

Sue Hastings, Pay & Employment Advice

# Writtle College: Report of an Equal Pay Audit

March 2009

## **WRITTLE COLLEGE: REPORT OF AN EQUAL PAY AUDIT**

### **0. Introduction**

0.1 I have been asked to undertake an independent equal pay audit covering all the employees of Writtle College. The audit is to cover gender, ethnic origin, disability, age and contractual status. It is to cover all aspects of remuneration.

0.2 My credentials for this project are that I have extensive experience in reward structures and the related equality issues, including facilitating a series of seminars for UCEA in carrying out equal pay audits in the higher education sector.

0.3 I propose to use the Equal Opportunities Commission (EOC) Equal Pay Review Model (EPRM) as the basis for the equal pay audit. I was a member of the team which developed and tested the EPRM (and has more recently reviewed and expanded it on behalf of the Equality and Human Rights Commission) and I have applied the Model on a number of occasions since it was published. In my experience, it provides a sound basis for carrying out an equal pay review/audit. The EPRM is currently being updated under the auspices of the Equality and Human Rights Commission (EHRC), and extended to ensure that it is equally applicable to other diversity strands. However, its basic principles are as in the original.

0.4 The EPRM has five main steps:

- (1) Scope of review; assembly of data
- (2) Identification of equal work, as defined by the Equal Pay Act:
  - a. 'Like work'
  - b. 'Work rated as equivalent under a job evaluation study'
  - c. [If necessary, 'work of equal value']
- (3) Calculation of average male and female salaries/ total earnings for those undertaking equal work
- (4) Establishment of reasons for any significant differences between male and female average salaries for equal work; determination as to whether these provide objective justification, including review of pay policies, for example:
  - a. Job evaluation system
  - b. Pay progression system
  - c. Starting salary policy
  - d. Market supplement system
  - e. Pay protection policies
  - f. Any other relevant pay policies
- (5) Development of an action plan to deal with any outstanding issues and, if necessary, an equal pay policy for the future.

0.5 Although the EPRM was developed in the context of the Equal Pay Act, which is gender discrimination legislation, the same principles and practices are equally applicable to other diversity strands, as long as comprehensive statistical data is available.

### **1. Assembly of Data**

1.1 The first step is to assemble the necessary data. I have been supplied with:

- An excel spreadsheet of the required pay, hours of work, grade, job evaluation points and diversity data for each individual employee (identified only by reference number);
- Documentation explaining various aspects of pay policy.

As necessary during the course of the audit, I have asked for and been supplied with additional information. I am grateful for the assistance received.

1.2 As indicated above, the scope of the equal pay audit covers gender, ethnic origin, disability, contractual status and age.

1.3 A useful background analysis is to identify the pattern of employment for each of the diversity strands under consideration. This is done for gender in Table 1.1 below.

**TABLE 1.1: WRITTLE COLLEGE WORKFORCE BY GRADE AND GENDER**

<b>GRADE</b>	<b>FEMALE</b>	<b>FEMALE %</b>	<b>MALE</b>	<b>MALE %</b>	<b>TOTAL</b>
10+	1	<b>33.3</b>	2	<b>66.7</b>	3
9	7	<b>30.4</b>	16	<b>69.6</b>	23
8	23	<b>41.1</b>	33	<b>58.9</b>	56
7	31	<b>50</b>	31	<b>50</b>	62
6	69	<b>71.1</b>	28	<b>28.9</b>	97
5	31	<b>53.4</b>	27	<b>46.6</b>	58
4	96	<b>73.3</b>	35	<b>26.7</b>	131
3	48	<b>82.8</b>	10	<b>17.2</b>	58
2	3	<b>37.5</b>	5	<b>62.5</b>	8
1	0	-	0	-	0
No grade	12	<b>50</b>	12	<b>50</b>	24
<b>TOTAL</b>	<b>321</b>	<b>61.7</b>	<b>199</b>	<b>38.3</b>	<b>520</b>

1.4 At the date of compilation of the spreadsheet data Writtle College employed 520 employees, counting those with more than one contract as individual part-time staff. Three fifths of the total are female (62%) and two fifths are male (38%). Grades 2 and 8-10 are male-dominated, the remaining grades are female-dominated. There are no employees currently in grade 1.

1.5 The jobs of 24 employees have not been evaluated or graded. These range from those on high spot salaries above the range of grade 10+ to very part-time employees on low salaries. Three are Senior Management Team members who are on spot salaries above the top evaluated grade and whose jobs have not been evaluated. Two are Agricultural Wages Board (AWB) workers on different terms and conditions who did not agree to changes to the Single Pay Spine (SPS). These roles have therefore not been evaluated. Two are apprentices; their jobs were not evaluated as their level of pay is stipulated by the government. Two are funded fixed term posts which were not evaluated for this reason. The remaining 15 employees are employed by Writtle College Services: they are treated completely separately as they are employed by this subsidiary company; they have different contractual terms, are paid on a different payroll and their jobs were not evaluated.

