

**CLOSE YOUR PAY GAP**



**PAY, PERFORMANCE AND BONUSES**

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# INTRODUCTION

This guidance is for private and third sector companies who are covered by the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. It is particularly aimed at those with responsibility for developing work on the gender pay gap, and specifically developing their company's Close Your Pay Gap personalised action plan.

This guidance accompanies the Close Your Pay Gap tool, which will help your company to close its gender pay gap. The tool uses your gender pay gap information, along with a series of questions, to provide a personalised action plan to help you to close your pay gap. This guidance supports the Pay, Performance and Bonuses **Close Your Pay Gap tool** priority, providing information and advice on how pay and performance systems and practice can impact on your gender pay gap, and how to implement your action plan.

Whilst every effort has been made to ensure that the explanations given here are accurate, only the courts or tribunals can give authoritative interpretations of the law.

## WHAT IS THE GENDER PAY GAP?

The gender pay gap is the difference in average hourly earnings between men and women. It is caused by a range of complex, inter-related factors including job segregation (where men and women do different types and levels of work), a lack of flexible working opportunities and discrimination in pay and grading structures. These three causes are common across all workplaces and sectors.

The gender pay gap is not the same as equal pay, although unequal pay between men and women is a major cause of pay gaps at the enterprise level. Equal pay law covers the concept of equal pay for equal work, rendering it unlawful to pay a woman less than a man (and indeed vice versa) for the same job or jobs of equal value. Equal pay for equal work is only one small piece of the pay gap picture, and tackling this alone is not enough to close your gender pay gap.

Closing your pay gap requires an understanding of its causes, and action to tackle those. The Close Your Pay Gap tool can help you do this.

## How pay and performance systems and practices impact on your pay gap

The most significant cause underpinning the pay gap is discrimination embedded within pay and grading systems. Usually this is not intentional, as many companies believe they are already providing equal pay. However most companies are unaware of the different impacts that seemingly objective pay practices have on men and women.

Individual salary negotiations, appraisal systems which reward stereotypically male behaviours, and having different job and grade titles for virtually the same jobs, are all factors which constrain women's pay relative to men's. Where discretion is involved in deciding performance-related pay or bonus awards, this provides another avenue for **gender bias** to creep in and further widen your gender pay gap.

Examining your pay and reward systems to ensure they work fairly for women and men is a great place to start when it comes to closing your pay gap. It provides a strong foundation for good practice, and provides an insight into how male and female employees are rewarded in your company.

Each section of this guidance contains related actions which you can take to close your gender pay gap.

Close the Gap is Scotland's expert on the gender pay gap. We can provide in-depth analysis and personalised support to your organisation, to help you to make the most of the pay gap reporting process and take effective action to close your pay gap. You can find out more in the **Work With Us** section of the **Close Your Pay Gap site**, or simply get in touch at [info@closethegap.org.uk](mailto:info@closethegap.org.uk).

# PAY AND GRADING SYSTEMS

Most companies are aware that pay discrimination is unlawful, and it's increasingly rare to find companies who intentionally pay their male and female staff differently because of their gender. However, many companies are unaware of the impact that seemingly objective pay practices have on men and women.

There can be many factors within pay systems that lead to inequalities, including:

- Individuals being appointed to different points on the pay scale;
- Different job and grade titles for virtually the same jobs;
- Stereotypically male jobs having disproportionate access to bonus earnings;
- Women having less access to high-paid shift and overtime work;
- Performance related pay being unfairly awarded; and
- Sex bias in analytical job evaluation schemes grading women's jobs lower.

A structured pay system is more likely to provide **equal pay**, and be easier to monitor and control, than a system which relies on managerial discretion. Most large companies now operate structured pay systems, however many also include room for negotiation, for example when it comes to starting pay or promotion-related increases.

A pay policy which sets clear parameters for pay decisions, and requires negotiated awards to be reviewed for potential equal pay risks, can complement your pay system, providing an additional set of checks and balances. However, it's important to be aware that any element of discretion in deciding pay can be highly vulnerable to gender bias.

