

Options for an Equal Pay Duty for Wales

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12th May 2009

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Introduction

The Gender Equality Duty for England contains a specific duty regarding equal pay. Such duties, with differing requirements, also exist in Scotland and Northern Ireland. The passage of the proposed *Single Equality Bill* provides the Welsh Ministers with the opportunity, using legislative powers conferred by the Equality Act when it comes into force, to include an equal pay duty relevant to the Welsh context.

Accordingly, research has been commissioned to address the question:

Given the Welsh context, what requirements for combating the pay gap most effectively, can realistically be placed on Welsh public authorities as part of a specific equality duty?

This report describes a review of current legislation and policy in relation to equal pay in Europe and Canada designed to produce a number of options for an equal duty. These were subsequently debated by experts on equal pay, academic, policy and practice, who gave freely of their time, expertise and enthusiasm, at a 'focused forum' hosted by Cardiff Business School on 3rd March 2009.

The policy review is preceded by background information on measurement of the gender pay gap. This is followed by a data analysis of women's employment and pay in Wales, which demonstrates some of the different elements that combine to produce a 'gender pay gap'.

In the second part of the report, the findings from the focused forum are presented, and assessed, followed by the recommended options for an equal pay duty in Wales. The Welsh Assembly Government (WAG) may use these recommendations as the basis of consultation with public sector employers, equality organisations and the public.

Background

Across the European Economic Area (EEA), the 'unadjusted gender pay gap' stands at 15 per cent between men's and women's gross median hourly earnings. The disparity results from a combination of differences in the ways men and women are employed. These factors include employment segregation (by sector, occupation, workplace hierarchy, contract type (permanent/casual, full or part time or fixed hours), the undervaluing of 'women's work', access to training and routes to progression, the unequal division of labour between paid and unpaid work, labour market structuring on the assumption of gender roles regarding childcare and adult dependent care in the working age years, and pay discrimination.

The 'unadjusted pay gap' refers to a measure that does not account for gender differences in sector, occupation, or compare like for like jobs. It captures the ways in which gender structures and defines labour market organisation and participation; it therefore includes structural inequalities.

It is important to recall that when dealing with change to structural factors that gender does not refer to given, fixed or biological attributes but is rather used to describe how society is stratified by social and economic divisions such as class,

age, disability, ethnicity, gender etc. We are therefore, considering how institutional systems and practice produce advantage or disadvantage, not personal attributes or characteristics.

The preferred measure of the 'unadjusted gender pay gap' is '*the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees*', as defined by the European Commission (CEC 2007: 15) in the recent *Communication on Tackling the Gender Pay Gap*. This measure is used by Eurostat and the International Labour Organisation (ILO). Considering hourly earnings makes it easier to see the difference that full time and part time earnings makes to the disparity, the latter contracts being overwhelmingly undertaken by women.

A median measure is also preferred to 'mean', as a 'mean' can be skewed by the very high earnings of some men at one end of the scale and by the very low earnings of some men, but mostly women, at the other end of the scale.¹

Pay disparity by gender varies between sectors, occupations, and within workplaces. The pay gap also varies by 'objective factors' such as education, age and experience but these Human Capital indicators do not explain the gap. A report from the European Foundation for Improvement in Living and Working Conditions (ELWC) states that that even when we account for occupation, job and experience differences, women are still subject to a pay penalty of 5% in 'like for like' jobs (2008:6). This should not be taken as a proxy for pay discrimination across the board, as such estimates vary considerably.

At the aggregate level, the percentage of the pay gap that is due to direct discrimination in 'like for like' jobs including pay, as well as bonus payments, overtime or additional payments that mostly accrue to men (ELWC 2008: 5) or indirect discrimination in the form of unequal pay for work of equal value is likely to be unknowable. It would be possible to gain such a nuanced understanding by pay audit or review at the level of the workplace, signalling the importance of employer data by gender, contract, occupation and pay.

Currently UK equal pay law does not allow for hypothetical comparators, comparators in 'like' jobs in the same sector but not with the same employer, or for representative actions to be taken. However, both at UK and European level some of these options tackle pay inequalities are being considered. The EHRC has called for these actions to be included in the *Single Equality Bill*, along with an audit of gender distribution within pay bands in public sector employments. Hence, the importance of the mechanism of Equal Pay Reviews to establish the gap within individual employer organisations or internal labour markets across sectors (the NHS, and Local Government being a good example of this).

¹ It should be noted that Statistics Wales currently provide full time weekly wages, by average or mean in statistical bulletins.

In Wales, policy responses include building towards meeting the Barcelona targets for provision of adequate, affordable childcare for 90 per cent of children between 3 years of age and the mandatory school age, as well as the provision of childcare for at least 33 per cent of children under 3 by 2010.

The proposed Child Poverty measure is a key measure in this regard. As partners in the *Close the Pay Gap* campaign, the Welsh Assembly Government, Wales Trades Union Congress and the Equality and Human Rights Commission have been actively trying to persuade and enable (through toolkits) public and private sector employers to voluntarily undertake Equal Pay Reviews (EPRs)

In the UK, policy initiatives include anti-discrimination legislation, provision of free childcare (up to school age), encouraging flexible working and EPRs, and working with Trades Unions on collective bargaining for equal pay. Local Government and the National Health Service have been following National Agreements that require them to undertake EPRs.

As part of the national negotiations on the 2004 Pay Settlement, a *Local Government Pay Commission* was established to critically evaluate pay issues in local government. The main Commission recommendation resulted in a commitment, by all local authorities in England and Wales, to introduce an equality-proofed pay structure by 1st April, 2007. This was the first time that a timescale had been placed on the obligation to carry out pay reviews, creating a 3 year 'window of opportunity' to introduce new local pay structures.

Known as the *National Joint Agreement on Local Government and Services*, this commitment also required a settlement of historical pay inequalities between women and men by 31st March 2007. WAG set aside monies to assist councils to undertake their pay reviews, and for those who may need it, offered the opportunity to apply for 'capitalisation direction' to settle unequal pay going back over 6 years. As a recent case study of the settlement and job evaluation process in a Welsh local authority shows, there are many ways of approaching an Equal Pay Review and 'fairness' needs to be tested and applied throughout to achieve equitable outcomes (EHRC 2009).

Since 2007, public sector employers in England, Scotland and Northern Ireland have been subject to distinct duties regarding EPRs. Together with policy responses from Europe and Canada such policies are discussed below, following an outline of the methodology for this research.

Research Methodology.

The research design was in two stages. A literature review of policy and data on the causes of the gender pay gap was collated and analysed. This provided a synthesis of current data on the gender pay gap and of policy in the EU and Canada designed to address the issues. From the synthesis, a suite of potential options were derived and debated in a facilitated forum. This took the form of small group discussion involving academics, policymakers and practitioners with expertise in equal pay. In this way we gathered information on preferred options and also on implementation issues, likely 'buy-in' from various stakeholders, costs, risks, and opportunities for success.

The literature review was undertaken through a search of peer reviewed academic articles in the social sciences using the Web of Science. Searches were made of websites for research and policy reports including EUROPA, the European Union Website, the International Labour Organisation, national and international Equality Commissions and Governments. Policy evaluations by the EU network of legal experts in the field of discrimination law were particularly helpful. The Office of the Chief Social Research Officer and Statistics Wales assisted with sourcing earnings data for Wales. The Welsh Local Government Association provided helpful employee data and other relevant research was sourced by 'snowballing' within networks, including the GB equality commission (EHRC) and known academics in the field of labour relations.

