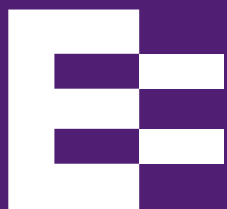


# Promoting equality in pay

A practical resource for conducting equal pay reviews in higher education



**Written and researched on behalf of ECU by Sue Hastings, consultant on equal pay, grading and pay structure.**

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# Equality Challenge Unit

## Promoting equality in pay

A practical resource for conducting equal pay reviews in higher education

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# Introduction

In 2008, Equality Challenge Unit (ECU) and the Higher Education Funding Council for Wales (HEFCW) held a conference in Wales promoting equal pay between men and women in Welsh higher education institutions (HEIs). As a result of recommendations made at the conference and by members of the Welsh liaison group, ECU set up its 2009 Welsh equal pay project. The project was designed to support HEIs in Wales to conduct and implement equal pay reviews to inform their equality work, with particular reference to gender. A specific aspect of the project was to consider the role of equality and diversity practitioners in equal pay reviews and to identify particular benefits from their active inclusion in the review.

Three Welsh institutions participated in the project and were supported by an equal pay consultant. Each institution was required to conduct an equal pay review with the involvement of their equality and diversity practitioner. Lessons from the project can be found in appendix 1. This resource was used by equality and diversity practitioners in the participating institutions to help them undertake and participate in their institution's equal pay review.

The resource is based on the Equality and Human Rights Commission (EHRC)'s equal pay review model ([www.equalityhumanrights.com/advice-and-guidance/information-for-employers/equal-pay-resources-and-audit-toolkit](http://www.equalityhumanrights.com/advice-and-guidance/information-for-employers/equal-pay-resources-and-audit-toolkit)), the Joint Negotiating Committee for Higher Education Staff *Equal pay reviews: guidance for higher education institutions* (JNCHES, 2007) and relevant legal decisions. It combines technical information and practical advice that is tailored specifically to the higher education sector. The resource does not represent a definitive methodology, nor does it define a standard for equal pay reviews in terms of scope and level of analysis; this will need to be determined locally and in consultation with trade unions.

**Note that the terms 'equal pay audit' and 'equal pay review' are often used interchangeably. In this document the term 'equal pay review' is adopted to be consistent with the JNCHES guidance.**

### Why undertake an equal pay review?

Although there is no specific legal requirement for institutions to carry out an equal pay review, there are compelling reasons for doing so:

- ⇒ The *Code of practice on equal pay* (EOC, 2003) recommends equal pay reviews as the most appropriate method of ensuring a pay system delivers equal pay for equal work and is free from gender bias and bias in relation to other equality areas. Failure to deliver equal pay for equal work could result in employees taking legal action against their employer. An equal pay review also helps ensure that the pay structure is transparent, another requirement of the *Code of practice*.
- ⇒ JNCHES has worked to ensure consensus on the *Framework agreement for the modernisation of pay structures* (JNCHES, 2003) and its implementation. The JNCHES pay agreement 2006–09 includes a strong recommendation that HEIs undertake an equal pay review within 12 months of the introduction of their new, post-framework pay structures and periodically thereafter. JNCHES has also developed guidance to assist HEIs in carrying out reviews.
- ⇒ Since April 2007, HEIs in the UK have been subject to the Gender Equality Duty. The Duty requires public authorities to eliminate unlawful sex discrimination and to promote gender equality. Specific duties apply in England and Scotland requiring HEIs to take actions to address any gender pay gaps. While the Welsh Assembly Government has no legislation for specific duties in Wales, it recommends that Welsh HEIs observe the specific duties in place for England, as does HEFCW. There are also duties in place requiring HEIs to combat discrimination in employment on the grounds of disability and race.
- ⇒ The Equality Act 2010 places renewed emphasis on the need for pay equality and the accompanying draft *Equal pay statutory code of practice* (EHRC, 2010) recommends that all employers conduct equal pay reviews. The majority of the provisions within the Equality Act are scheduled to come into force in October 2010. The proposed specific duties for England within the Public Sector Equality Duty, which require public sector organisations, including HEIs, to publish their gender pay gap and set an objective to close any identified gap, are expected to come into force in April 2011.

## What is an equal pay review?

An equal pay review is an analysis of an organisation's pay structure in order to identify and eliminate any gaps that cannot satisfactorily be explained on objective grounds other than gender. It includes the following essential elements:

- = comparing the pay of men and women doing equal work and identifying any gender pay gaps, whether in basic pay or any additional payments
- = carrying out similar analyses for other equality areas where the institution has sufficiently robust statistical data
- = explaining any significant pay gaps
- = developing an action plan to close pay gaps for which there is no satisfactory explanation, such as objective or other material factors affecting the pay decisions

## The structure of an equal pay review

This resource is based on the EHRC's equal pay review model, which has five steps:

Step 1: determining the scope of the review and collating the data required

Step 2: identifying where men and women (and those from other equality groups) are doing equal work

Step 3: comparing pay data to identify any significant pay gaps

Step 4: establishing the causes of any significant pay gaps and deciding whether these are free from discrimination and objectively justified, reviewing all relevant pay policies

Step 5: developing an equal pay action plan

# Step 1: determining the scope of the review and collating the data required

## Establishing a steering group

An equal pay review requires input from a range of people in the organisation. You will need knowledge and understanding of the pay and grading arrangements and the job evaluation scheme used, of payroll and personnel systems, and of how to obtain information from these. It is also useful to have some insight into how relevant policies and practices have developed over time.

A steering group should be established, which may include representatives from the following areas:

- = human resources
- = recognised trade unions
- = equality and diversity
- = payroll
- = information management

The inclusion of representatives of the relevant trade unions is important for several reasons.

- = It improves the credibility of the exercise.
- = Trade union representatives may be able to contribute valuable information, of which managers could be unaware, about the historical operation of the pay system.
- = Time, trouble and expense can be saved, especially by reducing the risk of any disagreement at a later stage.
- = Employees will have more opportunity to understand the outcomes of the equal pay review and the reasons for any proposed changes to grading and pay structures. This will help to ensure that pay systems are transparent and easy to understand.
- = Institutions are required to disclose any information necessary to recognised trade unions for collective bargaining, which is likely to include information about the pay review.

### Covering other equality areas in addition to gender

At the outset, it is important to agree whether the review will cover other equality areas in addition to gender. You will need to consider whether the quality of data available on the ethnicity, disability status and age of the workforce is statistically reliable for the purpose of carrying out a review. If the information is not sufficiently comprehensive or accurate, specify a date by which the information will be collected so that a wider review can be undertaken as soon as practicable. It is unlikely that many HEIs will yet have sufficiently comprehensive or robust data on religion and belief or sexual orientation to be able to include these in an immediate equal pay review, but these areas can also be included in the action plan so that a further review could be implemented when data are available.

### Which employees should be covered?

The review should cover all employees who are in the 'same employment', in the terms of the Equal Pay Act.

The *Code of practice on equal pay* (EOC, 2003) states that employees are regarded under the Act as being 'in the same employment' if they are employed by:

- = the same employer at the same workplace
- = the same employer but at a different workplace where common terms and conditions apply
- = an associated employer; for example, at his/her employer's parent company

In higher education the institution is usually the employer, so the review should cover all employees. Where research or similar companies are wholly owned by the institution, they should normally be included. If there is any question over the status of a particular group of employees, it would be wise to take legal advice, in case of future queries.

Because senior managers could be claimants or comparators in equal pay claims, it is important to include senior management jobs in the review wherever possible, even if they have not been included in the pay modernisation exercise.

A decision is also needed on whether jobs that are traditionally paid on an hourly basis, such as those of casual teaching and technical staff, should be included. In all of these cases, exclusion increases the risk of equal pay claims and decreases

## Step 1: determining the scope of the review and collating the data required

the institution's ability to defend such claims – especially where the excluded group is predominantly of one gender or the other. The decision is likely to depend on whether the relevant jobs have been evaluated and are on the same payroll system as other employees. HEIs should not be deterred from undertaking their equal pay review if they are unable to include casual employees in the first instance. However, future incorporation of these groups into central payroll and human resources systems has potential advantages for other aspects of human resources and equality activity.

### External consultancy support

You may wish to consider whether to bring in expertise from outside the organisation; however, there is no aspect of an equal pay review that cannot be resourced from within the majority of HEIs. Whoever undertakes the statistical analysis is reliant on data supplied by the institution. Some institutions have found external facilitation and support helpful to emphasise the independence and credibility of the exercise, at least for the first equal pay review. For further information see *Choosing and using equality and diversity trainers and consultants* (ECU, 2006).

