



Written evidence submitted to the Business, Energy and Industrial Strategy Committee inquiry into executive pay and the gender pay gap in the private sector

April 2018

1.0 Executive Summary

- 1.1 Close the Gap has broadly welcomed the range of data required to be reported under the gender pay gap information regulations. Headline gender pay gap figures and the other data provides a helpful overview of the men's and women's different positions and experiences in an organisation.
- 1.2 We are strongly of the view that companies should also be required to publish an accompanying narrative that provides contextual information about their pay gap. Developing a narrative is critical to demonstrating an understanding of an organisation's gender pay gap, and undertaking this analysis is essential to developing meaningful and effective actions that will narrow a pay gap.
- 1.3 Close the Gap's assessment of Scottish employer reporting found that less than a third of companies had published a narrative which explains the causes of their pay gap, with many superficial in their analysis.
- 1.4 There is no administrative data on pay gap reporting, and there does not appear to be a definitive list which identifies the employers bound by the regulations. Companies do not require to publish data which evidences their calculations, however, given what existing evidence says about the pay gap, it is evident that some employers have reported inaccurate data.
- 1.5 A key weakness in the regulations is the lack of provision for a robust enforcement mechanism. The EHRC will use its existing powers under the Equality Act to enforce the regulations, although there are differing opinions on whether they have the power to enforce fines and

convictions. This lack of clarity will exacerbate complacency among employers who are not committed to closing the pay gap.

- 1.6 Existing evidence on employer motivations on advancing gender equality at work shows that employers are very unlikely to take action unless legally required. This is borne out in the findings of Close the Gap's assessment of pay gap reporting which identified that less than a fifth have published a plan and just 5% have set targets to close their pay gap.
- 1.7 That there is no legal requirement to take action to close their pay gap is the major weakness of the regulations. We therefore strongly recommend that employers are required to publish an action plan with measurable actions that sets out how they are going to narrow their pay gap.

2.0 Introduction

- 2.1 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, including perspectives on the regulatory context and interventions that have been designed to tackle the causes of the pay gap.
- 2.2 Close the Gap recognises that the pay gap is a productivity issue as well as an issue of fairness and equality, and that narrowing the gender pay gap would return aggregate productivity gains to the Scottish economy.
- 2.3 Close the Gap has done considerable work around the business case including publishing a review of the evidence on economic case for addressing women's labour market inequality, producing guidance and tools for employers, producing publications on the business case during periods of recession and recovery, and has listened carefully to employers about the most effective ways of communicating strong arguments for action.
- 2.4 Although a range of bodies and committees have undertaken inquiries and investigations into the gender pay gap, actions have been short-

term and fragmented, and there has never been cohesive, strategic approach to solving the problem. Consequently, progress has been glacial with no substantive change in the systemic and entrenched inequality that women face at work.

- 2.5 Historically the gender pay gap has been seen as the purview of equality committees and organisations, and has not been acknowledged as a drag on economic growth. We therefore very much welcome the Business, Energy and Industrial Strategy Committee's inquiry on the gender pay gap which acknowledges that reducing the pay gap is good for the UK economy.

3.0 Questions

- 3.1 Q1: Whether the annual information related to pay required under the Equality Act 2010 is sufficient? Should any further information be required?

We have broadly welcomed the range of gender pay gap information that large companies are required to report. A headline pay gap figure provides a helpful overall sense of men's and women's different positions and experiences in an organisation. Discrimination embedded within the design of pay systems is a major cause of the pay gap. Pay systems that include any element of discretionary pay, such as bonuses, are commonplace across the private sector but such systems are highly vulnerable to discrimination. The measure of gender gap in bonus earnings is therefore very welcome. The requirement to publish gender-disaggregated data by pay quartiles also provides a useful insight into the distribution of men and women across an organisation and is helpful for highlighting vertical segregation.

- 3.2 However, we are strongly of the view that companies should also be required to publish an accompanying narrative that provides contextual information about their pay gap. Developing a narrative is critical to demonstrating an understanding of an organisation's gender pay gap. Without meaningful analysis which includes the identification of where and why specific problems exist, the publication of a headline gender pay gap can be meaningless and is unlikely to lead to change in practice. It will give employers a broader understanding of the causes of the pay

gap, and of where women are disadvantaged in their organisation. Developing an understanding of the issues that are specific to their own workplace will enable the development of an effective action plan to address gaps, and build capacity within the organisation to design and deliver work to narrow the pay gap.

- 3.3 Close the Gap has undertaken 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 that **less than a third of employers have published a narrative which explains the causes of their pay gap**, with many superficial in their analysis. This aligns with existing evidence on motivations for employer action on gender equality which consistently finds that employers are less likely to take action to advance women's equality at work unless they are legally required to. This evidence, coupled with the findings of our assessment, reaffirms our view that employers should be required to publish an accompanying narrative.

3.4 Q2: What is the extent of compliance? Is the information accurate?

While no administrative data on pay gap reporting has been published yet, it appears that the majority of organisations have reported at least some information on the UK Government online viewing service. The 10,526 employers who have published information here¹ are spread across the private and voluntary sectors in the UK, and the public sector in England. A challenge in assessing the extent of compliance is that there does not appear to be a definite list of organisations that are bound by the regulations. A further challenge is that the online viewing service does not enable the user to search by area of the UK, for example, to search only for Scottish companies. This is a fundamental flaw in the design of the viewing service and creates a considerable barrier to undertaking region-specific compliance work.

