



# BARGAINING FOR EQUAL PAY

A toolkit for trade union reps

[www.closesthegap.org.uk](http://www.closesthegap.org.uk)



## INTRODUCTION

It is now over thirty years since the Equal Pay Act came into force, 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 rates, and a shocking 34% gap when you compare women's part-time hourly rate to men's full-time hourly rate.

These headline figures represent a lifetime of pay discrimination for women. This discrimination is a contributing factor to women and children's higher levels of poverty and women's pensioner poverty. It also impacts on household earnings and on men's earnings when they work in sectors or occupations with high levels of female workers.

The trade union movement has been at the forefront of the campaign for equal pay, and it is vital that this commitment to the issue is reflected in workplace reps' bargaining strategies.

This short toolkit is designed to give reps an understanding of the Equal Pay Act, some guidance on bargaining for equal pay, and signposts to further useful information and support.

\*Dec 2005  
*Annual Survey of  
Hours and Earnings*



## CAUSES OF THE PAY GAP

There are three main factors that are responsible for Scotland's pay gap. Some of these may be more relevant than others to your bargaining strategy.

### ● OCCUPATIONAL SEGREGATION

Stereotyping about women's capabilities and skills results in women being clustered into predominantly female occupations that are associated with low pay. These include cleaning, catering, clerical, caring, and retail working.

Assumptions about women's abilities also mean they are less likely to be found at senior management level.

### ● CARING RESPONSIBILITIES

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

A lack of flexible working in many workplaces means that women are required 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, this means that women's pay is likely to go down. Part-time working also has a long-term scarring effect on women's wages, even if women return to full-time work.



## 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 many 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 and overtime work; performance-related pay being unfairly awarded; women not receiving the same access to training; sex bias in analytical job evaluation schemes grading women's jobs lower.



## EQUAL PAY AND THE LAW

The Equal Pay Act 1970 (EPA), interpreted in line with European equal pay law, is the principal piece of legislation relating to pay equality. It says that an individual can claim equal pay when she is employed in:

- **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;
- **WORK OF EQUAL VALUE** - which means work that requires the same levels of effort, skill, knowledge and responsibility.

### THE EQUAL PAY ACT

- Applies to workers, not just employees.
- Applies to men and women, although women are more likely to be claimants.
- Requires a comparator or comparators of the opposite gender to the worker making the claim. This comparator does not need to be employed by the same employer, but must be in the 'same service', where there is a single body responsible for controlling a woman's pay and that of her comparator. The comparator can be the woman's predecessor or successor, and does not have to give his consent.



- Allows an individual to compare any term in her contract with the equivalent terms in her comparator's contract. Each element of the pay package has to be considered separately and it is not sufficient to compare total pay.
- Considers pay to include not just salary and wages but also: bonuses, pay rises, piece work, fringe benefits, allowances, shift premia, sick pay, severance pay, benefits, performance related pay, maternity pay, and occupational pensions.
- Does not cover non-contractual issues such as recruitment, training, promotion, dismissal, and the allocation of benefits, for example, flexible working arrangements or access to a workplace nursery. However, these are covered by the Sex Discrimination Act 1975 (SDA). The SDA also covers non-contractual pay matters, such as promotion and discretionary bonuses.

## EQUAL PAY QUESTIONNAIRE

The questionnaire can be served upon an employer to ask questions to help build up an equal pay case. It can be found at:  
[www.womenandequalityunit.gov.uk/pay/update\\_question.htm](http://www.womenandequalityunit.gov.uk/pay/update_question.htm)

## REQUIREMENTS ON EMPLOYERS

Whilst the current law does not require employers to carry out an equal pay review, nor have an equal pay policy, the only absolute defence to an equal pay claim is a robust equal pay review that includes the use of an analytical job evaluation scheme free of sex bias.

However, the Equality Act introduced a duty on all public bodies to promote gender equality, effective from April 2007.



## GENDER EQUALITY DUTY

All public sector organizations now have a statutory duty, when carrying out their functions, to have *“due regard to the need to eliminate unlawful discrimination and harassment, and to promote equality of opportunity between men and women”*.

With regard to equal pay, employers will need to take steps to ensure that they are complying with the Equal Pay Act. The EOC's Code of practice on equal pay recommends that carrying out an equal pay review is the most appropriate method of ensuring that a pay system delivers equal pay free from sex bias. Guidance on how to complete an equal pay review is available from the EOC along with guidance on how to ensure that any job evaluation scheme used is free from sex bias.

