

# **Equal Pay Audit**

## **Gender**

### **2011**

(A report published in response to Regulation 7 of the Public Sector Equality Duties – Duty to publish gender pay gap information).

# Equal Pay Audit Report

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## **Equal Pay Audit Report**

### **Executive Summary**

The introduction of the Equality Act in 2010 has raised the profile of discrimination in employment as a risk area for the Library. As part of the changed environment, NLS can be expected to be held accountable for equality of pay by the Scottish Government as well as, potentially, the courts. This report seeks to identify the main risks arising from inequality in pay and offer some recommendations for action to mitigate those risks.

The Library's salary structures appear to present little risk following the pay settlement of 2008 which brought the majority of staff to the top of their bands. The use of JEGs for job evaluation is also an effective safeguard on salaries where it is consistently applied.

However, the system of allowances and elements of pay process do leave NLS open to equal pay challenges. The main risk arises through the operation of different systems of pay for comparable employees and this is exacerbated by a lack of clarity in the application of these systems. The existence of units of primarily one gender with their own patterns of allowance substantially increases the risk of a complaint being upheld.

The Library's ability to defend itself against any claim would be limited by the lack of clear justification for any differences in pay. Partly this is because these differences have a root in traditional practices that have not been scrutinised and rationalised and partly because, at the process level, we tend not to record our rationale in making decisions, just the decision itself.

The complexity and variety of the allowance system suggests that a fundamental review of pay and grading would be the most appropriate response. This has contractual implications and will require sufficient resources and careful management attention to ensure a successful outcome.

There are also specific risks arising from pay procedures to do with new start salaries; recruitment and retention allowances and the interface between Human Resources and Finance on pay. These risks can be managed through process improvements.

It is recommended that action is taken to simplify and clarify the full range of remuneration at the Library and to place pay on a more consistent, transparent and equal footing. Putting into practice the Library's current intention to carry out a pay and grading review would be the most appropriate means to achieve this.

## **1.0 Introduction**

### **1.1 Introduction**

1.1.1 The purpose of this audit is to assess risks to the Library arising from any potential failures to comply with equality legislation on pay. This is intended to begin a rolling programme of audits to cover the full range of protected characteristics while also monitoring changes in the composition of the workforce. This year the audit will focus on gender. Next year the focus will shift to disability and ethnicity before looking at age discrimination in FY 2012-13. The cycle will then resume in FY 2013-14.

1.1.2 As the Library's first Equal Pay Audit since the Equality Act came into effect, it is to be expected that practice, processes and procedures which have grown organically over the years are likely to be found wanting. However, improvements made on the basis of gender equality will stand the Library in good stead for subsequent audits.

### **1.2 Background**

1.2.1 The Library drew up an Equal Pay Action Plan in August 2003 based on a review carried out in December 2002. This identified some issues:

- Discrepancies in average pay between men and women at bands 6 and 9
- Some discrepancies occur due to newly appointed individuals starting higher up the pay scale than the recommended minimum
- Length of time taken to progress from minimum to maximum of the band may be in breach of age discrimination law

The first and third of these issues have been resolved since then. The second point is picked up at 5.5 below.

1.2.2 In the pay agreement of 2008, decisive action was taken to address the concerns referred to above on age discrimination. This change to the basic salary structure also helps prevent discrimination across a range of protected characteristics (such as gender) by raising the majority of staff to the top of their band. However it is doubtful that this "flat" position can be maintained for long without affecting the power of salaries to motivate and retain staff. The current position, though beneficial in equality terms, cannot be maintained indefinitely.

1.2.3 The Library is required to work within pay constraints established by the Scottish Government. These restraints will usually set a limit on the total cost of any pay agreement and may include specific restrictions on pay bargaining. This can limit the Library's ability to spend money on large scale pay issues (with potentially expensive consequences) and it requires a pragmatic view of what is feasible, as much as what is desirable, in meeting equal pay obligations.

## **2.0 Legislation**

### **2.1 The Equality Act 2010**

2.1.1 The key piece of legislation is the Equality Act of 2010. This is a complex act which consolidates much of the anti-discrimination legislation of the past 40 years while also introducing some new concepts. The following summary only covers key points as an indication of potential risk areas for the Library.

2.1.2 New concepts in the Act include:

- A provision allowing combined claims for direct discrimination on protected grounds (such as both gender and age, or disability and race), and
- A general duty for public sector organisations to have due regard to the need to eliminate discrimination and other prohibited conduct.

- A specific duty, currently being developed through Scottish Government consultation, suggests that all public sector employers with 150 or more staff will be required to publish an equal pay statement with information on equal pay policy and occupational segregation<sup>1</sup>.

These innovations increase the potential for risk and also the Library's obligation to act on equal pay.

## 2.2 Equal Pay for Equal Work

2.2.1 The Equality Act (building on the Equal Pay Act of 1971) gives men and women a right to equal pay for equal work. It implies a "sex equality clause" into all contracts of employment. This gives the right to equal pay for equal work a contractual basis. Failures to give equal pay for equal work can therefore amount to a breach of contract on the employer's part.

2.2.2 To establish whether work and pay are in fact equal requires a claimant to identify a comparator of the opposite gender at the same (or an associated) establishment covered by common terms and conditions but who is receiving better contractual pay (i.e. not performance bonuses) or other contractual benefits. The comparator does not have to be a current employee so a claimant can use the example of their predecessor in the same job. Case law suggests that a claimant cannot use their successor or a hypothetical comparator in their claim.

2.2.3 Each term of an employee's contract is subject to the principle of equal pay. An employer cannot aggregate the value of a total benefits package as an argument for an overall equivalence in package as a defence.

2.2.4 Where a job evaluation scheme (e.g. JEGS) has rated the work of an employee and comparator as equivalent (i.e. on the same band) the equality clause will give the employee the benefit of all the comparator's terms including those not covered by the job evaluation rating of the work (e.g. allowances or access to overtime). A claimant is free to choose their own comparator but their case is likely to be weakened if the comparator is particularly unusual.

2.2.5 A key principle of the comparison is that both parties are doing "equal work". The Act specifies that A's work is equal to B's if it is:

- **Like work**, i.e. their work is the same or broadly similar and the differences that exist are not of practical significance in relation to the terms of their work. The similarity here is to do with the specific nature of the job. If jobs are judged to be alike but one person is paid at band 3 and the other is paid at band 4, this could support an equal pay claim. Or,
- **Rated as equivalent** to B's work, i.e. their work is rated through an analytical job evaluation scheme (e.g. JEGS) and allocated to the same band. This means that disparate jobs such as band 3 cataloguing, band 3 front of house and band 3 bookfetching can all be considered equivalent and a claimant can claim equal pay with a comparator in the same band.

## 2.3 Defending Equal Pay Claims

2.3.1 Employers can defend themselves against such claims by establishing that if a difference exists it is justified as a "material factor", which is not connected with gender.

2.3.2 A material factor defence requires the employer to justify the difference in pay on grounds which:

- Do not involve treating A less favourably than B on grounds of gender, and
- Even if the factor is indirectly discriminatory, it is a proportionate means of achieving a legitimate aim.

There is therefore potential to defend a claim of indirect discrimination by justification as long as the reason for the difference can be demonstrated to be a reasonable way to fulfil a legitimate business objective. As an example, Security staff (mostly male) receive a higher level of shift allowance

<sup>1</sup> <http://www.scotland.gov.uk/Publications/2010/09/13094828/7>

because they work 12 hour shifts. These shifts are the most effective way for NLS to cover the 24/7 security requirement so the shift pattern is a material factor in any defence against a claim using Security staff as a comparator.

2.3.3 A material factor defence is therefore strengthened by clear and well documented decision making. Completion of Equality Impact Assessments on significant pieces of work that affect staff terms and conditions would also strengthen the Library's position by providing a clear understanding of equality implications as part of the decision making process.

2.3.4 Examples of the material factors that might justify indirectly discriminatory differences in pay include:

- Length of service (up to 5 years to avoid discrimination on age grounds)
- Seniority
- Merit, qualifications or skill
- Economic factors such as market forces affecting the supply and demand for particular skills. Some caution is required here as the market forces may themselves reflect underlying discrimination if the forces in question dictate lower pay for women. Clear decision making and well documented justification are essential to ensure a successful defence.
- Appointment of individuals to different grades (on genuine and objectively justifiable grounds) through a job evaluation system (such as JEGs).
- Costs – although this will be limited in effect if it is used as the sole factor
- Salary protection following redeployment, as long as the protection scheme is not tainted by sex discrimination and is proportionate to the (legitimate) purpose of the scheme.
- Unsocial hours of work, although there are different ways to recompense for unsocial hours and if these differences are tainted by sex discrimination the defence may fail.

2.3.5 Anti-discrimination legislation makes a distinction between direct and indirect discrimination. Direct discrimination on protected characteristics (e.g. paying women less because they are female) is automatically illegal. However, indirect discrimination occurs when features of a group of staff are disproportionately shared by people with a protected characteristic. In the Library, for example, part-time workers are disproportionately female so a pay regime that disadvantages part-time workers may constitute discrimination on grounds of gender. This protection is enhanced by legislation dedicated to promoting equal treatment for part time workers (see 2.4 below).