### What is pay?

The Equal Pay Act 1970 defines pay as all contractual benefits, whether present or future, which the worker receives, even indirectly, in respect of their employment from their employer.

The House of Lords has found that elements of the pay package should be considered separately, including, for example, leave entitlements, bonuses and allowances (*Hayward v. Cammell Laird*). It is not normally possible to set one benefit against another in order to claim that the overall pay is equal despite differences between elements of the package.

### The data required

You need to collect and compare two broad types of information for each employee covered by the review:

- = payroll information (basic pay, total earnings, hours of work)
- = human resources information, for example, job and personal characteristics

## Step 1: determining the scope of the review and collating the data required

The pay information needed for the review includes:

- = basic pay
- = total earnings, and separate data on:
  - overtime payments
  - working pattern payments, including shift pay, unsocial hours payments, on call, standby or similar payments
  - ‘contribution’ payments or any similar bonus or contribution-related payments
- = holiday entitlements
- = any other benefits (identified separately)

The job and personal characteristics data needed include:

- = employee reference number
- = gender, ethnicity, disability, age – depending on which of these are to be covered by the equal pay review
- = job title
- = hours of work
- = job grade or pay scale
- = job evaluation points for the job, if readily available
- = length of service in grade, if possible, or in the employment of the institution
- = location (if the institution has more than one location in areas where different labour markets may prevail)

Names are not required, as long as there is an individual ID or reference number for each employee.

### *What period needs to be covered?*

The data should be as up to date as possible, normally for the most recent academic or financial year. If collating data on overtime or other working pattern premium payments for a whole year is difficult or excessively time-consuming, you might agree a shorter period for this aspect of the exercise, say, three months or even one month, as long as the period is a typical one.

## Step 1: determining the scope of the review and collating the data required

### *How should my institution assemble the data required?*

A modern combined payroll and personnel system usually includes all the information necessary for the review. However, it is possible that this particular range of data will not have been brought together before. Usually it can be downloaded or assembled from different sources in spreadsheet form, or transferred into equal pay review software. Some HEIs are daunted by this process, however the role of the information management, or perhaps payroll, representative on the steering group is to assist in organising the data. Once you have organised the data, the most difficult part of the equal pay review is complete.

The data should be assembled in one spreadsheet, an example of which is provided in appendix 2. The column headings will need to be modified to suit those used within the institution. Once all the information has been assembled, it is possible to delete the names of individual employees and use only individual payroll or employee reference numbers, so that there is no scope for challenge under data protection legislation.

### **Does my institution need pay audit software?**

Some human resources/pay software providers supply equal pay review packages. These can be useful if you already use the provider's other systems. If not, they still require the necessary data to be extracted and input into the system. It is suggested that you clarify with the software provider whether you are likely to encounter difficulties uploading your pay data onto the software. If a significant amount of work needs to be undertaken on the data before it can be loaded onto the software, the cost savings of buying software may be limited.

The main advantage of using pay audit software is that it allows for more sophisticated statistical analyses than can readily be undertaken on a spreadsheet, which may be useful if further investigations of any significant pay gaps are required.

### **Does my institution need to adjust the data before analysis?**

In order to make comparisons across the organisation, it is necessary to bring all the data to common units of hours and pay. So, if one group works different contractual hours, or 'hours as required', then it is necessary to convert basic pay to a common base. For example, if most staff normally work 37 hours a week,

## Step 1: determining the scope of the review and collating the data required

but some work 39 hours a week, you will need to adjust the data in one of the following ways:

- = if 37 is chosen as the common hours base: multiply basic pay by 37, then divide by 39 for employees on 39-hour contracts
- = if 39 is chosen as the common hours base: gross up the basic pay of those on 37-hour contracts to a 39-hour equivalent by multiplying by 39, then divide by 37

It is also necessary to bring full-time and part-time (including term-time only) employees to a common salary basis. This will entail grossing up the basic pay of staff on part-time contracts to their full-time equivalents. An alternative is to convert everything to hourly rates of pay, although this can be more difficult in practice.

It is worth ensuring the accuracy of the full-time equivalent data, especially to ensure all part-time salaries have been correctly converted to their full-time equivalents, as discovering errors at a later stage can require reworking of the initial calculations.

### **Does the Data Protection Act affect the review?**

Processing and disclosure of personal information is protected by the Data Protection Act 1998.

Any data held on computerised and non-automated systems from which individuals can be identified are considered personal data. The data assembled for the review may include employees' names or payroll numbers, and so should be treated as personal data for this purpose. Employees' consent to the processing of personal data is required even if the outputs of the review are anonymised. Unless employees have given their express consent to the processing and disclosure of personal data – perhaps via a term or policy incorporated in their contract of employment – employees need to be informed about the equal pay review and notified of any third parties who will have access to the data. However, it is not necessary to inform employees individually; as long as it is readily available to all concerned, the information could be sent in a circular or uploaded onto a staff intranet. This is a matter that the steering group should consider at the planning stage.

## Step 1: determining the scope of the review and collating the data required

The Data Protection Act 1998 is not aimed solely at employers and employees, but applies to anyone who processes or stores personal data. This means that trade union representatives and external consultants involved in the pay reviews are required to observe data protection principles, which should be agreed with all parties involved at the outset.

Most outputs of the review will be anonymised; however, one or two individuals employed in specialist posts within certain positions or grades may remain identifiable. In these circumstances it is recommended that, having determined whether they are undertaking equal work, their pay should be described in relative as opposed to absolute terms. For example, in a small senior management team comprising one woman and three men, it is possible to describe the pay of the female member of the team as being 'more than', 'less than', or 'equivalent to' her male counterparts', without providing actual figures, in order to ensure data protection principles are observed.

### **Analyses of workforce composition**

At the outset, it is helpful to prepare a frequency table of all staff included in the review by grade, gender and other equality characteristics. These analyses of workforce composition are important because they give an indication of potential sources and targets for equal pay issues, for example, where male and female staff, staff from ethnic minority groups or staff with a declared disability are spread unevenly across the grade structure.

Frequency tables also provide a useful context for the equal pay review report.

## Step 1: determining the scope of the review and collating the data required

<b>Table 1.1 Distribution by grade and gender</b>					
<b>Grade</b>	<b>Number of employees</b>			<b>% of grade</b>	
	<b>Female</b>	<b>Male</b>	<b>Total</b>	<b>Female</b>	<b>Male</b>
1					
2					
3					
4					
5 etc					
SMG*					
<b>Total</b>					

\*SMG, senior management group.

<b>Table 1.2 Distribution by grade and ethnicity</b>					
<b>Grade</b>	<b>Number of employees</b>			<b>% of grade</b>	
	<b>BME*</b>	<b>White</b>	<b>Total</b>	<b>BME*</b>	<b>White</b>
1					
2					
3					
4					
5 etc					
SMG					
<b>Total</b>					

\*BME, black and minority ethnic.

## Step 1: determining the scope of the review and collating the data required

<b>Table 1.3 Distribution by grade and declared disability</b>					
<b>Grade</b>	<b>Number of employees</b>			<b>% of grade</b>	
	<b>With declared disability</b>	<b>No declared disability</b>	<b>Total</b>	<b>With declared disability</b>	<b>No declared disability</b>
1					
2					
3					
4					
5 etc					
SMG					
<b>Total</b>					

<b>Table 1.4 Distribution by age group</b>									
<b>Grade</b>	<b>Number of employees by HESA age group*</b>					<b>% of age group</b>			
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>Total</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
1									
2									
3									
4									
5 etc									
SMG									
<b>Total</b>									

\*Group 1 covers staff aged 34 and under, group 2 covers 35 to 49, group 3 covers 50 to 65 and group 4 covers staff aged 66 and over.

## Step 1: determining the scope of the review and collating the data required

### *Notes for tables 1.1 to 1.4*

- ⇒ It is suggested that HEIs adopt the Higher Education Statistics Agency (HESA) age groupings, unless the institution uses alternative age ranges for presentation of management information, in which case these may be preferred.
- ⇒ Only use more detailed categories (different ethnic minority groupings, for example) where there are sufficient data to allow for reliable statistical analyses and where identification of individuals can be avoided. Institutions that have recorded data on different UK nationalities (for example, white Scottish, white English, white Welsh or white rest of UK) may wish to include these as separate categories.
- ⇒ Frequency tables covering other characteristics can be added to similar formats, for example, Welsh language speakers.

## Step 2: determining where men and women are doing equal work

Step 2 of the equal pay review is to identify equal work – like work, work rated as equivalent, and work of equal value – within the relevant workforce. This is the foundation of an equal pay review.

