



THE LAW SOCIETY
of SCOTLAND

www.lawscot.org.uk



Ensuring fairness,
closing the pay gap

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Most employers believe they provide equal pay for equal work, irrespective of whether job holders are men or women. However, after more than 40 years of equal pay laws in this country, the pay gap, that is the percentage difference between men's and women's average pay, is still significant.

A recent survey carried out by the Law Society of Scotland (the Society) indicated that the average pay gap between the earnings of male and female solicitors in Scotland is 42%.¹ Comparisons with hourly earnings in Scotland reveal that this is much higher than for the overall average (a 13.3% pay gap in full time employees 2013²) and in all professions (18.9% full time employees pay gap in hourly 2013). Of those respondents who believed that they had suffered discrimination, the most common reason was in respect of promotion or salary related to gender or working patterns.

This is a matter of concern to the Society and therefore to the legal profession as a whole. The Society is under a duty to advance equality of opportunity under the Equality Act 2010, as well as having responsibilities under the Legal Services (Scotland) Act 2010 in relation to both equality and human rights. Any failure to tackle known deficiencies could result in a formal investigation being undertaken into the profession as a whole. The failure to respond risks not only legal action but also reputational harm to the Society and to the profession.

The Society has responded to these concerns by taking steps to raise awareness of the pay gap in the legal profession. This Equal Pay Audit Toolkit aims to assist firms to identify inequality in pay among both legally qualified and support staff who are doing equal work. In particular, it aims to encourage firms to take action to address the causes of the pay gap and to work towards achieving equal pay in their workplace.

The Society approached the Equality and Human Rights Commission (EHRC) for permission to adapt their Equal Pay Audit Toolkit to produce a toolkit which is specifically tailored to the legal profession, and which recognises issues which are particular to the operation of the legal firm. The Society is grateful for their assistance with this project.

This toolkit includes guidance which is sector specific and should be helpful to all firms and in-house teams. It is however primarily for small to medium sized firms, which form the majority of law firms in Scotland, to identify where pay gaps might exist and how they might be tackled. Larger firms and teams will find it a helpful starting point for recognising and addressing pay inequality.

¹ This figure is based on salary bands submitted by respondents to the Society's Profile of the Profession Survey 2013. This figure is the same as that reported following the first Women in the Legal Profession Survey in 2005

² <http://www.closesthegap.org.uk/content/gap-statistics/> accessed 11/09/14

Forward

In-house teams will also be able to use the principles set out in this toolkit to identify and address pay gaps which might be specific to legal professionals. In-house teams in the public sector will of course be required to comply with the requirements of the Public Sector Equality Duty, and the specific duties which include the requirement to publish gender pay gap information and statements on equal pay.³

While pay gaps can be related to ethnicity and disability, as well as work pattern and gender, in this Equal Pay Audit Toolkit, we concentrate on the gender pay gap, given that this is the gap for which there is the clearest evidence given the numbers of women and men in the profession, and which the Society's research has identified as the most serious.

This toolkit can be adapted, once a firm has become familiar with the process for identifying and tackling the gender pay gap, to address other gaps caused by ethnicity or disability. The EHRC's toolkit sets out comprehensive guidance for dealing with pay gaps beyond the gender pay gap, and should be referred to as a starting point for a more comprehensive audit.⁴

The benefits of undertaking an equal pay audit are clear. There is a wide range of approaches taken by firms to setting pay. Some firms will have fixed pay scales while in others there will be no formal structure and salaries may have developed on an evolutionary basis as and when staff are recruited and promoted. While this may have its benefits, it may also make it more difficult to justify existing differences in pay between individuals.

Undertaking an equal pay audit makes sound business sense and allows your firm to:

- demonstrate that you are complying with law and good practice;
- demonstrate to your staff/prospective staff that you have a commitment to fairness;
- identify, explain and eliminate unjustifiable pay gaps;
- be confident that you have rational, fair, transparent pay arrangements;
- avoid the risk of expensive equal pay claims;
- demonstrate your values to those you do business with;
- demonstrate a commitment to equal opportunities when submitting tenders for business.

Above all, it allows you to show to your clients and staff that you are committed to equality of opportunity. Undertaking an equal pay audit is one essential part of that commitment.

³ See guidance from the EHRC, accessed at <http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/technical-guidance/>

⁴ <http://www.equalityhumanrights.com/advice-and-guidance/tools-equal-pay/equal-pay-audit-toolkit/>

Introduction

This toolkit is a guide for solicitors' firms on carrying out an equal pay audit. An equal pay audit involves comparing the pay of women and men who are doing equal work⁵ in your firm, investigating the causes of any pay gaps by gender and/or work pattern and planning to close any gaps that cannot be justified.

The Equality and Human Rights Commission recommends that employers should conduct equal pay audits in the Code of Practice on Equal Pay⁶ as a means of ensuring equal pay in the workplace. This toolkit should be read alongside the Code of Practice.

An equal pay audit is not simply a data collection exercise. It entails a commitment to put right any unjustified pay inequalities and this means that the audit must have the involvement and support not only of the managing partner and those with responsibility for human resources, but also the whole partnership with authority to deliver the necessary changes. It is also important to involve representative staff to maximise the validity of the audit and success of subsequent action taken.

Most employers believe that they do not discriminate in the way they reward men and women. An equal pay audit is the most effective way of establishing whether your organisation is providing equal pay and rewarding employees fairly in practice, and is an effective demonstration of action to promote equal pay under the public sector equality duty.⁷ It provides a risk assessment tool for pay structures.

This toolkit also gives advice on good equal pay practice, on conducting an assessment of the impact of change on protected groups, such as women (equality impact assessments) when new pay and grading structures are introduced, and provides guidance on actions arising from the audit that may need to be taken to eliminate any pay gaps.

The toolkit gives general guidance only and should not be regarded as a complete or authoritative statement of the law. You should be alert to the possibility of developments in case law that may affect the rights of those working for you.

You should also be aware that under the Professional Rules for solicitors (Rule B1.15) there is a requirement to ensure there is no discrimination in employment terms, meaning that an equal pay complaint is also possible to the Scottish Legal Complaints Commission. The Society's Professional Practice Team can give advice on the Society's rules and guidance.

⁵ 'Equal work' has a precise legal meaning which is explained fully in the following pages

⁶ http://www.equalityhumanrights.com/uploaded_files/EqualityAct/equalpaycode.pdf

⁷ See Equality and Human Rights Commission's guidance on the public sector duty in Scotland

The Five Steps Model

This toolkit provides detailed advice and guidance on how to carry out an equal pay audit using the EHRC's recommended five steps model. The toolkit explains what you need to do at each step, why you do this and guidance on how to do it.

The equal pay audit model recommended by the Commission and the Society is in five steps:

1. Deciding the scope of the audit and identifying the data required
2. Identifying where staff are doing equal work
3. Collecting and comparing pay data to identify any significant equal pay gaps
4. Establishing the causes of any significant pay gaps and deciding whether these are free from discrimination
5. Developing an equal pay action plan and continuing to audit and monitor pay.

Each of these steps will be discussed in turn

STEP 1

Decide the scope of the audit and identify the data required

STEP 2

Identify where women and men are doing equal work: like work/ work rated as equivalent equal value

Check job evaluation (where you have implemented a systematic method of assessing different jobs)

STEP 3

Collect pay data to identify gaps

No equal pay gaps

Go to Step 6

STEP 4

Establish the cause of pay gaps and decide whether they are free from discrimination

Pay gaps not free from discrimination

Pay gaps free from discrimination

STEP 5

Redevelop an Equal Pay Action Plan

STEP 6

Review and monitor

Step 1 - Scope

Step 1 - Scope

Deciding the scope of the audit and identifying the information required

Step 1 involves some crucial decisions about the entire equal pay audit. It is particularly important, especially if this is your first review. The key areas to consider are:

The scope of your audit

A full equal pay audit would include all employees in your firm who are 'in the same employment'.⁸ That essentially means all employees who are employed by the firm at its various branches and by any associated employers, for example both staff in your solicitor practice and your associated estate agency business.