## **2.4 Part-time Workers**

2.4.1 Part-time workers, as such, are also protected against discrimination on the grounds of their employment status by the Part-time Workers (Prevention of Less Favourable Treatment) Regulations of 2000. Under these regulations the comparator is any full time worker (irrespective of gender). A notable exception however is that part-time workers may be paid overtime rates only once they have exceeded full time hours. Overtime aside, a pay practice that results in less favourable treatment for part-time workers is likely to be indirectly discriminatory under the Equality Act and will require an objectively justifiable material factor defence.

## **2.5 Associated Employers**

2.5.1 Comparisons can be made across “associated employers”. Being associated is defined as:

- One company has direct or indirect control over the other
- Both companies are under the control of a third person

In the Library's case, legal advice suggests that the Agency for Legal Deposit Libraries should be considered an associated employer given the close working association: shared personnel; the role of the NLCEO as chair of the ALDL board; and broad similarities in terms and conditions of employment. This association may be a source of risk if different pay practices emerge in ALDL and NLS and a claimant chooses a relevant comparator in the other organisation.

## **2.6 Penalties**

If an organisation is found to have unlawfully discriminated on pay an employment tribunal can make an award of pay arrears or damages. Damages are designed to restore the equivalence in pay and so make good the disadvantage suffered. In Scots law the normal limit for such compensation is five years.

## **2.7 Agency Workers**

Under the Agency Workers Regulations (2010) agency workers will, from 1<sup>st</sup> October 2011, gain a right to the same basic terms and conditions (including basic pay) as that enjoyed by employees. From that date an agency worker will be entitled to compare their terms and conditions of employment with an employee of the Library and raise a claim in the event of any detriment. Currently some agency staff are appointed using job descriptions underpinned by the JEGS system but are not included in pay agreements and therefore do not receive pay rises that employees do.

## **2.8 Risks Arising**

Failure to comply with legislation and discrimination against employees on protected grounds leaves the Library exposed to a range of risks:

- **Financial:** these could include arrears of pay and benefits of up to five years duration. Financial risks are exacerbated by the danger of other staff “piggy backing” a claim raised by one individual, so multiplying the potential penalties.
- **Legal costs:** as well as damages awarded by an employment tribunal there are the substantial costs of defending a claim at law.
- **Reputational:** the publicity attendant upon a high profile legal challenge is likely to have an adverse effect on public relations, partnership working and fundraising.
- **Organisational:** illegal discrimination in matters of pay can be expected to have a detrimental effect on recruitment, retention, employee relations and morale, generally hampering efforts to improve organisational effectiveness.
- **Political:** a well-publicised failure to live up to the public sector duty to eliminate discrimination can be expected to have repercussions in our relationship with the Scottish Government.

## **2.9 Benefits and Opportunities**

Tackling pay equality issues confers benefits and opportunities beyond risk management. The Library’s current approach to pay is highly complex, poorly understood, expensive and therefore wasteful. Simplifying and clarifying the pay regime offers the opportunity to demonstrate clearly and positively the full range and quality of the benefits package that is available to staff with consequent benefits for employee relations, morale and organisational effectiveness.

## **3.0 The Audit**

### **3.1 Methodology**

3.1.1 The audit focuses on the analysis of aggregated data to identify systemic risks arising from pay practice.

3.1.2 The primary data sources were the HR database (for gender and part-/full-time breakdown of staff population) and Finance’s record of actual payments for the period 2009-10. Finance also supplied additional data on starting salaries for new staff over the past 2 years. Another significant data source was HR files recording agreements and contractual elements of individual pay.

3.1.3 Documents held in HR were reviewed to identify potential justifications for any differences observed. These included pay agreements; memos to Finance; contents of personal files; documents supporting pay process (e.g. overtime sheets) and training materials for the JEGS system. It should be noted that there appear to be some gaps and inconsistencies in the records

relating to pay held by HR. This, in itself, adds considerably to the Library's risk exposure on pay equality related issues.

3.1.4 Areas of particular risk were identified in order to narrow the focus for further analysis. This involved identifying areas combining "equal work" with a high degree of gender segregation in units. Equal work is defined as "like work" (i.e. the same or broadly similar jobs) or work rated as equivalent under a job evaluation scheme<sup>2</sup>. Work rated as equivalent is the more significant area for the Library because JEGS creates a level playing field for salaries but does not control the allocation of allowances. This difference opens up significant areas of risk by combining a broad platform for comparison (i.e. anyone of the other gender at the same band) with a highly variable and complex system of reward which can be demonstrated to benefit men over women.

3.1.5 While some larger units are almost entirely male, few large units are exclusively female. Therefore comparisons can best be made between male units and closely related mixed units that contain enough females of the same band to allow meaningful averages to be calculated. On this basis, CSS, Reference Services and Front of House were chosen to support more detailed analysis. Although the Security unit is mostly male and the Porter/Messenger Unit exclusively so, specific terms and conditions (e.g. 12 hour shifts) and a lack of band 2 female comparators (only two in the Library) make comparisons more tenuous.

3.1.6 Analysis involved comparison of data sets for male and female, part-time and full-time staff to identify patterns which might suggest inequality. Where potential inequality has been identified, data relating to individuals (contracts, personal files etc) has been examined more closely to explore whether the data is accurate and whether any actual inequality might be justifiable on legitimate grounds. Where no justifiable material factor defence has been uncovered the case is considered to constitute a risk to the Library.

| <b>3.1.7 Equal Pay Audit – Methodology Summary</b> |              |  |   |
|--|--------------|--|---|
| Data Description                                   | Data Source  | Analysis   | Output  |
| Profiling of staff                                 | HR System    | Profiling of staff by gender, band, unit, part/full-time   | Baseline to assess variations in pay  |
| Breakdown of actual staff payments 2009/10         | Finance      | Comparisons of average by gender, band, unit, part/full-time   | Differences in actual pay for year 2009-10  |
| Document Review                                    | HR Files     | Comparison of contractual terms; instructions to Finance; records of decisions on pay; information on pay related processes and procedures | Any contractual justification for material differences in actual pay; potential sources of systemic inequality in pay process |
| HR Focus Group                                     | HR Team      | Review of HR practice and consistency check; interim review of findings and anomalies  | Identify systemic sources of differences in pay; scrutiny of anomalies; check assumptions                                     |
| Finance meetings                                   | Finance Team | Comparison of HR/Finance perspectives; clarification of any anomalies  | Identify systemic sources of differences in pay; scrutiny of anomalies; check assumptions                                     |
| HR Data Check                                      | HR Team      | Review of draft report   | Quality assurance; sense checking and review of assumptions and actions   |
| Finance Data Check                                 | Finance      | Review of data and conclusions   | Quality assurance on data and process   |

<sup>2</sup> Equality Act, 2010. s65(4)

## 4.0 Equality and NLS: Staff Profile

### 4.1 Breakdown by Gender and Pay Band

4.1.1 The following table shows the breakdown of population by gender and pay band. Figures are based on current staff complement. Note the high proportion of males at band 2 and females at band 6. Band 2 jobs are primarily in the Porter/Messenger and Collection Support Services units.

| % Gender Split by Band |                     |                 |               |
|------------------------|---------------------|-----------------|---------------|
|                        | <b>Total Number</b> | <b>Female %</b> | <b>Male %</b> |
| Band 1                 | 16                  | 44              | 56            |
| Band 2                 | 15                  | 13              | 87            |
| Band 3                 | 98                  | 46              | 54            |
| Band 4                 | 48                  | 54              | 46            |
| Band 5                 | 43                  | 49              | 51            |
| Band 6                 | 49                  | 71              | 29            |
| Band 7                 | 34                  | 41              | 59            |
| Band 8                 | 16                  | 38              | 63            |
| Band 9                 | 4                   | 75              | 25            |
| Band 10                | 1                   | 0               | 100           |
| <b>Total</b>           | <b>324</b>          | <b>49</b>       | <b>51</b>     |

### 4.2 Occupational segregation

4.2.1 Some units have a disproportionately one sided gender mix. Security, Collection Support Services, Foreign Collections, Reprographic Services and Porter/Messengers are all disproportionately male. Business Information, Development and Events and Science are disproportionately female. Areas of occupational segregation raise the risk of discrimination when differing terms and conditions are applied to the jobs in these units unless the difference can be objectively justified on non-discriminatory grounds.

4.2.2 Occupational segregation was previously identified as a problem in the Library's Equality Scheme (2007) with the following recommended action:

*Take positive action to attract women to apply for positions in departments which are predominantly male, or vice versa (this may include photographs of female staff engaged in traditionally "male work" on our vacancies web page).*

No progress had been reported against this action by the time of its review in 2009 and the current recruitment freeze makes any further progress unlikely in the short term.

