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Equal pay and trade unions :  
understanding the variations of union's  
legal mobilisation in the UK (1960-2010)

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## Legal mobilization, equal pay and trade unions

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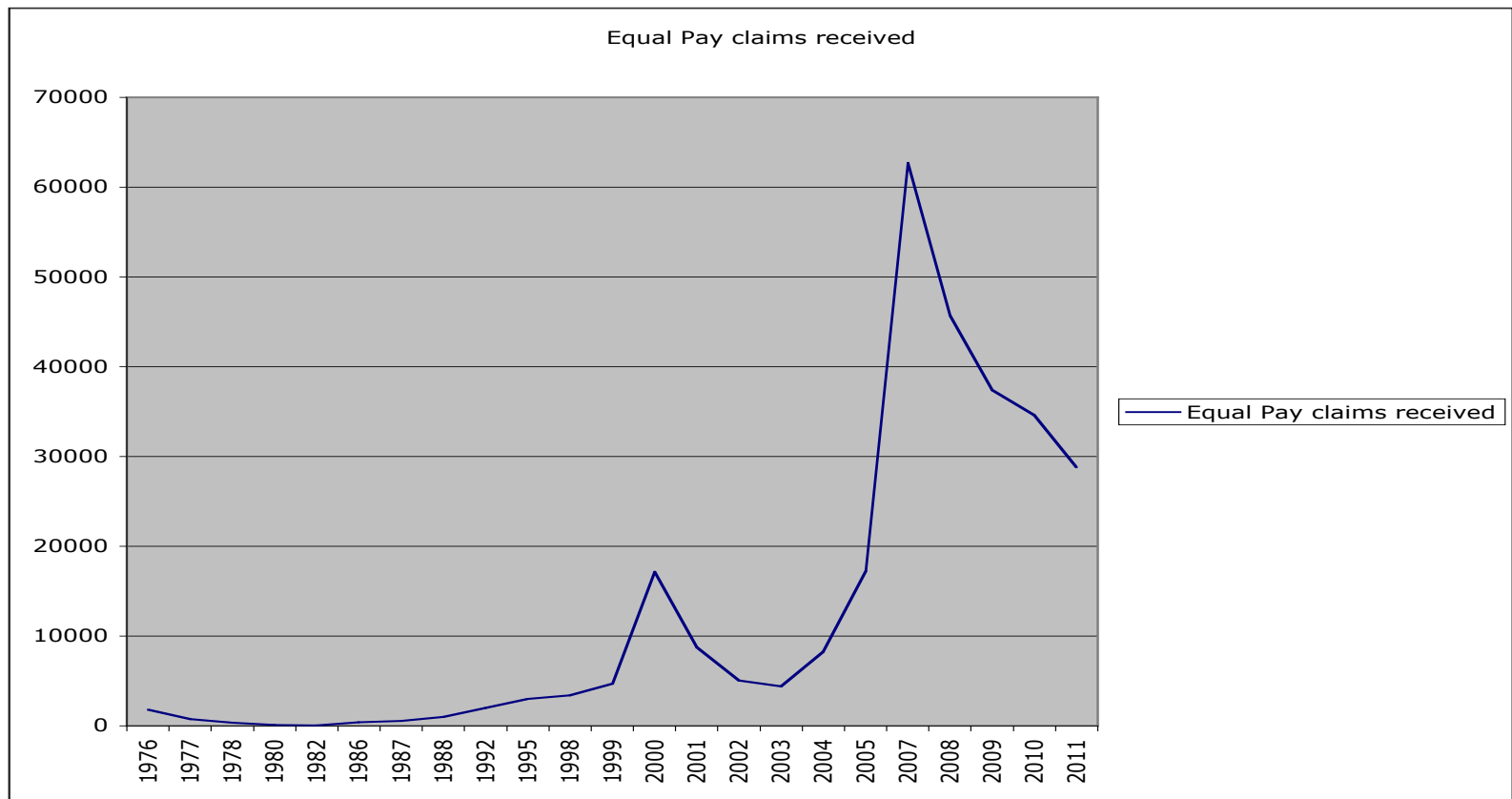
Since the 70's, legal mobilization has been crucial to the equal pay struggle in the UK, especially in the public sector, in a context of permanent restructuring affecting both the number of jobs, the characteristics of the workforce and the type of contracts

If most industrial relations studies stress union mistrust toward the use of the law (and individual rights) and their preference for collective bargaining (and the defence of their male members), unions have indeed mobilized legal resources in complex and subtle ways to achieve equal pay

However, this litigation activity is obviously more the result of external actors' pressure (feminist groups, EOC and lawyers) and new legal opportunities than the sign of a "conversion" of trade unions

