

## PERTH AND KINROSS COUNCIL

## Strategic Policy &amp; Resources Committee

29 November 2017

## AUDIT SCOTLAND – EQUAL PAY IN SCOTTISH COUNCILS

## Report by Depute Chief Executive and Chief Operating Officer

**PURPOSE OF REPORT**

This report provides an update on the findings of the Audit Scotland report on equal pay in Scottish Local Government. It confirms there are no outstanding equal pay liabilities for Perth & Kinross Council, and provides reassurance that the Council has fair and transparent pay arrangements with regular equal pay audits.

**1. BACKGROUND / MAIN ISSUES**

- 1.1 Historically, the pay and conditions of Council employees have been governed by different national agreements, for example pay and conditions for manual workers were different to those for administrative, technical and professional (APTC) workers. The differences between these groups of employees arose from national bargaining arrangements with different unions and historically favoured roles traditionally carried out by men. Equal pay claims about these differences were common in the 1990s and Councils made expensive settlements for historical discrimination. National negotiations commenced in the late 1990s to work towards implementing new pay and grading structures which would ensure that Councils complied with equal pay legislation.
- 1.2 In 1997, a UK-wide national agreement was reached to unify the pay structures of different groups of Council employees and this became known as the Single Status Agreement (SSA) or the “red book”. This agreement covered around 1.4 million workers across the UK, and Scottish Councils and trade unions negotiated the Scottish version of the SSA in 1999. By harmonising employment terms and conditions, and grading all jobs on the same pay scale, this agreement sought to eliminate pay inequality for all.
- 1.3 The Audit Scotland audit of equal pay in local government in Scotland focussed on the following themes:
  - Implementation of the Single Status Agreement (SSA)
  - Expenditure by Councils on settling equal pay claims
  - Dealing effectively with equal pay claims and minimising future risks
  - Governance and oversight arrangements of the SSA
  - Lessons for the future
- 1.4 The audit included interviews with a range of staff at 6 sample Councils and requested information from all 32 Councils. Perth & Kinross Council provided detailed information as part of the audit and was not selected as one of the sample councils.

## **2. SUMMARY OF AUDIT FINDINGS**

- 2.1 The Audit Scotland report ["Equal Pay in Scottish Councils"](#) in September 2017 identified a number of key messages as a result of the audit which are as follows:
- 2.2 Under equality legislation, all employers have a legal responsibility to ensure that women and men receive equal pay for work of equal value. In 1999, Scottish Councils and trade unions entered into the Single Status Agreement. The aim of the agreement was to harmonise local government pay and employment terms and conditions, and eliminate pay inequality.
- 2.3 Implementing the Single Status Agreement was a complex process which required each Council to undertake a large scale job evaluation exercise. Councils underestimated the challenges involved and all but one missed the agreed implementation date of 2004. It was not until 2010 that all Councils in Scotland had Single Status in place. This was 11 years after the agreement was signed, with implementation taking twice as long as initially planned.
- 2.4 Audit Scotland found there had been a lack of collective national leadership to overcome the challenges and address equal pay in a timely way.
- 2.5 Councils initially worked on the basis that they could offset the costs of implementing Single Status with savings from changes to staff conditions and by improving staff productivity. Councils received no additional funding to implement their new pay and grading structures. In reality, Single Status brought significant costs and some Councils and trade unions found themselves balancing the risk of industrial unrest with affordability. This meant that some of the approaches taken by Councils when implementing Single Status did not always prioritise pay equality and were later found to be discriminatory.
- 2.6 Councils sought to compensate workers who historically had been unfairly paid by offering payments if they signed compromise agreements. Councils paid around £232 million to approximately 50,000 workers in this way. The payments made were often of a relatively low value compared with the difference in pay over time, so some people refused them. Even while Councils were implementing Single Status, they continued to receive thousands of equal pay claims for historical pay discrimination.
- 2.7 All Councils received equal pay claims after implementation of Single Status. There were many reasons for these claims, for example, claims against pay and bonus protection given to predominantly male workers and discrimination in job evaluation schemes. Since 2004, around 70,000 equal pay claims have been lodged against Scottish Councils. The cost of compensation agreements and settling claims, along with legal fees, amounts to around £750 million. The number of claims made against individual Councils varies widely, and some of this variation can be explained by how actively “no win no fee” lawyers have encouraged claims in different Council areas. At the time of publication of the Audit Scotland report, there were almost 27,000 live equal

pay claims and workers could still potentially make new claims against Councils.

