements to family related leave and pay.**

It would be **very helpful** for all of this information to be held on a central database, such as the Gender Pay Gap Reviewing Portal. The public availability of this information is of benefit to employers, and to current and prospective employees.

Having **all of this information** held together in one location will better enable current and prospective employees to review and assess the policies of

particular employers, and to compare them against others. This will encourage mobility within the labour market, and enable employers to attract and retain the best talent by showcasing their approach to family-friendly and flexible working. It would be beneficial for employers to be able to include additional information which evidences their approach not just in policy terms but in practice. For example, the proportion of their workforce which works flexibly, and the range of flexible options in use. This will enable employers to take additional steps to build and evidence a good reputation on family friendly working practices.

Information on an employer's approach to flexible working is particularly important. Line managers are the gatekeepers of flexible working, which can function as a barrier to progression where flexible working is viewed unfavourably. This is particularly relevant to informal flexible working, which may not be covered in detail by flexible working policies, instead relying on the discretion and ability of line managers to manage this appropriately. If an employee is able to work flexibly in their role due to a supportive line manager, but sees that flexible working is not used consistently across her employer, this may prevent that employee from seeking opportunities in another team to gain experience, or applying for promotion.

Requiring employers to publish information on their family related pay and leave and flexible working policies, and their approach to the different forms of flexible working, will enable prospective employees to feel confident that they will be able to access the entitlements or working pattern that they need, and support current employees to make full use of their employer's policies.

Third sector organisations working on gender equality also use the Gender Pay Gap Portal to access and analyse employer information. A key flaw in the portal's search function is that it is not possible to search for data by UK region, for example Scotland. This hinders regional analysis of the available information and it is important this flaw is addressed.

#### **Question 7:**

**To what extent do you believe that a job applicant's decision on whether to apply for a job depends on the publication of the information mentioned above?**

A job applicant's decision to apply for a job is likely to depend **a lot** on this information, in particular for female applicants. The evaluation of Close the

Gap work with women in the renewable energy sector found that the level of maternity provision offered by employers was a key factor in women's decisions to stay in or leave their job<sup>6</sup>. Research from the Equality and Human Rights Commission on women's perceptions of gender pay gap reporting also showed that almost two-thirds (61%) of women would take an organisation's gender pay gap into consideration when applying for jobs, 58% of women would be less likely to recommend their present employer as a place to work if they had a gender pay gap, and half of women say that a gender pay gap would reduce their motivation in their role and their commitment to their employer<sup>7</sup>.

## **Section 2: A requirement to report or a voluntary approach?**

### **Question 8:**

**How effective do you believe a voluntary approach to encourage greater transparency about an organisation's approach to flexible working and family related leave and pay (e.g. through the Gender Pay Gap Reporting Portal) might be in providing information about employers' policies?**

A voluntary approach to transparency is likely to be **not at all effective**. Evidence shows that employers are unlikely to take action unless required to.

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>8</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>9</sup>. This demonstrates a lack of understanding about the causes of the gender pay gap, and specifically a lack of recognition that

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<sup>6</sup> Close the Gap (2015) *How women's networks and mentoring can address occupational segregation: What policymakers can learn from WiRES*

<sup>7</sup> Available at <https://www.equalityhumanrights.com/en/our-work/news/gender-pay-gap-determines-women%E2%80%99s-choice-employer>

<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

factors other than discrimination in pay systems contribute towards the pay gap.

The UK Government's initial approach to the gender pay gap reporting was the Think, Act, Report initiative, which took a voluntary approach to employer reporting. The results were that of the 280 employers which signed up, only five published their gender pay gaps, demonstrating the need for a legal requirement.

While the new gender pay gap reporting measures are an important first step in addressing the systemic inequality women face at work, the fundamental weakness is that employers are not required to take action that will close their pay gap. Close the Gap's assessment of employer reporting found that:

- **Less than a third of employers had published a narrative** which explained the causes of their pay gap, with many superficial in their analysis;
- **Less than a fifth of employers had set out actions** they will take to close the pay gap, with many actions unmeasurable and unlikely to create change; and
- **Only 5% have set targets** to reduce their pay gap, with some lacking timescales<sup>10</sup>.

The evidence demonstrates that a voluntary approach is insufficient to drive change.

