

WEST DUNBARTONSHIRE COUNCIL

Report by Chief Executive

Council Meeting – 14 May 2008

Subject: Proposals for Implementation of the Single Status Agreement

1. Purpose

1.1 The purpose of this report is to:

- Provide an update on the conclusion of the Job Evaluation exercise and on consultations undertaken with employees and their representatives.
- Provide an update on negotiations with Trades Unions and the outcome of Trades Union consultative ballots.
- Provide recommendations to Council as a result of the failure to reach a collective agreement with Trades Unions and detail proposals in relation to the imposition of the SJC 'Single Status' Agreement within West Dunbartonshire Council that will:
 - meet the Council's statutory obligations in relation to the Equal Pay Act and Gender Equality Duties
 - avoid the Council being subject to enforcement action from Equalities and Human Rights Commission
 - ensure the Council can continue to deliver Best Value and affordable services
 - satisfy the requirements of the Local Government Scotland Act 2003 – Best Value Guidance in relation to the need for probity in the use of financial resources

2. Background

2.1 Issue of Formal Offer and Progress of Negotiations

2.1.1 Following agreement by Council on 20 December 2006 and 27 June 2007 (Minutes attached as Appendix 1) a formal offer in relation to the implementation of the SJC 'Single Status' agreement within WDC was issued to Trades Unions in September 2007 commencing a formal period of consultation. This offer proposed a pay and grading structure and terms and conditions of employment that address the Council's vulnerability in relation to equal pay. The offer reflected a pay and grading model that addresses the inequalities in current pay arrangements while providing a terms and conditions package based

on equality of access and level of payment. This offer also maintained affordable service delivery to the residents of West Dunbartonshire.

- 2.1.2** Formal notification was also made to Department for Business, Enterprise and Regulatory Reform commencing a statutory 90-day period of consultation in relation to the proposals in September 2007.
- 2.1.3** The formal offer had undergone an independent Equality Impact Assessment and satisfied the Council's statutory responsibilities in relation to Equal Pay, addressing existing pay inequalities and providing a defence in relation to future litigation in respect of Equal Pay. The offer contained sufficient information for Trades Unions to undertake individual Equality Impact Assessments and it was anticipated that this offer would be submitted to national officers prior to Trade Unions consulting with their individual memberships. No formal response has been received from any Trade Union in relation to the outcome of their Equality Impact Assessment processes although each Trade Union has now undertaken a consultative ballot of its membership.
- 2.1.4** Throughout the formal consultation period regular meetings have continued to take place to discuss the Council's offer and agreement has been reached with Trades Unions to remove certain proposals from the terms and condition package following discussions within the Single Status Consultation Group, this included the withdrawal of proposals in relation to the replacement of designated public holidays with annual leave provision. In addition further clarification was provided to Trade Unions in relation to Overtime Payments, Notice Periods, Excess travel arrangements and a commitment was given that all services which currently operate on a Monday – Friday basis would continue to do so. A summary of the amendments to the initial proposals are contained in Appendix 2.

2.2 Conclusion of Job Evaluation Exercise

- 2.2.1** Job Evaluation is recognised to be the most robust method of achieving grading structures which satisfy the principle of 'equal pay for work of equal value' and which are both fair and transparent. In undertaking the Job Evaluation exercise the Pay Modernisation Team has consistently applied the Scottish Councils' Job Evaluation Scheme which has been fully endorsed by both sides of the Scottish Joint Council. This has provided WDC with a sound platform to develop pay and grading structures in support of the Single Status Agreement.
- 2.2.2** The fully trained Job Analyst Team within West Dunbartonshire Council was made up of employees from all Council Departments and representatives from Trade Unions. Following the evaluation and consistency checking of approximately 400 posts across the authority by members of the Job Analyst Team provisional matching outcomes

were issued to approximately 5200 employees covered by the Single Status Agreement. The purpose of this exercise was to ensure that each individual employee received an appropriate job evaluation outcome in respect of their post e.g. cleaners were matched to the agreed evaluation outcome for the post of cleaner or Library Assistants were matched to the agreed evaluation outcome for the post of Library Assistant.

