

# Investigation into unlawful pay discrimination at the BBC

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Report  
November 2020

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## Foreword

As this report was written, employers across the UK were dealing with the unprecedented impact of COVID-19 on their businesses and their employees. There will be many difficult weeks and months ahead and we cannot yet tell how long the impact will be felt.

In this context, it is more important than ever that employers look after their employees, attract and retain the best talent and create diverse workplaces that value their employees equally. There are real concerns that the aftermath of the pandemic will see inequality increase and it is incumbent on every employer to do what they can do prevent this, now more than ever. While the world we work in has changed, equality law still remains and must be followed.

May 1970 saw the coming into force of the Equal Pay Act. The law is explicit: men and women in the same employment must receive equal pay for equal work. Fifty years on, every employee should be able to see that their employer's pay processes are structured, well documented, transparent and kept under review, that equal pay is considered when their pay is set and that any complaints will be dealt with effectively. This should all be underpinned by leadership and a culture that embraces and embeds equality across all aspects of the employer's work.

But there is evidence that not everyone is complying with the law. In the last few years alone we have seen large groups of women take their employers to court over the issue of pay parity with their male colleagues. And there is much confusion over the difference between equal pay and the now much-talked-about gender pay gap, which refers to the difference in average hourly earnings of all men and women across a workforce.

Pay discrimination can be caused by a range of factors in the workplace and equal pay cases are often complex. There is limited evidence of employers making a conscious decision to pay a woman less than a man because of her sex. More commonly, pay discrimination can result from complex and decentralised pay systems, a lack of transparency about pay, or inadequate job evaluation. Complexity in pay systems also makes it difficult for employees and employers to know whether employees are being paid equally for equal work. It also makes it difficult and more time consuming for employers to evidence that they are complying with the law.

This investigation was prompted by public concern about pay inequality between men and women employed by the BBC. We did not find unlawful pay discrimination in the cases we analysed during our investigation. However, we did identify themes relating to past pay practices that could give rise to a risk of pay discrimination. These have now largely been resolved through the BBC's range of pay reforms, aimed at addressing its complex and decentralised pay structure. As with every organisation, there are always improvements that can be made and the BBC has plans for ongoing reform.

While this investigation considered possible pay discrimination by one major employer in the UK, equal pay must be a priority for all employers. For too long the effects of pay inequality have been seriously damaging for women and for businesses. Much more proactive effort is needed to eliminate unfairness, adopt objective and transparent pay systems, and establish a culture of trust, honesty and accountability.

We must not forget that at the heart of every organisation are real people. Suspicions of unfairness about pay can take a heavy emotional toll, as well as financial, leading to a breakdown of trust between employee and employer. Every employer should read this report and ask itself whether it can say it has done all it can to tackle pay discrimination. If any employer has even a shred of doubt about the answer to this question, it must step up and take action now. Employers must look at their policies and procedures and ask if they are right. Do you have a clear equal pay policy, does your pay system ensure consistent and transparent decision-making, and how do you monitor how it is working in practice?

Transparency is essential if employees are to have faith in their organisation's pay policies and processes. They need to have confidence in the complaints systems, and know that when complaints are raised they will be dealt with fairly and consistently.

Equal pay is the law. We have to seize this opportunity to make it a reality for everyone – it's the right thing for employees, the right thing for business and the right thing for society.

Caroline Waters, Interim Chair

# Executive summary

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## Background

We began our investigation into the BBC following concern about allegations of discrimination in the pay of its female staff. We wanted to establish whether the BBC had paid men and women equally, and to understand the extent to which the pay reforms it introduced recently had reduced any risk of pay discrimination as far as is reasonably possible.

Our investigation looked at a range of evidence provided by the BBC and over 100 of its employees. We assessed information about the BBC's approach to pay, and analysed data about the salaries of BBC staff. We reviewed 40 pay complaints made by employees at the BBC. From these, we identified themes and issues that have informed our findings and recommendations. We then analysed 10 of the complaints in greater depth.

We set out our main findings and recommendations for change below.

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## Our findings

### Suspected pay discrimination

Equal pay law is complex. In each case the nature of the work being done has to be assessed, as do the reasons why two individuals doing the same work are being paid differently. We analysed 10 of the complaints in depth to see if pay discrimination had occurred. We found that it had not occurred in any of the 10 cases.

Nevertheless, in reviewing the case files, we found some significant areas of risk that arose before the BBC's pay reforms. For instance, in the past the BBC had an overly complex and inconsistent approach to pay with too much discretion given to individual managers. Poor record-keeping meant that managers were sometimes unable to explain to people why they were being paid differently to those doing the same or similar work. At times during the investigation this also made it difficult for the BBC to quickly find information needed to answer some of our queries. Issues like this caused many of the problems the organisation has faced.

The BBC has taken significant steps towards addressing these issues, but more needs to be done. The BBC's board is committed to ongoing reforms and the BBC is implementing a programme of work which it believes will address our findings and recommendations. We welcome this. A continued focus on improving training and guidance will support consistent decision-making, and the BBC's commitment to tackling these issues will require continued leadership and board-level responsibility and accountability.

## **How the BBC deals with pay complaints**

The BBC's improved pay complaints process plays an important role in addressing historical shortcomings in its pay systems. It gives employees the opportunity to have their pay checked and adjusted in line with equal pay law and / or the BBC's fair pay approach. 'Fair pay' does not have a specific legal meaning but is used by the BBC to mean that an employee is at the appropriate point in their pay range. There is an advantage to the employee in the BBC considering fair pay in addition to equal pay, as long as the equal pay analysis is carried out separately.

The BBC told us that equal pay is fully considered in every case where it is raised. We initially had concerns about whether equal pay had been considered separately to fair pay at the informal stage of the complaints process, due to a lack of evidence in the case files we analysed. Based on further evidence provided by the BBC, we ultimately found that the BBC did consider equal pay separately to fair pay at every stage of the complaints process.

However, we found that in two-thirds of the cases we reviewed the BBC had not communicated its consideration of equal pay clearly to the employees concerned at the informal stage. This left some employees in doubt about whether equal pay had been considered or not.

The BBC has been slow to resolve complaints, and its use of independent experts did not meet the level of independence and objectivity that some staff had expected. Grievance processes can be stressful in any organisation. During the investigation, we heard from some women who told us the stress and anxiety brought about by the grievance process had a damaging effect on their health.

## **The BBC's pay systems**

The BBC has acknowledged that its historical approach to pay was decentralised and overly complex. Since 2015, it has put in place a programme of reform which has resulted in significant improvements. We recognise the progress it has made to date, including its Career Path Framework (CPF) which was developed to create a standardised approach to pay and grading. We also recognise that it is not possible to fully eliminate all risk of pay discrimination. However, as the BBC recognises, there is scope to do more to reduce any remaining risk.

One objective of the BBC's reforms was to reduce the overlap between pay bands which existed under its historical pay arrangements, but there are still overlaps between pay ranges.

This creates a risk of pay discrimination where an employee in a job that has been evaluated at a lower grade is being paid more than a colleague of the opposite sex who is doing a job involving greater demands in a higher graded role. However, in such cases there may be a material factor, which is a non-discriminatory reason (as defined in the [Glossary](#)) which explains the pay difference.

Some organisations use an analytical job evaluation scheme where jobs are scored against a range of factors to rate them as equivalent. Where two jobs have been rated as equivalent they are regarded as equal work for equal pay purposes. The BBC's job evaluation scheme does not rate jobs in this way. There is no obligation on it to use such a scheme, but using a non-analytical approach to job evaluation is widely perceived to have disadvantages, such as a need to consider on a case-by-case basis whether employees are carrying out work of equal value. The BBC believes that its approach reduces the risk of discrimination considerably, while also balancing other important requirements of a career and reward system. We recognise that employers will have to weigh up competing demands in deciding which form of job evaluation works best for them.

Regular reviews and updates of the job evaluation system will reduce the risk of pay discrimination further, as will carrying out regular equal pay audits in line with [our guidance](#).

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## Our recommendations for change

### Leadership

- The BBC's board should continue to drive positive change at the BBC, and should oversee the BBC's response to our report to minimise the risk of pay discrimination arising in the future.

### Dealing with complaints of pay discrimination

To improve the way it identifies and resolves pay discrimination, the BBC should:

- Make sure that its consideration of equal pay is recorded fully in every case and at every stage of the process. If an employee is offered an adjustment to their pay, they should be told explicitly whether this is on an equal pay or fair pay basis. If the BBC concludes that pay discrimination has not taken place, it should explain its reasons for this clearly.
- Clearly set out and adhere to reasonable time limits when determining pay complaints.

- Measure staff confidence in the grievance process and continue to take steps to improve the process in response to staff feedback.
- Measure staff confidence in its arrangements for the independent scrutiny of complaints and, if necessary, improve staff confidence through further staff engagement.
- Continue to identify underlying patterns and themes from its complaints, to learn lessons and improve its pay complaints processes. This should include seeking feedback from staff who have experienced the complaints system.

## **Further reducing the risk of pay discrimination**

To reduce the risk of pay discrimination occurring in the future, the BBC should:

- Continue to improve transparency when communicating with employees by giving them reasons for, and background to, the decisions made about their pay. In particular, it should make sure that outcomes are always recorded properly and consistently so it is clear why and when an employee's pay has been decided.
- Continue to improve training and guidance on equal pay law, equality, inclusion and diversity for all staff at the BBC who make decisions about people's pay.

## **Ensuring non-discriminatory pay systems**

To ensure its pay systems are non-discriminatory and provide equal pay, the BBC should:

- Review the Career Path Framework and On-air Framework regularly, to ensure their continued integrity and ability to meet changing job requirements and to reduce the risk of sex discrimination in pay. The first review into the On-air Framework should take account of the issues that we have raised in relation to the Samira Ahmed judgment.
- Regularly review any job evaluation scheme that is being used to make pay grading decisions, to make sure that they are up to date, including a review of factors, weightings and questions.
- Consider how it can best assess whether comparators are doing work of equal value when assessing pay complaints.

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## Investigation into unlawful pay discrimination at the BBC

- Conduct equal pay audits, which comply with our guidance, at least every five years.
- Continue the measures it has implemented to narrow the overlap between job pay ranges in different bands where feasible. If the overlaps do not narrow, the BBC should develop other ways to resolve this issue.
- In consultation with the Joint Unions, consider measures to resolve the issue of some employees being paid more than the maximum of their job pay range.

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### Next steps

We acknowledge the progress that the BBC has made since 2015, but we have identified some areas where further improvement is needed. The BBC's board is committed to ongoing reforms and the BBC is implementing a programme of work which it believes will address our findings and recommendations. We welcome this and trust that our recommendations will be implemented as part of the BBC's ongoing programme of reform.

# 1. Introduction

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## Background

In July 2017, the BBC published a list that named all staff who were earning over £150,000. The seven highest-paid members of staff were all men, as were two-thirds of the people on the list (a situation that we acknowledge has improved since).

Higher-paid women at the BBC were now able to compare their pay with men on the list who were doing the same jobs as them. As a result, some women believed that the BBC had not been paying them equally to their male colleagues. Some women at the BBC formed an informal group called BBC Women to push for the resolution of women's equal pay complaints.

In January 2018, Carrie Gracie resigned from her role as BBC China Editor and returned to her substantive News Channel presenter post. She published an open letter alleging systemic pay discrimination against women at all levels in the BBC. Following Carrie Gracie's resignation as China Editor, the House of Commons Digital, Culture, Media and Sport (DCMS) Select Committee launched an inquiry into equal pay at the BBC. It heard evidence from Carrie Gracie, the BBC's Director General and BBC staff.

In October 2018, the Select Committee published its report. It concluded that the BBC's approach to pay was 'extremely poor' and recommended that the BBC should:

- publicly acknowledge that it had a pay discrimination problem
- set a deadline to resolve all outstanding pay complaints, and
- take urgent action to end discriminatory pay practices.

The BBC accepted some of the Select Committee's recommendations and acknowledged that it had some historical equal pay cases.

The BBC had been reforming its pay structure and policies since 2015. These developments came at a time when it was in an advanced stage of consultation on its Terms and Conditions review, which was aimed at streamlining staff contracts and allowances. It also introduced the Career Path Framework (CPF). This was a map of all of the core jobs within the BBC; it created a standardised approach by reducing the number of job titles and creating job families and new pay bands. To do this, the BBC used a job evaluation scheme known as Job Evaluation and Grading Support (JEGS), which it has used since the early 1990s. The BBC invited employees to raise queries about their pay. In total, around 1,300 queries and complaints were raised from a workforce of approximately 19,000 employees.

