



Achieving Equal Pay in the Workplace

Your Guide to Changing Policy and Practice

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Acknowledgements

This toolkit was put together through the collaborative effort of the following people and organisations from 2021-2022 and received funding from the Joseph Rowntree Charitable Trust.

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UNISON: Josie Irwin, National Women's Officer

NEU: Karen Carbury, Lead Equality Organiser for Women

FDA: Duncan Woodhead and Victoria Jones, National Officers

Equity: Ian Manborde, Equalities and Diversity Officer

UCU: Jenny Lennox, Bargaining and Negotiations Official

PDA: Jayne Love, Organiser and Lead on Equalities

NAHT: Natalie Arnett, Senior Equalities Officer

CSP: Sian Caulfield, National Officer (Equality and Diversity)

NASUWT: Kim Jamson, Principal Official, Equality and Training, NASUWT

Unite: Siobhan Edean, National Officer for Equalities and Anooshah Farakish, Researcher for Equalities

BFAWU: Sarah Woolley, General Secretary

Geraldine Healey: Emeritus Professor of Employment Relations and Director of the Centre for Research in Equality and Diversity (CRED) in the School of Business and Management, Queen Mary University of London.

Laura Williams: Associate Professor of Employment Relations and Equality at the University of Greenwich

Sadvhi Dar: Academic Lead for Outreach and Widening Participation (School of Business and Management) at Queen Mary University

Yasmin Ibrahim: Professor of Digital Economy and Culture at Queen Mary University

Jenny Rodriguez: Senior Lecturer in Employment Studies at the Human Resource Management, Employment Studies & Law Subject Area Group at Alliance Manchester Business School

We would also like to thank the following people for their help and support:

Alliance Manchester Business School: Professor Jill Rubery

CIPD: Charles Cotton

Close the Gap: Lindsey Millen

Fawcett Society: Zaimal Azad and colleagues

Participants in The Equality Trust's 'Equal Pay Conference' in November 2021

Simpson Millar Solicitors: Joy Drummond

Stonewall: Phillipa Scafton and Beatrix Moore

TUC: Lynn Collins and Nikki Pound

GMB: Megan Fisher

TU Education: Tanya Warlock



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1

INTRODUCTION

1.1 What is Equal Pay?

It is unlawful for an employer to discriminate between men and women in the same employment doing equal work in relation to their contractual terms, including pay[i].

However, there is plenty of evidence that for some people unequal pay is a reality of working life.

The right to no less favourable contractual terms than a valid comparator of the opposite sex is set out in the Equality Act 2010 and the [Equality and Human Rights Commission \(EHRC\) statutory code of practice on equal pay](#).¹

It is also helpfully summarised by [ACAS](#).²

Equal pay law applies to pay and terms and conditions of employment, including:

- Basic salary
- Basic wages
- Pension
- Working hours
- Annual leave allowance
- Holiday pay
- Overtime pay
- Redundancy pay
- Sick pay
- Performance-related pay
- Bonuses
- Benefits, for example health insurance or a company car

Equal pay law covers employees, workers, apprentices, agency workers, full time, part time or temporary workers and self-employed people who are hired personally to do work for someone.

Two jobs can be classed as equal work, even if the roles seem different. For example, a clerical job and a warehouse job might be classed as equal work because the level of skill required for each is similar.

Work counts as equal if it is:

‘Like work’ – work where the job and skills are the same or similar;

‘Work rated as equivalent’ – work that has been rated as equivalent, using a job evaluation system[ii]; or

‘Work of equal value’ – work that is not similar but is of equal value. This could be because the level of skill, training, responsibility or demands of the working conditions are of equal value.

[i] When talking about equal pay and the gender pay gap, it is common for many organisations to fall into a binary of male and female. Part of the reason for this is that the current legislation, and by extension a lot of the information we have about the extent and causes of unequal pay in our economy, maintains this binary. Do try and make sure that you are sensitive to the fact that this language excludes the experiences of people who do not identify as either gender, as well as the specific experiences of people who have transitioned, and support them to achieve better representation both nationally and in your workplace.

[ii] Job evaluation is a way to work out the relative importance of different jobs in an organisation and devise pay arrangements to match this. See [ACAS job evaluation advice](#) for details.

In some circumstances, it is legal for men and women doing equal work to be paid differently, for example when the person receiving higher pay is located in a high-cost area like London. This is often referred to as a 'London weighting'. The employer must be able to demonstrate that the pay difference has nothing to do with whether the higher paid individual is a man or a woman and every case depends on the individual circumstances.

Employers can pay everyone the same rate for the same work but still pay women less on average than men.

“...in 2020, nine out of 10 women in this country work in companies or organisations that pay them less on average than their male counterparts.”

MP Stella Creasy - 'Equal Pay and Claims Bill' October 2020

The difference between men and women's average earnings is known as the gender pay gap. UK organisations with 250 or more employees are legally obliged to publish gender pay gap data for their organisation under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017.³



According to the Office of National Statistics, the gender pay gap for all employees in the UK was 15.5% in 2020.

Having a gender pay gap is not in itself illegal. However, a pay gap may indicate that there are equality issues that need to be addressed. For example, there could be stereotyping, prejudice or bias in recruitment & selection processes that result in more women being appointed to low-paid roles.

Wider society also influences equality of pay between men and women. Some jobs predominantly done by women have historically been paid lower salaries, caring roles for example. The concept of “comparable worth” is sometimes included in discussions about equal pay. This is the idea that jobs which are equal in their value to the organisation should be equally compensated, whether the work content of those jobs is similar or not.

While equal pay law currently only requires men and women to be paid the same if they are doing equal work, people may also be disadvantaged in the workplace because of their ethnicity, disability or their sexuality. Some face a double or a triple disadvantage; if they are a woman who is Black and has a disability, for example. When a person has more than one protected characteristic, they might be described as having ‘intersectional’ characteristics. It is useful to keep this ‘intersectionality’ in mind to fully understand and address pay inequality in the workplace.

1.2 Who is This Toolkit For?

The toolkit has been put together to help workers determine whether there is a problem with equal pay in their workplace and to signpost them to where they can get help to resolve the issue. It has been developed by trade unions and academics with support from lawyers and HR specialists.

It supports trade union representatives to negotiate with their employer around specific workplace practices and make adjustments to existing policies such as pay, recruitment, family leave, flexible working and so on; as well as explaining why it is important to carry out 'horizontal' pay audits and how to undertake one.

The toolkit also offers a starting point for trade union activists to start conversations with members about pay inequality in the workplace, to build a campaign and negotiate improvements.

If there are examples where workers are being paid unequally because of sex discrimination then they should be supported in filing equal pay claims. These examples are a clear indication that the structure of the organisation is flawed and needs to be altered so that everyone can have confidence that they are being paid equally and fairly.

Ideally, you would want to change the way that your organisation works so that paying people unequally due to sex discrimination would not be possible.

More than fifty years after the first law on equal pay was passed, too many women are still not paid on equal terms with men doing equal work. The gender pay gap is not closing fast enough and men continue to be paid more on average than women in too many workplaces.

This toolkit focuses on pay equality between men and women because there is currently a legal framework that employers are compelled to abide by and through which they can be challenged if they fail to pay equally. However, the tools can also be applied more broadly where inequality concerns race, disability and/or sexuality.



You can mix and match from the toolkit and adapt it to suit your individual circumstances or particular workplace.

This toolkit is designed to help identify if there is a problem with equal pay in your workplace and to work through whether this is something you can resolve yourself or, if you need to get help, it sets out how you can do this with your trade union.

1.3 What is a Trade Union and why should I join one?

A trade union is a group of workers who come together to improve or maintain their pay and/or conditions of employment. Established unions have democratic structures and can provide support to workers in a particular workplace as well as campaigning on local or national issues to effect positive change. If there are already members of a union in your workplace, find out which union they are a member of and join it. Only by working together can workers win improvements in the workplace. Also find out if a particular union is 'recognised' in your workplace as this may mean that an agreement between the union and the employer is already in place to facilitate collective bargaining.

Trade unions give agency to working people and help to redress the imbalance of power between employers and employees or workers. Acting collaboratively with other workers is the best way to effect change. If there is more than one union in your workplace, try to find out if specific groups of workers are members of a specific union. For example, in a hospital, doctors and nurses will often be members of a medical workers union, while administrative staff may be members of a clerical workers union.

If there are no union members in your workplace, or you still don't know which union to join, you can find out more about the right union for you via the TUC Join a Union website.⁴

It is your legal right to join a union, and an employer cannot discriminate against you for being a member of a trade union.

Union Stories: FDA

The FDA - the union for managers and professionals in public service - has supported equal pay for more than 80 years, first sending representatives to the Civil Service Equal Pay Committee in 1924.

