

Business, Energy and Industrial Strategy Committee  
House of Commons  
SW1A 0AA

10 April 2018

**Inquiry on executive pay and the gender-pay gap in the private sector – written submission from ICSA: The Governance Institute.**

**The gender pay gap**

1. The principal points that we wish to make to the Committee are as follows:
  - The gender pay gap is an important issue in society and it is right that we take steps to address it.
  - The gender pay gap is a different issue from that of equal pay and it is imperative that this difference is understood by all commentators.
  - The data which organisations are required to report is useful in quantifying their individual position, but the context, in terms of why the gap exists, where it exists in their organisations and what they are doing to reduce it is far more important.
  - The underlying causes of the gender pay gap are socio-economic and although business can and must play its part, Government action will be necessary to address many of these causes.
  - It is far too early to make an informed assessment of the success of gender pay reporting or to consider changes to requirements.
  
2. We welcome the Committee's decision to launch this inquiry focussing on executive pay and the gender pay gap in the private sector, and this opportunity to respond. An informed and robust examination of these important issues will be helpful although we are concerned that it may be too early for this review to have its full beneficial effect.



3. In this submission, we are addressing, as requested by the Committee, only the issue of the gender pay gap, which has attracted considerable public comment; not all of which has demonstrated a clear understanding of what the data reported can and cannot evidence. It is essential for us to gain the full benefit of the data being reported that this is clearly understood – for example that a gender pay gap does not mean that an organisation is in breach of equal pay legislation or ‘pays men x% more than women’.

### **About ICSA: The Governance Institute**

4. ICSA: The Governance Institute<sup>1</sup> is the international professional body for governance, with more than 125 years’ experience and with members in all sectors. Our purpose is defined in our Royal Charter<sup>2</sup> as ‘leadership in the effective governance and efficient administration of commerce, industry and public affairs’, and we work with regulators and policy makers to champion high standards of governance, providing qualifications, training and guidance. We are the membership and qualifying body for governance professionals and chartered secretaries, which includes company secretaries.
5. The company secretary, the governance professional in UK companies, is at the forefront of governance arrangements within businesses, supporting the board in its decision-making. Similar governance professional roles can be found across all sectors, including charities, the NHS and sports bodies. Our members are, therefore, ideally placed to bring the benefit of their diverse perspectives to understanding the complex issues involved and the need to think through the changes that need to be made to minimise the risk of unforeseen consequences, some of which have bedevilled previous governance reform initiatives.
6. Our student membership is currently around 70% female. In our response on 4 September 2015<sup>3</sup> to the Government Equalities Office consultation<sup>4</sup> (the 2015 consultation) prior to the introduction of the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017<sup>5</sup> (the Regulations), we commented that “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.”

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<sup>1</sup> [www.icsa.org.uk](http://www.icsa.org.uk)

<sup>2</sup> <https://www.icsa.org.uk/assets/files/ceo/institute-charter-and-byelaws-2016.pdf>

<sup>3</sup> [https://www.icsa.org.uk/assets/files/pdfs/guidance/Consultations-2015/1509ICSASubmission\\_Genderpaygap\(1\).pdf](https://www.icsa.org.uk/assets/files/pdfs/guidance/Consultations-2015/1509ICSASubmission_Genderpaygap(1).pdf)

<sup>4</sup> <https://www.gov.uk/government/consultations/closing-the-gender-pay-gap>

<sup>5</sup> [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](https://www.gov.uk/government/consultations/closing-the-gender-pay-gap)

7. As we also said in our response to that consultation, “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.” Unfortunately, that has proved to be the case.
8. The 2015 consultation document itself stated (page 8) that “An employer delivering equal pay may still have a large pay gap and an employer with no pay gap may be breaching the law.” Contrary to much of the press comment that we have seen over the last few weeks, a gender pay gap is of itself not necessarily a bad thing. However, reporting that statistic ensures that it can be monitored by the company and the reasons for the gap may be identified and remedial action taken if, and to the degree, appropriate.
9. In our view, it is this remedial action, if appropriate, that is the key value of the legislation.

