

Managing equal pay risk by ensuring good job evaluation practice



Introduction

All employees expect to be paid fairly and indeed have a legal entitlement to “[equal pay](#)”. In essence, this means that the pay of employees across an organisation must be the same if they are engaged in the same kind of work or work deemed to be of the same value/demand compared with other employees of the opposite sex¹ –

Equal pay for work of equal value

The Equality and Human Rights Commission makes this important point - **“Equal pay claims often result from an organisation’s lack of awareness, or assumption that they understand and provide equal pay.”**

In the NHS, a bespoke analytical Job Evaluation Scheme (JES) is used to enable organisations to assess the value (often referred to as job weight) of jobs by measuring them against common weighted criteria.

The NHS JES has been tested by employment tribunals and found to be adequate in delivering equal pay **but only** if it is implemented correctly at local level. Tribunals consider the JES to be of the same legal standing as other terms and conditions of service. Therefore, each employer must ensure that pay band determination by job evaluation/matching in their organisation is compliant with the NHS Job Evaluation Handbook.

The NHS JES is overseen by the NHS Staff Council who delegate the work of maintaining the scheme and ensuring its applicability to its Job Evaluation subgroup (JEG).

Employers are reminded that following the rules and processes outlined in the NHS Job Evaluation (JE) handbook is of utmost importance in protecting the organisation from legal risk and should be acknowledged in organisational risk assessment. Good JE practice also increases confidence in the outcomes and should reduce the number of grievances lodged and reviews requested by post holders as well as the negative impact of staff feeling aggrieved that their job is not properly recognised and valued.

¹ Staff have a legal entitlement to equal pay if employed on like work, work rated as equivalent and work of equal value to a comparator of the opposite sex. At present there is no case law regarding non-binary or transgender employees and the comparators they may use.

Ensuring good job evaluation practice

This guidance is designed to help organisations adopt good practice which is vital as we restore services and return to business as usual at this time of potential industrial conflict. It concentrates on four key areas:

1. Partnership working.
2. Using technology to undertake JE panels.
3. Building and maintaining capacity.
4. Ensuring robust and consistent outcomes and managing risk.

1 The importance of partnership working

As mentioned above, good JE practice can increase confidence in pay outcomes and reduce the number of grievances lodged and reviews requested by post holders.

Organisational commitment to partnership working is key to this and is a fundamental tenet of the NHS JES generally. At local level this can include, but is not limited to:

- Ensuring there is both a staff side and employer side JE lead with adequate administrative resource available to them.
- Supporting local staff sides to identify new JE panellists. Staff side panellists do not need to be accredited union reps although some local policies do stipulate this requirement. Staff side JE panellists should be nominated by and accountable to a local union or staff side.
- Ensuring that staff side panellists, including those in clinical roles, are released from their substantive roles to undertake JE panels. (NB JE panel work should not be counted in returns of Trade Union Facility time).
- Ensuring that any JE training is available to and has a good balance of staff side and employer side practitioners, by actively encouraging and supporting staff side to attend training and giving them paid time off away from their duties to do this.
- Ensuring that the operation of the JE scheme is a regular agenda item for discussion at your local Partnership Forum or Joint Negotiating Committee.

2 The use of technology in Job Evaluation

During the early days of the COVID-19 pandemic, JEG issued guidance to the service to help local organisations move to virtual panels as a way of ensuring JE work continued. Now it is up to organisations to decide, in partnership whether to return to face to face panels, continue with virtual panels, or whether to have a system with both, where JE practitioners can choose what suits their circumstances. Hybrid panels may also be considered as long as panellists feel comfortable and safe in relation to job matching.

Virtual or hybrid panels need to be set up so that they mirror face-to-face panels with full and comprehensive discussion between all panel members. The following

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principles should be followed to maintain the integrity of the JES and not create risk into the established process.

- The panels should operate in partnership. JEG recommends a minimum of two staff side and two management side practitioners.
- Consensus should be reached about the outcome. The usual issues of avoiding bias, suspending personal opinions should apply and nobody on the panel should be too close to the job being assessed.
- The chair may have to adjust the pace of the panel to ensure that each member is fully involved. Online meetings can often miss the cues that a participant in the meeting isn't keeping up.
- Records and an audit trail should be kept. This is very important should the job be involved in a future equal pay claim.
- All outcomes should be subject to consistency checking.

Carrying out panels virtually can add a layer of complexity and it is important that:

- All practitioners are trained and competent in relation to job matching and the use of the technology used.
- New and less experienced panel members should be offered the chance to shadow more experienced JE practitioners.
- The effectiveness of virtual panels should be reviewed regularly whilst in place. It will be important to assess whether they are as effective as face-to-face panels, particularly with respect to robustness of outcomes.