This process also helped to identify experts who should be invited to take part in the 'focused forum'. Thirty were invited, with twenty three agreeing to offer their time and expertise. They were subsequently sent a list of potential options, distilled from the literature review, in advance of their consideration at the forum. Annex 1 lists the participants.

Six participants were *Human Resources* professionals from the public sector in Wales with responsibility for pay. They came from the employer's organization for local government, local councils, higher education, the Welsh Assembly Government and the National Health Service. Seven were academics, who had previously researched equal pay, and the other participants came from the EHRC, both Wales and Scotland, trades unions, again Wales and Scotland were represented, and equality groups with an interest in campaigning for equal pay in Wales.

The findings from the forum are summarized in the second part of the report. Next, I describe the gender pay in Wales. This is followed by the literature review of policy.

Women in Employment

Women and men in *employee jobs* are considered in this review. In 2006, the UK 'gender pay gap' stood at 20 per cent, as it did in Austria and Finland (Eurostat 2008). In the rest of Europe, the lowest gap was in 3% in Malta, and the highest, Cyprus at 24 per cent. However, such aggregates are problematic. The reason that the Malta gap is so low is likely due to the extremely low economic activity rate of women (32 per cent) skewing the median. Differences in employment rates contribute to some of the gap but do not adequately explain it. For example, the employment rate gap between men and women is Malta 39 per cent, but only 4% in Finland (Eurostat 2008:93).

Women's employment rates are significantly affected by the presence of dependent children, their number and ages. The economic activity and employment rate gaps between men and women in Wales are 6% and 5% respectively (ONS 2009) but the employment rate gap between men and women who have dependent children under the age of 5 years in Wales is 32 per cent (LFS: 2008). Ninety per cent of these fathers are working, compared to only 58 per cent of mothers.

UK figures estimate that 30,000 women a year are lost to the labour market following maternity leave, mostly due to an inability to access flexible working (EOC 2005). The UK Equalities Review (Cabinet Office 2007) found that women with children under the age of eleven are 45 per cent less likely to be in paid employment compared to men. They concluded that system, and workplace practice failure to keep often highly qualified women in their jobs, is costing the UK economy up to £23 billion annually.

In Wales, the hourly median gender pay gap for full time workers is 14.3 per cent (ONS 2008). However, men command 62 per cent - nearly two thirds of all full time jobs in Wales (Statistics Wales: 2008). With women holding only one third of full time jobs this is not an illuminating comparison. It does highlight why it can be difficult, at the level of the workplace, for women to find 'like for like' comparators, and how necessary it is to understand the impact of women's concentration in occupations characterised by part time working. Women hold 75 per cent of all part time jobs in Wales (Statistics Wales 2008).

A more meaningful comparison is the 38 per cent disparity between men's median gross hourly pay in full time jobs and women's gross hourly pay in part time jobs (ONS 2008). This measure demonstrates the penalty for working part time. Although the 'gender pay gap' has narrowed over recent years for women working full time, it has not for part time workers.

Table 1 below considers actual earnings. In June 2008, the full time disparity in earnings, excluding overtime was around £2 per hour, £85 per week, but £5,760 annually (figures are gross). Over a 30 year working lifetime, this is a disparity of £172,800 (ONS 2008).

Table 1: Pay and hours comparisons, gross median

		Women	Men
Hourly rate Full time		9.82	11.46
Hourly rate Part time		7.09	7.39
Weekly rate Full time		361.60	447.90
Weekly rate Part time		138.40	144.10
Annual salary , Full time		19,211	24,971
Annual salary , Part time		7,964	9,523
Usual weekly hours worked	6 - 15	10.5	3.3
	16 - 30	32.5	8
	31 - 45	48	61.7
	45 +	7.1	26.4

Source: ONS, Nomis, ASHE at June 2008, Table 110628. Resident Analysis. Hourly and weekly earnings are excluding overtime but annual figures are gross. Hours data ONS 2009a, LFS data, released 11/02/09.

Table 1 shows the disparity in hourly earning between men and women. Recalling that nearly two thirds of full time jobs are held by men, the most frequent or mode comparator between men and women would be the difference between men's full time annual earning and women's part time annual earnings. This is £17, 000 per annum, or £510, 210 over a 30 year working lifetime. This evidences the consequence of 'contract segregation' (Rees 1998).

Table 1 shows that women are the majority contracted for low hours whilst men are the majority of those working long hours (45+). Around a quarter of men and a third of women on part time contracts have two or more jobs (ONS 2009a: Table 3).

The majority of part time contracts are offered in low skilled occupations, attracting low pay, with few progression opportunities (Callender 1997):

... in part time employment are more than twice as likely as people in full time work to be paid less than the minimum wage' (ONS: 2008b) And that .. Jobs held by women were more likely to pay less than the minimum wage than jobs held by men (1.4 per cent versus 0.8 per cent). This was due to the greater number of women in part-time jobs (ONS 2008b:1).

Thus increases in the National Minimum Wage or the introduction of a 'living wage' can have a disproportionately beneficial effect such low working incomes.

In higher skilled occupations, part time work is less available. As a result, women may downgrade their workplace roles or withdraw from the labour market following childcare, or to manage adult dependent care. Although men and women provide unpaid care in roughly similar numbers, it is women in the working age population who are most vulnerable to reduction or loss of earnings as they provide the majority of care at 30+ hours per week (Census 2001).

Recently the pay gap has increased. Growth in men's wages may partly explain this. Wales recorded the highest increase in men's average earnings amongst the UK countries and English regions (Statistics Wales: 2008b:5). Women's gross weekly average earnings (mean) rose by 4.2% on 2007, whereas men's rose by 6.7% (Statistics Wales 2008b).

Besides, contract segregation, segregation by industry and occupation is significant. Women are over three quarters of those employed or self employed full time in *Administrative and Secretarial occupations*, 84 per cent of those in *Personal and Service occupations* and nearly seventy of those engaged in *Sales and Customer Service occupations*. Men dominate the categories of *Managerial and Senior Officials, Skilled Trades and Occupations, and Process Plant and Machinery Operators* at 64, 91 and 85 per cent respectively (Statistics Wales: 2008c)

A sampling of occupational gender pay gaps reveals a weekly gross average difference of £77.60 for women in 'Elementary Occupations', for Managers and Senior Officials the disparity was £153.30 per week, for those in Administrative and Secretarial Occupations £57.60 per week (Statistics Wales 2008c). The disparity, even in female dominated occupations reflect different hourly pay for full time and pay time work, and vertical segregation.

These figures reflect whole economy occupations. It is generally accepted that the 'gender pay gap' is greater in the private sector (ITUC 2009). For example, in highly skilled financial sector occupations, *'the full-time gender pay gap in financial services is 39.6 per cent, with a part-time gender pay gap of 53.4 per cent (based on mean earnings). If full-time and part-time work are combined, and the median is used, the overall gap stands at 44.4 per cent'* (in EHRC 2009).

An analysis of pay gaps within different parts of the public sector is needed. Employer data sets need to be collated to facilitate this (see Thornley 2006 below).

Public Sector Employment in Wales

Employment by sector is highly gendered. Table 2 shows that women account for two thirds of the public sector workforce. The private sector workforce is much larger than that of the public sector, so more women are employed in the private sector overall but they dominate, numerically at least, public sector jobs.

Table 2 Employment by gender and sector Wales

Sector	Total	Women	Men	Women % of sector	Men % of sector	% of women in employ't
Public	386,000	253,000	133,000	66	34	41
Private	941,000	368,000	573,000	39	61	59
Total	1,339,000	627,000	712,000			

Source: Statistics Wales Table (003338) employment in public and private by sectors by gender, and local authority For the year ending June 2008.

