

## 5 Equal Pay

Not all the cases in the research sample were brought under the Sex Discrimination Act, and in this chapter we turn to twelve cases brought before industrial tribunals under the Equal Pay Act 1970, as amended by the 1983 'equal value' regulations. In fact, only one case considered in this chapter is an equal value case, all others having been brought under the heads of like work or work rated as equivalent. One case considered here was brought under both the EqPA and the SDA and was successful on both counts. In another case the applicant failed to establish her entitlement to equal pay, but a related claim of victimisation on account of the equal pay claim was successful, and we have chosen to consider that case under the equal pay heading.

All but one of the cases considered in this chapter are against private sector employers. We follow the format of previous chapters by first considering in turn each employer in the group of primary case studies.

### **E1: Browns Ltd**

This service sector employer has about 125 shop front branches on high streets up and down the country. Outlets vary in size from three to fifteen employees depending on the nature of the work undertaken. Some branches only receive work from customers and send it for processing elsewhere, while others both receive and process work on the premises. In total the company has about 750 employees on its payroll. There is a personnel officer at company headquarters and there are no trade unions.

For this case study data is drawn from interviews with a personnel officer, a sales director and the applicant.

***The decision***

The tribunal decided that the applicant was entitled to equal pay with her comparator having found that she was employed on like work. The employer had failed to make out a case that the variation in pay was due to a genuine material difference between the two jobs other than sex. The parties were allowed four weeks to arrive at an agreed amount of arrears, failing which a date would be fixed for a new hearing to decide on the appropriate amount. In the event this proved to be unnecessary.

Both parties were legally represented, the applicant by a barrister and the respondent by a solicitor. The applicant's case was legally assisted by the EOC.

***Case history***

At the time of her application the applicant had been working for the company for some five years, initially as a sales counter assistant, but after acquiring the appropriate skills, as a multi-skilled branch assistant at the third largest of the company's branches. Her job was as a machine operator and processor, and being multi-skilled, she was expected to engage in at least three different types of skilled tasks. There was only one other multi-skilled operator in this branch, a male who had been with the company a few years longer than the applicant.

The applicant had been asked to do some work in the accounts department and while working on the accounts she discovered that her comparator was earning about £20 per week more than she was, her pay at the time of the tribunal being £76 and her comparator's £98 per week. The applicant brought this disparity to the attention of her branch manager but, in the applicant's words, 'she didn't want to know'. Following the company's grievance procedures, she then took the matter up with the district manager who refused to take any action. She wrote to the company sales director with no satisfaction and finally to the managing director. There followed a correspondence between the applicant and the managing director in which he sought to justify the disparity but the reasons did not satisfy her.

The applicant was not a member of a trade union (none were recognised by the company) but she enquired of a union which she knew was active in retail outlets. That union could not help her because she was not a member and finally, on the advice of her husband, she wrote to the EOC to seek advice.

There was a common pay structure throughout all the company's branches. This consisted of a basic weekly rate for the post held, and in addition, a merit allowance payment which could be up to 25 per cent of basic pay. Merit payments were, it seemed, at the discretion of the branch manager, but in awarding a merit payment the company took into consideration the personal attributes of the employee (such as his or her proficiency on the job, and willingness to work overtime and be flexible with hours) and the turnover and profitability of the branch. We heard from a manager that it was not unknown for branch managers to take into account the fact that a man might have a dependent wife and children when deciding how to allocate merit pay.

At the tribunal the company sought to show that, although the nature of the work done by the applicant and her comparator were similar in that they were both multi-skilled operators, the component tasks which each was required to undertake were quite different. It was claimed, for example, that the comparator was required to train new operators, to lift weights and to be more flexible about overtime hours. However, the tribunal found that overtime working was on a voluntary basis and could therefore not be considered as an integral part of the job; that, like her comparator, the applicant had in the past been engaged on training new operators and that she had lifted heavy weights when required.

In addition, the company sought to show that in the past the comparator's job had been as a supervisor. Although the post of supervisor had since been abolished it was claimed that his terms and conditions of employment had been 'red-circled' and that in the passage of time the anomaly between his pay and the applicant's would be levelled out. However, it was found that the disparity in pay predated the time when the comparator was appointed supervisor and the company produced no evidence to show that progress was being made towards levelling out the basic rates of pay of the two employees.

### ***Effects and consequences***

About one week before the hearing the applicant was offered a pay increase backdated for a period of about nine months. The proposed increase would still have left her worse off than her comparator and so she refused to cash a cheque sent to her by her employer for fear it would prejudice her case. On the day of the hearing the company's solicitor again made an offer to the applicant but this was declined.

Winning the case resulted in her getting a better deal than the employer was offering in settlement, and two weeks after the tribunal hearing she received the full amount of back pay, some £1,700. In addition, she was offered the title and pay of branch supervisor thus putting her on the same pay rate as her comparator. It will be recalled that the position of branch supervisor had been abolished some years previously, and it seemed that by reintroducing this post along with a new job description, the company was attempting to avoid related claims from multi-skilled female operators in other branches. The personnel manager told us of his concern that there would be other claims as a result of the applicant winning the case.

The applicant left the employment of the company to have a baby about ten months after the case and did not return. She made clear to us her dislike of the company, believing the wages to be very low and criticising the poor state of employer/employee relations.

There had been a number of important developments since the tribunal. First, the company took the view that the matter could have been resolved earlier without recourse to a tribunal if the district manager had informed his superiors of the applicant's claim. The district manager was judged to have acted improperly and was therefore demoted to branch manager. We were told that the company had been concerned for a long time about his performance and that this case provided an opportunity to take action against him. The applicant herself provided independent confirmation of his demotion.

Of greater importance, however, was the link set up between the company and ACAS officials which resulted in the company taking a look at ways of improving its bonus and merit pay system. It is likely that ACAS officials drew the attention of the company to the problems the merit pay system was causing, and we gained the impression that there would have been changes to the pay scheme even if the company had won this case. Nevertheless, immediately after the tribunal the company set up a committee whose remit was to work out a new pay scheme. Skills levels were defined, proper job grades were introduced and a new merit rating system was introduced within a year of the tribunal decision. Merit pay became a smaller proportion of an employee's pay packet and was decided at headquarters in accordance with a seven-point scale. The applicant confirmed that before she left the company everyone had been issued with a new job description and

had been formally advised of a grade and merit rating. This had never happened in the past.

The scope for fresh equal pay claims seems to have been limited by these developments but we heard that two male employees continued to be paid at rates above the basic wage for their grade and that this was due to a previous 'red-circling' arrangement. We were informed that these discrepancies would eventually disappear due to the pay of the two men being held at current levels.

We heard that the company had had no other experience of sex or race discrimination cases. The company did not call itself an equal opportunity employer, nor had it sought to include any references to equality of opportunity in the staff handbook. The case had not precipitated any more general review of practice or procedure beyond the review of the pay structure. However, it was maintained that women did well within the organisation. Apart from the observation that both the sales director and the personnel manager whom we interviewed were women, we have no independent corroboration of that claim.

### ***Conclusions***

The intervention of the tribunal seems to have been successful not only in getting better pay for the applicant but also in setting up a new grading system and a method of merit payments which the company itself admitted was long overdue. Without the applicant having taken the case it is doubtful that any of these changes would have been introduced. ACAS played an important role in promoting these reforms, one of the few cases in this sample where we have been able to make such a comment. We note that ACAS was able to be of most help in giving advice to the employer about a new pay structure after the tribunal had come to a decision. We note, too, that it was the advisory service of ACAS, invited by the employer after the tribunal, rather than the conciliation service of ACAS which played a constructive role.