3 Maintaining capacity to ensure compliance

The JES handbook emphasises the need for employers to maintain capacity to undertake job evaluation **effectively and according to the requirements detailed in the NHS JE Handbook.**

This requires an organisation to ensure it has sufficient numbers of trained and competent JE practitioners from a wide range of jobs and occupations from across the workforce, including senior clinicians and not just Human Resources staff. As the purpose of JE is to mitigate the risk of equal pay claims, it is also of vital importance that organisations document and can defend the decisions that its JE panels make.

Who might be interested in becoming involved in local JE?

Local JE panellists help to ensure fair, transparent and equal pay across an NHS organisation. Being involved in panels is an opportunity to work with others from different teams to build a consensus and learn about the roles of staff across the NHS.

JEG has noticed a decrease in the number of staff side reps coming forward to be trained to become JE practitioners. The scheme depends on good partnership practices and panels where staff side play an equal role. Panellists will need

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adequate time off for attending training and panels. This time does not come from local facility time and does not need to be reported as such.

A panel member will develop a variety of skills:

- attention to detail
- asking questions and working with others
- raised awareness of bias and the need for objectivity
- assisting in keeping records of panel decisions
- reporting back to their local staff side or union branch depending on local lines of accountability (for staff side).

Training

The NHS Staff Council only endorses the training that has been designed by JEG and is delivered by JEG approved trainers in a systematic and robust manner, which ensures high standards and quality.

Training for organisations in the devolved administrations is organised locally with central support. For example, in Wales organisations have their own endorsed trainers and can if required use trainers from across the other organisations in Wales. Some training is organised centrally.

In England, the training is [organised through NHS Employers](#) and is offered virtually so organisations can either commissioning a whole course or book places on a centrally run. ICSs and ICBs may wish to consider commissioning training for the organisations within their geographical area on a collective basis.

There is a cost to providing this training and we commit to ensuring that the cost of training remains as competitive as possible. The cost of investing in job evaluation in your organisation assures you that your job evaluation practitioners are trained to deliver robust and defensible outcomes for the organisation, which is ultimately, a significant cost benefit in relation to the issues that organisations could face in relation to equal pay claims.

JEG recommends that newly trained panel practitioners should have the opportunity to shadow other panellists or take part in practice panels so as to develop their confidence.

Record keeping

Should an equal pay claim be heard at employment tribunal, the employing organisations would be expected to provide full documentation showing the process that was gone through to determine pay levels. This audit trail can easily be produced where an organisation has a good record keeping process and/or utilises software to capture decision making.

Local JE practices must therefore ensure that:

- It can be demonstrated that the information provided to panels is of good quality and is agreed by role holders and line managers as necessary (see next page).

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- JE Panel decisions are fully annotated, give sufficient detail to explain the decisions made and are held securely for as long as the post exists in the workforce.

Some organisations choose to purchase software for external providers to assist their JE work, others use internally generated systems and spreadsheets.

Remember – a member of staff can ask for the JE report for their role at any time and needs to be able to understand from reading it what information was considered by the panel and the decision-making process they went through to achieve their outcome.

A word on temporary solutions

It is important that any temporary solutions to capacity issues are discussed and agreed in partnership. Any temporary solutions agreed should be time limited and include an action plan aimed at solving capacity issues.

JEG recommends the following solutions are considered in this order –

1. **Solve the problem internally** - this would include commissioning more training and making sure that everyone recognises the importance of job evaluation. NHS Employers offers JE training, currently including job matching and consistency checking. Job analysis / evaluation and refresher training should be offered from 2023.
2. **Working with neighbouring NHS organisations to share resources.** In this case there would need to be assurance that the practices adhere to the JE Handbook, outcomes are of an adequate standard and that the consistency checking is done within the employing organisation.
3. **Use external/third-party consultants.** This should be a very short-term solution and only used when all other options have been exhausted as it opens up the process to significant risk under your local governance processes. Third party consultants may not necessarily be compliant with the requirements of the NHS job evaluation scheme, especially the need to work in partnership. JEG does not deliver training to third party consultants and is not assured that they have the most up to date JES information and advice. (see Box 1 on using external/third party consultants)

Box 1

The risks of using external/third-party consultants

The use of external or third-party providers to match or evaluate may introduce risk to the integrity of the JES in the organisation.

The following areas of concern have been passed to JEG from NHS organisations who have resorted to using external organisations to train staff or undertake job matching, analyst or evaluation panels on their posts:

- Consultants are not NHS Employer approved trainers with the current virtual courses and content.
- Panels being commissioned externally are not appropriately trained and have not completed NHS Employers training.
- Lack of evidence that panels are run in true partnership as there is no mechanism for this to happen. (NB panellists who have some tenuous link to a trade union is not what is meant by partnership).
- Evidence to support the levels given for factors is either insufficient or not relevant and therefore not sufficiently robust to defend banding outcome challenges.
- Consistency checking does not follow the process as per the JES handbook and is completed without staff side involvement.
- Because of the relationship between the NHS organisation and the third party provider, it may be difficult to present their work as having the necessary objectivity required for staff to have confidence in the process and outcomes

Evidence suggests the continuance of such arrangements increases the risk of poor job matching and evaluation outcomes, which could have far reaching consequences and exposes the organisation to equal pay risk. It should not therefore be relied upon as anything more than a short-term solution.