Whatever methods are used for determining pay, that law says you should ensure that your pay and reward system is transparent, and that all staff and managers can understand how pay is calculated.

## ACTIONS

Make sure staff pay is calculated using a single pay scale and all staff are included within it.

Make sure your pay system is transparent and all staff understand how pay is calculated.

## Discretion in pay setting

Any pay setting process which involves individual negotiation or managerial discretion has significant potential for bias to creep in.

While it may be useful to have some flexibility in deciding rates of pay, for example, when hiring a new employee who brings specialist knowledge or skills to the business, it has the potential to give rise to pay inequality if not managed carefully. Research has found that men are more successful in salary negotiations than women because **women are more likely to be penalised for asking for a pay rise**. What may seem like a relatively small difference in pay at the hiring stage has the potential to widen considerably over the years once annual percentage increases have been taken into account.

Individualised salary negotiations are commonplace at senior levels but **this can have a significant impact on your pay gap, particularly where women are under-represented in these roles. It may also make your business vulnerable to a costly equal pay claim.**

If you have a pay setting process which includes individual negotiation or managerial discretion you should undertake a pay analysis to identify if this disadvantages your female employees. Analysing data on starting salaries of new appointments and promoted posts can help to identify patterns which warrant further investigation.

It's likely you will encounter patterns such as more men or more women being appointed on higher than average salaries for their grade/role, and this may be more pronounced at higher grades. **This will widen your pay gap, and may expose your organisation to risk of an equal pay claim.**

Training managers and HR colleagues involved in pay-setting processes in gender bias and non-discrimination in decision-making is an important first step in tackling the impact of discretionary pay. A transparent system where starting pay reflects the demands of the job, and not the candidate, helps to ensure fairness, and will improve employee morale and workforce productivity.

## ACTIONS

Gather data on the starting salaries of all new appointments and promoted posts during the previous year, or a given period. Analyse this data by gender, and by grade and business unit. Investigate further any identified patterns.

Where pay is negotiated, ensure records are kept and reviewed regularly to check for gender bias.

Implement a pay policy which ensures pay reflects the demands of the job and not the candidate.

Implement training for hiring managers on transparent and fair pay-setting and decision-making processes. Close the Gap is Scotland's expert on the gender pay gap. We can deliver bespoke training on equality proofing your pay-setting processes. To find out more, visit **Work with Us**, or get in touch at [info@closethegap.org.uk](mailto:info@closethegap.org.uk).



## Job segregation, and job evaluation

Women and men are clustered into different jobs and sectors. There are many factors which underlie this segregation including stereotyped assumptions about men's and women's capabilities, preferences and skills; the culture and working hours commonly found in male-dominated jobs and sectors; and access to training and development opportunities, including apprenticeships.

**Job segregation**, also known as **occupational segregation**, restricts choices for men and women. The jobs most likely to be done by women are also associated with low pay, and fewer opportunities to progress. This includes jobs in cleaning, care, admin, retail and catering. This type of job segregation is called **horizontal segregation**.

Job evaluation is a method for comparing different jobs to provide a basis for a pay and grading structure. Its aim is to evaluate the job, not the jobholder. Job evaluation is essential to identify work of equal value, and to ensure pay is set based on genuine job requirements. The scheme or method used to identify these jobs should be analytical, i.e. factor-based, and it should be free from sex bias. This means that it should not unfairly favour jobs predominantly done by men or women.

Job evaluation can provide a defence against an equal pay claim if it meets the standards set by the tribunal system. These standards are centred on the requirement that the design and implementation of the job evaluation scheme must not be discriminatory, and must not undervalue work typically done by women.

## ACTIONS

**Make sure** your job evaluation scheme has been equality-proofed **OR** implement a non-discriminatory job evaluation scheme, which covers all roles in your organisation. Close the Gap can equality-proof your job evaluation scheme, and develop actions to address undervaluation. To find out more, visit **Work with Us**, or get in touch at [info@closethegap.org.uk](mailto:info@closethegap.org.uk).