A company official was disciplined for mishandling the applicant's grievance but, as might be expected in an equal pay case, the tribunal decision had no noticeable impact on the development of equal opportunity policies within the company.

## **E2: Starpress Ltd**

Starpress is one of a group of companies with common proprietorship in the publishing and communications industry. It is, however, operationally independent and has its own personnel function. At the time we carried out interviewing the company employed about 750, of whom 300 were skilled workers in the printing trades with only one of these being a woman. The remainder were unskilled workers and office staff. The company had recently come through a major rationalisation of its operations due to the introduction of new technology, and had lost about half its workforce. All employees are members of trade unions.

For this case study we interviewed the company's personnel director, a trade union representative and the two applicants.

### ***The decision***

The tribunal decided that the applicants, two female cleaners, were entitled to equal pay with male cleaners because their work was of a broadly similar nature. The company was instructed to pay the women the difference between their wages and that of a male cleaner backdated for a period of two years.

Both the employer and the applicants were legally represented at the tribunal and the applicants' case was legally assisted by the EOC.

### ***Case history***

The applicants were two of a group of about 10 female cleaners who were employed on a part-time basis by the company. They commenced work at 4 am and had generally left the premises by the time the working day began for other employees. The two women sought to compare themselves with male cleaners who were for the most part employed full-time by the company and who worked dayshift hours. The applicants had been unhappy with their rate of pay for some time and had from time to time let it be known that they thought they should be getting more money. The threat of redundancy had hung over their heads for some time and the rest of the workforce was being severely cut back. As cleaning staff left, they were not replaced and the applicants believed they were being asked to do an increasing amount of work for the same money.

The women had been aware for some time that their jobs were at risk, and there had been talk of contracting out the cleaning services.

By the time the applicants came to make a complaint to the industrial tribunal, they had in fact been made redundant and the company had contracted out the cleaning services.

The applicants had tried for some time to enlist the support of their union to pursue the complaint of unequal pay with management. Although a local union official had been sympathetic, senior officers of the union decided not to give the women support. This resulted in the applicants taking the union to an industrial tribunal in a separate development as they alleged that the failure of the union to support the equal pay claim against Starpress had prejudiced their chances of success and resulted in their receiving less compensation.

It should be noted that the practices of certain branches of the union had come under separate criticism from the EOC. The applicants had themselves been refused admission to the section which the male cleaners belonged to. Indeed they had experienced some difficulty in getting any section to take them on as members.

The applicants decided to raise their claim for equal pay directly with management through their supervisor. They allege that they were threatened with the sack and warned that their redundancy pay could be cut if they continued to pursue the equal pay claim. However, the applicants wrote to ACAS and were advised by ACAS to approach the EOC.

The company defended the case because it believed that the work done by the women and the men was qualitatively different. In reality, however, the company was concerned that, if it gave in to the claim, the elaborate structure of pay differentials which had been built up over the years would collapse and this would lead to a period of uncertainty in industrial relations. The union refused to back the applicants' claim for equal pay because it was believed the claim would lead to wider redundancies for cleaners throughout the industry. However, a local official of the applicants' union believed that the decision to contract out cleaning services had already been taken before the applicants took the case to tribunal. At the tribunal the company sought to prove that the job of a male cleaner which involved cleaning male toilets was more onerous than that of a female cleaner involved in cleaning female toilets. It was argued that the male cleaners spent more time cleaning toilets and that their jobs involved a higher 'obnoxious' element. In addition, it was claimed that the male toilets were used more frequently and that there were more of them.

However, the tribunal adopted the simple view that cleaning was cleaning and ruled in favour of the applicants.

***Effects and consequences***

The company was concerned that losing the case would make it vulnerable to claims from other quarters. Particular concern was raised about the scope for equal value claims since pay differentials in the industry could probably not be justified on any objective basis. The company therefore tried to avoid publicity about the case and engaged in what it described as a ‘damage-limitation exercise’. Personnel directors from the various related companies got together to discuss the implications of the case and how they could prevent future problems. It was decided to speed up and broaden the contracting-out of all service jobs, and as a result, two other companies in the group decided to contract out cleaning services. We were told that Starpress would never directly employ part-time female cleaners again.

The company paid the women about £1,000 each in pay arrears. There was some difficulty in agreeing the amount and the personnel director took the view that the women had agreed to accept less money because they were getting ‘cash in hand’. The applicants believed that they should have got more money but hoped to sort this out in their case against the union.

There were no more positive consequences to flow from the case either in terms of a general regrading exercise or in the direction of policy developments concerning equality of opportunity for women. There have been separate developments following an investigation by the EOC into membership practices in the applicants’ trade union but we cannot comment on how effective this investigation has been in removing restrictive membership practices, or on how it will have affected, if at all, employment practices within the industry.

***Conclusions***

Apart from the fact that the applicants received back pay, and accepting that this may not have been the full amount due, there were no further constructive developments following on directly from this particular case. The organisation as a whole took defensive action to limit possible repercussions in related companies, and cleaning and other services were contracted out. The company claimed that as a

result of the application it had been forced to take steps which in the long term would result in those women working in the industry losing out. For example, the company claimed that the rates of pay offered to women by outside contractors would be even lower than those which the company had been paying.

The company could have decided to retain the women and pay them the same rate as men. Instead it contributed to the lowering of female wage rates by seeking the same service at a cheaper price from an outside contractor.

### **E3: Northside Dealers Ltd**

The company is a motor dealership, one of a group of eight dealerships throughout the UK trading under different names but under the same proprietorship. The group is in turn part of a wider network of companies with interests in the leisure and travel industry. Northside itself employs about 80 staff and has considerable operational autonomy, although personnel and industrial relations matters are the responsibility of a training manager based at group headquarters. It is one of the biggest dealerships in the group. Staff include motor vehicle mechanics and technicians, car sales staff, and parts department employees. Only about 25 per cent of staff, mostly motor mechanics, are in the trade union recognised by the company.

Data for this case study derives from interviews with the manager of the dealership, the parts manager, a trade union official and the company training manager.

#### ***The decision***

The applicant made two complaints to the tribunal and both were heard at the same hearing. A complaint made by the applicant under the SDA that she had been dismissed by the employer due to her sex was rejected by the tribunal. However, it found her application for equal pay to be well founded in that the work she did was the same or broadly similar to that of a male comparator. The respondent was instructed to pay the applicant arrears for a period of nine months prior to her dismissal from the company.

At the tribunal the applicant was represented by a trade union official and the company by the training manager.

***Case history***

The applicant was employed by the company as a van sales driver. Her job involved delivering goods to customers and collecting cash on a route which had been allocated to her as one of four employees doing similar type of work. She had been provided with a written statement of terms and conditions of employment by the company and her letter of appointment stated that her job title was that of ‘van sales driver’.

At the time of the annual wage review she was awarded an increase of 2 per cent, but she discovered that two male van sales drivers had been offered increases of 5 per cent. She discovered at the same time that the basic wage of the two men was higher than hers. She complained about this to the parts manager, but was told that, despite her job title, she was really a van driver and not a van sales driver. The manager told her that the men were expected to engage in selling parts for the company in the course of their rounds and they were therefore entitled to a higher wage rate. This claim was the essence of the company’s defence at the tribunal.

