



Government Equalities Office

Closing the Gender Pay Gap

Responding to this Government consultation

Before completing this form, please refer to the Government consultation on closing the gender pay gap that provides background detail to all of the questions:

<https://www.gov.uk/government/consultations/closing-the-gender-pay-gap>

Depending on your views and experiences, it is estimated that this survey will take approximately 10-15 minutes to complete.

The closing date for responses is **6 September 2015**. Responses received after this date will not be considered.

Disclosure of responses

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).

The Government may publish responses received from organisations. If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

YOUR DETAILS

Please complete the following:

Name	Mary Mullally, Secretary, GC100
Address	GC100, Practical Law Company
Address 2	Friars House
City	160 Blackfriars Road, London
Postal Code	SE1 8EZ
Country	United Kingdom
Email address	Mary.Mullally@thomsonreuters.com
Contact number	0207 202 1245

Are you completing this consultation as an (tick one):

Individual	
Organisation	✓

If you are responding on behalf of an organisation, please complete the following:

Company name	GC100
Company address	As above.
Address 2	
City	
Postcode	
Country	
Email	
Contact number	
Number of staff in company	

Please select what type of company it is (tick one):

Business representative organisation/ trade body	
Charity or Social Enterprise	
Business	
Legal representative	
Local Government	
Professional body	
Public Sector	
Trade Union or Staff Association	
Other, please specify	<input checked="" type="checkbox"/> Please see below.

Introduction

This submission is on behalf of the Association for the General Counsel and Company Secretaries of Companies in the UK FTSE 100, generally known as the GC100. There are currently over 120 members of the group, representing some 80 companies. Please note that, as a matter of formality, the views expressed in this response do not necessarily reflect those of each and every individual member of GC100 or their employing companies.

GC100 welcomes the opportunity to respond to this consultation paper on closing the gender pay gap.

The response to this consultation was drawn up by the employment law working group of GC100. This is made up of senior in-house employment lawyers working for FTSE 100 companies.

YOUR RESPONSES

Q1: Publication of gender pay information will encourage employers to take actions that will help close the pay gap. Do you:

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Do you want to provide any further comment in relation to your answer above (Q1)?

GC100 members are supportive of an initiative that will encourage employers to take actions that will help to address pay inequality between men and women in workplaces in Great Britain.

As a general principle GC100 members consider that encouraging greater transparency around gender pay differences by requiring employers to collate and analyse gender related pay information internally cannot do any harm and will, over the long term, address the continuing inequity between men and women in the workplace. However, GC100 members are not convinced that the introduction of a mandatory requirement to publish pay gap information externally will, on its own, materially encourage employers to take actions that will help to close any existing gender pay gaps. To the contrary GC100 members hold concerns that external publication of gender pay gap data in isolation will place disproportionate focus on the figures that are reported, and how they are presented publically, when in order to achieve the objective of encouraging employers to take actions to close the pay gap focus should be on what positive actions employers are taking to address gender pay gap and equality issues within their organisation. GC100 members are also concerned about the additional burden that a mandatory reporting obligation will place on employers, in particular in view of existing reporting and disclosure requirements.

Given the Government objectives driving this initiative (as set out in Chapter 4 of the consultation paper) GC100 members consider that requiring employers to publish all material steps that they have taken to address gender inequality issues within their organisation and placing a positive obligation on employers to develop an action plan that sets out what steps they will take in the

future, including to address any gender pay gap, may be more beneficial than requiring employers to publish gender pay gap information externally in isolation.

If there is a mandatory requirement to publish pay gap information externally GC100 members consider it very important that employers have the ability to provide a contextual narrative.

As the reporting framework has not yet been formulated GC100 members would welcome the opportunity to engage in further consultation on the draft regulations when these have been prepared by the Government.

Q2: Transparency on gender pay will have an impact on (tick as appropriate):

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	Don't know
(a) Encouraging girls and women to consider working in a wider variety of occupations and sectors	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(b) Encouraging employers to develop their female talent	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(c) Encouraging employees to take up flexible working or shared parental leave	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(d) Encouraging employers to support flexible working or shared parental leave	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(e) Encouraging employers to adopt good practice on how to manage/support a multigenerational workforce	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(f) Helping those who have a stake in the organisation such as investors, shareholders and clients	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(g) Helping employers to address equal pay in their organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>

GC100 Comment:

GC100 members consider that greater transparency in relation to pay practices (by requiring employers to collate and analyse gender related pay information) will assist employers to address equal pay in their organisation. GC100 does not consider that greater transparency on pay will have a significant impact on (a) to (f) (inclusive).