### 4.3 Breakdown by Gender, Unit and Full Time Workers

4.3.1 The following table shows a breakdown of staff by gender, unit plus the proportion per unit who work full time. Figures are based on current staff levels.

|   | <b>Number</b> | <b>% Female</b> | <b>% Male</b> | <b>% Full Time</b> |
|---|---------------|-----------------|---------------|--------------------|
| Access and Enquiries (Service Mgr)      | 1             | 0               | 100           | 100                |
| Acquisition & Description (Service Mgr) | 1             | 0               | 100           | 100                |
| Business Information                    | 2             | 100             | 0             | 100                |
| Cleaning                                | 18            | 44              | 56            | 61                 |
| Collection Support Services             | 20            | 5               | 95            | 100                |
| Collections and Research (Director)     | 1             | 100             | 0             | 100                |
| Conservation                            | 6             | 50              | 50            | 83                 |
| Corporate Services (Director + one)     | 2             | 0               | 100           | 100                |

|   |    |     |     |     |
|---|----|-----|-----|-----|
| Customer Services (Director + one)          | 2  | 100 | 0   | 100 |
| Dev and External Relations (Director + one) | 2  | 100 | 0   | 100 |
| Development and Events                      | 4  | 100 | 0   | 75  |
| Digital Collections                         | 5  | 60  | 40  | 100 |
| Donations, Purchases and Preparation        | 6  | 33  | 67  | 83  |
| Estates                                     | 8  | 38  | 63  | 88  |
| External Relations                          | 8  | 88  | 13  | 88  |
| Finance                                     | 6  | 67  | 33  | 83  |
| Foreign Collections                         | 3  | 0   | 100 | 100 |
| Front Of House                              | 16 | 69  | 31  | 63  |
| Human Resources                             | 5  | 80  | 20  | 60  |
| Information Systems                         | 17 | 12  | 88  | 94  |
| Legal Deposit & Modern Colls (Service Mgr)  | 1  | 0   | 100 | 100 |
| Manuscripts and Maps                        | 28 | 54  | 46  | 79  |
| Modern British Collections                  | 4  | 25  | 75  | 100 |
| Modern Scottish Collections                 | 2  | 50  | 50  | 100 |
| Monographs and Media                        | 18 | 72  | 28  | 78  |
| Music                                       | 2  | 100 | 0   | 100 |
| National Librarian's Office                 | 2  | 50  | 50  | 100 |
| Newsplan Project                            | 1  | 100 | 0   | 100 |
| Official Publications                       | 11 | 82  | 18  | 91  |
| Porter/Messenger                            | 7  | 0   | 100 | 100 |
| Preservation & Conservation (Service Mgr)   | 1  | 0   | 100 | 100 |
| Preservation Services                       | 6  | 33  | 67  | 83  |
| Rare Book Collections                       | 16 | 31  | 69  | 94  |
| Reference Services                          | 31 | 77  | 23  | 52  |
| Reprographic Services                       | 5  | 0   | 100 | 100 |
| Science Information                         | 3  | 100 | 0   | 0   |
| Scottish Screen Archive                     | 14 | 57  | 43  | 71  |
| Security                                    | 21 | 10  | 90  | 95  |
| Serials                                     | 11 | 73  | 27  | 82  |
| Standards & Maintenance                     | 6  | 50  | 50  | 100 |
| Strategic Policy                            | 2  | 0   | 100 | 50  |
| Support Unit                                | 2  | 100 | 0   | 100 |

#### 4.4 Part-time/Full-time

4.4.1 The following table breaks down the staff profile by gender and part/full-time status. For the purposes of this audit, part-time staff are defined as those who are contracted to work less than 37 hours per week<sup>3</sup>. Figures reflect all staff employed in FY 2009-10.

<sup>3</sup> This is in line with the EU Directive on part-time working and widespread practice as reflected in a report by IRS Employment Trends (04/2001) and has the benefits of simplicity and clarity. The Part-time Workers (Prevention of Less Favourable Treatment) Regulations defines the full-time /part time difference as follows:

A worker is a "full-time worker" if "he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker's employer under the same type of contract, is identifiable as a full-time worker" (reg. 2(1)); and a worker who is so paid but is not so identifiable as a full-time worker is a "part-time worker" (reg. 2)

| Staff 2009-10                   | Full Time |         | Part Time |         | Total by Gender |         |
|---------------------------------|-----------|---------|-----------|---------|-----------------|---------|
|                                 | Number    | % Staff | Number    | % Staff | Number          | % Staff |
| Male                            | 175       | 47%     | 14        | 3%      | 189             | 50.4    |
| Female                          | 131       | 35%     | 55        | 15%     | 186             | 49.6    |
| <b>Total By Working Pattern</b> | 306       | 82%     | 69        | 18%     | 375             | 100%    |

4.4.2 89% of total contracted hours per week are worked by full time staff. The remaining 11% is worked by part-time staff whose contracted hours range from 7.5 to 32 hours per week. 79% of contracted part-time hours are worked by women. Of the Library's 69 part-time staff employed in 2009-10, 54 (75%) were female. Of the 14 male part time staff employed in 2009-10, 6 have since left the Library, an attrition rate of 43%. The comparable rate for female part-time staff is 20%. The total turnover rate for all staff is 12.5%. Although outside the remit of this study, attrition rates among male part-time staff should be investigated as they may reveal evidence of underlying issues that are currently hidden, especially as there may be a gender related factor at work.

4.4.3 Female part time workers work an average of 20 hours per week. Male part-time workers work an average of 16 hours per week.

4.4.4 Any terms and conditions that tend to disadvantage part-time workers in the Library are likely to have a disproportionate effect on female staff and may be considered discriminatory unless they can be objectively justified. NLS units which are disproportionately male (listed above) also show a 100% full time staff complement. This compounds the risks arising from occupational segregation by broadening the area of potential challenge to include differing terms for full-time and part-time staff.

## 5.0 Elements of Pay

### 5.1 Salaries and JEGS

5.1.1 Basic salaries, as determined by pay band, make up the bulk of remuneration in the Library. Salaries are situated within pay bands and jobs are allocated to these bands using the JEGs process. JEGs is an analytical job evaluation scheme endorsed by the Cabinet Office and considered to be "equality proofed". As an analytical scheme JEGs is considered an effective demonstration that different jobs can be considered to be of equal value. This enables useful comparisons across different units and, when properly applied, constitutes an effective defence in equal pay claims as long as all elements of pay are clearly linked to JEGs.

5.1.2 JEGS was introduced to the Library in 2000 following a review of pay and grading triggered by a move to devolved pay bargaining in the Civil Service and by internal complexities and issues in the Library's pay system. The objectives of the review were summed up by the then Head of HR in a business case as follows:

The particular issues which the Library has sought to address in this review are:

- **current inequities**

The grades and pay scales which the Library has inherited are the result of negotiation at national level between individual unions and HM Treasury. As a result the curatorial grades (IPMS) have much longer scales than the Support and Administrative Grades (PCS), and jobs of equal value are unequally rewarded. There are also different leave allowances and

overtime rates. The long IPMS pay scales lead to anomalies within the curatorial grades: for instance the maximum of the Grade G (entrance requirement 4 'O' grades) is higher than the minimum of the Curator D (three grades higher, a specialist grade, often requiring a graduate with a professional qualification or research experience).

- **inflexibility of present grading**

The number of grades and the former central grading guidance has led to some inflexibility and rigid lines of demarcation in what staff in certain grades may and may not do. The Library would hope to build upon the recent willingness of the unions to demonstrate a greater degree of flexibility in order to improve efficiency and increase individuals' job satisfaction.

- **complexity of present systems**

The existing 32 grades are too many for a relatively small organisation, are expensive and time-consuming to administer, and are confusing and potentially divisive for staff.

- **effects of information technology**

IT has affected the way the Library carries out its work. On the one hand these developments mean that the Library needs staff with new and additional skills, on the other, IT has reduced the creativity and initiative required of staff involved in the now, more routine, clerical processing tasks.

5.1.3 It should be noted that the inequity referred to above is primarily a matter of fairness (comparative reward for the demands of the job) rather than equality (differentials in pay that are related to legally protected personal characteristics such as gender or race). In the surviving documentation from this review exercise, gender equality does not emerge as a strong influence on the outcomes of the review process. This has implications for justifying the ongoing pay protection arrangements which arose from this exercise, should these be viewed as discriminatory.

## **5.2 Pay Protection**

5.2.1 Some staff are still covered by pay protection arrangements arising from the adoption of JEGS in 2000. Pay protection modifies the JEGS scheme on an individual basis by introducing specific, time-limited, amendments to the application of pay policy and collective agreements for designated individuals. Pay protection is designed to mitigate the effects of organisational change on specific staff who would otherwise be disadvantaged by these changes to the extent that a breach of contract might occur. Different groups of staff, over the past 10 years, have benefited from different kinds of pay protection arrangements.

5.2.2 Pay protection will often result in staff being paid above the band maximum for their job. This can be justified in equal pay terms as long as the protection arrangements are proportionate; equitable in application and do not perpetuate a discriminatory pay structure.

## **5.3 Allowances**

5.3.1 For many staff in the Library, basic pay is augmented by additional payment of allowances and overtime. There are many allowances and, while some are straightforward, no clear, authoritative list appears to exist that defines the nature, contractual status, eligibility requirements and application of all of them. Allowances sit outside the JEGS system and in their complexity, variety and lack of transparency, constitute one of the main areas of risk for the Library in equal pay terms.

## **5.4 Pay Process**

5.4.1 Jobs are evaluated through the JEGS process and allocated to pay bands on the basis of a numerical score. The Library's job evaluation process is only carried out by specially trained staff and a standard process is followed to ensure consistency.

