

# Birmingham City Council

## City Council

12<sup>th</sup> October 2023



**Subject:** Report to all Elected Members by Janie Berry, Monitoring Officer, under Section 5 Local Government and Housing Act 1989 *and*  
Report to all Elected Members by Fiona Greenway, Section 151 Officer, under Section 114(2) Local Government Finance Act 1988

**Report of:** Janie Berry, Monitoring Officer and  
Fiona Greenway, Section 151 Officer

**Report author:** Janie Berry and Fiona Greenway

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 :

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 Executive Summary**

1.1 All Elected Members of Birmingham City Council are asked to consider and accept the Reports prepared by the Monitoring Officer and the Section 151 Officer issued on 21<sup>st</sup> September 2023, regarding the Council's failure to secure a decision relating to the implementation of a job evaluation programme (also known as Pay Equity System [PES]).

## **2 Recommendation(s)**

Full Council is recommended to:

- 2.1 Agree to accept the report issued by the Monitoring Officer issued under Section 5 Local Government and Housing Act 1989; and
- 2.2 Agree to accept the report issued by the Section 151 Officer issued under Section 114 (2) Local Government Finance Act 1988.

## **3 Background**

- 3.1 On 21<sup>st</sup> September 2023, the Monitoring Officer issued a Report under Section 5 Local Government and Housing Act 1989, as a result of the Council failing as at that date to secure a decision relating to the implementation of a job evaluation programme.
- 3.2 The key issues and context which triggered the issuing of the Section 5 Report are detailed in the report which appears as Appendix 1 attached.
- 3.3 Alongside the issuing of the Section 5 Report by the Monitoring Officer, the Section 151 Officer issued a report under Section 114 (2) Local Government Finance Act 1988 to provide her opinion that "omission of a decision by the Council Business Management Committee has resulted in (a) a decision which involves the authority incurring additional expenditure which is unlawful, and (b) the course of action (i.e. inaction) if pursued to conclusion would be unlawful and cause a loss or deficiency on the authority".
- 3.4 The key issues and context which triggered the issuing of the Section 114 (2) report are detailed in Appendix 2 attached.

## **4 Options considered and Recommended Proposal**

- 4.1 In respect of both reports prepared by the Statutory Officers, the Council has the option to disagree with the contents of both reports. Should this occur, the Statutory Officers will need to consider the Council's reasoning and proposed response to address the concerns of omission of decision in respect of securing the implementation of a job evaluation programme. If the response is

deemed unsatisfactory to address the issues detailed within the Reports, the Statutory Officers may issue a further report pursuant to Section 5 Local Government and Housing Act 1989 and Section 114 (2) Local Government Finance Act 1988.

## **5 Legal Implications**

5.1 Prior to issuing the reports, the Monitoring Officer and the Section 151 Officer consulted with each other and the Head of Paid Service.

5.2 Once issued, both Reports must be circulated to all Elected Members of the Council and the Reports must be considered by an Extraordinary Meeting of Full Council.

5.3 Section 5 Local Government and Housing Act 1989 places a duty on the Monitoring Officer to prepare a report if at any time:

“any proposal, decision or omission by the authority, has given rise to or is likely to or would give rise to a contravention of any enactment or rule of law or of any code of practice made or approved by or under any enactment.

This includes the proposals, decisions or omissions by any committee or subcommittee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority is represented.”

5.4 Section 114 (2) Local Government Finance Act 1988 requires that:

5.5 “The chief finance officer of a relevant authority shall make a Report under this section if it appears to him that the authority, a committee or a joint committee on which the authority is represented-:

- a) Has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful;
- b) Has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or
- c) Is about to enter an item of account the entry of which would be unlawful”

## **6 Financial Implications**

6.1 The financial implications are as detailed within the Cabinet Report of 25<sup>th</sup> July 2023, the Council Business Management Committee report of 1<sup>st</sup> September 2023, and the Section 114 (3) report of 5<sup>th</sup> September 2023, all of which are appended to the Section 5 Report at Appendix 1.

## **7 Public Sector Equality Duty**

7.1 Whilst there are no equality issues directly arising from this report, there are a number of equality issues and duties to be addressed as part of the implementation of a job evaluation programme for the Council and these are

detailed within the reports appended to the Section 5 Report prepared by the Monitoring Officer.

## **8 Other Implications**

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

The Council must operate within a robust governance framework

## **9 Background Papers**

9.1 Not applicable.

## **10 Appendices**

10.1 Appendix One: Report prepared by the Monitoring Officer under Section 5 Local Government and Housing Act 1989 dated 21<sup>st</sup> September 2023

- Cabinet Report – 25<sup>th</sup> July 2023;
- Council Business Management Committee Report (which contains exempt appendices in accordance with Schedule 12A Local Government Act 1972)
- Section 114(3) Report dated 5<sup>th</sup> September 2023

10.2 Appendix Two: Report prepared by the Section 151 Officer under Section 114(2) Local Government Finance Act 1988 dated 21<sup>st</sup> September 2023

**Report to all Elected Members of Birmingham City Council**  
**Under**  
**Section 5 of the Local Government and Housing Act 1989**  
**By**

**Janie Berry, City Solicitor and Monitoring Officer, Birmingham City Council**

**Date of Report: 21<sup>st</sup> September 2023**

Purpose of Report

1. Members of the Council are asked to consider this Report prepared by the Monitoring Officer. This Report is prepared under Section 5 of the Local Government and Housing Act 1989. I am concerned that the Council has, at the date of this Report, failed to secure a decision relating to the implementation of a job evaluation programme (also known as Pay Equity System [PES]).
2. It is my duty as the Monitoring Officer to prepare a Report to the authority, if at any time it appears to them that:
  - a. *“any proposal, decision or omission by the authority, has given rise to or is likely to or would give rise to a contravention of any enactment or rule of law or of any code of practice made or approved by or under any enactment.”*
3. This includes the proposals, decisions or omissions by any committee or subcommittee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority is represented.
4. This Report is published following statutory consultation with both the Chief Executive (Head of Paid Service) and the Interim Director of Finance and s151 Officer.
5. The purpose of this Report issued by the Monitoring Officer is to make it clear to Members of the Council that immediate steps must be taken to secure a robust PES which:
  - a. Is objective, robust and can be consistently applied and be Equality Act 2010 compliant so as to remove the risks of job enrichment, sex discrimination and cannot be open to legal challenge and thus incur future potential equal pay liability; and
  - b. Can mitigate the accruing potential equal pay liability published in June 2023, in the region of £650m-£760m with a monthly accruing liability of between £5m-£14m.

Recommendations

6. That Elected Members of Birmingham City Council consider this Report by Janie Berry, City Solicitor and Monitoring Officer issued under Section 5 Local Government and Housing Act 1989.
7. That this Report be considered at a meeting of Full Council, held no later than the end of 21 days (the maximum allowable period set out within the Local Government and Housing Act 1989) from the date of issue of this Report.
8. That Birmingham City Council (by which this means a meeting of Full Council) decide whether it agrees or disagrees with the views documented within this Report and outline what action it proposes to take because of this Report.