Develop an initiative to map and tackle job segregation in your organisation. Close the Gap is Scotland's expert on the gender pay gap. We can deliver a bespoke initiative to tackle horizontal segregation in your organisation. To find out more, visit **Work with Us**, or get in touch at [info@closethegap.org.uk](mailto:info@closethegap.org.uk).

# REWARD SYSTEMS

## What is a reward system?

Many companies use incentive schemes, such as bonus payments and performance related pay, to reward individual or group performance. While such payments can motivate staff, they are vulnerable to gender bias. By their nature, reward systems are designed so that individuals are paid differently for doing the same job; this, in addition to the element of subjectivity that is inevitable in assessing a staff member's performance, results in a system that is far more likely to deliver pay inequality.

## Pay progression

It is generally expected that pay rates for staff will increase over time. Pay progression might be determined through length of service, as in the case of staff who move up the scale in a pay and grading structure. It may also be determined as a result of staff meeting certain criteria for pay increases outlined by a pay policy. Many companies also award periodic pay increases linked to inflation.

For many companies, pay increases are related to employee performance, assessed using a performance management framework or appraisal system. **Where a performance system has not been equality-proofed, this can have a significant impact on your pay gap, and can increase the risk of an equal pay claim.**

When pay awards are aligned to performance management systems, the nature of those systems results in greater levels of individualised pay. Performance related pay is vulnerable to pay discrimination because of the inherent subjectivity in assessing performance which cannot be numerically measured. Performance management systems often assign a greater value to stereotypically male attributes (for example, assertiveness, leadership, decision-making skills), and fail to value stereotypically female attributes (for example, co-operation, communication, listening).

## ACTIONS

Analyse your employees' performance management ratings by gender, and business unit. Close the Gap can provide an analysis of how performance management works for women and men in your organisation. To find out more, visit **Work with Us**, or get in touch at [info@closethegap.org.uk](mailto:info@closethegap.org.uk).

Review pay progression criteria to ensure they're realistically achievable by all staff in a reasonable period of time, and are consistently applied throughout the organisation.

## Bonuses

Women are significantly less likely than men to receive a bonus payment and, when they do, are likely to receive a much lower sum. Women are also less likely to be in roles which have the potential for bonus earnings, as bonuses are more commonly found in male-dominated jobs, and senior roles. Where women do have access to bonuses, the level of bonus they receive may be curbed by performance management systems which can undervalue their skills and contribution.

Enabling more women to have the opportunity to access a bonus involves having a gender analysis of how your reward system defines good performance, and work to tackle job segregation and barriers to progression for women.

## ACTIONS

Develop an initiative to widen access to progression and bonus earnings for women. Close the Gap can help you to analyse the barriers to progression for women in your organisation, and develop effective work to tackle these. To find out more, visit **Work with Us**, or get in touch at [info@closethegap.org.uk](mailto:info@closethegap.org.uk).

### Discretion in reward systems

Any element of discretion in awarding bonuses can be highly vulnerable to gender bias. Stereotypical views and attitudes to the value of different types of work and staff, including stereotypically female work, (for example admin work) may influence decisions, whether consciously or not.

Employers and managers may be unaware of the impact their decisions may have on staff morale, and on their company's pay gap and bonus gap.

**Transparency in pay systems is an essential factor in uncovering and tackling unlawful pay discrimination.** The more complex and less transparent the system is, the more vulnerable it will be to pay discrimination. A transparent reward system enables staff to understand not only their rate of pay, but how any reward system operates. It also helps minimise uncertainty or perceptions of unfairness, and reduces the possibility of equal pay claims being brought against your company.

It's important that staff involved in discretionary decisions around reward are trained in both implementing the reward system, and in the equalities aspects of pay and reward. Anyone given discretion to award bonuses, commission, or performance pay, should receive this training. Managers and people leaders with

responsibility for implementing pay and reward systems and carrying out reviews should also have completed this training, and be fully trained in the reward system itself.

## **Avoiding discrimination in reward systems: incentives and allowances**

Reward systems should be reviewed regularly, and monitored for sex bias. Regular comparisons between incentives received by men and women, full and part-time staff (the latter of which are most often women) and those on fixed-term and permanent contracts, should be undertaken in order to identify problems as soon as possible.

