

Review of BBC Equal Pay Audit

Introduction

1. The BBC has recently undertaken an equal pay audit for the purpose of identifying possible areas where it may be infringing equal pay principles. The scope of the audit is staff employed on staff grade employment contracts. Whilst this includes some on air staff, many of those are freelance or employed on different contracts. The BBC is proposing to review its on air staff as a separate exercise.
2. This is not an internal audit; the BBC has chosen to invite two expert and independent organisations, Price Waterhouse Coopers (PwC) and Eversheds Sutherland (International) Ltd (ES), to carry it out. Essentially PwC has obtained extensive information about salaries, the gender balance in jobs and related matters and has assessed it and suggested possible lines of investigation. PwC has also identified a sample of cases where a man and woman are employed on like work or jobs which have been evaluated as equal and who, in view of their similar qualifications and length of service, might be expected to be receiving the same pay but where one is in fact paid 5% more than the comparator. ES has then considered and analysed detailed records concerning these staff in order to try to determine why the pay differs, and more particularly to see whether there is any evidence to suggest that the difference in pay may involve breaches of the principle of equal pay.
3. I have been asked to undertake a review of this exercise and to consider the BBC's response to the findings and recommendations in the report. More specifically, I was asked to do the following:
 - 3.1. Approve of the detailed methodology deployed to ensure it is fully compliant with the Equality and Human Rights Commission (EHRC) guidance and best practice.
 - 3.2. Review the draft report and discuss its findings with ES and PwC and then with the Director General of the BBC.
 - 3.3. Consider the BBC's proposed management response to the findings to ensure that it provides an appropriate and considered response in a suitable time frame.
4. To facilitate carrying out these tasks I have held meetings with BBC management, principally in order to understand the factual background and the context in which the audit has been undertaken. I have also held on-going meetings with PwC and ES to discuss and consider the best way of marshalling and analysing the information about the BBC's pay practices and policies so as to test whether or not they may reveal discriminatory pay practices. These discussions have led to the collation of extensive information which enables gender comparisons to be made on a wide range of matters. This information has been considered by ES in the production of the report. I have been assisted in my work by Andrew Blake of counsel, very

experienced in the equal pay field. I am extremely grateful for his valuable input and suggestions.

Summary of Conclusions

5. My conclusions can be summarised as follows:
 - 5.1. The methodology adopted by ES is in accordance with the EHRC guidance and best practice. Indeed, in certain respects it goes beyond the guidance.
 - 5.2. The conclusion in the report that there is no systemic discrimination against women in the BBC's pay arrangements for these staff is, in my judgment, amply borne out by the statistical evidence and is further supported by the analysis of particular cases carried out by ES.
 - 5.3. The audit report sets out the statistical basis for these conclusions, and I have commented on them in more detail in the body of my review. However key points are:
 - 5.3.1. 18,210 employees fell within the scope of the audit, of which 17,658 are in jobs that include men and women. Of these:
 - 5.3.2. 15.1% are in jobs where there is a 5% or greater pay gap in favour of women;
 - 5.3.3. 16.4% are in jobs where there is a 5% or greater pay gap in favour of men;
 - 5.3.4. 68.5% are in jobs where the gender pay gap is less than 5% (including jobs where there is no pay gap).
 - 5.4. Of the 575 jobs in the new job profiles, there are 123 where the median pay difference in favour of men is 5% or more and 100 where the median pay difference in favour of women is 5% or more.
 - 5.5. Analysis of the statistics by reference to job grades shows six grades where the median pay gap is in favour of men (one of which is grade 2 with only six jobs) and four where it is in favour of women.
 - 5.6. If one delves below the bare statistics and considers the median for particular jobs, the pattern is very variable showing pay gaps in favour of men as well as women in jobs in different grades and with a different gender mix. This pattern does not support an inference that there is discrimination in the BBC's pay structures.
 - 5.7. The audit identified that in the lower grades, women are on average paid more highly, and in the upper grades men receive the higher pay. Looking at the range of jobs where the median is in favour of women, the reason for that is not immediately obvious, but it is very unlikely that the explanation is their sex. The reason for their higher pay is surely the product of a complex set of factors unconnected with their sex. In general, where the pay median favours one sex there are proportionately more members of that sex in the highest quartile of the

pay range. That is true for both men and women. There are likely to be good non-sex based reasons for this. Where the median pay benefits men in essentially similar ways, the starting assumption at least ought to be that, as with women, the higher pay is the result of the interaction of a host of factors that have nothing to do with sex. There is no justification in assuming that the difference is likely to be the result of sex discrimination.

