

Public Report

Birmingham City Council

Report to Audit Committee

30 September 2021



Subject: Equal Pay Update, August 2021

Report of: The Director of Council Management (s151 Officer) and the City Solicitor and Monitoring Officer (Acting)

Relevant Cabinet Member: N/A

Relevant O &S Chair(s): N/A

Report author: Suzanne Dodd, City Solicitor and Monitoring Officer (Acting)

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 type="checkbox"/> Yes	<input checked="" 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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:		
N/A		

1 Executive Summary

- 1.1 The purpose of this report is to update the Committee on the settlement scheme that has been agreed with the joint trade unions for the purpose of settling their members' potential third generation equal pay claims.

2 Recommendations

- 2.1 That the Committee note the contents of the report.

3 Background

- 3.1 After the Birmingham Contract was introduced on 1 November 2011, a number of no-win, no-fee law firms brought equal pay claims relating to the terms of employment that had been introduced on that date. Those claims are colloquially known as “third generation” claims.
- 3.2 In August 2017 and February 2018, Cabinet authorised settlement schemes to settle the third generation claims that had been, and were being, brought against the Council. Commercial reasons primarily lay behind the decisions to authorise these settlement schemes, rather than reasons relating to the Council’s prospects of successfully defending the claims.
- 3.3 On 3 December 2018 and 15 December 2020, Cabinet authorised a settlement scheme with the joint trade unions to dispose of any outstanding potential equal pay liability for union members who have not issued a third generation claim but could potentially do so (currently estimated to be around 14,500 employees and former employees). This settlement scheme has been designed to achieve parity between employees who have brought and settled a third generation claim through a no-win, no-fee law firm and those who have not, and it forms part of the Council’s wider strategy to draw a line under its ongoing, protracted equal pay liability.
- 3.4 After lengthy negotiations, the terms of a memorandum of understanding (“MOU”) were agreed with the joint trade unions in May 2021. The Council is now in the process of putting the terms of that MOU into effect. Please note that the Council is contractually obliged to keep the terms of the MOU confidential, and this report does not, therefore, give the specifics of any of those terms.

Action Plan

- 3.5 The Council is to endeavour to make settlement offers to all eligible trade union members by mid-February 2022.
- 3.6 To meet this deadline, the Council will need to:
 - 3.6.1 Carry out a system update to its equal pay database to ensure all data is accurate and up to date (this work is ongoing);
 - 3.6.2 Log, evaluate and check the claims of the union members who have been included in the trade unions’ claimant lists (the majority of this work has been completed);
 - 3.6.3 Design an automated calculator to expedite the process of calculating offers (testing is currently being carried out);
 - 3.6.4 Once the automated calculator is ready to use, calculate individuals’ offers and prepare the offer documentation;
 - 3.6.5 Once the offers have been calculated, assess them in terms of whether the settlement payments will affect individuals’ past entitlement to Housing Benefit and/or Council Tax Benefit/Support (for any individual whose

entitlement is affected, their offer calculation will need to be adjusted to offset any resultant overpayment of benefits); and

3.6.6 Send out individuals' offer documentation starting with claimants in the lowest graded jobs.

3.7 Once the settlement offers have been sent to the claimants, the Council will hold signing days with the trade unions and ACAS, at which the claimants who wish to accept their offer will be asked to sign a COT3 agreement in order to make the settlement legally binding. The use of DocuSign and virtual signing days should help to expedite this part of the process.

3.8 Claimants also have the option of instructing a legal representative and using a settlement agreement to make the settlement legally binding. For those claimants, a signing day will not be necessary.

3.9 Once an agreement has been signed by both the claimant and the Council, the Council will be required to pay the agreed settlement sum to the claimant. The Council has experience of processing large volumes of settlements and will take advantage of using Winshuttle to make the process more efficient, as it allows for bulk uploads. However, there may be a small number of settlements via cheques. This would be a slightly longer process, as it requires ID verification and in-person cheque collections.

3.10 There is an agreed dispute resolution procedure for situations where a claimant or their trade union disagrees with the offer amount or disagrees with the Council's decision not to make an offer to an individual.

4 Options considered and Recommended Proposal

4.1 This report is for noting only.

5 Consultation

5.1 The Equal Pay Cabinet Committee is provided with updates as part of its quarterly meetings.

6 Risk Management

6.1 The settlement scheme endeavours to mitigate the risk of further third generation equal pay claims being brought against the Council.

7 Compliance Issues:

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

7.1.1 This report is for noting only.

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 seek to settle equal pay claims, including contemplated ones, in accordance with the Public Sector Equality Duty and equal pay provisions within Chapter 3 of the Equality Act 2010.

7.3 Financial Implications

- 7.3.1 The latest valuation of outstanding equal pay liability is £153.8m (March 2021 valuation) and provision has been made for this in the draft accounts for 2020/21 (audit in progress). This provision includes the liability associated with giving effect to the settlement scheme agreed with the joint trade unions for settlement of potential third generation equal pay claims. Cabinet approved expenditure in relation to the settlement of this liability in December 2020, as it represented value for money.
- 7.3.2 As at March 2021, the Council's total expenditure as a result of settling equal pay claims issued under the Equality Act 2010 and preceding Equal Pay Act 1970 was £1.1 billion. When the outstanding liability of £153.8m quoted above is considered, then total expected expenditure is estimated to rise to around £1.3 billion. The revenue implications of equal pay settlements have been reflected in both the budget and the Council's medium-term 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.

7.4 Procurement Implications (if required)

- 7.4.1 It may be necessary to procure printing, copying and scanning services, given the large number of settlement packs that will need to be printed, and given the large number of COT3 and settlement agreements that will need to be copied and scanned.
- 7.4.2 It may also be necessary to procure digital technology to enable online ACAS signing days.

7.5 Human Resources Implications (if required)

- 7.5.1 HR colleagues have been sent a confidential briefing document, informing them of the terms of the MOU and advising them what to do should they receive a query in relation to this current settlement scheme from an employee.
- 7.5.2 The support of HR colleagues will very likely be needed during ACAS signing days. COT3 agreements have to be signed by a BCC official.

7.6 Public Sector Equality Duty

- 7.6.1 The settlement scheme endeavours to limit any adverse equality impact on staff at the Council, to further the Public Sector Equality Duty, and to ensure

compliance with the equal pay provisions within the Equality Act 2010 (Chapter 3).

8 Appendices

8.1 N/A

9 Background Documents

9.1 Reports to Cabinet dated August 2017, February 2018, December 2018 and December 2020