Where incentive pay and allowances are used, you may be able to limit the potential for pay inequality by considering the following:

- Designing a framework or developing a policy on incentives and allowances.
- Limiting discretionary power available to individual decision makers.
- Making the system around deciding eligibility for incentives, or allowances and the amounts paid, transparent and communicating the details to staff.
- Being as inclusive as possible in terms of the jobs that can access incentive pay and allowances.
- Regularly reviewing the process for deciding eligibility and payments.
- Training decision-makers in equality and the company's policy on incentives and allowances.
- Accurate record keeping.

Many companies offer staff in-kind benefits, which refers to the non-salaried components of a staff member's reward package. While these benefits are not covered by equal pay legislation, they are covered anti-discrimination law. You should, therefore, check that in-kind benefits are available to both male and female staff because evidence of one group receiving a benefit when the other does not (or receiving less) may be challenged as discriminatory.

# TYPES OF REWARD SYSTEMS

There are different types of reward systems, which can be linked to the performance of individual staff members, and some to the performance of groups, or team performance. For instance:

- Annual 'across the board' pay increases or increments, for example, where everyone gets a 3% increase.
- Annual pay increases or increments, supplemented by a reward payment, for example, everyone gets 3% plus an individual bonus.
- Fixed incremental scales with limited flexibility, where the pay increases for the majority of staff are set, but payments can be increased for exceptional performance, or reduced for poor performance.

## EXAMPLE

Where pay increases are linked to performance ratings, a series of fixed percentage points is commonly used.

Unsatisfactory	=	0% increase
Satisfactory	=	2% increase
Above average	=	3.5% increase
Exceptional	=	5% increase

## Individual reward systems

Some companies use an individual reward (IR) system, often called an annual appraisal or performance management system, to determine individual performance against targets or objectives.

**Close the Gap advises caution in the use of individual rewards or performance related pay, as these are areas where unlawful pay discrimination can easily occur.**

If you have an existing IR system the following checklist can be used to check if the elements that can help ensure it is as fair and effective as possible are in place.

- Managers who make decisions on reward have been trained appropriately, including in non-discrimination and objective decision-making.
- All staff members, and staff representatives, fully understand how the system operates.
- Sufficient time is allocated to conduct reward reviews, and allow for staff input.
- Objectives related to performance are specific, realistic, achievable, measurable and time-bound.
- Performance assessment periods are appropriate.
- Staff members have access to, and can comment on, their assessment score.
- There is a monitoring and review system in place.
- There is an appeals system in place.

When individual performance is being assessed in relation to reward, subjectivity or bias must be avoided. The assessment process must be scrupulously objective, and staff must have a clear understanding of what they have to do to achieve the individual reward offered.



## Objective setting

Objectives or targets to be met by staff must be achievable, fair and appropriate to the type of work carried out by the staff members involved. Objectives or targets may be based on quantity or quality, or a combination of both.

It is best practice to make sure all objectives are SMART – specific, measurable, achievable, realistic and time-bound. This type of objective is less likely to allow for subjective assessment of performance.

It is essential that staff are made aware of performance standards, and how to achieve them, and given adequate support by their line managers to do so. Staff should have regular meetings with their line manager throughout the performance period, and be given adequate feedback on any performance issues. This allows objectives to be revised, and to reflect changes which may have arisen, for example a change in workload, or a team or organisational restructure.

Staff performance, and the extent to which the objectives have been met, are assessed at the end of each performance period and rated against one of the agreed overall standards of performance. An example of performance standards commonly used in IR systems is given below:

## EXAMPLE

Commendable	A very high level of performance; agreed objectives consistently achieved.
Satisfactory	A fully satisfactory performance meeting all or nearly all objectives.
Needs improvement	Insufficient objectives have been met, and the individual needs to improve skills or effort, or both.
Unsatisfactory	The basic requirements of the job have not been met and little or no progress has been made towards agreed objectives.

The amount of the performance award is based on the performance level achieved by the individual concerned.

When assessing performance, appraisers should take into account that not all of the objectives set may have been achievable. Changes in circumstances during the appraisal period may have made it difficult for staff to complete some of the tasks planned.

