

Report of the Director of Resources

Proposals for Staff Compensation

Summary

1. This report gives an update on the Council's position in relation to offers of compensation to employees who could potentially make claims against the Council under equal pay legislation. As a good employer the council wants to reasonably compensate these employees without them or the council having to go through lengthy and costly legal proceedings. This report will ask the Executive to approve an overall level of compensation to the relevant employees in return for those staff signing a legal agreement that they will take no action against the Council in respect of alleged historical equal pay issues.

Background

2. The council is aware that certain types of manual jobs are comparable to each other, however due to historical practices certain groups of mainly male worker jobs have attracted additions to basic pay such as bonus payments, that have not been available to the mainly female worker jobs. The Council now wants to address these inequalities.
3. Equal pay legislation has been around since the early 1970's, however in recent years the profile of equal pay has increased, in the main due to the legislation evolving through case law but also due to increased awareness of the legislation and a number of high profile cases being brought against public sector bodies, some of which have resulted in multi-million pound pay-outs. In addition, the involvement of no-win, no-fee solicitors in this area has increased the likelihood of litigation.
4. The 1997 Single Status Agreement recognised the need for Council's to modernise their pay structures, partly to address historical inequalities. The subsequent national pay deal in 2004 again attempted to tackle this matter through the inclusion of a requirement for Council's to undertake a job evaluation exercise by April 2007. However such a process will only address inequalities going forward from the date of implementation of a new pay system. Any historical inequalities cannot be addressed in this manner and a strategy is required to reduce potential liabilities and exposure to litigation in this area. If there was a large number of employees who decided to take the council to tribunal on this issue this would take a large amount of resources to deal with.

5. Claims for equal pay are generally limited to six years back from the date of the claim. Although the current pay and grading project will aim to 'future proof' the Council in this area, action is required to resolve historical issues. The Council has considered its position on this matter very carefully and, having taken into account cases elsewhere, has concluded that it is essential that action is taken to reduce the Council's risk in this area by proposing a compromise agreement to settle potential equal pay claims.

Consultation

6. The Council's proposed levels of compensation have been discussed with union representatives from both Unison and the GMB. The position of the trade unions is very complex and has been made more so since an employee of Middlesbrough Council successfully brought a claim of sex discrimination against the GMB in respect of their handling of an equal pay matter. As such both UNISON and the GMB have stated that they will advise their members that, in their view, the Council's offer is the best that can be achieved through negotiation and that employees could potentially obtain more than the Council's offer through litigation. Accordingly the trade union's advice will be to reject the offer, although it will be left to the discretion of individuals to take this advice or not. The Council's compensation offer is affordable in relation to the sums it has set aside and has been calculated using a similar methodology as that used by other Local Authorities in the region who have had acceptance rates of around 90% of those employees offered compensation.

Options

7. The only options available to the Council are to offer compensation or to do nothing. The latter option would not address the Council's risk and potential liability in this area and experience has shown that it is inevitable that equal pay claims will be brought by employees, either supported by the trade unions or no-win, no-fee lawyers. This risk is heightened by the signing of a recent litigation protocol which commits UNISON, GMB, TGWU and Amicus to litigating on this matter.

Analysis

8. The Council has made a financial provision from past budget underspends of £1.59m to deal with this issue. Discussions have taken place with the Inland Revenue and it has been agreed that the Council will not make these payments to staff, assuming they accept the offer, through the payroll system. This means that there will be no effect on any employee's tax code, tax credits or any other benefit that is derived through the payroll system. The income tax and national insurance liability will be met separately by the Council.
9. The Council has researched recent case law on this subject and has considered events that have occurred in other local authorities. This has

led to the council agreeing a list of employees with the trade unions who are considered to be the employees who should be offered compensation for this issue. These employees work in predominantly female workgroups in jobs that do not attract additions to pay such as bonus. This research highlighted a total of 1,209 employees of which 1,072 are female and 137 are male. These employees occupy 1,328 posts as many of these employees are part time and are employed by the council in more than one job.

10. All the employees considered eligible to be offered compensation have been sent a letter on the 25th October notifying them and asking them to check the personal details the council holds about their employment. They have also been notified of the amount they could receive should they decide to accept the council's offer. A dedicated helpline will be operational from the 2nd November to answer any queries these employees may have. Included in the letter is a copy of the matrix of compensation amounts which shows how much each employee is being offered. This amount varies dependent on the manual grade of the job, the length of service in the job and the average hours per week employed in the job since they started it up to a maximum of six years. Any employees who have not had a letter offering them compensation or feel the amount they are being offered is not correct will be dealt with on an individual basis.
11. The Council will be running a number of 'road shows' in early December to which employees will be invited to discuss the offer and receive further information. If an employee accepts the Council's offer of compensation they will sign a legal declaration that they will take no legal action against the Council on this historical issue and acceptance of the offer is in full and final settlement of claims in this regard. The 'road shows' will take place at the Guildhall during the first week of December with possibly a couple of 'mop up' days being held later in the month for those employees unable to come to their original appointment. Employees will be invited to attend at a pre-determined time to receive their cheque and sign the legal declaration, known as a COT3. The Pay and Grading Project Board has decided that employees will not be released from work to attend the event as this would be too disruptive to services, rather an additional £15 will be included in the employee's cheque to reflect an average of two hours pay for attending the event and any travel costs that may be incurred.
12. In addition to the officers required to run the event, including the issuing of cheques, checking of identification etc. the events will also be attended by union representatives who will provide advice to their members and ACAS who will do the same for the non union members. This is a requirement of the legal process.

Implications

13. The following implications are relevant to this report

Financial - The likely cost can be met from the reserve of £1.59m that has been set aside from previous budget underspends, any unexpected additional amounts that have to be paid over this amount will have to be met from the council's reserves. More detail on the financial implications are contained in confidential Annex A.

Human Resources (HR) - The Head of Human Resources has been fully involved and consulted on this process and is in full agreement with the recommendations of this report.

Equalities – It is essential that the Council addresses the inequalities in its pay structures and the proposal to address this matter is therefore supported.

Legal - The Head of Legal Services has been fully involved and consulted on the processes described in this report.

Crime and Disorder - There are no implications.

Information Technology (IT) - There are no implications.

Property - There are no implications.

Other – There are no other known implications.

Risk Management

14. The Council's current risk in this area is high and as such immediate action must be taken. The action proposed in this report is expected to reduce the risk to medium to low. It is recognised that not all employees who could make a claim against the Council will accept the Council's offer and instead will pursue individual claims through litigation. This will involve increased officer time and legal costs in defending any claims and potentially an award of compensation greater than that being offered by the Council. Similar offers made to the same groups of employees at other local authorities have resulted in over 90% of employees accepting the compensation offer and if the same result is achieved at York, the remaining outstanding claims will be dealt with on an individual basis.

Recommendations

15. The Executive is asked to:
 - 1) Endorse the above approach to make offers of compensation in full and final settlement of the Council's liabilities in respect of historical equal pay issues.
 - 2) Authorise the use of the existing financial reserves of £1.59m that have been set aside to address this issue and that if this amount is exceeded then to fund any remaining compensation from the council's general reserve.

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Report Approved

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Wards Affected: None

All

For further information please contact the author of the report

Background Papers: