



# COMPETENCE RELATED PAY PROGRESSION IN THE LOCAL GOVERNMENT SECTOR

## 1. INTRODUCTION

An increasing number of local authorities in England are proposing to write an option to introduce competence related pay progression (CRPP) into single status grading and pay agreements to replace some or all traditional service-related progression in the short, medium or longer term. In Scotland and Wales only a small number of authorities are considering competency based pay at present.

The NJC Local Government Employers (LGE) would also like a commitment to competence related pay progression as an alternative to traditional annual incremental progression – derogatorily described as ‘time served’. This is more appropriately labelled ‘experience related progression’, the term used in this paper.

This briefing paper considers:

- **WHY** local authorities might wish to introduce competence related pay progression
- **HOW** local UNISON representatives might respond in the context of negotiations for the new grading and pay structure
- **WHAT** should be taken into account if and when the option is taken up?
- **WHETHER** CRPP raises equalities issues - considered in each section

## 2. LOCAL AUTHORITY MOTIVES

Many local authorities in England have based their grading and pay structure proposals on fairly conventional public sector models, with 9 to 12 grades to cover the single status group, each with 4 or 5 increments on the national spine and experience-related progression.

A significant minority of authorities have moved away from this model and have proposed fewer grades and/or longer pay scales. This is the situation where competence related pay progression is most likely to be proposed.

**WHY?** The most obvious motives are:

- (1) **Medium term costs:** On a traditional assimilation pattern, employees whose current pay is within the proposed new pay range (sometimes called ‘white circles’) move onto the new structure at the same salary, with no immediate cost to the employer. The longer the pay scale, the higher the proportion of new grade incumbents who will be able to move over in this way, thus minimising the year 1 costs.  
However, the longer the pay scale, the higher the medium term costs as employees progress up the pay scale. One way of reducing the medium term costs is to restrict pay progression

opportunities. One way of introducing such a restriction is through performance or competence pay progression, as the progression criteria can be constructed in such a way that not all employees will meet them. Performance related progression has acquired rather a bad name in the local government sector, so competence related progression is the preferred option.

- (2) Positive encouragement: For some time, Local Government Employers have advocated what they describe as more flexible pay structures, with longer pay scales and more management discretion. Competence related pay progression fits with this philosophy, although it is not clear that the LGE has seriously considered the equality implications (see below). Local authorities are also encouraged by the recent Agenda for Change pay system in the health service and Pay Modernisation Framework Agreement in higher education, both of which provide for competence/contribution points at the top of each pay scale and were agreed with trade unions.
- (3) Equality requirements: In order to comply with both gender and age discrimination regulations, it is sensible for employers to either adopt relatively short pay scales (not more than 5 incremental progression points) or to be in a position to provide objective justification for each point on longer pay scales. Competence related pay progression potentially provides such justification.
- (4) Skills enhancement: Competence related pay progression may be put forward as a means of enhancing skills levels in the local government sector, while rewarding those employees who develop their job-related competences.

UNISON branches will come to their own conclusions as to their local authority's motives in any particular situation. They will also be able to make their own assessments of the likelihood of the competence related pay progression proposals actually being implemented.

### 3. LOCAL BRANCH RESPONSES

In reality, few, if any, local authorities are able to deliver detailed proposals for CRPP at the same time as the rest of the grading review agreement. All available resources will have been devoted to the job evaluation exercise and developing the grading and pay structure proposals. So CRPP is most likely to be included in the draft agreement as an option for the future, sometimes - but not always - with an associated timescale.

If the branch agrees to a CRPP option being included in the grading and pay structure agreement, negotiators must ensure for equality reasons that the relevant clauses include:

- CRPP criteria to be jointly agreed and as objective as possible, so along the lines of NVQ modules, rather than allowing extensive discretion on 'objective setting' to local managers (see also section 6 below)
- Mandatory training, including in relevant equalities issues and the avoidance of bias, for all those involved in implementing CRPP
- Regular (preferably annual, either as part of an equal pay audit or as a stand-alone activity) monitoring of CRPP assessments and pay progression outcomes by gender, ethnicity, disability and age

Branches will also wish to ensure that:

- Sufficient resources will be available to support competence development for all employees, as well as appropriate assessment and moderation systems
- Progression will be experience-related until such time as an agreed CRPP system is in place

#### 4. SO WHAT, IN A NUTSHELL, IS COMPETENCE RELATED PAY PROGRESSION?

Traditional experience-related pay progression is based on an assumption that the employee has increased in skill and competence over the course of the year before an incremental pay increase is awarded. However, competence related pay progression requires an assessment of skill development, usually annual, but sometimes more or less frequent.