This litigation did not developed in a consistent manner over time and across unions

# A variable level of legal litigation



<b>Trade unionists - 20</b>			
Former Senior Policy Officer	TUC (ex NALGO)	Women	65-69
Senior Policy Officer	TUC	Women	40-44
Women's Equality Officer	TUC	Women	30-34
National Women's Officer	UNISON (ex NALGO)	Women	55-59
Former National Equality Officer	UNISON (ex COHSE)	Women	50-54
National Officer, Health service Gro	UNISON (ex COHSE)	Men	45-49
National Officer, Health service Gro	UNISON (ex NALGO)	Men	35-39
Senior Regional Officer	UNISON (ex NALGO)	Women	50-54
Regional Organiser	UNISON	Men	45-49
Regional Women's Officer	UNISON (ex NALGO)	Women	35-39
Regional Organiser	UNISON	Women	45-49
Researcher	UNISON (ex GMB)	Women	60-64
Assistant General Secretary	UNITE (ex TNG)	Women	60-64
Assistant General Secretary	UNITE (ex MSF)	Women	60-64
Former National Officer	UNITE (ex TNG)	Women	65-69
National Officer, Local Government Group	UNITE (ex MSF)	Women	40-44
Regional Organiser	UNITE (ex GMB)	Men	50-54
National Officer for Equalities	UNITE (ex AEU - TNG)	Women	40-44
Former Equality Officer	UNITE (ex GPMU)	Women	50-54
Researcher	PCS	Men	50-54
<b>Lawyers -10</b>			
Employment Judge	Employment Tribunal	Women	45-49
Employment Lawyer	UNISON	Men	45-49
Head of Equality Department	Thompson Solicitors	Women	60-64
Lawyer	Thompson Solicitors	Women	50-54
Lawyer	Cross Solicitors	Men	50-54
Lawyer	Leigh Day & Co Solicitors	Men	30-34
Former Equal pay campaigner	Action 4 Equality (ex GMB)	Women	60-64
Former Equal pay campaigner	Action 4 Equality (ex GMB)	Men	60-64
Former Equal pay campaigner	Action 4 Equality (ex NUPE)	Men	50-54
Former Barrister	Old Square Chambers	Women	65-69
<b>Experts - 3</b>			
Former Head of Equal Pay Unit	EOC	Women	65-69
Independent expert in job evaluation		Women	60-64
Head of Equality	ACAS	Women	55-59



## 1970-1983 : when trade unions are pressured by their base

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- By the end of the 60' s numerous strikes, sometimes supported by socialist and radical feminist groups put pressure on trade unions
- The *Ford Dagenham* strike is the best known, but many other female strikes took place in the 70' s, often supported by trade local trade unionists : *GEC Spon Street Works* in Coventry in 1973, *Trico* in Brentford in 1976...
- In context of EEC political pressure and rank and file mobilization, an Equal Pay Act was enacted in 1970, but with delayed implementation (1976)
- In 1975, 2500 equal pay claims were registered, but the number of claims came down to 39 in 1982
- Research work led by the EOC in the early 1980' s shows that most of the claims were supported by unions, but a significant number were not



## 1970-1983 : when trade unions are pressured by their base

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- It also stresses the unsympathetic attitude of trade unions toward complainants, sometimes giving incorrect advice or trying to deter the claimants from proceeding to the tribunal hearing and pressing them to accept the employer's poor offer
- The limitations of the law itself restricted the possibility to go to the court and the employers got rid of the most blatant discriminations but reinforced job segregation which made difficult to find a “male comparator”
- At that time, this individual right was not favoured by trade unions who preferred resorting to other collective levers that still existed at the time, such as wage councils, to improve female wages
- Besides, in the public sector, settlements on productivity during the winter of discontent (1979) allowed to introduce bonuses for male-dominated occupations (eg.refuse collectors) that will be at the heart of the legal litigation in the 2000's



## 1984-1995 : when the EOC takes the lead

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- From the early 1980's, the EOC created in 1975, mounted an EC-based litigation strategy resorting to the European Court of Justice which led to the implementation of an "equal value amendment" in 1984, enlarging the scope of the Equal Pay Act and helping clarifying the law
- The EOC also helped and trained trade unionists and ACAS experts
- In the private sector, a small number of male trade unionists started locally to take the lead on equal pay litigation, often triggered by the first elected women national officers in their union, but most often driven by their class-based trade union beliefs (low-qualified women) and the opportunity to attract new members in a context of decline
- In the public sector, few male trade unionists also saw litigation on equal pay as a possible lever to slow down the externalization of public services (CCT) imposed by the Tory government - and sometimes also as a way to improve the wages of "minority low paid men" working in female dominated occupations