## Summary of key issues

9. A number of issues have arisen over an extended timeline:

### *Context*

- a. The context to the decision around a PES can be found within the Council Business Management Committee papers, dated 1<sup>st</sup> September 2023. The decision of this committee was to agree to proceed with Option 2 as outlined within the appendices to this Report.
- b. The decision by the Council Business Management Committee was required in order to limit the ongoing accrual of a potential liability in relation to Equal Pay which is current estimates to be £650m-£760m, and is accruing at a rate of between £5m-£14m per month after the 1<sup>st</sup> April 2025. Any extension to the timeline to deliver a PES by this date would incur additional liability.
- c. The quantum of this estimated liability was first shared in February 2023. This demonstrates the significant time period over which this issue has been known.

### *Timeline*

- d. Following a Cabinet Meeting on the 25<sup>th</sup> July 2023 the funding envelope for a PES was agreed, with the delegated decision for a new PES given to Council Business Management Committee to be agreed at the earliest date.
- e. Council Business Management Committee were initially due to meet on the 17<sup>th</sup> August 2023. This was reconvened due to a delay in the publishing of papers for this committee, which was driven by the involvement of the Local Government Association in delivery of additional negotiations between Officers and Elected Members.
- f. Council Business Management Committee were subsequently due to meet on 29<sup>th</sup> August 2023 at an extraordinary meeting. This was opened and adjourned due to the receipt of a letter from Minister Rowley informing the Council of the need to ensure Best Value considerations were suitably included within any decision made by the Council.
- g. Council Business Management Committee met on 1<sup>st</sup> September 2023, and the Report to be considered excluded two of the four options on the grounds of unlawfulness as a conclusion and under the Council's Best Value duty.

### *Decision*

- h. The decision made on 1<sup>st</sup> September 2023 to proceed with Option 2, as outlined within the appendices of this Report, was conditional on the agreement of the addendum by the three recognised Trade Unions by 09:00 on Monday 11<sup>th</sup> September 2023.
- i. At the time of writing this Report, two of the recognised Trade Unions have responded confirming that they are unwilling to accept the proposed addendum and the third has not responded in the time allowed or at all.
- j. I have as such notified the Leader of the Council (and Chair of the Council Business Management Committee) of the potential options to progress a subsequent decision by the committee. Notifications had been made on 11<sup>th</sup> September 2023 and 12<sup>th</sup> September 2023.
- k. Following consultation with the Leader on Friday 15<sup>th</sup> September 2023, the Leader agreed that a Council Business Management Committee would be scheduled to propose approval of Option 4 by the Committee.
- l. I have since received a request on Wednesday 20<sup>th</sup> September 2023 from the Leader of the Council that Council Business Management Committee does not meet at this time.

- m. As a result of this, currently there is an omission to act or make a decision on the part of the Chair of the Committee.

#### Consequences of a Section 5 Report

10. The effect of a Report issued by the Monitoring Officer is that the decision in question shall be suspended until the end of the first business day following consideration of the Report by an Extraordinary Meeting of Full Council.
11. During the period between issuing of the Report and the Extraordinary Meeting of Full Council no steps can be taken which give effect to any proposal or decision relating to the issue in question.

#### Legal Framework

12. In preparation of this Report and pursuant to the Local Government and Housing Act 1989, the Monitoring Officer is required to consult with the Head of Paid Service and the S151 Officer and has done so.
13. Section 5 of the Local Government and Housing Act 1989 requires an extraordinary meeting of Full Council to consider and decide on the contents of this Report within 21 days beginning on the day the of the Report being issued.
14. Further legal implications can be found within the Cabinet and Council Business Management Committee papers which are appended to this Report.

#### Next Steps

15. The requirement of this S5 Report is that an Extraordinary Meeting of the Full Council must happen within 21 days at which the Council must agree a response that addresses the issues outlined within this Report. Full Council must consider whether it agrees or disagrees with the views contained within this Report and determine action it proposes to take as a consequence.
16. As mentioned above, the Council must make a lawful decision such that a process commences to deliver a Pay Equity Scheme that concludes by 1<sup>st</sup> April 2025.
17. The timeline for activity over the coming months is as follows:
  - a. 21<sup>st</sup> September 2023 – Issue S5 Report
  - b. Extraordinary Full Council Meeting by 12<sup>th</sup> October 2023 latest
  - c. Statutory deadline for Full Council to agree a response to this Report by 12<sup>th</sup> October 2023 latest

#### Appendices

- i. Cabinet Report – 25<sup>th</sup> July 2023
- ii. Council Business Management Committee Report – 1<sup>st</sup> September 2023
- iii. S114 Report – 5<sup>th</sup> September 2023

**Janie Berry**

**City Solicitor and Monitoring Officer, Birmingham City Council**

**21<sup>st</sup> September 2023**

## **2023 Addendum to the Job Evaluation Joint Principles Document**

### **Between:**

Birmingham City Council (BCC)

### **And our Trade Unions:**

GMB

Unison

Unite the Union (The TUs)

This is an addendum to the Job Evaluations Joint Principles Document, dated December 2020, and should be read in conjunction with it.

### **Preamble**

All parties now recognise that the accrued and ongoing liability for Birmingham City Council arising from its current pay and grading structure gives rise to an unaffordable potential equal pay liability of up to £760m. We acknowledge this potential liability is ongoing and increasing, therefore the long term and sustainable resolution of all potential equal pay claims means that urgent resolution is of the utmost importance to the City Council, its employees, trade unions, and the Citizens of Birmingham.

There has been considerable history relating to the progression of these issues but there is now a desire by all parties to move forward and resolve potential equal pay issues through a jointly agreed process utilising the Gauge system of Job Evaluation.

We acknowledge that any further delay to the completion of this programme will have potentially severe negative consequences for the financial viability of the City Council, security of employment and provision of services to our Citizens.

The purpose of this addendum is to provide a safeguard and certainty that the 2023 job evaluation programme will be completed in a timeframe that best minimises any ongoing potential equal pay liability and provides sustainable equality in our pay and grading system.

### **Principles**

We jointly agree:

- 1 That the job evaluation process set out in this document and any changes to terms and conditions must be complete and implemented by 1 April 2025 otherwise potential liability will increase further.
- 2 To doing all within our power to maintain satisfactory progress at all stages.
- 3 To facilitate the provision of accurate information and doing all we reasonably can to ensure that all job descriptions, person specifications and other information accurately reflect the reality of how any role is conducted.



- 4 That only persons who have the skills and knowledge to participate in evaluation programmes will take part in the programme, and that training, including equalities training, must be undertaken in order to do so.
- 6 That working with the West Midlands Local Government Employers Organisation (WME) and with assistance from the Local Government Association (LGA) we will implement the Gauge system of Job Evaluation.
- 7 Ultimately, given the urgency of completing the programme and potential ongoing financial liabilities, both parties acknowledge that without working together in positive partnership, BCC risks a statutory intervention. We give our commitment to working constructively, positively and respectfully to help achieve programme outcomes. If it appears at any stage that timescales and/ or deadlines are at risk, the Chief Executive (Head of Paid Service) and senior Representatives (supported by appropriate officers from our TUs) will urgently review the issues.

