



**EHRC Consultation on Draft Codes of Practice on
Equal Pay**

UNITE – the Union Response

March 2010

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Introduction

This response is submitted by Unite, the union. Unite is Britain and Ireland's largest trade union with 1.5 million members across the private and public sectors. As the union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors, we have extensive experience of representing men and women workers who are faced with discrimination on all grounds particularly in pay. We believe that this code of practice is an important tool for union reps as well as employers to ensure action to prevent and tackle the existing inequality in pay for women workers.

Unite the Union Response - Key Points

1. Unite welcomes the consultation on the Equal Pay Statutory Code of Practice.

We have found the current code of practice very useful and our officers and reps have used the EOC code of practice to deal with cases, in collective bargaining, and to assist in preventing discrimination in pay. The future code of practice for the Equality Act must at least be as good, practical and positive a tool as the current one. The production of the new code also gives the opportunity to improve on it.

2. We are very concerned that throughout the code, there is very little mention of the vital role of trade unions, including no reference to the role of union equality representative, a position clearly included in the ACAS Code which could be cross-referenced. All the major equal pay cases have involved trade unions – such an oversight is unacceptable.

3. The current code supports action to promote equal pay, and to prevent legal cases being necessary. This code should adopt a similar approach.

Unite the Union Response – More Detailed Points

In this response, in addition to the points above and in support of the TUC submission, we first highlight overarching points that apply to the whole code, and then raise more detailed specific points under each Part/section, following the format of the response document. This is followed by more specific and detailed legal points on the response form provided, attached as a separate document.

OVERARCHING POINTS COVERING THE DRAFT EQUAL PAY STATUTORY CODE OF PRACTICE

1) ACCESSIBLE FORMAT AND LAYOUT

While it is helpful to have the references to clauses in the Act at the side of the relevant paragraphs, the layout does not clearly separate legal sections of the act from commentary on the legal sections. We would suggest that the legal quotes should stand out being highlighted or put in a box. Also, where actual case examples are used it is important to reference to the actual case as a footnote for further reading. Clear headings and sub-headings make it much easier to find subject areas particularly when dealing with cases.

The code needs a clear Contents Page covering all sections after the Foreword. The code needs an Index and a Glossary of Terms .

For clarification “**the Equality Act**” should be used throughout the document instead of “**the Act**”, as it is likely that sections will be referenced separately, and having to constantly check back to other parts of the code for clarification is very unhelpful.

Certain sections of the code are repeated and should be deleted. For example, paragraph 2 on page 53 and paragraph 54.

It would be helpful to have a further information section that includes ‘Where to go for advice’ mentioning trade union representatives.

2) FOREWORD

As said above, the codes do not refer to the role of trade unions in combating discrimination in pay and it is important that this becomes clear from the start of the document. Therefore, the first paragraph on page 2, could say “it will make it easier for employees and their representatives ie trade unions to use the code to deal with and tackle unequal pay in the workplace.”

It is vital that the code sets out from the start that unequal pay is unfair, illegal and should be avoided rather dealt with after it has taken place. This has been mentioned on page 53 but there needs to be a positive and strong statement at the beginning of this section.

As explained above the vital role of trade unions should be clearly stated in the code therefore, “trade union representatives” should be inserted in the second paragraph of page 3, after “advocates”.

3) INTRODUCTION

This section is too long and needs to be summarised since it does not manage to explain the basic concept of equal pay in a user-friendly manner. The introduction in the EOC Code of Practice on Equal Pay is a good example. Following our suggestions below and the attached, the introduction can be condensed into 8 or 9 bullet points.

It is unnecessary to cover all areas of discrimination covered in the Equality Act when the purpose of this code is equal pay. Therefore, the second and third paragraph on page 5 and the first paragraph on page 6 need to be deleted.

The second part the second paragraph on page 6 is over complicated and unnecessary therefore, the section “Because of this ... entitled Equality of Term” needs to be deleted.

4) PART ONE

The title of paragraph 4 on page 19 should read “Sex equality clause” since this is the subject matter. Please see detailed comments attached in separate document, and TUC response.

5) PART TWO

This section is about good practice and needs to be positive and encourage employers to put in measures to avoid and deal with the gender pay gap. Therefore this section should not start with the negative sentence that it will take another 20 years to close the pay gap.

Paragraph 3 on page 53 is a repeat of paragraph 2 and should be deleted.

As said before the role of trade unions needs to be included in this Part, particularly, involvement of trade unions in establishing good equal pay practice. We strongly regret that the Act does not provide for mandatory pay audits in all sectors but it does contain the power for a future Secretary of State to take action, should insufficient progress be made. This power could lead to mandatory reporting on the gender pay gap by businesses with more than 250 employees if progress has not been made on a voluntary basis by 2013. The Code should ensure that employers are encouraged to start the process in the run up to this date. The recent EHRC recommendation is clear, that increasing transparency is crucial to addressing the difference between what women and men earn, and cross-referencing to this report would be of great assistance. The report on pay transparency also states that “equal pay audits were seen as being the most revealing approach, as well as being strongly supported by some as a way of identifying and addressing pay gaps.”

There were many good examples of pay audits in these reports that can be used in the code as best practice.

Good practice recommendations should be in bold for example, under paragraph 6 on page 54 “The EHRC recommends (that) all employers carry out regular equal pay audits”.

Please now refer to separate completed response form for more detailed and specific legal points. Thank you.