



**Fife Centre for Equalities  
Equality Briefing:**

*Gender Pay Gap: Reporting, Enforcement and  
Emerging Issues - February 2018*



## Key points

- The Gender Pay Gap report for organisations over 250 employees is due by **4 April 2018 for private and voluntary organisations** and **30 March 2018 for public sector employers**.
- The risk involved in not complying with gender pay gap reporting is **high** in terms of potential reputational and financial damage.
- Organisations **cannot** be punished for having a wide gender pay gap, but the [Equality and Human Rights Commission](#) can take action against organisations failing to publish their data, or for publishing misleading data.
- Public sector organisations in Scotland have further expectations placed on them due to [Public Sector Equality Duty](#) and the [Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012](#) with reporting on the Gender Pay Gap applying to organisations with **150** employees and over<sup>1</sup>.

## Background: Pay Gap and Equal Pay

Equal pay and the Gender Pay Gap are related as they both concern the disparity of pay women receive in employment. They are however two distinct equality issues, with Equal Pay being the most well understood and (depending on context) feasible to address.



Equal pay means that men and women in the same employment performing equal work must receive equal pay, as set out in the Equality Act 2010.

The Gender Pay Gap is a measure of the difference between men's and women's average earnings, and can be calculated for a specific organisation or across the labour market for an industry - nationally or locally. It is expressed as a percentage of men's earnings as historically this has been higher. In the cases where women's earnings are higher, this is described as a 'pay advantage'. Due to this the gender pay gap measure is a tool to address more systemic patterns of gender inequality or occupational segregation that full compliance with Equal Pay does not cover (\*see more details on current case law [below](#)).

In April 2017, the [Equality Act 2010 \(Gender Pay Gap Information\) Regulations](#) passed into law in April 2017 and lack of compliance can open up an organisation to action by the [Equality and Human Rights Commission](#). Employers are encouraged to follow the law, with formal enforcement action considered only if employers do not comply with the requirement to publish their data despite encouragement.

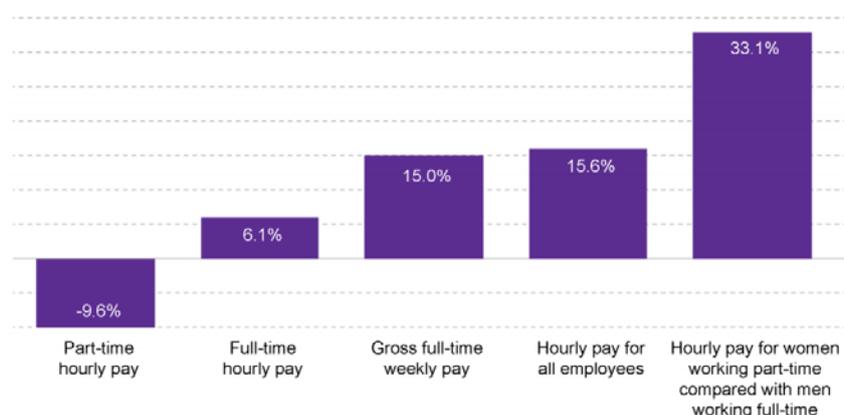
As April 2018 approaches, more gender paygap figures are being released, with only 1/8<sup>th</sup> of eligible organisations have submitted reports so far (1,047 firms out of approximately 9000). The figures released so far (February 2018) have already generated media attention (see [media section](#)).

<sup>1</sup> Note: This threshold might be lowered to 20 employees under proposals by the Scottish Government.



## Equality Statistics: Gender Pay Gap in Scotland and Fife

Depending on how the gender pay gap is measured it can vary in Scotland from 6% up to 33%. The measures in the graph below come from the Annual Survey for Hours and Earnings (ASHE) from the Office for National Statistics (ONS) and do not include income for the self-employed.



Source: *Scottish Government (2017) [No Small Change: The Economic Potential of Closing the Gender Pay Gap \(p10\)](#)*

The Scottish Government uses the full-time median pay gap which compares median hourly earnings of full-time male and full-time female workers so as to be consistent with the UK Office for National Statistics (ONS). With those measures, the pay gap between the median wage per hour of a man and a woman in Scotland is **£0.85** compared to **£2.51** for Fife ([EHRC online pay gap reporting tool](#)).

For individuals, the difference total weekly wage is a more useful measure:

- The [NOMIS Labour profile tool](#) reports the gender paygap between male and female workers at national level to be **£81.9 weekly** (£4258.80 per year before tax)
- In Fife this is lower at **£58.30 weekly** (£3031.60 per year before tax).

