

Public Report

Birmingham City Council Report to Audit Committee

19 July 2023



Subject: Equal Pay
Report of: The City Solicitor and Monitoring Officer
Relevant Cabinet Member: N/A
Relevant O &S Chair(s): N/A
Report author: Robert Harris, Head of Law – Permanent Pay Equity

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 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:		
The exempt appendix is exempt from public disclosure under paragraphs 3, 4 and 5 of Schedule 12A of the Local Government Act 1972.		

1 Executive Summary

- 1.1 The purpose of this report is to provide Audit Committee with a synopsis of equal pay and to outline the financial implications of equal pay for the Council.
- 1.2 The exempt appendix provides an update on what has changed since the last report to Audit Committee of 18 October 2022; an explanation of what the current spending controls are; and an explanation of the impact on the Council's accounts. The information in the exempt appendix is exempt from public disclosure under paragraphs 3, 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. 3 – ‘*Information relating to the financial or business affairs of any particular person (including the authority holding that information)’;*
 - 1.2.2 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
 - 1.2.3 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 information in the exempt appendix relates to financial and business affairs of the Council; to negotiations in connection with a labour relations matter (i.e. equal pay) arising between the Council and its employees; and is subject to legal professional privilege.

2 Recommendations

- 2.1 That the Committee note the contents of this report and the exempt appendices.

3 Background

3.1 What is Equal Pay?

- 3.2 The right to equal pay was introduced domestically with the enactment of the Equal Pay Act 1970 (now replaced by the Equality Act 2010). This represented a huge cultural shift in the workplace and was the culmination of a long struggle to secure statutory recognition of the principle of equal pay for equal work.
- 3.3 The current equal pay provisions in the Equality Act 2010 are concerned with the establishment of equal terms and conditions of employment for men and women, as initially laid down in Article 141 EC Treaty (now Article 157), which explicitly states that *each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied*. Please note that the Retained EU Law (Revocation and Repeal) Bill was introduced to Parliament on 22 September 2022, which aims to remove retained EU law from the statute books by the end of 2023 and could, therefore, impact on domestic equal pay law.
- 3.4 The Equality Act 2010 provides that every person’s employment contract is deemed to include a sex equality clause, the practical effect of which is that if there is any term in a person’s employment contract that is less favourable than a comparator of the opposite sex, that term is modified so as not to be less favourable. What is more, if a person’s employment contract does not contain a term that is included in the contract of a comparator of the opposite sex, the sex equality clause will deem that it is included. However, the sex equality clause will only apply where two workers are doing equal work, are of the opposite sex, have the same employer, and where any difference in terms is not due to a material factor.

- 3.5 A history of the equal pay issues which have arisen in the Council was provided in the private report to Audit Committee dated 18 October 2022, as well as details of how such issues have been mitigated.

4 Options considered and Recommended Proposal

- 4.1 This report is for noting only.

5 Consultation

- 5.1 The Cabinet Advisory Group – Equal Pay is provided with updates as part of its quarterly meetings.

6 Risk Management

- 6.1 The Council's mitigation strategies are intended to address and end any current equal pay issues and to preclude further equal pay issues arising in the future.

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 defend and to seek to settle equal pay claims in accordance with the Public Sector Equality Duty and equal pay provisions within Chapter 3 of Part 5 of the Equality Act 2010.

7.3 Financial Implications

- 7.3.1 A detailed and fresh analysis of the Council's ongoing equal pay claims has been conducted recently in light of issues raised as a result of the implementation of the Oracle financial system.

- 7.3.2 The Council has already paid out a total of £1.1bn in relation to the settlement of equal pay claims over the last decade. However, the refreshed analysis has revealed that significant additional equal pay costs will need to be provided for by the Council.

- 7.3.3 It is estimated that as of 31 March 2023, the Council's current potential equal pay liability could be in the region of £650m and £760m.

7.4 Procurement Implications (if required)

- 7.4.1 N/A

7.5 Human Resources Implications (if required)

- 7.5.1 N/A

7.6 Public Sector Equality Duty

7.6.1 The Council's mitigation strategies endeavour 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 Exempt Appendix: Private Report to Audit Committee on Equal Pay dated 19 July 2023

9 Background Documents

9.1 Private Report to Audit Committee on Equal Pay dated 18 October 2022.