In 1935 FDA's AGM passed a resolution committing the union to "equal salary scales for men and women Civil Servants employed in the same grades".

Having phased out different pay scales in the civil service by 1961, much of the battle for equal pay involves claims of indirect discrimination. For example, FDA has argued since 2014 that HMRC's pay system indirectly discriminates against women, owing to the fact that length of service is used as a determinant of basic pay. Men employed by HMRC typically have longer service than women and are clustered disproportionately at or near the top of the pay ranges for the relevant grades.

In recent years the gender pay gap in the civil service has been narrowing (9.3% in 2020 to 8.8% in 2021) but the greatest pay gap is in the most senior positions. The average Senior Civil Service pay for men sits £2,250 above that for women.

The complexity of pay grades, pay minima and maxima, and the impact of delegated pay (each department negotiates separately on non-SCS pay) in the modern civil service means the fight for equal pay continues for FDA members. Where the union identifies pay inequality and can campaign, make legal claims, and fight for justice, it continues to do so.

Union Stories: Pharmacist Defence Association Union (2022)

The Pharmacists Defence Association Union (PDAU) achieved its first recognition agreement in 2019 following protracted negotiations with Boots. Boots is the biggest employer of pharmacists working in community pharmacy, so it was a major achievement for the union to be able to negotiate the terms and conditions of its members employed by the company.

From the outset the PDAU has had two objectives in relation to pay. One is to ensure members' income maintains its purchasing power and the other is to ensure the pay system within the company is transparent, objective and complies with the Equality Act.

It has set up an Equality Committee with the company, which looks at wider equality issues, but supplemented this with a working group specifically looking at the pay system and whether it meets the test of being transparent, in the sense that any employee can know where they are within the pay system and whether this is determined by objective factors such as experience, qualifications, and expertise.

Although there is a long way to go, trade union recognition has enabled these issues to be placed on the agenda and to be jointly progressed by the company and the union. Unfortunately, there are still areas where line manager discretion has a significant impact on an individual's pay and PDAU's work to inject a much greater degree of objectivity into this process continues, but the establishment of the working party and equalities subcommittee represented a key step towards achieving its aims.

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2

HOW TO GO ABOUT ACHIEVING EQUAL PAY IN THE WORKPLACE

2.1 Talking About Pay

Whether you are a worker or a trade union rep, you may be new to the idea of equal pay. If so, there are a number of things to think about.

Look around and see if women tend to work in one area and men in another, or do they work in the same section.

Talk about pay. **Do women think they get less pay than men, do they think they work as hard or even harder?** If so, they may be right: research shows that when women work in female dominated areas, they are even more likely to receive less pay than when they work in mixed environments.⁵ Consider why this is the case.



Work done predominantly by women is likely to be undervalued and paid less.

This matters, not just today, but also for future workers. There is not only a current pay gap between men and women, but also a gender pensions gap, so that women enter retirement getting some 30% less than men. Women are also more likely to be in poverty in old age than men.⁶

If you are a trade union rep, do your members know this? Do they talk about pay? In lots of workplaces, people can be wary or discouraged from talking about pay and this greater secrecy gives more power to those who make decisions about pay.

What do your members/co-workers think about their pay? **Do you have a pay system with pay bands and pay spines?** Pay spines add a degree of transparency but they can also be abused by the discretion given to some managers. Can managers determine where a worker is put on the spine? Can they determine how much a worker receives on promotion? Discretion tends to favour male workers and is another reason men get more pay than women.

Do people receive bonuses or merit pay in your workplace? These are a major cause of women's lower pay.

Do you see more men represented in higher grades than women? If so, this would be unsurprising, since men tend to dominate the higher grades. Research shows that even when women get to higher positions, they earn less than men. Indeed, the pay gap increases at the higher pay levels.⁷

There is a view that men ask for pay rises, and women don't. This is not true; women ask, they just don't get!⁸ So don't be side-lined into thinking poor pay is women's fault. Rather it is the system, what some have called the institutionalised undervaluation of women's pay, or others have called inequality regimes. This undervaluing relies on secrecy to sustain it, so let's make pay more transparent.

If your organisation employs more than 250 people, it is required to complete a return on the gender pay gap. Have you seen this return? Were you part of the discussion? Is there an action plan with targets and dates? This document is publicly available on the government website (see Useful Links).⁹ It's a great tool, enabling you to compare your organisation with others.

Even if you work in a smaller organisation, there is no reason why your organisation could not follow the same framework as an internal exercise. There is more information on pay gap reporting and equality pay audits below.

Start talking about pay and equal pay. Raise pay in your union meetings, in department meetings, during coffee breaks and wherever colleagues meet or socialise. **Talking about pay will raise awareness among colleagues who will start to question the way the pay system operates.** Once you have a good idea of what employees think, if they feel that they have been treated unfairly, you are in a position to get some facts and figures to underpin these general observations.

Union Stories: Unison, GMB and Unite (2019)

UNISON members at Glasgow City Council have been fighting for equal pay for over 15 years.

Women working in caring, catering and cleaning across Glasgow started their long struggle for pay justice in 2007, finally winning a £500m deal to end their long-running dispute in 2019. Close to 16,000 claimants were set to benefit.

But some women are still waiting for their compensation. Meanwhile, the promised new pay and grading system hasn't been introduced, so women are still being paid unfairly compared to men.

In a ballot of just under 9,000 workers, with 52.5% of members voting, 96% of UNISON members voted to take further industrial action in March 2022.

The current dispute centres around whether the new claimants receive the terms of the 2019 agreement, while the council has recently said that it may not be able to finally settle its debt to these women until 2024.

Speaking about the vote, regional organiser Mandy McDowall said: "The overwhelming vote for strike action really shows the strength of feeling from our members. They are so angry about this.

"While we welcome the council's signals, this isn't enough progress to resolve the dispute. The talks need to be more constructive, with no conditions and based on applying the 2019 deal to all valid claims. Members simply cannot wait until 2024 for the claims to be paid out. Especially in the context of the cost-of-living crisis, members need and absolutely deserve an interim measure.

"We've worked really closely with the GMB, who have already voted in favour of strike action, and Unite, whose ballot returns on 14 March, and will continue to liaise with them in the next steps of the dispute."

The story of the Glasgow women shows that women campaigning and working together, strong and resolute, ready to take industrial action if necessary, can result in success. But it also shows that women have to be prepared to play the long game. The Glasgow story is not finished yet.¹¹

2.2 The Importance of Collective Bargaining

In workplaces where trade unions are recognised by the employers, discussions concerning pay and the terms and conditions of employment take place collectively and are coordinated with the support of trade union representatives. These discussions are known as 'collective bargaining' and it is in these discussions that any equal pay issues would be discussed.

Under collective bargaining agreements, all parties involved agree processes and procedures to ensure the smooth running of the collective bargaining meetings. From time to time, employment disputes occur between employers and employees and collective bargaining provides an agreed framework and procedures to help resolve these disagreements.

Collective bargaining with a recognised union is the best way to secure equal pay, terms and conditions for employees who encounter prejudice, disadvantage or marginalisation. It helps to remove the threat of individuals being targeted or feeling harassed by management in pay disputes.

Collective bargaining also addresses general terms and conditions, improving standards for all employees, not just for the individuals who bargain for better conditions for personal gain. OECD (Organisation for Economic Cooperation and Development) research shows that where there is collective bargaining, the gap between women and men's pay is smaller.¹¹



If you're not already a union member, it's a good idea to join.

Many unions in Great Britain are part of the Trade Union Congress so you can use the TUC's union finder as one way to identify the most appropriate union for your industry/sector.¹² If your union is not yet recognised, employees are advised to consider seeking advice on how to go about getting recognition. It may be possible to gain 'statutory recognition', even if your employer refuses to recognise your Union.¹³

2.3 Questions for Your Employer

To start negotiations or bargain on equal pay, trade union reps need to understand whether employees are being treated unequally and they must be able to demonstrate how this is happening. This means the questions you ask your employer must be carefully framed to get the answers that are most useful to your talks with management.

It is important to be precise about information that is being requested.

Remember that organisations can turn down a request if your question will lead to data disclosure identifying individuals. This is a challenge, because very often it is minorities in organisations who experience pay inequalities.

If you are a rep for a trade union that is recognised in your workplace, you will have the right to request this information for the purposes of collective bargaining under the ACAS Code of Practice.¹⁴

If you are requesting this information from a public authority and they do not supply it you can issue them with a Freedom Of Information request.¹⁵

Remember that an organisation must process an FOI request within a given time scale.

