

Investigation into unlawful pay discrimination by the BBC

Statutory Investigation under section 20 and schedule 2 of the Equality Act 2006 into the BBC by the Equality and Human Rights Commission.

Amended terms of reference

Interpretation

1. For the purposes of these terms of reference the following definitions apply:
 - a. '*The 2006 Act*' means the Equality Act 2006;
 - b. '*The 2010 Act*' means the Equality Act 2010;
 - c. '*BBC*' means the British Broadcasting Corporation and 'BBC' includes the BBC Public Service (which itself includes the World Service), BBC Studios, BBC Worldwide, Global News Ltd and BBC Studioworks (the "arms" of the BBC) including the arms of the BBC by whatever name they were or are known, or may in the future be known, and by whatever corporate or other vehicle they were or are provided or may in the future be provided;
 - d. '*The Commission*' means the Commission for Equality and Human Rights (commonly known as the Equality and Human Rights Commission);
 - e. '*CPF*' means the BBC's Career Path Framework;

- f. '*On-air jobs*' means the jobs that PwC considered in its On-air review (in respect of which it produced a public report dated 30 January 2018);
- g. '*On-air staff*' means staff occupying On-air jobs;
- h. '*Pay*' means all and any sums payable to BBC staff in connection with their employment that are within the scope of the Equality Act 2010, including basic pay, shift pay, allowances, pension, bonus, sick pay, redundancy and unfair dismissal compensation awards, whether payable under an express term of their contracts or otherwise;
- i. '*Pay case*' means any grievance or complaint, formal or informal, and howsoever expressed, raising an issue of pay of BBC Staff;
- j. '*Sex discrimination*' means direct discrimination or unjustified indirect sex discrimination because of the protected characteristic of sex, as those terms are defined in the 2010 Act;
- k. '*Sex equality clause*' has the same meaning as in the 2010 Act;
- l. '*Staff*' means all individuals in 'employment' as defined by the 2010 Act and therefore includes individuals employed or engaged by the BBC Public Service under a contract of employment or any other contract to provide personal service, whether or not expressed to be a staff contract, an On-Air Talent contract, or howsoever otherwise expressed, and to include those engaged via a personal service company or on a freelance basis in so far as they would not be covered by the definition under the 2010 Act;
- m. '*Terms and Conditions Review*' means the BBC's review of terms and conditions; and

- n. *'Unlawful pay discrimination'* means breach of the sex equality clause as regards pay of female Staff and/or sex discrimination as regards pay of female Staff.

Background

2. The Commission recognises that the BBC is undertaking a programme of reform which includes changes to terms and conditions and pay practices. The Commission suspects that there has been unlawful pay discrimination by the BBC in the BBC Public Service in the period prior to the introduction of these recent reforms. The Commission recognises the BBC's commitment to reform and its desire to work collaboratively in ensuring that the reforms are fully refined and embedded. Against that background, the Commission wishes to review whether such reforms have fully corrected any potential historic unlawful pay discrimination.

Scope of investigation

3. The investigation will consider whether there was unlawful pay discrimination in respect of BBC Staff in the period from 1 January 2016 to the date of any changes to the pay of those BBC Staff in the Public Service following the Terms and Conditions Review.
4. For the purposes of this investigation the Commission will examine a sample of pay cases where the BBC has reached resolutions or made decisions (whether resolved or decided before or after or on the same date that these Terms of Reference are published) ("the Samples").
5. In examining the Samples the Commission will look at all such issues as it considers appropriate, which may include any or all of the following:
- a. The jobs occupied by the complainants in the Samples ("the index jobs");

- b. Which jobs should properly be considered as comparator jobs for the index jobs;
- c. The pay of the index jobs and of any comparator jobs identified;
- d. If there is a difference in pay, whether there is a material reason for that difference that is not a difference because of sex;
- e. If it is because of sex, whether it is direct sex discrimination or indirect sex discrimination; if the latter, whether there is objective justification for the difference;
- f. Managerial discretion as regards pay;
- g. The BBC's approach to job evaluation and pay grading, and
- h. The relative position of staff and freelancers, and the pay of male and female freelancers.

5A. If the evidence provided in the Samples falls outside the timeframe specified in paragraph 3 above, the Commission can consider that evidence and make findings of unlawful pay discrimination in relation to it.

6. For the purposes of this investigation as set out in paragraph 3, the Commission may also examine the pay of jobs other than the index jobs and may examine all such issues as it considers appropriate in relation to such jobs, including (with any appropriate modifications to reflect the different jobs examined) those set out in paragraph 5 above.

7. The Commission will examine whether and to what extent the BBC has adequately resolved the unlawful pay discrimination in paragraph 3 above, which may include any or all of the following:-

- a. The way in which jobs have been mapped onto the new CPF;
- b. The width and overlapping nature of pay bands;
- c. The influence of market forces and of other potentially discriminatory pay-related factors; and
- d. The approach taken to resolving pay grievances, including in particular the BBC's approach to the identification of comparators;
- e. The approach taken by the BBC to pay auditing.

Sources of information

8. The Commission will use all its powers under the 2006 Act to obtain the necessary information to conduct its investigation.
9. The Commission will consider all information that it receives from the public or past or present BBC staff.
10. The Commission will make arrangements for the BBC to make representations and shall consider any representations made, in accordance with the 2006 Act, and in its approach to the BBC will at all times seek to act fairly and reasonably.

Communications concerning this investigation

11. Any communications concerning the content or progress of this investigation may be sent in confidence to bbcinvestigation@equalityhumanrights.com

Dated: 20 February 2020.