This could arise if either management or trade unions believe this risk has materialised or is raised by audit committee or external audit or the Finance & Resources Overview and Scrutiny Committee.

## **Recruitment and Training of Analysts**

BCC will proactively and expeditiously recruit and suitably train Analysts by the end of October 2023. This will run concurrently with Stage 1 (Job Information) below.

## **The Job Evaluation Programme Process**

The Job Evaluation Programme is split into several stages. We agree the roles and responsibilities at each stage are as follows.

### **Stage 1 – Job Information**

BCC will ensure that managers promptly and accurately complete Job Descriptions and Person Specifications (JDPS). TUs will encourage their members to accurately and promptly complete Job Context Questionnaires. These documents together comprise the Job Information. Managers will approve the Job Information, and in doing so will use reasonable endeavours to agree the information with the employee.

TU representatives will be invited to join the JDPS training that will be held for managers, and employees will be trained in the completion of the Job Context Questionnaire.

If the Job Information remains as not agreed, the matter will be referred to a panel consisting of a BCC Analyst and a TU Analyst. If consensus cannot be reached the matter will be referred to an independent Analyst appointed by WME. Their decision will be final.

## **Stage 2 – Evaluation and Moderation**

Each evaluation will be conducted by an Analyst appointed by WME.

On a rolling ongoing basis, a joint assurance panel consisting of an Analyst appointed jointly by the TUs, a BCC Central Job Evaluation Team representative and a WME Analyst will be established to verify that the principles of the Gauge evaluation are being consistently applied by reviewing a sample of evaluated job roles.

As the Gauge scheme is supported wholeheartedly by the TUs it is agreed that no more than 10% of roles will be reviewed. In the event there is not unanimity by the job assurance panel that the process has been followed, the job will be re-evaluated once by a senior Analyst and that decision will be final.

Once all evaluation is complete, a joint moderation panel consisting of an Analyst appointed jointly by the TUs, a WME Analyst and a representative from Directorate Management at JNC level will be convened in each Directorate. The purpose of this panel is to review the relativity of ranking within the service.

This will be followed by a cross-Directorate moderation by a TU Analyst, WME Analyst and People Partners from across the City Council.

The Statutory Officers (Monitoring Officer, s.151 Officer and Head of Paid Service) and the People and Corporate Services Director (or their Strategic Director equivalent) will not participate in any moderation panels.

## **Stage 3 - Model/Structure**

Once completed the pay and grading structure will be subject to collective negotiations before implementation across the Council. Both parties will work towards attaining a collective agreement to implement new terms and conditions.

This stage must be completed by April 2025.

## **Appeals**

A joint appeals panel (A BCC representative, WME representative and TU representative) will be established to hear any individual appeals arising following the implementation of the new pay and grading structure. Decisions can be made by majority of panel members and will be final.

Appeals will only be accepted on the following grounds:

- The job evaluation scheme has been misapplied,
- The Job Information provided was in error or is now out of date, or
- The job evaluation process has not been followed.

In all appeals, evidence supporting the grounds of appeal must be provided.

## **Maintenance of the integrity of the system**

A panel consisting of a representative from WME, TUs and the Pay Equity and Equal Pay Legal group will review the list of NJC roles evaluated in the previous six months and audit a sample of those roles. This panel will also review any NJC market supplements enacted during this period.

## **Governance**

The overall governance and progress of the project will be overseen by the finance and resources overview and scrutiny committee and the audit committee as a mandatory item on their respective work programmes. External audit will be invited to undertake regular reviews of the governance and progress of this project and will submit their findings to the City Council's statutory officers and the audit committee.

## **Signed**

|                         |                |                |                 |
|-------------------------|----------------|----------------|-----------------|
| Deborah Cadman          | Representative | Representative | Representative  |
| Chief Executive Officer | GMB            | UNISON         | Unite the Union |

**Date:** [xx] July 2023

Public Report

Birmingham City Council

Report to Cabinet

25 July 2023



**Subject:** Permanent Pay Equity (Short-Form Report)

**Report of:** Deborah Cadman, Chief Executive and Head of Paid Service;  
Janie Berry, City Solicitor and Monitoring Officer; and  
Fiona Greenway, Interim Director of Finance and Section 151 Officer

**Relevant Cabinet Member:** Councillor John Cotton, Leader of the Council; and  
Councillor Brigid Jones, Finance and Resources

**Relevant O & S Chair(s):**

**Report authors:** Darren Hockaday, Interim Director of People and Corporate Services; and  
Robert Harris, Head of Law – Permanent Pay Equity

|  |   |   |
|--|---|---|
| Are specific wards affected?   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No – All wards affected |
|  | If yes, name(s) of ward(s):             |   |
| Is this a key decision?  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                                 |
| If relevant, add Forward Plan Reference: 010856/2023   |   |   |
| Is the decision eligible for call-in?  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                                 |
| Does the report contain confidential or exempt information?  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> 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:  |   |   |
| <ul style="list-style-type: none"><li>• Schedule 12A, paragraph 3 – ‘Information relating to the financial or business affairs of any particular person (including the authority holding that information)’;</li><li>• 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</li><li>• Schedule 12A, paragraph 5 – ‘Information in respect of which legal professional privilege could be maintained in legal proceedings.’</li></ul> |   |   |
| 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.  |   |   |

## **Executive Summary**

### **1 Purpose of this paper**

- 1.1 The purpose of this paper is to ask Cabinet to approve funding and procurement of the resources required to conduct a job evaluation study and implement a new pay structure that best delivers the objectives set out in this paper (see paragraph 2.8 below). Such resources are a permanent Pay Equity team and Pay Compliance unit, recruitment, training of personnel to carry out the job evaluation and pay and grading programme, and relevant licences as appropriate (detailed areas of financial approval are set out in section 6 below). Please note that options to deliver job evaluation for both NJC and JNC grades can require one or a combination of different methodologies. Internal-led methodologies will require additional resource to ensure the required capacity and capability to deliver within an ambitious timescale. Therefore, a range of funding up to a maximum level will cover different routes.
- 1.2 By Cabinet approving funding and procurement, this will enable the Council Business Management Committee (CBMC), which has delegated authority on HR-related matters, to subsequently approve the methodology that best meets the aims of the job evaluation study as set out below. This paper provides a framework to inform Cabinet of the options under consideration and their merits and risks.
- 1.3 This report should be read in conjunction with Appendix 1 (11.1), which provides background and detail of the context to this report.

### **2 Background**

- 2.1 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 Section 151 Officer and City Solicitor and Monitoring Officer to undertake a refreshed analysis and further due diligence of the Council's projected liability in relation to equal pay claims.
- 2.2 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.
- 2.3 The principal solution to the Council's equal pay issues is the delivery of new terms and conditions of employment following a consistently and objectively applied job evaluation study and a new pay structure that complies with the relevant provisions of the Equality Act 2010.
- 2.4 The estimated range of potential liability assumes that new terms and conditions will be implemented by 1 April 2025. Any delay to this implementation date will add to the potential liability estimate.
- 2.5 The implementation timescale is influenced by a combination of the selection of a methodology that delivers the objectives of the job evaluation study (see

paragraph 2.8 below) and maintaining stable industrial relations whereby the trade unions are engaged in the methodology and fully cooperate in support of its implementation. This is an integral part of the choice of methodology. A strict timescale with delivery gates will need to be adhered to where all parties are held to account on the outcomes required at each stage. BCC recognises three trade unions within collective bargaining, which will be referred to as Trade Unions within this report.

