



Response to the UK Government consultation on ethnicity pay reporting January 2019

1. Introduction

Close the Gap is Scotland's women and the labour market expert, and delivers policy and advocacy work with a range of organisations that are stakeholders in women's employment including employers, employer representative bodies, policymakers and unions. We are exposed to a breadth of thinking on the part of policymakers and employers about women and the labour market, and workplace equality more generally, including perspectives on the regulatory context and interventions that have been designed to tackle the causes of the pay gap.

Close the Gap has 18 years' experience of supporting employers to calculate and publish their gender pay gap, and to use gender pay gap data as the foundation for action to tackle it. This includes developing guidance and training to enable public sector bodies in Scotland to better perform the public sector equality duty through compliance with the Scottish specific duties, which require listed public authorities to publish a range of employee data, including their gender and ethnicity pay gaps, and to develop equality outcomes to create positive change for people who share protected characteristics.

Following the introduction of the requirement for large employers to publish their gender pay gaps, Close the Gap has undertaken an assessment of gender pay gap reporting by Scottish private and voluntary sector employers. The assessment reviewed the reporting of a cross-sectoral sample of 200 employers in Scotland, and found:

- **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 have 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 gap¹.

These key findings demonstrate that reporting alone does not lead to action or change. The paucity of employers which have analysed and used their data to develop action to close their pay gap indicates a failure of the regulations to match the ambition of the UK Government in closing the gender pay gap.

It is 40 years since race equality legislation was first introduced in the UK and yet Black and minority ethnic (BME) people continue to face high levels of racism, racial prejudice, discrimination and bias in the labour market. The ethnicity pay gap is a longstanding issue with people from ethnic minorities earning less, on average, than White people. Employment rates and pay gaps vary between ethnic groups, and by gender², and BME women face a dual labour market disadvantage on account of their gender and their race.

Our recent research³ identified that BME women face a complex intersection of challenges in the Scottish labour market, facing multiple discrimination simultaneously, as a result of intersecting identities. Evidence shows that BME women face discrimination throughout the recruitment process, disproportionately not progressing beyond interview or, once in the workplace, not progressing within roles. BME women are also affected by occupational segregation and are predominantly found in stereotypically female sectors and jobs such as administration, customer service, and healthcare.

In the face of this evidence, it is clear that employers remain resistant to taking voluntary action to tackle inequality in employment, and it is unlikely that further regulation requiring employers to simply publish information on their ethnicity pay gaps will change this. For this reason it is essential that the regulation must require employers to publish, alongside information on their ethnicity pay gap and workforce composition, a narrative which illuminates this data and explains the reasons for inequality in their workforce, and an action plan to address them.

¹ Close the Gap (2018) *A Road to Change? An assessment of Scottish employer reporting of the UK gender pay gap regulations*

² EHRC (2017) *The ethnicity pay gap*

³ Close the Gap (2019) *Black and minority ethnic women's experiences of the labour market in Scotland* (forthcoming)

2. Answers to specific questions

Chapter 2: Ethnicity pay reporting

1. What are the main benefits for employers in reporting their ethnicity pay information?

The business benefits of greater equality and diversity in the workforce are well rehearsed. Effective utilisation of the talents and capabilities of BME people is a catalyst for growth: evidence suggests that the enabling the full representation of BME people across the labour market could add an estimated £24 billion per annum to the UK economy, the equivalent of 1.3% of GDP⁴. Ensuring their recruitment, progression and promotion practices are free from discrimination and bias will also benefit employers as they will be able to recruit from a wider talent pool, address skills gaps, and see their businesses become more productive, more innovative, and more profitable.

2. What type of ethnicity pay information should be reported that would not place undue burdens on business but allow for meaningful action to be taken?

Please indicate from the list below and state the reasons for your answers.

a) One pay gap figure comparing average hourly earnings of ethnic minority employees as a percentage of white employees

b) Several pay gap figures for different ethnic groups, using standardised ethnicity classifications

c) Ethnicity pay information by £20,000 pay band

d) Ethnicity pay information by pay quartile

e) All of the above

f) Other

g) Don't know

Close the Gap has worked with a range of public, private and third sector employers for 18 years. We have supported large private sector employers to undertake equal pay reviews, develop and implement actions to address pay gaps, and remove barriers to women's progression. We have also developed guidance and training, and provided support to individual public sector

⁴ <https://www.gov.uk/government/statistics/bme-individuals-in-the-labour-market-analysis-of-full-representation>

employers, to enable improved compliance with the public sector equality duty. In our experience, employers are able to access information from existing data and systems to calculate their overall pay gap by gender, and also pay gap figures by grade and job type. Although gathering and analysing pay information by ethnicity may be a slightly more complex process than for gender, there is no reason why employers should not be able to do so.

