

Equal pay in Scottish councils

Prepared by Audit Scotland
September 2017

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About equal pay

What is equal pay?

The campaign for equal pay has a long history. Over time, women have often received less pay than men for doing comparable jobs. The Equal Pay Act 1970 was the first piece of legislation enshrining the right to pay equality between women and men. This Act made it unlawful for an employer to discriminate between women and men in all contractual terms of employment, including pay. **The Equality Act 2010** replaces the Equal Pay Act 1970. All employers, public and private sector, must comply with equal pay legislation.

The Equal Pay Act 1970 set out ways an employee's work can be determined to be equal to that of another employee. These are restated in the Equality Act 2010 as:

- like work – work that is the same or broadly similar
- work rated as equivalent – when a job evaluation has rated two jobs as being the same or similar
- work of equal value – work found to be of equal value, for example in terms of effort, skill or decision-making.

Equal pay in councils

Historically, the 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 (APT&C) workers. These differences between groups of employees arose from national bargaining arrangements with different unions and historically favoured roles traditionally carried out by men. Equal pay claims about these differences were common in the 1990s and councils made expensive settlements for historical discrimination. National negotiations in the late 1990s began to find a new structure that would ensure councils complied with equal pay legislation.

What is the Single Status Agreement (SSA)?

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 (SSA) or the 'Red Book'. This agreement covered around 1.4 million workers across the UK. Scottish councils and trade unions negotiated the Scottish version of the SSA 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.

Guiding principles

The guiding principles for the Single Status Agreement are to support and encourage the following:

- **High-quality services delivered by a well-trained, motivated workforce with security of employment. To this end, councils are encouraged to provide training and development opportunities for their employees.**
- **Equal opportunities in employment; equality as a core principle that underpins service delivery and employment relations; and removing all discrimination and promotion of positive action.**
- **A flexible approach to providing services to the communities while meeting the needs of employees, as well as employers.**
- **Stable industrial relations and negotiation and consultation between councils as employers and recognised trade unions.**

Source: *Single Status Agreement*, Scottish Joint Council, 1999

About the audit

This audit examines equal pay in local government, focusing on the following five themes:

- how councils implemented the Single Status Agreement (SSA)
- how much councils have spent settling equal pay claims
- how councils demonstrate that they are dealing effectively with equal pay claims and minimising future risks
- how effective the governance and oversight arrangements of the SSA are
- what lessons can be learned for the future.

This audit provides an insight into how the SSA has been implemented. But it does not investigate councils' job evaluation schemes, or consider individual staff terms and conditions at councils.

Although it reports on the number of equal pay claims, it does not look at individual claims, or make audit judgements on past litigation.

We reviewed a range of documents during our audit. We interviewed a range of staff at six sample councils and requested information from all 32 councils. Data for costs relates to financial years 2004/05 to 2015/16. Other data such as number of claims lodged relates to 2004/05 up to 30 September 2016. **Appendix 1** has more information about our methodology.

In carrying out this audit, we faced considerable difficulty due to the lack of good-quality data relating to the implementation of equal pay.

Equal pay and the gender pay gap are different but related issues. Equal pay focuses on discrimination where a woman is paid less than a man for doing the same or broadly similar work, work of equal value or work rated as equivalent. The gender pay gap calculates the difference between men and women's earnings and presents this as a percentage of men's earnings. The gender pay gap is influenced by a range of factors such as:

- occupational segregation, where women are still more likely to be in low-paid jobs
- unequal caring responsibilities
- a lack of flexible working, which makes it difficult to combine caring with employment
- men continuing to make up the majority of those in the highest paid and most senior roles.

The factors that contribute to the gender pay gap have not been the focus of this audit, but where appropriate we highlight the links between equal pay and the gender pay gap.

Key messages

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.

- 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.
- 3.** There has been a lack of collective national leadership to overcome the challenges and address equal pay issues in a timely way.
- 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.
- 5.** Councils sought to compensate workers who had historically been unfairly paid by offering payments if they signed compromise 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.
- 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.
- 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.

Single Status Agreement

Pay inequality is rooted in long-standing traditional attitudes about women's place in society

Historically, women have often received less pay than men for doing comparable jobs. Many social and economic drivers led to discriminatory pay systems and the long-standing pattern of inequality. During the 1920s and 1930s, UK policy even reflected this practice of lower wages for women. Fundamentally, society often undervalues women's competencies and skills. In the local government context, roles predominantly done by women, for example catering, cleaning and caring, had lower pay scales than male-dominated roles such as grave-digging or refuse-collecting, even though they required similar skill levels. The campaign for equal pay continued throughout the decades, and the Equal Pay Act was passed in 1970. This prohibits any less favourable treatment between men and women in terms of pay and conditions of employment. Equal pay provisions are now in the Equality Act 2010.