Q3: Employees or other interested parties (e.g. shareholders) may want to gauge how an employer's gender pay gap compares with similar organisations. How important do you think comparability is (tick one)?

- Not at all important
- Very unimportant
- Somewhat unimportant
- Somewhat important
- Very important
- Extremely important
- Don't know

Do you want to provide any further comment in relation to your answer above (Q3)?

GC100's view is that employees and other interested parties will want to gauge how an employer's gender pay gap compares with other similar organisations. However the value of any comparison exercise will greatly depend on what pay data companies are required to publish. The GC100's view is that comparison of gender pay gap data is only useful and meaningful if each company calculates pay data and the pay gap on the same basis. As such, the GC100's view is that it would be preferable for the regulations to clearly prescribe the basis on which gender pay data is to be calculated, including what pay data must be included in any calculation. In particular GC100 members' view is that regulations should be prescriptive on how the data must be broken down in any reports to ensure a level playing field as far as possible.

Based on GC100 members' differing remuneration structures and grading structures, members consider that the more granular the breakdown of data required (for example by grade or job type) the less possible it becomes for employees or third parties to make genuine like-for-like comparisons across employer groups, sectors, or industries and indeed comparison of data could be misleading without an understanding of the context. As a related point members also expressed concerns in relation to being able to maintain confidentiality in respect of individual employee pay data if required to publish gender pay gap data broken down by grade or job type where the employee group at a particular grade or with a particular job type is sufficiently small.

The majority of GC100 members anticipate that the media will use publically available pay gap data to draw comparisons between employers and between sectors and industries. There is a concern that the media will use gender pay gap figures in isolation to draw negative comparisons that are misrepresentative or unhelpful particularly where the media fails to take into account positive and effective steps employers have taken or are taking to address identified pay gap issues. Members consider it inevitable that some employers' focus will therefore be diverted to the presentation of publically available pay gap statistics rather than analysing and addressing the underlying issue of a gender pay gap within their organisation.

Q4: Do you think the regulations should specify where the employer publishes their gender pay gap information - for example, a prominent place on their public website?

- ✓ Yes
- No
- Don't know

GC100 comment: The majority of GC100 members consider that the regulations should specify where employers must publish their gender pay gap information so as to ensure, as far as is possible, a level playing field for all employers. Although there were differing views the majority of GC100 members agreed that publishing pay gap information on the company website is likely to be most appropriate. Some members considered it may be sensible to cross-refer to the gender pay gap report in the annual report (possibly in the remuneration report) by including a link through from the annual report to the relevant page on the company's website.

Q5: Which of the following measures showing the difference in the pay of male and female employees are you currently able to calculate from existing data and systems?

	Tick all that apply
An overall gender pay gap figure	<input type="radio"/>
Gender pay gap figures broken down by full-time and part-time employees	<input type="radio"/>
Gender pay gap broken down by grade or job type	<input type="radio"/>
None of the above	<input type="radio"/>

GC100 comment:

Many GC100 members can currently extract basic pay data from current payroll systems and would be able to calculate an overall gender pay gap figure based on base salary.

There were different views amongst GC100 members on the ease with which they could extract basic pay data broken down by full time and part time employees or broken down by grade or job type, and also pay data based on employees' total remuneration packages; some members can extract this data relatively easily given their current software and the size of their employee population but a number of members would find this very challenging, particularly larger employers that currently operate a variety of shift or working patterns and grading and remuneration structures across different divisions or departments. A number of GC100 members will not be able to calculate meaningful gender pay gap data broken down by full time or part time status or by grade or job type (whether based on base pay or otherwise) without making significant modifications to current systems and in some cases without investing very significant additional resources into the process.

Q6: Do you think that any additional narrative information published by employers should be:

	Tick one
Voluntary and not set out within the regulations or non-statutory guidance	<input type="radio"/>
Voluntary, not set out within the regulations, but set out in the non-statutory guidance	<input checked="" type="checkbox"/>
Set out within the regulations	<input type="radio"/>
Other, please specify	<input type="radio"/>

GC100 comment:

GC100 members consider that it will be very important for employers to have the ability to provide additional meaningful contextual narrative alongside pay gap data.

