

Council 22 February 2010

Pay and Grading Programme – Negotiation phase

Service area: Corporate

Wards: Not applicable

1.0 Summary of report

- 1.1 All local authorities are required to implement Single Status, as part of a national agreement agreed by the Local Government Employers (LGE) and trade unions. The purpose is to ensure that there is clear equality in the way all council employees are paid. Single status is required to ensure that the council's pay and grading is fair, transparent and not open to legal challenge. The purpose is to remove the artificial distinction between different terms and conditions of service and to harmonise the differential pay structures which have existed until now.
- 1.2 So far around 60% of local authorities have implemented single status and the remaining ones, including Walsall are preparing for this. The process of implementation requires us to evaluate all types of council jobs against defined criteria. This results in all posts having an overall score. Salary levels can then be assigned to different scores and in this way a new universally applicable pay structure can be established. This process will address historic grading anomalies as all posts are evaluated against the same criteria. The process will also be used on an ongoing basis to ensure there is no future pay drift.
- 1.3 The job evaluation stage of the work has now been done and the next phase of the programme is to consult employees on future pay and grading structures. The purpose of this report is to advise council of the work involved to meet our legal obligations and to delegate authority to enable negotiations to proceed with the objective of reaching agreement with trade unions on a new pay and grading structure. A report will be brought back to Council at the conclusion of negotiations seeking approval to this before implementation. The timescales for this report back will depend on the progress of the negotiations.

2. Recommendations

- 2.1 That Council delegate the authority to enter into negotiations with the Unions, and employee representatives to the Chief Executive, in consultation with the Leader of the Council, and Portfolio Holder for Finance and Personnel.

3. Background information

3.1 Background to Pay and Grading

Prior to 1997, local government employees engaged in “Administrative, Professional, Technical and Clerical (APT&C)” work were employed on conditions of service contained within the “Purple book”. Local Government “manual” workers were employed on conditions of service contained within the “Blue book”. In 1997, national representatives of the Local Government Employers (LGE) and recognised trade unions (UNISON, GMB and TGWU [now known as Unite]) agreed the “Single Status Agreement”. The purpose of the agreement was to seek to harmonise the terms and conditions of employment between the APT&C and Manual employees. Since this date, the national agreement for the former Purple book and Blue book has been contained in the handbook known as the “Green book”.

The Single status agreement, known as the Pay and Grading Programme in Walsall, set out to remove the artificial distinction between the previous two separate sets of conditions of service and to harmonise the differential pay structures applicable to the different staff groups.

A key driving force behind the national agreement was to address the then, emerging equal pay issue. Single Status is underpinned by the legislative demands of the Equal Pay Act 1970. As a result of the equal pay act and current pay structures in local government, there has been a substantial rise in equal pay claims across local government. Since 2007 this has accounted for a 20% increase in claims before employment tribunals nationally.

Equal Pay claims are based around the following three claim types:

- 1) Like Work: Women receiving a lower rate of pay, bonuses, or less favourable terms than a male colleague doing the same or similar job.
- 2) Work Rated as Equivalent: The employer has carried out a job evaluation scheme and the woman’s job has been given the same rating or grade as a man in a completely different job and the woman has received lower pay, bonuses or less favourable terms.
- 3) Equal Value: A woman’s job requires a similar level of skills, knowledge and experience to a male colleague who does a completely different job; and the woman receives lower pay, bonuses or less favourable terms (essentially the same as point 2) but when no JE scheme has taken place.

The council has received to date nearly 800 equal pay claims – which are category 2 and 3 claims. These are a variety of equal pay questionnaires, grievances and ET1 (Employment Tribunal applications). A key defence against future equal pay claims is to ensure that there is one pay structure that is applicable to all and that the grade allocated to a post is given via a systematic process known as job evaluation. This will eliminate sex discrimination in the existing pay structure, and minimise the risk of future equal pay claims.

3.2 National Picture

The NHS has been through a similar exercise known as “Agenda for Change”. The cost of this was supported by the Government. The same level of support is not available for local councils, although councils can apply to capitalise any equal pay settlement costs. Settlements have ranged between £30 and £60 million, but are subject to the individual circumstances of each council. Nationally the LGE has estimated the total cost of pay reviews to be £2.9bn, with £1bn for back pay, £1.5bn on going costs, and £0.4bn protection. The Government have issued £1.1bn of capitalisation approvals since 2006. Approximately 60% of councils have fully implemented Single Status and other councils are in the process of implementing.

