

# WEST DUNBARTONSHIRE COUNCIL

## Report by the Interim Executive Director of Corporate Services

Council : 29 February 2012

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**Subject: Single Status Update**

### 1. Purpose

1.1 The purpose of this report is to

- Notify the Council of the numbers of staff who will revert to their Single Status grade and associated terms and conditions salary following the conclusion of the preservation period on 31/3/2012.
- Advise the Council of the actions that have been put in place to mitigate detriment associated with implementation of the Single Status Agreement
- Advise the Council of the current position of in relation to Equal Pay cases at Employment Tribunal.

### 2. Background

2.1 Following the implementation of the Single Status Agreement to address historical inequalities in pay on 1/3/2009 a salary preservation period was put in place for employees who were 'red circled' i.e. experienced a reduction in pay, arising from the outcome of the job evaluation exercise and associated changes to terms and conditions of employment. The national Single Status Agreement contained a provision in relation to pay protection as follows:

*"Protection at assimilation on to the new spinal column for all employees including bonus earners will be for **three** years on a cash conserved basis. The timescale has regard to the increased potential for equal pay claims should protection be allowed to extend beyond that period."*

At the date of implementation the Council agreed that pay protection would be applied to terms and conditions as well as grade.

2.2 At the time of implementation, all staff were informed of the position and given the opportunity to be automatically notified of vacancies arising within the Council and which would be open to them to apply for, and if successful, potentially address their detriment position. A number of staff took advantage of this arrangement.

2.3 The duration of the preservation period was implemented following national advice and guidance and reflects the best possible defence to further costly equal pay claims in relation to continuing salary inequalities resulting from any extension to the three year preservation period. The preservation period will come to an end on 31/3/2012.

- 2.4** Implementation of the Single Status Agreement and associated changes to terms and conditions of employment was critical to ensure the Council met its statutory obligations in relation to pay equality. Since implementation, the Council has been in a much more robust position to address challenges in this regard. However, the Council continues to face risk in respect of historical pay inequality, arising from a number of employees choosing to pursue claims within the Employment Tribunal Process, rather than accept the Council's offer of settlement by means of compromise agreement of actual and potential equal pay liabilities in 2006 and in 2008. In addition a number of further employment tribunal claims have been lodged and continue to be lodged in relation to equal pay issues as case law develops.
- 2.5** The Council currently has 296 Equal Pay Claims (215 claimants) lodged at Employment Tribunal. Meetings are ongoing with Solicitors representing the claimants with a view to reaching an agreement for the settlement of equal pay claims where possible.

### **3. Main Issues**

#### Final Detriment Position

- 3.1** The following estimated forecast levels of detriment were reported to Council on 14/5/2008 based on an implementation date of 1/11/2008;

1/4/2009	12.29% (617 employees) will remain red circled
1/4/2010	9.84% (494 employees) will remain red circled
1/4/2011	5.00% (251 employees) will remain red circled

Estimated levels of detriment reported were based on base salary and did not take account of any changes to terms and conditions of employment.

- 3.2** Upon the implementation of the new pay and grading structure and associated terms and conditions at 1/3/2009 the following estimated levels of detriment were identified at 1/4/2009. These figures related to detriment as a result of both changes to grade and to terms & conditions of employment.

Total Staff	Nos in Detriment	% in Detriment
<b>5494*</b>	<b>893</b>	<b>16%</b>

\* Total number of staff includes all temporary staff currently employed.

- 3.3** Following the conclusion of the Job Evaluation Appeals Process and the decision to implement pay awards of 2.5%, 0.65% and 0% respectively for the years 2009/10, 2010/11 and 2011/12, 322 employees will remain in a detrimental position at the expiry of the preservation period on 31/3/2012 and revert to their Single Status salary level. This represents 6% of the Single Status job population.

**3.4** The following table provides a breakdown by Council Department.

<b>Department</b>	<b>Staff remaining in detriment</b>
HEED	137
CHCP	32
Corporate Services	58
Education	64
Chief Executives	31
<b>TOTAL</b>	<b>322</b>

**3.5** While the number of staff in a detriment position has reduced by 64% over the period of pay protection it is regrettable that a significant number have not managed to come out of this position prior to the end of the preservation period and consequently are likely to experience a reduction in salary as at 1<sup>st</sup> April. Of the 322 employees remaining in detriment, 56 employees are in detriment as a consequence of changes to terms and conditions only and 266 mainly as a consequence of grade.