GC100 considers that such narrative should be voluntary non-statutory guidance that is not set out within the regulations.

Q7: How often do you think employers should report gender pay gap information?

	Tick one
Every year	
Every 2 years	
Every 3 years	
Other	<input checked="" type="checkbox"/>

If you responded 'other' to Q7, please specify how often employers should report gender pay gap information below:

GC100 comment:

Most GC100 members agreed that a lead-in period should be built into the regulations to allow employers to set up appropriate internal systems and resources before their first reporting deadline. There are however differing views amongst GC100 members on the frequency of any subsequent reporting obligation.

A number of GC100 members are of the view that, on completion of the relevant lead-in period, an annual reporting obligation is preferable so as to ensure that progress can be measured year-on-year (at an individual employer level). These members' view is that once employers have been given a sufficient period of time to understand the extent of their reporting obligation and to install appropriate pay recording systems the initial burden of collating and analysing pay data should lessen resulting in the reporting process becoming steadily easier to comply with over time, as well as analytically more useful as provision of data will be more frequent. There was an additional concern from some members that a longer reporting period may result in the reporting process having to start afresh every time, whereas with a relatively short reporting period (of one year) the process should become more routine and familiar. A number of GC100 members hold an alternative view that a mandatory annual reporting obligation would be too frequent (irrespective of whether it became easier to comply with over time); annual reporting would not allow sufficient time for

clear progress to be made and measured. These members suggest that reporting every two to three years is a more realistic period of time to allow for meaningful progress in closing the gender pay gap to be made and evaluated, particularly for large employers. Employers who wish to report more frequently than two to three years could do so on a voluntary basis.

Q8: What is your assessment of the costs of conducting gender pay analysis and publishing results?

	Actual Costs (£)	Estimated Costs (£)
Infrastructure (e.g. software)		
Training requirements		
Publication		
Other, please specify		
Total		

GC100 comment:

GC100 members are unable to assess actual or estimated costs associated with conducting a gender pay gap review until it is clear what pay information must be collated, analysed and published. However, the view of the majority of GC100 members is that collating, analysing and publishing pay data will require additional costs due to the need to invest in more sophisticated software systems and additional dedicated resource to collate and analyse the data - with such costs and resources increasing if more granular pay data analysis were required. Members of the GC100 agree that individuals involved in extracting, analysing and publishing gender pay gap data will require bespoke training and that there will need to be various stakeholders and teams involved in the collation and analysis process. The extent of the training and associated costs will depend on the complexity/granularity of the pay reporting obligation.

Q9: What is actual / estimated time taken by the lead person assigned to the activity of analysing and publishing a gender pay gap estimate?

	Actual Costs (£)	Estimated Costs (£)
Number of hours		

GC100 comment:

As above GC100 members are unable to assess actual or estimated costs that will be incurred or time that will be taken by the lead person assigned to the activity of analysing and publishing a pay gap estimate to complete this process as it is not yet clear what pay information must be collated, analysed and published. However, for the majority of GC100 members, given the size of their likely in-scope employee population, it is anticipated that a

dedicated resource team will be required to extract and analyse pay data and to prepare gender pay gap publications. The period of time that such dedicated resource would spend solely dedicated to this task varies between members, largely by reference to their current software and data recording systems; however, the majority anticipated a dedicated team would be required for a number of weeks or even months. If pay data were required to be collated, analysed and published by grade and job type some members considered that a dedicated team would be required to be dedicated to this task on a permanent basis or that they would need to outsource the task.

Q10: Private and voluntary sector employers in Great Britain with at least 250 employees may fall within the scope of the proposed regulations. Do you think this threshold is appropriate?

- Yes
- No
- Don't know

If you said 'no' to Q10, do you wish to provide any further comment below?

GC100 comment:

GC100 members consider that the proposed threshold of 250 is appropriate. GC100 members consider that it would be useful for there to be prescription within the regulations (or in guidance accompanying the regulations) as to when the 250 threshold is reached and/or when an obligation to report is triggered, for example:

- Will employees based abroad but employed by an employing entity registered in Great Britain be included for the purpose of calculating the 250 threshold? If so, should their pay data be included in the pay gap analysis?
- Must each employing entity with at least 250 employees within a corporate group report separately or can one employing company within the corporate group report on behalf of each employing entity that meets the threshold?
- If a single employer has less than 250 employees, but is part of a larger corporate group whose employee numbers exceed 250, will the smaller employer also be subject to a reporting obligation?
- If all of the employing entities in a corporate group employ less than 250 employees, but collectively they exceed the 250 threshold, will an obligation to report be triggered?

