

Proposed Equal Pay Settlement

Annexe 2 of Appendix A to this report is not for publication by virtue of paragraphs 15 and 16 of Schedule 12A of the Local Government Act 1972 (Description of Exempt Information: Wales)

Reason for the Report

1. To provide Members with an opportunity for pre-decision scrutiny of Cardiff's proposed equal pay settlement, prior to its consideration by the Cabinet on 20 September 2012.

Background

2. The Council currently has 1,571 outstanding equal pay claims lodged against it at Employment Tribunal. Since April 2012 negotiations between the Council and Trade Unions have been ongoing and on 2 August 2012 an agreement in principle was secured
3. Attached at **Appendix A** is the Cabinet report relating to this matter (marked as "Draft"), which itself contains two annexes.
 - Annexe 1 is a draft Memorandum of Understanding to govern the settlement. Paragraph seven of Appendix A summarises the provisions of the draft memorandum.

- Annexe 2 contains legal advice received from Geldards, the Council's legal advisers on this matter. This Annexe is marked "not for publication by virtue of paragraphs 15 and 16 of Schedule 12A of the Local Government Act 1972 (Description of Exempt Information: Wales)".
4. Councillor Russell Goodway, Cabinet Member (Finance, Business & Local Economy); Philip Lenz, Corporate Chief Officer (Shared), Christine Salter, Corporate Chief Officer (Corporate), a representative from Geldards Solicitors and representatives of the trades unions GMB, UNISON and UNITE will be available to answer Members' questions.

Issues for Scrutiny

5. The Council's most recent Equal Pay settlement referred to in paragraph 2 of Appendix 1 covered 3,000 employees formerly classed as "manual" who work largely in caring, cleaning and catering trades. It did not cover employees covered by Allied, Professional, Technical and Clerical (APT&C) employees' terms and conditions. Members may wish to explore how many of the outstanding Equal Pay claims relate to the former manual workforce, and how many to APT&C employees.
6. 1,571 Council employees have previously rejected a negotiated settlement and have launched Equal Pay claims. Scrutiny of this issue could explore the likelihood of their accepting a negotiated settlement now.
7. Members may wish to find out the implications for the Council of failure to settle the outstanding Equal Pay claims.
8. Members may wish to hear from trades union colleagues and officers about the role the unions have played in this settlement, and how far they have supported the Council management in developing the settlement.

9. Given the financial assumptions built into the figure of £7.5 million detailed in paragraph 11 of Appendix A, scrutiny of this matter could identify what might be considered to be the upper and lower parameters of the final actual settlement.

10. Lessons could be learnt from the process of COT 3 signing sessions held in 2001/12 (paragraph two of Appendix A briefly explains the purpose of the COT 3 agreement.). For instance some employees may not have provided their current contact details to Human Resources. Members may wish to test how successful the data cleansing exercise referred to in paragraph nine of Appendix A might be, and how officers will deal with settling the potential claims of employees whom it is difficult to reach.

Legal Implications

11. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers of behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

12. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to consider the proposed Equal Pay Settlement and whether it wishes to relay any comments or observations for consideration by the Cabinet on 20 September 2012.

Mike Davies

Head of Scrutiny, Performance & Improvement
12 September 2012

CABINET MEETING: 20 SEPTEMBER 2012

PROPOSED EQUAL PAY SETTLEMENT

REPORT OF THE CORPORATE CHIEF OFFICER, SHARED SERVICES

AGENDA ITEM: 18

PORTFOLIO: FINANCE, BUSINESS & LOCAL ECONOMY

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Reason for this Report

1. This report details the outcome of recent Equal Pay settlement negotiations with the Trade Unions and seeks Cabinet's endorsement on the proposed course of action to address the Council's outstanding Equal Pay claims.

Background

2. Members may recall a previous Equal Pay settlement agreed by the Council in February 2008 which led to settlement offers being made directly to over 3,000 employees in cleaning, catering and caring jobs. Of these, approximately 85% accepted the offer and in doing so were required to sign a legally binding Compromise (COT3) agreement which waived liabilities in relation to issues of equal pay until April 2013. This exercise was, however, restricted to the former manual workforce and did not include claimant employees in former APT&C jobs. It did nevertheless provide a window of opportunity for the Council to complete job evaluation and negotiate and implement a new Single Status pay and grading structure.
3. Whilst the Single Status arrangements, implemented from 1 April 2012, put in place a fair and equitable pay structure going forward, the outstanding equal pay claims concerning historical pay arrangements are a separate issue. Thus an important part of the Single Status Collective Agreement secured with the Trade Unions was the commitment to consider settlement options in relation to these outstanding equal pay claims.