**The Committee sought evidence on: Whether the annual information related to pay required under the Equality Act 2010 is sufficient? Should any further information be required?**

10. This gets to the heart of the matter. But the answer to the Committee’s question will depend on what the requirement introduced under the Equalities Act is intended to achieve. That requirement is, quite simply, that employers publish some specific statistics about differences in pay between men and women in their organisations –
  - “(a) the difference between the mean hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees (see regulation 8);*
  - (b) the difference between the median hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees (see regulation 9);*
  - (c) the difference between the mean bonus pay paid to male relevant employees and that paid to female relevant employees (see regulation 10);*
  - (d) the difference between the median bonus pay paid to male relevant employees and that paid to female relevant employees (see regulation 11);*

*(e) the proportions of male and female relevant employees who were paid bonus pay (see regulation 12); and*

*(f) the proportions of male and female full-pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands (see regulation 13)<sup>6</sup>*

11. This legislation was enacted in response to a manifesto commitment to require larger employers to publish the difference between the average pay of their male and female employees and was one of a range of measures intended by the then Prime Minister, David Cameron, “to close the gender pay gap in a generation”.
12. In her foreword to the 2015 consultation, the Rt. Hon. Nicky Morgan MP., then Secretary of State for Education and Minister for Women and Equalities, commented 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.
13. Addressing the gender pay gap is an important step to take and corporate reporting of the position is a key factor in enabling further progress. However, this is only one piece of a particularly complex jigsaw. The information that is being required is useful data, but it does not provide a complete picture – indeed it cannot without requiring data analysis to a degree that would prove unreasonably onerous. This is because much depends on the circumstances of individual organisations and upon the differences in pay between genders at different levels of an organisation.
14. One additional requirement that will be helpful will be for organisations to provide an analysis of what the board believes to be the principal factors causing a gender pay gap and, importantly, what steps it is taking to address these.
15. There are significant socio-economic factors at play which militate against women progressing to some senior management roles and which are beyond the power of individual companies to resolve. These will require Government action leading, more fundamentally, to cultural change in our society. Other factors include the funding of childcare and the cultural predominance of

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<sup>6</sup> [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017, regulation 2.](#)

women taking responsibility for both child and elder-care, in many cases because they feel obliged to do so.

16. There are other cultural issues too, with evidence that professional women are more likely than men to be more cautious about speaking at events or being profiled in magazines, regardless of the fact that many may be better qualified. This tends to lower their professional profile. Recruitment, too, places a disproportionate weight on 'current salary' with many employers offering an increment on that rather than the rate for the job. If a woman is on a lower salary than a man, this approach will simply carry that lower salary forward into her new role, and so on throughout her career.
17. One issue reported by many companies which have reported their gender pay gap is that, quite simply, they have fewer women in senior management roles. This is exacerbated for some by the fact that many of the top global roles, held by men, are based at the UK head office. These organisations need to ask themselves why, and what they are doing about it.
18. But evidence of the higher proportion of women in senior roles in the not-for-profit sector demonstrates that it is not just these socio-economic factors that militate against female progression in the workplace. There are some areas in which companies can take action and in which they can have a real influence. And they should do so.
19. The negative 'name and shame' approach can only go so far and we prefer to see greater focus on the positive – commending those companies which are 'shining lights' and those which take the opportunity to answer the question 'what are you going to do to alleviate the gender pay gap?' One example widely reported in the press is that of Ryanair, which reported a 67 per cent pay gap between male and female employees. This was attributed to the fact that only eight of its 554 UK pilots are women. EasyJet submitted a similar report in November 2017, which revealed a 50% gender pay gap explaining why this was the case in similar terms but, importantly, setting some targets to reduce this male dominance in higher-paid roles:  
*“easyJet’s gender pay gap is strongly influenced by the salaries and gender make-up of its pilot community, which make up over a quarter of its UK employees. Pilots are predominantly male and their higher salaries, relative to other employees, significantly increases the average male pay at easyJet. easyJet is seeking to encourage more women to become pilots through its Amy Johnson Initiative. It has set a target that 20% of new entrant pilots should be female by 2020.”<sup>7</sup>*

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<sup>7</sup> <http://corporate.easyjet.com/~media/Files/E/Easyjet/attachments/easyjet-gender-pay-gap-report-november-2017>

20. In our view, considered reporting of this sort can only be a good thing and should be encouraged.
21. Many other companies are already considering the areas that are open to them to influence and the actions they can take, beginning with a thorough review of their employment practices; but we are starting from a low base. Our most recent Boardroom Bellwether survey<sup>8</sup>, undertaken in association with The Financial Times and published in January, indicated challenges in the female executive pipeline. Granted that this was looking at the pipeline for female appointment for FTSE 350 boards, but 59% of respondents shared the view that their female executive pipeline is insufficient to provide a sustainable pool of talented board members, with only 22% being confident that it is.
22. We believe that comparability between organisations is, on balance, somewhat unimportant, especially where this is between organisations in different sectors. 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 actions are being taken to reduce a gender pay gap.
23. One of the most interesting – and most useful – results of gender pay gap reporting will, therefore, be the ability to view it on an ongoing basis, comparing and contrasting each company's changing position over successive years, what steps are being taken to narrow it and which of these have the more beneficial effects. The focus should be on getting more women into senior positions, and a wide range of initiatives covering recruitment, promotion, succession planning and retention ought to be considered. In particular, messages about equality of opportunity should be reinforced from the bottom up and considered in the context of wider diversity.