Sometimes organisations can refuse FOI requests because it asks for information that is either ambiguous or the request cannot be processed in the expected time scale. **This is why you need to select your questions carefully.**

The ACAS guidance on submitting requests for information about pay has good advice on how to go about identifying information to help your equal pay negotiation.¹⁶ There is a three-step guide to help you formulate questions that will provide you with meaningful data. These steps include: identify comparators; identify how comparators are doing equal work to you; ask further questions about how pay is determined and what differences in work explains any pay differentials. You can also see the EHRC Statutory Code of Practice (also in the 'Useful Links' Section).

We have developed a set of questions to help reps understand if there is pay inequality in the organisation. The answers will help in discussions with the employer about the changes that may be needed to resolve inequality and will help focus any campaign for change. Many of the questions relate to specific policies: pay, recruitment, maternity/paternity/carers' leave and so on. You can make real change in your organisation by changing policies and then making sure those changes are put into practise.



You can mix and match between the questions – don't feel you have to ask them all. They are designed to help you build a picture rather than cover everything.

It may be useful first to build a picture of the employer. Do they operate in the public sector or private sector, for example? This is important as public sector employers like local councils or the NHS recognise trade unions and generally have standard pay, terms and conditions. They also tend to use job evaluation systems to ensure equal pay for work of equal value. Large private sector employers in retail, banking and finance, transport and communications, for example, may also use a job evaluation system. However, employers in both the public and private sectors that pay equally may still have a gender pay gap for the reasons outlined in Section 1. These questions will help you understand the extent to which this is the case.

Preliminary Questions: Finding out about your workplace

Start by considering:

1. How is pay determined in your organisation?
 - a. By collective bargaining;
 - b. By individual negotiation;
 - c. A combination, with senior staff not covered by collective bargaining; or
 - d. There is no negotiation on pay.
2. Is there a recognised union in your workplace?
3. Does your organisation use job evaluation?

Job evaluation is a way to work out the relative importance of different jobs in an organisation and devise pay arrangements to match this. ACAS provides some good information about what job evaluation is and how it works.¹⁷

4. Does the organisation have an equal pay policy? If no, why not? If yes, how often is the policy reviewed?
5. Have there been any settlements of equal pay claims or potential equal pay claims?



If your organisation recognises trade unions, uses job evaluation and has an equal pay policy, there is less likely to be an issue with equal pay.

Gender Pay Gaps

Gender pay reporting is a legal requirement for organisations that have over 250 employees. Keep in mind that, under UK law, an organisation is not currently required to address a gender pay gap; they only have to report it.

The following questions have been designed to help you understand how gender discrimination may be shaping pay inequalities even if there is equal pay for work of equal value in the organisation.

If the organisation has over 250 employees, did they submit a gender pay report this year?

Are previous gender pay gap reports available? If so, for how many years? What is the trend in the pay gap, e.g. is it reducing or increasing?

Did the most recent report include an action plan with targets and dates attached?

If the employer has not undertaken a gender pay gap report, why not? Are they willing to do so?

What steps does the organisation take to reduce their gender pay gap if they have identified one?

Has the organisation ever undertaken an equal pay audit?

Has the organisation ever undertaken an Equality Impact Assessment (EIA)? If so, what was the purpose (e.g. as part of a redundancy consultation) and what were the results? Was the EIA carried out in collaboration with the union/s?

Are there parts of your organisation that are male dominated or female dominated? Are there departments or grades that are dominated by men or women?

How much is the highest paid man paid compared with the highest paid woman? How much is the lowest paid male worker paid compared with the lowest paid woman?

Is there a difference between who works part time and who works full time? Do more women work part time in a particular department or across the organisation?

What is the average pay across different pay grades of the same work?

To address more comprehensive or integrated equalities pay gap issues, you can also ask similar questions that look at other areas of inequality, for example:

- Does the organisation record ethnicity data for employees?
- Does the organisation report ethnicity pay data?
- Does the organisation record disability data for employees?
- Does the organisation report disability pay data?
- Does the organisation record how gender and ethnicity impact pay grades, contractual arrangements, and working conditions?
- Does the organisation record how disability, age, and gender of employees impact pay differentials?

If not, why not?

Union Stories: Unite

RBS worker Lucy Williams discovered that she was being paid £31,610 less each year than her male counterpart for doing the exact same job with equivalent experience. Conversations with her colleagues led her to believe that she wasn't receiving the same holiday entitlement either.

She raised the issue with her management but they dismissed her concerns and tried to 'fob her off' with the promise of increases 'next year'. But the pay gap continued to widen, with her male colleague receiving further pay rises. She filed an official grievance and was made redundant 5 months later, but she didn't back down. Even when, supported by Unite, Lucy was offered £150,000 if she 'kept quiet' about the issue she refused to back down.

"There are far too many women who are forced to back down. I was told I was mad for refusing. But I would rather have gone to tribunal than be silenced" she said.

Thanks to her perseverance and Unite's support, RBS dropped the 'gagging clause' and she won her claim.

Even though it was an 'exhausting' process, Lucy said: "I advise anyone to join a union. Unite has a proud tradition of standing up for those who are treated unfairly and fighting for what is right – things would not have ended as they did for me had I not been supported by Unite. There's strength in numbers." She also said: "I also urge women to have courage, and ask if they are being paid correctly and in line with the Equal Pay Act. If not, raise a grievance. Don't let them fob you off. Take it as far as you can."¹⁸

Transparency of pay, rewards and promotions

“Transparency creates accountability. Without transparency and accountability, bias is more likely to affect decision-making in ways that potentially disadvantage women or other under-represented groups.” UK Government Equalities Office: The Behavioural Insights Team ‘How to improve gender equality’

In short, the more transparent an organisation is about who is paid what, the more likely it is that they are aware of pay equality issues and to be doing something to remedy them.

Does the organisation have a published pay structure that employees have access to? If not, why not?

Is there more than one pay and grading system? How does this work?

If there is no published pay structure, how is the pay system structured and why?

Do managers and employees understand the basics of how pay is determined in the organisation?

Where there is a pay spine, do managers have discretion to determine the grade point in the case of new appointments or when someone is promoted?

Does the organisation’s pay policy include a clause on equal pay? If so, what is it and who is responsible for its implementation?

Does the organisation issue any bonuses/benefits/shares to employees? Are these bonuses available to all employees or are there any distinctions between, for example, full time and part time workers, permanently contracted and fixed term/zero hour contracted, or so called ‘professional grades’ and ‘administrative grades’? If so, how does this system work and what does the organisation do to make sure it is transparent and fair? Would any employee understand how these bonuses are allocated?

Is there a promotion policy? Is there a temporary promotion (acting up) policy? How often are such policies reviewed? Does the promotions policy require a fair and competitive application and selection processes, informal ‘expressions of interest, or something even less formal?

Are managers and employees aware of the promotions policy, including eligibility criteria?

What training do managers receive to support promotions in their workplace?

How are managers monitored to ensure that they are supporting all employees who are eligible for promotion?

How are staff made aware of the opportunities for promotion?

How long does it take for women, Black, disabled or LGBT+ staff to be promoted compared to others?

What steps does the organisation take to ensure fairness and equality when awarding promotion or allocating bonuses and/or benefits?

When was the pay policy last reviewed?

Does the organisation use discretionary pay systems (for example, merit pay and performance-related pay)? If so, how are these structured, what criteria are they based on and how are decisions arrived at?

How do employees move from one point/band on the pay spine to another and do they understand how to do this?

Does the organisation use different pay, terms and conditions (for example, attendance allowances, overtime or unsocial hours payments) for different groups of employees? Are men or women dominant in these groups?

Job Evaluation Systems

Job evaluation systems are more commonly used in the public sector. The two main ones are the Local Government Single Status Scheme and the Agenda for Change in the NHS. Some private sector organisations also use job evaluation systems.

Job evaluation is a way to work out the relative importance of different jobs in an organisation and devise pay arrangements to match this.

If an employer operates a job evaluation scheme, they are less likely to have equal pay issues. However, if it is operated badly or becomes out of date, it may no longer be effective. The following questions will help you identify whether this is the case.

Does the organisation use a Job Evaluation Scheme?

Does the organisation have a job evaluation and grading policy? How often are these reviewed?

How was the Job Evaluation Scheme developed?

Was the scheme agreed with the relevant Trade Unions?

How effective has this system been in making changes to job descriptions, roles, and responsibilities and ensuring that pay has been adjusted?

Is the methodology reviewed and, if so, how often?

What leads to a job being re-matched or re-evaluated?

How is the financial impact of any changes to the grading system and points to pay scale determined so that any changes to role responsibilities are adequately incorporated within the grading scheme?

Does the organisation use market-based pay systems or supplements not underpinned by job evaluation?

Recruitment

Bias and inequality can creep into even the most transparent and equal pay systems and lead to unequal pay and the maintaining of the gender pay gap.

The following questions about recruitment processes will help you see if this is the case.

