



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Y Pwyllgor Cyfle Cyfartal
The Committee on Equality of Opportunity**

**Dydd Mawrth, 16 Mawrth 2010
Tuesday, 16 March 2010**

Cynnwys
Contents

- 3 Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions
- 4 Yr Wybodaeth Ddiweddaraf am yr Ymgyrch Cyflog Cyfartal
An Update on the Equal Pay Campaign
- 21 Cynnig Trefniadol
Procedural Motion

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mohammad Asghar	Ceidwadwyr Cymreig Welsh Conservatives
Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Ann Jones	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Janet Ryder	Plaid Cymru The Party of Wales
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Mike Colley	Unison Cymru Wales Unison Cymru Wales
Anna Freeman	Cymdeithas Llywodraeth Leol Cymru Welsh Local Government Association
Gordon Kemp	Cymdeithas Llywodraeth Leol Cymru Welsh Local Government Association
Dominic MacAskill	Unison Cymru Wales Unison Cymru Wales
Alison Ward	Cymdeithas Prif Weithredwyr Awdurdodau Lleol Society of Local Authority Chief Executives

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Catherine Hunt	Dirprwy Glerc Deputy Clerk
Claire Morris	Clerc Clerk
Helen Roberts	Cynghorydd Cyfreithiol i'r Pwyllgor Legal Adviser to the Committee
Denise Rogers	Gwasanaeth Ymchwil yr Aelodau Members' Research Service

Dechreuodd y cyfarfod am 9.29 a.m.
The meeting began at 9.29 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Ann Jones:** Good morning, everybody, and welcome to this meeting of the Committee on Equality of Opportunity, held on Tuesday, 16 March. Here are the usual housekeeping rules for the benefit of members of the committee and our guests. If you have difficulty hearing, you can hear the language of the floor amplified on channel 0 of the headsets. The power button is on the front, the channel button is on one side and the volume control is on the other. If people speak in Welsh, the translation can be heard on channel 1. Would all Members around the table switch off their mobile phones, pagers, BlackBerrys and

anything else that might affect the recording, please? We are not expecting the fire alarm to go off, but if it does, we will take our instructions from the ushers. For information, however, the assembly point is out of the building and across the forecourt, almost at the Pierhead building. As I always say at this point, you can follow me, because I will be one of the first out of the building. Does anyone have any declarations of interest to record? I see that you do not. We shall move on.

9.30 a.m.

Yr Wybodaeth Ddiweddaraf am yr Ymgyrch Cyflog Cyfartal An Update on the Equal Pay Campaign

[2] **Ann Jones:** It is my pleasure to welcome all our guests here today. We have Alison Ward from the Society of Local Authority Chief Executives, councillor Gordon Kemp and Anna Freeman from the Welsh Local Government Association, and Dominic MacAskill and Mike Colley from Unison Wales. You are all very welcome and I thank you all for your papers.

[3] We are trying to see where we are going with the equal pay campaign, so I shall start by asking what progress is likely to be made on implementing the single status agreement and settling equal pay claims in local government during 2010?

[4] **Ms Freeman:** All authorities have now substantially finished their job evaluation exercises, the difficulty with that being that they have to do a lot of work around the restructurings that have happened. As there have been a lot of restructurings, they are still picking up the jobs that have changed but, other than that, they have substantially finished. The next issue is to get a collective agreement, because there has been a change in union policy around that, and it is no longer the case that a collective agreement can simply be signed if all the parties are agreed. It looks at the moment as though local authorities will have to go down the route of individual sign-up, dismissal and re-engagement, rather than get a collective agreement with the trade unions. That, in itself, will take time.

[5] We still see quite a number finishing that exercise this year, but it will be slower than it would have been because of the issue with collective agreements. For example, Merthyr would have been added to the list of those who had completed and got a collective agreement, and the same goes for Denbighshire, but, because we can no longer get that collective agreement signed, they will have to go down the route of individual sign-up, dismissal and re-engagement.

[6] **Ann Jones:** The paper from the WLGA to the Health, Wellbeing and Local Government Committee 12 months ago said virtually the same, so why is there a delay?

[7] **Ms Freeman:** They did not talk about a problem with collective agreements, because that did not exist at the time.

[8] **Mr MacAskill:** That is a good question, because there was not as difficult an issue around collective agreements then as there is now, so the question then becomes why we did not make progress when we could have done last year. Unison and the other trade unions have a concern about the slow pace of progress, because a number of authorities have been ready to move forward for the past two years, but have delayed doing so. The question that Unison and the other trade unions ask is why they have been sitting on their hands for so long. There are some very complex legal issues to do with single status agreements and the liabilities that both the employer and, significantly, the trade unions face.

[9] Anna referred to a change of policy from the trade union side, but it is not a change of policy, more an adaptation to the change in the legal climate as a result of case law. What the trade unions cannot do is enter into collective agreements that are either directly or indirectly discriminatory against women workers. That is what we are being asked—and, in some cases, pressurised—to do and, as you will see in my report, in the situation in Merthyr in particular, it was as though a shotgun was being held to the trade union official's head to get him to sign the collective agreement. You might ask why that is. If employers enter into a collective agreement with the trade unions, it limits some of their potential liabilities if they are sued by employees. However, it does nothing of the sort for the trade union side; in fact, it creates liabilities, because our members can sue us for entering into an agreement that discriminates against them.

[10] Traditionally, collective agreements and collective negotiations were about trying to get the best arrangement for the most people, the most of our members. However, dealing in this litigious climate, we have to be cognisant of small groups of our members, because they could take us to court and sue us—and rightly so—for agreeing to something that is discriminatory. Employers are, rightly, looking to reduce their liabilities by getting into collective agreements and using what they call COT3 conciliation agreements to get their employees to sign away any claims that they may have against the employer. That protects the employer, but the COT3 agreements and the collective agreement do not protect the trade union.

[11] The ideal scenario for the trade union is for the employer to accept that these legal frameworks are real and to put agreements on the table that are not discriminatory, rather than try to protect themselves through collective agreements and COT3 agreements. That way, the trade unions would be able to sign up and we would all be able to move forward together.

[12] **Ann Jones:** Thank you. So, is there a deadlock between the unions and the employers?

[13] **Ms Ward:** The context is a bit wider than the debate has suggested so far. I do not think that it is necessarily about local authorities as employers protecting themselves; it is more about local authorities as employers protecting public money, for which they are accountable. Most, if not all of us, I am sure, have very clear views that we have a duty to our employees and want to be very fair to them, but the legal climate is incredibly complex and it is changing all the time; hence the position that the trade unions are, quite rightly, having to take. That is because of the legal position that they are now in.