In Scotland, public sector employers are already required to publish occupational segregation information by ethnicity. Many public bodies have published their ethnicity pay gap by grade alongside this. This demonstrates that it is possible to gather and report this information.

It is essential that employers look at their ethnicity pay gaps by grade and job type to identify any occupational segregation issues and develop actions to address the concentration of BME people in lower paid jobs. Evidence shows BME people are more likely to work in low-skilled, low-paid jobs, and this disproportionately applies to BME women⁵. BME people are also more likely to be over-qualified than white people, but white people are more likely to be promoted at work⁶. Data that enables employers to identify where their BME employees are in their organisation, along with the provision of support to understand the causes of occupational segregation by ethnicity, is essential if employers are to take meaningful steps to close their ethnicity pay gaps.

In order to enable a meaningful analysis and deeper understanding of an employer's ethnicity pay gap, Close the Gap would recommend the following information is reported:

- a) One pay gap figure comparing average hourly earnings of ethnic minority employees as a percentage of white employees;
- b) Several pay gap figures for different ethnic groups, using standardised ethnicity classifications;
- d) Ethnicity pay information by pay quartile; and
- f) Staff composition by ethnicity and grade, and by quartile.

⁵ Equality and Human Rights Commission (2017) *The ethnicity pay gap*

⁶ <https://www.gov.uk/government/publications/race-in-the-workplace-the-mcgregor-smith-review>

This would enable employers to publish a headline ethnicity pay gap alongside richer information, which would provide for accessible and comparable pay gap reports supported by more in-depth analysis.

3. What supporting or contextual data (if any) should be disclosed to help ensure ethnicity reporting provides a true and fair picture?

Although ethnicity pay gaps vary by gender, region and age group, and these factors may help to explain in part why particular pay gaps exist, care must be taken if employers are required to publish contextual information alongside their ethnicity pay information. In our experience, employers do not have the competence to decompose their pay gap information to accurately ascertain the impact of contextual factors thereon. Evidence on gender pay gap reporting shows that many employers explained the causes of their pay gap as a justification for its existence, rather than presenting the causes and the actions that would be taken to solve the problem⁷. For example: “We have a pay gap because women are under-represented in senior roles”, along with a strong sense that men’s and women’s clustering into different types and levels of work was an inevitability, rather than having a set of causal factors to be addressed.

It is not to be expected that employers would take a different approach in the case of ethnicity. Indeed, the McGregor-Smith review highlights this issue in relation to unconscious bias, asking how much of this bias is “truly ‘unconscious’ and by terming it ‘unconscious’, how much it allows us to hide behind it”. Care must be taken that employers do not use ‘unconscious bias’ as a default explanation for inequalities, obscuring and preventing the discussion of the presence of structural racism.

Close the Gap would urge caution if employers are required to include contextual information on region or age, as the available evidence indicates that they are likely to over-rely on these factors as an explanation or justification of their ethnicity pay gap. This may enable those employers who are not minded to comply with the regulation to avoid taking action. However, with this caveat in mind, it would be useful for employers to publish their ethnicity pay gap for men and for women separately, in addition to the overall

⁷ Close the Gap (2018) *A road to change? An assessment of Scottish employer reporting of the UK gender pay gap regulations*

figure. This would build on existing gender pay gap reporting and support intersectional work on the pay gap.

4. Should an employer that identifies disparities in their ethnicity pay in their workforce be required to publish an action plan for addressing these disparities?

Employers should be required to publish a narrative of their analysis of their ethnicity pay gap information, along with an action plan to address its causes. Publishing an accompanying narrative is critical to demonstrating an understanding of an organisation's ethnicity pay gap. Without meaningful analysis which includes the identification of where specific problems exist, the publication of a headline ethnicity pay gap can be meaningless and is unlikely to lead to change in practice.

Following the first set of employer information published under the new gender pay gap reporting regulations, Close the Gap completed an assessment of gender pay gap reporting by Scottish employers. The assessment reviewed the reporting of a cross-sectoral sample of 200 employers in Scotland, and found:

- **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 have 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.⁸

The findings of Close the Gap's assessment are deeply concerning. The theory of change which underpins the gender pay gap regulations is that compelling businesses to report their pay gap would drive them to undertake a gendered analysis of their pay data. Theoretically, this would persuade businesses of the need to undertake an equal pay review to be able to explain and contextualise their figures, and reassure employees and other stakeholders that any gaps were not the product of discrimination. That so few employers have published a narrative, and even fewer still have set out an action plan or targets, suggests

⁸ Close the Gap (2018) *A Road to Change? An assessment of Scottish employer reporting of the UK gender pay gap regulations*

that most employers are not planning to delivery activity that will address the problem.

