

WEST DUNBARTONSHIRE COUNCIL**Report by Chief Officer – People & Technology****Council: 21 December 2022**

Subject: Equalities Review of Terms and Conditions of Employment**1. Purpose**

- 1.1** The purpose of this report is to seek agreement of the undernoted proposals of changes to terms and conditions of employment for local government and craft employees to further eradicate inequalities in the context referred to in Paragraph 4.1 below, and to authorise the Chief Officer People and Technology to engage with the Trade Unions for consultation with a view to seeking agreement on their implementation.

2. Recommendations

- 2.1** The Council is asked to approve the following proposals in this regard:

- Align the core terms and conditions of employment for local government and all craft employees to further equality of offering.
- To replace current overtime enhanced rates, with a single overtime rate of time plus a quarter for any hours in excess of 37 per week, payable to grades 1 to 7.
- A review of contracts of employment across relevant service areas to remove contractual overtime.
- Replace the additional 4 public holidays for those employed on Craft Operative terms and conditions (i.e. last Friday and Monday in May, third Monday in July and last Friday in September), with additional days transferred to annual leave entitlement.
- Replace 2 public holidays for all employee groups, again transferring these days to annual leave entitlement.
- Removal or replacement of alternating shift allowance.
- Replace facility for incremental progression after 6 months for eligible employees, instead applying incremental progression annually on 1st April in line with existing employees.
- Remove the historical, now closed discretionary Group Life Assurance Scheme provision entirely.
- Introduce a provision whereby employees appointed to standalone business critical roles of below grade 8 will be contractually required to give a minimum of 8 weeks' notice of their intention to terminate employment.

- 2.2** The Council is also asked to note that a further report(s) will be remitted to this Council in due course outlining options to provide sustainable and

equality proofed shift enhancements for irregular, unsocial hours and options for pay protection.

3. Background

- 3.1** The Council previously agreed a revised package of terms and conditions to support the national Single Status Agreement. One of the fundamental principles of this Scottish Joint Council (SJC) agreement was to harmonise the many disparate sets of conditions that existed at that time with the intended outcome of achieving an equality based package of terms and conditions.
- 3.2** As part of the implementation of the Single Status Agreement, reports presented to Council on the 25th June 2008 and the 19th August 2008 stated that enhancements created a risk to equal pay. The proposed revised terms and conditions were subjected to an independent Equality Impact Assessment and the assessment highlighted concerns in relation to pay inequality and specifically to offered enhancements. The Assessor stated that higher rates for enhancements would widen the gender pay gap particularly where employee groups do not have the opportunity to access those enhancements. There were concerns that the proposals to apply higher rates, particularly to overtime payments and payment for working public holidays, favour traditionally male dominated occupations which tend to be full time and disadvantage female employees, the majority of whom work part time hours. Women could suffer potential direct discrimination arising from the widening gap in overall payment levels due to their lower base pay, and potential indirect discrimination due to their inability to access some of these enhanced payments.
- 3.3** The Equalities Monitoring Report remitted to the Joint Consultative Forum on the 8th September 2022 reported that the sex pay gap for 2021/22 was 2.10% with the female hourly rate of £16.26 and the male hourly rate of £16.61 with 73.4% of the workforce being female. Further analysis of the data has identified that 55% of the female workforce work part time, in comparison to 21% of males. As such, there is a disproportionate impact on females due to the criteria for accessing enhanced allowances as per the terms and conditions of employment, i.e. beyond 37 hours per week.
- 3.4** In the 13 years since West Dunbartonshire Council implemented the local Single Status provisions, there have been a number of equality related incremental changes to further align differences in employment terms, as follows:
- Alignment of carry over annual leave accrual with SJC/LG (i.e. one additional day per year of service);
 - Application of the SJC Job Evaluation Scheme to the Craft Worker group (as part of our Equal Pay Audit in 2013/14, this group not having previously been subject to Job Evaluation) resulting in payment on SJC Spinal Column Points (SCP's);

- Strong encouragement by Politicians, Officers and Trades Unions that all employees join one of the occupational pension schemes (including via auto-enrolment) resulting in a 15% increase to 93% total membership; and
- Modernisation of pay arrangements in 2015, including introduction of a 4 weekly cycle, removal of weekly pay, and moving many processes online and enabling self-service resulting in an improved experience for employees and managers alike.

