Equal pay reform: the right diagnosis, but too complex a remedy?

Despite 2025 marking the 50th anniversary of the Equal Pay Act 1970 coming into force, the gender pay gap remains stubbornly high. Office for National Statistics figures for April 2025 put the headline gap at 12.8% (*www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2025*).

Recognising that the current equal pay framework is excessively complex, costly and slow, the government has published a detailed consultation on modernising equal pay and pay discrimination law in Great Britain (*www.gov.uk/government/consultations/equal-pay-and-pay-discrimination*). The consultation has three objectives: preventing pay discrimination; protecting women, disabled, ethnic minority and outsourced workers effectively; and making disputes easier and cheaper to resolve.

For anyone who has faced the unenviable task of advising on the current regime, the proposal to fix it before extending it is welcome. However, the risk is that in pursuing this goal, the government may make the regime more, rather than less, complicated.

The proposals

The consultation sets out a two-phase package of reforms, beginning with measures to strengthen and streamline the existing equal pay system before extending protections more broadly.

Phase 1. In order to reduce complexity and cost within the existing equal pay regime, the government is proposing to:

- Require employers to publish pay and conditions information in job adverts or, where there is no advert, provide these details in writing to candidates before interview. The precise requirements would be set out in regulations.

- Make equal pay audit orders the norm where a tribunal finds an equal pay breach, by removing most of the existing exceptions.

- Require tribunals to order a non-discriminatory job evaluation scheme alongside the order for an equal pay audit.

- Reinstate an optional statutory questionnaire for pay discrimination disputes. This is intended to promote early resolution and ensure that claims are better informed and more targeted.

- Establish an Equal Pay Regulatory and Enforcement Unit (the unit) to improve pay discrimination enforcement through the targeted use of its powers and by adopting a preventative approach. The unit could require:

  - the disclosure of evidence before a formal investigation;

  - a job evaluation scheme and/or equal pay audits as part of its investigations; and

  - responses from those subject to inquiry recommendations, including implementation updates.

- Launch formal reviews of the procedural rules for pay discrimination claims, and of the operations of the independent panel of experts, to identify and address inefficiencies and incentives that have perverse effects.

Phase 2. Once satisfied that Phase 1 has fixed the existing system, the government would seek to ensure that race and disability pay discrimination are taken as seriously as sex discrimination. The regimes would remain distinct, with equal pay claims continuing to relate only to sex. Race and disability claims would be levelled up by introducing contractual modifications, mandatory equal pay audits and job evaluation schemes, and comparator claims where work is "rated as equivalent" or of "equal value".

The equal pay regime would, in turn, permit hypothetical comparators in two narrowly defined situations: successor comparisons, where a claimant is replaced by a better-paid employee, and cases in which an employee's terms are improved after the appointment of a higher-paid worker of the opposite sex performing equal work. Tribunals would also be given discretion to extend time limits where it is just and equitable to do so.

In addition, all parties to outsourcing arrangements, including principals, intermediaries and service providers, would be required to take all reasonable steps to uphold pay equality in their contractual arrangements.

The details matter

The government's diagnosis is right: the current regime is too complex, too adversarial, and fails to meet the needs of employers and employees. However, reform sold as simplification must be judged against that standard. The success of the proposed reforms will turn on detailed policy decisions that the consultation leaves open.

Timing and tribunal capacity. Fixing the current system first is the right instinct. The consultation highlights that there are over 10,000 equal pay cases each year, making this one of the largest areas of complaint in the employment tribunals, with some taking a decade or more to resolve. This is before changes under the Employment Rights Act 2025, particularly those relating to unfair dismissal, harassment and time limits, filter into an already overburdened tribunal system (*see feature article "Employment Rights Act 2025: rights, rules and remedies", www.practicallaw.com/w-049-2018*). That raises the prospect that phase 2 could be a long way off, leaving the groups it is designed to protect waiting a long time. Greater clarity on what constitutes "fixing the current system" for the purposes of triggering phase 2 would therefore be welcome.

The risk of increased complexity. Simplification is a headline objective of the consultation, but several of the proposals could increase complexity. Much of phase 1 is new, not least obligations regarding job adverts, job evaluation schemes and a regulator able to compel disclosure, with the cost falling largely on employers. Multinational companies will also need to consider alignment with the EU's Pay Transparency Directive (*2023/970/EU*) if they are to implement a single process that complies with two different regimes (*see feature article "Pay Transparency Directive: lifting the veil", www.practicallaw.com/w-040-9054*).

Audits, evaluations and settlement incentives. Another example of a measure that may increase, rather than reduce, complexity is making tribunal orders for equal pay audits far more likely on a finding of breach, while also triggering a requirement to conduct a job evaluation scheme. The government notes that, to date, only one equal pay audit has ever been ordered by a tribunal, and argues that the proposed changes are targeted as they would apply only to employers found to be in breach. However, removing almost all of the tribunal's discretion could encourage employers to settle individual claims early to avoid an audit, and the broader organisational change that follows. Unless the unit is sufficiently funded to have a real deterrent effect and promote better pay practices, pay structures that give rise to a claim may therefore remain unexamined.

The statutory questionnaire. The reintroduction of the statutory questionnaire is a promising idea. Questionnaires were previously available for all discrimination claims but were repealed in 2013 as a deregulation measure. The proposed new questionnaire is intended to be simpler and would be supported by employer guidance. However, pay discrimination claims, especially equal value claims, are often complex precisely because the dispute turns on inherently fact-specific comparisons that a standard questionnaire cannot easily resolve. The effectiveness of the new questionnaire is likely to depend on its design. If it is too detailed, it may become too burdensome; if it is too simple, it is likely to fail to elicit the information needed to support early resolution.

Race and disability claims. Phase 2 raises similar concerns about simplicity. Rather than extending the equal pay scheme to race and disability, the government intends to keep the regimes separate. Race and disability pay discrimination claims would be updated with certain equal pay features, including contractual modifications to match a comparator's terms and equal pay audit obligations on employers that are found to be in breach. The choice of comparators would also be extended to include "equal value" and "rated as equivalent" claims. This is likely to make claims more complex and increase the delays that the phase 1 reforms are intended to reduce. In addition, employers face the difficulty of having to identify pay disparities using race and disability data that they cannot compel employees to provide.

Outsourcing and supply chains. The outsourcing proposal also promises to have a wide impact. It would impose a regulatory duty requiring every entity in an outsourcing chain to take all reasonable steps to ensure pay equality for outsourced workers. The unit would enforce breaches of this duty. A breach would not give rise to compensation; instead, the entity concerned could be required to take specified steps in future. In practice, this will require all entities in the supply chain to carry out greater due diligence into contractors' and suppliers' pay practices, even though that information is typically commercially sensitive.

Next steps

Employers and their advisers have a real chance to shape the new equal pay regime by responding to the consultation, which is open until 27 October 2026 (*see box "Actions for employers"*).

Mark Kaye is a partner, and Harriet Willis is an associate, at Mishcon de Reya LLP.

Actions for employers

In response to the government's proposals, employers should:

- Review whether their recruitment processes can accommodate prospective pay transparency requirements.
- Consider whether existing job evaluation and pay-setting arrangements are robust and well documented.
- Prepare for increased requests for pay information and the possible return of statutory questionnaires.
- For multinational businesses, assess how the UK proposals may interact with their obligations under the Pay Transparency Directive (*2023/970/EU*).
- Review outsourcing and supplier due diligence, particularly where outsourced workers may perform comparable work.
- Consider responding to the consultation before it closes on 27 October 2026.