In addition to the general duty outlined above, a number of public authorities are also subject to specific duties to promote gender equality.

With regard to equal pay, employers subject to the specific duties must develop and publish a policy on developing equal pay arrangements between women and men - including measures to promote equal pay, ensure fair promotion and develop opportunities and tackle occupational segregation - which must be reviewed at regular intervals.

Further information and guidance on the gender duty is available from the Equal Opportunities Commission.



## UNCOVERING DISCRIMINATION

Employers who pay fairly not only protect themselves from claims under the Equal Pay Act, but also reap the business benefits of boosted staff morale, increased innovation, employee retention, and a positive corporate image. The most effective way for an organisation to uncover unequal pay and put it right is to carry out an Equal Pay Review (EPR). These are sometimes called Equal Pay Audits.

A recent EOC study highlighted how crucial workplace reps are in campaigning for EPRs in the workplace.

*“The trade union representative endorsed the importance of national union pressure in bringing about the EPR, but also said that it was the result of persistent ‘nagging’ by company-level representatives.”*

[Equal Pay Reviews in Practice, EOC, 2005](#)

Close the Gap recommends to employers that trade unions be involved in any steering group overseeing an EPR.

The Equal Opportunities Commission (EOC) has published sets of guidance for large employers and small employers on how to carry out an EPR. These recommend a five-step process, as follows:

1. Plan how you are going to check your pay arrangements.
2. Identify jobs involving similar levels of skill and knowledge.
4. Collect and compare pay information.
3. Assess the pay information.
5. Change pay where it is not fair and equal.





## JOB EVALUATION

One of the most important things to get right when carrying out an equal pay review (EPR) is the step which identifies jobs involving similar levels of skill, knowledge, effort, and responsibility. An analytical job evaluation scheme should be used to score each job. This scheme should be free from sex bias, which means that it should not unfairly favour stereotypically male (or female) jobs.

### Checking that a job evaluation scheme is free from discrimination

1. Are all groups of workers who should be included covered by the scheme? (If workers are excluded, are they predominantly male?)
2. Is the evaluation panel gender balanced, and have the members had training in sex bias in job evaluation?
3. Are job descriptions comprehensive, including all aspects of women's jobs and not over-emphasising job characteristics missing from jobs typically performed by women?
4. Have you carefully examined job titles which are predominantly applied to women, and have a counterpart applied predominantly to men, to ensure that these reflect genuine differences?
5. Does the scheme give the demands of the woman's job equal consideration with the demands of the man's job?
6. Does the scheme include, or properly take account of, all the demands of the woman's job?



7. Does the scheme give unjustifiably heavy weighting to demands that are more typical of the man's job?
8. Do the demands of predominantly female jobs have the same number of levels as the demands of predominantly male jobs?
9. Is the method for scoring each reasonably similar?
10. Where there are only a few points between jobs usually performed by men and similar jobs usually performed by women, have grade boundaries been selected so as to avoid creating male and female grades?

A toolkit to support employers in carrying out job comparison for the purposes of determining equal value, which is suitable for smaller employers, is available from Close the Gap.

The Equal Opportunities Commission has produced guidance on job evaluations schemes free of sex bias, and this is available from [www.eoc.org.uk](http://www.eoc.org.uk).



## BARGAINING FOR PAY EQUALITY

Although pursuing a claim for equal pay or equal value is time-consuming and involves specialist knowledge, there is a role for workplace reps.

- Not every case, reaches tribunal, and even when cases are submitted to tribunal this does not stop negotiations at local level taking place. A twin-track strategy of lodging equal pay grievances (and ultimately submissions to tribunal) alongside negotiations has been very successful for some trade unions.
- Reps also have an ongoing role in terms of lobbying for EPRs and equal pay policies, and equal pay issues should form part of annual pay negotiations.
- Before taking action on equal pay, negotiators and reps should be clear on the equal pay strategy and objectives of their trade union.



