



**REPORT
ON
EQUAL PAY IN LOCAL GOVERNMENT**

**Health, Wellbeing and Local Government Committee meeting
10 March 2011**

This is an update to two previous UNISON reports provided to the Equality of Opportunity Committee (16 March 2010) and the Health, Wellbeing and Local Government Committee (2 July 2009). This update report provides an overview of Local Authorities' Job Evaluation implementation, compensation to women workers for past pay discrimination and UNISON's recommendations.

UNISON welcomes the opportunity to give evidence, two years on from our last report to the Health, Wellbeing and Local Government committee, on progress on the implementation of single status and equal pay in local authorities in Wales.

1. UNISON is Wales' largest public sector union representing around 100,000 public sector workers, over 50,000 of who are employed in Local Government.
2. The Single Status agreement enshrined in the National Joint Council for Local Government Services National Agreement on Pay and Conditions of Service commonly referred to as the Green Book has been in existence since July 1997.
3. In July 2004 the NJC agreed a 3 year timetable to implement single status and equal pay in local authorities in England and Wales by 1st April 2007.
4. The then WAG Minister for Local Government, Sue Essex, set up a series of meetings through the WLGA (Welsh Local Government Association) and the Local Government Trade Unions with local authorities to urge all parties to commit the necessary resources to resolve this long outstanding issue.

5. In addition the Minister made provision for an increase in each local authorities wage bill of 1.5% year on year over a period of 3 years amounting to a total increase of 4.5% to assist local authorities with the additional costs incurred in introducing equality pay proofed salary structures.
6. These monies were not hypothecated but included within the general settlement and recommended for use in assisting with the additional costs of introducing equal pay proofed salary structures.
7. The Local Government Association Employers representatives have stated that on average a 7% increase in the wage bill is required to establish satisfactory new equal pay proofed salary structures.
8. Despite trade union representations to WAG, WLGA and local authorities, all 22 local authorities have chosen to implement Job Evaluation individually and separately albeit with the majority using the Greater London Provincial Council (GLPC) job evaluation scheme. This is inevitably leading to 22 different salary structures which results in people, doing the same LA job in Wales, being paid different rates of pay and having different contractual terms and conditions. This flies in the face the WAG's vision of a one Wales public service and will exacerbate recruitment and retention problems in key professions.
9. Of the 22 local authorities in Wales to date only 9 authorities have completed the Job Evaluation exercise and introduced new salary structures – Caerphilly, Conwy, Denbighshire, Gwynedd, Merthyr Tydfil, Monmouthshire, Neath Port Talbot, Torfaen and Wrexham. This represents an increase of five since UNISON last gave evidence to this committee (2 July 2009) and at this rate it will take another 6-7 years for all local authorities in Wales to complete the process.
10. Often implementation has been accompanied with high pressure tactics: Merthyr Tydfil council when they were unable to get trade union agreement to their package, due to concerns that the new arrangements perpetuate sex discrimination, impose the scheme rather than seek to address the issues of outstanding concern. Merthyr Tydfil's scheme also undermines the WAG 'One Wales' commitment to Teaching Assistants (TA) by merging grades one and two and so distorting the national agreement and TA's career and professional pathways.
11. Rhondda Cynon Taff council is currently in the process of forcing through its implementation of a new salary strategy that places all workers on spot salaries (unique in Wales) and, through stopping unsociable hours and weekend payments, cutting over 500 workers' (mainly low paid women workers e.g. cleaners; kitchen assistants; teaching assistants and receptionist) take home pay by between 10 and 46%. This approach is out of step from all other authorities who have so far implemented new salary structures and, if maintained, will undermine out

of hours services and lead to recruitment and retention chaos for years to come.

