

# Amicus Guide to Equal Pay

  
*amicus*  
the union



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## Introduction

Equal pay legislation has been in force for over 30 years, yet women still earn 17% less than men. Amicus is campaigning to end this discrimination against our women members. Equal rights are a key priority for Amicus and we are committed to promoting equality and advancing the interests and improving the working conditions of members irrespective of age, gender, sexual orientation, ethnic or national origin, creed or disability.



This Amicus guide to equal pay sets out the union's policy and action points for workplace representatives.

The Women and Work Commission report was published in February 2006 and although Amicus welcomed the report in terms of the recommendations on skills and procurement, we were deeply disappointed that the Commission did not recommend mandatory equal pay reviews for all sectors. Following the Report we are strengthening our campaign for equal pay for women, as unless action is taken women will continue to suffer discrimination in both pay and opportunities. Equal pay legislation needs urgent reform and employers should be obliged to undertake equal pay reviews and take action to close the gender pay gap.

Amicus is at the heart of the campaign to end pay discrimination. Our experience of legal action on behalf of individual members is that it is a lengthy and complex process, and like all legal action is stressful for the member, without any automatic benefit beyond the individual's case.

People should be paid fairly, have access to equal opportunities and be free of discrimination and harassment. Join our campaign to end unlawful pay discrimination.

**Derek Simpson**  
**Amicus General Secretary**

Amicus is at the forefront of the trade union campaign to achieve equal pay. It is vital that equal pay is at the centre of collective bargaining. Amicus negotiators, shop stewards and representatives have a key role in ensuring that progress is made towards closing the gender pay gap.



This Amicus guide to Equal Pay sets out the union's policy and action points for workplace representatives. The guide has been produced to help you negotiate with employers on equal pay and I would urge you to make full use of the document. Achieving equal pay is important to everyone as it affects family incomes. Working together we can make a difference, close the gender pay gap and ensure that workers do not continue to suffer pay discrimination.

**Siobhan Endean,**  
**Head of Equalities**

## ■ The range of pay discrimination

Much of this guide will refer to pay discrimination against women, as this has been identified as a very significant problem historically, and is also continuing today. The references to the Equal Pay Act below only apply to pay discrimination on grounds of sex. We also cover other discrimination legislation, which allows us to tackle discrimination on grounds of race, disability, sexual orientation and religion. Additionally, Age Discrimination Legislation came into force in October 2006.

## ■ Gender pay gap - the facts

- Women working full time earn 17% less than the average male wage. The gap for part-time workers is even wider, with a 38% gender pay gap<sup>1</sup>. These statistics are a clear illustration that there remains inequality in many workplaces.
- Research on the pay gap illustrates the financial impact that this issue could potentially have on female employees. Research has found that *“the lifetime gender earnings gap (the gap between men and women’s earnings above and beyond any penalties attached to motherhood) is estimated to be worth just under a quarter of a million pounds for the mid-skilled women over their lifetime”*.<sup>2</sup>
- There exists a wide gender pay gap at every level of qualification. A TUC report found that teenage girls earn as much as 16% less than their male counterparts<sup>3</sup> - a demonstration that the gender pay gap is not simply the outcome of career breaks that some female employees may have due to childcare responsibilities.
- According to the Equal Opportunities Commission (EOC), men make up the majority of employees in the five highest paid occupations, but women predominate in four of the five lowest paid.
- The pay gap between white and black or minority ethnic workers is 20%. This increases to a 45% gap between black and minority ethnic women and white men.



<sup>1</sup> Annual Survey of Hours and Earnings (ASHE), 2005

<sup>2</sup> Women's Incomes over the Lifetime, 2000

<sup>3</sup> 'Young at Heart', TUC Report, 2004

## ■ Gender pay gap – the causes

The gender pay gap is persistent despite the Equal Pay Act, 1970. This Act states that all workers regardless of age, length of service or gender have the right not to suffer sex discrimination in relation to their pay.

