



CONDUCTING AN EQUAL PAY REVIEW: the role of union reps



ABOUT THIS BRIEFING

This briefing is designed to give trade union reps an understanding of the role that they should play in conducting an equal pay review. The five step process for this is outlined in detail, with accompanying good and bad practice examples at each step.

The content of this briefing does not constitute legal advice; only an employment tribunal can interpret the law.

THE GENDER PAY GAP IN SCOTLAND

It is now 40 years since the Equal Pay Act was introduced but there is still a massive inequality between men's and women's pay. There is a 12% gap between men's and women's full-time hourly rate and 32% when you compare women's part-time hourly rate to men's full-time hourly rate.¹ These figures represent a lifetime of pay discrimination for women all over Scotland.

There are three main factors that are responsible for Scotland's gender pay gap.

Caring responsibilities

Women also experience discrimination because they are more likely to care for children, sick relatives, disabled people or older people. One fifth of women lose their jobs, or lose out on pay and promotion, simply for being pregnant.

¹ *Annual Survey of Hours and Earnings 2009*



A lack of flexible working in many workplaces means that women are forced to look for part-time work in order to balance their many responsibilities. As most part-time work is in low-paid, stereotypically female occupations, women's pay is likely to go down.

Occupational segregation

Stereotyping about women's capabilities and skills results in women working in so-called 'women's jobs' which are low-paid. These include cleaning, catering, clerical, caring, and retail work. Assumptions about women's abilities, and workplace cultures that act as a barrier to women's progression, also mean that they are less likely to be found at senior management level.

Discrimination

There is also discrimination in pay systems, with many women being paid less for work that is the same or similar, or of the same value as male colleagues' work. There can be various factors within pay systems that lead to inequalities including individuals being appointed to different points on the pay scale; different job and grade titles for virtually the same jobs; male jobs having disproportionate access to bonus earnings; women having less access to high-paid shift work and overtime work; performance-related pay being unfairly awarded; women not receiving the same access to training; and sex bias in analytical job evaluation schemes grading women's jobs lower.

The most effective way for an organisation to uncover equal pay, and put it right, is to carry out an equal pay review. These are sometimes called equal pay audits.



WHAT IS AN EQUAL PAY REVIEW?

An equal pay review is a process which looks at pay arrangements within an organisation to find, and address, gender discrimination. It involves comparing the pay of groups of workers who are doing equal work in the organisation and then investigating any gaps by gender. An equal pay review focuses on one aspect of potential discrimination - unequal pay for equal work. It does not address the other causes of the pay gap such as occupational segregation, although these may be highlighted by the pay review.

Do organisations have to do an equal pay review?

An equal pay review is the most effective way of establishing whether an organisation is providing equal pay. However, private sector organisations are not legally obliged to conduct an equal pay review but without doing so, they will not be aware of any potentially unlawful gaps in pay. Public sector organisations should do a pay review to comply with the Gender Equality Duty.

A five step process, which was developed by the Equal Opportunities Commission (now Equality and Human Rights Commission), is described in the statutory Code of Practice on Equal Pay.



THE FIVE STEPS ARE

STEP 1: Decide the scope of the review

STEP 2: Determine where men and women are doing equal work

STEP 3: Collect and compare pay data to identify gaps

STEP 4: Establish the causes of the gaps and assess the justification for them

STEP 5: Develop an action plan

This briefing will describe the five steps and outline the role union reps should play within the process.

Arguing for an equal pay review

As equal pay is a critical issue for trade unions, pay reviews should be a bargaining goal for all branches and union reps. Each annual pay round should include looking at equal pay, either in the form of a full pay review or a shorter process like an equality impact assessment. To ensure equality for women members, it is vital that equalities should be seen by union as central to their work, and not just an add-on.

The five step process

Before starting the five step process, it is useful to include a **STEP 0** to decide roles and responsibilities for those people involved.

