

**EDUCATION EMPLOYMENT SUB COMMITTEE
26 JANUARY 2010**

**JOB EVALUATION
(Chief Officer : Human Resources)**

1 PURPOSE OF REPORT

- 1.1 To bring to the Sub Committee's attention the litigation risks arising from equal pay claims against the Council and to inform the Sub Committee of the actions of the officers in preparing a revised job evaluation scheme to address these risks.

2 SUPPORTING INFORMATION

- 2.1.1 Reports on the issue of Single Status/Equal Pay and Job Evaluation have been considered by the Council on a number of occasions over the past 3 years which have allowed it to track the national and local situation in these areas. This up to last year, has allowed it to agree that there did not appear to be any overwhelming reason why it should not continue with its existing job evaluation scheme rather than adopting the national scheme preferred by the unions.

Since the summer of 2008 however, a number of new issues have emerged which meant that maintaining the status quo posed a risk to the Council. Therefore it needed to look again at the current job evaluation scheme and consider whether to improve it.

- 2.1.2 The Council established a Steering Group of Chief Officers and HR Heads of Service under the chairmanship of the Director of Corporate Services to carry out a risk assessment of continuing with the current job evaluation scheme and to oversee a new job evaluation pilot scheme.

The Steering Group commissioned a firm of experienced job evaluation consultants to lead the project.

The results of the pilot scheme have been evaluated and reported back to the Council, including a full financial analysis. These results have meant it will proceed with a revision of the existing scheme; this report summarises the main points and issues arising from the pilot scheme and the subsequent report produced by consultants appointed to oversee the project.

3 RISK ASSESSMENT

- 3.1 In looking at a risk assessment, five issues are of prime importance:
- The proximity of neighbouring councils which over the past 12 months have been subject to intense activity by "No win, no fee" lawyers pursuing equal pay cases through grievances raised on behalf of employees. There are now in excess of 1,000 outstanding equal pay claims in Reading Employment Tribunal, Reading and Slough Councils have over 300 between them. The cases have been raised by a legal firm specialising in equal pay claims Action4Equality at Reading / Slough / Southampton / Oxford City/Oxford County Council.

- The receipt by the Council of two equal pay claims in the last few months, one each from Unison and the GMB. Until 18 months ago, the unions locally had been content to endorse the Council's approach to job evaluation and its pay structure. However the pressure of liability claims has made the unions nervous so they are stepping up the pressure to encourage staff to pursue equal pay claims as they target councils which are not, in their view, fully compliant with equality proofed pay structures. It is clear that these two claims may potentially be the beginning of a concerted campaign against the Council on equal pay principles.
- Employment case law is continually changing the rules around equal pay issues with the majority of judgements going in favour of employees.
- Staff on local conditions currently sit outside the Council's job evaluation and grading structure and as part of the workforce they remain a source of equal pay comparators.
- A recent change in the equalities legislation for the Council as an employer which requires it to "promote" equality issues including equal pay.

4 **JOB EVALUATION SCHEMES**

4.1 The Council's job evaluation scheme has been in place since 1997 and has undoubtedly given stability to the Council's grading structure over the years. However it has been subject to criticism in some areas because of concerns about its inability to deal with manual type groups of staff whose jobs involve physical effort, dealing with difficult people or rely heavily on interpersonal/physical skills (eg providing personal care) and also because it is not readily equipped to deal with specialist areas eg Education Advisors etc.

4.2 A completely new job evaluation scheme would be disruptive and turbulent in its impact and it is therefore right to question whether it makes sense to undergo such widespread upheaval affecting the whole workforce to achieve an equality proofed scheme.

The pilot scheme has demonstrated that the Council's current pay structure is vulnerable to equal pay claims. This is because the structure is based on an evaluation scheme which does not reflect modern equalities standards nor fully and fairly reflect all key job features.

Therefore by not developing a revised scheme, (given that the current situation would be difficult to defend in an Employment Tribunal). It is clear from the recent history of equal pay claims in the public sector that individual claims can vary between £6k and £25k. In addition the Council would incur substantial legal fees in highlighting any cases and could also be liable for up to 6 years back pay in any "test" case.