12. Other authorities have finished Job Evaluation but are delaying implementation, in case of Flintshire, even publishing the results 12 months ago but still yet to conduct any pay modelling on these results. The expressed concern of the local trade unions is that: “delaying tactics are being used to enable redundancies to have taken place prior to the implementation of Single Status, leading to a reduction in the ensuing financial implications of implementation.”
Ynys Mon, even at this late stage, is looking to go back to the beginning, potentially changing from the National Joint Council scheme (after 10 years of evaluating) to the GLPC scheme and two local authorities, Pembrokeshire and Swansea, have abandoned the GLPC scheme because they didn’t like the outcomes and are now evaluating jobs through the less robust ‘WAYS’ scheme.
13. In the current ‘financial crisis’ climate, with projected real terms spending cuts for the next 3 years, conditions are not favourable for satisfactorily resolving these outstanding equal pay and single status issues.
14. Local Authorities that claim to be ‘strapped for cash’ are trying to complete the equal pay and single status issue at least cost and, despite the NJC agreements commitment to joint ownership of the job evaluation process, discussions have broken down or are extremely strained in a number of authorities.
15. Some local authorities: Cardiff, Flintshire, Newport, Pembrokeshire, Swansea and Ynys Mon appear as far away as ever from completing equal pay and single status negotiations.
But, even in the areas where there has been progress or where progress is expected soon, a fragmented and chaotic situation has been created which, if left unremedied, will lead to recruitment, retention and general human resource problems for years to come.
16. In respect of payment to Local Authority women workers for past pay discrimination, only half of the local authorities have made offers for past discrimination (see appendix one for full details).
17. The remaining 11 authorities have so far refused to make any offer of compensatory payments for past pay discrimination despite the fact that capitalisation monies have been made available from the WAG.
18. UNISON, to pursue our members legitimate claims for past pay discrimination, is continuing to take individual member litigation against all of these Local Authorities. In Wales, UNISON has lodged some 12,000 cases with the Employment Tribunal.
19. The current situation continues to be extremely disappointing. From a situation of optimism in 2004 where there was an apparent consensus

between the LG Trade Unions, the WLGA and the WAG that this issue must be resolved; in many areas this issue has developed into a battle of attrition.

20. The result of this pursuant of a strategy of attrition by the majority of local authorities is that millions of pounds of local authorities' monies are continuing to be spent on solicitors' bills, with the prospect of further legal expenses and full costs when the claims are considered by the Employment Tribunal. Legal cost amounting to around £3 million by 2010 (full details in appendix one), these monies would be better spent on financing settlement offers to local low paid women workers, which would have the added bonus of producing a much needed economic stimulus to local economies, instead of lining the pockets of already wealthy large legal firms.
21. UNISON is calling for measures to streamline and accelerate the passage of equal pay claims. Unequal pay is a structural or systemic problem linked to longstanding societal assumptions about the value of the different work performed by women and men. It is a cruel and sadistic logic that requires each individual woman to prove she has experienced injustice when large groups of women have a shared experience of discrimination. We need representative actions to enable discrimination to be tackled efficiently and effectively.
22. UNISON would recommend that:
 - It is not too late for WAG to use its powers to get the commitment of all local authorities to move towards a unified approach to Job Evaluation which will ensure that no matter where a LA worker lives in Wales they will be treated the same in terms of their pay and terms and conditions. One set of grades for social workers in Wales; one set of grades for Teaching Assistants in Wales; one set of grades for Home carers in Wales. A one Wales approach within the framework of the National Joint Council agreement.
 - The rolling out of shared services in councils is an opportunity for local authorities to ensure commonality of pay, grades and conditions in the services that are being shared.
 - WAG to further advise local authorities of the 4.5% increase given to LA's to assist with establishing new equal pay proofed salary structures and the expectation that these extra monies be put into this process.
 - WAG to continue to make capitalisation funds available for one off compensations to meet back pay and equal pay back pay claims.
 - WAG to request an audit of the amount of public money that has already been spent, and that which is projected to be spent, on local authorities legal costs in resisting staff's equal pay claims.
 - WAG should develop a Welsh matrix for settlement of claims including Bainbridge claims and should develop a timescale for the operation of a scheme to help local authorities meet their equal-pay liabilities.

- For those councils that don't wish to settle claims, WAG to support having the GMF defences for all councils heard in the Employment Tribunals whilst the Assessors carry out their evaluations – see appendix one for details on this point.
- Work should be done now to help stop more cases arising in the future, such as having an independent equality impact assessment of local authority pay and grading arrangements.
- Annual equal pay audits should be carried out in all local authorities.
- Support the UNISON case for Equal Pay law reform:
<http://www.unison.org.uk/acrobat/B3791.pdf>

23. I will conclude this report as I have all my others with: The Equal Pay Act was passed by Barbara Castle in 1970, 'The requirement for equal treatment for men and women in same employment'. 41 years on and the matter in Local Government remains unresolved. It is high time for all local authorities in Wales to now do the right thing and allow public services to positively move forward and face the challenges ahead together.
24. UNISON Cymru/Wales are grateful for the opportunity to assist the committee with its work on equal pay and we are happy to provide further assistance if required.

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Head of Local Government
UNISON Cymru/Wales
March 2011

Appendix 1

UNISON Equal Pay Claims

This report on equal pay claims follows earlier submissions to the Welsh Assembly. It is set against a backcloth of councils in Wales failing to comply with the Equal Pay Act (1970), the Sex Discrimination Act 1974 and equal pay for work of equal value which has been on the statute books since 1984. These requirements are in addition to the introduction of the Green Book (Single Status) signed by trade unions and all local authority employers in 1997 and the subsequent firm promise from councils to end pay discrimination by 1st April 2007.