## CHECKLIST FOR NEGOTIATORS HANDLING PAY INEQUALITIES

**Below are suggestions which you may wish to discuss and use within your own organisations in terms of negotiating on pay inequality.**

- Have a clear strategy in advance of negotiations that is developed in light of your own union's equal pay strategy.
- Negotiators should identify an appropriate comparator or comparators, either who have been rated as equivalent to the claimant in a job evaluation scheme already implemented, or whose jobs have changed significantly since previous job evaluation schemes, where there is, or may be, a valid equal value claim. Negotiators should calculate from that information the equivalent pay rate for the future, and likely value of any back pay due (up to five years).
- In workplaces where more than one union is recognised, consider a joint union approach that includes sharing information, pre-negotiation meetings, and addressing any differences prior to negotiating with the employer.
- Whilst the interests of all members need to be considered, the main consideration should be the legal entitlement of members with valid claims under the Equal Pay Act.



- In recommending or rejecting any deal, make clear to members the reasons for doing so.
- Ensure trade union negotiators receive the full support of trade union legal advisors.

## SAMPLE LETTERS TO EMPLOYERS

Before taking action on equal pay, negotiators, reps and individual members should be clear on the equal pay strategy and objectives of their trade union.

Below are sample letters which union reps, branches and members may find useful when making an initial approach to a small or medium sized employer.

### LETTER FROM AN INDIVIDUAL MEMBER

*Dear ..... (Employer's name),*

*I would like to ask you about the pay systems within our company/organisation.*

*As you may know, the Equal Pay Act gives women (or men) a right to equal pay for equal work. This includes work that is the same or broadly similar, work that has been rated as equivalent under a job evaluation study, or work of equal value. On average in Scotland, women working full time still earn 12% less per hour than men working full time. There are different reasons for the pay gap, but most people agree that the best way to check for discrepancies or discrimination in pay systems is to carry out an equal pay audit or review, and then devise an action plan to tackle discrimination.*

*I would be interested to know if our company/organisation has carried out an equal pay audit in the last two years? If not, I would like to ask if the company/organisation would be prepared to carry out an equal pay audit.*

*I am aware that there are a number of organisations that provide very useful advice to small and medium sized enterprises to carry out an equal pay audit, such as the Equal Opportunities Commission, Close the Gap, ACAS, and there is also important information on the Department of Trade and Industry website. SMEs can also work together with trade unions to carry out a pay audit.*

*Thank you very much for considering this request, and I look forward to hearing from you.*

*Yours sincerely,*

*Employee.*

## COLLECTIVE LETTER FROM A TRADE UNION BRANCH TO A SMALL OR MEDIUM SIZED EMPLOYER

Dear ..... (Employer's name),

*As you may know, the Equal Pay Act gives women (or men) a right to equal pay for equal work. This includes work that is the same or broadly similar, work that has been rated as equivalent under a job evaluation study, or work of equal value. Despite the existence of this law for over 30 years, on average in Scotland, women working full time still earn 12% less per hour than men working full time. This pay discrimination can be bad for business, bad for staff morale, and could mean that our company/organisation is liable to equal pay claims at employment tribunals.*

*There are different reasons for the existence of the gender pay gap, but most people agree that the best way to check for discrepancies or discrimination in pay systems is to carry out an equal pay audit or review, and then devise an action plan to tackle discrimination.*

*The trade union is very interested in sitting down with management to discuss the issue in more detail. In particular we would like to talk to you about carrying out an equal pay review of all staff within our company/organisation.*

*The trade union believes it would be in the interests of both the organisation and its staff to work together on this issue. There are also a number of other bodies that provide very useful advice to small and medium sized enterprises to carry out an equal pay audit, such as the Equal Opportunities Commission, Close the Gap, ACAS, and there is also important information on the Department of Trade and Industry website.*

*I trust that you will consider this request and look forward to discussing this with management at the earliest opportunity.*

*Yours sincerely,*

*Trade Union Representative.*



## FURTHER INFORMATION AND ADVICE

A detailed list of electronic resources for reps working towards equal pay can be found at:

[www.closesthegap.org/reps](http://www.closesthegap.org/reps)

Additional information can be found at:

[www.tuc.org.uk](http://www.tuc.org.uk)

[www.eoc.org.uk](http://www.eoc.org.uk)

[www.acas.org.uk](http://www.acas.org.uk)

[www.dti.gov.uk](http://www.dti.gov.uk)

Individual trade unions also have a range of resources to support reps working on equal pay issues.



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STUC

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