

Birmingham City Council

Full Council

5 December 2023



Subject: The Birmingham City Council Equal Pay Programme Update

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Does the report contain confidential or exempt information? ☐ Yes ☒ No

If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential :

1 Executive Summary

- 1.1 The Addendum to the Principles document for Job Evaluation and Pay Equity (now referred to as The Equal Pay Programme) was signed at the end of October 2023. This document laid out the next steps and expectations for the delivery of The Equal Pay Programme by the 1st April 2025. It was delivered in collaboration between The Commissioners, The Members, The Trade Unions and Officers.
- 1.2 Since the time of signing, the Equal Pay Programme team (the team) has gone through significant change and is currently being fully resourced and re-established with new leadership and workstream structure.
- 1.3 The team will run with a full Programme Management Office Support function, and will establish the workstreams that are required to underpin the delivery of a job evaluation scheme (this will include tasks such as pay and grading structures, and establishment control).
- 1.4 Of equal importance, The Programme will also establish workstreams to tackle structural and policy issues that have contributed to the current pay equity issues, and which unless addressed now will not provide a permanent fix for the future.

The establishment of a suitably qualified and experienced team, in collaboration with Trade Union colleagues, is paramount to the success of this programme

- 1.5 A fundamental review of the current state of the plan including milestones and interdependencies for the delivery to 1st April 2025 is currently in process, with key milestones committed to be shared with the TUs in early December.
- 1.6 Since the addendum was signed, there has been an essential period of re-group to allow The Programme to move forward and properly establish a new baseline plan.
- 1.7 Governance arrangements are being created and implemented, in line with the programme's own steering group requirement (The Operational Steering Group), and also to provide the necessary oversight through The Governance Board and onward to the Improvement Board.
- 1.8 The Council has for the past few years been defending equal pay claims that seek to challenge its current job evaluation scheme. The majority of those claims have been settled expressly without admission of liability by the Council. However, until the current job evaluation scheme is superseded by a new job evaluation study, the Council will be prone to further such claims. Indeed, the Council is currently defending a multiple of such claims in the Employment Tribunal, where the majority of claimants have rejected the Council's settlement offers. Those claims were originally stayed pending settlement negotiations, but that stay was discharged by the Employment Tribunal in late 2022. Since then, the parties have been complying with various case management orders and two preliminary hearings have taken place. A further preliminary hearing has been listed for mid-2024, and a preliminary stage 1 equal value hearing has been listed for the end of 2024.

2 Recommendation(s)

- 2.1 That full council:
 - (a) Note the contents of this report.

3 Background

- 3.1 On 12 October 2023 the full Council met and discussed the methodology that would be used in the current job evaluation study and decided to adopt an NJC based job evaluation system. Following that meeting, on 21st October 2023 our recognised Trade Unions agreed an addendum to the December 2020 collective agreement on job evaluation, this is The Addendum. The Addendum encompasses the NJC based system and underpins the approach being used to the implementation of a new pay structure and terms and conditions of employment by 1 April 2025.
- 3.2 This report provides a progress update on The Equal Pay Programme.

4 Progress Update

Governance

- 4.1 The Addendum sets out governance arrangements and requires the establishment of an Operational Steering Group (“OSG”). The OSG will oversee the day to day running of The Programme as well as acting as a point of escalation.
- 4.2 Key milestones for the Programme are being prepared and once the OSG and GB are established, they will be presented. A communication plan has also been created alongside a key stakeholder engagement plan.
- 4.3 The Addendum sets out that for the first 8 weeks of the job evaluation process, once the benchmark roles are agreed and the analysts are in place, a Job Description Questionnaire (“JDQ”) will be used as part of the job information gathering stage. Members will recall from previous papers that this is the first stage in any job evaluation study. Following those 8 weeks, a review of the progress against delivery timelines using this methodology will then be undertaken.

Job data and the impact of Oracle

- 4.6 Data available in Oracle means has hindered the Programme from being able to decisively define the number of roles that exist within the organisation. This delays the understanding of organisational structures, and therefore identification of line managers who will be required to complete the JDQ process.
- 4.7 To mitigate this as far as possible, the current action is:
 - Working with the Directorates and the Oracle implementation team to update and correct data in the system and undertaking a data cleanse exercise to match person data on Oracle to that generated within the Programme.
 - ***Preparation for evaluation of jobs***
- 4.8 Formal analyst training starts on 8 January 2024. The Addendum envisaged that this would have started by the 31st October 2023. This delay is due to recruitment and availability of analysts. This date was also conditional upon having agreed 50 benchmark roles with the trade unions. Mitigations are currently being considered to bolster the number of analysts, some of whom may be able to be identified via the LGA so will already be technically trained and immediately deployable.

5 Issues and Risks

Trade Union engagement

- 5.1 We need to ensure that Trade Union colleagues are prepared to work with us to enact the provisions of the Addendum. We will only achieve this through collaboration, and rebuilding trust. The basis for this relationship will be published, clearly defined milestone plans, exemplary communications strategy within the organisation explaining the Equal Pay Programme, transparency in all matters and swift and courteous resolution of flagged risks and issues.

6 Legal Implications

- 6.1 The statutory definition of a job evaluation study is:

“A study undertaken with a view to evaluating, in terms of the demands made on a person by reference to factors such as effort, skill and decision-making, the jobs to be done... by some or all of the workers in an undertaking or group of undertakings” (s80(5) Equality Act 2010 (“EA 2010”).

- 6.2 Once a job evaluation study has been conducted, an employee’s work is deemed not to be of equal value to another employee’s work if their jobs have been given different values by that study (s131(5)(b) EA 2010). This prevents employees claiming that they should be paid the same as higher graded colleagues, and it gives employers a statutory shield against equal pay claims.
- 6.3 However, if there are reasonable grounds for suspecting that a job evaluation system discriminates because of sex, or is otherwise unreliable, an employer cannot rely on its job evaluation study as a statutory defence to an equal pay claim (s131(6) EA 2010).
- 6.4 To be legally compliant, the Council must ensure that its new job evaluation study:
- 6.4..1. Is an analytical job evaluation study within the meaning of s80(5) EA 2010;
 - 6.4..2. Does not discriminate because of sex; and
 - 6.4..3. Is in no way otherwise unreliable.

7 Financial Implications

- 7.1 In June 2023, the Council published that its potential equal pay liability could be in the region of £650m-£760m to the period ending 31 March 2025. The main strand of the Council’s mitigation strategy is to implement new terms and conditions of employment following a new job evaluation scheme, so as to address the risks giving rise to the potential liability. If this is not done by 31 March 2025, the Council’s potential liability could continue to accrue at the rate of

between £5m-£14m per month. Therefore, it is imperative that a job evaluation study is conducted, a new pay structure created, and new terms and conditions are implemented by no later than 1 April 2025.

On 25 July 2023, Cabinet approved a budget of up to £20m to fund an expedited job evaluation programme. This budget was to be funded from the Policy Contingency Fund.

8 Public Sector Equality Duty

8.1 None

9 Other Implications

9.1 None

10 Background Papers

None