Closing the Gender Pay Gap – Government consultation An NAPF response

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About the NAPF

The National Association of Pension Funds (NAPF) is the voice of workplace pensions in the UK. We speak for over 1,300 pension schemes that provide pensions for over 17 million people and have more than £900 billion of assets. We also have 400 members from businesses supporting the pensions sector.

We aim to help everyone get more out of their retirement savings. To do this we spread best practice among our members, challenge regulation where it adds more cost than benefit and promote policies that add value for savers.

Members of the NAPF have a clear interest in promoting the success of the companies in which they invest. As a consequence of this, the NAPF has long considered that one of its prime functions is to represent these interests on behalf of pension funds and the investment management firms who manage their assets. The NAPF's efforts are directed towards maximising the long-term returns of its members' assets.

Introduction

The NAPF warmly welcomes this consultation on the implementation of section 78 of the Equality Act 2010 (gender pay gap information) which the government committed to introducing within the Small Business, Enterprise and Employment Act 2015.

In June this year the NAPF published "Where is the workforce in corporate reporting?" This discussion paper was borne out of an increasing recognition, and indeed frustration, that presently there is very limited quantitative or qualitative reporting by companies on their approach to managing their workforce. This extends, as is highlighted within the paper, to the specific issue of the gender pay gap.

At a time when policy makers and central banks are rightly seeking to find solutions to the productivity puzzle there is also increased scrutiny on the way organisations are managed and a desire for more focus on the sustainability of company operations. We believe that issues related to the management of the workforce are deserving of more transparency by companies and attention by investors.

A focus over the past few years has been improving diversity on company boards. Following the Davies Review progress in the UK has been rapid with representation of women on FTSE 100 boards now exceeding 25%. However as Lord Davies rightly acknowledged in the foreword to the 2015 progress report, the job is not yet done. The goal should rightly be to ensure that companies are making the most of their available talent. Focus is rightly therefore turning to the low number of women Chairs and Executive Directors and the loss of talented, senior women from the Executive pipeline – one contributing factor to this may well be issues around equal pay.

In the UK there are firms which have already seized the initiative and have been willing to be much more transparent in this area. In our discussion paper we highlighted the example of Friends Life, whom are also recognised within this consultation paper. Friends Life acknowledged that gender balance is better for risk management and decision making, which in turn supports growth. To that end, they adopted a transparent approach to reporting which since 2011 included publishing their gender pay gap at grade level rather than at a top-line median salary level. This level of reporting is informative along with offering reassurance to investors that the agenda is being taken seriously.

Whilst we encourage the government to proceed with the introduction of new requirements for companies to reporting on their gender pay gaps we also encourage the government to give further thought to how it can enhance the quality of company reporting on their use of human capital more widely.

In terms of the reporting itself, consistency of disclosures on both inputs and outputs will be crucial to enabling more investors to give this area more scrutiny. Without the ability to monitor trends over time and ideally compare one company with their peers the value of the reporting for many analysts becomes minimal and it falls into the category of 'noise'. Equally, without thoughtful company specific qualitative reporting important context would be lost. As such what is most desired is a holistic approach which provides consistent data points alongside entity specific policies and context.

Moving the broader agenda forward will likely involve a re-thinking of the content currently provided within company annual reports and a debate as to whether there is scope for certain new disclosures to be made via websites or other communication avenues.

The potential disclosures discussed within this consultation paper will enable investors to ask more questions of companies in order to understand how opportunities for development and growth are grasped however; the issue of diversity should not be seen in isolation and the objective should be to provide investors, and wider stakeholders, with a clearer line of sight into how a company's workforce is composed, nurtured and motivated and subsequently how stable and productive it is in order to inform judgements on the sustainability of the operation.

We have sought below to provide answers, where appropriate, to the questions within the consultation document. We would be very happy to discuss any of these responses further.

Consultation questions

1. **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?**

We strongly agree.

The Think, Act, Report initiative launched in 2011 has to date only had very minimal success. One company, Friends Life which has been publishing its gender pay gap information since 2011 explained that "What gets measured, gets managed. What gets publicly reported, gets managed even better." We wholly agree with these sentiments. An onus on companies to publicly disclose results of their gender pay audits would likely really focus minds and result in tangible actions being taken by companies.

2. **How likely do you think 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 have restricted our comments here to the question of what impact the disclosures would have on investors and shareholders.

During 2014 the NAPF surveyed both pension funds and underlying scheme members and beneficiaries to better understand which issues were considered most important for investment managers to be taking into consideration when making investment decisions. The results were illuminating and instructive.

Our annual Engagement Survey surveyed 50 large UK occupational pension funds with combined assets under management of £419 billion. These large pension funds were asked how important it is that their fund's investment managers take a range of factors into consideration when making investment decisions. The results illustrated that pension funds consider that the long-term sustainability of an organisation should take priority over short-term performance when making investment decisions. In a similar vein, greater weighting and recognition was given to health & safety and pay and conditions of employees than to traditional governance topics such as executive pay, despite the political, societal and regulatory focus on this issue in the years since the 2012 Shareholder Spring.

These findings closely mirrored those of a similar survey the NAPF commissioned of underlying scheme members earlier in the summer of 2014. In this survey 1,064 UK adults were asked which issues they considered most important for their pension provider to take an active role in engaging with investee companies upon. Instructively, results demonstrated that scheme members consider those issues relating to "pay and conditions of employees" to be more important for engagement than those associated with executive pay, environmental impact and diversity.