This aligns with existing evidence on employer actions to advance gender equality at work. Research by Close the Gap into employer action on the gender pay gap 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 gaps⁹.

This undue complacency among employers is also evidenced in research published by the Government Equalities Office 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 pay¹⁰.

There is no reason to believe employers would take a different approach in relation to their ethnicity pay information. The evidence suggests that employers are unlikely to produce a narrative analysis of their ethnicity pay gap, or take action to address it, if this is requirement is not explicit in the regulations. If employers are required by law to publish their ethnicity pay gap information, they will already be doing the work of gathering and reporting the data. It makes good business sense to use this data to drive change, rather than to simply report the information without a plan to act upon it. We are therefore strongly of the view that transparency measures, such as reporting headline ethnicity pay gaps, should exist alongside a requirement to take action to address identified gaps.

Chapter 3: Ethnicity data and classifications

5. Do you currently collect data on ethnicity at your workplace? If yes, do you use standard ethnicity classifications for reporting? If so, which ones?

N/A

⁹ 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>

¹⁰ Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London

6. What do you think are the most effective approaches for employers to improve employee self-reporting or declaration rates?

It is essential that employers embark upon an early communications programme which provides clear and accessible information to their employees on what data they are collecting and why. Employees are more likely to disclose the relevant information if they know their employer is committed to using the data to develop action to address inequalities in their workforce. Employers should also commit to regular reporting on progress towards those actions, demonstrating to employees their commitment to transparency. Indeed, where employers publish their ethnicity pay information, and do not address the issues identified, there is the potential for a negative impact on employee morale and workplace relations.

Employer communications which intend to improve and encourage disclosure should also provide clear assurances around data security and confidentiality.

7. How should self-reporting or non-disclosure rates be reflected in the information reported by employers?

Employers collecting ethnicity data should, in addition to the different classifications of ethnicity, include options for employees to select 'Prefer not to say' and 'Don't know/None of the above', with an optional write-in section to enable additional information to be provided where desired. 'Prefer not to say' will enable those employees who do not wish to disclose their ethnic identity, perhaps due to concerns around confidentiality or how the information will be used, to submit a response. While, a 'Don't know/None of the above'-type option will allow those employees whose ethnic identity does not align with any of the categories, or aligns with more than one category, to provide the relevant information.

It is important that both of these options are available in order to provide employers with a fuller understanding of how and why employees disclose or not. A high number of 'Prefer not to say' responses may indicate to an employer that their employees are not comfortable disclosing their ethnic identity, providing an opportunity for the employer to plan work, e.g. focus groups or anonymous surveys, to understand why employees do not disclose, and to take targeted action to improve disclosure. If a standardised approach to classifications is taken then a 'Don't know/None of the above'-type option ensures employees whose ethnic identity does not closely align with a

relatively narrow set of classification options have the space to respond and provide contextual information regarding their identity.

8. For a consistent approach to ethnicity pay reporting across companies, should a standardised approach to classifications of ethnicity be used? What would be the costs to your organisation?

We support the recommendation of the Coalition for Racial Equality and Rights that a standardised approach to classifications of ethnicity should be used. This should use 5 standardised ONS ethnic classifications from 2011 census, along with 'Prefer not to say' and 'Don't know/None of the above'-type options.

Using a standardised approach will enable greater comparability of ethnicity pay gap data across employers, sectors and regions. In order to support the provision of accurate data, supporting guidance should provide clear information on which ethnic groups fall within the different classifications. Employers should also be encouraged to ensure they also provide this information to their employees as part of their communications around the gathering of ethnicity pay gap information.

While comparability of data may be desirable from a national, regional or sectoral perspective, it is important to ensure that this does not lead to a 'league table mentality' among employers, with those whose ethnicity pay gaps are lower than the average taking this as an indication that they do not have an issue with racial inequality or discrimination in their organisations. Existing evidence on action to advance gender equality at work, and gender pay gap reporting, shows undue complacency among employers, with few planning action to address the causes of their gender pay gaps. Close the Gap's experience of supporting individual public bodies' compliance with the public sector equality duty also indicates a sense of complacency, and associated lack of action, linked to perceived favourable comparisons with similar or neighbouring organisation.

Each employer's own ethnicity pay gap information is their most valuable starting point from which to plan action to tackle the causes of racial inequality in their workforce, and against which to measure progress.

9. Please outline steps that should be taken to preserve confidentiality of individuals.

It is important that employers do not publish data which could lead to the identification of individuals. It is also important, where an employer's dataset includes small numbers, that they are able to identify and report on patterns in that data. This in itself is not precluded by the need to preserve confidentiality. Good practice on publishing small numbers includes e.g. adopting a convention where an asterisk or other symbol is used to mean 'fewer than 10 people', and there is widely available supporting guidance on this particular issue¹¹.