1.6 These 24 employees are excluded from the analyses in section 2. Their exclusion from the job evaluation exercise means that they could become either claimants or comparators in equal pay claims to which the job evaluation exercise would not provide an immediate defence. There may be alternative defences, for example, the different contractual terms of those employed by Writtle College Services and the two on funded fixed term contracts, but these may not apply if all are employed at the same location as other Writtle College employees. *It would be wise to take legal advice on the contractual status of the various groups of employees whose jobs have not been evaluated.*

**TABLE 1.2: WRITTLE COLLEGE WORKFORCE BY GRADE AND ETHNICITY**

GRADE	WHITE ETHNIC ORIGIN	% OF TOTAL	NON-WHITE ETHNIC ORIGIN	% OF TOTAL	ETHNIC ORIGIN NOT KNOWN	% OF TOTAL	TOTAL
10+	3	<b>100</b>	0	-	0	-	3
9	20	<b>87.0</b>	1	<b>4.3</b>	2	8.7	23
8	49	<b>87.5</b>	4	<b>7.1</b>	3	5.4	56
7	60	<b>96.8</b>	1	<b>1.6</b>	1	1.6	62
6	96	<b>99.0</b>	0	-	1	1.0	97
5	56	<b>98.3</b>	1	-	1	1.7	58
4	124	<b>94.7</b>	4	<b>3.1</b>	3	2.3	131
3	57	<b>98.3</b>	1	<b>1.7</b>	0	-	58
2	4	<b>50.0</b>	0	-	4	50.0	8
1	0	-	0	-	0	-	0
No grade	22	<b>91.7</b>	1	<b>4.2</b>	1	4.2	24
<b>TOTAL</b>	<b>492</b>	<b>94.6</b>	<b>12</b>	<b>2.3</b>	<b>16</b>	<b>3.1</b>	<b>520</b>

NOTE: Those of Mixed Ethnic Origin are included under Non-White Ethnic Origin.

1.7 Analysis of those who have declared their ethnic origin, in Table 1.2, shows 12 employees of non-white ethnic origin spread across the grades. This is a low overall percentage of the total, just over 2%, and a cause for concern from an equal opportunities perspective, but outwith the scope of an equal pay audit. In terms of the equal pay audit, the low numbers mean that it is not possible to conduct any analysis by different non-white ethnic origins.

1.8 Only 8 Writtle College employees have declared disabilities, compared to 495 who have not declared any disabilities and 17 who have not provided any information. This is too small a number of employees with declared disabilities to allow for any reliable statistical analysis.

1.9 Exactly half of Writtle College's employees are in the oldest of the 3 age groups identified and less than one tenth are in the youngest category. Broadly speaking, and as one would expect, age increases with grade.

**TABLE 1.3: WRITTLE COLLEGE WORKFORCE BY GRADE AND AGE**

GRADE	16-25	% OF TOTAL	26-44	% OF TOTAL	45-65+	% OF TOTAL	TOTAL
10+	0	-	1	<b>33.3</b>	2	<b>66.7</b>	3
9	0	-	7	<b>30.4</b>	16	<b>69.6</b>	23
8	0	-	24	<b>42.9</b>	32	<b>57.1</b>	56
7	1	<b>1.6</b>	30	<b>48.4</b>	30	<b>48.4</b>	62
6	7	<b>7.2</b>	61	<b>62.9</b>	29	<b>29.9</b>	97
5	6	<b>10.3</b>	22	<b>37.9</b>	30	<b>51.7</b>	58
4	18	<b>13.7</b>	41	<b>31.3</b>	72	<b>55.0</b>	131
3	3	<b>5.2</b>	17	<b>29.3</b>	38	<b>65.5</b>	58
2	6	<b>75.0</b>	2	<b>25.0</b>	0	-	8
1	0	-	0	-	0	-	0
No grade	3	<b>12.5</b>	10	<b>41.7</b>	11	<b>45.8</b>	24
<b>TOTAL</b>	<b>45</b>	<b>8.7</b>	<b>214</b>	<b>41.2</b>	<b>260</b>	<b>50</b>	<b>520</b>

**TABLE 1.4: WRITTLE COLLEGE WORKFORCE BY GRADE AND FULL-TIME/PART-TIME**

<b>GRADE</b>	<b>FULL-TIME</b>	<b>% OF TOTAL</b>	<b>PART-TIME</b>	<b>% OF TOTAL</b>	<b>TOTAL</b>
10+	2	<b>66.7</b>	1	<b>33.3</b>	3
9	22	<b>95.7</b>	1	<b>4.3</b>	23
8	45	<b>80.4</b>	11	<b>19.6</b>	56
7	49	<b>79.0</b>	13	<b>21.0</b>	62
6	74	<b>76.3</b>	23	<b>23.7</b>	97
5	41	<b>70.7</b>	17	<b>29.3</b>	58
4	62	<b>47.3</b>	69	<b>52.7</b>	131
3	4	<b>6.9</b>	54	<b>93.1</b>	58
2	8	<b>100</b>	0	-	8
1	0	-	0	-	0
No grade	17	<b>70.8</b>	7	<b>29.2</b>	24
<b>TOTAL</b>	<b>324</b>	<b>62.3</b>	<b>196</b>	<b>37.7</b>	<b>520</b>

1.10 Overall just over one third (37.7%) of Writtle College employees work part time, treating those with more than one contract as part-time in relation to each contract, compared to nearly two thirds (62.3%) working full-time. However, the part-time employees are heavily concentrated in grades 3 and 4, where they form a majority and in grade 3 more than 90% of employees. Of the part-time employees in grades 3 and 4, 12 and 3 respectively are on term time contracts. There are no other term time contracts.

## **2. Identification of Equal Work**

2.1 In an equal pay audit, the identification of equal work is necessary in order to provide a basis for calculating average basic pay and total earnings for equal work by each of the identified diversity strands.

2.2 In the UK Equal Pay Act 1970, as amended in 1983, equal work is defined in 3 ways:

- (a) 'Like work', that is, the same or very similar work;
- (b) 'Work rated as equivalent' under a fair and non-discriminatory job evaluation scheme;
- (c) 'Work of equal value' when compared under headings such as effort, skill and decision.