The Equal Pay Act provides for equal pay between women and men undertaking equal work, that is:

- = **like work** – where employees are doing work that is the same or broadly similar, and any differences that do exist are not of any practical importance
- = **work rated as equivalent under a job evaluation system** – where jobs have been rated under an analytical non-discriminatory job evaluation scheme as being equivalent; that is, they have been rated as having the same number of points, or falling within the same job evaluation grade range of points
- = **work of equal value** – where the work done is different but considered to be of equal value or worth; this can be measured by comparing the jobs under headings such as effort, skill and decision-making

Exactly the same principles can be applied to BME and white employees, those with or without a declared disability, and those from different age groups.

The EHRC equal pay review model recommends ‘work rated as equivalent’ as the most effective means of identifying equal work across all employees where the organisation has recently carried out a job evaluation exercise. This is because the evaluated grades can generally be treated as ‘work rated as equivalent’ and thus as constituting ‘equal work’.

This should apply to all HEIs that have implemented the *Framework agreement for the modernisation of pay structures*. It does not matter whether the HEI used the Higher Education Role Analysis (HERA), Hay or any other job evaluation system. Each HEI needs to check at a later stage that the job evaluation scheme it uses has been designed and implemented in such a way that it does not discriminate on grounds of gender (see checklists 3.1 to 3.5).

## Step 2: determining where men and women are doing equal work

The exception would be if an HEI had adopted very wide job evaluation grade ranges and a small number of grades (for example, of more than 100 HERA points or equivalent to more than two 'know how steps' on the Hay system). In these circumstances, a single grade or pay range might encompass a wider range of 'value' than employment tribunals would accept as constituting equal work. The simplest solution here is to divide each wide grade range into two more conventional grade ranges and to carry out the calculations as below.

### **How should my institution treat jobs that were excluded from the job evaluation exercise?**

Where jobs were excluded from the pay modernisation job evaluation exercise, they should ideally be evaluated now, even if it is not intended to include them in the pay modernisation pay structure. Unevaluated senior management team jobs could be treated as a single group, as could professorial jobs; this assumes that they are broadly of equal value, which may not be the case but provides a working assumption in order to allow the initial statistical analyses to take place.

Any HEIs that have not undertaken pay modernisation job evaluation would need to use 'equal value' as the basis for determining 'equal work'. This is more difficult and less reliable. Any HEI in this situation should consult the EHRC equal pay review model for suggested ways of identifying 'work of equal value'.

### **When are 'like work' checks useful?**

Where the institution has large job groups with a gender mix (for example, lecturer, senior lecturer), it may be useful to supplement the 'work rated as equivalent' checks with 'like work' checks, based on job title, as described in step 3. 'Like work' checks can be undertaken for any job group that includes both women and men, but the results may be distorted by specific features of a small number, for example, if two female security guards have been recently recruited when most of the larger group of male security guards have long service in post.

## Step 3: comparing pay data to identify any significant pay gaps

The next step is to calculate average basic pay and total earnings separately for men and women who are carrying out equal work, that is, where they are in the same grade ('work rated as equivalent') or job group ('like work'). You will then need to compare the averages to identify any significant differences. The calculations will need to be repeated for each of the other equality groups included in the review.

### What are significant pay gaps?

For the purpose of identifying significant pay gaps, a 'difference' is a disparity between the average basic pay (or other element of pay) of men and women performing equal work within a specific grade. A 'pattern' is when, for example, it is found that women consistently earn less than men for equal work. The EHRC equal pay review model states that, as a general guide, any differences of five per cent or more, or patterns of three per cent or more, will require exploration and explanation. Significant differences as defined here do not prove that there is pay discrimination, but they may indicate features of the pay system that are indirectly discriminatory and will need to be resolved.

Differences of less than three per cent are likely to be affected by the gender composition of the group, rather than features of the pay system itself, and are less likely to indicate systemic pay discrimination.

### How do I calculate and compare average basic pay for employees undertaking work rated as equivalent?

This is done by:

- = sorting the spreadsheet by grade and gender
- = calculating the average female basic pay for each grade
- = calculating the average male basic pay for each grade
- = comparing the average basic pay of female and male for each grade
- = recording the data in a table such as table 3.1
- = highlighting 'significant differences'

### Step 3: comparing pay data to identify any significant pay gaps

The exercise should then be repeated on a separate spreadsheet for each of the equality areas included in the review. An example of a complete table is included in appendix 3.

There is no requirement as part of an equal pay review to calculate overall (total) average pay for women and men (or for other equality groups). However, this 'single measure' has been the subject of considerable publicity recently, as employers may be required to publish this overall average pay gap under the Equality Act 2010. It should be noted that the overall gender pay gap is reflective of the distribution of men and women across pay grades as well as any pay discrimination. In an HEI that has undertaken pay modernisation, there are likely to be few significant pay gaps within grades, and the overall ratio of female to male pay will be determined largely by the gender distribution across grades. This may raise issues in relation to equality and diversity, which are important and require action, but are outside the scope of the equal pay review itself.

Table 3.1 refers to male and female employees; however, similar tables should be completed for each of the equality groups included in the review. Average basic pay by age group is likely to show that pay increases with grade and age, as one would expect. Any exceptions from this expected pattern should be investigated.

<b>Table 3.1 Average basic pay by grade ('work rated as equivalent') and gender</b>					
<b>Grade</b>	<b>Number of employees</b>		<b>Average basic pay (£)</b>		
	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female as % of male pay</b>
1					
2					
3					
4					
5 etc					
SMG					
<b>Total</b>					

### Step 3: comparing pay data to identify any significant pay gaps

## How do I ensure my institution's job evaluation scheme is fair?

Most HEIs in the UK used the HERA or Hay job evaluation schemes when they implemented the framework agreement for the modernisation of pay structures in higher education. These schemes were designed to be fair and non-discriminatory, and a review of the implementation of the framework agreement (UCEA, 2008) found that most institutions felt that these schemes were fit for purpose.

The calculations in this resource are based on the premise that your institution's job evaluation system has been implemented in a fair and non-discriminatory manner. The aim of checklists 3.1 to 3.5 is to help confirm that the job evaluation scheme you are using has not been implemented in a way that, either directly or indirectly, discriminates on grounds of gender or any other equality area. If your institution uses more than one job evaluation scheme, complete a checklist for each scheme. If you do not know the answers to some of the questions, for example, about the background or detailed design of the scheme, seek information from people who were involved in the scheme's development such as senior human resources staff, previous job evaluation panel members and longstanding trade union representatives. You may also need to contact the consultants who implemented the scheme or the external supplier.

Checklists 3.1 to 3.5 cover four specific areas:

- = design of a job evaluation scheme
- = implementation of a job evaluation scheme
- = maintenance, review and monitoring of a job evaluation scheme
- = where organisations use more than one job evaluation scheme, the relationship between the schemes

'No' answers may indicate areas that may be more at risk of challenge in an equal pay claim. The resource assumes a working knowledge of job evaluation, but additional information can be found in *Job evaluation: an introduction* (ACAS, 2005).

## Policy and practice checklists: job evaluation

The following checklists refer specifically to job evaluation schemes on the grounds of gender equality; however, they should also be used for the other equality groups included in the equal pay review.

### Step 3: comparing pay data to identify any significant pay gaps

#### Checklist 3.1 Background

		Yes	No	Comment
1	Did you use a system devised specifically for the higher education sector?			
2	If not, did you develop an in-house scheme or use another generic scheme?			
3	When was the scheme introduced?			
4	Has the scheme been reviewed to ensure it complies with good equality and diversity principles and practices?			
5	When was the scheme last reviewed?			
6	Does the scheme cover all employees?			
7	Is information about the design and implementation of the scheme available to staff in a readily understandable form?			
8	Is the scheme computerised?			

#### Checklist 3.2 The design of the scheme

		Yes	No	Comment
1	Is the scheme analytical – does it use factors, defined levels and points scores?			
2	Does the scheme's factor plan fairly measure all significant features of all the jobs it covers?			
3	Do the factor levels in the scheme reflect measurable demand within the jobs covered by the scheme?			
4	Is the rationale for the scheme's scoring and weighting documented?			

