

Pay Transparency and its Effects

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Introduction

The European Commission's Gender Equality Strategy 2020-2025 sets out a commitment to address the gender pay gap and gender pension gap. This webinar sought to deepen knowledge and understanding of the intended and unintended effects attendant on pay transparency measures in general, and of the particular role for gender-neutral job evaluation and classification systems in facilitating pay transparency and the practical forms this could take in doing so.

Karen Vandekerchove, Head of the Gender Equality Unit in DG Justice and Consumers, opened the webinar. The European Commission is currently working to table a package of legal and non-legal measures to promote pay transparency with a potential to reduce the gender pay gap. This set of measures will build on the 2014 pay transparency Recommendation.

Session 1 - Pay Transparency and its Effects: Intended and Unintended

Presentation

Mark Smith former Faculty Dean & Professor Human Resource Management at Grenoble Ecole de Management, France, and Director elect at University of Stellenbosch Business School, South Africa

The gender pay gap remains a persistent challenge across the Member States, with a heterogeneity between countries in the level of and trends in this gap. This underlines the need for continued action on this issue. This need is further reinforced in the post-COVID setting where there are risks of the gender pay gap opening up as a result of the economic impact of the pandemic and the response required.

Root causes for the gender pay gap lie in horizontal and vertical gender segregation in the labour market; undervaluation of female-dominated occupations; the sexual division of unpaid labour; discrimination; and gender stereotypes. Gender stereotypes are concretised in organisations in a range of different areas, including in gender bias becoming embedded in formal payment systems and job grading, and in being a factor in discretionary pay practices. These are two areas where pay transparency measures can contribute to reducing the gender pay gap, shining a light on decisions based on such stereotypes. Pay

transparency measures enable a review of decisions in these two areas, in order to address the inequalities arising.

There are a range of effects resultant on pay transparency measures that can be deemed intended. These include awareness raised, whereby organisations become transparent and issues of pay and pay equity can be discussed. Action to correct pay inequalities is stimulated by this transparency. Pay transparency measures encourage a formalisation of management practices, driving the introduction of more gender neutral pay systems. They contribute to an overall closing of pay inequalities, however, their strongest effect is in closing inequalities within companies. Pay transparency measures increase the level of equal pay claims, in enabling an effective pursuit of such claims.

Unintended effects of pay transparency measures include evasion by employers through such as outsourcing low paid services performed predominantly by women to circumvent large pay gaps. There is the effect of 'window dressing' whereby employers fulfil legal pay transparency requirements but fail to follow up with effective action to address issues identified. There is the potential for a loss of focus on sources of inequality at the higher paid levels in an organisation, unless pay transparency is understood as part of a portfolio of action. There are positive unintended effects including talent retention; employee trust on the basis of a sense of procedural fairness; and positive business reputation.

Discussant

Jill Rubery, Professor of Comparative Employment Systems, the Director of the Work and Equality Institute at the University of Manchester

The widespread assumptions about the strategic nature of pay setting within organisations does not mirror the reality and is not a useful starting point for action on the gender pay gap. There can be an overestimation of the coherence of pay practices within companies. Such decisions are often decentralised to line managers and can often be driven by crisis rather than strategy. Pay transparency starts the conversation about pay and about equality in pay. It enables a more strategic approach with more formal pay systems that are equality compliant. However, given that managers are not accustomed to having their pay decisions scrutinised there could be a potential resistance to be addressed.

It will be important to build on pay transparency in developing further initiatives to extend its impact. In doing so it would be important to look across the supply

chain of companies where employees, even if not directly employed, contribute to the value of goods and services produced. There is responsibility through procurement, to extend the effects of pay transparency. This could also serve to respond to issues of evasion of pay transparency requirements by outsourcing.

There are limitations in legislation promoting equal pay in that there are no requirements in relation to the differential between jobs of higher and lower value and to that differential being proportional to the value of the jobs. Pay transparency measures would need to be further built on if this issue is not to persist.

There is a risk that the emphasis on pay transparency measures focus attention too much on pay structures and not enough attention is paid to who has access to higher level jobs and opportunity to progress a career within an organisation. There is a further risk that needs to be addressed in implementing pay transparency measures, of companies, where there is a concentration of low paid jobs, garnering praise for a low gender pay gap because of this issue, rather than enabling a critique of the overall low level of pay in the company.