The EOC Equal Pay Review Model uses the same indicators of equal work. These are relevant to all the diversity strands.

### **A. 'Work Rated as Equivalent'**

2.3 Of the above identifiers of 'equal work', the most comprehensive, where an organisation has carried out a job evaluation exercise and applied it to all, or most, employees, is 'work rated as equivalent'. This allows for the identification of jobs which are 'equal work' under the Equal Pay Act by grade, because they have been 'rated as equivalent under a job evaluation study'.

2.4 It should be noted that this approach relies on an assumption that the job evaluation scheme is fair and non-discriminatory and has been implemented in a fair and non-discriminatory manner. This assumption will be checked in a following section of the equal pay audit, as part of the review of pay policies.

2.5 Writtle College has undertaken a job evaluation exercise, using the HERA system of evaluation developed to support pay modernisation in the higher education sector. The structure has 10 grades and these can each reasonably be taken as representing ‘work rate rated as equivalent’.

**B. ‘Like Work’**

2.6 Where job titles have been used consistently, these can be the basis for identifying those undertaking the same or very similar work.

**C. Work of Equal Value**

2.7 As noted above, 24 employees are outside the evaluated grade structure, so are excluded from the gender pay gap analysis below. The only ways to bring them within the analysis would be to conduct some separate spot equal value checks or to evaluate them using the HERA system. The latter is more robust and thus preferable, but could not be undertaken within the timescale for this equal pay audit.

*It is therefore recommended that Writtle College evaluate all non-evaluated jobs before the next equal pay audit. Until that is done, there is a risk that an employee whose job has not been evaluated might seek to take an equal pay claim comparing themselves with an employee of opposite gender whose job has been evaluated, or vice versa. In such a situation, the job evaluation system would not provide an immediate defence to the claim. There may be alternative defences arising from their contractual status, but it would be wise to take legal advice on this point, as recommended above.*

**3. Calculation of Average Basic Pay for Equal Work for Each Diversity Strand**

**‘Work Rated as Equivalent’.**

**A. Gender**

3.1 Table 3.1 below shows average male and female basic full time equivalent (FTE) pay for each of the Writtle College grades from 2 to 10+.

**TABLE 3.1: AVERAGE BASIC PAY BY GRADE AND GENDER FOR ‘WORK RATED AS EQUIVALENT’**

Grade	Nos		Average FTE Basic Pay (£)		F as % of M
	F	M	F	M	
10+	1	2	58,623	58,623	100
9	7	16	46,909	48,103	97.5
8	23	33	40,079	41,217	97.2
7	31	31	32,107	33,595	95.6
6	69	28	26,129	26,045	100.3
5	31	27	20,674	21,857	<b>94.6</b>
4	96	35	18,519	18,581	99.7
3	48	10	15,785	16,427	96.1
2	3	5	13,787	13,849	99.6
	309	187			

3.2 EOC, and now EHRC, advice on equal pay reviews is that gender pay gaps of 5% or more should be considered significant and the reasons for the differences investigated. Systematic pay gaps of 3% or more in favour of one gender or the other should also be investigated as potentially indicative of underlying pay discrimination.

3.3 On the basis of this advice, there is one Writtle College grade where the gender difference in pay is significant, at more than 5%, and requires further investigation. This is grade 5, with 58 employees in the analysis, that is, 12% of the workforce covered by the analysis. There are also two grades, 7 and 3, where the gap is between 3 and 5%. All the grades except 6 have pay gaps in favour of men, so something of a pattern. So further investigation is required (see below) for the gender pay gaps in 7, 5 and 3.

## B. Ethnic Origin

3.4 Numbers of those declaring an ethnic origin other than 'white' are too small to be able to do anything but treat them all as one group for statistical analysis purposes. Table 3.2 below shows average pay on a full-time equivalent basis for 'white' and ethnic minority employees for each of the grades from 2 to 10+. Employees whose ethnic origin is not known are excluded from this table, so the numbers in each grade are different from those in the previous table.

**TABLE 3.2: AVERAGE BASIC PAY BY GRADE AND ETHNIC ORIGIN FOR 'WORK RATED AS EQUIVALENT'**

Grade	Nos		Average FTE Basic Pay (£)		Ethnic Minority as % of White
	Ethnic Minority	White	Ethnic Minority	White	
10+	0	3	-	58,623	-
9	1	20	44,931	47,879	<b>93.8</b>
8	4	49	39,062	41,029	95.2
7	1	60	32,458	32,880	98.7
6	0	96	-	26,085	-
5	1	56	21,458	21,238	101.0
4	4	124	18,574	18,550	100.1
3	1	57	14,867	15,914	<b>93.4</b>
2	0	4	-	13,865	-

3.5 Considerable caution is necessary when interpreting averages and percentages based on very small numbers. However, the overall pattern is of ethnic minority employees earning significantly less than white employees in grades 9, 8 and 3. These figures require further investigation.

## C. Disability

3.6 Of the 8 employees with declared disabilities, the job of one is ungraded; 6 are paid within the scale range for the grade and one is paid above the scale range for the job. This latter requires further investigation.

**D. Part Time/ Full Time**

3.7 Table 3.3 shows average pay by grade for part time and full time employees calculated on a full time equivalent basis for comparability. As can be seen, the only gap of more than 5%, in grade 8, is in favour of part time employees, but there are gaps of between 3 and 5 % in favour of both part time, grades 3 and 6, and full time, grade 5, employees.