In the late 1980s, councils attempted various measures to comply with legislation and address equal pay issues, for example by putting job evaluation schemes in place for manual workers. This exercise re-valued some women's jobs, and placed them on the same grade as jobs done by their male colleagues.

However, many of the male-dominated jobs included **bonus schemes** or attracted other allowances, providing men with extra pay. This meant that, even where female-dominated roles had been re-valued, women continued to receive less money than their male colleagues for work of equal value.

Background to bonus schemes

These locally negotiated schemes were initially introduced in the 1960s to address low pay and productivity within public sector manual working at a time of pay freeze. The schemes were typically applied to full-time roles carried out by male manual workers. So, for example, refuse collectors often received bonuses, while women in similar-level jobs, such as cleaning, did not. Over time, councils stopped monitoring productivity and the bonuses became an expected part of those workers' pay.

'Access to bonus payments is a crucial factor in determining employee earnings. Overall, more than half of male full-time manual staff receive bonuses, compared with only five per cent of female staff. According to a 1996 survey of council manual workers by the Local Government Management Board, bonus payments represented 15 per cent of average male earnings compared with just over one per cent of female earnings.'

Increasing equal pay claims and difficulties in eliminating pay inequality led to single status being agreed

Before the SSA, councils used different pay and grading structures across manual workers and administrative and clerical workers (APT&C); this made it difficult to identify and eliminate pay inequalities for similar work between these workers. In the 1990s, equal pay claims resulted in expensive settlements, mostly in relation to women being excluded from male-dominated bonus schemes. This led Scottish councils and trade unions to agree the SSA in 1999. The SSA replaced the old separate agreements and bargaining arrangements for different occupational groups, manual and APT&C employees. It aimed to harmonise both pay and employment terms and conditions and sought to eliminate pay inequality for all.

The original SSA signed in 1999 specified that single status should be in place by April 2002. This proved too ambitious and a revised date of April 2004 was agreed between councils and trade unions (**Exhibit 1, page 8**).

As separate employers, councils across Scotland took individual approaches to implementing single status and each one followed local processes to reflect its own circumstances. The Scottish Joint Council (SJC) issued guidance to help councils with their local implementation of the SSA. In 2006, an inquiry by the Scottish Parliament's Finance Committee into the cost of single status reported that unions preferred a national agreement covering all aspects of single status, but that councils sought to have local flexibility in all arrangements.¹ The Finance Committee recommended that councils, unions and COSLA urgently enter into discussions at a national and local level, facilitated by the then Scottish Executive, to ensure implementation within 12 months. There is no evidence this recommendation was taken forward, highlighting the lack of collective leadership nationally.

1. *4th Report, 2006 (Session 2): Report on the Financial Implications of the Local Authority Single Status Agreement*, Finance Committee, Scottish Parliament, 2006.

Exhibit 1 Councils' Single Status Agreement implementation dates

2003
South Lanarkshire

2004

Agreed national SSA implementation date

2005

2006

East Ayrshire
Glasgow City
North Lanarkshire
Moray
Falkirk

2007

Aberdeenshire
Renfrewshire
Fife
East Renfrewshire
North Ayrshire
Perth and Kinross
West Lothian

2008

Argyll and Bute
East Dunbartonshire
Angus
Dundee
Highland
Orkney Islands
East Lothian
Eilean Siar
Inverclyde
Scottish Borders

2009

Stirling
West Dunbartonshire
Shetland Islands
Aberdeen City
Midlothian
South Ayrshire

2010

Clackmannanshire
City of Edinburgh
Dumfries and Galloway

Some councils' implementation dates were backdated:

- Renfrewshire - 1 April 2006
- East Renfrewshire - 1 July 2006
- Orkney Islands - 1 April 2007
- Eilean Siar - 1 April 2007
- Dumfries and Galloway - 1 April 2009

Source: Audit Scotland information request to Scottish councils, 2016

Councils were required to undertake an extensive job evaluation as part of implementing single status

Before the SSA was implemented, there were separate bargaining arrangements in local government for pay and terms and conditions of different groups of staff, for example, manual workers and APT&C. This approach to pay and collective bargaining was not unique to local government. Before implementing Agenda for Change, the NHS had more than 20 committees bargaining separately for different groups of staff such as nurses and allied health professionals.

In 1993, there was a significant test case in England where female senior NHS speech therapists named male senior pharmacists and male clinical psychologists as comparators in their equal pay claim.² The Court of Justice ruled that an employer could not rely alone on the fact that the two jobs were paid according to two different collective bargaining agreements as a defence to comparing different occupations. To help deal with any inequalities in their approach to remunerating different groups of staff, employers across the public sector began introducing new **job evaluation** schemes.

In 1999, to help councils implement SSA, the SJC developed a national job evaluation scheme (JES). Councils did not have to use the national scheme but most did. South Lanarkshire Council had established its own scheme before the national JES was developed. Glasgow City Council and the City of Edinburgh Council used other schemes. Regardless of the scheme, if done correctly job evaluation should have provided assurances that a council had a fair and transparent equal pay structure and protected it from future equal pay claims.

