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GENDER PAY GAP REPORTING DURING THE COVID-19 PANDEMIC

Guide
March 2021

Diversity and Inclusion

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Guide

Gender pay gap reporting during the COVID-19 pandemic

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Acknowledgements

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1 Executive summary

Introduction

On 24 March 2020, the Government Equalities Office (GEO) and the Equality and Human Rights Commission (EHRC) suspended enforcement of the compulsory gender pay gap reporting requirements for the 2019/20 year, shortly before the annual deadlines.

The Government confirmed in December 2020 that compulsory reporting would resume in the current reporting year. New information and guidelines on the treatment of furloughed employees were included in the Government's release, which we cover and expand on in this supplementary guidance. On 23 February 2021, the EHRC announced that it would postpone any enforcement action against employers until 5 October 2021, in response to the continued effects of the pandemic.

More than half of employers voluntarily published their statistics for 2019/20. The CIPD strongly encourages all employers to do so, as well as publishing their pay gaps for other protected groups, including ethnic minority employees and disabled employees. For this 2020/21 year, the requirement is once again compulsory for employers with more than 250 employers, despite the six-month period of grace in terms of enforcement. According to a recent CIPD poll, just 6% of employers will not be ready to publish their data by this spring's deadlines.

For many employers, it is not a return to 'business as usual', as the pandemic is likely to have an unpredictable impact on the gender pay gap statistics that many individual employers report this year, and almost certainly for future years as well. This is particularly because of the impact of the Coronavirus Job Retention Scheme (CJRS), more commonly known as the furlough scheme, which will make comparisons with prior and future years problematic and potentially could shift the overall gender pay gap in an employing organisation up or down.

The CIPD's existing *Gender Pay Gap Reporting Guide* remains the essential guidance on the gender pay gap reporting requirements for all UK employers with more than 250 employees but, for the reporting year 2020/21, there is need for this supplementary guidance. Its aim is to:

- help people professionals and employers develop an understanding of the wider context for gender pay reporting and how the unusual conditions produced by the pandemic are affecting gender pay
- provide specific guidance on how to report their 2020 'snapshot' pay data by the end of the first quarter in 2021 and help them to explain any unusual variations in their statistics that may occur as a result.

All the guidance contained in the main *Gender Pay Gap Reporting Guide* continues to apply and should be referenced in conjunction with this supplement.

Context

Despite the higher death rates of older men from COVID-19, women have been taking a disproportionate, unequal share of the economic hardship caused by this horrendous virus. Due to factors such as assuming a greater responsibility for childcare and home-schooling in lockdown, women have been more likely than men to work fewer hours, be away from work temporarily or drop out of the labour market altogether since the pandemic struck.

One third (34%) of UK workers were not 'working normally' by the first week in April 2020, mostly on the furlough scheme. The numbers on the CJRS peaked at 8.86 million in May 2020.

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It has been particularly extensively used in the private sector and in hospitality and non-food retail activities, sectors dominated by low-paid, part-time, predominantly female-held jobs. According to analysis by the Women's Budget Group, women were the majority (52.1%) of workers put on furlough, equating to 133,000 more women than men (see Section 3, The gendered impact).

The UN's international analysis finds a similarly gendered pattern, concluding we *'risk a roll back in women's rights (and earnings) if necessary efforts are not urgently undertaken'* (see Notes, 23). However, the impact of the pandemic on both national and individual employer-reported gaps is more complex and varied than a universal widening of inequalities. Perhaps surprisingly, the annual ONS national figures reveal a continuing, significant reduction in the UK's median all-employee gap, from 17.4% in 2019 to 15.5% in 2020. However, analysis by the Equality Trust (see Notes, 26) of the 5,822 employer reports posted before compulsory reporting was suspended shows a widening gap in the majority. The Equality Trust found the average bonus gap was up by almost 200%.

The significant variations in gaps evident in more detailed national breakdowns, for example, by sector and age, highlight the unpredictable variations that individual employers are liable to find in their data this year.

Specific guidance for 2020/21

More than a million employers have furloughed employees on the CJRS. They face the largest impact of the pandemic on their gender pay gap statistics potentially and the effects of furloughing employees are not straightforward.

The majority of furloughed employees who have been paid less than their standard pay (the Government only covers 80% of usual pay) should still be counted when establishing whether an employer's headcount takes it to the threshold of 250 employees triggering the requirement to report gender pay gap statistics.

Furloughed employees on less than 100% of their pay should also be included in the gender pay gap calculations for three of the six required statistics, when calculating:

- the percentage of men and women receiving bonus pay
- the average (mean) gender pay gap in bonus pay
- the median gender pay gap in bonus pay.

However, employees on furlough who received less than full pay must be excluded from the other three gender pay gap calculations, for:

- the average (mean) gender pay gap in terms of hourly pay
- the median gender pay gap in hourly pay
- the calculation of the percentage of men and women in each hourly pay quartile.

Some employers have themselves been funding the remaining portion of their employees' pay to avoid pay cuts. If employees had their salaries topped up to their normal 100% levels while on furlough, they should be included in all six of these calculations.

The CIPD strongly encourages employers to publish a narrative explanation and action plan along with their required statistics. This is particularly vital this year when the employee population used to calculate the statistics has changed in many organisations. Every employer needs to do its own pay analysis to understand the causes of its pay gaps and how these will be addressed by its tailored plan of actions.

