

Public Report

Birmingham City Council

Council Business Management Committee

1st September 2023



Subject:	Pay Equity System
Report of:	Janie Berry, City Solicitor and Monitoring Officer. Fiona Greenway, Interim Director of Finance and Section 151 Officer; and Deborah Cadman, Chief Executive and Head of Paid Service
Relevant Cabinet Member:	Councillor John Cotton, Leader of the Council
Relevant O &S Chair(s):	Councillor Jack Deakin, Finance and Resources Overview and Scrutiny Committee
Report authors:	Darren Hockaday, Acting Director of People and Corporate Services

Does the report contain confidential or exempt information?

Yes

No

If relevant, provide exempt information paragraph number or reason if confidential:

The information in this report and its appendices is exempt from public disclosure under paragraphs 3 to 5 of Schedule 12A of the Local Government Act 1972. The exemptions relied on are as follows:

- Schedule 12A, paragraph 3 – *'Information relating to the financial or business affairs of any particular person (including the authority holding that information)';*
- Schedule 12A, paragraph 4 – *'Information relating to any consultations or negotiations, or contemplated negotiations, in connection with any labour relations matter arising between the authority or Minister of the Crown and employees of, or office holders under, the authority';* and
- Schedule 12A, paragraph 5 – *'Information in respect of which legal professional privilege could be maintained in legal proceedings.'*

These provisions apply because the information in this report relates to financial affairs pertaining to pay, as well as negotiations in connection with a labour relations matter and trade dispute over equal pay, which has arisen between Birmingham City Council ("the Council") and its employees. Plus, legal proceedings have been taken by some employees involved in this trade dispute, and information relating to those proceedings is included in this report, as well as legal advice, in respect of which legal professional privilege could be maintained.

1 Purpose

- 1.1 The purpose of this report is to agree a renewed Pay Equity System (PES) consisting of a job evaluation study and new pay structure, to be delivered by no later than 1st April 2025. A renewed PES is critical to ending pay inequity and ensuring all staff are treated fairly.
- 1.2 The options set out in this report are intended to deliver a job evaluation study and a new pay structure for NJC grades within Birmingham City Council (BCC), Birmingham Children's Trust (BCT), Acivico and maintained schools. A further report will be brought to this Committee at a future date that addresses JNC grades.
- 1.3 This is a supplemental report to that published on 25th August 2023, for the meeting of this Committee scheduled for 29th August 2023. This report has been updated to take into account the Council's Best Value Assessment of the job evaluation options detailed at Appendix 7 of the report and referenced at Section 9 of this report. Additional legal advice has been sought in respect of the four options as presented in the report published on 25th August 2023. The independent legal advice now received from two Leading Counsel advise that Option 3 cannot be lawfully supported (as detailed within the Legal Implications) and the proposed recommendation to the Committee is for Option 2 and Option 4 to be considered. Statutory Officers have also advised that Option 1 is incompatible with best value obligations as it exposes the Council to significant ongoing liability (as detailed within the Financial Implications).

2 Recommendations

- 2.1 To note:
- 2.1.1 That the Committee is required to make a decision based on the two objectives (listed in i. and ii. below) that are essential for a new job evaluation study for BCC (as set out in the report to Cabinet on 25th July) and the assessment against Best Value principles (at Appendix 7):
- i. That it must be objective, robust, consistently applied, and Equality Act 2010 compliant; and
 - ii. That it must be conducted in the shortest possible timescale given the size of potential liability referred to above and the estimated accrual rate and noting that Cabinet has recommended that implementation should be on or before 1st April 2025.
- 2.2 It is recommended:
- 2.2.1 That the Council Business Management Committee consider the adoption of either Option 2 (see 2.2.2 below and section 7) or Option 4 (see 2.2.3 below) contained within this report and**

make a decision on the PES methodology to be delivered based on the respective merits and risks.

2.2.2 To note that Option 2 (NJC Gauge delivered in conjunction with West Midlands Employers (WME)) is set out at section 12 of this report and is conditional on:

- i. A signed Addendum to the Principles Collective Agreement between the recognised trade unions and BCC attached at Appendix 3 of this report, including Points of Further Clarification;
- ii. The assurances set out at paragraph 12.7;
- iii. An immediate start to implementation at the point of decision, Friday 1st September 2023; and,
- iv. If the Addendum is not signed by 09:00am Monday 11 September 2023, that then means Option 2 is not practical to implement and the Council reserves the right to choose an alternative PES.

