Acas evidence to the Women and Work Commission

1. Introduction
1.1 This paper presents the evidence collected by Acas on our experience of organisational issues in relation to equal pay. It focuses on the barriers to progress in this area, which are reflected in the low level of demand for Acas support in equal pay reviews. Our evidence reveals that financial constraints constitute a major stumbling block to progress because they create conflicting demands not only between employer and employee, but also between employee groups, and within and between trade unions.

1.2 In addition to the main body of the report we have included three short appendices on:
- Research methodology;
- Acas experience of equal pay in local government; and
- A case study of an Acas advisory project on equal pay.

2. Knowledge and awareness of equal pay
2.1 The management of pay including job evaluation, grading and equal pay are important concerns for Acas. In 2002, we trained 50 senior advisers to facilitate equal pay reviews within companies, in conjunction with an EOC campaign on the issue. However, the expected flood of enquiries never happened. And if anything the level of interest has waned still further over the intervening period, despite efforts made by Acas operational staff to stimulate interest.

2.2 One reason for this lack of progress is the continued lack of awareness of equal pay coupled with apparent confusion about the nature and intent of the legislation. Calls to the Acas helpline and the experience of Acas advisers reveal not only low levels of enquiries on the issue of equal pay (well below 1% of calls to the national helpline concern equal pay) but also a misunderstanding of what it involves. Advisers on our helpline report that of
the calls that do come in on the subject many are from men seeking equal pay with male comparators. As one helpline manager noted, “calls tend to fall into two camps, those from drivers with no female comparators, and carers, tending to have no male comparators.” There remains a lack of understanding that equal pay must be based on sex discrimination. Helpline advisers also report an unwillingness on the part of women who may have a case, to take the issue up with HR, as well as a lack of awareness of the complexities of the subject.

2.3 Workplace advisers also report similar misunderstandings by trade union stewards who interpret equal pay as fair pay, again often comparing pay and conditions between two men. And a proper understanding of equal value is even less common.

2.4 In addition, we have also identified confusion, particularly in the voluntary sector, over the difference between internal benchmarking of jobs, in other words a job evaluation, and benchmarking pay with external organisations and sectors.

3. Attendance and interest in training events
3.1 Acas offers a range of training events and talks aimed at providing delegates a detailed understanding of the law and good practice. However, it is difficult to attract employers to training events that specifically focus on equal pay. In 2003/4, of the 12,929 delegates attending Acas conferences and seminars, just 46 delegates attended a training event or conference concerning equal pay. Acas has run half day events but found that those attending were predominantly new HR staff sent by local authorities, consultants, and SMEs that had a specific problem with one element of their pay structure with equal pay implications, such as company cars.

3.2 Generally, therefore, equal pay is covered as a short session within broader topics. As one adviser put it: “Most employers are interested in
compliance, though the public sector tends to want more and the private sector complains that we spend too long on equal pay. They are concerned about what it opens up”. Our advisers delivering training courses report a general negativity towards equality issues. “Employers complain of equality overload. If you bring up equal pay, employers start complaining about pregnant workers, and the burden of sex discrimination legislation generally”.

3.3 Acas is not generally asked to run in-house sessions on equal pay. Where we do run sessions, it is often in relation to an ongoing dispute on pay and conditions. In London, one senior adviser ran a two hour session with the trade union on equal pay audits, and found a high level of awareness of EOC materials. In fact there seems to be a level of awareness in the capital of EOC materials, but this does not translate into further action, for reasons discussed below.

4. Employer motivation for addressing equal pay
4.1 Motivation for action on equal pay is triggered by a number of factors, including: threat of legal action, or following a tribunal claim; as part of general employment relations issues with unions eg. realisation that the payment system is out of date, or a new job has been created that does not fit into the current structure; pressure from a new HR manager that says “we are skating on thin ice, we need to take action”; or, as in the case of Wales, the requirement by the Welsh Assembly for Assembly sponsored bodies to carry out an equal pay review.

