



Breaking free

- Notes to accompany the film:
- *The fight for equal pay in the prison service*

Written by the Public and Commercial Services Union

a TUC oral history project on equal pay



RECORDING WOMEN'S VOICES



The fight for equal pay in the prison service

Written by the Public and Commercial Services Union



THE BACKGROUND

The Prison Service in England and Wales employed staff in different occupational groups. Administrative, support and executive staff were mainly women, and numbered around 7,000. Prison officers and related grades were mainly men, and the largest staff group – around 40,000.

These staff were represented by different unions. Public and Commercial Services Union and the Prison Officers Association and had different terms and conditions (Prison Officers wore uniforms, worked a longer hour week and also many were on shift systems). The Prison Officers were on much higher salaries, up to £5,000 per year, even when hours and shifts were accounted for.

The Prison Officer pay lead could largely be traced back to an agreement reached in 1987 called Fresh Start, which included consolidating shift and overtime payments into basic pay. PCS demands for parity received some support, and was reflected in the famous Woolfe report published in 1991.

Despite years of meeting with management, reviews and even at one point a joint working party, no progress from management was forthcoming. The Prison Service agreed to consider this as part of their Pay and Grading review in 1994.

CLAIMANTS

The PCS lodged Equal Pay claims initially in January 1999:

- Administrative Assistants, Support Grade Band 2 Cleaners, Typists, Support Grades Band 1 and Band 2 – claiming Equal Pay with Operational Support Grades.
- Administrative Officers, Personal and Senior Personal Secretaries, Executive Officers and Typing Managers – claiming Equal Pay with Prison Officers.
- Higher Executive Officers – claiming Equal Pay with Governor 5 and 4 grades.

Management treated these staff as second class in relation to Prison Officers – for example, management used terms such as ‘front line’ and ‘back office’, and it was common for staff notices to refer to Prison Officers, even when the message was for all staff.

PAY AND GRADING AND JOB EVALUATION

As part of a pay and grading review, in 1996 the Prison Service developed their own customised job evaluation scheme (JES). This process used senior management and consultants. A scheme was developed and a rank order produced. Rank order is a job evaluation term, simply listing jobs according to their job evaluation score, with the highest scoring job placed at the top. The Prison Service Management Board endorsed both the JES and rank order, and confirmed this to staff in 1997. The rank order confirmed what PCS had been claiming for many years, broadly reflecting that:

- Administrative Assistants and Typists scores were similar to Operational Support Grades (equivalent to junior Prison Officers).
- Administrative Officers and Secretaries scores were similar to Prison Officers.

- Executive Officers and Senior Secretaries scores were similar to Senior Prison Officers.
- Higher Executive Officers score similar to Governor 4 and Governor 5 grades.

Therefore, despite the lower salaries of PCS members, the Prison Service's own job evaluation scheme confirmed that the work was of equal value to that done by higher paid Prison Service colleagues.

Rather than address this, the Prison Service embarked on a remarkable process of discrediting their own Job Evaluation Scheme (JES). Nevertheless, in July 2000 they used the JES to base the unifying of governor and management grades e.g. merging Governor 5 and 4 grades with Higher Executive Officers, albeit not equalising the salaries, and the mainly male governors remained on much higher salaries.

'Once it became clear that this new panel were ranking jobs in line with the previous job evaluation exercise, the work was abandoned'

When this inconsistency was posed to them – i.e. if the job evaluation scheme is no good how can it be used for a major management restructuring exercise? – their reply was that the scheme worked for management grades, but not non-management grades.

In 2001 the Prison Service revisited their job evaluation system, where a new job evaluation panel and consultant reconsidered the non-management jobs to amend the scheme as necessary. Once it became clear that this new panel were ranking jobs very much in line with the previous job evaluation exercise, the work was abandoned. In 2001 investigations by two sets of consultants, each reached the conclusion that essentially the 1997 job evaluation system was fine.

To conclude on job evaluation, which was central to the case, the Employment Tribunal appointed an independent job evaluation expert to evaluate around 50 jobs, a mixture of PCS administrative, executive, support and secretarial jobs and Prison Officer jobs. His final report in 2005 supported equal pay, and was in line with the initial 1997 Prison Service job evaluation outcome. (The PCS employed a job evaluation expert who recorded similar results).

When giving evidence to the Employment Tribunal in 2005, the Prison Service Chief Executive was asked if he would accept any job evaluation scheme which resulted in equality between the PCS grades and Prison Office grades, and he replied candidly, that 'no', he would not.

LITIGATION

The litigation proved to be lengthy, expensive and exhausting, due partly to the cumbersome legal process itself, but mainly due to the tactics employed by the Prison Service. Rather than negotiate a settlement, the Prison Service resisted at every opportunity, and lodged 11 appeals against decisions by Employment Tribunals, Employment Appeal Tribunal and the Court of Appeal.