- 2.2.3** Where employees and Line Managers agreed that the employee undertook different duties than the proposed match, information provided was considered by the Job Analyst Team and amendments made to outcomes as appropriate. In line with national guidance there was no appeal stage as part of this process.
- 2.2.4** Following implementation of the Single Status Agreement all employees will be entitled to appeal against their job evaluation outcome and will be provided with the necessary information to participate in this process. In addition to the information that will be provided as part of the national guidance employees will also be issued with information relating to the outcome of the matching process. The nationally agreed Appeals Process will be adopted within West Dunbartonshire Council and will comprise of Management and Trade Union representatives. All participants will be fully trained prior to the Appeals process commencing.
- 2.2.5** In line with nationally agreed guidance Elected Members will be responsible for maintaining a strategic oversight of the implementation of the Scheme within their authority and will not be involved in the local Appeals Process.
- 2.3** Independent Assessment of JE Outcomes
- 2.3.1** Following a request from local Trades Unions and agreement by the Chief Executive that an independent review be undertaken on the application of the Scottish Councils' Job Evaluation Scheme within WDC a joint referral was made to the Joint Secretaries of the SJC. The Joint Secretaries sought independent support from a suitably experienced person to review the application of the definitions and guidance of the SC JE Scheme by the Job Analyst Team of West Dunbartonshire Council. West Dunbartonshire Council is the only authority in Scotland that has undertaken such a review of the local application of the Scottish Council's Job Evaluation Scheme.
- 2.3.2** It is our understanding that the report of the External Reviewer has been submitted to the Joint Secretaries of the SJC for their consideration. It is anticipated that the Chief Executive will have received their views and recommendations prior to the Council meeting on 14th May.

2.3.3 This review did not examine either the matching process adopted within WDC or the proposed grading and pay model as these matters are for local determination.

2.4 External Benchmarking

2.4.1 In June 2006 the Pay Modernisation Joint Working Group considered whether an external salary comparison exercise was a necessary part of the process of designing the new pay structure. The Group agreed that the principal determinant of the new rates of pay must be the job evaluation results, and that external benchmarking would not be useful given that the Council's main competitors in the labour market are its neighbouring authorities who were also designing new pay structures at that time.

2.4.2 During the consultation exercise staff expressed concerns that neighbouring authorities appeared to be paying higher salaries for certain jobs; and managers expressed concerns that such a situation would lead to recruitment and retention difficulties. Accordingly, the Council's consultant on 'single status' matters was asked to undertake a benchmarking exercise, and gathered pay data and information on revised terms and conditions from Argyll & Bute, East Dunbartonshire, Inverclyde and Renfrewshire Councils.

2.4.3 The findings of the benchmarking study based on a sample of 23 key jobs were that:

- WDC appears to have been a higher payer than surrounding authorities prior to the implementation of 'single status'
- While pay movements in other authorities appear more pronounced in terms of implementing 'single status' the resultant salaries are mostly the same as, or lower than, those being offered by WDC
- The package of revised conditions of service being offered by WDC is more generous than that being offered by other Councils in terms of annual leave, public holidays, and allowances for non-standard working patterns

2.4.4 Accordingly it is believed that the new grading structure and remuneration arrangements proposed by WDC will enable it to maintain a competitive position in the labour market, and ensure that services can recruit, motivate and maintain the right calibre of staff. This situation will however be closely monitored to ensure that future service delivery continues to be supported by the recruitment and retention of suitably qualified staff.

2.5 Staff Consultation Exercise

2.5.1 As part of the staff consultation exercise a series of 6 road shows were held across the authority from 18th – 28th March 2008 to gather feedback on the proposals for the implementation of Single Status. These road shows were led by the Chief Executive and Senior Officers from each department were in attendance. All employees had previously been issued with a copy of the 'Achieving Workforce Equality' booklet and supporting Addendum which detailed the background to the Single Status agreement together with details of the Council's proposals in relation to pay and grading and terms and conditions of service.

2.5.2 Staff attending the events raised a number of important issues and concerns particularly in relation to preservation of terms and conditions of employment, the likely implementation date of the new Single Status arrangements and the perception that changes to terms and conditions would result in changes to current existing working arrangements. In response to these issues and concerns as well as feedback from Trade Union consultations and following legal advice the following additional information was issued:

- Pay protection would be applied to terms and conditions on a cash-conserved basis for a period of three years
- Protection period of 3 years commencing from 1/4/2008.

2.5.3 As protection was originally expected to be based on 2007 pay rates it was proposed that staff would now be protected at the higher salary levels applying from 1 April 2008 (subject to SJC agreement of the Cost-Of-Living-Award) and the effect of red – circling would not be felt until April 2009. This would provide additional time to mitigate the impact of detriment on staff.

