



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Economy, Jobs and Fair Work Committee

**Tuesday 18 April 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Tuesday 18 April 2017**

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**ECONOMY, JOBS AND FAIR WORK COMMITTEE**  
**12<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Gordon Lindhurst (Lothian) (Con)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Jackie Baillie (Dumbarton) (Lab)  
\*Bill Bowman (North East Scotland) (Con)  
\*Ash Denham (Edinburgh Eastern) (SNP)  
\*Richard Leonard (Central Scotland) (Lab)  
\*Dean Lockhart (Mid Scotland and Fife) (Con)  
\*Gordon MacDonald (Edinburgh Pentlands) (SNP)  
\*Gillian Martin (Aberdeenshire East) (SNP)  
\*Gil Paterson (Clydebank and Milngavie) (SNP)  
\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Kevin Burnett (Institution of Civil Engineers Scotland)  
Val Dougan (Law Society of Scotland)  
Cheryl Gedling (Public and Commercial Services Union)  
Richard Hardy (Prospect)  
Ann Henderson (Scottish Trades Union Congress)  
Peter Hunter (Unison Scotland)  
Dr Donald Macaskill (Scottish Care)  
Professor Catriona Paisey (Institute of Chartered Accountants of Scotland)

**CLERK TO THE COMMITTEE**

Alison Walker

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Economy, Jobs and Fair Work Committee

*Tuesday 18 April 2017*

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Gordon Lindhurst):** Good morning, everyone, and welcome to the 12th meeting in 2017 of the Economy, Jobs and Fair Work Committee. I remind everyone present to turn off any electrical devices that might interfere with the sound system.

Agenda item 1 is a decision on whether to take items 3 and 4 in private. Are we agreed?

**Members** *indicated agreement.*

## Gender Pay Gap

09:31

**The Convener:** This morning, we will take evidence from two panels of witnesses. Before we start, I ask members whether they wish to declare any interests.

**John Mason (Glasgow Shettleston) (SNP):** I note that one of the later witnesses is a member of the Institute of Chartered Accountants of Scotland's ethics board, and I wish to declare that until recently, I, too, was a member of that board.

**Bill Bowman (North East Scotland) (Con):** I declare that I, too, am a member of ICAS, from which we will hear evidence later. I also declare that Professor Paisey did her training while I was a partner with KPMG in Aberdeen, as did her husband, Nick Paisey, who is mentioned in the note.

**Dean Lockhart (Mid Scotland and Fife) (Con):** I am a member of the Law Society of England and Wales.

**The Convener:** I am not a member of the Law Society, but I suppose that I should declare that I am still a practising advocate and a member of the Faculty of Advocates.

**Jackie Baillie (Dumbarton) (Lab):** While we are in the mood for making declarations, I suppose that I should declare that I am a member of Unison.

**The Convener:** If there are no other declarations of interests at this stage, we will move on to our first set of witnesses, whom I will introduce in no particular order. I welcome Peter Hunter, regional manager, Unison Scotland; Cheryl Gedling, industrial officer, Public and Commercial Services Union; Ann Henderson, assistant secretary, Scottish Trades Union Congress; and Richard Hardy, national secretary, Prospect. I ask members to keep their questions and witnesses to keep their answers succinct. If, after this session, the witnesses wish to submit written information on any of the areas that we might cover, the committee will welcome that evidence.

I want to start with a question about the statistics available in Scotland on pay, earnings and employment for men and women. Is the panel confident that we have a definitive set of statistics? If not, in what ways can the statistics be improved? I note that paragraph 2 on page 3 of the Unison submission refers to this issue, saying:

"Scottish participants"

in a particular review

“were frequently unable to fully answer questions due to the absence of disaggregated data.”

The submission also mentions

“the Scottish Government commitment to Fair Work and inclusive growth”,

highlighting the need for “data to reveal impact”. Perhaps Cheryl Gedling can expand on that, and then the other witnesses can comment.

**Cheryl Gedling (Public and Commercial Services Union):** I could, convener, but I am not from Unison.

**The Convener:** That is entirely my mistake, and I apologise for suggesting that it was your submission.

**Peter Hunter (Unison Scotland):** I am quite happy for Cheryl to fill in the gaps. [*Laughter.*]

**The Convener:** My excuse is that I have just come back from the Easter break. Again, I apologise. Peter Hunter is, I think, the best person to answer that first question.

**Peter Hunter:** I used to work at the Low Pay Unit, where we did regular data analysis. If we were looking to break down earnings data by gender and working time, for example, by the time that we got to the regions of Scotland, very frequently there were gaps in the tables because the sample size would not support the analysis that we wanted to do. That was a common experience.

That has been a long-standing problem. My submission refers to the Scottish Government’s contribution to the overall United Kingdom report for the review of our compliance with the International Covenant on Economic, Social and Cultural Rights, which took place last year. The periodic review for all human rights compliance is on-going. All parties accepted the observation that the data did not disaggregate well for Scotland. The UK data is reasonably robust, but by the time that we reduce the sample size down to Scotland, we cannot comment on a variety of economic and social indicators that the United Nations wants to hear about. We have a data problem.

The committee has discussed the issue previously with people who are better qualified than I am to talk about it, such as academics and people from other interest groups. An important finding for the committee might be that we need to have the data to be sure that any policies that are adopted are having the desired impact.

**Ann Henderson (Scottish Trades Union Congress):** The STUC endorses that point, and I know that the Scottish Government has shared that concern in discussions with the STUC on some of the labour market work that is being done at that level. Some of the changes that are taking

place in the labour market have been referred to in the committee’s earlier discussions. One is the change around increased self-employment. What does that actually tell us? Is it masking underemployment? We really do not have some of the detail. In part, that is a UK-wide problem. We talk about a trend towards precarious work, but we do not know what that actually means for people’s day-to-day lives and their jobs. We do not necessarily know the sectors where it is most concentrated in Scotland, which makes it difficult to target interventions in the labour market. The latest labour market figures show an increase in economic inactivity, without our really knowing what that is. That is also very important.

**Richard Hardy (Prospect):** Obviously, I back up what my colleagues have said on that issue, but I want to add that, where pay reporting is done, it is important that is not just reporting of a mean or median across an organisation. Without digging down into pay grades and jobs of equal value, we do not get the sort of information that we need to resolve an equal pay issue. If we take too broad a view, the data is largely meaningless.

**The Convener:** Perhaps Cheryl Gedling wants to come in at this stage.

**Cheryl Gedling:** Thank you. From a civil service-specific perspective, the point that Richard Hardy has made is significant. The civil service is different from the rest of the public sector and has a story to tell about the consequence of 20 years of pay delegation. There are no UK-wide or Scotland-wide pay rates—they are devolved down to departmental level. I could work in one department and earn £2,000, or more, less than someone doing a job at the same grade in another department. We recognise that that issue has to be addressed. I also want, of course, to raise the issue of the impact of pay restraint, which we will no doubt come on to talk about a bit more.

Until we recognise that the issue has to be resolved, any data that we have will not be an accurate reflection of what is happening across the civil service and the rest of the public sector.

**Peter Hunter:** To add something positive to the critical observations that have been made, the increasing devolution of tax powers to Scotland fits in with data collection. The annual survey of hours and earnings gathers data through Her Majesty’s Revenue and Customs returns, and it is a massive data set. Therefore, there is perhaps scope within the devolution of tax to adjust how the data is gathered in order to address any perceived gaps in the Scottish data.

You also have the devolved power to design the 2021 census questions in Scotland, and the method of data gathering is another aspect. In our submission, we referred to the quite heavy

reliance on online participation. The census is only a 10-yearly snapshot of what is going on in the economy, but we could get a really good picture of what is happening with work and income.

Those are two positive areas that we could pay attention to.

**The Convener:** Thank you. We will now move on to a question from Jackie Baillie.

**Jackie Baillie:** I am interested in the panel's views on the forthcoming pay gap legislation and whether it will make a difference. The legislation requires pay gap reporting for companies with 250 employees or more. The Scottish economy is largely comprised of small and medium-sized enterprises. Given that context, is there scope to roll out the legislation in Scotland?

**The Convener:** Would anyone like to respond?

**Peter Hunter:** I seem to have been volunteered to go first. The legislation is very welcome. I will be saying some critical things in the course of our evidence this morning but it is important to emphasise the positives. It is great that the work of the coalition Government is being taken forward. The regulations are clearer and more effective than the Scottish public sector equality duty, which places an equal pay reporting obligation on public bodies. We should acknowledge that and review how we gather equal pay data in public sector bodies in Scotland to mirror some of the practices that are in these UK pay transparency regulations.

Generally speaking, the legislation is a massive, positive step forward, and transparency is very welcome. On public reputation and image protection, we have seen that big corporations such as Sports Direct and Uber do not like adverse publicity. Having spent 20 years in mass litigation, with tens of thousands of equal pay claims, I am hopeful that good old-fashioned transparency will work more quickly than that.

The upside of the reporting threshold for organisations is that big companies tend to set the benchmark rates for the economy so, even if small companies are not caught by the reporting regulations, the big companies, the public sector and large private organisations will tend to set the going rate. If they are compelled to increase rates for support workers or care workers because of pressure that comes through transparency, small organisations will be compelled to follow suit. As we know, there is a recruitment crisis in social care. The regulations' positive effect will spread to small organisations, notwithstanding the fact that they are not covered, so I am optimistic.

**Ann Henderson:** Another question is: what do we then do with the information? I know that the committee has been considering that angle. There are big companies that secure contracts to deliver

services for local government, the Parliament and, indeed, other organisations. When you are looking to contract out a service—we will come on to this later, too, I am sure, in relation to procurement—will pay gap reporting affect decisions about whether a company is a good one to give a contract to? What will people do with the information? It is a bit like some of the discussion that there has been around blacklisting and other practices. Would it influence their decision to award a contract if people saw that a big company had developed good practice and was seeking to reduce its pay gap?

09:45

**Cheryl Gedling:** Like my Unison colleague, I welcome the measure—any move towards greater transparency is positive. However, I possibly feel slightly less optimistic than she does about what will be done. Clearly, I would have liked the legislation to go further. It is important that employers are being encouraged to publish the information and an action plan about what they will do to improve their figures but, unfortunately, they are not required to do so.

We are witnessing what I can only call a decimation of the Equality and Human Rights Commission. We would have expected to see sanctions imposed and to have the EHRC policing and monitoring the position. Although the measure is a step in the right direction, without being able to ensure that the requirement is enforced and enacted, it is only a small step.

Having said that, I do not want to sound entirely negative; it is welcome that the work is being done. However, it should be extended beyond organisations that employ 250 staff, because even in the civil service employers represent smaller numbers of staff than that. There is secrecy around the information that is not helpful.

**Richard Hardy:** I am broadly in line with what colleagues have said. I particularly echo Cheryl Gedling's last point. The threshold of 250 staff is too high; it should be much lower. If the information is not collected, we cannot use it. We are broadly supportive of there being more transparency, but the measure needs to cover more organisations.

**The Convener:** Certain comments—or criticisms—have been made about the potential effect of the pay gap reporting legislation. I do not know whether anyone has seen the comments made by Kate Andrews of the Institute of Economic Affairs. She points to there being no breakdown of what job an individual is in, what qualifications they have, how long they have been working, or—to use her words—

“any of the other million differentials that could contribute to differences in pay.”

Is that a fair criticism? The committee has heard evidence that workers value not just the amount that they get paid but, for example, flexible working, if it is available. Other aspects of a job, not just the pay, might matter to someone who is working.

