

Equal pay—a good business decision



Contents

Introduction	2
The economic argument	3
Costs to employers.....	3
The legal approach	6
Equality Act 2010, Section 77.....	6
Equality Act 2010, Section 78.....	7
What can business do?.....	8
Making equal pay part of business – 2011 and beyond.....	11
Endnotes	14

Introduction

It has been a year since the 'Equal Pay, Where Next?' conference was held to commemorate 40 years of the Equal Pay Act.¹ At the conference the business case for equal pay was presented and debated. Since then, the Equality Act 2010 has been implemented which has consolidated and harmonised the previous Equal Pay Act 1970 and Sex Discrimination Act 1975. This paper aims to take a fresh look at the economic benefits of delivering equal pay under the Equality Act and against the current backdrop of policy and government developments, and aims to urge businesses to begin to tackle the perennial issue of the gender pay gap.

Many policy arguments for equal pay have been made over the years; however, the economic benefits of delivering equal pay have not been made as strongly. The key economic benefits, case studies and actions businesses can take are summarised in this paper.

The economic argument

Women now make up almost half of the UK labour force, yet face a gender pay gap of 14.9 per cent.² A combination of factors such as job segregation between the sexes, lack of part-time roles in senior posts and hidden pay discrimination contributes to the loss of between £15 and £23 billion or 1.3 to 2 per cent of gross domestic product every year.³ In a woman's working career from age 18-59 it is estimated that she would lose approximately £361,000 in gross earnings compared to an equivalent male.⁴

The economic impact of this on British families should not be underestimated. The National Equality Panel revealed that in a survey of 250,000 households 19 per cent were headed by a female breadwinner.⁵ A further 25 per cent of women earn the same as their husband or boyfriend, which means they could easily surpass their partner's earnings in the future. The implications of women not receiving equal pay go beyond missing wages for individual women. The continuing gender pay gap is particularly acute for families at the lower end of the socioeconomic scale because these families then become dependent on funds from the Treasury through the provision of tax credits, welfare benefits and other payments to make up their financial income. This makes the gender pay gap bad for women, families and the British economy.

Costs to employers

Failure to provide equal pay means employers spend thousands of pounds each year defending equal pay claims at tribunal. In 2009/10 alone, 37,400 equal pay claims were accepted at employment tribunal. Defending equal pay claims is a costly, complex and very time-consuming exercise which has a negative impact on businesses through:

- **Expensive legal fees** – lawyers are expensive and defending an equal pay claim/s costs thousands of pounds. Costs can escalate depending on claim circumstances, legal fees, number of claims and complexity.
- **Loss of control** – implementing a pay and reward system is the responsibility of each business, but by not implementing equal pay this responsibility will be placed into the hands of a tribunal.

- **Lost productivity** – defending equal pay claims is time consuming as HR and line managers have to gather evidence, communicate with legal representatives and attend tribunal hearings. This amounts to a high loss of business productivity time.
- **Low staff morale** – facing equal pay claims could lead to more being lodged if staff perceive that pay discrimination exists. Low staff morale leads to further loss of business productivity.
- **Tribunal decision** – even if you win your case, you will have had to pay thousands in legal fees. If you lose you will have to pay your legal fees, the employee's legal fees and a financial award (as decided by the tribunal), which could include up to 6 years' back pay.
- **Loss of reputation** – equal pay claims are likely to have a negative impact on the business reputation, which could adversely affect the businesses ability to attract and retain the best employees.

Case study

Admiral Insurance specialises in providing low-cost car insurance for younger drivers, people living in cities and those driving performance cars. This FTSE 100 company has operations in Germany, France, Italy and Spain as well as the UK – it also runs Confused.com.

