

# Equality of Opportunity Committee

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## Update on Equal Pay

### Introduction and background

The Equal Pay Act 1970 gives an individual a right to the same contractual pay and benefits as a person of the opposite sex in the same employment, where the man and woman are doing like work deemed to be of equal or equivalent value following an analytical job evaluation study being undertaken.

Over the past decade, the trend has been a narrowing of the gender pay gap in Wales. There was an exception in figures published in November 2008 when the Office for National Statistics reported a widening of the gap. According to latest figures published by the Office of National Statistics in November 2009, the gender pay gap for full time employees (excluding overtime and based on mean hourly earnings) narrowed to 8.8 per cent. The figure now stands at 6 per cent for part time employees.

Only Northern Ireland has a narrower gender pay gap for full time employees at 8.5 per cent and Wales has the third narrowest gap in respect of part time employees behind Scotland at 2.8 per cent and Northern Ireland at 5.2 per cent.

The agreed programme of activity announced by the then Minister for Social Justice and Local Government at the Equality of Opportunity Committee in November 2008 was delivered by March 2009. This activity, in partnership with the Wales TUC and the Equality and Human Rights Commission in Wales comprised three actions: to commission and publish research to help promote the benefits to public authorities of dealing with equal pay effectively; a series of regional equal pay workshops and an equal pay event to help share notable practice.

Continuing pay inequality based on gender forty years after the Equal Pay Act came into force is not acceptable. Reliance on legislation will not deliver equality of outcome that needs to be achieved. This is why the Welsh Assembly Government has supported, and will continue to support activities that contribute towards a narrowing of the gender pay gap for the citizens of Wales.

### Equal Pay in Local Government

There are two aspects to the equal pay issue for local authorities. Both need to be addressed before it could be said a satisfactory resolution has been reached. These relate to back pay arrears and introducing, as necessary, revised pay and grading structures.

The position on back-pay differs markedly between individual local authorities and their potential liability relates largely to the historic incidence of bonus schemes within an authority pay structure. If a liability is established for back pay arrears, typically the employees affected are female and work as cleaners, carers and catering staff.

The Assembly Government has made a total of £54 million available within unhypothecated revenue support grant over the three financial years from 2005-06 to 2007-08 to fund the implementation of new single status pay and grading structures. This money has increased in line with the general level of uplift in the annual revenue settlement in the financial years since then.

The Welsh Assembly Government has not made cash funding available to local authorities to meet back pay liability. Support in these cases comes in the form of a "capitalisation direction" from the Assembly Government. This effectively allows an authority to use capital receipts or borrowing to fund the liability. Applications made by local authorities to the Welsh Assembly Government need to satisfy certain criteria and the decision to issue a direction (or not) lies with the Minister for Social Justice and Local Government.

When borrowing occurs to fund the back pay liability, the local authority will still need to fund the debt repayments; in effect they are spreading the cost to the authority over a number of years (usually a 20 year period).

To date the Assembly Government has received requests from seven local authorities for directions. All have been approved up to the full value of the requests (£52.3 million in aggregate). Two authorities have settled back pay liabilities without recourse to a direction. It is clear from my discussions with local authorities that not all who have yet to finalise a liability will seek a direction. No requests for a direction have been received from local authorities during the 2009-10 financial year.

Although approval of a direction is not a cash transaction per se, the value of approved directions does count towards the Public Sector Borrowing Requirement and as such no guarantee can be given over the availability and overall value of the directions. This has been made clear to local authorities.

In January 2009, eight local authorities had yet to complete the job evaluation process as part of reaching single status agreements. Only one was outstanding by October 2009.

Six authorities have completed the process and implemented new pay and grading structures.

Implementation for the remaining authorities is not likely to be until 2010-11.

Nine authorities have settled equal pay liability claims and one is due to settle in 2010-11. It is understood that the remaining twelve authorities have outstanding issues to be resolved and are defending against claims.

## **Moving Forward**

The economic and legislative landscape is changing presenting challenges and opportunities that must be faced together. In the coming years, public authorities at all level of government will be faced with difficult choices as the pressure on the public finances increases. The advances made on narrowing the gender pay gap in Wales cannot be surrendered in this climate.

In my visits to local authorities I have made clear that I wish to see the gender equal pay issue brought to a conclusion. I have emphasised the moral obligation to resolve it as soon as possible. I do, however, recognise fully that this is a very complex issue which has entailed detailed analysis of pay and grading structures and sensitive and often protracted negotiations between employers and union representatives at both local and national level. This has been against a backdrop of changing and still evolving case law resulting from Employment Tribunal decisions, which has increased uncertainty and on occasions required a reappraisal of approach by authorities.

In March I wrote to all local authorities seeking confirmation of their current progress on the implementation of single status agreements; their timetable for completion; and the likelihood of a request for a capitalisation direction. I have received the majority of responses and my officials are following up with those authorities that are yet to respond. When I have a complete picture I will consider what action I can best take to move the process forward more rapidly.

The Equality Act 2010, will, for the first time, make provision for Welsh Ministers to introduce specific public sector equality duties in Wales. In 2009, our key stakeholders were asked what should be included in these duties. There was a clear response that these new duties should seek to remedy continuing pay inequality. Consideration is being given to how best this can be achieved and I look forward to working with the National Assembly for Wales, the Equality and Human Rights Commission, Wales TUC and our other partners in the statutory and Third Sectors in the coming months about how this aspiration can be made a reality.

Legislation in absence of leadership will not be sufficient. I will continue to encourage public authorities to make progress on pay equality during my regular meetings. The Welsh Assembly Government will continue to support the activities of the Equality and Human Rights Commission, the Wales TUC and Local Government to further narrow the gender pay gap. As Minister for Social Justice and Local Government, I will continue to offer leadership and support where appropriate to resolve pay inequity.

**Carl Sargeant AM**  
**Minister for Social Justice and Local Government**