

Public Report
Birmingham City Council
Report to Cabinet
9 November 2021



Subject: Equal Pay

Report of: The Director of Council Management, the City Solicitor and Monitoring Officer and Interim Director of HR

Relevant Cabinet Member: Councillor Ian Ward – Leader of the Council

Relevant O &S Chair(s): Councillor Carl Rice Co-Ordinating O&S Committee
Councillor Mohammed Aikhlaq

Report author: Suzanne Dodd, City Solicitor and Monitoring Officer

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:		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential :		
Exempt appendix 1 is exempt from public disclosure under paragraphs 4 and 5 of schedule 12A of the Local Government Act 1972.		

1 Executive Summary

- 1.1 This report is a late report, which is not on the forward plan, and is not subject to call-in, therefore Part B6, Para 6.2 and Para 6.9 of the Constitution have been complied with. The Chief Executive has consulted with the Leader, and it is agreed the decision is so urgent that its implementation cannot wait until the expiry of the call-in period; this is because the interests of the Council are jeopardised if this executive decision is not made immediately. The Chief Executive and the Leader also accept this late report. The Chair of Co-ordinating Overview and Scrutiny

Committees has been informed and has agreed to the report coming to Cabinet. Further details are set out in Appendix 1.

- 1.2 The exempt appendix is exempt from public disclosure under paragraphs 4 and 5 of schedule 12A of the Local Government Act 1972. The exemptions relied on are as follows:
 - 1.2.1 Sch. 12A, para. 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
 - 1.2.2 Sch. 12A, para. 5 – ‘information in respect of which legal professional privilege could be maintained in legal proceedings.’
- 1.3 These provisions apply because the equal pay claims, and the reasons for them, are subject to legal proceedings and/or are subject to negotiations with solicitors acting for the claimants and/or are commercially sensitive and subject to legal professional privilege.
- 1.4 Equal pay continues to present a challenge for the Council. Further to a Cabinet decision in December 2018 authorising the settlement of post-2011 equal pay claims, negotiations have been taking place with the no-win, no-fee solicitors who have brought such claims and with the trade unions in relation to their members who have not brought such claims but could potentially do so. A Cabinet decision was made in December 2020 approving the final terms of a head settlement agreement/MOU with the unions. The Council has been continuing to defend ongoing proceedings in the Employment Tribunal where settlement negotiations have failed. The purpose of this report is to seek authorisation from Cabinet to the settlement proposal in relation to those proceedings as set out in exempt appendix 1.

2 Recommendations

- 2.1 That Cabinet authorises the settlement proposal in exempt appendix 1.
- 2.2 That Cabinet delegates authority to the City Solicitor to enter all necessary documentation to execute the settlement in accordance with this Report.
- 2.3 Further to the Cabinet approvals from 3 December 2018 and 15 December 2020, Cabinet note that the expenditure required for the settlement proposal set out in exempt appendix 1 is still in line with those approvals.

3 Background

- 3.1 Authority for the settlement of equal pay claims was first granted by Cabinet on 25 July 2011. Cabinet approved the proposed decision of the Chief Executive to settle all equal pay claims issued in the Employment Tribunal by employees of the Council subject to adequate financial provision.

- 3.2 Since that time, Cabinet has approved the decision of the Chief Executive to make certain pay settlements taken under delegated authority granted by the report to Cabinet dated 25 July 2011. Further approval to an updated equal pay strategy was granted by Cabinet in July 2014, to include the establishment of the Cabinet Equal Pay Subgroup comprising the Leader, Deputy Leader and Chief Executive, and again in July 2015, August 2017, February 2018, December 2018 and December 2020. The Chief Executive has continued to authorise certain equal pay settlements in line with the strategy approved by Cabinet and the Cabinet Equal Pay Subgroup.
- 3.3 Further background information is set out in exempt appendix 1.

4 Options considered and Recommended Proposal

- 4.1 The options considered are set out in exempt appendix 1

5 Consultation

- 5.1 The Equal Pay Cabinet Committee met on 1 November 2021. The Trade Unions have been consulted.

6 Risk Management

- 6.1 Please see exempt appendix 1.

7 Compliance Issues:

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

- 7.1.1 The recommended decisions are in line with the Council's long-term financial planning and consistent with the Council's current equal pay strategy, which is to draw a line under any outstanding equal pay liability.

7.2 Legal Implications

- 7.2.1 The power conferred by section 222 of the Local Government Act 1972, 'power of local authorities to prosecute or defend legal proceedings', enables the Council to settle the ongoing proceedings in relation to equal pay.

- 7.2.2 Further legal implications are set out in exempt appendix 1.

7.3 Financial Implications

- 7.3.1 The Council has been settling claims issued under the Equality Act 2010 and the preceding Equal Pay Act 1970 for several years. As at the end of the 2020/21 financial year, £1.1bn had been spent on Equal Pay settlements. A further estimate of liability of £153.8m in respect of unsettled equal pay claims was identified at 31 March 2020 and means that total expected expenditure will rise to around £1.3bn. Budgetary provision has been made for £153.8m of outstanding liability, funded mainly by proceeds from asset disposals.

7.3.2 Any revenue implications of the equal pay settlements have been reflected in the Council's latest budget and within the financial plans in relation to later years. This includes capital financing costs arising from previous years' capital expenditure, loss of income and other costs arising from asset sales and the repayment of any temporary borrowing from reserves.

7.3.3 Further financial implications are set out in exempt appendix 1.

7.4 Procurement Implications (if required)

7.4.1 If the Council is unable to manage the processing of individual offers internally, it may need to call off an EU compliant competitive framework to procure the services.

Human Resources Implications (if required)

7.4.1 Further human resources implications are set out in exempt appendix 1.

7.5 Public Sector Equality Duty

7.5.1 All settlement strategies to date have endeavoured to limit any adverse equality impact on staff at BCC.

8 Appendices

8.1 Exempt appendix 1

9 Background Documents

9.1 Cabinet Report dated 25 July 2011

9.2 Cabinet Report dated July 2014

9.3 Cabinet Report dated 3 December 2018

9.4 Cabinet Report dated 15 December 2020