

# *ADDRESSING PAY INEQUALITIES IN WALES: PAST, PRESENT AND FUTURE*

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May 2022



This report was funded by the Arts and Humanities Research Council for the project Gender Equalities at Work: an Interdisciplinary History of 50 Years of Legislation (AH/V001175/1) through consultancy commissioned by the University of Edinburgh, University College London, and University of the West of England, Bristol.

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## Executive Summary

Fifty years on from the Equal Pay Act 1970, this report reviews efforts to address workplace inequalities in Wales - their past, present and future - with a focus on equal pay and the gender pay gap.

It finds that successive Welsh Governments have taken an interventionist approach to workplace inequalities that includes the Close the Pay Gap Campaign partnership to support equal pay in local government, refusing the voluntary approach to having an objective to address 'pay differences' in the *Gender Equality Duty* 2006, introducing a unique specific equality duty on gender 'pay differences' in the public sector that aims to tackle occupational segregation, and supporting the *Women Adding Value to the Economy* (WAVE) programme to assist employers to implement the duty.<sup>1</sup>

Consideration of the operation of the Welsh Specific Equality Duty on 'pay differences' suggests that the legislative drafting needs to be clearer, so that all the employment and pay analysis requirements are contained in one regulation. Further, that action is needed to prevent the 'pay differences' duty from being undermined by the weaker GB Gender Pay Reporting regulations.

The report sets out recommendations for improvement of the gender 'pay differences' duty and actions to include ethnicity and disability in employment and pay reporting, including:

- Make it a duty to address pay gaps not differences.
- Remove the option not to have an equality objective on gender pay gaps and include the same requirement for disability and ethnicity - Welsh public sector bodies must be required to undertake the occupational segregation, employment conditions and pay analysis.
- Apply the definitions of relevant employee and pay measures set out in the GB GPG regulations. This would include performance related pay.
- Apply the updated calculation methods advised by the Royal Statistical Service on managing £s and pence, and proper calculation of medians etc.
- Provide a reporting template with specified data tables.
- Require the publication of overall, full time and part time pay gaps.
- Mindful of the issues of disclosure and the need for intersectional data, an intersectional analysis should be included.

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<sup>1</sup> Women Adding Value to the Economy (WAVE) was ESF funded through the Welsh Government (2012-2015). Follow up work with employers was ESRC funded through an Impact Accelerator Award (2016-2019). WAVE research reports available at: <https://www.cardiff.ac.uk/research/explore/research-units/women-adding-value-to-the-economy-wave>

- Employment and pay analysis and action plans/review of progress should be published annually on a dedicated Welsh Government website.
- Additionally - every 5 years public bodies should provide an Equal Pay Statement including an Equal Value Audit (ESRC IAA Review and Renew: Gender Pay Gap Duty, Cardiff University seminar, November 2019).
- Include reports on progression from both low and high-grade roles.

In addition, there is an opportunity to influence both public and private sector employers through the proposed Social Partnerships and Public Procurement Bill. The Bill should expressly include equal pay amongst rights that social partners will work towards in the public sector and the public procurement levers should require all bidders with more than 50 employees to have a job evaluation scheme and they should be able to demonstrate the findings of an employment and pay analysis across gender, ethnicity and disability, in their tenders.

## ***Introduction***

Fifty years on from the Equal Pay Act 1970, this report considers the distinctive approach taken by successive Welsh Governments to tackling equal pay and the gender pay gap.

Wales has adopted an interventionist approach to workplace inequalities that includes the Close the Pay Gap Campaign partnership to support equal pay in local government, refusing the voluntary approach to having an objective to address 'pay differences' in the *Gender Equality Duty* 2006, introducing a unique specific equality duty on gender 'pay differences' in the public sector, and supporting the *Women Adding Value to the Economy* (WAVE) programme to assist employers to implement the duty.<sup>2</sup>

Having been involved in some of this history, I was delighted to be asked to look back and forward by the 'Gender Equalities at Work' (GEW) research project. GEW is taking a historical perspective to consider 50 years of activism in relation to workplace gender equality law, examining both the women's movement and trade unionism as well as the role of government, and equality bodies, with a view to understanding successes, blocks, and barriers in the UK.<sup>3</sup>

And as I look back, it is the collaborative approach in Wales that stands out as particularly distinctive. This collaboration has taken many forms. Firstly, it involved activists, local authorities, statutory agencies, and parties of the left prior to devolution developing the pioneering South Glamorgan Women's Workshop (Minto and Parken, 2021). Subsequently, there was collaboration between the National Assembly for Wales, Wales Trades Union Congress (WTUC) and the Equal Opportunities Commission in Wales (EOC), in three phases of the *Close the Pay Gap* campaign (Chaney, 2003).

Collaboration between employers, trades unions and ACAS was also significant in early examples of undertaking job evaluations, settling equal pay claims and creating harmonized pay systems in local government (Parken and Baumgardt, 2009)

Collaboration between academics, Trades Unions, human resources and equality officers from the public sector, Welsh Government policymakers, and the EHRC Wales was crucial to the design of the Wales Specific Equality Duty (WSED) on 'pay differences' (Parken et al, 2009). And collaboration between academia, public sector employers and stakeholders delivered the *Women Adding Value to the Economy* (WAVE) (Parken and Ashworth, 2019).

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<sup>2</sup> Women Adding Value to the Economy (WAVE) was ESF funded through the Welsh Government (2012-2015). Follow up work with employers was ESRC funded through an Impact Accelerator Award (2016-2019). WAVE research reports available at:

<https://www.cardiff.ac.uk/research/explore/research-units/women-adding-value-to-the-economy-wave>

<sup>3</sup> Gender Equalities at Work: an interdisciplinary history of 50 years of legislation:

<https://www.genderequalitiesat50.ed.ac.uk/about/>

Such collaboration has since been codified across the public sector in Wales through the *Well-Being of Future Generations Act 2015*.

Ten years on from the implementation of the Welsh Specific Equality Duty on gender ‘pay differences’, it is time for renewal. The duty was not clearly drafted, obfuscating its unique aim - to address the gendered labour market inequalities that create gender pay gaps (occupational, contract and working pattern segregation and segmentation), and it is in danger of being undermined by the weaker requirements of the UK Gender Pay Gap Reporting Regulations 2017.

Unlike the Welsh Specific Equality Duty, the GB regulations do not sufficiently assist employers to understand how inequalities arise within their organisation or require an action plan to reduce them. Efforts to meet the new National Milestone to eliminate the pay gap for gender, disability, and ethnicity by 2050 (Welsh Government, 2021, 2021a) must similarly enable employers to understand how their systems and processes can create inequality on these dimensions and consider the disparities that are compounded at their intersections (Welsh Government, 2021, 2021a). However, the GB regulations do impact the private sector in respect of pay gaps, and there is potential for more action on both pay gaps and equal pay within the proposed Social Partnerships and Public Procurement Bill.

With a view to taking the next steps to working together to address the systemic causes of unequal pay and pay gaps, the report draws upon some early thinking which took place in a ‘Review and Renew’ on the ‘pay differences’ duty held at Cardiff Business School in November 2019. Human Resources Directors, equality officers across the public sector, the Wales TUC and EHRC Wales, reviewed the existing legislation in Great Britain, discussed how to improve the operation of the gender ‘pay differences’ duty in Wales and anticipated the introduction of reporting and action on ethnicity and disability.<sup>4</sup> The results of these discussions and further recommendations are set out below.

The report begins by considering the history of bold activism and workplace interventions to increase women’s participation in the labour market prior to devolution. A timeline of historical actions on equal pay and gender pay gaps is provided at Appendix One. A separate, linked report provides a review and timeline of Wales’s approach to promoting equality for all since devolution (Parken 2022a).

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<sup>4</sup> Review and Renew: The Welsh ‘Gender Pay Gap’ Duty, 4<sup>th</sup> November 2019, event funded through ESRC Impact Accelerator Award (2016- 2019)

## ***Activism and Interventions in Wales Prior to Devolution***

Governance of Wales was held at the UK level until 1988, led by the Secretary for State for Wales, with a Welsh Office split between Whitehall and Cardiff. Chaney (2007) finds that there was little political will to address inequalities in policymaking under the Welsh Office:

For example, in 1996 William Hague, then Secretary of State, refused to meet the Equal Opportunities Commissioner for Wales stating: 'there's nothing to talk about' (Chaney et al., 2007: 156 in Chaney 2010: 31).

Chaney (2007) also comments on limited policymaking capacity in the Welsh Office (1964-99), and the tight constraints of the British constitutional framework (largely employed in implementing policy made outside of Wales).

Deidre Beddoe's inspiring history of women's activism in Wales charts the three decades before devolution (2001). She records the lasting contribution made by women's activism in Wales, including the women's march from Cardiff, which subsequently became the long-term women's peace camp at Greenham Common (2001, p.163), women's mass protests and independent organisation during the 1984-5 Miner's Strike and the network of women's support groups formed to support strikers and communities (2001, p165, Chaney 2007).