- 2.6 Close monitoring of the milestones and delivery of job evaluation is critical to achieve the implementation deadline of April 2025. To support delivery of the programme, in addition to the support and views of external audit, Finance and Resources Overview and Scrutiny Committee and Audit Committee will be invited to assist with the performance monitoring by the addition of job evaluation to their Committee work plans and therefore as a standing item at each meeting. If it becomes apparent, via this monitoring and oversight, that the deadline cannot be met, the Council may terminate the process and explore alternative routes to achieve the programme outcomes.
- 2.7 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. Furthermore, unstable trade union relationships would lengthen any methodology and potential industrial action would delay any implementation and therefore add to the Council's accruing potential equal pay liability.
- 2.8 Two principal objectives are essential for a new job evaluation study:
- 2.8.1 That it must be **objective, robust, reliable, and Equality Act 2010 compliant**; and
- 2.8.2 That it must be carried out in the **shortest possible timescale** given the size of potential liability referred to above and the estimated accrual rate.
- 2.9

It is therefore imperative that a job evaluation study is conducted, a new pay structure created, and new terms and conditions are implemented with all speed to achieve the **1 April 2025** date. If the Council's job evaluation and pay and grading programme goes beyond that date, the current figure of £650m to £760m is likely to increase at the rate given at paragraph 2.2 above.

- 2.10 Funding for a job evaluation and pay and grading programme was approved by Cabinet in April 2022 and this programme was developed from that date until the end of 2022. The Programme Team re-evaluated the programme based on the identified need for a quicker delivery time.
- 2.11 A job evaluation programme requires the following elements: recruitment, training, evaluation, moderation, pay modelling, appeals, statutory consultation, and implementation of the new structure and new terms and conditions of

employment. A collective agreement exists with Job Evaluation principles aligned to the Gauge based methodology and agreed and signed in January 2021. If the Council were to step outside of the collective agreement arrangements in implementing a Job Evaluation scheme this could lead to an industrial dispute.

- 2.12 At the end of the job evaluation study, new terms and conditions of employment will need to be introduced. Only at this point will any of the current ongoing potential liability be brought to an end.
- 2.13 To highlight the challenge of changing/introducing terms and conditions of employment, there are several recent examples nationally where councils and trade unions have failed to reach agreement – this is increasingly common and consequently has led to an increase in dismissal and re-engagement processes to secure council-wide implementation. These councils used a Gauge-based methodology to evaluate jobs (as the current programme intends). Similarly, in another example, a council used an alternative outsourced methodology (not Gauge), and this too resulted in a stalemate and agreement with trade unions has so far not been possible to change terms and conditions of employment through a collective agreement, and dismissal and re-engagement is the only remaining option.
- 2.14 To minimise risk, changes to terms and conditions of employment through collective bargaining is better served with cooperative trade union relations in the run up to this part of the process, notwithstanding that there is inherent risk that the consultation process could be protracted based on any or all trade unions not accepting an outcome where roles have been downgraded for example.
- 2.15 When the Council had previously sought to address equal pay risks, it issued redundancy notices to employees in the role giving rise to such risks as the mitigation strategy. At the time, this led to an industrial dispute and strike action by the trade union representing workers in the said role. This serves to highlight the risk of any potential changes to grades and pay and the prospect of resulting industrial action.
- 2.16 The above serves to demonstrate the challenges that may face the Council irrespective of the methodology that is used to carry out its job evaluation study, noting the history of equal pay at the Council is not comparable with the majority of other councils.
- 2.17 Any job evaluation methodology has its risks, and the heightened challenge comes at the phase of changing terms and conditions of employment so as to implement the product of the job evaluation study. Any changes to terms and conditions will be contentious and have proved to be in the recent history of the Council as referred to at 2.15, this remains a significant risk. Decisions on job evaluation methodology, based on current assessments, need to take into account how to reduce the probability of non-acceptance and/or a trade dispute and potential strike action. However, whilst it is recognised that a constructive and stable relationship with the recognised trade unions, aided by their support

in using the current Gauge methodology will aim to mitigate potential issues at the implementation stage; this is not the only consideration. Upon implementation of any scheme, there are likely to be winners and losers. Some of those losers may well be members of the recognised trade unions.

- 2.18 Protecting the pay of those whose salary is downgraded may not always be possible, because of the ongoing equal pay risk that this may represent. In such situations it makes the possibility of a collective agreement being reached with the trade unions difficult, whichever methodology (NJC, GLPC or outsourced) is chosen. For this reason, dismiss and re-engage remains an option, but not preferred (as per 2.6).

### **3 The Current Programme**

- 3.1 This Gauge-based job evaluation programme was 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.
- 3.2 The re-evaluation of the programme was based upon concerns that it would not best meet the Council's objectives – particularly of timescale. Once this was understood, officers set about consultation and engagement with the trade unions to explore how the job evaluation programme could meet the two key objectives required (see paragraph 2.8 above).
- 3.3 The process of trade union engagement/consultation commenced in January 2023 and has continued intensively up until the finalisation of this paper. Engagement/consultation with the recognised trade unions looked to address concerns that may have had an influence on timescale to complete the programme. Essentially, the existing approach using the NJC Gauge methodology is resource intensive and open to the risk of an elongation of timescale.

### **4 Summary of Options Considered**

- 4.1 The current programme is a **Gauge-based system** for all NJC (Green Book) grades on using existing assumptions whereby trade union colleagues partake in each evaluation panel is time consuming and assumes that experienced analyst resource could be found.
- 4.2 A **Gauge-based system partnering with West Midlands Employers** (and other sources of resource) for NJC roles where all panels are led by analyst-only panels. The reason this differs from option 1 is the trade union involvement as detailed in the new proposed draft addendum to the Principles Document (see appendix 1), which involves the trade unions in moderation and appeals, but no involvement in the evaluation stage other than potentially sampling (involvement in the benchmarking exercise has yet to be resolved as part of the addendum



document, shown in the appendix of this report). There are two inputs to the time in this particular methodology and approach, one is Trade Union involvement (dealt with within the addendum document), and the other is securing the scarce resource needed to enable this methodology. To ensure the integrity of the system, trade unions will do a sample of parallel evaluations. There is a risk to this option, in that the process would involve bringing in a large pool of resources that would need to be recruited, trained and developed. The best evidence to date indicates there is a national scarcity of suitably trained resource required to deliver the methodology.

In this option, if it appeared at any stage that timescales and/or deadlines are at risk, the Chief Executive (Head of Paid Service) and senior trade union representatives (supported by appropriate officers from our recognised trade unions) would urgently review the issues. This could arise if either management or trade unions believe this risk has materialised or is raised by Audit Committee, external audit or the Finance & Resources Overview and Scrutiny Committee.

In this option, all JNC roles would be evaluated using an outsourced provider.