3.3 The current pay structure in Walsall

The pay structures within the council that cover former Purple (APT&C staff conditions) and Blue (Manual worker conditions) book staff have developed on an ad hoc basis since the 1970s. This has led to the current pay structure which is no longer fit for purpose because:

- It leaves the council vulnerable to equal pay claims
- There is no consistent basis for determining the grades of individual jobs across the council
- It does not give sufficient flexibility to develop any link between an employees work contribution and the pay that they receive
- It is not transparent in its application.

The council has adapted and added to the nationally set pay structure of 49 spinal column points (individual pay levels). Staff on old blue book (manual worker) conditions are generally on fixed point salaries and staff on old purple book conditions (APT&C staff) are on salary grades of 4 spinal column points. In addition some posts receive additional payments including such things as performance bonus, shift allowances and other job related allowances. Some of these allowances are pensionable and some are not.

The national conditions of service incorporated into the green book are intended to provide a basic standard of conditions of employment throughout the UK. These are listed in part 2 of the green book and include such matters as the sick pay scheme, some leave entitlement and maternity scheme. Those conditions of service which can be negotiated locally if the council so chooses are listed in part 3 of the green book. These include such matters as working arrangements (and related pay) and car allowances.

3.4 Aims of the pay and grading programme

As can be seen from the brief description of the pay structure above, the structure has evolved into an unnecessarily complicated one. The aims of the pay and grading programme, is to create a legal, fair and affordable pay structure. This means that the council needs to create a pay structure that is systematically applied to all staff covered by the agreement (i.e. those formally

on blue book (manual workers) or purple book (APT&C staff) conditions), that the pay structure has sufficient flexibility built within it to respond to future pay structure demands, for example competency based pay. The pay structure needs to be sufficiently flexible to allow fair payment to staff who work non-traditional working patterns. Critically, it needs to be “equal pay proof” so that the council is in a strong defensible position to minimise the risk of future equal pay claims being submitted.

The programme outcomes also include a review of the part 3 terms and conditions to ensure that the council has an employment package that is fair and affordable and attractive in the recruitment and retention market. These conditions of service also need to be sufficiently flexible to support the council in the development of high quality services to citizens.

There are some inter-dependencies between the resolution of the equal pay claims and finalising the pay and grading scheme. It is not possible to comment further on these as they are currently before the ET for hearing.

3.5 Progress of the pay and grading programme to date

The pay and grading programme has been divided in to four key stages

Stage 1 – Job Evaluation

Stage 2 – Pay modelling and pay structure negotiations and defending equal pay claims

Stage 3 – Implementation of revised pay structure

Stage 4 – Mainstreaming the management of the pay structure

During Stage 1, a sample of all jobs in scope of approximately 1500 posts was agreed. This included a 10% sample for large job groups such as care workers, refuse loaders and all unique jobs. Schools support staff have also been included in the programme. All postholders within the sample were asked to complete a job description questionnaire. This is a nationally agreed pro forma, which seeks information about the tasks and responsibilities of the post which can then be scored against the criteria in the nationally agreed job evaluation scheme.

All job description questionnaires have been scored jointly between management representatives and trade union representatives at job evaluation panels. A number of quality checks were then applied to the job evaluation scores to ensure correct application of the job evaluation scheme. This process was in line with national guidance.

These scores have then been used to model different pay structures. This means that various pay structures have been tested against the job evaluation scores so we can assess the equality impact, the costs of the proposal and the impact on the pay level for individual posts.

Stage 1 is now largely complete and stage 2 will shortly commence.

3.6 Next Steps

Stage 2 of the programme is critical to the success of the programme. It is this stage that will include the statutory consultation stage with the trade unions. An initial meeting has been held with trade union colleagues to agree how best to manage the negotiation process to ensure effective and productive negotiations. Management side are seeking to begin the formal consultations with trade unions at the beginning of March. The timeline for the programme would be to implement a new pay structure during 2010/11 financial year, subject to negotiation.