Themes from the Discussion & Debate

The following themes emerged in the discussion:

- In relation to outsourcing as an evasion of pay transparency, there are increased risks in the current context, whereby movement towards permanent home-working could drive more self-employed platform working, which could also involve new forms of segregation. There is an earlier UK example where local government care workers were outsourced to the private sector on lower wages, on foot of a gender-neutral job evaluation process.
- In relation to indicators for pay transparency, there is the more public monitoring of the impact on the gender pay gap, alongside the more detailed data needed to drive and track change within an organisation. Initial indicators could trigger more diagnostic analysis within a company with a focus shifting to the micro level. Indicators need to be cognisant of the dangers of endorsing low wage employers.
- In relation to the unexplained gender pay gap, the location of discrimination in this element by economists is problematic. It precludes an understanding that some of the processes that contribute to the so-

called explained gap, such as occupational segregation, are discriminatory by nature and that stereotypes are at play in these processes.

- In relation to individual managers and their capacity, it was noted that individual managers do have agency and change can happen at this level. Individual managers have a capacity to assess productivity, but this is not necessarily related to pay, especially in relation to different starting salaries.

Session 2 - Gender Neutral Job Evaluation and Classification Systems

Presentation: Principles to underpin job evaluation: the ILO guide

Marie-Thérèse Chicha, Professor; Holder of the Ethnic Relations Chair at School of Industrial Relations, University of Montreal

The proactive approach to pay equity, taken up in jurisdictions such as Canada (Ontario, Quebec), Finland and Iceland, address all employers, based on certain criteria such as company size, rather than one employer at a time as in actions based on litigation. The proactive approach imposes results-based obligations on employers and specifies the methodology for achieving such results. The structured process required includes: identifying female-dominated and male-dominated jobs to be compared; choosing a job evaluation method; gathering data on the jobs; determining the value of the jobs; estimating wage gaps between jobs of equal value; and making pay adjustments to achieve pay equity. The approach involves joint effort by employer and employee, a process that improves workplace relations.

The job evaluation step in this process involves two types of methods: global methods and analytical methods. An analytical method, the point method, is recognised as the most appropriate for pay equity. Common, precise and detailed criteria allow all the requirements of all jobs in a company to be systematically examined, evaluated, and compared. Four basic factors, common to most point methods, are deemed essential and sufficient: qualifications, effort, responsibility, and the conditions under which the work is being performed.

These four factors are broken down into sub-factors to take account of the detailed and varied characteristics of different types of jobs in a company. Sub-factors should include those that are associated with women's jobs, which are often overlooked. Sub-factors should be clearly defined and illustrated with examples corresponding to female-dominated and male-dominated jobs. Job evaluation must be equally tailored to both female-dominated and male-dominated jobs and must be free from prejudices and stereotypes. Gender-neutral job evaluation involves removing such stereotypes and prejudices, which are strong in relation to female-dominated jobs.

Gender-neutral job evaluation offers financial and psychological benefits for women. It provides benefits for employers in ensuring a compensation system that is consistent and tailored to the company's needs, ensuring an attractiveness for the company, and reducing the threat of litigation due to the pay equity outcomes achieved.

Presentation: Job evaluation and gender pay equity: A French example

Frédérique Pigeyre, Professor of Gender, diversity, equality and women from school to enterprise, Special advisor in charge of the Equality Mission, Conservatoire national des Arts et Métiers, Paris ; and Anne-Françoise Bender, Assistant professor, Human Resource Management, Conservatoire National des Arts et Métiers, Paris

There is a need to focus on the central question of job evaluation in order to understand the persistence of the gender pay gap. Job evaluation must be understood as a structural problem underpinning this issue.

Criterion based methods of job evaluation do not offer protection from gender bias. They appear neutral but do not take account of difference in situation and experience between women and men. The concept of 'comparable worth' addresses the reality that discrimination is institutionalised in labour markets through systems that seem gender neutral but are not. However, in France, it has been difficult gain acceptance of this concept.