4.3 A different job evaluation method can be used for NJC and JNC roles via an **outsourced programme** to an external supplier or suppliers. See table in section 5 below.

4.4 The **Greater London Provincial Councils Job Evaluation System (“GLPC”)** is a job evaluation methodology that is used by London councils and in some local authorities outside London. GLPC has similarities to the NJC (Gauge) scheme, but it is not identical. Nevertheless, an analyst-led process using GLPC (following similar processes as for the WME option (see 4.2) is expected to require similar resources. Because of its structure, GLPC has proven to be more effective than the NJC/Gauge route at producing clusters of roles so as to facilitate grade structuring. This can lead to more distinct grade boundaries.

Due to the unfamiliarity of this scheme compared with options at paragraph 4.1 and 4.2, there is increased risk as our employees are not familiar with the approach, and this would result in further training required. This process also does not form any part of a collective agreement, which may elongate the timeline.

## 5 Summary of options under consideration

5.1 To assist the Cabinet in its decision making, the above options have been considered and collated over an intensive seven-month period involving trade union consultation and engagement. These options are summarised in the table below, with their various risks and merits and to what extent they achieve the objectives identified at 2.8.

|   | Gauge+ via Panels  | Gauge+ via WME   | Outsource   | GLPC   |
|---|--|--|---|--|
| <b>Estimated costs (inc. central team) based on several assumptions</b>   | £15.3m   | £10.8m   | £16m  | £10.8m   |
| <b>Industrial Relations</b><br><i>Potential mitigations of industrial disputes are not explored for any the options in this paper</i> | <ul style="list-style-type: none"> <li>Risk of no agreement on implementation</li> <li>Up to implementation this potentially reduces the risk of non cooperation with the Trade Union preferred methodology</li> </ul> | <ul style="list-style-type: none"> <li>Risk of no agreement on implementation</li> <li>Up to implementation this potentially reduces the risk of non cooperation with the Trade Union preferred methodology</li> </ul>   | <ul style="list-style-type: none"> <li>Risk of no agreement on implementation</li> </ul>  | <ul style="list-style-type: none"> <li>Risk of no agreement on implementation</li> </ul>   |
| <b>Principal risks</b>  | <ul style="list-style-type: none"> <li>Inability to recruit analysts</li> <li>Availability of Management Partners</li> <li>Length of programme and consequent potential equal pay liability accrual</li> </ul>         | <ul style="list-style-type: none"> <li>Inability to recruit analysts</li> <li>Lack of certainty of timescale and consequent risk of increase in potential equal pay liability accrual</li> <li>Length of programme and consequent potential equal pay liability accrual</li> </ul> | <ul style="list-style-type: none"> <li>Lack of Trade Union support (although some authorities have successfully outsourced with a degree of Trade Union cooperation)</li> <li>Length of programme and consequent potential equal pay liability accrual</li> </ul> | <ul style="list-style-type: none"> <li>'London Councils' only have 2 evaluators</li> <li>Inability to recruit analysts</li> <li>Lack of certainty of timescale and consequent risk of increase in potential equal pay liability accrual</li> <li>Length of programme and consequent potential equal pay liability accrual</li> </ul> |
| <b>All above options Equality Act 2010 compliant</b>  |  |  |   |  |

## **6 Recommendations**

It is recommended that Cabinet:

- 6.1.1 Approves a budget of up to £20m to take account of any risks for an expedited programme to be funded from the Policy Contingency Fund, including the establishment of a Permanent Pay Equity team and adjacent Pay Compliance unit to ensure that the equitable pay position achieved through the permanent pay equity programme is maintained in the future (see appendix 4).
- 6.1.2 Notes that any scheme that is chosen must be implemented by April 2025, to avoid the potential liability increasing beyond the estimated range.
- 6.1.3 Notes that the decision-making body for the methodology will be the Council Business Management Committee, with monitoring and oversight to be provided by the Finance and Resources Overview and Scrutiny Committee and the Audit Committee, as a regular item on their respective work programmes.
- 6.1.4 Following the decision by Council Business Management Committee authorises the running of compliant procurement processes (via either a direct award or a mini competition) under a framework agreement or other compliant route (as more fully described in appendix 1) to appoint a supplier or suppliers that prove(s) to be the most economically advantageous to deliver an expedited programme. This is based on a combination of one or more different methodologies for NJC and JNC. The supplier(s) would be providing a programme of job evaluation, pay equity analysis, and the creation of a new pay model in consultation with the Council and the trade unions.
- 6.1.5 Delegates the award of the contract(s), following the outcome of the compliant procurement process or processes, to the Interim Director of People and Corporate Services in conjunction with the Interim Director of Finance and Section 151 Officer and the City Solicitor and Monitoring Officer.
- 6.1.6 Notes when delivered, these elements will, on the introduction of new terms and conditions of employment, stop the current accrual of potential equal pay liabilities; provide the Council with a statutory defence to any future equal value claims; and maintain a pay equity system within the Council.

## **7 Background**

- 7.1 See appendix 1.

## **8 Options Considered**

- 8.1 See appendix 1.

## **9 Consultation**

9.1 See appendix 1.

## **10 Risk Management**

10.1 The programme team has, as part of the CPMO process, established a full assessment of the risks involved in the programme, together with the proposed mitigations and contingencies where appropriate.

## **11 Compliance Issues:**

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

11.1.1 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.

### **11.2 Legal Implications**

11.2.1 See appendix 1.

### **11.3 Financial Implications**

11.3.1 See appendix 1.

### **11.4 Procurement Implications**

11.4.1 See appendix 1.

### **11.5 Human Resources Implications**

11.5.1 See appendices 1 and 4.

### **11.6 Public Sector Equality Duty**

11.6.1 The recommended proposals will limit and address any adverse equality impact on staff at the Council in the quickest possible timeframe 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.

## **12 Appendices**

12.1 Appendix 1: Permanent Pay Equity: Long-Form Report dated 25 July 2023

12.2 Appendix 2: Addendum to Principles Document

12.3 Appendix 3: Glossary

12.4 Appendix 4: Structures of Permanent Pay Equity Team and Pay Compliance Unit

## **13 Background Documents**

13.1 Cabinet Report on Job Evaluation and Pay and Grading dated 26 April 2022

# 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.

Public Report

## Birmingham City Council

### Council Business Management Committee

1<sup>st</sup> September 2023



|                                    |  |
|------------------------------------|--|
| <b>Subject:</b>                    | Pay Equity System  |
| <b>Report of:</b>                  | Janie Berry, City Solicitor and Monitoring Officer.<br>Fiona Greenway, Interim Director of Finance and Section 151 Officer; and Deborah Cadman, Chief Executive and Head of Paid Service |
| <b>Relevant Cabinet Member:</b>    | Councillor John Cotton, Leader of the Council  |
| <b>Relevant O &amp;S Chair(s):</b> | Councillor Jack Deakin, Finance and Resources Overview and Scrutiny Committee  |
| <b>Report authors:</b>             | 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 1<sup>st</sup> 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 25<sup>th</sup> August 2023, for the meeting of this Committee scheduled for 29<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 – 26<sup>th</sup> April 2022 – ‘Job Evaluation/Pay & Grading’

21.2 Cabinet Report – 25<sup>th</sup> 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)



**Report to all Elected Members of Birmingham City Council**  
**Under**  
**Section 114 (3) of the Local Government Finance Act 1988**  
**By**  
**Fiona Greenway CPFA**  
**Interim Director of Finance (Section 151 Officer), Birmingham City Council**  
**Date of Report: 5<sup>th</sup> September 2023**

Purpose of Report

1. Members of the Council are asked to consider this report by the Section 151 Officer (the Chief Finance Officer). The report is made under section 114 (3) of the Local Government Act 1988 because the Section 151 Officer is of the opinion that:
  - a. The Council is currently in a negative General Fund position. That is because of the cost of providing for Equal Pay claims, that the Council is now legally obligated to recognise, will result in exceeding the financial resources available to the Council. This means that spend due within that period exceeded the financial resources available to the Council in that same period.
  - b. The Council has insufficient resources to meet that expenditure and the Council is not currently able to agree a solution that will allow suitable funding or financing to be obtained for this liability.
  