#### **What is the extent of compliance? Is the information accurate?**

24. The due date for reporting was barely a week ago so it is too early for us to be able to comment on the extent of compliance or on the accuracy of the information provided. The Equality and Human Rights Commission (EHRC) has reported that more than 1,500 companies failed to report before the deadline and will be investigated and there have been newspaper reports that some filings have been inaccurate. It is too early to say whether either of these reports are accurate.

#### **How effective are the sanctions for non-compliance with reporting requirements?**

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<sup>8</sup> [FT-ICSA Boardroom Bellwether survey Winter 2017](#)

25. Companies that have failed to report in accordance with the law, or have filed inaccurate or incomplete information, will be subject to sanctions from the EHRC. We understand that they will be given 28 days to comply with the requirements before becoming subject to investigation and the possible issue of an unlawful act notice which can ultimately lead to court action with the potential for an unlimited fine.
26. In our view, failure to file this information is more likely to be due to a belief, justified or mistaken, that the requirements do not affect the organisation or a simple failure to get the data prepared in due time than to wilful disregard for the law. We have received anecdotal reports from a small minority of companies that the information was more difficult to gather than they expected due, in at least one case, to the gender of their employees not being recorded in one system on the basis that it is irrelevant. It might, with hindsight, have been more helpful had the reporting requirement been tied to an organisation's normal annual reporting cycle than to the tax year. This was our recommendation in our response to the 2015 consultation.
27. Whilst we have not yet seen the sanctions in effect, we therefore believe that those open to the EHRC and to the courts will be effective.

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

28. None at present. As the original 2015 consultation document itself stated (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." As noted in paragraph 8 above, "Contrary to much of the press comment that we have seen over the last few weeks, a gender pay gap is, therefore, of itself not necessarily a bad thing. However, reporting that statistic ensures that it can be monitored by the company, the reasons for the gap identified and remedial action taken if and to the degree appropriate."
29. We are concerned by suggestions in the press that there should be sanctions or even fines for those companies which cannot demonstrate success in closing the gap. If the reported statistics have shown one thing, it is that the gender pay gap is a far more complex issue than this approach suggests.
30. These are issues for the Government and there are some relatively simple actions that could be taken. For example, one comment in the 2015 consultation document was (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.

31. Similarly, as we have noted in paragraph 16 above, recruitment places a disproportionate weight on ‘current salary’ with many employers offering an increment on that rather than the rate for the job. The Government could legislate to require all job advertisements to carry an associated salary band, rather than the rather unhelpful ‘market rate’ or ‘depending on qualifications and experience’ and outlaw questions about current salary just as questions about e.g. one’s intention to have a family are proscribed.
32. There are other actions and responsibilities that must lie with Government:
  - Actions to encourage girls and young women to consider the broadest range of careers through 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.
  - Actions 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 so as to make it easier for working women to return to work.
  - Actions around the support of carers, particularly in the provision of elder care which, for a variety of societal reasons, tends to fall more heavily on women than on men, to make it easier for women to stay in work for longer and to create equal opportunities for men to be the care giver.
33. The underlying causes of the gender pay gap are the result of significant societal issues, which it is important that the Government continues to address. 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’. There is an analysis of the causes of the gender pay gap on pages 10-12 of the 2015 consultation which remains a useful summary in this regard and we have proposed some further actions in paragraphs 30 to 32 of this submission.
34. Correcting and removing the gender pay gap is not, and should not be seen as, solely the responsibility of employers. There are steps that they can take and in our view the carrot, rather than the stick, is a better means of encouraging employers to embrace these changes. It is now too soon after the first full review of the gender pay gap to expect significant change or, therefore, to take action against employers.

35. I hope that our comments are useful. If it would be helpful for me to appear before your Committee to discuss them in more detail, I should be happy to do so.

Yours faithfully,

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