ABOUT THE CASE STUDIES

There are two case studies in this briefing; one good practice example and one bad practice example. Ms Tweed at Dunburgh University represents the bad practice example, while Mr Pinstripe at the University of the North represents the good practice example. You will notice as the case studies progress that making the wrong decisions early on the process can lead to problems throughout the equal pay review. Taking time to plan a pay review and ensuring that there are adequate resources to complete the process will help to achieve a successful outcome.

All institutions, job evaluation schemes, and software referred to in the examples are for illustrative purposes only and are not real. These case studies do not refer to any individual institutions but are made up of examples from a number of institutions.



In the bad practice example, Ms Tweed made mistakes from the very beginning and did not involve the trade union.



In the good practice example, Mr Pinstripe is a shining example of an HR manager who works in partnership with trade unions.

STEP 0: Who will be involved?

A steering group should be established which includes representatives from the trade union and Management and/or HR. Ideally there should be input from range of people with different expertise, in areas such as:

- the operation of the existing systems and the likely effect of any changes;
- pay and grading arrangements;
- job evaluation;
- payroll and HR systems and how to get information from these; and
- key equalities issues, for example, occupational segregation.

It is important that the steering group sets terms of reference and agree roles within the group, in order that everyone involved in the process is clear about what is expected of them and where responsibilities lie.

The group will also need to agree how involved external consultants will be in the process. Some organisations find it useful to hire external consultants to do all or part of the work. Having external consultants doing the job analysis and scoring jobs can be helpful for smaller organisations, particularly to avoid any sensitivities around employees scoring each other's jobs.

Unions should think about the impact of consultants on industrial relations, the budget for the equal pay review project, and the fact that equal pay is an ongoing issue. It can also be useful for organisations and unions to carry out all the work in the equal pay review process and, therefore, build knowledge and capacity within the organisation to carry out future pay reviews.

Leadership is critical for a successful pay review; having the support of senior figures within an organisation, and within the trade union, can make a significant difference to the success of the process. It is also crucial that senior figures in Management are committed to taking action to redress inequalities in pay and the associated costs of this.



Dunburgh University

Ms Tweed, HR Director at Dunburgh University, led a project team to implement an all-staff questionnaire on equality and diversity.

When she got the results, she decided it would be important to carry out a pay review because the survey highlighted equal pay as an issue for employees. It had also been raised as an issue by the trade union at a previous joint negotiating committee.

Ms Tweed had a look at her statutory Code of Practice on Equal Pay and pulled together a project team of her best HR Officers and together they made the following decisions:

- The HR Officers would do all of the work for the pay review, as they did not think anyone in the union branch had any experience of pay reviews.
- They set a three month turnaround time for the project, so they could report at the next meeting of the University Senate.
- They would use the existing Acme Job Evaluation Scheme, which was introduced because Ms Tweed had used Acme in a previous role at the Metropolis Police Force.
- They would consult with the unions once the analysis was finished, and negotiate on how to implement the review.



University of the North

Mr Pinstripe, HR Director at the University of the North, read an article about pay reviews in *People-Leading Today* magazine and realised that his institution should take one forward.

Encouraged by the trade union, Mr Pinstripe read guidance on implementing pay reviews from the EHRC and Close the Gap and put forward a proposal for action to his Board. Once he had approval, and had persuaded a Pro-Vice Chancellor to sponsor the pay review, he brought together his HR team and union reps to begin to plan the review.

- It was decided that union reps and HR Officers would go on a training course on equal pay and the principles of job evaluation together.
- After the training, they planned out each stage of the review together and got advice from a range of sources about how long it would take.
- They considered a range of job evaluation schemes and eventually selected the EqualFair job evaluation scheme, to replace the existing Acme Scheme and went on EqualFair training as a group.
- They decided that they would hire consultants to do the job role analysis, but would do most of the work themselves so they would build capacity and knowledge within the University of the North.

