



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

**Y Pwyllgor Iechyd, Lles, a Llywodraeth Leol  
The Health, Wellbeing and Local Government  
Committee**

**Dydd Iau, 2 Gorffennaf 2009  
Thursday, 2 July 2009**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi 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**

|                    |  |
|--------------------|--|
| Lorraine Barrett   | Llafur<br>Labour   |
| Peter Black        | Democratiaid Rhyddfrydol Cymru<br>Welsh Liberal Democrats                          |
| Andrew R.T. Davies | Ceidwadwyr Cymreig<br>Welsh Conservatives  |
| Ann Jones          | Llafur<br>Labour   |
| Helen Mary Jones   | Plaid Cymru<br>The Party of Wales  |
| Darren Millar      | Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor)<br>Welsh Conservatives (Committee Chair) |

**Eraill yn bresennol**  
**Others in attendance**

|                   |   |
|-------------------|---|
| Brian Gibbons     | Aelod Cynulliad, Llafur (Y Gweinidog dros Gyfiawnder<br>Cymdeithasol a Llywodraeth Leol)<br>Assembly Member, Labour (The Minister for Social Justice and<br>Local Government) |
| Anna Freeman      | Cymdeithas Llywodraeth Leol Cymru<br>Welsh Local Government Association   |
| Dominic MacAskill | Unison Cymru Wales  |
| David Powell      | Pennaeth yr Is-adran Cyllid Llywodraeth Leol, Llywodraeth<br>Cynulliad Cymru<br>Head of Local Government Finance Division, Welsh Assembly<br>Government                       |
| Steve Thomas      | Cymdeithas Llywodraeth Leol Cymru<br>Welsh Local Government Association   |

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

|                |                               |
|----------------|-------------------------------|
| Steve George   | Clerc<br>Clerk                |
| Catherine Hunt | Dirprwy Glerc<br>Deputy Clerk |

*Dechreuodd y cyfarfod am 1.02 p.m.*  
*The meeting began at 1.02 p.m.*

**Cyflwyniad, Ymddiheuriadau a Dirprwyon**  
**Introduction, Apologies and Substitutions**

[1] **Darren Millar:** I welcome Members and members of the public to the meeting. I remind you that headsets are provided, here and in the public gallery, for simultaneous translation and to amplify the sound. If anybody has a problem using them, ushers will be able to help. Committee members and members of the public may wish to note that the translation feed is on channel 1, while channel 0 can be used to hear the language being spoken.

[2] I would be grateful if Members, members of the public, and witnesses could ensure that mobile phones, BlackBerrys and pagers are switched off, so that they do not interfere with the broadcasting and other equipment. If it is necessary to evacuate the room and the public gallery because of an emergency, everyone should follow the instructions of the ushers, who will guide you to the appropriate exit. I remind you that the microphones are operated remotely.

[3] I have been notified of apologies from Val Lloyd, Dai Lloyd and Irene James. There are no substitutions. I invite Members to make declarations of interest under Standing Order No. 31.6. I see that there are no declarations.

1.03 p.m.

**Ymchwiliad i Weithredu Tâl Cyfartal mewn Llywodraeth Leol: Tystiolaeth gan  
y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol  
Inquiry on the Implementation of Equal Pay in Local Government: Evidence  
from the Minister for Social Justice and Local Government**

[4] **Darren Millar:** I am delighted that the Minister for Social Justice and Local Government, Dr Brian Gibbons, has joined us for this item, along with David Powell.

[5] Members will recall that, earlier in the year, the committee held a scrutiny session on this matter. As a result of that, the then Chair of this committee, Jonathan Morgan, wrote to the Minister setting out the committee's concerns and making some recommendations with regard to the lack of progress in this area. In his response, the Minister shared some of the committee's concerns, but he was unable to accept many of the recommendations. The Welsh Local Government Association also responded to our letter, and it took issue with a number of the points that we made. We will have the opportunity, after this part of our scrutiny session, to discuss with the WLGA some of its concerns.

[6] Rather than report immediately on the matter, the committee agreed that we should ask the original witnesses to give further evidence before deciding on whether to report this matter back to Plenary. That is why the Minister and David Powell, the head of the Government's Local Government Finance Division, have been invited back.

[7] We have not received any additional evidence papers from the Minister, but, of course, the previous correspondence between the committee and the Minister has been circulated again among committee members to remind them of our discussions, as paper 1. We have indicated that an opening presentation will not be required from you, Minister, so with your permission we will go straight into questions, unless you want to make a few opening remarks.

[8] **The Minister for Social Justice and Local Government (Brian Gibbons):** Yes I do, very briefly, Chair—thank you very much for the indulgence. With regard to the exchanges of correspondence, we are all guilty to some extent of using terminology to describe the various elements of this problem. For example, we have used 'backpay' or even 'equal pay' as being synonymous with certain things, and perhaps we did not always share the same understanding of what these words meant. I think that you received a letter from Colin Everett, the chief executive of Flintshire County Council, who summarised it very well.

[9] From my point of view, there are three elements in this regard to what I would call 'equal pay compensation', namely the long-standing issues in relation to people that have claims because of previous bonus systems, and so forth, who are predominantly low-paid

women with jobs such as cleaners, and catering staff and so on. That is one issue—compensation for equal pay issues.

[10] The second issue is the single status agreements to introduce a system across local government. In the future, all staff in local government will be working in an evaluated equal value for work regime.

[11] On the third issue, I think that when Unison or, perhaps, Colin Everett spoke about backpay, they meant the catch-up that was necessary for all staff as part of the implementation of the single status agreements, as opposed to what we often loosely refer to as ‘backpay’ when we are actually talking about equal pay compensation. We have not been as clear in our understanding of this issue, which has sometimes meant that we have been slightly at cross purposes—not least the Government; we all share a certain degree of lack of clarity in the way that we have described that.

[12] If we are talking about equal pay compensation, single status agreements and backpay as a consequence of the single status agreements, it may be helpful if things could be discussed in that way.

[13] **Darren Millar:** That is very useful, Minister, and I am sure that we will begin to unpick some of these things as we go through the questions that we have for you. January was the last time that you were with the committee to provide evidence on this matter. Can you give an update on the current situation with regard to local authorities and the way in which they are implementing the single status agreements?

[14] **Brian Gibbons:** A fair bit of progress has been made on the single status agreements. At the moment, I understand that three local authorities are in the process of implementing their new pay and grading structures, namely Gwynedd, Neath Port Talbot and Wrexham. We also understand that six local authorities are involved in translating the job evaluation exercise to the workforce and they are in discussions with the unions and the workforce at the final stage before full implementation. Three local authorities have completed the job evaluation, and are modelling the pay and grading structures before engaging in discussions with the workforce. Two local authorities have undertaken a job evaluation of posts, but have not quite completed the process. Eight local authorities have started on the job evaluation process, but are a certain distance away from completion, although we understand that 18 of the 22 local authorities in Wales will, it is hoped, have completed the exercise by the end of the year. However, as may come out in evidence, this is a very complex road for any local authority, but, if local authorities are to deliver what they are hoping to deliver at the moment, 18 will have delivered single status agreements by the end of the year and the remaining four hope to do that in the financial year 2010-11. I do not know whether you want to stop and talk about single status or whether you also want me to talk about equal pay compensation.

1.10 p.m.

[15] **Darren Millar:** Perhaps you can touch on that later. We will concentrate on the single status agreements at the moment and unpick other things further on.

[16] **Peter Black:** In your response to the Chair previously, you indicated that an equal pay conference was held in Cardiff on 11 March. Can you tell us what the outcomes of that conference were?

[17] **Brian Gibbons:** I attended the conference for a good few hours. From memory, probably half of the local authorities in Wales were represented at the conference or something of that order. The showpiece of that conference was a presentation from Graham Jones from Neath Port Talbot County Borough Council highlighting the work that the council

has done. If you remember, we, as an Assembly Government and the Equality and Human Rights Commission commissioned this work to highlight the business case for equal pay. My impression of the conference was that because we had a real, concrete example from Neath Port Talbot and because the messages were not theoretical, but practical examples of how implementing the compensation for equal pay and moving towards a single status agreement created a positive feeling among the workforce, the business case or case for good practice that local authorities that still had reservations about this approach should go down that particular road was well made.