The Equal Opportunities Commission set up the Equal Pay Task Force. The report entitled 'Just Pay'<sup>4</sup> concluded that there are three main reasons for the gender pay gap:

1. **Occupational segregation** – this takes two forms. *Horizontal segregation* where women are clustered in low paid occupations and *vertical segregation* where women are working in the lower graded jobs within an organisation.
2. **The unequal impact of women's family responsibilities** – this relates to the fact that women continue to bear responsibility for most childcare and domestic responsibilities.
3. **Pay discrimination** – remains a concern despite the Equal Pay Act. Pay refers to all aspects of an individual's salary including: bonuses, overtime, pension and any 'perks'.

The overall recommendation of the report was that equal pay reviews must be made mandatory if the pay gap is to be closed.

The government did not support this opinion. A further study was commissioned. This report by Denise Kingsmill<sup>5</sup> concluded that, "*the business case for major reconsideration of women's employment, and pay within both the public and private sectors is becoming overwhelming, and that the actions of employers spurred by self-interest offer the greatest prospect of reducing the gender pay gap in the short term*".

In 2004 the Government commissioned a further review to examine the causes of the gender and opportunities gap to recommend solutions to close it, chaired by Baroness Prosser of Battersea. The Women and Work Commission report

was published in February 2006 and although Amicus welcomed the report in terms of the recommendations on skills and procurement, we were deeply disappointed that the Commission did not recommend mandatory equal pay reviews for all sectors. Following the Report we are strengthening our campaign for equal pay for women, as unless action is taken women will continue to suffer discrimination in both pay and opportunities. Equal pay legislation needs urgent reform and employers should be obliged to undertake equal pay reviews and take action to close the gender pay gap.

The Government also commissioned an Equalities Review, chaired by Trevor Phillips, Chair of the CRE. This has investigated inequality in society and made recommendations in Feb 2007 to overcome the barriers to equality. Parallel to the Equalities Review, the Department of Trade and Industry is reviewing discrimination legislation with the aim of implementing a Single Equality Act. A new Act is required if the Commission for Equality and Human Rights is to function effectively and to ensure that discrimination legislation is made more coherent and comprehensive. This will enable people to better understand their rights under discrimination law at work.

Amicus is campaigning for Equal Pay Legislation to be strengthened within the term of this Government as part of a new Single Equality Act. There should be a statutory obligation for employers, in all sectors to carry out equal pay audits, take action on the results of the audits and publish these in their annual reports. Transparency in pay systems is essential if progress is to be made on closing the gender pay gap. Additionally, trade unions must have the right to take class actions on behalf of their members. This would enable trade unions to take cases on behalf of a group of employees in the same circumstances, as opposed to employees taking individual action.

<sup>4</sup> EOC, *Just Pay Report, 2000*

<sup>5</sup> Kingsmill Review, *Women's Employment and Pay, 2001*

## CASE STUDY – AMICUS FINANCE SECTOR

The sector currently has a larger pay gap than any other sector, at 41%. Amicus is working with the EOC and employers to address the issues that contribute to this unacceptable discrimination. As part of this campaign Amicus has produced a guide to 'Advancing Women in the Workplace'. This guide describes the barriers to female progression in the finance sector and outlines a clear action plan to address the issue of occupational segregation. This guide can be viewed on the Amicus website at:

**[www.amicustheunion.org/finance](http://www.amicustheunion.org/finance)**



## ■ So what is Amicus doing about the gender pay gap?

It is vital that changes take place in the workplace and we are:

- putting pressure on employers to carry out equal pay audits. These audits reveal exactly where the problems lie and the employer can then work with Amicus on solutions to close the gap,
- campaigning for the end of the long hours' culture and promoting flexible working for all staff to bring about work-life balance. This will bring about more equality in the workplace and will help women have better access to promotion opportunities,
- campaigning for enhanced maternity, paternity and parental leave and pay within the workplace and at government level. This will enable parents to share childcare responsibilities and have more choice about the time they spend with their children.