**TABLE 3.3: AVERAGE BASIC PAY BY GRADE AND PART TIME/ FULL TIME FOR 'WORK RATED AS EQUIVALENT'**

Grade	Nos		Average FTE Basic Pay (£)		PT as % of FT
	FT	PT	FT	PT	
10+	2	1	58,623	58,623	100
9	22	1	47,743	47,666	99.8
8	45	11	40,158	43,170	<b>107.5</b>
7	49	13	32,818	32,975	100.5
6	74	23	25,888	26,802	<i>103.5</i>
5	41	17	21,414	20,766	<i>97.0</i>
4	62	69	18,703	18,385	98.3
3	4	54	15,254	15,944	<i>104.5</i>
2	8	0	13,826	-	-

**E. Age**

3.8 Table 3.4 shows average basic pay on a full time equivalent basis for each of the identified age ranges. It shows increasing basic pay, associated with grade of job and with increasing age range, as one might expect. The biggest differences are between the youngest and middle age groups. The differences between the middle and oldest age groups are much smaller.

**TABLE 3.4: AVERAGE BASIC PAY BY GRADE AND AGE FOR 'WORK RATED AS EQUIVALENT'**

GRADE	16-25	AVE BASIC FTE PAY £	26-44	AVE BASIC FTE PAY £	16-25 % of 26-44	45-64	AVE BASIC FTE PAY £	16-25 % of 45-64	26-44 % of 45-64
10+	0	-	1	58,623	-	2	58,623	-	<b>100</b>
9	0	-	7	47,522	-	16	47,835	-	<b>99.3</b>
8	0	-	24	39,420	-	32	41,746	-	<b>94.4</b>
7	1	29,705	30	31,538	<b>94.2</b>	30	34,282	<b>86.6</b>	<b>92.0</b>
6	7	23,750	61	26,159	<b>90.8</b>	29	26,557	<b>89.4</b>	<b>98.5</b>
5	6	20,037	22	21,330	<b>93.9</b>	30	21,384	<b>93.7</b>	<b>99.7</b>
4	18	17,644	41	18,477	<b>95.5</b>	72	18,791	<b>93.9</b>	<b>98.3</b>
3	3	15,272	17	15,608	<b>97.8</b>	38	16,074	<b>95.0</b>	<b>97.1</b>
2	6	13,839	2	13,787	<b>100.4</b>	0	-	-	-



#### **4. Analysis of Reasons for Significant Differences: Review of Pay Policies**

##### **A. Further Investigations**

4.1 The next step is to investigate the reasons for the differences identified as significant in the 'work rated as equivalent'. Analysis of the data by scale point, grade and the various diversity strands indicates two explanatory features:

- (1) There are a number of employees paid above the stated maximum scale point for their grade. For example, the scale range for grade 7 is 30 – 34, but there are 20 employees paid on points above 34, ranging from 35 to 38. This group is disproportionately male compared with the grade as a whole (12 out of 20, that is, 60%, compared with 50% for the grade as a whole). There is a similar situation in other grades. The composition of these groups in terms of gender and part-time/full-time contributes to the relevant grade pay gaps.
- (2) The distribution of employees within each grade. For example, none of the employees of ethnic minority origin are in the groups paid above the maximum stated scale point for the grade; and these employees are generally in the bottom half of the relevant scale range, accounting for the grade pay gaps in favour of white employees. Again, the employees on the bottom point of grade 5 are disproportionately female, 88%, compared to 53% for the grade as a whole, contributing to the significant gender pay gap in this grade.

4.2 These features explain the significant pay gaps. The question is whether they provide objective justification. The fact that they contribute to some pay gaps in relation to most diversity strands suggests that they are not symptomatic of systemic pay discrimination.

4.3 I understand that all employees were originally assimilated to the national pay spine prior to job evaluation being conducted and thereafter the evaluated grade for their role confirmed. This resulted, due to the pay model, in the salaries of some employees being within the contribution area of the relevant grades. All employees who are in the contribution area (except those who remain under pay protection) have taken on additional responsibilities which are over and above those normally required in that particular grade and these have been defined as Contribution Area Criteria, justifying their salary remaining at that level unless such duties cease to be fulfilled. These are regularly reviewed as part of the normal annual PDR process in line with the job description for each role. These forms form part of the employee records of those concerned, along with their job descriptions.

4.4 This additional information amplifies the explanation for the significant pay gaps and provides more detailed reasons. Undertaking additional responsibilities is likely to provide objective justification for these pay differences, as long as the system is administered in a fair and unbiased manner. There remains a possible query over employees of differing gender or ethnic background, who are either carrying out similar additional responsibilities or have the potential to do so, and whether this could amount to sex or race discrimination. *It would be wise to repeat the pay gap analysis on an annual basis to ensure that gaps reduce to below significant levels and risks thus decrease.* (See also para. 4.13 below).

The next step is to consider whether any other aspects of pay policy might have contributed to the situation. Relevant pay policies are considered below.

## **B. Job Evaluation System and Grading Structure**

4.5 Writtle College uses the HERA system of evaluation and has done so since the Higher Education National Framework Agreement on Pay Modernisation was implemented by the College in 2007.

4.6 The HERA (Higher Education Role Analysis) system is analytical, that is, factor based, so meets the first criterion for acceptability in relation to UK equal pay legislation. As its name implies, the scheme was designed specifically for jobs in higher education, so it can be regarded as suitable and covering all relevant job features. The system thus meets the first two EOC EPRM Job Evaluation Checklist criteria.

