

**£Equal pay
where next?**



The Business Case for Equal Pay: How the business case for equal pay plays out in practice and what can be done to strengthen it

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**Equality and
Human Rights
Commission**

Introduction

This is one of four short think pieces produced for the 40th anniversary of the Equal Pay Act to inform new thinking and discussion on what should be the next steps in closing the UK's gender pay gap. The other three pieces look at the area of the law, how work is organised and ways of changing hearts and minds. The issues and ideas raised in all four pieces will be discussed by participants at the Equal Pay, Where Next? conference on 28 May 2010 to inform a single roadmap for future progress on equal pay. This is because neither action on the business case nor any of the other three areas alone will make the difference we need, but combined we have the opportunity to consider practical action to bring historic legislation to fruition.

Equal pay legislation and employers

In May 1970 the UK government introduced an entitlement to equal pay for employees doing equal work with employees of the opposite sex employed by the same employer. In 1970 equal work meant work that was the same or broadly similar, or work that had been rated as equivalent under an analytical job evaluation scheme. However, in 1983, following a reference to Europe by the Equal Opportunities Commission and subsequent infringement proceedings by the European Commission, the UK government was obliged to expand the definition of equal work to include work that, although different, is of equal value.

In recognition of the potential impact on businesses of bringing women's rates of pay up to those of men, the 1970 Equal Pay Act did not come fully into effect until 1975, thereby giving employers a five-year period within which to prepare for the extra costs of equalising pay (estimated, for example, to be as much as 18 per cent of the then annual wage bill in the clothing sector, and up to 32 per cent in individual firmsⁱ). A wage freeze was in force at the time, but the political priority attached to equal pay was such that the government provided for employers to breach the incomes policy if it was necessary to do so in order to equalise women's pay with that of men. No equivalent lead-in period was provided when the concept of equal pay for work of equal value was introduced.

While the legislation does not explicitly hold employers to account for the implementation of equal pay, the courts have made clear that employers are responsible for ensuring that their pay systems are free of sex bias and should not wait until confronted with a case before taking action to ensure equal pay.ⁱⁱ Nonetheless, the slow rate of progress in closing the gender pay gap shows that the law, at least in its current form, is a necessary but insufficient driver, and a business case rationale also has a key role to play.

The business case for closing the gender pay gap

The business case for closing the gender pay gap rests on the argument that such action will be beneficial (a) to the whole economy and (b) to individual businesses.

The intermediate level (that is, the business case relevant to specific industry sectors) is relatively undeveloped and largely confined to the public sector. However, commentators have noted (a) that the business case agenda is not generally about equal pay, but about business needs being served by equality measures,ⁱⁱⁱ and (b) that in practice there is not one business case, but rather a number of arguments that have greater or lesser significance in particular circumstances.^{iv}

The whole economy case

Whether at the level of the whole economy or of the individual organisation, the business case rests upon the relationship between pay and productivity. It is beyond the scope of this paper to disaggregate the components of the gender pay gap, but there is ample evidence that gender pay gaps contribute to the UK's lower productivity as compared to other comparable European countries and North America. In 2006 the Women and Work Commission estimated that removing the barriers to women working in occupations traditionally done by men and increasing women's labour market participation could be worth between £15 and £23 billion or 1.3 to 2 per cent of gross domestic product.^v More recently an independent study of gender equality, economic growth and employment across Europe has estimated that a complete transition to full gender equality in the labour market has the potential to increase gross domestic product by between 15 and 45 per cent in the European Union member States, with an estimated potential increase to the UK of 35 per cent of gross domestic product.^{vi}

The case on behalf of women themselves feeds into the business case at the whole economy level. It is possible to infer from national statistics that an average woman working full time from age 18 to 59 would lose £361,000 in gross earnings over the course of her working life, as compared to an equivalent male.^{vii} A levelling up of women's earnings has the potential to bring gains to the Exchequer not only in increased revenue from income tax and national insurance, but also through a reduction in the payment of benefits and tax credits. It would improve the financial wellbeing not only of women but also of their partners and children, and, most importantly, it would reduce the likelihood of women's poverty in retirement. There is even evidence that an increase in women's earned income decreases the likelihood of them being subject to domestic violence.^{viii} At the level of the whole economy therefore the business case would appear to be incontrovertible, and one can only wonder why it has not been more widely cited as a rationale for action.

