Grant Thornton

Equal Pay and Pay Transparency CPD webinar

Questions and answers

Your questions to the presenters

Q: How do they fund these costs?

These are often funded from reserves or from selling council assets.

Q: On market evidence, how regularly should this be reviewed, we generally do this yearly. Assume Next had recent evidence.

Any additional payments, including market supplements or allowances, should be reviewed yearly to ensure that they are still relevant. For example, if you pay an evening allowance but the hours for the work change for a particular employee, you need to ensure that the allowances stop. Market supplements should be reviewed to ensure that the national and local picture has remained the same. Next was able to use evidence which was recent but crucially able to show historically why the payments were different. It's not only recent information which is required, but keeping robust historical records.

Q: Does an annual double increment opposed to one increment also count as an additional payment for equal pay purposes?

If someone is getting two increments in one year, the additional one will need to be justified. It will count as an additional payment for equal pay purposes.

Q: What minimum size comparator group would you recommend? 5?

This really does depend on the role and how many people are doing the exact same role. Anything under 10 is difficult to use in terms of personal data and any protected characteristics. Anonymous data can be used on occasion but should the law expand to include other protected characteristics this will be harder to justify.

Q: How do you manage a situation where you are negotiating with a union to remove an out of date pay practice from a group of employees and meeting resistance from the

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union, but at the same time, the union are submitting equal pay claims based on this group of employees as comparators?

This is tricky. There could be two different trade unions with one supporting the practices remaining, while the other is putting in equal pay claims. Or it could be the same trade union as implied in the question. It is possible to try and add the trade union as a joint party in the claims if they will not work with you to remove the risk. Ultimately the employer has to change the working practices causing the equal pay risk either through concluding the negotiations or by a dismissal and re-engagement process. Evidence is the key to justifying why the pay practice has to stop and showing how other employers have stopped it might also be useful.

Q: Is there any case law or advice around current Job Evaluation and historical pay claims?

There is a large amount of case law regarding job evaluation and pay claims. A current Job Evaluation Scheme can help demonstrate fair pay going forward, but it does not necessarily remove liability for historical pay inequalities. Some worth reading *Redcar & Cleveland BC v* Bainbridge*, Surtees v Middlesbrough Borough Council, Abdulla v Birmingham City Council, North v Dumfries and Galloway Council, Allen v GMB, Glasgow City Council v Unison, Glasgow City Council v Fox Cross Claimants*. Reviewing the pay practices through an audit or diagnostic will be important to assess your own risks.

Q: How does market rate / benchmarking fall into the decision making (e.g. skill shortage in the market driving up salaries in certain roles/functions)?

As outlined above, market supplements or benchmarking can be used but should be reviewed to ensure that the national and local picture has remained the same. They can be risky practices if not considered in the round rather than as individual issues to be resolved. For example, other roles may also have national shortages but have not been reviewed. Always provide the supplements to everyone in the role. Keeping robust documentation is essential.

Q: To what extent should employers be looking beyond gender when carrying out pay analysis and proactively considering intersectional disparities, for example where gender intersects with ethnicity, disability or age?

Legally at present gender is the only consideration for equal pay. However, in *Mr Alpha Anne & Others v Great Ormond Street Hospital for Children NHS Foundation Trust [2026]* the EAT held that the post-transfer arrangements could amount to indirect race discrimination, rejecting the argument that TUPE prevented the Trust from addressing the pay disparity. Under the Public Sector Equality Duty there is a legislative requirement to reduce inequality so an equality Impact Assessment should consider other protected characteristics where possible.

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Q: In terms of asking for salary history - will it not be appropriate to ask how much they were paid in the last job, so that they could potentially agree on a spinal point within the salary range (provided at advert stage)? As this is still a common practice. Can this also become a equal pay issue if the two workers in the same band (grade) in the identical job has two different spinal point agreements at their start dates?

It is increasingly considered good practice to avoid relying on salary history when determining starting pay. Historically, evidence shows that men are more likely to negotiate higher starting salaries, and basing pay on previous earnings can inadvertently perpetuate existing pay inequalities rather than reflecting the value of the role itself. While employees can lawfully start on different spinal points within the same grade, employers should be able to clearly justify those differences. Where individuals are doing the same role and pay differences cannot be objectively explained, this can give rise to equal pay and pay equity risks. Where there are more than 5 increments in a pay band this is unlikely to stand up to scrutiny. If it is common practice to appoint to the bottom of the range this should always be the case, unless objectively justified and business reasons are kept.