Nevertheless slowly but surely the court decisions fell in PCS's favour, and by the end of 2005 the overall picture for the union was positive. There were three strands to the claims:

- The Prison Service offered what is known as a material factor defence – a justification for paying the grades different salaries. The Employment Tribunal met during April–June 2004, and heard from a host of Prison Service witnesses, including the Director General. Their decision found there was no material factor defense. The Prison Service appealed, and the Employment Appeal Tribunal met for five days over March and April 2005. They upheld the Employment Tribunal decision in our member's favour. The Prison Service sought leave to appeal to the Court of Appeal, and a decision was awaited.
- For the Higher Executive Officer applicants, the Prison Service argued that there was no sex discrimination, and hence they did not have to justify any pay differentials. The Court of Appeal ruled with the union in March 2005. The Prison Service sought leave to appeal to the House of Lords, which was granted.
- The third strand was Equal Value, and the Independent Job Evaluation Expert had supported the claims in his report. The Prison Service sought to have the Independent Expert's report thrown out, claiming it was incompetent. The Employment Tribunal considered this at a two-day hearing in July 2005, and ruled that the report be admitted. An Employment Tribunal hearing to consider Equal Value had been set for 22 days during January and February 2006.

This positive legal situation provided the backdrop for the Prison Service to meet the PCS and agree a settlement to the cases.

THE SETTLEMENT

In December 2005 and January 2006, PCS met the Prison Service 16 times, and a settlement was proposed, put to members in a ballot and accepted. The outstanding legal action was withdrawn.

The settlement was basically in two forms. Firstly significantly improved pay scales for many of the grades, and a commitment that future parity would be maintained. Secondly compensation for the claimants. These amounts were determined by grade and also how long ago the claim was submitted.

Full details of the settlement are available via larry@pcs.org.uk

Unfortunately the settlement was not good news for all grades, nor all members. For some grades such as the Administrative Assistant, once the comparators (Operational Support Grade) salary was reduced to take into account their longer working week and shift hours (reduction based upon a formula devised by the Employment Tribunal), these notional salaries were below the AA salary (a fraction above the minimum wage).

Also in terms of back pay and compensation, many PCS members did not actually submit a claim, and hence were not eligible for this. This caused a lot of anguish, and fundamentally the PCS was sympathetic, as the rationale from these members was correct – “Equal Pay has been proven and I worked for the Prison Service for years” – unfortunately the limitations of the Equal Pay Act did not allow common sense to prevail.

A no-win no-fee solicitor also intervened in the case and signed up more than 1,000 claimants, and on the back of the work PCS had done was able to agree a compensation package – the PCS agreement minus eight per cent.

© PCS

EQUAL PAY IN NUMBERS

- **3,567** – NUMBER OF CLAIMS
- **£1,034,741** – COST TO TAXPAYER (PAID BY PRISON SERVICE IN LEGAL FEES, ONLY UP TO SEPTEMBER 2004)
- **£50 MILLION** – COST OF COMPENSATION/BACKPAY
- **£9 MILLION** – INCREASE IN PRISON SERVICE CONSOLIDATED PAYBILL (AROUND 10% FOR THE PSC GRADES)
- **75 DAYS** – SPENT IN COURT
- **NIL DAYS** – IN COURT FOR NO WIN NO FEE SOLICITOR
- **5 JOB EVALUATION REPORTS** – THAT ENDORSED THE INITIAL 1987 PRISON SERVICE JOB EVALUATION SCHEME – 1 RECONVENED PANEL, 2 FIRMS OF CONSULTANTS EMPLOYED BY PRISON SERVICE, 1 CONSULTANT EMPLOYED BY PCS AND 1 INDEPENDENT EXPERT EMPLOYED BY EMPLOYMENT TRIBUNAL
- **£1 MILLION PLUS PAYMENT** – TO NO WIN NO FEE SOLICITOR (THEY TOOK 25% OF ALL COMPENSATION/BACKPAY PAYMENTS)
- **20% INCREASE** – TO ADMINISTRATIVE OFFICER MAXIMUM
- **10.5% INCREASE** – TO EXECUTIVE OFFICE MAXIMUM

ACKNOWLEDGEMENTS

The PCS would like to thank our legal representatives: Barrister Tess Gill who demonstrated her unrivalled expertise in Equal Pay, Barrister Ben Cooper who did an enormous amount of innovative work on this case; our consultant expert on Job Evaluation Robin Beddoe from Working Time Analysts, who travelled the country supporting this case, meeting lead applicants and the comparators; and last but not least our excellent solicitor from Thompson's, Nicola Dandridge, who worked tirelessly, and was a constant source of advice.