2.5.4 It was anticipated that these amendments would have a considerable impact on those staff adversely affected by the proposed changes to terms and conditions of service and would afford protection on 2008 salary levels on a cash-conserved basis for a period of three years for all staff suffering detriment following the implementation of the Single Status Agreements.

2.5.5 In addition further assurances were given to staff that there are no proposals to change current working patterns, contractual hours, current start and finish times or to extend weekend working arrangements.

2.5.6 Proposals on terms and conditions of service have consequently been amended in light of the above consultations and are detailed in

Appendix 3. These amendments signify a considerable movement from the initial proposals detailed in the formal offer of September 2007 and denote the final management position following the conclusion of the formal consultation period.

2.6 Management Questionnaire Results

2.6.1 While fully supporting the collective bargaining process the Council has a statutory responsibility to consult with all its employees. Approximately 35% of employees are not members of a recognised Trade Union and would therefore not be able to participate in the Trade Union Ballot process. Accordingly all employees were issued with a questionnaire and asked their views on the proposals for the implementation of Single Status within West Dunbartonshire Council. The outcome of the analysis of the returned questionnaires was as follows:

- Turnout 15% (751 employees)
- Acceptance 56%
- Rejection 44%

Of those who supported acceptance approximately 25% were female employees working in catering and cleaning.

2.7 Trades Unions Ballots

2.7.1 All three Trades Unions signatory to the SJC Single Status Agreement recommended that their members reject the Council's proposals in relation to the implementation of Single Status within West Dunbartonshire Council. Following the conclusion of their membership ballots all three Unions have indicated a rejection of the Council's proposals in relation to Single Status.

2.7.2 The following information has been provided in relation to turnout and the % of staff that voted to reject the Offer:

TU (Estimated numbers balloted) *	% turnout	% who voted to accept	% who voted to reject	% of Members who did not vote to reject
GMB (850)	64%	38%	62%	60%
UNISON (2000)	62%	18%	82%	50%
UNITE (800)	55%	46%	54%	70%

* Based on payroll deductions

2.7.3 In summary while all Trades Unions recommended that their members vote to reject the Council's offer in relation to Single Status proposals only 44% of members who were eligible to participate in the ballot process followed their Unions recommendation to reject the offer.

2.8 Conclusion of Formal Consultation Period

2.8.1 The SJC 'Single Status' Agreement anticipates a 3-month period of negotiation within which the local parties should reach agreement on revised conditions of service. Following an extended consultation period of an additional 4 months beyond the 90 days statutory consultation period, many amendments have been made to the initial proposals on Terms and Conditions of Service issued to Trade Unions in September 2007. These include:

- Removal of proposals in relation to converting fixed public holidays to floating days leave
- Clarification and extension of pay protection to terms and conditions
- Adjustment of protection period to run from 2008 until 2011
- Retention of existing excess travel arrangements
- Guarantees in relation to the continuation of existing working patterns.

2.8.2 These revisions to the formal offer represent the best outcome that can be achieved through the negotiation and consultation process that will enable West Dunbartonshire Council to continue to deliver affordable and competitive services while ensuring pay equality for employees within the single status job population.

2.8.3 The Trades Unions have now advised that they cannot reach agreement in relation to the Council's 'Single Status' proposals. Accordingly, the Council must now consider how best to meet its statutory obligations in relation to Equal Pay if it is to avoid being subject to enforcement action by the Equalities & Human Rights Commission and the need to defend further Equal Pay claims through the Employment Tribunal System.

3. Implementation Issues

3.1 Imposition of New Contractual Arrangements

3.1.1 The conclusion of the job evaluation exercise and the implementation of the Single Status Agreement within West Dunbartonshire Council is critical in ensuring a sound platform for future service delivery based on equality of access to pay and terms and conditions of service. It is also recognised that in moving the process forward this has been a

particularly difficult time for employees and the continued commitment of staff throughout this period has been invaluable to the continued provision of high quality services for the residents of West Dunbartonshire. However given that the Council has been unable to secure a collective agreement with the Trade Unions to vary individual contracts of employment in order to introduce a new equality proofed pay and grading scheme and revised package of terms and conditions following job evaluation, it would appear that the only realistic way forward is for Council to now pursue imposition.