[18] **Peter Black:** I understand that the conference was supported by local workshops run by the Wales Trades Union Congress. I think that you asked your officials to explore how to build on that activity in the coming year. What work is being done by your officials to build in that respect?

[19] **Brian Gibbons:** The conference was one of a range of actions that we, as an Assembly Government, committed ourselves to, to keep the momentum going in this particular area. We held a series of workshops in different parts of Wales to which a range of people were invited, essentially as an awareness-raising exercise. We also held sessions at all the party conferences in Wales, because we took the view that councillors make up a significant activist base of political parties and, if we could reach the councillors through their political parties, we would be able to make a breakthrough. I spoke at the Labour conference and I think that there were 30 or 40 people at that particular event, which went on for a long time. There were a lot of questions and so on. My understanding, which is only second-hand, is that some of the other conferences only had a fraction of the turnout, which was pretty disappointing. We, as an Assembly Government, have a clear responsibility, but, as political parties, we all have to take this particular message on board and push it through our elected representatives. A number of activities have been going on to supplement this particular campaign. In the immediate future, we are looking for opportunities within the Equality Bill to give further effect to the wider equal pay campaign.

[20] **Helen Mary Jones:** Your last comment to Peter Black leads on nicely to my question, Minister, because I want to ask you about the powers under the Equality Bill. You mentioned the potential of that legislation in your earlier answer to the previous Chair of the committee. Can you, therefore, explain briefly what powers are proposed for Welsh Ministers under the Equality Bill as it stands, in relation to this issue?

[21] **Brian Gibbons:** There are general duties in relation to equal pay but we will have two sets of powers, one of which will be with the consent of the Secretary of State to add bodies to the list of bodies that will be covered by specific duties, and then we have the powers to introduce specific duties on public bodies in Wales. Specific duties could relate to equal pay.

[22] **Helen Mary Jones:** Thank you for that answer, Minister. In a sense, it partly answers my next question, so I will ask a supplementary question on that, if I may. The Bill will give Welsh Ministers the powers to introduce specific duties, and you may consider using those with regard to equal pay, but under that legislation, what are the sanctions on a public body if you issue an instruction with specific regard to equal pay, for example, and that that instruction is not complied with? We have had specific legal responsibilities on equal pay for around 30 years and there are still issues outstanding. Will this legislation give you additional levers? I am not saying that you would find resistance in public bodies in Wales but I am thinking hypothetically.

[23] **Brian Gibbons:** My understanding is that the overwhelming lever is the tribunal system; that is—if you like—the court at which these decisions will be made. Therefore, if an employer is in breach of their employment duties, or their legal duties as an employer, those

issues will be resolved at the employment tribunals. My understanding is that the Assembly Government will have no judicial functions in this regard, and that it is a matter for the tribunals. There may be instances where cases may go to court. I do not know whether Dave would know; this is a fairly technical question with regard to the legality. I have asked officials questions on that precise point because we will look at the Equality Bill at another committee on Monday, I think. I have specifically asked officials for advice on what the mechanisms are, other than holding a tribunal. Perhaps I could ask officials to write to you. I hope that there will be greater clarity on Monday in response to my own queries.

[24] **Helen Mary Jones:** That would be very helpful and useful to see. Perhaps the fact that you have placed a duty on local authorities might act as additional evidence in a tribunal if an individual case was taken. There may be other powers and I would be interested to see what they are. Perhaps you could let us know.

[25] **Brian Gibbons:** Much thought needs to be given to the nature of the specific duties. Graham Jones said that—and I cannot remember whether he said this at the meeting, but he certainly did so elsewhere—even though Neath Port Talbot County Borough Council is very much an exemplar of good practice in tackling the overall unequal pay agenda, notwithstanding what it is achieving, it has only made a very small percentage point difference so far. The wider issues in relation to unequal pay are much more deeply ingrained, systematic and systemic in the way that people are employed, the nature of the contracts, the working hours, skills base, promotion opportunities and so forth. When we would be looking at specific duties, our starting point would be to take as broad an approach as possible and not necessarily link it simply to hourly rates of pay. Taking on board what Neath Port Talbot County Borough Council said, solving the hourly rate of pay is only part of this problem—it is a much wider and bigger problem. If we are able, as part of our specific duties, to capture this wider systemic problem, we would like to use the specific duties as a way of doing that.

1.20 p.m.

[26] **Ann Jones:** Brian, you state in your response that:

[27] ‘Specific resources were identified in the local government settlement announcements for 2005-06 through to 2007-08 to support the implementation of equal pay and single status arrangements.’

[28] Do you agree with the WLGA’s view that the funding was meant more specifically for the cost of implementing new pay and grading structures?

[29] **Brian Gibbons:** No, I do not think so. Clearly, there is a cost involved in implementing pay structures. One of the issues that the committee asked me and the Welsh Local Government Association about, and which it responded to, concerned the fact that, even though single status agreements had not been in place, there was an ongoing implementation cost. However, I do not accept that the 4.5 per cent increase was totally for implementation. Perhaps Dave would like to add something to that.

[30] **Mr Powell:** I think that the common understanding at the time was that it was for equal pay in the round.

[31] **Ann Jones:** So you disagree with the WLGA’s view that there was never any suggestion that that uplift was given to settle equal pay claims? It is very clear that it thinks that that money was never put there to settle equal pay claims, and yet you are saying that it was part of that.

[32] **Brian Gibbons:** I am not able to comment on exactly what the WLGA said.

However, the extra money was given partly to meet the cost and partly to cover the cost of the implementation process. We need to remember that this was unencumbered money, so local authorities had discretion with regard to how they spent it. The money was not labelled as being x for implementation and y for pay. That was not the basis of the funding. That issue is one reason why the money was put into the revenue support grant. There is not a box, one side of which is for implementation and the other side of which is for pay. Having two special grant funding streams would have introduced an element of inflexibility to the system, which would not have encouraged good practice.

[33] **Ann Jones:** I want to take this a bit further. The WLGA is very clear that it is of the view that there was never any suggestion that that money would go to help settle claims. Given that the 4.5 per cent uplift was not labelled—which I will not go into, because I have made my views on that very clear—and given that the WLGA clearly has a different idea of what that money was to be used for, it is obvious that we need to label money in future, because the WLGA obviously does not understand what this was about.

[34] **Brian Gibbons:** I have a copy of the letter and I did not think—

[35] **Ann Jones:** It is the last but one paragraph of the WLGA's letter:

[36] 'As we have stated, the headline 4.5% uplift on the paybill that the Assembly Government provided was intended for the cost of implementing new pay and grading structures, not for settling equal pay claims.'

[37] However, you are saying that you thought—

[38] **Brian Gibbons:** Hold on; we need clarity on what we mean by 'equal pay claims'. If we are talking about equal pay compensation—in other words, the overhanging legal liability that exists, which has nothing to do with the single status agreement—none of that money was particularly earmarked to provide compensation in the form of equal pay backpay. The way in which we support local authorities that want to finance equal pay compensation dating back to the previous bonus scheme and so forth is overwhelmingly through the capitalisation process. So, I would agree with that statement if the phrase 'equal pay' refers to equal pay compensation. That is why I made that point at the very beginning—

[39] **Darren Millar:** It is clear that we need to get these definitions right.

[40] **Brian Gibbons:** My understanding of that sentence is that that reference to equal pay is a reference to equal pay compensation, and that money was not intended for equal pay compensation.

[41] **Darren Millar:** We can clarify some of this with the WLGA when its representatives come in.

[42] **Brian Gibbons:** That money was intended for the single status agreements.

[43] **Darren Millar:** Andrew is next.

[44] **Andrew R.T. Davies:** Ann has already taken on my question.

[45] **Peter Black:** I would just like to turn Ann's question on its head. Do you have any evidence that any of this money that was given to local government was not spent on either equal pay or single-status-related activities?

[46] **Brian Gibbons:** Sorry?



[47] **Peter Black:** Ann is arguing that the 4.5 per cent should have been hypothecated, and it was not. Do you have any evidence that any of that money was spent on services not related to equal pay or single-status-related activities? Was there any monitoring?

[48] **Brian Gibbons:** No, because if you monitor it, it becomes a special grant.

[49] **Peter Black:** I understand that.

[50] **Brian Gibbons:** The nature of the revenue support grant is that it is unhypothecated; if you want to monitor the money, it has to be in the form of a special grant.

[51] **Peter Black:** Are you aware of any councils that may have spent that money on mainstream services rather than on what it was intended for?