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## What led to our investigation

On 10 January 2018, we wrote to the BBC asking for information about equal pay complaints and any action it had taken to address pay discrimination. The BBC provided a large volume of material voluntarily and explained its job evaluation scheme and pay policies. Over the following months, we analysed this information, met senior BBC managers and made requests for additional material, which the BBC provided to us.

The BBC also provided us with information about recent reviews that it had commissioned after it published the high pay list in July 2017:

- An equal pay audit by Eversheds Sutherland (ES) and PricewaterhouseCoopers (PwC), published in October 2017, which had examined the pay of graded staff in the BBC Public Service.
- A review of the ES and PwC audit, published by Sir Patrick Elias QC at the same time in October 2017 (the Elias review).
- An 'on-air review', carried out by PwC and published on 30 January 2018, which examined fairness and equality of pay for staff who present BBC television and radio programmes.

We reviewed all of the above documents. While these reports did not find evidence of systemic pay discrimination by the BBC, they did not rule out the possibility of individual equal pay cases. The reports highlighted some poor pay practices and recommended that the BBC should adopt more rigorous and transparent pay systems to remove any unfairness and potential pay discrimination.

In discussions with us, the BBC accepted that there had been difficulties with its historical approach to pay, but it expressed confidence that its recent initiatives had resolved these issues.

To understand the concerns of BBC Women, we met representatives from the group in February and July 2018. Following the meetings, we gave BBC Women a survey to distribute to their members, to enable women to share information about their complaints of pay discrimination at the BBC. This revealed concern about pay discrimination across all levels of BBC staff. We heard about the effect that trying to address concerns about their pay was having on some women. Some felt sad and angry, and believed that an organisation they had trusted had let them down.

After reviewing the material that the BBC provided to us and hearing from women at the organisation, we suspected that unlawful pay discrimination may have taken place. On 17 October 2018, we sent the BBC draft terms of reference for an investigation. We also entered into discussions with the BBC, in an attempt to reach a legally binding agreement under section 23 of the Equality Act 2006.

The proposed agreement committed the BBC to an action plan which would require it to:

- update and improve its job evaluation scheme
- carry out an equal pay audit
- reopen completed pay complaints, and
- appoint an independent person to review the findings.

The BBC accepted some of these requirements but was not in favour of reopening its completed pay complaints. Individuals had told us they believed the complaints system had not dealt with their equal pay concerns adequately. As we were not able to reach an agreement with the BBC on this, we began a statutory investigation on 12 March 2019.

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## Scope of the investigation

The investigation considered whether there was unlawful pay discrimination involving staff in the BBC Public Service from 1 January 2016 until the date that staff pay changed following the BBC's Terms and Conditions review. Following our initial review, we amended the terms of reference to enable us to consider and make findings on any evidence that fell outside this timeframe. We did not include BBC Studios (the commercial subsidiary of the BBC).

We also examined whether the BBC had taken adequate steps to resolve any pay discrimination, including in its approach to pay complaints. The terms of reference for the investigation are set out in [Annex 1](#).

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## How we carried out the investigation

We reviewed a range of evidence provided by the BBC and its employees. This evidence included:

- information from the BBC explaining its approach to setting pay and its grievance process
- recent pay audits and reviews, as listed above, and the information and recommendations made by Will Hutton in the BBC commissioned Public Service Transparency Review, which was published in January 2019
- statistical information about the pay of BBC employees
- evidence from over 100 women at the BBC who responded to our survey and / or provided information by email
- interviews with six women where we heard about their experiences first hand

- a targeted sample of 40 pay complaints made to the BBC by its employees, 10 of which we analysed in depth.

Our in-depth analysis of the 10 pay complaints looked at whether pay discrimination had occurred in breach of the Equality Act 2010. The law on equal pay is set out in more detail in [Annex 2](#). In summary, if a woman is doing equal work to a man (or vice versa), she is entitled to the same pay unless there is a non-discriminatory reason (known as a ‘material factor’ as defined in the [Glossary](#)) which explains the pay difference.

We applied the civil standard of proof – the balance of probabilities – to our analysis of the 10 pay complaints, which means that we had to decide whether it was more likely than not that pay discrimination had occurred. We concluded that pay discrimination had not occurred.

[Annex 3](#) explains in more detail how we carried out the investigation and why we analysed a targeted sample of pay complaints.

We are grateful to the individuals who provided us with information and evidence directly, and to the BBC which has cooperated with us throughout our investigation.

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## What happens next

When we issue a report following an investigation, we can include recommendations based on our findings. In the absence of an unlawful act notice, any organisation that we make recommendations to must ‘have regard to’ them.

We expect the organisation to give serious consideration to implementing our recommendations and to have good reasons if it chooses not to do so. In determining a claim, a court or tribunal may take a finding in our report into consideration but will not treat it as conclusive.

## 2. Suspected pay discrimination

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### Introduction

We suspected that unlawful pay discrimination against women had taken place in the BBC Public Service before the BBC implemented the pay reforms we describe in **Chapter 4**. Our investigation set out to determine whether pay discrimination had or had not occurred and whether any such discrimination had been resolved adequately. Having completed our investigation, we found no cases of unlawful pay discrimination at the BBC.

However, based on the evidence we reviewed in the cases, we identified themes that could give rise to a risk of pay discrimination. These themes arose from past practices which have now largely been resolved through the BBC's reforms. As is the case for every organisation, there are always improvements to be made. The BBC has shared with us its plans for ongoing reform, which we welcome.

In this chapter, we:

- discuss Samira Ahmed's employment tribunal case
- explain the conclusions we reached in the 10 cases we examined in depth, and
- consider the issues we identified when analysing the case files.

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### Samira Ahmed's case

In 2019, Samira Ahmed made an equal pay claim against the BBC in the employment tribunal. While each case will be considered on its own particular facts, and one employment tribunal does not have to follow a decision made by another, we discuss this case below as it is the only example to date of an employment tribunal applying equal pay law in relation to the BBC.

Samira Ahmed is the presenter of Newswatch. She claimed that she should have been paid equally to Jeremy Vine when he was the presenter of Points of View. The employment tribunal found that Samira Ahmed had proved she was doing like work to Jeremy Vine. It found that the differences between the two programmes were minor and had no impact on the work the two presenters did, or the skills and experience needed to present the programmes. The burden then moved to the BBC to prove that the difference in pay was not tainted by sex discrimination.

In defence of its approach to pay in this case, the BBC relied on various reasons including:

- the differences in nature and profile of the two programmes
- the profile of Jeremy Vine
- the presenters' broadcasting range and experience
- a difference in market rates payable for the two presenters and their programmes, and
- market pressures that applied at the time Jeremy Vine negotiated his contract.

In principle, the employment tribunal accepted that each of those factors could be a non-discriminatory material factor explaining the pay difference. However, on the evidence presented to it, the tribunal found that the BBC had failed to prove that any of those factors had caused the pay difference. The lack of a transparent and consistent process for evaluating, recording and determining presenter pay decisions at the time they were made contributed to the BBC's difficulty in showing evidence of causation.

Samira Ahmed's claim was successful.

The BBC reached a settlement agreement with Samira Ahmed after the employment tribunal gave its judgment in January 2020.

## Analysis of case files

As we explain in [Annex 3](#), we asked the BBC for its files relating to 40 pay cases raised by staff. We selected these from a spreadsheet of over 1,000 informal and formal pay complaints, which had all names and personal information removed. The sample was not intended to be representative of BBC jobs as a whole and included a higher proportion of cases in on-air roles (roles in television and radio).

Phase one of our analysis involved a detailed examination of all 40 files. We then selected 10 of the 40 files for further investigation.

In phase two, we carried out a more in-depth analysis of these 10 files. They covered a range of salaries and a variety of roles, including on-air presenters and off-air staff. In each of these cases, the BBC concluded that it had not discriminated against the women who had complained. However, the BBC had also considered these cases on a fair pay basis, which resulted in nine of the 10 women receiving a salary increase. Consideration of 'fair pay' is not a legal requirement. It is a term used by the BBC to mean that an employee is at the appropriate point in their job pay range and is a step which, when taken in addition to the equal pay analysis, can result in a more favourable outcome for the employee. We discuss 'fair pay' in [Chapter 3](#).

Following our initial analysis of the 10 case files, and after receiving answers from the BBC to a first round of questions, we suspected that unlawful pay discrimination had occurred. However, after we presented our initial findings to the BBC, it provided us with further explanations and, in some cases, further evidence relating to each case. After reviewing this, we concluded that pay discrimination had not occurred in these cases. The BBC satisfied us that it was likely that the women were not doing equal work to their male comparators or, if they were, that there was a material factor explaining the difference in pay.

In our detailed examination of the 40 files, we identified issues with the BBC's past approach to pay that gave us cause for concern. These issues did not lead to findings of unlawful pay discrimination because they are general observations about the BBC's pay systems rather than individual cases. The BBC has largely dealt with these issues as part of its recent reforms but, as is the case for every organisation, there are always improvements to be made.

## Issues with the BBC's past approach to pay

We set out below the issues that we think increased the risk of pay discrimination at the BBC in the past. While we welcome the steps the BBC is taking to tackle these issues, there are some areas where more can be done to reduce the risk of pay discrimination occurring in the future.

### **Decentralised and inconsistent approach to pay**

Before the BBC began its pay reforms in 2015, there was no single process for setting pay and awarding pay rises. Pay was set under multiple different collective bargaining arrangements, including some localised union negotiated variations. This led to a high level of complexity.

The BBC told us that new jobs were typically slotted into the existing grading system without an individual job evaluation exercise for each new job. Over time, this led to an increase in the number of job descriptions within grades and over 5,000 different job titles. The proliferation of jobs meant that some individuals found themselves in the same grades as others who were receiving significantly different pay. That does not necessarily mean that differences in pay were not justified. However, the complexity may have increased the risk of unequal pay occurring and made it harder to identify cases of unequal pay where they arose.

During our investigation, we heard that managers had made decisions about pay without clear central guidance or oversight. While, for most BBC Public Service staff, these decisions were made within structured collective agreements, we saw evidence that managers sometimes:

- determined individuals' starting salaries and awarded allowances and non-standard pay increases with limited central oversight from HR
- awarded non-standard pay increases without clearly recording the reasons for doing so
- consolidated allowances and non-standard pay increases into salaries when a person moved roles, and / or

- allowed staff to keep their acting-up allowances when they returned to their usual role after a temporary promotion.

Too much discretion given to individual managers without proper governance can lead to pay discrimination. Some of the women we interviewed described 'localised' pay decisions without any central oversight.

In the 40 files we looked at, we also saw evidence that three women who took on additional responsibilities or worked anti-social hours were not rewarded by an increase in pay at the appropriate time. They were later awarded retrospective pay increases on a fair pay basis after raising a complaint.

Concerns about past levels of managerial discretion were recognised in the BBC's grievance process. One grievance appeal panel set out its concerns about pay decisions in the following terms:

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**We noted the lack of a rigorous framework and proper guidance to managers on how pay should be set and the relatively high levels of discretion that managers had in the past, as well as poor record keeping of decisions.**

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In another, the grievance panel stated:

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**We do agree that to date there appears to have been little clarity, transparency and ownership with regard to decisions affecting your pay.**

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## **Poor record-keeping**

Employers must keep clear and consistent records about pay decisions. Without good records, employers are not able to explain or evidence their decisions. Employees will also struggle to understand the reasons for their level of pay and whether they have experienced discrimination.

The BBC's case files demonstrated that record-keeping was poor in the past, with documented explanations for pay decisions missing. Inadequate record-keeping was also noted in the BBC's equal pay audit in 2018, which identified a **'regular lack of documentation contained on either personnel or recruitment records'**. The BBC has accepted that, historically, its record-keeping was not good enough.

The BBC's lack of adequate pay records has affected its ability to explain the reasons for its pay decisions, both to employees and to us during the investigation. In some cases it also affected how long the BBC took to complete the grievance process, as the grievance panels had to undertake sometimes long investigations into the reasons for differences in pay.

### Examples of inadequate records

- In one grievance case, the BBC initially concluded that a male comparator's pay difference was the result of a car allowance having been consolidated into his salary, and then later identified that the increase had been a performance increase.
- In another case, the BBC explained that a male comparator's salary had been increased as a result of him being a 'flight risk', but there was no central record of the reasons for this increase. The BBC was ultimately able to provide contemporaneous evidence of the increase, but it was further evidence that record-keeping of pay decisions was historically poor.