- 3.1.2** Ongoing consultation with the Trade Unions is unlikely to achieve a collective agreement as is evident from the experiences in other local authorities and runs the risk of further delays in implementation and exposure to litigation in light of the Council's failure to fulfil its statutory obligations. The alternative of applying Para 12.2 of the Implementation Agreement section of the Red Book, which provides a mechanism by which authorities can introduce new local grades without varying individual Contracts of Employment, is also not an option for the Council as this approach does not include terms and conditions and would not address the inequalities arising from the application of differing terms and conditions as highlighted in the Equality Impact Assessment. If Council were to pursue this approach and implement pay and grading without addressing associated terms and conditions of service it would remain unable to demonstrate pay equality and fulfil its statutory obligations in relation to equal pay.
- 3.1.3** Through imposition Council would be seeking to vary contracts of employment to meet its statutory responsibilities with regards to Equal Pay and implement new pay and grading proposals and associated terms and conditions, based on the outcome of the job evaluation scheme. In these circumstances the Council would require to terminate the original contract of employment on notice and offer re-engagement on the new, desired terms from the date of the expiry of the notice period.
- 3.1.4** From a legislative perspective this rationale may be seen as a 'sound, good business reason' providing a sufficient reason to dismiss, however it will not, of itself, make the dismissals "reasonable" if the authority cannot demonstrate that, prior to the decision to dismiss being intimated, reasonable attempts were made to seek variation by agreement. Council has sought to achieve this through the Collective Bargaining process and has met its obligations in respect of engaging in a formal, statutory period of collective consultation under s188 Trade Union and Labour Relations (Consolidation) Act 1992.

3.1.5 Good employment practice suggests that consultation should be as widespread as possible, therefore given that imposition will require dismissal and re-engagement, the employment protection laws (which principally provide the right to claim unfair dismissal) create the expectation that, before notice of termination is given there will be individual consultation with all affected employees, even if those employees are members of a recognised trade union. It is, therefore, advisable that Council approach individual employees as part of the consultation process to agree to a variation to their contract of employment.

3.1.6 A significant positive response to this approach would minimise the number of individuals who would require to be dismissed in order to introduce new contractual terms and is the route that has been followed by most other Councils who have required to bring about implementation of the Single Status Agreement through imposition. As many employees will be entitled to the maximum twelve weeks' notice of dismissal, a minimum period of two months should be allowed prior to the issue of notice to allow the Council to consult directly with staff on signing up to the new terms and conditions. In the event of imposition it will be critical to ensure employees are left in no doubt that there is an offer of re-engagement prior to the expiry of the notice period

3.1.7 Termination and re-engagement does not constitute a break in service and individuals continuous service will remain the same. The dispute resolution terms of the Employment Act 2002 (dismissal and discipline procedure) do not apply to terminations in these circumstances.(cf R4(1)(b) The Employment Act 2002 (Dispute Resolution) Regulations 2004), and as the dismissals discussed here will not be for reasons of redundancy (as defined in Section 139 of the Employment Rights Act 1996) no statutory trial periods will apply, and no redundancy payments will be payable.

3.2 Pay and Grading

3.2.1 The proposed grading and pay structure for West Dunbartonshire Council has been designed in accordance with the methodologies, principles, and best practice advice set out in the 'Pay and Grading Guidance' issued by the COSLA Job Evaluation Consortium. The pay and grading structure has 12 grades covering the whole of the Single Status job population, i.e. Manual Workers and Admin, Professional, Technical & Clerical Staffs, including Residential Workers and Nursery Nurses. The grading structure reflects the application of the agreed outcomes of the job evaluation exercise to the design parameters agreed with Trades Unions through the Pay Modernisation Joint Working Group. Specifically, and in line with best practice, the Trades Unions side of the Joint Working group had requested that the model have approximately 12 discrete grades with clear boundaries between each grade. These requests were accommodated within the

development of the model and following an Independent Equality Assessment (2.1.3 above) the proposed pay model satisfied the requirements of Equal Pay legislation. The proposed grading and pay structure is set out at Appendix 4.

- 3.2.2** The pay structure provides incremental pay scales for each of the new grades, and these are mapped to the new spinal column of pay points agreed by the Scottish Joint Council (SJC). The top point of the pay scale is defined as the 'rate for the job' and each grade has a pay scale of 4 points, with incremental steps set at approximately 3% as they are currently for APT&C staff. As no agreement has yet been reached at a national level on the 2008/2009 pay award hourly rates reflect the current Employers' offer of 2.5%.
- 3.2.3** A salary comparison of posts included as part of the job evaluation exercise is included as Appendix 5. This information relates to the top point of existing and proposed salary scales and does not take into account enhancements to pay or individual salary placings.
- 3.2.4** Former Manual Workers did not previously enjoy incremental progression, but will now do so under the proposed arrangements.

