Made in Dagenham – a clarion call for equal pay in the City

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Today, 7 June 2018, marks the 50th anniversary of the strike by 187 female sewing machinists at a Ford car factory seeking sex equality, a story that inspired the 2010 film 'Made in Dagenham.' The strikes led to a meeting with Barbara Castle, then Employment Secretary, to discuss recognition and inequality of pay for females and, two years later, led to the inception of the Equal Pay Act 1970.

Further developments have occurred since, including the introduction of the Equality Act 2010 which replaced the 1970 Equal Pay Act, the launch of a Women and Work Commission, and the appointment of a Minister for Women and Equalities. However, 50 years on there is still a significant gap in pay between men and women. The World Economic Forum predicts this gap will not close for another 217 years.

Gender Pay Reporting

The latest initiative to address the imbalance in pay is the gender pay reporting obligation. Since 6 April 2017 organisations with 250 or more employees have been obliged to publish the following information each year:

1. overall gender pay gaps, showing the mean and median pay for both sexes;
2. the number of men and women in each of the 4 pay bands (lowest to highest salaries) to show how pay differs at different levels of seniority; and
3. information on pay gaps relating to bonuses and the proportion of males/females who received a bonus.

Over 10,000 firms have disclosed such information following the first round of mandatory reporting in April 2018. Of those, 78% of organisations reported a gap in favour of men. In addition, men were paid more than women in every single industry; there is no sector that pays women more than men.

Gender Pay Gap in the Financial Services Sector

One of the largest disparities in gender pay can be found, unsurprisingly, in the financial sector.

According to research by law firm Fox and Partners, the gender pay gap in the financial sector is 22% for salaries and 46%

for bonuses. Compared to the average UK gap of 9.7% this is a startling amount. A number of institutions within the financial sector are also performing much worse than this average – 43.5% at Barclays Bank Plc, 36.9% at Nomura International Plc, 36.5% at RBS and a 36.4% gap at Goldman Sachs. The gap is also substantially enlarged for individuals paid more than £1 million per year – the gender pay gap then rises to 91% in favour of men.

The glass ceiling

There has been a lot of discussion as to the reasons for this divergence. Looking at the statistics, one of the clearest explanations is the lack of female representation at the highest levels within financial institutions. According to a Financial Times study in 2017, women account for 58% of the total workforce at junior levels. However, this drops significantly to around 25% at senior levels. When this is broken down further, studies show that nearly 23% of board directors are women, but only 1 in 7 women are represented on executive committees. At JP Morgan only 9% of higher paid jobs are held by women.

Steps are being taken to address the imbalance at leadership levels in financial services. Independent reviews have been undertaken and non-binding and voluntary recommendations have been made; these include increasing the representation of women for FTSE100 executive committees to 33% by 2020 and requiring FTSE350 companies to disclose the numbers of women on their executive committees. So far, the government has resisted some calls for binding recommendations and/or quotas on boards or executive committees. The hope is that these various initiatives, together with the increased transparency around gender pay gaps as a result of the new reporting obligations, will drive culture changes within organisations. Not least because at present, there are no sanctions for firms who report a gender pay gap.

What options does an individual have in light of the gender pay reports released by their own employer?

Our experience as employment lawyers acting for senior individuals is that despite the advent of gender pay gap reporting, the issues of pay and reward are still shrouded in secrecy. Differentials have started to appear even in sectors where pay scales exist due to the payment of bonuses in addition to basic pay. In the NHS for example, full-time male consultants are paid 12% more than their female counterparts and male consultants are six times more likely to be paid bonuses. Pay differentials have been revealed to affect every professional and regulated sector.

It is however important to remember that a gender pay gap may not necessarily mean that there is a difference between the salaries or contractual bonuses of men and women performing like for like work or work of an equal value. If there is, this may give rise to a claim for equal pay. Alternatively, any less favourable treatment on the basis of sex, such as being passed over for job offers, promotions, discretionary pay rises or bonuses, may give rise to a claim for sex discrimination instead.

Specialist employment advice should be sought if you believe you have a claim for equal pay or sex discrimination. If so, the first step would be to request the information required to make an assessment as to whether there is a difference in pay between men and women performing like work and/or any less favourable treatment.

Stopping you enquiring about any discriminatory pay gap is unlawful

Whilst companies can request that employees keep their salaries confidential, section 77 of the Equality Act 2010 makes pay secrecy clauses in contracts of employment unenforceable to the extent that they prevent an employee from finding out whether or to what extent pay is connected to his/her gender, age, race, sexual orientation or disability, for example. Section 77 also makes it unlawful to victimise an employee for raising the connection between pay and gender or any other discriminatory reason for a pay gap to their employer.

Therefore, if a woman asks her male colleagues about how much they are paid because she is concerned that she is being paid less for carrying out the same or similar work, it would be unlawful for the employer to sanction her in any way for asking the question.

If any differences in pay or treatment are identified then further options could include submitting a formal grievance to the employer to address the situation.

Lessons from Dagenham – a collective approach

One of the key lessons from the Dagenham strike is the importance of collective action. City executives are largely non-unionised and pay negotiations happen behind closed doors on an individual basis. The era of asserting individual rights has moved generations away from the shield provided by collectivism. The power of collective movements has been palpable lately from #MeToo and #TimesUp putting a spotlight on sexual harassment, objectification and representation of women, to the organising by trade unions of individuals contractually classified as 'self employed' to obtain workers rights for them.

From our experience of advising many City women, raising such issues under the banner of 'discrimination' is perceived to be job or career ending. There is strength in unity, lots of practical advice that can be shared when women talk to one another whether within City women's networks or in external professional networks, and there is power in bringing collective grievances to change the practices and culture of

City employers. City employers may begin to understand that they cannot isolate employees easily and that such complaints call for systemic change.

Only time will tell whether we will see the gender pay gap in the financial sector narrow over the next annual gender pay reporting dates. One can only hope that the search for recognition and equality driven by the Dagenham factory girls moves its way quickly and persuasively into the City without a further 50 years going by.

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