Developing a new pay and grading structure that was fair and accurate took time. But this aspect of the single status programme proved more time-consuming for some councils than others. For example, the number of jobs councils had to evaluate varied. Some larger councils had thousands of different types of jobs to evaluate, whereas others had only hundreds.

What does job evaluation entail?

A key part of single status involved councils evaluating jobs under a single system that provides a consistent approach to defining their relative worth across the whole organisation.

Job evaluation does not determine actual pay, but places jobs in a rank order according to overall demands placed upon the job holder.

The SJC's JES scheme defines these demands across a range of factors such as knowledge and skills, responsibility, working environment, and dealing with relationships. Councils score local jobs and rank them through their locally agreed pay and grading structures. This approach across local government differs from the NHS's job evaluation scheme under Agenda for Change, which had a central negotiating group and enabled most jobs to be matched to nationally evaluated profiles.

Once each council had completed its job evaluation exercise for single status, it transferred manual and APT&C employees to the new single pay and grading structure.

Councils were expected to evaluate jobs and implement their pay and grading structures under the SSA in agreement with trade unions.

Some councils and trade unions faced difficulties reaching agreement on specific job evaluations and on new terms and conditions. This led to protracted negotiations and some councils faced industrial relations issues such as work-to-rule and industrial action. Our case study on **City of Edinburgh Council (Appendix 2)** and **The Highland Council (Appendix 3)** highlights how different the process was depending on local challenges. Some councils reported that dealing with the protracted and difficult negotiations on grading structures, along with equal pay claims, put a significant strain on their HR resources. Trade unions also faced this problem.

In its inquiry into the cost of single status in 2006, the Scottish Parliament's Finance Committee found that councils and unions failed to engage properly in constructive negotiations to implement single status agreements.³ Ultimately, only eight councils introduced their new pay and grading structures in agreement with trade unions.

Councils faced difficulties in funding the changes under the SSA, slowing progress

Another factor in the slow progress in moving to single status pay and conditions was the cost. Councils did not receive any additional money to implement these new pay

and grading structures. COSLA pay circulars in 2000 set out the intention to negotiate new pay structures on a cost-neutral basis.⁴ In signing the SSA, councils and unions expected to offset the additional cost of addressing pay inequalities for one group of staff (predominately women) by modernising their workforces, reducing the pay of another group (predominately men), or doing both. In 2006, COSLA reaffirmed to the Finance Committee the intention to deliver single status on a cost-neutral basis.⁵

South Lanarkshire Council reported that it had managed the impact of single status on its budget by implementing it alongside a programme of Best Value reviews.⁶ These delivered savings to offset the cost of single status. Councils considered various other measures to offset costs, such as recruitment freezes, encouraging staff to reduce their hours and rationalising terms and conditions. In reality, councils found it difficult to deliver single status on a cost-neutral basis. Some councils estimated the impact on their own local payroll. For example, the City of Edinburgh Council estimated it would add around £10 million each year to its wage bill. But nationally, the full cost of single status is unknown. There is no evidence of the cost to councils being estimated at a national level using cost modelling.

Negotiations with trade unions over cost-offsetting measures proved long and difficult. Our case study of implementation in **City of Edinburgh Council** and **The Highland Council** highlights these difficulties. Trade unions had to balance a number of priorities during the discussions with councils about new pay structures. In striving for equal pay, they were both representing their women members who were pursuing equal pay claims and trying to negotiate protection for the salaries of their male members.

The delays in implementing the SSA resulted in prolonged inequality and had financial implications. In 2004, councils began making compensation payments where they knew workers had been unfairly paid, generally to female manual workers who had been excluded from bonus schemes (**Exhibit 2, page 12**). In accepting these payments, workers were required to sign compromise agreements (now referred to as settlement agreements). Around 50,000 employees received this type of compensation.

In accepting compensation payments, employees agreed not to pursue claims with the Employment Tribunal Service (ETS). In 2003, amendments to the Equal Pay Act extended the limit on compensation for back pay from two to five years. In councils where the implementation date for SSA slipped they made additional compensation payments to female workers. These payments covered the gap for the period between the original date of SSA implementation in 2004 and the actual date that staff moved across to each council's new pay structure.

In 2009, a Local Government and Communities Committee inquiry into Equal Pay in Local Government reported that compromise agreements had not always been accepted by employees because settlement offers were too low.⁷ No national and comparable data about the amount paid to employees in compensation is available.

However, the Allen and others v GMB tribunal case found that the settlements were much lower than the real value of employees' claims.⁸ In some cases employees

received 25 per cent or less of the value they could have been entitled to. When compromise agreements were not reached, many workers went on to lodge an equal pay claim.