EU Pay Transparency Directive

Scope and applicability

We're a UK-headquartered business. Does this apply to us?

Not directly. Great Britain operations stay under the existing Equality Act 2010 regime; the Directive only binds your entities, employees or hiring based in an EU member state, under that state's national law. Worth flagging: EU colleagues will gain comparator pay rights and pay-secrecy protection that UK colleagues won't have, which can create friction across a mixed UK/EU workforce.

Which workers actually count towards the 100, 150 and 250 thresholds?

Broadly defined: full-time, part-time, fixed-term, temporary agency, platform and on-call workers are generally in scope; genuinely self-employed contractors usually aren't. Apprentices, trainees and domestic workers vary by country, so headcount should be checked against local transposition, not assumed from the Directive text.

What counts as "pay" for these purposes?

Ordinary basic or minimum pay plus any other consideration received because of employment, cash or in kind, so benefits in kind and variable pay count too. Data foundations need to reach beyond payroll base pay into total reward.

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Does this apply to public sector employers as well as private ones?

Yes, the same size-based thresholds apply to both. A few states are moving on the public sector first: Flanders has already drafted public-sector-only transposition ahead of its wider private-sector law.

Our EU country has not transposed the Directive yet. Are we off the hook there for now?

Not safely. The 7 June 2026 deadline has passed for most states, delay exposes the state to infringement action, and some Directive provisions may apply directly regardless. Building to the Directive's substance now, then adjusting once local law lands, avoids doing the work twice.

Hiring and pay-setting transparency

What exactly do we need to disclose to job applicants?

Starting pay or pay range must be disclosed before interview or in the advert itself, and salary-history questions are banned. The exact mechanism, advert versus another pre-interview point, varies by country and should be checked locally.

Are the salary ranges we publish legally binding ceilings we can never exceed?

No, they're a transparency obligation, not a pay cap. They do need to genuinely reflect real pay-setting criteria, which still have to be objective, gender-neutral and defensible if challenged.

Can our employees ask what a colleague doing similar work earns?

Yes. Workers can request their own pay and the average, by gender, for equal work, and employers must proactively remind them of this right. Pay secrecy clauses are banned outright.

Doesn't answering a comparator pay request risk breaching data protection law?

It shouldn't, if aggregated properly: the obligation is met through gender-and-category averages, not named individuals. The one real risk is a category too small to anonymise, worth fixing now with a minimum group size before disclosure.

Reporting obligations

When do we actually have to start reporting, and how often?

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250+: annual, first report by 7 June 2027. 150–249: every three years from 2027. 100–149: every three years from 2031. States can set lower thresholds or shorter cycles, so confirm the applicable trigger per country.

We operate in several EU countries. Do we report once at group level, or separately in each one?

Separately, per country: the obligation sits with each local employing entity, not the group, the same way UK gender pay gap reporting works. One shared job architecture and data foundation keeps that consistent without repeating the exercise from scratch each time.

How do we decide what counts as one "category of workers" for the per-category gap?

Workers doing the same work, or work of equal value, judged on objective, gender-neutral criteria: skills, effort, responsibility, working conditions, including soft skills. Every other metric depends on getting this categorisation right.

The 5% trigger and joint pay assessment

What actually happens if one of our categories shows a gap of 5% or more?

Three conditions have to be met together: a 5%+ gap in a category, no objective justification, and no fix within six months of the report. A gap that's explained or resolved in that window doesn't trigger the assessment, so the six months after submission matter as much as the number itself.

What if we don't have a union or works council in a particular country?

The Directive still expects cooperation with worker representatives; national law sets out an ad hoc mechanism where none exists. Worth mapping now which entities have no representative structure, rather than building one under a six-month clock.

Verify against local transposition before using this answer with a client: the specific mechanism each relevant country uses where no standing worker representative body exists

What are the actual penalties if we get this wrong?

Uncapped compensation (back pay, damages, interest) with the burden of proof shifted onto the employer, plus separate, country-specific fines for non-compliance with the reporting and audit obligations themselves.

Verify against local transposition before using this answer with a client: the specific fines and sanctions regime in each relevant country, which sits on top of individual compensation claims

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Practical readiness for a UK-headquartered group

Do we need to align our UK and EU pay approaches, even though the Directive doesn't reach our UK operations?

Not legally, Great Britain stays under the Equality Act regardless. In practice, two visibly different standards for one workforce creates friction, especially competing for talent against EU-standard employers, so most groups are building one global framework now.

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