

DIVIDE AND RULE?

ISSUES ARISING FROM USING MORE THAN ONE JOB EVALUATION SCHEME IN A SINGLE ORGANISATION

1. INTRODUCTION

- 1.1 **The Issue:** Wherever an organisation uses more than one job evaluation scheme, there is an issue over how to deal with jobs falling in the area around the interface between the JE schemes. This is a common situation in both public and private sector organisations.
- 1.2 In local government, the situation is bound to occur where the Hay scheme, jointly agreed by the JNC for jobs in the Chief Officer group, is applied by a local authority alongside a different scheme for non-Chief Officer jobs, for example, the NJC JES recommended for other local government employees.
- 1.3 **The Scale of the Problem:** In some authorities, the issue arises more obviously and acutely, where the Hay, or another, scheme is used for a wider group than just Chief Officers, in some cases down to SO1/2 level or below. A recent Employers Organisation survey shows 19.6% of responding local authorities undertaking job evaluation were using more than one JE scheme for NJC employees [*Employers' Organisation: Single Status Local Pay Reviews Survey, Part 1: Summer 2003*]. This percentage excludes those using the NJC JES for all NJC employees and Hay for Chief Officers, so is likely to represent a significant under-statement of the position.
- 1.4 **Aspects:** This guidance note covers two main areas:
- How to deal with jobs immediately above and below the divide, wherever it is drawn, between two JE schemes
 - Associated equality issues

Each section contains a list of key negotiating points. For simplicity, the JES covering the higher grade group of employees is referred to as the 'higher' scheme and the other as the 'lower' scheme. The most common situation in local government is where Hay is the 'higher' scheme and the NJC JES the 'lower' scheme, but the guidance would equally apply where either or both are different schemes.

2. JOBS ABOVE AND BELOW THE DIVIDE

- 2.1 **Recommended Approach:** Recommended practice is easy to state, although sometimes a little more difficult to implement. It is that jobs immediately above and below the divide should be evaluated against both job evaluation systems and jobholders awarded whichever is the overall 'better' outcome for them.
- 2.2 So, for example, a job, which, on evaluation (or re-evaluation on the 'lower' scheme following changes to the main job duties) comes out over, at or very close to the maximum JE score for the 'lower' scheme, should also be evaluated on the 'higher' scheme. If it falls within the JE range encompassed by the 'higher' scheme, the job would normally be graded and its jobholder paid on the 'higher' salary scales and their associated terms and conditions.
- 2.3 Similarly, where a post previously covered by the 'higher' scheme is subject to reorganisation and re-evaluation, which indicates that it has become significantly less demanding, then the job should also be evaluated against the 'lower' scheme and the job re-graded on the better outcome. This could result in downgrading of the post, although in this case personal protection arrangements would apply to the individual postholder(s).

2.4 **Practical Considerations:** Such arrangements are more easily applied in practice, where relatively few individuals and jobs are covered by the 'higher' job evaluation scheme, for example, first and second tier jobs only in a local authority. Even then, consideration needs to be given to issues, such as:

- Differences in union recognition agreements between the higher and lower scheme collective bargaining groups
- Differences in the way the job evaluation schemes are administered, for example, by joint panel and transparently for the lower scheme, compared to operation by the HR department and less transparently for the higher scheme (or, less probably, vice versa)
- Any barriers to transfer from one group to another, for example, differences in overtime payment arrangements, which could make it unattractive for individuals to move from one group to the other

Problems will obviously be minimised where there is the greatest degree of harmonisation between employment terms and conditions and job evaluation practices.

2.5 **Scale Issues:** Maintaining consistency around the area between two job evaluation schemes is more difficult the larger the number of jobs falling immediately above and below the divide. This has the effect of:

- Increasing the number of jobs needing to be evaluated on two job evaluation schemes, and the time and effort involved in this
- Increasing the risk that the job evaluation schemes will indicate different outcomes, for example, jobs evaluating above the agreed maximum score for the 'lower' scheme, but below the agreed minimum score for the 'higher' scheme. This might occur where the two schemes measure and/or weight different job features.

Negotiating Points – Jobs Above and Below the Divide:

Need to agree:

- Maximum JE points on lower scheme & minimum on higher scheme;
- JE points ranges where jobs will be evaluated on both schemes;
- Evaluation procedures for jobs falling in the agreed ranges;
- Pay ranges for both schemes (abutting or overlapping?);
- Rules for determination of best option for affected individuals;
- Any specific protection arrangements (for individuals whose jobs move from scope of 'higher' to 'lower' scheme)

3. EQUALITY ISSUES

3.1 Operating two abutting job evaluation schemes can raise equality issues in a number of ways. Again, these are less acute where one of the schemes covers a relatively small number of jobs, for example, first and second tier chief officer jobs only, and more acute where the divide falls lower down the overall pay structure:

3.2 **Job Evaluation Scheme Defence:** A job evaluation scheme provides assurance that an organisation is paying equal pay for work of equal value, as long as it is implemented in a fair and non-discriminatory manner. It also provides a defence against equal pay claims to employers where potential applicant and comparator jobs are covered by a single scheme. This is currently a specific clause in the Equal Pay Act [Equal Pay Act s.2A(2), (3)]. Even if this were removed, as

has been proposed, but not yet implemented, a job evaluation defence would undoubtedly be regarded seriously by Employment Tribunals. This is because, under a job evaluation scheme, applicant and comparator jobs have already been compared under 'headings such as effort, skill and decision', as required by the equal value section of the Equal Pay Act.