The failure to comply with legislation and to honour these agreements particularly with UNISON as the largest trade union in the Public Sector, led to UNISON members submitting some 12,000 equal pay claims across Wales. Claims continue to increase as does the number of members rejecting derisory offers to settle these claims.

Of the 22 Councils in Wales the following have made settlement offers:- Torfaen, Neath Port Talbot, Gwynedd, Swansea, Cardiff, Blaenau Gwent, Merthyr Tydfil, RCT, Caerphilly and most recently Carmarthenshire and Conwy.

Of the above Neath Port Talbot, Torfaen and RCT have made a second round offers due to the expiry of previous COT3's and late implementation of Single Status.

Councils have led employees to believe offers were/are in the region of between 30% and 80% of the value of claims. This has been shown to be false. A more realistic figure is 10% – 20%. The difference can amount to tens of thousands of pounds to claimants.

Equal Pay claims arise when an employee of one sex (the claimant) is doing work of equal value (measured via one of three routes) to another employee of the opposite sex (the comparator) but receiving less pay. Usually but not exclusively, the claimant is a woman and the comparator a man. The difference in pay most often arises because the man is being paid a bonus whereas the woman is not, or the man has had a bonus consolidated into basic pay whereas the woman has had no similar payment.

Bonus schemes are defensible if they are genuine productivity based schemes. It is UNISON's submission that all bonus schemes in Wales lost all links to any form of productivity many years ago. Councils effectively acknowledge this by making offers to settle claims.

The value of a claim depends upon the difference in pay between the claimant and comparator, the claimants' length of service and the number of hours worked per week. Where a bonus is the cause of discrimination the value varies between approximately 15% – 54% of basic pay. Claims are not restricted to manual workers, many lower paid non-manual workers, especially those in schools, also have valid claims. Some councils have, to a degree, recognised this and included some categories of non-manual workers in settlement offers.

Equal pay claims can also arise from the implementation of Single Status. The most common examples are where a council has perpetuated discrimination by either consolidating bonuses when assimilating men into new grades and/or, the man is receiving protection of their previous earnings whereas the woman is not receiving a similar payment. Frequently this means that men are assimilated to the new grade much higher than women.

As referred to earlier, the value of a claim depends upon several factors. Annex A is a table showing the effect of differing percentage bonus payments on each of the current six manual worker grades together with basic pay for each grade.

Taking a typical average of say a full time woman manual worker claimant on Manual Grade 3 (Spinal Column Point 6) earning £12,489 gross, having a male comparator also on MG 3 but earning a 50% bonus, the annual difference in pay = £6,245

A successful Tribunal claim would produce the following award:-

1. Up to 6 years back pay (dependant upon service) - £37,470
2. An amount equivalent to the difference in pay going forward from the date the claim is registered to the date of the Tribunal award. For many claimants this is already 3 years so adding a further £18,735 (£6,245 x 3 years) giving a total of £56,205 plus pro rata payments for additional hours, weekend working etc and an interest payment.
3. This total could be supplemented by protection being afforded to the man without an equivalent payment being awarded to the woman. .

A similar calculation for an MG 3 woman using a male comparator earning a lower bonus of 25% produces a claim to the value of £28,103.

Where councils backdate Single Status any backpay owed is termed as "compensation." Payment of backpay/'compensation' is often then conditional upon signing a COT3. The COT3 seeks to compromise all existing and/or potential claims until the end of any protection period.

By labelling backpay as compensation the council can also try to avoid making the payment pensionable so depriving employees, especially those approaching retirement, of the full pension entitlement they would otherwise have received.

Councils are continuing to spend substantial amounts of public money with law firms such as Geldards, in seeking to either oppose claims or put off the day of judgement for as long as possible. A Freedom of Information request by UNISON in 2010 to all councils in Wales showed that councils admitted to over £2,797,000 of expenditure by that date. We have no way of actually verifying these figures. For example, Caerphilly admitted to £184,000 in legal costs but also to having received over 800 invoices from their legal advisors for equal pay and Single Status assistance. The total figure of £2,797,000 must be regarded as a very conservative estimate.

Both UNISON and the Welsh Assembly have recognised the financial difficulties facing councils. The Assembly has greatly assisted in the process of settling claims by allowing councils to capitalise with repayments being spread over 20 years. Despite cries of hardship many councils have still to take up this offer of help. For UNISON's part we remain committed to negotiated settlements wherever possible and would prefer this to be on an all Wales basis. This would ensure consistency of approach and eliminate the resentment felt by many employees in one council being offered less than those in other councils.