2. This report is being issued now because of the following individual factors:
  - a. Correspondence from External Audit on 1<sup>st</sup> September 2023 which raises concerns around the provisions for Equal Pay in prior year accounts, 2020/21 and 2021/22, being materially understated which means the Council would have exhausted its General Fund balance on an accounting basis.
  - b. Further confirmation of the historic value of the potential Equal Pay liability impacting prior years, which is becoming more evident that it is unaffordable for the council based on existing available reserves. Since the announcement of the Equal Pay liability we have received additional correspondence to put the Council on notice of further litigation from recognised Trade Unions and claimant lawyers.
  - c. Correspondence from External Audit on 1<sup>st</sup> September 2023 also enquires around the likelihood of the Council being able to generate savings, additional revenue income, and/or capital receipts to mitigate the financial challenges.
  - d. A projected deficit of £87m for the 2023/24 financial year, for which the Council does not have sufficient reserves based on the Equal Pay liability above, which is forecast to grow in the 2024/25 financial year.
  - e. Concerns over the speed and effectiveness of the mitigations which have been put in place to address the in-year budget challenges, and the ability of the Council to address our financial position. We must now make challenging financial decisions and stop non-essential spending.
  - f. Extensive discussions with External Auditors, regulatory stakeholders, and leading Kings Counsel who have confirmed our assessment of our financial position (i.e. liabilities exceeding assets) and statutory position (i.e. the requirement to issue a S114). This advice has confirmed the points raised above and the case for issuing a S114 notice.
  
3. As a result the Council is unable to finalise the provisions for Equal Pay set out in the 2020/21 and 2021/22 draft accounts, nor can I write the supporting going concern statements for these financial years, nor can I make a Section 25 statement in the Local Government Act 2003, nor

can I approve accounts for three financial years (2020/21, 2021/22, and 2022/23). Following extensive discussions with External Auditors and other regulatory stakeholders over the last few months, I have come to this conclusion.

4. The Section 114 Notice is issued following statutory consultation with both the Chief Executive (Head of Paid Service) and the Monitoring Officer. At the date of this report that consultation has taken place. Following the issuance of the Section 114 Notice the Council has 21 days to hold a meeting of Full Council to consider the report from the Section 151 Officer and decide how it will respond.
5. The purpose of this Section 114 report is to make it clear to Members of the Council that immediate steps must be taken to mitigate the financial consequences of Equal Pay claims. This means agreeing a plan which provides a route to bringing the General Fund back to a positive position and assurance that this will be successfully delivered. This should include:
  - a. An appropriate savings plan;
  - b. Full assessment of the capital programme (including delaying existing projects and reviewing assets for sale); and,
  - c. Engagement with Central Government via the Department for Levelling Up, Housing and Communities (DLUHC), resulting in a formal request for Exceptional Financial Support (EFS).

#### Recommendations

6. That Elected Members of Birmingham City Council must consider this report by Fiona Greenway, Interim Director of Finance (Section 151 Officer/ Chief Finance Officer) issued under Section 114 (3) of the Local Government Finance Act 1988.
7. That this report must be considered at an extraordinary meeting of Full Council, held no later than the end of 21 days (the maximum allowable period set out within the Local Government Finance Act 1988) from the date of issue of this report.
8. That Birmingham City Council (by which this means a meeting of Full Council) must decide whether it agrees or disagrees with the views documented within this report and outline what action it proposes to take because of this report.

#### Summary of key issues

9. This report is being issued now for the following reasons:
  - a. Officers informed Cabinet on 28 June 2023 that the potential cost of new Equal Pay claims (brought about as a result of existing claims of job enrichment and evidence of task and finish practices taking place in some teams) would be between £650 million and £760 million. This advice made clear that the Council does not have sufficient resources to cover this potential liability. It is likely that the Council will need to recognise this liability in the current or previous financial years which will result in a negative General fund balance. This is an unsustainable financial position for the Council to be in.

- b. In Q1 of FY23/24, the Council forecasted an overspend of £87m for the financial year, which was reported to Cabinet on 25<sup>th</sup> July 2023 and sets the context of the gravity and urgency of the Council's financial challenge. In the interim period a series of mandatory 'S114 like' spending controls have been in place across the Council to restrict exceptional spend. Progress made against the projected overspend has started, however pace of delivery needs to increase.
- c. Further, work has been ongoing on developing a savings programme to address the in-year budget gap for FY23/24, which is an issue to the Council regardless of the potential Equal Pay liability.
- d. The council's external auditor has now indicated that it expects the potential EP liability to be recognised in 2020/21 and 21/22. Based on current estimates it is expected there will be a negative General Fund balance. As such the Council's expenditure is now greater than the resources available to it (including reserves).

#### Consequences of a Section 114 Notice

10. The issuing of the Section 114 report has the following impact on the work of the Council:

- a. Elected Members must by law agree to cease all non-essential expenditure and reduce the Council's operational and service delivery costs immediately.
- b. Financial Controls will be exercised by a S151 Spend Control Board. Based on this S114 report, from this date this S151 Spend Control Board will be chaired by the Section 151 Officer. The controls will mean that from this date:
  - i. The Council is prevented, without explicit agreement of the Section 151 Officer, from entering into any new agreement or commitment for expenditure until Full Council has met to consider the Section 114 report. These controls may be re-applied after the date of this Full Council meeting.
  - ii. Temporary Measures are now in force such that all non-essential expenditure will now stop with immediate effect without written confirmation from the Section 151 Officer. For avoidance of doubt, non-compliance with this requirement will be considered a disciplinary matter by the Council. This supersedes all previous guidance on non-essential expenditure, with no exclusions or delegations of authority to Corporate Leadership Team (CLT).
  - iii. The controls outlined in (i) and (ii) will apply to all services being delivered through companies controlled by the Council, or where the Council supplies funding to companies that are jointly or partly owned by the Council.
  - iv. The Financial Controls apply to all Council services, including statutory services, services delivered through controlled companies and connected entities. A framework will be set in place to ensure this happens whilst ensuring that key services to children and vulnerable people are not affected because of these controls.
  - v. Spending Controls will now remain in place for the foreseeable future, with a Financial Recovery Plan reported to Full Council on a quarterly basis moving

forwards. This is not a plan that is developed in isolation by Finance, but a plan that is created and owned by all Directorates and Members.

