

# BIRMINGHAM CITY COUNCIL

## PUBLIC REPORT

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| <b>Report to:</b>                                      | <b>AUDIT COMMITTEE</b>                           |                                       |
| <b>Report of:</b>                                      | <b>CORPORATE DIRECTOR FINANCE AND GOVERNANCE</b> |                                       |
| <b>SUBJECT:</b>  | <b>EQUAL PAY UPDATE MARCH 2019</b>               |                                       |
| <b>Key Decision:</b> <del>No</del>                     |  |                                       |
| <b>If not in the Forward Plan:</b><br>(please "X" box) | <del>Chief Executive approved</del>              | <input type="checkbox"/> Not relevant |
|  | <del>O&amp;S Chairman approved</del>             | <input type="checkbox"/> Not relevant |
| <b>Relevant Cabinet Member(s)</b>                      |  |                                       |
| <b>Relevant O&amp;S Chairman:</b>                      |  |                                       |
| <b>Wards affected:</b>                                 | <b>ALL</b>                                       |                                       |

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| <b>1. Purpose of report:</b>  |
| <p>1.1 The purpose of this report is provide an update to Audit Committee in March 2019 relating to the on-going liability of the Council in respect of equal pay claims under the Equal Pay Act 1970. Equal Pay continues to present a challenge for the Council. It should be noted that significant progress has been made in terms of managing the risks associated with lodged claims and settlement negotiations.</p> |

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| <b>2. Decision(s) recommended:</b>  |
| <p>That the committee:-</p> <p>2.1 Note the contents of the Report and to agree that a further update should be made to the Committee at a future meeting, date to be agreed.</p> |

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| <b>Lead Contact Officer(s):</b>                | Clive Heaphy, Chief Finance Officer         |
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| <div data-bbox="183 142 459 174" data-label="Section-Header"> <h3>3. Consultation</h3> </div> <div data-bbox="276 178 1422 210" data-label="Text"> <p>Consultation should include those that have an interest in the decisions recommended</p> </div> <div data-bbox="183 247 378 279" data-label="Section-Header"> <h4>3.1 <u>Internal</u></h4> </div> <div data-bbox="276 317 1440 384" data-label="Text"> <p>The Equal Pay Cabinet Sub Committee is provided with updates as part of the quarterly meetings.</p> </div>  |
| <div data-bbox="183 659 558 693" data-label="Section-Header"> <h3>4. Compliance Issues:</h3> </div> <div data-bbox="183 730 1347 798" data-label="Section-Header"> <h4>4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></h4> </div> <div data-bbox="276 835 591 867" data-label="Text"> <p>This report is for noting.</p> </div> <div data-bbox="183 936 1196 1005" data-label="Section-Header"> <h4>4.2 <u>Financial Implications</u><br/><u>(Will decisions be carried out within existing finance and Resources?)</u></h4> </div> <div data-bbox="280 1041 1453 1213" data-label="Text"> <p>The Council has made provision in its 2018/19 Statement of Accounts for the settlement and litigation costs of any outstanding validly pleaded Equal Pay claims. The cost of meeting the equal pay liabilities will be predominantly funded from capital receipts under the flexibilities granted by Central Government. The provision and the adequacy of planned funding are kept under regular review.</p> </div> <div data-bbox="272 1247 1463 1417" data-label="Text"> <p>The revenue implications of Equal Pay settlements have been reflected in both budget and in the Council's Financial Plan 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.</p> </div> <div data-bbox="183 1522 519 1556" data-label="Section-Header"> <h4>4.3 <u>Legal Implications</u></h4> </div> <div data-bbox="272 1589 1463 1690" data-label="Text"> <p>The power conferred by S222 Local Government Act 1972 'Power to prosecute or defend in court in the interest of the public' enables the Council to seek to settle equal pay claims.</p> </div> <div data-bbox="183 1761 1055 1795" data-label="Section-Header"> <h4>4.4 <u>Public Sector Equality Duty (see separate guidance note)</u></h4> </div> <div data-bbox="272 1831 1435 1864" data-label="Text"> <p>All settlement strategies to date have endeavoured to limit any adverse equality impact.</p> </div> |

