



Response to the UK Office for Equality and Opportunity call for evidence on equality law

June 2025

1.0 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 trade unions for more than 20 years to influence and enable action that will address the causes of women's labour market inequality. Our vision is for a Scotland where all women have a good working life.

A core function of Close the Gap is expanding the evidence base on women's experiences of the labour market. The experiences of women who are most marginalised, such as disabled women, racially minoritised women, young mothers and victim-survivors of men's violence, is a priority for us. We commission research, conduct primary research, undertake analysis of labour market data, and produce insight into women's diverse experiences of employment. We therefore welcome the opportunity to respond to this call for evidence.

It should be noted that there are widespread data gaps on women's experiences of work, which contribute to their poorer labour market outcomes and higher levels of poverty. This is particularly the case for women who are most marginalised, who are disproportionately affected by poverty and inequality. This is caused by a lack of intersectional gender competence in national and local data gathering and analysis, inadequate investment in intersectional data gathering, and employment practice that has insufficient attention on identifying the experiences of its women workers. There is therefore an urgent need to improve the quality and range of intersectional data at Scotland and UK level, and build intersectional gender competence in policymakers and analysts.

2.0 Answers to specific questions

EQUAL PAY

Question 6. Do you have evidence about the prevalence of pay discrimination on the basis of race, disability and sex in England, Scotland and Wales and/or the effectiveness of existing measures in reducing pay discrimination? [Yes, No]

Yes.

Question 7. What evidence is there on the prevalence of pay discrimination on the basis of race, disability and sex in England, Scotland and Wales? We are particularly interested in evidence relating to:

- the overall prevalence
- how levels and patterns of pay discrimination may differ across different situations, sectors, employer types or types of work
- how these levels and patterns of pay discrimination may differ where the discrimination is based on sex, race or disability

Question 8. What evidence is there as to the effectiveness of existing measures in England, Scotland and Wales in reducing pay discrimination on the basis of race, disability and sex?

Gender pay gap reporting

Close the Gap welcomed the introduction of gender pay gap reporting for large private and third sector organisations in the UK in 2018. It was a welcome first step in tackling the systemic inequalities women face in the labour market, including pay discrimination. At the time of introduction, it was recognised that there was widespread misunderstanding about what the gender pay gap is, and especially how it differs and relates to equal pay. There were also particular considerations for employers around potential equal pay issues given the legal risks of a tribunal if pay discrimination was evident. The employer awareness raising work delivered by UK Government and the Equality and Human Rights Commission attempted to address this misunderstanding. However, the focus on improving understanding of the gender pay gap came at the expense of recognising its relationship to pay discrimination. This awareness raising work has had the effect of diminishing attention on pay discrimination as a major cause of the gender pay gap. For example, there were no case studies on pay discrimination as a cause of the pay gap in UK Government communications

about the new regulations. A graphic was widely used in these communications which included the sentence: “This [the gender pay gap] is not the same as equal pay, which makes it illegal to pay men and women differently for equal or similar work”, accompanied by the words “equal pay” with a cross through it. The Acas guidance for employers on the regulations included only a short paragraph on pay systems. The Equality and Human Rights Commission’s 2017 pay gaps strategy¹ did not mention equal pay reviews or job evaluation, which are critical tools to identify pay discrimination. It is therefore not unexpected that the majority of employers generally do not consider the influence of pay discrimination when looking at their gender pay gap reporting.

This is borne out in analysis by Close the Gap of employer reporting of gender pay gaps over a five-year period. The 2023 report, *Positive Shifts, Persistent Problems*, set out the findings of Close the Gap’s assessment of Scottish employer pay gap reporting in 2021 and 2022, and compares this with assessments done in 2018 and 2019². This allowed for the identification of themes over time and the extent to which the regulations have achieved their purpose of encouraging employers to take action on the pay gap. The assessment included a cross-sectoral sample of different sized employers, ranging from 250+ to 10,000+ employees, which represented 50% of all Scottish employers who reported their pay gap.

A key theme in reporting was employers overstating the difference between the gender pay gap and equal pay, with the result of dismissing equal pay as being relevant. Most employers which published a narrative alongside their gender pay gap information included a statement along the lines of: “It is important to understand that the gender pay gap is not the same as equal pay, which focuses on men and women being paid the same for equal work.”

This is evidence of the widespread misunderstanding about what the gender pay gap is, which often results in its conflation with equal pay. The gender pay gap and unequal pay are two different but related issues. In attempting to clarify the distinction this appears to have had the effect of many employers ruling out unequal pay entirely as a cause of their pay gap. While

¹ Equality and Human Rights Commission (2017) *Fair Opportunities for All: A strategy to reduce pay gaps in Britain*, available at: <https://www.equalityhumanrights.com/sites/default/files/pay-gaps-strategy-fair-opportunities-for-all.pdf>

² Close the Gap (2023) *Positive Shifts, Persistent Problems: A five-year analysis of Scottish employer gender pay gap reporting*, available at: <https://www.closesthegap.org.uk/content/resources/Positive-shifts-persistent-problems-A-five-year-assessment-of-Scottish-employer-gender-pay-gap-reporting.pdf>

discriminatory pay practice does not explain all of the gender pay gap, it is still a significant cause across many organisations.

In each reporting period, Close the Gap's assessment found that most pay gap reports state "we have no issue with equal pay", while at the same time, providing no information on the steps they had taken to ensure equal pay for women. Previous research by Close the Gap found that the vast majority of Scottish employers have not done an equal pay review³, and in this pay gap reporting assessment, only one organisation mentioned plans to do an equal pay review. The assessment also identified a number of employer pay practices that could create pay discrimination, such as pay supplements that are paid predominantly to male workers in an organisation.