[52] **Brian Gibbons:** There is simply no way of knowing that. That is just like somebody in Westminster asking how much of the money that we get in the Welsh block is spent on a particular area. There is just no way of tracking that money.

[53] **Darren Millar:** But you are monitoring progress, are you not, Minister, in terms of the single status arrangements? You gave us an indication of that at the outset of this meeting.

[54] **Brian Gibbons:** Yes, that is right. We know from information that was given at the outset that progress is being made on implementing single status agreements in Wales—and progress is really being made. Hopefully, with a little luck, 18 of the 22 local authorities will have a single status agreement in place by the end of this financial year and the other four will have it in place by the end of next year. So, progress is being made.

[55] **Peter Black:** You have no evidence, therefore, that hypothecation would have produced a better outcome.

[56] **Brian Gibbons:** No, there is no evidence on the negative side.

[57] **Helen Mary Jones:** We have—[*Inaudible.*] The simple fact is that we have no evidence at all of what they used it for.

[58] **Brian Gibbons:** That is the nature of the—

[59] **Helen Mary Jones:** That is the nature of the grant. In retrospect and given that you have just been exploring with Ann Jones about there appearing to be some confusion about what the local authorities thought they were being given this money for—because, clearly, it was not a special grant; it was extra money that authorities in England, for example, did not get, even though they had the same responsibilities—do you have any regrets about not hypothecating it and not being able to track it?

[60] **Brian Gibbons:** It was not my decision, as you will appreciate. However, I take your point. In principle, no. Every local authority had a liability for a single status agreement—and we might get on to equal pay compensation later on. Every local authority had a responsibility to implement a single status agreement, so it was a systemic responsibility for every local authority in Wales. Putting that money into the revenue support grant allowed the flexibility to make that transition between using the money for the process and making money available to meet the pay bills when agreement could be reached and so forth. I do not know the numbers off the top of my head. For some local authorities, this has been a very difficult process and some have gone pretty far down the road with job evaluation using one methodology only to find that it was proving difficult and that they had to go back to square

1. If there was a special grant with a defined amount of money, those sorts of situations would have created all sorts of bottlenecks, cul-de-sacs and perverse incentives in the system, which we have avoided by putting the money into the RSG. Dave might want to add something.

1.30 p.m.

[61] **Mr Powell:** There is certainly evidence that local authorities have gone down a particular track in negotiating single status pay and then, because of the negotiations, having to backtrack on it—well, not backtrack, but to change direction as a result of the negotiation. As to having the money in a specific grant, I would have thought that that would have created problems anyway in respect of the overlap with other pay-related issues, such as people going onto incremental scales. I am no great expert on human resources and pay, but people on incremental scales will change either because of equal pay or other issues. It is a small amount of the overall pay bill, which you would have to artificially ring fence in one way in day-to-day working. The key thing is that when local authorities incur this liability, they have to meet it.

[62] **Helen Mary Jones:** It is their liability, and they have to meet it, but you as a Government gave them extra money to do it. Some of them have acted quickly and have done it, whereas some of them have taken a very long time indeed. Do you have concerns, Minister, or a take on why some local authorities have been able to use the resources that you gave them to achieve a proper single status agreement quickly, while others have not? I take your point about people using different schemes, but the Equal Opportunities Commission gave clear guidance to everyone as to what scheme they could use, which ended up being the scheme that everyone has used. They could have perhaps saved themselves some time and money if they had taken the advice that was available to them in the first place. That is just a comment.

[63] The real question is: is the Government working proactively with authorities to try to ensure that those resources that are put in are used as quickly as possible—we will put aside the argument about hypothecation for now—in order to get an outcome? Do you have a take on why some local authorities seemed to have found this so much more difficult than others, given that the issues about historical pay levels and the broader cultural issues that you mentioned, Minister, apply to all local authorities, and not to Neath Port Talbot County Borough Council to a lesser extent than anywhere else?

[64] **Brian Gibbons:** We will correct the record if necessary, but my anecdotal impression is that some of those authorities that ran into difficulties were in fact early adopters, that is, those that wanted to push the boat out and to resolve this issue ahead of the game. Some of those authorities found themselves in trouble.

[65] **Helen Mary Jones:** It was an impression that I was asking for, Minister; I would not expect you to know the detail.

[66] **Brian Gibbons:** We will have to go back and check whether that impression is correct, but that was my impression. I cannot remember exactly, but I think that there were three or four local authorities in particular that had to backtrack quite a considerable way. One or two of those authorities were very much at the forefront of trying to resolve this particular issue.

[67] **Mr Powell:** The decisions that came out of tribunals have swirled around here and have probably impacted on some authorities more than others, in terms of the meaning of those decisions locally. The legal situation is in a constant state of flux—or it has been.

[68] **Lorraine Barrett:** I think that my first question has been answered, as it follows on

from what Ann was talking about, and the possible misunderstanding of the terms of reference. So, I will look at the committee's recommendation that you did not agree to, namely that the Wales Audit Office should urgently investigate how local authorities are managing the resources provided to implement equal pay and single status agreements. You have said that it is unclear which benefits can be derived, and, in some ways, we have already talked about it. As my first question has been overtaken, I do not want to lose my second one. Could you explain how, in your view, that recommendation could undermine local authorities' negotiating position, or even remove their willingness to reach agreements beyond the quantum of funding identified?

[69] **Brian Gibbons:** It is not so much that. I am not clear as to what value that audit would have added to the process. There would be an opportunity cost in relation to getting involved in that audit. If that audit had taken place, I suspect that getting a clear answer would have been difficult, particularly given that it would have been at a time when most local authorities had not settled, and so would have wanted to protect their negotiating position. A fair amount of time and resource would have gone into it and, even if we knew the answer, would it have gotten us any closer to addressing the issue? What is needed is the political will now. It is arguable that greater transparency might have created a greater political will. However, given that 18 of the 22 local authorities are hoping to settle this year and the other four next year, would we have had added value for that?

[70] **Darren Millar:** What will you do if 18 do not settle by the end of the year and four do not settle in the next financial year? You have mentioned the fact that the tribunals will help to give a kick in the right direction, but we want authorities to achieve this and to move forward as quickly as possible without the tribunals, do we not?

[71] **Brian Gibbons:** There are no statutory powers at the disposal of the Assembly Government to force authorities to go any quicker, so we need to recognise the limits of our powers in this regard. As I said in the previous committee, I am committed to seeing that progress is made in this area. When we first considered this particular matter, I think that I said at one of those early committee meetings that I thought that we were beginning to approach a critical threshold in the progress being made. The evidence now is that we have gone past the critical threshold.

[72] We have been working to create awareness. I have engaged with local authorities and raised this as an issue. I went to the Welsh Local Government Association's annual conference and raised it as an issue, saying that the Assembly Government thinks that it is important. However, that is the limit of our powers. We do not have statutory powers to enforce this in any other way.

[73] **Mr Powell:** We asked local authorities a couple of weeks ago to let us know by September whether they will need capitalisation directions for the backpay element. Seven have already received them and one has even settled without recourse to a capitalisation direction. There is no necessity to have that if they do not need it. We have asked for that information by September with a view to getting decisions out on the responses that we get before the end of the calendar year, around November. As the Minister said, there is a lot of activity going on across the piece to talk to local authorities to resolve these issues.

[74] **Andrew R.T. Davies:** Minister, you have highlighted the point, as have various other Members, about the ability to push people on to reach a settlement. The aim is not to go down the legal avenue, but the latest evidence shows that there are 10,000 cases, with 34,000 potential cases, which would incur ancillary costs. Given the way in which you have funded it, via the revenue support grant, there is no real incentive for authorities to move on, is there? You have said that you believe that that was the correct way to put in the extra money, giving them an uplift so that they would have the revenue to meet the obligation. Could you explain

why you prefer that mode rather than the hypothecated mode of a dedicated grant?

1.40 p.m.

[75] **Brian Gibbons:** As you said, there are 10,000 cases. However, my understanding is that all those cases do not relate to the single status agreement but to compensation for equal pay. So, if local authorities are unable to fund compensation for equal pay from their own resources—although, as Dave said, one local authority has funded it and some others feel able to do so—we are willing to provide capitalisation to those local authorities. As Dave mentioned, we wrote to local authorities a couple of months ago to remind them that the deadline for applications for capitalisation is September and that we are open for business as far as that is concerned.