5. Equal pay reviews
5.1 Acas Wales has experienced the greatest interest in equal pay reviews largely motivated by the Welsh Assembly Directive that required Assembly sponsored bodies to complete audits, that were to be carried out independently and ratified by Acas. Over a period of four months we were involved in 12 equal pay audits in companies with between 20 and 200 employees. Most had carried out an audit themselves, and identified
potential problems by the time we contacted them. They had put job evaluation schemes in place in partnership with managers, trade unions or employee representatives.

5.2 The Acas adviser went through a check list covering distribution, grading structure and where women sat. Virtually everywhere lower grades were predominantly female, with the situation in reverse for higher grades. This was the trend though not true of all bodies we looked at.

5.3 Although plans put forward by the bodies involved did, by and large, encompass best practice in terms of process, in most cases it would have taken between four to seven years to eliminate pay differentials. This was acknowledged as too long by the organisations in question, but because of the cost implications the various bodies had to apply to the Assembly to ask for money earlier. As yet, however, the Welsh Assembly has not made additional funding available.

5.4 The EOC in Wales and Acas are planning a joint event in March with a session on equal pay aimed at private sector employers, and are expecting around 35-40 participants. The aim of the event is to raise awareness and give plain advice that can help their businesses be more effective while complying with the law.

5.5 In other parts of the country, we have been approached by organisations from both public and private sectors seeking information on equal pay reviews, but companies have not followed through for a variety of reasons discussed below. Anecdotally, we have spoken to employers that have carried out audits internally and “behind closed doors”, meaning that audits are not independently verified and if the results have serious financial implications employees are none the wiser. It means that instead of overhauling the entire pay system employers can identify hot spots and gradually amend them at the next pay round.
5.6 The proposal for a new public sector duty on gender equality to be included in the forthcoming Equality Bill, looks likely to increase responsibility of the public sector throughout the UK to carry out equal pay reviews.

6. Job evaluation
6.1 Employers are far more likely to tackle equal pay as part of a more general job evaluation exercise, and Acas has extensive experience in supporting and encouraging employers through the process.

6.2 Acas facilitates large numbers of job evaluation exercises each year, many of which unearth issues around equal pay. Our advisers work with employers to identify the most effective way of dealing with inequalities in the pay structure taking into account what a particular employer is capable of dealing with. Although Acas recommends that employers should implement analytical schemes, as these are the only schemes that will hold up in a tribunal, it will work with employers to introduce non-analytical schemes if an employer is unwilling or unable to take on a more complex approach. However, we will always make it clear in writing that this is a ‘stop gap’ and that it cannot be used as a defence in an equal pay case.

6.3 Some form of external help with job evaluation is important for various reasons, not least because those sitting on the working group carrying out the job evaluation exercise may be affected by the outcome, and also because employers sometimes find the results at odds with their expectation of where jobs should be and want to tweak job descriptions to favour a particular worker. The value of third party intervention is that it brings an objectivity and an impartiality to proceedings, and provides an intermediary who can challenge assumptions about what is often an emotive issue.
7. Types of inequalities that occur

7.1 Acas experience of unequal pay is predominantly related to occupational segregation, with male dominated areas commanding higher wages, or where the wage level is the same, the but male dominated occupations having more access to bonuses and allowances. In addition, women also tend to be found in lower grades and lower down within grading bands themselves. But we have also consistently found examples of women doing jobs with similar job titles to men but on less pay, and this is particularly true at director level.

7.2 Examples that our advisers have come across of potential equal value claims include:

Private sector
- Women doing electrical circuit work paid less than warehouse staff;
- Women painters in a toy manufacturing company being paid less than male packers and pickers;
- Red leaders (painting the outside of ships) paid more than administrative staff.

Public sector
- Women cleaners paid £7,000 less than men cleaning cars;
- Male gardeners paid more than caterers or cleaners because of attendance allowance;
- Male refuse collectors paid more than street cleaners because of dirt money and bonuses for leafleting;
- Personnel assistants paid around £2,000 less than male chauffeurs although they were more qualified than the men.

7.3 One adviser also noted that HR came out as a female dominated salaried job that was consistently underpaid compared with other management functions.
8. Why do inequalities in pay systems occur?