In this toolkit, we recommend that you include all staff. You should include salaried partners, directors, senior associates, associates, assistants, solicitors, paralegals, legal executives and trainees. You should also include, in the same audit, any and all supporting staff in all departments, including secretarial and administration, marketing, human resources and training, finance, facilities management and IT, financial services and estate agents.

You should also consider including equity partners within the scope of your pay audit.⁹ Although profit-sharing arrangements of partnerships will be varied and complex, and there may be valid non-discriminatory reasons explaining any differences between women and men, the Law Society recommends that partners are included (it is considered best practice to include partners) in any equal pay analysis with consideration given, in the usual way, to objective justification for any pay differences.

A full equal pay audit provides the highest level of confidence that you have identified and eliminated unequal pay and avoids the risk of expensive equal pay claims. For practical reasons, organisations may decide to conduct their audit in stages. If you cannot achieve full coverage be aware of the limitations of your audit. This may involve a risk assessment to determine which parts of the organisation to audit first. Include any particular equal pay concerns of which you are already aware, for example legally qualified groups or departments heavily populated by one sex.

⁸ See EHRC Equal Pay Statutory Code of Practice, paragraphs 51-57.

⁹ You may wish to take further advice regarding your own partnership agreement. Some partners at least may be entitled to pursue a claim for equal pay in the employment tribunal. The Supreme Court in *Bates van Winkelhof v Clyde & Co LLP* 2014 UKSC 32 held that a member of an LLP partnership is a 'worker' within the meaning of the Employment Rights Act 1996, the relevant provisions of which are analogous to the definitions of those protected by the relevant provisions of the Equality Act.

Step 1 - Scope

Who should be involved?

We recommend that you establish a project team with the necessary expertise to undertake the audit. This project team should include:

- A member of your human resources team because you will need team members with knowledge and understanding of your firm's pay and grading arrangements, as well as human resource information systems;
- A member of payroll because you will need staff with a knowledge of payroll systems and how they operate;
- A member of staff who understands how these systems have evolved over time;
- A member of staff with an understanding of equality and diversity issues, because you will require a team member with knowledge and sensitivity about key equality issues, such as occupational segregation.

It may well be that in your organisation there is only one or two members of staff with this knowledge and understanding who would form the project team. In any event, you should also involve representative staff, both professional and support staff, from different departments. Involving the wider workforce is important for several reasons:

- Employee representatives may be able to contribute valuable information about the operation of the existing system and the likely effect of changes;¹⁰
- Time, trouble and expense can be saved, for example by reducing the risk of any disagreement at a later stage, particularly if the outcome of the audit is likely to affect existing pay differentials;
- Employees will have more opportunity to understand the reasons for any changes. This will help to ensure that pay systems are transparent and easy to understand.

All members of the project team should have knowledge and understanding of equality issues, as well as an appreciation of the need for a high degree of confidentiality regarding access to sensitive personal data.

Consider carefully what resources you need. While the audit can be done in-house, you may need to consider whether to bring in expertise from outside the firm. Decide the likely resourcing between internal and any external expertise. You may decide to engage an external expert to conduct the whole audit, or to engage an expert coach for the project leader or that the whole project team should undertake training sessions on pay and equality issues as appropriate. You may decide to consult the Advisory, Conciliation and Arbitration Service (ACAS), which offers practical, independent and impartial help to bring pay systems up to date.

¹⁰ If you don't already have elected employee representatives, you should consider how relevant employees can be identified and invited to join the team.

Step 1 - Scope

What information will be needed and what tools are available?

The audit requires a range of information about every employee and what he or she is paid. Before decisions about the final scope of your audit can sensibly be reached you will need to establish what information you hold and how accurate and accessible it is.

You should be aware that the equal pay legislation covers each and every element of contractual reward, not only basic pay, but each contractual term relating to reward, including for example holidays, sick pay, bonus, performance related pay, and other benefits such as company cars. This toolkit focuses on the main elements of pay, but you will need to consider your arrangements for holidays, sick pay and other benefits etc.

You will need to collect and compare two broad types of information about each employee included in the audit:

- The personal characteristics of each employee, ie whether male or female; their job; what hours they work and when they work these; their length of service and so on;
- All the various elements of their pay.

The data checklist set out in annex 1 lists a range of information which you will require to collate, depending on the current systems you operate.

Most organisations with computerised payroll and personnel/human resource systems will hold the necessary data on one or other of their systems. The range of data may not have been brought together before. So, early in your proposed equal pay audit, you will need to ascertain from payroll and human resources colleagues which system holds the data and how it can be brought together.

It is possible to undertake many aspects of your audit using Excel. Recently, bespoke software packages have been developed for conducting equal pay audits.¹¹ These allow for speedy and in-depth investigation of pay gaps and also provide a useful tool for equality impact assessments.

You may find that your organisation simply does not hold items of information on its computerised systems. Do as much as you can without it. If it proves crucial at some stage in your analysis, explore whether there are other ways of collecting the data (or consider working from manual records).

It is important to ensure the accuracy of the data. Names, grades, titles and so on need to be up-to-date and accurate. Even seemingly minor inaccuracies can lead to results being unreliable. If your pay and human resource data has not been updated recently, then you are likely to need to allow time for this when planning your equal pay audit.

¹¹ <http://www.equalityhumanrights.com/advice-and-guidance/tools-equal-pay/checklists-equal-pay-in-practice/14-pay-audits-and-software-to-analyse-data/>

Step 1 - Scope

You will also need to consider the data protection issues involved in conducting an equal pay audit. You should ensure that you are aware of your legal obligations when processing personal data, and consider the approach you intend to adopt in relation to the disclosure of the results of the audit. For further information on the Data Protection Act see the EHRC's guidance.¹²

Some of the data collated will enable you to identify 'equal work' (step 2 of the model); some whether there is 'equal pay' for different groups (step 3) and some to investigate patterns of pay and causes of any observed disparities (step 4).

Setting expectations and dealing with outcomes

Many employers genuinely believe that they are providing equal pay. They embark on an audit with an expectation that no inequalities will emerge. It is important to recognise that an equal pay audit is not simply a data collection exercise. It entails a commitment to action if unjustified pay gaps are found. You should therefore alert senior management to the possible outcomes of the audit and secure their commitment to an equal pay action plan. Make them aware that the audit might require changes in pay, and that it is important to give a commitment to make those changes.

It is rare for employers to emerge from a properly conducted pay audit without some pay gaps or aspect of pay policy which requires to be changed. That does not mean that pay discrimination has been deliberate. Pay gaps are likely to have been caused by the impact of historical factors, such as starting salaries or length of service. The gaps may be justified. Take one step at a time in the analysis and explanation of pay gaps and remain objective.

Be aware too that an equal pay audit may not reveal all your individual equal pay vulnerabilities. The focus of an equal pay audit is on 'systemic' inequality in pay – identifying and resolving gaps in average pay between groups of men and women. Its prime purpose is to explore whether pay policies or practices, past or current, have systematically disadvantaged any particular group.

The focus on systemic inequality in an equal pay audit does not preclude some consideration of individual pay, whether as part of a spot-check or sampling process, as part of checking prominent but unexplained pay anomalies (sometimes known as 'sore thumb' vulnerabilities), or as part of the data analysis process.

¹² <http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/equal-pay/checklists-equal-pay-in-practice/15-pay-audits-and-data-protection>

Step 1 - Scope

In summary, when commencing an equal pay audit, you should:

- Decide on the scope of the audit (eg will it include all staff or a section; will the analysis be restricted to gender?)
- Establish a project team, including staff with appropriate expertise and staff representatives from different departments
- Identify their training needs
- Decide whether external expertise will be required
- Secure the board or senior management approval and a commitment to addressing any significant pay gaps which cannot be justified
- Identify the source of the data that will be needed and make sure it is accurate and up to date
- Develop a communications strategy to ensure that all staff understand the process

Step 2 – Equal work

Step 2 – Equal work, equal value and job evaluation

Determining where staff are doing equal work

Under the equal pay provisions of the Equality Act 2010 men and women in the same employment who are performing equal work should receive equal pay.