The negotiations will be complex due to the interdependency of a number of the component parts of the negotiations.

To ensure that the responses to negotiation proposals are timely and that the programme is not unduly delayed, approval is being sought to delegate authority to negotiate to the Chief Executive in consultation with the Leader, and the Portfolio holder for Finance and Personnel and the Chief Finance Officer.

The day to day negotiation team would comprise Executive Director (Neighbourhoods) (Jamie Morris), Manager HR Operational Services (Julie Black) and Programme Manager (Richard Battams), with support from the Head of Finance (Vicky Buckley), and Head of Law (Tony Cox). **Any proposed pay structure for implementation would be brought back for Council to consider and approve.**

Where authorities have been unable to reach agreement with trade unions on pay and grading proposals, they have the power to impose the new proposals by dismissing all employees and re-engaging them on the new terms and conditions (some local authorities in the West Midlands have implemented single status in this way). However it is the objective of the programme in Walsall to reach a negotiated settlement with trade unions.

3.7 Overview of a pay structure

The pay structure is more than simply the amount that is paid to staff. It needs to meet key demands:

- The Job: The pay structure needs to reward staff fairly for the responsibility that each person undertakes in doing their job effectively.
- The Market: The pay structure needs to enable the council to be responsive to market demands and rates for particular skill sets.
- The Person: The pay structure needs to reward the acquisition of appropriate skills and experience that are valuable to the Council
- The System: The pay structure needs to be cost effective to maintain and protect the council against future equal pay claims.

3.8 Communications Strategy

Clearly with an issue of this scale and potential impact on employees, good communications will be vital. A detailed communication plan has been developed which identifies the key messages, audiences and channels of communication. Key messages will be delivered in a variety of ways to ensure full accessibility. This is particularly important given the wide diversity of jobs the council employs, in different locations and at different times of the day, and the risk of relying on one single means of communication. A copy of the strategy is available from the council's Communications Unit, Room 34, The Council House.

3.9 Key negotiation issues

The key areas for negotiation are likely involve:

- **Pay Structure** – we will need to consider issues such as how many grades, how wide the grades should be, how staff will be assimilated from old grades to new grades and how people should progress through salary increments in the grade.
- **Allowances** - As stated above, some staff receive additional payments for a wide range of reasons. We will need to review what allowances are paid and how, and whether or not this is already accounted for within the job description itself.
- **Transitional pay arrangements** - It is likely that the grade of some posts will be reduced as a result of the pay modelling. A temporary means of “softening the blow” for those staff whose salary is affected is likely to be a matter for negotiation. There is however some legal constraints on what could or should be agreed.
- **“Part 3” conditions of service** - The working arrangements referred to in part 3 of the green book include, for example, premium rates of pay, shift allowances and standby allowances. Negotiations will consider which, if any, of the conditions of service, should be renegotiated and the interplay between the conditions of service.
- **Equality Impact Assessment** - The overriding principle of the national single status agreement is to ensure there is parity of earnings regardless of gender. An equal pay audit and equality impact assessment on the full range of pay structure proposals must be done.

4. Resource considerations

4.1 Financial

A fundamental objective of the negotiating team is ensuring any agreed new pay and grading structure is affordable. The experience of other local authorities who have implemented a new structure suggests it is highly unlikely that a new structure can be implemented without some additional cost to the current pay bill. The final cost will be dependent on the council's preferred pay structure, number

of losers/winners and any protection arrangements. Costs arising from any increase in the pay bill and any protection payments will be required to be funded from the general fund (revenue).

What the council can afford needs to be set within the medium term financial strategy. The future funding of the public sector is in only likely to reduce both in real terms and in real cash. It is possible that the council will need to reduce its costs by approximately £40m over the next 4 years, adding significant costs to the pay bill will only exacerbate the situation.

When an affordable negotiated position has been achieved a further report will be brought to council for decision. At that point council will have before them the full financial information necessary to make an informed decision.

Schools will be consulted through existing formal arrangements as any changes in cost for schools staff will be borne by schools budgets.