Influence of market rates
8.1 Employers will often pay what they perceive as necessary to get the right person. Depending on when they were recruited employees may find themselves on very different pay rates for the same job, something that can affect both men and women. However, when asking employers about differential rates between women and men in the same job, particularly at director level, employers tell us that they cannot recruit men unless they pay market rates, whereas women are more likely to settle for less for a variety of reasons.

Historical legacy
8.2 Advisers also identified historical factors influencing unfair pay structures. One manufacturing company paid predominantly male weavers higher rates than other groups because it used to be the most difficult job. But since the introduction of new machines the skill required was far less.

Lack of a systematic approach to pay
8.3 One of the key problems identified by Acas staff is the absence in many companies of a systematic approach to pay. In some companies pay may be driven almost solely by performance bonus schemes, in others there may be no structure at all, and no mechanism for setting rates for new jobs.

8.3.1 Pay systems frequently get out of sync because individual managers insist on exercising discretion on the way they reward employees, whether this be to resolve a specific staffing problem at a given point in time, or as a way of rewarding exceptional work. A manager might reinvent a job title and give a pay rise to a worker he/she wants to retain; or fund an increase in
wages through bonuses or overtime paid out of a budget not meant for wages. The knock on effect may have long term implications that are not taken into account.

9. Barriers to tackling organisational inequalities

9.1 Financial implications
9.1.1 The greatest barrier for employers in both private and public sector is the financial implication of carrying out an equal pay review or even a job evaluation exercise. When Acas work with employers we are always careful to explain that if an employer is going to embark on a job evaluation exercise they need to ensure that there is money in the bank to rectify any problems. If they carry out a review with guidance from Acas, that review must be transparent. The findings, therefore, are available to employees, and if the company then fails to act on its findings it is immediately open to equal pay claims where inequalities in pay have been uncovered. This fact alone stops many employers taking even the first step to examine their pay structures. As one adviser observed, “half the companies we talk to don’t even have enough for the annual pay rise”. One regional director at Acas noted that “the margins in manufacturing are so narrow that any hiccup may mean work is taken off shore”.

9.1.2 Another cause of the equal pay bottleneck is where a union has pushed for a full job evaluation exercise for the entire workforce and the employer will agree to some sections but says it wants to exclude one area for financial reasons. In one case we were involved with, the trade union was forced to reject the employer’s offer and the whole job evaluation exercise was dropped.

9.1.3 Although the moral argument for equal pay is widely accepted, the economic argument tends to win out. Many employers, therefore, prefer to take their chances rather than open up a Pandora’s box of equal pay.
9.1.4 The failure to enforce equal pay cannot be ignored as an influence in this decision by employers. Equal pay legislation has been around for 30 years and yet a relative minority of employers have been affected by it, consequently, taking your chances is seen as the better option by a large number of employers.

9.1.5 Although in larger cutting edge organisations, a business case can be made for equal pay in terms of being an employer of choice, for smaller organisations, that tend to put more emphasis on short term financial costs, equal pay is seen largely as an additional cost to the company, and potential threat to jobs, and the cause of resentment amongst those staff that will lose out.

9.2 Harmonisation
9.2.1 A key issue in the public sector, but also in parts of the private and voluntary sector is the complexity involved in harmonizing different pay systems. In local government the single status agreement that commits local authorities to merging the pay and conditions of all workers across the sector has raised a number of problems in relation to how to deal with jobs established as equal value, but which have historically been paid according to quite different criteria. For example, in one local authority that is in the process of implementing the single status agreement, two jobs that potentially compared as equal were those of refuse collectors (all men) and street cleaners (predominantly women). The refuse collectors were on a set rate for the round, set days and set streets for a set amount. If they did the work in five hours they would get paid the same amount as if it took them seven hours. It was “job and finish” ie paid for the task. They also got bonuses for lack of complaints, and dirt money. Some teams did not replace men when they left and shared the additional money between them.
9.2.2 Street cleaners picked up litter, were on an hourly rate and had no bonuses. There was no way of telling the hourly rate for the men. So in terms of pay systems the comparison was not like with like.

9.2.3 The local authority has the problem that if a bonus is paid to one and not the other it cannot take the bonus away, because on a collective level this might lead to strike action, on an individual level this could be breach of contract, and if it pays the bonus to the other group on what basis does it pay it? The weight of litter they collect? And where do they find the money to pay for it?