I suppose that my question has two parts. Is simply addressing the pay gap as a figure the appropriate approach? Is there more to the whole equation?

**Ann Henderson:** The committee has been considering this topic over several sessions. If one reads through all the evidence, it is quite obvious that the issue is complex. When you made the point about people valuing other aspects of their jobs, I thought of the childcare or social care sectors, which, ironically, are full of people—mainly women—who value what they do but are not paid appropriately. They do the job because they care about the job—if you listen to interviews with the skilled workforce, you see that they care passionately about their job. However, as a society, we do not treat it with the appropriate respect and value.

The language around the gender pay gap and statistics are useful, but all the evidence that you have heard tells you that tackling the matter, and resolving it, is complex. Even the statistics about the pay gap are only part of the story.

**Peter Hunter:** With the greatest respect to Kate Andrews, I would not attach any particular weight to what she said. First of all, there is no enforcement mechanism alongside the transparency regulations. If anyone were to litigate on the basis of data that was revealed under the regulations, the people who Kate Andrews is concerned about would have the opportunity to put forward a material factor defence—that is, that the difference in pay that might have appeared in the headline figures is attributable to some factor other than gender. That is how the law works; there is a defence in that regard.

The primary problem is that women and girls do better at secondary school and at further education, higher education, undergraduate and postgraduate levels, but do not convert that into cash value in the labour market. If the skills, knowledge and talent of women but not men are being underrecognised or overseen in the labour market, the more transparency that we have, the better.

We know that there is no point in comparing a 15 per cent pay gap in one company or one nation state with a 16 per cent pay gap in a different company or nation state, because the quality of the statistics does not support any observations in

relation to that. Some variance will possibly explain the difference between 15 and 16 per cent. We are all sufficiently intelligent and technically skilled to not assume that a pay gap of 14 per cent in a particular company means that there is unlawful discrimination in it. This is about headline indicators of long-term trends.

I am sure that Kate Andrews's contribution is well intentioned, but I would not attach any weight to it.

**Cheryl Gedling:** People who say that workers do not work only for their salary have never worried about paying their bills at the end of the month, getting their kids to school or whether they have enough money to get to work. Our members report such things.

I appreciate that there are things such as reward packages in other sectors of employment, but they do not exist in the civil service, and they have not done so for some time. People regularly fear losing their job, being made compulsorily redundant, or being moved 200 miles away because an office near where they live is closing. Therefore, I share the view that not too much weight perhaps needs to be given to that view in relation to the public sector and the civil service.

It is important to have the basic baseline information, because that gives us comparative information from one year to the next. It is not the full story, of course, but it is important.

We did a piece of research that looked at civil service pay trends from 2007 to 2016. It showed that the median earnings of female full-time equivalents still ran at 86 per cent of the median earnings of male full-time equivalents. That is not shown in civil service grades; it is a consequence of an overrepresentation of women in lower-paying grades—that is occupational segregation by any other name. We need to recognise that in the work that we do, and we need to conduct full equal pay audits, which are not currently being done in Scotland-based departments. I have more information about that to share later in the session. Until a light is shone on those aspects of pay, we will not address the issues that we have.

**Richard Hardy:** I want to pick up on Peter Hunter's point about academic achievement and the fact that women and girls do better. If we look at Scottish industry's structural position, we see that only 3 per cent of chartered civil engineers in Scotland and less than 10 per cent of those in senior managerial jobs in engineering are women. Equate Scotland refers to that as the “leaky pipeline”.

On flexible working, which was raised in the question, we would argue that the lack of flexible working in certain sectors is a reason why women do not go into them or do not go back into them if



they leave, which then creates the gender pay gap, rather than argue that flexible working is something that people value as an alternative to pay.

**John Mason:** The convener's question and Mr Hardy's answer touched on occupational segregation, which I am interested in. We do not seem to be making a lot of progress in some areas, although we are in a few. I think that solicitors have changed quite a lot and that a lot more women are going into that profession, but the care sector continues to be made up primarily of women and the science, technology, engineering and mathematics side continues to be made up primarily of men. What can and should we do to change that?

**Richard Hardy:** It looks as if that is a question for me. I touched on workplace policies such as flexible working and transparency in pay systems and pay on appointment. The evidence points to the fact that men tend to have higher starting salaries in engineering, particularly in areas that are not covered by collective bargaining.

In Prospect, we have done work on a number of areas with Equate Scotland, which is based at Edinburgh Napier University. One of those areas involves looking to work with employers to bring women back into the workforce after they have had a career break so that they feel supported and are not lost from the workforce, particularly in the STEM sector. That is systemic; it happens not just in Scotland but across the whole of the UK.

I agree that certain professions, including the legal profession, have changed quite a lot over the years. It is not helpful when people come into a science or engineering workplace and there is no transparency about pay. We know that performance-related pay systems can be inherently discriminatory. Eventually, women get to the point at which they might choose to leave to go into caring or because they are fed up that they are not catching up with their male colleagues as a result of intrinsic problems in the system.

Until we start to measure the extent of that problem—we hope that that will come about partly through the gender pay gap legislation—we cannot seek to address it. However, it is clear that the statistics for engineering in particular are very poor.

**Ann Henderson:** I sometimes get a bit frustrated with the conversation about occupational segregation. It is an important analytical tool, but there has been progress, and we should aim to capture that.

In the paper yesterday, there was an article about the next intake of firefighters in Scotland, of whom 14 per cent are women, and two women were interviewed as an example of the new

recruitment pool. Skills Development Scotland has done a lot of work on consciously promoting women in its advertising for modern apprenticeship schemes. People are working really hard to do some of the things that we have said would be a good idea—for example, presenting images of women in different jobs. Sometimes, however, we do not recognise that progress has been made.

I used to work on the railway; in the latter few years, I was working as a train driver. At that time, I could count on one hand the number of women train drivers in Scotland. That is not the case now. When you travel on public transport—you all travel on the train—you will see women working in a whole range of jobs, but there is nevertheless perhaps an issue with visibility.

It is sensible for trade unions and employers to discuss whether adjustments can be made around health and safety, uniforms, shift patterns or whatever to make things better for women and to prevent problems from arising, because everybody should be safe and secure in their workplace and should not be subjected to harassment or any of the other problems that we know women experience across the board. However, we should recognise where progress has been made, as ignoring that progress does a disservice to a lot of the work that many people have been doing to change what the face of the labour market looks like.

To come back to my earlier point, it is not necessarily a problem that a lot of women work in care or childcare—we really value those services. It might be a problem that they are undervalued in general, and that the terms and conditions are not good. There has also been a slight increase in the use of agency work and other practices that are not good. However, there are also bad employment practices in industries that are dominated by men—in construction, for example. Given the focus of the committee's inquiry on the pay gap and so on, we have to be careful that we do not ignore the other aspects.

I looked back at some of the committee's earlier discussions. Of course we should encourage more men to work in childcare and social care, but we should not get into a position where we wait until more men are working in that sector before we increase wages. Around 96 per cent of the staff who work with children in day care services are female. We will not change that overnight, so we have to look at what we pay the women who are in those jobs right now. In the conversation about occupational segregation, we must be careful that we do not shift the focus away from the problem of low pay.

**John Mason:** I take that point. However, would you accept that sometimes the trade unions are in

a difficult position? If a big employer such as Glasgow City Council is going to start paying care workers—who are mainly women—more, the men who are working in the parks or whatever will presumably have their pay pulled back to keep the budget balanced. Does the union not face a bit of a conflict of interest in trying to protect both the men and the women?

**Ann Henderson:** I will let Peter Hunter answer that; I can feel him at my shoulder. On you go, Peter.

**Peter Hunter:** I co-ordinated Unison's single status job evaluation and equal pay strategy for the best part of 10 years, and I have been to the depots where men have had pay cuts imposed on them. Our position is that the male rate tends to be the market rate for the job, and the equal pay legislation does not provide for the reduction of the male rate in order to achieve equality by levelling down, not least because that would deny us the economic benefit of gender pay equality.

10:00

The International Monetary Fund, the World Bank and Mark Carney at the Bank of England have said that the problem in the economy at the moment is the lack of capacity in low-income groups to consume the products that the economy is producing. By levelling wages down to the female rate for the job, we are going in the opposite direction to the one in which the IMF, the World Bank and the Bank of England would have us go. We are in an exceptionally difficult position with regard to gender pay equality and there is no easy solution to it. Local government is making significant progress on it, though, and we can maybe come on to the local government experience, because there is an awful lot of learning there.

Focusing on the question of occupational segregation, the Scottish Parliament can—without being complacent—give itself a considerable degree of credit for what it has done on the issue. When devolution was being considered, equality was a high priority in the Scottish Constitutional Convention, as those of you who were around at that time will know. A prominent solicitor, who is now president of the employment tribunal in Scotland, was appointed on a temporary basis to write what I understand was the first equal opportunities policy for a legislature. We have good gender balance, not only because we now have a large proportion of women as political leaders, but because there have been a number of prominent women leaders of each of the political parties in Scotland in the lifetime of the Scottish Parliament, which has had a massive positive effect on what young women might think that they

can do in the labour market. In that sense, there is a long game.

However, we are up against massive unconscious bias. I did a bit of reading in preparation for today's meeting, and I am compelled to share two statistics with you: 50 per cent of the chief executives of the Fortune 500 companies in the United States are 6-foot-tall men, but the proportion of men who are 6 feet tall in American society is only 14.5 per cent. I am not sure whether companies in America have an interview process for selecting chief executives, but I am pretty sure that they do not have a height requirement for them. There is obviously a very deep-seated unconscious bias there towards wanting tall white men as the people to lead organisations.

I have heard other people cite evidence to the committee that there is a correlation between companies having a good gender balance and their return on equity, productivity and profitability. However, we have deep-seated, unconscious, collective processes that cause gender bias, and I would not say that the labour movement is immune from that; perhaps others can comment on that. The fact that the UK Labour Party will probably be the last political party to have a woman leader shows that gender bias is a collective challenge; it is not a party-political point.

The key point is Ann Henderson's point, which is that while we are addressing that long-term challenge, there should not be a penalty for occupational segregation. That is what we have at the moment. For example, a cleaner in a particular local authority in Scotland—I will not name it—who cleans indoors is on grade 1, but a cleaner who works outdoors road sweeping is on grade 3. I do not understand that, which is why we did not sign the deal with that local authority.

Changing the occupational segregation position is a long-term process and people such as members of the Scottish Parliament are playing a massive role in that, which is to the credit of the Parliament. However, in the short term, there must not be a pay penalty for people who choose to work in an area as valuable as social care, as Ann Henderson said.

**The Convener:** As I am over 6 feet tall, I am one of the men to whom you referred, so I am not going to say anything at this point. Ann Henderson wants to come back in.

**Ann Henderson:** I am trying to avoid being diverted on to the point about height requirements, but there used to be a height requirement for train drivers. In the 1980s, a train crew agreement was signed that removed the height requirement and which allowed different members of staff to access the job of train driver. What happened was that

there were a lot of very happy less tall men in the west of Scotland who were able to apply for train driver jobs. *[Laughter.]*

In response to John Mason's question, Peter Hunter—probably unintentionally—used a phrase that I would not use: “the female rate for the job”. We should just use the phrase “the rate for the job”, but I understand that the phrase that Peter used is just a shorthand way of referring to the pay gap that exists between different types of work that are done in local authorities.

Scotland is going to have to decide how we will fund the expansion in social care and childcare. Some 16,000 new full-time-equivalent jobs are coming through the Government's welcome early years and childcare pledges. That is a lot of new jobs, but it does not make for a good headline if the next line is, “and this will be paid for by halving the wages of the men you know, who are working in completely different jobs.”