[76] **Andrew R.T. Davies:** You said ‘a couple of months ago’ and Dave said ‘a couple of weeks ago’.

[77] **Mr Powell:** It was relatively recently.

[78] **Brian Gibbons:** Yes, it was relatively recently. It was to remind them of the deadline for capitalisation. We did not send out a letter last November stating that the capitalisation deadline was this September; we sent it out relatively recently so that people would realise that time was running out if they wanted to apply for capitalisation, and they should submit their applications.

[79] **Mr Powell:** The timescale that we are working to is the same as last year’s, so it is known.

[80] **Brian Gibbons:** That is the route that we have gone down for equal pay compensation.

[81] For single status agreements, we are using the revenue support grant for the reason that we gave in response to Ann’s question: it is much more flexible. The level of commitment that will be required is not fully known. It is just not possible to know that in advance of the negotiations, even before you undertake the job evaluation. Clearly, if there is a fixed sum on the table, the negotiating position of the parties is immediately compromised. Let us suppose that the settlement is a bit above the hypothecated sum. Do you say, ‘Sorry, the hypothecated sum is  $x$  and the deal has come in at  $x$  plus 1, so hard luck’? You cannot do that, which is one problem with using the ring-fenced or special grant route to solve this. Pragmatically speaking, and on the grounds of flexibility, the revenue support grant is the best way in which to proceed.

[82] **Darren Millar:** Thank you for your answers to our questions. That brings us to the end of this part of our scrutiny session.

[83] On an entirely separate note, the committee has looked at whether to undertake further work on the governance arrangements in local government. We dropped you a note on our discussions. It would be helpful if you could update us, perhaps in writing, on any part of the legislative programme that the Welsh Assembly Government will bring forward, certainly in relation to the executive/scrutiny split and arrangements. You seemed to suggest in your response to our report on local government scrutiny arrangements in Plenary that you hoped to bring a proposed Measure forward in the not-too-distant future.

[84] **Brian Gibbons:** I have been to the Houses of Parliament for an information session, along with Members of the House of Lords and the House of Commons, on the implications of this for Wales. We have put in a bid for Measure-making powers on the assumption that

we will have framework powers. The First Minister has yet to make an announcement on the legislative programme, so we are waiting for him to reach a final decision on that. I think that the date is around 13 July, but certainly mid July, so that statement will be made before recess. We will all know for certain where we stand at that juncture. We understand that the Bill is going through the Houses of Parliament fairly smoothly. Clause 32, which is the relevant clause for scrutiny, has not proved controversial to date.

[85] **Darren Millar:** Thank you, Minister.

1.44 p.m.

**Ymchwiliad i Weithredu Tâl Cyfartal mewn Llywodraeth Leol—Tystiolaeth gan  
Gymdeithas Llywodraeth Leol Cymru ac Unison Cymru  
Inquiry on the Implementation of Equal Pay in Local Government—Evidence  
from the Welsh Local Government Association and Unison Cymru**

[86] **Darren Millar:** We will now move to item 3, continuing with evidence gathering on the implementation of equal pay in local government. Representatives from the Welsh Local Government Association and Unison Cymru have joined us. I am therefore pleased to welcome Steve Thomas, Anna Freeman and Dominic MacAskill to the table. We were supposed to have your colleague, Mike Colley, with us today, but I understand that, at the last minute, he has been unable to make it. We do not have an additional evidence paper from the WLGA, but we all have copies of the previous correspondence circulated to Members. We have received an additional paper from Unison, for which we are very grateful. That has also been circulated to Members. We have indicated that there is no requirement for an opening presentation from any of the witnesses.

[87] To the WLGA first and then Unison, can you give us a brief update on any developments that have occurred on this front, of local authorities implementing equal pay and equal status agreements, since our last committee evidence session on this in January? The microphones will be operated remotely, so you do not have to touch any of the buttons.

[88] **Ms Freeman:** There has been some progress. There have been two collective agreements since we last gave evidence, so things are clearly moving forward. I think that I indicated the last time we were here that there was one authority that was in a very sensitive stage that I did not want to say too much about, and that authority, Caerphilly, has since had a collective agreement. We just heard last week that Denbighshire has also achieved a collective agreement. So, although that has not quite been implemented yet, that should all be progressing shortly.

[89] **Darren Millar:** What about the remaining local authorities?

[90] **Ms Freeman:** They are all moving forward. They are all at various stages of the process. Most of them have now finished the pay and grading reviews. A couple are just waiting for an agreement that they can actually ballot. They are all moving forward; no-one is standing still. The negotiation phase is the very difficult phase. Carrying out the pay and grading review is one thing, as I think we emphasised last time, but asking how long it will take to complete the negotiations is like asking how long is a piece of string? That is the nature of negotiation.

[91] **Darren Millar:** The Minister seemed to indicate that 18 local authorities should have completed things by the end of the year and that the other four would complete next year. Do you concur with that view?

[92] **Ms Freeman:** It is difficult to say, as it will depend on the negotiations. I certainly think that they will have finished the process, yes, but we do not have a set timescale. Everyone is aiming to finish this year, but it will depend on the negotiations. It is about two sides reaching agreement. Given that quite a number of people in an authority will not have gained out of the process, they will not necessarily be in a frame of mind to vote 'yes', so it is difficult to say what will happen. There are also all the difficulties with getting agreements on a national level, as Dominic would concur, because of the position of the unions and the potential for claims to be made against them. It is a very difficult process.

[93] **Darren Millar:** Dominic, can you give us an update on Unison's perspective?

[94] **Mr MacAskill:** Yes, Chair. I just wish to differentiate between the single status agreements and the backpay liabilities in relation to equal pay, because they are two separate issues. I heard the proceedings earlier and I think that there is some confusion in language between the two. I will deal with them separately.

[95] On the job evaluations and the new salary structures for the authorities, one additional authority has got an agreement in place since the last time this committee considered this issue, but the trade union side in Denbighshire has also recently balloted on a proposal and that is likely to become an active agreement in the near future. We understand that Merthyr Tydfil is close to agreement as well and, as I have indicated in my report, in paragraph 11, we believe that several other authorities are making very good progress towards reaching an agreement. I have also identified that a number of authorities are absent from that list, and either they are not taking the progress seriously or there has been a severe breakdown in discussions, and I noted Flintshire and Pembrokeshire in that regard in particular.

1.50 p.m.

[96] In our opinion, things are better this year than they looked last year, but considering the fact that this national agreement had a target for implementation in April 2007, you can see that we are playing catch-up, and some authorities do not appear to be well engaged in that.

[97] In terms of the equal pay backpay liabilities, more authorities have settled. Paragraph 16 of my paper identifies those that have settled. I can go into detail about my comments on those settlements in later questions, if need be. A number of authorities are in discussion, however, having accepted that they have some liability, but they are either delaying discussions or they prefer their chances by following the litigation route to defend their corner. The picture for backpay liability is not a clear one, because, in any litigation, different lawyers will give a different assessment of risk. Some might give you a 50 per cent chance, while others might put it at 60 or 70 per cent. Some authorities are taking legal advice, and the advice that they get depends on what lawyers they have. I am, therefore, less hopeful of us seeing progress on the backpay liabilities, unless clear pressure is put on authorities to move forward collectively on this issue. I can elaborate on what I mean by that in questions if need be.

[98] **Peter Black:** What was your involvement in the equal pay conference on 11 March? What came out of it?

[99] **Ms Freeman:** The WLGAs certainly attended the conference. As for what came out of it, authorities simply carried on doing the work that they were already doing. I do not think that the conference changed anything, in all honesty. I would challenge the assertion that authorities are not taking this matter seriously; I run a group for authorities that are involved in the process, and they take it very seriously and have been working hard on this matter for a number of years. We have given evidence on several occasions to the effect that, yes,

authorities started the process, and perhaps became committed to completing it, at different stages—we entirely accept that, and I think that authorities would accept that too. The point at which they were provided with the resources to undertake the process is another matter. The WLGA itself went out to a number of authorities quite some years ago now, and we talked to cabinets and so on to make the point that this was something that really needed to be resolved. It was at different stages that they realised that and started to work really hard on it. That is a number of years ago, now. So, yes, we do have authorities that are at different stages, but we also have authorities that, perhaps in their eagerness to please the trade unions, actually evaluated too many jobs. Therefore, it is quite difficult to introduce a new pay and grading structure when you have a plethora of jobs for which there are no natural breaks. So, they have had some difficulties, and they are trying to resolve them. I think that we mentioned job family modelling as one way in which they are going about that.