Men's employment picture is almost the opposite of women's. Nearly two thirds of men are employed in the private sector, accounting for nearly 80 per cent of all men's employment.

Local government employment figures for Wales demonstrate the gender stratification of full time and part time permanent positions, and full time and part time casual contracts.

Table 3: Local Government employees by contract type, and hours

Wales	Men	Women
FT, Permanent	32,244	41, 837
PT, Permanent	5,350	49, 630
FT, Casual	3,762	5, 530
PT Casual	4,882	19,424
Totals	46, 238	116, 421

Source: ONS Quarterly Public Sector Employee Survey - Dec 2007

Of the 162, 657 employed in local government in Wales, men are 28 per cent of employees but hold 43 per cent of the full time permanent jobs available. Men on these contracts, account for 70 per cent of all men's employment in local government.

Whereas, women, are 72 per cent of employees in total but hold 56 per cent of the full time permanent contracts. Women on these contracts account for only 36 per cent of women employed in local government. Overwhelming women's labour is contracted part time, and particularly part time casual. Women hold 86 per cent of part time casual jobs, and of all women working in local government, 60 per cent are contracted part time

Employer data of this type was requested from WAG, the WLGA and NHS Wales. It is not immediately available. However, Table 3 demonstrates how analysis of employer data could clearly show how to make an impact upon the 'gender pay gap' by considering the stark concentration of women on low hours, low paid contracts in the public sector. Such an analysis has been undertaken nationally and is summarised below.

Before concluding this section, however, it is worth discussing research from the EHRC Wales who commissioned a case study of the back pay settlement and Job Evaluation processes carried out by Neath Port Talbot County Borough Council (2009). This demonstrated how significant the low hours, low wages issue is for women public sector workers.

All the community care assistants, domestics, teaching assistants, and cleaners interviewed were on fixed 10, 16, 20 or 24 hour contracts (Parken and Baumgardt 2009).

None had additional caring responsibilities and all wanted / needed to work more than their contracted hours to survive financially. Several had two or more contracts with the local authority, or a mix of education and local authority contracts but together these did not add up to a full time job with attendant benefits (higher hourly pay, NI/ pension/ sick leave/ holiday etc).

Here, a domestic who was supporting her sick and disabled partner, and her daughter and grandchildren (her daughter had separated from her partner), describes the relief of being able to settle debts with her back pay settlement:

Wonderful because I knew I could get rid of those two cards you know because they had been hanging over my head for a long time. [I had] £5,300 a bit left over that is in my bank you know something to fall back on ... it was a weight lifted then, you know, otherwise we were struggling every month paying them ... I didn't have to fork out £140.00 a month between the two – you know I had that bit extra (Domestic) (Parken and Baumgardt 2009:31).

She was contracted to work just 20 hours per week over split shifts at around £6.00 per hour. The payment of £140.00 per month to the credit card represented a quarter of her earnings.

Characteristics of working in the public sector (England and Wales study)

The following analysis draws upon both labour market and employer data, and is for England and Wales. Thornley (2006) has built employer data sets providing an acute insight into gender and pay in the public sector.

National data sets suggest that around a third of all women are employed in the public sector, and that they form around two thirds to four fifths of the total public sector workforce (Thornley 2006: 345).

Local Government and the NHS account for around 78 per cent of all public sector employment in England and Wales (Thornley 2006:346). Both are highly feminised – women are three quarters of LG and four fifths of NHS workers (figures for England and Wales LGPC 2003: 10-16 in Thornley 2006: 346). Data gathered from employees in occupations covered by National Joint Council services employments, shows that whilst women were 75 per cent of all employed staff in 2003, they were only thirty five of Chief Officers/ Senior Managers. They were 93 per cent of School Cooks and 97 per cent of Home Care Workers (Thornley 2006: Table 2 page 347).

These segregated employments (described as extreme segregation) produce greater pay gaps, than for the economy as a whole, through their high use of part time and fixed-hours contracts. The importance of considering part time earnings, not only full time, and the difference between headline (all economy) figures and actual pay in public sector occupations is highlighted:

... the majority of part time women in NJC local government services earned less than £11,000 basic earnings pro rata equivalent in 2002; and after allowing for part time workers - and their pro rata equivalents - the author's own estimate of the 'real' gender pay gap for women in NJC services is 35 per cent, or roughly twice the aggregate gender pay gap that

is reported for the public sector as a whole using data for full time workers only (see Thornley 2003c, in Thornley 2006: 350).²

There is great variability in pay performance in the public sector. The gap between pay in the private sector and public sector widened between 1992 - 2002. Whilst full time Registered Nurses have seen sustained wage increases, most remain clustered in lower pay grades on basic salary levels, well below the economy median (average salary in 2004 was £6,000 less than the national annual median for full time work).

Women covered by the NJC agreement on equal pay 2004 (catering, cleaning, caring), saw the gap increase between their pay and those in similar occupations in the private sector over the same period (Thornley 2006).

Equal pay audits may be the only mechanism to establish whether women are treated unfairly as a group within a workplace by say, being disproportionately employed on casual contracts. They can also take account of internal and external (market) pay factors, closing the gap between some occupations in the public sector that have fallen behind private sector pay. This is important in occupations such as 'caring' where pay rates in local job markets are significant for attracting and retaining staff.

Conclusion

From this employment review, we perceive how the patterning of work, particularly gender segregation by sector, occupation and contract type contributes to the gender pay gap. The issue of part time working, casual and fixed-hours contracts are shown to require significant attention. Any EPR worth undertaking must then include not just a comparison of men and women in like for like jobs and equal pay for equal value, but audit and analysis mechanisms capable of revealing how gender informs - who works where -and under what conditions (Rees 1992, 1998). Segregation, along with childcare/flexible working, is likely to be the most significant contributors.

In the following section I consider sociological explanations for the persistence of the 'gender pay gap', including a brief review of a '*Close the pay gap*' event which brought together academics to consider if it was possible to measure the amount of pay disparity that is due to pay discrimination only.

Gender Pay Gap - Composition and Causes

Understanding the composition of the 'gender pay gap' is complex; measurement is a matter of controversy; and beyond the scope of this policy review. There is some dispute that such a gap exists at all. For example, Shackleton, for the *Institute of Economic Affairs*, states that there is insufficient evidence that the 'gender pay gap' is the result of unfair discrimination (Shackleton 2008). His analysis, based in Human Capital theory, argues that objective differences such as education, age and experience between men and women along with women's lifestyle choices - wherein they '*may favour quality of life and job satisfaction over higher earnings*' means that there should not be attempts to close the gap.

However, such views are rejected by the EU *Network of Legal Experts on Equal Pay*

² Calculation based upon relative proportions of full time and part time workers when earning of the latter are pro rata to form FT equivalents.

(EC 2007b), who state that although differences in Human Capital (which can themselves be a result of gender socialisation and so it may be misleading to use the term 'objective differences') do contribute to the gap, they matter less than differences in work experience (caring for children), part time working, and workplace variables in contracts and conditions (Joshi and Paci (1998) in EC 2006:29). Other studies concur, showing how flexibility in this form is only created for lower skilled women, whilst flexibility for lower skilled men is secured through overtime (Beechey and Perkins 1987).

Hakim's 'preference theory' is also sometimes drawn on to explain 'choice' in part time working. Hakim, in work over two decades, has argued that there are 3 distinct types of women; career orientated, family orientated and those who move between the two. Since 'those who move between the two' are the overwhelming majority of women, the theory does not imply choice but rather that the current organisation of labour markets does not take account of the majority of women's life experiences (Proctor and Padfield 1998, Crompton 2006).

