Guidance, toolkit and templates

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INTRODUCTION

- Equal pay is a legal obligation under the Equality Act 2010. There should never be a difference in the pay of a man and woman doing work of equal value that can only be explained in terms of difference in their sex.

- In this sense pay refers to any and every part of an employee’s pay package, terms of employment and benefits such as bonuses and pension contributions.

- Employers must also ensure discussions about equal pay are protected. No one should be victimised following a request for information about pay for the purpose of making a claim of discrimination with regards to pay (based on any protected characteristic).

- Law firms should address equal pay, not only because it is a legal duty, but also to reduce the risk of an expensive and embarrassing pay claim being made against you, and to show staff, clients, and potential staff and clients, you are committed to equality.

LOW RISK PAY SYSTEMS

- It is advisable to adopt a low risk pay system – this will reduce the risk of an equal pay claim being made against you as issues of pay can be addressed before they become a problem.

- Transparency is central to a low risk pay system – pay systems that are not transparent are at particular risk of being found to be discriminatory. Make sure your pay system is transparent by explaining it to your employees in a way they can understand, and keeping it simple. Try to reduce the number of ways in which people are paid different amounts (e.g. more than one pay scale within the firm, managerial discretion over pay).
EQUALITY IMPACT ASSESSMENTS (EIA)

- An EIA helps you to consider the potential impact (positive and negative) a new policy may have on different groups of employees at the firm.
- It is advisable to carry out an EIA on any new proposals, so any issues can be addressed before the policy is rolled out. An EIA is a sensible preventative measure, reducing the risk of discriminatory pay systems being implemented.
- There are three elements to an EIA: initial assessment, full assessment and implementation.

EQUAL PAY AUDITS

- An equal pay audit is a process of comparing the pay of employees carrying out equal work in order to highlight any differences, considering the reason(s) for those differences, and making plans to rectify any unlawful differences in pay.
- When undertaking an equal pay audit you must be ready to deal with any problems that you find. Employers can shy away from conducting audits, concerned they will be costly. But remember, the cost of not conducting an audit, and exposing yourself to the risk of an equal pay claim being made against you, will likely be greater than taking the preventative measure of carrying out an audit.
- The steps of an equal pay audit are:
  
  Step 1: Decide the scope of the audit and gather the information required
  
  Step 2: Identify employees carrying out equal work to include in the pay audit
  
  Step 3: Collect, prepare and analyse pay data
  
  Step 4: Identify reasons for pay gaps (look at your culture and informal practices too), and consider if those reasons are discriminatory
  
  Step 5: Develop an equal pay action plan to address any issues highlighted in step 4.

Any discriminatory pay differences must be addressed immediately. In your action plan set out how and when you will address issues of pay – it must be clear you are addressing the problems as soon as possible. Remember while pay remains discriminatory you continue to be at risk of an equal pay claim being made against you.
PART 1 INTRODUCTION

1.1 Who is this toolkit for?

This toolkit is designed for partners, human resources professionals and anyone involved with the management of a law firm.

1.2 What is equal pay?

Equal pay refers to the right of all employees to receive the same level of pay as someone doing work of equal value. In this sense pay refers to any and every part of an employee’s pay package, terms of employment and benefits such as bonuses and pension contributions.

Equal pay is a legal obligation. Most commonly this relates to gender, but the legislation also relates to other groups protected under the Equality Act 2010 (e.g. employees from different ethnic groups or disabled staff). There should never be a difference between the pay of employees doing work of equal value that can be explained in terms of a protected characteristic. Employers must also ensure discussions about equal pay are protected. No one should be victimised following a request for information about pay for the purpose of making a claim of discrimination regarding pay based on any protected characteristic.

Instances of unequal pay are allowable if the employer can show the difference in pay is due to a material factor unrelated to the sex of the employees. A material factor has to be significant, relevant and the genuine cause of the inequality. Possible material factors might be a difference in the qualifications held by the employees, geographical differences (such as London weighting) and responses to a skills shortage. It is important to note the material factor cannot itself be discriminatory or unjustifiable. For example, market forces will not be a sufficient defence if it is deemed the market itself unfairly discriminates against men or women in certain positions. Firms cannot pay women less than men for equal work just because the market does so.

For more information on the legal framework surrounding equal pay see the Equal Pay Practice Note that accompanies this toolkit.
1.3 Why is it important?

This toolkit offers practical advice to help you address equal pay in your firm. Responding to inequalities in pay in your firm is important because it can help you:

- Reduce the risk of expensive and potentially embarrassing equal pay claims. Firms that have had successful equal pay claims made against them are required to pay compensation and/or back-dated pay
- Show you are compliant with the law
- Attract and retain the best talent by showing you are a fair and equitable employer
- Show clients and prospective clients you are committed to equality and you can walk the walk as well as talk the talk
- Improve relationships between staff across your firm.

1.4 What does this toolkit cover?

This toolkit refers particularly to gender pay inequalities, but the principles within it can be similarly applied to other groups protected under the Equality Act 2010. The accompanying Equal Pay Practice Note focuses on what you should do to respond to your legal duties, this toolkit provides advice on how to do it.

The principle tool for ensuring equal pay is an equal pay audit so most of this toolkit is dedicated to that subject. However, there are also a number of other preventative measures you can take to avoid pay inequality creeping into your pay systems.

After using this toolkit you will have a better understanding of how to:

- Identify and reduce areas of risk in your pay system
- Carry out an equality impact assessment for any changes to pay systems
- Prevent victimisation of those who wish to discuss pay discrimination
- Carry out an equal pay audit.

The equal pay for equal work provisions of the Equality Act 2010 apply to law firms of all sizes. However, the way law firms choose to implement activities to avoid sex discrimination in pay can vary in relation to the size of the employer. For example, smaller firms may be less likely to have a dedicated human resources team and may have fewer formal, written employment policies than some larger firms. On the other hand, smaller firms may also have simpler pay systems than larger firms. All of this can affect the processes firms use to review gender pay gaps. This toolkit is for firms of all sizes, but where relevant it also identifies particular issues smaller firms may want to consider.
1.5 How to use this toolkit

The Equality and Human Rights Commission (EHRC) has developed a Statutory Code of Practice on equal pay and accompanying practice checklists. A number of other very useful guidance documents are available.¹ This toolkit draws heavily on and aims to complement the existing guidance. It should be read alongside the EHRC Statutory Code of Practice.