STEP 1: Scoping the review

This step involves some crucial decisions about the whole equal pay review. This is especially important if it is an organisation's first pay review. A full equal pay review should include all employees and workers and consider the relative pay of women and men.

The definition of pay within the Equal Pay Act is very broad which means that all elements of pay must be included in the pay review. For example, salary, performance-related pay, competence pay, working patterns pay, bonus pay, any other payments or allowances, and all other benefits. It is not enough to be able to compare the whole benefits package. The Equal Pay Act provides for each individual element of pay to be compared.

Accurate, up to date data about each worker is required for the equal pay review. This includes the personal characteristics of each worker such as:

- gender;
- whether they work part-time or full-time;
- what hours they work, and when and where they work these;
- length of service;
- role and time in the grade; and
- any performance-related pay.

If such data is not available then it must be created before proceeding.



Dunburgh University

Ms Tweed and her HR Officers decided to pilot the whole pay review with academic staff, as the employees who flagged up equal pay as a concern in the staff survey fell into this category and there was thought to be no time to cover all staff.

Dunburgh University had bought a new HR IT system, HRDataPlus, two years previously, and although it did not have information about staff who were appointed before this time on it, the project team thought it would be appropriate as it was new and the sales leaflet said it would help with equalities monitoring.

The project team decided that it would be too costly in staff time and in software licenses for HRDataPlus to migrate historical data on to the new system, and decided to try to manage as best they could with data spread across two systems.

An HR Officer, who had been at Dunburgh University for some time, said she thought the old system had a lot of inaccurate information, but it was thought that it would take too much time to clean up the data for the equal pay exercise.



University of the North

Mr Pinstripe and the steering group had proposed that the equal pay review cover all staff, including employees and workers. Some board members had wanted to start the work with academic staff, but Mr Pinstripe and the Pro-Vice Chancellor were able to explain why this was bad practice.

The University of the North had also recently bought HRDataPlus, and had added new staff to the system while retaining an old system for existing staff.

The Equal Pay Review Steering Group carried out a cost-benefit analysis of migrating the data across and considered three options:

- migrating the data;
- creating bespoke spreadsheets for the equal pay review exercise, incorporating both sets of data; and
- not making any changes.

The Pro-Vice Chancellor sponsoring the equal pay review is also a sponsor of another HR project to improve data quality, so the decision was taken to migrate the data.

STEP 2: Identifying equal work

Under the Equal Pay Act, men and women in the same employment, who are performing equal work, should receive equal pay. There are three aspects to equal work:

- **LIKE WORK** – which means work that is the same or broadly similar, regardless of whether the job title is the same.
- **WORK RATED AS EQUIVALENT** – which means work that has been rated as equivalent under a job evaluation scheme, in other words, those jobs which have similar, although not necessarily the same, scores and are in the same grade. It is also important to look at the job scores above and below the grade boundaries for jobs with similar scores.
- **WORK OF EQUAL VALUE** – which means work that is different but equal in terms of the demands of the job. ‘Demands’ mean the skills, knowledge, mental and physical effort and responsibilities that the job requires.

The job evaluation scheme must be analytical which means that jobs are broken down by demands, also known as factors, and scores are awarded for each factor. The final total gives the overall rank order of jobs. The analytical job evaluation must also be free from sex bias, and designed with equal value in mind. In other words, every aspect of the scheme must be non-discriminatory, from scheme design through implementation to monitoring the outcomes.



Dunburgh University

An HR Officer at Dunburgh University grouped employees by their Acme job evaluation scores. A few employees on the old system did not have job evaluation scores because their jobs did not fit in well with the Acme factors. They were allocated a salary level between four and seven years ago on a whole job 'felt-fair' basis.

An HR Officer, assigned the task because of his expertise with the Acme JES, evaluated their job descriptions again and awarded them scores.