4.3 The pilot scheme has now been completed and costed. It has been developed by amending/extending the Council's existing job evaluation scheme in order to ensure it meets modern equalities standards by fully and fairly reflecting all key job features through introducing 4 new evaluation criteria to add to the Council's existing 7 criteria scheme. It is important to emphasise this approach of adaptation rather than wholesale change ie not opting for a new full scheme because adaptation minimises cost and disruption.

5 SCHOOLS SUPPORT STAFF

- 5.1 This issue does not affect teaching staff. However it is important to implement the suggested revised scheme for school-based non-teaching staff although that is against the background of the need to take into account the pending final decisions at national level over the future pay and conditions of school-based staff – a separate national negotiating body has been created which may create a countrywide pay scales for those staff. Current guidance indicates that that Councils will need to have their own equality proofed structures in place so these staff will be included in the scheme unless and until any other arrangements are made at national level.

6 BACKDATED LIABILITY

- 6.1 All equal pay claims, if proven, carry a potential backdated liability of up to 6 years. There is no doubt that the introduction of a new pay and grading structure will involve considerable activity from unions seeking compensation for staff to match that 6 years worth of liability. Where unions have attempted to broker local deals to settle backdated liability, they have sometimes been sued themselves by individual members often supported by no win/no fee lawyers; unions are often therefore reluctant to enter into such arrangements with Councils preferring instead to let the employer take the initiative in dealing with any individual claims. There is no certainty that the Council will be able to conclude a local arrangement through the amended scheme outlined in this report to mitigate any or all the possible backdated liability. However if the Council allows equal pay claims to proceed through the courts they will automatically impose that 6 year penalty.

7 TRADE UNION REACTIONS

- 7.1 The trades unions have significant problems of their own over this issue. They will be anxious to see the introduction of a new job evaluation scheme and a corresponding change in the Council's pay structure with increased payments to the lower paid, mainly female workers as this is the only way they can protect themselves from equal pay claims. However they are also acutely aware of the financial position of Council. This means that affordability is a problem for both parties as staffing budgets are finite.

In effect often new pay structures can only be introduced at the expense of a reduced number of posts usually through redundancies, recruitment freezes, overtime cuts etc.

8 THE NEXT STEPS - AFFORDABILITY

- 8.1 The case for a revaluation of Council jobs using a revised job evaluation scheme is detailed in the preceding paragraphs. However a key issue is around affordability. Whilst the work on constructing the new scheme should go ahead, the Council does not have to make a decision on the "points to grade" boundaries at this stage. The new scheme will produce a rank order of jobs according to their value, where the judgement is then made to define the actual grades can be a decision which is left until that rank order has been constructed – likely to be in about 9 months time. At that point, discussions about the financial impact and the number of staff who lose or gain from where those boundaries are drawn can be had; that will also encompass consultation about the scale of/time applicable for salary protection.

At that point, the matter will be the subject of a detailed report outlining the results of the evaluation exercise, the options for a new salary structure and the implications of the alternatives identified.

9 FURTHER ADVICE RECEIVED

Legal

9.1 Counsel's opinion has been sought on:

- (a) the impact of not carrying out a job evaluation exercise for the Council and carrying on with the existing pay structure.
- (b) the proposed adaptation of the Council's current scheme to ensure that it was equality and litigation proofed.

Counsel's opinion confirmed that there was a risk attached to the existing pay structure and that the Council's proposed scheme was, as far as possible, litigation proof.

The Committee should be aware that Counsel's advice incurred a premium because of the risks to Counsel's own insurance as this was seen as high value, high risk advice.

Finance

9.2 There are unknown financial pressures if no action is taken to review its job evaluation scheme as more Councils face legal challenge over their schemes. A review of the scheme does not necessarily mean additional cost. However the matter will be dealt with through the Schools Forum.

Equalities Impact Assessment

9.3 The requirement to have an equality proofed pay structure is fundamental.

Background Papers

CMT reports/report of Steve Vale/Deborah Moon dated April 2009.

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