This toolkit can be used in its entirety but some firms (particularly smaller ones) may not be able to use all the suggested measures at the same time. You can use individual sections to consider issues relevant to your firm (e.g. low risk pay systems, equal pay audits).

¹ For example, see the Law Society of Scotland (2015) Ensuring fairness closing the pay gap
www.lawscot.org.uk/media/427347/Ensuring-fairness-closing-the-pay-gap.pdf
PART 2  LOW RISK PAY SYSTEMS

IN SUMMARY

• It is an employer’s responsibility to ensure pay systems are free of gender bias.

• It is advisable to adopt a low risk pay system – this will reduce the risk of an equal pay claim being made against you as issues of pay can be addressed before they become a problem.

• It will also help you to meet your legal obligations under the Equality Act (relating to pay secrecy clauses, see 2.1 below).

• Transparency is central to a low risk pay system – pay systems that are not transparent are at particular risk of being found to be discriminatory. Make sure your pay system is transparent by:

  explaining it to your employees in a way they can understand, and

  keeping it simple – try to reduce the number of ways in which people are paid different amounts e.g. more than one pay scale within the firm, managerial discretion over pay, etc.

2.1 Why?

It is an employer’s responsibility to make sure its pay system is free of gender bias, and not to wait until an equal pay claim is made to correct occurrences of pay discrimination. It is advisable to adopt a pay system which will reduce the risk of a claim being made. Low risk pay systems are transparent, systematic, inclusive, well-managed, sensitive to job-demands and are monitored. This helps your pay system to keep up-to-date with changes in the nature of work in your firm. This is in everybody’s interests. It ensures employees are paid fairly for the work they are doing and it helps your firm ensure pay and reward systems are responsive to changing corporate objectives.

Adopting transparent pay systems also helps you to meet some of your legal obligations as an employer. For example, the Equality Act 2010 makes pay secrecy clauses in employment contracts unenforceable and protects employees from victimisation if they seek to ascertain what other employees earn (see Equal Pay Practice Note for more details).

2.2 When?

The best approach is to take preventative measures to avoid any potential equal pay claim. Adopting a low risk pay system will mean issues of pay can be addressed before they become a problem.
2.3 How?

2.3.1 Identifying low risk pay systems

Further details about low risk pay systems are available in the accompanying Equal Pay Practice Note. To summarise, a low risk pay system is:

- **Transparent**: Anyone – employer, employee, trade union – can understand the pay and benefit system. People can identify how each element of their pay contributes to their total earnings in a pay period.

- **Systematic**: The more systematic and simple your pay and bonus system is the easier it will be for people to understand it, and the lower the risk will be that gender imbalances will creep in. It helps if you have a clear pay structure and publish it. Small firms may find this easier as they are more likely to have less complex pay systems.

- **Inclusive**: A single reward structure for all employees reduces the risk of challenge.

- **Well-managed**: Keeping pay structures up to date and maintaining a systematic document trail whenever decisions are made about pay will also reduce the risk of challenge. This may be a particular issue for small firms without a separate human resources department and who may have fewer formal, written policies than larger firms.

- **Sensitive to job demands**: Equal pay claims are based on the performance of equal work. It is important firms consider not just job roles, but other factors such as job demands when deciding pay structures. For medium and large firms this may involve implementing a non-discriminatory, analytic job evaluation.

- **Monitored**: In order to manage risk it’s important to monitor pay outcomes across all equality groups. This allows action to be taken before something becomes a problem.

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**TOP TIPS**

When thinking about transparency, it’s important to note the Equality act 2010 makes pay secrecy clauses in employment contracts unenforceable in the context of equal pay discussions:

- A pay secrecy clause is a clause in an employee’s contract which prevents them from telling other employees how much they earn.

- This also covers cases when contracts don’t formally prohibit an employee from disclosing their pay, but the organisation has a culture which actively prevents these conversations.

- The act also protects employees from victimisation if they seek to ascertain what other employees earn.
2.4 Managing risk in your pay systems

Some working practices may increase the risk of equal pay claims being made against your firm. The table below identifies some of these and offers practical responses to reduce the risk. See the EHRC’s Equal Pay in Practice Checklist 19 for more detailed information.

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<th>WHY IT’S RISKY</th>
<th>WHAT YOU CAN DO TO REDUCE THE RISK</th>
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<tbody>
<tr>
<td><strong>Lack of transparency or secrecy over pay decisions</strong></td>
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| If your pay system is very complex employees will find it harder to understand how pay decisions are made. This may result in a claim being made against you. Complex and confusing pay systems can also make it harder to identify a clear defence for an equal pay claim. | • Ensure staff understand the pay system and each part of their own pay package  
• Consider publishing information about your pay system internally (e.g. an employee handbook)  
• Contractual secrecy clauses are unenforceable in relation to discussions about equal pay under the Equality Act 2010. You could review whether secrecy clauses are required at all in employee contracts |
| **Discretionary pay systems** |  |
| Many law firms use some form of performance related pay, but the level of discretion applied in making decisions about performance can vary across firms. Discretionary systems can be an important tool for rewarding employees, but they are also particularly prone to bias and at risk of challenge by employees who feel unfairly treated. |  
• You can reduce the risk of discrimination occurring by ensuring performance is linked to quantifiable and easily explained measures of performance (and measures don’t favour employees from particular genders)  
• Consider having a group of managers reach consensus on performance pay, rather than relying solely on individuals  
• Transparency is particularly important in these circumstances; it should be clear to staff how decisions have been made |
### WHY IT'S RISKY

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#### Non-payment of discretionary or incentive payments on maternity leave

Women on maternity leave are legally entitled to pay or bonuses acquired during the time before or after maternity leave, even if payment occurs during the maternity leave.

- A clear policy on this will help avoid potential challenges. The policy should ensure staff and their managers understand their entitlements
- Monitor implementation of the policy regularly to ensure rules are being applied consistently throughout the firm

#### Different pay terms (e.g. relating to bonuses or overtime) for different groups of employees

Some law firms will have pay systems built up over many years and these may become inconsistent. For example, some employees’ contracts may include particular bonus arrangements that others do not; some employees may be rewarded differently for activities deemed to be of higher value (e.g. working unsocial hours). Inconsistencies in pay and reward of this kind can leave you open to an equal pay claim.