To further understand the composition of the 'gender pay gap', Katherine Rake's model is helpful. This was adopted by the Equal Pay Task Force for their review and report, *Just Pay* (1999). Rake (*et.al.*1998) identify the composition of the gender pay gap as three distinct but interacting factors:

The gender penalty – horizontal, vertical and contract segregation by sector, and the perception of 'women's work', where either women are seen as the most suitable for low skilled menial tasks (because pay is low), or their over concentration in certain occupations within these sectors, leads to the undervaluing of that work (e.g. care workers (adult and child), customer services, caterers, cleaners). The bulk of the female workforce is concentrated in these jobs.

The Motherhood gap – flexible working adhering to low paid jobs, or women in low paid jobs not able to return to them following childbirth because their job is not 'kept open' for them or because of the cost of childcare; the inability of women in middle and higher skilled jobs to recover their potential prospects and associated rewards following childcare. – the offering of lower pay, and fewer bonuses or benefits to women on the basis that as women they might take a career break for childcare at some point or that they don't need/don't expect to earn as much as a man who is, stereotypically, viewed as the breadwinner.

Discrimination – direct or indirect between men and women in the same jobs or jobs of equal value.

In the EC '*Communication on Tackling the Gender Pay Gap*' [1.8.2007 (Com (2007) 424 Final)], a similar list of contributory factors is given:

personal characteristics such as age, educational background, family background, the presence of children, experience in the labour market, previous career interruptions and tenure on the job;

job characteristics such as occupation, working time, contract type, job status, career prospects and working conditions;

firm characteristics such as sector, firm size, work organisation, recruitment behaviour and the firm's compensation and human resources policies;

gender segregation by occupation or sector;

institutional characteristics including education and training systems, wage bargaining,

wage formation and tax and benefit systems, industrial relations, parental leave arrangements and the provision of childcare facilities before and during compulsory school years; as well as *social norms and traditions regarding* education, labour market participation, job choice, career patterns and the evaluation of male- and female-dominated occupations (EC: 2007Annex 2, Point 2. Page 15).

The EC is determined:

... to distinguish pay differences resulting from different labour market characteristics, on the one hand, and differences due to indirect or direct discrimination, on the other, including the societal differences in the evaluation of work in male and female dominated sectors or occupations (EC Communication on Tackling the pay gap between men and women (COM 424 Final 2007)).

All elements of the pay gap will need to be addressed by employers and the Trades Unions, whilst public policy must be used to anticipate and address disparities arising from childcare, education, training, and employment systems and policies.

Close the Pay Gap Campaign ‘summit’ 2006

This section of the review does not refer to the *Equal Pay Summit* organized by Jane Hutt, then Minister for Equality, but rather, an event which engaged academics from Wales and the South West of England in a debate about measuring the composition of the pay gap. This is a summary of the summit synopsis.³

Professor Bob McNabb’s large scale analysis (McNabb *et. al.* 2006) of men and women who worked full time in the private sector, using data from the *Workplace Employer Relations Survey*, studied how much of the difference in wages between men and women was due to individuals’ attributes and characteristics and the way in which these attributes/characteristics are treated in the labour market. His central conclusion was to attribute 70 *per cent* of the pay difference to occupational and industrial segregation and 30 *per cent* to different treatment of women and men *within* their workplaces and occupations.

He suggests that women suffer a ‘double whammy’ as pay is lower in workplaces that are dominated by women. Once within those establishments, women then earn less than men. Further that, although personal characteristics (such as ethnicity, marital status and having children) do affect pay levels, segregation is still more important. In other words what causes the ‘gender pay gap’ is the characteristics of the workplace and not the characteristics of men and women (Summary from EOC academic summit 2006).

The theme of the undervaluing of women’s work was echoed by Sheila Wild from the EOC. She argued that undervaluation was the ‘thread’ that linked together the three causes of equal pay. In her view, undervaluation involved:

- women being paid less for the same level of efficiency within the same job;
- women being employed in jobs or occupations which are undervalued.

³ See The Equal Pay Challenge, report of seminar 22nd June 2006. EOC internal document.

From a review of different academic disciplines, key 'economic' findings were:

- undervaluation does not reflect differences between women and men's investment in education and work experience, because the gender pay gap *grows* with increasing experience. The penalty on part time workers is especially severe.
- the breadwinner / second earner model is still widespread because many jobs do not pay enough to support an individual adult, which in turn helps to perpetuate undervaluation of women's work.

Key 'social' findings were:

- the value of work is constructed in such a way that women's skills are not visible or valued, and are seen to be a 'vocation' rather than acquired.
- these views are reinforced by payments systems, including grading of jobs, their starting pay and subsequent pay progression, and working hours.
- undervaluation is not a 'one-off' but a dynamic process – jobs continually change and develop, with new areas of undervaluation emerging

Suggested remedies included reporting on equal opportunities and equal pay policies through EPRs, legislation to provide for comparisons across organisational boundaries, gender sensitive pay and job grading systems.

Susan Harkness's review demonstrated that there was little evidence of policy impact on reducing the gender pay gap, but did suggest some of the different forms that researching impact might take (and could then be measured):

Inequality and Poverty

- Removing the gender pay gap might help to keep families out of poverty, whether in a couple or a single parent households or 'female breadwinner' families. She estimated that pay equality would lead to a 1% reduction in the poverty head count. There might be a longer term impact on family stability and pensioner poverty as well.

Distribution of earnings and domestic labour within households

- Closing the gender pay gap might change the distribution of earnings within households – for example the earnings of married / cohabiting women relative to their partners have risen from 60 to 65 per cent over the decade.
- There is little evidence of men reducing their work hours or increasing time spent on household tasks, although where women earn as much as their partners tasks are slightly more evenly split.
- Evidence suggests that increasing the share of household income going to women raises expenditures on children.

Peter Elias and Kate Purcell considered the increasing proportion of women entering higher level occupations, and the growth of participation in higher education. Their study consisted of analysis of the 'gender pay gap' amongst half of all 1995 graduates up to 10 years after graduation.

Their key findings were that the gender pay gap gradually widens in the years following graduation, from 10.5 per cent at the point of graduates' first main job to 18.5 per cent after 7 years. About half the gap can be explained by differences in hours worked, sector of employment and workplace segmentation, leaving *8 percentage points* of the gap unexplained by these factors. Recent research for the International Trades Union Congress (2009) also demonstrates that the 'gender pay gap' widens with age, and can be widest within occupations where employees generally have third tier education levels (e.g. finance sector figures given above).

In summary, besides addressing segregation and in-company work practices through pay reviews, different actions may be required for those at the top of the income bands (flexible working) and for those at the bottom (minimum wage), addressing unequal pay may have a positive effect on child poverty, tax revenues and disposable income as would better availability of childcare and requiring this to be shared between parents.

Conclusions

This summary supports previous analysis suggesting that gender segregation (in all its forms), and systematic under-estimation of the worth of women's work and skill, childcare and flexible working as the most significant factors. Separate, targeted initiatives will be needed to address issues faced by women in senior jobs (flexible working) and for those at the bottom (minimum wage, increased pay and hours).

Legislation and Policy Review

The United Kingdom

In this section I consider legislative and policy responses to the pay gap, followed by suggested recommendations of commissions, task forces and other gatherings of experts who have investigated the persistence of the gender pay gap.

Article 141 of the EC Treaty 1957 establishing the European Community, and the equal pay directive (Directive 75/117/EEC) provide the framework for European Union Member State domestic legislation and policy on equal pay. The European Court of Justice finds that the provision is directly effective. A new Directive (2006/54 EC (recast)) takes effect in August of this year and harmonises gender equality law.