In the 1970s and 1980s women's grassroots organisations campaigned on the four early demands of the Women's Liberation Movement, for equal pay, equal access to education and opportunity, twenty-four-hour nurseries, free contraception and abortion on demand, and against rape, pornography and sexual violence (Beddoe, 2002 p159-164). The Women's Rights Committee for Wales, set up to keep pressure on employers and unions to adhere to the Equal Pay Act 1970 and the Sex Discrimination Act 1975, organised the March Against Women's Unemployment from Pontypridd to Cardiff in 1982. The march was sent off by a 'rousing speech by veteran 1930's hunger marcher Dora Cox' (p, 163), and Beddoe reminds us of the unique contribution to women's activism worldwide made by the Welsh feminist scholar and creative Elaine Morgan through authorship of *The Descent of Woman* (1972) and televised dramatisations of the lives of Vera Britten and Marie Curie (p.160).

In 1984, the founding of the campaigning group, *Wales Assembly of Women*, is described by Beddoe as presaging a 'more respectable' form of engagement with institutional structures (2001:167). At the same time, structures such as Wales TUC Women's Advisory Committee (1984) and the UK South Glamorgan Women's Committee (1985), which was the only local government committee of its type in the UK at the time (Beddoe 2002, 167), demonstrate movement from the 'outside' - attempting to influence agendas, to the 'inside' - attempting to set the agenda (Charles and Aull-Davies, 2010). Networks of 'strategic women' (Chaney, 2007) or 'norm entrepreneurs' (Minto and Parken, 2021), connected to the women's movement, were beginning to work in, and influence the work of, the civil service, local government, the statutory equality agency for men and women, and academia.



Collaborations between these ‘strategic women’ (Chaney 2007), women in local government (notably Jane Hutt, current Welsh Government Minister for Social Justice, and the late Val Feld, Director of the Equal Opportunities Commission, Wales), feminist activists, and left leaning political parties gave vital support to the YES Cymru campaign. Once devolution was secured, this coalition of actors and others worked to ensure the ‘equality mainstreaming duty’ was part of the founding legislation, the *Government of Wales Act 1998*, which effectively constitutionalised *equality of opportunity for all* in the Welsh devolution settlement (Chaney, 2004, 2007, 2009, Minto and Parken 2021).<sup>5</sup>

The first positive action initiative in Wales, focused on increasing women’s employment was the founding of the South Glamorgan Women’s Workshop in 1994.

### ***The South Glamorgan Women’s Workshop***

Despite bids for European Funding requiring approval from a reluctant Welsh Office prior to devolution, a network of women from local government, trades unions, civil society, and academia developed and pursued the idea of a Women’s Workshop. Our interview data records how the Welsh Office was effectively by-passed (Minto and Parken 2021).

Taking a ground-breaking, positive action approach, the South Glamorgan Women’s Workshop based in Grangetown, provided an ethnically diverse local population with women-only education and training supported with onsite childcare facilities. This was a bespoke distinctive approach to employability training for women with its focus on addressing gendered occupational segregation through training courses on construction and IT:

[the Women’s Workshop] symbolised what was feasible and possible, and said yes, you can have single-sex training; yes, you can have an on-site nursery; yes, you can run on feminist principles, which is what we tried to do; and you can still be a successful and credible organisation. (quote 4) (Minto and Parken: 2021, p.1554)

It is a matter of regret that it no longer operates, leaving a missing piece in the current training provision needed for future skills in the digital and net zero transitions (MacBride-Stewart and Parken, 2021). However, a key legacy of the Women’s Workshop is a network of actors working throughout Welsh public services, who have taken feminist values and ways of working into the Welsh Government, Welsh civil service, public authorities, trades unions and the voluntary sector (Minto and Parken, 2021). One of its alumni subsequently initiated the idea for a programme of employer support to ensure that the ‘pay differences’ duty (2011) was properly implemented (Minto and Parken, 2021), in which the Women’s Workshop became a partner. The *Women Adding Value to the Economy* (WAVE) programme is discussed below.

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<sup>5</sup> For a review of devolution and equality more broadly see Parken 2022a.

## ***Addressing Equal Pay and Gender Pay Gaps***

Equal Pay and gender pay gaps are separate but interrelated concepts for measuring and addressing pay inequality between men and women. Addressing unequal pay and ensuring equal value across different jobs and sectors is vital for addressing gender pay gaps, but insufficient to address the historical inequities of gendered labour markets. Movement between actions on equal pay and gender pay gaps is evident in Close the Pay Gap Campaigns in Wales.

The Equal Pay Act in 1970 outlawed pay discrimination for men and women doing the same job. Implementation was delayed until 1975 to allow employers and unions to prepare their pay systems. During this period there was some collusion between employers and unions to defend the skills status of 'men's jobs' by demarcating them from 'women's jobs' to confound comparison (Cockburn 1985). *Equal Pay Amendment Regulations 1983* extended the principle of equal pay to employees in broadly similar work (like work), in different work but rated as equivalent under a job evaluation (JE) scheme and work which would be rated as of equal value if there had been a JE (Parken and Baumgardt, 2009). All GB equal pay law was harmonized within the *Equality Act 2010*.

However, Job Evaluation Schemes are not mandatory in the private sector in the UK, and only around a quarter of employers undertake them (IFS, 2015). And as we know from 40 years of measuring occupational segregation in the European Union, men and women are more likely to work in different jobs, often concentrated in different sectors of the economy (European Commission, 2009).

In Wales, there is also an acute difference in employment conditions with women holding over 80% of all part-time jobs and being more likely to be employed on temporary, casual or zero hours contracts, while men hold the majority of all full-time employee jobs in the economy, which are much more likely to be permanent positions (Parken, Pocher and Davies, 2014). The percentage of men and disabled people's employment part-time and casual contracts has been increasing in Wales in the last decade (Davies and Parken, 2017).

This gendered labour market structuring constrains access to finding the 'comparator' required under UK legislation; and these constraints are only compounded by the removal of the equal pay questionnaire 2014 and the imposition of employment tribunal fees (TUC, 2013). Whilst addressing the legacy of 'family wage' bargaining for men in pay systems is vital (Parken and Ashworth, 2019), equal pay legislation is inadequate for proactively addressing earnings disparities between men and women. Hence, the focus on gender pay gaps, which is a measure of the percentage difference between men and women's median hourly pay, across all jobs in the UK.<sup>6</sup>

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<sup>6</sup> The Equal Pay Portal is a valuable source of clear information on equal pay and gender pay gap regulations: <https://www.equalpayportal.co.uk/equal-pay/>

The early years of the National Assembly for Wales demonstrated a clear commitment to tackling gender inequality in the workplace.<sup>7</sup> Between 2001 and 2007, the three *Close the Pay Gap* (CPG) campaigns were jointly operated by a partnership of the National Assembly, the Equal Opportunities Commission (Wales) and the Wales Trades Union Congress (WTUC) (Chaney 2003, Fitzgerald 2007). In the first of the evaluations of these campaigns, the effect of the Welsh mainstreaming equality duty is apparent:

In Wales, a singular approach to the GPG can be traced back to December 1999 and early consultations between the Equal Opportunities Commission Wales and the Welsh Assembly Equality Committee ... The Assembly's statutory equality duty was cited in progressing this work ... Foremost of subsequent Welsh Assembly Government initiatives was the Close the Pay Gap Campaign launched in 2001 and undertaken with EOC Wales and the Wales Trades Unions Congress. (Chaney 2003: 9).

Although Deakin *et.al*, (2015) argue that the (NJC) Single Status Agreements 1997, 2004 and NHS *Agenda for Change* in 2004 effectively introduced the promotion of equal pay in the public sector, there was no guarantee that employers or unions would be willing or able to do this in a way that would result in equal pay. Chaney credits the first phase of the CPG campaign with demonstrating a proactive strategic approach on the part of the state (to tackle pay gaps in the public sector) that was not evident in other parts of the UK (Chaney 2003: 75).

The first CPG campaign provided equal pay tools for employers and equal pay training for over 500 TU officials by integrating an equal pay module within TU negotiators professional standards (Chaney, 2003). Following evaluation, two further phases of the campaign ran between 2004 and 2007.

The second phase of the CPG concentrated on encouraging private sector employers to undertake equal pay reviews through the distribution of an SME Equal Pay toolkit, and in addition, provided research into pay gaps based on ethnicity. In Phase Three, an *Equal Pay Summit* again focused upon equal pay audits and harmonising pay structures in the public sector. Phases Two and Three of the campaigns were noted for the efficacy of collaborative partnership working, the leadership provided by Welsh Ministers, the provision of dedicated staff resource working jointly across the partnership organisations, and for renewing impetus among employers and trades unions to implement the new pay structures required by public services agreements (Fitzgerald, 2007).

### **Rejecting the Gender Equality Duty**

The National Assembly of Wales (NAW) made a further policy distinction in relation to addressing gender pay gaps when it rejected the specific duties of the *Gender Equality Duty*,

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<sup>7</sup> Now the Senedd Cymru, see Parken 2022a for an explanation of legislation, governance, and name changes since devolution.

on the basis that the 'pay differences' duty was too weak. Underpinned by advice from the EOC Wales, the cross-cutting Standing Committee on Equality of Opportunity advised that the pay reporting requirement of the GED would undermine progress already made in Wales through the *Close the Pay Gap* campaigns and back pay settlements. They considered the requirement for public authorities to '*consider the need to have objectives that address the causes of any differences between the pay of men and women that are related to their sex*' would be a retrograde step (Equality of Opportunity Committee Transcript, 26<sup>th</sup> September 2006).