The following suggestions may help this process:

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- Try to isolate the specific impact of the pandemic on your six statistics. You could, for example, carry out an additional set of calculations including furloughed employees. The reporting legislation only specifies the minimum information you need to publish. There is nothing to stop you including this additional information in your narrative report.
- Look for changes in additional supporting data which might help to explain your pay gaps, for example, in recruitment salaries or market pay supplements.
- Bonus gaps have historically tended to change more from year to year, as well as displaying wider gender gaps than the other elements of compensation. So, investigate any changes in bonus payments in particular to see whether this has impacted men and women differently.
- All indications are that the pandemic has widened inequality across the UK. So, consider additional or enhanced actions that you might take to help to address this.
- Review your flexible working arrangements and the effects of any changes in patterns of flexible working during the pandemic on your pay gaps.

The *Gender Pay Gap Reporting Guide* points out that *'gender pay gap reporting isn't just about the figures you come up with; it's also about the story that those figures tell'*. The guide provides lots of advice on communications, and how you communicate your gender pay gap statistics is especially important this year.

HR professionals need to emphasise that achieving gender pay and wider equality for women is generally not a short-term 'quick fix'. There are deep-rooted social and economic causes which are not easy for any individual employer to unpick.

Reward strategy: the legacy of COVID-19

COVID-19 has made gender pay gap reporting a more difficult challenge for many employers. But there is also the potential now for a much more positive legacy, if the pandemic drives more employers to recognise the damaging impact of widening inequalities, to seriously investigate and address their gender pay and representation gaps with renewed emphasis, thereby helping to build more equal, diverse and inclusive organisations in the UK.

2 Introduction: why reporting is essential

Suspension of compulsory reporting

The COVID-19 pandemic and associated restrictions and lockdowns have had a huge and continuing impact on our home and working lives and on the interactions between them. It is perhaps not surprising therefore that the pandemic has also affected the Government's gender pay gap reporting requirements, as well as employers' associated strategies and actions designed to reduce and remove these gaps and to improve gender equality.

In the wake of the first wave of the pandemic in the spring of 2020, the Government introduced a delay in annual financial reporting deadlines (including the first year of CEO pay ratio reporting) and the 'temporary relaxation' of several rules and regulations to make it *'easier for businesses to continue working through the disruption caused by COVID-19'*.

On 24 March, the Government Equalities Office (GEO) and the Equality and Human Rights Commission (EHRC) took the decision to suspend enforcement of the gender pay gap deadlines for the 2019/20 reporting year. Otherwise, the required statistics would need to

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have been provided by all employers with at least 250 employees by the normal annual deadline of 30 March (public sector) or 4 April (private and voluntary sectors). By the time of the announcement, around half of employers covered had already uploaded their information onto the Government's reporting website.[1]

Minister for Women and Equalities Liz Truss and EHRC Chair David Isaac explained: *'We recognise that employers across the country are facing unprecedented uncertainty and pressure at this time. Because of this we feel it is only right to suspend enforcement of gender pay gap reporting this year.'*[2]

Irrespective of the wisdom or otherwise of that decision, made a matter of days before the deadlines for uploading the required statistics onto the Government's website, **both the EHRC and the CIPD strongly encouraged employers and their HR professionals to upload the required statistics voluntarily and produce their normal annual narrative report** documenting their progress. Rebecca Hilsenrath, EHRC chief executive, said lifting the requirement was justified in order to relieve pressure on employers, but *'just because enforcement has been suspended temporarily, does not mean that reporting on gender pay gaps and creating action plans to reduce them isn't still the right thing to do'*.

As of the end of 2020, three months before the next annual deadlines, very nearly 6,000 of the 10,000 or so employers normally required to report had done so voluntarily for their 2019 snapshot date, and almost 500 had uploaded their information for their 2020 snapshot date in advance of the next compulsory reporting deadlines at the end of March/ early April 2021.[3]

On 23 February 2021, the EHRC announced that it would postpone any enforcement action against employers for not reporting their 2020 figures until 5 October 2021. EHRC Chair Baroness Kishwer Falkner acknowledged that businesses were still facing challenging times but urged employers to *'report their gender pay gap data for 2020/21 on time if they can … to demonstrate the steps they are taking to reduce long-term pay gaps through detailed action plans'*.

Why reporting remains vital

Why should an employer report, even for a year in which it has not been compulsory to do so? The CIPD believes that it is vital to do so and would particularly encourage those 4,000 or so employers who have not published their 2020/21 annual pay gap reports to still do so, even though enforcement measures are suspended for six months, for eight important reasons:

1. **To show the employer's genuine commitment** to achieving gender equality above and beyond the minimum legal requirements. This can have many benefits – for example, EHRC research found that almost two-thirds of potential recruits would consider an employer's gender pay gap figures before joining the organisation.
2. **To assess the effectiveness** of action plans and strategies designed and already being implemented to reduce and remove any gaps and to help maintain the existing momentum behind such initiatives.

   As Fiona Cannon, director of sustainability and inclusion at Lloyds Banking Group, explained, without the published annual data, the risk is that gender pay is liable to *'fall off the (boardroom) agenda quite quickly … this is really hard work, you have to keep on it all the time.'*

   'Continuing to be transparent about our performance and how we are holding ourselves to account really matters – and that means meeting the deadline,' according to Shell UK Chair Sinead Lynch.[5]

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3 **To maintain continuity** in the reported statistics against preceding and future years in order to show and monitor trends and patterns over time. A variety of research studies[6] highlight that gender pay gaps have multiple, often complex, causes and their successful reduction requires a sustained approach over a number of years, adjusting and adapting according to progress achieved.

In addition, the suspension of compulsory reporting has not been extended even though enforcement measures have been postponed. Employers that fear their gender pay gap may have increased will still have to report their data by 5 October 2021, and then again in March/April 2022, and postponing reporting for six months will not make the problem go away.