- You can start by reviewing all non-basic pay terms to see whether they apply differently to different groups of people, whether there is a real business need for such differences, and how they can be phased out if no justifiable reason for them exists. Sometimes pay terms introduced many years ago may no longer be relevant or appropriate to your current corporate objectives
- A pay system will be much simpler if non-basic pay terms are the same across the whole organisation. Implementing this may take time and investment but would be worthwhile in increasing transparency and reducing the risk of equal pay claims in the future

#### More than one pay system within one firm

A pay system with numerous grading structures can become confusing and create opportunities for inequality to creep in unnoticed. This is often the case where different pay grades are not agreed by a common job evaluation scheme.

- Consider bringing all jobs of equal value (on the basis of one job evaluation scheme) under one pay system (using common pay grades)
- Introduce a process for comparing the most demanding jobs on a lower pay grade with criteria on the higher pay grade, so there is a mechanism for transferring jobs from the lower to the higher structure if needed
**WHY IT'S RISKY**

**Overlapping and long pay scales (more than a six point scale, or 10 per cent difference between the lowest and the highest points on the scale)**

The risk is this pay scale will be long enough to introduce significant gender pay gaps if women are largely clustered at one end of the scale, and men at the other. A woman may be able to compare herself with a higher paid man a few grades lower than her. This can leave you open to potential equal pay claims.

- Consider reducing the size of your pay scale if there is no longer a valid business reason for it
- Monitor your pay scale continually to check the distribution of employees of different groups along it
- Review policies on starting salaries and pay progression (both performance-based and experience-based). Ensure systems are applied fairly and consistently, and progression is judged as objectively as possible

**Managerial discretion over starting salaries**

The greater degree of managerial discretion, the higher the risk that differences will occur in the starting salaries of people doing work of equal value.

- If you do not have one already, a starting salaries policy can be a useful way to set out how decisions on starting salary will be made. It’s important to ensure when people are new to a post they start at the bottom of the relevant pay scale unless they meet particular criteria for a higher point on the scale
- You may need to take steps to ensure the process of negotiating salaries is fair. For example, unconscious bias training for recruiting staff and support to help managers respond to differences in the way employees might negotiate salary

**Market-based pay systems**

Although market forces (e.g. skills shortages, competitive pressure in the sector, roles being grouped into job families each with differing pay scales, geographical differences etc) can be a material defence for a difference in pay between two people, it is a limited defence. For example, market forces will not be a sufficient defence if it is deemed the market itself unfairly discriminates against men or women in certain positions. Firms cannot pay women less than men for equal work just because the market does so.

- To reduce the risk in this area conduct a review of all market-based pay to consider if the payments are justified, and to examine if these payments are made fairly across all groups (e.g. does everyone who fits the circumstances receive such a payment?)
- It is also advisable to underpin a market-based pay system with a job evaluation scheme identifying jobs of equal value, then set pay by reference to the job evaluation as well as market forces
## WHY IT’S RISKY

**Job evaluation systems that are out of date**

Job evaluations can help provide a defence in an equal pay claim as the firm will be able to demonstrate it has already considered which jobs are of equal value. An out of date job evaluation scheme is less useful as a defence.

## WHAT YOU CAN DO TO REDUCE THE RISK

- Review job evaluations to ensure they are kept up to date with any changes. Make sure you have accurate records for all jobs covered by the evaluation.
- It is useful to provide periodic training on job evaluation to ensure skills and knowledge are fresh and reflect best practice, and the necessary job evaluation skills/understanding are not lost as staff move on.
PART 3  EQUALITY IMPACT ASSESSMENTS (EIA)

IN SUMMARY

• An EIA helps you to consider the potential impact (positive and negative) a new policy may have on different groups of employees at the firm.

• It is advisable to carry out an EIA on any new proposals, so any issues can be addressed before the policy is rolled out. An EIA is a sensible preventative measure, reducing the risk of discriminatory pay systems being implemented.

There are three elements to an EIA

1. Initial assessment
   • Identify all the people who may be affected by the new policy
   • Gather information on all those employees and compare those carrying out equal work to consider if there is a different, and disproportionate, impact on some employees

2. Full assessment
   • Can adverse effects be justified?
   • If they can't, create an action plan for adjusting the policy or mitigating the impacts

3. Implementation
   • Implement the action plan
3.1 Why?

An EIA is a decision-making tool that can help you identify potential risks and do something about them. EIAs can help manage the risk of pay discrimination and reduce the risk of an equal pay claim being made against you.

Decisions taken about changes to pay structures can affect different groups of people differently. An EIA helps you to consider the impact of these decisions on employees. It makes good business sense to carry out an EIA before implementing a new policy, so that any changes needed to ensure equality for employees can be made before roll-out.

As with the low risk pay systems approach, carrying out EIAs is a sensible preventative measure.

3.2 When?

Firms should consider carrying out an EIA whenever changes are made to the organisation's pay structure. The assessment should explore whether individuals with particular protected characteristics are adversely affected by the change and, if so, whether this impact is disproportionate. Any potentially discriminatory policy changes should then be rectified.

3.3 How?

There are three elements to an EIA: the initial impact assessment, the full impact assessment and then implementation of any action required. An initial impact assessment is an early screening tool to understand whether there is potential for a policy to impact on employees with different protected characteristics. If there is a chance this will happen then a full impact assessment may be required.

For more detailed guidance on carrying out an EIA see the Law Society’s EIA: Guidance, toolkit and templates.

The diagram overleaf offers a simple overview of the process.
Identify aims and objectives of the activity or policy being assessed. 

Identify who is likely to be affected by it. 

Information needs to be gathered to consider whether the policy will affect different groups in different ways.

If it's found that the policy will have differing impacts on groups then consider whether that impact will be positive or negative. 

Is a full EIA needed? (Yes, if a negative impact has been identified). 

Decide at what point in the development of the policy the full impact assessment will take place.

Decide if additional information is required and, if so, what? 

Decide how it will be collected and who will collect the additional information needed. 

Consider who the interested individuals are or groups best to consult and assist in the EIA.