The principles, to varying degrees, have been transposed into UK legislation through the Equal Pay Act 1970 (and N.I. Act), the Sex Discrimination Act 1975 (and N.I. order 1976), the Equal Pay for Equal Value Act 1974. These were updated in 2001 by *The Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations* to include the mechanism of an *Equal Pay Questionnaire*, requiring employers to respond in a timely manner to employees' requests for comparative pay data.

Legal definitions:

Pay ... 'pay' is the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which an employee receives, directly or indirectly, in respect of his or her employment. It therefore includes bonuses, access to overtime, holidays, sick pay, pensions and other additional benefits.

Equal work means *like work* or *work rated as equivalent* or work of *equal value*.

Like work is work which is the same or broadly similar.

Work rated as equivalent is work which has been rated as equivalent under an accredited job evaluation scheme which is non-discriminatory.

Work of equal value is work which is of broadly equal value or worth in terms of the demands of the job when compared according to criteria such as skill, decision-making and physical effort (ECNI:2007)⁴

Specific duties to promote equal pay

England

Duties placed upon public authorities to address the 'gender pay gap' vary in UK. The duty for England and cross border England/Wales authorities commits central and local government to:

Drawing up and publishing a gender equality scheme which should identify gender equality objectives and show the steps that PAs will take to implement them. *PAs will also be required to consider whether one of their*

⁴ <http://www.equalityni.org/archive/pdf/EqualPayModelPolicy0307.pdf>

objectives should address equal pay issues or causes of the gender pay gap (GEO 2008)

Scotland

The wording of the Scottish duty on equal pay, additional to the Gender Equality Duty is:

Develop and publish an Equal Pay Policy Statement and report on progress within 3 years.

Thus far there has been no enforcement whilst the equality commission awaits first reports. However, anecdotal reports suggest that duty has had a positive influence in raising the debate and making it more likely that Equal Pay Reviews may be undertaken.

Northern Ireland.

Job evaluations schemes are held to be public policy and therefore subject to impact assessment:

... public authorities will need to conduct an equality impact assessment, in accordance with section 75 of the Northern Ireland Act, 1998 and the detailed procedure set out in schedule 9 of the Act. Use of the Equal Pay Review Model ... will enable public authorities to identify any differential impact in relation to gender (ECNI 2006:48)

This is the 'strongest duty' in the UK, thus far.

Evaluation in the UK

The GEO has recently commissioned research into the effectiveness of the gender, race and disability duties for PAs in England, as has the EHRC Wales for Welsh local authorities and fire service etc. Neither has reported yet.

There has been no official evaluation of the Scottish equal pay duty. There has been light touch regulation and little enforcement. As a result it is not possible to say whether public authorities have engaged with the specific duty on equal pay.

In Northern Ireland, Dickson and Harvey (2006) have reviewed the effectiveness of the duty in NI, and find that a potentially potent duty lacks impact because of an insufficient focus on enforcement.

It appears that a 'good' duty requires focus, guidance, reporting, monitoring and enforcement.

Legislation and policy in the EU27

The ELWC (2008) study finds a European average of 48 per cent of women in the lowest band of earners as opposed to 16 per cent of men. Moreover, in whatever social welfare regime is in operation around Europe, the largest proportion of

employed men, are in the top earning category (ELWC 2008:7). Only one in four workers reports having a boss who is a woman, and where they are in charge the workforce is likely to be predominantly female, however, across Europe vertical segregation holds true even in female dominated occupations in the public sector such as those in Education and Health (ELWC 2008: 4).

Across Europe the gender pay gap is lower in the public sector (EC 2006). This is attributed to standardised pay and grading systems, collective bargaining rules that require equal pay issues to be included in agreements, and large union membership (EC 2007c). For gender, equality duties are recognised in Denmark, Norway, Sweden, and in the Netherlands. All the 'duties' differ in their scope, requirements and the ways in which impact is assessed. Norway, Sweden and Denmark have legislation in place requiring annual reporting on equal pay in the private sector.

There have been several reviews of equal pay legislation and policy in Europe. However, these record progress towards legislative adherence and differing policy approaches rather than evaluating the success of particular measures.

The EC Network of Legal Experts in the Field of Gender Equality, suggest that European Union requirements for legislation on the principles of equal pay have largely been met within the EU27 (EC 2008). The network also produced a comparative review of equal pay policy in the EEA in 2007 (EC 2007). This following summary is based upon this review and information from EU governments:

Sweden – All employers (whatever sector) with over 25 employees are required to annually report progress on their action plan following a rolling 3 year equal pay audit of pay practices and differentials.

The Netherlands – Provision of a 'wage indicator' (an ICT tool) which provides employees with opportunity to make equal pay for equal value comparisons across employers in their sector. Information can be used in tribunals. As a result of collective bargaining most employees fall with one of eight pay scales. Through regulation - making part time work available in all sectors, the Netherlands have created a gender balanced part time workforce.

France – Recent legislation expects employers to ensure parents (mostly women) receive average incremental pay increases in their pay band and general pay increases for the maternity leave period - so as not to fall irrevocably behind average wages in their pay banding. The Welsh Assembly Government has a similar provision.

Belgium – EVA - sector wide pay analysis to establish causes of the pay gap, negotiate wage grids and introduce 'toolkits' – similar to the work of the *Equal Pay Task Force* in GB, and '*Close the Pay Gap* campaign in Wales'.

Norway – Public authorities obliged to include equality actions plan in their annual including; gender equality appraisal, list of actions and implementation, and evaluation. The private sector has a duty to report annually on gender equality in their enterprises and provide action plans. There is also a requirement to meet the

40 per cent quota on women in decision -making roles in public sector and companies quoted on stock market.

Iceland – Despite ‘special increases for women’ (see also Finnish example below) in Collective Agreements, to address the undervaluing of ‘women’s work’, little improvement has been shown. This has led to the production of a new Job Evaluation scheme for the public sector that takes account of ‘additional payments’, bonuses, overtime working, which have been mostly attributed to men in employment. Report limited results; Gender Equality Acts 96/2000 now under review.

Collective Bargaining in Europe – private sector

Throughout Europe the most frequent and embedded policy approach to equal pay is to require that equal pay negotiations are integral to Collective Bargaining (CB) and the making of Collective Agreements (CA) by sector, occupation and at company level. Usually employers and the social partners are required to work together on employee pay audits, with Trades Unions being given full access to all data. For example:

France - Collective bargaining for equal pay is compulsory. The aim is to close the pay gap by 2010 but in the first review, only 50 companies had complied (EC 2007)

Sweden - Highly organized/collectivized labour market (80 per cent of workers are in unions), so that collective agreements cover most of the labour market (EC 2007). Employers and employees are expected to negotiate to address equal pay. There are annual reporting requirement for employers 10+ employees. A recent review finds that lack of enforcement is reducing potential impact (EC 2007)

Finland – Collective Agreements are expected to negotiate higher wage increases for female dominated sectors/occupations to address the undervaluing of women’s work and consequent pay gap. This has been happening over time but hasn’t made a significant impact on the pay gap. However, it is valued for symbolically focusing attention/resources on the issue.

Denmark- All enterprises with 35+ employees and with at least 10 women and 10 men in the *same* jobs must undertake an EPR and report annually. The constraint on enterprise size and the comparator requirements (it doesn’t provide for a comparison of equal value jobs) means that it is likely to cover only 20 per cent of the whole workforce.

Lithuania – An obligation is placed upon the social partners to bargain on equal pay.

Spain – Positive action measures in Collective Agreements.

Portugal – Each November all employers in the private sector must publicly display for 30 days staff listings by gender, occupation and pay.