Admiral's pay structure is based around everyone starting at the same level Roles are advertised internally first before being advertised more widely in the public arena. Progression upwards in the firm is dependent on achievement and individuals are measured against certain performance criteria. Each member of staff has a tailored development plan which encourages them to acquire the skills to rise to the next level of their particular role. Unusually for business, all Admiral employees receive training **before** they are promoted and not after. This means that even if they are unsuccessful in one promotion bid, they have still acquired the skills for another one in the future. There is a culture of using an 'open plan' system for recruitment so that staff from the lowest grades to the most senior levels are involved in interviews.

It is well recognised that not having a fixed starting salary for each job/grade is one of causes of the existing gender pay gap in many workplaces. By taking this proactive approach, Admiral has reduced the likelihood of causing a gender pay gap due to different starting salaries. They also offer other benefits such as dealing informally with requests for flexible working; regular salary checks to make sure anyone falling through the net is identified, regular internal training opportunities and the removal of its mandatory retirement age. All of this helps to minimise

equal pay claims, recruit and retain the best staff and maintain workplace loyalty.

Reputational damage could also affect customer opinion and ultimately the company's commercial success. For large companies with shareholders, there is additional reputational risk. Providing transparency in pay has an economic impact beyond affected employees as corporate social responsibility is growing in importance for many shareholders.

Opinion surveys have shown that young people entering the labour market are more likely to want to work for a company that provides equal pay than one which does not. Forty-nine per cent of all students stated that an employer's commitment to provide equal pay would influence their job choice and 50 per cent of female students stated that the existence of a gender pay gap would make them reconsider their choice of job.⁶

Case study

Clydesdale Bank has carried out Equal Pay Audits annually for the past few years. It believes it is important in its drive to be recognised as an Employer of Choice. The profile of equal pay is raised through diversity awareness and is discussed on a regular basis with the union Unite. The audits compare pay for females and males in the same clustered roles taking into account time in position, experience and performance ratings. Any significant variations are investigated with the Business Unit as well as any factors affecting female progression. Action plans are put in place following each audit. As a consequence of the audits, the human resource function has increased its involvement in reviewing new salaries and adjustments by continually monitoring starting salaries and interim pay awards. Training is given to managers and one-off salary increases made throughout the year to address particular cases.

The legal approach

Failure to implement equal pay in the workplace can lead to legal challenges being made by both individuals and the Equality and Human Rights Commission (the Commission). Unique inquiry powers gave the Commission the ability to expose gender inequality in the finance sector. The 2009 Financial Services Inquiry investigated sex discrimination and the gender pay gap within the finance sector, the causes and potential solutions. The inquiry unearthed some informative data about common business practices within the finance sector:

- The gender pay gap for annual gross earnings (that is, all earnings, irrespective of hours) in the sector is 60 per cent, much higher than the economy-wide gap of 42 per cent.
- In more than half the cases the gap for discretionary performance-related pay was 45 per cent or more.
- The most common basis for a company's pay structure was reported to be a mixture of market rates and discretionary performance pay.⁷

As part of the inquiry, the financial services industry and the Commission are exploring ways to rectify the gender pay gap. Litigation should always be the last resort, as we believe that proactive management of pay systems in the workplace is much more cost effective and risk averse.

Equality Act 2010, Section 77

Since 1 October 2010, pay secrecy clauses within employment contracts are unenforceable if they are related to a protected characteristic.⁸ The Equality Act 2010 states that an employer cannot prevent their employees from making a 'relevant pay disclosure' to anyone; cannot prevent employees from seeking such a disclosure from a colleague (including a former colleague); and cannot victimise anyone involved in the relevant disclosure.

A relevant pay disclosure is one that is made (or sought) for the purpose of finding out whether or to what extent there is unlawful pay discrimination. It is not limited to discrimination on grounds of sex. The Code of Practice on Equal Pay between women and men provides further information about the law (see paragraphs 103-10).

Equality Act 2010, Section 78

From 2013, the government can make companies with 250 employees or more report on their gender pay gap under Section 78 of the Equality Act. However the government has said that it will not implement the gender pay reporting measures in Section 78 of the Act while it is working with business on how to best support increased transparency on a voluntary basis. The government will annually review this approach, in order to assess whether this approach is successful, and take a view over time whether alternatives are required, including using the mandatory approach through Section 78.