4 **To maintain an open and transparent approach** to pay management, which research suggests is associated with perceptions of fair pay by employees and lower gender pay gaps in practice.[7]

5 **To recognise the general and continuing, longer-term trend towards greater pay transparency** over time in society, employer practices, employment legislation and corporate reporting, with additional gender pay reporting requirements and ethnicity pay reporting seemingly likely to be introduced in the near future.[8]

6 **To continue to help realise the benefits for the national economy and individual organisations of addressing the gender pay gap** in general, but also specifically for 2020 and 2021. These benefits explain the purpose behind the original legislative requirement and are summarised in the main *Gender Pay Gap Reporting Guide*.

7 **To help address the unequal impact of the pandemic**, which has seen women's employment and earnings disproportionately affected and risks reversing the progress in closing the gap achieved in recent years, ever since the compulsory requirement was introduced in 2017 (see Section 2 below).

8 Also arising from the pandemic and associated social movements such as Black Lives Matter has been a **growing focus by investors and stakeholders on non-financial metrics and environmental, social and governance (ESG) reporting and performance**, meaning that a company's performance in areas such as equality, inclusion and diversity is likely to become more influential in corporate ratings and valuations in the future.[9]

This is also likely to increase the pressure on government to expand the compulsory gender pay reporting requirements to cover ethnicity. This was supported by over 130,000 signatories to a parliamentary petition following George Floyd's death in May 2020, and is already carried out voluntarily by leading employers including the CIPD (see Appendix 2 of the main CIPD guide for guidance on ethnicity pay reporting).

Compulsory reporting returns

The Government confirmed in December 2020[10] that **compulsory gender pay gap reporting would resume** in the current reporting year. Although enforcement has been postponed for six months, the EHRC and the CIPD are urging employers to adhere to the usual reporting deadline for uploading the six required statistics of 30 March 2021 for most public authority employers and 4 April for private, voluntary and all other public authority employers, with the figures based on payroll information from the relevant 'snapshot' date for payroll data over the previous 12 months. New information and guidelines on the treatment of furloughed employees was included in the Government's release, which we cover and expand on in this supplementary guidance.

But the CIPD also recognises that for many employers it is not a return to 'business as usual' given the major and continuing impact of the pandemic. **COVID-19 has had a massive impact on the social and economic context for gender pay reporting and**

perceptions of equality and fairness more widely. It is likely to have an uncertain, possibly negative impact on the gender pay gap data that many individual employers report this year from the 2020 snapshot dates, as well as almost certainly impacting on the national and many individual employer pay gap figures for the 2021 snapshot dates, and possibly for future years as well.

This is likely to be the case **particularly because of the impact of the widely used Coronavirus Job Retention Scheme (CJRS), or furlough scheme**, introduced by the Government in March 2020 to help protect jobs and earnings through the pandemic, which has since covered millions of UK employees. The majority of them have been earning less than their usual rate of pay on the scheme (the Government are paying 80% of an employee's earnings up to a maximum of £2,500 per month – although some employers have topped the pay up themselves to 100% of prior earnings[11]).

These furloughed employees should not be included in the three required gender pay gap calculations (see Section 4 below) if their earnings were less than the usual amount on the snapshot date. However, **they will generally need to be included in calculating the three bonus statistics**.

This potentially will have a significant impact on the number of employees an individual employer reports on and the size of the gap calculated for their 2020 and 2021 reports, and it will make comparisons with prior and future years potentially problematic. The purpose of this supplementary guidance is to address these issues.

Aims of this supplementary guidance

The CIPD's existing, comprehensive *Gender Pay Gap Reporting Guide*[12] remains the essential guidance on how to calculate the six statistics for the gender pay gap reporting requirements for all UK employers with 250 employees or more, and how best to work on reducing the gender pay gaps revealed by most.

This supplementary guidance therefore aims to:

- Help people professionals and employers **develop an understanding of the wider context** this year and how the unusual economic and employment conditions produced by the pandemic in 2020 and early 2021 appear to be affecting gender pay gaps in the UK (see Section 3 below).
- **Provide specific guidance** to employers on how to report their 2020 'snapshot' pay data by the due date at the end of the first quarter in 2021. The guidance will deal with the current unique situation when calculating and reporting gender pay gap statistics including, for example, how to deal with furloughed employees. It is also designed to help organisations ascertain and explain in their narrative reports any unusual variations and trends in their results which may occur as a result of COVID-related measures (see Section 4 below).

All of the information in the main *Gender Pay Gap Reporting Guide* continues to apply and should also be referenced in conjunction with this supplement. For the definition of any specific terminology used in the regulations – snapshot date, relevant full-pay employees, and so on – please refer to Appendix 1 in that guide.

We would also note that this document can only provide general guidance and the legal information set out here is for guidance purposes only. In terms of specific situations and legal advice, or if you are or could be involved in legal proceedings or have equal pay issues, then you should seek professional legal advice from an appropriately qualified solicitor.

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3 COVID-19: how the pandemic is affecting gender pay gaps

The gendered impact

'A disaster for feminism',[13] *'back to the 1950s',*[14] and *'the first female recession'*[15] are just some of the recent press headlines characterising the devastating but undoubtedly differentiated economic effects of the COVID-19 pandemic between men and women. Despite the higher death rates of elderly males from COVID-19, women have been taking a disproportionate and unequal share of the economic hardship caused by this horrendous virus.

