

## **GENDER PAY GAP REPORTING**

---

**PRODUCING AN EFFECTIVE REPORT AND ACTION PLAN**

**In the second article of a two-part series, Amanda Steadman, Principal Knowledge Lawyer in the Employment, Incentives and Immigration Group, provides tips on how to produce an effective gender pay gap report and considers some of the measures that can help close the gender pay gap.**

## **1. Preparing your year 2 gender pay gap report:**

Employers should expect even closer scrutiny of gender pay gap reports in year 2 than was the case in Year 1. The national media, industry press and employee populations will be looking to see what, if any, progress has been made and what actions are proposed to close the gap. With this in mind, employers should strive towards producing the most effective report possible. Below, I discuss some of the elements employers may wish to consider building into their reports.

### ***Opening statement from senior stakeholder***

We know that gender pay gap reports must be signed off as accurate by a director of the business (or equivalent). However, it is worth considering going a step further and including an opening statement from a senior person within the business, such as the HR director. This provides a good opportunity to restate your organisation's commitment to diversity measures and perhaps also draw attention to anything particularly noteworthy that has been achieved in this field. This could include things like: membership of relevant bodies; any awards for excellence in the diversity arena; and/or any measures taken which puts your business ahead of your peers (e.g. full equalisation of shared parental pay and maternity pay; achievement of targets for senior female employees).

### ***Explanation of the difference between the gender pay gap and unequal pay***

As discussed in my first article, *Lessons from Year 1*<sup>1</sup>, most employers report feeling confident about the distinction between the gender pay gap and unequal pay. However, employees and other readers of the report won't necessarily have this understanding. This is not helped by the frequent conflation of the two concepts in media reporting. Therefore, it is worth including a brief explanation of the difference between the two concepts.

### ***Explanation of what the report will tell the reader***

It's helpful to clarify which entity or entities are being reporting on. Although there is no obligation to report on a group-wide basis (the obligation is per legal entity) some reporting employers have elected to do so, alongside their entity-based reports, in order to provide a more representative picture. If you wish to do this then this should be clarified in the report.

It can also be helpful to explain the reporting methodology. For example, you could clarify matters such as: who has been counted as an "employee" for headcount purposes and who has been counted as a "relevant employee" for reporting purposes; whether overseas employees have been included; and how absent employees have been treated. You may also wish to state the total headcount per entity and how this breaks down by full and part-time workers.

---

<sup>1</sup> <https://www.addleshawgoddard.com/en/insights/insights-briefings/2019/employment/gender-pay-gap-reporting-lessons-from-year-1/>

It is also worth explaining what each aspect of the gender pay information is designed to show and to clarify the difference between mean and median pay gaps and why the median gap is the more representative figure.

### *Creative presentation of the results and provision of additional information and figures*

Although the statutory obligation is to simply report the gender pay results, it can be helpful for the reader to have this information presented in a graphical format (e.g. pie charts, donut charts or bar charts). This is a simple step that can help the figures to land better.

If you want to produce a market-leading report then you should also consider going beyond the minimum figures required for compliance. For example, outline your explanation of the causes of any gaps. One compelling way to do this is by providing additional figures which support your explanation. For example:

- If your overall gap is driven in part by gendered job functions and/or location would you be prepared to provide pay gap figures broken down by reference to job function and/or by location? This would help demonstrate that when these factors are removed from the equation the gender pay gap figures improve.
- If you attribute your bonus gap in part to the prevalence of women working part-time (given that actual not FTE bonus figures are used), would you be prepared to provide the bonus gap figures using the FTE figures?
- On the quartile figures, would you be prepared to adopt the recommendation made in the BEIS Select Committee report on Gender Pay Gap Reporting (**BEIS Report**) to provide the information broken down by deciles in addition to by quartiles?

### *Year on year comparisons*

There is no requirement to provide year on year comparisons in future gender pay gap reports, but this is a step that would be in keeping with the overall transparency aim of the exercise. A good example of year on year figures can be found in Deloitte's 2018 report<sup>2</sup> (Deloitte published its year 2 report ahead of the deadline).