Your equal pay audit must compare the pay of employees doing 'equal work'. This is the foundation of an equal pay audit. Everyone involved in your audit needs to understand the concept of 'equal work'.

To identify those undertaking 'equal work', the Equality Act requires you to make a comparison between staff doing the following types of work:

Like work

This means where men and women are doing work which is the same or broadly similar. Men and women are likely to be doing like work where they have the same job title, or where, even if their job titles differ, they do the same or broadly similar work. The assessment of whether two employees are doing like work is a broad brush analysis and only differences of practical importance will result in two similar jobs not being classified as like work.

Differences of practical importance mean that the difference has to be real and not simply something written in a job description. It is something that would normally result in high pay, for example additional responsibilities such as supervision or additional skills or knowledge they apply in their job. The number of hours worked will not be relevant for the analysis, and although there may be a valid reason for any differential in pay, again that is not relevant at this stage of the analysis.

Pay gaps for like work are still surprisingly common. It may be appropriate to categorise apparently dissimilar jobs as like work. Trainees, assistant solicitors, senior assistants, associates and senior associates may well be undertaking like work with colleagues in a similar position in the firm in different departments.

Job titles – the most common indicator of like work – can, however, be misleading. You will probably need to review the job titles in your system early in your audit to ensure that the same, or very similar, titles really do indicate like work. This is likely to be particularly the case in legal firms where there might be a limited range of job titles, but solicitors in different departments may well not be doing like work. An assistant solicitor who works in the conveyancing department whose work is supervised is unlikely to be doing like work with an assistant solicitor in the litigation department of long standing with a high degree of autonomous decision-making.

Do not restrict your equal pay audit to checking only for like work, as this will not consider the relative pay of jobs that are different but equal, and may put you at risk of equal pay claims.

Step 2 – Equal work

Work rated as equivalent

This means where men and women have had their jobs rated as equivalent under an analytical job evaluation scheme. Men and women are likely to be doing work rated as equivalent where they have similar, but not necessarily the same, job evaluation scores and are in the same grade/pay band.

It will be rare for legal firms, even the large firms, to have undertaken job evaluation exercises. However, you should be aware that analysis of pay using an analytical job evaluation scheme is the best way to satisfy yourself that you are meeting your obligations under the Equality Act. Only a valid analytical job evaluation scheme will provide you with an automatic defence against equal pay claims.

If you do use analytical job evaluation schemes you need to check your scheme has been designed and implemented in such a way that it does not discriminate between women and men. You could start with the EHRC's detailed guidance on equality proofing job evaluation schemes.¹³

Job evaluation schemes

A job evaluation scheme is an analysis of jobs where jobs are broken down into components or demands, known as factors. Comparisons are then made for each factor in each job either against each of the factors or by comparing jobs against one another. Typically scores are awarded for each factor. The final total gives the overall rank of jobs.

An analytical job evaluation scheme which is free from sex bias can provide a defence to an equal pay claim.

¹³ Available at http://www.equalityhumanrights.com/uploaded_files/equalpay/gd.13.101-1_gender_neutral_jes-ig_18-03-14_final.pdf

Step 2 – Equal work

Work of equal value

This means work that is different but which is of equal value in terms of the demands of the job. 'Demands' means, for example, the skills, knowledge, mental and physical effort and responsibilities that the job requires. Note that 'value' in this context does not refer to the fees or income generated by the job or the value of business that people bring to the organisation.

Jobs that may be entirely different in content can be of equal value when the demands made on the employees doing them are assessed. Equal value is likely to be relevant where men and women are in the same employment but do different types of work, or what appears to be the same type of work in a different context, for example family law and company law.

As discussed above, the most reliable way of assessing whether jobs are of equal value, and the only automatic defence to an equal pay claim, is to use an analytical job evaluation scheme specifically designed and introduced to take account of equal value considerations and of the types of jobs being done by your workforce.

If you do not use analytical job evaluation you need to find an alternative means of checking whether male and female staff doing different jobs are doing work of equal value. It is important to recognise that these alternative estimates of equal value are not as reliable as analytical job evaluation, and that the organisation is therefore still vulnerable to equal pay claims.

What is meant by 'equal value'?

The key point about equal value is that very different types of jobs can turn out to be of equal worth or value when analysed in terms of the demands made on the employee. The examples below show the breadth of comparisons that have been made in past cases. The golden rule is not to assume that jobs that are of different types (eg professional and administrative) cannot be of equal value.

Equal pay claims can be made on the basis of work of equal value with a comparator both within a particular pay/grading structure and across different structures or across departments.

The comparison to be made in an equal value claim is similar to a mini-job evaluation exercise, which examines the demands of the job, but not the individual characteristics or performance. The reference in the Equality Act to 'effort, skill and decision-making' is intended as an example of the sort of criteria, commonly called 'factors', found in conventional job evaluation schemes. Other factors to consider would be knowledge, training requirements and working conditions for example.

Step 2 – Equal work

The question of whether two jobs are of equal value involves a weighing and balancing between the features of different jobs. Examples of claims between different jobs that have been successful at tribunal or settled in favour of the claimants include a human resources officer in comparison with a health and safety advisor; a risk manager with a training and development officer; head of regeneration with head of projects for a council; human resources manager with a financial controller; and legal services manager with a finance services manager. In a legal firm, it may well be that secretaries or administrative assistants are doing work of equal value with facilities staff, or that professional support lawyers are doing work of equal value with senior human resources professionals.

The concept of equal value is intended to ensure that when employers set rates of pay they take account of all the significant demands of jobs done by both female and male employees without discrimination. However you choose to assess job demands you will need to ensure that you measure fairly all the significant features of jobs typically undertaken by women (for example, interpersonal skills, organisational skills, responsibilities for customers, clients or members of the public) as well as those of jobs done by men (for example managerial decision-making, physical effort). It is important to avoid stereotyping. Some kinds of work that are predominantly done by women (eg family law, clerical work) are valued less, or deemed to involve less skill, effort or decision-making than jobs that are predominantly done by men.

In legal firms, there are a number of factors which will be particularly relevant when making comparisons between jobs. In Annex 2, we set out examples of a range of factors which may well be relevant when assessing both professional and administrative jobs in the legal firm context. Factors will often be grouped in categories with similar elements, for example knowledge and skills, effort and demands, responsibilities, working environment.

Equal work

Equal work is where a woman compares her work with a male comparator that is:

- the same or broadly similar, provided that where there are any differences in the work these are not of practical importance (known as 'like work')
- different, but which is rated under the same job evaluation scheme as being work of equal value (known as 'work rated as equivalent')
- different, but of equal value in terms of factors such as effort, skill and decision-making (known as 'work of equal value').

Step 2 – Equal work

Possible methods for estimating equal value

In the absence of the introduction of a job evaluation scheme, there are a number of possible methods for estimating equal value. It should be noted, however, that none will be an acceptable alternative to a rigorous job evaluation-based approach to assessing equal value. These methods provide a risk assessment tool, rather than a robust defence to an equal pay claim.

Organisations with no job evaluation, but with clear job families or other occupational group hierarchies, can estimate equal value by matching those in equivalent positions in different job families or organisational hierarchies, so creating pay bands. For example, you could use categories, such as senior associates, associates, team leaders and specialists with equivalent qualification levels. You could use this method to estimate equal value between professional groups by comparing the jobs of the senior professional level in different departments. If you have no clear occupational group hierarchies, you can take a spot-check approach of equal work and equal pay risks by identifying and comparing jobs with occupants of the opposite sex where there may be an equal pay issue, for example taking sample jobs from female dominated departments and male dominated departments. You must then estimate whether the jobs are of equal value by undertaking a systematic assessment of the demands of the jobs under headings such as effort, skill, decision making and responsibility, and where equal value is indicated, compare male and female pay. Annex 2 sets out the range of factors which may be relevant.