4. **Industrial Relations: 112000, 2000 pay negotiations – local government employees**, Personnel Services Circular, COSLA, February 2000.
5. **4th Report, 2006 (Session 2): Report on the Financial Implications of the Local Authority Single Status Agreement**, Finance Committee, Scottish Parliament, 2006.
6. **Efficiency Statement 2006/07**, South Lanarkshire Council, 12 September 2007.
7. **12th Report, 2009 (Session 3): Equal Pay in Local Government**, Local Government and Communities Committee, Scottish Parliament, June 2009.
8. **Allen and others v GMB** [2008] EWCA Civ 810; [2008] ICR 1407.

Councils' strategies for protecting some workers' pay were later found to be discriminatory

In implementing their JES, councils faced criticism from unions about the lack of clarity and information about how some roles were scored and evaluated. This affected the willingness of unions and councils to agree on pay and grading matters and impacted on the time it took to implement the SSA.

The outcome of the job evaluation for some workers was that pay for their new grade was lower than their old grade, particularly for the male-dominated roles that had historically received bonuses. Councils were concerned that any widespread pay cuts could bring about industrial relation difficulties and in extreme circumstances lead to industrial action. To lessen the impact for those who would lose earnings, councils used a range of measures, for example they **protected pay** for some staff, predominately male, at the higher level for a period of time. This practice is known as red circling. SJC guidance stated that payment protection could be offered by councils for up to three years, but not how councils should apply it. As a result, the way in which councils used payment protection varied across Scotland.

Some councils protected basic pay and, despite a history of claims about women being excluded from bonus schemes, most councils also protected bonuses for a period of time after transferring to new pay structures.

Another approach councils adopted was to enrich some roles so that they would be graded at a level that prevented or minimised any potential loss in salary for some male workers.

The option of increasing the women's pay to the same level as the men – often referred to as levelling up – was consistent with the intention of single status and equal pay legislation. Councils did not pursue this option on the basis of affordability, although

there is limited evidence to demonstrate that they fully costed this option. Ultimately the measures councils adopted kept men's salaries higher than women performing equivalent roles.

Protected pay

Protection at assimilation on to the new spinal column for all employees including bonus earners will be for three years on a cash-conserved basis. This timescale has regard to the increased potential for equal pay claims should protection be allowed to extend beyond that period.

It is important to emphasise that bonus schemes may not in themselves be discriminatory provided they meet real business objectives and access is available to all. Councils should therefore be free to introduce council-wide reward strategies where this is considered desirable and following the full involvement of the trade unions.

Source: *Single Status Agreement*, Scottish Joint Council, 1999

Pay protection arrangements were the focus of various legal cases

From 2007 onwards, legal challenges started to be made to locally negotiated arrangements for men whose pay was protected. In the cases of *Redcar & Cleveland Borough Council v Bainbridge and Others*, and *Surtees and Others v Middlesbrough Borough Council*, the Court of Appeal held that, except in limited circumstances, discriminatory pay protection arrangements could not be justified.⁹

In the *Redcar* case, the court found no evidence that the council had taken account of any negative impact on female employees when only offering payment protection to the male employees. Councils subsequently received many claims against discriminatory payment protection schemes. We cover the number of all claims councils received in **(Exhibit 3, page 16)**.

In 2009, the Local Government and Communities Committee recommended that COSLA consult with trade unions and publish guidance to help councils understand the main points that were emerging from the complex case law about pay protection and what they should be doing to ensure that any pay protection scheme was fair.¹⁰ There is no evidence any updated guidance was ever issued, highlighting a further lack of collective national leadership.

9. *Redcar and Cleveland Borough Council v Bainbridge and others; Surtees and others v Middlesbrough Borough Council* [2008] EWCA Civ 885 CA.

Equal pay claims

Workers made equal pay claims after councils had implemented single status

While councils were implementing single status they all received claims relating to historical bonuses. Councils also experienced equal pay litigation following implementation of single status.

Employees of Scottish councils lodged more than 70,000 equal pay claims against their employers between 2004/05 and 30 September 2016 (**Exhibit 3, page 16**).

Some councils had several discrete waves of claims. **Exhibit 4 (page 17)** shows the number of claims lodged by council. ‘No-win no-fee’ solicitors signed up many claimants. This impacted on the number of claims made against specific councils, particularly the larger councils such as City of Edinburgh, South Lanarkshire, Glasgow City and North Lanarkshire.

As many claims are resolved outwith a tribunal, the details are not generally published, but from the information that is available we know that workers have made claims against:

- payment protection
- job evaluation scheme issues including job grading.