4.7 The remaining design checklist points concern the factor levels and scoring and weighting systems. The factor levels were also based on fieldwork using job samples from higher education and the weighting was derived from a large scale postal survey of employees and managers in the sector. The EOC Checklist actually asks whether there is a rationale for the weighting system. This is all in the HERA documentation, published by the Educational Competences Consortium (ECC).

4.8 The EOC Equal Pay Review Model also includes a checklist on implementation of the scheme. HERA procedures generally meet these criteria in that they:

- (1) Require jobholder involvement in the provision of information for job evaluation purposes through participation in job analysis interviews and provision of a Guide to Jobholders, intended to assist individuals to prepare for the interviews;
- (2) Use of job analysts to assist jobholders to provide the information required for evaluation;
- (3) Training of analysts and others actively involved in the exercise, including training in equality issues and the avoidance of bias;
- (4) Recording of analysis and evaluations through the computerised HERA system;
- (5) Joint validation panels to verify provisional evaluation outcomes.

*The HERA system provides a sound basis for determining equal work in the higher education sector. There is no reason to think that it could have contributed to the identified gender and other pay gaps. Rather it should have narrowed historical pay gaps.*

## **C. Post Evaluation Grading and Pay Structure**

4.9 Writtle College agreed a 10 grade structure to implement the evaluation outcomes, in line with the National Framework Agreement. The College does not currently use grade 1, so has effectively adopted a 9 grade structure. This is comparable with the grading structures developed elsewhere in higher education and other parts of the public sector.

4.10 The pay scales vary in length from 2 substantive scale points at grade 1 and 3 at grade 2 to 9 substantive scale points at grade 8. Government advice in relation to the Age Discrimination Regulations is that scales with up to 6 incremental points (minimum plus 5) do not require specific justification; scales above that may require such justification.

4.11 Pay progression is through experience in post in relation to the substantive pay scale points. However, at the top of each pay scale there are between 1 and 4 contribution related points. As long as the contribution system is fair and non-discriminatory and applied in a fair and non-discriminatory manner, this will provide justification for differences in pay between employees correctly placed on the contribution points and those on the substantive pay scale points.

4.12 Assimilation onto the new pay spine took place before the completion of the role evaluations, but subsequent adjustments effectively followed standard practice in that:

- Those whose previous pay was within the new pay range for their job moved across at their current salaries;
- Those whose previous pay was below the minimum of the new pay range for their job, called 'green circles', moved to the minimum point of the new scale;
- Those whose previous pay was above the maximum of the new pay range for their job, called 'red circles', moved to the maximum point of the new pay range for their job, but the excess is subject to personal protection for an agreed period of time.
- Those whose previous pay was above the substantive pay scale but within the contribution range were assimilated to the nearest point within that range, to avoid 'detriment', in accordance with the national agreement.

4.13 The above represents 'standard' UK assimilation policy. However, it is important to note that the traditional assimilation approach is currently subject to legal challenge in the NHS on the basis that it indirectly discriminates against female employees. It is being argued on behalf of the Claimants in the case of *Hartley & others v Northumbria Healthcare Foundation Trust* (heard in the Newcastle Tribunal from 6<sup>th</sup> October 2008, decision expected March or April 2009) that where pay progression rules are based on a criterion such as length of service (or competence or contribution), the traditional assimilation approach fails to recognise the experience (or competence or contribution) of upgraded female green circles who may have sufficient experience (or competence or contribution) to move to higher points up the scale and the practice has a disparate adverse impact on female green circles as a result.

4.14 From the above, it is possible to see that the gender pay gaps in grades 7, 5 and 3, and the ethnicity pay gaps in grades 9, 8 and 3, are in large part attributable to:

- (1) Assimilation above the substantive scale maximum, in accordance with the 'no detriment' rules. Of the 20 employees in grade 7 paid above scp 34, 9 are not on protection so must have been assimilated in this way. 5 are male, including all but one of those on scale points 37 and 38. Most of the jobs in this group are academic. There are similar, but smaller groups of non-protected employees at the top of scales 5 and 3, although these are non-academic.
- (2) Employees in the same above scale maximum groups on a protected basis.
- (3) The length of the pay scales, especially towards the top of the structure, meaning that a slightly unbalanced distribution of men and women through the grade can result in significant pay gaps.

4.15 The question is whether these features can also provide objective justification. For a transitional period, this is likely to be the case, but less likely to be so in the medium term. It will therefore be important that Writtle College:

- Undertakes regular equal pay audits to ensure that gender, ethnicity and part-time/full-time gaps are narrowing over time;
- Ensures that those assimilated on contribution points are meeting the criteria for those points, in order to provide individual justification for grade pay differences;

- Ensures that those on personally protected pay either move to higher graded jobs or that their protection is terminated in accordance with the agreement after the 3 year period in 2010;
- Considers shortening its longer pay scales over time, to prevent grade pay gaps from re-emerging.

#### **D. Starting Salaries**

4.16 Starting salaries have emerged from equal pay audits as one of the major, and previously under-recognised, sources of pay discrimination. Where recruiters have discretion over positioning of new employees on the relevant pay scale, this may be applied in an inconsistent and indirectly discriminatory manner. What may seem justifiable at the point of recruitment, can become increasingly difficult to justify over time. The EHRC, therefore, has recommended that organisations have starting salaries policies, so that placement above the minimum of the pay scale can only occur where the candidate meets specific criteria.