Does the organisation publish salaries when advertising jobs?

This is, for prospective employees, the first step in pay transparency. Not publishing salaries in job adverts is symptomatic of an organisation which would hire a candidate and proceed to pay them as little as they might get away with. In such situations, women tend to lose out.

Does the organisation require applicants for jobs to submit their previous salary on their application form?

Previous salary information may be used to determine a new starting salary. For successful female job applicants, this practice therefore continues the undervaluing and pay inequality of their previous job into their new role. A job advert should therefore have an attached salary value, and previous salary information should not be sought in application forms. In fact, inquiring about previous salaries is banned in some US states, such as New York.

Does the organisation use the practise of 'managerial discretion' over starting salaries?

Where managers can negotiate on the starting salary, research shows that women are offered lower starting salaries than men on average.¹⁹

What steps does the organisation take to reduce bias, unconscious or otherwise, during the recruitment process? Does the HR department anonymise applications by removing names, dates of birth or addresses before applications are subjected to selection for interview?

Does the organisation offer posts at pro-rata grades in advertisements?

This signals the employer's flexibility and commitment to openness in hiring staff whose working pattern will not conform to a full time 8am-5pm 'norm'.

How often does the organisation monitor and review its recruitment process for any evidence of bias?

A good employer will regularly review the process for potential bias. Doing this can prevent bias and reduce discrimination.

Does the organisation include a link to the pay structure and pay progression criteria (the way pay rises are awarded) in their induction for new employees?

This helps break the stigma of talking about pay. If people are reluctant to talk openly about pay, women are more likely to lose out.

Does the organisation send out an offer letter confirming the salary for the role and other contractual details? What specific information is included in this letter and when is this letter sent out?

This should happen as soon as possible and employees have a right to receive an offer letter within two months of being verbally offered the job. The absence of a written contract increases vulnerability.

Union Stories: NASUWT

A staff restructuring exercise at a secondary school saw our female member (a Head of Department – Science) lose her TLR payment. She accepted it and did not appeal the decision at the time as she believed there must have been a fundamental restructuring to her role but not the other Head of Department positions. Other male Heads of Department kept their TLRs. Four years later the female member retired.

When the employer advertised the retired member's role the TLR had been reinstated in line with the other Head of Departments (all male). When this was questioned no real explanation was forthcoming.

The NASUWT supported the member by lodging an Equal Pay claim at the Tribunal and an out of court settlement was eventually reached with the employee.

Part time and flexible working arrangements

Women are the largest group of workers in part time work and/or some form of flexible work arrangements that can lead to pay inequality. Asking questions about who can work flexibly can help uncover pay inequality.

What is the process for dealing with part time or flexible working arrangements?

How many requests for part time and flexible working have there been in the last 5 years?

How many were accepted and how many rejected?

How does the organisation support employees on part time contracts (for example with access to opportunities for training and career development? Or promotion and transfer opportunities, benefits and bonuses compared to their full time colleagues?

Family Leave (Maternity, Paternity and Adoption Leave)

TUC [research](#) shows that 54,000 women a year are forced out of work due to pregnancy and maternity discrimination.²⁰ Good family leave packages have been shown to make a difference to women returning to work, getting promoted and being paid fairly. The questions below are helpful to tease out possible reasons for pay inequality and pay gaps related to family leave.

Do women in the workplace know what they are entitled to, and do they have access to the organisation's maternity policy?

As a minimum, are all statutory entitlements for family leave, pay and rights in place and operating correctly?

What percentage of women who take maternity leave return to work for the company?

Can family leave – including maternity and paternity leave – be taken more flexibly than statutory entitlements?

How are calculations made for family leave and pay for term-time workers and those on annualised contracts?

Do workers feel supported when they return to work after family leave, including with regard to flexible working requests, breastfeeding and childcare?

Does the organisation have menopause and/or period policies to support employees?

2.4 Why Should You Ask Your Employer These Questions?

Why does it matter if managers have discretion over pay decisions?

The greater the level of discretion over bonuses, merit pay or point within a pay spine, the more likely it is that women's work will be undervalued and that stereotyping will come into play, leading to a greater pay gap. The financial services sector has one of the highest pay gaps and a widely acknowledged discriminatory culture. The median pay gap is 37 per cent in financial services and insurance, and the bonus gap is 52 per cent. Research on financial services shows that the pay gap is greater the higher the pay and that, post-recession, longer working hours and ethnicity contributed to the pay gap, but that collective bargaining led to a lower pay gap.²¹

If you work in an organisation with more than 250 employees, do check the pay gaps, including the bonus gap, which your employer is required to report.

Why investigate intersectional pay? Intersectional pay may relate to one or more protected characteristics (age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation) and it is an important feature in pay audits.²² Research on women's representation by ethnicity reveals that ethnicity is a more potent source of inequality than gender.²³ Moreover, research indicates that employees with more than one protected characteristic experience multiple disadvantages.²⁴

Is equal pay a one-off struggle? No, there is a need for constant vigilance as company policies and practices can and do change.²⁵ Annual pay audits are necessary to see if pay gaps have narrowed or widened. We are living through changing times in the post-Brexit era and while labour shortages offer opportunities to renegotiate pay, they also offer the potential for gender pay discrimination as 'market forces' may favour one sex.

Is women's work really undervalued? There are multiple studies showing that women's work is undervalued compared to men's.²⁶ This is why it is so important to check if men and women receive equal pay for equal work, or if women's work is less valued than men doing similar work of equal value to the organisation.

Will collective bargaining make a difference? Yes, research shows that collective bargaining is a fairer method of pay determination and leads to lower gender pay gaps.²⁷

Why do you need to know if women are under- or over-represented in an organisation/department/level of seniority? The proportion of women may be a marker of unequal pay. The higher the proportion of women, the more likely that pay is relatively low; and the higher the proportion of men, the more likely that pay is higher. Even where women take senior roles, they are likely to earn less than their male counterparts, which widens the pay gap.

If you work for an organisation with more than 250 employees, you can check this yourself by examining the pay gap report. The report groups earnings into 'quartiles' so you can see which group of earners has the highest or lowest pay gap. Don't be misled if the pay gap is smallest in the lowest quartile where earnings are lowest. It tends to be the case that women occupy the majority of jobs in the lowest quartile.

2.5 Sample Members' Survey

It is very important to get input from workers/trade union members about whether they think there is equal pay in the organisation. If their experience is very different from how the employer describes it, then this is probably an issue to ask questions about or campaign around. For example, if the employer maintains that everyone knows how to access the organisation's pay policy, but members say in response to a survey that they have no idea how to do this, then this is an issue that needs to be addressed.



The 'Questions for the Employer' can be mirrored in a survey of employees or trade union members. There is no need to reproduce them all but you can select key issues to focus on and tailor your questions to suit your audience. You could concentrate on a particular policy for example or a particular department or grade.

Surveys provide evidence when negotiating with your employer about the issues that members or employees want to address and that they think is important. You can use numbers ("90% of members surveyed responded that...") or anonymous quotations ("one respondent said that their manager had told them that they 'got her cheap'") to support your arguments.

Ideally, surveys can be sent out jointly so that both the employer and the employees/members of the Trade Union/s are committed to analysing the data together and coming to a shared decision about what to do about it.

Spoiler alert: this may not work in the real world! If not, it is important that the Trade Union or employees survey all workers, whether they are union members or not, so you can use the resulting evidence in your negotiations.

Beware: asking questions is not a neutral act - and neither are surveys!

Union Stories: UCU

After 18 months of negotiation UCU and the management at the University of Bristol reached an agreement aimed at tackling their gender pay gap of 13.6%.

The agreed measures included:

- Increased opportunities for progression for women;
- Greater opportunities to work flexibly or to job share;
- Funding for pilot schemes to allow research staff to continue working at the university between grants; and
- Training for all staff involved in recruitment and promotion processes.

The union said that increasing opportunities for advancement was crucial in tackling the gender pay gap, as more women at the university were employed in research-only and teaching-focussed roles, which often have less opportunity for career progression.

UCU said it also welcomed the move to invite all candidates to discuss flexible working and job share options when applying for jobs at the university. The university will gather data from all departments in areas such as part time work and flexible working requests to ensure that future plans to address the issue are based on the best possible evidence.²⁸

3

GOOD NEGOTIATION PRACTICE AND TALKING TO EMPLOYERS ABOUT EQUAL PAY

3 Good Negotiation Practice and Talking to Employers about Equal Pay

Good negotiations begin with a well organised workplace, where the union membership know their rights and are determining the issues reps are negotiating on. If the bargaining issues are owned by the membership and the wider workforce, reps will be in a much stronger position to negotiate a good deal for employees.

The best way to determine how others feel is to start a conversation about it.

Disciplining someone for talking about equal pay is against the law.

Don't assume that your colleagues know their rights and entitlements in relation to equal pay. Sharing the information you have collected by asking the questions in Section 4 will help you talk to colleagues and help them realise any injustice. Be proactive - don't wait for others to come to you.

Remember an employer has a vested interest in tackling equal pay issues because resolving cases through the courts can be a lengthy and costly process.

A letter (or email) can outline what it is that members want and citing the arguments why an employer should meet that demand. The information you have gleaned from surveying members and from the questions you have asked of your employer will inform the content of the letter. Members will need to think about and discuss how to approach this letter and subsequent negotiations.



Here's some suggested wording for starting negotiations with the employer on equal pay:

Dear Employer,

Our union branch has resolved to pursue a local campaign to end unequal pay in our workplace.

Despite the Equal Pay Act being in existence for over 50 years, women in our workplace are still paid less than men [insert evidence for this].

Pay discrimination can be bad for the organisation's reputation, bad for staff morale, and could also mean that our workplace is potentially liable to equal pay and discrimination claims at employment tribunals or in the courts.

We therefore request that an Equal Pay Audit be conducted [or an existing audit be reviewed] to help scrutinise pay rates and jobs, to identify pay gaps and measures to close them, and specifically to agree to:

- operate a transparent pay system, based on objective criteria and free from sex bias or discrimination on other grounds including race, age and disability;
- check for any gender and other pay gaps in the workforce/specific work areas;
- take action to implement equal pay for equal work in practice;
- provide paid release for union equal pay and equality training; and to
- provide facilities and paid release for union representatives involved in the negotiations.

Once the audit has been conducted, we would like to jointly analyse the results and formulate an agreed action plan to tackle the identified issues. That plan should include monitoring, implementation and review processes.

We formally request the carrying out of an equal pay review of all staff within the next [insert number] months.

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

Yours sincerely etc.

You may be presented with a number of reasons for this request being declined by the employer and you may therefore need to enter into further negotiation. You will need to think about and discuss with other union members how you will approach this negotiation.

During the negotiations representatives need to:

Ensure that you don't go into the negotiation meetings on your own. Even if you are the only representative in the workplace, find others to accompany you. They don't have to be formal reps, but they can take responsibility for different roles within the meetings, present different bits of information or provide member updates on progress. Seek volunteers at your branch meetings.

Take notes. Make sure that you write down what your employer is saying in the negotiation so that you can refer back to it later. You don't need to write down everything word for word, but it helps to have a record of what has been discussed and agreed so that you can come back to it later if something unexpected happens, or just to update your union members on progress.

Agree as a branch (or group), what your bottom line is and what you are prepared to do to achieve it.

Forewarn your colleagues about the things your employer might do to undermine you and/or the collective group. Tell them what kind of questions they might be asked, or what incentives they might be promised if they agree not to pursue the claim for equal pay. Think of this as an inoculation. This will strengthen the group and build trust in your ability to negotiate for the group.

Make sure workers know that the Equality Act 2010 states that an employer cannot prevent employees sharing and discussing rates of pay in relation to protected characteristics. You cannot be disciplined for talking about Equal Pay. If you are a trade union representative you have additional protection under the Trade Union and Labour Relations Act.

Meet in advance of negotiations with the other members who are going into the meeting with you to plan who will say what, and how you will approach specific issues. After the negotiations, come back to discuss and review progress and consider what you need to do next.

Have some facts and figures ready for discussion that will show the employer that you are well informed and serious about this issue. You can find out how much money your employer made in each financial year by looking at Companies House website.²⁹ Talk to your union about paying to access more detailed information if needed. You can use this to challenge the employer if they say the organisation can't afford to address the issue. It is also useful to know that the cost of an employment tribunal in England and Wales is free for

claimants to lodge a claim (those making a claim against an employer). Continue dialogue with members. Keep everyone updated on negotiations as much as possible, so that if you reach an impasse, they can be mobilised to put pressure on the employer.

Ensure that the branch or group is prepared to demonstrate the strength of feeling on this issue. There are many ways to show the employer that you are serious without breaking any rules. There is strength in numbers. One staff member wearing a T-shirt/badge/sticker staying 'Equal Pay' draws a little attention, but everyone doing it forces the employer to notice and can be very powerful.

Contact the relevant equality and support structures in your union (e.g. full time or elected officials). They will be able to provide advice and support for your discussions.

Agree a timeline for talks and a subsequent timeline for the actions that follow. Don't allow the employer to drag their feet on taking action and make sure staff know when they can expect to hear about progress, so if there isn't any you can mobilise them to put pressure on the employer.

Send agreed statements of progress with the employer out to staff, so that you can demonstrate the progress of discussions and ensure the employer is publicly committing to action.

Detail the final agreement in writing. Take it back to members before signing up to anything. Members should feel they own and have a part to play in the process, they need to agree to any final deal and ensure it meets their expectations.

Celebrate your successes! If you get a deal, make sure your union group finds time to enjoy that, and use any event you organise as a springboard for the next campaign you hope to work on.

What if the employer refuses to engage or says no to your requests?

If the employer refuses your request for information, or refuses to discuss the case for Equal Pay, it is not the end of the line. Your right not to suffer pay discrimination is set out in the Equality Act 2010. Find out where you stand. Talk to your union officials about whether you have a legal case to pursue the claim for equal pay through the tribunal courts. You will also need to build a campaign to get others involved in making and/or supporting the claim for equal pay.

If you work in the public sector, your employer has a duty to ensure that they uphold the Public Sector Equality Duty set out under the Equality Act 2010. The duty requires public authorities to have due regard to the need to:



Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;



Advance equality of opportunity between people from different groups; and



Foster good relations between people from different groups.

If you work for an organisation that provides a service for a public authority, you can check the local authority procurement contracts for information that supports your negotiation. These are a matter of public record and can be obtained through a FOI (Freedom of Information) request.³⁰ Some public authorities have a charter for private providers that includes expectations or requirements on how they pay their staff.

While the public sector equality duty does not apply to the private sector, all other aspects of the Equality Act 2010 do, including the legal right to equal pay for equal work. You may not have access to the same information available in the public sector, but there are other things you can use to your advantage.

Reputation is extremely important to organisations of any kind and can be damaging to profits if stories about discrimination get out. There are a number of ways you can seek support for an Equal Pay campaign that will put pressure on the employer to return to the negotiating table.



Local councillors and MPs: Elected officials are there to represent you, so don't be shy about asking for their help. Talk to them about the issue in your workplace and ask them to support you by writing to the employer, or asking questions at council meetings or in parliament.



Talk to your local community: If you provide a service, do your customers or service users know that you are not being paid fairly? Building support through your customer base, community and faith groups helps to put pressure on the employer to eliminate unfair and unjust practices.



Pledge of support: Ask local businesses, community and faith groups and employees to put their name to a pledge that supports your campaign. This can be a very simple message on a postcard e.g. "I support Equal Pay for workers at Pretend Ltd". Collect the postcards and deliver them by hand to the employer. The more signatures you collect the greater the impact.



Talk to the press: Choose a spokesperson to talk to the press. The spokesperson should be part of the campaign and look and sound like the rest of the group. If the union group is mostly women, a woman should be the spokesperson but men should be good allies and show their support for the women (or vice-versa). Equal pay benefits everyone, not just the affected group. Talk to your union about media or public speaking training and support.

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4

A WORKERS' GUIDE TO CONDUCTING AN EQUAL PAY AUDIT

4. A Workers' Guide to Conducting an Equal Pay Audit

4.1 Introduction

Equal pay audits are used by trade unions to demand that no group be disadvantaged on pay due to a protected characteristic.

Under the Equality Act 2010, protected characteristics are defined as: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Employers also routinely use equal pay audits to prove that their workplace is free from pay discrimination.

This section is designed to give trade union reps and workers an understanding of the role that they can play in conducting an equal pay audit.

A five-step process for this is outlined below. You may find that your trade union has also published guidance on this and that you can gain support for conducting an audit from officials within your regional or national office. Links to useful resources are included throughout this guide and at the end of this section of the Toolkit.

4.2 What is an Equal Pay Audit?

An equal pay audit is an examination of pay data to determine if all employees are being paid fairly or whether some groups are being treated more favourably than others.

After taking account of variables like job role, part time status and length of service, a comparison is then made between the pay packages belonging to employees from different groups.

In essence, the audit is trying to determine whether women (or people with other protected characteristics) are engaged in activity in a workplace that can be deemed as 'equal work' when compared with the work of other groups who are paid more. This includes situations where, although men and women in the workplace are broadly segregated (e.g. men are in warehousing and driving; women are in catering and cleaning) they are engaged in 'like work' in that their jobs and skills are the same or similar. The audit can also determine whether their work is of 'equal value' in that, for example, the level of training required or responsibility is similar.