[100] So, yes; they are at different stages, but no-one is sitting on his or her hands. At the conference, it was good to hear about one authority that had actually managed to achieve it; that was a bit of a shot in the arm, for people to know that it is possible, I am sure. However, that came at considerable cost; a lot of money went into that.

[101] As to changes, they are doing everything they can, so I do not think that the conference changed anything, no.

[102] **Mr MacAskill:** Unison did not have any direct involvement in the planning of the conference, although the Wales TUC was involved in forming it, and the general secretary addressed that conference. It was a useful conference in terms of promoting the current settlement and also in reinforcing the need to address the issue of equal pay and fair pay within local government. It was not what my predecessor, Paul Elliott, had anticipated in terms of his recommendation. The recommendation that I put in my submission is what we think is more necessary, because it seemed in that conference that we were preaching to the converted. The people who attended were generally people from the authorities that were actively engaged in the process, and there was not a very convincing turnout from the rest of the authorities. In terms of the attendance, less than 50 per cent of authorities sent anyone to that conference. It was a useful conference, but we did not see it as a mechanism to move this issue forward.

[103] **Helen Mary Jones:** Building on what you have already said about the effectiveness or otherwise of the conference—to that extent, the two organisations seem to concur—Unison’s paper suggests that there should be a special delegated meeting for Wales of all parties to thrash out the difficult issues in respect of the implementation of single status agreements and their implications for equal pay. You suggest that the Minister should use his authority to reiterate the imperative for resolving the issues. Given what you have said about the conference not being quite what you had expected, in terms of addressing the issues, what could a meeting such as the one that you describe in your paper achieve?

[104] **Mr MacAskill:** This is a thorny problem, and this committee has considered the issue a number of times, and progress is excruciatingly slow. My suggestions are an attempt to move us forward collectively in the right direction, and in a timely fashion. There is a tendency for local government to play hands-off, and this has been reinforced by the 22 local authorities staying in their silos on this issue, defending their particular right to control their resources and salary structures in their individual authorities. That flies in the face of the public services direction taken by the Welsh Assembly Government. It also flies in the face of any logic or reason with regard to recruitment and retention across Wales, dealing with professions such as social workers and teaching assistants. When the grading structures come into place, there will potentially be 22 different rates of pay for social workers and 22 different grades for teaching assistants in schools. When you grasp that reality, you need to look at where we are now, where we want to be and how we get there.

[105] Unfortunately, leaving the 22 local authorities to their own devices in silos will not work. Putting on conferences, however well-meaning they may appear and come across in terms of the subject matter, will not persuade people. I am not sure whether it is possible or whether people will play ball on this, but I envisage that we could get people around the table to ask ‘What is preventing us from having an all-Wales approach to this?’ Unison and the WLGA have lobbied for a one-Wales approach to the job evaluation of the single status agreement in Wales. Twenty one of the 22 local authorities are using the same job evaluation scheme. You could have had one steering group and one appeals process in Wales with key benchmark jobs—not every single job will be the same in the 22 local authorities, but the key benchmark jobs could be the same grade and equated the same. In that way you would solve the problem of neighbouring authorities competing with each other in key professions. So, the recommendations, whether they are realisable or not, are necessary to move this forward in a logical fashion.

2.00 p.m.

[106] **Mr Thomas:** That has attractions, in broad generalities, but the world is not that straightforward or simple. By that criterion, you would need a national appeals panel that would sit for the next 100 years. I agree with Dominic; it seems to me that you have a hard slog ahead, with no shortcuts. Whatever we wanted to do in terms of national agreements and so on, we did not do it. The result is that 22 sovereign bodies are negotiating with their workforce; that must be concluded. Some of those sovereign bodies, such as Anglesey, do not have a problem, while others, such as the Vale of Glamorgan, do not accept that their bonus schemes were automatically unlawful under the Equal Pay Act 1970. There are other sovereign bodies, such as Neath Port Talbot, Torfaen and a range of others, that have settled. That is the complexity of 22 local authorities and that is the value of local democracy—

[107] **Mr MacAskill:** May I, on a point of order—

[108] **Darren Millar:** Let Steve Thomas finish first.

[109] **Mr Thomas:** I agree with Dominic that there is no silver bullet. A conference will not solve these issues. We are starting, however, to see the finishing line on equal pay claims. The finishing line is now in sight. It has taken a hell of a long time and the waters have been muddied by constant recourse to employment tribunals. Helen Mary talked about the Equal Opportunities Commission, but, let us be frank, it walked away from the issue in terms of Bainbridge. It said that the whole thing was so tied up in litigation that it was a legal morass, so it walked away—

[110] **Helen Mary Jones:** That was after I stopped working for it. [*Laughter.*]

[111] **Mr Thomas:** It clearly needed stronger guidance. We are in this position because the legal morass or the dispute that has occurred over that period has inevitably slowed us down. At one time, the judgments were all going in one direction, and then, at a later date, they were reversed—the case against the GMB has been held about three times. So, it is an intensely complex process, and, as I said, I do not think that there is a silver bullet solution for it. We have to ensure that the authorities carry out their legal obligations and deal with their equal pay issues.

[112] **Darren Millar:** Do you want to add anything?

[113] **Ms Freeman:** I want to address the issue of ‘local authorities working within their silos’, because they are not doing that at all. Yes, job evaluation is about internal relativities—that was the difficulty with having an all-Wales scheme; you can do that with the NHS, which



is effectively one organisation, but you cannot do that with 22 separate employers—but the situation is that they are not ‘working in their silos’. Over a number of years, they have come together regularly on all the issues around job evaluation and they have worked together, sharing ideas and swapping ways of doing things. They have done everything they can. One authority will help another with something that it has found to have worked well; for example, Neath Port Talbot picked up the process used somewhere else. They have been doing a whole range of things like that. They have been working together on equal pay liabilities. They have been looking at issues around market forces; they are aware of the fact that they may end up with different rates of pay for what may be similar jobs. It has to be said that several jobs are quite different when you look at them, despite the fact that they have the same titles, so that would add to the difficulty of trying to do an all-Wales job evaluation exercise. They are not ‘working in their silos’. They have to do the job evaluation separately, because they are separate employers, but they are coming together constantly. They have taken a lot of time to come together to swap good practice and to help each other over the years. It is far from being the case that they are ‘working in silos’.

[114] **Darren Millar:** You wanted to come in earlier, Mr MacAskill.

[115] **Mr MacAskill:** Yes, on a point of information. Again, we need to separate the issue of single status structures from equal pay backpay liability. I think that Steve was confusing what I said. We can work together on an all-Wales basis—Anna said two things: she said that authorities cannot work together, but that they are working together. In fact, there is no reason why there could not have been an all-Wales approach to this scheme, because you could evaluate the jobs and if a social worker in one authority was doing something slightly different to a social worker in another authority, you could agree what the optimum job description or job role for that would be. It is possible to do that. Those benchmarked jobs would then create the relativity within that authority. Therefore it is possible. To say that it is not possible is disingenuous.

[116] **Darren Millar:** Are we not looking at the historical context now?

[117] **Mr MacAskill:** You have to keep them distinct because you can agree and have in place a structure to be taken forward in equal pay, but you are still left with your equal pay backpay liabilities. A number of authorities have dealt with some of their backpay liabilities but have not sorted out how they will go forward. You can separate the two. On one of the recommendations that I made regarding the equal pay backpay liabilities, at present, as you will see from our appendix 1, there is a plethora of different ways of calculating and coming to a settlement. Each of those authorities use different ways of measuring what their liabilities are, with different matrices, which will involve factors such as how long a person has worked for the authority, what their hours were, what their grade was, and who was their relevant comparator. There is no reason why some generalities could have been agreed in order to promote a matrix for Wales to adopt in totality, so that the authority did not have to keep reinventing the wheel.

[118] I have come to the part in my evidence about the amount of public money that has been spent on solicitors in Wales. Each authority gets its own advice on the way forward. When it comes to settlements and devising matrices, they are again getting their own advice, individually. This is multiplying the cost of—

[119] **Darren Millar:** We will come to the funding issues in a moment. I now call on Helen Mary Jones.