The communications strategy to raise awareness of what the gender pay gap is had a perverse effect on employer approaches to gendered pay discrimination. This was compounded by the focus of guidance from Equality and Human Rights Commission and Acas which at best underplayed, and at worst ignored, the importance of pay discrimination as a determinant of the gender pay gap. Gender pay gap reporting has therefore not been an effective measure in reducing pay discrimination on the basis of sex.

Equal pay statements

Under the 2012 Scottish-specific duties of the public sector equality duty, listed public bodies are required to undertake a range of activities to meet the duties. This includes publishing a gender pay gap, gathering employee data by protected characteristic, publishing and reporting on equality outcomes, and publishing an equal pay statement which includes occupational segregation. The individual duties are intended to work in harmony so that activity produced by public bodies delivers improved outcomes for women and other protected groups.

An equal pay statement must contain the authority's policy on equal pay, as well as information on occupational segregation. Public bodies were initially required to publish information related to women and men only, but in 2017 this was expanded to contain equal pay and occupational segregation information in relation to disability and race. Guidance from the Equality and Human Rights Commission on publishing an equal pay statement advises that

³ Close the Gap (2013) *Missing Out on the Benefits*, available at: https://www.closesthegap.org.uk/content/resources/1376469709_Missingoutonthebenefits-CTG.pdf

“an equal pay statement gives you the opportunity to set out your intention to deliver equal pay, and develop steps towards achieving this.” It further sets out that the policy might include:

- “A commitment that the organisation will carry out an equal pay review or audit
- A commitment to monitor pay regularly in partnership with trade unions or employee representatives
- Your objectives on equal pay
- Actions which you will take
- A named senior manager who will be responsible for the policy’s implementation
- A commitment that the organisation will apply appropriate resources to achieve equal pay.”⁴

The guidance also says that an effective way to identify pay gaps is by undertaking an equal pay audit. It notes that this is not required by the specific duties, but it may help demonstrate that due regard to the need to eliminate gender pay discrimination has been shown.

Close the Gap has undertaken periodic assessments of Scottish public body performance of the duties, which included a detailed examination of how organisations had reported on the requirements related to gender and employment. The assessments identified that despite an obligation to publish an equal pay statement, there is an increasingly diminished focus on pay discrimination and other causes of the gender pay gap.

Our 2013 assessment identified that 56% of public bodies had set an outcome on gender and employment. In 2021 this figure had fallen to 31%.⁵ Public bodies have also failed to use equal pay statements to identify issues with equal pay or set out actions⁶. Our 2017 review assessed 86% of equal pay statements as being of poor quality. The majority of statements assessed were

⁴ Equality and Human Rights Commission (2016) *Employee information and Public Sector Equality Duty: A Guide for public authorities in Scotland*

⁵ Close the Gap (unpublished) *Internal PSED assessment 2017*; and Close the Gap (2014) *Monitoring Scottish public bodies’ compliance with the public sector equality duty*

⁶ Close the Gap (unpublished) *Internal PSED assessment 2017*; Close the Gap (2015) *Making Progress? An assessment of employer compliance with PSED*, available at:

<https://www.closesthegap.org.uk/content/resources/Making-Progress---An-assessment-of-employers-compliance-with-PSED-November-2015.pdf>

largely commitments to principles and were often a copy and paste of previous statements.⁷

Close the Gap's view is that the current duty to publish an equal pay statement is having minimal effect. A policy on its own does not drive action, and public bodies' equal pay statements are largely commitments to principles with no concrete action attached to them. Equal pay is different from the gender pay gap, but they are interconnected. Lessons from the gender and employment duties of the Scottish-specific duties shows us that measures to tackle pay discrimination must be action focused and specific.

Equal pay reviews are more commonly done in the public sector, and a number of pay modernisation programmes, such as Single Status in local government and Agenda for Change in the NHS, have been carried out. Job evaluation is an essential step in doing an equal pay review, and public sector job evaluation schemes have largely succeeded in establishing value-proofed rank order of jobs - if not equal pay⁸. However, research published by Scottish Government on international mechanisms to revalue women's work⁹ notes that attitudes to the value of specific jobs can change over time and according to new circumstances and shifting social values. This was exemplified by Covid-19 which led to a growing and widespread realisation of the importance of undervalued, low-paid female-dominated jobs like cleaning, catering, care, retail and early learning and childcare work. The authors of the research observe that it might be appropriate to amend public sector job evaluation to reflect the high levels of responsibility associated with these jobs. It recommends that guidance should be issued to all public bodies, under the Scottish-specific duties, on the "need to update and maintain job evaluation schemes and ensure that new and changed jobs are evaluated and correctly graded to ensure equal pay for work of equal value".

Policy and regulatory solutions to pay discrimination must be specific and action focused. Close the Gap successfully advocated that a requirement on conducting and reporting on an equal pay review was included in legislation

⁷ Close the Gap (unpublished) Internal PSED assessment 2017. Further analysis is available in Close the Gap (2022) *Submission to the Scottish Government consultation on the review of the operation of the public sector equality duty in Scotland*, available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-SG-consultation-on-the-review-of-the-operation-of-the-PSED-in-Scotland.pdf>

⁸ Scottish Government (2021) *International Mechanisms to Revalue Women's Work: Research*, available at: <https://www.gov.scot/publications/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work/pages/6/>

⁹ Ibid.

that established the Scottish National Investment Bank¹⁰. The Scottish National Investment Bank Act 2020. Section 22 of the Scottish National Investment Bank Act 2020 requires the Bank to undertake regular equal pay reviews, and report to Scottish Ministers on the findings of those reviews as follows:

- (1) The Bank must, from time to time, conduct a review to ensure that it is providing equal pay for equal work (an “equal pay review”).
- (2) The Bank must report to the Scottish Ministers on the findings of an equal pay review.
- (3) A report under subsection (2) must set out—
 - (a) what the scope of the review was,
 - (b) how the Bank has collected data to inform the findings of the review,
 - (c) whether the review has found any differences in pay between any members of staff of the Bank doing equal work,
 - (d) what the reasons are for any such differences, and
 - (e) what steps the Bank will take as a result of the findings of the review.¹¹

The requirement holds significant potential for shaping the Bank’s practice on pay discrimination. However, Close the Gap notes that there is no publicly available information to suggest that the Bank has delivered on this requirement. Its 2025 equality strategy¹² does not mention its legal requirements on doing equal pay reviews. The strategy includes its equal pay statement under the Scottish-specific duties but, as with many public bodies, this is generic information on equal pay. It states that the Bank “undertakes regular equal pay reviews to monitor pay differences across all grades, roles and protected characteristic groups” but there is no detail on this or the action that’s been taken as a result and no reference to its legal obligations set out above. This implementation gap is a failure of the Bank’s leadership, and of inadequate oversight by Scottish Ministers. Despite this sector-leading, gender-competent legislation which has a specific focus on tackling systemic pay

¹⁰ *New legislation puts gender equality at the heart of the Scottish National Investment Bank* (Close the Gap, 2020), available at: <https://www.closesthegap.org.uk/news/blog/new-legislation-puts-gender-equality-at-the-heart-of-the-scottish-national-investment-bank/>

¹¹ See Scottish National Investment Bank Act 2020
<https://www.legislation.gov.uk/asp/2020/3/section/22/enacted>

¹² Scottish National Investment Bank (2025) *Equality Strategy 2025*, available at: <https://www.thebank.scot/equality-strategy-2025>

discrimination, there is a chronic lack of accountability to ensure this is delivered by the Bank.

If effectively implemented mandatory equal pay reviews would drive attention and recourses to the problem of pay discrimination. This would complement gender pay gap reporting requirements, as employers could use the findings of their equal pay reviews to shape their gender pay gap action plan. This would facilitate greater coherence and progress on tackling the pay discrimination and other gendered inequalities in the labour market.

COMBINED DISCRIMINATION

Question 32. Do you have evidence about the prevalence of combined discrimination in England, Scotland and Wales and/or the effectiveness of actions that can be taken to protect individuals against combined discrimination and accessing redress? [Yes, No]

Yes.

Question 33. What evidence is there on the prevalence of combined discrimination in England and Wales and Scotland?

We are particularly interested in:

- the overall prevalence of combined discrimination
- how levels and patterns of combined discrimination may differ across different situations, sectors or regions

Evidence on combined discrimination experienced by racially minoritised women

Close the Gap conducted research with racially minoritised women in Scotland to better understand their experiences of employment. This research, which was published in 2019, explored the intersecting inequalities racially minoritised women face in recruitment, training and development, underemployment, workplace culture, caring responsibilities, and education and skills. The research involved a short review of existing evidence on racially minoritised women's labour market participation and their experiences of employment, including pay gaps, workplace experiences, how caring responsibilities shape labour market participation, participation in Modern Apprenticeships, education, discrimination at the intersection of racism and sexism. It also reviewed evidence on the specific experiences of racially

minoritised migrant women, and Muslim women, and the higher levels of poverty among racially minoritised women.

The research comprised qualitative and quantitative data gathering. We gathered qualitative data from four focus group (n23) held in Glasgow, Dundee and Edinburgh. One group was held with racially minoritised Muslim women. Each group explored the following topics:

- discrimination and racial prejudice including recruitment, progression, pay, and workplace culture;
- caring roles including childcare and long-term care;
- education and skills including further and higher education, non-UK qualifications, and training and development in the workplace; and
- employability services;

We gathered quantitative data from racially minoritised women through an online survey. The majority (60%) of the participants self-reported as being 26-45 years old. 58% of survey respondents spoke English as their first language and 82% of survey respondents were UK citizens. 8% of respondents considered themselves to be disabled. The most common ethnic group of respondents was Pakistani (31%) and when asked about religion or belief, 45% of respondents identified as Muslim.

The sample size is fairly small, and the views presented are not, therefore, completely representative of all racially minoritised women in Scotland. However, despite the limitations, the data and analysis presented glean useful insight about the employment experiences of this under-explored group of women in Scotland and highlights the importance of centring an intersectional analysis to policymaking related to the labour market.

- Almost three-quarters (72%) of survey respondents reported that they had experienced racism, discrimination, racial prejudice and/or bias in the workplace, with those working in the public sector more likely to report this.
- Just over half of respondents (52%) who had experienced racism discrimination and/or harassment in the workplace said that they did not report it. Of those who did report, less than a quarter (23%) were satisfied with how their complaint was handled.
- Around half of racially minoritised women (49%) felt that they had been overlooked for a development opportunity because of racism,

discrimination, racial prejudice and/or bias, with this rising to 61% for those working in the public sector.

- Almost half (47%) said that they had experienced racism, discrimination, racial prejudice, and/or bias when applying for a job, while 41% reported that they had experienced this at an interview for a job.
- 4 % of respondents indicated that they had experienced bullying, harassment or victimisation in the workplace because they are a racially minoritised woman.
- Almost two-thirds (62%) of survey respondents said that their caring roles have affected their ability to do paid work and 59% of respondents with childcare responsibilities indicated that they do not use paid-for childcare.
- Three-quarters (73%) of racially minoritised migrant women had not converted their qualification to the UK equivalent because of a range of barriers including the process being too long (31%) and too complex (26%).