Where a man and a woman are doing equal work but are being paid differently, the burden is on the employer to prove there is a material factor that explains the difference. The BBC sometimes had difficulty in locating documentation of the material factors it relied on.

## **Influence of subjective factors on pay**

In the cases we analysed, the BBC explained many of its pay decisions by referring to factors such as **‘profile’**, **‘experience’**, **‘audience recognition’**, **‘market power’** and **‘flight risk’**. These factors can lawfully be relied upon to justify pay differences, and we accepted that the factors explained the pay differences between men and women in these cases.

However, there is a risk that such factors will be judged subjectively, or that they conceal stereotypical assumptions about the value of both men and women and their work. It is therefore important that there is a clear method for evaluating the weight of these factors objectively, and that employers can evidence that these factors were considered properly at the time the pay decision was made.

In Samira Ahmed’s case, the employment tribunal considered the BBC’s evidence about like work. The BBC said that:

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**The presenter of Points of View needed to have ‘a glint in the eye’ and to be cheeky.**

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The employment tribunal commented:

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**We had difficulty in understanding what the respondent meant by a ‘glint in the eye’ and how that translated into a ‘skill’ or ‘experience’ to do a job. How does one acquire such a skill or experience? In any event, the light-hearted tone and any cheekiness were achieved primarily by the script being written in a particular style.**

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Our analysis of the 40 complaint files shows that, as a result of historically decentralised pay systems and managerial discretion, it was not evident that BBC managers and HR staff had assessed factors objectively when they were considering individuals' pay. For example, in one case the BBC said that audience recognition explained the pay difference between a woman and her comparator, but there was no evidence in the grievance file that this factor had been taken into account at the time when either salary was set. However, the BBC later provided us with evidence confirming that audience recognition was taken into account when making the pay decision.

Material produced after the event can be relied on to justify differences in pay, and we have received evidence produced after the event as part of our investigation. However, our process is an investigative one which allows employers to provide further information and evidence in response to our questions and to make representations on our initial findings. Employers may find it more difficult to rely on this approach at a tribunal hearing where there are fewer opportunities to provide additional information. This makes it even more important that such factors are assessed and recorded properly at the time pay decisions are made.

## **Failure to review individual pay**

Pay reviews are a critical way to avoid pay discrimination. For example, if a man is appointed to do like work with women, and receives a higher starting salary, additional allowances or non-standard pay increases, then a review of comparable women's salaries will be needed so that the difference can either be justified or removed.

Under the BBC's historical pay systems, pay was increased through an 'across the board' annual increase negotiated with the Joint Unions. In some parts of the business, increases were also awarded under union-agreed, tenure-based mechanisms known as 'growth in job', designed to recognise experience. However, there was no general system to review individual pay regularly. In many of the case files we looked at, both women and men had experienced long periods without a review of their pay. This increases the risk of pay discrimination arising during the course of someone's employment, although we have seen no evidence to suggest it affects one sex more than another. In some cases, failure to review pay led to employees (both men and women) feeling that pay was not fair and that their growth in skills, experience and responsibility was not fully recognised.

As part of the BBC's reforms, it has made changes to provide for regular and consistent reviews of pay, including:

- central guidance on pay decisions
- a central daily pay meeting to review and approve proposed pay for new hires and internal job moves, and cross-check to others in similar roles
- a regular 'fair pay check' to review individuals' pay, which enables the BBC to adjust pay to reflect increased skills, experience and responsibilities and ensure that any differences in pay remain appropriate, and
- a data visualisation and analytic tool which enables cross-checking between others in similar roles and in different cohorts.

## **Lack of transparency about pay decisions**

Transparency means making sure that everyone (managers, employees and trade unions) can understand the system and how pay decisions are made.

The women we spoke to perceived a lack of transparency in past decision-making about their own salaries.

Poor record-keeping meant that managers were sometimes uncertain about the details of the pay and allowances of people they were managing. This may have left them unable to explain the reasons for pay differences, when the decisions made by previous managers had not been recorded properly.

In some cases, the BBC accepted that the process of determining salary was not transparent enough at the time the comparator was appointed. This meant that it sometimes had difficulty providing evidence of the reasons for the differences in pay. The BBC has made significant progress in this area as part of its reforms. As explained in [Chapter 4](#), the National Audit Office carried out a full audit into pay at the BBC, which recognised the high levels of pay transparency.

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## Conclusion

We concluded, on a balance of probabilities, that pay discrimination had not occurred in any of the 10 cases we analysed in depth.

However, as Samira Ahmed's case demonstrates, this does not mean that pay discrimination has not occurred at the BBC in individual cases and, in reviewing the case files, we identified various issues with the BBC's past approach to pay that could give rise to a risk of pay discrimination.

Before reform of the BBC's pay systems, an overly complex and decentralised system with limited central oversight allowed managers too much discretion to make pay decisions. A failure to review individual pay regularly, poor record-keeping and a lack of transparency around decisions all contributed to a confusing and inconsistent approach.

The BBC has taken significant steps towards resolving these issues and is committed to doing more. A continued focus on improving training and guidance for those who have responsibility for setting pay will support consistent, well-informed decision-making. We welcome the fact that the BBC's commitment to tackling these issues, in the recent reforms and going forward, comes from the BBC's senior leadership team, including the board.

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## Recommendations

- The BBC's board should continue to drive positive change at the BBC, and should oversee the BBC's response to our report to minimise the risk of pay discrimination arising in the future.

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## Investigation into unlawful pay discrimination at the BBC

- The BBC should continue to improve transparency when communicating with employees by giving them reasons for, and background to, the decisions made about their pay. In particular, it should make sure that outcomes are always recorded properly and consistently so it is clear why and when an employee's pay has been decided.
- The BBC should continue to improve training and guidance on equal pay law, equality, inclusion and diversity for all staff at the BBC who make decisions about people's pay.

## 3. How the BBC deals with complaints of pay discrimination

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### Introduction

Our investigation examined the BBC's approach to dealing with complaints of pay discrimination. We looked at the methodology the BBC used, the adequacy of the grievance process and the overall impact of the process on those who raised complaints.

This chapter explains the findings from our review of the evidence, including BBC case files and interviews with six women who went through the grievance process. We also set out what some women told us about their lack of trust in the BBC's internal processes.

While we identified some areas of concern with the adequacy of the BBC's grievance process, it nevertheless resulted in the correct outcome in the 10 cases we analysed in depth, as far as equal pay law is concerned.

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### The BBC's approach to pay complaints

In July 2017, the BBC published a list that named all of its staff earning over £150,000. It was in an advanced stage of consultation on its Terms and Conditions review and the introduction of its new Career Path Framework (a map of all of the core jobs within the BBC). This development placed each generic BBC job within a job family, and assigned it to a new market-informed job pay range. Against this background, some BBC employees raised concerns about their pay.

The BBC invited employees to raise these concerns through a central review process. Anyone could ask for their pay to be reviewed for any reason, not just those concerned about equal pay. Queries were considered on an informal basis first, in line with its grievance policy and the Acas Code of Practice.

The BBC explained that when it is considering pay queries from its employees, its approach is to look at equal pay first and then consider 'fair pay'. As we explain in [Annex 2](#), equal pay is a legal term and assessing it involves comparing an employee with a comparator, or comparators, of the opposite sex. An employee who has been a victim of pay discrimination will be entitled to back pay for the period during which they were unlawfully paid less than their comparator (up to a maximum of six years in England and Wales), and equal pay for the future, unless or until something changes in the complainant's or comparator's pay entitlement.

'Fair pay' does not have any specific legal meaning. It is a term used by the BBC to mean that an employee is at the appropriate point in their job pay range. This could include, for example, matching an employee's pay to the pay of a colleague of the same sex, or comparing the employee with a cohort of other employees of either sex based on their relative skills and experience.

There is an advantage to the employee in the BBC considering fair pay, as long as a separate equal pay analysis has also been carried out. It means that if the equal pay complaint is not upheld, the employee may still receive a pay rise if the BBC thinks that it is appropriate from a 'fair pay' perspective.

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## Overview of the BBC's grievance process

The BBC uses a three-stage process to deal with complaints about pay:

- an informal pay review
- a formal grievance, and
- a formal grievance appeal.

### Informal pay review process

The informal process is handled by a Case Manager (a HR professional) and Sponsoring Manager (usually the employee's line manager), who are advised by an employment lawyer.

The Case Manager meets with the employee to gain a better understanding of the issue. The Case Manager creates a cohort, typically of 15-30 people, made up of individuals who are in the same or a similar role with the same broad generic job title plus any comparators named by the employee. The BBC told us that the purpose of creating a cohort is:

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**To identify those who may be appropriate comparators (in addition to any named comparators) so that Employee X's pay can also be compared against a larger group of colleagues, ensuring a broad scope to the review alongside the consideration of Employee X's particular query.**

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The cohort allows the Case Manager to identify any further potential equal pay comparators (in addition to those suggested by the employee) and to consider the employee's pay from a fair pay perspective, alongside that of the cohort.

The BBC told us that the Case Manager and Sponsoring Manager carry out a detailed review of the employee's concerns and consider whether the individual is at the appropriate point in the job pay range. In doing so, the BBC told us that the managers analyse:

- the pay of comparators the employee has put forward
- the pay of people in the cohort of comparators that the Case Manager has identified
- whether the roles of individuals within the cohort are appropriate for comparison
- whether the complainant is paid less than the comparators named by the individual and / or less than others within the cohort, and
- if they are paid less, the reasons for that difference.

If the Case Manager and Sponsoring Manager think that any employees in the cohort, or any comparators put forward by the individual, are appropriate for comparison and are paid more than the employee who has raised the query, they then consider whether there are reasons for the difference in pay. If they find that there are reasons, they consider whether they are fair, appropriate and valid.

The Case Manager and Sponsoring Manager agree a recommendation which is submitted for approval to the BBC's Divisional Assurance Group (DAG) and then the BBC's Senior Management Remuneration Committee (SMRC). The DAG and SMRC can either approve the recommendation or send it back for further work. The outcome is either:

- no pay increase
- a pay increase with back pay in equal pay cases, or
- a pay increase to bring the employee up to the appropriate point in the pay range, with back pay in certain circumstances, for example, to rectify a mistake.

The decision is then explained to the employee.

## **Formal grievance**

If an employee is not satisfied with the outcome of the informal pay review process, they can make a formal complaint. A new Case Manager is appointed who assigns a Hearing Manager and a representative of Croner. Croner is a company hired by the BBC to provide independent assurance in the grievance process; it provides an 'independent expert' to sit on the grievance panel. A senior BBC or external employment lawyer is also assigned to provide advice.

Grievance documentation is prepared and a telephone call is arranged between the Hearing Manager, the Croner expert and the employment lawyer to discuss the case. The grievance panel (the Hearing Manager and the Croner representative) conducts a hearing to discuss the case with the employee. The complaint is then investigated.

When the investigation ends, the grievance panel has a telephone call with the lawyer to discuss its preliminary conclusions. The decision is finalised and the panel decides whether or not to increase pay and award back pay. The Croner expert then drafts a decision letter, which is reviewed by the Hearing Manager with advice from the employment lawyer.

## **Formal grievance appeal**

The employee had 14 days to appeal after the formal grievance outcome was issued. We understand from the BBC that this period has now been extended to 21 days. Appeals are heard by a different manager and Croner expert. The Appeals Manager will be more senior to the manager who heard the formal grievance, and sometimes former BBC managers are used. The appeal can either be a review, a rehearing or a combination of both, and the appeal panel decides what approach to take.

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## **Concerns with the BBC's approach to pay complaints**

### **Fair pay and equal pay**

As set out above, the BBC's fair pay approach can be advantageous to employees as long as an equal pay analysis has also been carried out. Equal pay is the law, whereas fair pay is an additional step that has been developed by the BBC.

The BBC told us that it always considered equal pay separately to fair pay at the informal and formal stages of the grievance process. Our review of the case files confirmed that the BBC did consider equal pay separately from fair pay during the formal stage. However, we initially had concerns about whether this was also the case at the informal stage, due to a lack of documentary evidence in the case files we examined.

The BBC told us that the informal process was intended to be 'document light' and case summaries were high-level. It also said that legal advice on equal pay was provided throughout the informal process to the Sponsoring Manager, Case Manager and approval groups in every case. Advice was provided verbally and this was summarised in the section of its SMRC papers covering 'legal advice'. This legal advice is privileged (meaning that the BBC is legally entitled to keep it confidential between itself and its legal advisers) and the BBC had redacted these sections in the cases we assessed.