Can the adverse effects be justified? (May be justifiable if the policy is of high importance or there are no other ways of achieving the aims).

If the effect(s) can't be justified, create an action plan with proposals to mitigate the adverse impact(s).

Implement the agreed action plan – build this into the development of the policy.
Broadly, there are four possible outcomes from an EIA:

- **No major change**: if the EIA doesn't suggest the potential for discrimination or adverse impact then no major changes need to be made.

- **Adjust the policy**: if the EIA highlights some problems, minor adjustments should be made to the policy so it better promotes equality.

- **Continue the policy**: if the EIA shows the potential for discrimination or adverse impact but you wish to continue with it (for example, because the likelihood of a policy having an adverse impact is so low that any action taken to mitigate that impact would be disproportionate), you should set out clearly the reasoning for continuing with the policy.

- **Stop and remove the policy**: if the EIA shows the policy constitutes unlawful discrimination the policy must be stopped and removed.

If your EIA identifies a negative impact you must create an action plan outlining how you will address the issues raised, or detailing the reasons for no action being taken. You may find it helpful to ask the following questions:

- Will the action reduce or remove any adverse impact?
- Will the action actively promote equality?
- How will certain groups benefit from this action?
- Would any other group be more disadvantaged?
- What are the costs of implementing this action?
- How will the actions be implemented?
- Who will be responsible for implementing the action plan?
- How can outcomes be measured, to determine whether they have worked?
FOR EXAMPLE: EIA

Johnson and John is a fictional law firm of 800 people, with offices in London (HQ), Birmingham and Leeds. In the annual staff appraisal process a number of employees argued the contractual bonus scheme should pay a premium rate to employees who work night shifts (after 8pm). Partners discussed the proposals and are considering applying this to future calculation of bonuses as they want to encourage staff to work irregular hours to meet demand for their international clients.

To assess the potential impact of this the firm considered who may be affected (principally fee-earners in all three sites). The firm also identified the policy may have a disproportionate impact on some employees (particularly those with caring responsibilities, often women, who are less able to work night shifts).

Given the potential disproportionate impact on female employees the firm considered a full EIA was required. This included a consultation with a selection of male and female employees across all three sites. Half of female employees felt they would be disadvantaged. However, a handful of female employees described how the flexibility in working hours might actually benefit them in terms of earning potential and responding to caring responsibilities.

The information from the full EIA was reviewed and the firm decided changes to the contractual bonus scheme would be implemented. The firm felt this would not be unlawful, despite disadvantaging some female employees. This was because paying a premium for night shift working was seen as a proportionate means of achieving a legitimate aim (to reward employees who wanted to contribute to international business aspirations of the firm).
PART 4  EQUAL PAY AUDITS

IN SUMMARY

• An equal pay audit is a process of comparing the pay of employees carrying out equal work in order to highlight any differences, consider the reason(s) for those differences and make plans to rectify any unlawful differences in pay.

• When undertaking an equal pay audit you must be ready to deal with any problems that you find. Employers can shy away from conducting audits, concerned they will be costly. But remember, the cost of not conducting an audit, and exposing yourself to the risk of an equal pay claim being made against you, will be greater than taking the preventative measure of carrying out an audit.

• The steps of an equal pay audit are as follows:
  
  **Step 1:** Decide the scope of the audit and gather the information required
  
  **Step 2:** Identify employees carrying out equal work to include in the pay audit
  
  **Step 3:** Collect, prepare and analyse pay data
  
  **Step 4:** Identify reasons for pay gaps (look at your culture and informal practices too), and consider if those reasons are discriminatory
  
  **Step 5:** Develop an equal pay action plan to address any issues highlighted in step 4.

Any discriminatory pay differences must be addressed immediately. In your action plan set out how and when you will address issues of pay – it must be clear you are addressing the problems as soon as possible. Remember while pay remains discriminatory you continue to be at risk of an equal pay claim being made against you.
An equal pay audit is a process of comparing the work of employees with particular characteristics (e.g. men and women) performing equal work, highlighting any pay gaps, assessing the reasons for these differences in pay and planning to close any unlawful pay gaps.

In 2011, the government introduced a voluntary reporting scheme, Think, Act, Report, to encourage companies to report gender pay information. Following a relatively low uptake, the government has decided to introduce regulations which will bring section 78 of the Equality Act into force, requiring companies with 250 or more employees to carry out an equal pay review and publish information on their gender pay gap. These plans are outlined in the Small Business, Enterprise and Employment Act 2015. The details of the regulations are currently pending and will be subject to consultation with businesses. As such, this toolkit may need to be reviewed in 2016 following any announcements by the government on the implementation of section 78. For more information on the legal framework surrounding equal pay see the Equal Pay Practice Note that accompanies this toolkit.

4.1 Why?

Like any other organisational strategy your firm might implement – such as plans to secure clients in new markets – activities to baseline and measure progress are important to help you understand whether your strategy is working. Equal pay reviews are no different. They help you understand the current situation on equal pay and identify areas where you may need to focus efforts to address inequalities or lack of progress.

Some law firms have expressed concerns about embarking on equal pay reviews. Potential costs and reputation loss are both common concerns. And yes, equal pay audits can be time consuming and complex. If you undertake one you must be ready to deal with the consequences. Yet the risks of not doing an equal pay audit can be much higher and include expensive equal pay claims, non-compliance with the law and poor reputation with employees, potential employees and clients. An equal pay audit may be the most effective method of ensuring a pay system is free from unlawful bias.

4.2 When?

You may be undertaking an equal pay audit for a variety of reasons. You may be doing it voluntarily to understand whether there are potential disparities in pay, or as a mandatory requirement in response to an unsuccessful employment tribunal case (see accompanying Equal Pay Practice Note). Whatever the reason, the principles of implementation are similar.

The amount of time taken to undertake each step of the audit will vary from firm to firm and will depend on the number of employees, complexity of pay structures and the amount of resources available to conduct the audit. If you have been asked to undertake a mandatory audit the tribunal must allow at least three months for the employer to conduct one. Three months is a useful, rough benchmark of the timescale to undertake an audit. This should allow yourself sufficient time to gather and clean any data and discuss the implications of the findings of your audit.
4.3 How?

