

A photograph of three business professionals (two men and one woman) sitting around a table in a modern office or meeting room at night. They are looking at laptops and appear to be in a collaborative meeting. The room has large windows showing a cityscape at night. The lighting is warm and focused on the people.

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# Is it time to review your pay and grading structure?

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Lowri Phillips & Helen Snow

# Agenda

- Pay and grading reviews
  - Triggers
  - Key considerations
  - The process
- Implementation
- Potential legal challenges

# Pay and Grading Reviews



# Pay and grading review triggers

- Reorganisation and redesign of roles
- Requirement to reduce expenditure
- Retention issues
- Shared services arrangements
- Ongoing monitoring
- External pressures

# Key considerations - affordability

- Real Living Wage - key factor in prompting pay and grading reviews
- Overall affordability
- Incorporating RLW into pay structures
- Wholesale changes to pay and grading structures?

# Factors to consider in undertaking a review

- Job Evaluation
- Pay protection
- Additions to basic pay
- Pay progression
- Back pay

# Key steps

- Determine type of grading and pay structure and pay progression system
- Determine Job Evaluation scheme
- Carry out the Job Evaluation

# Key steps

- Benchmarking and pay modelling
- Determine back pay proposals
- Determine bonus and other performance related pay
- Determine other conditions (e.g. allowances, on-call payments)
- Partial implementation or phasing in

# Key steps

- Undertake an equality impact assessment
  - Ensure proposals are not directly or indirectly discriminatory
  - Calculate average previous and proposed basic pay for men and women (undertaking work rated as equivalent)
  - Check equal pay gaps are reduced
- Pay protection
- Assimilation

# Implementation

- Collective Agreement
- Voluntary acceptance
- Dismissal and re-engagement

# Implementation

- Voluntary Agreement
  - Individual sign up
  - *Kostal UK Ltd v Dunkley and others [2021] UKSC*
- Dismissal and re-engagement
  - Collective consultation obligations 20+ employees
  - SOSR dismissal
- Settlement Agreements

# Potential legal challenges



# Equal Pay

- Equality Act 2010 Sections 64(1)(a) and section 65(1)
- Sex equality clause
- Equal work
  - “Like work”
  - Work rated as equivalent
  - Work of equal value

# Equal Pay

- Comparators
  - Of the opposite sex
  - Employed in the 'same employment' as the claimant
  - An actual person (not a hypothetical comparator)
  - A predecessor in the role

# Equal Pay

- Presumed that difference in salary is due to the difference of sex
- Difference in pay is due to a material factor, reliance on which does not involve direct or unjustified indirect discrimination
- ‘Material factor defence’
- The man is paid more for a particular reason and that reason has nothing to do with the fact that the claimant is a woman or the comparator a man.
- In the absence of any suggestion of indirect sex discrimination, successfully bring an end to the equal pay claim: the material explanation for the differential will suffice and there will be no need for the employer to justify its actions any further in order to avoid equal pay liability.

# Equal Pay

- Examples of Material Factors
  - Market forces arguments
  - Experience
  - Length of service
  - Pay increases to retain employees
  - Pay protection arrangements
  - Different collective bargaining processes or pay structures
  - Protection of terms under TUPE

# Equal Pay

- Material factor needs to be kept under review
- Evidence that the material factor is in some way ‘tainted’ by sex
  - Indirect discrimination
  - Statistics demonstrate an adverse impact on women
  - Requirement to objectively justify the actions
    - Proportionate means of achieving a legitimate aim

# Legal challenges relating to pay and grading reviews

- Equal pay claims
  - Pay protection
  - Labour Market Supplements
  - Allowances, bonuses etc.
- A non-analytical job evaluation/different job evaluations
- Historic claims

# Summary

- Consider the drivers behind the pay and grading review and what it is hoped the exercise will achieve
- Plan the process, ensure adequate resources are available
- Engage with the trade unions at the outset
- Be mindful of the potential legal challenges when making decisions

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# Thank You

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