9.2.4 In this particular case, the HR director presented the information on the pros/cons/difficulties to the senior team. Their response was that they would wait and see what was happening with proposals for a regional assembly, because they might not have responsibility for changes in the long term. This highlights a more general problem around future uncertainty emerging from modernisation of public services and proposals for future mergers. Some organisations have recognised the need for a review of pay structures but have put plans on hold until they know where they will sit within it.

9.2.5 The tension between male and female dominated unions can also act as a barrier to real progress. In one privatised industry, a number of job evaluation schemes were undertaken to harmonise the industrial and non-industrial grades. An equal pay working party was established but the industrial and non-industrial unions did not have a good working relationship and were representing the very different needs of their respective members. The industrial union represented a predominantly male workforce on better rates. Ultimately, the lack of progress in the joint working forum resulted in the white collar union pressing ahead with a new pay and grading scheme for white collar employees and using the threat of equal pay claims to increase pay rates for its female members.
9.2.6 Although there are unions that are pushing for equal pay on a national level, it is our experience that union representatives do not generally raise equal pay in its own right. It could be argued that some trade unions use equal pay issues pragmatically as a lever in the pay round, but do not push it further. However, in some instances there has been resistance to promotion of equal pay altogether. This is, in part, a result of their duty to represent all their members, and the difficulty that they face in balancing everyone’s interests, especially where male workers fear their pay will be eroded, through red circling, because of financial constraints. However the predominance of male representatives is also a factor. Because as a rule, employers do not look outside the pay roll budget for funding, there are almost always winners and losers where equal pay is concerned. Our experience is that both employers and trade unions constantly find themselves in a position where they are faced by opposing demands of significant sections of the workforce, and for obvious reasons do not want to raise women’s pay by depressing male wages.

9.2.7 The question for organisations is which part of the budget do they reduce to equalise women’s pay if funding is limited or not available? If they red circle men’s pay, it can take years for women to catch up, particularly when inflation is low, and they may still be vulnerable to equal pay claims. Additionally, red circling also creates potential problems for industrial relations because it gives out a message that men are overpaid when this is not the case, nor was it the aim of equal pay legislation to reduce male wages.

9.2.8 The result is that inaction and the status quo is favoured leaving women at the bottom of the pile once again.
10. **Lack of pressure and leverage by women**

10.1 One reason why there is not more pressure from women in the workplace on equal pay appears to be, in part, due to a lack of transparency of pay systems. Our experience shows that women often don’t pick up on discrepancies in pay unless they are doing exactly the same job, and often they don’t know what other people are being paid.

10.2 Another reason for women not taking action is the fear of rocking the boat. As one adviser said, “I would only expect women to take cases if they were leaving the organisation so had nothing to lose. If you plan on staying you don’t want to upset the apple cart and make yourself unpopular. But by taking an equal pay case there may be male workers that find their jobs red circled and lose out.” In addition, pressure is put on women informally and formally in the public sector not to pursue claims because it would result in cuts in services, and jobs. There has been a case of a local authority having to pay compensation to women for undue pressure exerted in this way.

11. **Pay systems management**

11.1 Advisers have found that some employers do not understand their own pay systems. This may be because there are three or four people with responsibility for different elements of the pay system, if they have a system at all, and there is no one person with an overall understanding of how the different elements fit together.

12. **Lack of senior management commitment**

12.1 One problem, constantly cited by advisers, was the lack of continuity in organisational approach to reviewing equal pay. Often, a new HR manager would raise the issue with senior management and set the ball rolling, have an initial meeting with Acas, but in what was often a long drawn out process the person driving the initiative would move on leaving a vacuum because of a lack of buy in from the top of the organisation.
13. Conclusions

13.1 Training and awareness raising

13.1.1 There needs to be more emphasis on awareness raising and training given the continued lack of awareness of the meaning of equal pay. Events should be state funded and ideally organised in partnership with a range of organisations that encompass the EOC, trade unions, Acas, CBI, CIPD and small business lobby to give events their broadest possible appeal.