Of course, if your figures have declined since the previous year then you should attempt to explain why this is the case. Remember this does not necessarily have to be a bad news story - some measures which will help close the gap might make things worse before they get better. For example, if you need to make long-term improvements in the pipeline of senior women, you may have to recruit a higher proportion of women at the start of their career which may, in turn, have a negative impact on your pay gap for a few years before those women progress to senior, well-paid roles.

### *Detailed action plan for closing the gap*

We know that the Government and the Equality and Human Rights Commission (**EHRC**) want employers to do more than offer a defensive narrative explaining the causes of their pay and bonus gaps. They want an action plan setting out the positive, measurable and time-bound steps that the employer will take to close the gap, perhaps also including specific targets. Therefore, if you want to produce a really compelling report the inclusion of an action plan is a must.

---

<sup>2</sup> <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/Growth/deloitte-uk-gender-pay-gap-report-2018.pdf>

However, this should go beyond a mere rehearsal of any standing diversity measures that you already have in place. The Government Equalities Office (**GEO**) 2018 survey<sup>3</sup> (the **Survey**) revealed that where employers said they had measures in place to close the gap, these were often existing measures which had already been actioned as part of a wider diversity strategy, rather than having been specifically identified as measures to target the closure of the gender pay and bonus gaps.

Instead, the measures should be ones that relate to the causes of the gap that you have identified and are likely to be successful. Below, I discuss research from the GEO on the steps that have a proven track-record of helping to close pay gaps. You should benchmark your proposed measures against the GEO's latest research to check that the steps you are considering are worth pursuing.

Once you have identified an appropriate measure, it is also important to avoid describing it in vague or generic terms. For example:

- *"We plan to encourage flexible working for senior roles"*. Specify how you will go about encouraging this and, ideally, provide some concrete examples. Will roles be advertised as open to flexible working as a default? How will flexible work patterns be championed throughout the business? Are there any senior role models already working flexibly?
- *"We hope to attract more women to senior roles"*. Explain how you plan to set about doing this and by when. Have you set a target?

### **Profiles of employees**

This perhaps belongs in the "nice to have" category – but profiles of senior female employees have been used to good effect by a number of large reporting employers. It's an opportunity to tell a real life good news story, perhaps charting a female employee's journey in the business and the support that has been provided to her. Good examples of this can be seen in the gender pay gap reports produced by Barclays and Deloitte.

## **2. What level of improvement should you be aiming for?**

Ensuring that your narrative and action plan deliver the right message is a key part of the reporting exercise. However, in the years ahead, the expectation from your employees and the public at large is that you will make progress on closing your gender pay and bonus gaps. What should you be aiming for and how will you get there?

In terms of the "what", the BEIS Report helpfully recognises that the achievement of a 0% pay gap is probably unrealistic. They consider that a range of +/- 3% is achievable and would, in their view, be indicative of a properly gender-balanced workforce. However, it is also recognised that higher gaps will take longer to close and businesses will need to balance the desire to achieve results in the short-term against the need to secure a long-term sustainable solution.

In terms of the "how", appropriate measures will naturally vary from sector to sector and from company to company. The BEIS Report squarely lays responsibility on employers to identify which measures will help close the gap within their individual businesses. They say: *"Organisations cannot rely on excuses about societal attitudes and trends to avoid examining their own contribution...it is up to organisations themselves to identify which measures are most likely to work for them"*. It goes on to recommend that sector representative bodies work with their members and other stakeholders such as the CIPD and

---

<sup>3</sup> Employers' Understanding of the Gender Pay Gap and Actions to Tackle It

trade unions to develop stretching targets for reducing pay gaps and guidance on what works well in a particular sector.

But for now, at least, navigating the "how" is the problem of individual employers. This may leave you feeling somewhat at sea in the sense that you may be able to come up with a menu of potential measures that *might* work - but you may have little sense of whether such measures *will* work and are worth investing time and money in.

### **3. Which measures should you consider taking to help close your gap?**

The GEO's guidance on action plans<sup>4</sup> offers employers some very useful directions on the effectiveness of different measures to close the gender pay gap. Below, I discuss some of these measures.

#### **a. Measures that work well:**

The following actions are measures which are said to have been tested in the real world and shown a positive impact on the gender pay gap.