Gross Weekly Pay	Fife (£)	Scotland (£)
<b>Full-Time Workers</b>	<b>530.5</b>	<b>547.7</b>
Male Full-Time Workers	554.8	580.2
Female Full-Time Workers	496.5	498.3
<b>Hourly Pay - Excluding Overtime</b>		
<b>Full-Time Workers</b>	<b>13.48</b>	<b>13.85</b>
Male Full-Time Workers	13.50	14.32
Female Full-Time Workers	13.38	13.31

Source: *Earnings by place of residence (2017 – for 2017 figures)*  
[Nomis: Labour Market Profile – Fife](#)

*Working with Partners and Communities to make Fife a fair, equal and inclusive place to live, work and study.*



## Gender Pay Gap Enforcement in 2018-19

The [EHRC 'Closing the gap'](#) plan for enforcing the gender pay gap regulations proposed in December 2017 is as follows:

- 1) Resolve non-compliance through **informal resolution** (e.g. contacting the organisation and requiring them to acknowledge obligations and asking to comply)
- 2) Where **formal enforcement** action is required,
  - a. For **private or voluntary sector** organisations
    - i. Use EHRC [Section 20 Investigations and Section 23 Agreements](#) to stimulate compliance
    - ii. If this process fails, seek a court order under [Section 24](#) requiring employer to comply,
    - iii. If the organisation does not submit a draft action plan, the EHRC will apply to the sheriff court in Scotland for an order requiring the employer to provide an action plan under [Section 22\(6\)\(a\)](#) within a specified timeframe.
  - b. For the **public sector**,
    - i. Follow an assessment as per [Section 31 Public Sector Duty Assessment and 32 Public Sector Duty Compliance Notice](#) (this initially is similar to Section 20 investigations)<sup>2</sup>
    - ii. If the assessment concludes that the employer has failed to comply, the EHRC will issue a notice under section 32 requiring the employer to comply with the duty to publish and to provide us, within 28 days of the notice, with written information of steps taken or proposed for the purpose of complying with the duty.
    - iii. If the organisation fails to follow this, the EHRC will apply to the sheriff court in Scotland for an order requiring the employer to comply under section 32(8).
- 3) In 2018/19 focus on employers who do not publish the information required and take action if required against employers for publication of inaccurate data.

<sup>2</sup> i. A public sector employer would commit an offence if it fails to comply with notice under paragraph 9 Schedule 2 EA 2006, or a court order requiring them to take the necessary steps to comply with the notice, falsifies anything provided in accordance with a notice or court order, or gives false oral evidence in response to a notice or court order, and does not have a reasonable excuse for doing so. This is liable to a 'level 5' fine (i.e. no maximum fine).



## **Gender Pay Gap Reporting: Guidance / Worksheet**

### Who does this concern?

**Any organisation** with 250 or more employees (note a part time worker equals one whole employee, not 0.5 FTE etc).

**Any Public Sector organisation in Scotland with 150 employees and over** (as per the Public Sector Equality Duty and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012)

**Employers** with several groups, franchises or subsidiaries need to be considered separately and require a report each.

**Employees** that should be included in the report cover any employee contract of:

- Employment
- Apprenticeship
- Or contract to personally do work (e.g. contractors, sessional or casual workers)

**Exclusions:** Agency workers and partners (or owners)

### When does it need to be completed by? (by sector):

- **Public sector:** No later than 30 March 2018, covering the previous year snapshot
- **Private sector:** No later than 4 April 2018, covering the previous year snapshot
- **Third sector:** First gender pay gap report to be published no later than 4 April 2018.

### What does it involve?

1) In preparing pay data report consider the following:

#### **Employee Pay that need to be included:**

- basic pay,
- allowances (e.g. car allowance, equipment allowance etc)
- piecework (e.g. external designers etc)
- shift premium pay (e.g. evenings or weekends)

#### **Employee Pay to be excluded:**

- redundancy
- benefits in kind
- overtime
- expenses



**Employee Bonus Pay to be included:**

- Commissions, or productivity / performance bonuses
- Incentives or profit sharing
- Covers money and cash value of vouchers, securities, or interests
- \*exclude leaving staff