3.5 The Council has additionally invested in addressing the three main causes of occupational segregation including strong support of flexible working, support for carers' and guaranteed interviews for parents returning to the workplace after a period of time out.

3.6 Whilst clear progress has been made toward addressing inequalities, it is clear that further opportunities exist to achieve parity across the workforce. In December 2017, an Equal Pay Audit focusing on allowances was presented to the Joint Consultative Forum (JCF) that demonstrated the potential for continuing indirectly discriminatory provisions that may give rise to claims on grounds of sex.

3.7 The report specifically recommended changes to allowances for enhanced working which were not supported by this forum and, given that this risk remains, there is a further opportunity to address equality concerns as part of this current review of terms and conditions.

4. Main Issues

4.1 As a public sector employer, it is essential that the Council continues to future-proof terms and conditions of employment, ensuring an employment package that is affordable within the financial envelope available, is gender pay neutral and is otherwise considered fair in terms of consolidation of provisions across different categories of employee. The review of the current terms and conditions has identified recommended opportunities for change as set out in sections below.

4.2 For the purposes of this report, the data set consulted included the Workforce Report as at 31st March 2022 and the Payroll Data from 2021/22. As this review focuses on the Local Government and Craft Operatives terms and conditions, those employed on teaching terms and conditions have been excluded. According to this data set, the Council's workforce profile for those covered by Local Government and Craft terms (excluding supply/casual) is detailed in the table 1 below:

Table 1: Workforce Profile

	F/T (no)	F/T (%)	P/T (No)	P/T (%)	Total	Total (%)
Female	1281	37.61%	2125	62.39%	3406	74.15%
Male	1042	77.47%	303	22.53%	1345	25.85%

4.3 Significant progress has been made in harmonising the terms and conditions of local government workers and craft workers, however, differences remain and the Council now seeks to fully address.

4.3.1 The table below provides a summary of key differences, the detail is set out in paragraphs 4.4 - 4.8 below:

Table 2: Comparison of Terms and Conditions

No.	Term & Condition	Local Government (35 & 37 FTE Hours)	Craft (37 FTE Hours)
1.	Overtime	<ul style="list-style-type: none"> • Time and a half for hours worked over 37 hours • Double time for hours worked over 48 hours 	<ul style="list-style-type: none"> • First 5 hours at plain time • Over 5 hours at time and a half • All hours worked on a Saturday or Sunday is time and a half
2.	Public Holiday Provision	<ul style="list-style-type: none"> • 8 Days 	<ul style="list-style-type: none"> • 12 Days for Craft • 8 Days for Quasi-Craft
3.	Alternating Shift/Irregular Hours Enhancement	<ul style="list-style-type: none"> • 10% 	<ul style="list-style-type: none"> • Not Available to Craft Worker

4.4 Overtime

4.4.1 Enhanced overtime payments made in 2021/22 were, in the main, paid to men working full-time. Of the number of females accessing enhanced rates, circa 60% work part time in comparison to circa 12% of males. Females and males tend to be clustered into different occupations and sectors with females typically undertaking part-time roles in lower grades, with an average of 84% of females occupying a role in Grade 1 - 3.

4.4.2 Existing arrangements for overtime across both local government and craft employees could contribute to the gender pay gap as the current enhancements are potentially more favourable to the traditional male occupations that are generally full time roles and could be to the disadvantage of female employees, the majority of whom work part time. Females are potentially further disadvantaged due to their inability to access some of the enhanced payments which may be due to the continued societal influences and balancing work with caring responsibilities as women are predominately the primary care givers in society. The average age of females accessing overtime enhancements is 48, for men it is 47.