A few weeks after the applicant complained to the parts manager she was dismissed from the company’s employment after she refused to return to a customer to collect an unpaid account. The applicant complained that there had been sex discrimination in the way she had been selected for interview, but the tribunal did not find this to be so. She had been employed by the company for less than two years at the time of her dismissal and was therefore not entitled to proceed under the EP(C)A.

At the tribunal the company sought to maintain that the job title in the applicant’s letter of employment had been wrong and that a mistake had been made by the company. However, when evidence was heard from the two male van sales drivers it became clear that selling was a very minor part, if any, of their job tasks and, in addition, the company was unable to produce any figure showing the level of sales obtained by the two men.

***Effects and consequences***

We heard from both the general manager and a trade union official who represented the applicant at the tribunal that she had received the full amount of back pay although we were not able to trace the applicant to verify payment details. One immediate repercussion of

the case was that another female driver whose job title was 'van driver' rather than 'van sales driver' (although she maintained that she did the same as the applicant) had her case for equal pay with the male van drivers taken up by the union. This was granted by the company on condition that she agreed to take on exactly the same tasks as the men.

The training manager told us that as a result of the case the company had become more aware of the position of women within the organisation and they had therefore taken the opportunity to look at the rates of pay of male and female reception staff. He acknowledged that until the case male and female reception staff had been doing basically the same job but getting different rates of pay. The men had been called 'technical assistants' and the women 'clerical assistants'. Now they had the same job title throughout all eight dealerships and the rates of pay had been harmonised.

We were told that the circumstances which gave rise to this case were unique and were the result of an anomaly at this particular dealership. Work practices varied from one dealership to another and Northside had a greater amount of van delivery work than others. There were no obvious repercussions for other dealerships with regard to van delivery jobs. In the view of the general manager, the main outcome was that he had become much more aware of the need for clearly defined job descriptions. He maintained that the jobs of the applicant and the men had been different but the company's case had in his view failed because it did not have the documentary evidence to show that there were differences.

The training manager told us he had a remit for the promotion of equality of opportunity throughout the company. After the launch of the CRE Code of Practice senior line managers had attended a training course. From time to time he received booklets from the EOC which he passed on to local managers. The company had a policy statement dated four years prior to our visit entitled 'Race Relations and Equal Opportunities' which contained references to the SDA and EqPA. (It took several minutes of rummaging through filing cabinets before a copy was found!) A section from the policy statement is quoted in the staff conditions of service handbook which was found more readily. At Northside the general manager recalled having received a policy statement on equality of opportunity from headquarters but was unable to produce a copy after some searching. A staff conditions of service handbook was found. The general manager took the view that all staff

must know about the policy because each was required to read and sign for his or her own personal copy of the handbook.

### ***Conclusions***

The tribunal resolved the disparity in pay between male and female van sales drivers. Although the applicant had been dismissed by the employer in connection, it seemed, with another incident, another woman doing a similar job had been granted equal pay with the male drivers. Furthermore, there had been a review of the position of female reception staff and differences in pay had been harmonised. The company had been made aware of the need for more detailed job descriptions, if only as a defensive tactic at any future industrial tribunals.

The company had an equal opportunity policy statement which had been unchanged for four years. The case had not led to a review of the operation of that policy.

The trade union had played an important role in pursuing the applicant's case and in following up on the implications of the case with respect to the job of another female employee. The union played this role despite the fact that neither of the two women was a member of the union at the time, although both agreed to join as a condition of obtaining union support. The constructive attitude of the union in this case contrasts sharply with the attitude of the relevant unions in the Power Supplies Co. and Starpress cases.

### **E4: Butcher Engineering Ltd**

The employer is a light engineering company employing in excess of 1,000 workers nearly all of whom are based at one site. Butcher Engineering was described to us as a family run firm with close ties to the local community, it being one of the principal employers in the locality. The company recognises two unions both active in the engineering industry and these have full negotiating rights. About 70 per cent of the workforce are members of trade unions.

For this case study we carried out interviews with the personnel officer, a trade union official and the applicant.

### ***The tribunal's decision***

The applicant claimed that she was employed on like work with a male comparator who received a higher rate of pay. The tribunal found that

the applicant was employed on like work with her comparator and that the company had failed to make out a genuine material difference defence. It ordered the company to pay the applicant arrears for a period of two years before the date of her application. An alternative claim that she was employed on work of equal value to two male comparators was not considered. The tribunal took the view that it would only consider the equal value claim if the 'like work' case could not be established.

The applicant was represented at the tribunal by an official of her trade union. The company was represented by an adviser from a branch of the Engineering Employers' Federation (EEF).

### ***Case history***

The applicant was employed as a tools control clerk and had been employed by the company for a period of about 11 years at the time the application was made. Her job was to supply tools from the company's stock of about 40,000 tools to sub-contractors engaged on work for the company. The job involved tracing the location of tools, checking on availability and logging them in and out. In addition, she had various residual duties and might be called upon to do typing in the office from time to time.

Her comparator had been with the company for some six years and also held the position of tool control clerk. At first his job had been identical to the applicant's except that he could not type and he was therefore allocated other clerical duties. As time progressed the tool control tasks became divided as a matter of convenience between the two clerks, with the applicant handling existing tools and her comparator handling new tools.

The applicant was a union representative and would on occasions attend meetings held at the premises. At one union meeting it emerged that the applicant was paid less than her comparator and the union decided that this discrepancy ought to be taken up with management. The applicant had the support of her comparator and he even gave evidence on her behalf at the tribunal hearing. The applicant told us that since the introduction of new managers industrial relations in the company had deteriorated. At one time there was very close cooperation with management and problems would always be sorted out by negotiation. The new managers had introduced batch production methods which the union thought were unsuited to the

product and which had altered traditional working patterns. We got the impression that the case was pursued by the union as part of a wider campaign against new management practices. The applicant would not have pursued the case without the encouragement and support of her union.

We heard that the applicant and the union had exhausted all the recognised grievance procedures prior to raising an application to the tribunal. The company argued at the tribunal that it had become necessary to allocate a new task to the comparator which gave him a greater degree of responsibility and which justified the difference in pay. His job, it was argued, required a higher degree of technical skill because it involved the extraction of information from engineering drawings. However, the comparator gave evidence that it was a common-sense task requiring no special knowledge or skill. It emerged that the applicant was on occasions required to operate a VDU and the tribunal decided that such a task was of comparable technical complexity to consulting engineering drawings. The tribunal considered that the comparator's new task was in any event merely another aspect of the normal duties of a control clerk. The tasks done by the applicant and her comparator may have been different from time to time but they could all be subsumed under the general job description and terms and conditions of employment of a tool control clerk.

### ***Effects and consequences***

Within a few months of the tribunal decision the applicant had accepted voluntary redundancy from the company. The company decided to computerise the tool control procedures and the job of tool control clerk disappeared. She was offered alternative work but did not find it to her liking and declined the offer. She believes she was manoeuvred out of a job and that more interesting work could have been found for her if the company had wanted to keep her. In her view the company had wanted to demonstrate to others the consequences of taking the company to an industrial tribunal.

After the tribunal the company employed the EEF officer who had represented the company at the hearing as a consultant to advise on irregularities in the grading structure and where necessary to devise new job grades. However, it was clear that this exercise fell far short of a proper job evaluation scheme and that no major changes in the

grading system had resulted. The purpose had rather been to discover if there were areas of work where the company might be vulnerable to further equal pay claims.