UK – Codes of Practice are considered to be significant in the inclusion of equal pay in Collective Bargaining (Code for GB – separate one for NI). However, surveys report that negotiators find bargaining for equal pay is more difficult than other areas

of equality bargaining and only 54 per cent reported any improvement in this regard between 2004 and 2006 (McCrudden in EC 2007). Collective agreements are only legally binding when implied in the terms of an individual's employment contract in the UK. Results are not publically available, monitored or evaluated (McCrudden in EC 2007: 94/95).

The role of collective bargaining has declined in the UK. However, it is the reason that local government and the NHS have undertaken comprehensive reviews. A recent paper by IDS for the TUC, suggests it has an important role to play but argues that the Central Arbitration Committee would need to be reinstated to offer some protection for TUs against being sued for making agreements that increase or sustain pay disparities (IDS: 2009). The *Equal Pay Task Force* has called for collaboration between social partners and employers in undertaking mandatory pay audits. The Government has resisted this (Discrimination Law Review 2006), calling for a 'light regulatory touch'.

Evidence from an EC review of good practice for pay reviews, suggests that whilst collective bargaining should be effective - it is highly variable by sector and that collective agreements have historically, and still continue to, discriminate against women, as 'work dominated by women, as well as qualities identified with women' were systematically undervalued (EC 2007c:27, see also Thornley 2006):

....equal pay was rarely an important point in collective bargaining. Negotiators were usually unaware that there was a gender pay gap and employees ignored their legal rights in this field. The lack of women in collective bargaining and the absence of negotiators who were motivated and sufficiently trained on equal opportunities accentuated the problem (EC 2007c:27).

The EU *Roadmap for Gender Equality 2006 - 2010* identifies reconciliation of work and family life, including ensuring more men take responsibility for childcare as a primary route to tackling the gender equality and the pay gap (EC 2008: 9). DG5 is currently undertaking a consultative review with the social partners to establish whether stronger legislation is required in this regard.

Canada

In Canada, the focus is on pay equity, not equality with men. Pay equity is viewed as an individual human right. The Human Rights requires audits and reporting for employees in sectors under federal jurisdiction.

Through the *Employment Equity Act*, the Canadian Human Rights Commission is mandated to conduct audits of federally regulated workplaces to ensure compliance with the Act. There are approximately 500 federally regulated private sector employers of 100 ... It also covers approximately 90 federally regulated public sector departments and agencies (Canadian Human Rights Commission 2007).

However, a review by the *National Association of Women and the Law*, argues that the law is rendered ineffective by insufficient detail for employers on what

and how to report, insufficient monitoring and penalties (National Association of Women and the Law 2007).

The NAWL review calls for new law, endorses reporting mechanisms in Sweden as an exemplar, and draws upon work by the International Labour Organisation to describe what is needed to address the 'gender pay gap':

The ILO report sums up as follows the key elements for success that a proactive law should put in place: *set up pay equity plans, analyze the pay systems, adjust wages as required, ensure good cooperation between employers and employees in establishing the pay equity plans and create specialized tribunals. We can only repeat how important it is to involve the employees in the job evaluation process and in all steps of the pay equity exercise* (National Association of Women and the Law 2007). (my emphasis added)

Conclusion

There is much to consider in this review of innovative approaches to tackling gender pay disparities. Consensus is centred on the use of pay audits (which capture segregation and not only salaries or wages in 'like' jobs or in equal value jobs), equal pay reviews, and regular reporting, monitoring and enforcement. Whilst some EC countries are strengthening Collective Bargaining for equal pay, Canadian reviewers want pay to be a human right and not subject to the potentials conflicts within TUs of bargaining for a 'family wage'. However, the lack of evaluation is disappointing, although not surprising, given the weak enforcement identified. The question of whether the EHRC Wales would be resourced to carry out a monitoring function needs to be considered.

The review also points to the need for change in the comparator requirements (the Netherlands' wage-indicator), representative actions, and transparency - all of which could be included in the *Single Equality Bill* (SEB). Innovative mechanisms for raising pay levels generally in women's sectors could be considered (e.g. Iceland and Finland).

Welsh Public Policy

The pay gap is comprised of pay discrimination and pay disparities; the latter being seen as the greater contributor (occupational segregation, training, contracts etc). There is then, the potential, under the auspices of an equal pay duty (audit part thereof) to require gendered education, training, and employment plans.

The Child Poverty Duty

For example, the proposal in the Child Poverty Duty consultation document (WAG 2008) that Local Authorities are required to provide free childcare places for two year olds, could have a tremendous impact on women's economic activity rates or increased working hours. However, if childcare is only available for 15 hours a week or only available at certain times of the day, (as has been suggested) it would maintain the constraints on women's working - leaving them trapped in low paid part time employment.

Additionally, as part of an equal pay duty, public authorities could be asked to report on the impact of restricted and unrestricted hours of child care provision on women's employment. They could also be required to report on how the proposal affects the market price of childcare. Childcare is already more expensive in Wales than in many other parts of the UK, and quantity allied to good quality, remains scarce (Bevan 2005). An equal pay duty could require reporting that evaluates how this strategy fits with the intention of the Children's and Young People's (CYP) workforce strategy to tackle the undervaluing of women workers in childcare occupations.

Skills that work for Wales

A review of qualifications data reveals that fewer women than men are engaged in workplace training at National Qualification Framework Level 3 (Statistics Wales 2007). The WAG policy proposal '*Time Off to Train*' does not discuss the differential gender impacts of the policy due to the unequal sharing of domestic roles and care, and employer attitudes to training women. The policy could lead to an increase in pay disparity. Gender reflexivity in policy making would ask questions such as 'How will the right to request flexible working and 'time of to train' affect the likelihood of women receiving both'?

A further example is the Not in Education, Employment or Training (NEETs) proposals where there is a strong case for a gender 'lens' to be applied. Similar numbers of young men and women are NEET but at different ages and for different reasons. Finally, as Communities First proposals are based on *household*, rather than individual income data, geographical target areas are identified for resource application. Consideration of the beneficial effect of women's income on family and child poverty might lead to enhanced targeting of resources (Women's Gender Budget Group 2005).

There is a strong case for an equal pay duty to gender sensitise such policies so that they have a positive impact on the gender pay gap.

Collected Recommendations

Over the last 10 years several Commissions, Trades Unions, and equality bodies have analysed gender pay disparities and made recommendations. The following is a brief summary of the measures consistently called for and that have merit.

Equal Pay Task Force, Just Pay (1999).

On discrimination:

- a requirement to carry out equal pay reviews
- a statutory duty on public employers to promote equal pay
- the right for trade unions or staff representatives to complain to the Central Arbitration Committee (CAC) that the employer was in default of the duty to carry out pay reviews
- rule changes allowing trade unions and the EOC to bring claims on behalf of groups of employees
- permitting proof of pay discrimination without an actual comparator in the same employment
- providing that it is a breach of the Equal Pay Act for an employer to discriminate against a woman on return from maternity leave in respect of pay for reasons related to maternity leave absence.

On social and labour market policy (supply and demand side) measures:

Specifically, *we recommend that the Government:*

- gives the *Low Pay Commission* (LPC) a specific remit to seek to narrow the gender pay gap when recommending the level at which the National Minimum Wage is set
- broadens the National Skills Agenda to include a concerted effort to overcome job segregation
- takes action to promote training and development opportunities for part-time workers which will enable them to move into better paid jobs
- reviews the relationship between the National Childcare Strategy and women's earnings
- increases efforts to promote patterns of work which will enable women to enter and continue in employment and to progress to jobs with higher rates of pay (EOC 1999: xvi – xvii).