Women are much more likely than men to be in the low-paid, precarious jobs and low-paying sectors hardest hit by the lockdowns and the slow, stuttering pace of any economic recovery. Women also predominate in the keyworker roles not amenable to homeworking that have seen the highest occupational mortality rates from COVID-19, notably care home workers and retail shop assistants.[16]

Concern at these developments causing a reversal and potential rise once more in gender earnings gaps and widening inequality has resulted in, for example, the current House of Commons Women and Equality Committee (WEC) inquiry[17] into the unequal impact of the pandemic on women. Internationally, a High-Level Meeting of the United Nations (UN) General Assembly[18] was held in October 2020 on the crisis and on how to re-energise *'the realisation of gender equality'*.

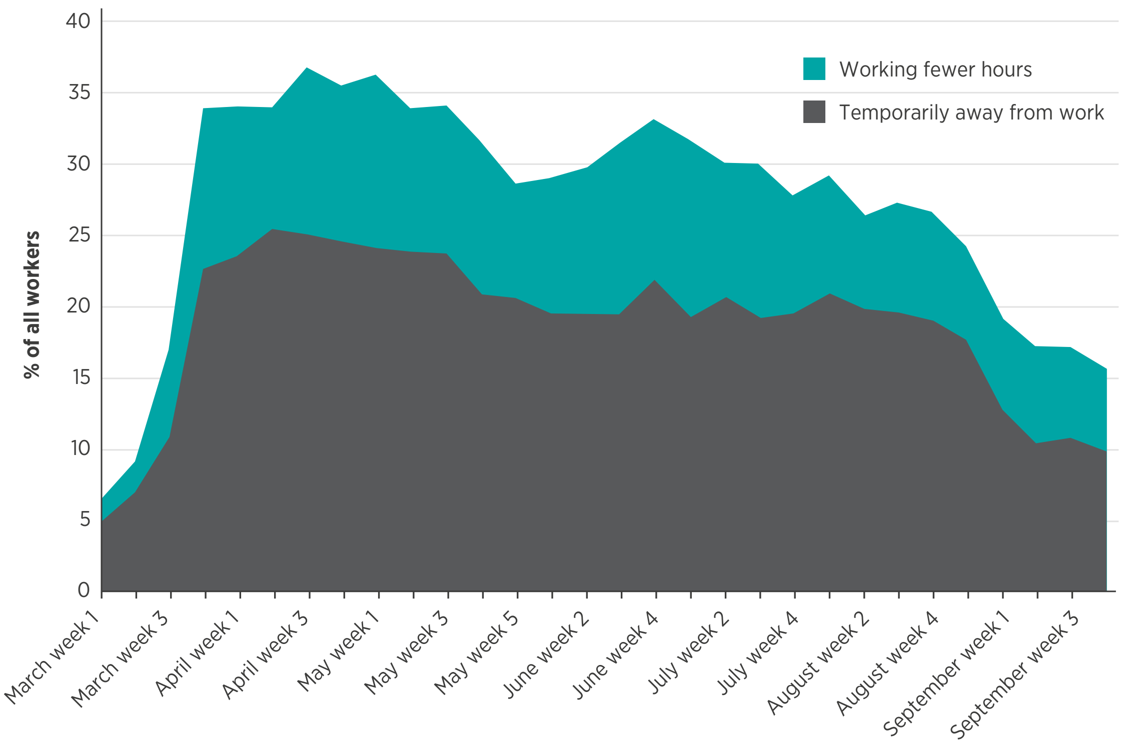
The IES's UK labour market analysis[19] of workers furloughed and made redundant by employers during 2020, presented in evidence to the WEC inquiry, concluded that *'low-income workers are bearing the brunt of the Coronavirus pandemic'* and these workers were *'more likely to be women, to be lone parents, to be from certain ethnic minority groups (Black, Pakistani or Bangladeshi), and/or to have no qualifications'*. In terms of the decline in employment of 490,000 jobs which occurred in the first six months of the virus's impact in 2020, 90% of these jobs were part-time roles, which are overwhelmingly staffed by women, the majority of whom have been forced into 'economic inactivity'.

Due to factors such as assuming greater responsibility for childcare during lockdown (women have been carrying out an average of two-thirds more childcare/home-schooling duties per day than men, according to Office for National Statistics (ONS) data[20]), women have also been more likely to be working fewer hours, temporarily away from work or dropping out of the labour market altogether than men since the pandemic struck in March 2020.

Less employment and fewer hours worked, more furloughing for women

One third (34%) of UK workers were not 'working normally' by the first week in April 2020 (see Figure 1), with almost a quarter 'temporarily away' from their work altogether, mostly on the furlough scheme.[21] The majority in both these categories were female employees with, for example, 133,000 more women than men furloughed in the first lockdown peak shown on the graph.

Figure 1: The proportion of UK workers not 'working normally' from March to September 2020



Source: IES analysis of quarterly Labour Force Survey

The furlough scheme, which explains the bulk of these employees not being at work earning their usual salaries and wages during 2020, is likely to have the biggest impact of any factor related to the pandemic on employers' gender pay gap analysis and statistics for 2019/20 (which must be reported by March/April 2021). The furlough scheme was only introduced very late in the reporting year on 20 March 2020, just before the 'snapshot dates' for calculating gender pay gaps. Employers were able to claim the Government's wage support from 1 March of 80% of salary for each employee furloughed, up to a maximum limit of £2,500 per month. Yet already by the start of April 2020 and the payroll snapshot dates for 2020/21 reporting, millions of employees had been moved onto the Government's payroll through the scheme and seen their pay reduced but protected.