The personnel officer said the lesson had been learned that compromise was preferable to losing at a tribunal. He himself had been of the opinion that the company would lose the case; he had therefore advised senior management to settle but he had been overruled. He now believed his own position in the company had been enhanced and that alternatives to going the whole distance to a tribunal would now be looked at more carefully in any future cases. Another equal pay claim had in fact been resolved by negotiation.

The company did not have an equal opportunity policy statement and no consideration had been given to developing one. The company preferred to employ women in certain workshops where there was a tradition of female employment, industrial sewing being mentioned as an example. Much of the recruitment to the company still took place through informal methods. The company had in the view of the personnel manager a good local reputation and strong connections with the local community. Family connections certainly helped in getting employment with the company.

### ***Conclusions***

The case itself had no immediate impact for the jobs of other workers and there were no consequential equal pay claims. Both tool control clerk jobs were abolished shortly after the tribunal due to the introduction of new technology. The applicant was awarded back pay for a two-year period and with redundancy money we heard that this came to about £5,000.

The company had taken defensive action to deal with anomalies in the pay structure which it thought might give rise to further equal pay claims. However, there had been no detailed examination of the jobs done by men and women in the organisation with a view to creating a grading and pay structure which was free of sex bias.

Within the company there was a very low level of awareness of equal opportunity issues and there was no evidence that awareness had been raised by the tribunal's decision.

### **E5: Craft Casings Ltd**

The company makes personal computer cases for a large well-known computer manufacturer. At the time of the tribunal the company employed about 600 people although due to expansion the number of employees was likely to increase to about 800 within the year. The company has five different sites all located in close proximity to each other and there was considerable transfer of personnel between sites. The company is part of a larger multinational group but is operationally independent both in terms of industrial relations and day-to-day commercial decision-making. There are no trade unions.

For this case study we interviewed the personnel manager and two applicants.

#### ***The decision***

The tribunal found that all six applicants were entitled to equal pay with a male comparator. Each was awarded back pay amounting to approximately £400. The tribunal also considered an application made by some of the women that they had been victimised contrary to section 4 of the SDA by being denied opportunity for overtime working as a result of their equal pay claim. This application was refused. In a separate case the women also claimed that they had been unfairly dismissed by the company, and some women in addition claimed that their dismissal amounted to victimisation under section 4 of the SDA. A separate decision was issued on that application which later went to appeal, but we are concerned here primarily with the equal pay claim.

The company was represented at the tribunal by the personnel manager and the applicants by a solicitor. The case was legally assisted by the EOC.

#### ***Case history***

The applicants were employed as power-press operators and spot-welders to work on a new order for the production of personal computer casings. The applicants' principal comparator had commenced work for the company some six months before the applicants. He had originally been employed on the paint-line, although as a result of changes in work patterns, and due to a reorganisation of work between the company's various sites, he was now mainly employed on the power presses. From time to time in the

past some of the applicants had been required to work on the paint-line assembly.

The company maintained that the main comparator had specific training as a paint spray-gun operator which among other factors entitled him to a different hourly rate from the applicants. He was paid £3.23 per hour whereas the applicants were paid £2.35 per hour. The company maintained that this amounted to a material difference between his work and theirs, but the tribunal found that the comparator had not carried out this task since the last major reorganisation, and that the applicants and the comparator were now employed on the same or broadly similar work.

There were, in addition, other employees with whom the applicants sought to compare themselves. These were employed primarily as setters but the tribunal found that the work of these men was sufficiently different from that of the applicants, even although once the men had set the machines up, they then went on to operating tasks which were more or less similar to the tasks done by the applicants.

The company took the view that the women had been spurred on in their application by 'outsiders' (meaning, it seemed, the EOC). It maintained that it tried to sort out the women's claim in a constructive way by inviting the women to discuss the claim. In the company's view they were hostile and anti-company, and once they had involved the EOC there was no possibility of a settlement. The applicants remained very bitter about the company, claiming that there was no attempt to resolve their equal pay grievance. In their view, when the company was presented with the equal pay claim its immediate reaction was to try to engineer their dismissal. This it managed to do by transferring them to another area of work which the company knew was coming to an end. While there may have been a genuine need for redundancies, the applicants argued that the company took the opportunity to get rid of them, rather than other employees who had been taken on more recently, because they were regarded as troublemakers.

### ***Effects and consequences***

Even after the tribunal's decision the company still refused to acknowledge that there was any validity in the applicants' claim. The personnel manager believed that the tribunal had failed to understand

what it was like working in a factory where work patterns and routines changed frequently due to new orders being received. Employees could not expect to be engaged in the same tasks all the time, and they had to be ready to change jobs and sites when one consignment of work had been completed. In the view of the personnel manager, the discrepancy in wages had been due to men transferring to less skilled work (in this instance to the same work as the applicants) but carrying the wage rate for the old job with them. The company's expectation was that they would move back to their original tasks once these started up again. He said this 'red-circling' of wages could happen irrespective of whether the employee being transferred was a man or a woman (although in practice he could not think of any instances where women on a higher wage rate had been transferred to lower paid work but retained the old rate).

The main implication of the case had therefore been that the company had decided to introduce a limit on the period during which an employee's rate of pay would be red-circled. Consequent to the tribunal jobs would be red-lined after transfer to another area of work which normally attracted a lower rate for a maximum period of 3 months. After that period the person transferred would revert to the going rate for the job. This new system had apparently been put to the works council and had been accepted. The personnel manager told us he had taken legal advice which had given him the impression that a tribunal would be unlikely to entertain further claims for equal pay, if such a system was operational, and if a difference between a man and a woman's wage could be shown to be only a temporary arrangement.

At the time of our interview the dismissal and victimisation claims had not been finally resolved, but the women were of the view that they had lost their jobs due to the equal pay claim. Their dismissal would, they believed, serve as a warning to other employees and the company's action had, it was thought, warned other women off pursuing similar claims. Not surprisingly, the company claimed that the fact that there had been no claims from other women demonstrated that the applicants had been out on a limb and were troublemakers.

The company had no equal opportunity policy statement and had no plans to introduce one. Employees, we were told, got the same rate for the job irrespective of sex. About one third of employees were women who for the most part worked in the 'cable shop'. The personnel manager thought this was a good arrangement because

women had ‘nimble fingers’ and making cables was not suitable work for men.

### ***Conclusions***

An important change had been introduced which would have reduced disparities in pay due to historic red-circling of wages. In so far as one consequence of red-circling was inequality of pay between men and women (as seems to have been the consequence in this instance), the effect of the new three-month regulation will be to reduce male wages rather to increase female wages. It is therefore not surprising that the company embraced the new regulation as a solution to pay parity problems since it also served to contain labour costs. This solution, however, offered no possibility of improving female wages in the company and it could therefore be argued that no wider material benefits have emerged from the case.

The applicants lost their jobs, they believed, as a result of the equal pay claim. This will have served as a warning to potential tribunal applicants about their likely fate should they pursue pay grievances in similar fashion. The company has a free hand since managerial power is not checked by trade unions.

### **E6: Hilling Council**

The employer is an upper-tier local authority with in excess of 20,000 employees. The department of the council we are concerned with provides social care services to the area and has over 1,000 employees including professional and administrative staff. The department has its own personnel function.

For this case study, the only successful equal pay claim against a public sector body in the three-year study period, we conducted interviews with the principal personnel officer of the department, an officer of the council’s central personnel section and a trade union official.