5.4.2 New employees are expected to start on the band minimum and progress through the band by annual increments. Annual increments are agreed by a collective bargaining process with trade unions within limits imposed by the Scottish Government. The Library's pay agreement of 2008 recognised that people were not reaching the top of their band quickly enough to avoid challenge under age discrimination legislation. A result of that agreement was to take all staff with five or more years service to the top of their band.

5.4.4 In theory, staff will remain in their particular band unless they are promoted to a new one. However this general pattern can be affected by changes to the job resulting in a re-evaluation on the JEGS scale. This re-evaluation can be triggered by an appeal from individual member of staff or by organisational change that re-fashions jobs in response to changing requirements (see 5.6 below). Where a re-grading appeal is successful the new band will also be applied to staff who are carrying out the same work.

### **5.5 New Starts Anomaly**

5.5.1 However, a notable variation to standard practice is that staff joining the Library don't always start on the band minimum. This may be because they are currently paid more than the minimum and there is an expectation that a job move should result in a salary increase. Occasionally a new employee will demand the maximum of the band – or more. This can result in payment of a Recruitment and Retention allowance which can extend the top of the band by up to 10%.

### **5.6 Organisational Re-structuring**

5.6.1 Changes to organisational structure also impact on banding by re-designing jobs. Often the re-designed job will be at a different band and this will require a process to match the job-holder to the new post or to manage the contractual breach implied in the change through pay protection.

5.6.2 As a deliberate, designed process that affects the jobs of current employees (with accrued employment rights) organisational restructuring has the potential to introduce bias and discrimination because it involves decision making within constrained parameters (e.g. "no redundancy payments") to achieve the best (or least harmful) result for the organisation.

5.6.3 The Library does not have a clear and established process for managing organisational restructuring which would help mitigate some of the risks arising from this kind of change programme.

### **5.7 Contractual Provisions**

5.7.1 Contractual provisions on pay can be broadly divided into two groups: explicit terms included in the principal statement of terms and conditions (Principal Statement) or added to it by agreement, and implied terms which can arise from changes to legislation or through custom and practice. The Principal Statement is a legal requirement and it is commonly referred to as "the contract". The actual contract of employment is much broader and includes statutory provisions; custom and practice and implied terms (all of which have a bearing on equal pay).

5.7.2 This means that not all contractual provisions are written down and this in turn opens up debate on whether features of pay (such as a right, or obligation, to overtime) are contractual or not. As an example of this, overtime in CSS is rostered 2 months in advance and any amendment necessary to cover for the rota is the responsibility of the individual making the change. The Head of CSS discussed his experience of being told that he was "expected to do overtime" when appointed to his first CSS role but that he accepts that some staff prefer not to do it and these wishes are accommodated. The expectation and forward planning suggests a contractual obligation but the ability to withdraw from overtime arrangements suggests the arrangement is non-contractual. The Principal Statement is silent on the topic and there appears to be no other documentation which clearly points one way or another.

## 5.8 Principal Statement of Terms and Conditions

5.8.1 The Principal Statement sums up many of the explicit contractual terms in force at the time of appointment. It includes references to other documents and agreements which have a direct bearing on pay in NLS.

5.8.2 These include:

**The Civil Service Code.** This code has traditionally set out an exhaustive list of terms and conditions of employment for civil servants. Although employees of the Library are not civil servants the Principal Statement states that the Library has adopted the code and so incorporates it into the contract of employment. The code has been useful in that it offers a reference point for quickly and easily resolving issues which have arisen over the years. However, ongoing adoption of the code also creates some risks for the Library.

5.8.3 The Library is not obliged to adopt the code. The current version of the code explicitly states that

*departments and agencies have authority to determine the terms and conditions relating to the remuneration (excluding pensions) of their own staff outside the Senior Civil Service and the payment of allowances to all staff, subject to the following conditions...[business needs of the Scottish administration; consistency with Government policy on Civil Service; Government policy on public sector pay, and]*  
*a: Value for money from the pay bill;*  
*b: Financial control of the pay bill'*  
*c: Flexibility in pay systems; and*  
*d: A close and effective link between pay and performance;*  
*Taking account of the inter-relationship between pay, pension provision, leave and other terms and conditions<sup>4</sup>.*

5.8.4 The Principal Statement sets out that:

*The Library has adopted the Civil Service Pay and Conditions of Service Code (the Code). The Code contains terms and conditions of your employment. Subject to the terms of this letter the Code will apply. A copy of the Code is available on the intranet [sic] and can also be consulted in Human Resources.*

5.8.5 There is a considerable discrepancy between the hard copy in the HR office and the current version available on the internet. Detailed provisions covering specific allowances preserved in the hard copy are missing from the current online version. It is not clear how the Code should be applied in case of dispute over these provisions. These discrepancies and lack of clarity raises the risk of claims based on differing interpretations of the code and nullifies the advantages gained through having a single point of reference to resolve issues.

## 5.9 Collective Bargaining Agreements

5.9.1 The Principal Statement also expressly incorporates collective bargaining agreements into the contract of employment which provides a mechanism for administering pay agreements at the individual level. This is accomplished by the following clause:

*There are also collective agreements affecting your terms and conditions which have been reached between the Library itself and the Whitley Council and/or between the Library and one or more of the recognised trade unions.*

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<sup>4</sup> [www.civilservice.gov.uk/about/resources/csmc/CSMC-7.aspx](http://www.civilservice.gov.uk/about/resources/csmc/CSMC-7.aspx) 02/12/10

## 5.10 Annexes to the Principal Statement

5.10.1 The Principal Statement refers to three annexes which elaborate on certain aspects of the statement itself. These are:

- Annex One: a list of all collective bargaining agreements between NLS and trade unions
- Annex Two: procedure for overtime working
- Annex Three: the attendance management policy and procedure

5.10.2 Annex Two is of particular interest for the purposes of this audit as it sets out procedure for accessing overtime and, indirectly, a range of associated allowances. It includes some clear rules:

- *All overtime for which payment is to be made must be authorised in advance by a responsible officer.*
- *Claims for overtime payments must be supported by a record of hours worked.*
- *All individuals must themselves provide the necessary documentation in support of their claims.*

5.10.3 However, in setting out the rules for calculating overtime this annex demonstrates a density of jargon; uses convoluted sentence structure; and makes obscure references to forgotten categories of staff. So much so that it must be considered incompatible with transparency in administration of pay systems. For example:

*The calculation of overtime payments is based on pay and allowance in issue (other than allowance in lieu of overtime or, the night duty, or shift disturbance, house, clothing, lodging, travelling and subsistence or similar out of pocket expense). The rate of payment varies from grade to grade, and except for overtime worked on public holidays, is not payable to staff in Unified grade 7 and above.*

It is not clear what “Unified grade 7” refers to; the nature of the variation from grade to grade; or what “allowance in issue” actually means. The Library’s Financial Accountant, in summing up these difficulties, described the instructions on overtime contained in the annex as “gibberish”.

## 6.0 Review of Evidence

### 6.1 Salaries

6.1.1 Analysis of basic salaries suggests that there are no significant inequalities in this element of pay. Following the most recent pay settlement, average salaries at all bands are now within 4 percentage points of the top of the scale.

|        | Average Salary |        | Average as % Band Max |        |
|--------|----------------|--------|-----------------------|--------|
|        | Female £       | Male £ | Female %              | Male % |
| Band 1 | 12683          | 12683  | 100                   | 100    |
| Band 2 | 14661          | 14661  | 100                   | 100    |
| Band 3 | 16947          | 17157  | 99                    | 100    |
| Band 4 | 20800          | 20877  | 96                    | 97     |
| Band 5 | 25699          | 26385  | 96                    | 99     |
| Band 6 | 31143          | 30416  | 98                    | 96     |
| Band 7 | 35743          | 36158  | 98                    | 99     |
| Band 8 | 47609          | 48878  | 97                    | 100    |
| Band 9 | 59466          | 59754  | 100                   | 100    |

## 6.2 Pay Protection

6.2.1 Twelve members of staff are currently in receipt of protected pay as beneficiaries of an agreement made in 2000 to support the transition to the JEGS system. This involved a 10+4 arrangement whereby salaries would be maintained (and revalorised) for 10 years before a 4 year tapering process would bring salaries down to the band maximum. The pay protection scheme is included in the *Agreement for the Introduction of a New Pay and Grading System* of January 2001:

*Staff on permanent contracts of employment on 31 July 2000 and whose new banding attracts a maximum below the old scale maximum for their old grade will retain on a personal basis the right to progress to the old scale maximum, revalorised in accordance with the pay protection arrangements.*

These arrangements are expanded in an annex to this agreement as follows:

*This means that pay awards for such staff will be consolidated up to the level of the revalorised old scale maximum. Revalorisation will be calculated on a "10 + 4" basis, ie for a period of 10 years from 2000 the level of each person's protected maximum will be revalorised by the same percentage as applies to the maximum of the individual's new substantive band. For the following 4 years, from 2010 to 2013, a taper will apply to bring the individual's protected maximum closer to the maximum of the new banding.*

*The taper will be applied by firstly calculating the difference between the then protected maximum and the then maximum of the new banding. In the first of the four years, the protected maximum will be set at 4/5ths of the difference above the maximum of the new banding, in the second year, 3/5ths of the difference above the revalorised maximum of the new banding, in the third year, 2/5ths, and in the fourth year, 1/5th of the difference above the revalorised maximum. Thereafter, in 2014 and beyond, there will be no further pay protection and the revalorised maximum of the new banding will apply. If, after ten years or more, the protected maximum for the individual is greater the protected maximum will mark time at this rate until overtaken by the revalorised maximum of the new banding.*

*These arrangements for pay protection apply only to posts in the grade held by the individual at the date of assimilation. Any individual who after assimilation moves in to a new pay banding, through promotion or re-grading, would be constrained by the maximum of the new banding without special protection*

6.2.2 The following table illustrates the current status of these pay protection arrangements.

|        | No Staff | Female | Male | Ave Salary | Band Max | Difference |
|--------|----------|--------|------|------------|----------|------------|
| Band 3 | 8        | 3      | 5    | 20380      | 17090    | 3290       |
| Band 4 | 2        | 0      | 2    | 23405      | 21632    | 1773       |
| Band 5 | 2        | 0      | 2    | 27662      | 26707    | 955        |

6.2.3 While the details of the agreement have been preserved in HR records the rationale for the decision has not. It is also unclear how many staff, and of what gender, may have previously had their pay protected under the same agreement but who have since either left the Library or changed job and so moved out of this category.

