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## Staffing Matters and Urgency Committee

9th May 2008

Report of the Director of Resources and Deputy Chief Executive

### Equal Pay Settlements

#### Purpose

1. This report is seeking approval to agreements that have been reached with four firms of solicitors who are acting for clients who have equal pay claims in against the Council. The Council was due to defend these claims at an employment tribunal commencing on 21<sup>st</sup> April 2008, however after lengthy negotiations it has been possible to reach agreement on settlement terms and draft Memorandum's of Understanding have been agreed so the tribunal can be deferred. To proceed with the settlement and to avoid the tribunal being reconvened the agreements need formal approval.

#### Background

2. Work on this equal pay project commenced as far back as Summer 2005 with an initial look at what issues were facing other councils, particularly in the North East of England. A vast amount of work then had to be done to look at all pay practices in this area to assess the risk that a liability may exist, and what should be done about it. After taking legal advice and thoroughly researching this issue it was decided to negotiate levels of settlements with the Trade Unions in advance of mass tribunal claims being lodged which could have potentially cost many more millions of pounds to deal with than what has actually happened in York.
3. Offers of compensation for settlement of cases that may have potentially led to equal pay claims in employment tribunals were made to employees in December 2006 and January and March 2007. Offers were made to 1,411 employees of which 1,279 accepted which is an acceptance rate of 90.6%. At the time 132 employees declined the council's offer and a further 23 employees who were not made an offer as the council thought they did not have a robust equal pay claim employed solicitors to pursue their claim through an employment tribunal.
4. The legal agreements signed by those who accepted were to cover 6 years back from 31<sup>st</sup> March 2007. As the new pay and grading system was not introduced on 1<sup>st</sup> April 2007 a potential new liability for equal pay arose and further offers of compensation had to be made. The climate around this issue had changed and a review of the levels of compensation being offered in other council's in the region was made which resulted in the council increasing its offer from that made in the previous year. These further offers of compensation were made to the same groups of employees as before and covered the period 1<sup>st</sup> April 2007 to 31<sup>st</sup> March 2008. There were 1400 staff who were made offers but 134 did not show up and 16 refused the council's offer at the event.

5. Over the year since the original offers were made further claims have been received via solicitors for a further 80 posts, mainly from staff who had accepted the first offer of compensation and signed the first legal agreement or from staff who we had not made offers to, which meant in total there were 235 cases that had been submitted to employment tribunal. A date was set for a two week hearing commencing on 21<sup>st</sup> April 2008.
6. There were several good reasons to try to negotiate a settlement prior to tribunal while still preparing our defence should they break down. These being, the expense of having to prepare the legal arguments and employ barristers to defend the council's position, there are risk and reputational issues and a tribunal ruling would be a fairly blunt win or lose, whereas negotiation gave the opportunity to take account of the relative strengths of different groups of cases. Therefore it was decided to enter into negotiations, assisted by the council's legal advisers on this issue, Dickinson Dees, with all the solicitors to try to reach a settlement prior to the tribunal hearing.

## **The Settlement**

7. The four firms of solicitors involved are Thompson's representing Unison members, Whittles representing GMB members, Stefan Cross solicitors based in Newcastle and one case from the York based Hetherton's.
8. The negotiations had the objective of producing a Memorandum of Understanding between the Council and each firm individually outlining the principles of the settlement offer but not individual calculations for each client as this can take time and can be done once the deal has been agreed.
9. Memorandum's of Understanding have been drafted for agreements with Thompson's, Stefan Cross and Whittles; Hetherton's only have one case so this will be dealt with on an individual basis. Stefan Cross and Whittles have agreed the settlement but at the time of writing this report Unison are awaiting approval from their national headquarters before they can agree the deal.
10. The contents of the Memorandum's are confidential between the Council and the Solicitors and their clients, however it is at a similar average basis to the offers of compensation that were offered to staff in March 2008. Also those claimants who it is considered have a weaker case against the council are offered a lower level of settlement than those with a more robust case. However in the Memorandum it is made clear that the council does not accept any liability or that it has contravened equal pay law.