This toolkit draws on the model for equal pay audits recommended by the EHRC in its Equal Pay Code of Practice\(^2\) and should be read alongside it.

The equal pay audit model outlined by the EHRC has five key steps:

- Decide the scope of the audit and information required
- Identify where staff are doing equal work
- Collect and compare pay data to detect significant equal pay gaps
- Establish the cause of any significant pay gaps and decide whether discrimination is a factor
- Develop an equal pay action plan and continually monitor progress.

Each of these steps is discussed in turn below.

4.3.1 Step 1: Scope of the audit and information required

(a) Scope

This part of the guidance is written for firms conducting their first equal pay audit, but can also be used by firms seeking to improve a repeat of the process.

A full equal pay audit involving all employees is the best way to approach this task. Yet, for practical reasons – such as available resources or data, for instance – some firms may choose to focus on a particular part of the organisation first (such as a practice area) and then conduct the full audit in stages over time.

It’s a good idea to start in parts of the firm where you think there might be a risk of unequal pay; this might be particular client sectors or teams with a much higher proportion of men or women. You need to be aware there will be important limits to a partial audit of this type and that the results shouldn’t be used to make overall conclusions about the firm as a whole. A full equal pay audit should include consideration of all roles including salaried partners, directors, senior associates, associates, assistants, solicitors, paralegals, legal executives and trainees, and should also include support staff such as administrative and secretarial support, marketing and communications, finance, IT and human resources.

While gender is often considered to be the most natural starting point for auditing the pay gap between fee-earners, it’s useful to remember other protected characteristics are also covered under equal pay for equal work legislation. For example, age or disability may be important factors for support staff due to the potential risk of unequal development opportunities in some support roles in the firm. Also, there is evidence of important gaps in pay between solicitors from different ethnic groups. You needn’t limit the scope of your pay audit to a gender analysis alone. Over time, and as you become more confident and your staff data improves, there is scope to undertake a fuller equality analysis of pay considering a range of aspects of people’s identity.

(b) **Information required**

The scope of the audit will be informed by the data you have and vice versa. For an audit to examine the potential gender pay gap you will need information about:

i  Background information on employees such as gender, work role, hours worked and working patterns, amount of time at the firm, role related qualifications and any relevant performance ratings.

ii  Details about pay such as basic pay/billable hours, bonuses (discretionary and non-discretionary), annual leave entitlements, performance related benefits, pension contributions, severance/redundancy pay.

It is important to remember that pay is a wide term that includes benefits and pensions and you will need to decide what type of reward you wish to compare. Legal practices may vary in their pay systems (e.g. lockstep or more merit/performance based models). Yet, most legal practices use relatively straightforward pay structures where remuneration includes some variation of an annual salary plus a bonus. For the purpose of a pay audit it is important particular aspects of pay are recorded and analysed separately – for example, in order to understand potential differentials in billable hours and bonus activity.

(c) **Deciding who will do the audit**

You may decide to perform an audit internally, or to enlist external help. If performing it internally, there are benefits in including a range of people to help improve objectivity of the analysis. Useful members of the audit team could include:

- An HR team member who can operate staff databases, with knowledge of relevant pay and grading arrangements and how these have changed over time
- Someone with expertise on the topic of equality and diversity and with background information about patterns of gender inequality in the legal sector
- Someone from finance who can use your payroll system to generate the information you need.

Some smaller firms may not have this range of staff and may in any case outsource some functions, such as payroll. In such cases it is worth discussing your plans with those companies and possibly hiring support for specific aspects of the review (e.g. HR or equality and diversity support). One advantage smaller firms have is with fewer employees to consider, the analysis can be simpler and the necessity for, and cost of, external support reduced.
Before you start the audit, here are a few tips:

- Think about how you communicate your intentions to employees. For example, explain the review may result in changes to pay.

- It’s important to have clear backing from senior leadership in the firm so employees know the audit has teeth. Some senior partners may require further information before offering their support and sponsorship, in which case it can be useful to share headline data on equal pay before commencing a detailed audit.

- It’s important to be clear and transparent about the methodology you’re using to arrive at decisions following the audit. This can be achieved without sharing personal information about particular individuals’ pay.

4.3.2 Step 2: Equal work

Your equal pay audit will need to compare the pay of employees doing equal work. Equal work is defined in different ways (described in the table below) and it’s important you consider all of these definitions when identifying employees to compare in the audit.

<table>
<thead>
<tr>
<th>DEFINITIONS OF EQUAL WORK</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Like work</strong></td>
</tr>
<tr>
<td><strong>Work rated as equivalent</strong></td>
</tr>
</tbody>
</table>
DEFINITIONS OF EQUAL WORK

<table>
<thead>
<tr>
<th>Work of equal value</th>
<th>Work which is equal in terms of the demands made of employees.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>These demands should reflect factors such as effort, skill and decision-making, level of responsibility, knowledge and working conditions. Sometimes different types of role can be judged to be of equal value in terms of demands made of employees (e.g. comparing the work of a paralegal fee-earner to a secretary). Comparisons may be made within and between teams and also between fee-earning and internal support roles. A job evaluation process is the most effective and systematic way of assessing this. If you decide to base your comparison on a small random sample rather than conduct a thorough job evaluation you should recognise the limits of this approach; it will be less robust and you will still need to demonstrate you have used systematic and transparent methods.</td>
</tr>
</tbody>
</table>

4.3.3 Step 3: Collecting, preparing and analysing pay data

(a) Collecting the data

To carry out an equal pay audit you will need the following data:

- **Job and personal characteristics**
  - Gender (if your firm has an equality policy in place you should be collecting information about protected characteristics of employees)
  - Full time or part time
  - Job title
  - Job evaluation score, job grade or band

- **Pay information**
  - Basic pay
  - Standard or normal hours
  - Total earnings
  - Additional hours worked
  - Department or location

---

3 For more information about data protection and equal pay audits see the EHRC website:
Equal pay audits are covered by the Data Protection Act 1998 and you must pay attention to the regulations covering sensitive personal data. The pay and personal characteristics of employees are classified as personal data. Under the act all personal data should be processed fairly and lawfully and only when certain conditions are met. There are three conditions when you do not need employees’ consent to process their personal data:

- It is necessary to do so for the performance of a contract, e.g. if equal pay or equal opportunities policies are built into employees’ contracts of employment, committing the organisation to monitoring pay regularly, under these circumstances an equal pay review could be deemed necessary for the conduct of the contract.
- Necessary for compliance with a non-contractual legal obligation, e.g. it is arguable that an equal pay review is essential to ensure the firm is meeting its statutory obligations to equal pay.
- Necessary for the pursuit of a legitimate business interest, e.g. as long as the processing of personal data is undertaken to promote equality of opportunity.