4.17 The Writtle College pay policy documentation supplied does not contain a discrete starting salaries policy, but the *New salary and grading arrangements for academic & non-academic staff, 2006* document does include some provisions relating to minimum entry points for new recruits. These provide for non-academic staff to commence at the minimum point of the scale for the grade. The specified minimum entry points for HE Lecturer/Advanced FE Lecturer, Senior and Principal Lecturer posts are also the minimum points of the relevant scales.

4.18 The same is true for unqualified/inexperienced FE Lecturers in relation to grade 6 but there is a provision for qualified FE Lecturers to start at a higher point on the same scale. This provision assumes that the contribution of a qualified FE Lecturer is equivalent to that of an unqualified Lecturer with 5 years' experience, which may often be reasonable but may not be, if, for example, an unqualified Lecturer with 3 years' experience is undertaking the same job to the same level of competence as a newly appointed qualified FE Lecturer.

4.19 The Writtle College policy determines minimum entry points but does not say whether these are also maximum entry points. Recommended starting salary practice would be for new recruits to start at the minimum point of the relevant pay scale, unless, through experience or by other means, they meet the requirements for a higher point on the scale, in which case they should be appointed at the appropriate higher point. The only exception would be where the Market Pay Policy applies. It may be helpful for Writtle College to clarify its starting salaries policy in this manner.

#### **E. Market Payments**

4.20 It is justifiable to pay above the grade rate to recruit and retain even where the group with the payment is of predominately one gender and the group without the payment is predominantly of the opposite gender.<sup>1</sup> In order for market payments to provide objective justification for differences in pay, they should be:

- Paid only where there is a demonstrable need for them from market data and/or evidence of inability to attract suitable candidates at the advertised rates;

---

<sup>1</sup> Enderby v Frenchay Health Authority and the Secretary of State for Health [1993] IRLR 591 ECJ.

- Subject to regular review in order to demonstrate an ongoing need and to adjust them to changes in market rates;
- Ideally paid as a separate supplement, rather than being consolidated into basic pay (it is easier for an organisation to justify and monitor market payments, where they can be separately identified);
- Paid to all those in the same circumstances. Non-payment to others in the group could lead to equal pay claims;
- Responsible for the whole of the difference in pay attributed to them.

4.21 Reliance on market data alone should be treated with caution, as the quality of the information depends entirely on how it is collected and collated. Information from a small number of recruitment advertisements is unlikely on its own to be sufficiently robust to justify a market supplement, as it is limited and partial. Further, internal and external jobs may not have been accurately matched for 'size'.

4.22 Once higher salaries have fulfilled their function of attracting more recruits into the particular role or changes in the labour market result in a reduction in the market rate, there is no longer a need for any additional payment and such payments lose their justification. In these circumstances, such payments should be subject to pay protection and phased out over time (unless the employee or their job has been subject to a development process to allow re-grading or appointment to a job commensurate with their historic salaries).

4.23 Writtle College does have a *Market Pay Policy and Conditions Supplements*. This largely complies with the criteria set out above, including, for example, separate identification of market payments on the basis of market data, regular review and adjustment as necessary. It includes provision for HR to monitor payment of market supplements, but does not specifically say that monitoring should be by gender and other diversity strands.

4.24 Only two Writtle College employees are identified on the spreadsheet as being in receipt of market supplements. Both are female, of white British ethnic origin and work part-time; neither has declared any disabilities. Given the small number, it is impossible to draw any statistical inferences.

## **F. Pay Protection**

4.25 The justification for pay protection is to cushion the transition to a lower pay rate, not to maintain the enhanced pay for a lengthy or indefinite period. Because there is a risk that indefinite or lengthy pay protection agreements may become discriminatory over time, such arrangements are generally considered to be contrary to good practice. Thus a pay protection policy should provide for enhanced pay to be phased out over a short period of time (generally 3 to 5 years). There are a number of different ways by which this can be achieved, for example:

- Those affected do not receive annual pay awards until such time as the maximum of the relevant pay scale 'catches up' with their salary;
- By stipulating a fixed time period for pay protection after which the salaries of those affected are adjusted to maximum of the relevant pay scales;
- By stipulating a fixed time period for pay protection and reducing the salaries of those affected by a set percentage every year during this period.

4.26 There is no prescribed legal time limit on pay protection. The issue is whether the protection arrangements can be justified in the circumstances of the particular case. A survey by local authority employers which included pay protection arrangements revealed that the length of such arrangements ranged from 2 to 6 years but most commonly 3 years. Pay protection arrangements negotiated as part of the Agenda for Change scheme implemented in the NHS offer protection until 2011 (approximately 5 years).

4.27 Writtle College has a Pay Protection Policy, which is generally in accordance with the criteria set out above. It also provides for a Personal Development Plan (PDP) for those subject to pay protection as a result of job evaluation or re-organisation.

4.28 Numbers of employees currently subject to pay protection by grade and gender are set out in Table 4.1 below. Total numbers subject to protection are small overall but more significant in some of the grades in which they are concentrated. Percentages of men subject to protection are greater than for women. This is what would be expected following a job evaluation exercise intended to move towards equal pay for work of equal value. None of those subject to protection are of ethnic minority origin.

**TABLE 4.1: PAY PROTECTION BY GRADE AND GENDER**

Grade	Nos		Nos on Pay Protection)		% of Total	
	F	M	F	M	F	M
10+	1	2	0	0	-	-
9	7	16	0	0	-	-
8	23	33	0	0	-	-
7	31	31	4	7	12.9	22.6
6	69	28	1	0	1.4	-
5	31	27	0	3	-	11.1
4	96	35	4	3	4.2	8.6
3	48	10	0	0	-	-
2	3	5	0	0	-	-
	309	187	9	13	2.9	7.0

### G. Performance Related Payments

4.29 As noted above, the new grading and pay structure includes provision for contribution increments above the substantive pay scales. I understand that a Remuneration Policy, covering the criteria for contribution payments, is currently being drafted for approval through the required committee structures.