We will have to find a different way of funding the services that we depend on and value. Part of the problem is that trying to resolve the undervaluing of particular jobs within a small pot might not be the best approach. There is a big question out there to do with specific current Government initiatives, and answering it will require more than an approach whereby we say, “Someone else—your neighbour—will pay for that.” Such an approach just takes money out of the local economy and does not help.

**Cheryl Gedling:** We are talking about broad issues to do with how society values certain employment sectors. A lot of work needs to be done to address that.

I want to pick up on the question about why a union would ask for something that might lead to a levelling down rather than a levelling up—Peter Hunter talked about that. I guess that if we followed that through to its logical conclusion, we would never ask for a greater pay increase than we thought that we could get. We are here to aspire on behalf of our members.

In the discussion about how to address occupational segregation, the importance of unions and collective bargaining has not been mentioned. For example, flexible working is really important. That is about not just the hours that someone works but how they work. Could they temporarily work from home? Could they do term-time working, which is something that unions have fought for? Could they have carer's leave? All those things remind us of the importance of strong unions in the workplace, and they can help to address occupational segregation.

In addition to the positive story that Ann Henderson told about the changes that have been achieved, it is important to highlight the

importance of trade unions, collective bargaining and the policies that enable workplaces to be truly flexible.

**Ash Denham (Edinburgh Eastern) (SNP):** I am interested in workplace culture, and I thought that Unison's submission was interesting. On page 7, you gave a list of discriminatory practices that you say are “not uncommon”, including sacking pregnant women, knowingly retaining discriminatory pay systems, manipulating job evaluation schemes and—I liked this one—generally investing

“time and effort in maintaining the status quo.”

First, do you think that things are getting better? Is the picture improving? Are such practices becoming less common, or are they still a real issue for female workers, in particular?

**Peter Hunter:** Someone should put me on the clock on this one. *[Laughter.]* I have witnessed all the things that are in the list, some of them repeatedly. Some have been brought out in employment tribunal evidence, such as the manipulation of job evaluation scores and the destruction of the evidence of that manipulation. Employment tribunals have been misled about evidence that was given to the Equality and Human Rights Commission, and the commission has been misled in the course of a formal investigation.

The Equality and Human Rights Commission launched a formal investigation into pay at Glasgow City Council, which is 12 years into a long-running and expensive equal pay battle. You might be interested to know the outcome of the investigation; I am interested, too. The investigation has closed, and nothing has ever been published. That does not seem particularly transparent. I am sure that the basis of the closure of the investigation was entirely satisfactory and completely proper and above board, so there should be no difficulty in publishing the results.

Some awful things have happened. In 2006, Des McNulty chaired a Finance Committee inquiry into job evaluation and the single status agreement, which made various recommendations, most of which were ignored. The issue was revisited by the Local Government and Communities Committee in 2010, under the chairmanship of Duncan McNeil, I believe. Most of the findings of that were ignored.

We are now into the 12th year of the equal pay battle and there will not be much change out of £1 billion. There is an Audit Scotland investigation taking place at the moment, and the Accounts Commission will be reporting in the summer. It is vital that that is open, and that the findings are analysed and further action is taken on the back of that.

We have achieved a degree of stability in local government—I am conscious of trying to be balanced in everything that I say today. Employers and trade unions have worked very positively to revise the job evaluation scheme. That was completed more than a year ago. A third edition was produced, which was accompanied by guidance about how to go in and look at some of the hot spots that gave rise to such great expense. Provided that the guidance is followed with enthusiasm and resource, the positive steps that were taken to counteract some of the difficulties that people got into will be very welcome.

**Richard Hardy:** To follow on from what Peter Hunter said, it is a mixed picture. In some of the bigger companies, there is a growing understanding of how job evaluation needs to be undertaken—it needs to be done on a regular basis and, where there is functioning interaction with a union or a staff committee, the union should be involved in that process so that there is oversight of it.

On the other hand, we have recently taken a case for a member of staff—a human resources manager—in a small consultancy organisation, who had worked part-time and who came back after pregnancy to be told that the job was full-time; she had worked part-time for six or seven years without a problem. That case cost the company quite a lot of money. Even some bigger companies, such as multi-site companies, might be very good on one site, but on another site, because the HR manager is different, the outcome and approach will be completely different. Cultural change within companies is important.

To go back to John Mason's question about unions having vested interests, we were the union that took the Cadman case on equal pay in the Health and Safety Executive in the UK to the European Court of Justice. We achieved success in that not by levelling down, but by levelling up. Cheryl Gedling's answer was excellent, in that it is good, strong collective bargaining and involvement within the workplace that ensures that the outcome is positive for everybody, rather than simply being a levelling down to the thing that we were worried about in the first place.

**Ann Henderson:** I agree with the comments that have been made about the importance of collective bargaining, and the fair work convention framework also gives us that to work with. On the question of the culture in an organisation, it is important that we all take some responsibility for that, whatever our organisation is. Nobody is in a bubble.

The recent report that the STUC published on sexual harassment in the workplace was quite a surprise to a number of people—the very high levels of daily niggling that women were

experiencing in the workplace and the consequential problems in the workplace. It is often people that you and I know who are responsible for the joking casual behaviour that can become quite threatening and unpleasant. That is something for us all to look out for in our work all the time.

When we are looking at recruitment processes and panels, we need to look at how we contribute towards tackling the issue so that people are not just recruiting in their own image. That is my shorthand for saying that people recruit from the people with whom they are most comfortable, and if they are most comfortable with what their present environment is, how do we change that? How do we build a more diverse workforce in which there is true equality of opportunity? We are not yet getting that. I hope that some of the questions that have emerged and been discussed through this committee's inquiry will throw some of that up.

The culture question has to be addressed at every level—trade unions are part of that, as we all have to take responsibility for speaking up for someone who appears not to have been treated equally. Some of the evidence on pregnancy and maternity leave discrimination is shocking. The drop in the number of applications to employment tribunals when charges came in tells a story as well.

10:15

New legislation, such as on shared parental leave, could contribute significantly to a change in some discriminatory practices in the workplace, in theory. The old adage is that a woman of childbearing age may be treated differently through the recruitment process; it is harder to identify in an interview whether a male worker is about to become a parent. A change in language and the drive to deliver services and support for all parents in the workplace could help, but only if we all buy into those changes in language and culture.

**Cheryl Gedling:** Cultural change is very important. The difficulty now is the impact of huge job cuts and workload issues. I was a civil servant and worked for some time for the Scottish Government, and I heard stories of people being told at interviews for jobs that were clearly stated as having a flexible working pattern, "Of course you understand that this is a full-time job." I thought that that was a thing of the past, but that is not the case—I am again hearing such anecdotal evidence. The problem is creeping back, and that is a concern. That issue is very important, as it is that unions and people challenge the problem, which is the only way to change the culture. We have seen a much harder line being taken in how

people are treated when they return from sick leave—particularly women with particular medical issues—including in the sector that is under the control of the Scottish ministers, in which efforts would previously have been made to look at working more flexibly and in different ways. That is simply not the case now.

We will not achieve the cultural change that we talk about if we do not address those overarching issues and allow people the space to discuss those matters. We recognise that the managers who we represent are struggling at the moment, but it is not okay to tell people, “We want you to be at work from 8.30 until 5.” That is simply not acceptable but, unfortunately, representatives are starting to hear it again. There has been progress, but there is a feeling now of a step back in the wrong direction.

**Gillian Martin (Aberdeenshire East) (SNP):** A thread goes throughout the evidence sessions about organisations trying to avoid addressing the gender pay gap. I want to tease out from witnesses in all the sessions the cost-benefit analysis of tackling all the issues that you have spoken about in answer to Ash Denham’s question. It is important to bring out the productivity reason and economic benefit for organisations—Peter Hunter’s evidence alluded to Mark Carney and others on that point. I give all witnesses the opportunity to talk about why organisations should relish tackling the gender pay gap as something that is good for them.

**Peter Hunter:** You received evidence in previous sessions from people who are far more expert than I am, but if global institutions such as the IMF or the World Bank say that positive gender balance in a company correlates positively with a better return to equity, I would have thought that companies would be intrigued that a gender balance correlates positively with a better return on capital investment and increased profitability and productivity. That was the finding of the fair work convention for Scotland. Those are high-level macroeconomic business benefits. We can also look at the microeconomic level. Scottish Enterprise data in the 1990s shows that people on low incomes spend their money in a way that creates 50 per cent more jobs than people on high incomes.

That resonates with Mark Carney’s point about the gulf in prosperity and the growth of inequality between the very rich and the very poor not making sense from a capitalist perspective. If people on low incomes do not have money to consume the goods that the economy produces, there is a risk of stagnation, which could be avoided if the economy were more equal. Addressing that makes good economic sense. Low-paid people spend their money on local

goods and services because they have unmet needs for day-to-day products and services that they cannot buy because they do not have the money. If we can put money into the economy, we therefore create a culture of economic growth. The McKinsey report says that we can have a £15 billion increase in gross domestic product by 2025 if we address gender inequality. That is partly through pumping money into parts of the economy where people’s spending power creates jobs and grows demand, all of which is good for business.

There is then a social policy spin-off. I am conscious that that is not what your question is about, but, for example, increased prosperity for women has a direct effect on child poverty. The best way to tackle child poverty is to address the poverty and inequality faced by mothers, not by fathers. If we look at education reforms, we all want to see improved attainment; there is a close correlation between economic stability in the family unit and educational attainment, so there is a variety of virtuous circles or positive benefits that can be achieved by addressing the issue.

However, how we get people to engage with that agenda is difficult. All the macro and microeconomic statistical evidence is there.

**Gillian Martin:** At an organisational level, there are real benefits to be discussed from eradicating the gender pay gap, such as reductions in sickness leave or staff turnover. I would like to give you the opportunity to talk about that. Richard Hardy mentioned that Prospect is doing a study with Edinburgh Napier University. Where we have organisations that are tackling the gender pay gap, is any of that being evaluated so that there is a model out there for other organisations to look at and see that that has a positive cost benefit ratio?

**Richard Hardy:** I was going to answer in a slightly different way from Peter Hunter, in drilling down into two areas that I have worked in extensively over the past 10 years. One is the electricity sector and the other is heavy engineering in the shipbuilding industry. In the Scottish distribution system, 65 per cent of the staff will need to be replaced over the next 10 years. Demographically, it is largely an ageing white male population with not much incentive to work on past the age of 60. One of the reasons that are given for women not going into that sector is the gender pay gap. If a company that wants to recruit 60 per cent of its workforce over the next 10 years—and, actually, it will need to be over the next seven years in order to get people up to speed—does not fix the gender pay gap, and therefore disenfranchises 50 per cent of the population from coming into its workplace, that seems to me to be economic suicide. There is a clear correlation there. If we fix the system, we take away one of the reasons—though it is not the

only one—for women saying, “I don’t want to go and be a jointer, a linesman or a first or second engineer,” and we will start to recruit. That has been a known known for the past 10 years, and the recruitment figures are still not great.

The same applies in shipbuilding. If we look at shipbuilding and ship support on the Clyde, again we can see an ageing white male population with some issues around gender pay gaps that come out in our surveys. Part of our pushback to those companies is that we say, “You need to fix that, because you are disenfranchising a whole group of people who want, or may want, to come and work in your industry.” As Peter Hunter said, and as I mentioned earlier, if we link that to women attaining better academic grades, companies really are cutting off their noses to spite their faces.