Additionally, we are campaigning for the equal pay legislation to be strengthened:

1. Equal pay reviews need to be made mandatory. Transparency in payment systems is essential. Amicus believes there must be a mandatory duty on employers in all sectors to undertake an equal pay review.
2. There should be a positive duty on employers to promote equality in the public, private and voluntary sectors.
3. Trade unions must have the right to take class actions on behalf of their members. This will enable trade unions to take cases on behalf of a group of employees in the same circumstances, as opposed to the current situation where each individual employee must take their own action.

## ■ Amicus priorities

Amicus' objectives in relation to equal pay are to:

1. secure equal pay for members by eradicating unfair pay discrimination.
2. where possible level up the pay of those suffering discriminatory pay disadvantage to the pay of the higher paid comparator<sup>6</sup>,
3. pursue objectives within the union's overall aim of maintaining job security, particularly within the public sector, through Single Status and Agenda for Change and avoiding job cuts, service dilution and externalisation, seeking to avoid erosion of previously negotiated terms and conditions.

Amicus will instigate legal claims as part of the union's strategy to protect and advance the interests of members subject to unlawful pay discrimination. Nonetheless, it is recognised that legal

action has inherent limitations and there are circumstances where a collective agreement is a better remedy. Claims are often difficult to win, the law is complex, and the facts are hard to prove. In addition, there are inevitable and often substantial delays, and the outcomes are usually uncertain. One problem is that, when a court agrees that pay discrimination has taken place in an individual case the decision has no automatic wider impact. In other words, even where there are other people working for the same employer with the same or very similar circumstances, each employee would still have to prove their case. Amicus wants this to change and is asking government to introduce 'class action', meaning that cases can be taken together with a wider impact. Amicus does not see equal pay claims as an easy fix. The main solution to pay inequality is through collective bargaining.

### CASE STUDY – AMICUS PRINT SECTOR

Women table hands who did a wide variety of jobs throughout the day compared themselves to guillotine operators in an equal value pay claim. The women were paid on the bottom grade, the men on the top grade. In a settlement at the tribunal it was agreed to conduct a job evaluation exercise. The women's jobs were found to be of equal value, overturning the traditional value that had been put on women's jobs for decades.

## ■ An equality review

Amicus is of the view that an equal pay audit (sometimes referred to as a 'pay review') is the only way to ensure that a pay system is fully equality proofed. The Equal Opportunities Commission define a pay review as, "*comparing the pay of women and men doing equal work, investigating the causes of any gender pay gaps and closing any gaps that cannot be satisfactorily explained on grounds other than sex*"<sup>7</sup>.

In our view, and that of the Equal Pay Task Force, the employer should have a

duty to carry out an equal pay audit<sup>8</sup>. In addition, the EOC's Code of Practice on Equal Pay<sup>9</sup> recommends that employers should carry out such audits. The union should be an active partner in that process (via our trade union representatives) being consulted throughout, and agreement should be sought. It is vital that if a pay audit is planned in your workplace you should contact Amicus. This will ensure that those involved in the audit, and any subsequent negotiations, are fully trained and supported in equality and equal pay issues.

<sup>6</sup> "Comparator" meaning person(s) whose pay is being cited in comparison to that of the member or members who are suffering pay discrimination

<sup>7</sup> Equal Opportunities Commission, Equal Pay Review Kit

<sup>8</sup> This view is stated in the Equal Pay Task Force 'Just Pay' Report to the Equal Opportunities Commission, 2000

<sup>9</sup> Code of Practice on Equal Pay, December 2003

## ■ Equal pay reviews – the benefits

In the majority of cases, the procedure to achieve equal pay will not be a cost neutral process. However, there are undoubtedly business benefits in completing an equality review.

These include:

- checking that the pay system is transparent to ensure that employees are rewarded fairly for their contribution to the organisation,
- the recruitment and the retention of the best staff,
- a workforce that is better equipped for competition,
- an organisation that leads the industry in good practice in employment,
- an organisation that presents a positive image to customers and the community,
- equal pay reviews can be effective in avoiding and defending equal pay claims.