Here is a simplified example to illustrate the approach:

FACTORS	Professional Support Lawyer	PSL	Estate Agency Manager	EAM
Knowledge and skills				
• Knowledge	higher	1	lower	-1
• Analytical skills	higher	1	lower	-1
• Communication skills	higher	1	lower	-1
• Physical skills	equal	0	equal	0
Responsibilities				
• For work & people	lower	-1	higher	1
• For financial resources	lower	-1	higher	1
• For physical resources	lower	-1	higher	1
Efforts				
• Mental demands	higher	1	lower	-1
• Physical effort	marginally lower	-0.5	marginally higher	+0.5
Other work elements				
• Working conditions	marginally lower	-0.5	marginally higher	+0.5
Overall comparison				
		0		0

Step 2 – Equal work

For simplicity, factors are identified as having higher or lower value, but no weighting has been applied (for example, a more complex approach might 'weight' 'knowledge and skills' at 60% and physical effort at only 5% of the total value of the role).

Looking at the overall picture here, you might translate 'higher' to 1 point and 'marginally higher' to 0.5 points which would reveal that these two jobs are equal value so should be in the same pay band (and any large differences in basic pay would require to be justified).

Transparency is a key feature of tackling equal pay problems

A transparent pay system is one where employees understand not only their rate of pay but also the components of their individual pay packets, including the way in which the demands of their jobs have been assessed. A transparent pay system avoids uncertainty and perceptions of unfairness and reduces the possibility of equal pay claims.

If a pay system, or any part of it, is characterised by a total lack of transparency, the burden of proof is on the employer to show that the pay practice is not discriminatory. In respect of equal value, 'transparent' means that information about how job demands have been assessed and how this assessment results in the rate of pay for the job are clear for all to see. The same is true for any performance related pay.

Assessments of job demands carried out by only one or two people (eg line manager, personnel officer) can result in unintentional biased outcomes. Reduce this risk by involving people with broad knowledge of jobs across the organisation and ensuring that they receive training and guidance on equal value considerations.

It is important to stress that at this stage the focus is solely on the jobs and the question whether there is equal work. While there may well be an objective justification for any difference in pay, that is considered at a later stage.

In summary, in order to group together staff doing equal work, you should:

- If you have a job evaluation scheme in place, check that it is valid and analytical and free from sex bias
- If not, consider whether to undertake an analytical job evaluation exercise
- If not,
 1. identify jobs with the same job title and assess whether jobholders are undertaking 'like work'
 2. Undertake an equal value assessment of each job type included in the audit
- Group together both like work and equal value job equivalents and put them into 'equal work' bands

Step 3 – Data

Step 3 – Collecting and analysing pay data

Collecting and comparing pay data to identify any significant equal pay gaps

Once you have determined where employees in those bands within the scope of your audit are doing equal work you need to collate and compare pay information to identify any significant gaps. Once you have identified the equal work bands, you can place them in a table, identifying the numbers of women and men, and then calculate average pay for each of these bands.

Analysing pay

The first task is to calculate the average basic pay for each equal pay band. Then calculate the gap between average pay for each equal work band. If appropriate, repeat this exercise based on total pay (including any additional pay elements such as bonuses). If you cannot separate basic pay and each element of pay, then base your calculations on total pay.

PAY BAND	NUMBERS		AVERAGE (MEAN) BASIC PAY (£)			%
	Male	Female	Male	Female	Difference	
Band 1 (including trainees)			£18,228	£17,896	-£332	-2%
Band 2 (including 1-5 PQE)			£30,099	£28,353	-£1,746	-6%
Band 3 (including assistants)			£37,919	£34,599	-£3,320	-9%
Band 4 (including senior assistants)			£54,982	£45,631	-£9,351	-17%
Band 5 (including associates)			£70,448	£51,960	-£18,488	-26%
Band 6 (including senior associates)			£83,075	£51,251	-£31,824	-38%
Band 7 (including salaried partners)			£76,769	£52,042	-£24,727	-32%
Band 8 (including equity partners)			£58,971	£46,748	-£12,223	-21%

Comparisons should be made within bands finding significant differences in average salaries. The EHRC's guidance suggests that a 5% difference in the pay of men and women doing equal work will be significant and therefore justify further investigation. Alternatively, where there is a pattern of differences favouring one sex or another, a 3% difference will be 'significant' and require investigation. (The way to calculate this is to see whether the difference between the salaries for the two groups is more than 5% - or 3% - of the lower of the two salaries.)

Step 3 – Data

Where numbers are very small, a difference of 3%, or even 5%, may not merit further investigation, although you might want to keep this particular type of work under careful review. In general it is preferable to investigate a non-significant difference rather than to fail to investigate a significant difference so, unless there is a substantial resource cost, you should 'if in doubt, check it out'.

You will then want to consider each pay element, such as bonus payments. You will be interested not only in differences between mean basic pay and pay elements, but also in whether one sex is more likely to receive a particular pay element. For example, are men more likely than women doing equal work to attract a particular allowance, such as a car allowance? In this case the comparison is between the proportions of the two sexes who do and do not receive the allowance. A rule of thumb that has been used, particularly in the context of selection procedures, is the 'four-fifths rule'. This is that where the 'success rate' or 'pass rate' of one group is less than 4/5 of the same rate for the other group, this difference needs to be looked into. Translated into the field of equal pay, you might say, for example, that if 25% of men are receiving a particular benefit, but less than 20% of women, then this should be looked into.

Group	Numbers of employees			% of Group		Receiving Bonuses				Average payment	
	Male	Female	Total	Male	Female	Numbers		% of recipients		£	£
						M.	F.	M.	F.	M.	F.
3	0	3	3	0%	0%	0	0	0%	0%	£0	£0
4	10	10	20	50%	50%	5	1	10%	50%	£3792	£3460
5	2	4	6	33%	66%	1	2	50%	50%	£5498	£4563
6	5	34	39	12%	82%	4	20	80%	58%	£7045	£5196
7	8	1	9	89%	11%	8	1	100%	100%	£8308	£5125
8	4	1	5	80%	20%	4	1	100%	100%	£7680	£4680
9	0	3	3	0%	0%	0	0	0%	0%	£0	£0

In this example, if in band 4 there are 10 men and 10 women, and five men but only one woman receives a bonus, then as half the men but only one tenth of the women receive a bonus, this will require further investigation.

Within each section there may be some further 'drilling down' depending on the pay gaps that emerge. A common sequence would be to analyse pay by equal pay band and then, where there are significant gaps, to analyse pay by jobs within grouping (like work), particularly jobs where large numbers are employed. This helps to determine the root of the pay gap.

Step 3 – Data

Next steps

If a significant gap does not emerge from this analysis, then there is no requirement to move to step 4 (although step 5 will be relevant in any event). However, given the evidence of the latest survey into the Profile of the Profession, it would be extremely unlikely if at this stage a pay gap was not in evidence. As discussed above, the analysis so far has identified where staff are doing like work, and whether there is a significant pay gap.

A separate consideration, explained in step 4, is what is the cause of that pay gap and whether or not there is any objective justification for it, that is not related to the sex of the job holder.

Step 4 – Causes of pay gaps in all elements of pay

Establishing the causes of any significant pay gaps and assessing the justifications for them

If you have found any significant pay gaps between the average basic pay of men and women doing equal work, you need to find out which aspects of the pay system are contributing to the pay gaps and why. This requires you, where possible, to break down the total pay into different elements such as basic pay, performance related pay, bonuses etc and examine each one in turn.