What can business do?

Currently the legislation does not explicitly hold employers to account for the implementation of equal pay but the courts have made it 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.⁹ It has been estimated that at this current slow rate of progression in closing the gender pay gap it will be 2068 by the time men and women's wages are equalised.¹⁰ It is clear that the business case, as well as the legislative case, has a significant role to play.

Case Study

In 2006 the **Civil Aviation Authority (CAA)** and Public and Commercial Services Union (PCS) launched an ambitious programme to implement a new pay and grading structure with equal pay at the centre of the change. As the CAA is comprised of four different functions, numerous proposals had to be presented to the Board. The results have been the joint establishment of equal pay compliance and the following actions:

- Development of equal pay principles which support equality of pay and demonstrate transparency and openness in their pay systems.
- Development of one CAA pay structure through collective bargaining arrangements.
- Development of one performance bonus scheme that covers all employees covered by collective bargaining.
- In performance management, overall performance indicators are methodically standardised to ensure consistency and fairness of treatment across the organisation. The performance management outcomes are regularly reviewed by HR Advisers to ensure consistency.
- All market-related supplements are recorded and reviewed separately from basic salary to ensure openness and transparency. Regular research market rates within the various labour markets in which they operate is undertaken.

The CAA believe that improving transparency would also help to improve talent development, as employees would be able to see what they could earn if they wanted to move to another division and upgrade their skill set. Equal pay reviews are now undertaken on a regular basis using their equal pay principles as a basis for measurement. The business case for implementing equal pay was important to the CAA as

they wanted to be a fair pay employer.

The government has focused on the voluntary approach, preferring businesses to regulate themselves and effect change from within the business community: 'The Government are committed to working with business to develop a voluntary approach to gender pay reporting in the private and voluntary sector. While we work with business and others to ensure this approach is successful, we will not commence, amend or repeal Section 78 of the Equality Act 2010.'¹¹ Businesses have the opportunity to measure, report and take action to reduce their gender pay gap in a voluntary capacity and if done correctly and in sufficient numbers, Section 78 will not be made mandatory. To facilitate this voluntary approach the government launched Think Act Report in September 2011: a principles paper, alongside guidance produced by Acas on Voluntary Gender Equality Reporting (including gender pay reporting) for private sector organisations with 150 plus staff.

If businesses are serious about their commitment to reducing red tape and regulation, then voluntarily reporting on the gender pay gap is paramount.

Case study

Virgin Mobile began to review equal pay in 2005. In its early days Virgin Mobile prided itself on a lack of bureaucracy and structure, but the reward team were keen to address pay discrimination issues that had arisen through this approach. A job matching exercise was undertaken to find jobs of equal value and the reward team gathered external data on the telecommunications industry to compare internal jobs to external market rates. This enabled them to address pay anomalies in a more informed manner. The equal pay audit carried out in 2005 covered all staff below board level, reviewed all elements of the pay package, base, bonus, benefit allocation as well as gender, age, location and length of service.

The findings revealed the following:

- The lower paid roles showed no gender pay gap, but this rose to 9 per cent at middle management level.
- Certain jobs were allocated specific benefits on a discretionary or ad hoc basis.
- The performance appraisal system lacked a robust structure as it was not linked to pay performance increases or performance-related bonuses.
- Some roles had a higher wage due to the need to 'buy in' the expertise at market rates.

Virgin Mobile organised a team dedicated to reward and championing pay issues at Board level. The team found that the main cost in conducting this was time, not money. Many employers worry about the resources and financial implications (especially if a high gender pay gap is revealed), however Virgin Mobile state that the cost implication is small and only took up a small amount of their annual bill. They state that if the Board can be convinced on the argument of good practice, then it will at least minimise the risk of litigation. Equal pay legislation is a key aspect of employment and discrimination law, so it is prudent to take proactive measures as soon as possible.