- 5.8. In addition, decisions or recommendations on pay are made by a large number of managers and above across the BBC (42% of whom are women and 58% men). It is inherently unlikely that they would all, or even to a significant extent, be biased in favour of men.
- 5.9. Nonetheless it is right to say that the report does not, and could not, categorically establish that there is no discrimination in relation to groups or individuals. The nature of an audit is that it is a general analysis of the pay situation; it is not a comprehensive assessment of all the jobs.
- 5.10. The audit has highlighted a number of areas where procedures need to be improved, in relation, for example, to the more consistent application of principles for making pay decisions across the BBC and in record keeping relating to contracts and pay decisions. This is not an issue of discrimination but one of fairness. These failings apply across the board, affecting both men and women alike. A lack of consistency or transparency in the application of the principles for determining pay understandably breeds suspicion about the process and generates a sense of unfairness which in some cases may be justified. It is important that procedures are tightened up. I am aware that a review of these issues is underway as part of the BBC's wider review of pay and terms and conditions.
- 5.11. The BBC has accepted the recommendations identified in the pay audit. It was in fact aware that it needed to adopt more rigorous procedures even before the audit was commissioned and had set in train a series of changes which I am satisfied will wholly meet the concerns expressed in the report.
- 5.12. In order to keep the outcome of pay practices under review, and to track the changes resulting from the operation of the new procedures, I would recommend that another audit is carried out in two to three years time, and that there are regular audits conducted thereafter.
6. I have had the opportunity to discuss the audit and my review with the Deputy Director General, and I will be speaking to the Director General in the coming days.

On-going Terms and Conditions Consultation in the BBC

7. The BBC is currently undertaking, and is wishing to implement, a series of steps affecting its relationship with staff. It is seeking to simplify and introduce greater consistency and fairness into the pay system by dramatically reducing

the number of job titles. This is described as the new Career Path Framework (CPF) and is designed, at least in part, to enable staff to identify more readily than they could in the past, where any future career progression may lie. At the same time, and ideally in tandem with this new CPF structure, it is seeking to make certain changes to the contractual terms and conditions of employment including, but not limited to, changes in pay structures. These are the subject of on-going consultation with the staff and recognised trade unions.

8. To bring about the new career structure, the BBC has conducted a series of exercises. First, it has undertaken a fresh job evaluation of the work carried out by its staff. The purpose of a job evaluation is to identify jobs which, although different in nature, can properly be considered to be jobs of equal worth. Provided it is independently and objectively carried out, it is a major – but not sufficient - step in seeking to eliminate the risk that jobs may be paid by reference to the sex of the job holder.
9. The BBC has graded its jobs in accordance with a job evaluation scheme for many years. However, the recent exercise has involved a thorough reconsideration of each job title. Under the old system there were some 5000 job titles, many comprising only a handful of staff. They had been classified into ten grades from 2 to 11 together with a number of linked grades (which had historically been agreed with the trade unions).
10. The new job evaluation, which has only very recently been completed and has not yet been implemented, was carried out with the active participation of Willis Towers Watson (WTW) who are acknowledged experts in this particular field. All of the jobs save for the two Senior Management levels were assessed in the 2017 exercise. However, the exercise only included those on staff contracts and therefore excluded contractors and freelance workers. The effect of this is that those on-air personnel who do not have staff contacts were not within the scope of the exercise. None of the observations in this paper are intended to relate to that group.
11. The job evaluation exercise involved assessing the jobs by reference to six objective factors. This methodology was based on a job evaluation system which was tailor made for the BBC some ten years ago by a predecessor of WTW. It was based on a well-known job evaluation system which had been used widely in the public sector and the civil service known as the JEG's methodology. This involves posing 33 questions with respect to each generic job title in relation to six core qualities: accountability; human relations; problem solving and creative thinking; freedom to act; impact; and knowledge and skills. The trade unions were consulted during the course of the exercise and indeed I understand received some equal value training to enable them more effectively to contribute to the process and to probe and question the provisional assessments. However, the ultimate decision as to how the new structure should be framed was for management.
12. The previous 5000 jobs have been reduced to around 600. Inevitably, therefore, there were numerous jobs which were brought together under the heading of a new generic job title. The new jobs were then evaluated to

determine into which grade they should fall. They were classified into grades 2 to 11, as under the old system. In most cases, the job titles remained in the same grade although exceptionally that was not the case. Moreover, as part of that exercise it emerged that some individuals did not sit happily within the description of the new job title to which their job would have been allocated and their job titles (and occasionally as a consequence, their grades) were changed accordingly.

13. The second exercise the BBC proposes to undertake is to reduce these current grades to six falling within what would be the new broad bands A to F. Jobs which formerly fell within grades 2 to 9 would fall within bands A to D, whilst grade 10 is commensurate with new band E and grade 11 with new band F. The jobs have also been categorised into 25 job families. The intention is to map out a framework which is clearer and simpler to understand than the former system, and thereby to identify more clearly the potential career path which staff might wish to follow.
14. Third, again with the expert independent assistance of WTW, the BBC has set a market informed pay range for each job title, as well as a broad pay range for each band A to F (assuming it is adopted). The pay range for individual jobs has been based on extensive data about the levels of pay within the particular market. The aim is to pitch pay at a level which will secure and retain appropriate and well qualified staff. This means that even within a job grade, there may be a number of jobs which have a different pay range, although there will be also a broad overall pay range for each of bands A to F. It follows that jobs of equal worth (i.e. rated as equivalent under a job evaluation study) will not necessarily have the same pay range because the market requires certain jobs to be paid more than others. Provided the market itself is not tainted by sex, or there is a justification for paying a higher market rate – a point to which I will return – this is lawful.
15. Having established into which job title an individual will fall and the appropriate pay range, the final stage is to establish where along the pay range an individual should be placed. The BBC has developed new fair pay principles and a proposed framework to help manage that process in the future. In broad terms, every job has a detailed job description and the assessment would be made by reference to the particular knowledge, skills, experience and values required for the job. Workers who are still developing their skills will be paid in the lowest quarter of the pay range; the middle half of the range is for those who are experienced and have developed all the necessary skills; and the upper quarter is for those who have extensive experience, are extremely knowledgeable about their job and are relied upon as specialists in their field. There would sometimes be a departure from these principles.
16. Perhaps not surprisingly given the large number of people on staff contracts, placing them at the appropriate position in the pay range will take some time to complete. However, a start has been made to this process. For example, the BBC is identifying individuals across all job titles who still fall within the lower quarter of their job pay range notwithstanding that they have been in their post for a number of years and might have been expected to progress.

Where it is concluded – as in some cases it already has been - that their pay is not in fact commensurate with their knowledge, skills and experience, they will be placed higher in their job pay range.

Gender Pay Report

17. There is a statutory obligation on the BBC to produce a gender pay report. Essentially its purpose is to identify and declare the difference between the rate of pay for a relevant male and a relevant female, expressed as a percentage of the male rate. It is necessary to report both the median (the mid-point on a pay distribution table) and the mean (the average pay of all relevant males or females, as the case may be.) I have seen a draft of the report which shows that the BBC has a pay gap of some 9.3% (on a median basis). The reason is that there is an under-representation of women in the more senior jobs. The BBC assessed (using methodology suggested by its external expert) that of the 9.3% median gap, some 7.7% was explained by this factor. This pay gap is significantly lower – only just over half - of the national pay gap.
18. It is important to emphasise that the existence of a gender pay gap is not proof that the employer is in breach of the equal pay obligations. There will almost inevitably be a gender pay gap where women are under-represented in the more senior posts, both in relation to the median and the mean pay. The fact that proportionately more men are found in the more senior posts raises a legitimate question about why that is so. There are a number of potential explanations, one of which could in principle be discrimination in recruitment, perhaps historic. But even if that were the case, the gender pay gap does not demonstrate that men are remunerated more favourably than women where women are employed in jobs of equal worth. At best it points to the possibility that this might be the case. Since the gender pay review suggests that not all the gender pay gap can be explained by the relative proportions of men and women in different jobs, that raises the issue of what other factors may have contributed to the gap. The equal pay audit seeks to address that issue.