- 2.8 Councils need to be confident they have fair and transparent pay arrangements and take necessary action, such as regular equal pay audits, to deliver pay equality in line with their public sector equality duty. Elected members need to continue to oversee, scrutinise and challenge Councils' approaches to delivering equal pay and reducing the gender pay gap.

### **3. IMPLICATIONS FOR PERTH & KINROSS COUNCIL**

#### **Single Status Agreement**

- 3.1 In October 2005, the Executive Sub Committee of the Council's Strategic Policy & Resources Committee approved a package of proposals in respect of a new pay, grading and benefits package in accordance with the Single Status Agreement. This followed an extensive job evaluation exercise and a comprehensive review of all terms and conditions of employment. The costs associated with the implementation of a new pay structure were partially offset through changes to terms and conditions including revised overtime rates, the removal of weekend enhancements, the removal of all productivity bonus schemes and adopting Inland Revenue mileage rates for staff travel, etc.
- 3.2 The package was offered to the trade unions in November 2005 after which a further extensive period of consultation and negotiation ensued, including an employee consultation survey on the proposals through the Electoral Reform Society in November 2006.
- 3.3 An independent equalities impact assessment on the proposed pay and grading structure was completed in February 2007. The equalities impact assessment confirmed that the proposed pay structure was equal pay compliant subject to reducing the number of increments in the proposed GE1 grade, the phasing out of overlaps and implementation of regular equal pay audits. All recommendations were approved at the Leaders' Meeting on 19 February 2007 and incorporated into the Single Status Pay Structure.
- 3.4 In March 2007, the trade unions representing the Perth & Kinross Council workforce advised that a collective agreement would not be achievable; so the Council determined that the best way to implement within a reasonable timescale was by writing to employees directly seeking their individual agreement to the implementation of a revised Single Status contract of employment from 1 August 2017. 98% of employees agreed to offer to vary their contract. Subsequently the remaining 2% of employees had their contracts of employment terminated and were re-engaged under a new Single Status contract of employment.

- 3.5 Despite the lengthy consultation and negotiation process, Perth & Kinross Council was one of the first Councils in Scotland to implement a comprehensive Single Status package which included both a revised pay and grading structure and a new set of terms and conditions of employment. The extent of changes to terms and conditions was significant in comparison to many Scottish Councils at that time and included revised overtime rates, the removal of weekend enhancements, the removal of all productivity bonus schemes, changes to unsocial hours payments, the removal of essential user car allowances and adopting Inland Revenue mileage rates for staff travel.
- 3.6 Following implementation of Single Status in 2007, regular progress reports on Single Status implementation issues, appeals and equal pay claims were submitted to the Leaders' Meeting. In addition, regular updates were provided to the Council's Single Status Joint Negotiating Committee and the Council's Executive Officer Team.

### **Equal Pay Claims**

- 3.7 Prior to the implementation of Single Status, the Council settled historical equal pay anomalies relating to the Cleaning, Catering and Care Groups. The total cost of this exercise amounted to £795,646 which included a 30% concessionary payment to HM Revenue & Customs (HMRC) to cover employers' and employees' tax and national insurance liabilities. All 205 employees signed legally binding compromise agreements.
- 3.8 Following these payments, 263 equal pay claims were lodged with the Employment Tribunal system against the Council. The majority of these claims were from Social Care Officers and School Support staff ie Early Childhood Practitioners, Support for Learning Assistants and Classroom Assistants. 244 of these claims related to the former pay and grading schemes prior to the implementation of Single Status in August 2007. 19 claims related to the successor Single Status Pay & Grading Scheme by claimants who were challenging the Single Status Job Evaluation outcome for their posts. All 19 of these post Single Status claims were subsequently abandoned by claimants.
- 3.9 A further 97 claims were abandoned and either withdrawn or struck out by the Employment Tribunal (as claimants failed to respond to correspondence), which reduced the number of live claims to 147.
- 3.10 All these claims have now been settled at a total cost of £641,373 which includes a payment to HMRC to cover employers' and employees' tax and national insurance liabilities, and specialist legal fees.
- 3.11 For Perth & Kinross Council, the risk of pre-Single Status claims (ie claims relating to the period prior to 1 August 2007) has now ended because any such claim had to be lodged within a 5 year period, ie 1 August 2012.