University of the North

Mr Pinstripe and his HR Officers returned from the EqualFair training and looked at a sample of 30 job descriptions to see if they could be used for role analysis.

It was decided they were not of sufficient quality, so a group of HR Officers and trade union reps were trained in job analysis using an EqualFair questionnaire and then rolled out training to line managers.

Line managers completed the questionnaires with their direct reports, with a sample of the questionnaires evaluated by a panel of the trained HR Officers and union reps for consistency and fairness.

The job role analysis was then evaluated using EqualFair and each job was given a score. Employees were then grouped by score and job role.

STEP 3: Comparing data

Once it has been determined where men and women are doing equal work, pay information should be collated and compared to identify any significant gaps. Calculate and compare the average basic pay and total earnings on both an hourly, and full-time salary, basis. This should be adjusted, in other words, grossed up or down for those who work fewer or more hours per week excluding overtime. This can be calculated as follows:

1. Calculate average basic pay and total average pay. Then calculate the gap between average pay and total pay for each group.
2. Compare access to, and amounts received, of each element of pay.

Unless there is a genuine reason for the difference in pay, that has nothing to do with the sex of the person in the job, women and men doing equal work are entitled to equal pay.

As there may be many different groups of workers to look at, it is helpful to prioritise which groups to look at first. As a general guide, any differences of 5% in one grade, or 3% in two or more grades, will require further investigation. It is important to note that although there may not be a pay difference between two groups, there could still be issues that require to be explored. For example, structural issues such as occupational segregation may reveal an under-representation of women in senior grades.

Although using the percentages as a guide can be helpful, the experience and the knowledge that a union rep will have from their own workplace will often be more helpful in uncovering unequal pay.



Dunburgh University

An HR Officer who had recently finished a statistics course wanted to do a regression analysis on the data, and include other factors than gender including race and disability. The results were hard to draw conclusions from.

A basic analysis by job evaluation score was done but the gap between each group of workers in terms of total pay was only 2.7%, except in a Grades 2 and 5, which had 7% gaps. A decision was taken to do further analysis only on Grades 2 and 5.



University of the North

The steering group decided to work its way through the analysis recommended in the EHRC toolkit, and then review to ensure that it was sufficient. It was important to the group that the analysis be transparent and understandable by all in the group, as well as robust enough to pick up any areas of concern. All elements of pay were analysed individually, as well as the total pay of individuals.

As with Dunburgh University, some grades and groups had wide pay gaps and some had very small gaps. Because it was not immediately clear why there should be small gaps in some areas and large gaps in others, the group decided to look at the reasons for the lack of gaps along with the gaps, in order to get a complete picture of the pay structure.

STEP 4: Finding out why there are pay gaps

If any significant pay gaps have been uncovered, it must be determined which elements of the pay system are contributing the pay gaps and why. All aspects of the pay system must be examined, in other words, the pay policies and practices that determine pay.

For example, this might include policies on starting pay, length of service, pay progression, pay protection, and market factors. It is also crucial that the pay system must be looked at from a variety of standpoints, for example, ways in which the design and the implementation of the pay system impact on men and women.

The primary focus of the equal pay review is to uncover systematic inequalities in pay between men and women, rather than pay differences between individuals.

As such, it is important to concentrate on the features of the pay policies and practices that affect, or have affected, either women or men. It is the effects that matter, not the intention behind them.

There may be a valid reason why there is a pay gap; this is known as a 'genuine material factor'. Examples of a genuine material factor include:

- **MARKET FORCES OR SKILL SHORTAGES** – the notion that an employer must pay more in order to recruit and retain worker to do certain types of jobs. This may occur, for example, when there is a shortage of a particular type of worker. The employer would, however, have to provide evidence that market forces or skill shortages have caused pay differences.
- **DIFFERENCES IN GEOGRAPHICAL AREAS** – it may be more difficult for employers to recruit and retain workers in certain geographical areas.