4.4.3 The table below provides an analysis of overtime payments for the period 2021/22 along with the gender breakdown. The response to COVID-19 pandemic significantly impacted upon the requirement for overtime working.

The data identifies that females worked more hours than males but the value was less as they typically worked overtime at additional basic/ plain time. These statistics show starkly that despite 73.4% of the workforce being female, this group does not have the same access to enhanced overtime rates as males.

Table 3: Comparison of Overtime for 2021/22

Overtime Rate	Value - Females	Value - Males	Pay Gap (%)	% of gender accessing the Enhancement	Allocation of Hours – Female	Allocation of Hours - Male
Plain*	£876k	£237k	+73%	33% F 12.8%	76,559	19,411
Time and Half	£694k	£1.42m	-51.39%	15% F 45% M	37,192	68,691
Double Time	£234k	£287k	-18.47%	6.5% F 16.9% M	9,603	10,195
Contractual Overtime	£7k	£153k	-95.42%	0.05% 2.75%	N/A	N/A
Total	£1.81m	£2.10m			123,354	98,297

*Using payroll data for 2021/22 Plain time and Additional Basic have been amalgamated

4.4.4 The Council has a responsibility to ensure that the application of all allowances, including enhanced pay, is not creating or adding to a gender pay gap that cannot be objectively justified.

4.4.5 In considering the impact of pay inequality in respect of reducing the current enhanced rates to time and a quarter will have a positive impact on the gross gender pay differential by **1.58%**. Further reduction would result in a further diminution of the gap. The majority of female overtime allowance paid in 2021/22 was at basic rate due to the part time nature of the roles and individuals therein.

Table 4: Comparison with proposed adjustments to enhanced rates for overtime

	Total Enhanced OT Payable 2021/22	Enhanced OT Rates Capped at proposed x1.25	Difference
Female	£936,220	£731,376	-£204,843
Male	£1,870,664	£1,499,016	-£371,647
Total	£2,806,885	£2,230,393	-£576,491
Gender pay Gap	50.05%	48.47%	-1.58%

4.4.6 Therefore, this proposal would further reduce exposure to equal pay liability by aligning Craft and Quasi-Craft employees (37 hour contracts) to the local government terms as these employees are predominately male (92%) and furthermore, the majority work on a full time basis (91%). As per table 2 identifies, there is a difference in the rates and qualifying criteria. The majority

of overtime enhancements paid to craft workers in 2021/22 were time and a half as the majority of overtime worked was worked at the weekend.

- 4.4.7** Additionally, by removing the further double time enhancement above 48 hours (which we are unaware of other local authorities similarly applying), the Council is reinforcing its stance on such excessive working – that is to discourage, not incentivise it.
- 4.4.8** In respect of how this compares to other local authorities, many already similarly restrict enhanced overtime rates by grade while the rate payable varies from plain time to payment at time and a half.

4.5 Contractual Overtime

- 4.5.1** Some Council services are still making use of contractual overtime and there are currently 39 individuals in receipt of this allowance, for which the current enhancement is time and half. This enhancement is typically only available in male dominated roles, of those in receipt of contractual overtime, only 5% are female which represents 0.05% of the female workforce. The table below provides an illustration of the gender pay differential from full time female on 35 hours and a full time male on 37 hour plus 5 hours contractual overtime.

Table 5: Comparison of female 35 hour worker and male 37 hour worker with contractual overtime included

	Female 35 Hour week	Male 37 hour week + 5 hrs contractual overtime	Gender Pay Gap
Hourly Rate	£10.34	£10.34	0%
Contractual Overtime Rate	£0.00	£15.51	N/A
Gross Weekly Pay	£361.90	£460.13	21%

- 4.5.2** To address this inequality, it is proposed that services still making use of this enhancement (noting that some services are already in the process of removing this) consider alternative resourcing models with a view to removing contractual overtime, subject to notice periods, this having a consequential positive impact on the gross gender pay gap. The cost of maintaining contractual overtime at the recommended reduced rate of time and a quarter is £133,743 however this would not eradicate the pay differential and is not the recommended approach.