### Step 3: comparing pay data to identify any significant pay gaps

<b>Checklist 3.3 Implementation of the scheme</b>				
		<b>Yes</b>	<b>No</b>	<b>Comment</b>
<b>1</b>	Are job holders involved in the completion of a job questionnaire or equivalent job information document?			
<b>2</b>	Are trained job analysts used to assist job holders to complete job questionnaires or equivalent job information documents?			
<b>3</b>	Are the job analysts trained in equality issues and the avoidance of gender bias?			
<b>4</b>	Does the job questionnaire follow the scheme factor plan?			
<b>5</b>	Are jobs evaluated or re-evaluated by a job evaluation panel or committee (or moderated by a panel or committee if a computerised system is used)?			
<b>6</b>	Are panel members representative of the main areas of work and composition of the groups being evaluated in terms of gender?			
<b>7</b>	Are panel members trained in equality issues and and the avoidance of gender bias?			
<b>8</b>	Are evaluation rationales or records, including the reason for each factor assessment, maintained for each job evaluated or re-evaluated?			
<b>9</b>	Have all distinct jobs within the relevant groups been analysed and evaluated?			

### Step 3: comparing pay data to identify any significant pay gaps

#### Checklist 3.4 HEIs with more than one job evaluation scheme

		Yes	No	Comment
1	Are all staff covered by one of the job evaluation schemes in use in your institution?			
2	Have you made any comparisons between the demands (and pay) of jobs covered by different schemes?			

#### Checklist 3.5 After the evaluations

		Yes	No	Comment
1	Has the impact of job evaluations and re-evaluations been monitored by gender?			
2	Has the positioning of the grade boundaries been checked to ensure they do not contribute to discrimination against one gender?			
3	Is there an appeals or review system for dealing with new or changed jobs or grading grievances through the job evaluation scheme?			
4	Have all aspects of grading and pay been checked to ensure those whose work has been rated as equivalent under the job evaluation scheme share the same pay and conditions, except where there is clear justification for doing otherwise?			
5	Is there a system for ongoing monitoring and maintenance of the job evaluation scheme?			

### Step 3: comparing pay data to identify any significant pay gaps

## Does my institution need to calculate and compare average basic pay for employees undertaking 'like work'?

Calculating and comparing average basic pay for employees undertaking 'like work' can provide a useful supplementary check for mixed gender groups and may sometimes explain some of the significant pay differences identified in the 'work rated as equivalent' checks. As the basis of the check is the job title, it assumes that job titles have been applied consistently. The check is done by:

- = sorting the spreadsheet by job title and gender
- = identifying from the spreadsheet jobs that are undertaken by both men and women
- = calculating the average female basic pay for each job
- = calculating the average male basic pay for each job
- = comparing the average basic pay of female and male job holders
- = recording the data in a table such as table 3.5
- = highlighting 'significant differences'

The exercise should then be repeated for each of the equality groups included in the review. It is only necessary to do this for jobs that have a mixed sample of the relevant equality groups, and where there are sufficient numbers for statistical analysis.

Grade	Number of employees		Average basic pay (£)		
	Female	Male	Female	Male	Female as % of male pay
Job A					
Job B					
Job C					
Job D etc					

## Does my institution need to calculate and compare total earnings for employees undertaking ‘work rated as equivalent’?

Calculation of total earnings for employees undertaking work rated as equivalent will enable identification of any further significant pay gaps arising from terms and conditions of employment other than basic pay, such as shift work, overtime and unsocial hours premium payments.

To calculate and compare total earnings for employees repeat the calculations that relate to table 3.1, using the total earnings rather than the basic pay of each employee over the same or a recent period. However, if, as in many HEIs, very few employees have such payments and they are spread across grades, then total earnings calculations may make little difference to the averages. It may be more useful to identify those with each additional payment and to analyse these by gender and other equality areas.

**Table 3.3 Average total earnings by grade (‘work rated as equivalent’) and gender**

Grade	Number of employees		Average total earnings (£)		
	Female	Male	Female	Male	Female as % of male earnings
1					
2					
3					
4					
5 etc					
SMG					
<b>Total</b>					

## Step 4: establishing the causes of any significant pay gaps and their justification

If your step 3 analysis identified any significant gaps, or patterns indicative of discrimination, between men and women (or from other equality groups included in the review) doing equal work, the next steps will be to:

- = establish the elements in which pay gaps are occurring, for example, basic pay, amount of overtime, or contribution-related pay
- = establish the pay practice that is causing the gap
- = assess whether the gap is justifiable and, if not, plan to close it

In order to do this, you may need to carry out some additional statistical analyses, for example, comparing salary within each grade by gender and length of service to see whether this explains the significant differences. Alternatively, simply reorganising the spreadsheet may help: for instance, sorting by grade, then salary point, then gender to see whether men are disproportionately clustered towards the top of the grade and women towards the bottom.

This section of the resource includes a number of checklists for this purpose, including those for:

- = contribution-related pay schemes
- = pay on entry and pay progression
- = market payments
- = pay protection
- = working time payments
- = benefits

Even if you have not identified any significant pay gaps, it is recommended that you check the design, implementation and impact of the institution's pay policies and practices to ensure they reflect equal pay principles.

As pay arrangements within higher education vary, some checklists – or parts of them – may not apply to every HEI. However, the fact that the HEI does not have a starting salaries policy does not mean this section can be omitted. All organisations have to determine pay on entry and promotion.

### Justifying pay gaps objectively

If there is any question of a particular pay practice or policy causing disparate impact between women and men, then the practice or policy needs to be justified objectively. If it is necessary to justify a particular pay practice or policy, you must be able to demonstrate that the reasons behind the differences in pay are not associated with the gender of the job holders, but that:

- = they are necessary to meet real business objectives
- = they lead to these business objectives being met
- = there is no less discriminatory way of meeting the business objectives

Institutions need to conduct a careful balancing exercise when formulating policies that will have a disparate impact on one gender more than on the other. In other words, the practice must be a proportionate response to the needs of the business compared with the rights of the relevant employees. For example, if your institution introduced overtime payments during the examination period and, in practice, this primarily benefited porters as they needed to work longer hours than other staff to set up and clear rooms, this could be justified. Even though a typically male group of staff is likely to benefit from the overtime payments, the need to deliver examinations within the examinations period could be considered a proportionate response to the needs of the business.

A number of pay structures have failed the objective justification test because, while they may have satisfied the criteria at the time they were introduced, they were no longer sufficient at the time of an equal pay claim. Examples include historical bonus arrangements in the local government sector and outdated labour market premium payments, which were no longer required to fulfil the business need to recruit and/or retain the relevant staff, in both private and public sector organisations.

### Ensuring equal contribution-related pay systems

In line with the JNCHES guidance (JNCHES, 2007), contribution-related pay includes all forms of additional pay related to the contribution of individuals or teams, and is more widely used to refer to pay that is related to both competence and performance. Checklists 4.1 to 4.5 cover all forms of contribution-related pay systems.

#### Step 4: establishing the causes of any significant pay gaps and their justification

Case law on contribution-related pay systems derived from the European Court of Justice (*Handels-og Kontorfunktionaerernes Forbund i Danmark v. Dansk Arbejdsgiverforening*) applies to all forms of contribution-related pay. The European Court of Justice ruled that where criteria for individual pay increments for men and women employed on equal work disadvantage women on average, the burden is on the employer to show that the criteria are objectively justified and not discriminatory. The relevant system should therefore, all things being equal, deliver equivalent contribution-related payments to women and men across a group, although obviously an individual might perform less well than another, and therefore receive less contribution-related pay.

Issues of particular concern regarding equal pay in contribution-related pay systems are:

- = female staff receiving, on average, significantly lower contribution-related pay than male staff (or vice versa) where they are undertaking equal work
- = BME staff receiving lower performance assessments than white colleagues, and in consequence lower payments
- = groups of staff being excluded from such payments where they are undertaking equal work
- = applying different contribution-related pay systems to different groups of staff undertaking equal work
- = contribution-related criteria that are potentially indirectly discriminatory by, for example, being more characteristic of 'male' than 'female' behaviour or emphasising features that individuals with caring responsibilities may have greater difficulty in complying with, for example, willingness to work outside normal hours
- = a reliance on staff putting themselves forward for bonuses, as some groups of staff may, in general, be more likely than others to put themselves forward

If an institution introduces a productivity scheme for a group of staff, it does not necessarily need to introduce a similar scheme, or a scheme resulting in identical pay, for all other groups of staff undertaking equal work. In particular, there may be many reasons why a scheme has been adopted for one group of staff and not another. This will depend on all of the circumstances of the case, and crucially on whether the pay policy can be justified (*Redcar & Cleveland Borough Council v. Bainbridge and others*).

## Step 4: establishing the causes of any significant pay gaps and their justification

If your institution has no contribution-related pay systems, you can move on to stage 5.