Q11: The cut off period for any calculation of the gender pay gap will need to be specified in the regulations. Which of the following do you consider preferable (tick one)?

- 1 January
- 6 April
- 1 October
- The year-end date for each organisation
- No preference
- Other

If you said 'other' to Q11, please specify which date you would prefer and why below:

The majority of members of GC100 consider that it would be preferable for the year end date for each organisation to be the applicable cut off period for the calculation of gender pay gap data although it is also recognised that another cut-off date, for example in line with existing reporting requirements, may be more appropriate depending on the type of data that must be reported on and the level of detailed analysis that will therefore be required.

Those members with year-end dates that fall shortly after the regulations come into force are concerned that without a lead-in period or phased implementation there will be insufficient time for them to meet their first deadline to report and such members were of the view that consideration should be given to this when the regulations are drafted to ensure adequate flexibility for employers complying with their first reporting deadline.

Q12: The Government is considering a number of actions to help support employers implement the proposed regulations. How helpful do you think the following measures would be?

	Very unhelpful	Not very helpful	Neither helpful or unhelpful	Somewhat helpful	Very helpful	Don't know
Helping employers to understand the new regulations e.g. through workshops and seminars	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Helping employers to calculate their organisation's gender pay gap e.g. through access to software	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Helping employers with other types of supporting analysis e.g. analysis of representation of women at different levels within the workforce	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Helping employers to address the issues identified by a pay gap analysis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other, please specify	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

GC100 comment:

GC100 members agree that Government guidance, in written form or provided through interactive workshops and/or training seminars, would be of assistance to employers. The focus of such guidance should, in the GC100's view, be to explain the legislative framework in detail, including potential justifications (to reflect that even though a gender pay gap may be demonstrated by the data, this does not automatically mean that there is an infringement of equal pay rights), to ensure that employers are correctly interpreting the regulations and fully understand their reporting obligation.

The majority of GC100 members did not agree that Government software, or Government assistance in analysing their gender related pay data or other gender related statistics, would be helpful.

Q13: Do you think there are alternative ways to increase transparency on gender pay that would limit the cost for employers, for example reporting to the Government via the existing PAYE system?

- Yes
- No
- Don't know

If you said 'yes' to Q13, what alternative(s) would you suggest?

The majority of GC100 members do not think it would be helpful to report directly via existing PAYE systems or via any other Government supported data system or department such as HMRC. In addition to concerns about the practical viability of using existing PAYE systems to report data, members have concerns that doing so may actually result in less visibility for employers. Their view is that it will be important for employers to assess the pay data and to do the calculations themselves to properly understand how any pay gap has come about in order to take positive steps to resolve it; if employers pass the pay data over to a Government system or body to process there is a risk that the opportunity for employers to establish the underlying causes of a pay gap during the data analysis process will be missed.

As a related point, some members consider that private reporting directly to the Government without the content of those reports being made public would still be a valuable way for the regulations to draw to employers' attention any gender pay gap issues within their organisation and to act as the catalyst for them to take remedial action. This form of private reporting would also reduce the negative impact of the unintended consequences set out in the response to Question 15. Employers that failed to comply with a private reporting obligation could still be subject to the measures outlined in the response to Question 14.

Q14: Do you think that introducing civil enforcement procedures would help ensure compliance with the proposed regulations?

- Yes
- No
- Don't know

GC100 comment:

GC100 members are unconvinced that a civil enforcement procedure with a financial penalty will ensure compliance. Some GC100 members consider that publicly "naming and shaming" employers who have failed to comply with the duty to report may be a more effective disincentive than a financial penalty. The majority of GC100 members are of the view that positive reinforcement or encouragement of employers who take steps to address gender pay gap issues (i.e. a "carrot" approach) would be more effective.

Q15: What, if any, do you consider to be the risks or unintended consequences of implementing section 78?