[14] My authority, Torfaen—and I do not speak for Torfaen, but for all of Wales—was one of the first to pay the backpay. At that time, I was working with a council that had a Labour majority, and it had very clear political views about the right thing to do, morally. In fairness, I think that those were also the values of the whole council. It took the decision to pay the backpay and was right in the vanguard in doing that. A lot of people criticised it for that and said that it was a dangerous thing to do, and that the council might be giving away £8 million of public money that it did not, legally, have to give away. That is a big responsibility to carry, so I just want to make the point that it is not necessarily about local authorities protecting themselves; it is about them wondering whether it is the appropriate time, and whether there is enough certainty that it is a good use of public money at that time. The legal complexity makes that situation change almost weekly.

[15] **Janet Ryder:** That raises the question of when the appropriate time would be to take such a decision. If local authorities are facing difficult settlements, they might have to realign services again. Will that delay this agreement yet again from coming into force? When will it be the right time for local authorities to step up to the mark and admit that they have this responsibility to fulfil?

[16] **Ann Jones:** Yes, bearing in mind that the Equal Pay Act was passed in 1970, which is 40 years ago.

9.40 a.m.

[17] **Ms Freeman:** There are two separate issues here. Local authorities are moving ahead with their single status exercises, putting in their new pay and grading structures, and getting the terms and conditions of the authority changed to those new structures. It may be moving forward more slowly than it was, because collective agreements cannot be signed on terms that are reasonable for the public purse. You refer only to the issue of making backpay settlements. Nine authorities have already made those, and a number have had legal advice that it is not appropriate to make them, and that they have defences.

[18] **Janet Ryder:** Can you explain to me why it should take longer for individual authorities to sign than to sign collectively? Where is the sticking block?

[19] **Ms Freeman:** I have just explained. It is because of the difficulties that the trade unions have in relation to the potential of being sued by their members if they do not get 100 per cent of what they would have got had they won at a tribunal.

[20] **Janet Ryder:** That surely applies whether it is a joint negotiation or an individual negotiation. Why should it take longer for an individual authority to settle compared with settling collectively? I would have thought that it would be quicker for an individual authority to settle.

[21] **Ms Freeman:** A collective agreement is not a bunch of authorities signing with a trade union. A collective agreement is an individual authority signing an agreement with its trade unions; the collective agreement is at that level. The authority will now need to go to each employee that would be affected by the change and ask the employee whether he or she is willing to sign up. If employees are not willing to sign up, the authority will have to look at the dismissal and reengagement process for those who are not willing to sign up. That is a much longer process.

[22] **Mr MacAskill:** There is a context, in that there is a national agreement to move single status forward. It was delayed. This is an agreement that goes back to 1998. There was an agreement in one of the pay rounds to push the single status negotiations forward, to have it implemented by 1 April 2007. We are more than two years on from that and we are talking about steady progress being made. Steady progress was being made in 2006 and only two authorities have moved forward since the last time that we were sitting in a committee. If we are moving at that rate of progress, we will still be sitting in a committee in five or six years' time. There is a need to bite the bullet and I know that Mike has something to say about the public purse, which Alison mentioned, because there are costs that the local authorities are incurring that are being paid to Geldards, which is making a mint.

[23] **Ann Jones:** Before Mike comes in, Joyce has a question on this point. I am conscious that we are straying into Eleanor's area, but I will let Joyce ask a supplementary question. If Mike can give a response, we will then have Eleanor's questions.

[24] **Joyce Watson:** I am amazed that we are still sitting here talking about when we are going to make progress, because in a previous life I was a county councillor sitting on a committee discussing the way forward and thinking, 'This is great. Since 1970 we have had the Equal Pay Act and, finally, something is going to happen'. Now I am in the Assembly, talking about the same things that I was talking about a number of years ago and being given exactly the same answers. If I am frustrated sitting here listening to it—and believe me, I

am—I cannot imagine what it is like for the women who are stuck in the middle of all this, expecting their equal pay and rights and being denied them by the people whom they are working for. If that is not demoralizing, I do not know what is, and I think that the time for action has to be now.

[25] **Mr Kemp:** It sounds as though people are almost saying that authorities are deliberately delaying this. I can certainly say, from my own authority's point of view, that we have no wish to delay this at all. We need to resolve this issue, and I think that that is the same for all authorities. There are complications in this. Although we are here to speak for all authorities, from the Vale of Glamorgan's point of view, we have come to the end of the job evaluation process, we are now going out to consultation with staff. We were hoping that we would be looking at a ballot and a collective agreement towards August or September of this year. Obviously, that is not going to happen with a collective agreement, but we still want to proceed with this.

[26] We need to resolve all these issues because there is potential cost to all authorities and the sooner that we can resolve what those costs will be, the better for all concerned. There is no incentive to delay things. As finances get more and more difficult, it will become more difficult to resolve those issues. So, all authorities want to resolve this sooner rather than later.

[27] **Ann Jones:** Thank you. Mike, you wanted to say something about the public purse and the cost.

[28] **Mr Colley:** When we came here in January 2009, we were asking the Assembly Government to support a Wales-wide approach to resolve the problems of single status, settle the equal pay backpay claims and enter negotiations to settle these claims as quickly as possible rather than going down costly legal routes. We welcome the support that we have had from the Assembly, which has, apart from making additional finance available to councils to help with the introduction of equal pay, made capitalisation available to councils, which has made equal pay backpay settlements affordable to councils and has been a great help.

[29] The problem is that the councils have acted independently—there has been no collective approach to the problem. The process has slowed—I do not think that there is any doubt about that—and the additional finance that the Assembly Government has made available to councils has been spent elsewhere. Finally, on the capitalisation side, few councils have taken up that option, which puzzles us because, at a time when councils claim that they are short of money in the climate that they face, you would have thought that this was an easy option for them to settle the claims. It does not seem to be one that councils want to take advantage of.

[30] Alison has spoken about protecting public money and we have a big interest in that. We see the money that is being spent at the moment and the attempts by councils to defend themselves against these claims as a waste of public money. We did a freedom of information request recently. All but one council have replied. Some £2.3 million have been spent to date. It is noticeable that Caerphilly is refusing to provide the information, and that is something that we will pursue elsewhere. It is, perhaps, refusing to provide that information because it is the council that has spent more than any other with Geldards in trying to oppose settlements and so on.

[31] Those legal costs are going to continue to grow, and as long as they grow it is inevitable that these claims will have to be settled in the end. It will become a bigger drain on public finances.

[32] **Ann Jones:** Eleanor, we have strayed into your area, but you are welcome to ask your question.