### **Comparing the proportion of men and women who have access to contribution-related pay**

The first stage is to prepare a frequency table showing the numbers and proportions of men and women, by grade, who received contribution-related pay in the selected period (see 'analyses of workforce composition' in step 1 for information about frequency tables). This is done by:

- = sorting the spreadsheet by grade, gender and contribution-related pay
- = calculating the number of women who received contribution-related pay in each grade
- = calculating the number of men who received contribution-related pay in each grade
- = comparing numbers of employees receiving contribution-related pay across the grades using a frequency table (see table 4.1)
- = recording any differences in access to contribution-related pay for further investigation

The same analysis can then be repeated for the other equality groups included in the review.

**Step 4: establishing the causes of any significant pay gaps and their justification**

<b>Table 4.1 Numbers receiving contribution-related pay by grade ('work rated as equivalent') and gender</b>						
<b>Grade</b>	<b>Number of employees in grade</b>		<b>Number of employees receiving contribution-related pay</b>			
	<b>Female</b>	<b>Male</b>	<b>Female</b>		<b>Male</b>	
			<b>Number</b>	<b>% in grade</b>	<b>Number</b>	<b>% in grade</b>
1						
2						
3						
4						
5 etc						
SMG						
<b>Total</b>						

## Comparing the average contribution-related pay received by men and women

The next stage – calculating the average contribution-related payment received by men and women – is relevant where contribution-related payments are made as sums of money, rather than increments of the pay scale. This stage is done by:

- = sorting the spreadsheet by grade, gender and contribution-related payments
- = calculating the average payment made to women for each grade
- = calculating the average payment made to men for each grade
- = comparing the average payment for women and men in each grade
- = recording any significant differences for further investigation

Table 4.2 refers to male and female employees; however, similar tables should be completed for each of the equality groups included in the review.

<b>Table 4.2 Average contribution-related payments by grade ('work rated as equivalent') and gender</b>					
<b>Grade</b>	<b>Number of employees</b>		<b>Average contribution-related pay (£)</b>		
	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female as % of male pay</b>
1					
2					
3					
4					
5 etc					
SMG					
<b>Total</b>					

## Step 4: establishing the causes of any significant pay gaps and their justification

### Identifying equal pay issues in contribution-related pay systems

Checklists 4.1 to 4.5 will assist you in identifying equal pay issues. These are examples that refer to gender equality issues; however, they should be used to cover all equality groups included in the review. If you cannot answer 'yes' to any of the questions in these checklists, you will need to investigate the practice to ensure it is free from gender discrimination.

Checklist 4.1 Access				
		Yes	No	Comment
1	Are all groups of staff included in the contribution-related pay system?			
2	In particular, are part-time staff, temporary and casual staff, staff who are on, or who have taken, maternity leave or career breaks, or any other group that is likely to be predominantly female included in the contribution-related pay system?			
3	Does the same contribution-related pay scheme apply to different groups of staff undertaking equal work?			
4	Do all employees have equal access to opportunities to develop the contribution levels required for the scheme, irrespective of gender, and do they benefit equally from them?			

## Step 4: establishing the causes of any significant pay gaps and their justification

### Checklist 4.2 Design issues

		Yes	No	Comment
1	Have all those involved in the design and development of contribution-related appraisal schemes been trained in equality awareness and the avoidance of bias?			
2	Are the criteria that are rewarded by the contribution-related appraisal scheme objectively justified, and have they been checked for potential gender bias?			
3	Do the contribution-related criteria exclude any that could be indirectly discriminatory (for example, those related to attendance, flexibility in hours of work)?			
4	Are contribution-related targets equally achievable by primarily male or female staff groups doing equal work?			

### Checklist 4.3 Implementation

		Yes	No	Comment
1	Have all those involved in the implementation of contribution-related schemes undertaken training in equality awareness, the avoidance of bias, and the operation of the scheme?			
2	Where managerial discretion applies, are there clear guidelines on the exercise of discretion over contribution-related appraisal and payments?			
3	Is the contribution-related pay system transparent to all employees? (For example, does each employee receive information about their individual performance ratings and how they convert into pay?)			

## Step 4: establishing the causes of any significant pay gaps and their justification

<b>Checklist 4.4 Impact – contribution-related pay outcomes</b>				
		<b>Yes</b>	<b>No</b>	<b>Comment</b>
<b>1</b>	Does the distribution of contribution-related assessments demonstrate the absence of gender bias between employees within the same grade?			
<b>2</b>	Is the distribution of contribution-related payments broadly similar between men and women within each grade?			
<b>3</b>	Is the distribution of contribution-related payments broadly similar between men and women across the institution?			
<b>4</b>	In a scheme where contribution-related payments are consolidated into basic pay, do women and men undertaking equal work achieve equal earnings over time?			
<b>5</b>	In a scheme where contribution-related payments are not consolidated into basic pay, is the average and distribution of such payments similar between women and men undertaking equal work?			
<b>6</b>	If differences have been revealed, have you checked whether current or historical practices are causing the pay gaps?			
<b>7</b>	Can any differences in pay between men and women that are attributed to contributions be objectively justified?			

<b>Checklist 4.5 Monitoring and review</b>				
		<b>Yes</b>	<b>No</b>	<b>Comment</b>
<b>1</b>	Are contribution-related objectives and assessments regularly monitored for gender bias?			
<b>2</b>	Are contribution-related payments monitored for gender bias?			
<b>3</b>	Have schemes been checked for their impact on women who are on or have taken maternity leave?			

## **Ensuring equal pay on entry or when joining a new pay grade**

Typically, staff will join a pay grade:

- = as a new recruit
- = on promotion (temporarily or permanently)
- = on re-entry after a career break
- = following a restructuring of a pay and grading system

The entry rate of pay on joining a grade may be determined using a set policy, or simply may be an amount agreed by the parties. Where a policy is used, the impact should be tested to ensure its operation does not favour one gender over another. Where there is discretion over the entry rate of pay, the impact of decisions should be checked by gender and other equality areas over a convenient recent period, such as the most recent financial year. If there has been limited recruitment over the most recent year, there is a danger of identifying individuals. To avoid this you can analyse a longer period, for example by analysing the past two or three years.

Complete table 4.3 and checklist 4.6. These are examples that refer to gender equality issues; however, they can be used to cover all equality groups included in the review where there are sufficient numbers of new entrants to grades. If you cannot answer 'yes' to any of the questions in these checklists, you will need to investigate the practice to ensure it is free from gender discrimination.

Similar tables can be constructed for other equality areas where there are sufficient numbers of new entrants to grades. Sufficient numbers are required to provide the basis for a robust statistical analysis and to avoid identifying individuals.

**Step 4: establishing the causes of any significant pay gaps and their justification**

**Table 4.3 Average pay on entry for new starters and promotees by grade ('work rated as equivalent') and gender**

Grade	Number of new starters		Average starting salary (£)			Number of promotees		Average salary on promotion (£)		
	Female	Male	Female	Male	Female as % of male salary	Female	Male	Female	Male	Female as % of male salary
1										
2										
3										
4										
5 etc										
SMG										
<b>Total</b>										

## Step 4: establishing the causes of any significant pay gaps and their justification

Checklist 4.6 Policy and practice: pay on entry and promotion					
		Yes	No	Comment	
1	Do you have a policy that sets out clear rules for:				
	a	starting salaries for new recruits?			
	b	salaries of those promoted from a lower grade?			
2	If you have such policies, are they applied in practice?				
3	Have those responsible for applying the policies been trained in equal pay principles and the avoidance of bias?				
4	Are the policies transparent and communicated clearly to line managers and employees?				
5	Where managerial discretion applies, are there clear guidelines on the exercise of discretion over starting salaries?				
6	Does your statistical analysis show that men and women have comparable outcomes in respect of:				
	a	starting salaries for new recruits to the institution?			
	b	salaries of those promoted from a lower grade?			
7	If gender differences in starting or promotion salaries have been revealed by the analysis, have you checked whether current or historical pay practices are causing the gaps?				
8	Do you regularly monitor starting and promotion salaries by gender?				

### Ensuring equality in pay progression

Differences in pay between men and women resulting from pay progression within a grade or job, whether by traditional annual increments or an alternative progression mechanism, may be justified by the benefits to the organisation of increased experience, competence or performance ensuring greater expertise. However, this justification may erode after an appropriate period.

The question of what is an appropriate period in this context has not yet been resolved by the courts, but government advice in relation to the Employment Equality (Age) Regulations (2006) is that the general justification above is sufficient for systems providing payments for up to five years. In practice, this means anything up to a six-point pay scale (minimum point on the scale plus five incremental points). After this period, specific justification may be required. This has become regarded as good practice in relation to other equality areas.

A contribution-related payments system, if designed and implemented in a fair and non-discriminatory manner, may provide specific justification for the incremental points to which it relates.