### ***The decision***

The tribunal decided that the applicant was entitled to equal pay with a male comparator and that the contract of the applicant should be altered so as to be not less favourable than the contract of her comparator. The employer did not seek to contest that the applicant and her comparator were employed on like work but argued that there

was a genuine material difference between the applicant's contract and that of the comparator. The applicant was awarded a sum equivalent to the difference in remuneration between herself and her comparator for a period of two years prior to the date of the decision.

In a separate action following the decision of the tribunal, the applicant sued the authority in court for breach of contract in an attempt to recover loss of earnings for the years not covered by the tribunal's award. This action was successful.

The employer was represented at the tribunal by a solicitor and the applicant presented her own case.

### ***Case history***

The applicant was employed as a social worker by the council. She had previously been employed as a social worker by a town council, which we can call Marley, which following a reorganisation of local authorities was amalgamated into Hilling. It was part of the reorganisation package that Hilling would honour the terms and conditions of employment of the previous employer.

During the period of her employment with Marley the social work profession was itself reorganised so that those with a professional social work qualification became qualified social workers and those without became unqualified social workers. Different rates of pay applied to the two sides of the profession. The applicant did not have any of the recognised qualifications which automatically entitled her to become a qualified social worker, but there was an arrangement that those awarded a 'declaration of recognition of experience' would be admitted as qualified social workers. Following the reorganisation of the profession, the applicant received a letter of appointment which placed her on the qualified scale.

However, although the applicant had this letter of appointment she continued to be paid as an unqualified social worker contrary to the terms of the letter of appointment, and she continued to be described by the authority as unqualified. She complained about this and Marley entered into a special arrangement with her whereby she was paid at two points above the appropriate rate on the unqualified scale. The applicant was never fully happy with this arrangement: over the period of the following 10 years she continued to petition her employer, first Marley and then Hilling, to grant her qualified status but both refused. The employer claimed at the tribunal that, in entering into the special

salary arrangement, the applicant had agreed not to pursue her qualified status claim. It was said that she had signed a document to this effect at the time, but the applicant denied having signed a document, and the authority was unable to produce it in evidence at the tribunal.

The position is, then, that the applicant had a letter of appointment from her previous employer appointing her on the qualified social worker scale. This contract was never put into practice, and she continued to be paid on an unqualified rate. She had been in dispute with her employer for years about this matter but the authority had refused to grant her qualified status. The case had even been considered by the director of the department who had personally refused her request. The dispute had soured the applicant's relations with the department for more than a decade.

The applicant sought to compare herself with a male who was unqualified but whom the department wrongly thought was qualified and who had been receiving the qualified social workers rate of pay until an application for promotion revealed his true status. It was the view of the authority's personnel officer that the applicant and the comparator had connived together to bring the case against the authority. The appearance of the comparator on the scene was fortuitous for the applicant, in his view, because it provided her with another avenue for pursuing her claim for qualified status and rates of pay. The authority's case rested on the fact that the comparator had been paid in error by the authority and that this amounted to a material difference in the contracts which justified the differences in pay.

The tribunal took the view that an error could not be held to be a material difference. In any case, there had been an error made with reference to the applicant's status which consisted in continuing to treat her as unqualified when she had a letter offering her a contract on the qualified scale. The authority had had many opportunities to rectify the error against the applicant but had chosen not to do so. It had gone along with a situation in which an error made in the case of a male employee had been allowed to operate to his advantage, but an error made in the case of a female employee had operated to her disadvantage. The authority had been unreasonable in allowing this situation to continue.

***Effects and consequences***

The applicant's contract of employment with the authority was unique. While the authority employed a small number (16) of unqualified social workers in addition to the applicant, none was in the applicant's situation of having received a contract of employment which had not been honoured, and none had entered into a special salary arrangement with the authority. The resolution of the case to the applicant's satisfaction and her pursuit of the case in the courts at a later stage had no direct consequences for the terms and conditions of employment of other employees.

The applicant's dispute with the authority and its predecessor predated the coming into effect of the Equal Pay Act in 1975 and it was only by chance when a suitable comparator appeared on the scene that the applicant was able to pursue a case under that legislation. It is perhaps worth noting, however, that all those who failed to gain qualified social worker status after the reorganisation of the profession were women.

As far as the authority was concerned the case did not raise any broader issues concerning equality of opportunity. There was an admission that the authority had been intransigent in the past and that a more enlightened authority might have resolved the case earlier. Instead attitudes became more inflexible as the years progressed, and the authority dug in its heels and refused to give in.

The decision did nothing to endear the tribunal system to the department's managers. In the opinion of the personnel manager, another tribunal would have come to a different view. The panel, of whom two were women, chose to support the applicant because it had, in his view, feminist sympathies, and was looking for a case to uphold. The panel's sympathies prevented it from appreciating the merits of the department's case. The whole process may have hardened managerial attitudes on equality issues but we had no evidence that attitudes on these matters had been particularly progressive or forward looking prior to the tribunal.

The case seems to have had no impact at all on the progress that the authority had been making towards implementing an equal opportunity policy. The tribunal was seen as a purely internal departmental matter with no wider implications for the authority. Since the case the authority had come under the control of the Labour Party which had a manifesto commitment to promote equality of

opportunity. Some elements of that policy such as the establishment of a women's committee had already come into effect, and a programme of training was about to be set up for all those involved in recruitment and training.

### ***Conclusions***

The applicant's long-standing grievance against the authority was successfully resolved by her use of the equal pay legislation. Her success at tribunal allowed her to pursue a case against the authority in the ordinary courts and to win that case as well, although she had to pay her own court costs to do so. It is arguable whether she would have succeeded in court without the tribunal decision behind her. The decision must have given her the confidence to pursue matters further.

### **Other equal pay cases**

We now turn to the remaining six equal pay cases in the secondary group of case studies. As in previous chapters we consider each employer in turn and summarise our conclusions about the group at the end of the section. The employers are all private sector organisations, five being commercial organisations and one being a voluntary body.

#### ***E7: Chestertons Ltd***

This is the only equal value case in the sample. The employer is a furniture maker and a case was brought by 23 female machinists who claimed that their work as machinists was of equal value to work carried out by male upholsterers. The workforce had been contracting, having fallen from a peak of almost 400 employees in the 1970s to only 120 at the time the claim was made. Most of the shop floor employees were members of a small trade union active in the furniture business. The applicants were represented by counsel and were legally assisted by the EOC. The employer was represented by an industrial relations advisor.

Female machinists and male upholsterers were on the same basic rate of pay, but, some years prior to the application, the male upholsterers had managed to negotiate an allowance of 16 per cent on top of the basic rate on the grounds that they were now doing heavier work and working in more congested surroundings. The tribunal asked an independent expert to decide whether the work of the two

groups was of equal value. The expert's report concluded that the work of the women was at least of equal value. The skills required were about the same and, although the men's tasks required greater physical effort, the women's tasks were more complex. The report concluded that the men's tasks were worth 15.5 points and the women's tasks 16 points.

The company did not challenge the expert's report and conceded that the jobs of the applicants and the male upholsterers were of equal value, but it sought to show that the difference in contract was due to a material factor other than sex. The company sought to show that because the weight of finished products had increased and because the upholstery workshop had become congested due to an increase in the volume of work, it had become necessary for the company to pay upholsterers the extra 16 per cent as an incentive to retain them in employment.