13.1.2 Equal pay audited companies could be kitemarked. This could be part of IIP or other existing workplace standards.

13.1.3 There is a need to encourage greater transparency of pay systems.

13.1.4 There is a need for training on how to set up and manage pay systems.

13.2 Targeting

13.2.1 There should be a focus on awareness raising in start ups that have no pay structure in place, to enable them to get it right at the beginning.

13.2.2 Target SMEs with simple things that they can do to stop the pay gap getting bigger -this might involve a wider arrangement involving subscription arrangements.

13.2.3 Equal pay audits should be focused on areas of centrally determined pay, the public sector, and local authorities.

13.3 Equal pay health check

13.3.1 Employers could be offered equal pay health checks, in the same way that the DTI and Acas are offering free Information and Consultation Health
Checks. It could be part of tribunal advice where an employer has faced an equal pay claim.

13.3.2 Health checks would offer a pre stage to an equal pay review and would check, for example, whether the employer had a pay structure in place, whether there was transparency, whether there was a system for adding new jobs, whether they record the gender of employees in the pay roll etc. Based on this an employer could start to put procedures in place, independently or with help. They might be more willing to take this first step as the least threatening form of intervention. It would also offer an important source of data on the state of existing procedures on equal pay, and pay systems more generally.

13.4 Equality representatives.
13.4.1 Acas supports consideration of proposals for equality representatives. Consideration might be given to their having similar status to health and safety representatives, ie legal status that would give employees confidence to be effective and speak out in the workplace in what can sometimes be a hostile environment. We believe their presence might facilitate negotiation and joint working on a local level to develop action most relevant to individual organisations.

13.5 Current legislation
13.5.1 The nature of current legislation and its enforcement presents employers with what many see as an impossible choice, that does not allow employers any space for manoeuvre in terms of introducing changes more slowly. Once a problem is identified an employer is legally required to rectify any inequalities immediately. On the other hand, if they keep quiet the lack of any real threat of enforcement for those that don’t raise their head above the parapet is relatively small. The result is that employers generally choose to do nothing even where they would like to make improvements for the future.
13.5.2 If legislation allowed a phased implementation, possibly mutually agreed, then many employers might be more willing to make changes to the system without fear of having to have all the required finances in place immediately. There should, however, be a clear timetable for implementation.
Appendix 1

Capturing Acas’ experience

The evidence presented is based on Acas’s collective knowledge and experience of working with employers, trade unions and employees on equal pay. In order to capture this knowledge we conducted interviews with senior advisers, assistant directors, and one regional director, across England, Scotland and Wales, who between them have many years experience of all areas of Acas’ work. Senior advisers are the officials responsible for carrying out detailed advisory work within workplaces, as well as running external training courses for groups of employers, and organising employer networks to discuss a range of HR issues including equal pay. In addition, we also contacted our helpline staff by email and asked them to send us qualitative information about queries from employers, trade unions and employee representatives, and employees themselves regarding equal pay.

Interviews with advisers, assistant directors and a regional director, were unstructured in nature, allowing participants to identify and prioritise key relevant issues and concepts. In particular the interviews focused on:

- Experience of equal pay reviews, job evaluation, and training on equal pay;
- Why employers took action in relation to equal pay and whether it was dealt with in its own right or as part of more general employment issues;
- What barriers exist to the implementation of equal pay;
- Examples of good practice; and
- Future change needed to bring about effective implementation of equal pay at an organisational level.
Appendix 2

Equal pay claims in local government

A growing area of Acas’ work in recent months has been in relation to actual and potential equal pay claims in local government as a result of local authorities introducing non-discriminatory pay and grading structures in the wake of a nationwide single status agreement merging blue and white collar negotiating machinery. In the north east, in particular, Acas has had substantial involvement with several local authorities working with trade unions to put together compensation packages for thousands of female employees with potential claims for back pay. Where a claim could be made to an employment tribunal, but the parties involved prefer to resolve the matter without referral to a tribunal, either party can approach Acas, under its statutory duty, to seek help in reaching an agreement that is legally binding and precludes the employee pursuing the matter through the judicial process.