## **Financial Implications**

11. The council has earmarked just over £4m, including a £1.5m provision made from a prior year underspend, to deal with the equal pay issue and to date has paid out £2.910m including tax and national insurance for the events in December 2006, January and March 2007 and March 2008. A rough estimate of what the cost of payments will be under the Memorandum's of Understanding is between £1.1m and £1.3m depending on evaluation of each claimants case. In addition there is the cost of making the compensation payments to those who have not yet accepted the council's second offer in March 2008, assuming the council's original

offer is accepted this will cost £400k. An analysis of the equal pay cost and funding is shown in the table below.

| <b>Equal Pay Costs</b>              | <b>£m</b>    |
|-------------------------------------|--------------|
| Already Paid                        | 2.910        |
| Solicitors Settlements              | 1.300        |
| Outstanding from March 2008         | 0.400        |
| <b>Total</b>                        | <b>4.610</b> |
| <b>Equal Pay Funding</b>            |              |
| Equal Pay general fund provision    | 1.500        |
| LCCS provision                      | 0.090        |
| Capitalisation                      | 1.069        |
| Contribution from 'one-off' budgets | 1.398        |
| <b>Total</b>                        | <b>4.057</b> |
| <b>Shortfall</b>                    | <b>0.553</b> |

12. The first option for funding the shortfall will be to apply to the Government for a further capitalisation request so the council can borrow initially and repay the borrowing from the budget that has been allocated for the on-going cost of pay and grading. Bids for capitalisation have to be with Government by the end of May 2008. In previous years bids for capitalisation have been heavily oversubscribed so there is no guarantee that the council will receive the amount it bids for. If the bid for capitalisation is not successful the shortfall will have to be met from the forecast underspend across the council in 2007/08.
13. Comparative research with other councils has shown that by making offers of compensation in advance of mass tribunal claims from solicitors has enabled the council to settle the vast number of claims without incurring excessive legal costs and has assisted in containing the overall cost to the council while still making offers that are attractive enough to encourage staff to accept them. York has been particularly successful at this and if the eventual cost is close to the £4.6m estimate then this will be extremely good value for money.

## **Future Risks**

14. Although the vast number of claims and workgroups where there is the biggest potential liability will have been resolved with these settlements there are still risks in this area that may need to be addressed.
15. There are still 150 staff outstanding from the March 2008 event who have yet to settle, however this risk is considered small as the council's offer to these people is in line with the memorandum of understanding principles so it is unlikely that these staff will be able to obtain a higher level of compensation if they employ a solicitor.
16. Some white collar staff may make equal pay claims now the results of the pay and grading exercise are known (known as 'equal value claims'). Legal advice suggests that it is a far more complex, costly and lengthy process for these staff and therefore the risk is less immediate.
17. There are several legal cases in the appeals process at present and the results may not be known for some months yet, these may have an adverse effect on the

equal pay situation and therefore these need to be closely monitored. In January the Court of Appeal heard two related appeals on the issue pay protection and job evaluation. The judgement is expected shortly and will require careful analysis.

## Implications

- **Financial** – These are addressed at para 10 above.
- **Human Resources (HR)** – The principal HR implications are noted in the main body of the report. HR advice has been integral to the equal pay project and HR staff have been fully involved in the process. Settlement using the Memorandum of Understanding provides an opportunity to successfully manage the financial, employee relations and reputational risks associated with these equal pay claims. While other areas of risk will remain (see paragraphs 16 and 17) the approach recommended in this report closes off another major area of potential equal pay liability and further builds on our positive relationship with the trade unions. The alternatives carry much higher risks in all these respects.
- **Equalities** – Addressing equal pay issues is a key part of the equalities agenda.
- **Legal** – The principal legal implications are noted in the body of the report. If the Council does not honour the Memorandum of Understanding, outlined in paragraphs 6 to 9, the 235 tribunal claims mentioned in paragraph 4 would be re-listed for a hearing which would be likely to take place later in 2008.

The other legal risks identified in the report, claims based on pay protection arrangements (paragraph 17) or future equal value claims (paragraph 16) will still exist if the proposed settlement is approved. However, a settlement which avoids the need for a tribunal hearing will improve the Council's position with regard to both risks.

- **Information Technology (IT)** – There are no IT implications
- **Property** – There are no implications for property

## Recommendations

Staffing Matters and Urgency Committee is asked to:

- Approve the settlement reached with solicitors as outlined in paragraphs 7 to 10
- Approve the respective payments to equal pay claimants (paragraph 11) funded as outlined in paragraph 12.

Reason: To avoid the tribunal being reconvened.

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### Chief Officer Responsible for the report:

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Report Approved



Date 8/5/08

**Specialist Implications Officer(s)**

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**Wards Affected:** *List wards or tick box to indicate all*

All



**For further information please contact the authors of the report**

**Background Papers:** None

**Annexes:** None