3.3 Terms & Conditions of Service

- 3.3.1** Part 2 of the National Agreement states that "Councils will ensure that discriminatory practices are identified and removed, and non-discriminatory practices introduced in all areas of employment..." The National Agreement also advises that the parties "...endeavour to minimise costs whilst ensuring service delivery standards are maintained."
- 3.3.2** Since Local Government reorganisation in 1996 many aspects of the terms and conditions of employment within West Dunbartonshire Council have been modified following discussions with Trade Unions to meet operational needs and service delivery requirements. This situation coupled with the continuation of terms & conditions from the predecessor authorities and limited harmonisation between former manual worker and APT&C employees has resulted in an inconsistent approach across the authority in the application of terms and conditions of employment creating inequalities in relation to access and the application of terms and conditions of service.
- 3.3.3** Under the Equal Pay Act the Council must ensure that men and women receive the same level of pay (total remuneration) as employees of the opposite sex who are performing equal work. Any difference in pay must be for a genuine and material reason, which is not the difference in gender.

- 3.3.4** Discrimination in terms of total remuneration can be direct or indirect. Direct discrimination may arise where the value of the total remuneration package is higher, or contains an additional element, for one gender than the other, where jobs have been evaluated as equal. Indirect discrimination may arise where one of the jobs is done by a much higher proportion of one gender than the other.
- 3.3.5** The guidance of the E&HRC (formerly EOC) advises that the proposed terms and conditions package should: -
- provide equality of access to allowances and enhancements,
 - be non-discriminatory in terms of levels of allowances and enhancements,
 - not undermine the pay equality delivered by the new grading and pay structure by causing, or increasing, gender gaps in total remuneration
 - ensure pay policy, procedure and practice is free from gender bias.
- 3.3.6** Accordingly the proposals relating to terms and conditions of service: -
- harmonise the application of allowances and enhancements to ensure that all employees within the scope of the 'single status' agreement enjoy the same remuneration package,
 - harmonise the level of allowances and enhancements to avoid potential discrimination in the application of the various elements of the remuneration package,
 - ensure equality of access to allowances and enhancements for all employees within scope of the 'single status' agreement,
 - minimise additional cost over and above that required to introduce the new grading and pay structure in accordance with the SJC Agreement which advises that parties to local agreements ensure minimal increases in cost to ensure there is no detrimental effect on the quality and delivery of services.
- 3.3.7** Costs associated with the proposed terms and conditions of service are estimated to be £1.34M per annum in addition to the significant implementation cost of the revised pay and grading structure. Assuming a mid year implementation date budget provision in respect of these additional costs can be accommodated within existing budget provision.
- 3.3.8** The additional annual costs associated with harmonizing existing terms and conditions at current highest rate and extending these provisions to employees with different contractual arrangements i.e. contracted on all inclusive rates or not in receipt of enhancements would be £2.67M per annum. This is the position that has been adopted by the Trade

Unions through the Collective Bargaining process, however, these costs could not be accommodated within departmental budget provision on a recurring basis and would have a significant impact on the competitiveness of services across the authority. This potentially may expose the Council to further litigation claims relating to Equal Pay.

3.3.9 Currently 724 employees (14%) receive enhancements for working irregular hours i.e. shift working, weekend working or night working. Under the revised proposals 1167 employees (22%) would receive enhancements for working irregular hours i.e. shift working, weekend working or night working. Effectively this demonstrates that the current proposals extend access to enhancements in respect of irregular working patterns.

3.3.10 As part of the external benchmarking exercise that has been undertaken in relation to the Council's proposals, terms and conditions of service were examined in neighbouring authorities. While all authorities are reviewing and harmonising terms and conditions of service as part of the Single Status Agreement, differences exist across all authorities in relation to the application of terms and conditions. A summary of proposals in neighbouring authorities is attached as Appendix 6.

3.3.11 A summary of the effect of changes to terms and conditions on key employee groups within West Dunbartonshire Council are contained within the worked examples detailed in Appendix 7.

3.4 Effective Implementation Date

3.4.1 It is now apparent that collective agreement with the Trades Unions cannot be achieved, therefore it is critical that implementation of the new pay and grading structure and associated terms and conditions of service package is implemented at the earliest opportunity in order to ensure pay equality. If the Council agrees to pursue the imposition route it is proposed that the implementation date be 1 November 2008.