The work that we are doing with Equate Scotland at Napier is quite small scale. It was a pilot project last year and we have just got funding for a second year. It has been positive and we have had buy-in from companies such as SSE and Scottish Power. However, it is about reaching out beyond that into those companies in which there is no collective bargaining and no champion to encourage change. There are clear operational reasons to spend the money to fix that, because it is a disincentive to recruitment.

**Peter Hunter:** There is a mirror between the skill shortages in the economy and the STEM sectors as well as in technical, managerial and leadership roles, and areas in which women are excluded from the economy. Part of what the McKinsey report is saying is that the dividend comes from addressing the inequality to be able to fill the gaps where the skills shortages are. It is as simple as that.

**Cheryl Gedling:** On the specific point about the benefits, it comes back to the fair work objectives. What does it mean to feel valued at work? Broadly, being valued at work means being paid the same for doing the same level or standard of work as your male counterpart.

However, what is not there is the systematic collection of evidence that Gillian Martin spoke about. For instance, in the civil service, there is no systematic collection of the reasons why people leave the civil service, and they do leave—they charmingly call it turnover. Exit interviews used to be conducted with staff who were leaving, but they are not conducted any more.

You raise an interesting point about the direct link between eradicating the gender pay gap and the benefits to attendance, recruitment and retention. It is a piece of work that does not exist and it clearly should be done, particularly when we look at the increase in pension age and the impact

of an ageing workforce, which trade unions are going to have to pick up on as well as employers. It has to start with the conducting of full equal pay reviews. It cannot just look at headline gender pay gap issues; it needs to look at allowances that are paid, working patterns, and people’s access to training and promotion. Such reviews are not being conducted across the Scottish sector at the moment. There has not been a full and formal equal pay audit in the Scottish Government for eight or possibly nine years. The last one will be having its decade birthday soon.

Without that kind of properly systematic collection of information, we are never going to be able to give a positive answer to that question other than the anecdotal evidence that we have from the trade union perspective.

**Ann Henderson:** Gillian Martin asked whether there is evaluation. I do not know what the evidence would be that reflected increased sickness patterns, for example, as a result of a high gender pay gap in an organisation. I have not ever seen anything that comes at it from that point of view.

Anecdotally, women will be at their work when they probably should not be at their work, as is sometimes the case with men. There are other issues to do with sickness and attendance patterns—

**Gillian Martin:** To help you, I was talking about the mechanisms to eradicate the gender pay gap, one example of which might be flexible working. People are more likely to take sick leave for reasons that are not about being sick if they do not have flexible working; they might be about caring responsibilities or other issues in their lives. That is what I was getting at.

**Ann Henderson:** Okay. One of the discussions that trade unions have been having is about the importance of flexible working and how it is applied. Under the regulations and the law, flexible working is optional and the problem is individualised. We need to get back the balance of having that discussion about what might be a repeated individual request, such as why a work start time has been changed so that it does not connect with any local childcare facilities or the bus services. That will come up as an individual problem, but it can be resolved and discussed collectively. It is quite important to get hold of that.

The bigger question about respect in how workers are treated and paying the rate for the job irrespective of gender is linked to a whole lot of other issues that we have, such as job security and the traditional way in which people felt that, if they went with a particular employer, they would have a career path or they would stay there—in local government or whatever—and have job

security and a pension. Those things are fragmenting all over the place just now, which makes things difficult.

10:30

To pick up on the point that was made at the beginning, we will have to try to identify trends, because addressing one organisation's practice helps a smaller number of people. We need to look at how that will roll out. There are big questions about how such things impact over people's whole lifespan, which the committee has discussed in previous meetings. The job security that was a familiar experience for many men and women in the past is going, and I am interested in how we can get that back and use those tools to make sure that there is not discrimination in the workplace in the context of a framework that is steady.

**Gil Paterson (Clydebank and Milngavie) (SNP):** Does the panel believe that the Scottish Government's 50:50 pledge on gender equality on public boards by 2020 will be met? Perhaps more important, what impact will the policy have, regardless of whether the pledge is met?

**Peter Hunter:** I think that the pledge is important and I would like it to be met. The devolved power in relation to promoting gender equality in the Scotland Act 2016 is very positive.

Having said that, I am concerned about the fact that the enterprise and skills review has become a bit of a political football. The governance arrangements for the enterprise and skills bodies are vital if we are to align those agencies to influence higher education, further education and modern apprenticeships, which are key labour market influencers. The minister's direction to universities—which I thought was perfectly sensible—that they should deliver certain labour market requirements, among all the other things that they do, was attacked on the basis that it represented an erosion of academic freedom. To my mind, the minister did not say anything about what people should think, what they should research, what they should teach or what they should publish. From the outside, it appeared to me to be political opportunism to undermine a perfectly legitimate and—in the context of the present discussion—very important direction, because we need our institutions to be led and governed in such a way that they have, among other things, a very close eye on gender equality. If such initiatives become the focus of attacks of that nature when we are trying to reform governance and leadership in the public sector as a whole, the answer to your question might be that the gender equality pledge will not be met, which would be disastrous.

**Ann Henderson:** We are not opposed to the pledge. Since the early 1990s, the STUC has had in its governance arrangements a mechanism that means that at least half of the general council of our organisation must be female, and that promotes greater women's representation through all the affiliated trade unions. Trade unions are working hard in their own structures to improve women's representation at all levels.

The pledge is a headline that will make some difference, but it is by addressing the deeper problems that the committee is concerned with that we will change working people's lives and rebalance equality in society. It is also important to say that, as with all people, all women are not the same. There are issues to do with disability, black and ethnic minority representation and diverse women's representation. I hope that, as the boards reconfigure themselves, the men on them will change, too, and that we will have more diverse representation from across society in public bodies and on public boards.

**The Convener:** I do not want to cut off that line of questioning, but we have a number of questions to cover, so we will move on to the next one, which will be asked by Bill Bowman.

**Bill Bowman:** Let us raise our sights to the horizon and perhaps beyond it. Are you aware of any innovative practices that have been adopted by other countries to support the reduction of the gender pay gap?

**Ann Henderson:** I do not have the details. As I understand it, there are Scandinavian examples, but I do not have the details in front of me, so it would not be the best use of the committee's time for me to attempt to answer that.

**The Convener:** That is fair enough. Would anyone else like to take on that question?

**Cheryl Gedling:** This is not a comment on practice in another country, but it would be remiss of me to let the moment go by without saying that as long as we continue to have pay freezes and pay restraint we will not eradicate the gender pay gap.

**The Convener:** We will move on, unless Bill Bowman wants to come back in on that.

**Bill Bowman:** I think that that was the shortest ever answer to a question.

**The Convener:** Right. We will move on.

**Dean Lockhart:** I want to get the panel's view on the role of older women in the workplace and the challenges that such women face. In particular, will you say what actions are most effective at enabling women who take a career break, for whatever reason, to re-enter the workforce in the same role or at a level at which

they can contribute in a similar manner? I think that we touched on that, but not in detail.

**Peter Hunter:** I will try to be brief. You have raised a massive issue. When we consider the occupations that are likely to be affected by automation and the rise of the robot, such as admin, clerical processing and food manufacture, we find a large concentration of women.

There is already a problem, in that the age variation in the earnings of women manual workers is the worst of all four categories. Female non-manual workers can expect their income to rise, as can male manual and non-manual workers, whereas a woman manual worker's earnings peak in her early 30s and then just plateau. Low-paid women in manual jobs will not be able to afford care provision for children or dependent relatives, and there is now a kind of care sandwich. Children take a long time to grow up nowadays—it can be 30 or 35—by which time elderly relatives are requiring care, so low-paid women are sandwiched by their care commitments.

I wanted to respond to Gillian Martin's question. Some fantastic work is being done at the University of the West of Scotland on a different approach to flexible working, particularly in response to the needs of dementia care. I will not go into the detail of that, but it picks up on Ann Henderson's point about moving away from individualistic responses to shared responses.

Dean Lockhart raised an important issue about older women, many of whom are trapped in the labour market because they do not have pension provision. We have not discussed that at all this morning. The pension gap, which needs to be measured and tracked separately, is a major problem that is already a significant cause of inequality between women and men and is likely to increase. That brings me back to all the points that we made about the economic cost of failing to deal with inequality, because the burden then falls on the state, either through in-work benefits for older women who work in later life or through pension top-ups. You raised a point that requires urgent attention for a variety of reasons.

**Ann Henderson:** If we tackle low wages and poverty pay—other witnesses referred to the issue in previous meetings—we could have the most significant impact on some of those longer-term problems.

Older women in the workforce can be a pretty good thing—we have worked among a lot of older women, and we think that we are quite good. The trade unions have been doing quite a lot of work on the issue, partly because problems have been emerging to do with performance management, workers struggling to adapt to new technology,

menopause and so on. There are health and safety requirements in which employers and trade union reps are not well trained. The profile of the workforce is not what it was in the 1940s, and there is some catching up to do on issues that should be talked about if we are to create a healthy and safe working environment.

In the trade union movement, I have seen women move from part-time work to full-time work. Sometimes that is because their immediate family responsibilities are over; another cause, which we have not discussed, is the changing profile of households. There is an increase in single-person households and households in which there are children but only one wage earner, and we have not talked about what that means for the labour market.

As you will see from our trade union representatives as well, older women have masses of experience, know the job inside out, know their company really well and have more time once some of the childcare responsibilities have passed. There has to be a different and better way of managing the whole lifetime of work, rather than focusing on the few years that are perceived as difficult when people have young children.

I hope that everyone with child or caring responsibilities will find a way of looking at their work life over a whole lifetime, rather than focusing only on that one year when there is a crisis or they need to leave their work. We should be able to manage keeping skills in the workplace in a way that benefits everyone over a longer period. The work with older women will help contribute to that.

**Richard Hardy:** I will deal specifically with engineering and technology. I refer again to the work that we have done with Edinburgh Napier University. I am happy to provide some documentation on that work to the committee, if you wish, convener.

We need to bring in flexible work and get a greater buy-in among employers so that they understand that flexible working can be achieved and not just in the admin sections of their employment, because that creates the occupational segregation that we have all mentioned before—I am talking about the idea that if something is an engineering job it has to be done 9 to 5, but if someone wants to work flexibly they should take an admin job in the central office where they can work more flexibly.

On re-skilling or re-gaining confidence, a civil engineer or an electrical engineer with a higher national diploma or a degree has all the basics, but they take a career break and find that the world of work changes, because it is changing ever faster—it has changed since the days when I



used to be a computer programmer and I hate to think how bad a mess I would make of that if I went back to it now. We need to address how companies, the Government and third sector organisations can be incentivised to re-skill or re-confidence—if that is a word—women who have the basic underlying technical, engineering and managerial knowledge, but are worried about how the world of work has changed while they have been out and how they make that step back in.

We have worked with Equate through seminars, webinars and mentoring, which are all the things that employers should be doing to encourage people to come back. There is a pool of people that employers do not even have to pay to train because retraining costs a lot less than getting someone through an HND or a degree.

**Cheryl Gedling:** There are some very basic things that can be done, such as keeping in touch with people when they are on a career break. That sounds very basic, but in many organisations it does not happen and once again the onus is on the individual. Organisations should take responsibility for that as part of valuing their employees.

We are starting to see the emergence of health and wellbeing policies. That sounds very positive and such policies can be positive, but there tends to be a focus on personal resilience, rather than on the organisation's responsibility for assisting people through that. It is very important for people to be able to increase or decrease their hours, sometimes for a short time, to help them through a particular period. The answer to such a request needs to be "Yes, we can do it," rather than, "No and here is why we can't," which is what we hear increasingly. Some of that is about the need for cultural change.