6.2.4 In more recent pay protection agreements the terms have been 2+2, bringing staff into line with JEGS within 4 years of changes being implemented. Although the most recent 2+2 arrangement has now expired it is not clear how the Library would successfully defend a claim from an individual who was covered by that agreement (or indeed any member of staff who was also a permanent employee

on 31 July 2000 and whose work was in other respects comparable with that of pay protected staff but who chose a 10+4 pay protected person as a comparator.

6.2.5 It is possible that the 10+4 arrangement would be considered unjustifiable should a complaint be raised. A 14 year adjustment period is unlikely to be thought proportionate; the arrangement does not appear to have been designed to resolve gender based differences; and, in its implementation, it might be considered to favour male staff over female staff. On the other hand, the agreement was reached through collective bargaining; was designed to protect a range of staff (including women) from detrimental consequences and we can demonstrate that the scheme has applied to women as well as men and therefore dispute any taint of sex discrimination. These points may mitigate the risk of any claim in practice.

### 6.3 Allowances and Overtime

6.3.1 The total amount paid in allowances for 2009-10 was £322,744. A full listing of these allowances, including amounts paid, is attached as an appendix.

| <b>Allowances Paid by Type 2009-10</b>  | Total £       | % of total |
|---|---------------|------------|
| <b>Shift Allowances</b> (including Shift Allowance; Additional Shift; Saturday Shift; Sunday Shift Premium; Public Holiday Shift allowances)  | 119910        | 37.1       |
| <b>Overtime</b> (including Additional Hours; Monday-Friday OT; Saturday OT, Saturday OT Premium, Sunday OT; Sunday OT Premium; Public Holiday OT; Public Holiday OT Premium; Security OT) | 170644        | 52.9       |
| <b>Other</b> (including Meals, Night Work; On Call, Supervisory, Recruitment and Retention; Responsibility; Telephone; Sick Pay at Pension Rate; Travel allowances)                       | 32190         | 9.9        |
| <b>Grand Total</b>  | <b>322744</b> | <b>100</b> |

6.3.2 The table below shows amounts paid to male, female, part-time and full-time staff plus percentage breakdown of total earnings from allowances and overtime:

| <b>Allowance Earnings 2009-10: Breakdown by Gender and Working Pattern</b> |              |              |               |              |               |
|--|--------------|--------------|---------------|--------------|---------------|
|  | Female (£)   | % Female     | Male (£)      | % Male       | Grand Total   |
| Full-time  | 70108        | 21.7%        | 222955        | 69.7%        | 293063        |
| Part-Time  | 27566        | 8.5%         | 2115          | 0.66%        | 29681         |
| <b>Total</b>   | <b>97674</b> | <b>30.3%</b> | <b>225070</b> | <b>69.7%</b> | <b>322744</b> |

Note that part-time staff do not qualify for overtime until they have worked the equivalent of a full-time working week.

6.3.3 149 staff (43% of employees) received no allowances at all. 46% of female staff and 36% of male staff received no allowance payments in 2009-10.

6.3.4 Total payments to individuals ranged from less than one pound to a maximum of £9027. The average earnings through allowances, for all staff who received such payment, was £1501. The average for male staff was £1924, the average for female £997. On average, male staff who received allowances were nearly £1000 better off than comparable female staff.

6.3.5 The following table breaks down allowance payments by gender and unit or function. Percentage figures show the proportion of the total value of payment to that unit/function broken

down by gender. Note that some units have been aggregated into functional groups for clarity of display where the amount involved was small.

| <b>Payment of Allowances by Unit/Function and Gender 2009-10</b> |                                 |                 |              |
|--|---------------------------------|-----------------|--------------|
| <b>Unit</b><br>(% female staff complement in brackets)           | <b>Total Value</b><br><b>£s</b> | <b>Female %</b> | <b>Male%</b> |
| Business Information (66)  | 340                             | 66              | 34           |
| Cataloguing (M&M, CSM) (65)                                      | 200                             | 100             | 0            |
| Cleaning (45)  | 13887                           | 35              | 65           |
| Conservation (36)  | 3750                            | 7               | 93           |
| Collection Support Services (5)                                  | 45015                           | 6               | 94           |
| Digital Collections (50)   | 244                             | 0               | 100          |
| Donations, Purchases and Preparation (50)                        | 2                               | 100             | 0            |
| Estates (29)   | 14905                           | 12              | 88           |
| Development and External Relations (80)                          | 2528                            | 99              | 1            |
| Foreign Collections (0)  | 2013                            | 0               | 100          |
| Finance (75)   | 0                               | 0               | 0            |
| Front of House (63)  | 19067                           | 65              | 35           |
| Human Resources (67)   | 365                             | 100             | 0            |
| Information Services (10)  | 9829                            | 1               | 99           |
| Legal Deposit & Modern Collections (33)                          | 1309                            | 35              | 65           |
| Map Library (50)   | 6442                            | 61              | 39           |
| Manuscripts (56)   | 15965                           | 69              | 31           |
| Music Collections (67)   | 1684                            | 100             | 0            |
| Official Publications Unit (90)                                  | 23                              | 100             | 0            |
| Porter/Messengers (0)  | 11603                           | 0               | 100          |
| Rare Books (36)  | 11620                           | 25              | 75           |
| Reference Services (77)  | 49555                           | 83              | 17           |
| Reprographics (17)   | 110                             | 0               | 100          |
| Science Library (75)   | 1020                            | 100             | 0            |
| Security (7)   | 110357                          | 8               | 92           |
| Serials (73)   | 53                              | 100             | 0            |
| Senior Management Team (60)                                      | 0                               | 0               | 0            |
| Scottish Screen Archive (73)                                     | 776                             | 89              | 11           |
| Strategic Policy & PA Unit (71)                                  | 82                              | 100             | 0            |
| <b>Total</b>   | <b>322744</b>                   |                 |              |

6.3.6 The following table shows the distribution of allowance payments by gender. Note the number of allowances predominantly claimed by male staff and also the two versions of Supervisory allowances which happen to pay at different rates for different genders.

| <b>Allowances Paid 2009-10 by Gender</b> |
|--|
| Allowances predominantly earned by men:  |

|  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Overtime (Monday – Friday)</li> <li>• Overtime (Saturday)</li> <li>• Overtime (Saturday Premium)</li> <li>• Overtime (Sunday)</li> <li>• Overtime (Sunday Premium)</li> <li>• Meal Allowance</li> <li>• Additional Shift</li> <li>• Shift Allowance</li> <li>• Security Overtime</li> </ul> | <ul style="list-style-type: none"> <li>• Recruitment and Retention Allowance (100%)</li> <li>• Public Holiday Shift Allowance</li> <li>• Public Holiday Overtime</li> <li>• Public Holiday Overtime Premium</li> <li>• On Call Allowance (100%)</li> <li>• Night Work Allowance at 25%</li> <li>• Supervisory Allowance 2</li> </ul> |
| Allowances primarily earned by women:  |  |
| <ul style="list-style-type: none"> <li>• Additional Hours</li> <li>• Saturday Shift</li> <li>• Sunday Shift Premium</li> </ul>   | <ul style="list-style-type: none"> <li>• Sick Pay at Pension Rate</li> <li>• Supervisory Allowance 1</li> </ul>  |
| Allowances quite evenly distributed between men and women:   |  |
| <ul style="list-style-type: none"> <li>• Night Work Allowance at 33%</li> </ul>  | <ul style="list-style-type: none"> <li>• Responsibility Allowance</li> </ul>   |

6.3.7 The following table shows the distribution of allowance payments according to part- or full-time status. The tendency to segregate payment mechanisms for different staff groups is marked, even if overtime was taken out of consideration.

| <b>Allowances Paid 2009-10 by Part-time/Full-time</b>  |  |
|--|--|
| The following allowances were primarily earned by full time staff:   |  |
| <ul style="list-style-type: none"> <li>• Overtime (Monday – Friday)</li> <li>• Overtime (Saturday)</li> <li>• Overtime (Saturday Premium)</li> <li>• Overtime (Sunday) (100%)</li> <li>• Overtime (Sunday Premium) (100%)</li> <li>• Recruitment and Retention (100%)</li> <li>• Additional Shift</li> <li>• Supervisory 1</li> <li>• Supervisory 2</li> </ul> | <ul style="list-style-type: none"> <li>• Responsibility Allowance</li> <li>• Night Work at 33%</li> <li>• On Call Allowance</li> <li>• Public holiday overtime</li> <li>• Public Holiday overtime premium</li> <li>• Security Overtime</li> <li>• Shift allowance</li> <li>• Sick Pay at Pension Rate</li> </ul> |
| Allowances primarily earned by part time staff:  |  |
| <ul style="list-style-type: none"> <li>• Additional Hours (99.6%)</li> </ul>   | <ul style="list-style-type: none"> <li>• Sunday Shift Premium</li> </ul>   |
| Allowances quite evenly distributed between part time and full time staff:   |  |
| <ul style="list-style-type: none"> <li>• Saturday Shift</li> </ul>   |  |

6.3.8 Drawing conclusions from this distribution of allowances is hampered by the lack of a comprehensive and authoritative listing of current allowances held by either HR or Finance. The entire system of allowance appears to be primarily driven, and maintained, by custom and practice.

