



Women and Equalities Select Committee – Gender Pay Gap consultation Discrimination Law Association response

Introduction

1. The Discrimination Law Association (“DLA”), a registered charity, is a membership organisation established to promote good community relations by the advancement of education in the field of anti-discrimination law and practice. It achieves this by, among other things, the promotion and dissemination of advice and information, and the development and co-ordination of contacts with discrimination law practitioners and similar people and organisations in the UK and internationally. The DLA is concerned with achieving an understanding of the needs of victims of discrimination amongst lawyers, law-makers and others and of the necessity for a complainant-centred approach to anti-discrimination law and practice. With this in mind the DLA seeks to secure improvements in discrimination law and practice in the United Kingdom, Europe and at an international level.
2. The DLA is a national association with a wide and diverse membership. The membership currently consists of over 100 members. Membership is open to any lawyer, legal or advice worker or other person substantially engaged or interested in discrimination law and any organisation, firm, company or other body engaged or interested in discrimination law. The membership comprises, in the main, persons concerned with discrimination law from a complainant perspective.
3. The DLA is supportive of any serious attempts to reduce the gender pay gap (“GPG”), which represents a real and persistent labour market disadvantage for women and is bad for women, men and society.

Terms of reference

- How adequate are the Government’s proposals for tackling the pay gap faced by women over 40? What additional measures would be most effective in reducing the pay differentials faced by this group?
4. The measures already announced by the Government are inadequate to tackle any GPG, for women of any age.
 5. Reporting the GPG does not create any obligations on employers to take any positive steps to address the GPG. Also, until it is known in what form that reporting will take, it is difficult to gauge the usefulness of the requirement; measures to tackle particular problems by reference to age, or part-time working status, will not be available unless the statistics are required from employers are broken down by age group. Similarly, the DLA also considers breakdowns in relation to other types of work (such as part-time work, agency work, and sub-contracting) as critical, especially given the high proportion of women engaged in (for example) part-time work.

6. In addition, individual companies reporting their GPG does not address institutional disadvantage. For example, occupational segregation (women are more likely to be employed in caring roles, and in the public and leisure sectors), cannot be tackled by individual employers operating at the micro level, without some measures also taking place at the industry or sector level, between employers.
7. However, the DLA still views the GPG as a useful metric - it may not address the complete range of disadvantages faced by women in the workplace, but it is a useful indication of progress. We also think that it is helpful to use pay as it is an objective measure, and we reject some of the other evidence before the committee that suggests that lower pay for women can somehow be offset by other benefits, which are far harder to measure objectively (such as general “happiness” at work).
8. One additional measure that the Government could consider is to require that any GPG reporting must be broken down by age groups so that the extent of the problem (and any progress) can be measured.
9. A second important additional measure would be to bring section 14 of the Equality Act 2010 into force, to deal very specifically with combined discrimination and dual characteristics (sometimes known as ‘intersectionality’). Although the case of Miriam O’Reilly against the BBC was successful for the claimant in many respects, the judgment did highlight the potential lacunae in a law that protects women from discrimination because of their sex, and people over 40 from discrimination because of their age, but not women over 40 from discrimination because they are older women.
 - What actions would be most effective in improving recruitment, retention and re-training for women aged over 40?
10. The DLA views childcare as the critical issue here: both encouraging it to be shared between genders, and how employers might accommodate childcare within career progression.
11. The DLA’s experience is that family friendly policies can have a real impact on retention of women over 40. Parental leave being non-transferrable would be one example of helping society shift from traditional gender roles. More assistance towards paid child care (whether as an employee benefit, or subsidized by the government) would be another example.
12. Employers should recognise the vulnerability facing women because they are more likely to be absent from the labour market, either because of child care or care of other family members). When re-engaging with the labour market, it can be harder for a woman to negotiate her previous terms because of this fact, meaning that often women have little choice but to accept the lower status and lower pay that is on offer. This is not a result of a “choice”, but rather is a structural imbalance in the labour market that (often unjustifiably) prefers unbroken experience.