The research identified that racially minoritised women experience specific inequalities at the intersection of gender and race, which overlap and compound, and drive poorer labour market outcomes and higher levels of in-work poverty.

Workplace culture

Toxic workplace cultures are central to the negative employment experiences of racially minoritised women. Women reported that they face many forms of overt racism and discrimination and implicit bias. The 'microaggressions'¹³ that they face on a daily basis include colleagues giving them a nickname or changing their name to something that is seen as 'easier to pronounce'; being treated as though they were less intelligent than their colleagues; and stereotypical expectations about the type of work or position they would hold, for example presuming they are a cleaner or secretary.

Although the vast majority of racially minoritised women had experienced some form of racism, discrimination or inequality at work, more than half did not report it to their employer. Of those who did, less than a quarter were

¹³ Microaggressions are brief and everyday verbal and non-verbal behaviours, whether intentional or unintentional, that communicate hostile, derogatory, or negative prejudices toward women and/or any protected group.

satisfied with how their complaint was handled. Reasons for not reporting included:

- feeling that their line manager would not support them or it was their line manager being discriminatory;
- feeling that it would not make a difference;
- a belief that their complaint would not be kept confidential; and
- a belief that reporting would make things worse.

This signals a core failing in employer equality practice, resulting in undue organisational complacency, a lack of confidence among racially minoritised women employees in complaints handling mechanisms, and as a result racism, discrimination and inequality going unchallenged.

Overall, the sense was that managing racism, sexism and discrimination is exasperating and requires women to put on 'an act'. This constitutes emotional labour whereby women must manipulate their actual feelings, or appearance of her feelings to satisfy the perceived requirements of her job. In the workplace, emotional labour also relates to influencing office harmony and being pleasant and tolerant. Discussions in the focus groups imply that racially minoritised women are required to undertake significant emotional labour in order to be accepted and to cope with negative workplace culture.

One participant explained:

"I smile... I'm telling you, if you want to survive you have to have a cheerful personality, otherwise you will burn."

Others consider whether, given their negative experience as a racially minoritised woman in the workplace and the energy necessary to manage this experience, maintaining their role is worth it:

"It is quite tough and hostile and you say to yourself: is that worth it for my mental health, to come to a workplace where I don't feel wanted?"

Caring responsibilities

Racially minoritised women's caring roles, particularly childcare responsibilities, were identified as a key barrier to entering and progressing within employment. The research found that women find it difficult to plan work around childcare with some forced to use sick leave and annual leave to

manage their caring roles due to the inflexibility of both working practice and childcare provision. The lack of quality part-time work, and assumptions about racially minoritised women's preferences and interests in progression also results in fewer opportunities for progression in the workplace, and sustains their under-representation in senior roles.

Accessing affordable, appropriate childcare was identified as a significant barrier for many racially minoritised women, and a particular challenge for some migrant women. For migrant women, the absence of informal networks of family or friends close by to help with childcare increased the burden of childcare, limiting their ability to enter the workforce or increase their working hours. One focus group participant said:

"I phoned to work and I explained them that my daughter's not well but I don't have any auntie or granny where who can come and stay with my daughter so that I can come to work... I'm OK but there's nobody to be with my daughter, that's the thing. But then my boss was like, 'No! Try to find someone.' I'm like, I don't have, there's nobody. I can't leave my daughter with my neighbour... and it's night-time, she needs to be in her bed, but then I can't leave her. There's nobody who can come in and look after her."

It was also highlighted that some migrant women did not feel comfortable using formal childcare, or may be unaware of the services available to them. There were perceived difficulties in preserving minority cultures within childcare settings, for example providing halal food options, scheduling activities that highlight a range of religious holidays or providing books and materials that feature ethnic minority characters. Racially minoritised women reported a lack of cultural sensitivity, which in part is a cause and consequence of a lack of workforce diversity; the early years workforce in Scotland is overwhelmingly (96%) white.

A focus group participant said:

"So you wouldn't want to leave your child, say two-year-old, with someone who you know has got different religion, got different culture, got different food, and then you leave that child all the day with them... And then you

can't find the person with the same religion as yours, same culture as yours, and if you found them then you can't pay them. That's another thing as well!"

Recruitment

Racially minoritised women face a range of barriers in securing employment, and around half of survey respondents reported experiencing racism, discrimination, racial prejudice, and/or bias both when applying for a job and at interview stage. The figure was higher than average for African women with 57% identifying as experiencing racism, discrimination, racial prejudice and/or bias when applying for a job and 64% at interview stage.

Non-transparent recruitment practice is viewed by racially minoritised women as being laden with racial and gender bias, and the lack of meaningful feedback creates a lack of clarity around how women can enter employment and progress in their careers.

Women also felt discriminated against for having a 'foreign-sounding name' and there was a perception that employers make prejudiced assumptions around an individual's English language skills based upon their name. Language was seen as a real barrier for migrant women in recruitment, but more in terms of employer bias and discrimination around certain accents and language, as opposed to any genuine skills deficit. No matter how competent they had become in speaking English, migrant women felt that they would always be marked as a non-native speaker by their name or their accent. A teacher, who began speaking English in primary one (age 4/5) and has Scottish-born children, explained how the staff on her initial teacher education programme asked if she could make her accent "more Scottish".

Training and development

A lack of transparency around training and development opportunities impacts racially minoritised women's ability to upskill and progress. Around half of survey respondents (49%) felt that they had been overlooked for a workplace development opportunity because of racism, discrimination, racial prejudice and/or bias. Less than half (42%) of women reported that their employer provides clear development opportunities. Exclusionary informal networks, which are often tinged with racial prejudice, and racially minoritised women's propensity to work part-time to accommodate their caring roles make it difficult to access training and development opportunities. This hinders their

progression and reinforces their concentration into different types and levels of work.