Immediate benefits

Greater pay transparency has been a great benefit to the board, employees and managers as they now know what is happening across the business and they are able to confidently justify their actions. Virgin Mobile are now confident that each job role has been properly evaluated, tested and is paid accurately both internally and in relation to market forces.

Making equal pay part of business – 2011 and beyond

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.¹² 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. However as has been discussed in this paper, there have been other push factors including proactive actions from within business.

Case study

Transport for London (TfL) has received national recognition for the work it is doing to tackle the gender pay gap and champion women's equality in the workplace. TfL undertake an equal pay audit across several protected characteristics every two years. The audit helps to identify if there are pockets of pay inequity and if there are any a dedicated team investigates if it is due to discrimination. In the past TfL recognised that a key issue for concern was the lack of formal starting salaries when making job offers to new employees. As part of its Gender Pay Gap Review the company proposed to address this by removing the request for previous salary information from application forms and from reference requests. A specific project was included in the 2006 Equal Pay Review to establish the viability of this new initiative and to develop a set of guidelines for those responsible for setting pay, such as recruitment specialists and managers, on how to determine fair salaries for new job entrants. The findings from this review have led to this guidance being built into ‘business as usual’ procedures for recruiting managers.

Dialogue between the employing manager, reward and recruitment teams are expected to identify and resolve any potential pay discrimination issues. These conversations include reviewing existing internal pay rates for similar roles as well as external market rates of pay. The aim is to ensure that new recruits are paid according to the value of their job role rather than relying on previous salary amounts which could contain existing sex bias. TfL now only engage in salary discussions after the short listing stage. For example a senior role requires application by CV only, with no request for salary expectation.

Application forms for roles up to manager level have a section on salary expectations, but not all applicants choose to complete this section.

Immediate benefits

TfL have found that being an employer that proactively strives to provide fair pay has proved beneficial as employees feel more valued; trust the organisation and in return employees are more engaged with their work. Having regular pay audits has also ensured that the organisation has not needed to spend excessive amounts of time and resources rectifying hidden pay discrimination through contentious litigation.

Equal pay is embedded into the business culture as a core value and business function. It is considered as part of managers' 'toolkit' and is given due weight and consideration when line managers are recruiting new staff, setting salaries and giving promotions. TfL has recognised that in order to be a successful public facing organisation, they needed to embed equality into their day-to-day workings.

Challenge Yourself

Opportunity Now is the gender campaign from Business in the Community. Opportunity Now empowers employers to accelerate change for women in the workplace. They work with their membership of employers from private, public and education sectors to offer tailored, practical and pragmatic advice on workplace issues.

Opportunity Now has issued a challenge to its members to:

1. Work together with government to develop appropriate reporting measures for pay.
2. Conduct an equal pay audit by 2014 and put the results of the pay audit in the public domain by 2016.
3. Adopt equal pay best practice, not just as a workplace entitlement, but as a mechanism to create a fairer and more equal society. Such best practice would include corrective and preventative action and robust pay processes such as job evaluation, transparent bonus systems and training for those involved in pay decisions.¹³

They, like the Commission, recognise that adopting equal pay best practice as an instrument to create a fairer and more equal society would encourage corrective and preventative action.

Go Public

The Think, Act, Report voluntary initiative is for businesses with 150 plus employees and has received widespread support from organisations such as BT, Tesco and Eversheds. However the Commission would encourage all businesses of all sizes to publicly commit to pay transparency and gender equality as a key business priority.

The first small firm to sign up to the initiative is investment banking firm Sustainable Development Capital. Co-founder Jonathan Maxwell has expressed surprise that gender equality is still an issue in the workplace. Jonathan states that 'There is also no gender pay gap in our firm. There is nothing we are uncomfortable about disclosing. Disclosure is always helpful dealing with inequalities. Hopefully it will act as an incentive to others and set a standard. When you set standards it becomes difficult for other firms to be below it... This issue deserves to get more attention and companies taking it seriously as we are will help to kill the issue. Companies that are not going to look good will not join. I would never want to find women being put off joining a business on the basis that they thought it to be gender-biased.'¹⁴ This is a good example of a business taking the initiative to publicly talk about their proactive equal pay management. The Commission would encourage more businesses to adopt the same approach to further enhance the business case for equal pay. There is reluctance for business to talk about equal pay, but without a raft of good practice examples, the suspicion will remain that the business case doesn't quite stack up.