4.3 Making the Case for an Equal Pay Audit

Discriminatory inequalities in pay between women and men doing equal work are unlawful.

The inequality persists because employers are ignorant of the law, or simply do not care. Without direct intervention this discrimination could remain in place for decades to come.

As well as setting out the need to comply with the law, using a business case argument can encourage employers - particularly private sector employers - to get on board with the audit. Research shows organisations often comply with equality and diversity initiatives when the business case is used.³¹

Unions can highlight the business case benefits of equal pay such as improved employee morale, reduced reputational risk, less chance of expensive legal fees from fighting tribunal cases, or damaged employee relations and decreased likelihood they will be an employer of choice.³²

Employers are more likely to conduct an equal pay audit if you use non-confrontational language.

For example, you could call the audit a consultation; this would enable you to broaden the scope of the audit to also look at wider policies that touch on pay, such as recruitment.

The pursuit of equal pay for equal work is a priority for most trade unions and should be a goal for workplace branches drawing on the policy position of the union, and allied advice and guidance on this. Periodic pay negotiations should commit to a focus on equal pay in the form of a full pay audit or equality impact assessment. The data made public by employers should be used as the basis to negotiate for a pay audit and/or equality impact assessment.

4.4 The Five Steps of an Equal Pay Audit

The guidance outlined here reflects that developed by the Equality and Human Rights Commission (EHRC).³³

The Commission is the UK's statutory body overseeing the implementation of the Equality Act, and providing advice and guidance to employers, trade unions and the public. EHRC supports the use of equal pay audits to plan for the steady closure of pay gaps.

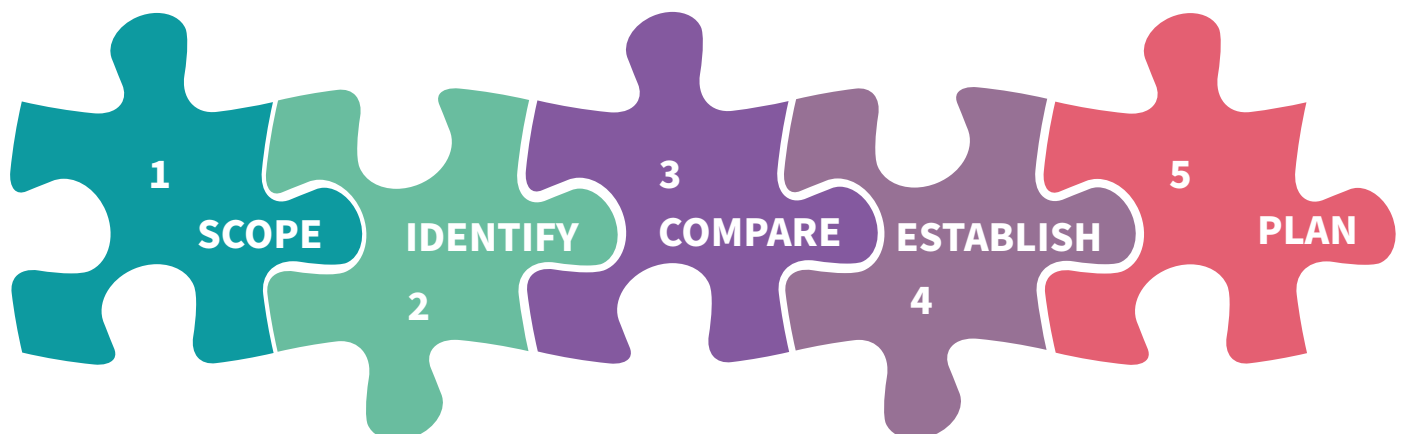
In the early planning stages of this work, it is invaluable to bring together a steering group to help oversee the work of the audit. It is important this group includes a representative from management and/or HR. Where the employing organisation is small and has no dedicated HR staff, it is important that the group includes someone with knowledge of pay systems within the organisation.

Ideally, the steering group should comprise those who can contribute expertise on:

- How current pay systems have been developed, and how any changes arising from the audit can be implemented;
- How the system of pay and grading arrangements are devised.
- Job evaluation;
- Understanding how to get information from payroll; and
- Equality issues and surrounding legislation, guidance and duties.

The group needs to set terms of reference and agree roles within the group, in order that everyone involved in the process is clear about what is expected of them and where responsibilities lie. It is also important that this group is jointly led by representatives of management and the trade union side.

The Five Steps



Step 1: The scope of the audit

Early discussion within the steering group should agree on the overall scope of the audit. If this is the first audit of the organisation it may be useful to agree on a pilot phase, focusing on an area of the company or an organisational activity where there are known concerns.

A staff-wide consultation, where the organisation seeks the views and input of all staff, may also be useful. For example, an anonymous survey could be sent out or a staff meeting held where the audit is explained and views sought.

An equal pay audit should include all relevant employees and workers and consider the relative pay of e.g. women and men. The definition of pay within the Equality Act is very broad which means that all elements of pay must be included in the pay audit, for example salary, hourly or piece rates, any performance-related pay, job and working patterns pay, bonus pay, any other payments or allowances, and all other contractual benefits. Every aspect of how work is rewarded financially and non-financially must be under the scope of the audit. Discriminatory benefits that fall outside the equal pay parts of the Equality Act because they are not contractual may still be unlawful sex discrimination under other sections of the Equality Act.

Early discussion should also include how to obtain this information, and that it is comprehensive, accurate and up to date.

Step 2: Identifying equal work

As outlined earlier, there are three ways of categorising what we mean by equal work:

- **‘Like work’** – work where the job and skills are the same or similar;
- **‘Work rated as equivalent’** – work that has been rated as equivalent, using a job evaluation system;³⁴ and
- **‘Work of equal value’** – Work that is not similar but is of equal value. This could be because the level of skill, training, responsibility or demands of the working conditions are of equal value.

Step 3: Comparing data

Where the audit process establishes that men and women are engaged in equal work, pay data (and allied information as outlined earlier) must be gathered and compared to establish whether pay gaps exist.

Then the average basic pay and total earnings on both an hourly and full time salary basis should be calculated and compared. This should be adjusted, in other words rounded up or down for those who work fewer or more hours per week excluding overtime.

Some large employers will hold backdated pay data and some will have sophisticated software to support any analysis. Smaller employers may not have so much information or analytical tools readily available.



If your employer does not have the data or software to complete these comparisons you could make suggestions as to how they may carry out such a task, for example:

- Asking HR to provide the current salary of all employees at the same grade; or
- Asking HR to provide the current salary of all employees carrying out the same role, e.g. check out operators or forklift drivers

Step 4: Establishing why pay gaps exist

Where it has been established that a pay gap exists, the role of the steering group is to understand why these unfair differences exist. All aspects of the pay system must be examined, i.e. the pay policies and practises that determine pay.

This should include, for example, an examination of how starting pay is calculated and how employees and workers are treated in respect of pay progression. The valuable role of the steering group here is to look at the pay system from the perspective of those in the group on the differing impacts of the pay system on women and men.

A key issue for the group to consider is whether there are legitimate reasons for variations in pay for women and men. These are known as ‘genuine material factors’. Examples of these factors include:

- Skills shortages and market forces: It is possible that an employer is paying more for a particular type of work due to global or national issues affecting production, service delivery or the number of people available to fill vacancies; and
- Geographical differences affecting pay: It is known that across the UK pay can vary for certain types of work. Additionally, employers can struggle to fill vacancies for certain work roles in different parts of the UK.

Of course, employers will need to objectively identify why pay gaps exist. Even if there is a reason for the difference in pay which is, on the face of it, unrelated to sex, statistical evidence may show indirect sex discrimination, in which case the employer will not be able to use that reason to defeat an equal pay claim. Indirect discrimination is where, as a result of the factor explaining the difference in pay, persons of the claimant's sex are put at a particular disadvantage compared with those of the opposite sex doing 'equal work'.

Step 5: Developing an action plan

As the work of the steering group progresses you will have a sense of the volume of work arising around pay gaps – and whether your employer attempts to defend these or not – and the consequent need to plan to close these.

The action plan should make arrangements to provide equal pay for those workers who are entitled to it; this should be done as soon as practicable. Any current pay policies or practices that contribute to unequal pay must be changed.



Look at the Questions to Ask your Employer Section for help with this.

These policies and practices might include those relating to starting salaries, performance management systems, promotion calculations, market supplements, pay protection, and eligibility for bonuses and allowances. An equal pay policy should be negotiated that commits the organisation to providing equal pay for its workers, and also outlines clear accountabilities, regular monitoring and adequate resources for equal pay audits.

Pay systems should also be regularly monitored and audited to ensure that existing policies and practises - and any proposed changes - do not contribute to unequal pay.