There was considerable variation by sector with respondents from the third sector (37%) and private sector (33%) less likely to report experiencing being overlooked. This figure was significantly higher among public sector employees with almost two-thirds (61%) of respondents believing they have been overlooked for a workplace development opportunity because of racism, discrimination and racial prejudice. Throughout the research, racially minoritised women working in the public sector were more likely to believe they have experienced racism in recruitment and training. Inequality in the public sector around in-work development opportunities is particularly concerning given that a relatively high number of women work in this sector. There have also been regulatory requirements on public sector employers to take action on gender inequality since 2007, and on race inequality since 2001. This also calls into question the oft-repeated claim that the public sector should lead the way on building inclusive workplaces.

Equal pay

There is a lack of publicly available pay data, and pay data which is disaggregated by gender and race is particularly difficult to access. It is therefore challenging to understand the extent of unequal pay experienced by racially minoritised women. However, previous research by Close the Gap identified a widespread culture of secrecy around pay across the labour market in general, with only a minority of employers in Scotland having done an equal pay review, with those that have been done often of poor quality¹⁴. Survey findings on racially minoritised women's experiences align with this. Around a third (34%) of respondents indicated that they think they have been paid less than a white and/or male colleague because they are a racially minoritised woman. Again, this points to the need for pay transparency, improved data collection, and improved pay practice by employers.

The public sector: Leading the way or falling behind?

The research found that racially minoritised women working in the public sector were more likely to report experiencing racism, racial prejudice,

¹⁴ Close the Gap (2013) *Missing out on the benefits: Summary of research on the reporting of the gender pay gap in Scotland: Summary of research on reporting of the gender pay gap*, available at: https://www.closesthegap.org.uk/content/resources/1376469709_Missingoutonthebenefits-CTG.pdf

discrimination and bias than respondents from the third and private sectors. This is especially concerning considering that the majority of public sector workers are women and, with the exception of Indian and Chinese women, ethnic minority women are more likely to work in the public sector than white British women. It is also oft repeated that the public sector should lead the way in building inclusive workplaces.

Public bodies in Scotland have been required to tackle discrimination and advance equality for more than a decade, yet the public sector equality duty has not resulted in the transformational change that was envisaged. Moreover, public bodies are very far away from applying an intersectional analysis which means the distinct experiences at the intersection of gender and race are largely invisible in the design and delivery of policy and programmes. Where once it was a given that the public sector was leading the way on equality, there is now mounting evidence that racism, discrimination, and racial prejudice and bias is a growing problem in the sector.

While this research highlights challenges in the public sector, existing evidence on equality practice in the private sector remains. Private sector employers tend to be less engaged in the equality agenda, particularly smaller employers. There are fewer regulatory levers to enable change in the private sector, and it therefore may be the case that in general employees in this sector are themselves less familiar with employer efforts to advance equality. Trade union density is also lower in the private sector, and therefore employees are often less aware of their employment rights.

However, without targeted interventions from employers across the labour market, racially minoritised women's inequality will persist, and will continue to have a detrimental effect on the health, wellbeing and the higher rates of poverty of this group of women.

Evidence on combined discrimination experienced by disabled women

Close the Gap has been undertaking research on disabled women's experiences of the labour market in Scotland. This has involved a literature review, focus groups (n22), interviews (n12) and an online survey (n894).

The review of evidence found that disabled women face a wider gender pay gap than non-disabled women and are more likely to be underemployed or

economically inactive¹⁵. When disabled women are employed, they are more likely to be in low-paid and precarious work. This contributes to the higher level of poverty they face. There are significant data gaps in the evidence base, and a lack of intersectional data gathered and analysed at national level which makes it difficult to gain a Scotland and UK-level understanding of the jobs and sectors disabled women work in, their access to in-work training and development, and experiences of workplace culture more widely.

The research will be published later in 2025. However, emerging findings identify several key themes:

- Inflexible work, poor employer knowledge about disability, discriminatory recruitment practice, caring roles, and social security rules were all identified as barriers to disabled women getting a job.
- Whether or not reasonable adjustments are put in place by an employer is key to positive or negative workplace experiences.
- Being visible in the workplace as a disabled women led to additional work educating others around needs and disability.
- Financial dependency traps women in both unhealthy work environments and low-paid jobs, and in abusive relationships.
- Line managers are central to having a good or bad experience in the workplace.
- Difficulties accessing training makes it harder for disabled women to do their job and progress in the workplace.
- Disabled women felt judged at work, with the vast majority having had their performance questioned formally or informally.
- Experiencing mental and physical harm in the workplace was a common experience.¹⁶

We are currently analysing the survey data but initial analysis¹⁷ identifies concerning levels and types of combined discrimination affecting disabled

¹⁵ Close the Gap (2018) The Gender Penalty: Exploring the causes and solutions to Scotland's gender pay gap, available at: <https://www.closesthegap.org.uk/content/resources/The-Gender-Penalty-Feb-2018.pdf>

¹⁶ *Emerging findings from Close the Gap research on disabled women and work* (Close the Gap, 2024), available at: <https://www.closesthegap.org.uk/news/blog/close-the-gap-research-on-disabled-womens-labour-market-experiences/>

¹⁷ Close the Gap (forthcoming) *Research on disabled women's experiences of employment in Scotland*

women. For example, a around quarter of respondents felt they had experienced discrimination at the application stage of a recruitment process (25%) or at a job interview (28%) with 32% indicating they had found it difficult to navigate a recruitment process. Experiences varied depending on condition and impairment, for example, 68% of neuro-divergent respondents reported they had found it difficult to navigate a recruitment process compared to 29% of those with a mobility-related condition.