I agree with Ann Henderson that having older women in the workplace is a real bonus and is something that we should seek to encourage in future.

**The Convener:** Thank you.

**Richard Leonard (Central Scotland) (Lab):** As we draw towards the end of this evidence session, I would like to take us back to where we began, which was with the question of low pay. We know that the five C occupations—cleaning, catering, clerical, cashiering and caring—tend to be performed predominantly by women and also tend to be occupations and functions that organisations contract out. My questions are about the supply chain. First, do you have any observations about the extent to which such jobs are contracted out and the impact that that has on the pay rate in those occupations? Secondly, what action could be taken by a private corporate that is contracting out, or a public sector organisation that is

contracting out, in order to raise the hourly, weekly and annual rate of pay of those low-paid women workers?

10:45

**Ann Henderson:** Procurement and tighter regulation around contracting services could help, and far more specific conditions about rates of pay for jobs could be included in procurement contracts.

There is the whole issue of the language around the five Cs and how we value those jobs. I go back to what I said earlier. We need to look at our own practices, as well. The Scottish Parliament contracts out its catering services. Off the top of my head, I do not know the rates of pay and the pay gaps in the organisations to which the Parliament contracts out its services. Members of the Scottish Parliament have budgets for getting their office cleaned, for example. There is an issue around how we demonstrate and live by our aspirations and how we rate those jobs in a way that values the work that is done. Are we sure that there are pension entitlements when public bodies contract out services? Are we sure that agency staff are not used excessively? There are a number of questions that we should all be asking. We should be asking about childminders. There are services that we and our families all use which public money is used for when policies have been decided and agreed by the Parliament. How is the money being spent?

I agree with the direction of your question. More questions should be asked, and there should be more transparency and more public accountability in how money is spent.

**Peter Hunter:** Richard Leonard has raised a very important point. There has been a sense in the conversation so far that the gender pay gap is a neutral problem that has been stubbornly resistant to our best efforts to eradicate. Not so. Successive UK Governments and different political parties have either failed or deliberately intervened to undermine the position of low-paid women in the labour market. The Transfer of Undertakings (Protection of Employment) Regulations directive, which would have addressed Richard Leonard's point, was due for implementation before Labour lost the election in 1979, so it did not implement it. The Conservatives delayed implementation. When they did implement the regulations, it was for commercial undertakings only and the public sector privatisation went ahead. In 1995, the Equal Opportunities Commission identified that that had a direct correlation with an increase in low-paid work for women, but nothing was done about it.

We have had the abolition of wages councils, reduced redundancy and dismissal rights for part-

time workers, and the systematic undermining of that group's position, which has fed directly into its pay.

I suppose that the only upside of Brexit is that we can now write our own procurement rules. If we look at the procurement guidance for social care, for example, we see that there is an interesting opportunity. Donald Macaskill is saying some very interesting things about the need to invest in social care and change the way that it is valued in order to address the recruitment and retention crisis in it, with consequential benefits for service users and national health service cost management in respect of delayed discharges. We have the beginnings of a framework there.

On the workforce matters that can now be competently evaluated, including equality and fair work in procurement processes, Unison published research last month that revealed that some local authorities in Scotland weight or value workforce matters as low as 4 or 5 per cent in the procurement evaluation process. Quality and price occupy 94 or 95 per cent of the evaluation. Workforce matters—fair work, equality and pay—will have no impact on those authorities' procurement decisions. There is no substantial monitoring and evaluation of whether the reported fair work practices of those organisations are delivered.

We have the potential to do things very differently to ensure that the problems in social care and other purchased services are addressed, but we currently fall considerably short of what we need to do. It would be very helpful if the committee reviewed how effective the revised procurement regime has been in the past 18 months and what more needs to be done in order to deliver a step change in the quality of the employment experience of people in social care or other services, and therefore the knock-on effect on recruitment, retention and care standards.

**The Convener:** We will have a question from Andy Wightman that will probably be the final one. I will give each witness an opportunity to answer it, if they wish.

**Andy Wightman (Lothian) (Green):** Do you have views on what specific actions the Scottish Government could take in the next few years to reduce and ultimately eliminate the gender pay gap? Unison's evidence touched more on the fair work convention than the Scottish business pledge. In that regard, are there existing initiatives that could be improved?

**Peter Hunter:** We do not have a strategy, but we need one. People see the gender pay gap as a reserved issue because equal pay legislation is reserved, but it is not. Promotion of equality is devolved under the Scotland Act 1998, so we

need to grab that issue. We need a strategy that people buy into and that can hold people to account for what they do under it.

The powers of the EHRC need to be reviewed, because we have the devolved capacity to enhance those powers, particularly in relation to the public sector equality duty. The UK Government has trumped the Scottish Government in relation to equal pay reporting. That is a gap that should not be allowed to persist. We should review the public sector equality duty in relation to equal pay reporting against the experience of the pay transparency regulations. We also need to review the impact of pay restraint, which obviously hits the lowest-paid workers. Cheryl Gedling made the point, which has to be emphasised, that we need to look at the impact that pay restraint has had on pay equality.

We have touched on the procurement point already, so I will close on the enterprise and skills review. I am concerned that it is being treated as a political football. We have well-respected and well-established agencies, and the purpose of the review is to align them towards particular objectives: greater efficiency, greater investment and greater fairness and equality in the labour market. If the enterprise and skills review is derailed, which has been attempted, we will miss the opportunity to muster the key resources that we have to pursue higher equality and therefore higher profitability in the economy.

**Ann Henderson:** We need to come back to what we were talking about at the beginning, which was data and the need for more information. The Scottish Government has to do more work to get below the economic inactivity figures to see who they refer to, because I am sure that those people are not inactive at all. There is generally another reason for those people leaving the labour market; we need to get in and around that and see what the gender differences and implications are and how they can be addressed.

I have made repeated references to the expansion of the early years and childcare workforce, but it is a key pledge of the Government and one that we are also committed to delivering. However, the bottom line is that it cannot be done cheaply.

The biggest intervention that could be made over the next five years on tackling the pay gap would be investing significantly in the new workforce. I am not talking about the living wage; people still live in poverty on the living wage. I cannot remember the specific figure, but the statistics on children who live in poverty show that a significant number of them have parents who are in work, with many of them receiving the living wage. Focusing on the living wage is therefore not enough; there needs to be a far more serious

injection of funding and resources to deliver high-quality jobs with good pay, security of employment, career prospects and pension funds to thousands of people in Scotland but primarily women, which would be fantastic.

**Richard Hardy:** With regard to what Ann Henderson and Peter Hunter have said, the Scottish Government should lead from the front as an employer. I am sure that I am stealing some of Cheryl Gedling's thunder by saying that, because she has touched on it, as has Peter Hunter. The Scottish Government should end pay restraint and carry out an equality review within the Government and its suite of employers. That would mean that, when trade unions or activists in other employers go out and talk about equality, employers cannot hide from it by saying "Well, the Scottish Government isn't doing it, so why should they force it on us?", which is what we occasionally hear. In short, the Scottish Government should be an exemplar as an employer.

**Cheryl Gedling:** Ditto.

**The Convener:** That is fine. I thank all our witnesses for their evidence.

I suspend the meeting to change over to our next panel.

10:54

*Meeting suspended.*

11:03

*On resuming—*

**The Convener:** I welcome back committee members. I also welcome our second panel of witnesses; in no particular order, they are Val Dougan of the equality and diversity committee of the Law Society of Scotland; Kevin Burnett, president of the Aberdeen Association of Civil Engineers, which is an associated society of the Institution of Civil Engineers Scotland; Dr Donald Macaskill, chief executive of Scottish Care; and last but not least, Professor Catriona Paisey, professor of accounting and finance at the University of Glasgow and member of the ICAS ethics board, which she is representing here.

**Bill Bowman:** We usually begin by asking the same sort of question. Do the panellists agree that we have a defined set of agreed statistics on female economic activity in Scotland and on the pay gap? Taking that one step further, is there enough evidence at industry level about female participation and the pay gap?

**The Convener:** I should have said that the sound desk operator will operate the mics, so there is no need to press any buttons. Witnesses do not need to answer every question, but I will

bring in anyone who indicates by raising their hand.

**Kevin Burnett (Institution of Civil Engineers Scotland):** The statistics are not too good, particularly in construction, and there are not good statistics on the gender pay gap. What is measurable is the proportion of women to men in engineering and construction disciplines. Statistics are therefore available for the STEM sector and what they show is not particularly good, as I am sure the committee is aware. However, major companies are gearing up to publish their statistics, and the Institution of Civil Engineers Scotland is encouraging them to do so.

I work for a major engineering consultancy based in London that employs about 300 staff in Scotland, and I know the statistics on the number of females in my company. The Institution of Civil Engineers has the figure for the number of female chartered engineers in the UK, which amounts to less than 4 per cent, although for those under 40 the figure might jump to nearer 20 per cent. However, those statistics are hard to come by at the moment.

If we want to set targets, we have to know where we stand and have a plan to get there. That is obviously part of the issue right now.

**Val Dougan (Law Society of Scotland):** From the Law Society of Scotland's perspective, the most recent census of the profession that we did was in 2013. There were over 3,000 responses, so the census provides a reasonably accurate depiction of the earnings levels in the legal profession in Scotland. We have been very open and honest about the fact that we have a sizeable pay gap of 42 per cent. We made that public in 2015 with a view to doing further work on it and implementing voluntary equality standards to try to get the profession to address the pay gap. We therefore have a lot of data on earnings in the legal profession.

**Professor Catriona Paisey (Institute of Chartered Accountants of Scotland):** I will talk about accountancy. There is data, but it is not always joined-up data. There is data from the Financial Reporting Council on the professional bodies, so I can give you ICAS data, for example, from that. ICAS has roughly 21,000 members, about a third of whom are female. That percentage will rise over time, because only small numbers of females joined the accountancy profession in the early years. Over the past four or five years, the figure for female trainees has been 41 to 44 per cent of the total. We are therefore not at parity, but we are approaching that sort of level. The figure of one third of our members being females will increase over time as trainees progress through the profession.

It is difficult to get completely comprehensive information on the pay gap. As members might know, accountancy tends to be dominated by four large international firms that are known as the big four: PricewaterhouseCoopers, Deloitte, EY and KPMG. Each firm publishes its pay gap data, and the pay gap figure at the moment tends to be between 15 and 20 per cent, if we compare average male earnings with average female earnings.

The firms also disclose the data on a different basis when they compare across grades. They may, for example compare trainees or newly qualified people, managers, directors and so on, and on that grade-for-grade comparison the pay gap comes down to something between 2 and 6 per cent. A number of things are going on, and obviously there are some structural issues within that pay gap.

You asked about the reliability of data. We have some data from professional bodies and some from large firms, but of course a very large number of accountants do not work in professional practice. About twice as many work in industry and commerce as work in public practice, and it is very difficult to get data for them because their data is wrapped up in the individual companies and organisations in which they work.

**Dr Donald Macaskill (Scottish Care):** As members will know, in social care we have an 86 per cent female workforce. We have clear evidence that there is no substantial pay gap. The pay gap that exists is a gap between reality and practice. As Scottish Care has said on a number of occasions, in a predominantly female workforce there are real challenges of horizontal segregation and occupational discrimination, which impact negatively on the ability of women to continue to work in social care and on the ability and desire of men to be attracted into the sector.