However, the tribunal found that no work study was carried out at the time the allowance was awarded to enquire into whether the female machinists might be similarly entitled to such an allowance. At the time the allowance was awarded there was no objective evidence available of any material factor amounting to a difference in the work carried out by the male upholsterers which justified the disparity. It arose because the men had negotiated the allowance and the women had not and for no other reason.

As a consequence of the case the system of allowances was harmonised and machinists were put on the same system of allowances as the upholsterers. In addition, the company had to find two years back pay for the 23 applicants at a cost of £20,000. The applicants agreed to accept payment in two stages to ease the company's cash flow problem.

After the applicants' success the remaining machinists who had not joined in with the original claim made applications to the tribunal for equal pay. The company won some of these cases but lost others. We were told by the chief executive of the company that, due to skilful stalling of the case by the company, by the time the second round of cases were heard, the women had been on the harmonised rate of pay for some time so that the amount of back pay was proportionately less because of the two-year rule.

There had been no equal value claims from other groups of workers, although the possibility of further claims seemed to exist as

only the machinists and the upholsterers were paid the new harmonised rate.

***E8: Higgins International***

The company is the UK subsidiary of a multinational electronics company whose headquarters are overseas. The British workforce consists of 130 employees involved only in sales and marketing, as the company has no production sites in the UK. There is no trade union organisation at the company's present site. Internationally the company employs about 30,000 workers.

The applicant had been employed as a personnel officer with the company for a period of three years up to the time of her retirement. She took retirement when the company transferred its UK offices to a site which it became inconvenient for the applicant to work from, and a new personnel officer was employed in her place. Prior to working as personnel officer the applicant worked as secretary to the managing director, and when the previous personnel manager retired the applicant took over as personnel officer. In claiming equal pay the applicant sought to compare herself both with her predecessor, the personnel manager, and with her successor, the new personnel officer who took over on her retirement. The applicant was represented by counsel and was legally assisted by the EOC. The employer was represented by an official of the Engineering Employers Federation.

A pre-hearing assessment had ruled that the applicant could not in law compare herself with a successor, but at the full hearing the panel set aside that view and decided to hear both claims. It found that the applicant did not do like work with her predecessor as there were substantial differences in qualifications and in the level of decision-making. The applicant had been appointed as personnel officer to carry out a job which was different from the job undertaken by her predecessor.

The tribunal took the view that Article 119 of the Treaty of Rome entitled the applicant to compare herself with her successor, a male who had been appointed on a salary higher by some £2,000. The company did not seek to contest that the applicant and her successor did like work. Its case had been that comparison with a successor was not possible under the EqPA and that a company ought to be allowed to pay a successor a higher rate of pay if it was necessary to attract the

best person for the job. The tribunal therefore ruled that the applicant was entitled to equal pay with the successor.

This case seems to have been pursued with a view to establishing a legal precedent. This fact was appreciated by the employer who claimed that he would be aware in the future of the risk of employing a man on a higher salary to replace a female, but he saw no need to take any other action consequent to the decision. There had been no attempt to review the company's salary structure nor had the tribunal given any hint or indication that this was necessary.

### ***E9: New World Schools***

The employer is a religious organisation which runs private schools throughout the UK and elsewhere. The applicant was a teacher in one of these schools and had been employed by the organisation for about six years. She applied to an industrial tribunal, having been refused a home owner's allowance by the employer who considered that as a married woman she could not be regarded as a head of household. She compared herself with a male teacher and colleague who had successfully claimed the allowance after the appropriate qualifying period. The applicant was legally represented at the tribunal and her case was assisted by the EOC. The employer was represented by a regional director. Membership of trade unions is not permitted by the organisation.

The applicant was a married woman whose salary was the main source of household income. Her husband was self-employed and contributed to the household only an irregular income. The employer had a scheme for its teachers whereby those who were purchasing a house on a mortgage and who had five or more years experience were entitled to qualify for a home owner's allowance of £180 per month. The applicant wrote to her employer claiming the allowance when she became entitled to do so by length of service, but her claim was refused in a letter which told her that 'inasmuch as you are a married woman and being supported you are not eligible'. The letter went on to say that the allowance was only payable to heads of household.

The tribunal found that the employer's rationale for paying allowances was based on assumptions which were discriminatory against women. The system of allowances assumed that only men were heads of household. In the view of the tribunal it was wrong to assume that men were more likely to be the primary income earners

for the household. The tribunal found that there was no material difference in the work done by the applicant and her comparator and that the applicant was therefore entitled to receive the allowance. She was awarded arrears of payment amounting to over £3,000.

We heard from the employer's regional director that there had been previous complaints about the way the allowance scheme was operated and that the matter was due to be discussed at a national level at the time the applicant raised the complaint. The applicant had been assured that even if the matter was not resolved to her satisfaction by the national council he would undertake to change the allowance system within the region. He had asked the applicant to wait for the outcome of the national conference but she had not felt able to do so.

The regional director was not surprised by the tribunal's decision. He claims to have used the decision to good effect to persuade the national organisation to change the terms of the allowance scheme. Since the decision, allowances have been awarded to male and female employees irrespective of sex or marital status and without any enquiry into whether there were other earners in the household. Employees only had to meet the qualifying period of five years service. Between 40 and 50 employees were immediately affected by the change in policy and all these were now paid the allowance.

***E10: Motorbox Ltd***

The company makes gear boxes for motor vehicles. It employs about 350 people on two sites and there is a print room at each site. Two female applicants working in the print room on one site sought to compare themselves to a male worker at the other print room who earned almost £1,000 a year more. The applicants were represented at the tribunal by a union official and the respondent by an industrial relations director.

Two years prior to the application to the tribunal the employer had carried out a job evaluation exercise and job descriptions were produced for each employee, although it seems that these were never issued. The job evaluation exercise had rated the jobs of the applicants and the comparator as being of the same value, each being awarded 197 points. When the applicants became aware that their jobs had been rated the same as that of the comparator but that they were being paid less, they approached their trade union representative who drew this fact to the attention of management. An interim payment was

made to the applicants pending the final outcome of the job evaluation process and its implementation.

Following the report of the consultants who had carried out the evaluation and awarded points to each job, it was envisaged that as a next stage the jobs would be placed in salary grades and specific pay rates would be allocated to each job. However, this second stage was never carried out, and it was the view of the tribunal that salaries were subsequently fixed in an arbitrary manner without regard to the points system produced by the consultants. We heard that there had been a change of management after the first stage of the evaluation exercise and it was the view of the company at the tribunal that it no longer made commercial sense to carry through the consultants' report to the next stage.

The employer sought to argue at the tribunal that the comparator's job had become materially different from that of the applicants since the evaluation, but the tribunal did not accept that the employer had presented convincing evidence that some of the tasks had become more onerous and more frequent compared with those on the basis of which his job description had been produced. The panel therefore concluded that the employer had failed to prove that the difference between the salary of the applicants and that of their comparator was due to a material factor other than sex.

One of the applicants told us that the union had pursued the case on their behalf because the company had failed to honour the agreement made at the time of the interim award. The company had been taken over by new managers who had refused to carry out the second stage of the job evaluation scheme. The tribunal had forced the company to implement the scheme and she was therefore happy with the outcome. As far as she knew there had been no other claims following the decision. A manager confirmed that the anomaly between the two print rooms had been rectified. However, work patterns had changed to such a degree that the job evaluation scheme could no longer be fully implemented. The company would look carefully at any further claims for harmonisation but no further evaluation of jobs was planned.