The BBC was ultimately able to provide further evidence to demonstrate that managers did consider equal pay separately from fair pay at the informal stage. Based on the further evidence provided, we accepted that this was the case.

However, in two-thirds of the cases we looked at the BBC had not communicated its consideration of equal pay clearly to the employees concerned at the informal stage. We saw instances in which the BBC increased an individual's pay but did not give reasons for the amount awarded.

This led to distrust from women who could not understand the BBC's rationale. Eleven employees who used the informal pay review process told us they felt the BBC had ignored their equal pay complaint. Some employees rejected pay increases at the informal stage because the BBC could not give them an adequate explanation for why they had received it.

## Equal value complaints

There are three types of equal work: like work, work rated as equivalent, and work of equal value (as defined in the [Glossary](#)).

Our review of 40 BBC pay case files shows that, in some cases, the BBC considered whether comparators were doing like work, or work that was broadly comparable. In other cases, it went straight to considering whether or not there were material factors that would explain any difference in pay. A valid material factor defence would mean that a claim for equal pay would not succeed, regardless of whether the employee and their comparators were doing equal work. The BBC told us that, while managers had received training on equal pay, they were not trained to assess work of equal value and were not asked to do so. The BBC said this was because:

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**The question of equal value is a technical one, determined by an employment tribunal, with the assistance of one or more equal value experts, following a lengthy process typically lasting many months or years. To undertake that analysis as part of an internal process such as the informal pay query process and even the grievance process would not be straightforward.**

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The BBC told us that, in these cases, the approach the grievance panels took was to focus on the reasons for the differences in pay (whether relating to the role, to individual factors or to external factors), rather than the technical analysis of equal value. We did not identify any cases where this approach caused an issue.

However, in cases where employees are not doing like work to their comparators and there is no material factor to explain any difference in pay, the BBC will not be able to establish for certain whether its employees are doing equal work if its managers are not equipped to undertake an equal value analysis.

As we explain in **Chapter 4**, there is no legal requirement to have a job evaluation scheme that rates jobs as equivalent. However, the absence of such a scheme means that, when comparing individuals' work, the BBC will need to consider on a case-by-case basis whether they are undertaking like work or work of equal value. The BBC should therefore consider how it would best assess whether comparators are doing work of equal value, when considering pay complaints in the absence of a scheme that rates jobs as equivalent.

## **Assessing material factors**

In some of the cases we analysed, the grievance file did not contain enough information for us to conclude that there was a non-discriminatory material factor to explain any pay difference. We had to seek further information and evidence from the BBC before we could reach a conclusion. This included employment contracts, pay histories, expense reports, details of deployments, correspondence from when pay decisions were made and witness statements from senior managers. This information had not always been taken into account during the grievance process and had therefore not always been shared with complainants.

The absence of proper exploration of material factors during some of the grievance processes we reviewed led some women to believe that their complaints had not been examined properly. This creates real risks for the BBC because it can lead to dissatisfaction among staff and potential legal action.

## Recording of equal pay complaints

We also found errors in the BBC's record-keeping on grievance outcomes. The BBC provided us with information in relation to 35 complaints it had classified as having an equal pay outcome. When we reviewed this information, we found that eight of the 35 cases did not include any evidence of equal pay being accepted by the BBC, or of an equal pay remedy (this means the employee being paid the same as their comparator and receiving the necessary back pay). The BBC's classification of some of these cases is therefore inaccurate, suggesting that some grievance outcomes have not been recorded correctly.

## Delays in the grievance process

During our investigation we received many accounts of delays in the grievance process. Employees were often told to expect a decision within a specified timeframe, only for the deadline to be missed. This then left employees feeling uncertain about when they would receive the outcome. Explanations given to employees for the delays were often inadequate, with the manager only citing, for example, a need for further investigation.

### Examples of delay

- A reporter who had been through all three stages of the process had initially made an informal complaint in December 2017 and did not receive her final appeal outcome until December 2019.
- Another reporter had an appeal hearing in December 2018 and was not provided with a decision until the end of July 2019.
- One employee complained that, after making the initial contact about her complaint, she was passed round in a circle of people for eight months until she was ultimately passed back to the person she first contacted. It took 10 months in total for the BBC to provide an outcome.
- An employee did not receive the answers for four months to questions she raised about the pension implications of a proposed pay offer.

- A union representative stated that the longest delay she was aware of was a case in which it took 370 days from the grievance hearing to provide the employee with a decision.

## **The use of independent experts**

The BBC provided terms of reference to Croner, stating that the Croner expert would:

- act independently of the BBC manager
- reach an independent decision, and
- have the casting vote in the event of a disagreement over the outcome.

The BBC discussed the appointment of Croner and the terms of reference with the Joint Unions. The BBC told us that, although there were some concerns from the Unions about Croner's marketing and website (which suggested that it gets results for employers), the Unions were satisfied with Croner's independence following a meeting with the organisation. Croner told us that the Unions subsequently raised concerns about its independence and met Croner for a second time in March 2019. Croner explained the process to the Unions and reiterated that it had the casting vote in determining grievances. Croner said that the Union appeared satisfied with its explanation.

Some of the BBC staff who contacted us said they were not satisfied that the Croner experts acted truly independently. They were concerned that Croner and the BBC worked together to reach negative grievance outcomes.

After a grievance hearing, the Croner expert worked with the BBC manager to investigate the grievance by identifying relevant documents and posing questions to BBC staff. The Croner expert was then responsible for drafting the grievance outcome letter, which they provided to the BBC for comment.

During the course of our investigation, an individual made us aware that she had received a draft outcome letter in error, which the Croner expert had intended to send to the BBC manager and a lawyer. The comments by the Croner expert in the draft letter demonstrated that, while they were reaching their own view of the evidence, they were also working collaboratively with the BBC manager to agree a joint conclusion.

The employee told the BBC that she felt the letter showed collusion between the BBC and Croner and that Croner was rubber-stamping management decisions. The employee asked for Croner to be removed from the process and for a different BBC Hearing Manager to re-hear the appeal. The BBC agreed to this request.

The BBC and Croner emphasised to us that the Croner expert had the casting vote if the BBC Hearing Manager disagreed with the Croner expert's proposed outcome of a grievance. However, the BBC told us there were no examples where a casting vote had been used because it had not been needed.

The BBC secured the support of the Joint Unions for Croner's appointment on the basis that its experts would act as independent third parties. While it is usual practice for members of a grievance panel to agree their conclusions together, the BBC's description of an 'independent expert' could have led staff to expect the Croner representative to be more detached from the process. The collaborative relationship between the BBC and Croner, in agreeing the outcomes of grievances, led some staff to question the independence of the Croner experts; those staff lost trust in the process as a result. Confidence in independent experts is essential if employees are to have faith in the system.

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## **Impact of the grievance process on women**

Any grievance process can be stressful for an employee. Some women told us that the BBC's grievance process was draining and had a negative effect on their health, particularly due to factors such as the length of time complaints took to resolve.

Some employees told us they found the process humiliating, or that it made them anxious or angry. A union representative told us that the process has had a serious impact on many women and caused difficulties such as anxiety and sleeping problems. We received evidence that several employees had been signed off work due to the stress of the process.

The BBC told us about the support provided to individuals going through the process, which included access to confidential counselling through the BBC's Employee Assistance Programme as standard. In addition, if a Case Manager was particularly concerned about an individual, they would escalate that to an HR Business Partner for local intervention, which might involve a management conversation or an occupational health referral. In some cases, the BBC also contacted the union to provide support.

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## Conclusion

The BBC's pay complaints process plays an important role in addressing historical shortcomings in its pay systems. It gives employees the opportunity to have their pay checked and adjusted in line with equal pay law and / or the BBC's pay principles. While we found that the BBC had reached the correct outcome in each of the 10 cases we examined in depth, we also found areas in need of improvement.

We confirmed that equal pay had been considered by the BBC during every stage of the grievance process, but there was a lack of documentary evidence of this within the case files. The BBC's consideration of equal pay had not been explained clearly to employees in two-thirds of the cases where equal pay had been raised as an issue at the informal stage.

The BBC does not use a job evaluation scheme that rates jobs as equivalent, or carry out an analysis of equal value during the complaints process. This means that if cases arise where employees are not doing like work to their comparators and there is no material factor to explain any difference in pay, the BBC's equal pay analysis will be incomplete, increasing the risk of pay discrimination going undetected.

The BBC has been slow to resolve complaints. Its use of independent experts did not meet the level of independence and objectivity that some staff had expected, and some staff lost trust in the process as a result. The grievance process had a damaging effect on the health of some women who raised complaints.

## Recommendations

The BBC should:

- Make sure that its consideration of equal pay is recorded fully in every case and at every stage of the process. If an employee is offered an adjustment to their pay, they should be told explicitly whether this is on an equal pay or fair pay basis. If the BBC concludes that pay discrimination has not taken place, it should explain its reasons for this clearly.
- Clearly set out and adhere to reasonable time limits when determining pay complaints.
- Measure staff confidence in the grievance process and continue to take steps to improve the process in response to staff feedback.
- Measure staff confidence in its arrangements for the independent scrutiny of complaints and, if necessary, improve staff confidence through further staff engagement.
- Continue to identify underlying patterns and themes from its complaints, to learn lessons and improve its pay complaints processes. This should include seeking feedback from staff who have experienced the complaints system.

## 4. The BBC's pay systems

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### Introduction

Our investigation examined the BBC's systems for evaluating jobs and setting pay, and the reforms it made over a five-year period. We did this to understand whether any unlawful pay discrimination had occurred and, if so, how it had occurred and whether it had been resolved adequately.

The BBC has made a series of wide-reaching reforms which have significantly improved the coherence, consistency and transparency of its pay systems. The reforms have reduced the risk of pay discrimination considerably. While we acknowledge that it is not possible to eliminate the risk of discrimination completely, we set out in this chapter our recommendations to reduce the risk further.

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### The BBC's historical approach to pay

The BBC has acknowledged that its historical approach to setting pay was not fit for purpose and was confusing for staff and managers. Pay decisions were overly complex and decentralised. When managers set individuals' pay on appointment or promotion, there was limited central guidance or governance. Pay was set mainly through collective bargaining arrangements and union negotiated pay increases, meaning there was no system of regular individual pay reviews.

An overly complex and decentralised system meant that managers did not have the necessary guidance or framework to make consistent and well documented decisions about pay. This can be problematic and increases the risk of discrimination.

Before the BBC started its reforms, the following problems existed with its pay system:

- There were over 5,000 different job titles being used within the BBC for around 19,000 staff. Individuals with the same job title sometimes performed significantly different jobs, and individuals with different job titles sometimes performed similar work.
- There were 32 pay bands across 16 grades with many of the grades overlapping between the bands.
- Around 10% of BBC staff were paid more than the maximum of their allocated pay grade range, with limited central oversight or approval. This made pay bands less meaningful.
- The BBC has used an established job evaluation system called Job Evaluation and Grading Support (JEGS). This is a process where trained evaluators rate jobs against a series of factors such as knowledge, communication skills, physical and emotional demands. However, not all new roles at the BBC were evaluated in this analytical way. Some were 'slotted' into the grading structure based on their similarity to existing roles. Although slotting is a recognised form of non-analytical job evaluation, it is more subjective than analytical job evaluation methods and less likely to prevent pay discrimination from occurring. An over-reliance on slotting can be problematic.
- Pay was set under multiple different collective bargaining arrangements, including some localised union negotiated variations. Managers also had too much discretion to set starting salaries and allowances, and sometimes to award pay increases, with limited central oversight and guidance. Aside from the collectively negotiated annual pay increases, there was no systematic approach to individual pay reviews.

The BBC has acknowledged that this approach sometimes made it difficult for individuals to understand the reasons for their pay. It also made it difficult for the BBC to compare individuals' pay across the BBC as a whole.

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## BBC pay reforms

The BBC told us it had been on an 'extensive change journey' since 2015 to improve its employment practices and transform its human resources function.

We set out the main elements of the reforms below.

## Terms and Conditions review

In late 2016, the BBC launched a Terms and Conditions review (T&C review). This aimed to streamline work contracts, take a new approach to scheduling and working patterns, review pay and grading, and simplify employee policies. As part of the T&C review, certain allowances were removed, frozen and / or limited to those already receiving them.

## Career Path Framework

In 2016, before starting the full T&C review, the BBC had started to develop the Career Path Framework (CPF) for all staff.

The CPF is a map of all of the core jobs within the organisation. The BBC says that it **‘provides structure by which the BBC can define and describe its core jobs’**. It gives a clear and transparent definition to job content. It also sets out a clear career path, allowing staff to see how they can progress within the BBC.

