

Gender-Neutral Job Evaluation Schemes

An Introductory Guide



**Equality and
Human Rights**
Commission

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About this publication

What is its purpose?

This publication provides summary guidance on gender-neutral job evaluation schemes and their use as a defence against equal pay claims.

Who is it for?

This guide is designed for employers and human resources personnel. The guidance inside may also be useful for employees, trade union officers or other employee representatives.

What is inside?

This guide:

- explains how a gender-neutral job evaluation can give an employer a defence to an equal pay claim
- outlines the standards that the job evaluation must meet to provide that defence
- states the potential risks of discrimination in the design and implementation of a job evaluation
- indicates where to find out more information about how to carry out a job evaluation.

When was it published?

This guide was first published in March 2014.

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An introductory guide

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Introduction

The Equality Act 2010 makes unlawful direct and indirect pay discrimination between men and women. The Act includes special provisions known as 'equal pay provisions' dealing with this kind of pay discrimination. These provisions replace the similar provisions in the Equal Pay Act 1970.

The Act also makes unlawful direct and indirect pay discrimination because of protected characteristics other than sex, such as ethnicity, age or disability. The equal pay provisions do not apply to these claims. The Equality and Human Rights Commission's *Core Guidance: Pay and Benefits* explains what the Equality Act says about this kind of pay discrimination. The principles of objectivity and avoiding bias relevant in equal pay cases will also help to reduce the risk of pay discrimination because of other characteristics.

Many employers use vocational qualifications, market rates or unit turnover to determine pay. Such approaches may be effective – and may deliver equal pay for equal work – but, unlike non-discriminatory analytical job evaluation (JE), those approaches will not allow an employer to demonstrate the absence of bias, nor will they provide a 'first-line defence' to an equal pay claim brought under the Equality Act 2010.

A JE scheme can provide that 'first-line defence' if it meets the high design and implementation standards set by the courts. At the heart of these standards is the requirement that the design and implementation of the JE must not be discriminatory and must not undervalue work typically done by women.

Historically, it has been women who bring equal pay claims, but a growing number of men are doing so too. Introducing a JE that is gender neutral in design and implementation, and ensuring that it remains so, will protect employers against the risk that a JE is biased against work predominantly done by men or women.

This Guidance explains:

- how a JE can give an employer a defence to an equal pay claim;
- the standards that the JE must meet to provide that defence;
- the potential risks of discrimination in the design and implementation of a JE; and
- where to find out more information about how to carry out a JE.

You should read this Guidance if you are an employer and:

- you do not currently have a JE scheme, but are considering having one;
- you have a JE scheme that may need updating or which may not meet current legal standards.

This guidance may also be useful for employees, trade union officers or other employee representatives involved in developing or reviewing an employer's JE scheme.

How a legally compliant job evaluation gives an employer a defence to an equal pay claim

Equal pay claims under the Equality Act 2010

The Equality Act 2010 entitles a woman to equality in pay, and other terms and conditions, where she is doing equal work to that of a man in the same employment. If she is not receiving equal pay, she can bring an equal pay claim against her employer under the 'Equality of Terms' provisions in the Act. A man can also bring an equal pay claim under the Act where he is doing equal work to that of a woman in the same employment.

Equal pay provisions are now called 'Equality of Terms' provisions and are to be found at Chapter 3 of Part 5 of the Equality Act 2010. Although there are some amendments and additions to the new legislation to take into account, case law on technical points, the principles and main provisions remain essentially the same as those of the Equal Pay Act 1970. These are explained in more detail in the *Code of Practice on Equal Pay*, paras 41–47. Cases decided under the 1970 Act are still relevant in interpreting the equal pay provisions in the 2010 Act.

To make an equal pay claim, an employee can compare himself or herself only to an employee of the opposite sex in the same employment. This employee of the opposite sex is called a 'comparator'.

An equal pay claim cannot be brought where there is no comparator doing equal work. However, an employee can bring a claim of direct sex discrimination based on a hypothetical comparator.

There are three types of equal pay claim:

- 'like work' refers to work that is the same or broadly similar as the comparator's, provided that any differences in the work are not of practical importance;
- 'work rated as equivalent' means work that is different from, but rated under the same job evaluation scheme as work of equal value to, the comparator's; and
- 'work of equal value' refers to work that is different from, but of equal value to, the comparator's, as measured by factors such as effort, skill and decision-making.

Job evaluation as a defence to an equal pay claim

Job evaluation is a method for comparing different jobs to provide a basis for a grading and pay structure. Its aim is to evaluate the job, not the jobholder. A JE scheme is a way of systematically assessing individual jobs objectively, while avoiding prejudice or discrimination.

