

Pay inequality issues continue to remain high on the agenda

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Pay inequality issues continue to remain high on the agenda

The interest in pay inequality between men and women shows no signs of waning in 2020. In January, an Employment Tribunal upheld a female TV presenter's equal pay claim against the BBC, who are now on the hook to pay an estimated £700,000 in

compensation. In a little over two months, pay inequality will come under the spotlight again, when large employers publish the third round of gender pay gap reports.

Samira Ahmed wins equal pay claim against the BBC

Samira Ahmed is a journalist and presenter of BBC's Newswatch programme. She brought an equal pay claim against the BBC seeking to compare her pay (£440 per episode) to that of the male presenter of Points of View, Jeremy Vine (who was paid £3000 per episode). Ms Ahmed argued that she did the same or similar work to Mr Vine. The BBC said that the work was different because Newswatch was a news programme and Points of View an entertainment programme. They also argued that a popular programme like Points of View required the presenter to have a "glint" in the eye.

The Tribunal agreed that there were enough similarities between Ms Ahmed's and Mr Vine's roles meaning that their pay could be compared. They both presented magazine-style programmes which involved a discussion of viewers' opinion. Both programmes lasted 15 minutes and both were pre-recorded and scripted by producers. The requirement for a "glint" in the eye did not denote any special skills or experience needed for the role.

This meant that the BBC had to explain the difference in pay, by reference to a material and non-discriminatory factor. It put forward a number of factors including the profile of the programmes and the presenters, the experience of the presenters and different market rates for the roles. However, their defence was significantly weakened by the fact that: (i) they did not operate a transparent and consistent pay process for presenters; and (ii) there was an absence of documentary or witness evidence to explain the pay decisions that had been taken.

Notably, the Tribunal gave short shrift to the "market rates"

argument because the BBC had taken an inconsistent approach. For Mr Vine, the market rate was the amount the BBC considered it had to pay to persuade him to present Points of View. For Ms Ahmed, it was the amount the BBC considered it had to pay for the role. The Tribunal said that market rate had to mean the same for both the man and the woman.

The Tribunal upheld Ms Ahmed's claim, finding that she and Mr Vine performed like work and that the BBC had failed to show that the difference in pay was because of a non-discriminatory material factor. However, from the point that Ms Ahmed moved to a permanent BBC contract there was a non-discriminatory reason for the difference. Ms Ahmed is set to recover an estimated £700,000 compensation covering a 6-year period.

Although this decision does not change the law, it serves as a useful reminder of the dangers of operating an opaque reward system. The lack of a transparent and consistent pay process and the absence of evidence explaining the pay decisions hampered the BBC's ability to defend the claim. The lesson for employers is to operate a fair and transparent reward system, backed up by records setting out the reasons for pay decisions. To minimise risk, employers should also interrogate whether their existing pay awards are free from discrimination by undertaking an equal pay audit.

Polly Rodway, a partner at BDBF specialising in discrimination and equal pay issues, spoke to BBC London and The Guardian about the Tribunal's decision. You can listen to the BBC London broadcast [here](#) and the read The Guardian article [here](#).

Third round of gender pay gap reports to be published by 4 April 2020

Employers with 250 or more employees will be required to publish their annual gender pay gap reports for the third time on, or before, 4 April 2020. Reporting employers can expect intense media scrutiny of both the accuracy of their figures

and the progress made in closing their gender pay gap.

First, on the accuracy of the figures, we know that employers are struggling with the process and getting it wrong. The BEIS Select Committee Report on Gender Pay Gap Reporting from 2018 highlighted that businesses found the reporting process “very difficult” and many had required external legal advice to help them understand how to comply with the rules. The Committee also found that some employers had published “highly improbable, inaccurate or questionable” data and some had reported mathematically impossible figures. Around 725 employers had submit their figures more than once.

The Committee also identified the need for better guidance to help employers complete the reporting process accurately. The current guidance, Managing Gender Pay Gap Reporting, is not exhaustive, meaning that there are many areas where firms are having to make their own judgement on how to report. This inevitably leads to mistakes and inconsistencies which undermine transparency. Polly Rodway recently spoke to The Times about the urgent need for the gender pay gap reporting guidance to be revised to ensure better reporting. You can read Polly’s comments [here](#).

Second, now that the regime has had time to bed in, employers will increasingly come under pressure to reduce their pay and bonus gaps and redress gender imbalances in the most senior and highly paid roles. However, it’s generally accepted that there are no “quick fixes” to closing the gender pay gap. It is helpful for employers to tackle this issue head on in their reports by providing an explanatory narrative putting the results in context. What kinds of things should employers consider including in their narrative?

- **Statement from senior person in the business:** an opening statement from a senior person within the business, such as the HR director, demonstrates senior buy-in and provides a good opportunity to restate the

organisation's commitment to diversity measures.

- **The difference between the gender pay gap and unequal pay:** although research shows that the vast majority of employers understand this distinction, it is inevitable that some readers won't. It's worth briefly explaining the difference.
- **What the report covers:** clarify which entity or entities are being reported on and explain the reporting methodology (e.g. who has been counted as a "relevant employee" and how absent employees have been treated).
- **Year on year comparisons:** there is no requirement to provide this information, but it would be in keeping with the transparency aim of the gender pay reporting. Also, if figures have remained static (or worsened) then this provides an opportunity to explain why this is the case. For example, the employer may have recruited a higher proportion of women at the start of their career to improve the future pipeline of female talent. This may negatively affect the pay gap in the short term.
- **Action plan for closing the gap:** this is not compulsory, but the Equality and Human Rights Commission encourage employers to provide an action plan setting out the positive, measurable and time-bound steps they will take to close their gap. Care should be taken to outline specific measures, rather than a recital of standing diversity initiatives.

If you need help with any equal pay issues or producing your next gender pay gap report, please contact [Polly Rodway](#), [Amanda Steadman](#) or your usual [BDBF contact](#).

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