The assessment is made against a competence framework, which can be visualised as a matrix of competences required for jobs in the organisation. Examples would be customer/client skills; IT skills and decision making skills. There will be levels of competence for each of these. The competence framework may be based on National/Scottish Vocational Qualifications (N/SVQs) in appropriate subject areas or on competences developed within the organisation or occupational group, or possibly on some combination of these.

Good CRPP systems provide for training to assist employees to attain higher competence levels. This requires a system for prioritising training opportunities and support for individuals undertaking training. An N/SVQ based system has an associated training and assessment system, but the organisation may need to train (more) assessors. An organisation using its own competence framework also needs to introduce a competence assessment system.

Evidence of competence development is usually through certification of training or through individual portfolios of achievement.

#### 5. WHAT IS THE ATTRACTION OF CRPP?

To the employer, the attraction is a better trained and skilled workforce, which should **therefore** increase efficiency and productivity and the knowledge that it is paying incremental increases for something - competence development - rather than what it may see as nothing - time served progression.

Employees are also often attracted to the idea of competence related pay. They see it as:

- Recognition through the annual appraisal/ assessment of their work during the year, which is often lacking in experience related systems
- Recognition through incremental increases of skill and competence development, giving added value and encouragement to training courses and self study
- Potential for development of transferable skills which may provide the basis for career development either within the same organisation or elsewhere

From a UNISON perspective, there is the potential for greater involvement in training issues than may have been the case previously.

#### 6. AND THE DISADVANTAGES?

The potential problems with CRPP lie not so much in the principle, but in the practical aspects. For example, there may be difficulties over:

- The resources available for training and competence development
- The system for rationing training opportunities – sometimes priority is given to ‘front line’ staff, or a particular group needing skills development, rather than to support staff
- The fairness, real or perceived, of the competence assessment system
- The association with pay. Problems such as the above exist in any skills development system, but they are more acute when incremental pay increases depend on competence acquisition

## 7. WHAT THE LAW SAYS ABOUT COMPETENCE RELATED PAY PROGRESSION

The law does not say a lot specifically on competence related pay progression, but rather more on other forms of progression which is relevant also to CRPP:

- (1) In *Hartlepool Borough Council & Another v Dolphin & Others* UKEAT/0007/08, the male comparators, who included refuse workers, roadsweepers, gardeners, joiners, labourers/drivers, and painters, had benefited from a variety of incentive schemes since the 1970s. None of the female claimants, who were employed by the council as care assistants, office cleaners, school escorts and school kitchen assistants had access to such schemes. The Tribunal could see no reason why similar schemes could not be applied to the claimant work groups and upheld the women's claims. The Council's appeal to the Employment Appeal Tribunal was rejected.
- (2) In *Handels-og Kontorfunctionaenes Danmark v Dansk Arbejdsgiverforening (acting for Danfoss)* ECJ [1989] IRLR 532, in what we in the UK know as the 'Danfoss' Decision, the European Court of Justice said that there is every reason to expect the performance ['competence'] of women to be as high as the performance ['competence'] of men. All things being equal, the relevant system should therefore deliver equivalent performance ['competence'] payments to women and men across a group, although obviously an individual woman might perform less well and therefore receive less performance related pay than an individual man. If men perform consistently better than women, this would suggest the discretionary pay system is discriminatory.
- (3) In *Latham v Eastern Counties Newspapers Ltd* [ET Case No. 32453/93], the company had introduced a 'performance related pay' scheme in which assessors were required to determine the 'aptitude' of all employees in the claimant's department, but were not given any criteria or guidance for their awards. The claimant was put in a lower category than her male comparator. The company argued that the difference in pay was due to differences in performance, but this was rejected by the ET on the basis of the absence of transparency and lack of objective criteria in the assessment system. The Tribunal was not satisfied that the system was objective or free from sex bias.
- (4) In *Crossley v ACAS* [1304744/98] male conciliators were towards the top of a long pay scale as the result of an historical assimilation process following a job evaluation exercise. More recently recruited female conciliators were clustered towards the bottom of the pay scale. Male and female conciliators had similar performance assessments. A Tribunal found that the pay system indirectly discriminated against the women and could not be objectively justified on the facts. In the light of the Tribunal's decision, ACAS reviewed its pay structure and introduced shorter pay scales.
- (5) In *Cadman v the Health and Safety Executive* [[2006] IRLR 969 ECJ], the European Court of Justice held that, because workers normally acquire greater experience and therefore perform their duties better as their length of service increases, an employer does not usually have to justify using length of service as a criterion in determining pay. Where, however, the worker provides evidence capable of raising 'serious doubts' as to whether, in the circumstances using length of service to determine pay is an appropriate way of rewarding experience and competence, the employer will be required to show that the length of service goes hand in hand with experience and better performance of work.
- (6) In *Wilson v Health and Safety Executive* [2010] IRLR 59, the Court of Appeal held that the 'serious doubts' test is merely the counterpart of the general rule that a length of service criterion does not require justification in the ordinary case. The Court observed that it is a comparatively low preliminary test. The employee merely has to show that there is evidence from which, if established in trial, it can properly be found that the rule in *Cadman* does not apply. The Court also held that where the employee does raise serious doubts, an employer can be required to justify not only the adoption of a length of service criterion but also the way it is used.

