

**SUPPLEMENTAL**

**Birmingham City Council**

**Full Council**

**12 October 2023**

**PUBLIC REPORT**



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<b>Subject:</b>	Pay Equity System
<b>Report of:</b>	Deborah Cadman, Chief Executive and Head of Paid Service, Fiona Greenway, Interim Director of Finance and Section 151 Officer, and Janie Berry, City Solicitor and Monitoring Officer.
<b>Relevant Cabinet Member:</b>	Councillor John Cotton, Leader of the Council
<b>Report authors:</b>	Darren Hockaday, Acting Director of People and Corporate Services
<b>Commissioner's Comments:</b>	<p><i>We are very pleased to be able to endorse this recommendation and welcome the constructive way all parties have worked to agree a solution.</i></p> <p><i>It is essential that the Council takes a clear decision at this meeting.</i></p> <p><i>The revised recommendation which delegates the finalisation of the text of the agreement to the Head of Paid Service in a short period of time with the fallback of the original recommended approach if an acceptable form of words cannot be agreed within this window is the only alternative proposal which would satisfy Commissioners.</i></p> <p><i>Addressing the Equal Pay issue at this meeting, is both a necessary and an important step on the road to recovery and the ultimate withdrawal of the Direction regime. There are no other courses of action that meet these requirements.</i></p>

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 and latest developments

- 1.1 This supplemental report provides Full Council with an update upon the latest position with regard to negotiations with our recognised Trade Unions on a renewed job evaluation programme known hereafter as Pay Equity System (“PES”) and sets out recommended next steps.
- 1.2 On 5 October 2023 Commissioners, led by Max Caller CBE, were appointed to support Birmingham City Council under the terms of Directions from the Secretary of State for Levelling Up, Housing and Communities.
- 1.3 The Council’s officer and political leadership team, with the support of Commissioners, have engaged in significant further dialogue with Trade Unions in relation to agreeing a revised addendum. The revised addendum will set out the agreed principles of working in relation to the delivery of the new Pay Equity System.
- 1.4 The terms of a revised addendum are close to being agreed. The revised terms are similar in substance to those previously underpinning Option 2 set out in the Council Business Management Committee (‘CBMC’) report on 1<sup>st</sup> September 2023. Whilst final agreement is yet to be reached, the Council is confident that the three recognised Trade Unions will be in a position to sign a revised addendum by 22 October 2023. Once agreed, the signed addendum will be circulated to all 101 elected members. The addendum will secure a Collective Agreement that sets out a framework and the responsibilities of stakeholders required to deliver a Permanent Equity System (PES) or otherwise known as job evaluation.
- 1.5 The principles as set out in the Addendum are as follows:

We (Recognised trade unions and BCC) jointly agree:

- a. That the job evaluation process set out in this document and any changes to terms and conditions of employment must be completed and implemented by 1 April 2025 otherwise potential liability will increase further.
- b. To doing all within our power to maintain satisfactory progress and provide the relevant resources at all stages.
- c. To facilitate the provision of accurate information and doing all we can to ensure that all job descriptions, person specifications and other information accurately reflect the reality of how any role is conducted.
- d. 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 to do so.
- e. That working with the West Midlands Local Government Employers Organisation (WME) and with assistance from the Local Government Association (LGA) we will implement the NJC-Gauge system of Job Evaluation.
- f. Ultimately, given the urgency of completing the programme and potential ongoing financial liabilities, all parties acknowledge that without working together in positive partnership, BCC risks further statutory interventions. 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.

## 2 Recommendations

### 2.1 Full Council is recommended to:

2.1.1 Delegate authority to the Head of Paid Service to agree the terms of the revised addendum on the behalf of the Council with its three recognised Trade Unions on or before 4pm on 22 October 2023. **In the absence of the Council being in receipt of an agreed addendum, signed by authorised representatives of all three recognised Trade Unions by 4pm on 22 October 2023, Council Officers are instructed to proceed with the implementation of Option 4 (Outsourced Option) as set out in the CBMC Report dated 1 September 2023, with immediate effect.**

2.1.2 Council notes that the decision is made in the context of:

- (a) A Section 114 (3) Report issued by the Section 151 Officer under the Local Government Finance Act 1988 on 5<sup>th</sup> September 2023;
- (b) A Section 5 Report was issued by the Monitoring Officer under Section 5 Local Government and Housing Act 1989 on 21<sup>st</sup> September 2023, as there was a failure to secure a decision relating to the implementation of a job evaluation programme;
- (c) A Section 114 (2) Report issued by the Section 151 Officer under the Local Government Finance Act 1988 on 21<sup>st</sup> September 2023, triggered by the issuing of the Section 5 Report as in the opinion of the Section 151 Officer, 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 (ie inaction) if pursued to conclusion would be unlawful and cause loss or deficiency on the authority;
- (d) Statutory Recommendations issued by the External Auditor, Grant Thornton, under the Local Audit and Accountability Act 2014, on 29<sup>th</sup> September 2023, which includes a recommendation to the Council that “the commencement of the job evaluation process should not be further delayed (as this would further undermine the Council’s financial sustainability)”; and
- (e) potential equal pay liabilities which are estimated to be accruing at a rate of between £5m-£14m per month from 1<sup>st</sup> April 2025.

### **3 Background**

- 3.1 At its meeting on 1<sup>st</sup> September 2023 the CBMC considered two options for a Pay Equity System (PES) methodology. These were:
  - 3.1.1 Option 2: Use an adapted version of NJC Gauge in co-operation with West Midlands Employers (“WME”), Version A (“WME Gauge A”), dependent upon an agreed and signed Addendum.
  - 3.1.2 Option 4: Outsource job evaluation to a third-party specialist supplier.
- 3.3 In the meeting of the 1<sup>st</sup> September 2023, CBMC considered the risks and benefits of both of the above-mentioned Options. CBMC decided that the process in Option 2 should be followed, which included a requirement that the Council’s three recognised Trade Unions sign and return the addendum to the 2020 collective agreement on job evaluation by 9am on 11<sup>th</sup> September 2023. No signed addendum was received.

#### **4. Next Steps**

- 4.1 The Council will continue to engage with its recognised Trade Unions, with the support of Commissioners, and work with them constructively to finalise the terms of the revised addendum.
- 4.2 Therefore, it is recommended that Full Council agrees to approach set out in paragraph 2.1.1 (as set out above).

#### **4 Implications**

##### **Legal implications**

The Council must take steps which secures a job evaluation programme which is objective, robust and can be consistently applied and be compliant with the Equality Act 2010 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.

The detailed legal implications in respect of job evaluation and equal pay and the implications for the Council are contained within the Report to Council Business Management Committee as published within this agenda.

##### **Financial implications**

In June 2023, the Council published the potential equal pay liability of being in the region of £650m - £760m to the period ending 31<sup>st</sup> March 2025. From 1<sup>st</sup> April 2025, the Council has an accruing monthly liability of between £5m-£14m per month until such time as a robust job evaluation methodology is implemented across the Council.

The detailed financial implications in respect of job evaluation and equal pay and the implications for the Council are contained within the Report to Council Business Management Committee as published within this agenda.

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

The Council must take steps which secures a job evaluation programme which is objective, robust and can be consistently applied and be compliant with the Equality Act 2010 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. The remainder of the implications are set out in the Council Business Management Report dated 1 September 2023 as published with this agenda.

## **Appendices**

None

## **Background Papers**

Agenda Report and Minutes of Council Business Management Committee – 1 September 2023.

Agenda Report and Minutes of Cabinet – 25 July 2023.