It is best practice to have an appeals process which allows staff to appeal their rating if they disagree with it. Appeals should be heard by a manager unconnected to the staff member appealing, or the business unit in which they work. You should check all decisions made regarding performance rating, or appeals, are robust and objective, and that you are able to evidence the reasons for the decision. This information should be recorded for all staff.

Recording performance information, and analysing it by gender, will allow you to identify patterns. Do women or men tend to be awarded higher ratings? Is there a pattern evident at particular grades, or in certain business units? It is not always easy to see where **gender bias** can creep in, or where ratings systems favour stereotypically male behaviours over female ones. **Understanding if and how your performance management framework impacts differently on women and men can enable you to identify how this contributes to your gender pay gap.**

## ACTIONS

Gather and analyse performance management ratings by gender, looking for patterns across the organisation, or in particular grades/business units.

Analyse performance management criteria for gender bias. Close the Gap can provide an expert gender analysis of your performance management criteria. To find out more, visit **Work with Us**, or get in touch at [info@closethegap.org.uk](mailto:info@closethegap.org.uk).

# POLICY AND PRACTICE

## Equality in decision making

Decisions around pay, performance and bonuses should be objective and fair. Where managerial discretion and unfair criteria feature, subjectivity and bias can leave your company at risk of a reputationally damaging equal pay claim, and serve to widen your **gender pay gap**.

Staff involved in pay and bonus setting decisions, performance assessment, and other incentive allocation, should be trained in equality-proofed decision-making. This should include training on the gender pay gap, and gender bias in pay and reward systems, to ensure the avoidance of bias (and the perception of bias) in their decision making. Training helps to build capacity in managers to make fair and objective decisions, and ensure they understand how pay discrimination contributes to the pay gap. Making sure your company can evidence its decisions, and records those decisions, also protects it from costly tribunal claims.

You may be confident that your company's policies on pay, performance and bonuses are fair; however if your company has a gender pay gap or bonus gap, it may be useful to review your policies, and how they are being implemented across the business. The mismatch between policy and practice could be caused by a range of factors such as a knowledge gap on equal pay, a training need, or a communication issue. **The only way to address this is to analyse your pay, performance and bonus practices to identify areas of concern, and target action there.**

## **ACTIONS**

Provide managers involved in decision-making on pay, performance, and bonuses with training on equality-proofing your pay and rewards systems.

Implement a support structure for line managers on policy implementation, which includes guidance on equal pay, and ensuring decisions on pay are free from gender bias.

# LEGAL REQUIREMENTS

## Equal pay

It is common for the gender pay gap to be confused with the legal definition of equal pay. Equal pay law covers the concept of equal pay for equal work, rendering it unlawful to pay a woman less than a man (and indeed vice versa) for the same job, a job rated as equivalent under a job evaluation scheme, or jobs of equal value. Equal pay for equal work is only one small piece of the pay gap picture, and tackling this alone is not enough to close your gender pay gap.

**Equal pay:** refers to the concept of equal pay for equal work. An individual can claim equal pay when she or he, when compared with a comparator of the opposite sex, is employed in like work, work rated as equivalent in a job evaluation exercise, or work that is different but of equal value.

**The gender pay gap:** is the difference in average hourly earnings between men and women. It is a complex issue with a number of causes and goes far beyond the single issue of pay discrimination.

The equal pay review, sometimes called an equal pay audit, is the key method for identifying discrimination in pay systems. It involves comparing the pay of groups of workers who are doing equal work in the organisation and then investigating any gaps by gender. An equal pay review focuses on one aspect of potential discrimination - unequal pay for equal work. It does not address the other causes of the pay gap such as occupational segregation, although these may be highlighted by the pay review.