Parallel to negotiations on pay and grading, the council will need to fund the costs arising from any settlement of equal pay claims. Settlements in other authorities have run into millions of pounds. The Government has therefore made available capitalisation directions to authorities. Capitalisation allows councils to borrow to fund the cost of equal pay claims, therefore spreading the cost over the period of the loan and minimising the immediate impact on the budget and council tax.

The council has a finite budget with Government funding set to significantly reduce over the medium term, as such it is imperative that the council negotiates an affordable and equal pay proof structure.

4.2 Legal:

The Equal Pay Act has been in force since 1970. The underlying principle of the Act is that men and women should receive equal pay for equal work. It provides that a woman employed at an establishment in Great Britain is entitled to enjoy contractual terms that are as favourable as those of a "male comparator" in the same employment provided the woman and the man are employed on equal work (being like work, work rated as equivalent or work of equal value).

The 1997 NJC Single Status Agreement undertook to end the historic pay discrimination in local government by reviewing their pay and grading structures to make them equal pay proof. The 2004 NJC pay implementation agreement sets out a timetable for the completion and implementation of pay and grading reviews to be completed by 1 April 2007.

If the negotiations are unsuccessful the council may have to consider dismissing and re-engaging all affected staff. Before this happens there is a statutory requirement to enter into meaningful consultation in relation to any proposed changes. Failure to do so could lead the council open to challenge for failure to consult or unfair dismissal.

If an employee refuses to agree to a change, the employer could terminate the existing contract and offer continued employment under the new terms. The

employee may, however, have a claim for unfair dismissal resulting from the termination of the existing contract. To avoid this, the employer will have to show a fair reason for the dismissal, which is typically the sweep-up “some other substantial reason” where termination and re-engagement is involved. The employer will also need to show that a fair procedure was followed (this could be the statutory dismissal procedure, where this applies).

The employer should also follow collective consultation procedures under s.188 Trade Union and Labour Relations (Consolidation) Act 1992 if 20 or more employees in any one establishment will be dismissed and re-engaged within a period of 90 days. This method is likely to prove administratively burdensome, and may also have a significant impact on industrial relations.

4.3 Staffing

To date the programme has been resourced largely within current staffing resources and fitted around business as usual commitments. As the programme moves into the second phase dedicated time from specialist technical officers will be required to allow the Pay and Grading team to be more responsive and better prepared to engage in productive negotiations.

This programme affects all staff on green book terms and conditions. It includes schools support staff but excludes teachers. This programme will represent significant change for the majority of staff employed by the council, this could well have an impact on staff morale, sickness and staff turnover.

The Apprenticeships, Skills, Children and Learning Act 2009, established the Schools Support Staff Negotiating Body. In short this creates a separate grading structure and set of terms and conditions. This will mean that in the near future, schools support staff will be excluded from the pay and grading programme.

5. Citizen impact

One of the aims of the pay and grading programme is to create a pay structure and set of terms and conditions of service that are attractive in the recruitment market place so that the Council can recruit and retain high quality staff. A further aim is that sufficient flexibility is created to allow the council to respond to and develop quality service delivery to our citizens

6. Community safety

None directly related to this report.

7. Environmental impact

None directly related to this report.

8. Performance and risk management issues

8.1 Risk

If a revised pay structure cannot be agreed the council could remain at risk of equal pay claims. Further, trade unions may ballot their members for strike action which if agreed, will have a direct impact on service delivery to citizens.

8.2 Performance management

None directly for this phase of the programme.

9. Equality implications

The Government have proposed in the Equality Bill a specific duty requiring public authorities with 150 or more employees to publish the gender pay gap in their organisation. This is supplemented by proposed duties to specify how the gap will be addressed. The equality audits which are part of the pay structure development work will highlight the gender gap and the development of the total pay structure will go some way to reducing the pay gap. Any proposed restructure would have to be subject to an equalities impact assessment.

10. Consultation

A formal Joint Negotiation and Consultation Committee (JNCC) has been established since the inception of this programme. Management side and trade union side have worked together productively to achieve the job evaluation scores. It is hoped these productive working relationships will continue during this stage of the programme.

There is a statutory obligation to hold meaningful negotiations with trade union representatives and given the number of staff who will be affected by these negotiations the minimum period for these consultations will be 90 days.

Key stakeholders will be consulted to inform the negotiations.

Background papers

None

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