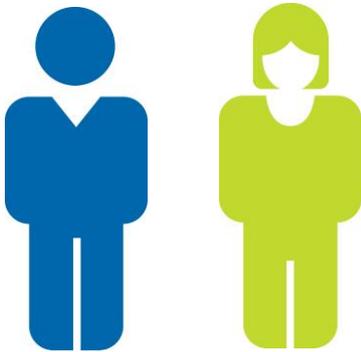


The true cost of equal pay



...the issue of equal pay seems to be in the media spotlight almost daily. With a recent Supreme Court ruling against Birmingham council for at least £757m (see below), new legislation from the government under consultation, and the true gender pay gap still hovering just below 20%, the risk to businesses of not tackling equal pay is bigger than ever before...



In fact I'd go further and say, it's not just the risk of keeping your head in the sand and not addressing the equal pay issue, but businesses are missing out on a massive opportunity. An organisation that knows where it is with equal pay, talks about it openly with its employees and addresses any issues, has a huge advantage in the employment marketplace.

So where are we? 2013 saw the full time gender pay gap creep back up to 10.0% from 9.5% in 2012. The overall pay gap remains wide at 19.7% in April 2013, a slight increase from 19.6% in 2012 (ONS, 2013). The gap is so wide, as a substantial part of the female workforce is employed part-time (42% of women compared to only 12% of men) with these roles typically having lower rates of pay (ONS, 2013).

So, even though the principle of equality is now firmly entrenched in law and society, why does equal pay remain a stubborn issue?



The employee perspective

A range of things contribute to it, including undervaluing of the roles traditionally done by women compared to those where men dominate (nursing versus mechanics, for example). Also as women tend to do the bulk of unpaid caring for children, pay structures historically based on length of service automatically put women at a disadvantage in pay terms. But it is not limited to women taking career breaks to have children, even women without children earn on average 7% less than men in full time jobs according to the OECD (2). In fact the lifetime earnings gap for the average female executive was recently revealed to be £423,390 when compared to a male worker with an identical career path (CMI 2012).

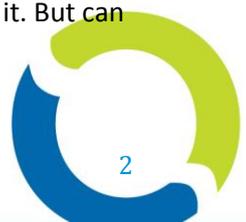
There is mixed research as to why this may be. One school of thought suggests that women value a better work life balance at the detriment of progressing pay and/or their career. Further research cites the ability of men to negotiate higher salaries; the reason for this being that when the ability to negotiate salary in a job posting is ambiguous, men are significantly more likely to do so.

Without doubt, the lack of female leaders and executives as role models certainly makes it far less likely for other women to move up into senior roles within the organisation. It also results in a gender bias within an organisation. In general people don't consider themselves bias or discriminatory, but we know that empirically and statistically they are. Fact: unless you have a 50:50 gender representation there are bias decisions being made in your organisation. The

The Equal Pay Act of 1970 was implemented to address the remuneration imbalance between men and women, and while society has moved on, the pay gap has barely altered. Progress in closing the gap has been slow, and with austerity measures potentially in place for years to come, it is quite likely the gap may actually widen. It has been estimated that at this current slow rate of progression in closing the gender pay gap it will be 2085 by the time men and women's wages are equalised (Opportunity Now).

The recent introduction of the Equality Act 2010 missed a big opportunity to encourage equal pay compliance and formally change the equal pay environment in organisations. The government did introduce the 'Think, Act, Report' framework, aimed at encouraging private and voluntary sector organisations with more than 150 employees to focus their attention on gender equality. It remains a voluntary initiative and therefore hasn't had much impact. Whilst consultation is underway to make equal pay audits compulsory for companies losing an equal pay claim, the number of organisations that will be impacted will be minimal (many settle to avoid losing). There is nothing else in place to more formally draw attention to the potential differences in pay.

At Innecto, we see many clients that have grown significantly over recent years and failed to pay adequate attention to the fact that they are perpetuating a gender pay gap, this is just creating a bigger issue for the business in the future. The main excuse we hear is cost. Organisations feel that if they identify a problem they won't be able to afford to address it. But can they really afford not to?



The business perspective

A big consideration and one that will grab the attention of any Finance Director is the **potential costs** associated with equal pay claims, and whilst it might not cost too much to raise a claimants pay to that of her comparators, costs escalate when back pay, pension rights and interest are factored into the equation. Huge and unplanned costs to a business can be severely damaging. At least if you are aware of the issue, you can plan to manage it over time.

It is said that the Birmingham case could cost the council over £2m in back pay (plus legal fees), but money is not the only consideration. Not only does it take time and energy to manage an equal pay claim, it is likely to have a negative impact on **staff morale** (and therefore business productivity) and the **reputation** of the business. A business does not necessarily have to lose a claim to be affected; just being associated with a claim could affect customer opinion and ultimately the business's commercial success. It can also impact the ability to **attract and retain** the best employees. According to the Equality and Human Rights Council (EHRC 2011), 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.

Taking a proactive approach to closing the gender pay gap is good for business. Employers who use equal pay audits already believe there are economic benefits from ensuring equal pay throughout an organisation. For example equal pay demonstrates a commitment to staff and to fairness, it ensures that a business is maximising use of their employees' capacity", and provides protection from the cost of legal action (Home Office, 2012). For example, the equal pay reviews survey carried out in 2008 by IFF research stated that 87% of employers who conducted a pay audit did so because they saw it as good business sense. Furthermore, 82% of those who conducted audits did so because they wanted to be seen as good practice employers.