- (7) Pay and benefits based on length of service are also covered specifically by the Employment Equality (Age) Regulations 2006<sup>1</sup>. The Regulations provide an absolute exception for benefits awarded with reference to length of service criterion of up to and including five years, and allows a length of service criterion of over five years where it '*reasonably appears*' to the employer that the way in which the criterion is used '*fulfils a business need of the undertaking*'.

## 8. WHAT WE CAN LEARN FROM THE LEGAL GUIDANCE

- (1) The CRPP must cover all relevant employees whose work is of equal value. In the Single Status context, it is not possible to exclude groups in the same grades as groups who are included. So, while it would be possible to convert some current career grade systems into frameworks for CRPP, it would be necessary to also develop parallel systems for all those currently excluded from career grade systems, including for large job populations such as home and residential carers, administrative and clerical staff and schools based staff who are employed by the local authority.
- (2) The CRPP system must be fair and non-discriminatory in terms of both design and implementation. The expectation is that, overall, women should meet the criteria for progression as frequently as men and BME employees as frequently as white employees – both areas where there have been problems in relation to performance related pay. The system should also fairly accommodate those with disabilities and in all age groups. The practical implications of the Danfoss decision are:
- a. The system must be transparent and comprehensible to all employees
  - b. The competence related progression criteria must be as objective as possible
  - c. The outcomes should be regularly monitored on all diversity strands where data is available to check that no discrimination whether direct or indirect, is occurring in the implementation of the system.
- (3) Adjustments will need to be made to the position of assimilated employees to ensure that they are on the correct point on the scale by reference to their competence assessments. Not doing this could result in future equal pay claims. For example, claims could arise from women assimilated to the bottom point of a pay scale claiming that their work is of equal value where they can demonstrate equivalent or greater competence than men assimilated towards the top of the same pay scale. The practical implications of this are:
- a. Some of those assimilated at - or towards the bottom - of grade pay scales may require accelerated progression to reflect their competence levels
  - b. Some of those assimilated at - or towards the top - of pay scales may require extra assistance to ensure that they meet the competence criteria for their position on the pay scale. If they cannot achieve the relevant competence levels over a reasonable period, it may be necessary to consider moving those concerned to a more appropriate point on the scale.

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<sup>1</sup> Regulation 32

## **9. IF THE EMPLOYER STILL WANTS TO PROCEED, WHAT SHOULD THE SYSTEM LOOK LIKE?**

It can be seen from the above that introducing an effective CRPP system, which is compliant with legal equality requirements, is a major challenge for any large organisation. The result is that there are relatively few large-scale competence frameworks covering different occupational groups, as would be required by a local authority. One example is the NHS Knowledge and Skills Framework (KSF) developed as part of the Agenda for Change agreement of 2004 [[www.nhsemployers.org/pay-conditions](http://www.nhsemployers.org/pay-conditions)]. The website includes information on the system, case studies and frequently asked questions (FAQs), for what is a sophisticated system covering a wider range of occupations than in the local government sector, but nevertheless provides some idea of what is involved in developing and implementing a CRPP system.

If the employer still wants to proceed, then the essentials from a negotiating perspective include:

- (1) Union involvement at all stages and levels: The model of health and safety committees and representatives is probably more appropriate than the traditional pay negotiations approach, as a CRPP system will require long term development, problem solving and monitoring.
- (2) A realistic competence framework: Some organisations introducing CRPP have initially used only a small number of universal competences (e.g. communications skills) from the eventual framework, so that all employees and their representatives can get used to the system.
- (3) Review of training resources and provisions: Organisations introducing competence pay systems have sometimes developed new links with local colleges to assist in the delivery and assessment of training.
- (4) An appeals system for employees who feel they have not been given appropriate training and development opportunities or are dissatisfied with the outcomes of the competence assessment system: This could either be through the organisation's grievance procedure or a specially developed appeals mechanism, similar to those used in the context of job evaluation.
- (5) Central overview and monitoring of the system: This should preferably be implemented through a joint steering group with central HR support, in order to ensure fair and equitable implementation of the system. Organisations with devolved managerial and HR systems may lay themselves open to internal or external challenge, if there is no oversight or moderation system.