As organisations look to ensure their JE practices are robust it is recommended that they complete the self- assessment checklist, in partnership – see link below – to assess their current compliance and draw up an action plan for any necessary improvements.

In particular JEG advises organisations to

- Action plan to build capacity locally so that third party providers are no longer needed
- Promote the role of the JE panellist and recruit volunteers from within the workforce.
- Determine the training requirements are for new and existing panellists.
- Carry out a quality assurance check on any banding outcomes undertaken by external panels during this interim period.

4 Ensuring quality and consistent outcomes

An often overlooked but vitally important part of good JE practice is ensuring that outcomes are of a high standard and consistent across the employing organisation.

This can **only** be done by completing quality assurance and consistency checking in partnership.

Chapter 14 of the JE handbook covers quality and consistency and says – In order to comply with equal pay legislation, it is important that organisations are assured of the quality and consistency of their job evaluation work. Consistency is vital to ensure equal pay for work of equal value and to reassure staff that their outcomes have been achieved fairly.

Employers must work in partnership to ensure that their JE practices pay sufficient attention to quality assurance and consistency checking. This includes but is not limited to:

- The accuracy and currency of job information (see box 2).
- The constitution of panels ensuring there is sufficient diversity and workforce representation.
- The competence of panellists.
- The availability of comprehensive decision logs and robust record keeping.

On consistency checking itself, the handbook reiterates the need to check outcomes (for each factor as well as the job as a whole) for consistency against:

- Other matches completed by the same and other matching panels.
- Other local matches within the same occupational group* and job family.
- Other local matches within the same pay band.
- National profiles for the same occupational group* and pay band.
- Check total weighted score and rank order of jobs for the organisation.

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To ensure fairness and eliminate any bias it is essential that consistency checking is conducted in partnership.

Box 2

Keeping job descriptions up to date

All jobs change and evolve over time and it is vital that the requirement for equal pay for work of equal value is met when this happens.

Consequently, employers need to be assured that job descriptions are regularly reviewed and reflect the full scope of the responsibilities, skills and knowledge required for a job. The ideal opportunity for this to happen is during the annual appraisal process

Where changes occur, posts should go through the JE process to ensure pay banding is appropriate.

Job information considered by job evaluation panels must be agreed by both the post holder and the line manager.

Conclusion

Just like organisations have to consider and report on mitigation of other legal risks, JEG recommends that JE practices are noted in operational risk registers and Boards are apprised of the adequacy of mitigations locally.

The Equality and Human Rights Commission paper, '[Check for Risky Practices](#)' provides useful information, summarised in the bullet points below, about the risks of poor job evaluation practice:

- A job evaluation scheme – and the way in which it is operationalized - which is not kept up to date may not provide a defence in equal pay claims.
- If job evaluation procedures are not followed for new or changed jobs – or if up-to-date evaluation records cannot be produced - a tribunal may not accept that a job has been adequately evaluated.
- Providing regular training on job evaluation will help to ensure skills and knowledge are fresh and reflect best practice.

Only by ensuring good NHS JE practices that comply with the JE handbook and can be evidenced by successful self assessment, can organisations be confident that they are truly mitigating this risk.

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Changes to the health and care system in England

On 1 July 2022, the Health and Care Act came into effect. It fundamentally changed the way NHS health and care is planned and delivered in England and enables more collaboration with health and care organisations in a given geographical integrated care system (ICS), to work in a more joined up way.

For job evaluation, there is the opportunity for groups of individual organisations to develop working relationships more tangibly, by considering how JE might work across an ICS, with harmonised policies, shared training and sharing of consistency checking data through CAJE or equivalent systems.

ICS and ICB colleagues are reminded of the need to work with the NHS trade unions in partnership on such an approach.

While local systems and ICBs may want to play an active role in oversight of JE health within their provider organisations, it is important to note that organisations within an ICS cannot simply rely on the JE outcomes of other ICS organisations. Organisations would need to ensure the quality and consistency of a decision not made internally. Liability for equal pay sits with employing organisations individually, so they need to manage their own equal pay risk, have ownership of their pay banding outcomes and therefore **must** be able to defend their pay banding outcomes.

Advice and resources from JEG

- There are a [range of materials](#) to help organisations in their JE work.
- [Virtual panel guidance](#).
- [Self-assessment checklist](#).
- Information on signing up for our [new virtual courses](#).
- Advice on using [template job descriptions](#) or JE outcomes from other organisations.