4.6 Public Holidays

- 4.6.1** In December 2017, the ‘Equal Pay Audit – Allowances’ highlighted the separate terms and condition for Local Government and Craft employees, each having separate annual leave and public holiday entitlements. Craft workers employed before 1st April 2015 are entitled to 12 defined public holidays and are typically male (90%), Quasi-Craft employees (those employed after 1st April 2015) are also predominately male (95%) and Local

Government employees, who are predominately female (74%) are entitled to 8 public holidays. Due to this, Craft employees are more likely to access enhanced rates for working on a public holiday than Local Government Employees and creating a gender pay differential. Table 6 below provides illustrative examples of the gender pay differentials based on the current provision.

Table 6: Comparison of current provision for Public Holiday Allowances

	Female Local Government Employee: Worked 8 public holidays @ Double Time	Male Craft Employee (37 hours): Worked 12 public holidays @ Double Time	Gender Pay Gap
Hourly Rate	£10.34	£10.34	0%
Daily Rate	£72.38	£76.51	5.4%
PH Enhancement (per day_	£72.38	£76.51	5.4%
Total Gross Pay for PH Working (per day)	£144.76	£153.02	5.4%
Total Payable for PH Working	£1,158	£1,836.24	36.93%

4.6.2 To address this inequality, and in recognition that many of our services are delivered on a 24/7, 365 day basis and to further support progress around occupational segregation and provision of flexibility, it is proposed that the public holiday entitlement is reduced to 6 days (for Local Government, Quasi-Craft and Craft Employees) and that the following are declassified as public holidays and instead added to annual leave entitlement:

- Last Friday and Monday in May*;
 - Third Monday in July*;
 - Last Friday in September*
 - May Day (first Monday in May); or Good Friday; and
 - September weekend (last Monday in September)
- *for Craft Employees only in order to equalise with Local Government Employees.*

4.6.3 This proposal would have a positive impact on the gender pay differential by up to **31.53%** as outlined in Tables 6 & 7 ($36.93\% - 5.4\% = 31.53\%$ reduction). Deselecting Good Friday would also recognise that the workforce is made up of employees of various faiths therefore allowing more flexibility to take holidays associated with their own personal beliefs.

Table 7: Comparison of proposed Public Holiday Allowance

	Female Local Government Employee: Worked 6 public holidays @ Double Time	Male Craft Employee (37 hours): Worked 6 public holidays @ Double Time	Gender Pay Gap
Hourly Rate	£10.34	£10.34	0%
Daily Rate	£72.38	£76.51	5.4%
PH Enhancement (per day)	£72.38	£76.51	5.4%
Total Gross Pay for PH Working (per day)	£144.76	£153.02	5.4%
Total Payable for PH Working	£868.56	£918.12	5.4%

4.6.4 As previously stated, the proposal would add the days to employees' annual leave entitlement (on a pro-rata basis) giving them the freedom and flexibility to use the days as they wish as is in accordance with the principles of achieving work-life balance.

4.6.5 As a consequence, the minimum paid (full) annual leave entitlement will increase, for all employee groups, to a minimum 27 days and maximum 37 days per annum (including the additional day agreed for SJC employees 2022). This entitlement is well above the statutory minimum, compares generously with other Councils and therefore consideration could be given to not adding these to flexible annual leave entitlements.

4.6.6 With regard to the existing arrangements for annual leave and public holidays across Scotland's 32 Local Authorities and, mindful that it is common for employees to move around, a comparison was undertaken. While there are some outliers, the majority offer 7 or fewer fixed public holidays so a reduction to 6 would be consistent with wider practice.

4.6.7 Reduction in the number of fixed public holidays added to annual leave entitlement (as implemented in neighbouring authorities) would also reduce costs through a decrease in premium payments while enhancing service delivery to the residents of West Dunbartonshire Council many of whom now expect a service on those days previously regarded as public holidays.

