



Submission to the Scottish Parliament Equalities and Human Rights Committee on the Gender Representation on Public Boards (Scotland) Bill

August 2017

1. INTRODUCTION

Close the Gap is Scotland's women and labour market expert, and has 16 years' experience of working with employers, policymakers, trade unions, employees, and sectoral bodies to encourage and enable action to close the gender pay gap.

Evidence shows that voluntary measures have proven to be ineffective in tackling women's labour market inequality, and shown that sustained action is required to increase gender diversity on public boards. Close the Gap therefore welcomes the opportunity to respond to this call for evidence.

Occupational segregation, where women and men do different types of work and different levels of work, is a cross-cutting theme of Close the Gap's work. Vertical segregation, or the 'glass ceiling', which describes women's underrepresentation in senior roles, is a key cause of the gender pay gap. Occupational segregation functions as a drag on growth, both within individual organisations, and within the wider economy. Achieving gender balance on public boards has the potential to influence wider occupational segregation through challenging gender norms and perceptions around public authority. Equal representation will also drive excellence in public service delivery as decision makers better reflect the populations they serve.

2. POINTS

The impact, if any, on people applying for an appointment as a non-executive member of a public board.

Although the gender representation objective applies to whichever gender is under-represented, given that women only hold 36%¹ of board places, it will be some time before boards will find themselves in the position where men are the under-represented group. Our response focuses on women's under-representation.

Women do not enjoy equality with men in Scotland, and women's labour market inequality is a cause and a consequence of this gender inequality. Gender inequality in employment is a cradle to labour market issue that requires a strong commitment from government if it is to be successfully addressed. Women continue to have a very different experience of the employment to men. This manifests in a range of ways including:

- Women's employment is concentrated in low-paid, undervalued jobs such as admin, retail, cleaning and care work.
- Only 37% of directors, managers and senior officials are women.²
- Three-quarters of part-time workers are women.³
- Women working part-time are paid on average 32% less than men working full-time.⁴
- Only 28% of public body chief executives are women.⁵

The gender pay gap is the key indicator of women's persistent inequality at work. The overall pay gap in Scotland is 15 per cent, when comparing the average hourly pay of all men and all women, excluding overtime.⁶

The report of the Economy, Jobs and Fair Work Committee inquiry into the gender pay gap recognises that to reduce the pay gap, action is required not only in labour market policy, but across a range of policy areas and makes recommendations around education, skills, childcare, procurement, business support and economic development policy and delivery. Close the Gap has particularly welcomed the recommendation that Scottish Government develop a national strategy to tackle the pay gap.

¹ Engender (2017) *Sex & Power 2017*

² Close the Gap (2016) *Gender pay gap statistics*

<https://www.closesthegap.org.uk/content/resources/Briefing17.pdf> accessed August 2017

³ Ibid

⁴ Ibid

⁵ Engender (2017) *Sex & Power 2017*

⁶ Close the Gap (2016) *Gender pay gap statistics*

<https://www.closesthegap.org.uk/content/resources/Briefing17.pdf> accessed August 2017

Two key causes of the gender pay gap are occupational segregation, where men and women do different types of work, and different levels of work; and, inflexible working practices which make it difficult for women with caring responsibilities to participate in the labour market, particularly at senior levels. These have particular relevance for women's under-representation on boards.

Assumptions about women's and men's capabilities and preferences contribute to occupational segregation, and to women's under-representation in senior positions, including on public boards. It is commonly assumed that women do not apply for senior roles because they are not interested; however research shows this is not the case. In the United States, Catalyst, a non-profit organisation working to accelerate progress for women through workplace inclusion, found that 55 per cent of women and 57 per cent of men aspired to be in a senior leadership position⁷.

Tackling women's under-representation on public boards is a positive step towards addressing the lack of women in senior and decision-making roles in public life, and in employment. Having more women round the table means women's perspective will be included in the discussion. Women's capabilities and aspirations are not in question; action is required to tackle the real barriers women face to accessing senior positions.

Evidence shows that increased representation for women on boards influences both the focus and outcomes of discussions, which is of key significance for public service delivery. Achieving gender balance on public boards has the potential to influence occupational segregation through challenging gender norms and perceptions around public authority, and providing children and young people with a more diverse range of role models. Equal representation will also drive excellence in public service delivery as decision makers better reflect the populations they serve.

The impact, if any, for those public authorities responsible for encouraging and recruiting women to public boards as non-executive members.