The Principles of Equal Pay: Equal Work

19. Aspects of the law of equal pay are surprisingly, and some would say unduly, complex. But the basic philosophy is clear enough. The principle underlying equal pay is that where a woman is employed on equal work as her chosen male comparator, she is prima facie entitled to enjoy equal pay, and indeed to be treated equally with respect to all terms and conditions of employment (and similarly for a man and a female comparator).
20. The concept of equal work is defined in the relevant legislation, the Equality Act 2010. The work is equal work if it falls within the definition of like work, work rated as equivalent under an appropriate job evaluation study, or work of equal value. A job evaluation study is “a study undertaken with a view to evaluating, in terms of the demands made on a person by reference to factors

such as effort, skill and decision making...the jobs in an undertaking.” Provided the study is thorough in its analysis and capable of impartial application, the employer will be able to rely upon it so as to defeat a claim from a woman who chooses to compare herself with a man employed on work which is rated more highly under the job evaluation scheme (and vice versa). The fact that the jobs may have been assessed as being equivalent had a different job evaluation scheme been employed is immaterial. (That may well be the case since job evaluation is not a science and ultimately it is a matter of judgment, in the light of the relevant job criteria, to decide where the boundary between two grades should lie.) Of course, if there are reasonable grounds for believing that the study was based on discriminatory evaluation principles, it cannot be relied upon.

21. Once the job evaluation study comes into effect, so does the equality principle. A woman is prima facie entitled to the same pay as a man employed on work of equal worth. However, she is not able to claim that she was employed on work rated as equivalent from any earlier date. Any claim for arrears of pay will have to be made on the basis of the earlier job evaluation, provided it was still considered to be sufficiently objective and independent.
22. In this case, as I have explained, the BBC has undertaken a job evaluation study in which the jobs have apparently been assessed in accordance with the principles of independence and objectivity which the law requires. I have not independently verified that, although I have been told in some detail how the evaluation was carried out. I would be extremely surprised if it did not satisfy the requirements of the law. The fact that jobs have been evaluated in this way is particularly important when considering the nature of the equal pay audit, for reasons I discuss below.

The Principles of Equal Pay: Material Factor Defence

23. Where a woman is employed on equal work with her comparator, there is a presumption that she should be paid the same. However, the presumption is rebuttable. The employer may still be able to justify paying the male comparator more if there is a material factor, other than sex, which provides an explanation for the difference in pay. The onus is on the employer to establish this defence.
24. There are effectively two elements or stages to the material factor defence. The first provides a defence to what is termed direct sex discrimination. If the employer shows that the difference in pay is genuinely the result of a material factor which is not sex, this establishes that the woman is not being paid less because she is a woman. Such factors as seniority, flexibility, responsibility and greater productivity provide examples of potential material factors. These in principle justify higher pay for the person holding that job, whether male or female.
25. However, even where the employer is able to rebut a direct discrimination challenge, the woman may be able to show that there is prima facie indirect discrimination arising from the application of the material factor. This occurs

where the factor relied upon to justify the difference in pay in fact adversely impacts on women so that it is less likely that they will be able to satisfy the requirement. Bonuses which depend on the employee working full time would constitute an example because fewer women than men work full time. Where that is the case, the employer has to go further and show that the factor relied upon to explain the difference in pay is justified; the law defines this as being a proportionate means of achieving a legitimate aim.

26. A particular example of a potentially justifiable material factor, notwithstanding that it adversely impacts upon women, is where a group which is predominantly male is paid more than a predominantly female group employed on equal work and the explanation is that this is necessary because of market forces. This defence is not always open to an employer. It is no answer, for example, where men do not exhibit any particular skill which is in demand. So cleaners and caterers have been able to compare their jobs with road workers or refuse collectors, and the employer has been unable to rely upon market forces to justify the difference. It is no answer to the women's claim simply to say that men in these jobs have traditionally been paid more than women. But where the male group display different and particular skills in short supply, such as engineers (who are predominantly male) the need to pay a higher rate to attract the requisite staff will be a justification for the difference in pay, notwithstanding the adverse effect on women.

The Equal Pay Audit

27. Unlike the gender pay report, there is no general statutory obligation on an employer to carry out an equal pay audit, although an employment tribunal may now require this as part of the remedy against an employer who is found to have been in breach of the equal pay principles.
28. The purpose of the audit, as identified by the EHRC is:
 - 28.1. to identify any differences in pay between men and women doing equal work;
 - 28.2. to investigate the causes of any differences in pay between men and women doing equal work; and
 - 28.3. to eliminate instances of unequal pay that cannot be justified.
29. It is worth pointing out that, whilst there is no specific obligation to carry out the audit, the decision voluntarily to do so will assist the BBC to demonstrate that it is complying with the public sector equality duty imposed by the Equality Act. This requires public bodies to have due regard to the need, inter alia, to eliminate discrimination in the exercise of its public functions, and these include functions in the field of employment.