- 3.3 **More Than One JES:** The Equal Pay Act legal defence does not operate where the applicant job is covered by one job evaluation scheme and the comparator by another. In these circumstances, it is open to the employer to carry out an evaluation of both jobs on one or both of the schemes in question (or indeed a third scheme) and to put this forward, but this is likely to have less force as a defence than where both jobs are covered by a single scheme.
- 3.4 The problem is minimised where one of the schemes covers only a small number of, say, chief officer, jobs, where it can reasonably be assumed that they are genuinely more demanding and, therefore, of greater value than the jobs in the tier below. It becomes more acute, where a wide range of jobs is covered by each scheme.
- 3.5 Apart from the Equal Pay Act itself, relevant documents, which can be quoted in evidence in Employment Tribunal cases, are:
- Code of Practice on Equal Pay, revised edition effective from December 2003 [EOC: *Code of Practice on Equal Pay*: available on EOC website at www.eoc.org.uk – go to Law section, then Codes of Practice]
 - Equal Opportunities Commission: Equal Pay Review Kit [EOC: *Equal Pay Review Kit, 2002*: available in hard copy form from the EOC and on the EOC website at www.eoc.org.uk – search under Equal Pay Review Kit]. The most pertinent sections are:
 - Guidance Note 4: Job evaluation schemes free of sex bias: checklist 4 'For organisations with more than one job evaluation scheme';
 - Guidance Note 5: Assessing equal value: Equal value check 1: 'For organisations with two or more job evaluation schemes covering between them all or nearly all employees'.
- 3.6 **Male and Female Jobs Above and Below Scheme Boundaries:** Depending on where it is drawn, the divide between job evaluation schemes may become, intentionally or unintentionally, a mechanism for avoiding paying equal pay for work of equal value. For example, if:
- There are jobs undertaken predominantly by women and currently paid on grades SO1/2 (e.g. Social Worker jobs? Home Care Manager jobs?); AND
 - They are found to be of equal value to jobs undertaken by men and currently paid on PO or Management grades (e.g. Accountant, Highways Engineer jobs?) AND:
 - This is the case, whichever of the two job evaluation schemes is used, BUT:
 - The divide between the schemes is drawn between SO and PO grades AND:
 - Pay scales do not overlap, THEN:
 - The result would be unequal pay for work of equal value AND
 - This could be the subject of an equal value claim by the female group in question covered by the 'lower' job evaluation scheme.
- 3.7 For this reason, it is important to:
- Check the gender patterns of jobs falling immediately above and below the divide between two job evaluation schemes.
 - Define the divide between the two schemes in terms of JE points, not the previous grading structure(s)
 - Evaluate jobs in the areas immediately above/ below the agreed JE points boundary for the higher/ lower schemes respectively on both JE schemes, awarding the jobholders the better of the two outcomes. This is effectively carrying out Equal Value Check 1 from the EOC Equal Pay Review Model (see above).

3.8 **Schemes Giving a Different Pattern of Outcomes:** Where two schemes measuring and/or weighting different job features are used, then there is a real risk of pay discrimination. If, for example:

- A predominantly female group (e.g Residential Home Managers, Social Workers) evaluates above the agreed maximum JE range on the 'lower' scheme BUT
- When evaluated on the 'higher' scheme scores relatively lower AND
- Salaries are consequently relatively lower than they would have been had all the jobs around the divide been evaluated on the 'lower' scheme THEN
- The result would be unequal pay for work of equal value AND
- This could be the subject of an equal value claim by the female group in question covered by the 'lower' job evaluation scheme.

In these circumstances, it is better:

- Not to place the divide where this situation can occur
- To place the divide at a point in the overall rank order where the schemes do give similar outcomes. In relation to Hay and the NJC JES, this is probably only at the middle management level, above the professional jobs where the two schemes may give differences.

And, as before:

- Check the gender patterns of jobs falling immediately above and below the divide between two job evaluation schemes.
- Define the divide between the two schemes in terms of JE points, not the previous grading structure(s)
- Evaluate jobs in the areas immediately above/ below the agreed JE points boundary for the higher/ lower schemes respectively on both JE schemes, awarding the jobholders the better of the two outcomes. This is effectively carrying out Equal Value Check 1 from the EOC Equal Pay Review Model (see above). In this case it should help determine the appropriate salaries for jobs in the overlapping salary scale area.

Negotiating points – equality issues:

Need to agree:

- Gender monitoring for jobs above and below divide
- Divide defined in terms of JE points, NOT previous grades
- Test evaluations in the boundary area on both schemes, including female-dominated jobs below divide on 'higher' JES and male dominated jobs above the divide on the 'lower' JES
- Divide not to be placed where it creates gender pay inequalities
- If unavoidable, have overlapping pay scales to minimise risks of equal pay cases

4. CONCLUSIONS

- 4.1 It is clear from the above that practical and equality problems are both minimised where any second job evaluation scheme is confined to a small group of jobs, for example, Chief Officers and that this must be the first negotiating aim.
- 4.2 Where this is not possible, the group covered by the second job evaluation scheme should be kept to a minimum and consideration given to both the practical issues and to whether any equality issues arise from predominantly male and female job groups immediately above and below the divide between the schemes.
- 4.3 Where there are large numbers of jobs above as well as below the divide between the two schemes, then it is important to:
 - Agree sound procedures for evaluating jobs at or near the divide on both schemes, to check for equal value between the two schemes, and ensuring the individuals obtain the 'best deal' (which may not always be the highest basic salary, for example, where overtime or bonus payments are only available to those covered by the 'lower' scheme) out of this exercise
 - Undertake initial and subsequent regular equality monitoring of jobs falling immediately above and below the divide, their gender composition and whether any jobs below the divide appear to be of equal value to jobs above.
 - Place the divide at a point where the two schemes do give similar outcomes and above any areas where they give different outcomes.

17th May 2004