6.3.9 Reviewing the range of allowances with HR colleagues revealed some knowledge gaps on the nature of some of the allowances listed above plus a recognition that the Library is living with the legacy of previous systems of remuneration that do not sit comfortably with current approaches. These conflicting systems have been pointed out previously but the conflict has never been resolved. HR colleagues were unable to explain the reason why there were two different Night duty rates or why there were two supervisory allowances.

## 6.4 “Single Gender Allowances”

6.4.1 Some allowances, aside from those claimed by segregated units, should be highlighted as only being paid to one gender in FY2009-10. These are the Recruitment and Retention allowance; On Call allowance and Sick Pay at Pension Rate.

6.4.2 **Sick Pay at Pension Rate** (total 09/10: £5085) was paid to two female members of staff. There is no explanation for the payment in their personal files. Both were absent from work for extended periods of time with long-lasting medical conditions. Both could be considered as disabled but there is no evidence that this was a factor in paying the allowance. A male member of staff, absent for the whole year with a long-lasting medical condition that might also amount to disability, did not receive the allowance. Again, there is no reference in his file to the reason for this.

6.4.3 The **On Call** allowance (total 09/10: £6674) was paid to four male members of staff. None of these have the rationale for payment included in their personal file. In one case a memo indicates that the allowance was previously paid to the (female) head of security before she left the Library’s employment. The process for inclusion in the rota is not documented but appears to be based on knowledge of key Library systems. The allowance is paid for membership of a four part rota system to ensure out of hours advice is available on key Library systems. Some of the current incumbents have received training to allow them to take part. An e-mail from the head of Estates gave the following list of responsibilities attached to the allowance:

1. Available to be added to on-call rota which should be generally every fourth week. Be sufficiently flexible to cover periods when colleagues are unavailable to cover periods of their on-call time.
2. The on-call week starts at 08:00 Monday morning and continues to the following Monday morning at 08:00 hrs.
3. Available to drive / attend site at any time during on call week, and be able to attend site within 1 hour.
4. The main responsibility when called is to assess what the problem is and decide what is required to rectify the problem. This can vary from answering a phone call, to attending site to manage the initial stages of an incident.
5. Whilst a technical knowledge of the various systems would be an advantage, the main criteria would be an understanding of what the various systems are to achieve and the consequences of not having them.

The process for allocating individuals to the on call system is unclear. In some cases it is linked to specific areas of technical systems knowledge required as part of the individual’s job. It is less clear in other cases.

6.4.4 **Recruitment and Retention** allowance (total 09/10: £4697) was paid to two male members of staff. In only one case was there a rationale included in the personal file. This rationale was based on the need to fund an equivalent salary to the current income of the member of staff. The rationale did not include any reference to the recruitment and selection process or general market rates for the post.

## 6.5 Allowances and Occupational Segregation

6.5.1 A comparison of allowances paid to band three staff across the related areas of Reference Services, Collection Support Services and Front of House demonstrates the differentials that can arise from the system of allowances.

| Average Earnings from Allowances 2009-10: Full Time Staff Only |             |               |
|--|-------------|---------------|
| Unit   | Band 3 Male | Band 3 Female |
| Reference Services   | 1081        | 1742          |
| Front of House   | 1244        | 1615          |

|                             |      |     |
|-----------------------------|------|-----|
| Collection Support Services | 2687 | n/a |
|-----------------------------|------|-----|

6.5.2 While all these units all sit within the same organisational department and report to the same service manager, Reference Services and CSS also cover the same opening hours and work on the same customer service process. CSS tend to get overtime (and associated allowances such as meal costs) while Reference Services and Front of House staff get shift allowance plus some access to overtime.

6.5.3 Although the difference in earnings reflects the larger amount of additional hours worked by CSS staff it does raise the question of why such different systems of pay apply to such closely related groups of staff. The answer given by HR colleagues was that this reflects a historical distinction between “industrial” and “clerical” staff. Historical legacy is unlikely to stand as a valid defence in an equal pay claim in the absence of any other justification. The risk to the Library is that the overtime/allowance system of pay appears to be biased in favour of male staff even within the same JEGS band.

## 6.6 Pink Slip Leave

6.6.1 Pink slip leave is a variety of overtime remuneration in that staff can opt to take pink slip leave in lieu of overtime payment. Its use by staff who are also on flexi-time may be anachronistic when the overtime is given at a plain time rate but it allows staff to circumvent some restrictions on carrying forward and using flexi-credit. It parallels both the flexi-time and overtime systems resulting in inefficiency, over-complexity and a lack of transparency.

6.6.2 Pink slip leave is easily generated but difficult to monitor until it is “cashed in” through Wintime. Anecdotal evidence suggested there could be hundreds of pink slips in circulation waiting to be cashed in for time off at some point in the future. In the context of equal pay the pink slip “black hole” distorts the data on overtime/additional hours payments by removing the value of this time from the financial record and so weakens our ability to manage the associated risks.

6.6.3 A summary of pink slip leave awarded in 2009-10 showed a total of 269 working days. A calculation based on band midpoints (and including on-costs) estimated the financial value of this time as £37,459. This is the equivalent of a band 6 member of staff. The following table shows the distribution of pink slip leave by band and gender. Percentages refer to the amount of cash equivalent tied up in the leave at current rates. Pink slips will accrue cash value if they are retained over an annual salary increase period-

| Percentages of total value of pink slip leave 2009-10 broken down by band and gender |          |        |       |
|--|----------|--------|-------|
| Band   | Female % | Male % | Total |
| Band 1   | 0        | 0      | 0     |
| Band 2   | 0        | 0      | 0     |
| Band 3   | 7        | 1      | 8     |
| Band 4   | 2        | 5      | 7     |
| Band 5   | 4        | 5      | 9     |
| Band 6   | 24       | 6      | 30    |
| Band 7   | 14       | 14     | 29    |
| Band 8   | 6        | 9      | 15    |
| Band 9   | 0        | 0      | 0     |
| Band 10  | 0        | 1      | 1     |
| Grand Total  | 58       | 42     | 100   |

6.6.4 Note the high proportion of pink slip taken by band 6 females and the low proportion taken by band 3 males. This may be entirely due to personal preference and therefore outside the scope of an equal pay audit.

6.6.5 Shortcomings in the Wintime system mean that reports cannot be generated to assess the amount of pink slip overtime that has been “cashed in” as leave.

## **6.7 Eligibility for Allowances**

6.7.1 There is considerable confusion over who is eligible for what allowances and it is not always clear how instructions for the application of allowances are originated or authorised. Finance colleagues believe that they are acting on standard operating procedures set up by Human Resources. However, HR staff were unable to define all allowances that were paid out last year or relate them to terms of employment. This appears to be the result of a historical blurring of responsibilities between the HR and Finance divisions combined with a gap in pay policy capability in the HR unit.

6.7.2 HR colleagues also highlighted issues over Sick Pay at Pension Rate (SPPR) and Responsibility Allowance. SPPR has recently been paid to two female members of staff but not to a male member of staff in similar situation for no clearly identified reason. Some doubts were also raised over the lack of an established and transparent process for handling the allocation of responsibility allowances when individuals have been selected by managers without any documented rationale for their choice.

## **6.8 Pay Process**

6.8.1.1 The audit has included elements of the pay process including the use of the JEGS system; appointment to new posts; changes to salary through organisational restructuring and the role of the Human Resources and Finance divisions in maintaining controls on pay.

## **6.9 JEGS Administration**

6.9.1 A review of JEGs process with HR colleagues allowed them to share some concerns about how the process has worked in practice. This included some discrepancy from the authorised process around the reliance on job descriptions to grade jobs. This required evaluators to make certain assumptions about (for example) the size of a managerial component in a job. These assumptions are not made explicit or documented in the process. Consistency is achieved by training and co-operative working by HR staff.

6.9.2 Concerns were also raised about the practice of allowing managers engaged in organisational reviews to design job descriptions with specific candidates in mind to help manage the risks of redundancy. This was considered to raise the potential for discrimination although the risk was mitigated through scrutiny by HR staff.