The Methodology Employed in this Audit

30. I turn to consider the equal pay audit which I have been asked to review. The EHRC has produced guidance on equal pay audits, which includes a toolkit which sets out the following broad 5 step approach:

Step 1: Decide the scope of the audit and identify the information required.

Step 2: Identify employees carrying out equal work (in the BBC's case like work comparisons of staff performing the same job, and staff performing jobs which have been rated as equivalent).

Step 3: Collect, prepare and analyse pay data.

Step 4: Identify reasons for pay gaps and consider if those reasons are discriminatory.

Step 5: Develop an equal pay action plan to address issues highlighted in step 4.

31. The guidance then elucidates these steps in more detail. As it points out, equal work is the foundation of an equal pay audit. In this case the authors of the report have not needed to engage with that issue because of the job evaluation study recently completed. That exercise has to be read alongside the current assessment being made by PwC and ES. It was plainly appropriate for PwC and ES to accept the legitimacy of that study as amounting to compliance with step 2. In short, they have complied with step 2 by accepting and adopting the results of the job evaluation study recently completed by the BBC.
32. Step 3 has been conducted by PwC who have obtained a raft of information from the BBC which has been analysed in various ways. This includes obtaining information which enables them to calculate average pay for men and women in the sense of both median and mean pay, in relation to all job categories. The analysis includes assessing differences both in basic pay and total pay, as the EHRC guidance requires.
33. Step 4 involves the difficult task of seeking to determine the explanation for any pay gap. The EHRC guidance states that "as a general rule differences of 5% or more, or any recurring differences of 3% or more, merit further investigation". In this case, depending on the jobs titles or grades being considered, the statistics have shown that there are gender gaps in favour of both men and women, although it is more often in favour of men. The statistics have been analysed to see what light, if any, they cast on the reasons for pay differences, with a particular focus on grades or jobs where there is a gender pay difference of 5% or more. In addition, there has been a selective sample taken of comparators who are doing either the same job or jobs evaluated to be of equal worth, who on the face of it one might expect to be receiving equal pay, but where the man, or in some cases the woman, is in fact earning at least 5% more. These cases have been considered in detail to see what light, if any, they shed upon the explanation for pay differences and the processes by which pay is determined. For completeness, I would

add that the EHRC guidance refers to investigating areas where there are “recurring pay differences of 3% or more”. This might refer to differences recurring across the pay structure at any given time, or recurring within certain jobs or grades over time. I have seen no evidence of pay differentials of 3% or more which recur across the pay structure. In relation to whether such differentials recur in the same areas over time, this is the first audit of the new job profiles. In future audits the BBC will need to consider whether pay differences of 3% or more are continuing in some jobs or grades.

34. Step 5 requires action to be taken where it appears that there may be discrimination in the pay setting arrangements. In fact, however, a well-conducted audit can also highlight potential unfair pay practices even if there is no cogent evidence of discriminatory pay practices.

Compliance with EHRC Guidance and Best Practice

35. I am satisfied that the audit has been very thoroughly carried out and has complied with the principles suggested in the EHRC guidance and best practice. Indeed, in some respects, in particular the detailed comparison of specific jobs, it may be said to have gone beyond the strict requirements. There has, I am told, been no difficulty in PwC and ES obtaining from the BBC such information as they have requested. I have reviewed a sample of the comparators and the underlying documents which have caused ES to reach the conclusions they have. In my judgment they support the conclusions drawn in those cases.
36. I have also been in continuing discussions with both PwC and ES and have reviewed the draft report and made suggestions for clarifying and adding material. These suggestions have been adopted.

What is the explanation for pay differences?