Before the BBC developed the CPF there were over 5,000 different job titles being used within the organisation for around 19,000 staff. This process reduced the number of job titles to around 600.

Under the CPF, pay is based on the BBC’s ‘Pay Principles’ (published in October 2017) and is underpinned by new detailed guidance on pay and market-informed job pay ranges.

The BBC told us that it took the following steps to create the CPF:

### 1. The BBC created job families and CPF job descriptions

The CPF is made up of 27 job families, which were created based on the nature and purpose of the core work functions at the BBC. For example, there is a job family called ‘Journalism’ and another called ‘Finance’. Each job family has a senior manager business owner and a senior HR owner. They

defined the CPF jobs for that job family and have ongoing responsibility to oversee and maintain the job family, including sign off for any changes.

Within each job family, there are multiple CPF jobs. For example, within the Journalism job family there are 23 CPF jobs, ranging from Journalism Assistant (evaluated at band A) to Senior News Editor (evaluated at band F). A market-informed pay range was created for each CPF job; this is called a job pay range, as explained in step 3 below.

Each CPF job has a job description. The BBC consulted with the Joint Unions about the development of the job families and CPF jobs, and about the content of the job descriptions. The BBC did not consult with job holders about the demands of their roles during the development stage, but employees had the opportunity to discuss the mapping of their roles to the CPF jobs informally and to challenge it at a later stage.

The BBC has continued to refine the CPF since its introduction. This has included reviewing and narrowing some job pay ranges and drawing out some specialist jobs.

## **2. The BBC evaluated the CPF jobs using the Job Evaluation and Grading Support (JEGS)**

The BBC uses JEGS, an analytical job evaluation scheme which compares jobs against core factors. It was developed for the BBC in the early 1990s by Towers Perrin (now Willis Towers Watson (WTW)) and has remained in use in the same form since then. It was adapted from the JEGS that is used across the Civil Service but they are two distinct schemes, albeit with the same name and underpinned by WTW's Framework software.

To evaluate the initial 600 CPF jobs, members of the BBC Reward Team worked with the consultants, WTW. CPF jobs were evaluated using JEGS. The JEGS score was used to place each CPF job into one of six new levels (known as career bands) ranging from A to F.

The BBC consulted with the Joint Unions throughout the process of creating the CPF. The BBC explained the use and application of JEGS to the Joint Unions and shared worked examples with them. The Joint Unions were not involved in carrying out JEGS evaluations and did not see the JEGS scores. They were consulted about the job evaluation outcomes for all CPF jobs and provided feedback, which led to some changes. The BBC told us that the scoring was managed by the Reward Team, and scores were not provided to managers or the Joint Unions to maintain the integrity of the job evaluation system.

### **3. The BBC set the job pay range for each role**

A pay range was created for each CPF job using relevant market data provided by the WTW Global Grades pay survey data. Once the CPF jobs had been evaluated using JEGS, the BBC Reward Team sourced the appropriate market data from the WTW market pay database. JEGS points and role descriptions were used to map roles to the relevant WTW grade to get the appropriate market survey data match. Each job pay range was agreed by the relevant senior managers and reviewed by the Joint Unions. The Joint Unions provided feedback, which led to some changes to the job pay ranges.

### **4. The BBC mapped individuals' roles to the CPF jobs in each job family**

The BBC used a form of job evaluation called 'whole job classification' to match specific roles to the CPF jobs. The BBC described this process as a 'mapping exercise'. The exercise was based on input from managers working in collaboration with HR; it took account of the work that people actually did, not just their job title.

A person's role was mapped to a CPF job if their current role was a 70% or greater match. The Joint Unions were encouraged to give feedback on the role mapping, which resulted in some changes.

## **5. The BBC informed staff about the outcome of the process**

In October 2017, all staff were informed of their proposed new career band, their CPF job and the job pay range for that job, along with any individual pay consequences. This information was added to the personalised 'PeopleView' panels on the BBC intranet.

The BBC did not consult with staff before their roles were provisionally mapped to the CPF jobs, but staff were able to review the job description for their proposed job (and the descriptions of other jobs) following the provisional mapping. They had an opportunity to discuss their mapping with their managers. This led to changes in some cases.

If employees were unhappy, they had a further opportunity to challenge their mapping through the CPF review process which was managed by HR. The Joint Unions also raised concerns where there were issues that affected groups of staff. Some further changes were made as a result.

Final 'PeopleView' panels were published in May 2018, before the staff ballot on the proposed changes to terms and conditions. The ballot was successful and, at the time of implementation, all staff were moved over to the job pay ranges on their existing pay levels. If an employee's existing pay was below the minimum of their assigned job pay range, it was increased to the minimum. Employees in the lower quarter of their job pay range received an additional 'across the board' increase.

One objective of the CPF was to reduce the overlap between pay bands that existed under the BBC's historical pay arrangements. But it did not remove overlap altogether.

For example, in 2019, the pay for band A ranged from a minimum of £20,536 to a maximum of £30,804, and band B ranged from a minimum of £23,103 to a maximum of £37,992.

This overlap could mean that someone working in a job evaluated as band B, with a higher pay band range and greater responsibility, is being paid less than a colleague working in a job evaluated in the lower band A. This creates a risk of pay discrimination if an individual in a higher band is paid less than someone of the opposite sex in a lower band. Any such difference in pay would have to be explained by a non-discriminatory material factor.

Before the reforms, the average overlap between the pay range of one pay grade and the pay grade above it was 55%. The BBC told us that in 2019, following the reforms, the average overlap in pay between the broad (A–F) bands under the CPF was lower (at 39%). The average overlap between job pay ranges in different bands is 21%. These overlaps are still significant. In addition, because people were mapped to the new jobs based on their pre-existing pay arrangements, over 300 people are paid more than the maximum of their CPF band pay range and job pay range.

We wanted to establish if there was a difference between the number of men and women above the maximum or at the top and bottom of pay bands; given the overlap between pay bands, this could have indicated widespread or systemic pay discrimination. When we analysed the 2017–2019 pay data of over 6,000 presenters and journalists at the BBC, it did not show any such disparate impact on women when compared to men, or vice versa.

There was also no evidence to suggest that men are more likely to be paid above the maximum of their CPF band pay range and job pay range than women.

However, overlapping pay bands, and people being paid above the maximum of their CPF band pay range and job pay range, increase the risk of pay discrimination in individual cases, unless differences in pay are explained by non-discriminatory material factors. The BBC says that some overlap is inevitable because factors other than job size drive pay and, at the higher levels of the organisation, a lack of overlap would affect the BBC's ability to recruit those with scarce or valuable skills. WTW confirmed this, and that some overlap in pay range is common in the market for this reason. The BBC has taken steps to address people being paid above the maximum of their CPF band pay range and job pay range, in discussions with the Joint Unions. In particular, it has frozen the salary of this population. The BBC recognises that this situation needs to be kept under review.

The BBC has taken measures to reduce the risk of pay discrimination arising from overlapping pay bands. This includes guidance on how individual pay should be set within the ranges and enhanced governance. When setting pay, it is important to carry out a comparison to other roles (including those within the same band and those above and below). The BBC uses 'Tableau' (a data visualisation tool) to facilitate this comparison. The BBC has also introduced a periodic review of pay known as a 'fair pay check' to ensure that pay remains appropriate.

We recognise the BBC's concerns about eliminating overlaps altogether and welcome the steps being taken to tackle this issue. Nevertheless, we would like to see overlaps reduce further, particularly at the lower levels of the organisation. We encourage the BBC to continue the measures it has implemented and to monitor pay decisions carefully. If the overlaps do not narrow as a result of the measures taken, then it may be necessary for the BBC to develop other ways to resolve this issue to help further reduce the risk of pay discrimination arising in the future.

## **On-air Framework**

In November 2017, the BBC commissioned a review by PricewaterhouseCoopers (PwC) to examine the pay of 824 individuals carrying out on-air roles (in television and radio) in news and related areas. The review was intended to help the BBC to understand the fairness and equality of pay for on-air presenters, editors and correspondents, and to generate recommendations for an objective pay framework.

The PwC report was published in January 2018. It concluded that the BBC lacked a consistent evaluation and governance framework for the on-air group. PwC reported that there were pay differences between men and women in similar roles, but that these were explained by material factors that were not tainted by direct sex discrimination. PwC's review did not consider whether indirect sex discrimination had occurred as this was beyond the scope of the review.

The PwC report set out recommendations to ensure pay equality and improve fairness and consistency for the on-air group. In summary, it considered that the CPF combined with the new market-informed job pay ranges provided an appropriate framework, and that JEGS provided an adequate job evaluation outcome for those in bands A to E.

However, PwC recommended a different approach for a small group of on-air staff in band F, given the nature of the programmes, their differing demands and the unique nature of the roles. The BBC developed a bespoke set of criteria to evaluate jobs for this subset of on-air roles, and a new band called band Fp. The criteria focused on the key additional factors relevant to these jobs, to help to distinguish between the respective roles.

JEGS was used to distinguish between jobs in band E and band F. The BBC was not able to evaluate the jobs in band Fp using JEGS because, given the unique nature of the roles, it did not provide the level of detail needed to set out the differences between on-air jobs at a senior level.

The BBC worked with PwC on the proposed scoring criteria with some input from WTW. The BBC also consulted with the Joint Unions and held feedback sessions with employees run by an organisation called Change Associates. The consultation led to some changes. The framework was then finalised and implemented.

While we understand the rationale for the distinction between roles in band Fp and other bands, we are concerned that, in Samira Ahmed's case, the employment tribunal questioned the way her role had been evaluated. The tribunal noted that Samira Ahmed's role 'moved within an hour from having passed the hurdle for band F but probably being better placed at band E Lead Presenter Premium to being mapped to band E Lead Presenter'. It added that the decision had been taken very quickly and that an alleged consultation meeting was not genuine. The BBC told us that it disagreed with the tribunal's conclusions.

Although conclusions cannot be made about the integrity of the CPF or On-air Framework from a single case, the judgment raised concerns for us about the process by which roles are evaluated. A clear system for determining the difference between on-air roles is critically important to be confident that people have been mapped to the correct job and are receiving equal pay for equal work.

The BBC told us that it believes there is a clear distinction between bands E and Fp. It also maintained that the mapping consultation with Samira Ahmed was genuine and that, in any event, she had the opportunity to challenge the mapping decision, which she took.

We understand that the BBC intends to carry out a review of the On-air Framework. We welcome this and recommend that the review should take account of the issues that we have raised relating to the Samira Ahmed judgment to ensure that any potential risks are mitigated fully.

The BBC should review the CPF and On-air Framework regularly to assure their continued integrity and ability to meet changing job requirements, and to manage the potential risks of indirect or direct sex discrimination arising in setting pay.

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## The BBC's job evaluation scheme

Job evaluation schemes provide a basis for grading and pay structure. They also help employers to demonstrate that they are paying men and women equally. If a job evaluation scheme is used properly, it provides a robust, consistent and non-discriminatory method for assessing and comparing the value of different jobs, which is vital to achieving equal pay.

As we explain in [Annex 2](#), some organisations use analytical job evaluation to rate jobs as equivalent. 'Work rated as equivalent' means work that is different from but rated under the same job evaluation scheme as work of equal value. Where two jobs have been rated as equivalent, the law requires that they are paid the same unless there is a non-discriminatory material factor that explains the difference.

Our [equal pay guidance](#) explains that job evaluation schemes should be reviewed regularly to remain relevant and free of sex bias. This is to make sure the factors are still appropriate, particularly when there are changes in roles and how work is organised, or when new approaches are taken to define the core values and competencies of the organisation.

As explained above, the BBC uses JEGS – an analytical job evaluation scheme that compares jobs against core factors. The BBC confirmed to us that JEGS has not been updated since it was implemented, but that its Reward Team is satisfied it is still fit for purpose. The BBC told us that WTW recently carried out an assessment of JEGS and did not find any areas of concern, although it suggested that it could benefit from refinements to the language. If JEGS, or any other scheme, is used for pay or grading purposes, the BBC should review it regularly to make sure that it is up to date, including a review of factors, weightings and questions. Such reviews are particularly important in the BBC's fast-moving environment.

Analytical job evaluation is a useful way for employers to reduce the risk of pay discrimination, but there is no legal obligation to do this. The BBC has evaluated the CPF jobs using an analytical scheme. However, job holders' specific roles have not been evaluated analytically – they have been mapped to the CPF jobs using another recognised form of job evaluation known as 'whole job mapping'.