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

- 5.1 The Equal Pay Act 1970 (the Equal Pay Act) was an under-utilised piece of legislation with few claims for many years. Following the National Single Status Agreement in 1997, attention was focused on pay structures within Local Authorities and NHS Trusts. "No win no fee" lawyers started issuing claims for Equal Pay in the late 1990s, and brought equal pay into the public arena.
- 5.2 Over the last twelve years there have been significant developments as a result of case law which have dramatically changed the scope of the Equal Pay Act and the ability of Local Authorities to deal with the resultant equal pay litigation
- 5.3 The Council's intention has always been to produce a gender fair salary structure. Indeed the process of producing and implementing a fair salary structure disclosed the inequalities and inconsistencies of the pay arrangements that existed prior to implementation of the Council's Pay and Grading scheme in 2008. Equal pay claims have been issued despite the Council actively pursuing a 'Single Status' agenda for its employees in 2008 and in 2011 and 2016 using the new Birmingham Workforce Contract for Council and School Managed employees. The Council's Pay & Grading Scheme has prevented, or should have prevented, any further claims as all employees were to be fairly and equally remunerated for work of equal value.
- 5.4 Currently equal pay claims broadly fall into the following categories:
- (a) Rated as Equivalent (RAE) – prior to Single Status these claimants usually referred to as 'manual' or 'blue collar'; claimants, invariably female, choose a 'manual' male employee as their comparator and the comparators chosen in local government are almost always male employees with the benefit of bonus schemes from which they derive much higher levels of pay than the female claimants. These claimants would almost certainly have succeeded even if the bonus schemes were shown to be genuine productivity schemes; this is because female employees were 'rated as equivalent' under their old conditions of service and therefore entitled to the same rate of pay. However the women were not considered for bonus schemes in the same way as the male manual employees.
  - (b) Equal Value (EV) – prior to Single Status these claimants were referred to as 'non-manual' or 'white collar'; claimants, invariably female, choose a 'manual' male employee as their comparator - non-manual v manual. This was allowed by the Court of Appeal in 2008 and opens up the possibility of a large number of further equal pay claims using the same bonus earners as the 'comparator'.
- 5.5 Authority for the settlement of validly pleaded Equal Pay claims was first granted by Cabinet on 25th July 2011.
- 5.6 Further approval to an updated Equal Pay strategy was granted by Cabinet in July 2014, and again in August 2017. Approval was granted in April 2018 to establish the Equal Pay Cabinet Executive Committee and an updated strategy in December 2018. The Cabinet Sub Committee meets on a quarterly basis.
- 5.7 Further background information is set out in a Private briefing.

## **6. Evaluation of alternative option(s):**

This report is for noting only.

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| <b>7. Reasons for Decision(s):</b> |
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| This report is for noting only. |
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| <b>List of Background Documents used to compile this Report:</b> |
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| Cabinet reports July 2014 and 2015, August 2017, April 2018 and December 2018. |
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| Audit reports September 2012, November 2013, November 2016 and January 2018. |
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| <b>List of Appendices accompanying this Report (if any): none</b> |
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| <b>Report Version</b> | <b>V1</b> | <b>Dated</b> | <b><u>21<sup>st</sup> March 2019</u></b> |
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## **PROTOCOL PUBLIC SECTOR EQUALITY DUTY**

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
  - (a) whether there is adverse impact upon persons within the protected categories
  - (b) what is the nature of this adverse impact
  - (c) whether the adverse impact can be avoided and at what cost – and if not –
  - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
  - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
  - the full equality impact assessment (as an appendix)
  - the equality duty – see page 9 (as an appendix).

## Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

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| 1 | <p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none"><li>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;</li><li>(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;</li><li>(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</li></ul>  |
| 2 | <p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"><li>(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;</li><li>(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;</li><li>(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.</li></ul> |
| 3 | <p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>   |
| 4 | <p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"><li>(a) tackle prejudice, and</li><li>(b) promote understanding.</li></ul>   |
| 5 | <p>The relevant protected characteristics are:</p> <ul style="list-style-type: none"><li>(a) age</li><li>(b) disability</li><li>(c) gender reassignment</li><li>(d) pregnancy and maternity</li><li>(e) race</li><li>(f) religion or belief</li><li>(g) sex</li><li>(h) sexual orientation</li></ul>  |