In a study of the pay grading system in the retail sector, five criteria were found to be applied in job evaluation, with different weights for each: Knowledge 12.5%; Abilities 12.5%; Relations 25%; Responsibilities 25%; and Autonomy 25%. The following gender biases were identified in the study:

- Specific skills are deemed to be archetypical 'feminine skills' and, as such, fail to get recognised;
- Less weight is given to criteria to which female-dominated jobs are most linked;
- Priority is given to characteristics assigned to managerial jobs (male-dominated), and those requiring organisational or customer relationship skills are undervalued (female-dominated); and
- Most of the criteria value management jobs, and criteria such as customer relationship or working conditions, while important for most other jobs, are not taken into account.

In France, legislation enacted in 2014 includes explicit reference to a requirement to analyse the criteria used in pay-grading systems and to correct those which might lead to indirect gender discrimination. This builds on previous legislation, including the 2001 Genisson law that requires pay negotiation to improve gender equality, ensuring no gender-based discrimination is introduced. However, implementation has been an issue.

Progress has been made in developing tools, kits and guidelines. The Council for Gender Equality at Work produced guidelines and a methodological kit showing how to question implicit biases in pay systems; and to improve job descriptions by expanding the skills set out, valuing other skills and changing the weighting of criteria. Examples are given in the guidance of comparisons of job demands between different but comparable jobs. However, the Employers Federation expressed its opposition within the report, invoking freedom of negotiation and refusal of a priori suspicion of gender discrimination in existing criteria.

Presentation: Job evaluation in action: actors & regulation starting from the Tesco case

Dr Claire Evans, Research Fellow, Industrial Relations Research Unit, Warwick Business School; and Dr Manuela Galetto, Associate Professor, Industrial Relations Research Unit, Organisation and Human Resources Management, Warwick Business School

Although not mandatory, job evaluation is understood in the UK as an important tool for reviewing and assessing pay systems to ensure obligations under the Equality Act 2010 are met. Section 80(5) of the Equality Act 2010, defines a job evaluation study as 'a study undertaken with a view to evaluating, in terms of the demands made on a person by reference to factors such as effort, skill and

decision-making, the jobs to be done by some or all of the workers in an undertaking or group of undertakings.’ The types of job evaluations identified by the Advisory, Conciliation and Arbitration Service (ACAS) are: job ranking, paired comparison, job classification, points assessment, and factor comparison.

The precedents for the current equal pay cases involving supermarket chains can be traced back to the public sector and the 1997 government proposal for a single pay structure to be implemented within ten years in local councils, and the inequalities uncovered in this process ultimately leading to a number of high-profile legal cases.

In Tesco, a job evaluation study in 2014 revealed that 22 hourly-paid shop floor roles were equivalent to three higher-paid roles in their distribution centres. The study was hidden and abandoned. An Employment Tribunal decision in 2020 found the job evaluation study did not meet the legal test. An appeal has now been lodged with the Employment Appeal Tribunal, seeking a revision of the job evaluation study, and with the ECJ, seeking assistance in interpreting UK law.

In ASDA, in a case started in 2014, the Employment Tribunal and Employment Appeals Tribunal ruled in favour of female shop workers in their case that store staff jobs are of equal value to higher paid jobs in the company’s distribution centre. The case is now before the Supreme Court.

These cases have demonstrated that job evaluation has the potential to uncover pay discrimination. However, the onus of proving discrimination remains on the individual, which is problematic as it is an impediment to action on the issue for most individual given the time and pressures involved.

Themes from the Discussion & Debate

The following themes emerged from the discussion for future attention:

- In relation to the extent of application of job evaluations, in Quebec the threshold is for all companies with ten or more employees to implement the pay equity process, using the four factors to conduct job evaluations, with up to 80% compliance. In the UK gender pay gap reports are compulsory for employers with over 250 employees under legislation enacted in 2017, but there is no penalty for failure to implement and no obligation to act on foot of the reports. In France, all companies are covered by industry agreements and all industries are supposed to negotiate pay

grading systems. However, company level action has proven more effective.

- In relation to participative processes of job evaluation, in Quebec employers with 100 or more employees are required to establish a pay equity committee with employee representatives, including a set proportion of women. In the UK, companies are not under obligation to negotiate or share on such issues. It was the Tesco management that did the job evaluation there. If there are trade unions present in a company, they can promote equality in collective bargaining. ACAS is a tripartite body established by government that has provided guidance on job evaluation. In France, it is mandatory to negotiate on the improvement of wages each year, but equality is not seen as important in this process. Job evaluation is an independent initiative of employers, and should be shared in the company with employees.