Find out if there is a genuine reason – or reasons – for the difference in basic pay that has nothing to do with the gender or working pattern of the jobholder.

You should check the pay policies and practices that determine basic pay. For example, is the starting pay for men and women the same; do you reward length of service, or is pay progression based on performance; is a supplement paid to specialists or those with skills which are in high demand (ie do market factors determine pay), and so on.

These need to be checked from a variety of standpoints: the policies which apply to these elements of pay; how these are being applied in practice and the statistical impact by gender. It is how pay policies and practices actually affect pay that matters – not the intention behind them.

In practice, the most common explanations for significant pay gaps found in equal pay audits tend to be one (or more, working in combination) of the factors listed below. You should check each of these elements using the EHRC's recommended checklists which are provided in the annexes.

Length of service

Length of service is one of the most frequent explanations for pay gaps. You should therefore calculate average service for the equal pay bands under consideration and you may need to consider service for particular individuals.

Step 4 – Causes

You may find it helpful to have a visual check, and therefore you may wish to put the information into an excel spreadsheet and produce a scattergraph. Where for example the graph suggests a stronger relationship between length of service for men than for women, and shows a greater 'scatter' (spread) of salaries for men, who are also more likely to receive high salaries at most levels of length of service, this may require further investigation.

Even if you can see some relationship between length of service and pay, it may not be entirely clear whether service explains the pay gaps and an element of judgment may be required in making that decision.

Whether longer service constitutes a justification for higher pay is another matter, particularly in respect of averages in an equal pay audit. The use of length of service as a method of increasing pay and recognising service is generally accepted as a valid reason for differences in pay. Therefore employers do not need to provide specific justification for using length of service as a criterion in a pay system, even where that results in unequal pay between men and women.

However, there may be some situations in which using length of service must be specifically justified by the employer, that is where an employee provides evidence which raises serious doubts about the appropriateness of awarding pay increases based on length of service to reward experience, having regard to the particular job in question. In such cases, the employer will be required to prove that what is true as a general rule – namely, that length of service goes hand in hand with experience, and that experience enables the worker to perform his or her duties better – is also true with regard to the job in question.

There is less correlation between length of service and improved performance for some jobs than in others (especially beyond a certain period). However, recent research by the Law Society into the profile of legal professionals [footnote] shows that when age and number of years' post qualification experience are taken into account, while there is no real difference between the sexes for those at the start of their careers, the gender pay difference becomes apparent for those aged 36 and above and for those with over five years' experience.

This is therefore a factor to which you should give careful consideration, and while it may explain pay differences, you may be required to justify, relying on objective evidence, the use of length of service as an explanation for pay differences.

Starting pay (see checklist Annex 3)

Typically, employees will commence a job as a new recruit, a transferee, on promotion, on re-entry after a career break, or following a restructuring of a pay and grading system. Research has shown that in general the starting salary of women tends to be lower than the starting salary of men.¹⁴ It is therefore important to be aware if this is a factor which contributes to the pay gap in your firm.

¹⁴ See eg Neathy et al (2005) Equal pay reviews, published by Equal Opportunities Commission, which found that men tended to be put on a higher starting salary than women, irrespective of qualifications or experience. This was linked to men's assertions regarding previous salary levels.

Step 4 – Causes

Starting pay on commencement of a job may be determined using a set formula/rule or simply be an amount agreed by the parties. Where a formula is used, the impact should be tested to ensure that its operation is not producing different outcomes by gender. Where there is managerial discretion over starting pay, the impact of decisions should also be regularly checked.

You can find out if there is a problem in your organisation by looking at the amount you paid on recruitment, on change of job, and on promotion, to men and women over a five year period. If your records show that there is a tendency for people from one sex to be favoured over another, then you need to find out why this happening.

Pay protection arrangements

Pay protection – often known as ‘red circling’ – is a widely-used pay protection technique for protecting the pay of an individual or group whose job is downgraded following, for example, an internal reorganisation, grading review or implementation of a new job evaluation scheme, or following a relocation.

When red circling, that is maintaining a difference in pay between groups, differences should be kept for the shortest possible period, and phased out over a reasonable period of time. Otherwise discrimination will be perpetuated in a way that will be difficult for firms to justify long term.

Pay progression (see checklist Annex 3)

Differences in pay between women and men resulting from pay progression within a job, whether by traditional percentage increments or an alternative progression mechanism, may be objectively justified by the benefits to the organisation of increased experience ensuring greater expertise. But this justification erodes after an appropriate period of time, depending on the nature of the work.

Problems, however, may arise from the legacy of past incremental progression systems, or a lack of any system, which appear to lie at the root of some gender-based pay differences.

It is essential that any new pay progression arrangements are rigorously scrutinised both for their impact on women and men, and for the strength of the ‘increased expertise and value’ justification. The argument is likely to be stronger if progression is linked to the achievement of non-discriminatory pre-determined criteria.

Market forces (see checklist Annex 4)

Market factors are a major determinant of pay in a growing number of pay structures. Most pay systems are influenced to some extent by rates of pay in the external labour market. The main ways in which this may apply to you are:

Step 4 – Causes

1. You may use general or sector-related market survey data as the main determinant for setting pay levels for employees generally. Market data is usually bought in from a supplier and used to set and maintain the organisation's pay line at a particular level within the relevant market (just above the median, for example, or at the upper quartile). As the market data covers organisations similar to yours, it should reflect similar workforce compositions by gender and part-time working, so equality issues should not arise.
2. You may use specific market data to determine the pay levels for some or all individual employees in specialisms where there is intense competition for the relevant types of employees, for example specialists in pensions law.
3. You may set your pay levels following review of market data for your sector, but acknowledge that the salary levels will not recruit and retain employees in roles from other sectors of the labour market, for example IT jobs, and that additional payment will be required. Current good practice suggests that such payments should be made as supplements on top of basic pay, but this has not always been the case in the past and market elements may have been incorporated into basic pay.

This is a complex area, but practices of particular concern regarding equal pay in market based pay systems include:

- Over-reliance on data from sex segregated jobs
- Failure to ensure that a representative sample of male and female jobs from organisations of a comparable size is included in the database
- Internal and external jobs are not accurately matched for 'size'.

Differences in labour market rates can be a defence to an equal pay claim, but only in specific circumstances where it can be shown:

- That market factors were genuinely taken into account when setting the higher comparator rates, and not simply put forward as a post hoc justification for the pay difference;
- That the market factors are still relevant at the date of any claim; and
- That market factors account for the whole of the differences attributed to them. If not, the courts must determine what proportion of the difference is accounted for by market factors. You are therefore recommended to consider market supplements as additions to basic pay.

Whichever way you use market survey data, you should complete the market data checklist in annex 4 to check that you are not importing pay discrimination through this route. You should also undertake equal value checks to ensure that market factors account for all of the differences in pay.

Step 4 – Causes

If you answer 'no' (or you do not know the answer) to any of the questions in the checklist you will need to further investigate the payments and pay practice to ensure it is free from discrimination.

Performance related pay (see checklist Annex 5)

A performance/competence measurement and pay system should, all other things being equal, generally deliver equal average performance payments to women as to men.

Some issues of concern regarding equal pay in performance/competence based pay systems are:

- Groups of workers being excluded from the system or bonus arrangement;
- Applying different performance/competence pay systems to different groups of employees;
- Applying the same criteria for different jobs, eg sales revenue where some jobs are excluded from sales;
- Where performance pay schemes pay percentages of salary and average salaries between men and women are not the same for each level of job;
- Using performance/competence criteria that are potentially indirectly discriminatory by, for example, being more characteristic of male than female behaviour.

The first part of the performance pay checklist in annex 5 identifies those aspects of any performance/competence pay system where problems could arise. The remaining parts of the checklist deal with specific aspects of particular types of performance pay systems.

In order to work through the checklist you will need:

- Copies of your performance related pay policy
- Analyses of performance related assessments, or equivalent, overall and by level and by gender
- Analyses of performance related payments, overall and by level and by gender.