## **6.10 New Starts**

6.10.1 The data on payments made to new starts at the Library shows a clear gap between men and women. In the past 2 years 63 people have started work with the Library. Of these 33 were female and 30 male. 85% of female new starts joined the Library on the recommended band minimum. 63% of male new starts also joined on the band minimum.

6.10.2 Where the minimum starting salary rule was not imposed, the overall average starting salary for men was 20% above the minimum compared to 7% for women. At both band 5 and band 7 all female appointments were to the minimum of the scale while males were averaging respectively 18% and 19% above the minimum. At Band 8 there was one (male) instance of an award to the top of the scale.

6.10.3 The following table shows the distribution of starting salaries by band and gender by showing the average difference (in pounds) to the band minimum for those staff awarded a starting salary in excess of that minimum.

|        | Male New Starts 2008-10 |                               | Female New Starts 2008-10 |                               |
|--------|-------------------------|-------------------------------|---------------------------|-------------------------------|
|        | Number above Minimum    | Average Salary Difference (£) | Number above Minimum      | Average Salary Difference (£) |
| Band 1 | 0                       | 0                             | 0                         | 0                             |
| Band 2 | 0                       | 0                             | 0                         | 0                             |
| Band 3 | 1                       | 93                            | 0                         | 0                             |
| Band 4 | 0                       | 0                             | 1                         | 501                           |
| Band 5 | 2                       | 3723                          | 0                         | 0                             |
| Band 6 | 3                       | 1802                          | 2                         | 852                           |
| Band 7 | 4                       | 5302                          | 0                         | 0                             |
| Band 8 | 1                       | 12486                         | 1                         | 2980                          |

6.10.4 Personal files contain very little information on the reasons for starting salaries in excess of the minimum. In most cases there is only an instruction to Finance to pay the designated amount. In the case of the band 8 member of staff alluded to above, the fact that payment is to the top of the band is acknowledged, and concurred with, but no supporting rationale for either the fact or the amount is included in the record.

6.10.5 HR colleagues commented on the various influences that bear upon the decision to award a salary above the band minimum. While there is always pressure to bring the long and expensive recruitment process to a satisfactory conclusion with appointment of the best candidate, the cost of that candidate is not always a concern and there is a reluctance to move to the next appointable candidate if salary demands are judged excessive. Other pressures include a candidate's expectation to at least match, and preferably exceed the current salary; additional daily travelling expenses; and a special request by Director or senior manager. The total value of the benefits package is not always as clearly understood and articulated as the salary element is.

6.10.6 There is no process in place to support HR staff or recruiting managers in assessing what the market rate for the job actually is or in judging whether a request is reasonable or not. In the face of these pressures and without a process to fall back on, the current position in practice seems to be that if people ask for more money, they get it.

## 7.0 Conclusion

7.1 The Library's basic salary structure does not appear to be a source of risk under the Equality Act as the settlement of 2008 pay negotiations has brought so many staff to the maximum of their band. However this concentration of staff at band maxima is likely to lead to increasing dissatisfaction in coming years and will add to the necessity of a review of pay and grading in the interests of organisational effectiveness.

7.2 Allowances, on the other hand, do seem to present a considerable risk. The confusion, complexity and lack of transparency in the payment of allowances exposes the Library to risk by making any objective justification of pay differences unsustainable. This can be seen most clearly in comparing payments to band 3 staff across the three closely related units of Reference Services, Collection Support Services and Front of House where, effectively, three different systems of allowances appear to be in operation. Given the disproportionate male bias in the make-up of CSS, any difference in pay can be attributed to gender discrimination. There appears to be no justification for these differences other than tradition and it is unlikely that the Library could successfully defend a claim on this basis. Legal advice suggests that a failure to tackle allowances and overtime when moving to the JEGS system in 2000 would further weaken our defence.

7.3 While these problems with allowances can be considered systemic there are also issues that arise with the administration of allowances on a less regular basis. These include payment of Sick Pay at Pension Rate and Recruitment and Retention allowances. In both cases these allowances have been paid to individuals without any clear record being kept of the decision making process or specific justification for the payment being made. Because SPPR has been paid only to female staff, and R&R has only been paid to male staff the Library could also be vulnerable to claims. The lack of evidence for a non-discriminatory basis to these decisions could be expected to compromise any defence the Library attempted to make.

7.4 Aside from allowances, other elements of the pay process also appear to create risks for the Library. These include the application of the JEGs process; pay protection; the process of agreeing starting salaries; and controls on pay within Human Resources and Finance divisions.

7.5 The JEGs process is considered to be equality proofed, but there are potential problems in the way the process operates in the Library. Although evaluators are fully trained in the use of the system evaluations are usually carried out on job descriptions which can be lacking in enough detail to effectively analyse the job. In practice, evaluators make important assumptions from job descriptions to allow the evaluation process to be completed. These assumptions may be particularly susceptible to bias and discrimination when the JEGs process is being used in organisational restructuring exercises and job descriptions may be prepared by line managers with specific individuals in mind. The lack of official guidance for managers engaged in this activity exacerbates the risk although this is mitigated to some extent where HR staff are consulted in advance.

7.6 In addition it should be noted that JEGS is something of a two-edged sword. While it reduces the risk from salary based claims it also opens up a wider range of comparators where different systems of allowances apply to people at the same band. By rating their work as equivalent, JEGS allows a female band 3 reference services assistant to identify a male band 3 bookfetcher as a comparator.

7.7 The current arrangements of 10+4 pay protection may present some risk to the Library. The disproportionate duration of the agreement; the lack of a clear and legally acceptable justification for the agreement; plus the apparent bias in favour of male staff covered by its terms could leave the Library vulnerable to a challenge from any aggrieved member of staff capable of identifying a comparator within the pay protected group. As the agreement still has three years to run, it may be advisable to bring this arrangement to a close as soon as possible. This may involve a compensatory payment to protected staff.

7.8 New starts to the Library have the opportunity to negotiate a starting salary with the recruiting manager in a way that internal transfers and promotions do not. Although in principle appointments should always be made to the minimum of the band, recruiting managers (and HR staff) are aware of the pressure exerted by "market forces" (genuine or otherwise) and the relatively strong bargaining position of a successful candidate at the end of a long and expensive selection process. Add to this the general expectation that current salaries should be exceeded by at least £1-2000 to encourage the candidate to make the move, the opportunity arises for new starts to exploit their position to gain an advantage over current staff on the same band. In addition, male staff appear to be much more successful than their female counterparts in securing this advantage. Part of our weakness in this area may be due to our poor understanding of, and limited ability to articulate, the full value of the entire benefits package on offer at the Library. Be that as it may, once again, the absence of evidence of the decision making process or rationale for an enhanced salary could be expected to fatally weaken the Library's defence. Process improvements could significantly lower the risk to the Library in this area.

7.9 Pink slip leave appears to be both anachronistic and a drain on the administrative resources of both HR and Finance. Its main purpose (in practice) appears to be to allow staff to circumvent rules governing the flexitime system. It obscures the cost of overtime from managers and undermines

resource planning by allowing staff to build up a stock of leave days which can only be measured by counting the actual pink slips held by individual members of staff. The amount of pink slip leave issued in 2009 ( a value of £37.5k) can be compared to employing a full-time band 6 member of staff who might or might not be available for work on any given day. While there may be no significant equality issues in pink slip leave the practice reduces transparency in pay; weakens management control and diminishes accountability. It therefore undermines our ability to manage the general risk environment.

7.10 It appears, therefore, that there are insufficient controls in place to safely, and fairly, administer significant elements of pay at the Library. Responsibilities for pay are split between the Human Resources and Finance divisions but those responsibilities are not clearly articulated. While HR may be expected to fulfil a contractual, policy and decision making role and Finance to take charge of implementation, this is not necessarily understood to be the case in practice. The lack of clarity over respective roles is exacerbated by a lack of pay policy expertise in HR. This lack of clarity has also created difficulties at the interface between HR and Finance when Finance have sought clarification of terms and conditions related to pay.

7.11 Overall it is the conclusion of this report that protecting the Library from the risks of discriminatory pay practice and simultaneously achieving the benefits associated with a streamlined, transparent, fair and effective pay system can only be achieved through a fundamental reform of current practice to bring allowances into line with JEGS; make significant process improvements and impose effective controls on decision making on pay. It is recommended that the Library proceed as soon as is practicable with its outstanding commitment to a pay and grading review that will address these issues and ensure transparency, equality and fairness in pay.