It is essential that pay progression arrangements are scrutinised both for their impact on men and women, and for the strength of the 'increased expertise and value' justification, particularly where progression is linked to the achievement of predetermined criteria.

Complete table 4.4 and checklist 4.7. These are examples that refer to gender equality issues; however, they can be used to cover all equality groups included in the review where there are sufficient numbers with pay protection arrangements. If you cannot answer 'yes' to any of the questions in the checklist, you will need to investigate the practice to ensure it is free from gender discrimination.

## Step 4: establishing the causes of any significant pay gaps and their justification

**Table 4.4 Distribution of employees by grade, pay point and gender**

Grade	Pay point	Number of employees			% of employees	
		Female	Male	Total	Female	Male
1	0					
	1					
	2 etc					
2	0					
	1					
	2 etc					
etc						

### Checklist 4.7 Policy and practice: pay progression

		Yes	No	Comment
<b>1</b>	Do you have a policy outlining clear rules for pay progression?			
<b>2</b>	Were the pay progression rules checked for bias at the design stage?			
<b>3</b>	If you have such a policy, is it applied in practice?			
<b>4</b>	Have those responsible for applying the policy undertaken training in equal pay principles and the avoidance of bias?			
<b>5</b>	Are the policies transparent and communicated clearly to line managers and employees?			
<b>6</b>	Does your statistical analysis show that men and women are treated comparably in respect of pay progression?			

## Step 4: establishing the causes of any significant pay gaps and their justification

### Market payments

Employers have always responded to market pressures for particular occupational groups, nationally or geographically, by paying higher salaries where there are recruitment and retention difficulties. Historically, employers often accommodated the market pressures by placing the relevant jobs into a higher grade or pay range. However, under the framework agreement, the higher salary can be made up of two components, the rate for the job plus a supplement or premium recognising market forces.

The European Court of Justice has said that market forces could provide objective justification for all or part of the difference in pay between predominantly male and female groups (*Enderby v. Frenchay Health Authority and the Secretary of State for Health*), provided that market forces were genuinely the reason for the difference in pay at the time pay was introduced, and they have not simply been put forward as a post hoc justification for the difference in pay, and provided that market factors are still relevant at the date of any claim.

Once higher salaries have fulfilled their function of attracting more staff into that particular sector of the labour market, there is no longer a need for any additional payment in order to recruit and retain staff, and such payments will lose their justification.

Market factors must account for the whole of the difference in pay that an employer attributes to them. If not, the courts must determine what proportion of the difference is accounted for by market factors. Although the European Court of Justice did not say that additional payments in response to market pressures should be paid as a separate supplement, it is probably easier for employers to justify and monitor market payments where they can be identified separately.

The most obvious and best evidence justifying payment of a market supplement is failure to attract candidates of sufficient calibre to a post advertised at the appropriate grade rate for the type of work.

Additional evidence justifying payment of a market supplement could come from, for example, labour market surveys (national, regional or local, or specific to the type of work). However, such data must be treated with caution, as the quality of the information depends entirely on how it is collected and collated. Information

## Step 4: establishing the causes of any significant pay gaps and their justification

from a small number of recruitment advertisements is unlikely on its own to be sufficiently robust to justify a market supplement, as it is limited and partial. Further, internal and external jobs may not have been accurately matched for size.

The fact that the preferred candidate in a recruitment process has a higher salary from previous employment than that at which the job was advertised is also insufficient on its own to justify a market supplement. One individual cannot constitute a labour market, which by definition requires numbers of buyers and/or sellers, unless, in very exceptional circumstances, they have attributes making them uniquely suitable for the post (research scientists in a new field might be seen in this light).

If it is accepted that a market payment is justified by the evidence, then it should be paid to all those in the same circumstances, even if they were not threatening to go elsewhere for a higher salary. Non-payment to others in the group could lead to equal pay claims. This is because they are part of the same labour market as the new recruit for whom an additional payment has been shown to be justified.

All market supplements in payment should be reviewed regularly, every one to two years, to ensure they continue to be justified.

### **Identifying pay equality issues arising from market payments**

Complete table 4.5 and checklist 4.8 which will assist in identifying equal pay issues arising from market payments. These are examples that refer to gender equality issues; however, they can be used to cover all equality groups included in the review where there are sufficient numbers of new entrants to grades. If you cannot answer 'yes' to any of the questions in these checklists, you will need to investigate the practice to ensure it is free from gender discrimination.

**Step 4: establishing the causes of any significant pay gaps and their justification**

<b>Table 4.5 Numbers receiving market payments, average market payments by grade ('work rated as equivalent') and gender</b>							
<b>Grade</b>	<b>Number of employees in grade</b>		<b>Number of employees receiving market payments</b>		<b>Average market payment (£)</b>		
	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female as % of male pay</b>
1							
2							
3							
4							
5 etc							
SMG							
<b>Total</b>							

## Step 4: establishing the causes of any significant pay gaps and their justification

<b>Checklist 4.8 Policy and practice: market payments</b>				
		<b>Yes</b>	<b>No</b>	<b>Comment</b>
<b>1</b>	Do you have a clear policy on the payment of market supplements?			
<b>2</b>	Were the market payment rules checked for bias at the design stage?			
<b>3</b>	If you have such a policy, is it applied in practice?			
<b>4</b>	Have those responsible for applying the policy undertaken training in equal pay principles and the avoidance of bias?			
<b>5</b>	Is the policy transparent and communicated clearly to line managers and employees?			
<b>6</b>	Does your statistical analysis show that men and women are treated comparably in respect of market payments?			
<b>7</b>	Are your market payments supported by evidence from:			
<b>a</b>	recruitment and retention exercises?			
<b>b</b>	external market data suppliers?			
<b>8</b>	Have you asked the provider(s) of any external market data for confirmation that their data collection and analysis process have been checked to ensure equality?			
<b>9</b>	Are market payments reviewed regularly to ensure they remain justifiable?			

## Step 4: establishing the causes of any significant pay gaps and their justification

### Pay protection

Pay protection is used to protect an individual employee's pay where their job is downgraded as a result of job evaluation, for example following an internal reorganisation, grading review or implementation of a new job evaluation scheme, or the individual is transferred to a lower-grade job following a relocation or a job transfer due to an impairment or long-term health condition. The justification for the practice is generally that:

- = employees may experience real financial difficulties if faced with a sudden drop in wages
- = it is not possible to unilaterally reduce the pay of an employee without their agreement as a reduction in pay may constitute a breach of contract, and an employee might not agree without pay protection

'Red circling' is a term used to describe circumstances whereby an individual's role is downgraded during pay modernisation or restructuring. Under red circling, their contractual entitlements remain the same even if they are paid at a higher rate than colleagues doing the same work. Whether red circling is justified will depend on the validity of the job evaluation process. This is a particularly complex legal area, and it would be wise to take legal advice on what any analysis of those on pay protection shows.

### Pay protection resulting from pay restructuring

Where pay protection results from the introduction of a job evaluation scheme or a new pay and grading structure, it is important to identify those employees who were entitled to equal pay before the restructuring was introduced, and to ensure the pay protection policy does not have the effect of continuing historical discrimination between these groups. For example, it has been held that the red circling of certain bonus payments to male work groups was discriminatory in circumstances where the payments could not be justified historically in relation to certain female work groups undertaking equal work, and were not extended to those female groups during the protection period. The appropriate course in these circumstances would have been to extend the bonus payments to the female comparators during the protected period (*Redcar & Cleveland Borough Council v. Bainbridge and others*). Provided the policy does not perpetuate historical discrimination, it should be capable of justification for the reasons identified above, at least for a limited period.

## **Pay protection in other circumstances**

Individual staff members may also have their pay protected in other circumstances in which their role is changed. This may occur when a disabled staff member is moved to a different role as a reasonable adjustment, for example. Subject to what is said elsewhere in this section, the scope for other colleagues to challenge such individual pay protection arrangements may be limited, given the nature of the justification that the employer is likely to be able to make.

## **How long should pay protection last?**

One question that is often asked is how long pay protection arrangements can stay in place before becoming discriminatory. There is no clear answer to this question. Early case law suggested that it is relevant to take into account all the circumstances of the case, including the length of time that has elapsed since the protection was introduced, and whether it accords with good industrial practice in relation to continuation of the protection (*Outlook Supplies Ltd v. Parry*). However, recent cases suggest that indefinite pay protection arrangements may be justified where there is no evidence of sex discrimination at the inception of the scheme or subsequently – that is, where the composition of the protected group is not disproportionately gender-dominated in comparison with the workforce as a whole and/or the female comparator group in particular (*Tyne and Wear Passenger Transport Executive v. [1] Best and others and [2] Fulton*). For example, the preservation of terms and conditions of employment following a succession of transfers covered by the Transfer of Undertakings (Protection of Employment) Regulations was approved in one case where there was no evidence of sex discrimination (*King's College London v. Clark*). However, where there is evidence of disparate impact on one gender, it is suggested that the practice may be justified only for a limited period in order to cushion the effect of the drop in pay.