If you answer 'no' (or you do not know the answer) to any of the questions in the checklist at annex 5, you will need to further investigate the pay data and pay practice to ensure that it is free from discrimination.

Geographical differences

The difference in pay may be explained by geographical differences, for example in order to recruit and retain solicitors in your Aberdeen office, you may need to pay a higher rate than those working in other offices. Again, good practice suggests that such payments should be made as supplements on top of basic pay. You will need evidence, such as market data, to justify additional pay. The geographical factor should account for the whole of the difference attributed to it. Identifying them as supplements to basic pay will facilitate this.

Step 4 – Causes

Benefits (see checklist Annex 6)

You may provide a range of benefits as part of your remuneration packages, such as pensions, private health care or private health insurance. In terms of equal pay law, each element of the pay package must be treated separately. So your equal pay audit needs to consider access to and the amounts received of each benefit separately, by gender and working pattern.

Issues of concern regarding equality in benefits include:

- Unequal access – for example the exclusion of part-time workers from a benefit where the majority of part-time workers are women
- Providing different levels of benefit to different categories of employee
- Providing different levels of benefit according to length of service.

You can adapt the benefits checklist in annex 6 to review the benefits provided by your own organisation.

PUTTING THINGS RIGHT – SOLUTIONS FOR COMMONS ISSUES

Starting pay

It is important to have a clear policy and to follow it. A starting salaries policy should state that new appointees to a post (whether new recruits to the organisation or internal promotees) will commence at the minimum point of the relevant pay scale or range unless the individual meets the criteria for a higher point on the scale, in which case they will be placed at that point.

Do not rely too much on previous salary. Skills and experience (consistent with criteria for pay progression) should be the only criteria for appointing at above the lowest point on your pay scale.

As there is evidence to suggest that men may negotiate more than women,¹⁵ you may wish to consider awareness training for recruitment managers where they have discretion on these matters.

If the market rate for the type of work can be demonstrated to be higher than the salary in accordance with the starting salaries policy, then the most transparent solution is to pay the additional amount as a separate market supplement.

Pay progression

Different methods can be used to achieve and then to maintain equality. These include:

- Guaranteeing that employees will reach a maximum within a reasonable timeframe through, for example, accelerated incremental progression.

¹⁵ Linda Babcock & Sara Laschever (2003) *Women Don't Ask: Negotiation and the Gender Divide*, Princeton University Press (September 22, 2003)

Step 4 – Causes

- Setting time limits within which employees will reach each pay point.
- Shortening the scales or pay range – long pay scales can lead to unequal pay. A woman joining at a lower point than a man can take years, if ever, to catch up. Shorter pay scales, which accurately reflect the time needed to become fully competent at a job, are a positive step.
- Setting target pay points for all staff to reach within a specific time. This means that you guarantee all workers currently employed will have reached a certain point, eg 70% of any maximum, by a set date providing this is equitable between women and men. Progressing beyond that target point to the max must also be equitable.
- Setting competency and experience criteria for workers to reach each pay point. If operated fairly, these will then provide a justification for position on pay scale.
- Differentiating awards by the employees' existing position in the pay band, eg giving those at the bottom of the pay band a higher percentage pay increase than those at the top.
- Where a performance related pay scheme has equity shares, reducing the differential between them. This means lessening the difference between awards for employees receiving different performance marks.
- Reducing the number and range of performance and box markings. Performance or box markings introduce an element of managerial discretion and may increase the risk of bias against groups of employees. Reducing the range of markings cuts down the number of possible differences in individuals' pay within the equal work band or job, thereby, leaving less scope for possible discrimination. Checking results for bias across the organisation before they are implemented will also allow you to address this.
- Underpinning increases. This means giving a minimum cash increase to all workers, eg 4% or £500, whichever is the greater. This enables lower paid workers to move up the scale.

There is no one best method of progression through the pay levels. Different methods will be appropriate depending upon the size of organisation and the composition of staff. Even in the same organisation, methods may vary depending on the circumstances at the time.

All these methods assume that changes are made to the existing pay systems. Consideration should also be given to introducing a new structure that takes equal pay into account at all stages, eg introducing short pay bands with clear and fair progression through a number of points.

Pay protection

Pay protection is often the most sensible and practical way of realigning rates of pay for employees after others have been found to be doing equal work but, as with any other aspect of the pay system, it needs to be well thought out and kept under review. Protection is a sensitive area and you may need to check prevailing case law.

Step 4 – Causes

Examples of action that you can take in this area include:

- Answering the questions in the checklist will help you to decide whether you need to take remedial action or not. The answers will also suggest some possible solutions.
- Consult your employees and their workplace representatives. They will have views as to the acceptability of any proposals and they may also be able to suggest alternatives.
- Look for alternative solutions: If the protection is likely to carry on for longer than three years, consider whether a one-off non-consolidated lump sum to buy out the pay may be the better option.
- Make sure that decisions on protection are properly documented. It makes good business sense for employees to understand why they receive benefits, but if you should ever be challenged, documentation will be essential. Properly documented decisions will enable you to explain your reasoning.

Performance related pay

Examples of steps you can take to put things right include:

- Ensure performance assessments are monitored and that access to performance pay is fair across the organisation.
- Ensure the criteria for rewarding performance are clearly defined and achievable and that targets are fair across departments in the organisation.
- Look to link performance to a quantifiable target, which can be seen as objective. However, 'softer skills' – which may be primarily done by women – may be harder to quantify but they should not be excluded from access to performance pay.
- Ensure training in diversity and the avoidance of bias for all involved in assessing performance and awarding pay.
- Limit the element of discretion in appraisal.
- Explain the system to employees so everyone understands it.
- Consider whether your performance pay scheme is contributing to the problem, eg if you pay percentages of salary, consider fixed payments which are not consolidated into basic pay each year.

Market supplements

If you are satisfied that you need to pay more to recruit to a particular role, the additional payment will be most easily defended if:

- You pay the additional amount as a separate market supplement, rather than consolidating it into basic pay;
- You record the evidence that led you to pay the market supplement;

Step 4 – Causes

- You review the evidence and the payment regularly to check whether payment is still justified;
- If it is no longer justified, you do not pay the market supplement to new recruits to the role.

Assessing the reasons for pay gaps

Even if none of these reasons explains the pay gap, you may wish to drill down to determine whether there is any systematic bias on a department or divisional basis to determine whether policies and systems are being applied by individuals in a biased way which may explain the pay gap.

Once you have found the cause of a pay gap you need to assess whether that cause would amount to a justification in law. Some employers tend to stop once they have found the cause of a pay gap – assuming that that is all that is required.

It is very important that you are clear about the reasons for the pay gap. You must have objective evidence to support differences in pay where men and women are doing equal work if you are to have a valid justification for the differences which is unrelated to the sex of the jobholder.

The question of what amounts to a satisfactory explanation of the pay gap is a complex area dependent on the detailed and individual circumstances of each organisation, as well as on equal pay case law. You should first consult the EHRC's Code of Practice on Pay. If there is any doubt, you should seek legal advice from specialists.

Step 5 – Action Plan

Step 5 – Developing an equal pay action plan

Developing an action plan

What happens next in your equal pay audit depends on whether or not you found any pay gaps for which there was no satisfactory explanation and justification. If you found any such gaps you should develop an equal pay action plan or, if your audit did not reveal any unjustified pay gaps, then you will benefit from continuing to review and monitor your pay policies and practices to maintain your current standards.

In the first instance you may wish to consider undertaking an analytical job evaluation exercise, which is the only action which can give you a defence to an equal pay claim.

The specific actions you need to take will depend on the nature and extent of the pay gaps you have identified and their causes. As you worked through step 4 identifying the causes of the pay gaps, the actions required will probably have become clear – though not necessarily easy to implement. Where possible, involve your project group in formulating the plan.