[33] **Eleanor Burnham:** You are very kind, Chair.

[34] Yr wyf yn meddwl bod yr hyn y mae Mike Colley yn ei ddweud yn arswydus. Wrth gwrs, mae'n gywir, oherwydd ni fyddai'n gwneud y cyhuddiad a dylem sicrhau ein bod yn rhoi golau coch ar ei eiriau, fel petai, oherwydd dyna'r her fwyaf o ran datrys y broblem hon. Yr wyf fi, fel eraill, yn gresynu nad yw'r broblem ddwys hon wedi cael ei datrys. Yr oeddwn yn arfer gweithio yn y gwasanaethau cymdeithasol flynyddoedd maith yn ôl ac yr oeddwn yn credu yr adeg honno nad oedd merched yn cael chwarae teg. Nid oes cyfiawnder ac nid oes chwarae teg. Heblaw am y £2.3 miliwn yr honnir iddo gael ei wastraffu, hoffwn ddwyn pwysau i sicrhau bod yr adroddiad hwn yn dangos yn union lle mae'r gwallau. Felly, o'r hyn sydd wedi cael ei drafod hyd yma, a ddylid ac a ellid ymdrin â chyflog cyfartal ar lefel Cymru gyfan yn hytrach na chan 22 o awdurdodau lleol unigol? Ai dyma'r her?

I think that what Mike Colley has said is very frightening. Of course, he is correct otherwise he would not have made that accusation, but we should ensure that we put a red light on his words, as it were, because that is the greatest challenge in overcoming this problem. I, like others, regret the fact that this serious problem has not been overcome. I used to work in social services many years ago, and I believed then that women did not have fair play. There is no justice and no fair play. Apart from the £2.3 million that is alleged to have been wasted, I would like to apply pressure to ensure that this report shows exactly where the failings are. So, from what has been discussed to date, could and should the issue of equal pay be addressed on an all-Wales level, rather than by each of the 22 local authorities individually? Is that the challenge?

[35] **Mr MacAskill:** It is certainly one of the things that Unison recommends at the end of its report and something that we have recommended over the years. Our work with Sue Essex originally was very positive and laid the basis for real progress, for example, the issue of the 4.5 per cent that is consolidated in local authorities' budgets to cover the implementation of single status, and the availability of capitalisation for settling historical claims. The problem is that each authority is dealing with this in its own unique way and there is a certain degree of objective reasoning behind that, because each authority has to look at its own particular liabilities.

9.50 a.m.

[36] This is about bonus payments, for the historical backpay, that were predominately paid to male workers, and our argument is that those bonus payments, if they were once productivity bonus schemes, have long since stopped being that and just been additions to salary. In some cases, authorities are still claiming that they are productivity bonuses and some may still have elements of that, although our evidence suggests otherwise. The other issue is that, even if there is still an element of productivity in them, were women workers also offered the opportunity to have bonus payments?

[37] So, there is an element of assessing legal risk that individual employers need to make, but one thing that we could have sorted out at an all-Wales level is, where liability is accepted, how to mechanise the calculation. That is the bit about having an all-Wales approach to the matrix for calculating what would be owed to these discriminated-against women workers, and the employers can then apply their percentage risk to that matrix. So, for example, if there is a 100 per cent risk, then this is what you would pay your women workers. If you believe that you have a 70 per cent risk of losing a claim, then you apply a 70 per cent formula to that 100 per cent matrix.

[38] The lack of that joined-up approach has meant that we have had to negotiate and try to bring employers to that position individually 22 times in Wales, and that is very frustrating

and is causing delay. As you see from our report, movement forward on the backpay is not tangible at all. Unison has 11,000 cases going through tribunals, and other unions have thousands more, and the danger is that the tactic that appears to be employed by the councils, supported by Geldards solicitors mainly—which is the company taking most of this £2.3 million—is delay. The tactic is to delay and hope that the law changes and reduces your liabilities. That is a very risky tactic.

[39] It is not risky for Geldards because, if this gets delayed for 10 years, it will get paid for 10 years, irrespective of whether all the cases are lost or not. When cases are lost, they have no need of Geldards—the solicitors have taken their money, have their new flats and new yachts, having been paid by the public purse, and, at the end, in 10 years' time, or however long it takes for these tribunals to come to a conclusion, the councils will then have to pay the full whack of the claim, which will be much more than it would be if settlements were put forward on the table now.

[40] **Ann Jones:** Would you have liked an all-Wales settlement? That question is to the WLGA.

[41] **Ms Freeman:** I just do not think it is practicable. If you are going to settle, the issue of what matrix you use is not a major one. That has not been what has delayed things terribly.

[42] **Ann Jones:** Would it have been easier if it had been an all-Wales agreement, so you would have known? You would not have had authorities—

[43] **Ms Freeman:** We could not have had an all-Wales agreement; we would have to have had a collective agreement at a local authority level.

[44] **Eleanor Burnham:** So, what role does the Assembly have, or the Assembly Government, in pushing this? We are all sitting here because we enjoy the challenge of trying to sort out issues, but this is probably, for me, as I am sure that it is for Janet and Joyce—forgive me, but Oscar is quite new to the committee—one of the most perplexing issues that we have faced. When you look at the role of women and at how hard done by so many women are, by working so hard for so little money—they may be carers in their families, for example—and having pensions that are going to be nil, apart from the situation being unjust and unfair, it is a drain on society in the main, because it concerns some people doing the same jobs as others for virtually nothing.

[45] It is appalling that, as Dominic said, some solicitors should vacuum £2.3 million out of the situation, and I think that it is about time that we knocked heads together, which is really why we are writing this report.

[46] **Ms Freeman:** On the issue of the women concerned—this is going to be controversial, but I will say it—they were actually paid better than they would have been in the private sector. Of course, it is unjust that the men got a bonus. A lot of them were refuse collectors, and it was an issue because refuse collection was such a big issue—if bins did not get collected correctly, that created big difficulties. The women were not badly paid, and they were paid better than they would ever have been in the private sector.

[47] **Ms Ward:** Forgive me for not being able to respond to you in Welsh. From a personal perspective, I am obviously a woman and have come up through local government, and I understand the feelings and the passion that have been expressed around the table. My authority has paid the backpay and is due to implement in April. Having said that, there are real issues for authorities that believe that there may be a legal case to answer as to why they should not pay it. The sum of £2.3 million sounds like a lot of money, and it is, but the backpay for my authority alone, which is not the largest in Wales, was £8 million. You are

probably talking about £300 million or £400 million of backpay across Wales, so you need to put that in context.