##### *Including multiple women in shortlists*

When putting together a shortlist of qualified candidates, the advice is to ensure that you include more than one woman in that shortlist. The Harvard Business Review has reported on research<sup>5</sup> which shows that where there is only one woman in a pool of four finalists, the odds of her being hired are statistically zero. However, when another woman is added, the decision-makers were much more likely to consider hiring a woman. Where two women were included in a shortlist of four, the chance of being hired rose to 50%.

Why does being the only woman in a pool of finalists matter? Firstly, it highlights how different the woman is from the norm – which can be viewed as risky for decision-makers. Further, having your difference brought into relief can also lead to inferences of incompetence. Managers need to know that including two women or more in shortlists could be a game-changer.

A related step to think about would be using the positive action provisions in section 158 of the Equality Act 2010 to select a woman (from a pool of equally qualified candidates) for a role where you reasonably think women are underrepresented or disadvantaged. However, EHRC research revealed that only two out of 440 in-scope employers were planning to use positive action measures to tackle the gender pay gap.

Other measures said to work well in the context of recruitment and promotions are **skills-based assessments** and **structured interviews**.

##### *Introducing transparency to promotion, pay and reward processes*

Operating transparent promotion, pay and reward processes is said to be effective in helping to close the gap. This means that employees are clear about what is involved and managers understand that their decisions need to be objective and evidence-based. The BEIS Report echoed this advice and recommended that employers address complex pay systems, including discretionary pay awards which are vulnerable to conscious and unconscious bias. However, there seems to be little appetite amongst employers to embrace transparency in this area. The EHRC's guidance - Closing the Gender Pay Gap

---

<sup>4</sup> Reporting the gender pay gap and improving gender equality in organisations: evidence-based actions for employers.

<sup>5</sup> <https://hbr.org/2016/04/if-theres-only-one-woman-in-your-candidate-pool-theres-statistically-no-chance-shell-be-hired>

- reported that only a "few employers" out of the 440 they surveyed had committed to introducing greater transparency into the reward process.

A related measure endorsed by the EHRC is the undertaking of an equal pay audit to check that the presence of any gap is not related to unlawful pay discrimination. Again, there seems to be little appetite amongst employers to do them – the EHRC reported that only 4 out of 440 employers in their survey had conducted, or intended to conduct, an equal pay audit. Without an equal pay audit, however, it is difficult to see how an employer can robustly claim that their gender pay gap is driven solely by factors other than unlawful discrimination.

Another measure said to work well in the context of pay is the **encouragement of salary negotiation**.

#### **b. Measures that look promising:**

Promising actions are those requiring further research to improve the evidence on their effectiveness and how best to implement them.

##### *Improving workplace flexibility for all*

The advice is to advertise and offer all jobs as having flexible working options. The Government is currently considering whether to compel employers to do this – historically it has preferred a voluntary approach. Further, flexible working opportunities should be offered to all regardless of gender or seniority. Indeed, it is recommended that senior leaders model and champion flexible working.

Flexible working is already an established measure amongst most employers. Interestingly, the EHRC reported that 25% of employers had committed to boosting the uptake of flexible working as part of their action plans. However, these plans tended to be on the generic side with high-level commitments to encourage a better work-life balance and supporting flexible working. It remains to be seen how such employers will track whether such approaches are having a material impact on their gender pay gaps.

##### *Encouraging the uptake of shared parental leave*

It is well-established that the gender pay gap widens dramatically after women have children and could be reduced if childcare was shared more equally. This would help to reduce the "motherhood penalty" which occurs due to extended time out of work typically followed by part-time working arrangements.

The advice is to encourage the uptake of shared parental leave, which has, to date, been extremely low (around 2%). How can you encourage men to take up shared parental leave? First, by enhancing shared parental pay to match enhanced maternity pay and, second, by promoting it within your business and helping employees understand how the system works and how it might benefit them.

The EHRC report that 20% of employers are planning to take steps to improve the uptake of shared parental leave, although this tended to be by way of promotional activities rather than enhancement of pay.