***Case E11: Wellmans Ltd***

Wellmans is a small company of less than 15 employees which imports and distributes health foods, vitamin supplements and cosmetic items

from abroad. The company's headquarters are overseas where all of the manufacturing is carried out. By tradition the manager is sent by headquarters to Britain, but all the other employees are local people. The applicant submitted an application under both the EP(q)A and section 6(2)(a) of the SDA claiming that she had been denied access to the opportunity for promotion. She succeeded on both counts and was awarded approximately £2,250. Both parties were represented by solicitors and the applicant was legally assisted by the EOC.

The applicant worked as a packer in the warehouse where her job consisted of filling bottles with vitamin pills and packing, handling and storing boxes. She worked alongside a man who was first employed by the company at about the same time as the applicant but who earned more money than she did. The applicant sought to compare herself with this man, claiming that she did like work.

After working alongside each other for a period of some 18 months the comparator left Wellmans and took employment elsewhere. However, within two months of leaving he returned to Wellmans having been invited back by the manager to take over the post of warehouse manager which had recently been vacated by another employee. The applicant believed that she was entitled to be considered for promotion to the job of warehouse manager, since she was working for the company when the post became vacant, and because she had been acting as deputy to the warehouse manager before he left. She also claimed equal pay with the now returned comparator for the period dating from when he started back again with the company.

The applicant thus sought to compare herself with the same man but during two separate periods of employment. The company resisted comparison for the first period on the grounds that although she worked alongside the comparator, the comparator was required to do heavy lifting which the applicant, nearing retirement age, was not capable of doing. However, the tribunal accepted the applicant's evidence that she frequently lifted heavy weights and awarded her equal pay for the first period of comparison. It decided that during the second period after his return to the factory as warehouse manager, the comparator carried out work which was substantially different from the applicant and that there were therefore no grounds for equal pay for the second period.

The tribunal also found that the applicant had not been informed that the job of warehouse manager was vacant, and that the company had denied her the opportunity of applying for the job. It took the view that she had not been told about the job or invited to apply because the manager considered the job to be a man's job involving the lifting of heavy weights. The tribunal came to the conclusion that the reason the applicant had not been invited to apply for the job was because she was a woman. The panel considered that she would have had a one-third chance of securing the job had she applied, and she was awarded one third of the differential in salary payments for the relevant period. The applicant continued to work for the company for another two years until her retirement.

Since the tribunal a new manager had been put in post by the company. The applicant suggested that the former manager had been removed because he mishandled the situation, but the new manager said he had been removed because of the poor trading position of the company and because he had been a bad communicator. The new manager claimed her style was quite different and that all problems were now discussed in a more open manner. She took the view that the applicant had been unsuitable for the job of warehouse manager due to her age, but that the previous manager could have handled the situation with more sensitivity.

Apart from the fact that the applicant had been put on a higher rate of pay, there were no wider changes. The new manager said she would have to be more cautious about employment legislation, but she took the view that in a small company there was no room for fixed work patterns or rigid job descriptions: everyone had to be prepared to be flexible and this was explained to new recruits when they arrived. In such a situation there was always the potential for disputes among employees.

The applicant told us she had received her award but only after a long period of time. The company paid her the amount in two stages claiming that there were cash flow problems. She had expected to receive more money from the tribunal, and she had in fact turned down a larger amount offered in settlement by the company through ACAS.

***Case E12: Grants Builders Ltd***

The employer is a large construction company which builds houses for private sale. It employs about 400 people including an

administrative staff of about 90 and a sales team of 25. The company is part of a larger group of companies which we can call Grant Holdings, and which consists of about 15 companies employing in total over 1,000 people. The applicant was a sales negotiator with the company, and she brought a claim for equal pay with a male whom she regarded as employed on like work. She also brought a claim under section 4(1)(d) of the SDA claiming that she had been victimised by her employer as a result of making a demand for equal pay, in that her hours of employment had been reduced from five days of work to two.

The applicant's claim for equal pay was rejected by the tribunal, but the employer was found to have victimised the applicant. The applicant was awarded £100 by way of compensation for injury to feelings and a further £725 in lost earnings as a result of a reduction in hours. In addition, the tribunal recommended that the applicant be restored to a five-day working week. The applicant was represented by a solicitor, and her case was legally assisted by the EOC. The respondent was represented by an industrial relations consultant.

The applicant worked on site as a sales negotiator showing potential purchasers around properties and arranging the preliminaries of sales contracts. In common with most other members of the sales team, the applicant had no contract of employment even though she worked a 30-hour week and was considered to be a full-time employee. The exception to this state of affairs was the position of three male employees who had contracts and who worked on a salary and commission basis. The applicant's view was that she was doing the same job as one of these salesmen, but getting paid much less, and she became involved in discussions with other female staff about how to improve their terms and conditions of employment. The applicant and other employees took advice from the EOC and sought a meeting with one of the company's directors. They related their grievances to him, including a claim for pay parity with the male sales staff and a request for proper contracts of employment and job descriptions.

The director took the applicant's grievances to the chairman of the company and, it seems, lobbied on the applicant's behalf for equal terms and conditions with the male sales staff. The chairman turned down these representations, and it was shortly after this meeting that the applicant was told her working days were to be reduced from five to two.

The tribunal rejected the applicant's claim for equal pay on the grounds that, had the company operated a grading system, the comparator would have been on a much higher grade than the applicant due both to his previous track record in sales and to the expectations which the company had of him. However, the tribunal decided that the applicant's working hours had been reduced due to the fact that she had been the spokesperson for the women's grievances, and had come to be regarded as a troublemaker by the company.

The chairman of the company confirmed to us that the applicant had received compensation, and that she had been returned to a five-day week as recommended by the tribunal. However, the company required her to work weekends which she found inconvenient and which probably amounted to further victimisation, and she resigned within a month of going back to five-day working. It was clear to us that the chairman was quite glad she had gone voluntarily. Indeed, he took the view that it would have been more appropriate to have dismissed her when she made the initial protests. It had been a mistake to keep her on at all.

There had been no changes in the terms or conditions under which other employees worked. The majority of the sales staff were still part-timers without any contracts of employment or job descriptions, and the company was not prepared to alter the status of these workers, as it took the view that giving them contracts would make the company vulnerable under employment legislation. Contracts of employment were regarded as privileges to be extended only to the most valuable employees (all of whom were male). The company had refused to consider the wider question of pay inequality on the sales team. In the chairman's view pay equity was the 'small print' of employment legislation which he had no time for. Equal pay laws interfered with his right to manage, and we were told 'there's no question of equal pay for anyone'.

It seemed that following the case the status quo had been maintained with the added bonus for the company that the applicant, who in the view of the company had caused all the trouble, had now departed.

### ***Summary of cases E7-E12***

Chesterton's had harmonised the allowance system for upholsterers and machinists and £20,000 had been paid out in back pay. There were subsequent claims from machinists not included in the tribunal application, and this had resulted in further payments by the company. However, there were no further claims from other occupational groups, although it seemed that there might have been grounds.

The success of the claim against New World Schools resulted in about 50 other employees being paid allowances subsequent to the applicant being awarded arrears of £3,000. The tribunal decision seems to have been used constructively by a sympathetic manager to encourage the organisation to change the allowance system throughout the country.

