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Equal Pay Act at 40
Wednesday 23rd February, 2011

Length of service as a determinant in pay : Cadman/Wilson v HSE

Equal Pay Act at 40 - Over the hill or
finally picking up speed?

23 February 2011

Marion Scovell –Legal Officer

Cadman/Wilson v HSE

- Bernadette Cadman, Principal Inspector & Christine Wilson, Health & Safety Inspector
- In grade 5 years plus
- Pay differences with longer serving comparators of up to almost £9,000 pa
- Claims presented to Employment Tribunal 2001 & 2002

Principal Inspector pay

Average salaries

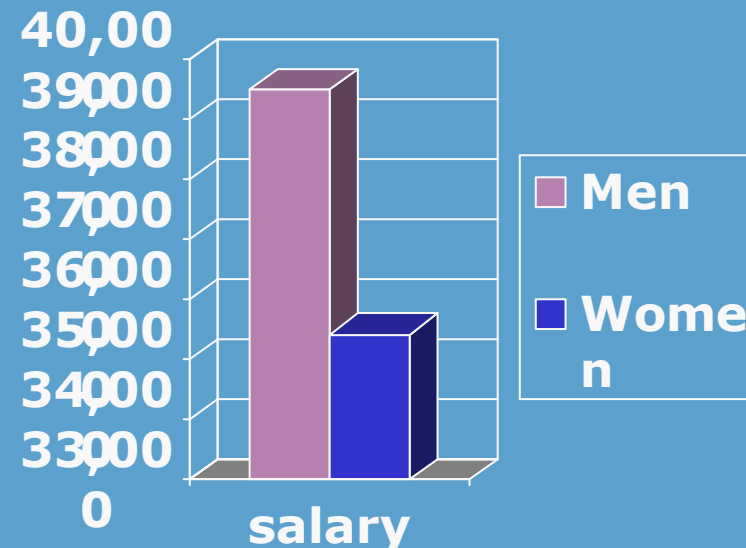
Women £35,414

Men £39,483

Average length of service

Women – 6 years

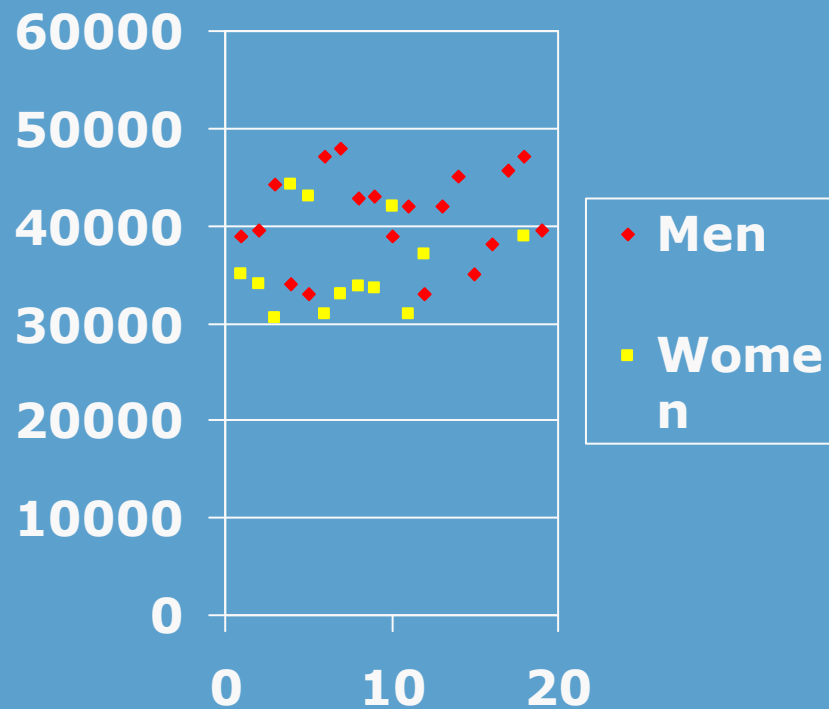
Men – 9.5 years



Clustering

Example of the clustering effect, showing where men and women are in the pay band