3.5 Assimilation of Employees to New Grading and Pay Structure

3.5.1 At the agreed implementation date all employees within the 'Single Status' job population will be assimilated to the new grading and pay structure following the job evaluation exercise using the accepted protocol as agreed by the Pay Modernisation Joint Working Group. Employees would therefore be assimilated to the nearest spinal column point to their current hourly rate. In accordance with agreed practice this would result in subsequent employee incremental progression being applied 6 months later at 1 May 2009 rather than 1 April. In the present circumstances as part of the implementation arrangements it is therefore proposed that incremental progression be applied at 1 April

2009. Associated costs exist within current departmental budget provision.

3.6 Backdating

3.6.1 It is standard practice in pay negotiations that where negotiations are not completed prior to the intended implementation date that the application of the collective agreement is back-dated. In this case there has been no collective agreement.

3.6.2 In the event of termination and re-engagement there are two key issues with regard to backdating pay:

- The Council could **not** legally impose contractual change and backdate the effect of this. Imposition can only be from a date going forward and would require contractual notice to bring about the change.
- The Council has **no** legal obligation to backdate salaries – it has always stated that backdating would only be applied in the event of a collective agreement.

3.6.3 This position presents a number of challenges in that clearly there is an expectation amongst a significant number of employees that they will see an increase in pay as a consequence of the Council's commitment to addressing pay inequality through implementation of the agreement. This expectation will be particularly acute with those groups of staff who signed a compromise agreement. It has also been suggested that it may be possible, even in the absence of a collective agreement or individual agreement, to make a determination that for any employee who has gained following the job evaluation process, the monies would be backdated.

3.6.4 The national Single Status Agreement as outlined in the Red Book does not itself require backdating however this possibility has been raised with legal advisers. The advice is that whilst this is at the discretion of the Council and may be possible in appropriate circumstances, it could only be achieved in accordance with the requirements of the Local Government in Scotland Act 2003 – Best Value Guidance. The Council is required to note its obligations with regard to economy, efficiency, effectiveness and equalities as detailed in the Local Government Scotland Act, extracts of which are attached at Appendix 8.

3.6.5 In order to ensure that the Council's Best Value duties are complied with, any arrangements for backdating would have to be made by Elected Members after considering the impact of the decision on efficiency, effectiveness, economy and equalities. Such a decision should, at the very least, have a neutral impact on these factors (including the impact of the actual expenditure itself), though, given the large sums of money involved, it is reasonable to expect a positive benefit to the Council.

3.6.6 In line with Audit Scotland / Accounts Commission comments on the Council's decision making processes, it is also essential that such a decision be taken only with as full as possible an understanding of the impact it will have on the Council's finances, and thereby its ability to deliver Best Value services. Given that Council has no legal obligation to backdate salaries any consideration of this approach would require to be assessed within a framework incorporating Best Value requirements.

3.7 Strategies to Mitigate Detriment

3.7.1 In accordance with accepted good practice Council has already agreed to put in place post-implementation arrangements to mitigate detriment for those individuals most adversely affected (red-circled) through implementation of the Single Status Agreement.

3.7.2 Employees whose current base pay is higher than the top point of the pay scale for their new grade at assimilation to the new WDC pay structure are defined as being red circled. These employees' pay is frozen, i.e. cash conserved at the current rate – in this case those applying with effect from 1 April 2008, and they will remain in detriment following the application of the Cost-Of-Living-Award (COLA) with effect from 1 April 2009.

3.7.3 In practice those employees who are red-circled by less than 2.5% will never be cash conserved because the application of the COLA of 2.5% with effect from 1 April 2009 to their new 'rate for the job' will overtake their cash conserved pay.