The alternative is to continue the legal process but in one of two ways.

Several Independent Assessors have been appointed by the Employment Tribunals to evaluate claims but the sheer volume means this task will take many more years to complete even if more Assessors are appointed and so the value of outstanding claims will carry on rising.

Councils continue to declare their intention to argue what is known as a Genuine Material Factor (GMF) defence in the event of the Assessors upholding the claims. This will prolong claims still further. GMF is the term used for the councils' argument that all bonus schemes were/are genuine productivity based schemes thereby legitimising the additional pay men have been receiving. The evidence shows to the contrary, with bonus payments having remained constant week-in week-out, year-in year-out, even when the employee has not been at work and therefore not been productive.

Such was the concern by Carmarthenshire claimants over the unreasonable amount of time being taken to hear the claims that Unison lodged an Application with the Tribunals for the council to produce its GMF defence in the Tribunal. A part of Unison's submission was that the constant delays/challenges were unreasonable, costly (to both sides) and, a breach of their human rights under Article 6 of The Human Rights Act. Article 6 states that people have a right to a fair hearing without unreasonable delay and within a reasonable period of time. Sadly, Unison has had a number of members pass away during the years of litigation with councils over equal pay claims. In February this year the Tribunals delivered its verdict on our Application. It has determined that the Application is upheld and so now Carmarthenshire will have to finally try and defend what we believe to be indefensible. This is good news for claimants and tax payers alike. No doubt

all other councils will be watching very closely to what happens to Carmarthenshire from here on in.

The tribunals have also rejected a challenge by the legal representatives for councils which was based on the Brett v Hampshire decision and whether claimants had properly complied with Grievance Procedures.

UNISON remains open to the opportunity to minimise further legal costs by having the GMF defences for all other councils heard in the Tribunals whilst the Assessors carry out their evaluations. The GMF arguments could be completed within the year and the outcome would have a significant impact on one side or the other. Were councils to lose their argument as is expected, they would then find it extremely difficult to justify continued expenditure on legal costs. It must therefore be in the interests of the public purse to proceed with these GMF arguments on a council-by-council basis as quickly as possible. We ask the Assembly to actively support this approach and encourage councils to comply.

Mike Colley
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Cymru Wales UNISON

MG	SCP	F/T Current Gross Annual Salary	+50%	+45%	+40%	+35%	+30%	+25%	+20%	+15%
1	4	£12,145	£18,218 (£6,073)	£17,610 (£5,465)	£17,003 (£4,858)	£16,396 (£4,251)	£15,789 (£3,644)	£15,181 (£3,036)	£14,574 (£2,429)	£13,967 (£1,822)
2	5	£12,312	£18,468 (£6,156)	£17,852 (£5,540)	£17,237 (£4,925)	£16,621 (£4,309)	£16,006 (£3,694)	£15,390 (£3,078)	£14,774 (£2,462)	£14,159 (£1,847)
3	6	£12,489	£18,734 (£6,245)	£18,109 (£5,620)	£17,485 (£4,996)	£16,860 (£4,371)	£16,236 (£3,747)	£15,611 (£3,122)	£14,987 (£2,498)	£14,362 (£1,873)
4	7	£12,787	£19,181 (£6,394)	£18,541 (£5,754)	£17,902 (£5,115)	£17,262 (£4,475)	£16,623 (£3,836)	£15,984 (£3,197)	£15,344 (£2,557)	£14,705 (£1,918)
5	8	£13,189	£19,784 (£6,595)	£19,124 (£5,935)	£18,465 (£5,276)	£17,805 (£4,616)	£17,146 (£3,957)	£16,486 (£3,297)	£15,827 (£2,638)	£15,167 (£1,978)
6	9	£13,589	£20,384 (£6,795)	£19,704 (£6,115)	£19,025 (£5,436)	£18,345 (£4,756)	£17,666 (£4,077)	£16,986 (£3,397)	£16,307 (£2,718)	£15,627 (£2,038)

NB

- 1) all figures are gross
- 2) salaries are based on 1 April 2009
- 3) differences reflect difference for 1 year only (09/10)
- 4) interest would be added by the E.T. + overtime and other enhancements
- 5) not all members pay tax/N.I.
- 6) part time employees would need to be pro rata calculations
- 7) signing a COT3 in acceptance of an offer usually means forfeiting all other equal pay claims whether lodged or not
- 8) figures take no account of loss to pensions