### NHS CASE STUDY – AGENDA FOR CHANGE

AfC is a new pay system that applies to all NHS employees, with the exception of medical doctors, dentists and the most senior managers.

From the outset, AfC was negotiated with the intention of ensuring that all elements were implemented in partnership at every level of the NHS structure. Additionally, third party advice was obtained from the EOC and the Commission for Racial Equality, with continuing support from an independent expert on the equal pay implication of job evaluation.

An important key element was the aim to establish a pay system that was objective, equality proofed and tailored to reflect the values and purpose of the NHS. A new job evaluation scheme is designed to ensure all jobs are evaluated fairly without any bias. Amicus research showed that discretionary pay points in nursing were awarded in a way that seemed to discriminate against black and minority ethnic staff.

A second element was the harmonising of terms and conditions so that everything that should be included in basic pay but was previously acknowledged by bonuses or allowances is now embedded in job evaluation. There is now equity on other important entitlements such as holidays and overtime pay.

In addition, a new Knowledge and Skills Framework provides a fair system for staff development and training that is monitored electronically.

At every stage decisions and implementation are dependent on partnership work. No one party has the upper hand. This means joint training, joint leads on job evaluation, joint panels to match people to job profiles and joint reviews.

## EQUAL PAY REVIEW - RESOURCES

### • Equal Opportunities Commission

The EOC has produced a range of practical resources to help employers address the issues surrounding equal pay.

**EOC Website: [www.eoc.org.uk](http://www.eoc.org.uk)**

**[www.eoc.org.uk/cseng/advice/help\\_for\\_employers\\_from\\_the\\_eoc\\_equal\\_pay.asp](http://www.eoc.org.uk/cseng/advice/help_for_employers_from_the_eoc_equal_pay.asp)**

**Help line: 0845 601 5901**

These resources include:

1. Code of Practice on Equal Pay
2. Equal Pay Review Kit (outlined below) - there is also a Review Kit for small businesses - [www.eoc.org.uk/cseng/advice/equalpay.asp](http://www.eoc.org.uk/cseng/advice/equalpay.asp)

This toolkit gives advice to employers on good equal pay practice. It is a step-by-step model on how to conduct a pay review.

3. Equal Pay Review Kit Guidance Notes  
[www.eoc.org.uk/cseng/advice/equal\\_pay\\_review\\_kit\\_guidance\\_notes.asp](http://www.eoc.org.uk/cseng/advice/equal_pay_review_kit_guidance_notes.asp)
4. Practical tips on equal pay  
[www.eoc.org.uk/cseng/advice/practical\\_tips\\_on\\_equal\\_pay.asp](http://www.eoc.org.uk/cseng/advice/practical_tips_on_equal_pay.asp)  
[www.eoc.org.uk/cseng/advice/checklist.asp](http://www.eoc.org.uk/cseng/advice/checklist.asp)





### • ACAS

**[www.acas.org.uk](http://www.acas.org.uk)**

**Help line: 08457 474747**

The Advisory, Conciliation and Arbitration Service has trained advisers to assist employers and trade union officials who are embarking on a pay review.

### The EOC's equal pay review model has five basic steps:

1. Deciding the scope of the review and identifying the data required.  

2. Identifying when men and women are doing equal work.  

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

4. Establishing the causes of any significant pay gaps and assessing the justifications for these.  

5. Developing an Equal Pay Action Plan, or reviewing and monitoring.

It is recommended that a review considers 'like work', 'work rated as equivalent', and 'work of equal value'<sup>10</sup>. The EOC suggests that any audit must include all employees, whether they are full-time, part-time, a casual employee, a temporary worker, a contractor or are self-employed. An audit should also look at factors where discrimination might affect pay.

<sup>10</sup> 'Like work', 'work rated as equivalent' and 'work of equal value' are defined later on p13.

## ■ What should be included in a pay review?

The checklist below is a good starting point in gathering the initial information that is required at the beginning of the audit process. The list refers to a gender breakdown of information, but it is advisable to expand this to other potentially disadvantaged groups.

