

Public Report
Birmingham City Council
Report to Cabinet
25 July 2023



Subject: Permanent Pay Equity (Short-Form Report)

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

Relevant O & S Chair(s):

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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: <u>010856/2023</u>		
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"> • 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.		

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

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