4.7 Shift Allowances

4.7.1 As part of the Council's terms and conditions, employees are entitled to enhancements for working a non-standard shift patterns and as per the

criteria outlined in the terms. The shift allowances payable are outlined in table 8 below:

Table 8: Shift Allowances

Shift Description	Enhancement	Gender Profile of those accessing Enhancements
Night Shift*	33% of base pay for hours worked between 10pm and 8am	70% F* 30% M*
Alternating Shifts/Irregular Hours	10% of base pay	76% F 24% M

* this includes occasional enhancement of 23% where 10% allowance is already paid.

4.7.2 The current provision for nightshift working is 33% in addition to base pay. The proposal is that this be retained for now as it is a payment made which broadly reflects the gender profile of the workforce and to predominately employees on Grade 3, primarily in roles in health and social care. However, a review of application and alternatives is underway to ensure that consistency and fairness are ensured.

4.7.3 The Council does otherwise pay an enhancement of 10% of base pay, for those working alternating/rotating shift patterns and irregular hours, as defined in the terms and conditions. The gender split of those receiving this enhancement was broadly reflective of that of the Council workforce as a whole. It is further noted in table 9 below that the average allowance paid is comparable across both male and female and as such, any proposed change will not have a disproportionate impact in terms of gender.

Table 9: Average Payment of 10% Shift Allowance by gender

	Total paid	Ave Payment	Total No of Employees	% in receipt of allowance	% of workforce by gender
Female	£521,968	£1884	277	76%	8%
Male	£161,802	£1859	87	24%	6%

4.7.4 A review of the shift patterns that attract this allowance has been undertaken and the majority of recipients work on an alternating shift pattern. Whilst shift patterns are variable across services, these are primarily worked within the Council's core hours (between 7am and 9pm). This allowance is not accessible to other employees, predominately female, working a consistent shift pattern within the core hours.

4.7.5 It is recommended that this allowance is removed for two reasons, it will not have a disproportionate impact in terms of gender and current application is

unfair and inconsistent. An alternative to this would be to retain a variation only for those unsocial hours worked by Grades 1 -3, of which those in receipt of this allowance at Grade 1-3, 84% are female.

4.7.5 There are some employees who receive this 10% allowance as part of irregular hours whereby they work 8 hours per week out-with the Council's core hours and it is proposed this payment is reviewed to consider alternative options that are sustainable and equality proofed. It is noted that, in contrast with our approach, some local authorities pay an enhanced hourly rate for unsocial hours, rather than applying an uplift to base pay as a whole. This would ensure a fair and consistent application to those hours worked during core time.

4.8 Incremental Progression

4.8.1 New appointments, promotions or re-gradings between 1st October and 31st March, receive their first increment on the new salary scale six months from their effective date of appointment.

4.8.2 This provision benefits some over others simply based on timing and would need to be objectively justified.

4.8.3 To ensure equality of pay progression, it is proposed that this provision is removed, reverting to increments applied on 1st April for all after their one year service anniversary with West Dunbartonshire Council.

4.9 Group Life Assurance Scheme

4.9.1 Death in Service provisions currently exist under two separate schemes, The Local Government Pension Scheme (Scotland) Regulations 2018(LGPS) and the Group Life Assurance Scheme and the Scottish Teachers' Superannuation Scheme (STSS),

4.9.2 The most beneficial provisions are enshrined in the LGPS and the STSS and provide guaranteed payment, upon death in service, equal to 3 times annual pay. This benefit is additional to the ill-health provisions, notably more likely to be required than death in service. Following significant and sustained efforts to promote and increase membership, 93% of employees are members of an occupational pension scheme, and therefore eligible for accrued benefits.

4.9.3 The Council also locally operates a self-insured death benefit through the historical discretionary Group Life Assurance Scheme, which provides for up to one years' contractual pay. There is no automatic right to receive the full benefit and, depending on individual circumstances, the only payment that may be made is an amount to cover all or some of the funeral expenses.

4.9.4 This scheme is now only available to those in unchanged employment since 1 May 2009. Of the 600 people still eligible, only 46 are not in either of the

occupational pension schemes. The majority are female (82%) and the average age is 63 so it is reasonable to assume that some may choose to retire when able to access state pension.