Offered only the opportunity to accept or reject the Order for the specific duties under the *Sex Discrimination (Public Authorities) (Statutory Duties) Order 2006*, the Equality of Opportunity Committee made the historic decision to advise the National Assembly to reject it.<sup>8</sup> The Welsh Assembly Government subsequently refused to implement the Statutory Order for the Specific Duties of the GED:

2.7 To fit with the Welsh context, the specific duties will not apply to public authorities operating wholly and exclusively in Wales. Instead, the Welsh Assembly Government is exploring with the UK Government ways in which the Welsh Assembly Government may be able to create specific equality duties applying to such Welsh authorities. (WAG, Eighth Annual Report on Equality, 2007: p6).

In 2010, Ministers in Wales and Scotland were afforded powers to make their own specific equality duty to address pay gaps, under the *Equality Act*. The design and effectiveness of Welsh Specific Equality Duty on 'pay differences' duty is discussed below.

### **The Benefits of Settling Back Pay Claims**

As discussed, phase one of the Close the Pay Gap campaign was focused on supporting equal pay in the public sector. Local authorities were working on job evaluation and introducing harmonised pay systems, with a deadline of by 1<sup>st</sup> April 2007 (The *National Joint Agreement on Local Government and Services 2004*), the original deadline of 2004 having been extended to 2007 as few authorities had complied. By 2008, despite the Close the Pay Gap *campaign*, only thirteen of twenty-two local authorities in Wales were on or near the deadline:

... seven local authorities have resolved or are close to resolving their back pay issues in respect of breaches of equal pay legislation, six more are on track to resolve the issue by the end of the financial year, two more by next year with the

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<sup>8</sup> At this time the cross-party Standing Committees of the National Assembly were involved in decision-making and included Standing Advisors from the statutory equality commissions, Stonewall Cymru, and the Welsh Language Board. The Committee's status changed to scrutiny of Welsh Government in 2006 with the separation of the executive from the legislature, and Standing Advisors were prohibited under the new rules.

balance believing that they do not have a liability... (Minister for Social Justice and Local Government, Statement on equal pay to the Assembly Equality of Opportunity Committee 6<sup>th</sup> November 2008).

To avoid the large claims brought by 'no-win no-fee' lawyers against councils in England and Scotland, who would not or could not settle, the Welsh Government offered local authorities the opportunity to apply for a capitalisation direction to settle unequal pay back pay settlements going back up to six years. The Equality and Human Rights Commission (Wales) commissioned research to share early learning from one of the first local authorities in Wales to design and implement job evaluation, agree a new pay structure and settle back-pay claims (Parken and Baumgardt, 2009).<sup>9</sup>

The aims of the commissioned research were to identify the actors, processes and decisions involved. Through qualitative research, the processes of co-operation to build a method to analyse and compare pay across jobs, and to establish a settlement mechanism was discussed with the employer, trades unions, and the Advisory, Conciliation and Arbitration Service (ACAS), who worked in partnership. Both employer and union staff recalled 'starting with a blank sheet of paper' since there was no nationally agreed process for job evaluation (Parken and Baumgardt, 2009). Interviews with women working as domestics, cleaners, domiciliary care workers, teaching assistants and cooks explored their understanding of the need for back-pay settlements and their decision to accept the payment rather than opt for employment tribunal, the financial impact of the settlement payment and their views on the process.

The local authority began work on the Job Evaluation processes in 2005, with the stated aim of implementing a new pay structure by April 2009. In 2007, their request for a 'capitalisation direction' order was granted by the then, Welsh Assembly Government (WAG). Employees were consulted on the new pay and grading structure in 2008. The research established that successful implementation was based on a joint employer and trade unions working group, which had achieved a genuine and trusted collaboration; that sensitive information and legal advice was shared within the group without either party taking advantage from it and that having ACAS involved at an early stage was vital (Parken and Baumgardt, 2009).

The working group made joint presentations to staff explaining that pay discrimination had arisen historically within 1970s bonus pay systems created for the, then, mainly male full-time workforce and through compulsory competitive tendering processes in the 1980s, which resulted in loss of holiday and sick pay for part-time women workers. The council offered affected employees around two thirds of the bonus payment value but capped settlements at £10,000 gross.

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<sup>9</sup> An earlier version of this discussion was submitted to Policy and Politics but not published

Employees attended 'signing days' during which they were reminded that the settlement offer represented only part of what might be awarded in a tribunal claim and were again encouraged to consult their union and ACAS (also present). Over 99% of eligible employees accepted the back-pay settlement on these 'signing days' (Parken and Baumgart, 2009, p19-23).

This level of cooperation is in sharp contrast to the chilling effect that the finding in the Allen vs GMB case had on addressing equal pay claims. In the Allen case (in 2008) the GMB was found to have indirectly discriminated against women for underestimating the amount of compensation for back-pay due to women and recommending acceptance of the settlement during negotiations on a wider 'single status pay deal for all employees.'<sup>10</sup>As a result, some unions reduced their involvement in job evaluation processes and back pay settlements across the UK. The unions in this Welsh local authority case were careful not to recommend the settlement but continued in the process, giving advice to employees, and working with the employer and ACAS on the new pay system.

The research also identified the precariousness of setting an equitable pay system. Adjustments were needed to the new grading structure to ensure that while men were positioned at the bottom or middle of overlapping scales, women were not positioned at the top of new pay scales, limiting their future pay progression (Parken and Baumgart, 2009).

All the women interviewed about their back-pay settlement worked on a part-time basis in grades 1 to 3 with contracts of 18, 20 or 24 hours per week. Their average tenure was eight or more years, and average pay was around £6.00 per hour. Without exception, they regularly worked additional hours, and relied upon the availability of additional hours to manage financially:

*What I can feel from the girls up there is that at one time that seemed OK [20 hours contracts] ... and there's still one or two who prefer part time, but most want full time now ... all we get all day is girls phoning ... 'is there any more hours' ... I had a girl on the phone this morning telling me she's got to earn £750 a month before she can even buy food ... you've just got to promise them that if any more work comes in, they can have it, knowing that you've said the same to other girls ... (Community Care). (Parken and Baumgardt, 2009, 29-30).*

Their earnings were not 'pin money' but often the main source of household income. Although they wanted more hours, full time work was not offered in their jobs and grades. The concept of 'flexicurity' (European Commission, 2010) was intended to produce job *flexibility with security* for employees. In this employment structure, flexibility rested with

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<sup>10</sup> GMB v Allen and Ors [2008] EWCA Civ 810

the employer while insecurity (not knowing if enough hours of work would be made available to meet household costs) rested with the employees.

In the main, women employees had used their back-pay settlements to repay debts accumulated to pay for day-to-day living. They spoke of the relief of no longer having these debts. Others had made essential house repairs. However, marginal pay increases resulting from the new pay structure brought new concerns that their pay may just exceed welfare transfer limits, resulting in unmanageable losses to household income (Parken and Baumgardt, 2009).

By 2012, 16 councils had settled back-pay claims at a cost of £75m.<sup>11</sup> Several councils were reluctant to settle, claiming this to be an historical issue. Equal pay claims have been made against Bridgend County Council, Conwy Council, and Flintshire and in some of these cases, no-win no-fee lawyers have made claims on behalf of council employees. Gaining later information on the completion of job evaluation and back-pay settlements has been difficult.

Although the Welsh Government has recently set out a new Pay Policy Statement for local authorities to foster greater fairness, transparency, and accountability in senior officials' pay (Welsh Government, 2021b), it may be time for the Equality, Local Government and Communities Committee to revisit progress made across all staff in local authorities throughout Wales.<sup>12</sup>

However, it does appear that the early approach of encouraging compliance in Wales through the first and third phases of the Close the Pay Gap campaign, offering capital direction payments for settlements, and taking a partnership approach in Wales, has been largely successful in avoiding the ballooning cost of tribunals and pay-outs such as have been seen in Redcar, Birmingham and Glasgow. On the other hand, back-pay settlements, were capped, and often restricted to particular employee groups, which has meant that thousands of women and some men, have missed out on a full settlement of the back pay due to them.

The back pay case study demonstrated that although unequal pay was being addressed, gender pay gaps would continue to be produced by inequalities in the employment structure. Local government workforce composition had changed from mainly men working full time with bonuses in the 1970s, to mainly women (70% of the staff) mainly working part time in low graded low paid jobs (Deakin et.al 2015). Higher graded work remained associated with full time working patterns and thus men's work (Thornley, 2006). This research gave voice to the experience of low-paid part-time government workers, whose

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<sup>11</sup> BBC News 'Equal Pay: Welsh Councils agree £75m in pay claims' 17th December 2012  
<https://www.bbc.co.uk/news/uk-wales-20740932>

<sup>12</sup> Welsh Government statement on pay Transparency in local Government <https://gov.wales/pay-accountability-within-local-government-html-0>

jobs were by default part-time, and who struggled to get higher hours of work. These insights into the place of gendered labour market structuring, demonstrated that beyond addressing equal pay through pay systems, gender pay gaps were embedded in employment structures.