- 3.12 The post-Single Status Preservation Agreement applied to those whose pay grades reduced when the Single Status Agreement took effect. This preservation lasted until 2010 – therefore, the risk of any additional claims relating to preservation arrangements ended in 2015. As such, by 2015 there was no residual risk of any new equal pay claims in respect of the pre-Single Status Pay & Grading Schemes.
- 3.13 In addition to its own equal pay liabilities, the Council also contributed to its share of the outstanding equal pay liability for Tayside Contracts. This amounted to payments of £2,006,000 in 2006/07 and £245,000 in 2007/08.
- 3.14 The Council developed a strategy to manage both the Council's liability and its share of the liabilities of Tayside Contracts. The essence of the approved strategy was to determine the probability of a range of financial outcomes based on the limited information at the time. The approved strategy involved earmarking £6 million of the Council's General Fund reserves to provide for the high and moderate risk scenarios. With the resolution of Council and Tayside Contracts equal pay cases, there was no longer a need to set aside a sum within the Council's reserves.
- 3.15 The Council has maintained a robust job evaluation process since the implementation of Single Status to maintain the integrity of the pay and grading structure and ensure compliance with equal pay principles. The Council's job evaluation procedures were the subject of an internal audit in March 2016 which confirmed that adequate and effective internal controls were in place.
- 3.16 Equality Impact Assessments are carried out on any proposed changes to terms and conditions in order to determine any impact on all protected characteristics including gender eg implementation of the Living Wage, Modern Apprenticeship Pay Rates, Holiday Pay plussage.

### **Reducing the Pay Gap**

- 3.17 Perth & Kinross Council was the first Scottish Council to implement regular Equal Pay Audits which have taken place since 2006/07. Initially, these focussed on Single Status employees but have now been extended to include all other employee groups. The purpose of equal pay audits is to identify any differences in pay between men and women doing equal work, to investigate the causes of any differences in pay between men and women doing equal work, and to eliminate instances of unequal pay which cannot be justified. This is a proactive approach which minimises the risk of any future equal pay claims.
- 3.18 The results of Equal Pay Audits have been reported to the Executive Officer Team and to the Equality & Diversity Member Officer Working Group since they were introduced in 2006/7.

- 3.19 Ensuring women and men receive equal pay for work of equal value should contribute to closing the gender pay gap. The Audit Scotland report highlights that, in Scotland, the pay gap between male and female employees is currently about 15% in favour of males. In 2016, the Local Government Benchmarking Framework (LGBF) introduced a new indicator for the Gender Pay Gap which requires to be completed annually by all Scottish Councils.
- 3.20 The most recent equal pay audit (carried out on data from 2016/17) showed that the Council's overall pay gap based on average hourly rates is now 0.4% in favour of female employees. The comparative figure for 2015/16 was 0.6% in favour of males. These gender pay gap figures demonstrate that there are minimal differences between the average pay of males and females within the Council which compares favourably with the national position highlighted by Audit Scotland.
- 3.21 Like all Scottish Councils, Perth & Kinross Council has identified pressure at the lower end of its pay and grading structure because of the Scottish Local Government Living Wage. A review of the pay and grading structure is currently being carried out ahead of any adverse impact on pay differentials for lower graded supervisory posts; this will also ensure the Council has a sustainable pay structure in the medium and longer term. An independent Equality Impact Assessment will be carried out on the preferred grading model to ensure it complies with equal pay provisions.

## 4. RECOMMENDATIONS

- 4.1 It is recommended that the Strategic Policy & Resources Committee:
- Notes the findings of the Audit Scotland report on equal pay in local government
  - Notes the progress made by Perth & Kinross Council in having fair and transparent pay arrangements and regular equal pay audits to deliver pay equality in line with our public sector equality duty

### Author

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### Approved

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## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

<b>Strategic Implications</b>	<b>Yes / None</b>
Community Plan / Single Outcome Agreement	<b>None</b>
Corporate Plan	<b>None</b>
<b>Resource Implications</b>	
Financial	<b>None</b>
Workforce	<b>None</b>
Asset Management (land, property, IST)	<b>None</b>
<b>Assessments</b>	
Equality Impact Assessment	<b>None</b>
Strategic Environmental Assessment	<b>None</b>
Sustainability (community, economic, environmental)	<b>None</b>
Legal and Governance	<b>None</b>
Risk	<b>None</b>
<b>Consultation</b>	
Internal	<b>Yes</b>
External	<b>None</b>
<b>Communication</b>	
Communications Plan	<b>None</b>

### 1. Strategic Implications

Not applicable.

### 2. Resource Implications

Not applicable.

### 3. Assessments

Not applicable.

### 4. Consultation

Internal

- 4.1 The Heads of Finance and Legal & Governance Services have been consulted in the preparation of this report.

### 5. Communication

Not applicable.

**2. BACKGROUND PAPERS**

Audit Scotland – ["Equal Pay in Scottish Councils"](#) September 2017

**3. APPENDICES**

Not applicable.