4.9.5 The proposal is to remove this provision as it is inaccessible to the wider workforce and, alternative more beneficial provisions exist in the pension schemes.

4.10 Notice Period

4.10.1 Whilst there are no equality impacts regarding notice periods, this ethical review of terms and conditions has identified an opportunity to respond to risks in terms of organisational resilience.

4.10.2 Currently, the minimum period of notice which employees are contractually required to provide when confirming their intention to terminate employment is determined by grade, with those of grade 8 and above required to give 8 weeks' notice. Whilst the majority of standalone business critical roles will typically exist at this level, there are instances where such roles exist at other grades, and where the shorter notice period (i.e. 4 weeks in the case of those on grades 3 to 7) creates a serious risk in terms of organisational resilience should corresponding post-holders resign. Whilst services will continue to progress succession planning to reduce risk, it is proposed that, as an additional safeguard, an amendment is made to the terms and conditions which would contractually require those appointed to such roles (regardless of grade) to similarly provide give 8 weeks' notice. This will enable additional time to plan and implement arrangements to ensure continuity of service provision following receipt of an employee's written notice of resignation.

5. People Implications

5.1 Effective and regular monitoring and analysis of pay and remuneration is critical to ensure the organisation is providing equality of pay, employment practice and access to remuneration for all employees.

6. Financial and Procurement Implications

6.1 The proposed changes to eradicate inequality will reduce liability, further and fundamentally address the gender pay gap and indirectly reduce spend.

6.2 The timescales outlined in the table below are indicative as proposals are subject to trade union consultation.

Proposed Change	Indicative Effective Date
Reduction in Overtime Enhancement	June 2023
Removal of Contractual Overtime	June 2023
Public Holiday alignment and reduction	April 2023 (needs to align with leave year)

Removal of Alternating Shift Allowance	June 2023
6 monthly increment	April 2023 (needs to align with leave year)
Removal of Group Life	June 2023
Notice Period	June 2023 (to allow for identification and variations)

7. Risk Analysis

- 7.1** There is a risk of retaining those current provisions, as detailed above, which could disproportionately benefit male employees over females, in terms of potential claims for indirect/direct sex discrimination.
- 7.2** The Council's overall gender pay gap is less than 3%. This sits in stark contrast to the pay gaps (potentially circa 20-50%) that exist when the additional terms outlined in this report are analysed. The Equality and Human Rights Commission's (EHRC) recommends that immediate action is required when a pay gap is more than 3%. Therefore the Council has a duty to identify appropriate action to eliminate instances of inequality that cannot be justified. Accordingly, there are risks to the Council if the proposed changes are not implemented.
- 7.3** The Council has already had a number of Employment Tribunal Claims raised in relation to the current allowances and, without change, the risk of further claims remain.
- 7.4** There are risks of possible claims arising from the changes.

8. Equalities Impact Assessment (EIA)

- 8.1** Equalities impact assessments have been undertaken in relation to the above proposals and are included as appendices to the report.

9. Consultation

- 9.1** The Trade Unions were made aware of the high level changes at the Convenor meeting on 22nd November and the report shared following Council pre-agenda meeting.
- 9.2** As the proposed changes seek to vary the current terms and conditions, collective consultation and negotiation will be required. There is a risk that collective agreement may not be achievable resulting in industrial dispute/action.

10. Strategic Assessment

- 10.1** The proposals set out within this report will assist the Council to deliver against its strategic priority “to deliver efficient and effective frontline services that improve the everyday lives of residents”, by contributing to the supporting outcome of being a “continuously improving Council delivering best value”.

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Date: 6 December 2022

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Appendices: Equality Impact Assessments

Background Papers: WDC Terms and Conditions (LGE) V3.6 - April 2021
Scheme of Pay and Conditions of Service (Craft Operatives)
Equal Pay Audit – Allowances remitted to JCF in December 2017

Wards Affected: None