3.7.4 Approx 7% of those technically red circled at 1/4/08 will enjoy an increase in salary when the COLA applies at 1/4/09 although they will not receive an increase of the full 2.5%

3.7.5 The following numbers of employees will remain red circled in the 3-year period following implementation:

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

- 3.7.6** Employment case law has established (supported by the Equal Opportunities Commission) and Senior Counsel has advised the COSLA Employers' Secretariat that to eliminate past pay inequality protection periods should be as short as possible. The SJC 'Single Status' Agreement provides for a 3-year period of detriment protection for individual employees on a cash conserved basis, i.e. current pay is frozen and cost-of-living-awards do not apply. Under these arrangements protection would end at 31/10/2011 and employees would assimilate to the new spinal column point appropriate to their post.
- 3.7.7** In practical terms this would result in approximately 251 employees assimilating to the new spinal column point and dropping in salary at 1/11/2011. As a further 45 employees would move out of red circling at 1/4/2012 as a result of the annual COLA award it is proposed that in the circumstances the preservation period be extended for a period of 5 months until 31/3/2012. While technically continuing an inequality this would be defensible as Council could argue that in the circumstance it would be a practical solution that would avoid the need to reduce salary levels only to increase them again in a very short period of time. In addition for administrative and payroll purposes the 1 April is recognised as the point in the calendar year where any salary recalculations are normally made.
- 3.7.8** A range of measures will require to be utilised to underpin the Council's commitment to mitigate detriment including re-design of jobs, restructuring of services, retraining and/or redeployment of individual employees to other job roles within the Council. A Joint Working Group involving Corporate and Departmental Personnel, Service Managers, and Trades Union representatives will be established to develop a framework of principles which can be applied to all affected employees, to ensure equity and fairness and to avoid the perpetuation of discrimination.

3.8 Termination of Bonus Schemes

- 3.8.1** A Joint Bonus Review Group assessed the various bonus arrangements currently applying within the 'single status' job population against the criteria set out in the COSLA Pay and Grading Task Group 'Guidance on Bonus'. The Group concluded that the current bonus schemes should be terminated at implementation of the new pay structure to ensure compliance with the Equal Pay Act. It is therefore proposed that all bonus schemes be terminated as of 31/10/2008 and that the necessary measures are put in place to notify employees accordingly. Bonus is considered as part of the remuneration which would be "cash conserved" under the protection arrangements on implementation.

3.9 Compromise Agreements

- 3.9.1** In order to address its vulnerability to Equal Pay employment tribunal claims WDC reached compromise agreements with approximately 1300 female Manual Worker employees at a cost of 6.4M. In having failed to implement a pay and grading structure to meet its obligations in respect of equal pay on expiry of these compromise agreements, West Dunbartonshire Council remains vulnerable to equal pay claims from this group of employees.
- 3.9.2** These individuals may have a potential claim under the Equal Pay Act and could now launch a secondary tribunal action, against which the Council has limited defence. Therefore in light of the failure to reach a collective agreement with Trades Unions that would have provided for retrospective salary and provided compensation from the expiry date of the compromise agreements it is proposed that arrangements are made at the earliest opportunity to enter into further compromise agreements with the affected employees.
- 3.9.3** This would meet the council's responsibilities in respect of Equal Pay and target resources into the low paid female manual employees for whom there has been potential discrimination in relation to pay and in particular access to bonus payments.

Estimated costs of this exercise based on the previous compromise agreements reached would be in excess of £3.3M

3.10 Referral to Joint Secretaries

- 3.10.1** The principles of the SJC 'Single Status' Agreement provide for referral to the SJC Joint Secretaries for conciliation in the event of a failure to agree by the local parties. If the conciliation is unsuccessful, the Joint Secretaries may recommend further procedures for resolution of the difference between the parties, including external conciliation, mediation or binding arbitration. The Agreement anticipates that conciliation should be completed within 3 months.
- 3.10.2** Given the prolonged consultations and negotiations that have already taken place it is not anticipated that conciliation by the SJC Joint Secretaries would assist in achieving collective agreement. It is our understanding that Joint Secretariat conciliation has proven unsuccessful in other authorities. However, the conciliation process can run concurrently with the steps necessary to implement through dismissal and re-engagement.

3.11 Position in Other Authorities

3.11.1 In a recent survey of implementation arrangements amongst Scottish Local Authorities (27 respondents) 11 Councils indicated that they had implemented new pay and grading arrangements by agreement 4 by use of red book clause 12.2 while the remaining 12 had or were planning to impose with 90 days notice. In respect of terms and conditions of service 12 had reached agreement with Trades Unions, 8 had either imposed or were considering imposition with 90 days notice. The remainder indicated that negotiations were on going. The majority of Scottish Local Authorities expect to implement the Single Status Agreement before the end of 2008.

4. Other Issues

4.1 Personnel

4.1.1 The implementation of the Single Status is the biggest change exercise facing West Dunbartonshire Council since local government re organisation in 1996 and has been an extremely unsettling time for all employees. Employees and Managers will require ongoing support to manage the implementation process.

