

# Consultation Response

Good Work Plan: Proposals to support families –  
Transparency of flexible working and family related  
leave and pay policies

October 2019



## Introduction

---

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Equalities Law and Employment Law sub-committees welcome the opportunity to consider and respond to the Department for Business, Energy & Industrial Strategy consultation: Proposals to support families – transparency of flexible working and family related leave and pay policies. The committees have the following comments to put forward for consideration.

## Consultation questions

---

### **1. Do you agree that large employers (250+ employees) should publish their family-related leave and pay policies on their website?**

Strongly agree.

We support the aim of taking steps to encourage greater transparency. This will encourage employers to give real consideration to how they deal with these policies – although our experience is that most large employers already do so.

The devil will however be in the detail with regard to such a proposal – both in relation to a requirement to publish these policies and the policies on flexible working. We support full transparency but are mindful of placing too great an administrative burden on employers. Considerable thought will be required on exactly what it is that employers are required to do and what the consequences of failure would be. At this stage our responses are high level – as is appropriate for the consultation. We would welcome an opportunity to respond to more detailed proposals in due course.

**2. Do you agree that large employers (250+ employees) should publish their flexible working policies on their website?**

Strongly agree.

Greater transparency will encourage employers to give greater consideration to this issue. It will also give potential employees the ability to compare and contrast different employers.

**3. Do you agree that transparency of these policies will help employers to recruit and retain staff?**

Strongly agree.

It is likely that the employers will seek to put in place policies that will attract talent. It will be for employers to decide on the balance between what is attractive to engage future employees and what works commercially for them from a business perspective.

**4. Do you agree that, where the employer has a policy on family-related leave and pay which extends the statutory minima, reworking and publishing an internal policy document on a public-facing website would be simple and inexpensive?**

Agree.

The employer will already have a written policy that it will provide to all employees. It is highly unlikely that it will contain anything that is confidential. It should be a reasonably straightforward matter either to provide that policy or a precis of that policy.

**5. Do you agree that, as for family related leave and pay, reworking and publishing a flexible working policy on a public-facing website would be simple and inexpensive?**

Agree.

For the reasons stated at Answer 4 above.

**6. How helpful would the following information be if it was held (and viewable) on a central database – for instance the Gender Pay Gap Reporting Portal:**

**a) Whether flexible working may be available from the start**

Very helpful.

It would enable job applicants to obtain relevant information from one site – and to compare and contrast information as between different employers.

**b) Approach to place, hours and times of work**

Very helpful.

It would enable job applicants to obtain relevant information from one site – and to compare and contrast information as between different employers.

**c) Approach to informal flexible working (such as later starts to accommodate health and other appointments)**

Very helpful.

It would enable job applicants to obtain relevant information from one site – and to compare and contrast information as between different employers.

**e) Enhancements to different types of family-related leave and pay, for example: Maternity Leave and Pay; Paternity Leave and Pay; Adoption Leave and Pay; Shared Parental Leave and Pay; parental leave taken in respect of older children; or, any other contractual enhancements to family-related leave and pay.**

Very helpful.

It would enable job applicants to obtain relevant information from one site – and to compare and contrast information as between different employers.

**7. To what extent do you believe that a job applicant's decision on whether to apply for a job would depend on the publication of the information mentioned above?**

Somewhat.

We believe that it would influence many applicants' decisions to apply – particularly those with children or other caring responsibilities. Some people are particularly hesitant to ask questions about flexible working or family leave in case it counts against them in the recruitment process. . Having the information publicly available in advance levels the playing field for all candidates.

However we should also recognise that for others these issues may be of lesser concern when compared to the nature and quality of the work; the reputation of the employer; geographical location; and salary, benefits etc.

**8. How effective do you believe a voluntary approach to encourage greater transparency about an organisation's approach to flexible working and family-related leave and pay (e.g. through the Gender Pay Gap Reporting Portal) might be in providing information about employers' policies?**

Not very effective.

If the desire is to have full transparency and a level playing field a purely voluntary approach is unlikely to achieve that.

**9. How effective do you believe creating a facility on the Gender Pay Gap Reporting Portal on GOV.UK to record details about an organisation's policies on flexible working and family related leave and pay would be:**

**a) To provide a central point of information for employees or prospective employees?**

Very effective.

This would be simple and straightforward for larger employers.

**b) To let employers record the information as a part of the annual cycle of Gender Pay Gap Reporting?**

Very effective.

This would be simple and straightforward for larger employers.

**10. How effective do you believe it might be to encourage employers to set out how they are using greater transparency about their employment policies as part of their gender pay gap action plans?**

Don't know.

The effect is likely to be small at first and would take some time to show a difference.

**11. Do you agree that it would make sense to enforce a reporting requirement of this kind in the same way as gender pay gap reporting (i.e. a requirement to provide this information as part of the gender pay gap reporting process)?**

Agree.

On balance we believe that there needs to be some compunction about providing this information to ensure a level playing field.

**12. Thinking about the balance between what it is practical to provide in a short job advert and what is useful to a candidate, which of the following is the best option (please select one)?**

- **A simple statement (such as “Happy to Talk Flexible Working”)**
- **A short statement covering the organisation’s approach to place, hours and times (e.g. “core hours”) of work**
- **A simple statement and a link to a published policy**
- **A short statement covering the organisation’s approach to place, hours and times of work and a link to a published policy**
- **Other (please set out)**

A simple statement.

Presumably the candidate can then obtain greater information online.

**13. If a requirement was introduced to state in job adverts whether flexible working may be available or not:**

**a) Who might the enforcement power sit with? Please describe.**

The Equalities and Human Rights Commission may be a possible enforcement body, subject to the need to ensure adequate resourcing for any additional powers.

**b) What should be the process for reporting a breach? Please describe.**

Individuals might report a breach to EHRC



**c) What should be the penalty for a breach? Please describe.**

Publishing a list of defaulters, similar to the approach taken for national minimum wage, might be a low cost and effective penalty. If EHRC were to be involved they might issue a default notice on an employer requiring them to rectify the position for future/further adverts. Failure could result in inclusion on a list of defaulters. That defaulter list might link in with the gender pay gap reporting portal.

**14. If a requirement to provide a link to your flexible working policy on the gender pay gap reporting portal was introduced, do you agree that it would be helpful also to ask employers to record whether they had advertised jobs as open to flexible working?**

Agree.

It would be helpful to make sure that the two link up.



Law Society  
of Scotland

**For further information, please contact:**

Policy Team

Law Society of Scotland

DD: 0131 226 7411

[policy@lawscot.org.uk](mailto:policy@lawscot.org.uk)