Throughout the survey and focus groups there was a common theme that line managers were often aware of their responsibilities regarding reasonable adjustments however responses indicated that this did not always translate to a meaningful and timely change when it came to implementing reasonable adjustments. For example, while 62% of respondents indicated that they strongly agreed or agreed with the statement “My line manager was fully aware of their legal responsibilities in providing reasonable adjustments”, only 36% of the respondents had their reasonable adjustments put in place immediately with 17% indicating that adjustments had never been put in place. Neurodivergent respondents had the lowest levels of agreement that their adjustments were put in place immediately (29% compared to the average across all groups of 36%).

Many disabled women respondents reported that they had felt judged because of their disability, impairment or long-term health condition. 29% said they felt this judgement came from their manager, 36% from colleagues and 10% from customers. Just over half (52%) had had their performance questioned at work because of their disability, impairment or long-term health condition, and 16% were involved in a formal performance review with 36% in an informal capacity.

Related to this, the vast majority of respondents (81%) had felt the need to overcompensate or work harder at their job to prove that they were as capable/productive as colleagues. The highest level of agreement with this question was in participants who were neurodivergent (92%).

Having more than one disability, impairment or health condition also appeared related; those with three or more conditions reported the highest levels of feeling need to overcompensate and having had their performance questioned.

The initial analysis identifies the patterns of combined discrimination experienced by disabled women, and the failures in employer practice to

handle complaint around this. Just under half (47%) of respondents agreed they felt their line manager had doubted their ability to be promoted based on assumptions they have made about their disability, impairment or long-term health condition and because they are a woman. Around a quarter (24%) of respondents disagreed or strongly disagreed that their line manager is supportive of them and their needs as a disabled woman. 44% of respondents reported that they had experienced bullying, harassment or victimisation in the workplace because they are a disabled woman. Over half of those who had experienced this, reported it to their employers, while 43% did not report it. Of those who did report, the vast majority (82%) were dissatisfied or somewhat dissatisfied with the way the complaint was handled.

Disabled women are among the most marginalised in the labour market, experiencing a wide range of overlapping and compounding discriminations at the intersection of gender and disability. This contributes to their concentration in low-paid, undervalued and precarious work, and their higher levels of in-work poverty. They are also more likely to experience higher levels of bullying, discrimination and harassment because they are disabled women. Despite this, there is little evidence that employers are cognisant of the scale and depth of the discrimination disabled women face. Enacting the combined discrimination provision is a necessary first step in leveraging attention and action from employers on this workplace injustice.

Question 37. What evidence is there as to the effectiveness of any other actions to protect against combined discrimination and provide redress for those who have experienced it?

The concept of combined discrimination is broadly aligned with the concept of intersectionality which originates from US scholar and activist Kimberlé Crenshaw. Crenshaw highlights how the experiences of Black women in the US, at the intersection of gender and race, are distinct from both Black men and White women, by creating overlapping and compounding inequalities. Although the language of intersectionality is increasingly adopted in Scotland, primarily in Scottish Government and in some public bodies, this has not resulted in intersectional analysis being used to develop policy. Indeed, even the language is often used incorrectly. In Close the Gap's experience, there is a significant lack of understanding of intersectionality as a concept, and similarly a lack of understanding of how this relates to women's experiences.

The current legal framework for equality does not lever attention from employers to prevent and tackle combined discrimination. There is no legal imperative to analyse and address this type of inequality, and therefore there is little evidence of this happening in organisations. Under the Scottish-specific duties of the public sector equality duty, listed public bodies are required to do a range of things to advance equality and tackle discrimination including publish and report on equality outcomes, do equality impact assessment, report gender pay gaps, gather employee data, do equality mainstreaming, publish an equal pay statement, and report occupational segregation data. Close the Gap works to support public bodies to better meet the requirements of the Scottish-specific duties.

Over the course of more than a decade, we have delivered considerable work around the duties which provides us with an important insight into public sector employer practice on equality. This has included undertaking periodic assessment exercises to understand how public bodies are performing, developing guidance for public bodies on meeting the duties, providing specialist advice to public bodies both individually and at a sectoral level, and through membership of public body equality advisory groups. The evidence gathered shows, and our experience is, that it is vanishingly rare for employers to be proactively focused on combined discrimination. Rather, the trajectory of employer attention on equality is the opposite. Over the past decade, there has been increased move away from examining and taking action on discrimination experienced by specific groups such as women, and instead an increasingly common homogenised approach to equality has emerged, which also often includes human rights. The mission of intersectionality is to examine in detail the intersections of two oppressions such as gender and race. This nuanced approach is at odds with a homogenised approach which applies a broadbrush to all equality considerations.

Research on employer motivations to tackle gendered inequalities, including that published by UK Government¹⁸, is clear. It is the case that most employers will not take substantive action to tackle inequalities in the workforce unless they are legally required.¹⁹ Commencement of the combined discrimination

¹⁸ IFF Research (2015) *Company Reporting: Gender pay data*, Government Equalities Office; Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London

¹⁹ Global Institute for Women's Leadership (2020) *Gender pay gap reporting: A comparative analysis*; and Close the Gap (2013) *Missing out on the benefits: Summary of research on the reporting of the gender pay gap in Scotland*, available at:

https://www.closesthegap.org.uk/content/resources/1376469709_Missingoutonthebenefits-CTG.pdf

provision of the Equality Act is long overdue. It is also an essential step in ensuring that women who are most marginalised such as disabled women and racially minoritised women can seek redress for the intersecting inequalities and discriminations that characterise their lives.

There is also an urgent need to implement a capacity building programme to build intersectional gender competence in employers. Intersectionality is not well understood, and with adequately resourced work to improve knowledge and capability, there is a high risk that commencing the combined discrimination provision will not result in the desired outcome.

