

Equality of Opportunity Committee

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Update on the Equal Pay Campaign - Evidence from UNISON Cymru/Wales

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 to the Assembly's Equality of Opportunity Committee on progress on implementing single status and equal pay in Local authorities in Wales.

1. UNISON is Wales' largest public sector union representing over 90,000 public sector workers, 50,000 of whom 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. This will inevitably lead to 22 different salary structures that will result in people, doing the same LA job in Wales, potentially being paid at 22 different rates of pay and having 22 different forms of 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 6 authorities have completed the Job Evaluation exercise and introduced new equal pay proofed salary structures - Caerphilly, Denbighshire, Gwynedd, Neath Port Talbot, Torfaen and Wrexham and. In the case of Wrexham this led to a dispute over Terms and Conditions (Green Book, Part III conditions) with the local authority preparing to issue 90 day termination of contract notices to staff in order to re-employed them on lesser conditions. In the case of Caerphilly and Torfaen this has led to the use of high pressurised tactics to get staff to sign away their legal rights, in exchange for limited 'compensation' payments, through COT3 agreements.
10. Merthyr Tydfil council, when they were unable to get trade union agreement to their package due to concerns that the new arrangements perpetuated sex discrimination, threatened to impose worse proposals without any elements of back pay or protection and also indicated that they were considering derecognising some of the trade unions that organise in the council.
11. Anglesey, Blaenau Gwent, Carmarthenshire, Ceredigion, Conwy, Monmouthshire, and Vale of Glamorgan are expected to complete the job evaluation process sometime this year.
12. In the current financial crisis climate, with projected real terms spending cuts from 2011 onwards and the WAG Local Government settlement for 2010/11 providing some authorities with only a 1% increase in funding, conditions are not favourable for satisfactorily resolving these outstanding equal pay and single status issues.
13. 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 in Merthyr Tydfil and are extremely strained in other Authorities.
14. Some local authorities, Bridgend, Cardiff, Newport, Pembrokeshire and Swansea appear as far away as ever from completing equal pay and single status negotiations.
15. The resolution of this issue has been further complicated by the recent Court of Appeal decision in Bainbridge and Surtees which extends pay protection to women who have been previously discriminated against by recommending levelling them up to the same protection level as men. This imposes an extra cost on LA's if they are to provide protection, for those employees who salary goes down

as a consequence of job evaluation, and deliver a discrimination proofed single status agreement.

16. In respect of payment to Local Authority women workers for past pay discrimination, only nine of the 22 local authorities have made offers for past discrimination - Caerphilly, Torfaen, Neath Port Talbot, Merthyr, Swansea, Cardiff, Rhondda Cynon Taff, Blaenau Gwent and Gwynedd.

17. The offers made were unsatisfactory as they did not meet the sums of money women would have been entitled to if they were successful in their Employment Tribunal claims.

18. The LA Trade Unions recommendation to members was to reject the offer and pursue claims to an Employment Tribunal.

19. Despite the LA Trade Union advice most women accepted the offers made, faced with an immediate payment offer or a larger payment award sometime in the future; a near impossible decision for low paid workers to make.

20. The remaining 13 authorities have so far refused to make any offer of compensatory payments for past pay discrimination - Anglesey, Conwy, Flintshire, Denbighshire, Wrexham, Powys, Ceredigion, Pembrokeshire, Carmarthenshire, Bridgend, Vale of Glamorgan, Newport and Monmouthshire despite the fact that capitalisation monies are available from the WAG.

21. UNISON, to pursue our members legitimate claims for past pay discrimination, is taking individual member litigation against all of these Local Authorities. In Wales, UNISON has 11, 000 cases lodged with the Employment Tribunal. (See Appendix 1 and 2 for fuller details including estimated value of claims and legal cost)

22. The current situation continues to be very disappointing. From a situation of optimism in 2004 where there was an apparent consensus between the LA Trade Unions, the WLGA and the WAG that this issue must be resolved, in many areas we have almost ground to a halt and battle lines are being drawn.

23. The result of this pursuant of an attritional strategy by the majority of local authorities is that millions of pounds of local authorities' monies will be spent on solicitors' bills, with the prospect of further legal expenses and full costs when the claims are considered by the Employment Tribunal. 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.

24. 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.

25. UNISON's full agenda for law reform is set out in the attached Equality Bill briefing and we invite the Committee to endorse the measures in relation to equal pay.

http://www.unison.org.uk/equality/pages_view.asp?did=8197

26. UNISON would recommend that:

WAG uses 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.

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.

Work should be done now to help stop more cases arising in the future, such as having an independent equality impact assessments 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.

27. The Equal Pay Act was passed by Barbara Castle in 1970, 'The requirement for equal treatment for men and women in same employment'. 39 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.

28. 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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Appendix 1

UNISON Equal Pay Claims

This report on equal pay claims follows earlier submissions to the Welsh Assembly. It is set against a backdrop 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 11,000 equal pay claims across the whole of Wales. Claims continue to increase as does the number of members rejecting derisory offers to settle these claims.

Of the 22 Councils in Wales 9 have made settlement offers. These are:- Torfaen, Neath Port Talbot, Gwynedd, Swansea, Cardiff, Blaenau Gwent, Merthyr Tydfil, RCT and Caerphilly.

Two of the above (Neath Port Talbot and Torfaen) have made second round offers due to late implementation of Single Status.

Councils led employees to believe offers were 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 an average of 15% - 20%.

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.

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%. 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.

As referred to earlier, the value of a claim depends upon several factors. Appendix 2 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.

A new twist to offers in Wales is where Councils backdate Single Status but term any backpay owed as "compensation" and then makes payment conditional upon signing a COT3. This compromises all existing and/or potential claims until the end of any protection period.

By labelling backpay as compensation the Council can also avoid making the payment pensionable so depriving employees, especially those approaching retirement, of the full pension entitlement they would otherwise have received. Neath Port Talbot, Caerphilly and

Torfaen have all done this. Torfaen have gone one step further by victimising anyone who refuses to sign a COT3 by assimilating them at lower salary points in their new grades than other colleagues who have acquiesced.

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 very recent Freedom of Information request by UNISON to all Councils in Wales has shown that Councils have admitted to over £2,000,000 of expenditure already. We have no way of actually verifying these figures and so they must be regarded as very conservative estimates.

At the time of writing Rhondda Cynon Taff and Newport Council have still not provided details of their expenditure. They are several weeks beyond the 20 day prescribed time compliance contained in the Freedom of Information Act 2000. Caerphilly County Borough Council has refused to provide the information. Given the huge costs they must have incurred due to various factors, their reluctance is perhaps not surprising. There is little doubt that this figure will increase dramatically once the afore mentioned three Councils comply. UNISON regards this level of expenditure as a waste of public money which could be used to reach negotiated settlements.

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 yet 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.

An Independent Assessor has recently 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. Councils have already declared 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.

As an alternative UNISON is giving Councils the opportunity to minimise further legal costs by having the GMF defences 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