[48] **Eleanor Burnham:** I understand that, but going back to what Dominic was saying earlier, it is such a drain. For example, I heard this morning on Radio Cymru that £0.5 billion will be out of the coffers every year for the next few years. It is quite frightening, and there will never be a right time if we continue like this. May I put something very controversial into the pot? Should we have more women in positions like yours? What you have said gives me heart about your union. I have always worried about the role of the unions—perhaps there were not enough women. Should we have more women councillors, more women chief executives and more women senior officers, so that we have a different viewpoint when we are fighting for fair play and justice? Forgive me, I know that you are very senior in the WLGA, so I did not mean to cast any aspersions on you.

[49] **Ms Ward:** I think that we would all agree that diversity is a really good thing. Personally, I would like to see 50 per cent of the chief executives in Welsh local authorities being female and 50 per cent of the cabinets being female. Whether it would make a difference would depend on the women concerned, I think.

[50] **Eleanor Burnham:** Hoffwn ofyn fy nghwestiwn nesaf yn Gymraeg. A allwch chi egluro beth a elwir yn hawliadau ail genhedlaeth? Pam maent yn digwydd? A gafodd yr hawliadau hyn eu rhagweld ac, os cawsant eu rhagweld, a ellid bod wedi'u hosgoi?

Eleanor Burnham: I shall ask my next question in Welsh. Would you give us an explanation regarding the so-called second-generation claims? Why are they happening? Were these claims predicted and, if so, could they have been avoided?

[51] **Ann Jones:** Who wants to take that first?

[52] **Mr Colley:** Perhaps the best way of answering your question is to say that once the single status has been introduced, it first provides additional evidence to people who had claims pre-single status but were not aware that they had claims. That is best illustrated by the job evaluation results, where you see large groups of women being upgraded and put onto grades where men have remained static. That is a very good indicator that those women were underpaid in the first place. That is one type of claim that arises as a consequence of introducing single status.

[53] The so-called second-generation claims arise when councils decide to apply protection payments in particular. Those are usually made to men because bonuses are being discontinued, but they apply protection to the amounts that they would otherwise have received through that bonus. Recent case law, particularly a case called Bainbridge, states clearly that if you are paying protection to men, you must make an equivalent payment to women. Councils do not seem to be able to take this on board, and this is one of the major problems that face us in being able to sign agreements. It is exactly the point that Dominic made earlier about the position that we are in at the moment, where we cannot sign up to agreements that clearly discriminate against women. It is the problem of councils paying out protection.

10.00 a.m.

[54] Another aspect is how councils assimilate people into the new grades. Some councils are consolidating all sorts of different payments, including bonuses, in particular, so that, when you look at the new grading structure, a man is assimilated into the new grade at a higher level than a woman, because the woman was not in receipt of a bonus. In some councils, that can amount to a three, four, five or six incremental point difference within a

grade.

[55] **Eleanor Burnham:** There is obviously a difference of opinion: you do not agree with that,

[56] **Ms Freeman:** I do not agree with all of it. The thing about people's assimilation onto grades after job evaluation, is that they could be male or female. It is the case quite often that, if somebody is at a higher level of pay, you would assimilate them onto a higher point in the new grade, rather than at the bottom of the grade, where people would normally start. It can happen to men or women, but it does create some anomalies and it does mean that some anomalies are carried on.

[57] It is not the case that bonuses are simply being consolidated and that men are being allowed to keep bonuses and go on at a higher rate. What is happening is that jobs are changing considerably: people are being multiskilled, they are working in an entirely different way and, at the end of the day, when all those changes are made to the kinds of jobs that they do, the evaluation does, perhaps, come out at a level that is equivalent to the old rate of pay plus bonus, or plus some of the bonus.

[58] **Eleanor Burnham:** I spoke to Denbighshire—I spoke to Ann about it—and the council told me that everything was hunky-dory in Denbighshire, which is brilliant. I am no expert—although I have been an employer in my time—and it seems to me that there are lots of issues that, in many respects, would have been far better dealt with at a national level in this instance. That could have given us clarity. Surely, all these different issues have been seen in all local authorities. I see that you do not agree. If you are a refuse collector in one local authority, you must be doing something similar to refuse collectors in all the other authorities.

[59] **Ms Freeman:** Originally, yes, but local authorities are all individual employers and differ in how they want to have the work organised—some have outsourced it to other companies. How they want to organise the work, or how they make sure that they have the bins collected, has to be done at an individual authority level and has to fit with what they are already doing.

[60] **Mr MacAskill:** Irrespective of the difficulties that we face over secondary claims and others, one thing that has been clearly stated by the employers' side is that the trade unions will not be able to sign collective agreements. We had a clause that, if we inserted it into agreements, would facilitate our ability to sign those agreements. It is known as the Fareham clause, because it was used in Fareham, and I will distribute it, but Mike can read it out.

[61] It is a very straightforward clause, which says, in a nutshell, that employers should consider whether they have any liabilities and if they find that they have liabilities, that they agree to settle those liabilities. The trade unions cannot then be blamed, or accused, by their membership of signing up to a discriminatory package. If our members can evidence and prove that they have a case, the employers can accept it and move forward. So, we are trying to think inventively, in a sense, to get over the hurdles. It works in Fareham.

[62] Welsh authorities, who are all taking the same advice from Geldards—which is a very aggressive solicitor in terms of defending litigation and defending its business—have obviously been given clear advice not to touch Fareham. The reason is that they do not want to pay women workers even when there is quite clearly evidence that they have a case. The only reason that they would pay up under a Fareham clause would be if they have a case.

[63] **Ann Jones:** We have some questions on the Fareham clause, so would you like to take them now? I know that we are jumping about a bit, but it seems to follow on quite well.

Then I will come back to Eleanor Burnham.

[64] **Joyce Watson:** I will take them in their logical order. The first one, which you have already answered, more or less, is about the future for collective agreements on implementing single status. I know that it is the Fareham agreement, because we have got papers from both sides. So, I will listen to the answers. You have partly explained what the Fareham clause is. Would both sides like to explain clearly what the Fareham clause is? Then I will ask the next lot of questions.

[65] **Mr MacAskill:** I think that, to supplement what I said earlier, it is where there is no agreement on liability—the employer’s side does not agree with the trade union’s side that it needs to level up, in effect, and thinks that it can defend its case. As Anna has said, there are some women workers who are being protected as well as men workers. It is not a clear position—we need to look at the evidence—so there may be an argument over it. The Fareham clause is a mechanism to enable us to get over that hurdle without having to go through a lengthy litigation period to determine which side is right. The Fareham clause says that, if the employer finds that the trade union’s side was right, the employer will pay up. That is what they do not want to do, because, at the moment, if they make settlement offers, those offers are a fraction of what women workers would be entitled to if they went through a tribunal claim and were successful. So, they do not want to pay what women workers would be fully entitled to. One clause is not necessarily the solution to every single council’s position. However, what is very frustrating is that all the councils are taking exactly the same position, without applying it to their own set of circumstances, because they are taking the same advice from the same set of solicitors. That is our concern.