[120] **Helen Mary Jones:** My second question to the WLGA about its view on the meeting that Unison proposes has, in a sense, been answered. However, I will come back to Anna Freeman’s point about local authorities co-operating. It has to be acknowledged that it does

not look like that from the outside. My concern is that it is the local authorities that want this to work. I will take your earlier comment, that this is a priority for everyone, with a pinch of salt. However, accepting what you suggest, that it has become a priority, it is clearly more of a priority to some than others. Does the nature of the co-operative working that you describe include everyone, or is this only, from my perspective, the good guys, who you would expect to be sharing information, trying to progress the agenda in any case?

[121] **Mr Thomas:** The WLGA has a contract with Edwards Geldard Solicitors. We sit in on what I can only describe as interminable meetings on this issue at least once every quarter with all 22 authorities. It is very rare that all 22 authorities are not there. The turnout is always excellent. Anna has these discussions with the Joint Council for Wales, which is a tripartite body with the unions, employers and the local authorities. We also have the human resources directors' network and Solace, the chief executives' network. This is a regular item on the agendas of those meetings. We have discussed this issue to death, Helen.

[122] **Helen Mary Jones:** Tell me about it. Women who have not been paid for 30 years are the ones that have suffered.

[123] **Mr Thomas:** I agree, but if you are saying to us that local authorities are not coming together to discuss this, that is not the case. We do come together.

[124] **Helen Mary Jones:** That was what I was trying to unpick because there was a time when some local authorities were working on it and co-operating and there were others pretending that they did not have a problem. It is encouraging to hear—

[125] **Mr Thomas:** Co-operation is extensive.

[126] **Helen Mary Jones:** Yes. One wonders to what end. I just have to say, on record, that a safeguarding children social worker in Neath Port Talbot should be doing the same job as one in Swansea and in Carmarthen. If they are not, there is a problem. When I worked in that field, we had national terms and conditions for the whole of the UK. It is simply not right to say that that could not have been done. However, we are where we are now.

[127] **Mr Thomas:** We commissioned the Garthwaite report to look at social care workers and the costs. Some of the arguments that we had with the unions around that time made it impossible to introduce a national pay framework because a lot of it was about whether we could set it in the context of single status agreements. Until we did the single status agreement, you could not reach agreement on these things.

[128] **Darren Millar:** I am very conscious of the time, therefore I would like to ask Members and witnesses to be brief in their questions and answers. I will come to Ann Jones in just a second, but Andrew has a brief point to make.

[129] **Andrew R.T. Davies:** Yes; it is just a brief point. It seems like a lifetime ago that you raised the point about co-operation and working together. I do not mind admitting that I know precious little about local government. To be honest, in my previous background, other than when it would come to regulate me, I never had much to do with local government. However, we are continually told in Plenary that there is this co-operative model, and that everyone is working together for the common good to save on costs and so on.

2.10 p.m.

[130] We have heard about the dialogues that are supposedly going on. Dominic, you clearly gave a sense that there is no co-operation and that people are working in their 'sovereign silos', to use your words, Steve. That phrase made me feel as though we were

sitting in the United Nations. It is one thing coming together to talk about it, but is action flowing from these internal meetings that you referred to with Edwards Geldard? If I were a solicitor, I would love to have interminable meetings because I would be billing you by the hour.

[131] **Mr Thomas:** I used the expression ‘sovereign states’ not ‘silos’.

[132] **Andrew R.T. Davies:** Sorry.

[133] **Mr Thomas:** What I meant by that was that these are legally constituted bodies that must construct deals as legally constituted bodies. They must do that; they would break the law if they did not do that. That is important. However, there is a huge amount of co-operation on a vast range of issues. You get reports back from your Ministers regularly on the ‘Making the Connections’ agenda. You can see the amount of work going on with regard to public services on a national basis. However, this issue is intensely complex. Inevitably, there is an appeals process tied in with it, there is the grading structure to put in place, and there are disputes. Dominic mentioned Pembrokeshire and Flintshire. At one time, Flintshire had completed a job evaluation on a different scheme to the one that the unions favoured and they had to abandon all that work. That set them back a number of years.

[134] **Mr MacAskill:** On that point—

[135] **Darren Millar:** We will have to move on. You may be able to touch on that point in your response to another question.

[136] **Ann Jones:** Steve, both the WLGA and Flintshire County Council have suggested that the committee has not properly understood the purpose of funding provided in the local government settlement on this issue. In your letter to the previous Chair, you stated quite clearly that the additional money that went in was intended for the cost of implementing new pay and grading structures and not for settling equal pay claims. In order that we get it right, will you explain the distinction more fully to the committee please?

[137] **Ms Freeman:** The 1.5 per cent per annum was provided in response to the expenditure sub-group report in, I think, 2004 or 2005. We made the case that the cost of implementing new pay and grading structures—which has nothing to do with the cost of any backpay—at that time was running at between 3 per cent and 5 per cent across England and Wales, although nothing had been completed in Wales, so the figure is for England. That was the figure that we had from the Local Government Employers. It was costing, on average, 3 per cent to 5 per cent on the pay bill—that figure, incidentally, is now running at 7 per cent. That was the cost of people going onto new incremental scales and having more headroom, and therefore there was an increase in the costs over subsequent years. That was absolutely nothing to do with the cost of any backpay.

[138] The costs of backpay are for the costs of any unlawful discrepancy in pay between men and women until the point at which you implement. That is quite separate. Therefore, that 4.5 per cent over three years was provided in response to that ESG report of the 3 per cent to 5 per cent increase on the local government pay bill. It also needs to be said that authorities did not all get 1.5 per cent per annum because it was an increase on the headline, non-teaching pay bill and therefore what each authority got would have depended on its share of the settlement. They did not all get as much as 1.5 per cent per annum; it would have been entirely dependent on their share.

[139] That is the difference. When we were informed of the money that would be provided, it was said that it would be for equal pay audits, which was not terribly clear wording. Had we known that it was going to be misinterpreted down the years, we would have challenged that

and said that it was in response to our ESG report and it is the actual costs of the increase on the pay bill caused by putting in the new pay and grading structures. That might have made it clearer. However, your wording was for 'equal pay audits' and not for equal pay backpay.

[140] **Ann Jones:** That was not our wording; it was the Minister's wording.

[141] **Ms Freeman:** The Welsh Assembly's wording.

[142] **Darren Millar:** The Welsh Assembly Government.

[143] **Ann Jones:** We are not the same thing, are we?

[144] **Ms Freeman:** The wording we were given was not the wording that we would have chosen for clarity.

[145] **Mr Thomas:** The discussion that we had with Sue Essex at the time was that the ESG would deal with single status agreements and that capitalisation, if it was required, would deal with equal pay.

[146] **Ann Jones:** Given that you had this wording that you did not think was suitable, why did you not challenge it? Why did you let that go ahead with this uncertainty, which has put some of the authorities in awful situations?

[147] **Ms Freeman:** We thought that whoever put that wording in knew that it was in response to the WLGA's report. Hindsight is a wonderful thing.

[148] **Ann Jones:** Had the funding been hypothecated and had it been clearly stated what it was for, there would not have been a problem.

[149] **Mr Thomas:** I do not agree with that at all. The bottom line is that you have to deal with the issue, so whether or not you hypothecate the money is academic. If you could have stated a sum and hypothecated it, it would have given a target for everybody to aim for—

[150] **Ann Jones:** At least we would have—

[151] **Mr Thomas:** And that would have been the wrong target.

[152] **Ann Jones:** But those local authorities would then have put that money towards achieving a single status agreement rather than putting it into the revenue support grant.

[153] **Darren Millar:** It is worth saying that some local authorities may require no extra cash to meet the agreements and that others may require much more cash. The point that I am making is that the amount required by each local authority is variable, so the arbitrary application of a 4.5 per cent increase over three years was perhaps not the best way to go forward.

[154] **Mr Thomas:** I think that the view at the time on this was that we welcomed any additional money coming into the settlements. The variation would have been reflected in the distribution. For example, the money went in in 2007-08, and the average uplift that year was 2.4 per cent for local authorities, so the idea that, of that 2.4 per cent, 1.5 per cent would have been sufficient to deal with single status agreements is nonsense. There would not have been any money going into other services. What local authorities had to do over a period of time—and we have had debates on this on numerous occasions—is build up their reserves to deal with equal pay claims. Where they do not have the money to deal with their equal pay claims, they will turn to capitalisation. The reserves are clearly being used for single status

arrangements.