(based on but not accurate to HSE data)



Causes of the problem

- Pay System

- Largely incremental scale till early 90s
- Replaced with performance pay
- Very limited progression through scales
- 'Tram line' effect

- Women with shorter service :

- Traditionally male dominated employment,
- More women employed over the last 10-15 years
- Family responsibilities

The Litigation

- ET1s submitted 2001 (BC) & 2002 (CW)
- 9 hearings in the 2 cases, including ECJ in 2006 and Court of Appeal in 2009
- Both cases finally resolved in 2010

Key Legal Issues

- **ECJ** – A pay system based on length of service which has a disproportionate impact, *where* the employee can provide evidence that raises ‘serious doubts’ about its appropriateness, needs to be objectively justified
- **CoA** – The ‘serious doubts’ test applies to the adoption of length of service as a criteria, and/or to the *manner* in which it is used
- It should be proportionate
- The test acts as a filter

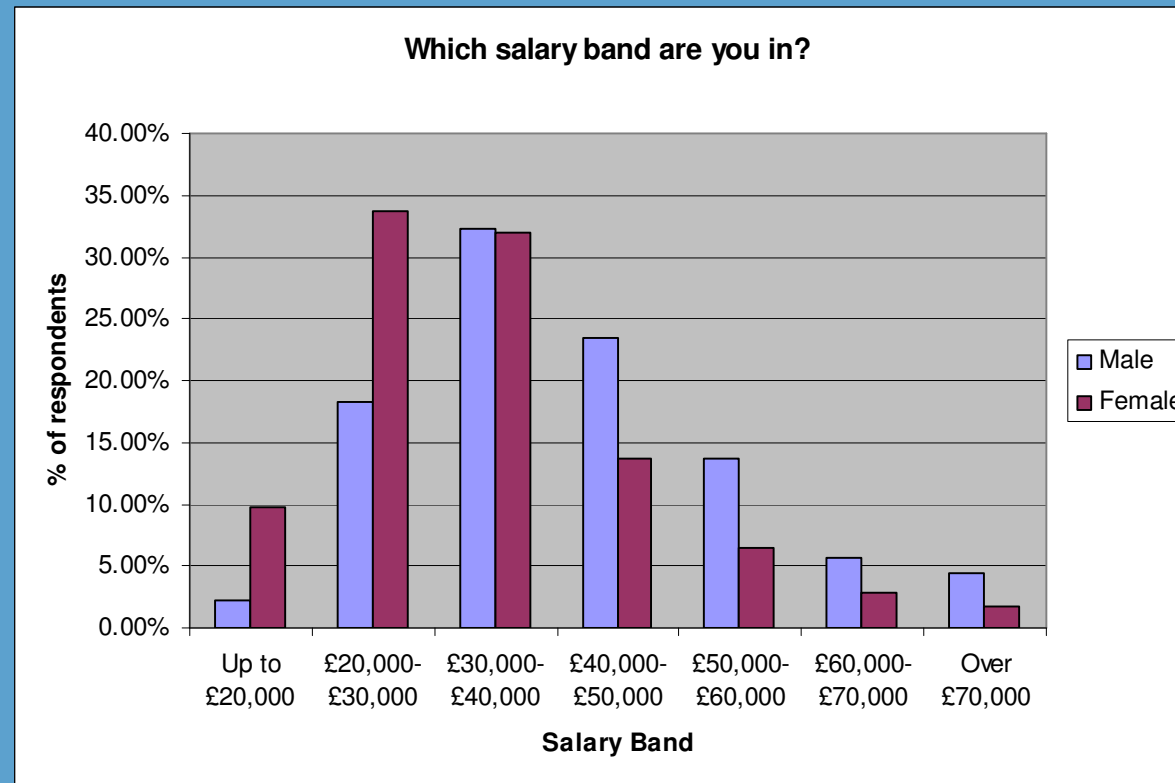
Other cases

- Cases against 9 other organisations submitted in 2006 (originally stayed pending Wilson case)
- 1st cases to apply CoA judgment
- Stay lifted 12/2009, 5 sets of cases settled
- 1st case to determine the 'serious doubts' issue heard by ET 21/2/11
- Initially looking at length of pay scales, the extent of the difference in pay, & the 'added value' gained through experience