This learning subsequently informed the scoping exercise for the Welsh specific duty on 'pay differences', which was focused on addressing gendered occupations, including the undervaluing of women's work, and working hours and contract segregation.<sup>13</sup>

The next section of the paper reviews policy research and consultation exercises that informed the design of the Welsh "pay differences' duty.

### **Scoping a Public Sector 'Equal Pay Duty' for Wales**

The *Equality Act* in 2010 included provision for a *Public Sector Equality Duty* (PSED) with a *General Duty* requiring listed authorities to eliminate discrimination, advance equality of opportunity and foster good relations between people with protected characteristics and those without. Note the limitation by characteristics, rather than the focus on promoting equality for all as prescribed by the Welsh mainstreaming equality duty.

More recently termed 'reflexive law' (Conley and Page 2013, Deakin 2011, Hepple 2010) public sector duties set the parameters of equality outcomes without prescribing the method of achievement. Specific equality duties are the stepping-stones toward meeting intended outcomes, and are created in dialogue between government, civil society, statutory equality bodies and public services (Conley and Page, 2013).

Having been granted powers under the *Equality Act 2010* to create their own Specific Equality Duties, the Welsh Government commissioned a policy review and recommendations for a specific equality duty on equal pay in the public sector. The research specification required explanation of the causes of gender pay gaps, international examples of policy interventions and consultation with key stakeholders (Parken et al. 2009). Here we see the elision between equal pay and gender pay gaps; while knowing an organisation's pay gap may assist women with assessing whether there are inequalities in the pay system as well as in the organisation structure, GPG calculations do not reveal the level of detail needed as an equal pay audit.

In addition, once drafted the duty became one on 'pay differences'. This term, imported from the Gender Equality Duty 2006, suggests a rather more neutral concept than pay gaps, disparities, or inequalities. However, such elision may have been carried into the thinking for the Welsh Duty, as the data analysis required would also 'flag up' unequal pay within grades, which the employer could then further investigate.

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<sup>13</sup> An earlier version of this discussion was submitted to the Journal Policy and Politics.



The policy review to scope the duty demonstrated the emphasis placed upon collective bargaining for equal pay in EU countries, set against the declining role of collective bargaining in the UK, particularly in the private sector. The mixed and potential role of social partnership and collective bargaining to address unequal pay and pay gaps is discussed below in relation to looking to the future.

Sweden, Denmark and Finland, the countries most associated with embedded gender mainstreaming, had equality duties requiring employers in both the public and private sectors to publish gender pay gaps (Parken et al. 2009). In the UK, Scotland had exceeded the weak 'due regard' requirement of the *Gender Equality Duty* (GED) in place in England where public organisations were only required to have 'due regard' to the need to set a pay equality objective, by requiring an equal pay policy statement. In Northern Ireland, job evaluation schemes were held to be public policy documents and therefore subject to equality impact assessment. Parken (et al. 2009) also noted that there was little evidence of enforcement or monitoring of these duties in the UK (Dickenson and Harvey, 2006) but again identified occupational segregation as a significant contributor to gender pay gaps.

Following the policy review and recommendations in 2009, a suite of options was discussed in a seminar and workshop with HR professionals, equality officers from across the public sector, government officials, trades union officials, representatives of statutory equality bodies and academics in Wales. The result of these consultations was to discard the option not to have a specific duty on pay, or to adopt the existing GED duty in place in England or make equal pay mandatory within collective bargaining. The consultation meetings demonstrated consensus, indeed enthusiasm, for a Welsh specific duty, with two options emerging as recommendations for wider consultation through a Welsh Government 'listening exercise':

1. Design a duty that requires a delineated series of data collection steps and subsequent action on findings. This would include audit and analysis of segregation by occupation, pay, grading and contract type and working pattern (for example, employers would need to justify hiring women for part time work or on low fixed hours contracts whilst using overtime and shift working for men). Regular reporting, monitoring and enforcement would be required.
2. Create a duty, or part of a duty, that goes beyond pay discrimination and requires gendered education, employment and training plans that respond to gendered structural inequalities in employment. This also requires equality impact assessment of the effect of new policies on equal pay (Parken et al. 2009, p.25-26).

The first option is similar to the NI duty, in that pay data is required to be published but it exceeds the NI duty in requiring the publication of pay data in a combined analysis with gendered employment patterns. Option 1 also required an action plan and, along with annual reporting, an annual report on progress in closing the gender pay gap. Option 2 was

similar to the Socio-Economic Duty (s.1 Equality Act 2010) and might have compensated in some policy areas but not all, for the Socio-Economic Duty not being commenced by the UK government.

The full suite of options for specific duties in Wales were tested at public sector consultation events, and in an on-line consultation undertaken by the Welsh Government.<sup>14</sup> Option 1 for the pay duty was chosen, with the recommendation that public sector organisations in Wales undertake analysis of gender in employment through considering the combined impact of job, hours, grade, contract type and working patterns on pay, create an action plan and report on progress annually (Parken, et al. 2009). Stakeholders were convinced that addressing gender pay gaps meant tackling gendered labour market structuring, gendered employment patterns and the over-concentration of women in low-graded, low paid part time work, with few opportunities to build hours and earnings or to progress.

The intention behind the Welsh duty was enabling; that by undertaking an analysis of women and men's employment by job, grade, working patterns, contract types and pay, employers would understand the causes of gender pay gaps within their employment structures (vertical, horizontal, contract and working pattern differences in the employment structure) and be able to act (Parken, 2015). This Duty essentially brings together all the information required for a gender pay audit, enabling a new view of who works where and under what conditions within the organisation.

In essence, the Welsh duty, as designed, asks all listed public sector employers, of whatever size, to address gender pay gaps through a focus on the interplay between different forms of occupational segregation (occupational, horizontal, vertical, working patterns and contract type), to surface the often unreflexive use of part-time contracts for women in low grade work in the public sector and women's over-representation in temporary and casual contracts. It was envisaged that this would lead employers to question whether it was always a choice to work part-time hours, as well as to consider the impact these factors may have on progression in both low- and high-grade work (Parken et al., 2009, Parken and Ashworth, 2019). However, as discussed below, some of this intention was lost in the translation to legislation.

It should be noted that the Welsh duty still differs substantially from others in the UK. The Scottish duty requires listed authorities with over 150 employees (amended in 2016 to organizations with 20 or more employees) to publish the hourly pay gap between men and women every two years, in addition to a statement on equal pay policy and basic occupational characteristics for men and women, people who are disabled and those who are not, and people from ethnic minorities and those who are not, every four years (Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012).

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<sup>14</sup> Results of the listening exercise on specific duties: <https://gov.wales/written-statement-equality-act-2010-statutory-duties-wales-regulations-2011-equality-act-2010>

Under the Public Sector Equality Duty, public sector organisations in England were only required to have 'due regard' to the need to set at least one equality objective, and so there was no direction to set an objective on equal pay or gender pay gaps. It wasn't until the Gender Pay Gap Reporting Regulations for all organisations over 250 employees were introduced in March 2017 (public, private and voluntary) that mandatory gender pay gap reporting was required in English public authorities and in private sector organisations with more than 250 employees. The regulations require the publishing of mean and median pay and bonus gaps, and the proportion of men and women receiving bonuses and in salary quartiles (Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017). Crucially, no action plan is required. In Northern Ireland, the separate duty under s75 Northern Ireland Act 1998, still requires equality impact assessment of public sector employers' job evaluation schemes (as they are public documents), and the GPG reporting regulations have not yet been introduced.

The central innovation in the Welsh duty 'pay differences' is directing action to address gender pay gaps at improving employment structures rather than only within pay systems but the required combined analysis of employment and pay can reveal equal pay issues which merit further investigation. In summary, this duty is evidence-based and action-focused, requiring an action plan, annual reporting and updating.

The intention was to prevent the reproduction of gender pay gaps in each generation, thereby reducing overall pay gaps in the economy and producing structural change, one organisation at a time (Parken et al. 2009, Parken, 2015, Parken and Ashworth 2019).

The *Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011*, also require public bodies in Wales to report pay differences for all protected characteristics but not to undertake the detailed analysis specified at this time for gender. There is also no requirement for an intersectional analysis.

### ***When Structural Change Meets Legislative Drafting***

Some of the innovation of the Welsh 'pay differences duty' has been lost in translation to legislation.

Firstly, reflecting on my own research to define a duty to address gender pay gaps, I was disappointed to see the use of 'pay differences' from the Gender Equality Duty 2006. 'Pay differences' is a somewhat neutral phrase and could imply that differences are not problematic, whereas pay gap retains focus upon disadvantaging processes.