At Motorbox the tribunal decision was instrumental in bringing into effect those aspects of the job evaluation exercise which affected the applicants and the comparator. This had been financially advantageous to the applicants. There had, however, been no implementation of the findings of the exercise as a whole.

The retiring personnel officer at Higgins won her claim for equal pay with a successor, but the case seems to have been presented in order to establish a legal precedent and not primarily with a view to encouraging the company to examine pay and conditions. No such examination was conducted by the company.

A new manager had been installed at Wellmans and this might have had something to do with poor personnel management by the previous occupant. The applicant continued to work for the company for a further two years prior to retirement and reported no victimisation. There were no consequences for other employees who each negotiated separate terms and wages directly with the manager.

There had been no improvement in the terms and conditions of sales negotiators at Grants, and the applicant left the company shortly after the tribunal. The chairman of the company was opposed to all employment legislation and particularly to any notion of pay equality or job contracts. The prospects for any improvements in these matters looked very bleak.

### **Summary and conclusions**

In this chapter we have considered a group of twelve equal pay cases and tried to discover what the implications of these cases have been

for pay and conditions and for job grades within the organisations concerned. Where relevant, we have also sought to comment on the implications of the decision with respect to the development of equal opportunity policies. Eleven of the equal pay applications were brought against private sector organisations, with one of these being a voluntary non-profit-making body. Only one application was against a public sector organisation and this was a local authority. In eight of the twelve cases applicants were legally assisted by the EOC.

At Browns we discovered that the tribunal decision was instrumental in bringing about important changes in the grading system, and in getting a new pay scheme off the ground. It was likely that these changes would have been introduced even if the employer had won this case, since ACAS had performed a valuable advisory role in pointing out deficiencies in the pay structure even before the hearing took place. New job descriptions were issued following the review of the grading system. In addition to receiving back pay, the applicant gained a new job title in recognition of the tasks she had in fact been performing. She had, however, since left her job to have a baby and had not returned. A district manager had been demoted for his mishandling of the applicant's grievance.

The two applicants at Starpress were awarded pay arrears, but there was some dispute as to whether the amount paid by the company was the full amount. The applicants had in any case been made redundant by the company prior to their application being lodged, but after it became known that they were seeking pay parity. Not only were the applicants made redundant but so also was the rest of the company's cleaning staff. Cleaning services were contracted out in a move designed to head off claims from other workers which might disrupt pay differentials in the industry. Similar action was taken by other companies belonging to the same group. This case of itself did not have major implications, but, coupled with a subsequent case the applicants raised against their trade union and an investigation conducted by the EOC, efforts to promote equality of opportunity within the industry seemed to have been stepped up.

The applicant at Northside Dealers was no longer working for the company. She had been dismissed shortly after her application for equal pay, but in a manner which the tribunal found did not amount to sex discrimination. She had received pay arrears, and another woman employed by the company in a similar job had received equal pay as

a result of the tribunal decision when her case was taken up by the union. As a result of this case the company had examined the pay of reception staff, and introduced pay equality for men and women in these grades. The company had an equal opportunity policy which had been drawn up several years earlier, but there had been no review of the policy as a result of the tribunal's decision.

Butcher Engineering had employed a consultant after the industrial tribunal to carry out an analysis of its grading system, but this had been done with a view to ensuring that there were no areas where other equal pay claims might be imminent. No specific job evaluation exercise had been conducted with a view to ensuring pay parity between men and women. The applicant had received back pay, but shortly after the tribunal her job was abolished, and she accepted redundancy after having been offered unsuitable alternative employment. She took the view that she had been squeezed out as a result of her pay claim.

The applicants at Craft Casings believed that they had been dismissed due to their equal pay claim, and this has resulted in a separate application to the tribunal. Despite a vindictive and hostile attitude, the employer seems to have taken steps to eradicate some of the conditions which gave rise to the claim, by introducing changes in the arrangements for the 'red-circling' of jobs. A higher wage after transfer will now be maintained for a maximum period of only three months. It was likely that the real motive for such a change was the financial saving that would be made by the employer, rather than any sudden conversion to introducing equitable pay arrangements.

The case taken against Hilling Council was peculiar in that the applicant's grievance against the authority predated the arrival of equal pay legislation. The EqPA provided a vehicle for her to pursue with success her claim for qualified social worker status. The tribunal decision opened up the way for a successful action against the authority in the courts. There were no obvious implications for any other employee of the authority.

We have already noted that the decisions against Chestertons and New World Schools had implications for other employees beyond those making the initial claims. Both cases involved systems of allowance payments which operated in a discriminatory manner. At Motorbox the decision had a more limited impact: the applicants had succeeded in getting the employer to implement the findings of a job

evaluation exercise for their own jobs, but there had been no wider implementation with respect to other employees. We concluded that at Higgins International the case had been used to establish a legal precedent, and that there were no implications for other company employees. Wellmans was a small business where a change in management may have led to an improvement in management-employee relations, thus lessening the likelihood of a similar incident reoccurring. The management at Grants remained inflexible after the tribunal and no attempt was made to address major shortcomings in the terms of employment of the female sales staff.

Employers frequently sought to characterise an industrial tribunal as a unique event which had no further implications or consequences. In some instances, they took this view because of the failure of the panel to sketch out the implications of the decision for employment practices. In other instances, they accurately perceived the implications but were reluctant to face up to them. In a few instances there was no obvious general lesson to be learned nor practice worthy of closer inspection.

It is always possible for employers to be looking at ways of developing equal opportunity policies, but a tribunal case may not necessarily raise the issues which are most relevant or pertinent for a particular employer. The fact that there has been an equal pay case against an employer does not necessarily mean that lack of pay parity is a major problem which the employer ought to be addressing.

There is greater scope in equal pay cases than in sex discrimination cases for affecting the circumstances of a substantial number of employees. Even though a sex discrimination case may reflect directly on the equal opportunity policies of the employers, the case itself generally relates to the grievance of only one particular applicant. Some equal pay cases come about through an isolated female employee comparing herself with a group of men and in such cases the implications may be limited only to that employee. But more frequently a victory for the applicant has immediate repercussions for other employees.

Perhaps for this reason and also because they concern 'bread and better' matters to do with pay and conditions, trade unions are likely to find themselves involved more directly in equal pay cases than in sex discrimination cases. As has been shown, however, they do not

always intervene to support the applicant if there are conflicting concerns about the maintenance of pay differentials.

Tribunals have no authority to issue recommendations to employers in equal pay cases, that power being restricted only to breaches of the SDA. However, it seems reasonable to expect employers to have regard to any implications the case might have for the extension of equality of opportunity, particularly if it is a case which the employer knows that the EOC has been assisting. For example, losing an equal pay case could lead an employer to look at inconsistencies in job descriptions or in the way jobs are evaluated and graded. Any such examination might enhance the value of women's jobs within the organisation and consequently improve their scope for reaching more senior grades.

The scope for evasive behaviour by the employer is probably as great in equal pay cases as it is in sex discrimination cases, especially if there is no trade union organisation, or if the trade union has been unsupportive of the applicant. Such evasive behaviour is most likely where more than one employee stands to benefit from the tribunal decision, and where losing the case may have serious financial implications for the employer. Whole areas of female employment have been contracted-out and jobs which are vulnerable to equal pay claims have been reorganised or mechanised to undermine the possibility of further claims. By and large, however, it is easier in an equal pay case than in a sex discrimination case to demonstrate the objective gains that have been obtained by the applicant in pursuing his or her grievance to a tribunal.