The BBC has not evaluated job holders' specific roles analytically. It says that this would not be practical in an organisation like the BBC, where roles constantly evolve and change, and compete with the private sector. The BBC's primary purpose in developing the CPF using both of these methods was to aid a range of HR processes, including organisation design, career development, and pay framework design and management. As the BBC analyses job holders' specific roles non-analytically, this process does not result in jobs being rated as equivalent.

It is widely perceived that the use of a non-analytical approach to job evaluation has some disadvantages in comparison to analytical schemes:

- Non-analytical evaluation can increase the risk of pay discrimination because it generally relies on more subjective assessments than an analytical points-based approach. Although even carrying out an analytical job evaluation is not an exact science and there will always be some subjective judgments to be made.
- A non-analytical scheme cannot be relied on in defence of equal pay claims under section 131 of the Equality Act 2010.

- Investigating potential equal pay issues is more complex. When comparing individuals' work, the employer will need to consider, on a case-by-case basis, whether they are undertaking like work or work of equal value. This could be a time-consuming and difficult issue. Carrying out a full analytical evaluation of all roles would also be a time consuming exercise for an organisation, but once complete it allows for easy identification of work of equal value.

Nevertheless, the BBC's approach to job evaluation is common market practice and the BBC believes that it provides for more flexibility in a large organisation. It believes that its approach reduces the risk of discrimination considerably, while also balancing other important requirements of a career and reward system. We recognise that there are some competing requirements when deciding what method of job evaluation is best for any particular organisation.

The BBC has continued to refine the CPF since its introduction and expects that, due to the fast-moving nature of the business, jobs will always evolve to reflect business needs and the CPF will continue to evolve to reflect this. Since the implementation of the CPF, the number of CPF jobs has risen from 600 to around 730. The BBC has confirmed that all of the new CPF jobs created since its implementation have been evaluated analytically, and that it intends to carry out an analytical job evaluation of any new CPF jobs in the future (though, as explained above, this will not allow it to rate jobs as equivalent).

We recognise that creating the CPF and consolidating the pay structure represent considerable achievements by the BBC. The BBC should continue to carry out an analytical job evaluation of new CPF jobs in the future to help reduce the risk of discrimination.

Taking into account the difference between analytical and non-analytical schemes, the BBC should further consider how it can best assess whether comparators are doing equal work, when considering pay complaints.

## Equal pay audit

As explained above, the BBC published an equal pay audit conducted by Eversheds Sutherland (ES) and PwC. The audit examined graded staff levels, including some on-air staff who had an employment contract with the BBC. The audit concluded that there was no evidence of 'systemic gender discrimination' at the BBC although, given the nature of an audit, it could not rule out the possibility of individual equal pay issues.

The BBC asked Sir Patrick Elias QC to review the audit before it was published (his review is referred to as the 'Elias review'). He was satisfied that the audit had been carried out in line with our guidance and that the conclusions were correct.

The audit was based on a statistical analysis of 'high level job role data'. In addition, it analysed a sample of cases where there was more than a 5% median pay gap between a man and a woman. It found that there was no evidence of sex discrimination in over 90% of the cases where a difference in pay existed. The audit identified factors that were used to explain pay differences which were not tainted by direct sex discrimination.

The audit collected, analysed and reported on pay statistics and on the reasons for pay. It also sampled around 300 cases where some explanation for the difference in pay between male and female job holders was called for. The audit report gives examples of the reasons identified for the pay differentials but does not analyse whether they would stand up to scrutiny.

Examples of reasons identified included:

- market forces
- specialist skills
- pay protection when roles are transferred
- pay increases for temporary promotions or secondments, and
- experience and differing levels of responsibility.

The audit noted that in 8.6% of cases **‘there was insufficient information to understand whether there was a non-gender reason for the pay differential’**. Equal pay law says if an employer is unable to establish a non-discriminatory material factor for a difference in pay between those carrying out equal work, then the employer has failed to explain the difference in pay and the employee is entitled to pay parity with their comparator. Recognising this, the audit concluded that these cases needed further investigation.

As we explain in **Chapter 3**, this reflected our experience when analysing the case files. In some cases, there was not enough information in the grievance file to conclude that there was a non-discriminatory material factor. We had to seek further information from the BBC before we could decide if pay discrimination had occurred. Therefore, evidence of material factors available to managers at the grievance stage was not always the same as the evidence made available to our investigation.

The Elias review described the process the BBC used to evaluate jobs for the CPF. While stating that he would be surprised if it did not satisfy the requirements of the law, he also made it clear in his report that he was not in a position to determine that question. As we state above, the BBC had used a recognised form of non-analytical job evaluation, but it had not undertaken a job evaluation that would provide a defence to an equal value claim.

We do not question the independence or integrity of the audit. We note the audit found that there is no evidence of systemic discrimination, while recognising that discrimination can arise in individual cases. With the exception of our view of the BBC’s job evaluation scheme, our findings are consistent with the audit.

Regardless of the work carried out by the BBC, ES and PwC, the BBC’s use of a non-analytical approach to job evaluation means there is a greater risk of sex discrimination. To manage this risk, the BBC should carry out audits at least every five years, which consider indirect as well as direct sex discrimination.

## Pay transparency

One of the aims of the CPF was to increase transparency in relation to pay and career progression for staff. We agree that the CPF is a more coherent and transparent system for determining pay at the BBC.

The BBC also told us that it had introduced additional measures to improve pay transparency, including:

- A digital platform for staff, called 'PeopleView', which has been enhanced to give staff access to detailed information about the breakdown of their pay and how it compares with others in the same job and / or band. For jobs that have at least 10 men and 10 women, this is broken down to show the pay distribution for women compared to the pay distribution for men in that job. Since January 2020, the same information is also broken down into two categories: 'Black, Asian and Minority Ethnic (BAME)' and 'non-BAME'. This information is also shown by band.
- A dedicated inbox to allow staff to question the makeup of their pay and other issues, which remains open for staff queries.
- A 'fair pay check' in November 2018, which reviewed every employee's position in their job pay range against their colleagues. As a result of this, the BBC told us that it made over 1,000 adjustments to individuals' pay.
- A second 'fair pay check' conducted in 2019. The BBC intends to continue to undertake this process regularly. To assist with this review, the BBC has equipped managers and HR staff with better tools, such as Tableau, to give decision-makers wide visibility across the BBC when looking at pay.

These are welcome improvements that provide greater pay transparency at a systemic level in the BBC. But transparency is also needed on the reasons for individual pay decisions, including any allowances or pay increases. Some staff told us they continue to feel that they do not know the reasons for decisions about their pay and would like to understand the decisions better.

The BBC has made some enhancements in this area, including clarification of pay guidelines and guidance on the award of acting up and attachment allowances. The BBC has also provided training and guidance for pay decision-makers, managers and employees and intends to enhance the training and guidance further. As we explain in **Chapter 2**, we welcome this. It is important that individuals know why their pay has been set at a particular level, and the BBC should continue to focus on improving this and being more transparent when communicating with people about their pay.

In 2018, the BBC's board commissioned Will Hutton and Chris Saul to examine pay transparency in the BBC Public Service review (the Hutton review). The Hutton review reported in January 2019 that, while the introduction of the CPF and the T&C review were **'important steps, taken in good faith, the current position on pay transparency is unstable'**. The review concluded that the BBC was **'among the UK leaders in pay transparency'** when it came to giving staff access to information about pay, but warned that this could result in staff uncertainty around the reasons for their pay relative to others. The review also noted that there was **'some ongoing distrust'** about how jobs had been classified under the CPF and **'ignorance about the process'**.

The Hutton review recommended that:

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**The disclosure of relative pay information must be accompanied by a strong narrative explaining how pay rates have been arrived at in relation to others.**

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We agree. For staff to trust the BBC's pay reforms, there must be continued transparency about how pay is set and what factors have informed individual pay decisions.

The Hutton review also considered the case for full disclosure of all BBC salaries. Having noted that a **'substantial majority of respondents [to a survey conducted as part of the review] ... wanted pay disclosure to remain anonymous'**, the review recommended that anonymity was retained for all staff earning less than £150,000 per year.

Individuals need to know what they are being paid in relation to their comparators to be satisfied they are not being discriminated against. The BBC's use of 'PeopleView' panels to provide the breakdown of pay by gender and by ethnicity is very welcome. However, as stated above, the BBC should make sure that individuals understand the reasons for pay decisions, including at every stage of the complaints process. The BBC recognises this and has enhanced its training to assist managers in providing clearer explanations about how pay has been set.

The BBC told us it has implemented many of the recommendations in the Hutton review, including new initiatives on leadership and development for managers and working parents. In 2019, the National Audit Office carried out a full audit into pay at the BBC. Its report noted:

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**The BBC has taken big steps in improving consistency and fairness and is well ahead of other organisations with regards to pay transparency. Its gender pay gap is also lower than the national average and most other media organisations.**

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We welcome the BBC's commitment to improvement in this area, which should help it to manage pay in an even more transparent way.

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## Conclusions

The BBC has acknowledged that its historical approach to pay was decentralised and overly complex. It has put in place an extensive programme of reform which has resulted in significant improvements to the management and transparency of pay. While we recognise that it is not possible to eliminate all risk of pay discrimination, we have identified areas where the risk could be reduced further.

There is still overlap between the pay ranges of the six broad bands of pay, (the A–F bands). Within those broad bands sit the pay ranges for particular jobs, referred to as the job pay ranges, and there is overlap between these pay ranges too. This means some staff are being paid less than colleagues who are in a lower band to them. In addition, over 300 people are still paid more than the maximum of their broad band pay range and their job pay range.

Both of these issues can create a risk of pay discrimination, for example, where an employee in a lower band is being paid more than a colleague of the opposite sex in a higher band, unless there is a material factor. We did not find any evidence of discrimination, but care is needed to mitigate risk.

While we understand the rationale for the distinction between roles in the On-air Framework and those in other bands, we have some concerns about how Samira Ahmed's band was determined.

The CPF and On-air Framework will need regular review to maintain their integrity in the BBC's dynamic environment.

The BBC has taken a non-analytical approach to job evaluation. Non-analytical job evaluation is widely perceived to have some disadvantages and carry a greater risk of pay discrimination than an analytical approach. However, the BBC has taken this approach, which is common market practice, as it believes that it reduces the risk of discrimination considerably, while also balancing other important requirements of a career and reward system.

While transparency has improved, some staff continue to feel that they do not know the reasons for decisions about their pay, and they would like to understand the decisions better.

The BBC aims to be an exemplar employer and our recommendations will support it in that.

## Recommendations

The BBC should:

- Review the Career Path Framework and On-air Framework regularly, to ensure their continued integrity and ability to meet changing job requirements and to reduce the risk of sex discrimination in pay. The first review into the On-air Framework should take account of the issues that we have raised in relation to the Samira Ahmed judgment.
- Regularly review any job evaluation scheme that is being used to make pay grading decisions, to make sure that they are up to date, including a review of factors, weightings and questions.
- Consider how it can best assess whether comparators are doing work of equal value when considering pay complaints.
- Conduct equal pay audits, which comply with our guidance, at least every five years.
- Continue the measures it has implemented to narrow the overlap between job pay ranges in different bands where feasible. If the overlaps do not narrow, the BBC should develop other ways to resolve this issue.
- In consultation with the Joint Unions, consider measures to resolve the issue of some employees being paid more than the maximum of their job pay range.

# Annex 1: Terms of reference

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## Original terms of reference

**Statutory Investigation under section 20 and schedule 2 of the Equality Act 2006 into the BBC by the Equality and Human Rights Commission.**

### Interpretation

- For the purposes of these terms of reference the following definitions apply:
  - a. 'The 2006 Act' means the Equality Act 2006;
  - b. 'The 2010 Act' means the Equality Act 2010;
  - c. 'BBC' means the British Broadcasting Corporation and 'BBC' includes the BBC Public Service (which itself includes the World Service), BBC Studios, BBC Worldwide, Global News Ltd and BBC Studioworks (the "arms" of the BBC) including the arms of the BBC by whatever name they were or are known, or may in the future be known, and by whatever corporate or other vehicle they were or are provided or may in the future be provided;
  - d. 'The Commission' means the Commission for Equality and Human Rights (commonly known as the Equality and Human Rights Commission);
  - e. 'CPF' means the BBC's Career Path Framework;
  - f. 'On-air jobs' means the jobs that PwC considered in its on-air review (in respect of which it produced a public report dated 30 January 2018);
  - g. 'On-air staff' means staff occupying On-air jobs;
  - h. 'Pay' means all and any sums payable to BBC staff in connection with their employment that are within the scope of the Equality Act 2010, including basic pay, shift pay, allowances, pension, bonus, sick pay,

redundancy and unfair dismissal compensation awards, whether payable under an express term of their contracts or otherwise;

- i. 'Pay case means any grievance or complaint, formal or informal, and howsoever expressed, raising an issue of pay of BBC Staff;
- j. 'Sex discrimination' means direct discrimination or unjustified indirect sex discrimination because of the protected characteristic of sex, as those terms are defined in the 2010 Act;
- k. 'Sex equality clause' has the same meaning as in the 2010 Act;
- l. 'Staff' means all individuals in 'employment' as defined by the 2010 Act and therefore includes individuals employed or engaged by the BBC Public Service under a contract of employment or any other contract to provide personal service, whether or not expressed to be a staff contract, an On-Air Talent contract, or howsoever otherwise expressed, and to include those engaged via a personal service company or on a freelance basis in so far as they would not be covered by the definition under the 2010 Act;
- m. 'Terms and Conditions review' means the BBC's review of terms and conditions; and
- n. 'Unlawful pay discrimination' means breach of the sex equality clause as regards pay of female Staff and/or sex discrimination as regards pay of female Staff.