[155] **Ann Jones:** Was that the guidance that you sent out to local authorities?

[156] **Mr Thomas:** It was an unhypothecated amount of money that went into the RSG, and we told local authorities that they had a responsibility to meet this obligation and that they had to find the money.

[157] **Ms Freeman:** We were asked about this last time, and I provided evidence to the committee clerk following that hearing on the sheer cost of the process. One of the reasons why it took so long was that local authorities were not able to put resources in at the time. They were struggling for some years. I know that there were people doing job evaluation as one part of their job; there are now big teams—

[158] **Darren Millar:** The issue was about the clarity around what that pot of cash was for.

[159] **Ann Jones:** Dominic, you recommend in your paper that the Welsh Assembly Government should further advise local authorities on this 4.5 per cent increase that has been given over several years and that they should give them some direction on what to use the money for. What do you mean by 'further advise'? It is obvious that the WLGA feels that you cannot have hypothecation, and the Minister does not want hypothecation.

[160] **Mr MacAskill:** That is a suggestion that would adapt to the conditions of no hypothecation. We can see from the discussions that we have had today that there is some confusion. I am looking for clarity and for this to be re-emphasised to local authorities in a letter. We have come across, in negotiations, examples of where local authorities are looking to keep the costs down and not to minimise harm and disruption to their workers, and, in some cases, they are putting only 3 per cent into the pay line. We are saying that they have had 4.5 per cent, so that is the minimum that they should be considering for the pay line. So, rather than bringing down pay for everybody and making lots of people suffer, they should use the full amount that they have been given by the Welsh Assembly Government to implement this scheme.

2.20 p.m.

[161] On the cost of doing the work to get the scheme in place, that is not a problem related to consolidation. They are one-off problems, which you can account for. That 4.5 per cent is consolidated, so that is 4.5 per cent extra that you are getting year on year.

[162] **Darren Millar:** Did you want to respond to that?

[163] **Mr Thomas:** [*Inaudible.*]—year on year.

[164] **Mr MacAskill:** You are not getting an extra 4.5 per cent, but it is consolidated.

[165] **Mr Thomas:** You said 4.5 per cent year on year.

[166] **Mr MacAskill:** That 4.5 per cent is consolidated.

[167] **Mr Thomas:** Yes, but it would not be consolidated on the distribution of the local government settlement.

[168] **Ann Jones:** May we talk about capitalisation? Dominic, you make the point in your paper that the councils that have made settlement offers have done so via the provision of capitalisation. You then go on to say that:

[169] 'However, in spite of very favourable terms, the amounts capitalised have been small in total budgetary terms.'

[170] You then go on to say—and you have started to touch on it—that public money is going into the pockets of solicitors, whereas, if we all came together, it could go to those workers—mainly women—who will need it. I wanted the WLGA's view as well, but could you expand on that, and perhaps Ann or Steve could then come in.

[171] **Mr MacAskill:** There are two issues there: the level of settlements that have been agreed, which I cover in appendix 1 of the paper and, in particular, on page 2 of the appendix, which shows the offers that have been made and what we believe to be the true value of those offers, compared to what the low-paid women workers would get if they carried on with their litigation and went to a tribunal. If less money was spent on solicitors by all the authorities—some more than others—that money could be used to make more reasonable settlements. We believe that our members and low-paid women workers who are being offered these settlements are being brought to a meeting, given a cheque with the amount filled in and are told, 'Take that cheque away and sign away your legal rights'. In general, we have been advising them that those are not good deals, because if they waited—unfortunately, the legal process is slow and there is risk associated with litigation—and went to a tribunal, they could, in some cases, get five, six or seven times the amount that they are being offered by the council. We believe that there is hard-pressure selling of the deals, and that is inappropriate. In the end, they are either liabilities or they are not, and these people should have been paid appropriately.

[172] **Darren Millar:** We will move on to legal claims in a second.

[173] **Mr Thomas:** You cannot have it both ways, Unison. I was told by your predecessor, Paul Elliott, that he thought that the deals struck at Torfaen and Neath Port Talbot were superb. A process was undertaken there that could not have been any more consultative, and Unison, at the time, was commending those deals. I do not know what has changed since then, but clearly something has.

[174] **Darren Millar:** We shall turn to Ann Jones. We will have to be brief.

[175] **Ann Jones:** No, that is fine, thank you. I think that Andrew has a question.

[176] **Andrew R.T. Davies:** Before I ask the questions that I have been given, you say in your paper that evidence suggests that councils have already collectively spent millions—I presume that you are talking about millions, because you have put an 's' at the end of the figure. What evidence do you have that would give us a harder figure than that?

[177] **Mr MacAskill:** We have anecdotal evidence, and one of my recommendations is that it is something that needs to be quantified, because this is public money that is being spent in large amounts. We know how much we are spending on solicitors. We know the cost of that, and we calculated an estimate of what the cost would amount to over the 22 local authorities. There has been no clear accounting of the money that is being spent on solicitors, because in the end it is a defensive mechanism against paying out to people who have been—

[178] **Andrew R.T. Davies:** Can you give me a feel for what you think it has cost?

[179] **Mr Macaskill:** We think that it has cost up to £1 million already.

[180] **Andrew R.T. Davies:** That is the reference to £1 million.

[181] **Mr MacAskill:** Yes. If it carries on—and some local authorities have said that they are going to go straight to a tribunal—and it gets to a tribunal, you get to the stage at which there is a Queen’s Counsel sitting for six or seven-day hearings, which would result in multi-million-pound bills.

[182] **Peter Black:** May I clarify something? You are spending huge amounts of money on solicitors and are encouraging your members to go to tribunals, yet you are complaining that councils are spending money on solicitors.

[183] **Mr MacAskill:** That is indeed the case—

[184] **Peter Black:** Should they not be protecting their own interests and the interests of the council tax payers?

[185] **Mr MacAskill:** We believe—

[186] **Ann Jones:** [*Inaudible.*]

[187] **Peter Black:** [*Inaudible.*]—in their interests.

[188] **Mr MacAskill:** We believe that there are clear liabilities, and we are pursuing those claims because we believe that they are clear liabilities.

[189] We believe that some authorities—in fact, the majority of the authorities that have not come out with offers—are defending these claims purely on the basis of hoping that the legislation will change as we move forward. Case law is changing as we move forward; in some cases, it has benefited the employer, while in others, it has not. We believe that it is a purely defensive response. In some cases, that may be more legitimate than others. However, there has been no attempt to quantify the amount that has been spent on defending these, and with regard to the potential liabilities across Wales, a cost-benefit analysis of that might show that it is not a good use of public money.

[190] **Ms Freeman:** Obviously, this is public money. What authorities are trying to do in employing solicitors is to safeguard the interests of the taxpayer and balance that against the interests of the women workers who may, in certain circumstances, be due some sort of compensation. Generally speaking, those women workers have been underpaid only in the sense that they have been paid less than the male workers who are in jobs that are being rated as equivalent. In terms of the private sector, they have been better paid. So, it is a little disingenuous to portray them as being totally downtrodden. They have not been badly treated, but, of course, it has been unlawful in certain cases.

[191] Case law is constantly changing. We have just had recent case law from Sheffield, where it has been proven that the bonus schemes can be perfectly bona fide. Cases have been won with regard to the claims of carers, cooks and so on and taken down.

[192] **Darren Millar:** We do not want to get into individual cases.

[193] **Ms Freeman:** I am not getting into the detail.

[194] **Darren Millar:** We are talking about the process and moving it on so that we get to the bottom of this. I am very conscious of the time and we have some important questions to come to.

[195] **Ms Freeman:** The legislation is a part of that because it is constantly changing. Therefore, what is lawful, what is unlawful and the appropriate level of compensation is

shifting the whole time.

[196] **Darren Millar:** The committee wants to see fewer legal cases, because we want to try to get to a situation where local authorities settle this matter once and for all.

[197] **Andrew R.T. Davies:** Would you concur with Unison's figures, which show that councils have spent around £1 million so far?

[198] **Ms Freeman:** I have absolutely no idea of the figure.

[199] **Andrew R.T. Davies:** So, while it can quote evidence, you are unable to do so.

[200] **Mr Thomas:** I have no exact figure to give you. Going back to your earlier point, we bring the 22 local authorities together and we seek legal advice. That costs us £40,000 per year.