**3.6** A key constraint in relation to the numbers of staff who continue to experience detriment has been the fact that pay awards anticipated at the outset of Single Status implementation did not materialise due to a number of factors outwith the control of the Council, most importantly the prevailing economic climate and reduced funding levels. A significant number of employees did however move out of preservation following the outcomes of the Job Evaluation Appeals Process and through ongoing organisational change. It should also however be noted that while at Single Status implementation it was anticipated that restructuring to improve service delivery may provide opportunities to address red circling within departments the reality has been that staff numbers within departments have been reduced with limited opportunities to address red circling.

**3.7** Following discussions with the Trade Unions arrangements have been put in place to ensure an ongoing focus on supporting individuals to move out of detriment where possible. This includes the following;

- Individual meetings with line management to ascertain individual requirements;
- Development of individual support plans to assess opportunities arising from restructuring, job redesign, redeployment and retraining;
- Accelerated access to vacancies on a case by case basis;
- Development of Directorate Plans with a focus on opportunities to mitigate detriment in respect of high areas of loss and specific staff groups;
- Health check on job evaluation outcomes that continue to cause concern relating to staff in detriment;
- Establishment of joint Trade Union/Management Working Group to monitor and oversee actions arising from individual support plans and Directorate plans;

- Funding to support re-training opportunities set aside in the budget to support redeployment where it cannot be supported within Directorates.

**3.8** It is recognized that where a change in salary associated with the ending of the preservation period is significant, it will be a difficult adjustment for individuals to make. Therefore, in addition to the development of individual support plans referred to in 3.6 above, arrangements have also been put in place for the provision of confidential advice and support including financial advice on accessing benefits and debt management, as well as access to counseling support. Where individuals are a member of the Pension Fund their pension will be protected at the higher pensionable earnings level for a period of 10 years from the date of implementation.

**3.9** The expiry of the preservation period on 31/3/2012 will conclude the implementation of arrangements to fulfill the national Single Status Agreement and will ensure that all employees are paid at a salary level appropriate to the job evaluation outcome appropriate to their post irrespective of gender. This will satisfy equality legislation and provide a robust defense to any future Equal Pay Claims. A number of Local Authorities have received further Employment Tribunal Claims relating to salary preservation and while a defense to salary preservation within the boundaries of the national agreement of 3 years could be justified, any continuation of salary preservation beyond the 31/3/2012 would expose the Council to future and potentially costly litigation at a time of considerable financial uncertainty.

**3.10** Prior to the implementation of the Single Status Agreement at 1/3/2009 the existing contracts of all employees were terminated and employees accepted revised contracts of employment indicating that where preservation arrangements were put in place that these arrangement would cease at 31/3/2012. Any reduction in salary at 1/4/2012 is fully reflected in individual contracts of employment.

#### Current Equal Pay Claims

**3.11** Currently 296 equal pay claims are within the Employment Tribunal process relating to 215 individual claimants. These can be broadly categorised as:

- Group 1 - Claims relating to employment in Catering, Cleaning and Home Care where previous offers or settlement were rejected by employees.
- Group 2 - Claims relating to other employment groups excluded from original settlement offers
- Group 3 – “Second Wave” Post-JES Claims challenging pay preservation / JES implementation

**3.12** Following requests from external solicitors representing current and former employees in relation to these matters initial discussions are ongoing with a view to settling a number of current claims. Authority for the settlement of claims rests with the Chief Legal Officer and financial provision has been identified within the Council budget.

## Risk of Future Employment Tribunal Claims

- 3.13** The above position reflects stated tribunal claims at this point in time. The experience in other local authorities would indicate that further claims relating to salary preservation may arise however this has not occurred to date within West Dunbartonshire Council. This situation will continue to be reviewed on a regular basis however the Council remains at risk as case law develops.

### **4. People Implications**

- 4.1** Following the expiry of the preservation period at 31/3/2012, 322 employees will see a reduction in salary levels.