[66] **Ann Jones:** Would the WLGA or SOLACE like to give us their views of the Fareham clause?

[67] **Ms Freeman:** It is simple enough. We had legal advice from John Kavanagh QC that it would be very unwise to incorporate it, because of the terms on which it says settlement should be made. It talks about ‘if a claim is valid’, but I do not know what that means in terms of who decides that it is valid. If it means when it goes to tribunal, that is about seven years off, on the union’s estimation, because all claims are of equal value now. Only one independent expert has been appointed to look at them, at the moment, and there are thousands of them, so it is going to be a very long and drawn-out process. I do not know of any other way of deciding that a claim is valid. It says that settlement will be with reference to six years’ backpay, to pay protection and to assimilation. The terms are such that they are not reasonable. The advice is that, if you put that into a collective agreement, although, strictly speaking, it may not be legally binding in the sense of being incorporated into people’s contracts, it would be very unwise to make such a pledge and then go to tribunal. So, the advice is—and I do not see why the advice should apply to one authority and not another—‘do not incorporate it’.

[68] **Eleanor Burnham:** That is my whole point when I ask why this cannot be done nationally. There should be clear definitions, there should be an explanation of what ‘valid’ means, and then, surely, your heads should be knocked together and you should be told to get on with it. Sorry, I am a simple soul.

[69] **Ann Jones:** That is a bit violent for a Tuesday morning.

[70] **Ms Ward:** If I just step back from representing either side, what I am hearing is two sides trying to protect their backs against any liability—not just the local authorities but also the trade unions—and the consequence is that this is not getting sorted out. It is not unreasonable to say that there has to be closure on this issue at some point for everybody, including the local authorities. To have open-ended liability, where you do not know when

that might hit you, given the times that we are entering in to, where we are going to have to manage every penny, is difficult. I do not think that it is unreasonable to say there has to be some mechanism for closing this down both ways.

[71] **Eleanor Burnham:** However, you have managed it in your local authority. Why can they not learn from you?

[72] **Ms Ward:** I cannot possibly comment on that. There are some issues around different authorities having different legal liabilities and contracts, so it may have been easier for us than for another authority, because other authorities may have different contractual obligations.

10.10 a.m.

[73] **Eleanor Burnham:** I see that Dominic MacAskill is shaking his head.

[74] **Ms Ward:** May I just finish my point first? I am concerned at the idea of imposing national regulations on this, because it goes to the heart of something that is a part of our principles, which is that there is local autonomy for local councils to determine how they run their business and employ their staff. I understand why it is frustrating from the Assembly's point of view, but I think that it could set a precedent that would be quite dangerous in other ways.

[75] **Eleanor Burnham:** This is an issue of national importance for women, to secure fair play and justice, and to move forward. Otherwise, we will still be stuck doing this in another 10 years' time.

[76] **Ms Ward:** I agree with you, but we have key principles about local autonomy in Wales, which would be changed if the Assembly imposed things nationally. I just wanted to make that point.

[77] **Ann Jones:** Joyce Watson, would you like to come back on the question of the Fareham clause? I will bring Mike in after that.

[78] **Joyce Watson:** Yes. We now know what it is and that you do not agree with it, but that has got us nowhere. However, at least we understand it and it is on the record. To Unison, is it the case that trade unions will not agree to collective agreements on single status unless they contain a Fareham clause?

[79] **Mr MacAskill:** We came up with the Fareham clause as a solution to the situation in Fareham. It solved a problem, and Fareham council took advice and was quite happy. It has been used in other English authorities since then, so they are obviously taking legal advice that is different from that given to our Welsh colleagues. Our legal team is constantly looking at how we can overcome obstacles, because we want to move forward and we do not want to provide any further hindrance—or excuse—to the employers for not moving forward. Our solicitors are looking at other wordings that could potentially be a Fareham mark two, or another name, which would be the next one to get an agreement. We are working very hard to try to find ways through this. In the end, there are clear legal parameters that we are all working within. We want to get a fair settlement for our women workers, who have been waiting for so long.

[80] **Mr Colley:** First, there are two points that I want to make on the Fareham clause. In England, the Fareham clause has proved to be very successful, and a large number of councils has seen the wisdom of going down that route. If you look at the clause that we have passed around, which was the clause that we submitted to Merthyr, you can see that the first two

lines are very relevant. They talk about the council giving ‘consideration’, and the next sentence talks about ‘where it accepts’, and then it goes on to say that it will ‘seek’ to resolve. It has been very carefully worded to try to cater for everybody’s interests, and to enable us to sign an agreement. It is unfortunate that the councils in Wales are being advised as they are, because we think that this is a solution. There is no blanket position as far as Unison is concerned. Every single status package is looked at independently through our own processes, and legal advice is taken to see whether that scheme is equality-proofed, and whether we can sign up to it without fear of being sued, which is extremely important to us.

[81] What I want to do, if I may, is try to move things on a little, because there has to come a point at which we find a solution to these problems. Otherwise, we will find ourselves back here again in another 12 months’ time, and I do not think that that is in anybody’s interests. More and more money from the public purse will have been spent on legal costs. Looking at the options—and there is a number of options—the ideal, from our side, is to meet in full all the claims that we have lodged against councils, to bring a swift end to all the legal costs that councils are incurring. That would be nice, but we accept that it is unlikely. Unison has been committed to negotiating settlements to these equal pay claims from day one, and various methods have been used in different councils to produce settlements. That is our preferred route. The alternative is to say ‘no’ and for councils to continue with the legal process. That will take one of two forms. It will either be a case of going through the independent assessor route, waiting for those people to produce their results and then, at the end of that, the councils will have already declared that they will start to present their GMF arguments to drag the process out further.

[82] **Mr MacAskill:** Do you want to explain what a GMF defence is?

[83] **Mr Colley:** I was just about to do that. GMF stands for ‘genuine material factor’, and that is the defence that the council puts forward to justify continuing to pay bonuses to men. That is central to the whole argument for equal pay claims for backpay.

[84] As I said about backpay claims in the report prepared for you on equal pay, Unison has been looking at this process and trying to find ways and means of reducing legal costs on both sides and getting a speedy solution. It seems to us that a sensible way of dealing with that is for councils to present their GMF arguments now, at the same time as the independent assessors are doing their work on evaluating the claims. If the councils feel so strongly that they have sound defences, why not present those now? The outcome will have a profound effect on one side or another.