## 1984-1995 : when the EOC takes the lead

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- However, the use of litigation remained quite controversial within trade unions and has sometimes been caught in the middle of internal conflicts. Because of the complexity of the law and the length of the claims, the financial commitment linked to litigation and its unknown duration, has often been perceived as a huge burden for small unions
- Most of the long running cases have indeed been conducted either by the EOC or by major unions, with few exceptions, as MSF and the speech therapists.
- The fact that these cases were won triggered the attention of local government employers (also pushed by feminist groups in big cities).
- In 1988, a new job evaluation scheme negotiated with trade unions was introduced in the public sector to tackle equal pay issues, but this scheme maintained bonuses for male jobs - unions not wanting to upset their “core members” in a context of membership decline





## 1997-2010 : under the pressure of a “no win no fee” lawyer

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- By the mid 90's, a “twin-track approach” was led by a UNISON local officer, Peter Doyle to pursue an equal pay case in North Cumbria Hospitals (he was forced to drop his case in 1996 by fear of seeing the National Pay Structures abolished by the Conservative Government, but resurrected it in 1997) - the case was settled in 2006....
- The indirect result of this strategy was to force the government to negotiate a new payment system across the public sector (*Single Status*) in 1995 that should tackle equal pay issues and get rid of the “male bonuses”
- Another plan was negotiated in the NHS (*Agenda for Change*) under the Labour Government in 2004. These two agreements, introducing “equality-proof” job evaluation, revealed a huge gender gap in terms of bonuses, which led to an increase of equal pay claims to get “back pay “ (up to 2 years) linked to “past discrimination”
- The large visibility given to these cases by the media and the amount of money helped raising rights consciousness among low paid female workers (“diner ladies”, home helps) who turned to the unions or to lawyers

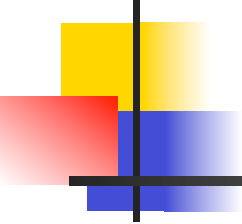


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## **Female Birmingham council workers win £200m equal pay case**

« More than 4,000 female council workers have won the right to be paid the same as their male colleagues in a case which could lead to payouts worth about £200m. An employment tribunal found in favour of female workers employed by Birmingham city council in 49 different jobs, including lollipop ladies and cleaners, who complained of being excluded from bonuses worth up to 160% of their basic paid to men. In one year a refuse collector took home £51,000, while women on the same pay grade received less than £12,000. The bill for the council based on the 4,000 test cases was about £200m. However, if a further 20,000 women came forward and lodged claims, the figure could rise to £1bn »

**The Guardian, Wednesday 28 April 2010**



## 1997-2010 : under the pressure of a “no win no fee” lawyer

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- In local government the situation became very tricky : 1) contrary to the NHS, the government did not allocate special funding for local authorities to implement Single Status placing a huge financial burden on them and possibly threatening jobs 2) by 2007, many councils had not implemented it, which left the door opened for litigation, 3) finally even when they had implemented it :
  - the decentralised implementation process of *Single Status* has allowed employers to use or not the nationally agreed job evaluation scheme, sometimes preferring other packages. They have also introduced new grading procedures or redesigned jobs to ensure that men’s jobs were assimilated at the top of the new pay grades, sometimes with local trade unionists’ support.
  - they used the possibility to give “protection for anyone who may be adversely affected by the grading review » (mostly male occupations) maintaining discriminatory practices...