(b) Preparing your analysis

You’ve decided the scope of your review and have identified where employees in the firm are doing equal work. The next step is to put groups of employees doing equal work together into equal work groups or bands that correspond broadly to the same level of job within your firm. Don’t forget the same job title doesn’t necessarily equate to the same type of/value of work. For example, you may decide to place some fee-earners with different titles in a similar band for the purpose of analysis. The list of potential bands will vary from firm to firm. A typical shorthand description for bands within a law firm might be:

- **Band A:** Trainees
- **Band B:** Junior assistant solicitor
- **Band C:** Senior assistant solicitor
- **Band D:** Junior associate solicitor
- **Band E:** Senior associate solicitor
- **Band F:** Salaried partner
- **Band G:** Equity partner

Once you have decided who will be in each band you can then use pay data to calculate average pay in each band for men and women and then compare average pay of men and women. However, bear in mind analysis based solely on average total earnings per year (i.e. incorporating both basic pay and bonuses) can hide potential differences in pay which can be important sources of gender inequality in the sector.
There are a number of different ways of calculating average earnings. Using the median as a measure of average earnings tends to be less affected by a small number of extremely high earners (which can skew the distribution of earnings). However, using the mean can help to capture differences across the distribution (e.g. showing lots of women in the low earning extreme or lots of men in the high earning extreme). In practice, there are benefits in presenting both the median and the mean together when describing average pay, though this should be accompanied by clear commentary that explains how this has been calculated. Future announcements by government on publication of equal pay statistics in 2016 will likely prescribe a particular approach to enable comparability within and between sectors.

Your analysis should enable a full understanding of potential variances between men and women in a range of aspects of pay (e.g. basic pay, bonus pay and benefits). Your analysis should also offer comparisons between employees that are consistent and like-for-like. One way of doing this is to calculate pay on an hourly basis to account for different working patterns. The sample spreadsheet provided [spreadsheet 1] gives an example of how this can be done to standardise pay calculations.

You can use a spreadsheet like this one to help you calculate differences in pay or use commercially available software. The example spreadsheet only includes information about sex of the employee, but could include other factors such as ethnicity, disability and age in the employee characteristics columns. However, with lots of data to get through, it is a good idea to focus on one protected group at a time (e.g. gender, ethnicity, age).

(c) Making sense of the figures

Once you have run a detailed analysis of the type described in the example spreadsheet for each employee, your next job is to identify significant variances in average salaries between men and women within a particular equal work band. It can be helpful to group together summary figures for particular equal work bands and pull out some key information to help you understand the differences. The table below provides an example of the type of headline information you may want to collate by equal work band/job type. A sample excel spreadsheet version of this table is available [spreadsheet 2] for you to start your analysis.

<table>
<thead>
<tr>
<th>Equal work band</th>
<th>Average hourly basic pay per year</th>
<th>Average hourly total bonuses per year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male employees</td>
<td>Female employees</td>
</tr>
<tr>
<td>A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C</td>
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<td></td>
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<td>D</td>
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<td>E</td>
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<tr>
<td>F</td>
<td></td>
<td></td>
</tr>
<tr>
<td>G</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Deciding what a significant difference looks like is not an exact science but it is useful to have an indicator to help you know when to follow up with further investigation. EHRC guidance suggests as a general rule differences of 5 per cent or more, or any recurring differences of 3 per cent or more, merit further investigation. A significant difference within an equal work band – depending on the specific nature of what you find – may merit further investigation within that grouping to understand whether specific parts of the firm are affected in particular (e.g. assistant solicitors working in particular practice areas).

If no significant pay gaps are identified then you won’t need to move on to the next step which is about exploring why pay gaps might exist.

**TOP TIPS**

<table>
<thead>
<tr>
<th>Here are a few more headline analyses that you might want to do:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Full time gender pay gap</strong>: Difference between hourly earnings of men and women which is calculated by comparing full time employees’ pay (men and women). Comparisons can be done using the median or average.</td>
</tr>
<tr>
<td><strong>Part time gender pay gap</strong>: Difference between hourly earnings of men and women which is calculated by comparing full time employees’ pay (men and women). Comparisons can be done using the median or average.</td>
</tr>
<tr>
<td><strong>Part time gender pay gap</strong>: As above, but for part time employees’ pay. This helps you to understand whether part time staff are being paid less per hour than full time workers (this is likely to be unlawful).</td>
</tr>
<tr>
<td><strong>Overall gender pay gap</strong>: Difference between hourly earnings of men and women which is calculated by comparing all employees’ pay (men and women). While this analysis doesn’t use bands to compare pay in equal roles (like the table on p26) it does give an overall impression of potential occupational segregation.</td>
</tr>
<tr>
<td><strong>Starting salaries</strong>: Difference between starting salaries of men and women for equal work bands.</td>
</tr>
</tbody>
</table>
4.3.4 Step 4: Establishing causes of pay gaps and deciding whether they are free from discrimination

(a) Identifying reasons for pay gaps

If you identify any significant pay gaps then you need to explore if there is a genuine reason for the difference in pay that is not related to the sex of the employee or to a particular working pattern. To do this you will need to examine your pay systems to understand whether pay policies and practices (both formal and informal) may have caused this or may be contributing to the gender pay gap. Some of this will require further data-crunching (e.g. looking at the relationship between length of service and pay as it affects both men and women).

The reasons for differences in pay can sometimes vary between large and small law firms. For example, differences in starting pay can be a feature in small firms due to the going rate for jobs in the local area, whereas larger firms may have more consistent starting salaries across their national/international offices. The checklist on p29 should be useful for a range of firms in thinking about differences in pay, but this is not exhaustive and of course you can add other potential reasons for differences.
### Differences in Basic Pay Between Men and Women Doing Equal Work

Do differences exist because:
- Female employees are paid less per hour than male employees?
- Starting pay is currently not the same for employees?
- Starting pay was previously not the same for employees?
- Pay progression is not the same for employees?
- Employees are rewarded for length of service?
- Employees with particular specialist skills receive additional income?
- Other reasons?