Evaluating a job's demands inevitably involves value judgements that are, to some extent, subjective. The aim of a JE is to minimise the scope for subjectivity, and to make decisions about jobs as rational, consistent and transparent as possible.

A JE provides an employer with a defence to an 'equal value' claim where:

- the job done by the person claiming equal pay has been given a different (lower) value than the comparator's under the JE (s 131(5) and (6) of the Equality Act 2010); *and*
- the JE satisfies the standards set by the courts and tribunals.

The standards that a job evaluation must meet to provide a defence to an equal value claim

In the course of cases decided under the Equal Pay Act 1970 and the Equality Act 2010, the courts and tribunals have set out the standards that a JE must meet if it is to provide a defence to an equal value claim.

To provide a valid defence, a JE must be:

- *analytical* – it should evaluate each job in terms of the demands made on the worker under factors such as ‘effort’, ‘skill’ and ‘decision-making’ (with evaluation on a ‘whole job’ basis, under which jobs are assessed in terms of their overall content, not meeting this standard);
- *thorough and impartial* – it must objectively assess the value placed on the work performed and, so far as possible, not leave room for the results of the evaluation to be influenced by subjective views (so that a JE that does not have rigorous safeguards against subjectivity will not meet this standard);
- *gender neutral* – it should be objective, be non-discriminatory, recognise the skills of men and women equally, and be applied in a consistent and unbiased way (so that a JE that is gender biased or discriminatory at any of the planning, design, implementation or evaluation stages will not meet this standard); *and*
- *reliable* – it must be reliable in every other way (so that, for example, a JE that uses out-of-date procedures or practices, which uses out-of-date evaluation results or which is only partially completed will not meet this standard).

The next section of this Guidance highlights some of the main risks of which an employer must be aware to ensure that a JE is gender neutral.

Risks of gender bias in job evaluation design

A JE may be at risk of gender bias in its design if:

- the choice of factors in a JE does not reflect all of the work being evaluated;
- factor definitions are potentially discriminatory;
- factor levels are potentially discriminatory;
- the scoring system is potentially discriminatory; and/or
- factor weighting is potentially discriminatory .

Risk 1: The choice of factors does not reflect all of the work being evaluated

Job factors are aspects of a job that can be defined and measured, such as 'knowledge and expertise' or 'physical and mental demands'. A factor plan is the combination of factors against which jobs will be evaluated.

The choice of factors affects the final ranking of jobs. A robust JE needs to identify all of the demands of a job, and not overvalue or ignore factors that are associated with jobs that typically have been done by women or by men. If the factor plan is affected by gender bias, the JE will not provide the employer with a defence to an equal pay claim, however fairly the JE exercise is carried out.

Discrimination may occur if the factor plan scheme:

- *omits factors relevant to jobs mainly done by women* – Skills such as manual dexterity (for example for keyboard operation, cooking, graphic arts), communication skills or meeting emotional demands are undervalued because they are thought to be the skills or attributes that women either naturally possess or acquire through life experience, and so may be omitted from a job evaluation.
- *double-counts a job demand* – If factors are not chosen carefully, they may duplicate or overlap. This can lead to one or more demands of a job being counted more than once, exaggerating the overall demands of the job, as in the following example.

Example: How biased factors produce biased outcomes

An employer identifies job factors under the headings of 'skill', 'responsibility', 'effort' and 'conditions'. The evaluation in Table 1 scores the role of handyman/gardener more highly than that of HR assistant.

Table 1 Evaluation using gender-biased factors

Factors	Handyman/gardener	HR assistant
Skill		
Experience in job	8	3
Training	4	6
Responsibility		
Equipment and machinery	6	3
For safety	4	2
Effort		
Strength required	7	1
Sustained physical effort	5	2
Conditions		
Physical environment	6	1
Hazard	4	1
Total	44	19

Note: Each factor is scored on a scale from 1 to 10. For simplicity, no weights have been applied.

The set of factors in Table 1 is biased on gender grounds because:

- it contains many characteristics of 'male' jobs and few of 'female' jobs, such as physical strength but not visual attention;
- some of the characteristics of the male job are duplicated; for example, 'strength' double-counts 'sustained physical effort' to some extent; and

- the two conditions factors reflect demands traditionally associated with jobs done by men – that is, ‘physical environment’ and ‘hazards’.

Table 2 demonstrates how choosing a set of factors that incorporates all of the important and relevant differentiating characteristics of the jobs to which the scheme is going to be applied produces a more equitable outcome.

Table 2 Evaluation using gender-neutral factors

Factors	Handyperson/ gardener	HR administrator
Job knowledge	5	6
Complexity of task	6	7
Responsibility for people	2	5
Responsibility for materials and equipment	5	2
Responsibility for information	1	7
Mental effort	4	6
Visual attention	5	6
Physical activity	8	2
Working conditions	6	1
Total	42	42

Notes:

- Each factor is scored on a scale from 1 to 10. For simplicity, no weights have been added.
- The job titles have also been changed to make them gender neutral and to avoid the risk that the status suggested by the title influences the evaluation.