1. **Gender breakdown** - provide a breakdown of the numbers of men and women in each pay band.
2. **Average salaries** - calculate average salaries for men and women in each pay band.
3. **Fixed sum allowances** - calculate average annual allowances for men and women in each pay band.
4. **Overtime** - calculate average annual overtime payment for men and women in each pay band.
5. **Special bonuses** - provide a breakdown of special bonus payments for men and women in each pay band.
6. **Performance related pay** - provide a breakdown of box markings by gender for each pay band for the most recent staff appraisal round.
7. **Starting pay on appointment** - calculate the average starting pay on appointment for men and women in each pay band for the period of the last two years.
8. **Average length of time in grade** - calculate the average length of time in grade for men and women in each pay band over a five-year period.

Consideration of the factors in this list will therefore be a valuable initial step in the review.



### CASE STUDY – HBOS

HBOS has carried out an equal pay audit based on gender and findings were shared with the unions. The audit revealed that there was some pay anomalies at senior levels, but the major issue was that women were clustered in the lower grades in the company and under-represented in senior management.

An action plan was drawn up in partnership with the unions which included a commitment to carry out regular equal pay audits, draw up action plans, regular monitoring of starting salaries and managerial guidelines on equal pay. A review of all HR policies and practices was undertaken in order to remove any barriers to progression and ensure equal access.

A Diversity Leadership Forum has been set up where HBOS divisions come together to plan and track progress against diversity commitments. This is chaired by James Crosby, Chief Executive of HBOS.

The company has recently issued a HBOS Diversity Commitment to all staff with their salary slips stating that “diversity, dignity and respect are fundamental pillars of HBOS”.

## A NEGOTIATOR'S GUIDE

Trade union negotiators have a vital role to play in addressing the gender pay gap. Equality issues must be placed at the centre of all collective bargaining. It is vital that an equality review is conducted to ensure that an organization is aware of any anomalies in payment systems. The following should be considered in negotiations:

- Recruitment and promotion – starting pay and promotion.
- Salary progression – pay increases, increments, like work.
- Performance related pay – management discretion.
- Additional benefits – access to additional benefits.
- Conclusions drawn should form the basis of an action plan to address any anomalies. An action plan should be agreed with management and Amicus to provide equal pay for all employees within three years. It is vital that there is regular monitoring to ensure there is no recurring sex bias.
- Findings to form the basis of negotiating strategy along with other issues.
- Determine whether legal claims should be a part of strategy if negotiations do not deliver.
- Negotiators, members and employers must be clear as to the Amicus equal pay strategy and objectives.
- Members must be consulted and informed over formulation of claims and the outcome.

## ■ Negotiations

The primary objective in negotiations on this issue should be to level up the pay of the lower paid to that of their higher paid comparators. Ideally there should not be any reductions in pay. Legal action can potentially give up to six years' back pay. Where a group is found to have been underpaid, consideration must be given to the issue of back pay. The equality review must be repeated on a regular basis to determine the extent to which the union has achieved its objectives.

When negotiating with an employer on the issue of equal pay, any proposed pay and regrading agreement should be considered in the context of the union's objectives and strategy. When faced with the prospect of having to recommend something less than full equalization up of pay (including back-pay where appropriate), the following factors should be taken into account:

- The views of all groups of members affected by the pay reviews, and in particular, those groups who could bring equal pay claims;
- The prospects of success of individual equal pay claims (you may need to obtain legal advice through your Regional Officer to determine this);
- The likely length of equal pay proceedings compared to the benefit of an immediate settlement;
- The fact that collective agreements will remove the necessity of each member having to prove her claim on the balance of probabilities in an employment tribunal;
- The amount of the offer and the reasons that the offer is less than full value.