[201] **Ms Freeman:** In terms of the potential liabilities that authorities declared that they may have in the first instance, the level at which they have been able to settle is considerably less as a result of the legal advice. So, it certainly has saved the taxpayer money overall.

[202] **Andrew R.T. Davies:** Thank you. Unison's paper offers a table that shows that 10,227 claims have been lodged so far.

[203] **Mr MacAskill:** That is by Unison; other trade unions have lodged claims as well.

[204] **Andrew R.T. Davies:** You then say that there are 34,300 potential claims. I presume that you are also aware of other unions' claims. How have you arrived at that figure?

[205] **Mr MacAskill:** Not all of our members in those work groups have lodged claims and not all of the people in those work groups are trade union members. So, that is the potential that we have calculated in relation to the number of women workers in those areas who are likely to have claims.

[206] With regard to the cost, one reason for the cost is that each worker is treated as an individual. Point 24 of my report notes that we have made representations to the Westminster Government for a change in the law to allow collective action. Part of the reason why Unison is litigating is that, if we do not, we could be litigated against. So, we also have to be defensive. Everyone is treated as an individual, but we believe that there should be a way of looking at groups of workers so that we can balance collective bargaining and the issues of the employer around these claims. That is why one of the recommendations is that we look to use the Equality Bill that is currently going through Parliament as a mechanism to try to address this issue.

[207] **Andrew R.T. Davies:** We touched on job evaluation a little earlier.

[208] **Darren Millar:** Yes. I think that we have touched on both of the next questions.

[209] **Peter Black:** You have also dealt with my questions.

[210] **Darren Millar:** We have touched on your matrix question.

[211] **Peter Black:** My question was about legal costs and I think that that question has been asked.

[212] **Darren Millar:** Fair enough. We will move on to question 14, then.



[213] **Helen Mary Jones:** Unison suggests that the Welsh Assembly Government should develop a Welsh matrix for the settlement of claims—historical ones, I presume—and a timescale for the operation of the scheme to help local authorities to meet historical equal pay liabilities. Could you expand on how that matrix will work and on its purpose?

2.30 p.m.

[214] **Mr MacAskill:** I believe that my predecessor had discussions with the WLGA on the prospect of a joined-up approach. I was not aware that the authorities were meeting collectively under the auspices of the WLGA, and, for your information, the legal bill that they incur is in addition to the legal bills that individual employers are incurring—£40,000 is not the total pot. So, if they are meeting, it is an opportunity to achieve a common approach on the offers. I accept that we felt that the Torfaen offer was a good one, although, for legal reasons, we could not recommend it. However, since the Torfaen offer, the other offers have been ever decreasing.

[215] There is an opportunity here and the matrix is about how you calculate an offer. There have been variations in how offers have been calculated, which determine their value. You can have a general matrix that everyone applies, but an individual employer can apply to that matrix what it believes is its litigation risk. So, you get the general figure, but then it can say, 'We believe that we only have 30 per cent risk, so we will only pay 30 per cent of that matrix.' So, there is some flexibility for the employer, but it also means that there would be a common approach to those offers. So, there is clarity in that you would not have to take legal advice every time you put something together and it would all mix and would potentially speed up the process.

[216] **Helen Mary Jones:** It may be difficult for the WLGA to answer this. I can see how that would have been helpful, but I am a bit concerned that it may be too late now. Do you think that that would help local authorities in trying to decide what their liabilities are and what offers they should make?

[217] **Mr Thomas:** I think that it is shutting the barn door when the horse has bolted. I am sorry to keep repeating myself, but as local authorities, working with our colleagues in the union, we must hunker down and sort out the deal. We will do that at a local level and people are working on that. Let us be frank: human resources departments in local authorities have not been working on key subject matters because they have been dealing with this issue. This is a key issue, but they should also deal with a range of other issues. This has dominated the HR profession over the last three years. As a result, there is no lack of willingness to solve equal pay backpay—people want to solve it, get it out of the way and deal with the forthcoming issues, which, sadly, are the possible downsizing of the public sector workforce. So, as I said earlier, on equal pay at least, for once I can say somewhat confidently that the finishing line is starting to emerge or is in sight, at least. A couple of years ago, we were all getting depressed about where this was headed. We are starting to see the possibility of a conclusion of this issue. However, inevitably, some local authorities among the 22 will take a strong line on this and will fight it and take it to employment tribunals.

[218] **Helen Mary Jones:** As a supplementary question to that, Unison has suggested that this committee's main role should be to recommend those to the Welsh Assembly Government, although we can have a view on what others should do. From what you say, should I assume that the WLGA's view is that there is no further role for the Welsh Assembly Government except to keep providing the additional resources and capitalisation when you need it or could the Minister do something helpful to provide clearer guidance and more support?

[219] **Mr Thomas:** Ann quoted from the exchange of letters that we had. Let us set aside the issues there—that was an example of this committee putting pressure on us, collectively, as local government, to keep our foot on the gas in terms of equal pay. You have performed a useful role in that regard. Going into the next financial environment that we are about to go into, we want these issues done and dusted. We will not only be dealing with this, but with service cuts and massive calls for efficiencies, and so we have to resolve this issue. As I said earlier, there is no silver bullet for this; rather, there are tricky negotiations at a local level, but real progress is emerging and, on the back of that, I hope that we will not need to come here to discuss this again in a year or two.

[220] **Helen Mary Jones:** I have one very brief supplementary question for Unison. You have suggested in your paper some things that I think have merit, and, although there are questions about whether it is too late, they could have been or could even now be done at a national level. Are there any dangers for the unions in participating in those national discussions and agreements, given our findings? I know that things have gone backwards and forwards with the GMB, with the unions having been found to be complicit in negotiating agreements that were prejudicial to their women members. You mentioned in response to either Andrew or Peter that unions sometimes have to take up cases because they know that they might be liable if they do not. You may not be able to answer this, because it may be a question for a lawyer, but would there be anything potentially compromising to the unions for them to say, ‘Let us help the Government and the WLGA to negotiate a national matrix for determining settlements’?

[221] **Mr MacAskill:** In general terms, we need to evidence that we are pursuing equal pay seriously. So, we are taking our members’ claims seriously. The criticism of the GMB was that it had not sufficiently weighted that part of the equation. I think that any steps that we take to try to move this forward can be looked on positively. Having said that, we may end up thrashing it out, getting a matrix together and getting everyone to meet and sign up to it but, in the end, Unison could say, ‘We cannot sign that off; it is very good that you have done something to move this matter forward, but we have some criticisms of it’. So, there are no guarantees.

[222] On the job evaluation and the structures, it is not too late, because even if every one of the 22 authorities had their new salary structures, are we really going to live with 22 different sets of terms and conditions for the 22 authorities in Wales? We are talking about making the connections. We had the south-east Wales project that was looking to bring together human resources, training and payroll. If they had brought them together—and it also included the fire service—you would have had 11 different terms and conditions and pay rates within that new body, which is just ridiculous. There is stuff that we need to do, even if it looks as though it is a bit late, because we need to move towards where we think that we should be, and not just deal with the current situation.

[223] I have just two further points to make. First, the Apprenticeships, Skills, Children and Learning Bill that is going through Parliament is talking about a national negotiating body for school support staff, which could put school support staff on a single grade. Secondly, Gwenda Thomas has announced a social work task group to look at a grade for social workers. All the pressures are about bringing us together and achieving commonality, but what we are overseeing at the moment is disintegration.

[224] **Darren Millar:** With those final comments, if Members have no further questions, we will bring this item to a close. I thank Steve Thomas, Anna Freeman and Dominic MacAskill for the evidence that they have provided, in written form and in this oral session. Anna, did you have a final comment to make?

[225] **Ms Freeman:** I just wanted to ask whether we could have a copy of the Unison

paper. We have been at a disadvantage as a result of not knowing what it contains.

[226] **Darren Millar:** The papers, which are public documents, are available on the internet. I now bring this item to a close.

2.38 p.m.

**Cynnig Trefniadol  
Procedural Motion**

[227] **Darren Millar:** I will ask committee members whether they are prepared to hold the remainder of the meeting in private for us to discuss our draft reports on CAFCASS Cymru and mental health services in the community. 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).*

[228] I see that there are no objections.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 2.39 p.m.  
The public part of the meeting ended at 2.39 p.m.*