Risk 2: Factor definitions are potentially discriminatory

Courts require JEs to be reliable – that is, two assessments of job value, however performed, must produce the same results. So factors need to be clearly described so that they are readily understood, and can be applied consistently and reliably. This reduces the risk of the subjective views of the job evaluators resulting in gender-biased results.

Factor descriptions need to describe the meaning and scope of each factor. The description must be impartial, and should not imply assumptions about the gender of jobholders or the demands of work associated with one gender, because this may lead to undervaluing some job demands.

Examples

- A definition of ‘working conditions’ may discriminate if it reflects only the demands of adverse working conditions in jobs traditionally performed by men, such as refuse collectors working with noisy and dirty machinery. The definition should also reflect the demands of adverse working conditions in jobs often done by women, for example care workers dealing with bodily fluids or odours.
- A definition of ‘experience’, which includes continuous length of service, may discriminate on grounds of sex (because women tend to have breaks in service associated with childcare). For a JE, if the necessary job demands can be learnt in two months, then twenty years’ service by a job holder is not relevant.

Risk 3: Factor levels are potentially discriminatory

Specific factors in a JE often contain a number of levels to indicate different job demands related to complexity, managerial oversight or autonomy. Each job is placed at the factor level relevant to actual job demands. For example, the factor ‘initiative’ might contain several levels, ranging from the lowest defined as ‘following detailed instructions under close supervision’, to the highest level defined as ‘working within overall policy and having very wide discretion over a broad range of activities with minimal managerial direction’.

The levels must be objective, measurable and relevant to the demands of the job.

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The wording of factor levels should avoid bias. For example, specifying job knowledge levels only in terms of formal academic qualifications might disadvantage women who have equivalent levels of job knowledge acquired in other ways.

The number of levels in a factor is a form of weighting and may result in gender bias in the job evaluation.

Example

If each factor level in a JE scores 10 points, then a factor with eight levels will result in a maximum factor score of 80 points, and a factor with five levels in a maximum factor score of 50 points. If the factors characteristic of jobs typically held by men have more levels than jobs typically held by women, this will result in gender bias because the male jobs will have a higher potential score. The number of levels should be similar in 'male' and 'female' job factors.

Risk 4: The scoring system is potentially discriminatory

Scoring is the method of attaching values to the various levels within each factor to calculate a total score for each factor and the overall job.

The method of scoring for each factor should be reasonably similar; otherwise, factors with the same or similar numbers of levels can result in widely differing scores.

Example

A factor of 'responsibility for financial resources' has five levels, with each level valued at 5 points, giving a maximum score of 25. The factor of 'responsibility for caring' also has five levels, but each level is valued at 3 points, giving a maximum score of 15. The different scoring systems mean that more favourable weighting is applied to the 'responsibility for financial resources' factor. This could lead to gender bias where the factor with the higher value score is associated with jobs traditionally done by men.

Factors characteristic of male-dominated jobs should not have higher value scores than factors characteristic of female-dominated jobs, or vice versa. If they do, an employer needs to be able to objectively justify both the different scoring values for each level and the overall maximum scores, to demonstrate that the system is impartial and gender neutral.

Risk 5: Factor weighting is potentially discriminatory

Factors are not equally important and it is normal to reflect this by weighting the factor scores. For example, an important factor may be weighted at 10 per cent and an unimportant factor may be weighted at 5 per cent.

Gender bias may affect the decision on how to weight factors. A JE should not give very high or very low weights to factors that are exclusively found in jobs performed mainly by either men or women.

In the event of a legal challenge, an employer will need to justify its set of weightings by showing the importance of the factors to the organisation as a whole.

Risks of gender bias in job evaluation implementation

The key risks of bias in implementing the JE are:

- biased or unreliable job information;
- biased or unreliable selection of benchmark roles; or
- the use of 'job slotting' or 'job matching'.

Risk 1: Biased or unreliable job information

However unbiased a JE's factor plan, the results of a JE exercise will be at risk of being discriminatory and inconsistent if the job information on which the evaluation is based is unreliable. The job information will need to follow the JE factors to avoid assumptions, omissions and undervaluation, and to maintain objectivity and consistency.

The process for capturing job information needs to be rigorous, reliable and gender neutral. The less familiar the person capturing the job information with the jobs concerned, the greater the risk that the information captured will reflect his or her preconceptions about the demands of those jobs, rather than the reality. Involving suitably trained staff, the role holder and relevant supervisors/line managers will ensure that the job information provides a more accurate reflection of those actual demands.