Amongst several recommendations echoed elsewhere, the European Trades Union Congress calls for:

- re-introducing a concrete target for reducing the pay gap in the European Employment guidelines (see also Rubery *et.al* 2004);
- improving statistics, and add comparable data on the part time gender pay gap, and the gender pension gap (EC 2007d);
- supporting collective bargaining as an important instrument for reducing inequalities including the gender pay gap;
- promoting equality clauses in public contracts, and considering making them compulsory (as suggested by the proposed SEB).

In addition, and recognising the key role trade unions can play in reducing the gender pay gap, ETUC and affiliates will:

- demand at least equal access to vocational training and career development for women as an important instrument to reduce the pay gap;
- put the part time pay gap on the agenda of collective bargaining negotiators, as well as of the EU social partners, with a view to a possible strengthening of the Part time Directive; (ETUC 2008).

Options for an equal pay duty in Wales.

Findings from the Focused Forum debate

Following the analysis of contributory factors to a 'gender pay gap', a number of options were distilled. Two were seen as workplace initiatives and not debated at the forum. These are provided at Annex 2.

The analysis from the literature was presented and the following options debated at the 'focused forum' with academics, trades unions representatives, EHRC representatives from Wales and Scotland, and HR professionals from the public sector in Wales. They were also asked to bring details of any other options they preferred.

This 'mix' of expertise in equality advocacy, research and implementation was invaluable in gaining a rounded picture of each option's potential benefits, risks and costs. In small groups, participants debated each option, took notes and reported their opinions to plenary.

In addition to their preference for realistic options given the context in Wales, they were asked to assess the likely impact of each on the 'gender pay gap', identify the implications (capacity, resources, pay and service delivery) for implementing each approach in the public sector in Wales and to consider whether there should be reporting, monitoring and enforcement mechanisms, and if so, what might they be and which organisation would be responsible.

The options debated were:

1. Have no specific duty on equal pay in the public sector and/or wait to see what is proposed in the *Single Equality Bill*.
2. Adopt the Gender Equality Duty (England) specific duty on equal pay:
Public authorities will also be required to consider whether one of their objectives should address equal pay issues or causes of the gender pay gap.
Or the duty in Scotland:
Develop and publish an Equal Pay Policy Statement and report on progress within 3 years.
3. Design a duty that requires a delineated series of data collection steps and subsequent action on findings. This would include audit and analysis of segregation by occupation, pay, grading, contract type (for example, employers would need to justify hiring women part time work or on low fixed hours contracts whilst using overtime and shift working for men). *An innovation would be to include multi-strand data on occupational segregation in workplaces.* Regular reporting, monitoring and enforcement would be required (following similar practice in Northern Ireland, Canada, Sweden etc).

4. Create a duty (with England) for equal pay to be integral to collective bargaining.
5. Create a duty which targets differential pay increases at undervalued 'women's work' (as in Finland, Iceland).
6. Create a duty, or part of a duty, that goes beyond pay discrimination and requires gendered education, employment and training plans that respond to gendered structural inequalities in employment. This also requires equality impact assessment of the effect of new policies on equal pay.

Focused Forum - Summary

Rejected Options:

Option 1

Have no specific duty on equal pay in the public sector and/or wait to see what is proposed in the Single Equality Bill.

Likely impact on reducing the 'gender pay gap'?

Overall, the expert forum felt that no action would lead to the pay gap increasing, and that the SEB was unlikely to offer a significant step forward. They argued that taking no action sent the wrong message about the importance of attending to pay disparities. Wales had an opportunity to provide strong leadership and this should not be missed.

What are the implications (capacity, resources, pay and service delivery) for implementing this approach in the public sector in Wales?

Litigation implications regarding cost were raised – the spectre of substantial legal fees and possible compensation claims resulting from 'no win- no fee' cases. There was also a feeling that the public sector should be an exemplar of 'fairness' and equity, underpinned by a human rights approach and to do nothing risked reputation, the goodwill of staff, service quality, and may have negative impact on recruitment and retention. With lower pay scales, the public sector was vulnerable to competition from the private sector but conversely, doing nothing might not encourage 'outsourcing'.

Option 2

Adopt the Gender Equality Duty (England) specific duty on equal pay:

Public authorities will also be required to consider whether one of their objectives should address equal pay issues or causes of the gender pay gap

Or the duty in Scotland

Develop and publish an Equal Pay Policy Statement and report on progress within 3 years.

Likely impact of these options on reducing the 'gender pay gap'?

There was scepticism about impact of these policies. It was said that public bodies have become good at "policy talk" not at change. The England duty was seen as weak. Regarding the Scottish duty - it was felt that it was of symbolic importance in raising the profile of the issues but there was little concrete evidence of impact in terms of outcomes. The Scotland TUC planned to carry out a review this year. Participants (and the lessons from the policy review) reiterated the importance of duties that require focus on outcomes with timescales attached, with accompanying and reporting, monitoring and enforcement mechanisms.

What are the implications (capacity, resources, pay and service delivery) for implementing either approach in the public sector in Wales?

As the duties were weak there was little discussion of resource/capacity estimates. Participants did feel that public authorities should at least be required to publish figures, so questions and debate was created. However, it was noted that Human Resources departments don't necessarily have the skills for such analysis and that the impact on such department can be complex. A standard approach would be needed; perhaps an EHRC Code of Practice.

Should there be reporting, monitoring and enforcement mechanisms? If yes, what might these be and who would be responsible?

Robust monitoring was needed but uncertainty about who could fulfil this demanding role - WAG, WAO, EHRC?

Option 3.

Create a duty (with England) for equal pay to be integral to collective bargaining.

Likely impact of this option on reducing the 'gender pay gap'?

This option was rejected as it said that collective bargaining could not be devolved, was a voluntary mechanism upon which duties could not be imposed and participants were not sure what difference it would make (though see NJC and NHS

agreements outlined above). There was also concern that the duty would be placed on unions too and that they could then be cited as a co-respondent in equal pay claims. This is a real concern also identified in the IDS paper discussed in the literature review but the IDS solution was to reinstate the Central Arbitration Committee to 'sign off' negotiated settlements, insuring TUs from compensation claims.

However, it was felt that collective bargaining processes could seek to consider equal pay issues but to have any effect, this would need to be targeted at reducing the 'gender pay gap' by specific proportions (as in France).

Option 4. Create a duty which differential pay increases at undervalued 'women's work' (as in Finland, Iceland)

What is the likely impact of this option on reducing the 'gender pay gap'?

This option was seen as unfeasible because of decentralised pay bargaining in the UK, lack of sufficient and accurate research and data to decide upon percentage increases and potential backlash from male employees.

Participants concluded that a much simpler and effective way to the raise pay and living standards of the poorest workers, overwhelming women was an increase in minimum wage or a duty upon public authorities to pay a 'living wage'. Although this may not improve the situation for professionals or managers in public authorities.

Accepted Options:

Option 5.

Design a duty that requires a delineated series of data collections steps and subsequent action on findings. This would include audit and analysis of segregation by occupation, pay, grading, and contract type (for example, employers would need to justify hiring women for part time work or on low fixed term contracts whilst using overtime and shift working for men). An innovation would be to include multi-strand data on occupational segregation in workplaces.

Likely impact of this option on reducing the 'gender pay gap'?

This option generated the most debate and enthusiasm so that participants became fully engaged in thinking about outcomes, implications and monitoring.

Participants felt that the audit would have impact if accompanied by a requirement to publish an action plan with achievable delineated steps. However, given 'impact assessment fatigue', there should not be over-prescription of process leading to stifling of outcomes.