SEXUAL HARASSMENT

Question 41. Do you have evidence on effective steps that can be taken by employers to reduce/prevent sexual harassment in the workplace? [Yes, No]

Yes.

Question 42. What evidence is there on effective steps or specific issues that employers should take into account when trying to reduce/prevent sexual harassment in the workplace?

We are particularly interested in:

- effective steps that employers can take in relation to company culture, staff training, how policies are enforced, reporting systems and procedures, and recording and investigating complaints
- how best practice may potentially differ according to employer size, sector, or other factors
- where there may be gaps in the evidence base, noting those identified by the literature review

Sexual harassment is a form of violence against women (VAW) endemic in UK workplaces, and normalised to the point of invisibility for many. VAW is a cause and consequence of gender inequality at work, and women's wider inequality in society. In order to tackle and prevent VAW, including sexual harassment, women's inequality needs to be addressed in all areas, including the workplace. Close the Gap delivers a world-leading, innovative employer accreditation programme, Equally Safe at Work²⁰. The programme is a primary

²⁰ See <https://www.equallysafeatwork.scot/>

prevention intervention which supports delivery of Scotland's national strategy to prevent and eradicate VAW. Equally Safe at Work supports employers to prevent sexual harassment, and other forms of VAW, and advance gender equality at work. Employers are required to meet a wide range of criteria under themes which align with key features of gender equality at work - namely VAW, workplace culture, flexible working, occupational segregation, leadership and data. It was piloted in local government from 2018-20, then further pilots were delivered with NHS boards and third sector organisations. There are 18 accredited employers, with another 17 currently working towards accreditation. A further 40 employers are engaged through the Equally Safe at Work community of practice which facilitates shared learning and peer support.

The programme therefore has a strong focus on enabling employers to understand their role in preventing sexual harassment and other forms of VAW, and taking the necessary steps to challenge sexism in the workplace. Close the Gap has done extensive work to support employers to understand, tackle and prevent sexual harassment at work. This includes developing guidance²¹ and key messages for line managers²²; delivering training to line managers, senior leaders and other key people; developing e-learning modules on sexual harassment; providing quality assurance on sexual harassment policies; and delivering expert workshops to investigators of workplace sexual harassment. We have also developed targeted resources on sexual harassment for SME employers²³, as part of our Think Business, Think Equality online self-assessment tool including guidance, quick guides, case studies, an animation and other awareness-raising materials.

Building capacity on the causes and manifestations of sexual harassment

It is crucial that capacity is built in employers, and especially line managers, on the factors that facilitate sexual harassment. There are a variety of factors that perpetuate sexual harassment in the workplace. Understanding the root causes

²¹ Close the Gap (2022) *Equally Safe at Work line managers' guidance on sexual harassment*, available at: <https://www.equallysafeatwork.scot/resources/Equally-Safe-at-Work--guidance-for-line-managers-on-sexual-harassment.pdf>

²² Close the Gap (2022) *Equally Safe at Work key messages for line managers responding to sexual harassment*, available at: <https://www.equallysafeatwork.scot/resources/Equally-Safe-at-Work--key-messages-on-sexual-harassment.pdf>

²³ See <https://www.thinkbusinessthinkequality.org.uk/toolkit/10-sexual-harassment/75-download-our-resources/>

is integral for taking effective action to prevent sexual harassment from occurring.

Traditional gender roles

Sexual harassment in the workplace largely reflects power imbalances based on gender and is part of a continuum of inequality that women face in the workplace and everyday life. Traditional gender roles and stereotypes around how men and women should act are replicated in the workplace, and they are a driver of sexual harassment. For example, women may be asked to take notes in meetings, or make tea and coffee when that is not part of their job. People may assume that a woman is in a lower role than she is because of her gender. It also means that men are usually in leadership or senior roles, while women are often in roles that are seen as 'women's work'. Because women do the majority of childcare and care in the home, gendered assumptions are made about their capabilities, preferences and career ambitions. Men routinely have more power in the workplace because of their higher status and pay and as a result are over-represented in decision-making roles.

Line managers should consider what actions they can take to reduce power imbalances in their team by, for example:

- taking steps to reduce feelings of isolation,
- addressing the under-representation of men or women in particular jobs,
- ensuring that decision making at senior levels is more representative of different groups, and
- providing sufficient support for workers at all levels.

Everyday sexism

Women report that their experiences are often minimised by colleagues or dismissed as 'banter'. This is because of sexist workplace cultures which enable sexual harassment to go unchallenged, and undermine women in the workplace in more or less subtle ways. Everyday sexism is visible in formal and informal interactions, and manifests in a number of ways in the workplace, for example:

- Women's contributions being valued less; for example, their ideas being dismissed in meetings, or their contributions being initially ignored, only to be repeated by a male colleague later and received positively.

- Women being assigned to fewer higher visibility projects despite having equivalent skills and experience to their male colleagues.
- Women being expected or asked to make the tea or take minutes, irrespective of their role.
- Sexist jokes and remarks dismissed as 'banter', including a preoccupation with a woman's physical appearance, including her clothes.
- The use of language which diminishes, infantilises or sexualises women, e.g. referring to colleagues as 'the girls', or calling a colleague 'darling' or 'love', which creates an environment where women feel they are seen as less valuable or held in contempt.
- Stereotypical expectations around the type of work or the position a woman, or man, would hold; for example, assuming a woman is a lower grade when she is a senior manager, or a man being assumed to be the manager of a team by a visitor from another department.
- Suggesting a female colleague only got a promotion because the hiring manager found her attractive or implying she had slept with him.
- Referring to a female manager as 'bossy' while male managers are seen as assertive and strong.
- The, often unspoken, assumption that women will organise collection sheets, gifts, and nights out for colleagues.