2.2.3 To note that Option 4 (outsource to an external provider) is set out in Section 14 of this report.

2.3 That the committee notes that, if it becomes apparent at any stage of the process that the deadline of April 2025 cannot be met or other concerns become clear, such as a deviation from the methodology agreed and any associated agreements and lack of evaluator resource, the Council may terminate the process and explore alternative methodology routes to achieve the programme outcomes. Should the need for this arise, the recognised Trade Unions will be consulted and engaged appropriately.

3 Background and Context

3.1 The estimated potential equal pay liability was made public in a Council statement on 28 June 2023. That statement gave a range of between £650m and £760m and an accrual rate of £5m to £14m per month. Since publishing this statement, the Council has received correspondence from one of the recognised Trade Unions advising of further potential Equal Pay claims being issued against the Council. This has the capability to further increase the potential financial liability on the Council.

3.2 Given issues raised as a result of the implementation of the Oracle ERP System, the Council's leadership instructed the interim Director of Finance (and S151 Officer) and Monitoring Officer to undertake a refreshed analysis and further due diligence of the Council's projected liability in relation to potential equal pay liabilities.

3.3 The principal solution to the Council's equal pay issues is the delivery of new terms and conditions of employment following a job evaluation study and a new pay structure that complies with the relevant provisions of the Equality Act 2010.

- 3.4 The estimated range of potential liability assumes that new terms and conditions will be implemented by no later than 1st April 2025. Any delay to this implementation date will add to the potential equal pay liability estimate.
- 3.5 Two objectives are essential for a new job evaluation study for BCC:
- 3.5.1 That it must be objective, robust, consistently applied, and Equality Act 2010 compliant; and
 - 3.5.2 That it must be conducted in the shortest possible timescale given the size of potential liability referred to above and the estimated accrual rate and noting that Cabinet has recommended that implementation should be on or before 1st April 2025.
- 3.6 On 25 July 2023, the Cabinet approved a budget of up to £20m for the delivery of a PES and ancillary resources in pursuit of the PES and for the establishment of a permanent Pay Equity Team and Pay Compliance Unit to ensure the maintenance of the PES once completed. The Cabinet further agreed that the delivery date for the PES must be no later than 1st April 2025 in order to limit the further accrual of the potential equal pay liability.
- 3.7 The Council is committed to working with relevant stakeholders (including Trade Unions) to make this happen as soon as possible, so that the focus of the organisation can return to delivering “best in class” services, tackling inequality and making Birmingham a great place to live for all its citizens. For any of the options to be successful it is imperative that there is a positive collaboration between the Trade Unions and the Council.
- 3.8 Unstable Trade Union relationships would lengthen the progression of any methodology and potential industrial action would delay any implementation and therefore add to the Council’s accruing potential equal pay liability. At the conclusion of the job evaluation study, it is the preference for the Council to seek a smooth and timely adoption of new terms and conditions through collective bargaining with its three recognised Trade Unions.

4 Implementation assurance and governance

- 4.1 Close monitoring of the milestones and delivery of job evaluation is critical to achieve the implementation deadline of 1st April 2025. The following will support delivery of the programme:
- Challenge and oversight of External Audit.
 - Regular oversight by the Council’s Statutory Officers and Corporate Leadership Team.
 - Finance and Resources Overview and Scrutiny Committee and Audit Committee will contribute to the performance monitoring by the addition of job evaluation to their respective Committee work plans as a standing item on their agenda.

- 4.2 Monitoring and oversight may be modified or enhanced as the programme progresses.
- 4.3 If it becomes apparent at any stage of the process that the deadline cannot be met or other concerns become clear, such as a deviation from the methodology agreed and any associated agreements and lack of evaluator resource, the Council may terminate the process and explore alternative methodology routes to achieve the programme outcomes. Should the need for this arise, the recognised Trade Unions will be consulted and engaged appropriately.