Some councils used job enrichment measures to prevent workers losing pay under single status. A job enrichment scheme typically includes ‘measures that can improve earning opportunities and significantly reduce loss of pay or bonus’. Measures could include the creating of new roles, or re-adjusting the job weightings of workers – in predominantly male jobs – under the single status job evaluation scheme. If a council does not offer female employees the same measures, it can continue inequality in pay. There is little published information on the claims for this reason in Scotland, although it has been the subject of many legal and academic papers, for example in ***Are litigation and collective bargaining complements or substitutes for achieving gender equality? A Study of the British Equal Pay Act.***

From 2004/05 to September 2016, the total cost of settling claims, including all compromise agreements and legal costs, has been around £750 million across all Scottish councils. **Exhibit 5 (page 18)** shows the cost by council over this period. In 2009, the Scottish Government introduced a ‘capitalisation’ scheme. This was to

allow councils to borrow capital to settle equal pay claims. Between January 2009 and April 2012 it granted 11 councils (Aberdeen City, Clackmannanshire, East Dunbartonshire, City of Edinburgh, Falkirk, Glasgow City, Highland, Midlothian, North Ayrshire, Scottish Borders and West Dunbartonshire) consent to borrow a total of £83 million. Six of these councils (Aberdeen City, Falkirk, Glasgow City, Midlothian, North Ayrshire, and West Dunbartonshire), used the scheme to borrow capital with the amount borrowed totalling almost £37 million. Only two councils (Glasgow City and North Ayrshire) borrowed up to their full allocation.¹¹

11. Consents to Borrow – Equal Pay, Scottish Government, April 2013

Managing equal pay claims is an extremely complex process. A claim can escalate through many stages until agreement is reached. Negotiations between councils and employees' representatives may continue during the process and they can reach an agreement at any stage.

The process of taking an equal pay claim through the administrative and legal stages required to reach a conclusion can be very long and costly. Many claims are settled before they reach a tribunal hearing.

In bringing a claim, a claimant has to first establish a comparator for like work, work rated as equivalent and/or work of equal value. If a council chooses to defend the claim, the legal grounds on which pay differences can be justified are very complex.

There are almost 27,000 pending or unresolved equal pay claims

At the end of September 2016, 27 councils reported almost 27,000 equal pay claims remained live with the ETS (**Exhibit 7, page 21**). Angus, Dumfries and Galloway, reported East Lothian, Orkney and Renfrewshire had no live claims. Nine out of ten live claims are from female workers. Live claims represent over a third of all claims lodged with the ETS since 2004/05. Seven councils have over 50 per cent of all their claims still recorded as live. Thousands of claims currently in the system in Scotland have been live for over a decade.

Reasons reported by councils for the length of time taken in resolving live claims include:

- processing and assessing the validity of claims
- waiting for full information on the nature of the legal challenge
- the grounds for a claim changing, for example if an individual changes their legal representation

- time taken for claims to progress through the ETS
- waiting for the outcome of tribunals.

Challenges to councils' approaches to implementing the SSA across the UK created a complex legal environment. This includes significant cases where employment tribunal rulings have been appealed and taken as far as the UK Supreme Court, with different rulings at each stage. Councils have commonly waited on legal rulings in national test cases in determining whether to defend claims as part of their strategies to minimise costs. Employees have successfully challenged how some councils have handled and defended claims. For example, in *Cannop and others v Highland Council*, female claimants successfully challenged the council's approach to delaying and defending claims on procedural grounds.¹²

Another example of councils' defences against equal pay claims was that female workers and their male comparators had to be co-located for a claim to be valid. For example, more than six years after claims were raised, *Dumfries and Galloway Council* lost a UK Supreme Court ruling in 2013 that clarified that women and men can compare earnings across locations for the same employer, as set out in EU law.¹³ Similarly, *City of Edinburgh Council* lost a tribunal appeal from workers comparing themselves across locations.¹⁴

In another lengthy and complex case in 2014, the Court of Session ruled that female workers working in Glasgow City Council's arm's-length organisations (ALEOs) could legitimately compare their terms and conditions with male workers in the council.¹⁵

12. *Cannop and others v Highland Council* [2008] CSIH38; [2008] IRLR 634

13. *North v Dumfries and Galloway Council* [2013] UKSC 45

14. *City of Edinburgh Council v Wilkinson* [2011] CSIH 70

15. *Glasgow City Council v Unison and Fox Cross Claimants* [2017] CSIH 27

Reducing the gender pay gap

The causes of the gender pay gap are complex. As well as discrimination in pay grading systems, other factors, including occupational segregation and inflexible working practices can contribute to female workers earning less than their male counterparts.

Ensuring women and men receive equal pay for equal work should contribute to closing the gender pay gap. But in Scotland, the pay gap between all male and female employees (full-time and part-time workers) is currently estimated at about 15 per

cent.¹⁶

Since 2013, public bodies have been required to publish information on their gender pay gap every two years. However, this is reported in different ways by different organisations, which makes it very difficult to determine the true scale of the issue.

Identifying a direct link between equal pay and a reduction in the gender pay gap is difficult given the complex factors involved (**Exhibit 8, page 23**). Only 15 councils provided information on the difference in their gender pay gap since implementing SSA. Even where councils have provided information, the way they measure the gender pay gap varies, making it difficult to assess performance.