[85] We have just submitted that argument in relation to Carmarthenshire. We recognise that we will probably have to do that on a council-by-council basis, because each council will have its own arguments on GMF. Carmarthenshire is the first one. Hopefully, there is to be a case-management discussion in the employment tribunals in May. Hopefully, the tribunals will agree to go down that route. We can ensure that that happens if councils are prepared to say now that they are happy to go down that route. Perhaps that is where the Assembly could help us.

[86] **Joyce Watson:** I want to take you back to Fareham. Has Unison been the subject of legal action on the basis that it has negotiated a collective agreement that discriminates against any of its members?

[87] **Mr MacAskill:** Many thousands of claims against Unison and other trade unions have been lodged, mainly by Stefan Cross Solicitors. The GMB union has had a ruling against it, and that case will be argued against Unison as well. Unison has had to set aside £80 million of its members’ money to defend any claims against it and to have funds in reserve in case it loses any cases. That is a significant hit for any trade union. It is quite fortunate that Unison is

a large union and a growing union, but it is not sustainable.

[88] We hope that the measures that we are taking mean that we will not have to spend that £80 million, but that is a defensive move. One thing that needs to be recognised is that, in Wales, each authority has its own liability, but councils can manage their liabilities by trying to negotiate collective agreements or by getting their staff to sign COT3 agreements. We have liabilities with all 22 authorities, and if we sign up to discriminatory deals with them all, we are potentially leaving the door open for our members in all 22 authorities to sue us, and that is what we need to avoid. Liability is manageable on an employer/employee basis, but it is not manageable for a union that covers all these employees.

[89] **Ann Jones:** Right, let us leave Fareham. Joyce Watson, do you want to come back? If so, please be quick.

[90] **Joyce Watson:** My question was on Fareham, but we will go back to where we were, will we?

[91] **Ann Jones:** Yes. We have covered Fareham pretty well, and I think that we have a fair understanding of where both sides are.

[92] **Janet Ryder:** May I take you back to what you said about employment tribunals? What you said early on was that you want to get the best deal for any woman worker. Why might a claim to the employment tribunal be in the interests of an employee? Might it ever be in the interests of an employee? What about a negotiated settlement with the employer?

[93] **Mr Colley:** Sorry, I am not quite sure—

[94] **Janet Ryder:** Why would an employee go to an employment tribunal? Why might they get a better settlement out of that rather than a negotiated settlement?

10.30 a.m.

[95] **Mr Colley:** I think the issue about pensions is bigger than the employers' side is making it seem. As Dominic said, we are not aware that these compensation payments could be pensionable. If that proves to be the case, that could be good news, but it is difficult to see how they can be. You have to ask the question, 'Why call these payments "compensation"?' In some councils, the amount of money that a person has received has been equivalent to the backpay that they would have received if they had called it 'backpay'. If that is the case, why call it 'compensation'? There are two reasons for that, and they are the reasons that I mentioned: first, people can then be required to sign a COT3; and, secondly, they are not pensionable payments. If they are, that would be helpful. There are a number of people who are caught up in this particular trap, and we think that that is grossly unfair.

[96] **Janet Ryder:** I wonder whether it would be possible to have any information on the number of settlements where, for men in particular, it affected their wage so they have had to renegotiate their salary, or there have been negotiations that have affected a man's salary, and that salary has actually ended up as what they were getting before, including bonuses. I wonder whether you could tell me how many claims have been made on behalf of men who have then ended up earning what they used to earn with bonuses.

[97] **Mr MacAskill:** I cannot give you many specific examples. What is being employed by a number of authorities is what they call 'job enhancements'. We have difficult negotiations because we want to level women workers up, not male workers down. So, it should be much more positive. That was why the 4.5 per cent that the Welsh Assembly Government added to the grant was very welcome. Having said that, the general assessment is

that you require an increase of about 7 per cent in the total salary bill in order to implement single status job evaluation. That would not give a complete levelling up of pay—there would still be some levelling down—but it would be implemented in a fair manner.

[98] We are not against job enhancements and job enrichments, but the one thing that needs to be guaranteed is that the opportunities for job enrichments are across the board, so that we are not just giving male workers the opportunity to enrich their jobs. It has to be across the board, in terms of staff development, to ensure that they all have that opportunity. Otherwise, you are just substituting one set of discriminations for another set of discriminations. The underlying message that I want to get across is that we do not want to reduce the household incomes of fairly low-paid male workers; we want to increase the household incomes of very low-paid women workers.

[99] **Ms Freeman:** The normal results from a job evaluation are, roughly, 30 per cent go up, 30 per cent go down and 30 per cent stay the same.

[100] **Mr MacAskill:** That is not the case any more.

[101] **Ms Freeman:** No, it is not in local government. That is what I am saying. Local authorities have worked extremely hard to reduce the number of what are called ‘red circles’—people who would otherwise be losing pay. They have worked very hard to get those figures down as low as possible, right across the board, whether they are male or female.

[102] **Mr MacAskill:** I think that those figures are based on not having any increase in the salary bill, where you pull some people up and others down. There are significant resources being put in and committed by the Welsh Assembly Government. We would also expect local authorities to commit resources and move this forward. There has been plenty of time and this consolidated sum has been in councils’ accounts. Those dozen or so authorities that are still some way from implementation have been benefiting from that 4.5 per cent consolidated amount. Where has that money gone? Is that set aside in a budget headed ‘reserves for implementation’? I do not think so. In most cases, it has been used and squandered on other issues.

[103] **Ann Jones:** We are going to come on to funding in a minute. Janet, had you finished your questions?

[104] **Ms Ward:** May I just clarify something?

[105] **Ann Jones:** Can you wait until we come on to the funding issue?

[106] **Ms Ward:** It is just about the point that Dominic made.

[107] **Ann Jones:** Go on then.

[108] **Ms Ward:** I cannot speak for all authorities as I am not familiar with their budgets, but my understanding is that most authorities have a reserve for single status and they are keeping that funding in reserve for when they need to sort things out.

[109] **Ann Jones:** Yes, I will come to that because I have some specific questions on funding as well. Eleanor, you may come in very briefly because we are running out of time.

[110] **Eleanor Burnham:** During these challenging times, which we hear about constantly, when public sector jobs will have to be redefined, is this not a golden opportunity to grasp the nettle and incorporate all of this single status, equal pay or whatever? Can you explain to me

why certain authorities have paid out on equal pay settlements when they have not implemented single status? How can you have paid out on equal pay settlements and not have implemented single status? I am a simple soul and I cannot understand the logic of that. Perhaps the WLGA and SOLACE can help me on that one.