### Differences in Bonus Payments and Performance Based Pay Between Men and Women Doing Equal Work

Do differences exist because:
- Some employees don’t have job positions that entitle them to bonus related pay?
- Some employees don’t get access to work activities that contribute to increased bonus related pay (e.g. projects associated with higher billable hours or networking with clients and securing income for the firm)?
- Bonus systems or performance based systems are applied differently to different employees (e.g. different merit based criteria used, or different levels of reward used)?
- Performance criteria may indirectly discriminate (e.g. not valuing characteristics often associated with women)?
- Rationale for discretionary bonus payments lacks transparency?
- Other reasons?

### Differences in Benefits Between Men and Women Doing Equal Work?

Do differences exist because:
- Employees from a particular sex receive employer contributions for pensions; private healthcare contributions; other benefits?
- Employees from particular parts of the organisation receive different levels of benefits?
- Employees with longer length of service receive different benefits?
- Employees from a particular sex receive greater annual leave entitlements?
- Other reasons?
Look at your culture and informal practices too

Whichever way you choose to investigate the reasons for equal pay gaps in your firm it is important to remember you are trying to understand both policy and practice. In other words, the written policy may be different from what happens in practice in the firm.

Where you identify areas for concern, you should take some time to think about both the formal and informal practices that shape the experience of employees. The roots of pay inequity can run deep. The idea that due to the impact of their family responsibilities women earn less than men doing equal work is too often used as an excuse for gender inequity. In fact, women often earn less due to the complex relationship between pay system factors, effects of unconscious bias and gender inequity in the workplace and broader society. Getting to grips with how these types of factors operate in your workplace can be challenging. It may involve looking at aspects of organisational culture and practice that are not regularly discussed openly, such as:

- Who is recruited in the workplace and to what roles
- How roles are gendered (e.g. particular areas of legal practice associated with female or male colleagues and gendered attributes required to do well in those practice areas)
- Systems of reward within your firm and how they disrupt or maintain the status quo
- Approaches to allocating credit for securing clients
- Approaches to assigning employees to projects (with more or fewer billable hours attached) or to teams that pitch work to new clients
- Approaches to client succession and passing clients between employees in the firm.

A broad checklist like this is an important first step in helping you identify areas for further investigation. The Law Society in Scotland has developed a set of comprehensive checklists and questions relating to specific aspects of pay systems which are equally applicable in England such as:

- Starting pay, pay protection and pay progression
- Market data (how you set market rates and whether this results in unequal pay)
- Performance/competence based pay systems
- Benefits

(b) Look at your culture and informal practices too

Whichever way you choose to investigate the reasons for equal pay gaps in your firm it is important to remember you are trying to understand both policy and practice. In other words, the written policy may be different from what happens in practice in the firm.

Where you identify areas for concern, you should take some time to think about both the formal and informal practices that shape the experience of employees. The roots of pay inequity can run deep. The idea that due to the impact of their family responsibilities women earn less than men doing equal work is too often used as an excuse for gender inequity. In fact, women often earn less due to the complex relationship between pay system factors, effects of unconscious bias and gender inequity in the workplace and broader society. Getting to grips with how these types of factors operate in your workplace can be challenging. It may involve looking at aspects of organisational culture and practice that are not regularly discussed openly, such as:

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- Approaches to allocating credit for securing clients
- Approaches to assigning employees to projects (with more or fewer billable hours attached) or to teams that pitch work to new clients
- Approaches to client succession and passing clients between employees in the firm.

(c) Deciding whether the pay differences are justified

After identifying pay differences between men and women doing equal work and identifying potential reasons why these are happening, as an employer you need to be able to show either:

- You think pay differences are justified, in which case you will need to demonstrate this via evidence and keep a record of that evidence (if you don't have evidence you will need to address the pay differential), or

- You think the pay difference is not justifiable (i.e. it is connected with an employee’s sex or another characteristic protected in the Equality Act 2010).

The EHRC’s Code of Practice on Equal Pay explains in more detail the potential scope of objective justification of pay differentials. The table overleaf includes a few examples of issues you may wish to consider in deciding whether pay differentials are justifiable.
If you have identified pay differences between men and women doing equal work that are not objectively justifiable and are connected with the employee’s sex (or other protected grounds) then you need to respond to this and provide equal pay. The final step of an equal pay audit relates to making a plan to respond to those differences.

<table>
<thead>
<tr>
<th>POTENTIAL REASON FOR PAY DIFFERENCES</th>
<th>EVIDENCE NEEDED FOR JUSTIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees are rewarded for length of service</td>
<td>Are you able to demonstrate longer service corresponds to actual differences in performance due to increased experience on the job?</td>
</tr>
</tbody>
</table>
| Differences in the going rate for particular jobs | Can you show that you’ve faced challenges in recruiting and retaining the higher paid people?  
Can you show that other firms in the area are advertising similar jobs at a similar rate of pay? |
| Higher paid employees achieve better performance than lower paid employees doing a similar job | Can you clearly show differential achievement of relevant performance targets and work outputs? |
| Fee-earners are paid more on the basis of success in building relationships with clients (measured by attendance at events out of normal working hours) | Can you demonstrate attendance at out-of-hours events results in better client relationships or other business related outcomes that warrant additional pay (taking into account that women with childcare responsibilities may be less able to attend these events)? |
| Some employees are able to access particular types of bonus related pay and others are not | Can you show it is necessary for the firm to provide these types of bonus payments (e.g. to incentivise fee-earners)?  
Can you justify the amounts (e.g. in relation to billable hours and other performance based indicators, or in relation to discretionary bonus payments)? |
| Some employees are able to access particular types of benefits and others are not | Can you show it is necessary for the business to provide these benefits to particular employees and not to others (e.g. in order to recruit and retain employees in particular roles)? |
4.3.5 **Step 5: Developing an equal pay action plan to address any pay discrimination**

If you have not found inequalities between men’s and women’s pay based on gender discrimination (or on other protected grounds), or if you have found differences for which there are justifiable and non-discriminatory reasons then you need take no further action. However, it is useful to keep monitoring pay differences and reviewing pay systems to ensure they remain non-discriminatory.