The way in which job information is presented can lead to the evaluation being affected by irrelevant preconceptions.

Example

- Using gender-specific job titles risks the evaluation of a job being influenced by its traditional association with women or with men. To avoid that risk, use gender-neutral job titles, such as 'team leader' instead of 'foreman', or 'salesperson' instead of 'shop assistant'.
- Using job titles that indicate the current status of the jobholder risks the evaluation being influenced by the status implied by that title, rather than being based on the actual demands of the job. To avoid

that risk, use more status-neutral job titles, such as ‘customer services team member’ or ‘customer services officer’ instead of ‘customer services assistant’.

Risk 2: Biased or unreliable selection of benchmark roles

Most JE exercises involve selecting certain jobs as benchmark roles. These are jobs that are used as a standard against which others are measured, because these roles are considered to be typical of a grade or group of jobs. The selection of benchmark jobs should reflect the range of work done in the organisation as a whole.

If only a small number of female staff are employed within an organisation, the employer needs to ensure that it includes a representative sample of these ‘female’ jobs amongst the benchmark roles. This will ensure that the JE scheme takes account of job elements particular to the ‘female’ jobs, rather than evaluates the jobs of female employees against a factor plan that is more appropriate to work done mainly by men, in which case it may be discriminatory.

Risk 3: Use of job matching or slotting

An analytical JE process should cover all individual jobs. However, ‘job slotting’ or matching a job to a generic job profile is acceptable practice when an individual job is identical, or almost identical, to the generic job profile. Any generic job profiles must relate to the factor headings in the JE and matching must be undertaken against all of the factors.

For a JE exercise to comply with the standards required by the courts and tribunals, all individual jobs should be subject to an analytical JE process. A ‘slotting’ of jobs against benchmarks on the basis of historic grade relationship would not meet the standards set by the courts and tribunals, and so would not provide an employer with a defence to an equal value claim.

Finding out more information about how to carry out a job evaluation

For further information on employment tribunal standards, see the Commission's Guidance booklet *Gender-Neutral Job Evaluation Schemes: An Introduction to the Law*, available on the Equality and Human Rights Commission website (www.equalityhumanrights.com).

For a step-by-step guide on how to plan, design and implement a JE free of gender bias, see the Commission's *Equal Pay Audit Toolkit*, available on the Equality and Human Rights Commission website (www.equalityhumanrights.com).

For information about equal pay law and practice generally, see the Commission's *Code of Practice on Equal Pay*, available on the Equality and Human Rights Commission website (www.equalityhumanrights.com).

Other useful resources

Advisory, Conciliation and Arbitration Service (ACAS) (2005) *Job Evaluation: An Introduction*, available online at www.acas.org.uk/media/pdf/4/0/B01_1.pdf

ACAS (2011) *Job Evaluation, Considerations and Risks*, available online at www.acas.org.uk/media/pdf/9/t/job-evaluation-considerations-risks-accessible-version-July-2011.pdf

Armstrong, M., Cummins, A., Hastings, S. and Wood, W. (2005) *Job Evaluation: A Guide To Achieving Equal Pay* (London: Kogan Page Ltd)

International Labour Organisation (ILO) (2008) *Promoting Equity: Gender-Neutral Job Evaluation for Equal Pay – A Step-by-Step Guide*, available online at www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101325.pdf

Standards Australia (2012) *Australian Standard on Gender-Inclusive Job Evaluation and Grading*, AS 5376–2012, Australian government guide available online at www.wgea.gov.au/sites/default/files/Guide_to_Australian_Standard.pdf

More about this publication

Why has the Commission produced it?

The Equality and Human Rights Commission has responsibility for the promotion and enforcement of equality and non-discrimination laws in England, Scotland and Wales. This publication was produced to foster a better understanding of (and adherence to) these laws, in line with its mission.

What formats are available?

This Guide is currently available, in English, as a PDF file from the Equality and Human Rights website, www.equalityhumanrights.com.

Who can I talk to about it?

Questions or comments may be sent to correspondence@equalityhumanrights.com.

Where can I find more information?

Lawyers, human resources personnel, courts and tribunals are advised to consult the Equal Pay Statutory Code of Practice for additional technical guidance. This document is available from the Equality and Human Rights Commission on its website, www.equalityhumanrights.com.

The Equality and Human Rights Commission also offers specific tools and guidance for employers on implementing job evaluation free from gender bias. Visit www.equalityhumanrights.com.

Further information

Gender-Neutral Job Evaluation Schemes: An Introductory Guide was published by the Equality and Human Rights Commission. This publication and related equality and human rights resources are available from the Commission's website (www.equalityhumanrights.com).

For specific advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

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