- vi. Due to the significant potential Equal Pay liability, and no route for financing or limiting this liability, the Council's Capital Financing Requirement will need to be reviewed and re-calculated as a potential route to financing the liability. This means that no further loans will be sought from the Public Works Loan Board (PWLB) unless these are to be applied for capital purposes for which the Council is in contract, for the replacement of existing maturing loans, the maintenance of working capital, or other specified matters agreed by the PWLB in conjunction with DLUHC and the Section 151 Officer.
  - vii. Financial controls will generally have an adverse impact on the profit and loss accounts of various accounts and entities in receipt of support from the Council. The boards of these companies may look to the Council to make up for the lost funding from revenue resources. However, based on the current financial position of the Council, and the issuance of a S114 notice, the Council is unlikely to be able to consider provision of such support.
  - viii. If Financial Controls are not adhered to, or do not achieve the required outcomes, a further S114 notice will need to be issued.
- c. The Council has already implemented Financial Controls on spending – these are detailed in the report to Cabinet on 25 July of this year (entitled Medium Term Financial Plan (MTFP) Refresh – update to Cabinet at Quarter 1 of the 2023/24 Financial Year). This report extends these controls, such that, **the Council is prevented, without explicit agreement of the Section 151 Officer, from entering into any new agreement or commitment for expenditure until Full Council has met to consider the Section 114 report.**
  - d. Depending on the outcome of the Full Council meeting, these Financial Controls may need to remain in place until a solution is found to fund the costs of these Equal Pay claims. This is because the Council will lack the resources to maintain spending in all areas moving forward.

#### Financial Situation

11. As announced on 28 June 2023, following refreshed analysis it is estimated that as of the 31 March 2023 the Council's current potential Equal Pay liability is in the region of £650-760m. Detailed calculations are now being finalised for inclusion within the accounts for the 2020/21, 2021/22 and 2022/23 financial years, but they are material enough to warrant disclosure now.
12. Officers have begun consultation with the Department for Levelling Up, Housing and Communities (DLUHC). Potential support could enable the Council to make local arrangements to finance the cost, but would still require the Council to set a balanced budget and therefore make significant additional savings.
13. To enable the Council to cover the costs of any future loans, budget savings would need to be made. To address this challenge the Council has:
  - a. **Implemented Mandatory Spending Controls** for all non-essential expenditure. Mandatory spending controls mean that no new agreements or commitments for all

expenditure (including revenue, workforce, and capital) can be made unless specific criteria are met. Individual Directorate arrangements have acted as a first line of defence for the application of criteria, with a Finance Governance Board (chaired by the Leader with a panel of Members, including Independent Financial Advisor) in place to discuss exceptional spend decisions above £200k. This has now been in place since July, and we have seen additional control over exceptional spend. However, there is still a large value of spend being incurred across the Council in relation to the delivery of services against the criteria outlined as allowable expenditure.

- b. **Developed a Robust Budget Savings and Recovery Plan** which is a multi-workstream plan to address both in-year financial challenges and the longer-term transformational changes required to reduce the cost base for delivery of services across the Council. This plan has a number of identified workstreams and Directors have commenced developing saving opportunities with their teams. However, the savings identified will not be sufficient to address the significant Equal Pay liability.

- 14. This action has not yet been sufficient enough to mitigate Equal Pay pressures or tackle a range of existing budget pressures. These budget pressures are detailed in the report to Cabinet on 25 July of this year (entitled Medium Term Financial Plan (MTFP) Refresh – update to Cabinet at Quarter 1 of the 2023/24 Financial Year).

#### Legal Framework

- 15. Section 114 (3) requires that: “The chief finance officer of a relevant authority shall make a report under this section if it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.”
- 16. The process for issuing a Section 114 report and the effect of it are set out in various sections under the 1988 Act. Subsection 3(A) requires the chief finance officer to consult, so far as reasonably practicable, the Head of Paid service and the Monitoring Officer. Both of these statutory officers have been fully briefed and consulted in the preparation of this report.
- 17. Section 115 of the 1988 Act requires Full Council to consider and decide on the report made under Section 114 within 21 days beginning on the day the report is issued. Full Council must consider the report at a meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it.
- 18. Section 115 (6) states that pending consideration of the report by Full Council, there is a prohibition period which runs from the date the report is made to the date of the Full Council meeting. During this period, the Council must not enter into any new agreement which may involve the incurring of expenditure (at any time) by the authority unless the chief finance officer of the authority authorises it to do so.
- 19. Subsection (6A) states the chief finance officer may only give authority for the purposes of subsection (6) if he considers that the agreement concerned is likely to: a. prevent the situation that led him to make the report from getting worse, b. improve the situation, or c. prevent the situation from recurring.
- 20. Subsection (6B) requires that authority for the purposes of subsection (6) shall:

- a. be in writing,
  - b. identify the ground on which it is given, and
  - c. explain the chief finance officer's reasons for thinking that the ground applies.
21. Subsection (8) states that if subsection (6) is not complied with, the Council shall be taken not to have had power to enter into the agreement (notwithstanding any option to do so under contract or otherwise). Therefore, the Council's actions will be deemed unlawful.
22. Section 116 requires the Council to notify its external auditors of the report and the time, date and place of the full Council meeting. The external auditors also need to be informed of the outcome of the meeting as soon as practicable. The external auditors have been kept informed of the emerging financial position and the planned work. The external auditors will need to consider the implications of this report on their statutory functions and the implications for their opinion on the 2019/20 and subsequent accounts which remain unaudited at the date of this report.
23. The Council's legal duties around budget setting are set out in Section 31A of the Local Government Finance Act 1992, which states:
- a. In relation to each financial year a billing authority in England must make the calculations required by this section.
  - b. The authority must calculate the aggregate of:
    - i. the expenditure which the authority estimates it will incur in the year in performing its functions and will charge to a revenue account, other than a BID Revenue Account, for the year in accordance with proper practices.
    - ii. such allowance as the authority estimates will be appropriate for contingencies in relation to amounts to be charged or credited to a revenue account for the year in accordance with proper practices.
    - iii. the financial reserves which the authority estimates it will be appropriate to raise in the year for meeting its estimated future expenditure.
    - iv. such financial reserves as are sufficient to meet so much of the amount estimated by the authority to be a revenue account deficit for any earlier financial year as has not already been provided for.
    - v. any amounts which it estimates will be transferred in the year from its general fund to its collection fund in accordance with regulations under section 97(2B) of the 1988 Act,
    - vi. any amounts which it estimates will be transferred in the year from its general fund to its collection fund in accordance with section 97(4) of the 1988 Act; and
    - vii. any amounts which it estimates will be transferred from its general fund to its collection fund pursuant to a direction under section 98(5) of the 1988 Act and charged to a revenue account for the year.

#### Next Steps

24. The requirement of this S114 (3) notice is that an Extraordinary Meeting of the Full Council must happen within 21 days at which the Council must agree a response that addresses the issues outlined within this report. Full Council must consider whether it agrees or disagrees with the views contained within this report and determine action (if any) it proposed to take as a consequence. A failure to do so within the 21 days will lead to the issuance of a further s114 report.