The business benefits of action to tackle women's economic inequality, and particularly gender balance on boards, are well rehearsed. Close the Gap research identifies clear and mounting evidence that gender equality at work is not just good for women, but is also a critical driver for improved business

⁷ Pande, R. & Ford, D. 2011. 'Gender Quotas and Female Leadership: A Review'. Background paper for the World Development Report on Gender.

performance, and a worldwide catalyst for economic growth⁸. Crucially, closing the gender gap in employment could be worth more than £17bn to the Scottish economy.

Close the Gap's *Gender Equality Pays* research showed that employers that take steps to address women's inequality at work benefit from a reduction in costs through lower turnover, improved employee morale and motivation, and higher levels of productivity. Diverse workforces are more creative as men and women have different experiences and perspectives. Gender balance on boards can therefore drive excellence and efficiency in public service delivery, as decision-makers better reflect the service-users they serve.

Under the public sector equality duty, public bodies are already obliged to consider gender balance and a wide range of other issues relating to gender equality. Policies to advance gender equality, for example, in relation to recruitment, should be mainstreamed throughout each public body, as outlined in the duty.

Public bodies are also required to publish their plans to increase board diversity as part of their compliance with the duty. It is particularly important that these succession plans contain measurable, achievable, relevant, and time-bound actions, and not vague aspirations around compliance with existing law. Weak actions, and generalised commitment statements to equality were identified as common themes in Close the Gap's assessment work of public authorities' compliance with the duty⁹ in 2013 and 2015.

The actions required of public bodies to comply with the Bill should already be in place under the board diversity requirements of the public sector equality duty. However, Close the Gap's third biennial assessment of compliance with the duty has revealed that the majority of public bodies assessed are failing to comply with these requirements. At the time of writing the assessment is still ongoing, with assessment completed for 78 per cent of the sample of 45 bodies; however of the bodies assessed so far only 43 per cent have published board diversity data, and only 17 per cent have published succession plans. It is therefore likely that public bodies will require clear guidance and support to make progress on improving the gender diversity of their boards.

⁸ Close the Gap (2015) *Gender Equality Pays: The economic case for addressing women's labour market inequality*

⁹ Close the Gap (2015) *Making Progress? An assessment of employers' performance of the public sector equality duty*

Action to encourage applications from women must be supported by detailed guidance on the practical steps that can be taken to allow women to progress. Close the Gap research shows that even where organisations are supportive of gender equality, this often does not translate into specific actions to advance diversity¹⁰.

Guidance on encouraging applications must be prescriptive; it must place the onus on the appointing person(s), and public body, to ensure that women receive adequate capacity-building and encouragement, as opposed to on individual women. It must also ensure public bodies recognise the wider barriers women face in the workplace, for example access to childcare and a lack of flexible working at senior levels, in particular barriers to skills acquisition and progression. Organisations must ensure they effectively communicate to women that their applications will be taken seriously; evidence indicates that some women have stopped putting themselves forward, following multiple unsuccessful attempts to secure interviews for board positions for which they appear to be amply qualified¹¹.

Work to encourage applications from women also overlaps with the public sector equality duty's broader requirement that public bodies gather employee data on recruitment, development and retention, analyse this data, and use the analysis to inform the development of work to address the issues identified. There is an opportunity to align work to support the encouragement of applications with work to support compliance with the duty. In making the links between both pieces of legislation explicit it may help to improve overall compliance, reduce the likelihood of duplication of effort or work within individual organisations, and reduce any perception among public bodies that the Bill presents a new and additional "burden".

A commonly cited barrier to increasing the number of women on boards is the assumption of a gendered skills gap: that female candidates lack the skills and experience required. This assumption is often held alongside the view that quotas are directly contrary to candidates being appointed based on merit. It is of note that the merit of male candidates is never questioned in this way.

Evidence suggests that gender quotas may increase the skill-levels on the boards of organisations. This is because a more robust and inclusive process

¹⁰ Close the Gap (2013) Missing out on the benefits? Summary of the research on reporting of the gender pay gap in Scotland

¹¹ Engender (2016) Equal voice, equal power: The case for gender quotas in Scotland

identifies candidates outside the norm, which have traditionally been identified through male-dominated informal networks that stretch across sectors and the public sector in its entirety¹². The idea that women may end up appointed to boards at the expense of more qualified candidates assumes that all of our public board members are subject to standardised selection processes, which is not the case¹³.

It is essential that requirements in relation to consideration of candidates are supported by guidance on transparent and robust recruitment and decision-making processes, and do not allow assumptions about the skills and capabilities of female candidates to function as a barrier to women progressing through the application process. Guidance must be prescriptive, with accompanying support programmes in place to provide operational capacity building where required. Potentially, there would be a role for the Equality and Human Rights Commission, and third sector organisations to support this work. It is imperative that organisations with this role are adequately resourced to carry out such work.