The sectoral level case

Consideration of the wider impact that equal pay can have on the profile of a sector is confined to the public sector, where perhaps the best example is higher education (HE). HE has recognised the demographic imperative of women's increasing labour force participation, not only on student participation rates but also on employment practices, including pay. Employer and union bodies have worked together to develop the business case across the sector and to ensure that policies and practices designed to achieve equal pay are in place.

The University of Sunderland

The University of Sunderland has a number of policies and systems in place that are more likely to provide equal pay and which contribute to minimising the gender pay gap. It is also involved in initiatives to promote gender equality and achievement and has received many awards for its equality initiatives. The University's actions in respect of equal pay, which include regular equal pay audits, have resulted in a 5.9 per cent reduction in the gender pay gap for full-time employees and 8 per cent for all employees, which shows how progressive employment practices can reduce gender pay gaps.

The company level case

The company level case generally leads on the gains to be made from bringing women's average earnings up to the level of those of men in terms of:

- recruitment (positioning the firm as 'an employer of choice')
- retention (reaping a full return on the company's investment in human capital), and
- the effective utilisation of labour (making the most effective use of the internal labour market).

Quantitative evidence of the impact of equal pay audits is harder to come by, partly because organisations are wary of disclosing this for fear of provoking claims against them, and partly because the cost implications will depend, among other things, on the size of the pay gap. However, companies which have carried out equal pay audits consistently express the view that audits are worthwhile.

Nationwide Building Society

At the request of the Nationwide Group Staff Union (TUC affiliated), Nationwide carried out an equal pay audit covering gender and ethnicity. It was a combined effort of expertise from the union, HR staff, trainers, the reward team and an equal opportunities committee that agreed what would be measured and how the data would be compiled. As a result the organisation was able to address a host of employment practices that it was previously unaware of, including the need to provide guidance for managers on how to ensure that female and ethnic minority staff can gain equal access to promotion opportunities and on how to appropriately assess part-time employees' appraisals.

'There is no doubt that reward makes a positive contribution to Nationwide's competitive edge: over the past five years, employees' satisfaction with pay and benefits has jumped from 49.9 per cent to 85 per cent, while labour turnover has dropped from over 10 per cent to below 8.25 per cent - a very low figure compared to the industry average. At the same time, the society's assets have steadily increased and its share of the market has expanded.'

National Museum Wales

The Museum's management and its three trade unions – PCS, Prospect and the FDA – worked together to undertake an equal pay review. The review identified issues which presented the Museum with a high risk of litigation: historical grading systems with long pay ranges – many long-serving males were on higher wages than newer recruits who tended to be women; cost-saving exercises introduced in the 1980s that had included red-circling pay for existing employees (mostly men) but not for new employees (mainly women); and a pension scheme that was discriminatory because those who joined before 2000 got paid an extra 4.2 per cent. Also not everyone was eligible and as a result 85 per cent of men held a pension and only 65 per cent of women joined. There were also few promotion opportunities for women at the bottom of the pay scale.

The Museum was able both to address the 29 per cent gender pay gap and greatly reduce the possibility of lengthy and costly litigation. This would better motivate staff and increase productivity and loyalty.