Secondly, the Welsh duty as understood by those who designed it and who chose it in consultation is described discursively as requiring an employment and pay analysis by gender, job, grade, working hours and contract type. However, the actual wording of the *Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 No. 1064 (W.155)* does not

clearly specify this. The requirements are spread across a number of regulations, obscuring the required combined employment and pay analysis and its publication as one set of results.

Currently, part of the duty is in Regulation 2 on interpretation, where 'pay difference' is defined as between a) a woman and a man or b) between women and men, thus both unequal pay and gender pay gaps are to be considered. However, the equal pay element has been largely overlooked.

Regulation 7 requires that listed authorities identify the relevant information they need to fulfil their equality duties and takes steps to fill information gaps. Part of the information authorities must hold or obtain and publish relates to Regulation 11 which requires that listed authorities give due regard to having an equality objective to address 'pay differences' between the pay of persons who share, and those who do not share, a protected characteristic, where such a difference is, or could be reasonably assumed to be related to that personal characteristic. This implies an unintended element of choice regarding having an objective.

Further, when identifying any pay differences, if a gender pay difference is observed, the authority must create an equality objective to address gender pay differences. Where a gender pay difference is observed, Regulation 12 requires the authority to publish its gender pay objective, its policy related to addressing the causes of the gender pay gap, the action plan, and update the plan annually (Regulation 12) or publish its reasons for not doing so.

This is key. If an employer decides not to have a 'pay differences' objective, crucially, they must be able to evidence why they think they need not do so. This should effectively mean that they must undertake the employment and pay analysis to demonstrate this, but this is not specified in the regulations.

Further, the specification of the employment parameters that should be analysed to fulfil the intent of the 'duty' are contained in Regulation 9 on *Training and the Collection of Employment Information*, which requires annual publication of:

1(a) the number of people employed by the authority at the relevant date in the year, 1(b) broken down by:

(i) Job, (ii) Grade but only where an authority operates a grade system in respect of its employees, (iii) Pay, (iv) Contract type (including but not limited to permanent and fixed term contracts), and (v) Working pattern (including but not limited to full time, part time and other flexible working arrangements). (WSI. 2011. No. 1064 (W155, p. 12/13).

In combination with the regulations on information, equality objectives and gender pay difference reporting, regulation 9 is essentially the requirement to analyse gender

employment and pay by the parameters recommended in the policy review (Parken et al. 2009). This link could have been made clearer in the guidance for the ‘pay differences’ duty (EHRC, 2014).

That the ‘duty’ is scattered over several regulations within the statutory instrument has weakened efficacy. The result of this is clear to see by looking at the very helpful Welsh Government website containing public authority annual reports in which health bodies and universities particularly are publishing their employment monitoring data but reporting their gender pay gaps, and sometimes disability or ethnicity pay gaps separately, and against the UK GPG reporting regulations.<sup>15</sup> Whilst the argument might be that this is helpful for benchmarking, it does not fulfil the Welsh duty.

This drafting can be clarified in the forthcoming review by setting out the imperative that a combined analysis of gender, disability and ethnicity employment and pay is required, as is an action plan and annual update on progress.

Despite these now evident weaknesses in the drafting of the regulations, *the Women Adding Value to the Economy* (WAVE) Programme, established to support employers with the combined employment and pay analysis, proceeded with the original intention of the duty, by simply described as requiring an action plan to address gender pay gaps based on an analysis of employment and pay by gender, job, grade, working pattern and contract type. An early evaluation of the implementation of the public sector equality duties (PSED) in Wales found that:

**Outcomes for staff and service users:** Some organisations had moved beyond investigation of inequalities through equal pay audits and reviews to begin to address the reasons for gender and other pay differences such as gender stereotypes and role [of] segregation in employment (Mitchell *et.al.* 2014: p8).

Mitchell (*et.al.*, 2014) concluded that Welsh public sector employers’ engagement with tackling gender pay gaps exceeded that evidenced elsewhere in Great Britain. This progress is, as discussed above, in part due to a sustained history of government legislation and support for workplace equality programmes such as the *Women Adding Value to the Economy* (WAVE) research programme.

### ***Workplace Intervention Programmes***

Wales has taken an active approach to improving workplace inequalities through intervention programmes. The European Social Fund and European Regional Development Fund have provided a fundamental underpinning for such interventions.

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<sup>15</sup> Statistics Wales PSED reporting: <https://statswales.gov.wales/Catalogue/Equality-and-Diversity/Public-Sector-Equality-Duty>

An EHRC review of the impact of EU funding related to promoting equality, human rights, and inclusion, and anticipating the transition to the Shared Prosperity Fund, noted that Wales received €2.1 billion from European Social funds during the period 2007–13 (Broughton et al, 2019). Given geographical areas of high disadvantage, Wales received considerably more per person funding in the 2014-2020 period than England or Scotland, standing at €27 and €47 per person respectively:

**Wales** receives €140 per person per year on average – approximately €3.5 billion in total over the period 2014–20, in combination with match funding. EU funding helps people into work and training and supports research and innovation in the business community. (Broughton et al. 2019:9)

Research on the influence of the EU requirement for gender mainstreaming in the structural funds and the Welsh Government’s addition of race and disability, noted increasing institutionalisation of equality objectives from the first round of funding to the most recent (Minto and Parken, 2021 p.7). There is also evidence of a clear distinction in the mechanism for delivering equality mainstreaming between Wales and Scotland:

Although Scotland has continued to have a commitment to gender mainstreaming, there is evident resistance in committing fully to the strategy as compared with the Welsh Government which has a specific gender mainstreaming horizontal theme. Furthermore, they have a Crosscutting theme team who are there to offer guidance through the life cycle of funded projects. (Wilson and Campbell, 2020:74, in Minto and Parken, 2021 p.7)

Concerns about the reduction and redirection of the promised replacement of EU funding for employability and workplace equalities programmes have been realised since completing our research (Minto and Parken, 2021). Wales will receive £585 million over 3 years from the Levelling Up fund - much less and over a much shorter time than EU 7-year funding programmes (IWA, 2022). It is a matter of regret, that such strategic equality requirements and the wealth of mainstreaming equality and sustainability knowledge built up over many years within the Wales European Funding Office (WEFO), may now be lost as funding is administered by local authorities.

It is beyond the scope of this review to cover all workplace interventions funded by EU programmes, or indeed those of the Wales TUC or WLGA. However, of note is the SME Equality Project.<sup>16</sup> The project was initially managed by Chwarae Teg/Fair Play, to ‘support, develop and expand the role of women in the Welsh Economy’ (Rolph, 2010), supported through EU funds, by the Welsh Development Agency (2001-2004). The programme aimed to improve E&D policies & practices within SME organisations, particularly to ensure

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<sup>16</sup> EU funded projects with equality and sustainability outcomes in the 2000-2006 programme: <https://gov.wales/sites/default/files/publications/2019-09/eu-structural-funds-programme-2000-to-2006-approved-projects.pdf>

companies were at least compliant with employment equality and pay legislation and promoting best practice. The programme was subsequently run directly from the WDA (2004 -2009), supported by 50 business advisors assisting SMEs with addressing the breadth of equality strands in areas such as recruitment and progression, tackling equal pay and other schemes such as Investors in People. Support is now offered by business advisors working within the Welsh Government, supported by Inclusion Managers.

Chwarae Teg has since run two EU funded Agile Nation Projects (2009-to present day), which offer leadership programmes, training, mentoring and development to women, and assist SMEs to introduce flexible working, best practice in pay systems, and workplace equality programmes. Chwarae Teg also managed the Welsh Government's Gender Equality Review from 2018-2019, which is discussed in the accompanying report on equality policy in Wales post devolution (Parken, 2022a).<sup>17</sup>

### ***Women Adding Value to the Economy (WAVE)***

WAVE was also funded by the European Social Fund through the Welsh Government and was created specifically to support the implementation of the 'pay differences' duty. It was recognised that employers may not have the systems to analyse gender, employment conditions and pay in the way specified (at that time it was common for this data to be in separate datasets), and that a feminist sociological interpretation could assist with explaining the data, including the legacy of 'family-wage' systems, the undervaluing of women's work, and barriers to progression (Parken, 2015, Parken and Ashworth, 2019). By understanding the drivers of gender pay gaps in their data, WAVE aimed to support employers to create meaningful action plans. A partnership of University of South Wales (USW), the Women's Workshop (WW) and Cardiff University (CU) was formed to bid for European Funding.

The award of £4.3million over 3 years provided the programme partners with opportunities to stimulate women's entrepreneurship (USW), provide digital skills, IT management and leadership training (WW), and to collaborate with employers to analyse and interpret their employment and pay data to meet the 'pay differences' duty, and support action plans with change management expertise (CU).

The CU research and change management strand of the project aimed to 'bring the duty alive' and was underpinned by a gender mainstreaming approach - focusing on the unequal gender relations that shape women's workplace experience (Parken and Ashworth, 2019). Collaboration and dissemination of findings was secured through an Advisory Group comprised of the statutory equality body, the Welsh Government, the Welsh Local Government Association, the Wales TUC, women's NGOs, NHS Wales, and academics.