Close the Gap's experience of working with individual public sector employers on compliance with the public sector equality duty has identified that there is a need for capacity building on publishing small numbers of data; this is something that could usefully be included in a package of support for employers who will have to gather and publish their ethnicity pay information for the first time.

Chapter 4: Next steps and government support for employers

10. What size of employer (or employee threshold) should be within scope for mandatory ethnicity pay reporting?

- *All employers*
- ***Employers with 50+ employees (as recommended by the McGregor-Smith Review)***
- *Employers with 250+ employees (as for gender pay gap reporting)*
- *Employers with 500+ employees*
- *Other threshold*

While a threshold of 250+ employees would align with existing gender pay gap reporting regulations, we feel that the employee threshold should be set at employers with 50+ employees, as recommended by the McGregor-Smith Review. A threshold of 250 employees excludes small and medium enterprises

¹¹ <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

which account for 99.9% of private sector companies in the UK¹², and most voluntary sector organisations, as 59% of these have fewer than 50 employees.¹³

Evidence shows that smaller employers are less likely to have good equalities practice in place¹⁴ because they are unlikely to have a separate HR function or equalities competence within the business. In our experience, the employers that are already taking steps to deliver work to tackle inequality in the workplace tend to be large organisations. Ensuring the ethnicity pay reporting regulations cover smaller employers would ensure that the majority of employees benefit from the new measure.

11. What support measures do you think would be useful for employers?

In view of the greater complexity involved in reporting ethnicity pay information, compared to gender pay gap information, it would be helpful to produce a data template for employers to support consistency of reporting. Supporting guidance must make clear that the data should be supported by a narrative describing the employer's analysis of the data, and the actions they will take to address the issues identified.

It is essential that employers fully understand their obligations in relation to reporting ethnicity pay information. Raising awareness of the requirements, and ensuring that employers understand the rationale for publishing their ethnicity pay information, will be key to success.

Close the Gap produced guidance¹⁵ for the public sector on the public sector equality duty and the requirements of Scottish specific duties on gender and employment, equal pay and occupational segregation. We also delivered training and capacity building work and supported individual organisations in the reporting process. In our experience, there were knowledge gaps in relation to the calculation of the pay gap; analysing gender disaggregated data; understanding and analysing occupational segregation information; and

¹² Department for Business, Innovation and Skills (2018) *Business Population Estimates for UK and the Regions 2018* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746599/OFFICIAL_SENSITIVE_-_BPE_2018_-_statistical_release_FINAL_FINAL.pdf accessed January 2019

¹³ NCVO *UK Civil Society Almanac* <https://data.ncvo.org.uk/a/almanac18/workforce-2015-16/> accessed January 2019

¹⁴ Olsen and Walby (2004) *Modelling gender pay gaps*, Equal Opportunities Commission: Manchester

¹⁵ Close the Gap (2016) *Public Sector Equality Duty: Guidance for reporting on gender and employment, equal pay and occupational segregation* <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-PSED-guidance-on-gender-and-employment-2016.pdf>

developing of actions to address pay gaps. This was also reflected in our assessment of public sector compliance with the duty.¹⁶

The findings of our assessment of employer gender pay gap reporting in 2018 found that less than a third of employers had published an analysis of their gender pay gap, with most superficial in nature and indicating a lack of understanding of the causes, and less than a fifth of employers had committed to action to address gendered pay inequalities, with most actions unmeasurable and unlikely to create change¹⁷. This, and our experience of working with public bodies in Scotland on the Scottish specific duties has shown that employers require a significant level of support in order to meet their obligations and to perform well in this area.

There is no evidence that employers will be able to demonstrate greater competence or a different approach when it comes to reporting their ethnicity pay information. Given that there is more activity on employment inequality in the public sector, and the findings of analysis of gender pay gap reporting under the new regulations in the private sector, it is extremely likely that private sector employers will require considerable support in this area.

¹⁶ Close the Gap (2019) *Assessment of employer reporting on the public sector equality duty* [Forthcoming] and Close the Gap (2015) *Making Progress? An assessment of public sector employers' compliance with the public sector equality duty* <https://www.closesthegap.org.uk/content/resources/Making-Progress---An-assessment-of-employers-compliance-with-PSED-November-2015.pdf>

¹⁷ Close the Gap (2018) *A Road to Change? An assessment of Scottish employer reporting of the UK gender pay gap regulations* <https://www.closesthegap.org.uk/content/resources/The-Road-to-Change.pdf>