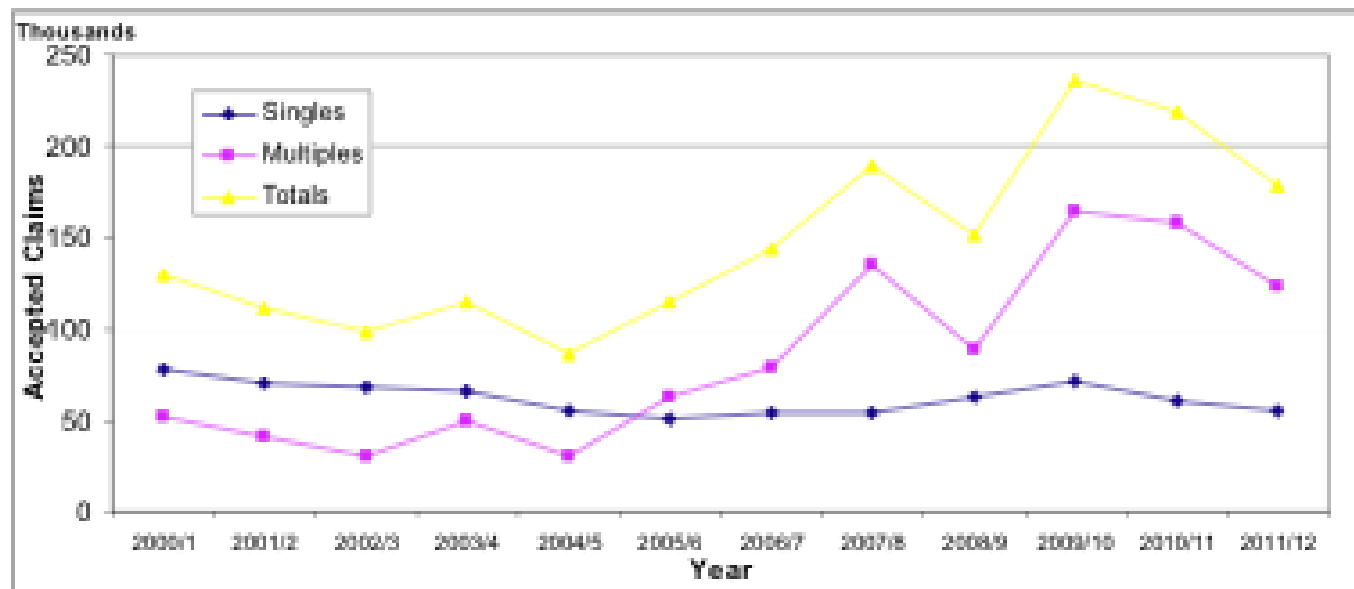


## 1997-2010 : under the pressure of a “no win no fee” lawyer

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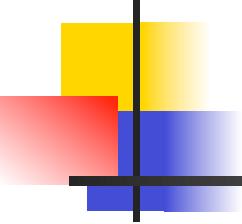
- From this point, the level of litigation started to grow, thanks to employers’ inertia and above all the activity of a “no win no fee” lawyer who used to work for trade unions and took the opportunity of an ECJ decision that led to the extension of the back pay period up to 6 years to settle his own practice
- From 2005, this “litigation entrepreneur” organised information campaigns in local councils and hospitals, recruiting former union officers (who had often been sacked by their trade unions). In one year he initiated more than 10.000 claims, mostly group claims.
- He also litigated against unions for having failed to protect their female members’ interests and negotiated discriminatory agreements in the public sector (addressing pay protection measures for male workers)

**Figure 1: Single and Multiple Accepted Claims, 2001-2 to 2011-12**



Note: Figures for 2007-08 are estimated

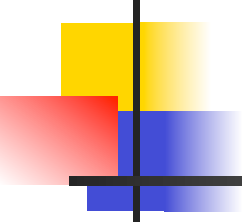
Source: ET Reports



## 1997-2010 : under the pressure of a “no win no fee” lawyer

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- In a context that should have deterred them from using litigation, public sector unions, and especially UNISON, became overwhelmed by litigation, : adverse decisions of the EAT from 2006, repeated appeal strategies led by employers, intensive use of the “market factors” provision that allows them to call in economic arguments as a defence of unequal pay, and of the “genuine material factor” (GMF) defence that allow to argue that other reasons unrelated to sex (age, length of service, number of working hours) account for the permanence of wage differentials.
- Within unions, claims management became very centralized and controlled by national levels, and most claims are now dealt by lawyers.



## 1997-2010 : under the pressure of “no win no fee” lawyers

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- Because of the volume of claims, the restrictions of the law (no class action, male comparator...) which has not been amended, local trade unionists are afraid of equal pay cases (and not allow to take any) even if they can not deny their members the right to litigate - but they do not adopt a pro-active position
- From 2007, the number of new cases has decreased (almost no claims in the private sector), but the stock of claims remains huge and there is obviously a threat for “second generation” claims linked to Single Status implementation - even if the future mainly depends on Stefan Cross activity (who has been made QC for its contribution to discrimination law in 2012), but who might stop his activity



## Conclusion

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This study shows that unions have been urged to litigate thanks to the mobilization of other social movements - such as feminists groups in the 70' s - of independent agencies such as the EOC in the 80' s or individual lawyers in the 2000' s

It brings new insights on the difficulties “non-legal” organizations can have in building legal mobilizations and especially combining litigation with other repertoires of action. The large scope of activities and the multiple and competing interests of their members, can make unions quite circumspect toward the defence of individual rights in courts.

Apart from the action of a small number of local trade unionists, this legal activity has consistently revealed the discriminatory side of collective bargaining led by trade unions, and the collusion with the employers to ensure protection for male occupations and “avoid rocking the boat” - not addressing the main issues of job segregation and under-evaluation of women' s work