Everyday sexism disempowers women and makes it hard for them to feel like they can come forward. It creates a conducive environment for sexual harassment and makes it difficult for women to feel like anything will change.

Workplace culture

Workplace culture plays a central role in enabling sexual harassment and sexist behaviour. This is because organisations that tolerate this type of behaviour signal to harassers that it's normal and acceptable.

Workplace cultures are perceived to be tolerant of sexual harassment when sexually harassing behaviours go unchecked by managers and colleagues. When this happens, victim-survivors feel less comfortable reporting sexual harassment and may be worried they'll face retaliation if they do.

Establishing a positive and inclusive culture that challenges the everyday nature of sexual harassment is the first step in preventing it. Sexual harassment takes place in part because employees with sexist beliefs and attitudes believe

their behaviour is not bad and that they will not face any consequences for their actions.

Where there is clear signalling that sexual harassment will not be tolerated and has serious consequences, perpetrators are less likely to harass. Furthermore, workplace culture can affect the effectiveness of training on sexual harassment. Employees who think that their employer tolerates sexual harassment have lower levels of motivation to attend the training or engage with the content²⁴. Therefore, unless employers effectively challenge negative culture, actions to address sexual harassment will be unsuccessful.

Another key factor to consider is stress. High levels of workplace stress can be a contributory factor in creating a working environment in which sexual harassment is more likely to occur. When there is either an excessive demand on staff and/or reduced resources, stress can arise. This is because of excessive working hours and limited recovery time, work precarity, or high levels of staff absence, sickness or turnover. In this context, workers are overwhelmed and this can create 'hot spots' of more pervasive workplace incivility, including increased levels of bullying, harassment, verbal and physical incivility and violence, including sexual harassment²⁵.

Employers, and individual line managers, need to understand why sexual harassment is occurring and communicate to staff that it is unacceptable. Reviewing and reflecting on workplace practice is a good place to start. For example, reviewing how easy it is for employees to make a report of sexual harassment or looking at how recent reports of sexual harassment have been dealt with. Employers can also undertake an audit of the workplace culture to understand employee experiences and monitor the prevalence of sexual harassment.

Close the Gap's Equally Safe at Work line manager guidance on sexual harassment provides further evidence-based, practical advice on recognising the signs of sexual harassment, how to mitigate the risk of sexual harassment, how line managers can speak to and support victim-survivors, how they should respond to reports, how third-party harassment should be handled, and how to manage alleged perpetrators.

²⁴ Walsh, B. M., Bauerle, T. J. & Magley, V. J. (2013) *Individual and contextual inhibitors of sexual harassment training motivation*, Human Resource Development Quarterly, 24(2)

²⁵ Searle, R. (2019) *Sexual Misconduct in Health and Social Care: Understanding Types of Abuse and Perpetrators' Moral Mindsets*.

A standalone sexual harassment policy

Many employers will already have policies to manage harassment, either in a generic bullying and harassment policy or in a dignity and respect at work policies. However, it is important that employers do not conflate different forms of harassment, because there are different drivers and solutions. Sexual harassment is gendered, as set out above, and is caused by women's inequality in all aspects of society. Employers should have a standalone policy on sexual harassment which recognises it as a gendered behaviour, and a form of VAW. It is best practice for the policy to include:

- a definition of sexual harassment
- context of sexual harassment as a form of VAW and driver of women's workplace inequality
- examples of sexual harassment which are relevant to the workplace and reflect the diverse range of women it may affect
- who the policy covers
- the organisation's commitment to zero tolerance of sexual harassment, harassment and victimisation
- that sexual harassment or victimisation may lead to disciplinary action up to and including dismissal
 - in a work situation
 - during any situation related to work such as at a social event with colleagues
 - against a colleague or other person connected to the employer outside a work situation, including social media
 - against anyone outside a work situation where the incident is relevant to their suitability to carry out the role
- information on aggravating factors such as abuse of power over a more junior colleague that will be taken into account in deciding what disciplinary action to take
- an effective procedure for receiving and responding to complaints of harassment
- information on addressing third party harassment
- commitment to review the policy regularly.

Developing a standalone policy on sexual harassment is one of the criteria for Equally Safe at Work bronze accreditation.

Building competence, capability and confidence in line managers

Data gathered through Equally Safe at Work found a lack of knowledge in line managers on sexual harassment, particularly on how to respond to disclosures²⁶. For example, when asked how confident they are in responding to a disclosure of sexual harassment, 70% reported that they were not confident or somewhat confident, while just 30% felt very confident. This, along with learning gathered from wider employer engagement work, shows that there is still much work to do with line managers to build greater awareness and understanding on how to respond to sexual harassment. A particular challenge highlighted is how line managers can effectively challenge sexual harassment when it occurs.

It is good practice to build competence, capability and confidence in line managers on all aspects of sexual harassment, how to respond to reports, and how to prevent it in the workplace. Training is an essential step, but by itself is not effective. Too often, training is a one-off intervention, with no follow up which undermines sustained knowledge building, while momentum is lost. Training should be one of a number of measures that an organisation is taking.

Developing an effective set of actions on sexual harassment

Close the Gap highlights that good practice requires a suite of measures to tackle and prevent sexual harassment. This means:

- having a standalone sexual harassment policy;
- having an effective reporting system in place that staff have trust and confidence in;
- visible leadership support with a clear signal that sexual harassment will not be tolerated;
- awareness raising campaigns on sexual harassment which target all staff;
- an action plan, with adequate resourcing to tackle gender inequality at work including everyday sexism; and
- leadership accountability on delivery of the action plan.

²⁶ Data gathered through employee surveys with organisations undertaking Equally Safe at Work accreditation.