

**BIRMINGHAM CITY COUNCIL**

**PUBLIC REPORT**

**Report to:** CABINET  
**Report of:** Corporate Director Finance & Governance  
**Date of Decision:** 24<sup>th</sup> May 2018  
**SUBJECT:** EQUAL PAY AND TUPE- CITYSERVE SERVICES

**Key Decision:** Yes  
**If not in the Forward Plan:** Relevant Forward Plan Ref:  
(please "X" box) Chief Executive approved   
Relevant Cabinet Member(s) or O&S Chair approved   
Relevant Executive Member: Councillor Ian Ward, Councillor Brigid Jones  
Relevant O&S Chair: Councillor Mohammed Aikhlaq, Corporate Resources  
and Governance  
**Wards affected:** ALL

**1. Purpose of report:**

1.1 The two reports – public and private- must be read together.

1.2 This report sets out matters relating to equal pay and TUPE.

1.3 On 24th January 2018 Cabinet approved the provision of equal pay indemnities in certain circumstances. Further delegated authority is sought in respect of equal pay indemnities requested after March 2018.

1.4 This matter was not included in the Forward Plan because consideration is required as a matter of urgency due to current proposals to TUPE transfer staff. Further, this matter has previously been considered by Cabinet on 24<sup>th</sup> January 2018 and Legal Services is seeking a confirmation of the delegated authority made by that Cabinet Report.

**2. Decision(s) recommended:**

That the Cabinet:-

1. Note the contents of this report.

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## **Consultation**

Consultation should include those that have an interest in the decisions recommended.

### Internal

The relevant Cabinet Members, the Leader and relevant Corporate Officers have been consulted. Officers from finance and legal have been involved in the preparation of the report as appropriate.

### External

Extensive consultation has been undertaken with educational institutions about the proposed migration of the Cityserve cleaning services, they have indicated support for the recommendations in the private report in relation to indemnities.

## **Compliance Issues:**

Are the recommended decisions consistent with the Council's policies, plans and strategies?

The recommended decision is consistent with the Council's current strategy as to Equal Pay as set out in a report to Cabinet in July 2014.

### Financial Implications

(How will decisions be carried out within existing finances and Resources?)

No additional liabilities are created as a result of the contents of the private report.

### Legal Implications

The effect of Transfer of Undertakings Protection of Employment Regulations 1996 (TUPE) work so as to protect the rights of the employee to the extent that it provides for the contracts of employees made with the transferor (the old employer) to be treated 'post transfer' as if they had always been made with the transferee (the new employer). All of the old employers "rights, powers, duties and liabilities, under or in connection with" the transferring employees' contracts pass to the new employer unless alternative provision is made.

Public Sector Equality Duty (see separate guidance note)

The litigation risk of the different groups of equal pay claims is kept under review.

## **Relevant background/chronology of key events:**

An approved report was presented to cabinet on 14 November 2017 requesting permission to authorise the undertaking of formal consultation with schools and other educational establishments relating to the migration of the cleaning services into these establishments.

Formal consultation with schools and educational establishments indicated the majority were broadly in favour of the proposals but they required assurances around equal pay indemnities up until the point of transfer.

On 24th January 2018 Cabinet approved the provision of equal pay indemnities in certain circumstances where services were transferred to educational establishments or third party independent contractors.

Recommendations are made in the private report in respect of the continued provision of equal pay indemnities.

**Evaluation of alternative option(s):**

As per Private report.

**Reasons for Decision(s):**

To manage any potential liability facing the Council in respect of equal pay claims issued against the Council.

**Signatures**

**Date**

Leader, Councillor Ian Ward ..... ..

Deputy Leader, Councillor Brigid Jones ..... ..

Clive Heaphy, Corporate Director, ..... ..  
Finance and Governance

**List of Background Documents used to compile this Report: None**

**List of Appendices accompanying this Report (if any):** 1. Cabinet Report 24<sup>th</sup> January 2018

**Report Version**

**Dated**