The furlough scheme has been particularly extensively used in the private sector and in areas most badly impacted by the first lockdown, notably hospitality and non-food retail activities, sectors dominated by low-paid, part-time and predominantly female-held jobs. The numbers on the scheme peaked at 8.86 million employees on 8 May 2020. By the end of the year, when numbers again increased under the revised scheme to over 4 million as the third, post-Christmas lockdown was introduced, more than a million employers had by then made use of the scheme.

According to analysis by the Women's Budget Group,[22] women were the majority (52.1%) of workers put on furlough across the UK up to the end of August 2020, and more women than men were furloughed in 72% of parliamentary constituencies, with the largest gender difference evident for younger people aged 18–24 years.

Section 3 below deals specifically with how employers should take account of furloughed employees in their annual gender pay gap calculations and narrative reports this year.

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Internationally, despite the operation of similar job support schemes in many countries, looking at the data from its own recently established 'gender tracker', the UN's analysis[23] finds a similar gendered pattern of impact, concluding that *'women and girls are left behind'* in the COVID-19 response, and that we *'risk a roll back in women's rights (and earnings) if necessary efforts are not urgently undertaken'*.[24]

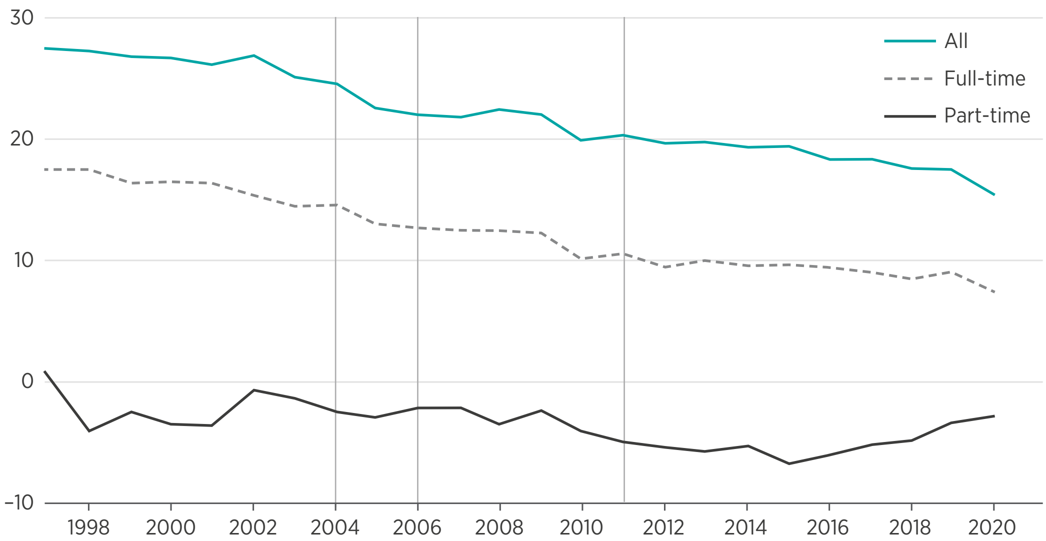
The unpredictable effects of the pandemic on gender pay gaps

All of this damaging data might lead to the assumption that the UK's national gender pay gap, and many of the gaps reported by individual employers, will have widened since the pandemic struck as a sign of this greater gender inequality, perhaps encouraging some employers not to report voluntarily in 2020.

A list of reasons to resist this temptation and to report on gaps every year, even voluntarily, has already been listed (see Why reporting remains vital, above). The impact of the pandemic on both national and individual employer-reported gaps is in fact more complex and varied than a universal widening.

Take the national gender pay gap, which the Government uses as its main metric to monitor its own performance in international league tables and to assess the impact of the compulsory reporting regulations. Perhaps surprisingly, the annual ONS analysis of the national gender pay gap, published in November 2020 but based on data at the end of the first quarter, reveals **a continuing, significant if surprising reduction in the UK's median all-employee gap**, down from 17.4% in April 2019 to 15.5% in 2020 (see Figure 2).

Figure 2: The gender pay gap for median gross hourly earnings, April 1997 to April 2020 (%) (Source: ONS)[25]



How, then, to explain the continuing decline in the national gender pay gap despite the gendered impact of COVID-19? The ONS admits to challenges in gathering its data through the normal methods because of the pandemic but reports that it still believes it is accurate and consistent with the figures for prior years.

The ONS believes that at the time of its data-gathering, *'approximately 8.8 million employees were furloughed under the Coronavirus Job Retention Scheme (CJRS)'*, with many experiencing pay reductions. However, rather than removing furloughed employees on reduced pay from its calculations, as employers are required to do under the reporting

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regulations, the estimates in the (ONS) bulletin *'include furloughed employees and are based on actual payments made to the employee from company payrolls and the hours on which this pay was calculated, which in the case of furloughed employees are their usual hours'*. In other words, they were treated as though their pay had not been reduced.

The ONS also believes that the bulk of both men and women furloughed and experiencing any pay reductions were low-paid workers, who were thereby experiencing a similar impact which was not differentiated by gender.

Some commentators remain sceptical and believe that the November 2021 national figures will show the anticipated reversal and widening of these gaps, given that factors such as furloughing will have had a longer period to have an impact on the data than in the 2019/20 year. **An analysis[26] of the 5,822 individual employer reports already posted on the Government's website before the requirement to report was suspended in March 2020 shows this widening of the gap occurring in a majority of them**. While 12% reported a positive gender pay gap in favour of women, averaging across the whole sample there had been a 0.9% increase in the median pay gap over the prior 12 months to 12.8%, reversing the progress of recent years.

