

To: Audit, Risk and Scrutiny Board

On: 6 November 2017

Report by: Director of Finance and Resources

Heading: Audit Scotland Report - Equal Pay in Scottish Councils

1 Summary

- 1.2 On 7 September 2017, Audit Scotland published a report on 'Equal Pay' in Scottish Councils.
- 1.3 The report details audit information collected by Audit Scotland from across all 32 Councils in Scotland focussing on:
- How Councils implemented the Single Status Agreement;
 - How much Councils have spent on settling equal pay claims;
 - How Councils demonstrate that they are dealing effectively with equal pay claims and minimising risks;
 - How effective the governance and oversight arrangements of the Single Status Agreement; and
 - What lessons can be learned for the future.
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2 Recommendations

- 2.1 It is recommended that the Board notes the contents of the report.
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3 Background

3.1 The campaign for Equal Pay has a long history. The Equal Pay Act 1970 was the first piece of legislation giving the right to pay equality between men and women. This Act made it unlawful for an employer to discriminate between men and women in all contractual terms of employment including pay. The Equality Act 2010 replaced the Equal Pay Act and sets out ways an employee's work can be determined to be equal to that of another employee such as:

- **Like work** – work which is the same of broadly similar
- **Work related as equivalent** – when a job evaluation had rated 2 jobs as being the same of similar
- **Work of equal value** – work found to be of equal value, for example in terms of effort, skill or decision-making.

3.2 Historically, pay and conditions of Council employees were governed by different national agreements. For example, pay and conditions for manual workers differed from those of administrative, professional, technical and clerical employees (APT&C).

3.3 In 1997, a UK wide agreement was reached to unify the pay structures of different groups of Council employees. This became known as the Single Status Agreement or Red Book as it's widely known. Scottish Councils and Trade Unions negotiated the Scottish version of the Single Status Agreement in 1999. By harmonising employment terms and conditions, and grading all jobs on the same scale, this agreement sought to eliminate pay inequality for all.

4.0 Summary of the Key Messages

4.1 A summary of the key messages highlighted by Audit Scotland in their report is detailed below. A statement on the Council's position, where relevant, is noted below.

4.2 Key Message 1

Under Equality legislation, all employers have a legal responsibility to ensure that women and men receive equal pay for equal work. In 1999, Scottish Councils and Trade Unions reached the Single Status Agreement. The aim of the agreement was to harmonise local government pay and employment terms and conditions, and eliminate pay inequality.

4.3 Key Message 2

Implementing the Single Status Agreement was a complex process that required all Councils 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.

The Council implemented Single Status in Renfrewshire in 2006.

4.4 Key Message 3

There has been a lack of collective national leadership to overcome the challenges and address equal pay issues in a timely way.

The Council and its legal advisers managed the majority of claims during the period of 2007-2012, with the vast majority of claims being settled by 2012. The Council has no equal pay claims relating to the implementation of the Single Status Agreement.

Councils as part of the Society for Personnel and Development Scotland work collaboratively with Cosla to share their current position and future plans to address pay inequality.

4.5 Key Message 4

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.

To support the implementation of Single Status Agreement, the Council evaluated, and continues to evaluate jobs under a single system called the Scottish Joint Councils (SJC) Job Evaluation Scheme. The scheme does not determine actual pay, but places jobs in a rank order according to the demands placed upon the job holder. The scheme defines these demands across a range of factors such as knowledge and skills, responsibility, working environment and dealing with relationships. The Council scores jobs and ranks them through our locally agreed pay and grading model. Prior to implementing Single Status in 2006, the Council made the appropriate financial provision to pay for this.

4.6 Key message 5

Councils sought to compensate workers who had historically been unfairly paid by offering payments if they signed settlement 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. ***The Council pro-actively managed the risks associated with equal pay claims, securing mutually acceptable settlement agreements on 2651 claims costing £12.25m. The majority of these claims were settled by 2012.***

4.7 Key message 6

All Councils received equal pay claims after implementation. There were many reasons for these claims, for example claims against pay and bonus protection given to predominately male workers and discrimination in job evaluation schemes. Since 2004, around 70,000 equal pay claims have been lodged against Councils. The cost of compensation agreements and settling claims, along with legal fees amounts to around £750 million. The number of claims made against Councils varies widely. Some of this variation can be explained by how actively 'no win, no fee' lawyers have encouraged claims in different Council areas. There are almost 27,000 live equal pay claims and workers could potentially still make new claims against Councils.

The Council has no live equal pay claims with all claims having been settled.

4.8 Key message 7

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.

To comply with the Councils Public Sector Equality Duty, the Chief Executive, on 20 April 2017, submitted a report to Council entitled 'Equality Outcomes and Mainstreaming Progress Report'. The report detailed steps taken by the Council to achieve its equality outcomes and highlighted areas of good practice as well as areas of focus for the future.

Accompanied with the report was the Council overall gender pay gap, reported as 4.86% in favour of males. A revised Equal Pay Policy was also approved demonstrating the Council's commitment to equal pay and benefits for work of equal value for all employees, and commits the Council to a series of actions to reduce the gender pay gap.

5.0 **Actions for Council**

5.1 The report highlights that Councils must ensure they are fulfilling their Public Sector Equality Duties in relation to equal pay. This includes:

- Publishing an equal pay statement and equal pay policy;
- Assessment the impact of any changes that may affect equal pay;
- Publishing gender pay gap information.

5.2 In complying with good practice, Councils should:

- Use EHRC guidance for example when undertaking equal pay audits and developing equal pay policies;
- Use Close the Gap's guidance on meeting with the Public Sector Equality Duty;
- Ensure their risk registers are up to date;

- Implement 3rd edition of the Scottish Joint Council (SJC) Job Evaluation Scheme.

5.3 ***As part of the 'Equality Outcomes and Mainstreaming Progress Report' submitted to Council on 20 April 2017, the Council followed the EHRC's guidance when it carried out its equal pay audit and revisions to its Equal Pay Policy as part of the duty to comply with the Public Sector Equality Duty. In addition, the Council implemented the 3rd edition of the Scottish Joint Council (SJC) Job Evaluation Scheme in April 2016.***

****END****

Implications of the Report

1. **Financial** – The financial risks to the Council are minimal because of the MOU's currently in place with the employee's representatives. This may change should the Council redesign its current pay and grading model.
 2. **HR & Organisational Development** – HR & OD will continue to support the Council to meet its Public Sector Equality Duty minimising the future risk of equal pay claims.
 3. **Community Planning** – None.
 4. **Legal** – HR & OD will continue to work closely with legal colleagues to ensure that future legislative case updates are considered and risks to the Council minimised.
 5. **Property/Assets** – None
 6. **Information Technology** – None.
 7. **Equality & Human Rights -**
 - (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because for example it is for noting only. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
 8. **Health & Safety** - None.
 9. **Procurement** – None.
 10. **Risk** – As stated in number 2 above. .
 11. **Privacy Impact** – None.
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List of Background Papers

- (a) Equal Pay in Scottish Councils – Report by Audit Scotland
- (b) Equality Outcomes and Mainstreaming Progress Report

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