- 3.5 It is not possible to determine whether or not gender pay gap information is inaccurate as employers are not required to publish any information to evidence their calculations. However, given the existing

¹ UK Government gender pay gap viewing service <https://gender-pay-gap.service.gov.uk/Viewing/search-results> last accessed 20 April 2018.

evidence on gender pay gaps across different industries of the labour market, it is possible to identify what the common experience is in, for example, companies that are male- or female-dominated or where there is clear vertical segregation with men concentrated in the senior roles in an organisation.

3.6 Close the Gap's assessment of Scottish reporting suggests that some employers are publishing inaccurate information, either wilfully or as a result of miscalculation. Examples of highly dubious pay gap information include:

- Mean and median pay gaps of 0%;
- A mean or median pay gap of 0% and the alternative measure being high e.g. greater than 30%;
- Heavily male-dominated companies, including at senior levels, reporting extremely low pay gaps;
- Exactly the same number of men and women in each of the four pay quartiles.
- Extreme gender gaps in bonus earnings, for instance, -1123.60%.

3.7 An investigation by the Financial Times in December 2017 found that one in 20 of the companies that had reported by that point had published statistically improbable data.² Days before the deadline, The Guardian also reported evidence of companies publishing questionable and inaccurate data including the removal of key employee data.³

3.8 Q3: How effective are the sanctions for non-compliance with reporting requirements?

3.9 At this early stage, it unclear how effective the sanctions for non-compliance will be, as the Equality and Human Rights Commission (EHRC) has not yet concluded its enforcement work. The EHRC's enforcement policy sets out strategy for enforcing the regulations. This includes taking

² Ehrenberg-Shannon, Billy, Aleksandra Wisniewska and Sarah Gordon "Cluster of UK companies reports highly improbable gender pay gap", *Financial Times*, 7 December 2017, available at <https://www.ft.com/content/ad74ba76-d9cb-11e7-a039-c64b1c09b482> last accessed 19 April 2018

³ Topping, Alexandra and Caelainn Barr "Gender pay gap: multiple firms submit questionable data", *The Guardian*, 29 March 2018 available at <https://www.theguardian.com/news/2018/mar/29/gender-pay-gap-several-firms-submit-questionable-data> last accessed 19 April 2018

action against non-complying employers, and those who report inaccurate data.⁴ Furthermore, the policy states that companies who do not comply face an unlimited fine and conviction.

3.10 However, it has been reported that neither the regulations nor the EHRC's existing powers under the Equality Act would enable it to take the action it has set out in its policy.⁵ This is because the regulations do not provide for an enforcement mechanism or sanctions for non-compliance. Rather the explanatory note to the regulations states that failure to comply with the duty will constitute an "unlawful act" within the meaning of s.34 of the Equality Act 2006, which empowers the EHRC to take enforcement action. A lack of adequate statutory enforcement powers is a key weakness of the regulations.

3.11 The unclarity around this is likely to foster a sense of complacency among employers who are not minded to comply with the regulations. This challenge is compounded by an under-resourced EHRC which has felt the sharp end of considerable funding cuts by the UK Government in recent years.

3.12 Q4: What requirements, if any, should there be on companies to address gender pay gaps?

3.13 The requirement of larger employers to publish their gender pay gap information is a welcome small step towards addressing women's inequality at work. At the very least, it will ensure that accountability in the private and voluntary sectors reflects accountability in the Scottish public sector. Listed public bodies in Scotland are already required to publish their pay gap, as well an equal pay statement, and information on occupational segregation in their organisation.

3.14 Close the Gap has undertaken 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:

⁴ Equality and Human Rights Commission (2018) *Closing the gap: Enforcing the gender pay gap regulations*

⁵ Gordon, Sarah, Billy Ehrenberg-Shannon and Aleksandar Wisniewska "Doubt raised on whether UK gender pay gap regulations are enforceable", *Financial Times*, 2 January 2018, available at <https://www.ft.com/content/ed34624a-eca6-11e7-8713-513b1d7ca85a> last accessed 20 April 2018

- **Very high pay gaps of up to 60% in male-dominated sectors** such as construction, finance and oil and gas;
- **Extremely high gender gaps in bonus earnings of up to 100% in male-dominated sectors** such as manufacturing, construction, energy and finance;
- **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.⁶

3.15 The findings of Close the Gap's assessment are deeply concerning. The theory of change which underpins the 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 that most employers are not planning to delivery activity that will address the problem.

3.16 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 gaps.⁷

3.17 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 pay⁸. This demonstrates a lack of understanding about the causes of the gender pay gap, and

⁶ Close the Gap (2018) Forthcoming. A summary of findings are available at <https://www.closesthegap.org.uk/news/blog/close-the-gap-assessment-of-scottish-gender-pay-gap-reporting-suggests-most-employers-are-/>

⁷ 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>

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

specifically a lack of recognition that factors other than discrimination in pay systems contribute towards the pay gap. Pay gaps as a result of pay discrimination may result in litigation. However, if gaps are determined by occupational segregation and employers are not persuaded of the business case for gender equality, there is no clear driver for action.

3.18 The widespread undue complacency is a critical challenge to closing the gender pay gap. A common feature of the narratives that were published was a declaration that a pay gap was not as a result of pay discrimination as the company pays “everyone equally”. However, only one employer in the sample of 200 mentioned plans to conduct an equal pay review.

3.19 The evidence from Close the Gap’s review, along with existing research on employer motivations on taking action to advance women’s equality at work reaffirms our concerns about the limitations of the gender pay gap regulations.⁹ While we’ve welcomed the new pay transparency measures as 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.

3.20 We therefore strongly recommend that employers are required to publish a plan with measurable actions that sets out how they are going to narrow their pay gap.

⁹ Close the Gap (2015) *Response to the UK Government consultation on closing the gender pay gap* <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-response-to-the-UK-Government-consultation-on-closing-the-gender-pay-gap---August-2015.pdf>