The Equality Trust's analysis six months later in November 2020 using a slightly larger sample found a small average decline in the overall gender gap reported of 0.5%. But the Equality Trust found that the reported average bonus gap was up by almost 200%. It also reported that two-thirds of the 20 employers with the largest gender pay gaps in 2019 did not report voluntarily in 2020, including, for example, Sweaty Betty and Virgin Atlantic. Both these organisations had pay gaps of over 50%, so the absence of this type of employer with large gaps might have contributed to lowering the average gap across the remainder.

Others believe that with the decline in national employment levels during COVID-19 occurring particularly in lower-paying female-dominated occupations, this reduction could have increased the average pay of those women still remaining in employment and captured by the national figures. This is hardly a desirable feature of the labour market, even if it temporarily reduces the national gap.

This effect can be seen in the monthly average earnings statistics, where the ONS reported in January 2021 that *'current growth in average employee pay continued to strengthen, but this growth is increasingly being driven by compositional effects of a fall in the number and proportion of lower-paid employee jobs'*.[27]

However, the breakdown of the gender pay gap by occupational grouping and earnings level contained in the ONS's annual gender pay analysis shows that the gap is widest in the highest-earning job category of managers, directors and senior officials. It has, though, reduced here since 2019, partly because of the growth in the proportion of women holding this type of role.

The significant variation in gaps in these more detailed national breakdowns, for example, by sector (the gap is generally lower among public sector employers), and age (where there is now a small pay gap for younger women, but a significant and increasing difference for those over the age of 40) highlight the unpredictable variations that individual employers are likely to find in their own data. These will vary according to their organisation's profile of work and skills, location, employee demographics and, this year, the numbers and types of workers furloughed, placed on short-term working or made redundant, or having their earnings reduced in some other way.

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This emphasises the importance of individual employers analysing and reporting on their own situation in order to reduce their gender pay gaps. The specific details of calculating and explaining individual employer gender pay gaps under the reporting regulations for this year are considered in Section 4 below.

4 Reporting guidance for 2020/21: what and how to report

The *Gender Pay Gap Reporting Guide* follows the detailed guidance set out by the Government and Acas in support of the 2017 reporting legislation. As it explains, employers need to:

- determine whether the regulations apply to your organisation and, specifically, whether you meet the minimum threshold of 250 'relevant employees' for compulsory reporting
- calculate the hourly pay rates for the men and women among your 'full-pay relevant employees'
- calculate the six measures of the gender pay gap an organisation is required to report (see below)
- finally, analyse your data, draft a narrative report to explain the causes of any gaps shown and an action plan of initiatives designed to close them (both narrative reports and action plans have so far remained voluntary under the legislation, but are published by the majority of the 10,000 or so employers reporting their figures annually).

The six measures are:

- the mean (average) gender pay gap in hourly pay
- the median gender pay gap using hourly pay
- the percentage of men and women receiving bonus pay
- the mean gender gap in bonus pay
- the median gap in bonus pay
- the percentage of men and women in each hourly pay quarter in a ranking of your employees from lowest to higher paid per hour.

COVID-19 and the furloughing of almost one-third of the UK labour force in response will never have entered even the worst nightmares of the government officials and lawyers who developed the 2017 legislation. Yet the figures due to be reported by many employers in 2021 and 2022 will be affected by the pandemic and the support schemes intended to deal with it. The narratives of those organisations will need to explain this impact and many of their action plans will need to specifically address the resulting effect on their gender pay gaps.

At the time of writing, the CJRS had been extended to the end of September 2021, meaning that millions of employees will still be furloughed on the snapshot dates for organisations required to calculate their gender pay gaps and report them over the following 12 months up to March/April 2022.

In this section, we set out how to take account of the furloughing of any employees and other relevant pandemic-related changes taken in gender pay reporting calculations, narratives and plans, with reference to the additional guidance the Government published in December 2020,[28] when it confirmed that annual reporting had been resumed after the 2019/20 suspension.

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Do the regulations apply to my organisation?

The regulations define the minimum threshold requirement of 250 or more employees in terms of 'relevant employees' on the snapshot date. The definition of an employee is that contained in the Equality Act 2010. This so-called 'extended' definition includes employees (those with a contract of employment), workers and agency workers (those with a contract to do work or provide services), apprentices, and some self-employed people, where they have personally to perform the work.

Relevant employees are counted on an individual basis, **not** as full-time equivalents. So, for example, each part-time employee, including job-sharers, employed by an employer on the relevant snapshot date, counts as one employee.

People furloughed and therefore absent on the snapshot date are nonetheless still employed and count toward the total number of 'relevant employees'. This would also apply to those on sick leave or self-isolating on the snapshot date, or temporarily laid off, or on reduced hours or pay because of the lockdowns and the economic effects of the pandemic.

Apprentices under contract normally would be counted in the total and if they are still in employment they continue to do so. However, if their apprenticeship has been cancelled, as has happened unfortunately in hundreds of organisations during the pandemic, then obviously they would not count if not employed on the snapshot date.

So, in terms of the number of relevant employees needed to meet the threshold requirement to report under the regulations, those on the furlough scheme on the snapshot date are treated exactly the same as other employees. But this may well not be the case when it comes to the next step – making the pay gap calculations.

Furloughed employees and the gender pay gap measures

The regulations require the overall mean and median gender pay gaps in an organisation to be calculated using 'full-pay relevant employees'. This definition excludes any employees who, during the relevant pay period running up to the snapshot date (typically the previous month or week), are being paid at a reduced rate or not being paid at all.

For example, these might be employees on sick leave being paid at a reduced rate or taking an unpaid period of paternity leave. In a normal year, therefore, there will be fewer 'full-pay relevant employees' than the 'relevant employee' total for most employers. But the gap between them would typically be small, would be similar each year and would normally be split fairly evenly between men and women.