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<sup>17</sup> Chwarae Teg, GER reports: <https://chwaraeteg.com/projects/gender-equality-review/>

Benchmarking reports on working patterns and pay created a baseline, and this information was used to create an on-line *Equal Pay Barometer*, in which the public could look up occupations and view the gender composition by working pattern and overall, full-time, and part-time pay gaps (Parken, Pocher and Davies, 2014).

The findings showed the extent of gender segregation in Wales by sector and within occupations: only 25% of Wales' employees worked in gender balanced occupations (gender balance on a 60/40 ratio). Men held the majority of full-time permanent contracts, and the link to this premier form of employment and their domination of senior posts was clear to see across all sectors – even those in which women were the vast majority of employees (ibid.). For women, the default use of part time work as the main way of offering flexibility was observed as restricting opportunities to work higher hours and gain higher earnings, across sectors and occupations where women predominated (Parken, Pocher and Davies 2014).

In the collaborative employment and pay research, three large public sector employers volunteered or were recruited as case studies, covering local government, health, and higher education. To participate in the WAVE research, these employers agreed to share their employment and pay data under strict security conditions, to dedicate sufficient internal resource to support data collection, to involve the trades unions in the research process, and to create an internal WAVE management team of senior staff (across operational departments - beyond HR), who would lead the change management with support from WAVE change management expertise (Parken, 2015).

The employers also agreed that the research team could share the analysis and findings, action planning and change management outcomes (anonymously) with over 40 public sector organisations who regularly attended the WAVE Gender Employment and Pay Network (GEPN). By sharing the learning journey, a wider pool of organisations was able to apply the learning to their own analysis, action plans and reporting against the 'pay differences' duty. Change management actions included:

- The introduction of values-based recruitment and generic non-stereotypical job roles - all offered as flexible working from day one (also replacing the gender stereotypical working patterns associated with these jobs - full time for men, part time for women).
- Movement of women from casual to permanent roles.
- Seminars for Line Managers, with Citizen's Advice Bureau and JobCentre+ on the impact of undertaking additional ad hoc hours on household budgets in connection with Universal Credit tapers, and how to build a more sustainable approach to increasing working hours.
- Job shadowing and Job switching to facilitate movement to jobs with a 'job ladder' - creating horizontal progression pathways.
- Women's leadership training programmes.



- The redesign of recruitment, progression, and promotion schemes for higher graded staff (those on career pathways), and crucially the introduction of Performance Development Reviews (PDRs) for staff on the lowest three grades (overwhelmingly women on part time contracts) to support development to higher grades/additional working hours.

The employer case study research reports for health, local government and the university are still available on the Cardiff University website.<sup>18</sup> WAVE findings and change management programme actions were shared widely within Wales in trades unions, local government, university, and health seminars and as part of the Government Equality Office's Academic Expert Group for setting out the GB GPG regulations.

WAVE was adjudged to have been instrumental in creating 'a shared vision in conjunction with the public sector in Wales for [addressing] gender employment and pay inequalities' (Oldbell, 2015: 38). The data analysis provided a new view of their organisation to employers, (who works where and under what conditions), influencing actions in workforce organisation and development, and succession planning. One of the case study employers won an industry award for innovation in diversifying recruitment. However, this learning needs to be continuously refreshed and shared with new staff in the public sector.

WAVE can be seen in a continuation of feminist intervention on gender pay gaps in Wales: building on past feminist activism and networking within the state. WAVE brought feminist ideas to bear within and beyond state institutions, by working with women and men, across government, academia, public sector workplaces, the EHRC Wales and Wales TUC to address wider social and economic gender inequalities that are reproduced through organisational 'systems and processes and ways of seeing and doing' as Teresa Rees defined gender mainstreaming (2005). These are also the kinds of collaborations required to meet the ambition for a Feminist Government in Wales (Chwarae Teg, 2019, see also Parken 2022a). The wider learning from WAVE is that to enable employers to move beyond complying with the process requirements of the Welsh Specific Equality Duties, 'to bring the duties alive', properly resourced, long-term, workplace intervention programmes are vital.

Such programmes will be needed to support the implementation of employment and pay analysis and action in relation to disability and ethnicity. The current Welsh 'pay difference' duty needs to be improved, and its unique focus on the various forms of occupational segregation must also be safeguarded, so that it is not undermined by the GB GPG reporting regulations. Further, given the voluntaristic nature of equal pay audits in the UK, more action in the private sector is required.

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<sup>18</sup> WAVE research reports available at: <https://www.cardiff.ac.uk/research/explore/research-units/women-adding-value-to-the-economy-wave>

## ***Improving Our Futures***

The key lesson from gender pay gap analysis over time, and reinforced by findings from the WAVE programme in Wales, is the central tenet of overcoming all the interconnected forms of gender segregation in employment.

After almost ten years of the operation of the Welsh specific pay differences duty, a seminar was convened in November 2019 to scope improvements. Again, academics, public sector equality champions and HR professionals from all sectors, reviewed the evidence from WAVE and worked together with union and EHRC representatives to discuss the limitations of the GB duty and to discuss progress and next steps for the Welsh Duty (Review and Renew Seminar).<sup>19</sup>

A synthesis of EHRC Wales monitoring of the public sector equality duties in 2018, showed that of the 73 public sector organizations subject to the Welsh Specific Equality Duty, over 70% had an objective to address GPGs or had an objective encompassing this aim, but only half of these had an action plan. Overall, 40% had an objective and action plan, a third were fully compliant (had an objective, had collected and published all the data, and had an action plan) but a quarter did not have an objective or provide a reason why not (EHRC, 2018).

As discussed above, lack of clarity in the drafting of the Welsh specific duty, in which the constituent parts of a combined employment and pay analysis is spread across several regulations, in combination with Welsh public bodies, particularly health and universities reporting against the GB GPG regulations for benchmarking purposes, may have weakened the effectiveness of the Welsh duty. Reporting against the GB duty also undermines the Welsh duty as it does not require analysis by gender, job, grade, contract type and working pattern in combination or an action plan.<sup>20</sup>

After debate, participants in the 'Review and Renew' seminar decided that any renewed pay duty for Wales should reinforce the distinction between the Welsh and UK GPG duty and inform public sector bodies in Wales that they are not required to report against the latter, and, certainly not at the expense of undertaking the job, grade, contract type and working patterns and pay requirement of the Welsh duty.

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<sup>19</sup> Review and Renew: The Welsh 'Gender Pay Gap' Duty, 4<sup>th</sup> November 2019, event funded through ESRC Impact Accelerator Award (2016- 2019)

<sup>20</sup> Government website on GPG reporting regulations: Scottish and Welsh public authorities are required to report against the [Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012](#), or [Equality Act 2010 \(Statutory Duties\) \(Wales\) Regulations 2011](#) respectively. Retrieved from: <https://www.gov.uk/guidance/who-needs-to-report-their-gender-pay-gap - public-regulations>

The seminar identified the following measures to improve the current duty for Wales:

- Remove the option not to have an equality objective on gender pay gaps and include the same requirement for disability and ethnicity - Welsh public sector bodies must be required to undertake the occupational segregation, employment conditions and pay analysis.
- Apply the definitions of relevant employee and pay measures set out in the GB GPG regulations. This would include performance related pay.
- Apply the updated calculation methods advised by the Royal Statistical Service on managing £s and pence, and proper calculation of medians etc.
- Require the publication of overall, full time and part time pay gaps.
- Mindful of the issues of disclosure and the need for intersectional data, an intersectional analysis should be included.
- Employment and pay analysis and action plans/review of progress should be published annually on a dedicated Welsh Government website.
- Additionally - every 5 years, public bodies should provide an Equal Pay Statement including an Equal Value Audit (ESRC IAA Review and Renew: Gender Pay Gap Duty, Cardiff University seminar, November 2019).

In addition, I would suggest:

- Make it a duty to address pay gaps not differences.
- Improve the drafting of the duty so that it is all contained in one regulation.
- Provide a reporting template with specified data tables.
- Include reports on progression from both low and high-grade roles.

Since this time, the Welsh Government has set out a commitment to 'Explore legislation to address pay gaps based on gender, sexual orientation, ethnicity, disability, and other forms of discrimination' (Welsh Government 2021a:6). Based on learning from WAVE, the focus must be on employment and occupational segregation and a programme to support employers to understand and address employment and pay gaps will be needed to secure efficacy.

Previous research shows the importance of gender in understanding pay gap analysis by sexual orientation (Arabsheibani et al. 2004). In previous intersectional research, women, and in particular women from ethnic minorities and disabled women, were described as 'getting the wooden spoon' (Joll et al. 2011), across employment and earnings in Wales. Action on increasing access to employment to boost earnings is vital for disabled people in Wales (Jones and Wass, 2013). Further, research is required to understand the intersections of gender, disability and ethnicity pay gaps. The publication of pay gap data for ethnicity and disability for Wales at a national level that shows the overall, full-time and part-time pay gap will assist with meeting the National Milestone to eliminate the pay gap for gender, disability, and ethnicity by 2050 (Welsh Government, 2021).