If you have found differences in pay which cannot be explained by any material factor, you must put a plan in place to address this as soon as possible. It may not be possible to implement equal pay immediately, but your action plan should set out when you will rectify pay issues, and why this is the soonest that it can be done. Set clear timescales and stick to them – remember delay could put you at risk of equal pay claims being made against you, and until you have resolved any issues highlighted by the review you are still vulnerable to equal pay complaints.

**CASE STUDY: DLA PIPER UK LLP**

DLA Piper UK LLP monitors equal pay during its annual pay review process. Salary review decisions are moderated by HR as well as the office managing partner, the UK managing partner and are checked by its head of compensation and benefits who also receives a monthly equal pay report to monitor any trends.

Your approach to developing your action plan will depend on what you have found in step 4 of the process.

The first half of this toolkit includes a number of actions that can be taken to prevent unequal discriminatory pay in your firm (e.g. low risk pay systems, organisational culture and equality impact assessments). In the remainder of this toolkit we include a few additional examples of other areas where action may be required following an audit.
(a) Job evaluation exercise

If you have not done a job evaluation exercise this can be a good place to start. It will help you in providing a defence to an equal pay claim and will also help you to:

- Know what duties each employee carries out
- Get a better understanding of training needs for particular jobs
- Improve the design of jobs and respond to outdated grading structures
- Encourage dialogue about the value of particular jobs and improve fairness and transparency of pay.

There is a lot of free guidance available about running a job evaluation in your business (see Other useful resources).

(b) Performance/merit related pay

In recent years there has been a trend towards more merit based pay arrangements for fee-earners linked less to PQE and traditional associate lockstep systems. This can help to promote a high performance culture by rewarding lawyers that are most deserving, but it can also bring with it challenges on the equal pay front. For example, with a discretionary performance based system it can be harder to moderate decisions when there are lots of people working at a similar level in the firm.

Whichever pay system your firm uses, there are a number of things you can do to address disparities you may have identified in your equal pay audit, such as:

- Ensuring your pay system is transparent and employees know what they will get when they achieve a certain level within the firm
- Ensure targets are set fairly across departments and/or practice areas within the firm
- Link performance to measurable targets and include activities and skills which may primarily be done by women in the firm as well as those predominantly by men
- Try to create opportunities for objective review of performance by involving other people in decisions and monitor performance assessments
- Recognise appraisal, particularly discretionary appraisal, of performance related pay can be influenced by unconscious bias. Introduce unconscious bias training for managers responsible for pay decisions.
(c) **Starting pay**

If you don’t have a starting salaries policy this can be a useful way of setting out clearly how decisions are made. You need to accompany this with support for recruiting managers to help eliminate bias and cater for differences in style when negotiating salary (see 2.4).

(d) **Equal pay policy**

It is important to ensure information about equal pay trends feed into future decisions in the firm. It can be a good idea to capture your commitment and plans to provide equal pay in the future. Your policy could include information about:

- Your commitment to employees to provide equal pay for equal work (for protected groups such as gender, race and disability)
- Establishing the scope of your equal pay commitment (e.g. including both basic pay but also different types of bonuses and performance related pay)
- Your commitment to repeat equal pay audits at regular intervals and to use the details to address any instances of discrimination in pay
- Your commitment to communicate the results of your equal pay audit to staff and further afield.
FOR EXAMPLE: **EQUAL PAY AUDIT ACTIONS**

- Continue to reduce the difference between median pay of male and female employees by revising the pay system to introduce a process of progression for staff to reach a target rate of pay within a particular time frame.

- As part of introducing a new pay system consider if performance related pay should be continued by weighing up the benefits and examine the potential for discrimination and adverse impact on particular groups.

- Introduce a more robust system for determining starting salaries, which relies less on the sole discretion of line managers.

- Monitor the salaries of part time staff to ensure they remain in line with the salaries of full time staff.

- Review market data to consider if salaries determined by market forces are reflective of wider market pay patterns.
PART 5 USEFUL RESOURCES

5.1 Other guidance

EHRC, Equal pay Statutory Code of Practice

Law Society of Scotland (2015) Ensuring fairness, closing the pay gap

EHRC, Gender-neutral job evaluation schemes: an introduction guide

ACAS Job evaluation: considerations and risks

5.2 Useful contacts

ACAS (The Advisory, Conciliation and Arbitration Service)
Telephone: 08457 47 47 47
Textphone: 08456 06 16 00
ACAS website: www.acas.org.uk

ACAS provides information and advice to employers and individuals on legislation and on industrial relations practices and procedures.

Practice Advice Service
The Law Society provides support for solicitors on a wide range of areas of practice. Practice Advice can be contacted on 020 7320 5675 from 09:00 to 17:00 on weekdays or email practiceadvice@lawsociety.org.uk

Law Society Consulting
If you require further support, Law Society Consulting can help. We offer expert and confidential support and guidance, including face-to-face consultancy on human resources. Telephone: 020 7316 5655 or email consulting@lawsociety.org.uk

Find out more about our consultancy services.
PART 6  TERMINOLOGY USED IN THIS TOOLKIT

Direct discrimination
This occurs where someone is, was, or would be treated less favourably on the grounds of their age, disability, gender, race, religion or belief, pregnancy or maternity, marriage and civil partnership, gender reassignment or sexual orientation. Direct discrimination is unlawful.

Gender
The state of being male or female.

Gender pay gap
A gender pay gap is either:
- A calculation of the difference in the average earnings of women and men in a population (e.g. in the legal profession, or in a law firm)
- A calculation of the difference in actual earnings between a woman and a man working for the same employer, and doing equal work. This type of pay gap can give rise to an equal pay claim.

Indirect discrimination
This occurs when a policy, provision or criterion is applied equally to everyone but in practice disadvantages one group of people more than others and cannot be justified as a proportionate means of achieving a legitimate aim.

Job evaluation
This is an approach to systematically assessing the relative value of different jobs. Work is seen as equivalent if the jobs are assessed as scoring the same number of points/falling within the same job evaluation grade.

Protected characteristic
It is unlawful to discriminate against an individual because of any of the protected characteristics in the Equality Act 2010. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.