13. Another aspect of retention is to recognise that “experience”, while an important shorthand for a person’s ability in a role, cannot be an absolute measure of that ability. Evidence by Professor Shackleton says that he is not aware of any evidence that “after controlling for factors such as experience and qualifications, women suffer from any obvious disadvantage”. This fails to appreciate that reliance on “experience” may itself be a source of institutional bias against women, by failing to recognise that relevant experience for a role is not necessarily gained in the workplace, nor that tangible benefits of childcare (time management, multi-tasking, dealing with stressful environments) can also be utilised in the workplace.
14. Recruitment and retention policies and practices are also linked. The more women an organisation has in senior, influential positions, the more likely it is that any discrimination will be removed from recruitment. This is both in encouraging a diversity of applicants, and ensuring that the decision-makers feel less comfortable making decisions which perpetuate disadvantage amongst women.
 - Is there any evidence that women aged over 40 face particular barriers to promotion? If so, what could be done to address this problem?
15. The DLA’s experience is that fewer women are in more senior positions in virtually every sector. The vast majority of sex discrimination cases that are brought are by women facing barriers to progression, including access to training and opportunities for promotion in the workplace (and an even higher percentage of those that are successful at tribunal or settle). In addition, those cases that result in litigation are likely to be the tip of the iceberg – many women only bring discrimination cases at the end of their careers, or when they are about to move sector, as they know what an obstacle having brought a claim will be to any future career progression.
16. Women with caring responsibilities (be it children or older dependants) tend to work flexibly because of these responsibilities (see the Carers UK State of Care Survey 2011). There is a real risk that employers feel that carers (who work part-time) are not as committed to the job as their younger colleagues (who work full-time). Women who fall into this category are often desperate to have flexibility in their working pattern, which often leads to a feeling of being “grateful” and therefore not asking for more by way of a promotion. Added to this is the lack of perceived flexibility in senior roles.
17. Further, women over 40 who undertake caring responsibilities, because of the stress, often themselves develop hidden disabilities (such as depression) and are more likely to develop conditions such as osteoarthritis at this age. This in turn can lead to further disadvantage as employers are less likely to make reasonable adjustments under the Equality Act for more senior employees.
18. The possible steps to be taken in relation to promotion are covered above, as we see these as very similar to those faced in recruitment and retention. We would also endorse the recommendations of the Equal Pay Portal (published on the committee’s website on 1 December 2015).

- Are there particular difficulties in narrowing the gender pay gap for women working in predominantly female sectors and non-professional roles? Are there any evidence-based measures which could effectively address these issues?
19. As discussed above, the GPG may be an imperfect measure of disadvantage in predominantly female sectors. This difficulty is exacerbated by the fact that the only way to reduce the GPG overall may be to work to reduce the extent of occupational segregation. While such a task can no doubt be contributed to by employers, it also requires effort in education and change in how we structure childcare overall. A shift away from a mind-set that sees low-paid and part-time work as a “choice” made by women would be helpful, and measures such as “Lean In” networks (based on providing role-models and support networks) have also shown some success.
- Should the regulations on gender pay reporting be extended to organisations with fewer than 250 employees?
20. The DLA does not approve of any exemption within pay reporting. One intermediate option may be for the reporting requirement to be extended gradually; first to employers with more than 100 employees, before being extended to all employers. Reporting is available to any company with even a modest pay-roll system, and collating the statistics should be a matter of running a few reports rather than hours of work. The potential benefits far outweigh this minimal cost.
- Would voluntary measures regarding what employers do with gender pay gap information be sufficient to create change within organisations? What could be done to ensure that information about an organisation’s pay gap is translated into action?
 - Which mechanisms would most effectively ensure that policies designed to narrow the gender pay gap are fully complied with? Is there evidence from other countries or policy areas of what might work best?
21. Regular publically available equal pay audits for companies that fail to improve their GDG, or provide a satisfactory explanation, could be one solution.
22. There also needs to be clear guidance on how the statistics are reported, the public prominence they must be given, and what narrative must be provided. One answer may be that all applicants for any position have to be provided with copies of the latest GPG information. Another would be that there is a body (such as the Equality and Human Rights Commission) that can offer comment and guidance to bodies that fail to take adequate steps to improve their figures repeatedly. This would not be mandatory in any sense, but would have a public “name and shame” element to it.

23. The DLA's firm view is that voluntary measures will not be sufficient. Such measures have not managed to eradicate the GPG after over 40 years of legislation, and the position is unlikely to change from further voluntary measures. Such entrenchment requires mandatory action.
24. An alternative view may point to the competition naturally fuelled amongst commercial rivals. However, this will only occur in the same sector, and only where there is competition for the same pool of employees, who have relative freedom to choose their employer. This is unlikely to apply to the low-paid and majority part-time sectors, and so is unlikely to be effective in those contexts.

Discrimination Law Association
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