[111] **Ms Ward:** To start with the second point, the issue is that to pay backpay is a decision that you take. You get the funding—in our case, it was capitalisation—and then you pay it. That is then done. However, actually implementing single status agreements is a much more complex piece of work, because you have to do job evaluations across the piece. In the case of my council, for example, there are 4,000 members of staff, so you have to do job evaluations for 4,000 staff and work through that process. It takes time to do that complex piece of work. So, paying the backpay can be done straight away, but then you have to work through the process of evaluating everyone's job, give people time to appeal against the evaluation, and then be in a position to implement it. It is a longer piece of work.

[112] **Ann Jones:** You may come in very quickly, Eleanor; come on now.

[113] **Eleanor Burnham:** If you do not do this quickly you might find yourself, in 10 years' time, in exactly the same position of having to settle another—for want of a better term—unjust situation.

[114] **Ann Jones:** Yes, it is going to drag on, is it not?

[115] We will come to funding now. Oscar has some questions on funding and he has sat very patiently. Oscar, do you want to ask your questions on the funding issues?

[116] **Mohammad Asghar:** I think that some of the questions have already been answered. This is about resources for local government employers. In January of this year, the Equality and Human Rights Commission gave evidence to this committee. It said that,

[117] 'it was really helpful to have allocated that money to kick-start local authorities to address equal pay, but it was a bit of a missed opportunity in the sense that it was not ring-fenced. We are completely unable to track what happened to that money.'

[118] Do local authorities have sufficient financial resources to implement the single status agreement—I think you have already answered that—and to settle equal pay claims? Furthermore, what impact is the current financial climate having on the ability of local authorities to negotiate with trade unions?

[119] **Mr Kemp:** Regarding what local authorities have done with the money that has been allocated, in my authority—I do not know the position in all authorities—we have reserves set aside to meet this challenge. Whether it will be enough is always difficult to say. We have increased the reserves again for the coming financial year. I cannot remember the exact sums, but the budget headings are clear and we probably have about £3 million set aside for that. Obviously, as the financial situation worsens, it makes it more difficult to come to any sort of agreement because things have to keep changing. As I said, we have to re-evaluate many things because of changes in circumstances.

[120] **Ann Jones:** Are you the lead member for equal pay at the WLGA?

[121] **Mr Kemp:** Yes, I am the employment spokesman.

[122] **Ann Jones:** Can I ask that, when the WLGA comes to committee, you get an up-to-date picture of what is going on across the 22 local authorities? It does not happen just in this committee, but every time that the WLGA comes in, that the representatives talk about their

own particular authority. If you are the lead member, or lead spokesperson, can you not find out what is happening in Anglesey or Gwynedd? It is most disconcerting—

[123] **Ms Freeman:** Find out what, exactly?

[124] **Eleanor Burnham:** Whatever—

[125] **Ann Jones:** Thanks, Eleanor. You know what you are coming to give—

[126] **Ms Freeman:** If we had notice of the questions in advance, we would be able to collect a lot of information, but without knowing what you are going to ask—

[127] **Eleanor Burnham:** Surely—

[128] **Ann Jones:** Eleanor, please; you and I cannot talk at the same time.

[129] If you are coming in to talk about equal pay, it is obvious that Members are going to ask questions about their own authority or about authorities in a particular region. So, if you are coming in as the spokesperson on equal pay or employment, surely it is not beyond the wit of man—if I can say that in the Committee on Equality of Opportunity—to collect all the relevant information. It is the same when the WLGA comes in to give evidence on social services: the lead member for social services talks only about their authority. The unions manage to do it across Wales, and other all-Wales bodies manage to do it, so I think that the WLGA should be a bit more up to date with its information.

10.40 a.m.

[130] **Mr Kemp:** I think that that is a fair point. We should have more idea of what is going on. We know which authorities have settled. Overall, I do not see any problem with getting the information, as long as authorities will provide it to us, which I am sure that they will.

[131] **Ann Jones:** Surely, as constituent members, they should provide you with the information if you are coming to speak on their behalf?

[132] **Mr Kemp:** Yes, they should do. That is what I am saying.

[133] **Janet Ryder:** I agree with what you have just said, Chair. It is frustrating when people speaking on behalf of a national body, as you are, come in to give evidence and cannot answer for that body. It begs the question as to why we should bother with the WLGA if it cannot represent all authorities. What is even the *raison d'être* for the WLGA?

[134] **Ann Jones:** The reason why I said that was that I was going to ask how many authorities have allocated reserves for their equal pay settlements. Which local authorities have done that and which have not? If any have not, why have you, as the lead organisation, not ensured that they have done so? However, I cannot ask you that, because you do not have the information.

[135] **Mr Kemp:** On the second question about why I have not ensured that, I have no power to control what each authority does. It is for each individual authority to decide what to do, and each authority will appreciate that it will have to deal with this at some point.

[136] **Ann Jones:** So, do you think it is okay for the Welsh Assembly Government to say, 'We are putting in 4.5 per cent for you to address equal pay', and for the councils to totally ignore the Welsh Assembly Government?

- [137] **Mr Kemp:** No, I am not saying that that is acceptable at all.
- [138] **Ann Jones:** That is what has happened across Wales, is it not? That is why we are in the mess we are in, is it not?
- [139] **Mr Kemp:** I do not think that that is the case.
- [140] **Ms Freeman:** No, that is not the case at all. May I—
- [141] **Ann Jones:** Sorry, Oscar, I pinched your questions; please carry on.
- [142] **Mohammad Asghar:** Thank you, Chair. I have a very direct question—
- [143] **Eleanor Burnham:** Should we not allow the witnesses to answer?
- [144] **Ann Jones:** No, we will move on, because—
- [145] **Ms Freeman:** Now that we know you want that specific information, I can go back and collect it, and you can have it.
- [146] **Ann Jones:** Okay, thank you. We would appreciate that information.
- [147] **Mohammad Asghar:** This is very eye-opening. If women are doing an equal job to men, there should not be any discrimination. Discrimination, in my book, is a crime. Others can say what they want, but I think that it should not happen.
- [148] I heard just now about legal costs of £2 million plus. There is a legal adviser in every council, and those advisers are highly qualified; I do not know why you do not use them. Why have more local authorities not made requests for capitalisation to assist them in settling equal pay compensation claims?
- [149] **Mr Kemp:** Each local authority, as we stressed this morning, is different.
- [150] **Mohammad Asghar:** In what respect?
- [151] **Mr Kemp:** Size, the services that they provide directly—
- [152] **Mohammad Asghar:** There are differences in size, I agree—
- [153] **Mr Kemp:** Different authorities deal with things in different ways. There is a problem in saying that capitalisation is fantastic—it sounds good, but you still have to pay for it. It is not something that you get for nothing. We still have to fund that capitalisation, so that has an impact on services. Each authority needs to look at its own position and decide what level of capitalisation, if any, it needs.
- [154] **Eleanor Burnham:** Surely—
- [155] **Ann Jones:** No, Eleanor, hang on. You wanted to respond, Dominic.
- [156] **Mr MacAskill:** I welcome the WLGA's commitment to find out what has happened to the 4.5 per cent. We have been training our activists to scrutinise budgets and medium-term financial plans and we are finding, in a number of cases, that we cannot locate a heading in the reserves for single status in some of those authorities that have not settled. That gives us cause for concern. The other aspect of this is that authorities may have a reserve in place, but they are saving money because they have delayed implementation. The money was given on