In June 2017, the Scottish Parliament's Economy, Jobs and Fair Work Committee recommended that the Scottish Government:

- develop a suite of indicators to measure the underlying causes of the gender pay gap, using comprehensive data
- change the way it measures and reports the gender pay gap in its National Performance Framework (NPF) to take into account part-time workers in Scotland.¹⁷

Close the Gap

Close the Gap works in Scotland to influence and enable action to address the causes of women's inequality at work. Along with the Equality and Human Rights Commission (EHRC), it has highlighted limitations in the way public sector bodies calculate and report the gender pay gap. For example, in 2015 Close the Gap found that:

- **only 50 per cent of the public bodies it examined published adequate gender pay gap information**
- **35 per cent published inadequate gender pay gap information**
- **15 per cent did not publish any gender pay gap information.**

It also found there was limited evidence of the specific actions taken by public sectors bodies to tackle the causes of the gender pay gap. In 2016, Close the Gap published revised guidance to help improve compliance and promote good practice. It also recommended publishing an appropriate suite of measures, including both the mean and median pay gap figures for all employees, the full-time pay gap and the part-time pay gap.

16. *Annual Survey of Hours and Earnings (ASHE) – gender pay gap by country April 1997 to 2016*, Office for National Statistics, October 2016. This was calculated on the median hourly earnings excluding overtime.

Governance and oversight of equal pay

The public sector equality duty was created under the Equality Act 2010 and came into force in April 2011. The public sector equality duty requires public authorities to take a proactive approach to tackling discrimination. Scottish specific duties were introduced in 2012. These set out a number of steps that employers must take to meet their public sector equality duty. For example, they must publish an equal pay statement every four years which contains their equal pay policy. They must also publish equality impact assessments on new or revised policies or practices. The Equality and Human Rights Commission (EHRC) guidance states that the equal pay policy should contain:

- a commitment to monitoring pay regularly in partnership with trade unions or employee representatives
- objectives and actions the council will take on equal pay, with a named senior manager responsible for implementation of the policy
- a commitment that the organisation will apply appropriate resources to achieve equal pay.

The EHRC also highlights that the most effective way of checking compliance with equal pay obligations is to carry out an equal pay audit. An equal pay audit involves comparing the pay of men and women doing equal work. Employers should look at the causes of any differences in pay. Where there are no valid reasons for the differences, they should take action to eliminate the inequality. Only 20 councils provided us with their latest equal pay audit but not all audits met with EHRC guidance.

Councils, along with all public bodies, published their most recent equal pay statements in April 2017. Close the Gap is assessing public bodies' compliance with the gender and employment aspects of the duty. The findings will be published in October 2017.

Councils should ensure that their pay system delivers equal pay, particularly as they go through periods of organisational change. For example, when delivering services through integration authorities for health and social care and ALEOs. Councils should take appropriate steps and follow good practice to go beyond legal compliance, to ensure they are meeting all their equalities duties (**Exhibit 9, page 25**).

Elected members have a corporate responsibility to ensure that the council is taking all the necessary steps to comply with equal pay legislation. As part of that responsibility, elected members should ensure that the council has appropriate arrangements in place to manage outstanding equal pay claims. Elected members need to know how many equal pay claims are outstanding at any one time and how the council is dealing with these claims. Of the 21 councils that have more than ten live claims, only four provided elected members with routine update papers on equal pay litigation between September 2015 and September 2016.

Elected members also have a broader duty to promote equality. As part of discharging their equality obligations, elected members should regularly receive monitoring information on the progress their councils and, where appropriate, integration authorities and ALEOs that deliver services on their behalf, are making in reducing the gender pay gap. They should use this information to challenge officers on this progress.

Exhibit 9

Actions for councils and elected members

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**
- **assessing the impact of any changes that may affect equal pay**
- **publishing gender pay gap information.**

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 the public sector equality duty**
- **ensure their risk registers are up to date.**

For those councils using the SJC job evaluation scheme, they should ensure they implement the most recent edition.

Questions for elected members in overseeing, challenging and scrutinising equal pay

- Have I been updated on the number of ongoing equal pay claims at my council? Am I satisfied they are being dealt with effectively?
- Have I been updated on the potential cost of equal pay claims?
- Have I been updated on the steps my council is taking to mitigate against the risks of equal pay claims? For example:
 - Have I seen my council's equal pay audit? Did it meet EHRC good practice guidance? Are there any pay gaps? Can we sufficiently justify any differences in pay gaps?
 - Have I seen action plans and progress reports against my council's equal pay policy?
 - Have I been updated on changes in case law that might affect my council?
 - Have I seen equality impact assessments on any changes to my council's pay and grading system?
 - Has my council fully implemented the SJC third edition guidance and recommendations?
- Have I been informed about whether my council has allocated adequate resources to proactively carry out equality work around equal pay/gender pay gap beyond responding to equal pay claims?