The strength of the business case as a driver

Research carried out for the Equality and Human Rights Commission in 2009 found that the factors most likely to encourage action to tackle the gender pay gap are not in fact the business drivers, but the 'push' factors – employee complaints, equal pay cases or legislative requirements.^{ix} However, the same research also confirmed the importance of institutional factors such as the active engagement of trade unions with the equal pay agenda, a predominance of female employees in the workforce and levels of excellence in managing pay systems generally. These and other similar findings suggest why the business case approach to equal pay has generally been held to have had only a limited impact on employers' practices and is seen as a weak instrument for closing the gender pay gap. The findings also confirm that at workplace level the various business case arguments will have greater salience for some organisations than others. The research did not, however, look at the impact of the business case at a sectoral level and it would be useful to do more work on this.

Conclusions – can the business case be strengthened?

The answer to this question is unequivocally 'yes'. It's essential to remember that the business case is in fact socially constructed. It is a product of our culture and our ideas about how pay should be negotiated and about what it is appropriate to pay men and women. This culture can be changed. It is entirely possible, for example, as was done when the entitlement to equal pay was first introduced, to position the pursuit of equal pay above other political, economic or business objectives, and where businesses have made progress in narrowing the gender pay gap, this change of emphasis appears to be one of the keys to success – equal pay as a core objective, not as an add-on. Implementing equal pay is like any other project aimed at increasing organisational efficiency; it requires management, time and resources – and as with any such project its success will depend upon the priority attached to it.

A shift to a culture that properly values women's work is a change that can be initiated by business and union leaders deciding to treat men and women more equally, but if the change is to be effective those leaders need to ensure that their decisions do indeed influence the behaviour and decision-making of people lower down the pecking order. They also need to ensure that women just as much as men understand that they can influence the outcome of pay negotiations.

What practical recommendations can we make?

The Equality and Human Rights Commission suggests that efforts to strengthen the business case should focus on:

- Getting employers and unions who have implemented equal pay to publicise what they have done and how they have gained from it. Businesses are reluctant to talk about equal pay, but without a raft of good practice exemplars, the suspicion will remain that the business case doesn't quite stack up.
- Extending the sectoral approach (as is increasingly being developed in the public sector) to the private and voluntary sectors. Business learns best from business, and good practice is more persuasive if it is grounded in a similar perspective.
- Getting businesses to extend their budgetary perspective – a short-term cost benefit analysis is almost certain to show a hit on the bottom line; a longer term view will be more likely to show not only a more accurate financial picture, but also the harder-to-evaluate qualitative gains. Narrow cost benefit analyses, especially if undertaken by line managers having to meet short-term performance indicators, may not fully reveal the dimensions of the business case.
- Recognising, managing and overcoming resistance at local level: the line manager's or trade union rep's business case is likely to differ from that of the organisation as a whole.
- Building the impact that closing the gender pay gap will have on the whole economy into the arguments at sectoral and organisational level. Reducing the gender pay gap means raising UK productivity while reducing social costs; these gains will benefit business.

ⁱ *Just Wages for Women*, Professor Aileen McColgan.

ⁱⁱ *Redcar & Cleveland Borough Council v Bainbridge & Others* [2008] IRLR 776 CA.

ⁱⁱⁱ *Beyond the Business Case: A three-pronged approach to equality action*, Professor Linda Dickens, CBE.

^{iv} *The Business Case for Equality, Is the Carrot Better than the Stick?* Professor Linda Dickens, CBE.

^v *Shaping a Fairer Future*, Women and Work Commission, February 2006.

^{vi} *Gender Equality, Economic Growth and Employment*, Asa Lofstom, Department of Economics, Umea University, 2009.

^{vii} Equality and Human Rights Commission analysis based on *Annual Survey of Hours and Earnings 2009*, table 6, Office for National Statistics, November 2009.

^{viii} *The Impact of Women's Position in the Labour Market on Pay and Implications for UK Productivity*, Professor Sylvia Walby and Dr Wendy Olsen.

^{ix} *Gender Pay Activity in Large Non-public Sector Organisations, baseline report 2009*, Equality and Human Rights Commission.