**Bill Bowman:** Thank you. As we have found elsewhere, it seems that there are pockets of data and trying to correlate them is a challenge that we need to address.

**Jackie Baillie:** I accept a lot of what Dr Macaskill has said, but let me nevertheless look at the pay-gap reporting legislation that is due to come in shortly. Will that legislation be useful and make a difference to the pay gap? I ask that in the context that Scotland is largely an SME-driven economy, so companies typically have fewer than 250 employees, which is the threshold for reporting on the pay gap. In commenting on that, will you also say whether you think that there is scope to do more in Scotland than is currently proposed across the UK?

**Dr Macaskill:** As you know, the social care sector in Scotland is predominantly SME, although

there are one or two larger corporate bodies in both the care home and the care-at-home sectors. Despite what I said about the lack of what we might describe as a classical pay gap, some people are concerned that the 250 level will not get us to where we want to be after several decades of equal pay legislation. Given the context of social care, that is perhaps more of a challenge for other sectors than it is for us.

**Professor Paisey:** In accountancy, we can use the evidence from other examples to show that disclosure works and brings change. If I think back to when I trained as a chartered accountant, for example, we had hardly any social and environmental reporting. Now, virtually every organisation over a certain size produces a sustainability report, environmental report, social reports and so on. We are starting to get human rights reporting, which again we never saw a few years ago. In principle, the answer to the question about whether disclosure affects circumstances is, "Absolutely yes"—once an issue becomes visible, people want to tackle it.

I think that the requirement for gender pay reporting will be very useful. Some of the big accountancy firms are UK-wide, so they may meet the threshold of 250 employees on a UK-wide basis, but if we just look at the Scottish situation there are only five accountancy firms that have more than 250 employees. Dropping the requirement to 200 employees would take in only another two accountancy firms. The Scottish situation is difficult, because lots of firms have significantly lower figures than 250.

The changes and visibility are welcome, but we should not overstate the effect. We will still see only the very top of the pyramid.

11:15

**Val Dougan:** I am sure that you have heard the old adage that what gets measured gets done. From a legal perspective, it will be helpful to see figures and for people in the legal profession to have some comparative analysis against our peer group; sector league tables will be helpful. Before we came here today, we discussed whether we have the information that you mentioned about how many law firms would be captured by a figure of 250-plus employees. The Law Society records figures for lawyers only, so we do not know how many other employees there are and we cannot say whether X amount will come under the legislation based on a threshold of 250 employees. When we developed our voluntary standards, we put the benchmark at 150 employees; in the Scottish public sector, the threshold has now been dropped to 20, so there is potentially scope to go below 250.

From a UK perspective, when the regulations came in it was said that the figure would cover only 34 per cent of the UK workforce; translating that percentage to the Scottish economic model, I imagine that the figure would reduce further.

We might see the threshold level reduce in future, but it is important as a first step. I do not know of any law firms that currently report on their gender pay gaps, so getting even the larger firms to report will be helpful as a step forward.

**Kevin Burnett:** In the construction and general engineering sectors, the high level of subcontracting will cause an issue for many companies in Scotland, apart from maybe the largest consultants. Many of even the largest contractors may not employ above that threshold. There is a case for the threshold to be reduced, as Val Dougan suggested.

I am not yet aware of any companies in construction and engineering that issue gender pay gap information, but a large number are gearing up for that. We are encouraging companies to do it voluntarily—understanding the issue means that they can start to do something about it. Doing something about the gender pay gap and closing it down will clearly have tangible effects and advantages. However, there is a significant issue about whether the arrangements that are being introduced will capture enough information to be valid for construction and engineering.

**The Convener:** We have spoken about statistics, and it would be good to hear Gillian Martin's question about productivity at this point.

**Gillian Martin:** My question is about the tangible advantages that Kevin Burnett mentioned.

I ask each witness why it is in their sector's interests to tackle the gender pay gap. It is not just the right thing to do for equality; it has tangible effects. Can you outline those effects for your sector? For Dr Macaskill, the question could be one of occupational segregation as opposed to a gender pay gap.

**Kevin Burnett:** Industry advice is that a more equal, diverse and inclusive community clearly performs better across a host of metrics, which has to appeal to private sector companies—they are aware of that. Certainly in our company that awareness is there, and it is there in major contractors; they understand it, albeit that some are perhaps struggling to believe it. We in the Institution of Civil Engineers are absolutely convinced that a more diverse community makes for a better community.

There is a requirement for cultural change, and there are a lot of arguments to be made on that point. Profit levels speak loudest and there is

evidence from various sources that profitability goes up. That is the hardest-hitting message in certain circumstances—let me be blunt about that. However, there are a lot of other metrics, beyond profitability, that count. One of the biggest drivers in any equality, diversity and inclusivity community that exists in a profession, a company or whatever, is staff engagement. That is clear. If staff are engaged, they will give you the message, first and foremost, that what they are looking for is more cultural balance, more equality and more inclusivity, and they will tell you that there are benefits to that, as I am sure that you realise.

In our company, we have seen the benefits. We can drill into well-performing teams and give examples that show that the more diverse a team is—it is not just about gender balance—the better it tends to perform.

**Val Dougan:** In the legal profession, an issue that we have discovered from profiling is the problem with female progression. We do not have the same issues with entry into the profession as construction faces; some 51 per cent of the legal profession are female—indeed, 60 per cent of under-40s are female. However, only 28 per cent of partners are female.

Our issue is therefore about the pipeline up the way. We have a lot of women at traineeship, assistant and associate levels but fewer at partnership level. Progression and—if I can use this parlance—vertical occupational segregation are the issues for us. We want action on that.

**Gillian Martin:** If you make the argument for law firms addressing the issue in cost benefit terms, what do you say?

**Val Dougan:** The issue is that we lose female talent if we do not keep women in the profession up to partnership level—that is the main driver. If we do not have women working through to very senior levels, we find from surveys that at senior associate level women quite often go into in-house or public sector roles. There are undoubtedly economic benefits from having an inclusive workforce, and it makes absolutely no business sense to have women working and being incredibly successful for 10 or 15 years only to lose them at partnership level. There is a talent issue for the legal profession.

**Professor Paisey:** The talent issue is the same in accountancy. It is an odd system, is it not, when lots of people come in at lower levels but are not represented in the same proportions higher up? Something is obviously going on there.

In the big four accountancy firms, there is a strong interest in diversity. It is not just about gender; a lot of work is going on on factors to do with social mobility, ethnicity, age, disability and a variety of things.

It is often said that a more diverse workforce is a better and more profitable workforce. I am not convinced that we have hard evidence for that. At research level it is difficult to unpick whether it is a diverse workforce or the company's having other attributes that make it do well and drive greater profitability or whatever.

I would say that diversity is one of a package of things that benefit companies, but I would be reluctant to say that, if you have a more diverse workforce, you will increase your profitability. I do not think that it is as straightforward as that. However, firms want their workforces to be more inclusive and representative of the general population.

There is huge concern about the talent wastage that Val Dougan talked about. That probably applies across a lot of professions. For example, last week, we heard concerns about the fact that a lot of teachers are female but there are still more male headteachers than there would be if a proportionate number of females were rising to that position.

**Dr Macaskill:** The situation is slightly different in social care. The need to diversify the workforce in social care is a result not of a desire to increase capacity or profits but of a need to maintain survival. As I have said, we have an 86 per cent female workforce. On average, staff are over the age of 45, with a significant group who are over the age of 50. Unless we begin to recruit a much more diverse workforce—that includes women, despite the 86 per cent figure—we will not be around in 10 or 15 years' time. The UK will need 700,000 additional social care workers by 2037, even allowing for the progression of technology-enabled care. The Scottish equivalent of that is roughly 80,000. I know where they need to come from, but I really do not know where they will come from. At the moment, we are losing workers because of age and for lots of reasons that I have spoken about elsewhere in terms of work stress and so on. There is no option: there is a fundamental need to diversify the social care workforce.

**Andy Wightman:** I will follow up on Jackie Baillie's question about the new legislation. A previous witness—Anna Ritchie Allan from Close the Gap—told us that she had attended three employer events that law firms had delivered on the new legislation and that each event had included informal advice on how restructuring an organisation into corporate groups would reduce the employee head count, which would enable the organisation to avoid the gender pay gap requirements, because the regulations do not take into account the overall head count of companies that are structured into corporate groups. She also talked about employers considering promoting

higher-paid employees into a limited liability partnership, as is often done in law firms, which would exclude them. Are you familiar with such advice, which appears to undermine the intention behind the new legislation?

**Val Dougan:** I have certainly not seen anything like that, and I work in a large law firm that advises clients about the regulations. Most people—even the ones who are on the cusp of the threshold—are looking at the matter with a view to reporting. That seems to be the direction of travel. People want to apply transparency. I have seen no attempts at all to try to get out of reporting.

**Professor Paisey:** I endorse that. I have certainly not heard of anything of that nature in accountancy, although there is concern that there are gaps. The big four accountancy firms have voluntarily disclosed some information. Obviously, the information is not as extensive as it will be once the full reporting regime comes in, but I sense a willingness to look at the issue. As I said before, the approach includes not only gender but other aspects of diversity, such as social mobility issues, and there is a willingness to look at them, too. I have certainly not heard of the sort of manipulative behaviour that Andy Wightman mentioned.

**Val Dougan:** I can think of people who have come to our seminars from bodies that have about 200 employees but which are going ahead with the process because that is what their peer group is doing and they do not want to be left behind. If we start to shift the mindset to one in which transparency is the norm, people will ask why bodies that are not transparent have not become transparent.

I have certainly not seen any avoidance measures. It would be quite complex to set up a different corporate structure just to avoid reporting.

11:30

**Andy Wightman:** That is helpful. My next question is about the gender pay gap in your industries. The Law Society of Scotland provided us with a figure of 42 per cent for full-time salaries in its sector. If other witnesses cannot provide a figure now, can they supply figures later for part-time and full-time staff and all workers that cover the mean and the median?

**Kevin Burnett:** That could be quite challenging to do for the construction sector. I am representing my sector not only for the Institution of Civil Engineers but for the Institution of Mechanical Engineers, the Institution of Engineering and Technology, the Institution of Chemical Engineers and so on—the sector is quite siloed. At the moment, I cannot give a figure for the gender pay gap in our sector.

I was recently discussing that metric with colleagues and I found—interestingly—that, in the civil engineering sector, there seems to be a slight pay gap in favour of chartered female engineers over chartered male engineers. However, that might be a statistical variance because the group that was selected was so small. I understand that the pay gap is 11 per cent in favour of males among mechanical engineers. It is difficult to get figures for the gender pay gap across the sector, but the Institution of Civil Engineers should be able to provide a figure. Individual companies will certainly be able to provide such figures.

The women in science and engineering campaign has a 10-point plan that we are encouraging all our member organisations to adopt, and some of them are doing that. One of the 10 points is:

“Understand the starting point so you can monitor progress”.

On your question, if we are not prepared to try to understand the starting point, we can have no progress. I echo the other speakers' view that the examples that you have given indicate a retrograde step that we have not seen.

**Dr Macaskill:** As I said earlier, the size of the social care sector is such that it is difficult to gather data on the gender pay gap, but the issue is not that gap but occupational segregation. When I speak to front-line workers, the pay gap that they talk about is that between those working for a charity or a private organisation and those doing the same work in-house for a local authority—that is where the gap exists.

**Professor Paisey:** I quoted the global figures for the big four accountancy firms, which report a gap in the order of 15 to 20 per cent. However, once that is adjusted for grades, the figure comes down to 2 to 6 per cent.