Because there is a risk that indefinite pay protection agreements may become discriminatory over time, indefinite pay protection arrangements are generally considered to be contrary to good practice and should be for as short a time as possible, but this will depend on the circumstances of the case.

Complete table 4.6 and checklist 4.9. These are examples that refer to gender equality issues; however, they can be used to cover all equality groups included in the review where there are sufficient numbers with pay protection arrangements.

#### Step 4: establishing the causes of any significant pay gaps and their justification

If you cannot answer 'yes' to any of the questions in the checklist, you will need to investigate the practice to ensure it is free from gender discrimination. If numbers protected are very small, it may be appropriate to group grades together, or look at the total number on protection compared with the workforce as a whole.

<b>Table 4.6 Numbers subject to pay protection by grade ('work rated as equivalent') and gender</b>						
<b>Grade</b>	<b>Number of employees in grade</b>		<b>Number of employees subject to pay protection</b>		<b>As % of all in grade</b>	
	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>
1						
2						
3						
4						
5 etc						
SMG						
<b>Total</b>						

Checklist 4.9 Policy and practice: pay protection				
		Yes	No	Comment
1	Do you have a policy outlining clear rules for pay protection?			
2	Were the pay protection rules checked for bias at the design stage?			
3	If you have such a policy, is it applied in practice?			
4	Have those responsible for applying the policy undertaken training in equal pay principles and the avoidance of bias?			
5	Is the policy transparent and communicated clearly to line managers and employees?			
6	Does your statistical analysis show that men and women are treated comparably in respect of pay protection?			

## Working time payments

In many public sector pay systems, pay includes a number of elements that are paid in addition to basic pay. These include working time premiums, such as overtime, shift pay, on-call payments or unsocial hours payments.

Equal pay problems with working time payments arise primarily from unequal access to working time premiums, for example:

- = jobs undertaken predominantly by women are excluded from the payments, or have restricted access to them
- = overtime is restricted to certain jobs or groups, or allocated on a discretionary basis

If staff undertaking equal work do not receive equal premium payments, there may be an equal pay problem if you cannot objectively justify the difference. Objectively justifying differential access or payments can present a considerable challenge to employers. For example, it will be very difficult for an employer to justify a rotating shift system in a service-related department if it has the twin effects of disproportionately excluding women and raising the earnings of a predominantly

#### Step 4: establishing the causes of any significant pay gaps and their justification

male group. Justification could be particularly difficult when it may be possible to provide the required level of service by other means, such as part-time shifts, and to reduce the numbers genuinely required to work the night-time shift.

Checklist 4.10 will assist in identifying equal pay issues arising from working time payments for employees doing equal work. It can be used for other equality areas as well as gender.

<b>Checklist 4.10 Policy and practice: working time payments for employees doing equal work</b>							
<b>Type of payment</b>	<b>Do men and women have equal access?</b>		<b>Are payments still objectively justified?</b>		<b>Are average payments equal for men and women?</b>		<b>Comment</b>
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	
Overtime							
Shift pay							
Night-duty payments							
Unsocial/irregular hours payments							
Payments for short-notice change to rostered shifts							
On-call payments							
Standby duty payments							
Payments for public holiday working							
Any other working time payments – specify							

## **Step 5: developing an action plan and future steps to ensure pay equality**

All institutions will need to review and monitor pay equality. However, if gaps were identified between the pay of men and women for which there was no satisfactory explanation, an action plan should be developed. If there are no pay gaps within grades, but there is a significant overall average pay gap, consideration will also need to be given to initiatives that could help address the gap (for example, initiatives to improve the retention of women returning from maternity leave, or mentoring schemes aimed at improving the progression of women into more senior roles). Action plans should be linked to your institution's gender equality objectives as outlined in the equality scheme or gender equality scheme.

### **What should an action plan include?**

An action plan should include arrangements to:

- = improve the robustness of pay or evaluation data on groups omitted from the equal pay review
- = extend the review to groups omitted on account of lack of sufficiently robust pay or evaluation data
- = take forward any checks not completed during the review and any other outstanding matters
- = narrow, and ultimately eliminate, any significant gaps that cannot be explained satisfactorily on grounds other than sex
- = change policies and practices that contribute to unequal pay
- = introduce an equal pay policy
- = introduce ongoing monitoring of pay outcomes by gender

### **When should equal pay be introduced?**

For practical and financial reasons it may not be possible to address the identified pay inequalities immediately. Institutions need to be aware that they are vulnerable to equal pay claims in the interim. Any delay in implementing equal pay for equal

## Step 5: developing an action plan and future steps to ensure pay equality

work will increase the risk of equal pay claims. Further, under the Equal Pay Act 1970, employees may be entitled to up to six years back pay (five years in Scotland). The action plan should clarify the timescales the institution has in mind, and how it will compensate employees who may be entitled to equal pay.

### **Does my institution need to implement an equal pay policy?**

The Equality and Human Rights Commission (EHRC) recommends that every employer should introduce an equal pay policy that provides employees with a clear statement of the institution's intentions in respect of equal pay. Evidence of an active equal pay policy may assist an institution's defence against an equal pay claim.

The equal pay policy should commit the institution to providing equal pay with clear accountabilities, regular monitoring in partnership with trade union representatives and adequate resources for equal pay reviews. There is a specific HEI equal pay policy model at appendix B of the JNCHES guidance (JNCHES, 2007) based on the following EHRC model.

#### **EHRC's model equal pay policy (EOC, 2003)**

We are committed to the principle of equal pay for all our employees. We aim to eliminate any sex bias in our pay systems.

We understand that equal pay between men and women is a legal right under both domestic and European law.

It is in the interest of the institution to ensure that we have a fair and just pay system. It is important that employees have confidence in the process of eliminating sex bias and we are therefore committed to working in partnership with the recognised trade union representatives to take action to ensure that we provide equal pay.

We believe that in eliminating sex bias in our pay system we are sending a positive message to our staff. It makes good business sense to have a fair, transparent reward system and it helps us to control costs. We recognise that avoiding unfair discrimination will improve morale and enhance efficiency.

Our objectives are to:

- = eliminate any unfair, unjust or unlawful practices that impact on pay
- = take appropriate remedial action

We will:

- = implement an equal pay review in line with EOC Guidance for all current staff and starting pay for new staff (including those on maternity leave, career breaks or non-standard contracts)
- = plan and implement actions in partnership with trade union representatives
- = provide training and guidance for those involved in determining pay
- = inform employees of how those practices work and how their own pay is determined
- = respond to grievances on equal pay as a priority
- = in conjunction with trade union representatives, monitor pay statistics annually.

### **How often should my institution monitor and review pay equality?**

Where groups had to be omitted from the initial equal pay review for lack of data, or where it is necessary to change policies and practices that have caused unequal pay, it is recommended that the equal pay review is repeated within a year after the change in policy has been introduced to ensure the changes to the relevant policies are having the desired effect.

Once you are satisfied that the changes in policy have eliminated any bias in the pay system, it is recommended that the exercise is repeated every two to three years.

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### **New JNCHES equality working group**

The New Joint Negotiating Committee for Higher Education Staff (New JNCHES) has recently established an equality working group to focus on strategic equality issues. The group aims to produce a report on equal pay reviews in higher education by December 2010, and will be looking at measures that could be taken to investigate the gender pay gap.

# Appendix 1: lessons from the Welsh equal pay project

This appendix outlines some key lessons learned from ECU's Welsh equal pay project.

## Employees to include in an equal pay review

Two of the participating institutions omitted casual, hourly paid staff from the scope of the review, mainly because of the difficulty in assembling pay data for the large numbers of people employed, often for very small numbers of hours and not always covered by the central payroll system. All agreed to investigate how these groups might be included in a future equal pay review. This is a common issue in the higher education sector. HEIs should not be deterred from undertaking their equal pay review if they are unable to include casual employees in the first instance. However, future incorporation of these groups into central payroll and human resources systems has potential advantages for other aspects of human resources and equality activity.

All three institutions wanted to include ethnicity and disability in their equal pay reviews and had sufficiently robust and comprehensive data to do so. However, numbers of disabled and BME staff in all three institutions were small compared with the total employee population, so, for statistical reasons and to avoid identifying individuals, it was not possible to subdivide disabled and BME staff by nature of impairment or ethnicity. This is unfortunate as it is possible, for example, that the pay experience of some ethnic groups could be different from that of others.