COVID-19 and its impact are not in any sense normal. Significant numbers of employees in many key sectors have been and still are on the furlough scheme on a reduced rate of pay, and different proportions of men and women may be evident in that furloughed population. Both 2020 and 2021 snapshot dates are affected. This potentially could have a significant impact on the mean and median pay gaps that you calculate, and also on the quartile pay distribution that needs to be reported.

Under the updated government guidance, it is clear that **furloughed employees should generally be excluded from the three pay calculations**:

'Exclude from your list of full-pay relevant employees, those on "leave", and who are receiving less than full pay, including those on: annual leave; maternity, paternity, adoption, parental or shared parental leave; sick leave; special leave; ***furloughed leave under the Coronavirus Job Retention Scheme, unless their pay was topped up to their usual full pay****; any other forms of leave (for example, study leave or sabbaticals).'*[29]

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The exception here is where an employer has furloughed their employees on 100% of their pay and made up the difference between the Government's contribution and the employees' normal pay. The furloughed employees on full pay would then be a 'full-pay relevant employee' and should be included in the pay calculations.

So, for these three pay statistics, furloughed employees will be generally classified as 'on leave' on reduced pay and so **furloughed employees should not be included in the calculations which are carried out on 'full-pay relevant employees'**. This applies for the calculation of the mean gender hourly pay gap, the median gender hourly pay gap and the percentage of men and women in each hourly pay quarter.

However, the logic will generally be different in terms of the other three measures of the gender gap, that is, in bonus pay eligibility and any gender differences and gaps in the mean and median bonus payments received over the 12 months prior to the snapshot date.

Furloughed employees and the gender bonus pay measures

The three bonus measures which need to be reported under the regulations – bonus eligibility between men and women, and mean and median payments actually made over the 12 months prior to the snapshot date to male and female employees – are calculated for 'relevant' rather than just 'full-pay relevant employees'. So in these cases **furloughed employees should normally be included in the gender bonus calculations**, whether they are furloughed on the Government's reduced-percentage rate or on their full pay rate through an employer top-up.

The Government Equalities Office has confirmed that *'any furloughed employees must be counted when establishing what the employer headcount is, and included in the gender pay gap calculations when calculating the percentage of men and women receiving bonus pay; the average (mean) gender pay gap using bonus pay; the median pay gap using bonus pay'*.[30]

It is important to remember, for furloughed and for all employees, that these bonus payment measures should **only include payments actually received in the defined prior year**. If no bonus payment was paid to all or to some employees in the previous year, or a bonus plan has been suspended because of the COVID-19 crisis, or a decision on payment delayed or deferred beyond the snapshot date, then no bonus payment should be recorded in these statistics.

Narrative reports and action plans

Both the Government and the CIPD have consistently emphasised the importance of organisations voluntarily providing a written narrative to accompany these required gender pay gap statistics, primarily in order to explain the reasons for any gaps and to set out an action plan to address the causes revealed by an organisation's analysis.

As the Government's revised guidance[31] explains:

'Adding a supporting narrative helps anyone reading your gender pay gap report understand your view of why a gender pay gap is present and what your employer has already done to analyse and close it.'

And as we set out in the section on 'Closing your gender pay gap' in the main guide, *'it is not possible to be prescriptive... what action you take will vary from one sector to another and from one business to another'* and so there we set out a range of possible suggestions.

Narratives also give the opportunity to explain any major and unusual changes in an organisation's circumstances which might produce a change in their gender pay gap figures compared with prior years. So, for example, an employer could have sold off part of

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its business with large numbers of female, lower-paid workers, which substantially reduced its gender pay gap purely because of the change in profile of the employee population. This could be explained in a narrative report.

Another organisation may have moved its formerly outsourced and generally female, lower-paid ancillary service staff back in-house as employees. This put those workers on improved pay and conditions, but lowered the organisation's overall pay average for women in the organisation and so widened its gender pay gap compared with the previous year. Again, this can be explained in an accompanying narrative.

This year, however, is different. Potentially many thousands of employers will have seen their employee population used to calculate the statistics change, possibly radically, from the previous year. This could be due to furloughing or having to restructure or make redundancies because of the state of the lockdown economy. And this is likely to result in unpredictable and potentially significant shifts in an organisation's gender pay gap statistics, possibly worsening them compared with previous years.

Around a fifth of employers have either postponed their annual pay reviews or frozen pay levels for their staff as a result of COVID-19, which means the pay data used to calculate the statistics might be substantially the same as in the previous year.

So, how should an employer respond if its pay gap statistics have changed (and especially worsened) purely or largely on account of the pandemic? As in prior years, every organisation will need to do its own pay analysis to understand the causation of its pay gaps and how these are and will be addressed in future by their tailored plan of actions. But the following are some suggestions on the possible approaches employers could take.

Try to isolate the specific impact of the pandemic on your six gender pay statistics

You could, for example, carry out an additional set of calculations including furloughed employees, particularly if you have large numbers of them, in order to better compare with gaps in prior years on a like-for-like basis. As already described, you could investigate your workforce profile, understand where the changes are located and whether your male and female populations have been affected differently.

A retail business, for example, might have closed all its shops and furloughed all the staff for most of the last year, so this year's pay figures might only include its head office employees. This understanding will be critical to presenting and interpreting the pay gaps revealed this year.