We were asked at the beginning of the session whether data exists on the gender pay gap. It is difficult to get granularity for the figures that I have quoted. We do not have data that splits gender figures by grade, by age and by factors such as working full time or part time. However, as with the construction sector, employers in our sector undoubtedly have the information—for example, individual chartered accountancy practices or financial services companies that employ large numbers of chartered accountants will have it. The professional bodies do not have that information because they are not the employers.

**Ash Denham:** We have probably touched on this already, but I am interested in hearing about what your organisations or sectors are doing to address and reduce the gender pay gap. The Law Society of Scotland's submission indicated that several things have been done in its sector,

including a campaign on progression to get women into more senior positions, seeing whether interviews with senior women as role models would help and publishing pay gap figures. Will Val Dougan share with us whether those actions have been successful for her sector and suggest any other things that would be more successful?

**Val Dougan:** We have done those things, but we have also published the equality standards, which form a framework that law firms can sign up to. It contains the ideas of having an equality lead, accountability at senior level and an equality strategy that sets out an action plan for what is to be achieved.

The framework has 10 standards, including a gender pay gap standard that applies to firms with more than 150 employees. It goes slightly further than the UK regulations by asking for reporting on part-time and full-time posts and at various levels of seniority. The framework was introduced in 2015 on a voluntary basis and has been our main focus. We have been pressing firms to sign up to it voluntarily and take action; so far, 21 firms have signed up. The framework will come under review next year, and we hope that, with the UK regulations coming in, a lot more firms will be caught by the 250-employee threshold and further measures will be taken as a result.

We have looked at a variety of voluntary initiatives, and we also do training for new partners in which they learn about the equality standards so that they can embed the standards in their firms. We have a couple of events coming up in May and June on women and equality in the legal profession. We are doing lots of things—the issue is very much on our radar as a profession. However, it will take time for all those things to have an impact.

**Professor Paisey:** A number of things are happening in accountancy. On progression through the ranks, the big firms, and other firms as well, are concerned to make sure that there are pathways up to partner level. In the big four firms, between 13 and 17 per cent of partners are female, and those firms have set targets to get that up to something like 25 per cent over the next two or three years. That is still nowhere near what we might argue the figure ought to be, given the numbers of females who are coming into the profession, but it will be a step change from where we are. Various strategies are facilitating that, such as mentoring and leadership programmes.

The targets that have been set for percentages of managers and senior managers who are female have been more or less met. The targets that still need to be met are at the director and partner levels, so some progress has been made. There are other things, too. Firms have introduced return-to-work schemes for people who have

taken a career break, for example. They also often have paid internships for 12 or 16 weeks, and people can apply for positions at the end of that time.

However, one difficulty is that, as research shows, the catalyst for differential career progression is often a woman having a maternity break. There are positive and negative stories about that. There are positive stories of good conversations taking place between women in that position and employers, in which they discuss their career aspirations and what kind of work they would like to do, and the employer puts together a package, which probably involves a bit of flexibility on both sides but which is designed to work for the individual. The individuals who have such arrangements speak highly of them, but there are also negative stories—people say that they asked for part-time work or whatever and were not allowed to have it.

The research shows that a problem is that, if a woman takes time out for a career break to look after her children and wants to return in a part-time capacity, such jobs are simply not advertised. People often negotiate part-time work when they are with an employer. They might say that they would like to come back but that they would like to work mornings or three days a week, for example. Women can often do that if they are negotiating with their current employer but, if they take time out of employment completely, they cannot find such jobs, because jobs are not advertised on that basis—it is rare to see an advert that says that the post is suitable for flexible working.

More cultural change is probably required. It would be useful for employers to make it clear that many of their jobs can be done flexibly, given that people feel that they cannot apply for jobs that are advertised on a full-time, permanent basis.

**Kevin Burnett:** When companies, firms or organisations can provide evidence of the effect of measures, that is powerful. Carillion managed to increase its maternity return rate from 76 to 96 per cent by introducing more flexible and more agile working practices, including home working, parental leave, greater part-time working, special leave and time off for dependant care.

The introduction of such practices can give a clear metric, as in the case of Carillion. Although the metric does not tell us in what capacity the maternity returners came back, the company cites the fact that, according to its staff engagement survey—such engagement is critical—84 per cent of staff recommend Carillion as an employer. The company is on target to increase the percentage of women in leadership positions to 30 per cent by 2020.

I keep going back to the need to have metrics, so that the effect of such measures can be shown. On the face of it, that is a clear success story, and it follows on from what Catriona Paisey said.

**Dr Macaskill:** The situation is a bit different in social care. The most recent substantive piece of research showed that nine out of 10 people thought that it was okay for a man to do a job of care, but the same research showed that two thirds of parents would not encourage their son to enter a care career. A third of the 16 to 25-year-olds who were asked whether they would want to work in care said no, and another third did not know what social care is. There are huge issues of societal stereotyping and gender stereotyping when it comes to social care.

As an organisation, we work hard to dispel the myths that men are unable to care, that they are unable to offer dignity to individuals at the end of their lives and that they are unable to be sensitive to someone's personal needs, but such societal assumptions are extremely deeply rooted. It is okay to have a male doctor or a male psychiatrist, but it seems to be a step too far to have a male care worker. Unless we bridge that societal stereotype, social care will face massive challenges in the very near future.

**The Convener:** There is something that I would like to clarify in relation to the solicitors profession. My question is directed at Val Dougan. The Law Society's submission mentions the Equality Act 2010 and refers to the

"simplistic notion of formal equality",

which it says is compounded by a number of factors, one of which is occupational segregation. Do you agree that occupational segregation can cause a difficulty in this area?

**Val Dougan:** In our profession—the situation is obviously different from the situation in Donald Macaskill's sector—vertical segregation is the issue. How the women in the legal profession are distributed is a major factor in why there is such a large pay gap. There is a 42 per cent difference in salary because we have fewer women at the top and a great deal of them at the bottom and in the mid tier.

**The Convener:** That is what I wanted to look at—how the situation will unfold. According to figures in your 2016 annual report, the number of female solicitors in Scotland has gone up to 52 per cent, with 65 per cent of newly admitted solicitors being female and only 35 per cent being male.

**Val Dougan:** Yes—and 70 per cent of law students are female.



11:45

**The Convener:** Looking to the future, the problem will not be that there are not enough women in the legal profession, whatever happens with the pay structure. Does that mean that, ultimately, the solicitors profession in Scotland will become segregated and will be predominantly female? Will that cause problems in the future, given that studies—there is a recent US study—identify that falling pay is associated with sectors where positions become predominantly occupied by females? What is the Law Society's approach to that? The Scottish Government and the Scottish Further and Higher Education Funding Council recognise the issue. Even your colleague in the Law Society, Rob Marrs, wrote an article—I think that you referred to that article in your submission—in which he identified some of the problems, which are similar, albeit the opposite way round, to the problems that Dr Macaskill referred to, and which include the issue that young males do not view the law as a profession to enter.

**Val Dougan:** We have an interesting situation—it was one of the points that was raised in our let's talk progression campaign, which not only considered the current gender imbalance, but asked whether we need to actively encourage men into the profession. That is something that the Law Society will potentially have to consider in the future because we have had that imbalance at entry level for quite some time. That is within the society's sights.

I have not had any discussions about what the increasing feminisation of the legal sector will bring in respect of wages. That is not really within my remit.

**The Convener:** I wonder whether that would be a question of looking at the fees—possibly legal aid and other fees—that are paid to solicitors for particular lines of work.

**Val Dougan:** It is not really something that I can comment on at this stage.

**The Convener:** Fair enough. I also want to ask about paralegals. Do you know the percentages of male and female paralegals? The annual report—certainly the web version—indicated that there are 434 paralegals, against roughly 11,500 solicitors. Does that disguise another question about percentages and who is paid what for work that is essentially legal work that would have been done by qualified solicitors 25 years ago?

**Val Dougan:** There has been a sizeable shift in the profession but we do not hold information on that. As I said, the information that we gain in our census relates to returns from solicitors. I can ask about that—it might be something that I could follow up in writing—but I do not have information on paralegals available to me just now.

**The Convener:** It would be very helpful if you could follow that up.

**Dr Macaskill:** I have a general comment. We often hear the phrase “feminisation of the workforce” in respect of social care, and it is unfortunate that we equate and associate feminisation of a workforce with low pay and poor terms and conditions. We would much rather that people recognised that, in social care, the fact that our workforce is not truly representative and sufficiently diverse is itself because of the low pay and poor terms and conditions. When we have discussions around gender pay gaps we must be very careful not to equate a female-dominated workforce with a workforce that should be paid less. Unfortunately, 30 or 40 years after the legislation that established the NHS created home helps, that is exactly what we have seen.

**The Convener:** That is precisely what I was trying to get at. The question is whether having more balanced workforces—if I may put it that way—rather than workforces that are segregated in one way or another would tend to assist in ensuring fairness in working conditions and pay.

**Dr Macaskill:** As I said when I last appeared before the committee, if the social care workforce in Scotland was more balanced and representative of the community and—dare I say it—more male dominated, like some elements of the legal profession at the moment, we would not be a low-paid profession.

**Professor Paisey:** Can I make a brief point about the horizontal segregation that seems to exist in some other areas? Many professions have that. Research that one of my colleagues in Glasgow has done on the insolvency section in accountancy shows that there are clear gender issues there. Women often choose not to go into insolvency, perhaps because it does not suit their lifestyle—they might suddenly be told that they have to go hundreds of miles away in the next hour because a firm has got into difficulties. There is some horizontal segregation in accountancy. People used to say that tax was more typically done by females and insolvency by males. Those are generalisations, and the situation changes all the time. However, within the subsections of lots of professions there are probably certain areas that prove more attractive to one gender than to the other.

**The Convener:** Thank you. We will move on to questions from Gil Paterson.

**Gil Paterson:** Is the panel confident that the 50:50 target for gender diversity on public boards will be met by 2020? How do you think the private sector will react to that?

**Professor Paisey:** It is a live issue and I would not like to say that the public boards will meet the

50:50 target. There are international examples—Norway led the way, but there are now around 10 other countries in which there is real concern about balancing boards. ICAS has done some research on balancing boards, but it has looked at other issues as well as gender, including age and ethnicity.

I think that all companies are working on the issue, and, in the various debates that take place, there are two arguments. Some people say that there should be positive discrimination to meet the target, but other people say that they want people to be appointed on merit, although they want to ensure that, if there are structural constraints that prevent certain people from getting into those positions, things are done about that.

Let us look at the FTSE 100 boards, for example. There is concern that, although females are coming on to boards, they are often in non-executive roles rather than in executive positions. That is another form of segregation that needs to be tackled. It is not just a question of balancing the numbers; it is a question of looking at the roles that people undertake when they are on boards.

**Kevin Burnett:** That would be a difficult target to meet in the construction sector. Was your question about the public sector?

**Gil Paterson:** Well, the target is for the public sector, but will the fact that there is a target that people are working towards encourage the private sector to follow suit—maybe more rigorously?

**Kevin Burnett:** Yes, I think that the target will encourage the private sector. In my own company, 28 per cent of all technical staff are female. However, for the top grades of the company that figure falls to 9 per cent. The targets that are set are not 50 per cent by 2020; I would hazard that, in most companies in the construction sector, such a target might be considered unrealistic, given the relative numbers.

The opinion is that organic growth is more stable. Determining what measures are an imposition and what measures are organic is quite a key question. What is growth in the company, and what is seen as an imposition on the company? Elements of a company will always resist what they see as an imposition. Some of that comes down to conscious bias.