For the purposes of the equal pay review, the categorisation used for ethnicity by all three participating HEIs essentially distinguished white from BME employees. However, this raises a question about who the potentially disadvantaged groups are, when the 'other white' category includes people from eastern European countries who may have pay experiences that are more similar to those of BME employees than other 'white' employees. The procedure adopted was to include the 'other white' category in the overall 'white' grouping. However, this remains an unresolved issue, as it was not possible, even if desirable, to subdivide the 'other white' category accurately. This raises a question, outside the scope of this project, for equality and diversity practitioners within institutions as to whether an additional category is required in this area.

In common with many other organisations in Britain, none of the participating HEIs had sufficient data on religion and belief to be able to include them in their equal pay reviews (this is not the case for Northern Ireland, where HEIs have been collecting data on religion for many years). Nor did the participating HEIs have data on sexual orientation. All three institutions have in their action plan the need to collect sufficient data on religion and belief and sexual orientation.

### **What is pay?**

There was discussion at the initial meeting about what to do concerning pension arrangements, as most institutions have at least two schemes with differing contribution rates and benefits. It was agreed that, while it was possible to collate data on pension scheme membership, which might well show disparate gender impact, pension schemes were outside the control of HEIs.

### **Data collation**

Experience shows that this is where problems sometimes arise, deterring institutions from going further. Assembling and cleansing the data to ensure it is accurate can be the most time-consuming part of an equal pay review, but once completed and checked, the rest of the process is relatively straightforward and quick.

For some participating institutions this stage took longer than initially anticipated. Their experience indicates that it is sensible to allow six to eight weeks for the data assembly for an HEI. If it is possible for someone to work on this aspect of the review full-time, then it might take two to three weeks. On the other hand, in one institution a human resources specialist with information management and payroll expertise and an ongoing responsibility for maintaining and cleansing the relevant databases was able to assemble the data in one day. This experience points to the advantage of including a data analyst in the equal pay review team.

### **Outcomes of the analysis**

HEIs that followed the model grading and pay structure as outlined in the *Framework agreement for the modernisation of pay structures* (JNCHES, 2003) are unlikely to show significant grade gender pay gaps, unless they have adopted long pay scales, and employees of one gender are clustered at the top of the pay scale and those of the opposite gender are clustered towards the bottom of the

## Appendix 1: lessons from the Welsh equal pay project

scale. This was true in the participating HEIs, where there were no significant gaps requiring further investigation in most of the job-evaluated grades.

However, there were significant gaps in the professor groups in two of the three institutions. Further investigation showed that this was the result of wider pay ranges for male professors than for female professors. The data confirmed what was already known to the institutions concerned, but gave impetus to strategies to address this issue, for example, through careful monitoring of recruitment salaries by gender against those of existing employees in the group, and of contribution-related payments where applicable.

The overall gender pay gap varied greatly between the participating HEIs. However, as none of them had any significant gender pay gaps in their evaluated grades, there was no evidence of systemic pay discrimination. The overall gaps were primarily the result of the distribution of men and women across the grades. Where HEIs have relatively wide overall gender pay gaps, this raises important equality issues that need to be considered in relation to their gender equality scheme objectives and actions.

There were no significant pay gaps or discrimination issues in any of the participating institutions in relation to ethnicity and disability. In relation to ethnicity, this was the result of the relatively even distribution of BME staff across academic as well as non-academic grades, a pattern that is rarely found outside higher education. The same was true for Welsh language speakers in the one institution that was able to carry out the analysis for this group.

### **Outcomes for participating institutions**

By the end of the planned project period (three months), the smallest participating institution completed its pay review. The other two institutions were at varying stages of carrying out additional analyses and considering the implications of their findings. The reviews allowed staff to demonstrate to others within the institution that pay modernisation had delivered greater pay equality, and thus reduced the risk of successful equal pay claims by staff included in pay modernisation.

Wider equality issues were also identified in relation to promotion, the availability of part-time working at senior levels, and recruitment. Consideration was given to how to address these within institutions' existing equality work.

The analyses carried out related to basic pay. In higher education, this constitutes the vast majority of the pay bill. However, the collation of data on additional payments allowed for further investigations in the future into issues such as overtime and working pattern premium payments (honoraria), all of which turned out to be paid disproportionately to men. This raises the questions as to whether each payment is justified and, where it is (for example, a premium payment for night work), why opportunities to achieve the payment appear to be restricted, in practice, to one gender.

### **Impact of equality and diversity practitioner involvement**

The equality and diversity practitioners found that their involvement in the reviews improved their knowledge and understanding of equal pay and the process of undertaking an equal pay review. At two institutions, the equality and diversity practitioner led the review with support from colleagues in human resources, who found that the equality and diversity practitioner brought a different and valuable (non-human resources operational) perspective to the exercise.

‘Having an equality practitioner involved in the project has allowed the university to review and plan future tasks with a clearer focus on gender equality, i.e. not only in pay.’

*Participating institution*

The findings of the reviews are being shared with equality and diversity committees and gender working groups, and are being considered in the context of gender equality schemes.

‘The equality practitioner involvement has facilitated direct input into the university gender equality working group and the equal opportunities committee, which will influence the revised gender equality scheme for the university. The equal pay action plan will be integrated into the university’s gender equality scheme.’

*Participating institution*

### Key lessons for the higher education sector

Undertaking an equal pay review was not as complex or time-consuming as some of the participating institutions had feared:

- = specialist pay audit software was not essential, as an equal pay review can easily be undertaken using a basic spreadsheet programme
- = although assembling individual employee full-time equivalent pay and human resources data did take time and effort, once this was done, the rest of the equal pay review was relatively straightforward
- = involvement of equality and diversity practitioners was beneficial in providing an objective equality perspective on the review, its outcomes and future action

## Appendix 2: example spreadsheet

Table A												
ID	Gender	Nationality	Ethnic origin	Disability	Age	Grade	Job title	Contract	Actual salary	FTE* salary	Actual hours	FTE* hours etc
10001	Female	UK	White Welsh	No	55	1	Domestic assistant	Permanent	6,500	13,000	18	36
10002	Female	Poland	White other	No	34	6	Systems analyst	Fixed term	32,009	32,300	36	36
10003	Male	USA	White other	No	49	10	Professor	Permanent	55,000	55,000	36	36
10004	Female	UK	White British	Yes	44	4	Secretary	Permanent	18,000	24,000	27	36
10005	Female	UK	White British	No	23	3	Library assistant	Permanent	8,000	16,000	18	36
10006	Male	UK	White Welsh	No	31	5	Technician	Fixed term	27,000	27,000	36	36
10007	Female	Ireland	White other	No	37	6	Research assistant	Fixed term	20,000	30,000	24	36
10008	Female	UK	Pakistani	No	33	7	Lecturer	Permanent	19,500	36,000	19.5	36
10009	Male	UK	Not specified	No	42	8	Project leader	Permanent	40,000	40,000	36	36
10010	Male	UK	White English	No	59	2	Porter	Permanent	15,500	15,500	36	36
etc												

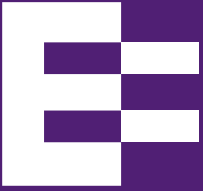
\*FTE, full-time equivalent.

## Appendix 3: example of a completed table

<b>Table 3.1 Average basic pay by grade ('work rated as equivalent') and gender</b>					
<b>Grade</b>	<b>Number of employees</b>		<b>Average basic pay (£)</b>		
	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female as % of male pay</b>
1	101	72	13,502.98	14,563.77	92.7
2	30	45	14,631.56	14,595.99	100.2
3	47	32	15,905.45	15,398.45	103.3
4	92	37	18,996.32	18,767.89	101.2
5	111	39	22,021.65	21,976.30	100.2
6	83	67	26,112.87	26,346.42	99.1
7	162	131	32,987.65	33,054.11	99.8
8	121	145	42,870.12	43,992.95	97.4
9	67	92	48,234.23	50,987.99	94.6
Professor	22	66	61,573.71	65,402.02	94.1
SMG	3	6	54,876.94	57,096.22	96.1
<b>Total</b>	839	732			

A percentage of 92.7 demonstrates a 7.3% pay gap in favour of men. A percentage of 103.3 shows a 3.3% pay gap in favour of women, which may be referred to as a pay gap of -3.3%.

Although every effort is made to ensure that the information contained within this publication is accurate and up-to-date, ECU cannot be held responsible for any errors or omissions. The information is not a substitute for legal advice, and should you require more specific advice you should consult an appropriately qualified professional adviser.



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