GC100 members consider there are a number of risks or unintended consequences of implementing section 78, which are summarised below:

1. An increase in informal pay review discussions and pay related grievances from current employees
2. An increase in equal pay or discrimination claims

Individuals who review published gender pay gap data may conclude that they have sufficient grounds to (i) request an informal pay review discussion with their employer, (ii) submit a formal grievance or (iii) submit a claim in an Employment Tribunal. If publication means that women feel better able to discuss their pay more openly with their employer the GC100's view is that this will be a positive unintended outcome. Similarly, where a complaint is well founded an employer should be taking steps to address that in any event, and a formal grievance may be the catalyst for some employers to address a genuine gender related pay disparity. However, the risk of unmeritorious litigation flowing from gender pay gap publication is significant and consideration must be given to how this risk can be managed effectively. The Government's aim is to encourage employers to take steps to narrow existing gender pay gaps in Great Britain and the focus should be on measuring employers' progress against that aim. If the result is that employers who identify gender pay issues and who are taking steps to address them are nonetheless faced with costly and protracted equal pay and discrimination challenges resources will be focussed on dealing with these issues. This will distract employers from pursuing appropriate initiatives or remedial steps. An unintended consequence may also be that employers focus more time and attention on the presentation of pay data to the detriment of initiatives aimed at addressing pay gap issues.

3. Media coverage fuelling negative PR and causing employee relations issues

There is a risk that the media will critically focus on percentage pay disparities and largely ignore contextual narrative and/or other steps organisation are taking to attract, support and promote women in their organisation.

4. Women starting out in their careers being deterred by such coverage from applying for jobs in certain sectors or industries as a result of gender pay gap publications

Women starting out in their career may also be put off applying for jobs in certain sectors or industries because of negative media coverage of gender pay disparities. Pay gap data will not in itself accurately reflect an employer's pay approach. These reports may ignore important steps those employers or industries are taking to attract female talent, or fail to reflect progress that is being made year-on-year on the gender pay gap. The GC100's view is that the focus of any external publication must be more holistic. It must encourage employers to set out what they are doing, or plan to do, to create a diverse and fair place to work for both sexes.

Q16: Do you consider there are any risks or unintended consequences that warrant dropping or modifying the implementation of section 78?

- Yes
- No

If you said 'yes' to Q16, please explain why you think this is:

See responses to Question 15 above.

Q17: How do you think the Government can most effectively encourage young girls to consider the broadest range of careers?

Q18: How do you think the Government can work with business to support women to return to work and progress in their career after having children?

Q19: How do you think the Government can make sure that older women are able to fulfill their career potential?

Q17, Q18 and Q19

Comment:

The GC100 members consider that Questions 17 to 19 raise important issues. However, members agree that the themes covered in these questions, while significant, are peripheral to the subject matter of this consultation paper, which is focussed on transparency on pay and closing the gender pay gap in Great Britain. GC100 members are of the view that the issues raised by Questions 17 to 19 merit a separate more detailed consultation.

Notwithstanding this position, in broad terms the GC100 members consider that the following ideas could be considered further in the context of the Government's objectives to encourage young girls to consider broader career choices, to support women at the start of their career and when they return to work after having children and also to provide a framework for older women to fulfil their career potential:

- initiatives to actively encourage all young people, and specifically girls, to study subjects where there is a skills shortage in Great Britain i.e. the sciences, technology, engineering and mathematics;
- initiatives to support teachers and parents who may influence positively the education and careers choices being made by young girls;
- initiatives to celebrate and commend employers who have promoted and encouraged young women in their careers by providing those employers with a platform to 'show-off' what they have achieved and why it has benefitted their business;
- consideration of whether "child related" pay enhancements (e.g. enhanced shared parental pay) should be made available to men and women;
- initiatives to better manage phased return to work arrangements after women have had a child, particularly to allow both parents to balance their childcare commitments with their careers;
- considering ways that carers of older partners can be better supported to allow them to fulfil their full career potential;
- considering ways that employers could be encouraged to re-train older employees where appropriate; or
- considering how employers can better understand the challenges facing older women in the workplace.

Thank you for your time in completing this consultation.

You may email or post your completed response as follows:

By email: GenderPayGapConsultation@geo.gov.uk

By post:

Gender Pay Gap Consultation
Government Equalities Office
4th Floor
100 Parliament Street
London
SW1A 2BQ