The Equality and Human Rights Commission has developed tools for businesses of all sizes and sectors to help them implement equal pay.

Quick Start Guide to Equal Pay – designed for small businesses (50 employees or less) to easily identify pay gaps and establish ways to tackle them.

Equal Pay Audit Toolkit – designed for businesses with over 50 employees, which consists of five stages to identify pay gaps and implement necessary changes.

Equal pay must be viewed as a core business objective, not as an add-on to existing business priorities. Implementing equal pay is like any other project aimed at increasing organisational efficiency; it requires management, time and resources (not always financial) – and as with any such project its success will depend upon the priority attached to it.

Endnotes

¹ Event sponsored by Fawcett Society, TUC, Equality and Human Rights Commission and UNISON.

² Mean hourly earnings, excluding overtime, Office for National Statistics, *Annual Survey of Hours and Earnings 2011*.

³ Women and Work Commission, *Shaping a Fairer Future*, February 2006

⁴ Equality and Human Rights Commission analysis based on *Annual Survey of Hours and Earnings 2009*, table 6, Office for National Statistics, November 2009.

⁵ *An anatomy of economic inequality in the UK: Report of the National Equality Panel 2010*.

⁶ Henderson Global Investors, *Closing Britain's Gender Pay Gap Position paper*, October 2002.

⁷ Financial Services Inquiry, *Sex discrimination and gender pay gap*, report of the Equality and Human Rights Commission 2009.

⁸ Protected characteristics are sex, race, disability, age, sexual orientation, religion and belief, gender reassignment, pregnancy and maternity, marriage and civil partnership.

⁹ *Redcar & Cleveland Borough Council v Bainbridge & Others* [2008] IRLR 776 CA.

¹⁰ See <http://www.telegraph.co.uk/finance/jobs/7953522/Equal-pay-still-57-years-away.html>

¹¹ House of Commons, Theresa May Home Secretary and Minister for Women and Equalities, response to written answers to questions, 15 June 2011. Available at: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110615/text/110615w0001.htm>

¹² Equality and Human Rights Commission, *Gender Pay Activity in Large Non-public Sector Organisations, baseline report 2009*.

¹³ See http://www.bitcdiversity.org.uk/about_us/the_campaign_aims_of.html

¹⁴ See <http://www.fmwf.com/media-type/news/2011/10/sustainable-development-capital-first-sme-to-sign-up-for-gender-equality-reporting/>

Contact us

England

Freepost

RRLL-GHUX-CTRX

Arndale House

Arndale Centre

Manchester

M4 3AQ

Helpline:

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Fax: 0845 604 6630

Email: englandhelpline@equalityhumanrights.com

Scotland

Freepost

RRLL-GYLB-UJTA

The Optima Building

58 Robertson Street

Glasgow

G2 8DU

Helpline:

Telephone: 0845 604 5510

Textphone: 0845 604 5520

Fax: 0845 604 5530

Email: scotlandhelpline@equalityhumanrights.com

Wales

Freepost

RRLR-UEYB-UYZL

3rd Floor

3 Callaghan Square

Cardiff

CF10 5BT

Helpline:

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Fax: 0845 604 8830

Email: waleshelpline@equalityhumanrights.com

Helpline opening times: Monday–Friday: 8am–6pm

If you would like this publication in an alternative format and/or language please contact the relevant helpline to discuss your requirements. All publications are also available to download and order in a variety of formats from our website:

www.equalityhumanrights.com

Copyright Equality and Human Rights Commission

December 2011

ISBN 978 1 84206 429 0

