

Gender Pay Gap Consultation  
Government Equalities Office  
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Submitted via e-mail to: [GenderPayGapConsultation@geo.gov.uk](mailto:GenderPayGapConsultation@geo.gov.uk)

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Dear Sirs

### **Closing the Gender Pay Gap**

We welcome the opportunity to respond to the Government consultation on Closing the Gender Pay Gap. The Institute of Chartered Secretaries and Administrators (ICSA) is the international professional body with primary responsibility for governance. Our Royal Charter requires us to lead 'effective governance and efficient administration of commerce, industry and public affairs' and we are the qualifying body for Chartered Secretaries. Our members are the usual point of contact for engagement between the issuer and its investors in governance matters and corporate reporting. As such, our members are well placed to understand the experience of issuers on the impact of these proposals.

In preparing our response we have consulted, amongst others, with members of the ICSA Company Secretaries Forum, which includes company secretaries from more than 30 large listed companies from the FTSE100 and FTSE250. However, the views expressed in this response are not necessarily those of any individual members of the Forum nor of the companies they represent.

We have not been able to submit this response through your online system as we had a number of specific comments to give greater context to our responses which we were unable to find a way to include therein.

### **General comments**

We are delighted to see the focus that the Government is giving to the issue of equality, of which gender equality is a key, but not the only, aspect. As the Minister states in her foreword, "ensuring that women achieve their full potential will have a significant impact on our economy" and as a professional body we are proud to see the steady increase in our



female membership and, in particular, the number of women who are reaching the senior roles in our profession. The working party that has reviewed this response was comprised entirely of women members, including the company secretaries of two FTSE100 companies.

The Minister added that the causes of the gender pay gap “are numerous and varied. It cannot simply be explained by pay discrimination, which is already unlawful, and has been since campaigners successfully won the right to equal pay over forty years ago. These causes include the concentration of women in lower paid occupations and the fact women remain far less likely to progress to senior levels – still making up only 34% of managers, directors and senior officials.” These are important points to remember. Whilst we agree that addressing the gender pay gap is an important step to take; that corporate reporting of the position is a key factor in enabling further progress; and we welcome the fact that this is a manifesto commitment for the Government, we must emphasize that it is only one piece of the jigsaw. The causes of these underlying factors are the result of significant societal issues, which it is important that the Government continue to address, and unless these underlying factors are corrected the gender pay gap, and indeed the full equality of all members of our society, can never be wholly ‘a thing of the past’. The analysis of the causes of the gender pay gap on pages 10-12 of the consultation document is a useful summary in this regard.

We are enthusiastic supporters of corporate transparency, but firmly believe that data that is reported must not be used to draw inferences that it does not support. Our chief concern about this piece of legislation is, therefore, that a ‘single-figure’ gender pay gap statistic may be taken in isolation and treated as a proxy for ‘good’ or ‘bad’ corporate behavior when the reality is that every company is different and there may be entirely acceptable reasons why some companies are an outlier from the norm. As the consultation document states (page 8) “An employer delivering equal pay may still have a large pay gap and an employer with no pay gap may be breaching the law.” A gender pay gap is, therefore, of itself not necessarily a bad thing. However, reporting that statistic will ensure that it can be monitored by the company, the reasons for the gap identified and remedial action taken if and to the degree appropriate.

Our other concern is around the scope of the proposed legislation. Does it relate to all employees or only to those in the UK? Much of the justification for the proposal in the consultation paper is UK focused, although that does not seem to be explicit. However, this will make a very significant difference to the degree of difficulty for companies in providing this data and, potentially, to the data itself.

**Set out below are our responses to the specific questions in the consultation.**



**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 or strongly disagree?**

On balance, we tend to agree that the publication of gender pay information will encourage employers to take actions that will help close the pay gap. However, it will not encourage all employers to do so and we suspect that those who choose not to do so are likely to be those where it would be most beneficial. The negative 'name and shame' approach can only go so far and we would prefer to see greater focus on the positive – commending those companies who are 'shining lights' and those who take the opportunity to answer the question 'what are you going to do to alleviate the gender pay gap?' – even if that answer is 'nothing, because ...'.

**Q2: Transparency on gender pay will have an impact on:**

- (a) Encouraging girls and women to consider working in a wider variety of occupations and sectors.**
- (b) Encouraging employers to develop their female talent.**
- (c) Encouraging employees to take up flexible working or shared parental leave.**
- (d) Encouraging employers to support flexible working or shared parental leave.**
- (e) Encouraging employers to adopt good practice on how to manage and support a multigenerational workforce.**
- (f) Helping those who have a stake in the organisation, including investors, shareholders and clients.**
- (g) Helping employers to address equal pay in their organisations.**

We believe that transparency on gender pay may have a minor impact on all the above factors (a) to (f). However, we would emphasise that all these together need a holistic approach and that analysis of the gender pay gap is just one, and not necessarily the most important one, of a number of factors that need to be considered. We are concerned that publication of a gender pay gap figure may tend to lead to a disproportionate focus on this one, relatively insignificant, metric.