What the above surveys demonstrate is that many long-term investors are now increasingly incorporating intangible factors into their valuations and assessments of a company's sustainability. In developing an assessment of the sustainability of a company's business model it would be remiss to not cast a scrutinising eye towards the company's return on investment in its workforce and whether that investment is likely to result in long-term business success. There are many factors which inform this judgement such as the turnover within an organisation and in turn these – which are often lagging indicators - are themselves influenced by other aspects such as for example a gender pay gap.

The quandary of course is that whilst more investors are beginning to give thought to analysing these intangibles they are commonly difficult to quantify and value and in the case of employee related matters data points are often not reported, or if they are, are often inconsistent thus hampering any ability to make comparisons. A universal reporting requirement would therefore be beneficial to investors and analysts and may in turn inform ex-ante investment decisions as investor may view a large gender pay gap as an issue of concern.

In addition, with investors increasingly being encouraged to act as engaged stewards of the companies in which they are invested, this additional reporting would enable them to have broader and more informed dialogues with company management. For genuinely long-term investors such as pension funds, conversations about the approach to managing the which constitute the wider workforce are crucial to understanding a company's culture, how well a company is functioning and whether warning lights are beginning to flash.

3. Employees or other interested parties (e.g. shareholders) may want to gauge how an employer's gender pay gap compares with similar organisations. How important do you think comparability is? (Not at all important; very unimportant; somewhat important; neither important nor unimportant; somewhat important; very important; don't know.)

Two crucial elements required for disclosures to be decision-useful for investors are consistency and comparability.

The fundamental issue at present with the reporting of issues related to the workforce by companies is that where information is provided it too often provides only a few pieces of the jigsaw thus not allowing the full picture to be seen. However, in addition, where data points are provided they are too often inconsistent and thus do not enable investors and analysts to make comparisons between companies within sectors. Without the ability to compare one company with their peers the value of the reporting for many analysts becomes minimal and it falls into the category of 'noise'.

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

It is important that resultant disclosures are easily accessible and that users of the information are able to place a high level of trust in the validity of the information.

It is right that continued consideration is given to the use of websites for the hosting of information that would historically have been disclosed within annual reports. In our view the use of websites for corporate reporting is most beneficial when the information in question changes little from year to year.

There is however, much to be said for the focusing of minds that publication within the annual report and account brings. There is a danger that issues which are not expected to be reported within an annual report receive less attention by the Board and in turn by others as they are deemed to be of secondary importance. It is generally the preference of most investors that pertinent information is disclosed within the annual report with clear sign-posting made to where further more static information can be located. Whilst we believe that this approach would also make sense for these disclosures we believe it would not necessarily be appropriate to prescribe this within the regulations but instead emphasise that the data should be published in a prominent location.

5. 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.

It may be appropriate to prescribe a minimum requirement such as an overall pay gap figure.

Investors however, may find little value in the publication of the single figure as it would miss far too much context and provide too little in the way of granularity to explore with the company.

We believe that disclosures of workforce matters should be viewed holistically. In the first instance we have suggested that enhanced disclosures around the composition of the workforce are needed and that these should include the numbers or proportions of permanent, temporary and contingent labour in addition to the mix of ages and genders at different levels of seniority. Against this context it would be possible to communicate differences in the pay of male and female employees amongst different categories of workers and different job grades. It is this level of disclosure which would be informative, providing significant insight into how a workforce is composed and talent developed, nurtured and promoted, however, we also acknowledge the difficulty of calculating the figures, especially where there are not clearly defined levels of seniority.

6. 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.

Without thoughtful company specific qualitative reporting important context would be lost. As such what is most desired is an approach which provides consistent data points alongside entity specific policies and context. In our view however, the additional narrative information need not be prescribed within the regulations but there may well be value in setting out expectations within non-statutory guidance. There should be scope and space for innovation and for companies to adopt practices most appropriate for their circumstances.

There is likely merit in re-considering the current guidance provided by the FRC with respect to the Strategic Report in order to encourage companies to give more consideration to their disclosures in relation to their workforce. Crucially any revisions should go beyond the topic of gender pay differences.

7. 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.

In order for this information to be regularly monitored and utilised it should be incorporated into a company's annual corporate reporting cycle. This should also help drive year-on-year improvements.

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

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

10. 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?

It may be appropriate to apply the regulations in the first instance to those companies which are required to comply or explain with the UK Corporate Governance Code – e.g. Premium listed companies – as they may be best equipped to adopt such practices in the near term. For smaller companies it may be appropriate to provide a longer lead-in time.

11. 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).

In our view the appropriate time period used is a matter for the company concerned. As above, it would be sensible for the period to be aligned with that adopted for its general reporting cycle and companies should be clear when the data was calculated.

12. 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?

N/A.

13. 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 believe that any move away from the current proposal to require reporting of the results of a gender pay gap analysis publicly would be disappointing. For publicly listed companies in particular, although the principle no doubt translates more broadly, the practice of reporting publicly focuses minds and ensures that the issue receives the attention of the board.

14. Do you think that introducing civil enforcement procedures would help ensure compliance with the proposed regulations?

For publicly listed companies it is their investors to whom they are primarily accountable. Shareholders have sufficient tools to express their views to companies providing appropriate levels of reporting are required.

15. What, if any, do you consider to be the risks or unintended consequences of implementing section 78?

If implemented in a fashion which produces disclosures which are too high level or inconsistent then the regulations will simply result in adding a (relatively small) cost to companies with little benefit. If however, resultant disclosures are consistent, comparable, company specific and meaningful then section 78 will provide beneficial for both companies and their investors.

16. 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.

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