

Disclosure of job evaluation data

Whilst many HE institutions have willingly shared job evaluation (JE) and role analysis data with the trades unions during the Framework Agreement (FA) negotiations, a number have refused to do so or to only provide very limited data.

The advice set out below is provided for branches and local associations faced with a refusal by the employer to disclose requested data.

What data should be disclosed?

UCU must be party to information relating to operation of the scheme, factor weightings, content and use of the national academic role profiles and local academic-related role profiles, benchmarking, scoring of role profiles and grade boundary scores.

Individual members should, on request, be provided with:

- The score of the benchmark or profile to which their post has been matched, or where appropriate,
- Their individual score with as much explanatory information as possible.

To be of practical use, such data is needed prior to an appeal – not at the end of the whole process.

Partnership working

The FA requires employers to work in partnership with their recognised trade unions on the implementation of the Agreement with a view to “reaching negotiated agreement on a timely basis”.

A refusal to share job evaluation data is contrary to this commitment and leads to the trades unions and staff losing faith in the process. It is clearly in the interests of institutions to have the trades unions on board during the job evaluation / role analysis process so that staff can be confident that the process has been applied fairly and consistently.

ECC Ltd, the company that developed the HERA job evaluation scheme, has made it clear to subscribers that there is no reason not to share data with the trades unions and would expect such sharing to take place.

The best way to encourage employers to share data is to use the arguments above. If they are unwilling to share data then they are acting contrary to the spirit of the national FA and, if they are using HERA, contrary to the advice of those who designed the scheme.

UCU cannot be expected to have confidence in the application of role analysis and job evaluation if negotiators and members are refused access to data about the process and the outcomes. In such cases, branches and local associations should refuse to agree to the implementation of the process and take the matter through the normal institutional negotiating channels.

Legal framework

If employers are unwilling to disclose appropriate data there are also a number of legal challenges that can, and should, be used by UCU.

Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A)

Section 181 of the above Act requires employers to disclose to the recognised trade union(s) certain information from the purposes of collective bargaining.

The information that they are required to disclose is information:

- without which the trades unions would be to a material extent impeded in carrying on collective bargaining and
- which it would be in accordance with good industrial relations practice that they should disclose to them for the purposes of collective bargaining.

Further information about these rights is available at:

http://www.acas.org.uk/media/pdf/2/q/CP02_1.pdf

Job evaluation, role analysis and the use of the national academic role profiles will underpin the future grading, progression and promotion of our members. We believe, therefore, that the full disclosure of relevant data is necessary for the purposes of collective bargaining.

Furthermore, where the employer has indicated a significant number of red-circled posts, it is even easier to see how denying access to JE data would impede the UCU in carrying on collective bargaining.

The employer is not however obliged to disclose data that relates specifically to an individual, so individual score data could not be requested under this provision.

If the employer refuses a request under S181, a complaint can be made by the UCU to the Central Arbitration Committee. **Seek advice from your regional office before making such an approach.**

The Freedom of Information Act

The Freedom of Information Act (FOIA) gives a general right of public access to all types of recorded information held by public authorities, which include colleges and universities. Anyone (including a trade union representative) can make a request for information.

Requests for information:

- Have to be in writing – which includes electronic communications such as fax and e-mail.
- Should be addressed to the person named in the university or college's Publication Scheme.
- Do not need to refer to specific provisions of the Act.
- Should specify in what form you would like to receive the information requested e.g. electronically, summary, hard copy, inspection of original

Requests have to be dealt with within 20 working days of being received but this may be extended in certain circumstances.

However, there are some reasons which can justify not responding to requests – but the institution must give reasons and tell the applicant of their right to complain.

In such cases an appeal may be made to the Information Commissioner who can issue a notice requiring the authority to disclose the information sought.

Information which is 'absolutely exempt' need not be disclosed, and indeed the institution need not confirm or deny the existence of the information requested.

Absolutely exempt data includes:

- Information which is reasonably accessible by other means
- Information supplied by the security services
- Information held by an institution for the purposes of court/tribunal/arbitration or inquiry reasons.
- Personal data of which the applicant is either the subject, or the disclosure of which would breach the Data Protection Act
- Information the disclosure of which would constitute an actionable breach of confidence

- Information the disclosure of which would constitute a contempt of court

Therefore, individual score data could not be released under the FOIA but the other absolute exemptions would not apply.

A range of other information can be withheld by an institution but only where to do so would be in the public interest and where such action would outweigh any public interest in disclosure. Possible grounds for such a 'qualified exempt' refusal include:

- Information intended for future publication
- Information which would prejudice an auditing body's functions
- Information which would endanger the physical or mental health of an individual or endanger their safety
- Information which is a trade secret and disclosure of which would prejudice another person's commercial interests

A further qualified exemption applies if, in the reasonable opinion of a qualified person, disclosure of the information would prejudice the effective conduct of public affairs. Although this argument has been tried by at least one institution, it is likely that the public interest in disclosing the data will outweigh any speculative disadvantage to the institution in disclosing it.

Information is also exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of the institution. It is difficult to see how an institution could argue this as there is plenty of data relating to JE from institutions in the public domain – some even publish their grade boundary scores on their web sites.

A refusal to disclose information under the Act can be appealed to the Information Commissioner who can issue a notice requiring the institution to disclose the information sought. **Seek advice from your regional office before making such an approach.**

The Data Protection Act

The data protection act controls how personal data can be stored and processed and gives individuals the right to access personal data held about them.

Where an individual has had their post evaluated, this would include their job evaluation score. The employer can charge up to £10 for access to such information but must respond to a written request from an employee for such information within 40 days.

There are exemptions from the general right of access to personal data including:

- information held for management forecasting or planning,
- information for negotiation,
- confidential references (prepared by the employer) and

- information held for the detection of crime.

Access to information may also be denied if in disclosing the data the identity of a 3rd party is revealed and cannot be edited out. It is for the employer to decide whether on balance the worker's right to know what information is held about him/her and its source outweighs the right to privacy of the 3rd party who can be identified by releasing the information.

It is therefore difficult to see how the employer could refuse such data to individuals requesting their JE score.

However, at least one employer has sought to argue that the data was processed for management forecasting or management planning to assist in the conduct of their business or other activity and that if the data was disclosed it would be prejudicial to the conduct of the institution's business or other activity. UCU believes that such an argument would not hold up if the case were referred to the Information Commissioner.

Complaints about breaches of the DPA can be made to the Information Commissioner. Seek advice from your regional office before making such an approach.

Equality questionnaires

Under equality legislation there is provision for a member of staff to issue a questionnaire if they believe that they may have been discriminated against on the grounds of their gender, race, disability, religion or belief, sexual orientation or age. It is also possible to take collective cases under the equality legislation if a whole group of staff have been affected, for example.

If any member has been disadvantaged as a result of the job evaluation process, the employer is refusing to provide data to the individual and there is a possibility of discrimination then the questionnaire process could be used to require the employer to disclose the job evaluation data (and that of similar posts). **Seek advice from your regional office before taking any such action.**

The majority of employers have shared the necessary data with UCU branches and local associations but a minority refuse to co-operate and meet the spirit of the Framework Agreement. However, it is worth noting that UCU has been successful in achieving reviews of role analysis and job evaluation outcomes through negotiations and collective action. We should not accept outcomes that are not a result of partnership working and where essential data has been withheld from us.