Regard needs to be given to providing an adequate back-pay settlement for those with potential equal pay claims. If the best deal that negotiations can achieve fails to include full back pay entitlement; or that equal pay be achieved over a number of years (and the negotiators wish to agree this to protect the future pay line) then before the Union makes any recommendation to our members it is crucial that the Union does the following:

- Obtains legal advice as to the amounts that are being offered and to what extent they reflect the claims' prospects of success;
- Provides a full explanation to all groups of members, and in particular, those who could bring equal pay claims, as to the fact that the offer is less than full value;

- Advises those members what their chances of success at an employment tribunal are, the time limits for pursuing a claim and whether Union legal assistance is available; and
- Explains the reason that the offer is being recommended;
- Canvass the views of members once they have had the above information.

It is a legitimate aim for the Union to seek pay protection for members who may otherwise suffer a pay reduction under an equal pay audit in order to cushion the effect on members who will have adjusted their lives to a particular level of income. Continuing to provide cost of living increases to members on pay protection is more risky and if there is a realistic doubt over the employer's ability to fund equal pay (which may be a more common concern in the public sector) then seeking to maintain pay protection will not always be appropriate and you should seek legal advice through your Regional Officer. You should balance the interests of all different groups of members, ie pay protection should not

usually be maintained at the expense of back-pay for other members. Remember to consult all groups of your membership fully during negotiations.

In most cases it is not appropriate to propose a deal which would deny union legal assistance to potential equal pay claimants. If any such deal is proposed, and representatives want to recommend it for any reason, it must be referred to your Regional Officer who would at that point seek legal advice before any such deal is put to union members.

Potential individual equal pay claims should be referred through Legal Services and the Union will consider whether to provide legal assistance in these claims in the normal way, taking into account the prospects of success of the claim and any exceptional factors. Even if the Union decides not to provide legal assistance to an individual claimant, it is not appropriate to deny practical support (e.g. the provision of relevant information) to a union member who chooses to pursue their claim independently or through private solicitors.

## ■ Action plan – achieving equal pay

Once any issues with equal pay are established from the audit, an action plan should be drawn up to eliminate pay discrimination and provide equal pay within a reasonable time scale.

Key features of an action plan are that it should:

- provide equal pay for current and future employees, if a gender gap exists, within less than three years in all but the most complex situations,
- be agreed with the trade union,
- set up a system of regular monitoring and clear managerial accountability to ensure the pay system is free of bias,
- introduce an equal pay policy if none exists. The policy should set out clear objectives and an effective programme of how the organisation should achieve equal pay. The policy should include a statement on equal pay, as well as proposed action, including regular monitoring and the impact on pay systems. The organisation's equal opportunities policy should also be amended to incorporate a commitment to addressing equal pay,
- commit to carry out an equal pay review on a regular basis<sup>11</sup>.

<sup>11</sup> EOC, *Equal Pay Task Force "Just Pay", 2000*  
EOC, *Equal Pay Review Model, 2002*

## ■ Training

National training is held at Esher College for those involved in collective bargaining. The issues covered include why the pay gap exists and exploring ways to eliminate it. The training will look at the barriers to progress on pay equality and make practical recommendations on what action should be taken to eliminate the gender pay gap.



Importantly you will also learn:

- what the law says about equal pay,
- what pay reviews are and why they are necessary,
- skills to work in partnership with employers to carry these out.

More information on training is available on the Amicus website - [www.amicustheunion.org.uk](http://www.amicustheunion.org.uk) or contact your Amicus Regional Office.

## ■ The union's responsibility

All significant equal pay advances have been achieved with union support. For over a century Amicus and its predecessors have fought for equal pay. We have had many victories, but much more needs to be done. You can be part of that.

Additionally, all unions are under a legal duty to ensure that they provide services to members in a non-discriminatory way. This means that Amicus representatives must seek to do their best for all members regardless of gender, race, religion, disability and sexual orientation. A failure to do this means that the representative and the union could face allegations of discriminatory treatment from members.

It is vital to ensure that equality issues are considered at the outset of any negotiations with employers and they are taken fully into account by negotiators in formulating their strategy and advancing claims. This duty applies to representatives at all levels of Amicus, paid and unpaid. Amicus will continue to provide educational, campaigning and other support to help you deliver for Amicus members in your workplace.