**Val Dougan:** It also depends on where one is starting from. I understand from the public boards consultation that the boards were already sitting at more than 40 per cent, so reaching the 50 per cent target from such a starting point seems achievable, on the face of it, although much depends on how big the boards are and how many times vacancies come up. For a small board whose members still have several years' tenure, it

might not be possible to achieve the target. The starting point matters.

We have not seen the same activity levels in the private sector, but taking steps in the public sector is helpful, because it raises awareness, which is always a good thing. It will be interesting to see how many private firms sign up to the 50:50 by 2020 target.

**Dr Macaskill:** It is difficult to answer the question for social care companies, the majority of which are small and medium-sized enterprises. Many do not have boards or are not limited companies. Given that so many SMEs originate with and are managed by a woman director and are built up by groups of women, there is a greater challenge in attracting men to serve on the boards and committees that run organisations and charities.

**John Mason:** I was interested in your answers to previous questions, Dr Macaskill. If I understood you correctly, you said that the primarily female workforce in social care is partly a societal issue and partly to do with money—if there was more money in social care, it might attract more men.

How can we go about changing things on the societal side? Our schools are part of the answer. We sometimes have a tendency to ask schools to fix any problem that we have, which is a bit unfair, but could and should schools do more to encourage women down the STEM route, and should they do more to encourage guys down the social care route?

**Dr Macaskill:** The answer is yes, but given the proportion of time that a child spends in school, compared with the proportion of time that they spend at home, it is not just down to education.

A lot of the debate around the gender pay gap and horizontal segregation has not been properly informed by the psychology of discrimination and an understanding of how individuals develop their negative attitudinal frameworks—and how early that happens. Child psychology now teaches us that by the age of two or three a child has developed a lot of the attitudinal framework with which they will journey through life. If, in those very early years, care is seen as something that is done by females and nurture as an activity that is for the mother rather than the father, it will not matter what early years or school educators do, because those attitudes will have been framed.

There is a lot that we need to do, including in education. There are good models where children are invited into care homes and care-at-home companies to see the reality of care—that happens all way through into secondary education. However, there needs to be a much more fundamental discussion in wider society about the values around care and why the sector

is not deemed to be masculine or suitable for a man.

There is an increasing drive towards technology-enabled care, to plug the gap created by human absence. However, if I am dying, I do not want my hand to be held by a machine—I want a human being to be there. That will happen only if society changes its attitudes. It is about money and resource, but it is not only about those things; it is also about what value we give to care and what price we put on dignity.

12:00

**Kevin Burnett:** There is a clear STEM issue. The 2013 labour market survey showed that 70 per cent of women with STEM qualifications were not working in a STEM-related workplace. Roughly three times as many boys as girls take up STEM qualifications in this country, although it is different in other countries.

To follow on from what has been said, I think that there is a societal attitude. The Institution of Civil Engineers Scotland offers programmes to schools, because we understand that schools are resource constrained across a number of metrics. We offer STEM activity programmes in schools in Aberdeen and throughout Scotland. We offer one-hour bridge-building activities, which tick the curriculum for excellence boxes. Trying to encourage all pupils into STEM activity takes financial support, which comes from our industry. There is a clear target to introduce programmes in primary 5 to primary 7, and to girls in particular—for example, we take the programme to a girls school in Aberdeen. Bridge building is a classic case—

**John Mason:** Dr Macaskill was arguing that kids pick up very early who cares and who nurtures. Do you think that it is a bit later on that youngsters start to think that your sector—engineering—is for boys?

**Kevin Burnett:** I think that they make those decisions at a later stage. I have been on those programmes, and we tend to see a difference between the girls and boys who undertake those activities: the boys go forward, but for the girls it is sometimes a revelation to them. It is interesting to go into an all-female environment, where there is a completely different dynamic: suddenly, the girls all go forward together. There is almost a restriction in classes—this is purely my personal opinion from having seen it—that girls will stand back and let the boys do activities.

**John Mason:** In a college class, for example?

**Kevin Burnett:** I am sorry—I am talking about at the primary school level.

The situation starts to change when people get older. We have other programmes that target first-year and second-year students. One involves a sort of disaster-relief scenario, with hands-on engineering activities. At that point, the girls seem to have suddenly jumped. It is almost as if the girls who have decided that they will be engineers—I am sorry to say that it tends to be quite a small percentage—push themselves forward to get their hands on what we offer them. My personal observation is that there is almost an acceptance at the primary school level that boys will do engineering and girls will not. However, if there is an all-girl class, there is a completely different dynamic.

**John Mason:** How do we tackle that? Should we change teacher training? Is that part of teacher training?

**Kevin Burnett:** I think that it is part of teacher training. When you approach a school—I and our engineering graduates and students have done this—if you a lucky there is a teacher who is engaged with STEM activities. It tends to be a teacher in the engineering and sciences department, although they might be a geography teacher, for example. We have seen that, if a teacher is open and willing to do something, the whole school will take it up but, unfortunately, when they move from that school, the school will stop doing it. I have seen that happen at an academy in Aberdeen. The school took up the activity until the teacher moved on. It is almost as if there are tiny oases in the desert, of teachers who are willing to engage and take things on.

**John Mason:** That is very helpful. Thank you.

**Richard Leonard:** I have a very specific question for Val Dougan in connection with the Law Society of Scotland's submission and a more general question about procurement and outsourcing.

There is a section in the Law Society's submission on "contributory factors" to litigation, which in paragraphs a to l lists a number of reasons why the society thinks that there has been an awful lot of litigation around equal pay, especially in local government and arising from the single status agreement. I thought that it would be in the interests of your members to have lots of litigation; nonetheless, you seem to take a view of it. In paragraph k, the society points to

"The failure of local authorities to outsource to genuine third parties pursuant to standard procurement processes, rather than to external arm's length organisations ('ALEOs') where the council retained an ownership or controlling stake or share."

Am I right in thinking, though, that because the workers in question were outsourced to an ALEO, it became possible for them to pursue equal pay

claims, because a Court of Session ruling deemed that the women working in ALEOs would be allowed to compare themselves with men working directly for the council—in the case in question, it was Glasgow City Council—whereas if they had been outsourced to “genuine third parties”, as you describe it, they certainly would not have had any remedy in law under the equal pay legislation?

**Val Dougan:** I should say that I did not write the submission—somebody else did. I am aware of the issues about equal pay in the public sector, but my role today is to talk about the gender pay gap within the legal profession. I am quite happy to take away any points about the public sector and single status, but the society does not really have a firm view on that. I can speak to the person who wrote that part of the submission.

**Richard Leonard:** Okay. Thank you. We have found from some of the evidence that we have been given that outsourcing has driven the gender pay gap even wider than it might otherwise have been, because there has not been a remedy under the equal pay legislation to address it.

**Val Dougan:** We can definitely say that the Equal Pay Act 1970 and the Equality Act 2010 have been very ineffective means of driving equal pay. I do not think that anybody would disagree that the individual, reactive legislation has not made a great deal of difference.

As I see it, one of the major problems with gender pay is that people conflate it with equal pay, but the two are completely distinct terms. One of the reasons why people have in the past been reluctant to even understand their gender pay gap is potential exposure to equal pay claims. If there is one thing that the committee can do through its work, it is to highlight the distinction between equal pay and gender pay so that people will be a lot more willing to tackle their gender pay gap. Gender pay is about so much more than pay; it is about distribution and occupational segregation. It includes an element of pay discrimination, but there is so much more to it than that. If we can have a more informed debate about what equal pay and gender pay are, that will be a better way of pushing forward on gender pay, because people will stop being worried about the potential threat of litigation under the equal pay legislation.

Equal pay cases in the private sector are few and far between. We saw a lot in the public sector in relation to single status, and then there was a second wave of claims, but that is finishing now. We have seen only a little bit of litigation in the private sector, which has come out of the supermarket cases involving Asda. There is a little bit of litigation there, but tribunal fees have had a massive impact on that.

I am not sure that I can talk about the particularities of ALEOs, but I can certainly give a view on the distinction between gender pay and equal pay.

**Richard Leonard:** I do appreciate the difference between the gender pay gap and equal pay, but is it the case that there is not really a problem with equal pay in the private sector? Does the fact that we have seen a mountain of cases in the public sector and very few in the private sector mean that the private sector has got it about right and the public sector has got it woefully wrong, or is it just that the torch has not been shone sufficiently on the private sector?

**Val Dougan:** I do not think that we know. In the private sector, there is no transparency on pay scales, so people do not know what their colleagues are earning. It is a completely different mindset to that in the public sector. People who work in the public sector always know about grades and scales, so they always find it quite strange that someone who works in a private sector organisation can have absolutely no awareness of what their colleagues earn. Previously, people had the ability to submit an equal pay questionnaire, but those aspects of the legislation have been withdrawn, so that cannot be done any more.

There are difficulties around that. There is a cultural reticence when it comes to asking about pay. The legislation was amended to say that employers were no longer able to prohibit pay discussions, but with the removal of pay transparency, we just do not know what the position is in the private sector.

It is possible that, with gender pay gap reporting, firms might actually look at their pay gap, which will lead them to drill down to ask why they have that gap and what it means. However, they will begin to understand that only if they go beyond the statutory metrics and look at the gap at grade level, because it is only when they drill down to that level that they will understand the distribution of their workforce. That is potentially a limitation of the regulations.

**Professor Paisey:** Drilling down to grade level is key. That would highlight whether there were any differences in an organisation. I do not think that we would find that many differences in accountancy organisations. If a male and a female both got a training contract with EY, for example, I am sure that they would be paid the same rate.

However, I found it quite surprising in some research that I was involved in—this is reported in my written submission—that a gender pay gap of about 11 per cent exists at the newly qualified level in accountancy, which is an early level where you would not expect much by way of a gender

pay gap. That is not within individual firms—within a firm, a male and a female will get the same. However, when we drilled down into the data, we found that people who were working for small and medium-sized employers got paid less than those who were employed by the big four accountancy practices.

We would expect that; that is not unusual in itself. The gap is there because more females are employed by small and medium-sized firms. Basically, the issue is occurring across organisations rather than within individual organisations. Therefore, if there is a tendency for females to get traineeships with small and medium-sized firms and a slightly higher percentage of males go to the big four firms, that will exacerbate a gap simply because, at the recruitment stage, some people are getting some jobs as opposed to other ones. That was an unusual finding. I was surprised by that; I did not expect that at all. It is only when one organisation is compared with another that we start to see such trends emerging. It will not be terribly easy to make such comparisons, even with the new transparency rules that are coming in.

**Dr Macaskill:** I anticipate a question on procurement, so I will comment on that area. Social care procurement has its own statutory guidance. The principles are human rights based, and they cover personalisation, involvement and engagement. In social care, we have seen a direct impact as a result of the inability to implement the statutory guidance, which has led to increased negative terms and conditions in the non-statutory sector.

One day, a local authority might celebrate itself as a Scottish living wage employer. Two days later, it might seek to enter into a contract with a charity that provides home care that makes it impossible for that organisation to pay its workers the Scottish living wage. As someone who sits on the fair work convention sub-group on social care, I know that there is profound hypocrisy in an organisation publicly stating that it is a Scottish living wage fair work employer and then commissioning and procuring a third party, be it charitable or for-profit, in a manner that prevents that party from ensuring that it is able to diminish gender segregation and occupational segregation.

**The Convener:** Thank you very much.

I am afraid that we have run out of time. I thank you all for coming in today and for your contributions.

12:14

*Meeting continued in private until 12:50.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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