37. I comment here on the key findings of the audit relating to the explanation for pay differences. There will classically be a whole range of reasons why a man employed in a particular job may justifiably be paid more than a woman and vice versa. But there are two particular explanations which will quite often explain the difference, or at least a part of it.
38. First, as I have indicated, even where jobs are in the same grade and have been rated as equivalent, they may be subject to different pay scales which reflect genuine market pressures. That will sometimes be an explanation for a difference in pay where jobs are compared across different grades.
39. A second potentially obvious explanation for a difference in pay is that the male comparator has received an additional payment not received by the woman (or vice versa). In general, the BBC pay system is not complex since there are few additional payments supplementing the basic salary. However, there is a London Weighting Allowance which is paid to all staff who fall within its terms, and also payments which are now called Flexibility Allowance payments and reflect the fact that a member of staff may need to be available at inconvenient times, such as where a story breaks and requires a journalist

and camera crew to be present at short notice. These are paid to both men and women where the requirement is imposed. As the audit report shows, a higher payment was made until 2008 and it was not taken away from those who were then in receipt of it. The report notes that the current payment does not disproportionately adversely impact upon women. The earlier payment probably does not either but even if it does, a payment of this kind would in principle be capable of justification. In any event this payment affects only a very small group overall, and its impact on the wider statistics is marginal. For these reasons, when looking at the question of equal pay, it is more helpful in this case to focus on the basic pay rather than the total pay.

40. The audit has identified across the board the median and mean pay differentials both with respect to grades and individual job titles. Areas have been identified where the pay differential in favour of men is 5% or more and vice versa. 12,103 staff (68%) are in fact in areas where the differential is less than 5%. Although both median and mean have been considered, the former is the more reliable. It is commonly used in analysing pay because it identifies the central tendency of the sample, showing the middle-most salary of a sample and therefore, unlike the mean, is not subject to the influences of any extremely high or low salaries at the top or bottom of the salary range. I have focused on the median in this analysis.
41. Looking at the differences by reference to job titles, there are 123 jobs where there is a 5% or greater differential in favour of men and 100 where it is in favour of women. It is true that the low numbers in some of these jobs makes this a very rough and ready exercise but it negates the notion that there is any systemic discrimination against women in the pay practices. This statistic becomes more reliable if we analyse jobs where the outcome will not be affected by small changes in the number of men or women working in them. I have looked at the position where jobs have at least 50 employees and the minimum proportion of both genders is at least 10%. The figures then show that in 12 jobs the pay median is 5% or more in favour of men and in ten jobs it is 5% or more in favour of women.
42. A consideration of the pay gap across the ten grades compels the same conclusion. There are six where the median pay gap is in favour of men (and one of those is grade 2 which is by far the smallest grade with only six job titles) and four where it favours women.
43. Moreover, if one looks below these headline statistics, the notion that there is any systemic or widespread discrimination becomes even harder to sustain. Within each grade there is a wide variety of jobs and a pattern of pay which, if one simply focuses on the bare statistics, is often difficult to rationalise. I draw some examples but many could be given:
 - 43.1. In grade 3, in two jobs women predominate to a similar degree; in one the median pay gap is 9.1% in favour of men and in the other it is 11.6% in favour of women.
 - 43.2. In grade 5, looking at two particular jobs, one employs five times as many men as women and the median pay gap is 7.7% in favour of

women, and the other employs over twice as many women, and the median pay gap of 3.4% is in favour of men.

- 43.3. In grade 8 there are two jobs with a roughly equal split of men and women; in one there is a median pay difference in favour of women of 15.6% and in the other it is 11.7% in favour of men.
44. In every job grade the median pay for particular job titles sometimes favours men and sometimes women. Looking at the range of jobs where the median is in favour of women, the reason for that is not immediately obvious, but it is unlikely that the explanation is their sex. One would be reasonably confident that on a detailed analysis of the reasons, they would be the product of a complex set of factors unconnected with the sex of the job holders. Where the median pay is higher for men in essentially similar circumstances, the starting assumption ought similarly to be that, as with women, the higher pay is the result of the interaction of a host of factors that have nothing to do with sex. There is simply no justification in assuming that the difference is likely to be the result of sex discrimination.
45. It is true that in the case of both men and women, the lack of detailed understanding of what drives the higher pay in particular grades means that it is not possible categorically to rule out the sex of the job holders as a possible explanation for some of the pay differences in particular job titles. One might think, however, that this is not an intrinsically likely explanation given that decisions on pay are taken across the BBC by a very large number of managers, over 40% of whom are women.
46. One feature which emerges from the statistics is that in general, although not in all cases, the gender with the higher median pay is disproportionately over-represented in the upper quartile. That is true for both men and women. That raises the question why this should be so. The comparative exercise undertaken by ES suggests that, so far as they could discern, there were in general good and cogent reasons for the pay decisions - although not always adequately documented - to explain the pay difference, and they had nothing to do with sex.
47. Of course, since pay decisions are inevitably influenced by the initial decision of individual managers, there is always the possibility of discrimination in relation to particular individual cases. An audit report of this nature could not be expected to identify them not least because it is not a comprehensive analysis of all jobs.