We do not believe that transparency on gender pay will help employers to address equal pay in their organisations as they will already have the information. It is more a question of driving them to do so.

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

We believe that comparability between companies is, on balance, somewhat unimportant. We are of the view that year-on-year comparability within the same company is likely to be far more interesting, as is the narrative around what, if any, actions the company has taken to reduce a gender pay gap.



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

We are torn between a desire to allow companies flexibility to report this information where seems appropriate to them whilst recognising that specifying where the information should be published will make it more easily available. On balance, we would take the view that the regulations should provide for the information to be published on the company website, rather than in the annual report. However, we would counsel against this being too prescriptive in terms of the 'number of clicks from the homepage' etc.

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

- (a) An overall gender pay gap figure by calculating the difference between the earnings of men and women as a percentage of men's earnings.**
- (b) Gender pay gap figures broken down by full-time and part-time employees.**
- (c) Gender pay gap figures broken down by grade or job type.**
- (d) None of the above.**

As a professional body, this question is not directly relevant to us, although we are advised that some of our members will have difficulty in gathering the data. On balance, we believe that an overall gender pay gap figure derived by calculating the difference between the earnings of men and women as a percentage of men's earnings should be relatively easy to achieve. Gender pay gap figures broken down by full-time and part-time employees will be more of an issue and gender pay gap figures broken down by grade or job type will present significantly more difficulties.

However, all these answers depend very much on the geographical scope of the proposed requirement – i.e. does it relate to all employees or only to those in the UK? The answer to this question will make a very significant difference to the degree of difficulty in producing the required data.

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

- (a) Voluntary and not set out within the regulations or non-statutory guidance.**
- (b) Voluntary, not set out in regulations, but set out in non-statutory guidance.**
- (c) Set out within the regulations.**
- (d) Other, please specify.**

We believe that additional narrative that provides context, explains any gender pay gaps and sets out what, if any, remedial action the business intends to take is important, but that this will depend entirely on the individual circumstances of the company concerned. We do not, therefore, believe that it can be set out adequately in regulations. On balance, our view



is that it should be voluntary, not set out in regulations, and encouraged by, rather than set out in, non-statutory guidance. As the international professional body with primary responsibility for governance, ICSA would be happy to work with the Government Equalities Office to develop such guidance in the same way that we have worked with other Government departments to produce non-statutory guidance.

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

- (a) Every year.**
- (b) Every 2 years.**
- (c) Every 3 years.**
- (d) Other.**

We believe that requiring this information on an annual basis would permit ease of comparability and fit well with companies' existing reporting cycle. Once this is established as part of that process, and the relevant infrastructure has been set up, reporting this information will, in our view, be less of a burden on that basis.

**Q8: If you are an employer, what is your assessment of the costs of conducting gender pay analysis and publishing relevant information?**

**Actual Costs Estimated Costs**

**Infrastructure (e.g. software)**

**Training requirements**

**Publication**

**Other, please specify**

**Total**

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

As a professional body, we are unable to answer these questions, although our members have commented that it will not be possible to provide a meaningful estimate of costs unless and until the full details of the proposed requirement are available. Whilst it is easy to say that there are likely to be financial and resource costs, these cannot be quantified until companies know exactly what and how they will be required to report and can then assess, for example, the costs of any work on their payroll systems necessary to extract the required data. You have noted in paragraph 3.8 of the consultation document that it is the Government's intention "that commencement of the regulations should be delayed for an appropriate period to give businesses an opportunity to prepare for implementation"; we cannot emphasise too strongly that an appropriate period between enactment and effective date will be essential to mitigate the implementation costs.



**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

**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:**

**(a) 1 January.**

**(b) 6 April.**

**(c) 1 October.**

**(d) The year-end date for each business.**

**(e) No preference.**

**(f) Other (please specify, including reason).**

(d) the year end date for each business. As noted above this will minimise disruption by keeping the new requirement in line with the existing reporting cycle for the company.

**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?**

**(a) Helping employers to understand the new regulations (e.g. through workshops or seminars).**

This would be helpful

**(b) Helping employers to calculate their organisation's gender pay gap (e.g. through access to software).**

This might be helpful, but given the vast number of systems used by companies to produce their payroll and employee data, we believe this would be a very complex undertaking and therefore would not recommend that it be attempted.