Source: Audit Scotland, 2017

Appendix 1

Methodology

Documents we reviewed for our audit

We reviewed a wide range of documents during our audit, including the following:

- *The National Agreement on Pay and Conditions of Service for Local Government Employees* (The Red Book), which includes guidance on implementing Single Status.
- **The Equality Act 2010**

- Financial audit information and other work already carried out by local auditors.
- Delivering Equal Pay in Scottish Local Government, Unison Scotland submission to the Accounts Commission, May 2017.
- Scottish court papers.
- Inquiries carried out by Parliamentary committees in 2006 (Finance Committee), 2008 (Equal Opportunities Committee) and 2009 (Local Government and Communities Committee).

We asked councils for copies of:

- relevant minutes, papers and agendas for council meetings and appropriate council committees such as the Resources or Policy and Strategy Committee
- equality impact assessments and audits
- information on their gender pay gap.

Research

We commissioned an employment law specialist to independently review the historical development of equal pay law.

Data analysis

There is limited published information on equal pay in local government. We collected information from 32 councils across Scotland on the following:

- the number of equal pay claims lodged with the ETS (2004-16), how many are still live, and the outcome of those settled
- the cost of claims to councils
- when they implemented single status pay and grading structures
- if they used compromise agreements and how much they cost if they did
- information about how councils monitored progress with equal pay
- what challenges councils faced and lessons they learnt from implementing equal pay.

Councils record equal pay data in different ways, which made it difficult for us to directly aggregate and compare data. For example:

- some councils record claims by calendar year, others by financial year
- one council only maintained information on live claims on its database and did not hold information about claims that had been settled
- some councils could identify and quantify duplicate claims, while others could only

indicate that their data included duplicates without specifying how many or when they had been lodged

- one council recorded data by the date settlements were made rather than when claims were lodged
- one council recorded the number of claimants rather than the number of claims.

Interviews we carried out for this audit

We selected six councils to visit to further our understanding of how single status had been implemented. These were Angus Council, East Ayrshire Council, the City of Edinburgh Council, The Highland Council, North Lanarkshire Council and South Lanarkshire Council. These councils represent a mix in terms of size, rurality, the number and cost of claims, the job evaluation scheme used, and the length of time they took to implement single status.

At each of these councils we conducted interviews with typically:

- the chief executive
- the director or head of finance
- the director or head of human resources and legal
- other appropriate council officers
- the council leader and conveners of relevant committees
- union representatives from Unite and Unison.

We also interviewed the following stakeholders:

- The Convention of Scottish Local Authorities
- Trade unions at national level, including the Scottish Trades Union Congress and Unison (STUC), and some local representatives
- The Scottish Government
- Close the Gap
- The Society of Personnel and Development Scotland
- A Queen's Counsel, specialising in employment and discrimination law
- HM Court and Tribunal Service
- Consultant to the COSLA job evaluation consortium

- Legal Office of the NHS
- A lawyer and an independent equal pay consultant.

Appendix 2

The process of implementing SSA – City of Edinburgh Council

City of Edinburgh Council

2003

- Council agrees with unions to use an alternative job evaluation scheme to the SJC JES for the SSA – the Capital Scheme

2005

- Council agrees to try to resolve equal pay claims through compromise agreements to prevent them going to tribunal
- Council acknowledges indefinite pay protection and bonus schemes are not defensible but decides cost of extending them to non-bonus earning groups is prohibitive
- **Single status to be implemented by May 2006**
- Unions and legal firms begin submitting claims on behalf of workers
- Council decides to defend claims from APT&C workers making comparisons with manual workers
- Very high risks of industrial dispute identified

2006

- Council considers options for funding equal pay and agrees to the disposal of assets, chiefly the Morrison Street development site
- Implementing SS is now branded 'Modernising Pay'

- Compromise agreements offered to 3,000 employees with 88% acceptance
- **SSA pay and grading scheme to be implemented 1 October 2006, ending bonus schemes**
- Negotiations frustrated by strained relations with unions including a temporary union embargo on the job evaluation process but by June there was agreement on the Capital Scheme
- Job evaluation process starts

2007

- Accepted compromise agreements discharge council's liability for these workers up to 1 Oct 2006
- **SSA pay and grading scheme to be implemented 1 April 2008**
- Council acknowledges recent tribunal judgements open up possibility of claims against pay protection, though this was being disputed in the courts so considered medium- to long-term risk and financial liability quantified
- Service reviews which are under way are likely to increase skill levels and responsibility in both female and male manual worker groups and may impact on future liabilities

2008

- Legal advice is to defend claims by males who have not yet lodged ET applications
- Negotiations with unions on the new pay structure begin but suspended pending the outcome of the Bainbridge case
- SSA package includes; new pay structure, working time arrangements, 3-year pay protection, 36 hr week and conversion to monthly pay