## Background

- The Commission recognises that the BBC is undertaking a programme of reform which includes changes to terms and conditions and pay practices. The Commission suspects that there has been unlawful pay discrimination by the BBC in the BBC Public Service in the period prior to the introduction of these recent reforms. The Commission recognises the BBC's commitment to reform and its desire to work collaboratively in ensuring that the reforms are fully refined and embedded. Against that background, the Commission wishes to review whether such reforms have fully corrected any potential historical unlawful pay discrimination.

## Scope of investigation

- The investigation will consider whether there was unlawful pay discrimination in respect of BBC Staff in the period from 1 January 2016 to the date of any changes to the pay of those BBC Staff in the Public Service following the Terms and Conditions Review.
- For the purposes of this investigation the Commission will examine a sample of pay cases where the BBC has reached resolutions or made decisions (whether resolved or decided before or after or on the same date that these Terms of Reference are published) (“the Samples”).
- In examining the Samples the Commission will look at all such issues as it considers appropriate, which may include any or all of the following:
  - a. The jobs occupied by the complainants in the Samples (“the index jobs”);
  - b. Which jobs should properly be considered as comparator jobs for the index jobs;
  - c. The pay of the index jobs and of any comparator jobs identified;
  - d. If there is a difference in pay, whether there is a material reason for that difference that is not a difference because of sex;
  - e. If it is because of sex, whether it is direct sex discrimination or indirect sex discrimination; if the latter, whether there is objective justification for the difference;
  - f. Managerial discretion as regards pay;
  - g. The BBC’s approach to job evaluation and pay grading, and
  - h. The relative position of staff and freelancers, and the pay of male and female freelancers.
- For the purposes of this investigation as set out in paragraph 3, the Commission may also examine the pay of jobs other than the index jobs and may examine all such issues as it considers appropriate in relation to such jobs, including (with any appropriate modifications to reflect the different jobs examined) those set out in paragraph 5 above.

- The Commission will examine whether and to what extent the BBC has adequately resolved the unlawful pay discrimination in paragraph 3 above, which may include any or all of the following:
  - a. The way in which jobs have been mapped onto the new CPF;
  - b. The width and overlapping nature of pay bands;
  - c. The influence of market forces and of other potentially discriminatory pay-related factors; and
  - d. The approach taken to resolving pay grievances, including in particular the BBC's approach to the identification of comparators;
  - e. The approach taken by the BBC to pay auditing.

## **Sources of information**

- The Commission will use all its powers under the 2006 Act to obtain the necessary information to conduct its investigation.
- The Commission will consider all information that it receives from the public or past or present BBC staff.
- The Commission will make arrangements for the BBC to make representations and shall consider any representations made, in accordance with the 2006 Act, and in its approach to the BBC will at all times seek to act fairly and reasonably.

## **Communications concerning this investigation**

- Any communications concerning the content or progress of this investigation may be sent in confidence to [bbcinvestigation@equalityhumanrights.com](mailto:bbcinvestigation@equalityhumanrights.com)

**Dated: 12 March 2019.**

## Amended terms of reference

The amendment is underlined.

### Interpretation

- For the purposes of these terms of reference the following definitions apply:
  - a. 'The 2006 Act' means the Equality Act 2006;
  - b. 'The 2010 Act' means the Equality Act 2010;
  - c. 'BBC' means the British Broadcasting Corporation and 'BBC' includes the BBC Public Service (which itself includes the World Service), BBC Studios, BBC Worldwide, Global News Ltd and BBC Studioworks (the "arms" of the BBC) including the arms of the BBC by whatever name they were or are known, or may in the future be known, and by whatever corporate or other vehicle they were or are provided or may in the future be provided;
  - d. 'The Commission' means the Commission for Equality and Human Rights (commonly known as the Equality and Human Rights Commission);
  - e. 'CPF' means the BBC's Career Path Framework;
  - f. 'On-air jobs' means the jobs that PwC considered in its on-air review (in respect of which it produced a public report dated 30 January 2018);
  - g. 'On-air staff' means staff occupying On-air jobs;
  - h. 'Pay' means all and any sums payable to BBC staff in connection with their employment that are within the scope of the Equality Act 2010, including basic pay, shift pay, allowances, pension, bonus, sick pay, redundancy and unfair dismissal compensation awards, whether payable under an express term of their contracts or otherwise;
  - i. 'Pay case' means any grievance or complaint, formal or informal, and howsoever expressed, raising an issue of pay of BBC Staff;

- j. 'Sex discrimination' means direct discrimination or unjustified indirect sex discrimination because of the protected characteristic of sex, as those terms are defined in the 2010 Act;
- k. 'Sex equality clause' has the same meaning as in the 2010 Act;
- l. 'Staff' means all individuals in 'employment' as defined by the 2010 Act and therefore includes individuals employed or engaged by the BBC Public Service under a contract of employment or any other contract to provide personal service, whether or not expressed to be a staff contract, an On-Air Talent contract, or howsoever otherwise expressed, and to include those engaged via a personal service company or on a freelance basis in so far as they would not be covered by the definition under the 2010 Act;
- m. 'Terms and Conditions review' means the BBC's review of terms and conditions; and
- n. 'Unlawful pay discrimination' means breach of the sex equality clause as regards pay of female Staff and/or sex discrimination as regards pay of female Staff.

## **Background**

- The Commission recognises that the BBC is undertaking a programme of reform which includes changes to terms and conditions and pay practices. The Commission suspects that there has been unlawful pay discrimination by the BBC in the BBC Public Service in the period prior to the introduction of these recent reforms. The Commission recognises the BBC's commitment to reform and its desire to work collaboratively in ensuring that the reforms are fully refined and embedded. Against that background, the Commission wishes to review whether such reforms have fully corrected any potential historical unlawful pay discrimination.

## **Scope of investigation**

- The investigation will consider whether there was unlawful pay discrimination in respect of BBC Staff in the period from 1 January 2016 to the date of any changes to the pay of those BBC Staff in the Public Service following the Terms and Conditions Review.

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## Investigation into unlawful pay discrimination at the BBC

- For the purposes of this investigation the Commission will examine a sample of pay cases where the BBC has reached resolutions or made decisions (whether resolved or decided before or after or on the same date that these Terms of Reference are published) (“the Samples”).
- In examining the Samples the Commission will look at all such issues as it considers appropriate, which may include any or all of the following:
  - a. The jobs occupied by the complainants in the Samples (“the index jobs”);
  - b. Which jobs should properly be considered as comparator jobs for the index jobs;
  - c. The pay of the index jobs and of any comparator jobs identified;
  - d. If there is a difference in pay, whether there is a material reason for that difference that is not a difference because of sex;
  - e. If it is because of sex, whether it is direct sex discrimination or indirect sex discrimination; if the latter, whether there is objective justification for the difference;
  - f. Managerial discretion as regards pay;
  - g. The BBC’s approach to job evaluation and pay grading, and
  - h. The relative position of staff and freelancers, and the pay of male and female freelancers.

5A. If the evidence provided in the Samples falls outside the timeframe specified in paragraph 3 above, the Commission can consider that evidence and make findings of unlawful pay discrimination in relation to it.

- For the purposes of this investigation as set out in paragraph 3, the Commission may also examine the pay of jobs other than the index jobs and may examine all such issues as it considers appropriate in relation to such jobs, including (with any appropriate modifications to reflect the different jobs examined) those set out in paragraph 5 above.
- The Commission will examine whether and to what extent the BBC has adequately resolved the unlawful pay discrimination in paragraph 3 above, which may include any or all of the following:

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## Investigation into unlawful pay discrimination at the BBC

- a. The way in which jobs have been mapped onto the new CPF;
- b. The width and overlapping nature of pay bands;
- c. The influence of market forces and of other potentially discriminatory pay-related factors; and
- d. The approach taken to resolving pay grievances, including in particular the BBC's approach to the identification of comparators;
- e. The approach taken by the BBC to pay auditing.

### **Sources of information**

- The Commission will use all its powers under the 2006 Act to obtain the necessary information to conduct its investigation.
- The Commission will consider all information that it receives from the public or past or present BBC staff.
- The Commission will make arrangements for the BBC to make representations and shall consider any representations made, in accordance with the 2006 Act, and in its approach to the BBC will at all times seek to act fairly and reasonably.

### **Communications concerning this investigation**

- Any communications concerning the content or progress of this investigation may be sent in confidence to [bbcinvestigation@equalityhumanrights.com](mailto:bbcinvestigation@equalityhumanrights.com)

**Dated: 20 February 2020.**

## Annex 2: Equal pay law

The Equality Act 2010 gives employees a right to the same pay and other contractual terms of employment as employees of the opposite sex who are doing equal work for the same employer.

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### Who the right to claim equal pay applies to

The right to claim equal pay applies to everyone who works under a contract of employment (employees) or under a different type of contract that requires them to do the work personally and not to send someone else to do it in their place (workers). It does not apply to people who are genuinely self-employed. Genuine self-employment would mean that they could send another contractor to do the work in their place. In this report, for simplicity, we refer to both employees and workers, who the right to equal pay applies to, as ‘employees’.

The right applies to women who claim equal pay to men doing equal work, and vice versa. For simplicity, and to reflect that most equal pay claimants are women, we refer to women throughout this chapter.

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### How the right to equal pay works

A woman has a right to equal pay with a man where they are doing ‘equal work’ and the woman’s contractual terms are less favourable than the man’s, unless there is a ‘material factor’ that explains and justifies the difference. We explain what a material factor is below on [page 68](#).

The Equality Act 2010 inserts a ‘sex equality’ clause into the contract between a woman and her employer. The sex equality clause means the woman’s contractual terms relating to pay, such as salary, commission, contractual bonuses and pension contributions, are the same as those of a man doing equal work. It also covers non-pay contractual terms, such as holiday allowance and guaranteed overtime. We refer to ‘equal pay’ to cover all these terms.

## The meaning of equal work

A person making an equal pay claim has to show that they undertake equal work to their comparator. There are three types of equal work. They are:

- **Like work:** this is where the work of a woman and her male comparator is the same or broadly similar. The work must involve similar tasks that require similar knowledge and skills. Any differences in the work must not be of practical importance. For example, in one case, a court found that a woman with the job title 'cook', preparing lunches for directors, and a man with the job title 'chef', cooking breakfast, lunch and tea for employees, were doing like work.
- **Work rated as equivalent:** this is where the work of a woman and her male comparator has been rated as equivalent based on how demanding it is. It must have been rated under an analytical, non-discriminatory job evaluation scheme. For example, the work of an occupational health nurse might be rated as equivalent to that of a production supervisor when the demands of the job, such as skill, responsibility and effort, are assessed using a job evaluation scheme.
- **Work of equal value:** this applies where the work of a woman and her male comparator is not 'like work' and has not been rated as equivalent, but the employment tribunal or court finds it is of equal value in terms of demand on the employee, looking at factors such as effort, skill and decision-making. For example, in one case, the court found that a clerical assistant and a warehouse operative were doing work of equal value.

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## When an employer can defend pay differences by relying on material factors

If a woman shows that she is doing equal work to a man, there is a legal presumption that any difference in their pay or other contractual terms is because of their sex, unless the employer can show that a 'material factor' explains the difference.

A material factor must:

- be a genuine reason for the difference in pay
- cause the difference in pay
- be significant and relevant, and
- explain the pay difference with 'particularity'. This means the employer must be able to show how each factor was assessed and how it applied in that specific case.