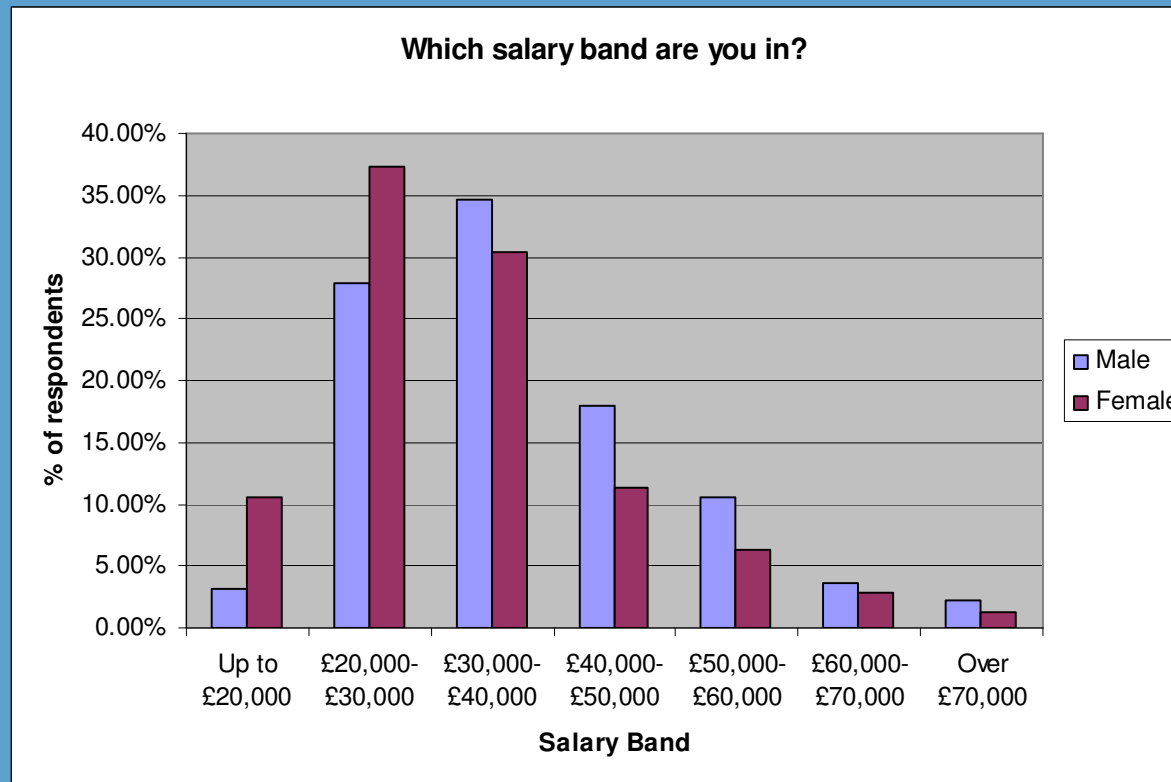
Impact of litigation

- Prospect position - differences in pay should be :
 - transparent & justified
 - reflecting a real learning curve/added value
 - proportionate
- HSE moved to reintroduce pay progression whilst cases continued
- Good example of individual litigation combined with collective negotiation
- Many other organisations worked at shortening scales – within financial constraints

The gender pay gap 2010– all Prospect members



The gender pay gap 2010: Prospect public sector* members



(*mainly Central Govt Depts, Agencies & NDPBs)

Present challenges

- Equality Act 2010 – fit for purpose?
- Economic climate
- Pay Freeze in public sector
- Lack of progression within pay scales
- Lack of emphasis on public sector duties
- Combining litigation and negotiation