2009

- Job evaluation completed and EIA carried out by external assessor
- Around 10% of staff covered by the SSA identified as losing income at the end of the pay protection period
- Council set deadline of March to conclude formal negotiations with the unions
- Legal advice following the Bainbridge judgement is to retain the 3-year protection period and offer compromise agreements to female staff
- Legal advice and advice from COSLA recommend continuing to defend claims

from APT&C staff

- Refuse and street cleaning staff reject pay proposals and begin industrial action

2010

- Modernising Pay now part of a wider transformation programme, 'Future State'
- **SSA to be implemented 4 October 2010**
- Neighbourhood worker post created for street cleaning staff to mitigate loss of earnings at end of pay protection
- All staff except refuse collectors resolve industrial dispute in July. Refuse collectors are balloted and continue to reject pay package. Council adopts contingency arrangements employing private contractors
- After 80 formal meetings over 4 years, the final pay package was rejected by the unions in October. Management invoked a statutory change process in November. Bonus payments to end via the statutory change process
- Pay protection applied for max of 3 years from 1 Oct 2010. Unions disagree on the methodology for calculating level of protection

2011

- Over 1,500 claims made against the council have yet to be settled, but none have been considered by the ETS. It is not possible to predict how long it will take to settle cases through the legal process
- The total cost of settlements between 2006 and March 2011 was £47.1 million, discharging liability for the 2,071 employees concerned up to that date
- Formal notification of the end of industrial action received on 11 October 2011

Appendix 3

The process of implementing SSA – The Highland Council

The Highland Council

2000

- Council agrees to adopt national JES
- Project Board and Joint Working Party established

2001

- Job evaluation interviews piloted with staff
- Management and unions start work on design of single pay structure

2002

- Job evaluation interviews and verification continue
- Further work carried out on unified pay structure

2003

- 1,200 job evaluation interviews completed
- Appeals process agreed with unions

2004

- Around 8,500 employees to be affected
- Total of 1,500 job evaluation interviews completed
- Development of pay structure continues
- Council considers options to fund new pay structure including, eg freeze recruitment, encourage reduced hours for full-time posts, reduce posts
- **Council commits to SSA implementation date of 1 April 2005**

2005

- Job evaluation interviews and verification continue
- Negotiations with unions continue on harmonised terms and conditions
- Unions hold back from progressing claims pending negotiations
- Work starts on assessing council's potential liability

2006

- Initial assessment of potential liability based on a proposed National Framework for settling equal pay liabilities consistently across Scotland. Ultimately a National Framework was never agreed and each council had to reach their own local agreement with the unions

- Package of harmonised terms and conditions for SSA presented to unions for consideration
- Development of grading structure continues
- Over 2,500 compensation offers made to staff, with over 2,300 accepting
- Process puts pressure on HR resources

2007

- Council attends a pre-hearing at the Employment Tribunal to clarify certain legal issues around the statutory grievance procedure
- Unions given until March to respond to terms and conditions package for SSA
- Work ongoing to match 8,000 employees to a job family and generate job rank order reducing the number of grades from 115 to 15
- Council begins assessing impact on pay bill and the number of red circled employees
- **Proposed date for SSA implementation now 1 October 2006**

2008

- Gap compromise payments made to cover period from Sept 2006 to April 2008
- After 2 years of negotiations, SSA terms and conditions to be subject to union ballot
- Pay structure undergoes EIA by external assessor and **SSA implementation date 1 April 2008**
- 10,000 employees to be advised how the job evaluation exercise affects them (subsequently delayed)
- Council and unions work on transition programme on job redesign to deliver service improvements and minimise any negative impact on staff

2009

- EIA assessor requests more work on new harmonised terms and conditions
- Deadline of March set to agree harmonised terms and conditions
- Job evaluation letters finally sent to staff in February
- New pay structure implemented from 1 March 2009 and backdated to 1 April 2008
- Council reflects on Bainbridge ruling – unions request pay protection be extended

to other employees whose comparators are red circled. Council decides it is unaffordable and invites unions to negotiate a local agreement in place of the 3-year pay protection

- Council decides in August that statutory procedure be invoked if agreement on harmonised terms and conditions can't be reached. Letters to be sent to staff in October
- Almost 2,000 job evaluation appeals received. Council estimates it will take 9 months to work through first stage of the process

2010

- Unions to ballot on proposed terms and conditions. Unions respond to council by April with sticking points, including: transition to monthly pay, working pattern enhancements and overtime rates
- Craft operatives in Transport, Environmental and Community Services opt into the job evaluation process. This would remove bonuses and reduce liability for equal pay claims
- Collective agreement on harmonised terms and conditions implemented September

2011

- 33% of the 2,575 stage one job evaluation appeals were successful
- 11% of stage two appeals were successful
- Pay protection period ended on 31 March – management look at options to support staff about to lose income
- Settlement offers made to 1,000 claimants to settle liability up to the introduction of SSA in 2008
- Council decides to defend pay protection claims