

Health, Wellbeing and Local Government Committee

HWLG(3)-17-09 paper 2

Committee Inquiry into the Implementation of Equal Pay in Local Government – Evidence from UNISON Cymru Wales



UNISON welcomes the opportunity to give further evidence to the Assembly's Health, Wellbeing and Local Government Committee on progress on implementing single status and equal pay.

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 of 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 4 authorities have completed the Job Evaluation exercise and introduced new equal pay proofed salary structures – Caerphilly, Gwynedd, Wrexham and Neath Port Talbot. In the case of Wrexham this is now leading 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 this has led to the use of high pressurised tactics to get staff to sign away their legal rights through COT3 agreements.
10. It is anticipated that Denbighshire and Merthyr Tydfil will be balloting Local Authority Trade Union members on their single status proposals in the near future.
11. Anglesey, Blaenau Gwent, Carmarthenshire, Ceredigion, Conwy, Monmouthshire, Torfaen and Vale of Glamorgan are expected to complete the job evaluation process by the end of 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 2009/10 – providing an average increase in LA budgets of 2.9% but with some authorities receiving only 1.5% increase does not create the right climate in which to satisfactorily resolve these equal pay and single status issues.
13. Local Authorities '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 Flintshire and Pembrokeshire.
14. Some local authorities, Bridgend, Cardiff and Newport are still at least two years away from completing equal pay and single status.
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 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.

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 14 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 over 10, 000 cases lodged with the Employment Tribunal. *(See Appendix 1 and 2 for full 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. The Committee meets at an opportune time. Discrimination law is reserved to Westminster and the UK Government have published the results of their review of discrimination law in the new Equality Bill. The Government Equalities Office launched a consultation on the specific duties of the Equality Bill on 11 June 2009. The consultation period closes on Wednesday, 30 September 2009.
25. 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.
26. 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

27. 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 Committee 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 continues to make capitalisation funds available for one off compensations to meet back pay and equal pay back pay claims.
 - WAG to collate 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 assessment of local authority pay and grading arrangements.
 - Annual equal pay audits should be carried out in all local authorities.
 - Support the UNISON case for Equal Pay law reform during the passage of the forthcoming Equality Bill.

- Whilst acknowledging the positive equal pay conference (held on 11th March) initiated by Brian Gibbons, WAG Minister for Social Justice and Local Government, a special delegated meeting of all parties is necessary to thrash out these difficult issues and for the Minister to use his authority to reiterate the imperative for these issues to be resolved.
28. As was stated in UNISON's earlier submission, the Equal Pay Act was passed by Barbara Castle in 1970, 'The requirement at 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.
29. 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.

Dominic MacAskill
Head of Local Government
UNISON Cymru/Wales
25th June 2009

Unison submission appendix 1

Unison equal pay claims lodged on a council by council basis up to june 2009

COUNCIL	CLAIMS LODGED
ANGLESEY	54
BLEANAU GWENT *	364
BRIDGEND	1171
CAERPHILLY	1545
CARDIFF *	516
CARMARTHENSHIRE	781
CEREDIGION	116
CONWY	125
DENBIGHSHIRE	200
FLINTSHIRE	285
GWYNEDD *	218
MERTHYR *	165
MONMOUTH	169
NEATH PORT TALBOT *	314
NEWPORT	443
PEMBROKESHIRE	272
POWYS	67
RHONDDA CYNON TAFF *	1943
SWANSEA *	1025
TORFAEN *	44
VALE OF GLAMORGAN	206
WREXHAM	204

Current total = 10227

Potential number of additional claims = 34,300

*** = Includes settled claims but confined to Caterers, some Carers and some Cleaners i.e. sections of the manual worker work force. Swansea also included Teaching Assistants.**

Equal Pay Claims – Settlement Offers To Date:-

EMPLOYER	ALLEGED VALUE OF OFFERS IN SETTLEMENT OF CLAIMS	APPROX TRUE VALUE OF OFFERS COMPARED TO REAL VALUE OF CLAIMS
TORFAEN	80% gross	50%
NEATH PORT TALBOT	60% nett	20-30% max
GWYNEDD	30% gross	20%
SWANSEA	30% - 60% gross	15-20%
CARDIFF	50% gross	10-20%
BLAENAU GWENT	34% gross	10-20%
MERTHYR TYDFIL	Sliding scale – max 75% gross	15-40%
R.C.T.	65% gross	10-20%
CAERPHILLY	No figure identified	10-20%

NB. With the exception of Swansea who included Teaching Assistants in their offers, Councils have limited offers to Caterers, some Carers and some Cleaners i.e. sections of the manual worker work force

1. All payments capped at approximately £7,500 which for many further reduced percentage value offer.
2. The percentage figure excludes the following which would be added to a successful employment tribunal claim:

- up to a full 6 years back pay from the date claim lodged
- additional back pay from the date claim lodged to date of tribunal decision (for many this will represent approx 3 more years back pay)
- claims relating to protection or buy out payments afforded to men
- calculation of pay owed based on actual hours worked not average
- inclusion of hours worked as overtime for the duration of years entitlement
- loss of increased pension benefit
- tax and N.I. deducted only in accordance with individual prescribed rate

- award of 8% interest

Summary:

Whilst value of claims vary according to entitlement, typically a woman working full time on the lowest manual worker grade (Grade 1), using a male comparator on same grade but receiving a 50% bonus, would have a claim valued at £34,734 + the add ons awarded by the tribunal. This would put the real value at approximately £55 – 60,000 compared to a capped offer of £7,500.

Unison submission appendix 2

National Assembly for Wales – Health, Wellbeing and Local Government Committee - 2 July 2009

General

Equal pay claims arise when a person of one gender is doing work of equal value to a person of the opposite gender but one is being paid more. It is usually the man that is the higher earner and the woman who is discriminated against.

The Value Of Claims

There is a significant difference between an equal pay back pay claim and receiving back pay as a consequence of being upgraded through Single Status / Job Evaluation.

The latter is usually backdated to 2006 (Caerphilly) 2007, 2008 or even only to 1 April 2009 whereas an equal pay back pay claim affords the difference in pay between the claimant and comparator for a period of up to 6 years from the date the claim was lodged. A successful Employment Tribunal claim would also award additional back pay for the date the claim was registered with the Tribunal to the date the tribunal made its decision.

If this was say a three year wait the award would be 6 years + 3 + 8% interest. The final amount would be reduced by whatever the claimant received from the Council by way of back pay under job evaluation.

Funding Offers

In the main these Councils who have made settlement offers have done so via the provision of capitalisation made available by the National Assembly for Wales. However in spite of very favourable terms the amounts capitalised have been small in total budgetary terms. Substantially improved offers to an increased number of claimants would not cause major financial difficulties and would also be off set by huge savings in legal costs.

The current derisory offers exploit the financial plight of members in the current financial climate but where accepted they leave feelings of resentment.

Defending Claims / Legal Costs

Evidence suggests the Councils have already collectively spent £1,000,000's in legal costs even prior to them making settlement offers. Those costs are now escalating at an alarming rate due to more frequent commissioning of legal experts e.g. leading Councils etc. We would submit that the only gains are solicitors and at the expense of taxpayers and claimants.