### **5. Financial Implications**

- 5.1** The impact of salary preservation is £350k and this has been included in budget 12/13 and future financial projections.

### **6. Risk Analysis**

- 6.1** The Council has a statutory duty under the Equality Act 2010 to ensure pay equality. It must have due regard to the need to eliminate discrimination and promote equality and the introduction of an equality proofed pay and grading framework supports this. In addressing detriment and maintaining sensitivity to the effect of the monetary loss in pay being experienced by some individuals there is a careful balance to be achieved that does not prolong the risk of continued pay inequality.

- 6.2** The Council still remains exposed to ongoing tribunal claims in relation to historical pay inequalities associated with the payment of bonus to predominantly male manual worker employees and this risk will remain until a period of 5 years has passed since the implementation of the new pay and grading structure. Additional claims may also be raised in relation to inequalities arising from the payment of salary preservation however current legal advice in this regard would indicate that a robust defence could be presented by the Council.

### **7. Equalities Impact Assessment (EIA)**

- 7.1** There is no equalities impact assessment required as implementation of the Single Status Agreement and the arrangements for preservation addressed historical pay inequalities identified through the implementation of the Single Status Agreement which was equality impact assessed at that time. The Council however has an ongoing duty in respect of Equal Pay and the existing arrangements will be subject to ongoing review.

- 7.2** Any pay preservation can have an equalities impact as it continues to pay those workers who experienced a salary reduction at single status (e.g. male workers who earned bonus) at a higher rate than those who gained at single status (e.g. predominantly female workers without bonus). However, a three

year pay preservation period can be justified on objective reasons, being part of a national agreement, negotiated with unions. By way of contrast, any extension of the three year preservation period would have a detrimental equalities impact without any objective justification. It would also seriously undermine the Council's current and future defence to equal pay claims. It was for these reasons that Council limited the pay preservation period to 3 years.

## **8. Strategic Assessment**

- 8.1** This report fits with the Council's strategic priorities in respect of equality, Financial Strategy and Fit for Purpose Services. It also supports the fulfillment of its statutory duties in respect of pay and gender equality.

## **9. Conclusions and Recommendations**

- 9.1** Following the conclusion of the preservation period arising from implementation of the Single Status Agreement at 31/3/212 it is estimated that that 322 employees will see a reduction in salary levels. This represents a 64% reduction from the numbers of staff in detriment at implementation.
- 9.2** Implementation of the Single Status Agreement took place in a very different economic climate and there is no doubt that recent pay freezes and limited internal development opportunities within a reducing workforce have constrained opportunities for individuals to move out of detriment. In the last three years the Council has also sought to balance its workforce commitments to avoiding compulsory redundancy and address low pay through the introduction of the "living wage". When set alongside the commitment to addressing historical pay inequality and the mitigation of detriment it is evident that this has been a challenging period for the Council with significant workforce issues to be addressed.
- 9.3** Renewed commitment has been given to addressing detriment and arrangements, as outlined in the report, have been put in place to support this. These will be overseen by a joint Trade Union/Management working group. It must however be acknowledged that that there is a careful balance to be achieved in supporting individuals and continuing to meet statutory equality duties by not unnecessarily prolonging inequality. The Council continues to be exposed to risk in relation to pay preservation issues and other pay equality issues and is engaged in settlement discussion in respect of outstanding Employment Tribunal claims.
- 9.4** It is recommended that Council notes:
- I. The expected numbers of staff who will revert to their Single Status grade and associated terms and conditions salary following the conclusion of the preservation period on 31/3/2012 and as a consequence experience a reduction in pay;
  - II. The actions that have been put in place for the ongoing mitigation of detriment and to support individuals at the time of transition;

- III. The current position in respect of ongoing Equal Pay cases at Employment Tribunal and the risk of further Equal Pay Claims;
- IV. The ongoing requirement to meet statutory duties in respect of pay and gender equality in accordance with the Equality Act 2010.

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Date: 22/2/2012

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**Appendices:** N/A

**Background Papers:** **Council Report – Proposals for Implementation of the Single Status Agreement - 14 May 2008**  
**Council Report – Proposals for Implementation of the Single Status Agreement - 19 August 2008**

**Wards Affected:** N/A