Never before has there been so much pressure on employers to address this issue. The action of the workplace representative will be the key to our success.

## ■ A Guide to the Equal Pay Act

Gender pay equality can be argued for in three distinct ways as provided for in the Equal Pay Act, 1970. These are:

1. S1(2)(a). **Like work** where the woman is doing the same or similar work to that of her male comparator.
2. S1(2)(b). **Work rated as equivalent** under a job evaluation scheme. For instance the old White Book local government JES has been used to argue that women should be paid the same bonus as their male comparators on the same grade as them under the scheme. Although far more straightforward than an equal value claim there will often be pitfalls. In particular it is common for JESs to rely on benchmarked jobs with other jobs being slotted in. It is only if the non-benchmarked jobs have been slotted in an analytical and transparent way that they can be relied on to found an equal pay claim. Further JESs are often out of date.
3. S1(2)(c). **Work of equal value** where a woman claims that although her work is different to that of a man it carries the same "value" as a man's. Value is measured by reference to a range of matters including qualifications, skills both physical and mental and the demands of the job to take and implement decisions, contact with customers or service users and the like.

As has been already mentioned, such claims may well take many years to resolve and again the outcome is uncertain. Normally the Employment Tribunal will appoint independent experts to meet with and assess the value of claimants and comparators' jobs. Their reports usually form the basis of the Tribunal's decision. An employer may seek to justify pay discrimination by reference to a 'material factor'<sup>12</sup> other than sex as the reason for the pay difference. Where there is no evidence of gender discrimination, whether direct or indirect, the threshold for this defence is easy for the employer to satisfy. Where there is evidence of direct discrimination, there is no defence. Where there is evidence of indirect discrimination, then the employer has to objectively justify the pay difference.

<sup>12</sup> *'Material factor' is also referred to as 'genuine material factor', and refers to a significant reason, other than sex, which is the reason for the difference in pay. The legal definition has shifted with case law so expert legal advice should be sought via your officer if there is a question over an alleged 'material factor'.*



This is a much harder test for the employers to establish. Indirect discrimination arises where a pay practice disproportionately affects more women than men or vice-versa. Indirect discrimination also applies to other legally prohibited forms of discrimination. So for example inferior pay terms for part time workers may amount to pay discrimination where the majority of such workers are women. Statistical evidence may be produced to show that there is an imbalance in the proportion of male and female workers in a particular group thereby enabling a claim that pay disadvantage across the whole group when compared to other groups is discriminatory.

Employment Tribunals deal with claims by determining the content of a statutory equality clause in the woman's contract of employment. All future pay is subject to that clause and the woman is entitled to have her pay calculated according to it. Historic discrimination can result in an award of back pay for up to six years, together with interest.

To take an equal pay claim to an Employment Tribunal under the Equal Pay Act the claim must be submitted to the Tribunal within six months of the end of the pay discrimination or while it is ongoing. For other forms of pay discrimination, such as race, the time limit is three months. It is now also a requirement to have first submitted a grievance letter to the employer<sup>13</sup>. In order to gather evidence of pay discrimination there are legal questionnaire procedures that can be used. For evidence of equal pay between men and women there is an Equal Pay Act Questionnaire. For other forms of discrimination there are the questionnaires under the relevant discrimination acts. These questionnaires can be sent to the employer either before an ET claim is lodged, or within 21 days of having lodged the claim, however you are advised to seek assistance from Amicus before submitting any questionnaire.

For information on the Equal Pay Act and other discrimination issues please contact your Regional Officer<sup>14</sup>.



<sup>13</sup> This is a 'Step 1' letter under the Disciplinary and Grievance Regulations, which came into force on 1st October 2004. A reps guide to these regulations can be obtained from your Amicus office.

<sup>14</sup> If you are not a workplace representative you should contact your work place representative in the first instance.

## **Amicus Guide to Equal Pay**

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