### H. Holidays

4.30 Holiday entitlement varies. HE academic staff are entitled to 42 days holiday, FE academic staff receive 35 days holiday and non academic staff receive 25 days holiday raising to 30 after 5 years service. As grades 6 to 9, which have most academic staff, also have higher proportions of males than for the Writtle College workforce as a whole, there is potential indirect gender discrimination in relation to this contractual term. This presents a risk of a female non-academic employee making an equal pay claim, comparing herself with a male academic member of staff in the same grade as herself, either for equalisation of the holiday term in her contract, or for higher basic pay on account of her worked hourly rate of pay being lower than his. As jobs in the same grade are 'work rated as equivalent', an Employment Tribunal would then need to decide whether the nature of academic work provided objective justification for the difference in holiday entitlement. It is not clear what the outcome would be. *It would be wise to take legal advice on this point.*

## I. Benefits

4.31 It would be usual to calculate average total earnings for 'work rated as equivalent' in order to examine the impact of additional payments and benefits on top of basic pay. However, at Writtle College, the additional payments and benefits are specific to small numbers of employees, so their impact on average total earnings would be very limited. In these circumstances, it is more useful to consider the impact of each additional payment separately.

4.32 Three senior members of staff in the analysis receive **medical insurance** payments. One is in the same grade as employees of opposite gender who do not have this entitlement. This could have given rise to a possible equal pay claim, but the employee in question has left the employment of the College and it has been agreed that medical insurance payments will be confined to members of Senior Management Team for the future.

4.33 Thirteen employees have **accommodation** provided with the job. If this can be shown to be a necessity for the work undertaken and is accessible to, but only to, those who meet this necessity criterion, then it is likely to be justifiable, whatever the composition of the group. However, if this is not the case, then the composition of the group could give rise to a risk of challenge over provision of accommodation. 11 of those with accommodation provided are male and two are female; this is clearly disproportionate to the gender composition of the workforce as a whole. All are of white British ethnic origin, except one whose ethnic origin is not known; again this is disproportionate to the ethnic composition of the workforce as a whole.

4.34 I am told that accommodation is provided as a necessity for the work undertaken for most of the employees concerned. The others have come from historical terms when they were AWB workers – the whole area of the provision of college accommodation is currently under review. *There appear to be some potential risks here, so it is important that the review is completed and the outcomes implemented as soon as practicable.*

4.35 Thirteen employees are in receipt of **childcare allowances**, 5 males and 8 females, spread across the grades. The proportions are not significantly different from those for the workforce as a whole, so as long as childcare allowances are paid only in accordance with the agreed scheme rules, these are unlikely to be a potential source of challenge.

4.36 Most employees take advantage of the **pension scheme contributions** to one of the available pension schemes, the Teachers' Pension Scheme (TPS) or the Local Government Pension Scheme (LGPS). Numbers not taking advantage of this benefit are greater in the lower grades, so are female dominated. As take up of pension scheme contributions is on a voluntary basis, it is not considered that any particular conclusions can be drawn from this analysis except that the take up of the benefit amongst female employees is slightly lower than amongst male employees.

**TABLE 4.2: EMPLOYEES NOT RECEIVING PENSION CONTRIBUTIONS BY GRADE AND GENDER**

Grade	Nos		Not receiving pension contributions		% of Total	
	F	M	F	M	F	M
10+	1	2	0	0	-	-
9	7	16	1	1	14.3	6.3
8	23	33	1	0	4.3	-
7	31	31	2	0	6.5	-
6	69	28	11	3	15.9	10.7
5	31	27	10	6	19.3	22.2
4	96	35	26	9	27.1	25.7
3	48	10	13	7	27.1	70.0
2	3	5	3	5	100	100
	309	187	67	31	21.7	16.6

## **5. Conclusions, Action Plan, Equal Pay Policy**

### **Conclusions and Observations**

5.1 24 employees are outside the evaluated grade structure, so have been excluded from the gender pay gap analysis. The only ways to bring them within the analysis would be to conduct some separate spot equal value checks or to evaluate them using the HERA system. The latter is more robust and thus preferable, but could not be undertaken within the timescale for this equal pay audit.

5.2 *It is therefore recommended that Writtle College evaluate all non-evaluated jobs before the next equal pay audit. Until that is done, there is a risk that an employee whose job has not been evaluated might seek to take an equal pay claim comparing themselves with an employee of opposite gender whose job has been evaluated, or vice versa. In such a situation, the job evaluation system would not provide an immediate defence to the claim. There may be alternative defences arising from their contractual status, but it would be wise to take legal advice on this point*

5.3 The primary statistical analyses show that there are gender pay gaps requiring further investigation in relation to grades 7, 5 and 3. Similarly, there is a pattern of ethnic minority employees earning significantly less than white employees in grades 9, 8 and 3. These figures also required further investigation. In relation to contractual status, the only gap of more than 5%, in grade 8, is in favour of part time employees, but there are gaps of between 3 and 5 % in favour of both part time, grades 3 and 6, and full time, grade 5, employees. Analysis by age shows increasing basic pay, associated with grade of job and with increasing age range, as one might expect. The numbers with declared disabilities are too small for reliable statistical analysis.