25. As mentioned above, the Council needs to resolve funding the existing and accruing Equal Pay liability as well as address the Medium-Term Financial Plan Budget Gap for 2023/24 onwards.
26. The Financial Controls referred to in this report will operate from the date of this report. Elected Members must by law agree to cease all non-essential expenditure and reduce the Council's operational and service delivery costs immediately.
27. The timeline for activity over the coming months is as follows:
  - a. 5<sup>th</sup> September 2023 – Issue S114 Notice
  - b. Extraordinary Full Council Meeting by 26<sup>th</sup> September 2023 latest
  - c. Statutory deadline for Full Council to agree a response to this report by 26<sup>th</sup> September 2023 latest
28. Negotiations with DLUHC will continue over the coming months to determine an approach to financing the liability.

**Fiona Greenway CPFA**

**Interim Director of Finance (Section 151 Officer), Birmingham City Council**

**5<sup>th</sup> September 2023**

**Report to all Elected Members of Birmingham City Council**  
**Under**  
**Section 114 (2) of the Local Government Finance Act 1988**  
**By**  
**Fiona Greenway CPFA**  
**Interim Director of Finance (Section 151 Officer), Birmingham City Council**  
**Date of Report: 21<sup>st</sup> September 2023**

Purpose of Report

1. Members of the Council are asked to consider this Report by the Section 151 Officer (the Chief Finance Officer). The Report is made under section 114 (2) of the Local Government Act 1988 because the Section 151 Officer is of the opinion that:
  - a. The omission of a decision by the Council Business Management Committee has resulted in (a) a decision which involves the authority incurring additional expenditure which is unlawful, and (b) the course of action (i.e. inaction) if pursued to conclusion would be unlawful and cause a loss or deficiency on the authority.
2. This Report is being issued alongside a Section 5 Report from the Monitoring Officer, dated 21<sup>st</sup> September 2023, because:
  - a. The Council Business Management Committee agreed, on Friday 1<sup>st</sup> September 2023, to proceed with Option 2, on the basis that a signed addendum would be returned to the Council by the three recognised Trade Unions by 09:00 on Monday 11<sup>th</sup> September 2023.
  - b. On Monday 11<sup>th</sup> September 2023 two of the recognised Trade Unions responded confirming that they are unwilling to accept the proposed addendum, and the third has not responded to date.
  - c. As a result, the decision made by Council Business Management Committee on Friday 1<sup>st</sup> September 2023 is no longer valid.
  - d. The Monitoring Officer has since informed the Leader of the Council and Chair of the Council Business Management Committee of the options to move forwards, on Monday 11<sup>th</sup> September 2023 and Tuesday 12<sup>th</sup> September 2023.
  - e. A date for the Council Business Management Committee has not been agreed, with no intention to set a date or make a decision as a result.
  - f. There is currently no methodology proposed to resolve the Equal Pay challenges facing the Council, and hence no process to limit the accrual of additional liability past 1<sup>st</sup> April 2025 (as the current estimates of potential liability of £650m to £760m assume that a new Pay Equity System is implemented on 1<sup>st</sup> April 2025; at present, the potential liability is accruing at a range of £5m-£14m per month).
  - g. Further details of this omission can be found within the Section 5 Report from the Monitoring Officer dated 21<sup>st</sup> September 2023.
3. As a result of the omission of a decision by the Council Business Management Committee, and since the liability will now continue to accrue, it is my opinion that the Council is now (a) accruing additional unlawful expenditure in the form of a growing liability, and (b) making a decision (by omitting a decision) that will result in a loss or deficiency for the Council and council tax payers. As such this triggers a notice under section 114 (2) of the Local Government Finance Act 1988.
4. The Section 114 Notice is issued following consultation with both the Chief Executive (Head of Paid Service) and the Monitoring Officer. Following the issuance of the Section 114 Notice the



Council has 21 days to hold a meeting of Full Council to consider the Report from the Section 151 Officer and decide how it will respond.

5. The purpose of this Section 114 Report is to make it clear to Members of the Council that immediate steps must be taken to mitigate the additional liability being accrued in relation to Equal Pay after the 1<sup>st</sup> April 2025. This means a suitable decision must be made such that a process commences to deliver a job evaluation programme (also known as Pay Equity System [PES]) that concludes by 1<sup>st</sup> April 2025.

#### Recommendations

6. That Elected Members of Birmingham City Council must consider this Report by Fiona Greenway, Interim Director of Finance (Section 151 Officer/ Chief Finance Officer) issued under Section 114 (2) of the Local Government Finance Act 1988.
7. That this Report must be considered at an extraordinary meeting of Full Council, held no later than the end of 21 days (the maximum allowable period set out within the Local Government Finance Act 1988) from the date of issue of this Report.
8. That Birmingham City Council (by which this means a meeting of Full Council) must decide whether it agrees or disagrees with the views documented within this Report and outline what action it proposes to take because of this Report.

#### Summary of key issues

9. Regarding the potential Equal Pay liabilities, there are two significant issues that the Council has to address:
  - a. The scale of the potential Equal Pay liabilities – this requires a Financial Recovery Plan to ensure the Council can pay for these liabilities. This was the subject of the S114 Report issued on the 5<sup>th</sup> September 2023 under section 114 (3) of the Local Government Finance Act 1988.
  - b. Ending the liabilities – by implementing a PES which would prevent the financial liability continuing to grow in the future. This is the subject of this S114 Report, issued as a supplementary document on the date shown, under section 114 (2) of the Local Government Finance Act 1988.

#### Consequences of a Section 114 (2) Notice

10. The issuing of the Section 114 (2) Report has the following impact on the work of the Council:
  - a. During the 21 day prohibition period the course of conduct which led to the Report being made shall not be pursued.

#### Legal Framework

11. Section 114 (2) requires that: “The chief finance officer of a relevant authority shall make a Report under this section if it appears to him that the authority, a committee or a joint committee on which the authority is represented—:
  - a. has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful,

- b. has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or
- c. is about to enter an item of account the entry of which is unlawful.”

#### Next Steps

12. The requirement of this S114 (2) Report is that an Extraordinary Meeting of the Full Council must happen within 21 days at which the Council must agree a response that addresses the issues outlined within this Report. Full Council must consider whether it agrees or disagrees with the views contained within this Report and determine action it proposed to take as a consequence. A failure to do so within the 21 days will lead to the issuance of a further S114 Report.
13. As mentioned above, the Council must make a lawful decision such that a process commences to deliver a PES that concludes by 1<sup>st</sup> April 2025. A failure to do so will lead to the issuance of a further S114 Report.
14. The timeline for activity over the coming months is as follows:
  - a. 21<sup>st</sup> September 2023 – Issue S114 Report
  - b. Extraordinary Full Council Meeting by 12<sup>th</sup> October 2023 latest
  - c. Statutory deadline for Full Council to agree a response to this Report by 12<sup>th</sup> October 2023 latest

**Fiona Greenway CPFA**

**Interim Director of Finance (Section 151 Officer), Birmingham City Council**

**21<sup>st</sup> September 2023**