Indirect Discrimination

48. The audit report did find that typically pay was determined by a range of factors which were in principle justified and relevant to pay. Even if any particular pay practice had an adverse impact upon one sex, the pay differential would not be discriminatory. In that context I have in fact supplemented the report by looking at the market informed pay ranges for different jobs in cases where there are jobs performed predominantly by one gender. It has long been recognized that market forces can be tainted by

discrimination. One way in which such discrimination has, in some cases, arisen is where the market rate for jobs predominantly done by men has been higher than the market rate for jobs predominantly carried out by women, despite the jobs being of equal value (or rated as equivalent).

49. Most jobs at the BBC that have a significant number of employees have a reasonably balanced gender split. However, there are some which are predominantly done by one gender. To review whether there was a risk that the pay ranges for these jobs adversely impacted upon women, I asked PwC to provide an analysis of the pay ranges for jobs which were predominantly male or female (i.e. over 60% of one gender) and which had at least 50 employees. 36 jobs met these criteria. Looking at these jobs, there was no evidence that the pay ranges for the predominantly male jobs were consistently higher than for the predominantly female jobs. The picture was mixed: in some grades there were predominantly female jobs with higher pay ranges than predominantly male jobs, and vice versa, and in others the pay ranges were the same.

Procedural Concerns

50. The report has found no evidence from which discrimination could reasonably be inferred. What the report has highlighted are certain failures in procedure. There appears in the past to have been insufficient guidance directing those who make decisions on pay as to how pay should be set and thereafter increased; inadequate record keeping; and an inconsistent approach to carrying out appraisals, which could have a bearing on an individual's pay. This inevitably creates a risk that pay issues will not be consistently handled. But as the examples analysed in the report amply show, the problem is directed equally to men and women.
51. As a result of a failure of process, there will no doubt be occasions where an individual member of staff has not received the salary which his or her job performance merits because there has been no proper appreciation of the work the staff member has been performing. It would be surprising in an organisation as large as the BBC if there were not odd cases where a member of staff has a genuine grievance that he or she is not properly rewarded (although if proper procedures are in place this risk would certainly be reduced.) But the evidence suggests that, where this occurs, it is far more likely to be an issue of fairness than one of sex discrimination.

Removing Potential Unfairness: BBC Response

52. The BBC accepts the recommendations made in the audit report and agrees that it needs to apply more rigorous pay principles and practices in order to seek to eliminate potential unfairness in the system. If, and to the extent that, there is any unlawful sex discrimination, these changes should deal with that also. In fact, before the audit was commissioned, the BBC was alive to the fact that more rigorous procedures and guidelines were required. The most significant is the proposed introduction of the new pay policy and, as part of the new Career Path Framework and terms and conditions consultation, procedures for determining where individuals should be placed on the pay

range. I have set out the approach which is proposed to be adopted above. The exercise is currently being undertaken in relation to every member of staff. I have been told that the scrutiny of individual jobs is something which the BBC proposes should happen thereafter every six months in a process termed "Fair Pay Review." This is a manifestly fair system which should secure consistency and transparency. Of course, because there is always an exercise of judgment involved in determining the appropriate pay, there will be individuals who feel aggrieved at the decision. Potential conflicts will not disappear. But if the principles are properly implemented they should minimise cases of perceived unfairness.

53. Other changes in line with the audit report's recommendations have been taken. Annual appraisals have been carried out for some time but again it has been recognised that in the past there has not necessarily been consistency about the way they have been conducted, and the outcome has not always been recorded. The proposal is to introduce a level of consistency. As to the keeping of records, steps have been taken to ensure that they will be retained centrally in the future at the HR Shared Service Centre in Birmingham.
54. I am satisfied that there is a range of steps being taken which meet the procedural concerns expressed in the audit report.
55. In my judgment the BBC is adopting pay and personnel processes in line with best practice.

Recommendation

56. This pay audit has been a valuable exercise for the BBC. In order to keep the outcome of pay practices under review, and to track the changes resulting from the operation of the new procedures, I would recommend that another audit is carried out in two to three years time, and that there are regular audits conducted thereafter.

Sir Patrick Elias

3 October 2017