At a headline level your action plan should include arrangements to:

Provide equal pay

If your audit finds pay gaps related to gender or working pattern, for which there is no justification, you should plan to provide equal pay for current and future employees as soon as is practicable. If the pay discrimination that you have found is direct pay discrimination against women, then you must put it right immediately. Liability for equal pay starts from the point at which a claim is submitted (with up to five years' back pay). However, it may not be possible, for cost or other reasons to provide equal pay immediately. Your action plan should make your timescale clear and it should be as speedy as possible.

Change the pay policies and practices that contribute to unequal pay

Once your equal pay audit identifies the causes of unequal pay and shows that those causes are not justified, you should change any current pay policies and practices that have, or continue to, contribute to unequal pay.

Examples of pay policies and practices which organisations have needed to change following equal pay audits include starting salaries, performance management systems, promotion calculations, market supplements, pay protection and eligibility for bonuses and allowances.

Introduce an equal pay policy

Publish an equal pay policy that commits your organisation to providing equal pay, with clear accountabilities, regular monitoring and adequate resources for equal pay audits. This should be an explicit pay policy, rather than something vague hidden away in a more general equality and diversity policy.

Step 5 – Action Plan

Ongoing review and monitoring

Introduce ongoing review and monitoring of pay outcomes

An equal pay audit is not a one-off event. In order to ensure your pay system remains free from bias, you will need to continue to review and monitor pay outcomes for women and men. Annual monitoring is recommended, eg of performance pay and other pay increases, and ongoing review of the impact of new pay policies as they are implemented.

Consider other equality and diversity issues that may affect pay gaps

One beneficial by-product of doing an audit is that it may have highlighted other equality issues, such as under-representation or job segregation, in your organisation. As a result, you may wish to examine other employment practices identified during the audit. These might include job design, recruitment processes, segregation of protected groups by job type and seniority, approaches to training and development and succession planning.

For an example of equal pay action plan, see the EHRC's toolkit.¹⁶

¹⁶ http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/equal-pay/step-5-additional-information#An_example_of_pay_related_actions_from_an_action_plan

Annex 1 – Data Checklist

Annex 1: Checklist – data required (as appropriate)

DATA REQUIRED	COMMENTS
1. Person/job/grade information for each individual	
Employee number	<i>Unique identifier needed for each employee.</i>
Post number/contract number	<i>May be used to identify specific roles, particularly where employees have multiple contracts.</i>
Job title	<i>May be used for like work analysis.</i>
Job code	<i>May be used for like work analysis.</i>
Job family	<i>May be used for like work and equal value analysis.</i>
Name	<i>Usually needed when drilling down during the data analysis to check reasons for pay gaps and potential justifications.</i>
Band/grade/spinal point	<i>Used for work rated as equivalent.</i>
JE Score	<i>If available, useful for checking jobs either side of grade/band boundaries and for dividing broad bands.</i>
Sex	
Date of birth	<i>Used for analysing pay by age.</i>
Department, Division, Branch, etc	<i>Organisational details, as appropriate for your analysis.</i>
Location	<i>If relevant for your analysis.</i>
Contract status	<i>Full time, part time, fixed term contract and so on.</i>
Performance appraisal rating	<i>Useful to check performance pay/potential reasons for gaps.</i>
2. Pay and hours worked	
Base salary (Full Time Equivalent)	
Actual base salary	
Bonus (annualised) and date paid - FTE	
Include all other separate elements of pay item by item - for a standardised timescale/FTE	<i>For example, market supplements; performance related pay; working patterns payments, eg medical insurance, loans.</i>
Payments in kind	<i>For example, car, accommodation.</i>
Total actual cash received (ie actual base + bonus + anything else))	
Contract hours worked (weekly)	
Protected pay 'flag'	<i>Pay protection may be reason for differences.</i>
3. Dates	
Date of joining organisation	<i>Service in the organisation/grade/pay band or job is often a cause of pay gaps.</i>
Date into current job	

Annex 2: Examples of possible factors for equal value assessment

Category 1: Knowledge and skills

Specialist knowledge: This factor measures all forms of knowledge required for the job, no matter how acquired (including knowledge gained through formal qualifications as well as on and off the job training). It includes theoretical and practical knowledge, professional, specialist or technical knowledge; and knowledge of the policies, practices and procedures associated with the job. Some consideration may also be taken of the demand to update knowledge especially if this is a key feature of jobs.

Analytical skills: This factor takes into account analytical and judgmental skills required for the job. It includes the skills required for planning things such as litigation, finances, meetings, departments, services and conferences. Also gives consideration to the analytical skills required to understand complex situations or information; or skills to formulate solutions and find the best course of action. It takes account of the skills required for planning or organising meetings, departments, services, conferences and for strategic planning. It also takes account of the complexity and degree of uncertainty involved in these activities. In considering the demands in this factor take account of the complexity and degree of uncertainty involved in these activities that may make the work more demanding.

Communication skills: This factor takes into account interpersonal and communication skills that are required by the job. It includes oral and written skills, composition and language skill. It includes skills required for interaction with individuals and teams, both internal colleagues and external clients, for example questioning and listening skills, the appropriate use of empathy as well as observation skills when communicating with people. In considering the demands for this factor take into consideration any obstacles that there may be in the communication and whether for example influencing or persuasion through argument is required.

Physical skills: This factor takes into account the physical skills that are required for the job. These might include keyboard use, manual dexterity, hand–eye co-ordination, driving or other physical skills required for other activities, which may require the use of equipment or tools. Consideration should be given to how demanding these skills are, for example in terms of accuracy and speed necessary to undertake the tasks.

Annex 2 – Equal Value

Category 2: Responsibility

Responsibility for work & people: This factor takes into account the extent to which job holders are responsible for work undertaken by themselves or others. This includes responsibility for allocating, checking and assessing the work of others; supervising, managing, training and co-ordinating staff whether or not in direct line management. In assessing this factor consideration should be given to the nature of the responsibility and limitations, rather than the number of employees.

Responsibility for financial resources: This factor takes into account the actions and decisions taken to ensure the security or generation of financial resources. It can include handling cash, cheques, processing of invoices, monitoring and setting budgets. It also takes account of policy development and providing advice and guidance on financial resources or related internal or external policies. In assessing these elements consideration should be taken of any limits to such responsibilities for example whether job holders are acting alone or sharing the responsibility with others and the extent to which procedures affect their scope to take actions or make decisions.

Responsibility for physical resources: This factor considers the actions and decisions taken to ensure the physical resources of the organisation for example manual or electronic collection, storage, transcription of information, obtaining or maintaining tools or equipment, buildings and consumables. It also includes policy development and providing advice and guidance on physical resources related to internal or external policies. In assessing these elements consideration should be taken of any limits to such responsibilities, for example the extent to which instructions and procedures affect an individual's scope to take actions or make decisions.

Category 3: Efforts

Mental effort: This factor considers the intensity and extent of visual, mental, aural or sensory attention required for the job. It includes the requirement for memory and concentration required in completing work, for example in interpreting/ checking documents for accuracy or undertaking calculations etc. In assessing this element consideration should be given to obstacles that may make such work more demanding that are outside the control of the jobholder such as conflicting or unpredictable deadlines or for example repetitive work or repeatedly switching between tasks because of interruption.

Physical effort: This factor covers any physical effort above what would normally be incurred sitting at a desk but free to move around. This could include activities such as lifting, bending, stretching, repeated execution of small movements and working in awkward or uncomfortable positions. In assessing this demand consideration should be given to the frequency and intensity of such activities.

Annex 2 – Equal Value

Category 4: Other work elements which may be relevant

Working conditions: This factor considers the nature of the working conditions the jobholder will encounter. It includes unpleasant, uncomfortable, unsocial and hazardous conditions, including repetitive strain injury. In assessing this factor consideration should be given to the exposure to the conditions and the frequency with which they occur.