To date this has resulted in settlements for over two thousand employees and several million pounds worth of compensation, though these costs are far lower than those that might have been faced by local authorities had multiple equal pay claims gone to tribunal. The benefits of addressing settlements in this way include:

- Giving women their rights rather than them having to fight for them;
- Saving the council and, therefore, the exchequer the cost of tax and national insurance that would have to be paid in a tribunal award, as well as additional costs involved in defending a tribunal case;
- Avoids clogging up the tribunal system; and
- Settlements are reached in agreement with trade unions where appropriate.
Criticism of such settlements has been that women could get more if they took the case to tribunal, particularly because settlements may not reflect the full amount of back pay entitlement. However, because women do not have to pay tax and national insurance on awards they may, in fact, come away with a very similar amount to what they would have won from tribunal.

In a minority, though rising number of cases, however, female employees in local authorities in the north east have chosen to take their cases to tribunal. Since Acas has a statutory duty to provide conciliation in the majority of claims brought to tribunal, the rise in these cases has significantly increased the equal pay profile in Acas’s individual conciliation work.

In some of these local authorities, Acas has worked with employers and trade unions in its advisory capacity to facilitate problem solving on the full range of issues involved, including: devising new pay models; salary protection; and, bonuses and allowances.

Our experience of working with councils shows a range of different approaches to implementing single status. Progress across local authorities varies considerably in terms of time lines they are using, with some aiming to pay compensation and implement the new job evaluation scheme this year, others in 2006 etc. Some are paying compensation, but delaying implementation of new JE schemes. This has left them vulnerable to equal pay claims, and in one case a local authority has opted to make a second round of compensatory payments to those involved. In addition, across local authorities the same jobs have different job titles, with different points and therefore different pay, which explains to a certain extent why action has been so slow. There is no ‘one size fits’ all for local authorities, and each local authority must develop its own approach to tackling the problem.
Appendix 3

Case study: Acas and Equal Pay

Background
Acas provided assistance to a large public sector company with just over a thousand workers and located across a number of locations, including one abroad.

The workforce of the organisation is entirely non-manual and covers those with both high academic and professional skills and those with lower skills. Labour turnover is low, 50 per cent of the workforce has worked for the organisation for more than three years. Slightly more women than men work for the organisation (54% women: 46% men). An equality audit revealed a gender pay gap, and between 2001 and 2002 a new agreement was developed between management and unions to establish a method of progression, in the main to address inequality in pay. The agreement provided that all women workers within certain bands and with more than five years’ service, would get double progression up the pay scale. Initially 37 workers were identified as being beneficiaries of the arrangement. However, with the arrival of a new HR manager, a more detailed analysis of the possible impact of the agreement revealed that more than double this number were due to benefit.

The cost implications were considerable, and the analysis raised concerns that implementation might increase pay inequality. The union rejected the reanalysis of the statistics and relationships between the management and union deteriorated. The parties reached deadlock.
How Acas assisted the organisation?
Both parties trusted Acas, and were confident that it would help resolve their difficulties. The union officer already had a positive relationship with Acas and felt that the employer might be willing to share with Acas further analysis of the impact of the 2002 agreement. The HR manager had no previous contact with an Acas officer, but reported that she ‘immediately felt comfortable’ that she was dealing with people who ‘knew what they were doing’. Neither party considered using an alternative consultant. The officer met both parties jointly four times, and also met with them separately.

What Acas brought to the parties
Acas was successful in restoring discussions between the parties and their intervention was welcomed for this reason. Parties reported high levels of trust in the officer; that he helped allay suspicions between the parties; and made them more open minded to the ideas and views of the other side. Most importantly, both felt that there was a genuine exchange of valid information regarding pay – statistical and otherwise – due to presence of an independent third party. This provided a sound foundation for restoring negotiations on the future agreement. There was a general belief that if Acas had not been involved ‘they would never have got where they were’ and would never have achieved a final agreement on the issues.

A new agreement was concluded following Acas intervention which was felt by both parties to have lead to an improvement in the employment relations climate including more mutual trust. The agreement addressed some of the key equality issues giving women, who were due to receive an increment, the right to receive it one year early, although their entitlement was then to be frozen for the next year. Other amendments were made to those with long service, and an appeals panel, comprising both management and union representatives now hear appeals regarding grading.