- **PAY PROTECTION** – also known as ‘red circling’, this is a widely used technique to protect the pay of an individual or group whose job has been downgraded following, for example, an internal reorganisation, grading review or implementation of a new job evaluation scheme. This is normally used for a period of time to allow other changes to be phased in. Check most recent case law to ensure that actions taken around pay protection are not unlawful.
- **DIFFERENT SKILLS, QUALIFICATIONS, EXPERIENCE** – the employer would have to prove that the different skills, qualifications or experience were pertinent to the job.

The genuine material factor defence will fail, however, where the reason itself is ‘tainted with discrimination’. For example, an employer cannot always rely on the defence of market forces if the market itself is discriminatory.



Dunburgh University

The analysis done by Ms Tweed and HR Officers identified the following reasons for pay gaps within the organisation:

- bad decisions by individual line managers managing Grade 2 women; and
- women not putting themselves forward for promotion to Grade 5, so there only being one woman in Grade 5 who had been recently promoted.



University of the North

The steering group of the University of the North met for an away day at an off-site location to discuss the results of the analysis, and to investigate reasons for the pay gaps. The union and HR staff drew on their equalities experience to think broadly about concerns that women and men employees had previously identified. The Pro-Vice Chancellor buy-in enabled them to feedback a broad range of issues to the Board. Issues that were identified included:

- corporate culture, including presenteeism and an assumption that an academic environment would be automatically inclusive;
- the previous job evaluation undervaluing administrators and cleaners;
- access to flexible working and part-time working at some pay-grades only;
- line manager discretion over starting salary; and
- poor recruitment practice compliance, with individuals being ‘tapped’ for jobs before internal or external advertisement, by a small minority of line managers.

STEP 5: Developing an action plan

This step depends on the nature and extent of the pay gaps that were uncovered, and whether there was a lawful justification for them. The action plan should make arrangements to provide equal pay for those workers who are entitled to it; this should be done as soon as practicable.

Any current pay policies or practices that contribute to unequal pay must be changed. This might include those relating to starting salaries, performance management systems, promotion calculations, market supplements, pay protection, and eligibility for bonuses and allowances.

An equal pay policy should be negotiated that commits the organisation to providing equal pay for its workers, and also outlines clear accountabilities, regular monitoring and adequate resources for equal pay reviews.

Pay systems should be also regularly monitored and reviewed, to ensure that existing policies and practices, and any proposed changes do not contribute to unequal pay.



Dunburgh University

Ms Tweed and her team interpreted the pay review to suggest that individual managers and women were responsible for pay gaps at Grades 2 and 5. The HR Department of Dunburgh University consequently delivered:

- reminders on policy in the form of a memo to managers of Grade 2 women; and
- self-esteem training to women in Grade 4.

Although the Board were impressed with the quick turnaround of the equal pay review, industrial relations have declined as the union were furious not to be involved and are questioning the review's findings.



University of the North

The steering group met again to develop a workplan for delivering actions against the findings of Step 4. An example of these with regards flexible working is:

- Development of a new flexible working policy which will offer term-time working, annualised hours, home working, and flexi-time.
- A joint leaflet from HR and the union to advertise the new flexible working arrangements.
- A three-year procurement plan to secure better videoconferencing facilities to minimise time away from home and IT resources to enable homeworking.
- A flexible working champion in the senior management team.
- HR scrutiny of the flexible working requests and the reasons for declining these.

Industrial relations have significantly improved as a result of close working together during the equal pay review. The University has also built capacity to carry out the review again in two years' time, but the detail and quality of actions mean that the pay gaps will start to narrow.



FURTHER INFORMATION

Further information on conducting an equal pay review can found at:

www.closesthegap.org.uk

www.equalityhumanrights.com/adviceandguidance/information-foremployer/equal-pay-resourcesand-audit-toolkit/

If you are looking for support or guidance in conducting an equal pay review, please contact us at:

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