4. The Council currently has 1571 outstanding equal pay claims against it which are slowly being taken through the All Wales Employment Tribunal process.
5. Negotiations took place from April 2012 involving Council officers, Geldards (the Council's legal advisors in equal pay matters), senior representatives from the 3 Trade Unions (UNISON, GMB and Unite) and their respective legal advisors (Thompsons and Leo Abse & Cohen). All parties were committed to resolving these outstanding claims through a negotiated settlement approach rather than being determined externally via the Employment Tribunal, where the cost associated with an adverse finding against the Council could be significant.
6. Following detailed and protracted negotiations, agreement in principle was finally secured between the Council and the Trade Unions on 2 August 2012. From the Council's perspective, these negotiations were mindful of the need to balance payments to eligible claimants with the cost to the Council at a time of severe financial constraint. Following consideration of these issues, the cost of the settlement was calculated as £7.5 million subject to assumptions on composite tax rate to be paid to HMRC, pension contribution take up, etc. A Memorandum of Understanding is still being finalised which will set out the terms of the agreed settlement.
7. The current draft of the Memorandum of Understanding is attached as Appendix 1 and a summary of its provisions include:
 - The settlement offer (the "Offer") will apply to Equal Pay Claims submitted on or prior to 19 April 2012.
 - Eligibility for an Offer is based upon the relevant earnings of the female Claimants (namely basic pay) being lower than the consolidated earnings of the relevant male bonus earning Comparator (namely basic pay plus bonus, with the latter weighted at 33.3% of basic pay).
 - Settlement calculations will be based on a notional period of retrospective loss of up to 6 years prior to the date of the issue of the Claimants claim together with the period up to and including 1 April 2012 (being the effective date of implementation of Single Status). This is the maximum period and will be adjusted according to personal circumstances, namely each Claimant's period of continuous employment.
 - The Offer will be subject to Claimants signing a COT3 Agreement which will include a waiver of all existing and any potential equal pay claims relating to historic Issues of Equal Pay (as defined), the outcome of Job Evaluation and pay protection up to and including 31 March 2017.
 - A composite Tax rate will be agreed with HMRC and will be paid by the Council.

8. The settlement also provides that the Trade Unions will strongly recommend the acceptance of offers made to Claimants and will not support claims from members who decline to accept either the Trade Unions' recommendation or their legal advice
9. Planning is underway to facilitate this process including a data cleansing exercise and a communications strategy, so that Claimants can sign their COT3 Agreements and receive their settlement payments prior to Christmas 2012.

Reasons for the Recommendations

10. Securing the Single Status Collective Agreement with the Trade Unions was conditional on the Council's commitment to consider outstanding Equal Pay Claims. The impact of Employment Tribunal outcomes for Councils elsewhere has been significant so the negotiated settlement route has been the preferred option to address these outstanding claims. This settlement will address a significant proportion of the outstanding litigation risk to the Council.

Financial Implications

11. The cost of the proposed settlement has been calculated as circa £7.5 million which can be found from the utilisation of the earmarked reserve set up for this purpose. This sum was determined following lengthy negotiations and balances the cost of the payments to eligible claimants with the cost to the Council during a period of severe financial constraint.
12. There are a number of assumptions included within the financial model used to estimate the outstanding liability, including the composite rate that tax and National Insurance will be paid at to the HMRC, an assumed percentage seeking full pension and the level of take up of the offer to buy out of the payment treated as pensionable pay. Claims included within the financial model will also need to be reviewed for their validity.
13. Any changes to the above assumptions will have an impact on the cost to the Council with any variances to the amount put to the provision will be required to be met from the general fund in the year the payment is made.
14. It should also be noted that there remains some element of risk from employees who could still lodge equal pay claims although no provision has been made for these due to the uncertainty in level, values and timing of any potential claims.

Legal Implications

15. The confidential Legal Advice to the Council on this matter is provided by Geldards and is attached as Appendix 2 to this report.

HR Implications

16. The Council has been working in partnership with the Trade Unions to foster good employee relations so that each party had a clear understanding of the major issues that needed to be addressed in order to achieve the Single Status Collective Agreement. To pursue a policy of defending the 1571 existing claims in an Employment Tribunal would be cost prohibitive and would damage this partnership approach. The negotiated settlement route has been the preferred option of both parties to address these claims.
17. A clear communications strategy will need to be put in place to help Claimant employees understand the implications of the proposed settlement proposal. Helpdesk arrangements will be in place to respond to any queries via telephone or e-mail that Claimant staff may have following receipt of their offer. Conclusion of this process will mean that a significant proportion of the remaining equal payrisk to the Council is addressed.

RECOMMENDATIONS

The Cabinet is recommended to:

- (1) Agree the proposed settlement to be offered to Claimants, as outlined in the Memorandum of Understanding, attached as Appendix 1.
- (2) Subject to the approval of (1) above, delegate authority to the Corporate Chief Officer (Shared) and Corporate Chief Officer (Corporate) in consultation with the Cabinet Member (Finance, Business & Local Economy) to conclude any outstanding matters that may arise.

PHILIP LENZ

Corporate Chief Officer
30 August 2012

The following appendices are attached:

Appendix 1: Memorandum of Understanding: Equal Pay Settlement

Appendix 2: Confidential Legal Advice from Geldards (exempt from publication)