**(c) Helping employers with other types of supporting analysis (e.g. analysis of representation of women at different levels within the workforce).**

We believe that most employers will be able to manage this. In the June 2014 edition of our half-yearly Boardroom Bellwether report, we asked the company secretaries of FTSE350 companies how easy they had found it to comply with the new strategic report requirement to disclose the number of men and women at certain levels in your organisation. 65% of respondents described it as easy or very easy, with 27% describing it as difficult or very difficult.

**(d) Helping employers to address the issues identified by a pay gap analysis.**

We believe that employers will be able to manage this.



**(e) Other, please specify.**

The consultation document states (page 15) that “Transparency around pay was an issue, with a small number of staff contractually bound not to discuss their pay with colleagues”. The Government could legislate to make any such contractual provision ineffective.

One innovation that our members have found very helpful in the corporate reporting environment has been the development by the Financial Reporting Council (FRC) of the Financial Reporting Lab - <https://www.frc.org.uk/Our-Work/Codes-Standards/Financial-Reporting-Lab.aspx>. The Lab was set up by the FRC to improve the effectiveness of corporate reporting in the UK and “provides an environment where investors and companies can come together to develop pragmatic solutions to today’s reporting needs”. As the FRC website states:

“The Financial Reporting Lab was launched in 2011 to:

- As a learning space, companies can use the Lab to test new reporting formats with investors, and investors can indicate areas where management can add greater value through the information they provide.
- As a hub to support innovation in reporting, the Lab’s focus on gathering and sharing evidence from the market provides the broader corporate community with feedback from shareholders on the value that new reporting formats bring.

The Lab has worked with 65 different companies, 60 investment organisations and over 300 retail investors to bring insight and understanding to a number of key areas of disclosure.”

We would therefore suggest that GEO consider introducing a similar programme and facilitate this working group concept which has been very successful in the financial reporting environment.

**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?**

We were unclear as to how this might actually work in practice. Again there would be a significant infrastructure challenge in converting all the software used by companies to submit PAYE returns to the Government to provide this information. Moreover, reporting via the existing PAYE system is not in the public domain.

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

Yes, but we would expect these to be the existing civil enforcement procedures relating to breaches of the existing statutory reporting regime.



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

As mentioned above, we are enthusiastic supporters of corporate transparency, but firmly believe that data that is reported must not be used to draw inferences that it does not support. Our chief concern about this piece of legislation is, therefore, that a 'single-figure' gender pay gap statistic may be taken in isolation and treated as a proxy for 'good' or 'bad' corporate behaviour when the reality is that every company is different and there may be entirely acceptable reasons why some companies are an outlier from the norm. There is a real risk that the press will use the gender pay gap figure to focus on negative stories about UK plc, and that special interest groups will use it as a lever to push their own agendas.

We would also be concerned were any new legislation to lead to increased liability for companies beyond that relating to a failure to comply with the new disclosure requirements. We don't yet know where the Government will want the disclosure to be made and how the legislation (and any penalties for non-compliance) will be framed.

**Q16: Do you consider there are any risks or unintended consequences that warrant dropping or modifying the implementation of section 78? If yes, please explain.**

No. We believe that these risks can be mitigated by educating companies to be clear about exactly what this data means in their case, and that good guidance on which, as we have stated above, we would be happy to work with GEO will support this education process.

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

We believe that this requires significant activity and encouragement from Government in schools, as well as in colleges and universities. These should be co-ordinated with the business world, which can help. Indeed it is keen to do so as maximising the use of the available talent pool in the UK makes great business sense.

**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?**

As the consultation document recognises, this is a much bigger social issue than can be addressed simply by companies reporting data. We applaud the actions that the Government have already taken, particularly those around parental leave and childcare, which we believe to be at the heart of addressing the imbalance between men and women at senior levels in business and we believe that more initiatives to support childcare are probably the most significant step that the Government can take.

As mentioned above, this Institute is the international professional body with primary responsibility for governance, an area of business in which women are very well



represented. One of the key business roles in this area is that of the company secretary. Until the passage of the Companies Act 2006, it was a requirement that all companies had a company secretary; that Act removed the requirement for company secretary in any other than public companies on the basis that it was deregulatory. Given the increased focus on good governance in all companies and the Government's reliance on the information provided by companies, we believe that it remains appropriate for a properly qualified professional to hold the company secretary role in all companies, and that the change by the then Government in the 2006 Act should be reversed.

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

The critical issue here is the support of carers. For a variety of societal reasons, elder care tends to fall more heavily on women than on men. Your project in this area is a most welcome step.

We hope our comments are useful. If you would like to discuss them, or would like further information, please contact me.

Yours faithfully



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