**Always use figures before deductions such as:**

- PAYE
- NI
- Pension schemes
- Student loan repayments

2) Calculate the 6 key information figures using the instructions below

**a. Mean gender pay gap**

This is calculated as a percentage by:

$$\frac{(\mathbf{Mn} - \mathbf{F})}{\mathbf{Mn}} \times 100$$

**Mn** is the **mean gross hourly rate** of pay of all full pay relevant male employees on the relevant date

**F** is the **mean gross hourly rate** of pay of all full pay relevant female employees on the relevant date

**b. Median gender pay gap**

This is calculated as a percentage by:

$$\frac{(\mathbf{Md} - \mathbf{F})}{\mathbf{Md}} \times 100$$

**Md** is the **median gross hourly rate** of pay of all full pay relevant male employees on the relevant date

**F** is the **median gross hourly rate** of pay of all full pay relevant female employees on the relevant date

**c. Mean bonus gender pay gap**

This is calculated as a percentage by:

$$\frac{(\mathbf{Mnb} - \mathbf{F})}{\mathbf{Mnb}} \times 100$$

**Mnb** is the **mean bonus rate** paid to all full pay relevant male employees in the 12 months preceding the snapshot date



**F** is the **mean bonus rate** paid to all full pay relevant female employees in the 12 months preceding the snapshot date

**d. Median bonus gender pay gap**

This is calculated as a percentage by:

$$\frac{(\mathbf{Mdb} - \mathbf{F})}{\mathbf{Mdb}} \times 100$$

**Mdb** is the **median bonus rate** paid to all full pay relevant male employees in the 12 months preceding the snapshot date

**F** is the **median bonus rate** paid to all full pay relevant female employees in the 12 months preceding the snapshot date

**e. Proportion of males and females receiving a bonus payment**

- i. Number of male employees receiving bonus pay, as a percentage of the total number of male employees:

$$\frac{(\mathbf{Mb})}{\mathbf{M}} \times 100$$

- ii. Number of female employees receiving bonus pay, as a percentage of the total number of male employees:

$$\frac{(\mathbf{Fb})}{\mathbf{F}} \times 100$$

**Mb** is the total number of male employees receiving bonus pay

**M** is the total number of male employees

**Fb** is the total number of female employees receiving bonus pay

**F** is the total number of female employees

**f. Proportion of males and females in each quartile band**

- Split numbers of employees into 4 equal quartiles
- Rank based on gross hourly rate of pay
- Identify the number of full pay relevant male and female employees that fall into each pay band on the snapshot date
- Distribute employees on the same hourly pay rate evenly by gender where those bands cross quartile boundaries
- Report distribution for each quartile, e.g.
  - “Of the number of employees in the lower quartile, **M1%** are male and **F1%** are female.”
  - “Of the number of employees in the lower middle quartile, **M2%** are male and **F2%** are female.”



- “Of the number of employees in the upper middle quartile, **M3%** are male and **F3%** are female.”
- “Of the number of employees in the upper quartile, **M4%** are male and **F4%** are female.”

3) (Optional / Good practice) Include a narrative section in the report explaining:

- a. Causes of any gender pay gaps shown in the report, e.g. difficulty in recruiting in STEM industries, or percentage of women having had breaks from work that affected their career progression;
- b. The percentage of women working part time
- c. Actions being taken (or will be in the following year) to close paygaps
- d. How employees can get involved

4) (Optional / Good practice) Compare the gender pay gap looks against the wider picture in Fife and Nationally.

In Fife<sup>3</sup>, for **fulltime workers**:

- 17.9% pay gap between female and male full-time workers, compared to a 6.1% pay gap at national level.

For **part-time workers**:

- 11.8% pay advantage for women working part-time in Fife, compared to a 9.6% advantage nationally.

5) **Sign and endorse the report** – by a member of the management team, the organisation CEO or the Board of Directors

**\*For Private and Third Sector:**

Conclude with a written statement confirming that the information is accurate.

Note: this is not required for Public Sector organisations.

6) Publish the gender pay gap information on your organisation website so it is publicly available (remaining accessible for 3 years minimum), and also on:

- <https://www.gov.uk/report-gender-pay-gap-data>

---

<sup>3</sup> More details on gender pay gap in Fife, check Fife Centre for Equalities [Equality in Fife 2018](#) – pg 143 – 148



## Emerging issues / Media reports

As more reports are published, gender pay gap reporting is gaining a higher media profile, issues in the reporting process (i.e. organisations 'gaming' the report) are being highlighted as well as pay equality issues:

- 1,047 firms have complied, ~ **8,000** to go
- Men earned **18.4%** more than women in April 2017 (ONS)
- **74%** of UK firms pay more wages in total to their male staff than female staff
- The highest reported paygaps on 21/2/18 were in air travel firms and banking (e.g. Tui, Easyjet, and Virgin Money, Clydesdale and TSB, with quoted figures include: Easyjet at **45.5%**, Tui Airways **47%**, Bank of England **24%**).
- Partners in firms are excluded from gender pay reporting because they are considered to be owners rather than employees
- Companies also create subsidiaries or service companies with staff numbers below the 250 threshold for gender pay gap reporting

[Gender pay gap: Men still earn more than women at most firms](#)  
(BBC News, FEB18)

[Lloyd's of London CEO chief says partnerships skew gender pay gap data](#)  
(FT, FEB18)

[Vast majority of firms have a gender pay gap, show company reports](#)  
(Independent, FEB18)

## Useful links

ACAS Guidance on reporting:

<http://www.acas.org.uk/index.aspx?articleid=5768>

Equal Pay Portal:

Resource centre <http://www.equalpayportal.co.uk/>

EHRC Gender Paygap Tool:

<https://www.equalityhumanrights.com/en/pay-gaps/gender-what-does-pay-gap-look>

UK Gender Pay Gap Viewing Service:

<https://gender-pay-gap.service.gov.uk/Viewing/searchresults>



## **Related (\*Equal Pay) Case Law**

### **Glasgow City Council v Unison and Others**

[http://www.bailii.org/scot/cases/ScotCS/2017/\[2017\]CSIH34.html](http://www.bailii.org/scot/cases/ScotCS/2017/[2017]CSIH34.html)

**(Sex / gender based discrimination)**

- 6000 claimants argued that the pay protection scheme which accompanied the introduction of the new pay system had actually had the effect of discriminating against women by excluding them.
- Loss of bonuses for male-dominated groups following the implementation of the job evaluation scheme had resulted in those groups being given the benefit of pay protection (“red-circling”).
- The Court of Session upheld an Employment Appeal Tribunal decision that the pay protection scheme was discriminatory against women as bonuses favoured male groups

### **McCloud and Others V Ministry of Justice and the Lord Chancellor**

<https://www.leighday.co.uk/LeighDay/media/LeighDay/documents/Employment/McCloud-Ors,-Mostyn-Ors-Reserved-Judgment-Reasons-16-1-17.PDF>

**(Age; race; sex / gender based discrimination)**

- The Employment Tribunal upheld the claims for unlawful age, race and sex discrimination and equal pay against the Lord Chancellor and the Ministry of Justice by McCloud and over 200 judges in relation to changes in pension entitlements.
- The Tribunal held that the Lord Chancellor and the Ministry of Justice had discriminated against younger judges – which included significant number of females or judges and/or from minority ethnic groups, as it could not be justified to have them to leave the Judicial Pension Scheme in April 2015, while allowing older judges to remain.

### **Edinburgh Council 2009 Pay Dispute (Equal Pay / Refuse collectors)**

[http://news.bbc.co.uk/1/hi/scotland/edinburgh\\_and\\_east/8165451.stm](http://news.bbc.co.uk/1/hi/scotland/edinburgh_and_east/8165451.stm)

<http://www.solfed.org.uk/catalyst/when-equality-means-cuts>

**(Sex / gender based discrimination)**

- In 2009 a new pay system that meant equal pay across salary bands meant refuse collectors would have a wage cut from £18,000 to about £12,000, in line with several posts that were more female-dominated (e.g. teaching assistant, catering etc).



**Contact us:**

**Fife Centre for Equalities**

New Volunteer House, 16 East Fergus Place, Kirkcaldy, KY1 1XT

**Telephone:** 01592 645 310

**Email:** [info@centreforequalities.org.uk](mailto:info@centreforequalities.org.uk)

**Opening Hours:**

Monday-Friday, 09:00 – 17:00

Tell us about your community concern online at:

<https://centreforequalities.org.uk/support-and-advice/community-concerns/>



[Attribution-NonCommercial 4.0 International \(CC BY-NC 4.0\)](https://creativecommons.org/licenses/by-nc/4.0/)

The license is also available in the following languages:

Bahasa Indonesia , Deutsch , français , hrvatski , italiano, Nederlands, norsk , polski,  
suomeksi, svenska, te reo Māori, Türkçe, українська, العربية, 日本語.



[www.centreforequalities.org.uk](http://www.centreforequalities.org.uk)

Fife Centre for Equalities is a Company Limited by Guarantee, registered in Scotland No. 536028 and registered Scottish Charity No. SC046683.

*Working with Partners and Communities to make Fife a fair,  
equal and inclusive place to live, work and study.*