The risk of damages

In a successful claim a woman is entitled to:

- An order from the employment tribunal **declaring her rights**
- Her **pay, including any occupational pension rights**, must be raised to that of her male comparator
- Any **beneficial term** in the man's contract but not in hers must be inserted into her contract
- **Any term in her contract** that is less favourable than the same term in the man's contract must be **made as good as it is in his**
- **Equalisation of contractual** terms for the future (if she is still in employment)
- **Compensation consisting of arrears of pay** (if the claim is about pay) **and/or damages** (if the complaint is about some other contractual term)

Back pay can be awarded up to a **maximum of six years** (five years in Scotland) from the date that proceedings were filed with an employment tribunal. In addition, the employment tribunal **may award interest**. With up to six years' worth of back pay being awarded, the interest element is likely to be considerable. There is no award for injury to feelings in an equal pay case.

With the new legislation under consultation and potential enforcement of equal pay reviews these costs could be significantly higher.



Addressing the underlying inequalities should also lead to improved engagement and career progression of women, meaning that businesses are better able to retain talent. We are all aware that organisations with a more engaged workforce outperform their peers on a number of organisational performance metrics (Kenexa 2012). According to the Benchmarking Trends Analysis Report 2012 for gender and race, it has been proven that companies that carry out regular audits of equal pay tend to have more women in senior positions. **The report concludes that where “employees know and understand how their pay is set and are confident they are paid fairly in comparison to their colleagues, they are more likely to perform better”.**

Summary of the Birmingham equal pay case

A group of 174 people who worked in traditionally-female roles, such as cleaners, cooks and care staff won a ruling at the Supreme Court over pay in October. They claimed they were excluded from bonuses that were paid to employers in traditionally-male jobs such as refuse collection.

Claims in excess of £757m includes claims by that group and hundreds of other city council workers.

The Supreme Court rejected the council’s argument the claims should have been submitted through an employment tribunal within a six-month time limit of leaving their jobs. This effectively means equal pay claims can be brought through the civil courts, extending the time limit to 6 years from the 6 months allowed in employment tribunals.

Will this case cause local authorities to sit up and take notice and finally abandon their hopeless fight and tackle their historical equal pay issues? Maybe, but according to TUC research (2012), the new battleground will be in the private sector, where the pay gap is twice as big as that in the public sector, particularly for part time workers.

Birmingham City Council has made the decision to sell the NEC national exhibition centre to help it meet its equal pay bill which now stands at £1.1billion – an example of just how costly these claims can be (Financial Times, 2014).



Conduct an equal pay review – they aren't as difficult to do as you might think and while it might flag some issues to address initially, in the long run it will not only help you stay on top of any concerns and prevent potential equal pay claims, it could have a positive impact on employee engagement. The hardest part of an equal pay review is getting your data together, so review what data you capture on your HR system and start filling in the gaps.

Ensure your approach to reward is balanced– do you have a clear view on internal equity (what you actually pay) verses external equity (what the market pays)? It's very easy to focus on being market driven, without considering the consequences for equal pay internally in your organisation, so take a step back and consider the impact of going too far either way, and aim for a good balance in your approach to pay.

Review or introduce a grade structure –a grade structure with a points-factor job evaluation system is the gold standard for equal pay defensibility. But by ensuring you have a framework in place that has some justification as to why roles are at different levels will provide your employees with a level of transparency and clarity, allowing them to see where they fit in and how they can progress their career.

Address issues – whilst it might be costly to resolve all potential equal pay risks at once, it is possible to put an action plan in place to erode them over time, and will be far less costly than paying back pay on a successful claim. As part of your annual pay review process, put some money aside to resolve those areas that have unjustifiable pay gaps.

Review your HR processes – ensure that your recruitment, promotion and pay review processes don't adversely create bias or perpetuate past discriminatory practice. Whilst it will take a change in educational practice and wider society to fundamentally change traditional occupational segregation, you can ensure that there are no gender barriers to entry. By conducting equal pay audits, you can establish if functions are predominantly male or female, and dig further to understand if there are organisational practices that inhibit equal access.

Be transparent – whilst not all employers share pay range information with their employee, EHRC recommend that everyone (including managers, employees and trade unions) should understand pay and benefits systems. Not only is it common sense and good practice to be transparent, it's been established in law that the more systematic and transparent organisations' structures are, the stronger its defence against an equal pay claim (Pay & Benefits 2012).

Be a leader - to move from where we are today to where we need to be in a passive 'organic' way just won't make the step-change that's needed. As a business leader in the world today, whether as an HR professional or a CEO you need to look ahead, be a thought leader, take risks and look for opportunities. That's exactly what's needed to make the game changers required in equal pay. You have to ask yourself, what kind of organisation do you want to be? What messages do you give either gender about working in your business? Do you have female role models at all levels in your business – if not why not? And what could you do differently to change the picture? What impact would that have on your brand and external reputation?



So, make a great business decision today and join the 87% of employers who conducted a pay audit because they saw it as good business sense – you might be pleasantly surprised how well you're doing!

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