The Welsh Government has also set out a commitment to 'Ensure public bodies and those receiving public funding address pay disparities' (Welsh Government 2021a:6), with the key mechanism for improving equal pay and addressing pay gaps in the private sector being the Social Partnership and Procurement Bill. This is an opportunity but as currently drafted it does not refer to gender pay equality.

### ***Social Partnership***

The Nordic Countries (Sweden, Denmark, Norway, Finland, and Iceland) and France tend to have highly collectivised wage bargaining systems across sectors. Subsequent research has shown that sectors where women predominate, such as early-years care, adult care, and health, have been undervalued in these national negotiations (Koskingen-Sandberg, 2021, Kirton 2021). Kirton (2021) sets out the history of patriarchal union structures, protectionism around 'men's family wage' and resistance to equal pay - often viewed as having the potential to undermine wider pay agreements.

The example of the Hoover factory in Merthyr Tydfil in 1970 serves as one example of such tensions. Inspired by the strike for equal pay at Ford in Dagenham, women workers at Hoover called for, and were granted, equal pay. However, the union objected, and although the men threatened to strike, women were given equal pay, causing a resentment that lasted decades (Missteart, 2014, reporting on the Voices from the Factory Floor archive).<sup>21</sup>

Guillaume (2022) argues that after some initial resistance from unions, successful litigation and a body of case law owes some of its successes to the role of collective bargaining in forcing public sector employers to negotiate pay and grading agreements in local government and the National Health Service. These agreements have fostered pay transparency, benefiting low-paid women, including particularly Black and Southeast Asian women, who are overrepresented in low graded public sector work (ibid.). Guillaume observes that a valuable body of knowledge now exists within unionism for job evaluation and equal value assessment, but although litigation strategies appear more successful than rules and regulations introduced through collective bargaining, it is costly and individualised. She calls for new social partnership arrangements to set out how responsive law, litigation and collective bargaining can operate together, complement, or replace each other where, situationally, each would be most effective (Guillaume, 2022).

In Wales, following the findings of the Fair Work Commission, interest in fair working conditions to create decent pay, and, providing routes to create job progression from low paid work has led to a consultation on the Social Partnership and Public Procurement Bill.

The Fair Work Commission set out a definition for fair work in Wales as:

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<sup>21</sup> Voices from the factory floor archive: <https://www.factorywomensvoices.wales/>

- Fair reward;
- Employee voice and collective representation;
- Security and flexibility;
- Opportunity for access, growth, and progression;
- Safe, healthy, and inclusive working environment;
- Legal rights are respected and given substantive effect.

The proposed Social Partnership and Public Procurement Bill intends to formally ensure public bodies involve unions, encouraging them to bring quality information, new ideas and innovation to entrenched labour market impoverishment, resolving conflicts, and addressing injustices (Welsh Government 2021c).

However, as WAVE demonstrated, there must be a focus on considering *the combined impact of job, grade, working patterns and contract types on pay*. It should be noted however, that Fair Work is no substitute for equal pay or equal value in like work. The introduction of the Living Wage for social care workers in Wales (Welsh Government, 2022) will have disproportionately benefited women, given their adherence to the bottom of the pay scale, and restricted working hours, as did the introduction of the minimum wage (Manning, 2008) but this is no substitute for equal value assessments.

Equal pay should be explicitly listed as one of the rights that social partners will work towards in the public sector and the public procurement levers should require all bidders with more than 50 employees to have a job evaluation scheme and they should be able to demonstrate the findings of an employment and pay analysis across gender, ethnicity and disability, in their tenders.

## **Conclusion**

Fifty years on from the Equal Pay Act 1970, this short review has considered efforts to address workplace inequalities in Wales, with a focus on equal pay and the gender pay gap.

Wales has a distinct, collaborative approach to equality and social justice founded in the labour movement. This has created an accepted norm that there should be equality for all. Strong campaigning and activism has supported an enabling legislative environment, with supporting programmes largely resourced through EU funds.

In the actions taken within the Close the Pay Gap campaigns and the provision of capital directions to implement the Single Status Agreement 1997 and 2004, in the introduction of cross-cutting themes within European Funds allocation, and in creating a ‘pay differences’ duty that assists employers to understand and address the structural causes of pay gaps, the Welsh Government has demonstrated a strong interventionist approach.

This report has set out the improvements needed to increase the efficacy of the existing Welsh Specific Duty on ‘pay differences’ based on learning from the WAVE programme and

initial discussions with collaborating stakeholders across the public sector, unions, and women's equality organisations. Much of this learning can assist with the introduction of new legislation to address disability, sexual orientation and ethnicity structural employment and pay inequalities.

New legislative efforts to address race, sexual orientation and ethnicity pay gaps, as well as strengthening the gender pay differences programme, will need to be underpinned by effective analysis and a collaborative knowledge sharing programme to ensure their effectiveness. Public procurement legislation has the power to increase equality in the private sector if requirements for employment and pay analyses are included.

## **Appendix One: Timeline – Equal Pay and Gender Pay Campaigning, Legislative and Workplace Equalities Interventions <sup>22</sup>**

- 1964 - 1998 - Welsh Office has responsibility for equality
- 1970 – Equal Pay Act
- 1972 - founding of Disability Wales - advocacy, advice, research
- 1975 – Sex Discrimination Act
- 1978 - founding of Welsh Women’s Aid
- 1984 - founding of the South Glamorgan Women’s Workshop - gender atypical training, employability, childcare, welfare advice
- 1985 - founding of Wales Assembly of Women - women’s rights/ accredited to UN Social and Economic Council - CEDAW reports
- 1992 - founding of Chwarae Teg - workplace equality
- 1995 - founding of Black Association Women Step Out (BAWSO) - employability, training, domestic violence services
- 1996 - founding of Minority Ethnic Women’s Network Wales (MEWN)
- 1996 - founding of Say Yes for Wales - devolution campaign
- 1997 - Women Say Yes for Wales - devolution and equality campaign
- 1998 - Government of Wales Act - includes statutory duty to promote equality for all
- 2000- founding of LGB Forum - becomes Stonewall Cymru in 2003
- 2002 - Race Relations Amendment Act
- 2001 - 2007 - three phases of Close the Pay Gap Campaign - collaboration between the Welsh Government, the Wales Trades Union Congress (WTUC) and the Equal Opportunities Commission (EOC)
- 2005 - Disability Discrimination Act
- 2006 - Equality of Opportunity Committee request Minister to reject the Order for the specific duties under the *Sex Discrimination (Public Authorities) (Statutory Duties) Order 2006*
- 2006 - Government of Wales Act - mainstreaming duty placed upon Ministers
- 2011 - Welsh Specific Equality Duties including pay differences duty
- 2012 - 2015 - Women Adding Value to the Economy (WAVE) - employment and pay research and change management to support pay differences duty
- 2017 - GB Gender Pay Gap Reporting Regulations
- 2018 - Fair Work Commission
- 2018-19 - Gender Equality Review
- 2021 - Socio-Economic duty commenced
- 2021 - New Programme for Government and cooperation agreement with Plaid Cymru
- 2021 - Social Partnership and Public Procurement Act Consultation

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<sup>22</sup> Not exhaustive

## References

- Arabsheibani, R., Marin, A. and Wadsworth, J. (2004) 'In the Pink: Homosexual-Heterosexual Wage Differentials in the UK', *International Journal of Manpower*, 25 (3-4), 343-54
- Beddoe, D. (2001). *Out of the Shadows: A History of Women in Twentieth Century Wales*, Cardiff: University of Wales Press
- Broughton, A., Monica, A., & Rizzo, S. (2019). *The Future of Funding for Equality and Human Rights in Britain*. Equality and Human Rights Commission Research Report 127. Ecorys UK, <https://www.equalityhumanrights.com/sites/default/files/the-future-of-funding-for-equality-and-humanrights.pdf>
- Chaney, P. (2010). 'Delivery or Déjà vu? Gender Mainstreaming and Public Policy in Post-Devolution Wales', in N. Charles and C. Aull Davies (eds.), *Gender and Social Justice in Wales*, Cardiff: University of Wales Press
- Chaney, P. (2009). *Equal Opportunities and Human Rights: The First Decade of Devolution*, Manchester, Equality and Human Rights Commission
- Chaney, P. (2007). 'Strategic Women, Elite Advocacy, and Insider Strategies: The Women's Movement and Constitutional Reform in Wales', *Research in Social Movements, Conflicts and Change*, 27, 155–185
- Chaney, P. (2004). 'The Post-Devolution Equality Agenda: The Case of the Welsh Assembly's Statutory Duty to Promote Equality of Opportunity', *Policy and Politics*, 32(1), 63–77
- Chaney, P. (2003). *A Preliminary Evaluation of the Close the Pay Gap Campaign in Wales*, Research report commissioned by the Welsh Assembly Government, Equal Opportunities Commission (Wales) and the Wales TUC, Cardiff: Equal Opportunities Commission
- Chaney, P., Mackay, F., & MacAllister, L. (2007). *Women, Politics and Constitutional Change*, Cardiff: University of Wales Press
- Charles, N. and Aull-Davies, C. (2010). 'Setting the Scene: Devolution, Gender Politics and Social Justice, in N. Charles and C. Aull Davies (eds.), *Gender and Social Justice in Wales*, Cardiff: University of Wales Press
- Cockburn, C. (1985) *Machinery of Dominance: Women, Men, and Technical Know-How*, London: Pluto Press.
- Conley, H. and Page, M. (2015). *Gender Equality in Public Services: Chasing the Dream*, London: Routledge
- Chwarae Teg (2019). *Deeds Not Words: Gender Equality Phase 2 Report*, Cardiff: Chwarae Teg
- Davies, R. and Parken, A. (2017). 'Devolution, Recession and the Alleviation of Inequality in Wales', in Fee, D., and Kober-Smith, A. (Eds.), *Inequalities in the UK*, Emerald Publishing Limited, Bingley, pp. 323-340
- Deakin, S., Fraser-Butlin, S., McLaughlin, C., and Polanska, A. (2015). 'Are Litigation and Collective Bargaining Complements or Substitutes for Achieving Gender Equality? A Study of the British Equal Pay Act', *Cambridge Journal of Economics*, 39, 381–403
- EHRC (2014) *Equality Objectives and Strategic Equality Plans: A Guide for Listed Public Authorities in Wales*, Cardiff: EHRC Wales
- EHRC (2018) *Public Sector Equality Duty Monitoring*, Cardiff: EHRC Wales
- European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Verashchagina, A., Bettio, F., *Gender Segregation in the Labour Market: Root Causes, Implications and Policy Responses in the EU*, Publications Office, 2009, <https://data.europa.eu/doi/10.2767/1063>
- European Commission (2010) *Flexicurity Employment Indicators*, Report of the Employment Committee, EU Publications Office