**Question 9: How effective do you believe creating a facility on the Gender Pay Gap Reporting Portal on GOV.UK to record details about an organisation's policies on flexible working and family related leave and pay would be:**

**a. To provide a central point of information for employees or prospective employees?**

Creating a facility on the Gender Pay Gap Reporting Portal to record details of organisations' policies has the potential to be **very effective**, if steps are taken to adequately publicise its location and purpose. There is no publicly available information on the number of people using the gender pay gap portal to view

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<sup>10</sup> Close the Gap (2018) *The Road to Change? An assessment of Scottish employer reporting of the gender pay gap regulations*



employers' pay gaps for the purposes of evaluating their desirability as an employer. It would be useful to investigate this.

Having a range of information which demonstrates an employer's approach to gender equality in the workplace and family-friendly working would better enable current and prospective employees to review and assess the policies of particular employers, and to compare them against others. This could support greater mobility within the labour market, and enable employers to attract and retain the best talent by showcasing their approach to family-friendly and flexible working.

It would be beneficial for employers to be able to include additional information which evidences their approach not just in policy terms but in practice. For example, the proportion of their workforce which works flexibly, and the range of flexible options in use.

Employers should also be required to publish this information on their websites, and include a link to this in job adverts.

### **b. To let employers record the information as a part of the annual cycle of Gender Pay Gap Reporting?**

This approach is likely to be **very effective**, as it aligns with current reporting requirements and will therefore minimise reporting burdens.

#### **Question 10:**

#### **How effective do you believe it might be to encourage employers to set out how they are using greater transparency about their employment policies as part of their gender pay gap action plans?**

This will be **not at all effective**, as the evidence shows that the majority of employers are not publishing gender pay gap action plans in addition to their gender pay gap reporting requirements.

The lack of a requirement for employers to take action to close their gender pay gap is a fundamental weakness of the gender pay gap regulations. Close the Gap's assessment of gender pay gap reporting by Scottish employers found that less than a fifth of employers have set out actions they will take to close the pay gap<sup>11</sup>.

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<sup>11</sup> Close the Gap (2018) *The Road to Change? An assessment of Scottish employer reporting of the gender pay gap regulations*

This evidence also aligns with research published by Close the Gap and the Government Equalities Office on employer action on gender equality which shows that employers are unlikely to voluntarily take action on the causes of the pay gap<sup>12</sup>.

#### **Question 11:**

**Do you agree that it would make sense to enforce a reporting requirement of this kind in the same way as gender pay gap reporting (i.e. a requirement to provide this information as part of the gender pay gap reporting process)?**

We **strongly agree** that a reporting requirement of this kind should be enforced in the same way as gender pay gap reporting.

As described in our responses to questions 8 and 10, existing evidence on motivations for employer action on gender equality consistently finds that employers are less likely to take action to advance women's equality at work unless they are legally required to.

### **Section 3: A requirement to say whether jobs may be open to flexible working in an advert**

#### **Question 12:**

**Thinking about the balance between what it is practical to provide in a short job advert and what is useful to a candidate, which of the following is the best option (please select one)?**

The best option is ***a short statement covering the organisation's approach to place, hours and times of work and a link to a published policy***. Providing a short statement on the employer's approach alongside a policy offers greater clarity than a simple statement such as "Happy to Talk Flexible Working", which is open to interpretation and does not provide clear information on the flexible working practice of an employer. If the statements were required to use a similar format this would aid transparency and better enable prospective employees to make comparisons between employers. enable them to demonstrate themselves as a sector leader.

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<sup>12</sup> See Close the Gap (2013) *Missing out on the benefits: Summary of research on the reporting of the gender pay gap in Scotland*; and IFF Research (2015) *Company Reporting: Gender pay data*, Government Equalities Office

#### **Question 14:**

**If a requirement to provide a link to your flexible working policy on the gender pay gap reporting portal was introduced, do you agree that it would be helpful also to ask employers to record whether they had advertised jobs as open to flexible working?**

We **agree** that employers should record if they have advertised jobs as open to flexible working. It makes business sense that employers which are supportive of flexible working they would wish to use this to attract candidates and set themselves apart from other employers.

Only 6% of jobs paid £20,000<sup>13</sup> or more are advertised as being available on a flexible basis<sup>14</sup> and while all employees have the right to request flexible working, research by Close the Gap has found that there is no evidence of an increase in the use of formal flexible working in Scotland since 2010.<sup>15</sup> Asking employers to include information on flexible working in job adverts, and to record this on the portal, could help to extend the use of flexible working across the labour market.

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<sup>13</sup> £20,000 full-time equivalent or more.

<sup>14</sup> Family Friendly Working Scotland (2017) *The Timewise Flexible Jobs Index Scotland*

<sup>15</sup> Close the Gap (Forthcoming 2019) *Flexible Working for All? The impact of the right to request regulations on women in Scotland*