5

FROM POLICY TO PRACTICE: BUILDING A WORKPLACE CULTURE WHICH SUPPORTS EQUALITY

5. From Policy to Practice: Building a Workplace Culture which Supports Equality

You and your colleagues have campaigned hard and won essential improvements in workplace policies and procedures when it comes to delivering equal pay for staff. Job done? No.

With key exceptions, most workplace policies are not contractual. An employer failing to act in accordance with a workplace policy is not a breach of contract. It is not in and of itself illegal. Workers must hold them to account.

When discrimination occurs due to a failure to act according to policy, this is still classed as discrimination. However, proof requires meeting stringent legal tests. And we don't want to be in a workplace where threats of legal action are a constant. It's exhausting.

Therefore, you and your colleagues must seek to ensure additional steps are implemented alongside the written improvements to policies and procedure.

The employer should be encouraged to:

- Be transparent – by publicising any additions and changes to policies and giving a positive rationale for the changes;
- Develop mandatory training for all line managers on the word and spirit of the changes to policies and procedures. If the employer delivers routine Equality, Diversity and Inclusion training, any changes to policies and procedures can be covered in this training; and
- Review the impact of the changes in policies and procedures after a reasonable period of time. Compare equality outcomes at the end of the review period with outcomes before the changes were made.

You, your colleagues and other trade union members should:

- Educate your union members and non-unionised workers on the improvements you've secured as a union collective. Some members/workers will have less awareness of workplace policies than others;
- Reach out to new union members, particularly those who are new colleagues or who identify as belonging to an underrepresented group;
- Promote your wins: Use the newly won policy and procedure improvements as a recruitment tool for non-union members;
- Remain attentive to the implementation and application of the improvements you've secured:
 - Engage with your fellow union members through meetings;
 - You can also track member concerns and queries through conversations and surveys. Are you hearing reports of "nothing's changed" or "they didn't follow the new policy when I asked about x"?
 - Has your employer dedicated enough resources to ensure policy improvements can be carried out in a meaningful way?
- Be prepared to return to the bargaining table. Having secured improvements in the first place, the employer implicitly accepts the benefit of those improvements. You have a shared interest in ensuring the improvements are properly implemented. This can be done through changes in decision making, improvements in behaviours and a positive shift in workplace culture so that equal pay is an expectation, not just an aspiration.

6

MAKING AN EQUAL PAY CLAIM

6. Making an Equal Pay Claim

If your employer refuses to engage with you to make meaningful changes to policies and practises in the workplace and you think that there are examples where workers are being paid unequally, then these people should be supported in filing equal pay claims. If someone feels they are not getting equal pay, they might be able to make a claim to an employment tribunal.

There are ways you can find out if you/they are being paid equally. You could start by asking your colleagues and checking job advertisements. If you are a trade union representative you could survey your members.

You will need to identify if – or to what extent – there is a connection between your pay and being a woman (or a man)[i].

The law requires the following:

1. To find the right comparator: They have to be doing the same job as you, employed (or previously employed) by the same employer and they have to be a man (or woman if you are a man looking to make a claim);
2. The comparator is doing equal work; A comparison of your terms and conditions with those of your comparator; and
3. Consideration of whether there is any legal explanation for the discrepancy in pay and whether the difference is due to sex discrimination, i.e. being a woman (or a man).

An employment tribunal will establish if there are sufficient grounds for compensation to be paid. You may have to fill out a questionnaire, which will help clarify the issues.

This is legally quite technical and if you are a member of a trade union you should seek help from your trade union rep. If you are not already a member, you should consider joining a trade union.

Whether or not your union is recognised by your employer for the purposes of bargaining on pay and conditions, there is nothing preventing a union from supporting members in lodging an equal pay claim with an employer and acting as the members' representative.

[i] Current legislation, and by extension a lot of the information we have about the extent and causes of unequal pay in our economy, maintains a binary distinction between 'women' and 'men'. Do try and make sure that you are sensitive to the fact that this language excludes the experiences of people who do not identify as either gender, as well as the specific experiences of people who have transitioned, and support them to achieve better representation both nationally and in your workplace. Request further support from your union around this issue. There is a glossary of useful terms at the end of this document, where you can find out more about the terms and examples we use.

Possible pitfalls: legal points to be aware of

Individuals and trade union reps need to be aware that if you have identified a comparator of the opposite sex who is paid more for work of equal value, but there is also someone of the opposite sex who is paid the same or less than you, the employer can use this to argue against an equal pay claim. There may still be indirect sex discrimination, in which case the fact that there are others of the opposite sex who are not paid more will not defeat a claim.

Employers might argue that they are 'taking proactive steps' to reduce the risk of any equal pay claim as part of their mitigation; some have been successful with this argument.

An employer can also justify unequal pay if the difference is due to a genuine material factor not related to gender. There are a number of reasons why a court has sided with an employer on an equal pay case, including differences in experience, years of service, qualifications, tasks, locations and shifts. It is important that you consider these issues when picking a person to compare pay rates with. Again, look out for any indirect sex discrimination. An employer can only rely on a material factor as a defence if the factor is untainted by any discrimination.

TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 2006) can be a big stumbling block in equal pay cases. Staff transferring in from another employer with higher pay than those already employed by that company can create unequal pay situations. TUPE preserves the terms and conditions of transferring employees and prevents the new employer from putting them on a lower pay rate, even if this would bring them into line with current employees doing the same work.

There is no time limit on the impact of TUPE, and so such pay differences can be maintained and embedded over a long period of time. When tackling unequal pay in your workplace, you will need to consider if TUPE is a factor and how it might impact on the pay of staff. However, as with any form of pay protection, the longer the pay discrepancy exists, the harder it is for the employer to establish that it is the cause of the discrepancy. In any event, as with other factors, if the TUPE results in indirect sex discrimination, the employer would need to justify it. Also, financial considerations aside, there is nothing to prevent an employer raising the pay of its existing employees to parity with the staff transferred in.

Timeline

You can raise an equal pay claim providing you are still in the job, or within 6 months of leaving the job. Your trade union will help check that a claim is made within the timeline.



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7

**CELEBRATE YOUR
SUCCESSSES!**

7. Celebrate Your Successes!



Any win on Equal Pay is a win for everyone. Celebrate your win, no matter how big or small it feels, so that others can see that better is possible. Your success in winning a fairer pay structure in your workplace changes that workplace for the better. If women are paid equally to men for similar work then the value we place on that work changes and that changes society. Winning on equal pay now ensures better pay, conditions and working lives for future generations. Be proud of what you have achieved!

What can you do to celebrate?



Tell your members and other colleagues about it. The employer might want to sell this as their success, but don't forget who prompted/forced the employer to act. Being part of a collective of union members shows potential members that there is strength in numbers, and if they can win the right to equal pay, they can win on other workplace issues too. Use your contacts from the campaigning stage, MPs, Councillors, community groups and the press so that they can share in the success they helped to bring about.



Talk to new employees about joining the union group and share your story of success with them.



Consider contacting your regional/national union and/or media team for wider promotion. Your Union can also use the examples for things such as training events and courses.

Union Stories: GMB

GMB members in Dundee, Birmingham and across the UK in ASDA stores have lodged thousands of equal pay claims with the aim of pay justice and recognition of the value of their work. In March 2021 they hailed a 'massive victory' as the Supreme Court ruled in favour of 40,000 workers. The ruling means shop floor staff at Asda can be compared to workers in the distribution centre for the purposes of their equal pay claim.

Wendy Arundale, who worked for Asda for 32 years, said: "I'm delighted that shop floor workers are one step closer to achieving equal pay. I loved my job, but knowing that male colleagues working in distribution centres were being paid more left a bitter taste in my mouth. It's not much to ask to be paid an equal wage for work of equal value, and I'm glad that the supreme court reached the same conclusion as all the other courts."