Participants felt that the audit would address the employer data deficit, drawing out contract segregation issues, which would have most impact on the overall 'gender pay gap'. This approach could also identify where women might be working several low hours contracts across two or more public authorities, possibly encouraging contracting arrangements between them, leading to more secure or perhaps 'full time' employment (contract pairing). Participants saw the need for initial expertise to support employers to create, collate and analyse the data. However, this was not seen as a burden, as it was argued that public sector employers were familiar with data collection for measurement purposes. It was suggested that WAG might make some research monies available to set data collection methods and facilitate the first analyses.

b. What are the implications (capacity, resources, pay, and service delivery) for implementing this approach in the public sector in Wales.

In this approach, collective bargaining could be a barrier, but a staged approach to changing employment structures could be built in. There was concern over publication of information having unforeseen consequences. However, it was also felt that the public sector should lead in this area, fear of non win/ no fee solicitors should not prevent action but rather prompt it. The risk in this approach was too much analysis, and its cost. The priority must be outcome focussed action to close pay gap. Other comments:

- Need to recognise differences between organisations (mechanism for delayed implementation for organisations who had recently undertaken pay reviews)
- Duty needs to have a target for narrowing the gap within different parts of the public sector (established following analysis process within Option 5).

c. Should there be reporting, monitoring and enforcement mechanism? If yes, what might they be and who would be responsible?

Targets would be negotiated including perhaps a time lapse for those local authorities who have recently undertaken pay reviews. The EHRC would need to provide a code of practice, accompanied by regular reporting to either Wales Audit Office, LG inspectorates, to the relevant Minister or a Wales Equal Pay Tribunal. Penalty would include the withholding of public monies if gaps were not closed over time.

Option 6.

Create a duty that requires gendered education, employment and training plans that respond to gendered structural inequalities in employment. This also requires equality impact assessment of the effect of new policies on equal pay.

Likely impact of this option on reducing the ‘gender pay gap’?

Participants saw the value of this option, particularly where it could be linked to Option 5. Requirements would be delineated in a code of practice backed by Ministerial Remit Letters; all policies would need to assess their likely impact on reducing the ‘gender pay gap’. Policies would identify how they influence the availability of part-time work at all organisational levels, flexible working, time differences between men and women to invest in training and development, employer training in ‘women’s sectors’, specific NEETs issues for young women, barriers for women returners to training, availability child care, and gender stereotyping. All bodies that receive public money (procurement) should be included.

What are the implications (capacity, resources, pay, and service delivery) for implementing this approach in the public sector in Wales?

Participants showed some concern that this replicated the *Gender Equality Duty*, as public authorities should be doing this anyway. However, they did see the value of linking policy and employment structures to equal pay in this way.

There was concern too, that this was too burdensome for today’s economic climate. Equality expertise would be needed to ‘read across’ the implications of policy on gendered outcomes. Participants thought expected outcomes would need to be clear. Overall Option 5 was preferred to 6.

Should there be reporting, monitoring and enforcement mechanism? If yes, what might they be and who would be responsible?

There would need to be capacity building to deal with the issues in organisations linked to regulation (regulatory bodies like WAO, CSIW, ESTYN)

Conclusions and Recommendations

From the data analysis and policy review it is clear that the main contributors to the ‘gender pay gap’ are gender segregation in the labour market in all its forms and childcare/ flexible working barriers. Pay discrimination, ‘like for like’ or equal value jobs, may play a lesser role. Therefore Equal Pay Reviews, which are resource intensive and expensive, may not make as significant a contribution to change as equal pay audits which involve a deeper analysis of gendered employment patterns and workplace barriers.

The experience of EPRs within local authorities reveals that although equal pay claims have been settled and a fairer system of pay scales introduced, the ‘gender pay gap’ may only have been reduced by a few percentage points. To tackle the 38.15 per cent gap between the gender of those who hold the majority of full time jobs in different sectors, occupations and levels of the hierarchy to those who hold the majority of part time jobs in different sectors and occupations, a mechanism to address this structural disparity is required.

For the poorest women increases in the minimum wage or the introduction of a living wage is highly significant. Addressing the disproportionate number of women in undervalued 'women's work' on low paid low hours contracts is essential.

As a result of hearing the analysis and debating options in the forum, one public sector employer stated that her local authority would attempt to abolish the lowest pay grade. This would impact positively on hundreds of women employees. Another employer stated that it might be easier to address the low-hours contracts issue than undertaking an EPR.

Option 5 is similar to the call from the EHRC for the *Single Equality Bill* to incorporate analysis of men and women within pay bands - again wider than an EPR.

Although outside our remit, suggested wording for this option has been assisted by input from one of the experts consulted on our proposed options:

The Welsh Ministers require all designated devolved public bodies⁵ to consider how to address the causes of the 'gender pay gap' within their employments.

A Code of Practice would then delineate the type of audit to be undertaken in order to develop and publish an Equal Pay Plan (EPP). EPPs will be formally approved by Welsh ministers (-or designated body).

Equal Pay Audits (EPA) will be required to meet the set criteria in EPPs. The task of reviewing the 3 yearly EPAs to be formally assigned to WAG or a (devolved) independent, third party organisation like the Wales Audit Office (or Equal Pay Panel/Tribunal).

Welsh Ministers would be given legal powers to compel remedial action from public bodies for non-compliance with Welsh Equal Pay duty (e.g. issuing of Compliance Notices). Procedures to apply in cases of continued non-compliance need to be established.

Or a combination of Option 5 and 6:

The Welsh Ministers require all designated devolved public bodies⁶ to develop and publish an Equal Pay Plan (EPP), which will address the causes of the 'gender pay gap'. This includes a requirement to impact assess the effect of all new policies on equal pay.

Reporting mechanisms as delineated for Option 5.

⁵ Thanks go to Dr. Paul Chaney for his comments. The duty will need to set out whether non-devolved yet WAG-funded bodies (e.g. Police Authorities) covered.

⁶ Need to determine whether non-devolved yet WAG-funded bodies (e.g. Police Authorities) covered.

Annex one

Focused expert forum on an Equal Pay Duty, 3rd March 2009, hosted by Cardiff Business School

Attendees

Name	Designation/ Organisation
Heulwen Blackmore	WAG (CAEC - EHRD)
Dani Boucher	WAG (OCSRO)
Caren Fullerton	WAG (HR)
Jane Dowden	Cardiff - HR
Graham Jones	NPTCBC - HR
Tina Bowen	Torfaen – HR
Derek Walker/ Head of TUC	WTUC
Natasha Hirst	WTUC
Sue Dye	EHRC Wales
Amelia John	EHRC Wales
Muriel Robison	EHRC Scotland
Anna Freeman	WLGA - HR
Hilary Hopkins	NHS
Audrey Jones	Wales Assembly of Women
Rhys Davies	Cardiff – Wiserd Socsi
Caroline Joll	CARBS
Victoria Winkler	Bevan Foundation
Peter Hunter	Unison Scotland
Dave Blackaby	Swansea University
Chriss O'Connell	WEFO
Susan Harkness	Bath University
Sian Wiblin	PCS Wales
Carole Thornley	Keele University
Terry Rees	Cardiff University, organiser today
Alison Parken	Organiser today
Adele Baumgardt	Organiser today

Annex 2

Additional Options –

1. Create a duty that introduces free childcare, up to age 2, for 30 hours per week for employees in the public sector.
2. Create a duty that provides exemplar flexible working for all in the public sector, including parental leave at near salary rates, for a set period - to be shared equally between the parents (or lost) where both are public sector employees. Increase paternity leave (2 weeks) to near salary level. In addition, extend WAG's practice (and that of France) of providing an average pay increase of changes within the employees' pay band, and incremental increases, to all public sector employed mothers on maternity leave.

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