## **8.0 Recommendations**

### **8.1 Allowances**

- Review and rationalise the payment of allowances as part of an overall review of pay and grading to ensure consistency, transparency and fairness across the whole Library.
- Review pink slip leave in relation to overtime and Wintime
- Clarify and simplify procedures for overtime

### **8.2 Pay Process**

- Cease current pay protection arrangements. This is likely to involve buying out the current arrangements. Introduce a simple, clear and objectively justifiable policy to cover organisational change and pay protection.
- Review the adoption of Civil Service Code into contracts of employment.
- Review and clarify processes for more effective administration of pay within Human Resources to ensure clear justification, and effective recording, of decisions on pay.
- Develop a new process for managing new staff appointments that takes realistic account of actual market forces affecting pay and provides a structure to underpin any negotiations on salary
- Allocate specific responsibilities, and develop the required capabilities, within Human Resources to enable the division to play an effective role in developing, implementing and maintaining pay policy
- Clarify and streamline the HR/Finance interface to ensure responsibilities are clearly understood and can be acted on effectively
- Communicate the range and benefits of NLS remuneration to staff in plain English

### **8.3 Other**

- Introduce and enforce Equality Impact Assessments to guard against discrimination in employment practice and to enable a material factor defence to be mounted when required.
- Address issues of occupational segregation through means that do not involve recruitment – e.g. secondments and level transfers
- Clarify the relationship of ALDL to NLS in terms of employment law liabilities; incorporate these into service level agreements and pay bargaining procedures
- Consider the impact of Agency Workers Regulations on pay policy and equality in terms and conditions generally. Make appropriate adjustments to HR processes.
- Investigate turnover rates among part-time male staff



**Appendix: Allowances Paid 2009-10**

| <b>Allowance</b>                  | <b>Description</b>   | <b>£ Paid</b> | <b>% of total</b> | <b>Distribution by Unit</b><br>(Units shown account for top 80% of spend)                    | <b>% paid male</b> | <b>% paid female</b> |
|-----------------------------------|--|---------------|-------------------|--|--------------------|----------------------|
| Additional Hours                  | Paid to PT staff below OT threshold  | 14873         | 4.6               | Ref. Services (57%); Maps (14%); Estates (10%); FoH (10%)                                    | 5.8                | 94.2                 |
| Additional Shift                  |  | 2123          | 0.7               | Security (93%); Ref. Services (7%)   | 77.3               | 22.7                 |
| Meals (£3.52)                     | Paid to staff doing OT in evenings, but not on shift allowance                             | 3586          | 1.1               | CSS (58%); Manuscripts (16%); Rare Books (15%)   | 80.1               | 19.9                 |
| Night 25%                         | Late night work?   | 1692          | 0.5               | CSS (32%); Manuscripts (22%); Cleaning (18%) Rare Books (17%)                                | 73.2               | 26.8                 |
| Night 33%                         | Early morning work?  | 4558          | 1.4               | Cleaning (100%)  | 44.1               | 55.9                 |
| On Call                           | Staff with specialist knowledge rostered to support emergencies on 24hr basis, 1 week in 4 | 6674          | 2.1               | Estates (70%); Conservation (30%)  | 100                | 0                    |
| Overtime (Mon-Fri)                | Time at plain rate, authorised by line manager   | 67435         | 20.9              | CSS (41%); Manuscripts (22%); Security (14%); Porters (10%); Rare Books (10%)                | 79.5               | 20.5                 |
| Overtime (public holiday Premium) | Doubles plain rate for PH working  | 1174          | 0.4               | Security (46%); FoH (20%); IS (17%)  | 79.3               | 20.7                 |
| Overtime (public holiday)         |  | 1174          | 0.4               | Security (46%); FoH (20%); IS (17%)  | 79.3               | 20.7                 |
| Overtime (Saturday Premium)       | Adds half time to Saturday plain rate  | 13552         | 4.2               | CSS (25%); Ref Services (20%); Manuscripts (11%); Rare Books (8%); Cleaning (8%); Porters 7% | 68.2               | 31.8                 |
| Overtime (Saturday)               |  | 34839         | 10.8              | CSS (27%); Ref Services (21%); Manuscripts (10%); Porters (9%); Cleaning (9%)                | 69.9               | 30.1                 |
| Overtime (Security)               | Note also Security shift allowance   | 23601         | 7.3               | Security (100%)  | 93.1               | 6.9                  |
| Overtime (Sunday Premium)         | Doubles plain rate below   | 6997          | 2.2               | Estates (34%); Security (33%); IS (18%)  | 90.9               | 9.1                  |
| Overtime (Sunday)                 |  | 6997          | 2.2               | Estates (34%); Security (33%); IS (18%)  | 90.9               | 9.1                  |
| Recruitment and Retention         | Used to extend band maximum by up to 10%   | 4697          | 1.5               | Security (68%); Estates (32%)  | 100                | 0                    |
| Responsibility                    | Temporary absence cover for more senior post   | 2988          | 0.9               | FoH (40%); Ext Relations (30%); CSS (21%)  | 45                 | 55                   |
| Shift (Public Holiday)            | Double time  | 7407          | 2.3               | Security (97%); FOH (3%)   | 94.1               | 5.9                  |
| Shift (Saturday)                  | Gives time and a half shift allowance for Saturday working?                                | 13602         | 4.2               | FOH (32%); Ref Services (31%);   | 26.1               | 73.9                 |
| Shift (Sunday)                    | Double time  | 1539          | 0.5               | FOH (89%)  | 12.7               | 87.3                 |

|                           |   |       |      |                                    |      |      |
|---------------------------|---|-------|------|------------------------------------|------|------|
| Premium)                  |   |       |      |                                    |      |      |
| Shift Allowance           | Variable rate for unsocial hours                        | 95238 | 29.5 | Security (60%); Ref Services (23%) | 71.6 | 28.4 |
| Sick Pay at Pension Rate  | Enhanced sick pay to preserve pension contributions     | 5085  | 1.6  | Ref Services (75%); Music (25%)    | 0    | 100  |
| Supervisory (1)           | Temporary allowance to reward line mgt responsibility   | 1662  | 0.5  | Cleaning (100%)                    | 0    | 100  |
| Supervisory (2)           | Temporary allowance to reward supervision of colleagues | 361   | 0.1  | Security (100%)                    | 100  | 0    |
| Telephone                 | Allowance for costs of home working phone use           | 848   | 0.3  | IS (76%); CSM (24%)                | 76.4 | 23.6 |
| Travel (Mon-Fri)          | Payment for travel time                                 | 9     | 0.0  | Security (100%)                    | 100  | 0    |
| Travel (Saturday Premium) | Adds half time to Saturday travel allowance             | 4     | 0.0  | Security (100%)                    | 100  | 0    |
| Travel (Saturday)         | Plain time rate for Saturday Travel                     | 9     | 0.0  | Security (100%)                    | 100  | 0    |
| Travel (Sunday premium)   | Doubles time for Sunday Travel                          | 9     | 0.0  | Security (100%)                    | 100  | 0    |
| Travel (Sunday)           | Plain time rate for Sunday Travel                       | 9     | 0.0  | Security (100%)                    | 100  | 0    |
| Grand Total               |   | 32274 | 2    |                                    |      |      |

| Recommendations From Draft Equal Pay Audit 2011: Update 2013   |  |
|--|--|
| Recommendations  | Progress Report  |
| <b>Allowances</b>  |  |
| 1: Review and rationalise the payment of allowances as part of an overall review of pay and grading to ensure consistency, transparency and fairness across the whole Library.   | Pay and Grading Review under way<br>Review of allowances included in TU negotiations   |
| 2: Review pink slip leave in relation to overtime and Wintime.   | The implementation of a new Time and Attendance system and a new HR System has given us a basis on which we can review the Flexi Policy to remove the need for Pink Slip leave.            |
| 3: Clarify and simplify procedures for overtime.   | No further progress  |
| <b>Pay Process</b>   |  |
| 4: Cease current pay protection arrangements. This is likely to involve buying out the current arrangements. Introduce a simple, clear and objectively justifiable policy to cover organisational change and pay protection. | A 10+4 pay protection has been superseded by a more reasonable 2+2 provision. The timeframe for individuals currently still being protected under 10+4 will come to an end in August 2014. |
| 5: Review the adoption of Civil Service Code into contracts of employment.   | We're currently in the process of modernising all terms and conditions.  |
| 6: Review and clarify processes for more effective administration of pay within Human Resources to ensure clear justification, and effective recording, of decisions on pay.   | Included in Shared Service process improvement plans   |
| 7: Develop a new process for managing new staff appointments that takes realistic account of actual market forces affecting pay and provides a structure to underpin any negotiations on salary                              | The development of a new Pay and Grading structure and a Pay Policy is underway.   |
| 8: Allocate specific responsibilities, and develop the required capabilities, within Human Resources to enable the division to play an effective role in developing, implementing and maintaining pay policy                 | Included in the HR Shared Services implementation plan which now underway.   |
| 9: Clarify and streamline the HR/Finance interface to ensure responsibilities are clearly understood and can be acted on effectively   | Included in the HR Shared Services implementation plan which is which now underway.  |
| 10: Communicate the range and benefits of NLS remuneration to staff in plain English   | To be included in the new Pay and Grading structure communication plan   |
| <b>Other</b>   |  |
| 11: Introduce and enforce Equality Impact Assessments to guard against discrimination in employment practice and to enable a material factor defense to be mounted when required.  | An Equalities Policy was issued which did not include a requirement for EIAs. A review of the Equalities Policy is now required.   |
| 12: Address issues of occupational segregation through means that do not involve recruitment – e.g. secondments and level transfers  | Some progress but more work required.  |
| 13: Clarify the relationship of ALDL to NLS in terms of  | SLA in place   |

|   |             |
|---|-------------|
| employment law liabilities; incorporate these into service level agreements and pay bargaining procedures   |             |
| 14: Consider the impact of Agency Workers Regulations on pay policy and equality in terms and conditions generally. Make appropriate adjustments to HR processes. | No progress |
| 15: Investigate turnover rates among part-time male staff   | No progress |