5.4 Further analysis of the data by scale point, grade and the various diversity strands indicates two explanatory features for the significant grade pay gaps:

- (1) There are a number of employees paid above the stated maximum scale point for their grade. The composition of these groups in terms of gender and part-time/full-time contributes to the relevant grade pay gaps.
- (2) The distribution of employees within each grade. For example, none of the employees of ethnic minority origin are in the groups paid above the maximum stated scale point for the grade; and these employees are generally in the bottom half of the relevant



scale range, accounting for the grade pay gaps in favour of white employees. Also the number of female employees on the minimum point in grade 5 contributes to the significant gender pay gap in this grade.

5.5 I understand that all employees were originally assimilated to the national pay spine prior to job evaluation being conducted and thereafter the evaluated grade for their role confirmed. This resulted, due to the pay model, in the salaries of some employees being within the contribution area of the relevant grades and in the observed distribution of employees across the new grade pay scales.

5.6 This additional information amplifies the explanation for the significant pay gaps and provides more detailed reasons. There remains a possible query over whether it provides objective justification for the observed grade pay differences. *It would be wise to repeat the pay gap analysis on an annual basis to ensure that gaps reduce to below significant levels and risks thus decrease.*

5.7 Review of pay policies which might have contributed to grade pay gaps shows:

- The HERA system provides a sound basis for determining equal work in the higher education sector and it has been implemented in accordance with good practice criteria. There is no reason to think that it could have contributed to the identified gender and other pay gaps. Rather it should have narrowed historical pay gaps.
- The College has effectively adopted a 9 grade structure. This is comparable with the grading structures developed elsewhere in higher education and other parts of the public sector.
- The gender pay gaps in grades 7, 5 and 3, and the ethnicity pay gaps in grades 9, 8 and 3, are in large part attributable to:
  - Assimilation above the substantive scale maximum, in accordance with the 'no detriment' rules.
  - Employees in the same above scale maximum groups on a protected basis.
  - The length of the pay scales, especially towards the top of the structure, meaning that a slightly unbalanced distribution of men and women through the grade can result in significant pay gaps.

5.8 The question is whether these features can also provide objective justification. For a transitional period, this is likely to be the case, but less likely to be so in the medium term. *It will therefore be important that Writtle College:*

- *Undertakes regular equal pay audits to ensure that gender, ethnicity and part-time/full-time gaps are narrowing over time;*
- *Ensures that those assimilated on contribution points are meeting the criteria for those points, in order to provide individual justification for grade pay differences;*
- *Ensures that those on personally protected pay either move to higher graded jobs or that their protection is terminated in accordance with the agreement after the 3 year period in 2010;*
- *Considers shortening its longer pay scales over time, to prevent grade pay gaps from re-emerging.*

5.9 In relation to other pay policies, Writtle College does have **market pay policy**. This is good practice and the policy largely complies with best practice criteria. It includes provision for HR to monitor payment of market supplements, but does not specifically say that monitoring should be by gender and other diversity strands. Only two Writtle College employees are identified in the pay data as being in receipt of market supplements. Given the small number, it is impossible to draw any statistical inferences.

5.10 **Holiday entitlement** varies, even between those on the same grade and pay scales. As grades 6 to 9, which have most academic staff with higher holiday entitlements, also have higher proportions of males than for the Writtle College workforce as a whole, there is potential indirect gender discrimination in relation to this contractual term. This presents a risk of a female non-academic employee making an equal pay claim, comparing herself with a male academic member of staff in the same grade as herself, either for equalisation of the holiday term in her contract, or for higher basic pay on account of her worked hourly rate of pay being lower than his. As jobs in the same grade are 'work rated as equivalent', an Employment Tribunal would then need to decide whether the nature of academic work provided objective justification for the difference in holiday entitlement. It is not clear what the outcome would be. *It would be wise to take legal advice on this point.*

In relation to other benefits, issues only appear to arise in relation to provision of accommodation. I am told that accommodation is provided as a necessity for the work undertaken for most employees and this is likely to provide a defence to any challenge. However, in other cases accommodation arises from historical terms when the employees in question were AWB workers – the whole area of the provision of college accommodation is currently under review. *There appear to be some potential risks here, so it is important that the review is completed and the outcomes implemented as soon as practicable.*

### **Action Plan**

On the basis of the above, a draft action plan for Writtle College might include the following:

- (1) Agreement on an equal pay policy, either as a discrete policy or as part of the wider remuneration policy (a skeleton model equal pay policy forms an appendix to the EOC Code of Practice on Equal Pay);
- (2) Agreement to carry out an equal pay audit annually until such times as all grade pay gaps fall below significant levels;
- (3) Evaluation of those jobs which have not yet been evaluated before the next equal pay audit;
- (4) Seek legal advice, as a matter of urgency, on:
  - a. whether the contractual position of the various groups of employees whose jobs have not been evaluated is likely to provide a defence to any equal pay claim involving them as either claimants or comparators;
  - b. whether the nature of academic work is likely to provide a defence to equal pay claims in relation to holiday entitlement;
- (5) Ensure that those assimilated on contribution points are meeting the criteria for those points, in order to provide individual justification for grade pay differences;
- (6) Ensure that those on personally protected pay either move to higher graded jobs or that their protection is terminated in accordance with the agreement after the 3 year period in 2010;

- (7) Consider shortening its longer pay scales over time, to prevent grade pay gaps from re-emerging;
- (8) Complete the review of the provision of college accommodation as soon as practicable, in order to minimize any risks arising from this benefit.