the basis that it would start in April 2007. We are now in 2010. Some authorities are not going to implement until this year or maybe even 2011, and they are not going to backdate to 1 April 2007, so that money has disappeared into other areas. In the difficult financial climate that we are facing, we do not want to lose this opportunity and get this confused in what will be very difficult financial settlements in the years to come. There will be pressure on local authorities to cut services and cut jobs. The danger is that we will lose the opportunity to create equal pay in order to protect services, and perpetuate a situation in which women workers are doing work for less pay than they should be getting.

[157] **Ann Jones:** That brings us back to Janet Ryder's question, about when will be the right time to do this if financial settlements are getting tighter.

[158] **Ms Ward:** I would like to go back to the initial question about the cost of single status. The average cost of implementing equal-pay-proofed structures is 7 per cent on the pay bill. So, while the Assembly funding is welcome—and I do believe that the majority of authorities have put it aside—it is not 7 per cent. So, there is an issue for local authorities, even with the money that the Welsh Assembly Government has put forward. It is costly for them. That is not to say that it is not the right thing to do, but one must recognise that there is a cost attached to it.

[159] **Ann Jones:** Did you want to come back on that, Oscar?

[160] **Mohammad Asghar.** No, I think that that is enough, Chair. I would rather that you ask the questions now.

[161] **Ann Jones:** No, no. As the Chair, I have asked too many questions. Joyce, did you have a question on the Equality Bill?

[162] **Joyce Watson:** Yes. If all else fails, let us try something else. So, we have an Equality Bill. Unison has noted in its evidence that it has an equal pay campaign. On the basis of that evidence, I would like to ask this question: in what ways could the Equality Bill, and, in particular, the ability that it gives Welsh Ministers to impose a specific equal pay duty on local authorities, help to make equal pay a reality?

[163] **Mr MacAskill:** There are a number of elements in it, and I invite Members who have not already done so to follow the link that I have included in the report for a much more detailed look at what we envisage in an Equality Bill. A key element of the legislation as it stands at the moment is that it does not recognise collective settlements for equal pay issues. That is why we have 11,000 individual claims lodged with the tribunal. Those claims could probably be grouped into a couple of dozen work categories, and so you could have had a couple of dozen claims before the tribunal. When you got a collective agreement on those, all the people would be bound by them. So, it frees things up and ensures that you can keep a collective process. I am sure that the employers would see that as an advantage, as well as the trade unions. Our members certainly see it as an advantage, because it would speed up the process of settling these historical claims. That is a key area. Until we have primary legislative powers for the Assembly, all that we can do is to lobby Westminster to include that. Even at this late stage, there is still resistance to that. The individual claim is still taking precedence over collective claims, and that is hindering movement. It does not benefit the individual claimant either.

[164] The other thing, which we have included in the recommendations, is about having annual equal pay audits of local authorities. If the Welsh Assembly Government took that position, it would ensure that a spotlight was shone on local authorities. There would then be much more of an incentive for local authorities to move this issue forward, because there would be proper scrutiny. One thing that we have found in this committee, and in a previous

committee to which I gave evidence, is that the picture is not that clear. We need clarity, because without clarity there is no way that we can move forward.

[165] **Ann Jones:** This is a question to WLGA, or even to SOLACE. Do you think that the Equality Bill—more legislation—will help you to settle this, given that the Equal Pay Act was passed in 1970?

[166] **Ms Ward:** The reason why councils are not paying is not because they believe that they do not have a duty to treat their employees equally. They are not paying because they believe that there is a genuine material factor, because of how the contracts are constructed, which means that there has not been any inequality. So, while I would welcome a duty of equality in Wales as a good thing in general, I am not sure that it will solve this problem. Those authorities will still say, 'We are not behaving in an unequal way. There are genuine reasons why we should not be using public money in this way.' That is my concern.

10.50 a.m.

[167] **Ms Freeman:** If it contains a clause around pay protection, and making that legitimate, if that is a means to bring in equal pay, that would be useful. However, it is a little way off yet. So, whether we will still have people who need to make use of that at that point, I am not sure.

[168] **Ann Jones:** Sorry, Joyce, for jumping in there. It was your question.

[169] **Joyce Watson:** So, all that said, is there a need for further legislation besides, or in addition to, the Equality Bill to help to move this forward?

[170] **Mr MacAskill:** The Equality Bill is the vehicle that is available at the moment, and, even at this late stage, it can be amended. That would be the preferred route—to deal with it now—rather than waiting for this to come in without the necessary amendments and then looking to find another vehicle to create a solution. We have a small window. I recognise what Anna has said about pay protection, which is already in there. However, the part that is not in there, and which Unison is advocating for inclusion, is the issue of being able to make collective claims.

[171] **Ann Jones:** Do Members have any further questions? We have run over time, and so I am grateful to the witnesses for staying. I see that there are no further questions. I thank all the witnesses for coming in; as you can see, there is still a lot more that we want to do on this. We will be having the Minister in, and we will check to see what can be done with regard to employment tribunal assessors.

[172] You will be sent a copy of the transcript to check for accuracy, and it will form part of a report or a letter that we will write to the Minister. We will write to the WLGA with the questions that I wanted to raise. If you could submit that information, that would also help with our report. I thank you all for coming in.

Cynnig Trefniadol Procedural Motion

[173] **Ann Jones:** I ask a Member to move a motion to allow us to go into private session to discuss item 4.

[174] **Janet Ryder:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance

with Standing Order No. 10.37(vi).

[175] **Ann Jones:** Thank you. I see that the committee is in agreement.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 10.52 a.m.
The public part of the meeting ended at 10.52 a.m.