The Bill requires public boards to report on the operation of the Act, although Scottish Ministers can regulate how this should happen; what should any reporting requirements cover and why?

It is imperative that public bodies are required to provide comprehensive reports on compliance with the legislation, as otherwise it will be impossible to ensure that activity and progress is measured.

We are strongly of the view that reporting arrangements should be aligned with existing reporting regulations and timescales under the public sector equality duty, to integrate public bodies' equalities work in a coherent way.

Public bodies are already required to publish their plans to increase board diversity as part of their compliance with the public sector equality duty. Work to encourage applications overlaps with board diversity succession planning, and could be published as a standalone report, or included in mainstreaming reports, as evidence of how public authorities are meeting the duty to mainstream gender, and addressing gender inequalities.

¹² Close the Gap (2015) Gender Equality Pays: The economic case for addressing women's labour market inequality

¹³ Engender (2016) Equal voice, equal power: The case for gender quotas in Scotland

Reports should include a detailed action plan to achieve gender balance, containing measurable, achievable, relevant, and time-bound actions, and not vague aspirations around compliance with existing law. It would be useful to include a narrative detailing how organisational data analysis has informed the development of the action plan, and progress measures.

It would also be helpful to have information on work to comply with this legislation incorporated in public bodies' corporate plans. Again, this would enable them to demonstrate one of the ways in which they have mainstreamed gender, and it would also give strategic prominence to achieving gender balance at board level.

Whether there should be penalties for non-compliance with the Bill and what these should be and why.

The Bill fails to set consequences for non-compliance. Evidence suggests that if governments demonstrate a willingness to impose sanctions for noncompliance with gender quotas, they can increase female representation. Various precedents exist of public bodies failing to comply with legal obligations to advance gender equality, including certain aspects of the public sector equality duty. For example, assessment work on compliance with the duty by Close the Gap¹⁴ found that it was not uncommon for public bodies to have failed to publish any information on their website by reporting deadlines, or to have failed to undertake concrete steps to meet equality outcomes. The current assessment has revealed a majority of bodies have failed to comply with the duty to publish a board diversity succession plan, and over half of bodies assessed have failed to publish board diversity data.

Close the Gap has also identified a significant weakening in compliance across all aspects of the duty since reports were first published in 2013, and since the introduction of the Gender Equality Duty in 2007. A review of the current and previous two assessments show performance of the duty is deteriorating, with evidence of a concerning lack of knowledge and understanding of equalities and mainstreaming, a lack of prioritisation of equalities work, and growing genericising of approach with little evidence of meaningful work to improve outcomes for each protected characteristic group. The full report of this assessment is due to be published in late 2017.

¹⁴ Close the Gap (2015) Making Progress? An assessment of employers' performance of the public sector equality duty

This deterioration in compliance has relevance to the requirement of public bodies to take steps to improve the gender diversity of their boards. Robust enforcement is essential, and without some form of meaningful recourse there is significant possibility that these measures may not be taken seriously. The Equality and Human Rights Commission could have a role in enforcement work; however it is essential to ensure the Commission is adequately resourced to undertake such work.

Please tell us about any other comments you feel are relevant to the Bill.

It is important that the full diversity of women in Scotland be represented on public boards. The scope for this Bill to deliver equal access to boards, and benefits due to members' increased capacity to reflect experiences and perspectives of service users, will be limited if wider access issues are not also addressed. Otherwise, positions will be simply filled by white, non-disabled, straight women.

Systemic barriers to representation for those facing multiple inequalities must be considered. For example, access to employment is hugely limited for disabled women, due to discrimination, stigma and public attitudes. Many women report infantilising treatment in the workplace that is not perceived to be equivalent for men, but based on their identity as disabled women¹⁵. LBT women face harassment, discrimination and negative stereotypes in the workplace and are excluded from employee networks. Unemployment and underemployment are also a particular problem for women from some minority ethnic communities. Discrimination and racism, which remain prevalent problems across Scotland's labour market and public institutions, and occupational segregation which sees minority ethnic women clustered in low-paid jobs are key factors which drive this¹⁶.

In conclusion, the Bill is a positive step towards addressing the lack of women in senior and decision-making roles in public life, and in employment. The Bill would benefit from the provision of prescriptive guidance for appointing persons and public bodies on encouraging applications, and on transparent and robust recruitment and decision-making processes, with accompanying support programmes in place to provide operational capacity building where required. It is also essential that there are clear reporting requirements and

¹⁵ Engender (2016) Equal voice, equal power: The case for gender quotas in Scotland

¹⁶ Ibid

robust enforcement mechanisms in place to ensure these measures are taken seriously.

Taking steps to address women's under-representation on public boards is a necessary action towards closing the gender pay gap, and tackling women's economic inequality.