## How to check whether you are providing equal pay

The most effective way for a company to uncover unequal pay is to carry out an equal pay review. The five steps of the process, as set out by the Equality and Human Rights Commission are:

FIVE STEPS	
1.	Deciding the scope (who will be involved in carrying out the review, the use of external expertise, ensuring all required data and tools are in place, setting expectations and outcomes).
2.	Determining where men and women are doing equal work (identifying jobs involving similar levels of skill, effort, decision-making, and knowledge).
3.	Collecting pay data (comparing the pay of women and men doing like work, work rated as equivalent, and work of equal value).
4.	Identifying causes of gender pay differences (identifying pay gaps and the reasons those gaps exist).
5.	Developing an action plan (committing to work to eliminate those gaps that cannot satisfactorily be explained on grounds other than sex).

It is important to get the most out of your equal pay review. While an equal pay review is an essential process to ensure you can prove that you are providing equal pay, it is also a mechanism which can help to identify the cause of your company's gender pay gap.

Information on how to conduct an equal pay review is available on the Equality and Human Rights Commission website<sup>1</sup>.

## ACTIONS

Undertake an equal pay review. Close the Gap is Scotland's gender pay gap expert. We can support the delivery of your equal pay review. To find out more, visit **Work with Us**, or get in touch at **info@closethegap.org.uk**.

Review the findings of your last equal pay review. Were recommendations made? If so, review recommendations and prioritise actions to address these. If the review made no recommendations, Close the Gap can review the report's content and develop these into a personalised action plan for you. To find out more, visit **Work with Us**, or get in touch at **info@closethegap.org.uk**.



# GLOSSARY

## **Direct discrimination**

Less favourable treatment of a woman than a man (or vice versa) because of their sex.

## **Diversity**

The recognition and valuing of difference, in its broadest sense. It is about creating a culture and practices that recognise, respect, value and harness difference for the benefit of service users, members of the public and employees.

## **Equality**

Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration - recognising the diversity of different groups of women and men.

## **Equal value**

As defined by the Equality Act 2010, an individual can claim equal pay with a comparator of the opposite sex where work is different, but which

would be assessed as equal in value in terms of demands such as effort, skill and decision-making.

## **Equal pay review**

A process which looks at pay arrangements within an organisation to find, and address, gender discrimination. It involves comparing the pay of groups of workers who are doing equal work in the organisation and then investigating any gaps between men's and women's pay.

## **Gender**

Refers to roles, attitudes, values and behaviours that men and women are encouraged to adopt by society. These characteristics can vary depending on the society around us. For example, historically, gender role stereotyping would suggest that women should look after children at home while men go to work in the formal labour market.

## **Gender bias**

Gender bias describes where men and women are treated differently because of their gender, and it may be intentional or unintentional. It can also be

used to describe why a process or policy may have a differential impact on or outcome for women and men.

### **Gender pay gap**

The gender pay gap is the difference in average hourly earnings between men and women.

### **Glass ceiling**

Describes the under-representation of women at senior levels in organisations, and across the labour market.

### **Indirect discrimination**

Occurs when an employer applies a provision, criterion or practice equally to both women and men that puts one sex at an unfair disadvantage.

### **Job segregation**

Another term for occupational segregation.

### **Positive action**

Refers to a range of lawful actions that seek to overcome or minimise disadvantages (e.g. in employment opportunities) that people who share a protected characteristic have experienced, or to meet their different needs.

### **Positive discrimination**

Treating someone with a protected characteristic

more favourably to counteract the effects of past discrimination. It is sometimes confused with positive action, which is lawful.

### **Presenteeism**

Refers to a working culture which equates working long hours with increased productivity, commitment or capability. This is a barrier to women's retention and progression within the workplace. The need to be seen to be putting in the extra hours do not fit with the family-friendly working practices many women (and men) need.

### **Protected characteristics**

These are the grounds upon which discrimination is unlawful. The characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

### **Occupational segregation**

Refers to the clustering of men and women into different types of work (horizontal segregation) and into different levels of work (vertical segregation).

## CLOSE YOUR PAY GAP

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The Close Your Pay Gap tool is designed to help large employers close their gender pay gap. It's aimed at those who are publishing their gender pay gap figures under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. Close Your Pay Gap is developed by Close the Gap, Scotland's expert on the gender pay gap.

Close the Gap works in Scotland on women's participation in the labour market. We work with employers and policymakers to influence and enable action to address the causes of women's inequality at work.

Close the Gap

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