Annex 3 – Pay Checklist

Annex 3: Starting pay, pay protection and pay progression checklist

You should answer the following questions by checking pay practice, rather than relying on your pay policy.

DESIGN	Yes	No
Are there clear rules governing starting pay, pay progression and pay protection?		
Were those involved in the design of the rules trained in equal pay principles?		
Has your policy on starting pay (ie the 'rules' you apply) been checked for potential bias?		
Was the likely impact on women and men of the 'rules' checked prior to implementation, eg as part of an equality impact assessment?		
Was there an objective justification for the rules?		
IMPLEMENTATION	Yes	No
Do the same rules on starting pay apply in principle to all employees?		
Have those involved in the implementation of the rules been trained in equal pay principles?		
Are the rules transparent and have they been communicated clearly?		
Are the rules applied consistently and even-handedly in practice?		
Where managerial discretion applies, are there clear guidelines on the exercise of discretion over starting salaries?		
Is there a right of appeal against decisions?		
IMPACT	Yes	No
Does your statistical analysis show that women and men performing equal work are treated equally regarding starting salaries, pay protection and pay progression?		
If differences have been revealed, have you checked whether <u>current</u> pay practices are causing the gaps?		
If differences have been revealed, have you checked whether <u>historical</u> pay practices are causing the gaps?		
MONITORING AND REVIEW	Yes	No
Do you regularly monitor and review entry salaries, pay protection and pay progression?		
Do you regularly review the justification for your rules and practice on entry salaries, pay protection and pay progression to ensure they remain valid?		
Do the rules and practice still meet standards of best equal pay practice?		

Annex 4 – Market Checklist

Annex 4A: Market Data Checklist

If you answer 'no' (or you do not know the answer) to any of the questions in the checklist you will need to further investigate the pay data and pay practice to ensure that it is free from discrimination.

	Yes	No
Can you clearly identify an appropriate external market(s) for the jobs within your pay systems?		
Do you apply the same principles and guidance for using market rates when deciding pay for all internal jobs?		
Is there an even distribution of male and female jobs in your external labour market database?		
Have you asked your provider of market comparisons /databases for confirmation that the process has been equality proofed?		
If you use a job evaluation scheme for internal and external matching for market purposes has it been audited for bias?		
Have those involved in preparing market rate data, advising on its use and applying it to pay been trained/given guidance in avoiding bias?		
Where managerial discretion applies, are there clear guidelines on the exercise of discretion over awarding market related pay?		
Are market rate additions checked regularly to ensure that they are still justified?		

Annex 4B: Market supplements / payments checklist

	Yes	No
Do you pay market payments to individuals as a separate supplement? If not, are you able to identify the part of the salary attributable to market factors?		
Do you keep records of all market supplements / payments with the reasons and evidence for their introduction?		
Do you review the evidence and payment regularly to check whether it is still justified?		
If the evidence suggests the supplement / payment should be increased, decreased or withdrawn, do you do this?		
Do you monitor market payments / supplements by gender and other protected grounds?		
Do you pay market supplements / payments to all those in the same job group(s) as the individual(s) for whom they were introduced?		

Annex 5 – System Checklist

Annex 5: Performance/competency based pay systems checklist

You should answer the following questions by checking pay practice, rather than relying on your pay policy.

ACCESS	Yes	No
Are all groups of workers included in the performance/competence pay system or systems?		
In particular, are part-time workers, temporary or casual staff, those on maternity leave or taking career breaks, or any other group which is likely to be predominantly female, included in the performance pay system?		
Does the same performance/competence pay scheme apply to different groups of workers with jobs of equal value?		
Do all employees have equal access to opportunities to develop/acquire competencies, irrespective of gender and do they benefit equally from them?		
DESIGN ISSUES: THE MEASUREMENT OF PERFORMANCE/COMPETENCE	Yes	No
Have all those involved in the design and development of performance appraisal schemes been trained in diversity awareness and the avoidance of bias?		
Are the criteria/objectives that are rewarded by the performance appraisal system objectively justified and have they been checked for potential bias?		
Are performance/competence criteria which may favour attributes and roles often perceived to be 'male'/white (eg assertion, leadership, decision-making skills) and those often perceived to be 'female' (eg co-operation, consultation, and other people-related features) included in a balanced way?		
Do the performance criteria avoid any which could be indirectly discriminatory, for example, those related to attendance, flexibility in hours of work?		
Are performance targets or objectives equally achievable in jobs typically done by women and men in your audit?		
IMPLEMENTATION	Yes	No
Have all those involved in implementing the scheme been trained in diversity awareness and the avoidance of bias, as well as in the operation of the scheme?		
Where managerial discretion applies, are there clear guidelines on the exercise of discretion over performance appraisal and payments?		
Is the performance/competence pay system transparent to all employees covered by it, eg does each employee receive information about her or his individual performance ratings and how they convert into pay?		

Annex 5 – System Checklist

IMPACT: PERFORMANCE PAY OUTCOMES	Yes	No
Does the distribution of performance/competence assessments show that there may be bias towards women or men within each equal work band?		
Is the distribution of performance/competence payments broadly similar as between women and men in each grade/pay band?		
Is the distribution of performance pay broadly similar as between protected groups across the organisation (within and between schemes)?		
In a scheme where performance/competence payments are consolidated, do protected groups undertaking equal work achieve equal earnings over time?		
In a scheme where performance payments are not consolidated, are the average and distributions of such payments similar as between protected groups undertaking equal work?		
If differences have been revealed, have you checked whether <i>current</i> practices are causing the pay gaps?		
If differences have been revealed, have you checked whether <i>historical</i> practices are causing the pay gaps?		
Can any differences in pay between women and men which are attributed to performance/competence be objectively justified?		
Is the treatment of non-consolidated performance payments for pension purposes the same or similar as between women and men undertaking equal work?		
MONITORING AND REVIEW	Yes	No
Are performance targets and ratings regularly monitored by gender, ethnicity and disability and by working pattern, etc?		
Are performance payments regularly monitored by gender, ethnicity and disability and by working pattern, etc?		
Have schemes been checked for their impact on women who have taken maternity leave?		

Annex 5 – System Checklist

INCENTIVE BASED PRODUCTIVITY/BONUS SCHEMES	Yes	No
Is the base point for the measurement of productivity /bonus demonstrably at an equivalent level for work generally undertaken by women as for work generally undertaken by men?		
If the base point is not demonstrably equivalent, have adjustments been made to the measurement system to take account of this? In particular, have reasonable adjustments been made for disabled staff?		
Do the measurement steps above the base point represent equivalent levels of additional effort (mental and/or physical) for work generally undertaken by women and work generally undertaken by men?		
Does the system for converting productivity into bonus or other payment result in equivalent pro-rata payments for full-time and part-time staff where appropriate?		
Does the system for converting productivity into bonus or other payment result in broadly similar payments for women and men?		
Are the average payments over a suitable period equal by gender, ethnicity etc?		
If differences have been revealed, have you checked whether <i>current</i> practices are causing the pay gaps?		
If differences have been revealed, have you checked whether <i>historical</i> practices are causing the pay gaps?		
Can any differences in pay between women and men, which are attributed to performance/competence, be objectively justified?		

If you cannot answer 'yes' to any of the questions (or you do not know) you will need to investigate the practice to ensure it is free of discrimination.

Annex 6 – Benefits Checklist

Annex 6: Benefits checklist

Benefit	Paid in correct proportions?		Is their average payment equal?		Can the benefit still be objectively justified?		Does it comply with best equality practice?	
	Yes	No	Yes	No	Yes	No	Yes	No
PERSONAL SECURITY								
Occupational pension								
Sick pay								
Private health insurance								
FINANCIAL ASSISTANCE								
Interest-free loans								
Mortgage assistance								
Season-ticket loans								
Fees to professional bodies								
LEAVE								
Holidays								
Special paid leave								
Career breaks								
CARS								
Company cars								
Private petrol								
Car allowance								
Car parking								