Each campaign and each claim lodged is a reminder that we have a long way to go to ensure that women's work is properly valued and rewarded. Building on our successes and experience is key to preventing equal pay issues in the future and ensuring that women will be paid equally for work of 'equal value' from the start.³⁵

Useful Links

Advice and Tools For Employers

HeforShe: https://www.heforshe.org/sites/default/files/2021-05/hfs_proven_solutions_schneider_electric.pdf

https://www.heforshe.org/sites/default/files/2021-05/hfs_proven_solutions_accor.pdf

STUC-small to medium businesses: https://www.thinkbusinessthinkequality.org.uk/#page_2

STUC- Large (250+ employees) businesses: <https://www.closeyourpaygap.org.uk/>

PWC: women in work index <https://www.pwc.co.uk/services/economics/insights/women-in-work-index.html>

ACAS and Equal Pay

<https://www.acas.org.uk/equal-pay>

<https://www.acas.org.uk/job-evaluation-considerations-and-risks-advice-booklet>

Equality and Human Rights Commission and Equal Pay

<https://www.gov.uk/government/collections/gender-pay-gap-reporting>

<https://www.equalityhumanrights.com/en/our-work/equal-pay>

<https://www.equalityhumanrights.com/en/publication-download/equal-pay-statutory-code-practice>

<https://www.equalityhumanrights.com/en/multipage-guide/equal-pay-audit-larger-organisations>

<https://www.equalityhumanrights.com/en/advice-and-guidance/how-achieve-equal-pay>

<https://www.equalityhumanrights.com/en/equality-act/protected-characteristics>

<https://www.equalityhumanrights.com/en/advice-and-guidance/why-equal-pay-matters#:~:text=Providing%20equal%20pay%20for%20all,relations%20and%20low%20staff%20morale>

UK Government Website- Gender Pay Gap.

<https://gender-pay-gap.service.gov.uk/>

International

Epic International Pay Coalition:

<https://www.equalpayinternationalcoalition.org/the-coalition/>

EU Commission proposes measures to ensure equal pay for equal work

https://ec.europa.eu/commission/presscorner/detail/en/ip_21_881

Woman Alliance: Pay in Iceland

<https://www.womenalliance.org/equal-pay-in-iceland-setting-a-new-standard/>

Research

ONS data: Gender Pay Gap:

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2021>

Institute for Public Policy Research: Gender Pay Gap. <https://www.ippr.org/files/2018-05/state-of-pay-may18.pdf>

Institute for Public Policy Research: The Fair Pay Report- How transparency can help tackle inequalities - https://www.ippr.org/files/2018-11/1542206529_the-fair-pay-report.pdf

Labour Research Department booklets. Either available in print from your union or online here - <http://www.lrd.org.uk/> (unions will have an account you can use to access these, so contact them for details)

Behavioural Insights Team: How to increase transparency of progression, pay and reward <https://www.bi.team/publications/how-to-increase-transparency-of-progression-pay-and-reward/>

The Trade Union Congress (TUC) and Scottish Trade Union Congress (STUC)

The TUC and equal pay <https://www.tuc.org.uk/workplace-guidance/pay-holiday-and-working-hours/equal-pay>

TUC Equality Audit: https://www.tuc.org.uk/sites/default/files/2021-08/TUC_Equality_Audit_2021_AW_Accessible_Bookmarks.pdf

The STUC and Close the Gap <https://www.closesthegap.org.uk/content/union-evaluation/>

Close the Gap: Conducting an Equal Pay Review: <https://www.closesthegap.org.uk/content/resources/Equal-Pay-Review-briefing.pdf>

Women and Men in Trade Unions- STUC blog <https://scottishtuc.blog/2018/03/08/step-aside-brother/>

Union Specific:

BFAWU:

[https://www.bfawu.org/inclusivity/women/Chartered Society of Physiotherapists \(CSP\): Equality and Diversity Toolkit](https://www.bfawu.org/inclusivity/women/Chartered_Society_of_Physiotherapists_(CSP):_Equality_and_Diversity_Toolkit)
https://www.csp.org.uk/system/files/publication_files/E%26D-toolkit-2020-mobile.pdf

Equity

<https://www.equity.org.uk/at-work/equity-for-women-toolkit/>

FDA

<https://www.fda.org.uk/home/Supportingyou/Equality-and-diversity.aspx>

NAHT

<https://www.naht.org.uk/Our-Priorities/Our-policy-areas/Equality-diversity-and-inclusion>

NASUWT

<https://www.nasuwat.org.uk/advice/equalities.html>

Pharmacists Defence Association (PDA)- Women's Network:

NAWP | The Pharmacists' Defence Association (the-pda.org)

UCU equal and gender pay resources:

<https://www.ucu.org.uk/genderpay>

UNISON: Conducting an equal pay audit:

https://www.unison.org.uk/content/uploads/2013/06/Briefings-and-CircularsEqual-Pay-Audit-Q_A3.pdf

Unite the Union

<https://www.unitetheunion.org/media/3241/jn5578-hb-a4-equalities-pay-up-brochure-20.pdf>

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- ³ Gov.uk, Gender pay gap service: <https://gender-pay-gap.service.gov.uk>
- ⁴ TUC, Union finder: <https://www.tuc.org.uk/join-a-union>
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¹³ Employers: recognise a trade union: <https://www.gov.uk/trade-union-recognition-employers/statutory-recognition>

¹⁴ Acas Code of Practice on disclosure of information to trade unions for collective bargaining purposes <https://www.acas.org.uk/acas-code-of-practice-on-disclosure-of-information-to-trade-unions-for-collective-bargaining>

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Glossary

Annualised Contracts: the employer pays the employee a salary for the whole year, in equal instalments every month.

Collective Bargaining: discussions concerning the terms and conditions of employment that take place collectively and are coordinated with the support of Trade Union representatives.

Comparable Worth: jobs that are equal in their value to the organisation should be equally compensated, regardless of whether the work content of those jobs is similar.

Employment Tribunal: the court that hears claims for breaches of employment law.

Equal Pay: both men and women who are employed by the same employer and carry out the same kind of work are legally entitled to be paid the same. Any difference in pay must be justified.

Equal Pay Act 1970: A key piece of legislation passed by Parliament that made it illegal to treat men and women less favourably than each other in terms of pay and conditions of employment.

Equal Pay Audit: An equal pay audit is a process that looks at pay arrangements within an organisation to find, and address, sex discrimination.

Equal Pay Claim: a claim lodged at Employment Tribunal where a person believes they are not being paid the same as a comparator.

Equality Impact Assessment: An assessment carried out by an employer to ensure that their policies and procedures are fair and do not have a disproportionate impact on protected groups.

Ethnicity Pay Gap: ethnicity pay gap shows the difference in the average/median hourly pay between all Black, Asian and minority ethnic staff in a workforce and all White staff

Freedom of Information Request: a request to a public sector organisation for information that they hold but is not already in the public domain.

Gender Pay Gap: the difference between average gross hourly earnings of men and women as a percentage of the average gross hourly earnings of male paid employees (excluding overtime).

Gender/Ethnicity Pay Gap: ethnicity pay gap shows the difference in the average pay between Black, Asian and minority ethnic staff by gender in a workforce and White staff by gender.

Harassment: when an individual is subject to unwanted behaviour which is usually related to a protected characteristic.

Intersectional / Intersectionality: the way in which different social categorisations such as race and gender interact to produce and reproduce discrimination and or disadvantage. For example, an intersectional approach may reveal that women from different ethnic groups may earn less than white women, black men may earn less than white men.

Job Evaluation System: a system that an organisation uses to evaluate the characteristics of jobs to establish comparative value.

Maternity (Motherhood) Penalty: the disadvantage (usually in pay and conditions) women who have children face in the workplace compared to women without children.

Merit Pay: the additional pay an organisation pays to its employees to reward high performance workers, usually on an individual basis.

Occupational Segregation: the clustering of men and women into different jobs or types of work (horizontal segregation) and into different levels of work (vertical segregation).

Pay and Grading System: a system used by an organisation to determine the pay and grading of the workforce.

Performance Related Pay: an additional payment for workers based on performance, which can be based on individual or group performance.

Public Sector Equality Duty: a legal duty, part of the Equality Act 2010 that requires public bodies to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010; to advance equality of opportunity between persons who share a relevant protected characteristic (as defined by The Equality Act 2010) and persons who do not share it; and foster good relations between persons who share and do not share a relevant protected characteristic.

Recognition (Trade Union): This is where an employer has agreed to 'recognise' a trade union for the purposes of collective bargaining. There will usually be a 'recognition agreement' where aims and terms of the agreement are set out.

Statutory: Controlled or required by law.

Structural Inequality: the inequality that results from the systems of privilege that give status and power to certain groups over other groups.

The Equality Act 2010: the main legal instrument in the UK that protects individuals from discrimination, harassment, victimisation in employment and society.

Unconscious bias: biases that an individual or a group of individuals hold against others that are outside of their own conscious awareness.

Unequal Pay: this is when men and women receive different levels of pay when they carry out work that is of equal value.

Unlawful Discrimination: the illegal treatment of an individual based on a protected characteristic.

Victimisation: when an employer treats an employee badly because they have taken a case or are supporting a legal case. Victimisation can occur when an employer thinks an employee has taken such action even if they have not done so.

This work was funded by

THE
JOSEPH
ROWNTREE
CHARITABLE
TRUST

Joseph Rowntree

**Published by
The Equality Trust
Resource for London
356 Holloway Road
London
N7 6PA
www.equalitytrust.org.uk**

March 2022

**Design by The Equality Trust
Cover photos by Unsplash**