Material factors should be considered at the time the pay decision is being made. Although it may be possible to produce supporting evidence after the pay decision was made, it may be given less weight and be less persuasive than evidence showing that the material factor was taken into account at the time the pay decision was made.

Reliance on the material factor must not involve treating the woman less favourably than the man because of their sex, which would be direct sex discrimination. For example, in one case, a council could not use market rates to justify the difference in pay between female catering assistants and male road sweepers, refuse collectors and gardeners. The market itself was tainted by sex discrimination which saw the claimants' work as 'women's work'.

The material factor must not put women as a group at a particular disadvantage compared to men, unless the employer has a legitimate aim (a real need that is not discriminatory), and the material factor is a proportionate (appropriate and reasonably necessary) way to achieve that aim. This would be indirect sex discrimination. For example, in one case, a police force wanted to reward night working by using 'special priority payments'. This put women at a particular disadvantage compared to men because they were less likely to be able to work at night due to caring responsibilities. However, the police force had a real need for people to work night shifts and acted proportionately, as there was no other way to encourage night working without offering higher pay.

## Proving an equal pay claim

The burden of proof rests on the employee for some parts of an equal pay claim and on the employer for others. Whoever the burden rests on, that party must prove their case on a balance of probabilities.

The employee must prove that they are doing equal work to their comparator, but not receiving equal pay to them.

To avoid legal responsibility for unequal pay, the employer must prove that any material factor used to justify the difference in pay is not tainted by direct sex discrimination.

If the employer fails to prove this, the employee wins the claim. The employee does not need to show that the employer intended to discriminate against them, or held discriminatory attitudes towards women (or men).

If the employer demonstrates that the factor it relies on is not tainted by direct sex discrimination, the employee may be able to show that it is indirectly discriminatory if it puts women at a particular disadvantage compared to men (this would be indirect sex discrimination).

If the employee can do this, the employer will lose the claim, unless relying on the factor can be justified by proving that it had a legitimate aim (a real need that is not discriminatory) in doing so, and that its actions were appropriate and reasonably necessary to achieve the aim.

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## The outcome of a successful claim

If a woman succeeds in an employment tribunal, she is entitled to have all of the following:

- an order from the employment tribunal declaring her right to equal pay
- her pay, including any occupational pension rights, raised to that of the male comparator
- any beneficial term, which is in the man's contract but not in hers, inserted into her contract

- any term in her contract, which is less favourable than the same term in the man's contract, improved to the same level
- equality in the terms of her contract for the future if she is still in employment, and
- an award of compensation, consisting of back pay if the claim is about pay, and / or damages if the complaint is about another contractual term.

Back pay can be awarded up to a maximum of six years in England and Wales, and five years in Scotland, from the date that proceedings were filed with an employment tribunal. The employment tribunal can also award interest on the compensation and can order the employer to carry out an equal pay audit.

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## Job evaluation

Job evaluation schemes provide a basis for a grading and pay structure, as well as a way for employers to check and demonstrate that they are providing equal pay for equal work. The aim of job evaluation is to evaluate the demands of a job in a way that is as objective as possible, to ensure that the job is at the right point in a grading structure and is paid appropriately.

Job evaluation schemes assess the demands of different jobs in the organisation and can rate jobs as equivalent to each other. If jobs are rated as equivalent, the jobs must be paid equally.

There is no legal requirement for employers to use a job evaluation scheme, but job evaluation helps employers to meet their equal pay obligations and can be crucial if they need to defend their pay system against an equal pay claim. If an employer has undertaken a valid job evaluation scheme, it can rely on the outcome of the scheme to show that jobs have not been rated as equivalent and are therefore not jobs of equal value.

For a job evaluation scheme to be valid under equal pay law, the courts have held that it must be thorough in its analysis, objective, transparent, accurate, internally sound and consistent, sufficiently detailed and fair.

## Annex 3: How we carried out the investigation

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### Our analysis of the sample of pay complaints

To assess whether there had been unlawful pay discrimination at the BBC, we decided to look at a sample of cases where BBC employees had raised concerns about pay. This approach enabled us to consider cases in depth to determine whether pay discrimination had occurred in any of the cases in the sample.

As well as reviewing a sample of pay complaints, we instructed Beamans Ltd, which specialises in the use and application of job evaluation and equal pay, to analyse the BBC's pay and grading structures. This helped us to understand whether the changes that the BBC introduced reduced the risk of pay discrimination adequately.

The BBC had supplied us with a spreadsheet of over 1,000 complaints with all names and personal information removed. The list covered a broad range of individual cases, from formal equal pay complaints to more informal 'fair pay' queries. We used this spreadsheet to select 40 cases that were at different stages in the grievance process. We chose to limit our examination to this number as it would not have been proportionate or practical for us to consider more. Our selection was informed, in part, by cases that had been brought to our attention by women at the BBC.

The 40 cases included some that the BBC had determined were not equal pay cases, some that had led to the BBC making a financial award to the individual on a fair pay basis, and two that had been classified by the BBC as equal pay cases. Most of the cases had been through the formal grievance process. We chose a range of roles with different levels of pay, but the sample was not intended to be representative of BBC jobs as a whole and included a higher proportion of cases in on-air roles in band Fp.

We identified themes and issues in the 40 cases which have informed our findings and recommendations. We requested further information from the BBC in relation to some cases.

We also carried out a more in-depth analysis of 10 cases. We worked with legal counsel to consider the evidence and assess whether pay discrimination had occurred, using the legal tests set out in the Equality Act 2010. We applied the civil standard of proof (the balance of probabilities) to make our findings. As a regulator, our process for investigations is different from the process used in the employment tribunal. The legal test we apply is the same, but our investigation is mainly based on documentary evidence, requesting additional documents and asking further questions as required.

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## Evidence from BBC employees

As we explain in [Chapter 1](#), we gave BBC Women a survey to distribute to their members, to enable women to share information about their complaints of pay discrimination at the BBC. When we launched the investigation, we also opened a dedicated email inbox for people to provide information to us directly. In total, we heard from over 100 individuals.

We interviewed six women and heard about their experiences first hand. They told us about the BBC's grievance process and pay structures.

The evidence we gathered from BBC employees was not intended to be representative. We used the information to inform and develop our understanding of the BBC's pay policies and systems, and how these had affected employees.

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## Our analysis of BBC pay data

We analysed 2017–2019 pay data of all BBC employees within the Journalism and Presenter job groups, which was over 6,000 people. Our conclusions are set out in [Chapter 4](#).

We analysed:

- the overlapping pay bands, to establish whether those in the highest quartile and being paid above the pay band maximums were mainly men, and whether those in the lower end of the pay bands, or below the minimum pay band, were mainly women
- whether people were paid above or below their pay bands, and
- mean and median pay for men and women and the number of men and women in each quartile across the different pay bands.

## Annex 4: Glossary

**Band:** See **career band** and **pay band**.

**BBC:** The British Broadcasting Corporation, which includes the BBC Public Service (including the World Service), BBC Studios, Global News Ltd and BBC Studioworks. Our investigation looked at pay in the BBC Public Service.

**Career band:** A broad career band on the BBC's Career Path Framework. A career band consists of jobs at a broadly similar career level and has a broad band pay range for the jobs within it.

**Career Path Framework (CPF):** The BBC's job grading structure, which consists of six broad career bands A–F (A being at the bottom and F at the top). All generic jobs are grouped into a job family and then mapped to the CPF according to the career level they sit at.

**Comparator:** A person of the other sex to whom an employee claiming equal pay compares themselves, and who is thought to be receiving more pay for equal work. The comparator may be a current or former colleague or a predecessor in the role.

**Direct sex discrimination:** Treating a woman less favourably than a man because she is a woman (or vice versa).

**Equality Act 2006:** A piece of legislation which established the Equality and Human Rights Commission. It sets out our regulatory powers, including our power to investigate an organisation that we suspect has acted unlawfully.

**Equality Act 2010:** A piece of legislation under which an employee has the right to equal pay, among other rights.

**Equal pay:** The right to equal pay is the right to equal pay with a person of the opposite sex in the same employment who is, or has been, doing equal work. This means being treated the same as another employee of the opposite sex in all elements of an employee's contractual pay and benefits package, including (but not limited to) basic pay, non-discretionary bonuses, overtime rates and allowances, performance-related benefits, severance and redundancy pay, access to pension schemes, benefits under pension schemes, company cars, sick pay, travel allowances and benefits in kind.

**Equal work:** Defined in the Equality Act 2010 as being either like work, work rated as equivalent or work of equal value.

**Grades:** A grading structure consisting of grades 2-11 into which jobs were organised at the BBC before the CPF introduced career band levels and market-informed job pay ranges.

**Indirect sex discrimination:** In the context of equal pay, this is when a pay-related factor puts women at a particular disadvantage compared to men (or vice versa) and cannot be justified objectively.

**Job evaluation and grading support (JEGS):** A job evaluation scheme used by the Civil Service. The BBC uses an adapted form of JEGS.

**Job evaluation scheme:** A method used to assess the relative demands of different jobs objectively. A panel of evaluators rates jobs against a series of factors, such as responsibility for people, knowledge, communication skills, physical demands, emotional demands, mental skills and initiative. Job evaluation schemes must be non-discriminatory and not influenced by gender stereotyping or assumptions about women's and men's work.

**Job family:** A group of related jobs at the BBC. For example, Journalism. Jobs within a family usually have similar characteristics in terms of knowledge, skills and competencies. Within each job family there may be a pathway for career progression within the organisation.

**Job:** The specific role someone is employed to do. Each generic BBC job sits within a job family and is assigned a job pay range.

**Job matching:** A process the BBC used to compare employees' specific roles to core job descriptions within the CPF. Roles were mapped to the CPF structure if they were a 70% match with the CPF job description.

**Joint Unions:** The three trade unions recognised by the BBC. The National Union of Journalists (NUJ), the Broadcasting, Entertainment, Communications and Theatre Union (BECTU) and Unite the Union.

**Like work:** Work that is the same or broadly similar. The work involves similar tasks which require similar skills, and any differences in the work are not of practical importance. For example, in one case, a court found that a woman employed as a 'cook', preparing lunches for directors, and a man employed as a 'chef', cooking breakfast, lunch and tea for employees, were doing like work.

**Market-informed pay range:** The minimum to maximum pay range for a job, which is informed by information from the market survey data about the pay that job would attract at other organisations.

**Material factor:** A reason given by an employer, in defence to an equal pay claim, to explain a difference in pay between a man and a woman doing equal work. To succeed in the defence, the factor must be genuine, be the cause of the difference in pay, be significant and relevant and must not directly or indirectly discriminate against either sex.

**On-air jobs:** The jobs that PricewaterhouseCoopers (PwC) considered in its on-air review. It published the findings of the review in a public report dated 30 January 2018.

**On-air staff:** Staff in on-air jobs (television and radio).

**Pay discrimination:** A breach of the sex equality clause regarding the pay of staff and / or sex discrimination regarding pay of staff.

**Pay progression:** The way(s) in which employees can increase their pay within their job pay range. Within the BBC, these can include an annual pay review, and a pay progression increase which may be linked to taking up a new role within the same CPF job (if appropriate). The BBC also currently provides for an automatic annual increase for people whose pay position is in the lower quarter of their job pay range. There are other ways pay can progress, for example, linked to job moves as part of a recruitment process.

**Sex:** The characteristic of being a man or a woman. Sex is one of the nine protected characteristics under the Equality Act 2010, meaning that it is unlawful to discriminate against a person because of their sex.

**Sex discrimination:** see [direct sex discrimination](#) and [indirect sex discrimination](#).

**Sex equality clause:** A term in every employee's contract, providing them with a right to equal pay.

**Staff:** All individuals employed or engaged under a contract of employment, or any other contract, to provide their service personally to the BBC.

**Work rated as equivalent:** Work that has been rated under an analytical, non-discriminatory job evaluation scheme as being of equal value in terms of how demanding it is (or vice versa). For example, the work of an occupational health nurse might be rated as equivalent to that of a production supervisor, when parts of the job such as skill, responsibility and effort are assessed by a fair job evaluation scheme.

**Work of equal value:** Work of a woman that is not 'like work' or 'work rated as equivalent', but nevertheless is of equal value to the work of a man (or vice versa) in terms of demands made on the employee, with reference to factors such as effort, skill and decision-making. For example, in one case, a court found that a clerical assistant and a warehouse operative were doing work of equal value when it compared the demands of each job.

## Contacts

This publication and related equality and human rights resources are available from [our website](#).

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