5 Job evaluation study

- 5.1 A job evaluation study starts with the Recruitment and Training of those who will participate. Once that is complete it comprises the following stages:
- Stage 1: Job Information
 - Stage 2: Evaluation and Moderation
 - Stage 3: Model and Structure
- 5.2 This is followed by a period of negotiation and implementation of a new pay and grading structure.
- 5.3 Any appeals by employees against outcomes will occur after the date of implementation of a new structure and new terms and conditions of employment.
- 5.4 To aid the maintenance of the job evaluation system, there is some advantage for the Council to seek to procure a single evaluation methodology throughout NJC and JNC roles. This would promote equity in the entire pay system and ensure that all roles are evaluated on an equal basis with the boundary between NJC and JNC roles properly defined.
- 5.5 However, it is recognised that to provide a robust job evaluation methodology for JNC graded employees, an alternative option may be required as the NJC Gauge methodology is not applicable. Therefore, references to time stated for the PES options in this paper does not account for JNC grade evaluation and there is no decision being sought from the Committee for this cohort.

6 The Current Job Evaluation Programme

- 6.1 The current programme was approved in the April 2022 Cabinet report on 'Job evaluations and Pay and Grading'. Hereinafter this will be referred to as "the current programme".
- 6.2 The current programme is based on the establishment of 12 panels, each led by a job evaluation analyst with a trade union evaluation partner and a management evaluation partner to evaluate the circa 3,200 roles that exist within the Council, Birmingham Children's Trust ("BCT"), Acivico, and maintained schools.

- 6.3 The approach of this option is set out in a collective agreement called “Joint Principles for Job Evaluation” dated December 2020. Hereinafter called the “Principles Document”.
- 6.4 The current programme is calculated by the project team to take more than 54 months to deliver.

7 Developments since April 2022

- 7.1 Contained within the private report.

8 Alternative options to the current programme

- 8.1 From officers’ assessment of the situation, informed by engagement with external audit and external lawyers, and the recent announcement of the Council’s potential equal pay liability, it is clear that an end-to-end job evaluation process plays a pivotal role in the resolution of the equal pay issues facing the Council.
- 8.2 An approach will be needed that meets the required criteria and provides the Council with a proven, objective, and consistent job evaluation methodology or methodologies that can deliver all original programme objectives, end-to-end, to achieve an implementation date of no later than 1 April 2025.
- 8.3 Given the concerns outlined (at section 7 above) about the current programme and the need to meet the key objectives it has been essential to review a number of methodologies.
- 8.4 The City Council and our recognised Trade Union partners have been engaged in consultation since January 2023 with the aim of reaching agreement on a job evaluation methodology that both meets the April 2025 deadline and provides a robust pay equity solution which protects the Council from future equal pay claims. The Unions have adopted a positive and co-operative approach to discussions over a Gauge WME option and share our commitment to delivering a new and equitable pay and grading system by the crucial April 2025 deadline.
- 8.5 It became apparent early on that application of the current programme (Option 1 below), that is the full NJC Gauge system would not meet the deadline of April 2025. In addition, given our unique and challenging history of equal pay claims and previous unsuccessful equal pay studies, there is a risk of inequity in assessments caused by role enrichment. We also note paragraph 4.3, in which the Council may terminate any process and explore an alternative methodology should it become apparent the deadline cannot be met.
- 8.6 There are four options for a PES to be considered by the Committee:
- 8.6.1 Option 1: Use the current approach of NJC Gauge system in full (the current programme). *(NB: as referenced in para 1.3 this option is further discounted due to the Best Value assessment)*
 - 8.6.2 Option 2: Use an adapted version of NJC Gauge in co-operation with West Midlands Employers (“WME”), Version A (“WME Gauge A”).

8.6.3 Option 3: Use an alternative adapted version of NJC Gauge in co-operation with West Midlands Employers, Version B (“WME Gauge B”). *(NB: as referenced in para 1.3 this option is no longer proposed for the Committee’s consideration)*

8.6.4 Option 4: Outsource job evaluation to a third-party specialist supplier.

9 Option considerations

9.6 Best Value Assessment

9.7 On Tuesday 29th August 2023 the Leader of the Council received a letter from the Department for Levelling Up, Housing & Communities (DLUHC) Minister Lee Rowley MP. This letter asks for assurances that the options presented to the Council Business Management Committee (CBMC) and any decision taken related to equal pay complies with the Council’s Best Value duty under the terms of the Local Government Act 1999.

9.8 The Best Value Duty relates to the statutory requirement for local authorities and other public bodies (defined as best value authorities in the Local Government Act 1999) to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. In practice, this covers issues such as how authorities exercise their functions to deliver a balanced budget, provide statutory services, and secure value for money in all spending decisions.

9.9 This letter of 29th August states that “Given the size of the unweighted litigation liability as communicated by your officers - £1.15bn – it is prudent that I seek written assurances that decisions taken by the Authority represent value for money and do not adversely impact on the level of support the Government may need to provide”.