- Fitzgerald, R. (2007). *Final Report and Evaluation of Phase 3 of the Equal Pay Campaign in Wales*, Research report commissioned by the Welsh Assembly Government, Equal Opportunities Commission (Wales) and the Wales TUC, Cardiff: Equal Opportunities Commission
- Guillaume, C. (2022) 'Is Litigation the Way Forward to Address the Undervaluation of Women's Work?' *Futures of Work*, newsletter, 10 February 2022, Issue 21, <https://futuresofwork.co.uk/2022/02/10/is-litigation-the-way-forward-to-address-the-undervaluation-of-womens-work/>
- Hepple, B (2010). 'The New Single Equality Act in Britain', *The Equal Rights Review*, 5, 11-24
- Institute of Welsh Affairs (2022). 'IWA Responds to the Levelling-Up White Paper: What Does "Levelling Up" mean for Wales', 3 February 2022, <https://www.iwa.wales/our-work/work/the-iwa-responds-to-the-levelling-up-white-paper/>
- Joll, C., Wass, V., and Parken, A. (2011). 'The Positions of Different Groups in Wales: A Cross-Cutting Summary and Conclusions', in Davies, R. (ed.) *An Anatomy of Economic Inequality in Wales*, WISERD research centre, report for EHRC Wales, Cardiff: WISERD
- Jones, M. and Wass, V.J. (2013). 'Understanding Changing Disability-Related Employment Gaps in Britain 1998-2011', *Work Employment and Society* 27 (6), 98
- Kingsmill, D. (2001). *Review of Women's Employment and Pay*, London: Department for Trade and Industry
- Kirton, G. (2021) 'Union Framing of Gender Equality and the Elusive Potential of Equality Bargaining in a Difficult Climate', *Journal of Industrial Relations*, 63(4), 591–613
- Koskinen-Sandberg, P. (2021). 'Wage Politics and Feminist Solidarity: The Case of a Cartel Regarding Early Education Teachers' Wages in the Finnish Capital Area', *Gender Work and Organisation*, 28 (3), 973-991
- National Assembly for Wales (2004). *Mainstreaming Equality in the Work of the Assembly*, policy review report, Cardiff: National Assembly for Wales
- MacBride-Stewart, S. and Parken, A. (2021). *Inequality in a Future Wales: Areas for Action in Work, Climate, and Demographic Change*, Cardiff: Future Generations Commissioner for Wales and Public Health Wales NHS Trust
- Milner, S.E. (2016). 'Gender Pay Reporting: Institutions, Mechanisms, and Organisational Change, GWO conference paper, June 2016
- Minto, R. and Parken, A. (2021). 'The European Union and Regional Gender Equality Agendas: Wales in the Shadow of Brexit', *Regional Studies*, 55 (9), 1550-1560
- Missteart, R (2014) 'Voices of the Factory Floor: The Forgotten Workers who Pioneered Equal Rights for Women in Wales', *WalesOnline*, 24 July 2014, <https://www.walesonline.co.uk/news/wales-news/voices-factory-floor-hidden-workers-7491941>
- Mitchell, M., Beninger, K., Rhamin, N., Morell, G., (2014). *Review of the Public Sector Equality Duty (PSED) in Wales*, NatCen research report for the Equality and Human Rights Commission (Wales), Cardiff: Equality and Human Rights Commission
- Morgan, E. (1972). *The Descent of Woman*, London: Souvenir press
- National Assembly for Wales (2006). Equality of Opportunity Committee, Transcript, 26 September 2006
- Oldbell (2015). *External Evaluation of the Women Adding Value to the Economy (WAVE) Programme* for the Wales European Funding Office, West Wales, and the Valleys Convergence Operational Programme ESF 2007-2013

- Parken, A. (2022a). 'Equality and Devolution in Wales: A Distinct Approach?' Research report for the project 'Gender Equalities at Work: an Interdisciplinary History of 50 Years of Legislation, <https://www.genderequalitiesat50.ed.ac.uk/>
- Parken, A. (2015). *The WAVE Employer Case Studies: From Evidence to Action on Gender Pay Gaps*. Project Overview Report for the Women Adding Value to the Economy (WAVE) Programme, <https://www.cardiff.ac.uk/research/explore/research-units/women-adding-value-to-the-economy-wave>
- Parken, A. and Ashworth R. (2019). 'From Evidence to Action: Applying Gender Mainstreaming to Pay Gaps in the Welsh Public Sector, *Gender Work and Organisation*, 25 (5), 1–20
- Parken, A., Pocher, E. and Davies, O. R. (2014). *Working Patterns in Wales: Gender, Occupations and Pay*. Labour Market Report for the Women Adding Value to the Economy (WAVE) Programme
- Parken, A., Rees, T. and Baumgart, A. (2009). *Options for an Equal Pay Duty for Wales: Research and Policy Review* Cardiff: Welsh Assembly Government, <https://gov.wales/sites/default/files/statistics-and-research/2019-07/080214-options-equal-pay-duty-en.pdf>
- Parken, A. and Baumgart, A. (2009). *The Benefits of Settling Equal Pay, Local Authority Case Study*, Cardiff: Equality and Human Rights Commission (Wales)
- Rees, T. (2005). 'Reflections on the Uneven Development of Gender Mainstreaming in Europe', *International Journal of Feminist Politics*, 7 (4), 555-574
- Rolph, M. (2010). *Evaluation of Use of DCELLS Core Funding Support for Chwarae Teg*, report for Welsh Government, Cardiff: Welsh Government, <https://gov.wales/sites/default/files/statistics-and-research/2019-09/101109-evaluation-use-dcells-core-funding-support-chwarae-teg-en.pdf>
- Rubery, J., and Grimshaw, D. (2015). 'The 40-Year Pursuit of Equal Pay: a Case of Constantly Moving Goalposts, *Cambridge Journal of Economics* 2015, 39, 319–343
- Trades Union Congress (2013). 'At What Price Justice? The Impact of Employment Tribunal Fees', London: TUC
- Thornley, C. (2006). 'Unequal and Low Pay in the Public Sector', *Industrial Relations Journal*, 37 (4), 344-358
- Welsh Government (2018). *Fair Work Wales*, the report of the Fair Work Commission, Cardiff; Welsh Government
- Welsh Government (2022). *Implementing the Real Living Wage for social care workers in Wales*, Cardiff: Welsh Government, <https://gov.wales/implementing-real-living-wage-social-care-workers-wales>
- Welsh Government (2021). *Well-being of Future Generations: National Indicators and National Milestones for Wales*, laid before Senedd Cymru 14 December 2021, Cardiff: Welsh Government
- Welsh Government (2021a). *Programme for Government*. Cardiff: Welsh Government
- Welsh Government (2021b). *Pay Accountability Within Local Government: What to Include in Local Authority Annual Pay Policy Statements*, 16 November 2021, Welsh Government: Cardiff
- Welsh Government (2021c). *Consultation Document: Draft Social Partnership (Draft) Bill*, Welsh Government: Cardiff
- Welsh Government (2020). *Advancing Gender Equality in Wales Plan*, Cardiff: Welsh Government, <https://gov.wales/sites/default/files/publications/2020-03/advancing-gender-equality-plan.pdf>

- Welsh Assembly Government (2006). *Eighth Annual Report on Equality*, Cardiff: Welsh Assembly Government
- Wilson, L. and Campbell, J. (2020). 'Gender Mainstreaming in Action? The Scottish Structural and Investment Funding Programme 2014-2020', *Feminismo/s*, 35, 63-93