4.2 Legal

4.2.1 The Council has a clear statutory responsibility to comply with the Equal Pay Act, Gender Equality Duty and the Best Value Guidance of the Local Government Scotland Act 2003.

4.3 Financial

4.3.1 The Council has fully provided for the original estimated full year costs of implementation. Original additional estimated full year costs for implementation of Single Status were £5.9M for year 1, £7.1M for Year 2 and £8.3M for Year 3.

4.3.2 Implementation costs at 1 November 2008 would be as follows:

- Estimated costs to uplift salaries with effect from 1/11/08 – £2.35M per annum
- Estimated cost to settle further compromise agreements - £3.3M per annum
- Costs associated with changes to terms & Conditions with effect from 1/11/2008 - £0.37M (full year costs - £0.9M)

4.3.3 Provision requires to be set aside in respect of the potential costs of ongoing Employment Tribunal claims and future potential claims.

4.4 Risks

4.4.1 Delayed Implementation: Any further delay in the implementation of the Single Status agreement and the introduction of Equal Pay will increase the Council's vulnerability to Equal Pay litigation, particularly in respect of secondary claims and may result in enforcement action by the EHRC.

4.4.2 Service Impact: The implementation of new grading and pay structures, and the harmonisation of terms and conditions of service, will result in a significant increase in the employee costs for front line service delivery. In addition services may require to be reconfigured generating the need to review services and their achievement of Best Value.

4.4.3 Employee Relations: The potential for employee relations unrest exists as has being evidenced in other authorities.

4.4.4 Litigation: The Council's Policy commitment to Equalities is founded in acceptance and pursuance of its statutory duties. Failure to implement 'single status' breaches the Council's statutory duty and its employment policy. It is believed however that the proposals detailed above support the Council in providing a robust defence to any challenge on the Council's statutory duties in respect of Equal Pay and allow best value services to be delivered to the residents of West Dunbartonshire.

5. Conclusions

5.1 The conclusion of the job evaluation exercise and the implementation of the Single Status Agreement within West Dunbartonshire Council is fundamental to ensuring a sound platform for future service delivery based on equality of access to pay and terms and conditions of service. It is however recognised that in moving the process forward this has been a particularly difficult time for employees. The continued commitment of staff throughout this period has been invaluable and has enabled the Council to provide high quality services to the residents of West Dunbartonshire however it is now critical for the Council to bring an end to uncertainty and move forward with implementation in line with other Council's across Scotland.

5.2 The national Agreement on Single Status was signed in 1999 and as signatories to the Agreement both Trade Unions and the Council are committed to implementing pay and grading structures which underpin equality. Through the process of Collective Bargaining both the Council and the Trade Unions have failed to reach an agreement on how this should be taken forward and the Council remains vulnerable in terms of a failure to address its statutory equality duties. Given this situation and

having assessed the likelihood of continued consultation achieving a collective agreement Council has no option other than to consider imposition. In this event there will be continued opportunities for Council to put in place strategies to minimise detriment for those employees who are negatively affected through any such decision.

6. Recommendations

6.1 It is recommended that Council:

- Make arrangements for the termination of all existing Bonus Schemes with effect from 31/10/2008;
- Agree an imposition date of 1 November 2008 in respect of the Council's offer of September 2007 (as amended) at the rates of pay effective from 1/4/2008;
- Consult with individual employees with a view to varying contractual arrangements by agreement;
- Extend the protection period until 31/3/2012; and
- Put in place arrangements to pay additional compensation for those who signed compromise agreements for the period 1 April 2006 to 31/10/2008.

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Chief Executive
Date: 2 May 2008

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Appendices:

- Appendix 1 Previous Council Minutes
- Appendix 2 Amendments to terms & conditions October 2007
- Appendix 3 Summary of final proposal on terms & conditions following consultation exercise
- Appendix 4 Proposed grading structure
- Appendix 5 Salary comparisons of existing and new salaries
- Appendix 6 Comparison of terms & conditions with neighbouring authorities
- Appendix 7 Impact of changes to terms & conditions on key work groups
- Appendix 8 Extracts from the Local Government Scotland Act 2003 – Best Value Guidance

Background Papers: WDC Council Report 28 June 2006, WDC Council Report 20 December 2006, WDC Council Report 27 June 2007, WDC Council Report 19 December 2007

Wards Affected: N/a