9.10 On Tuesday 29th August 2023 the Leader of the Council (and chair of the Committee) proposed adjourning the Council Business Management Committee until Friday 1st September 2023 to enable an assessment of the options in the report against the Best Value Duty to be completed to supplement this report.

9.11 A summary of this assessment is at Appendix 7.

10 Common stages in the process

10.1 Each of the options have common stages. These are:

10.2 Stage 1: Job Information

10.3 The role holder and their line manager define a Job Description and Person Specification (JDPS). Where possible, this should be by agreement. This is supplemented using a questionnaire, of varying length dependent on the solution being used, which should cover areas that remain unclear from the JDPS. The

JDPS and the questionnaire are called the 'Job Information' and it is this critical documentation that is used to evaluate the role.

10.4 Stage 2: Evaluation and Moderation

10.5 The evaluation scoring system is applied, using factors and weightings to arrive at a score. Where there is ambiguity, help text is used to provide clarity. For roles where there are many incumbents, for example an administrative assistant, a solution known as 'benchmarking' is used. This works by first agreeing which roles are going to be included as 'benchmark roles' then taking a sample of each role and evaluating that rather than every role individually. Following evaluation, scores are moderated, generally by a local panel followed by a business wide panel, to ensure consistency and fairness.

10.6 Stage 3: Model and Structure

10.7 The scored roles are placed into a grading system with cut off points and salary points awarded against each. This is negotiated with Trade Unions with the aim of reaching a collective agreement so that the new pay and grading system applies to all employees. Once individuals are informed of their new pay and grade, there is normally a right of appeal following implementation.

10.8 The options identified in paragraph 8.6 are examined in detail in the following sections, along with the advice of Officers. In formulating their advice, the Council has taken legal advice from four leading KCs with specialist knowledge in employment law and equal pay, including knowledge and understanding of the Council's Equal Pay litigation with one KC having consistently represented the Council in previous Equal Pay litigation, as well as considering the views of external auditors, input from the Local Government Association (LGA), and the experience of other Local Authorities.

11 Option 1 - Use the unadapted NJC Gauge system in full (the current programme)

11.1 A detailed analysis of each of the options is presented in the private report.

12 Option 2 - Use an adapted version of NJC Gauge in co-operation with West Midlands Employers ("WME"), Version A ("WME Gauge A")

12.1 A detailed analysis of each of the options is presented in the private report.

13 Option 3 - Use an alternative adapted version of NJC Gauge in co-operation with West Midlands Employers, Version B ("WME Gauge B").

13.1 A detailed analysis of each of the options is presented in the private report.

14 Option 4 - Outsource job evaluation to a third-party specialist supplier

14.1 A detailed analysis of each of the options is presented in the private report.

15 Option parameters and risks

15.1 Contained within the private report.

16 Consultation

16.1 Throughout 2023, BCC has been in consultation with the recognised Trade Unions, seeking a way to accelerate a job evaluation study while maintaining robust and defensible outcomes.

17 Risks

Industrial relations

17.2 BCC is clear in the objectives it must deliver to stem its potential equal pay liabilities and any delay to that delivery is likely to see the estimated potential liability grow. Therefore, any decision taken will need to balance speed, certainty, and the effect on industrial relations.

17.3 For simplicity, the risk of an industrial dispute in relation to PES is categorised in 2 phases.

- The first is based upon the decision on the PES methodology and any subsequent impact this may have on the delivery/performance of the PES and consequently delay the target date of April 2025 incorporation.
- The second risk is at the end of the process where trade unions and employees know the financial impact the PES and where BCC will seek a collective agreement to incorporate new terms and conditions.

18 Compliance Issues:

18.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

18.1.1 The recommended decisions are consistent with the Council's overarching equal pay strategy, the primary objective of which is to draw a line under the issue of equal pay in the organisation.

18.2 Procurement Implications

18.2.1 See Appendix 1.

18.3 Public Sector Equality Duty

18.3.1 The recommended proposals will limit and address any adverse equality impact on staff at the Council in the quickest possible time and, in the opinion of officers involved in the permanent pay equity programme, in the most reliable way. They will also ensure

compliance with the Public Sector Equality Duty and with Part 5, Chapter 3 of the Equality Act 2010.