##### *Setting internal targets*

The advice stresses that employers should set specific, realistic and time-bound equality goals and track progress towards those goals i.e. what will be achieved and by when? Generic statements such as "we aim to reduce our gender pay gap" or "we will improve gender equality in the business" are too generic and risk being unsuccessful.

The BEIS Report recommends that organisations should be ambitious and set stretching targets that are right for their circumstances. However, the targets need not necessarily concern the gender pay gap figure itself. They could relate to the recruitment or proportion of women at different levels of

seniority. And these targets could be in the near and/or longer term. For example, a large employer in the arts sector set an overall target of reaching an equal balance of men and women among their top 100 hundred earners

Other promising measures are said to be **recruiting workplace returners** and operating **mentoring, sponsorship and networking programmes**.

**c. Measures that appear to be less effective:**

Due to mixed evidence, these measures are said to be less effective in reducing the gender pay gap.

***Training across a number of areas***

It may come as a surprise to learn that training across a number of relevant areas – unconscious bias, diversity and leadership development – have not proven to be effective. And, worryingly, there was some evidence to show that mandatory diversity in the USA may have actually *hindered* the recruitment of women to senior positions. There are a variety of possible reasons for this, including making people think that the training itself is the solution and no further steps are needed.

Other measures which appear to be less effective are using **diverse selection panels** in recruitment and using **performance self-assessment** mechanisms.

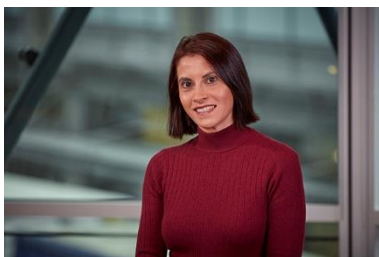
---

**Should you require any assistance in the preparation of your Year 2 gender pay gap report, or on the selection and implementation of appropriate measures, please do get in touch with me or your usual Addleshaw Goddard contact.**

**Amanda Steadman, Principal Knowledge Lawyer**

Email: [amanda.steadman@addleshawgoddard.com](mailto:amanda.steadman@addleshawgoddard.com)

Tel: 020 7160 3310



addleshawgoddard.com

---

Aberdeen, Doha, Dubai, Edinburgh, Glasgow, Hong Kong, Leeds, London, Manchester, Muscat, Singapore and Tokyo\*

\*a formal alliance with Hashidate Law Office

© 2018 Addleshaw Goddard LLP. All rights reserved. Extracts may be copied with prior permission and provided their source is acknowledged. This document is for general information only. It is not legal advice and should not be acted or relied on as being so, accordingly Addleshaw Goddard disclaims any responsibility. It does not create a solicitor-client relationship between Addleshaw Goddard and any other person. Legal advice should be taken before applying any information in this document to any facts and circumstances. Addleshaw Goddard is an international legal practice carried on by Addleshaw Goddard LLP (a limited liability partnership registered in England & Wales and authorised and regulated by the Solicitors Regulation Authority and the Law Society of Scotland) and its affiliated undertakings. Addleshaw Goddard operates in the Dubai International Financial Centre through Addleshaw Goddard (Middle East) LLP (registered with and regulated by the DFSA), in the Qatar Financial Centre through Addleshaw Goddard (GCC) LLP (licensed by the QFCA), in Oman through Addleshaw Goddard (Middle East) LLP in association with Nasser Al Habsi & Saif Al Mamari Law Firm (licensed by the Oman Ministry of Justice) and in Hong Kong through Addleshaw Goddard (Hong Kong) LLP, a Hong Kong limited liability partnership pursuant to the Legal Practitioners Ordinance and regulated by the Law Society of Hong Kong. In Tokyo, legal services are offered through Addleshaw Goddard's formal alliance with Hashidate Law Office. A list of members/principals for each firm will be provided upon request. The term partner refers to any individual who is a member of any Addleshaw Goddard entity or association or an employee or consultant with equivalent standing and qualifications. If you prefer not to receive promotional material from us, please email us at [unsubscribe@addleshawgoddard.com](mailto:unsubscribe@addleshawgoddard.com). For further information please consult our website [www.addleshawgoddard.com](http://www.addleshawgoddard.com) or [www.aglaw.com](http://www.aglaw.com).