The reporting legislation only specifies the minimum information you need to publish

There is nothing at all to stop you including this additional information in your annual published narrative report, if it helps to explain the trend in your published figures. Many employers already voluntarily publish their pay gap in each pay quartile, for example, as well as just the proportion of men and women; or you could include findings from an equal pay audit to demonstrate that your pay gap is not caused by paying men and women unequally for like work.

Look for changes in additional supporting data which might help explain your pay gaps

This data might become particularly pertinent this year in helping to explain any shifts compared with prior years. If, say, you have frozen recruitment, how might this have impacted your male and female pay averages? It is not uncommon for men in systems with pay ranges to sit at a higher point in their pay scales on average than women.

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Or if a general pay freeze was implemented, there may have been some market-related adjustments made (which are often skewed towards male incumbents). Or perhaps pay was only frozen for higher-paid employees (which commonly have a higher proportion of male incumbents).

Investigate any changes in your bonus payments

Bonus gaps which measure variable pay have historically tended to change more from year-to-year, as well as on average displaying wider gender gaps than the other elements of compensation. So, in particular, investigate any changes in your bonus payments and how this may have impacted men and women in your organisation differently. Often more than one bonus plan will be aggregated into the overall bonus gap figure and it is not unusual for the gender coverage of each plan to vary – with all employees, for example, members of a profit-sharing plan but a male skew often evident in the membership of sales incentive plans.

Boards and external audiences such as the press are often most interested in major shifts in the figures, particularly negative ones, so being able to explain this situation and show causation related to the pandemic will be particularly important for employers this year.

Consider additional or enhanced actions

All the indications are that the pandemic has widened inequality across the UK and indeed global economy, with women, ethnic minority and disabled employees particularly badly affected. So, consider additional or enhanced measures that you might want to take in your organisation to help address this. The pandemic, as Section 3 explains, has highlighted the focus on inequality and on an employer's ESG performance, including making improvements in the inclusion and diversity field. Significant gender pay gaps and lack of female representation at senior levels in individual employers are being viewed increasingly seriously by investors and other stakeholders, such as customers and employees, irrespective of the social and structural drivers of the gaps, upping the importance of employer actions to address them.

This could, for example, be done by extending your existing actions to expand your board talent pipeline and succession plans designed to increase female representation at board level further down the organisation to senior management and professional posts; or perhaps by introducing or extending gender-blind recruitment and selection processes, which have been shown in many research studies to improve the diversity of jobholders in the roles covered.

Review your flexible working arrangements

Check the effects of any changes in patterns of working during the pandemic on your pay gaps. The pandemic has had a huge impact on our working patterns, with more than half of the workforce moving to homeworking substantially or permanently over the past year.

This appears to be having a varying effect on gender representation and future pay gaps. On the one hand, many perceived barriers to home and variable working hours have been shown to be without foundation as people have transitioned to carry out well-paid jobs away from the office. These jobs can be performed just as well, some would argue better, by employees working varied hours and in varied locations.

But, on the other hand, working mothers appear to have taken on the bulk of additional caring and education responsibilities, forcing more women than men to cut their hours and pay and forcing some to drop out of employment altogether.

How have these global and UK-wide trends been manifest in your organisation? Have your female homeworkers been forced to reduce their working hours and pay and how has this affected your hourly gender pay gap? These will be important factors to consider this year for many employers, alongside resulting changes and improvements to their flexible working and parental support policies.

The Government has already consulted on proposals to introduce the compulsory reporting of flexible and family-friendly working policies, and significant parliamentary support is evident for extending legislative requirements, for example, to enhance shared parental leave to cover parental pay and to make the compulsory advertising of all jobs, especially the most senior, as being open to working on a flexible/part-time basis.

The *Gender Pay Gap Reporting Guide* covers this issue in more detail, describing the information and data you might need to review and possible policy responses. As it explains, *'family leave and flexible working arrangements are not about getting more women into more part-time jobs, but about enabling employees to redistribute the responsibility for looking after family members between themselves, so as to reduce the motherhood and eldercare pay penalties.'* COVID-19 has made the need for employers to address these penalties even more urgent and, thereby, help to close their gender representation and pay gaps.

Communicate, communicate, communicate

'Gender pay gap reporting isn't just about the figures you come up with; it's also about the story that those figures tell,' as the guide says. **How you communicate your gender pay gap statistics is always vitally important, especially during COVID-19**.

Perhaps most of all this year, people professionals need to emphasise in their reports, to their boards and other important stakeholders, that achieving gender pay and wider equality for women with men is generally not an easy, short-term 'quick-fix' phenomenon. There are deep-rooted social and economic causes which are not easy for any individual employer to unpick and address.

So, in your narrative, highlight the longer-term trends in the pay gap statistics you have been reporting, reinforce and provide evidence for your genuine commitment at all levels to addressing them, and set out realistic goals and targets in terms of what can and needs to be achieved in the medium to long term, what plans and initiatives will close the gaps, and how you will monitor and report on them in future years. *The Gender Pay Gap Reporting Guide* provides lots of good advice on communications, which has become even more important due to COVID-19 (see Section 14 of the guide).

The future of reward strategy and the legacy of COVID-19

The pandemic has undoubtedly made gender pay gap reporting in 2021 a more difficult challenge for many employers, potentially widening inequalities in society, disrupting their sequence of reporting and for many introducing uncertain and perhaps unhelpful and negative data and trends into their six reported statistics.

But there is also the potential now for a much more powerful and positive legacy. The CIPD hopes that it will drive more employers to recognise the damaging impact of widening inequalities and the benefits of addressing them, encourage them to seriously investigate and address with renewed emphasis their own pay and representation gaps, and thereby help to build more equal, inclusive and diverse employing organisations in the UK.

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5 Notes

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