19 Financial Implications

19.1 Contained within the private report.

20 Legal Implications

20.1 Contained within the private report.

21 Background documents

21.1 Cabinet Report – 26th April 2022 – ‘Job Evaluation/Pay & Grading’

21.2 Cabinet Report – 25th July 2023 – ‘Job Evaluation’

22 Appendices

22.1 Appendix 1: Procurement advice (Exempt)

22.2 Appendix 2: Consultation Process (Exempt)

22.3 Appendix 3: Addendum to Principles Document Option A (Exempt)

22.4 Appendix 4: ~~Addendum to Principles Document Option B (REMOVED)~~

22.5 Appendix 5: ~~WME Letter regarding Benchmark Role Analysis options 24082023 (REMOVED)~~

22.6 Appendix 6: Glossary

22.7 Appendix 7: Best Value Assessment of Options (Exempt)

Glossary

APPENDIX 4

1. Equality Act 2010

- 1.1 The Equality Act 2010 was enacted on 8 April 2010 and replaced the Equal Pay Act 1970. It is the primary piece of equal pay legislation in the UK and is concerned with the establishment of equal terms and conditions of employment for employees.
- 1.2 Section 66(1) of the Equality Act 2010 provides that every person's employment contract includes an *equality clause*, by which they are entitled to any term that a comparator of the opposite sex who is in the "same employment" enjoys that they do not or that is more favourable.
- 1.3 For the *equality clause* to bite, 'equal work' needs to be established. This can be done in three ways:
- 1) By a worker establishing that they are doing **like work** with a comparator of the opposite sex (i.e. they are doing the same, or broadly the same, job); or
 - 2) By a worker establishing that they are doing **work rated as equivalent** with that of a comparator of the opposite sex following a job evaluation study (i.e. they are doing different jobs at the same grade); or
 - 3) By a worker establishing that they are doing work of **equal value** to that of a comparator of the opposite sex (i.e. they are doing different jobs, either at different grades or where no job evaluation study has been carried out, but the 'value' of their work is equal).

2. Equal Value

- 2.1 An employee can claim work of equal value if they are not employed on **like work** or **work rated as equivalent**, and provided they can show their work is equal to that of a comparator of the opposite sex in terms of the demands made on them by reference to factors such as **effort, skill, and decision-making**. This type of claim is usually brought where an employer has not undertaken a job evaluation study, or where the two jobs in question have different grades under such a study, but there are reasonable grounds for suspecting that the study was based on a system that discriminates because of sex or is otherwise unreliable.

3 Job Evaluation

- 3.1 A job evaluation study is a systematic procedure for analysing a group of jobs (as opposed to the individuals undertaking them). The results of the analysis are then used to give each job a numerical score in order to rank them, from the most valuable downwards. They will then be grouped into salary bands and all jobs

within a particular band will be "rated as equivalent" for the purposes of the Equality Act 2010.

A good job evaluation study typically possesses several key characteristics. Here are some important aspects to consider:

- **Validity:** The job evaluation study should accurately and reliably measure the factors that determine the value of different jobs. It should reflect the true distinctions between jobs based on factors such as skill, effort, responsibility, and working conditions.
- **Objectivity:** The evaluation process should be objective and unbiased. It should rely on standardised criteria and methods that are consistently applied to all jobs, regardless of personal characteristics or preferences.
- **Job-relatedness:** The study should focus on evaluating jobs based on their content and requirements, rather than the individuals performing them. It should consider the tasks, skills, knowledge, responsibilities, and qualifications necessary for each job.
- **Comprehensive:** A good job evaluation study should cover a wide range of job factors and dimensions. It should capture the full scope of job requirements and reflect the various aspects that contribute to the job's value.
- **Consistency:** The evaluation process should produce consistent results when applied to similar jobs within an organization. It should minimise subjective judgment and ensure that similar jobs receive similar evaluations and compensation.
- **Non-discriminatory and reliable:** The study should not be based on a system that discriminates because of sex, and it should not be otherwise unreliable.
- **Regular review:** A good job evaluation study should be periodically reviewed and updated to reflect changes in job roles, industry standards, and organisational needs. This ensures its ongoing relevance and effectiveness, and it provides assurance in terms of there being an ongoing application and embedding of the study and its methodology in the organisation.

By incorporating these characteristics, a job evaluation study can provide a solid foundation for fair and equitable compensation practices, supporting organisations in making informed decisions regarding job classification, pay structures, and salary administration. It also provides an employer with a statutory defence to **equal value** claims.