

# WEST DUNBARTONSHIRE COUNCIL

## Report by the Chief Executive

Council Meeting – 20 December 2006

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**Subject: Pay Modernisation - Proposals for Implementation of the Single Status Agreement**

### **1. Purpose**

**1.1** The purpose of this report is to provide an update on the status of on-going local negotiations and of the national context affecting progress in relation to implementation of the Single Status Agreement and to recommend an 'Employers' Offer' as a proposal for implementation of the Single Status Agreement in West Dunbartonshire Council.

### **2. Background**

#### Progress of Negotiations Joint Working on Equal Pay and Job Evaluation

**2.1** The Council and the Trades Unions re-focused their efforts and began working together as a Pay Modernisation Joint Working Group in August 2005, with the shared objective of equalising pay by:-

- implementation of a new WDC grading and pay structure developed from the results of the application of the Scottish Councils' Job Evaluation Scheme.
- reviewing terms and conditions of employment in order to harmonise those previously different for APT&C staff and Manual Workers; ensure equality in terms of total remuneration; and to provide equal opportunity in access to enhancements.
- reviewing Bonus payments in accordance with the Guidance of the COSLA Pay and Grading Task Group.

**2.2** The Pay Modernisation Joint Working Group has developed key processes and procedures to support implementation and will continue to meet through the formal consultation process in order to reach agreement on the detail of outstanding aspects associated with implementation.

## Employment Tribunal Decisions Impacting on Joint Working

- 2.3** The Employment Tribunal decision in the case of Allan –v- GMB, has led the Trades Unions to take a cautious approach to on-going local discussions. In this case the Tribunal upheld a case of sex discrimination and victimisation against the GMB for the way in which it dealt with 100 of its members in relation to the pursuit of an equal pay claim. Whilst it is under Appeal, it is our understanding that as a consequence local negotiators are not empowered to reach agreement without the approval of Technical Experts based at national Headquarters. Each Unions' Technical Expert will scrutinise the employers proposal and are likely to either approve the proposal for progression to local ballot or reject it as unacceptable.

### **3. Progress of Job Evaluation and Pay and Grading Development**

#### Job Evaluation Activity

- 3.1** Job evaluation (J.E.) processes are now complete for approximately 70% of the affected employees. Consultations with Heads of Service will be undertaken to review predicted job evaluation results, the consequent impact for services, jobs, and jobholders. It is anticipated that queries resulting from this exercise will need to be resolved, and job evaluation activity such as matching will be on-going throughout the first quarter of 2007. However, sufficient work has been undertaken to enable the Joint Working Group to agree the JE results used to develop the grading structure.

#### Development of Grading and Pay Structure

- 3.2** 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' guidance issued by the COSLA Job Evaluation Consortium. It has 10 grades covering the whole of the Single Status population, i.e. Manual Workers and Admin, Professional, Technical & Clerical Staffs, including Residential Workers and Nursery Nurses. The grading structure reflects the outcomes of the job evaluation exercise across the whole of the 'Single Status' job population. The parameters of the proposed grading and pay structure are set out at Appendix 1.
- 3.3** 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 based on hourly rates 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. Former Manual Workers who did not previously enjoy incremental progression will now do so.

## Assimilation of Employees to New Grading and Pay Structure

- 3.4** All employees within the 'Single Status' job population will be assimilated to the new grading and pay structure following the job evaluation exercise using procedures agreed by the Pay Modernisation Joint Working Group.

## Equalities Impact Assessment

- 3.5** The Trades Unions have indicated that they will require an Equalities Impact Assessment on the proposed grading and pay structure to ensure it addresses the inequalities in the previous arrangements and is fully robust in terms of statutory requirements under the Equal Pay Act. The Independent Adviser to both the SJC and the COSLA JE Consortium has been advising the Pay Modernisation Joint Working Group to ensure that the development of the grading and pay structure meets with agreed principles and best practice. However, an analysis of the predicted results by grade and gender will be required. It is intended that the Consultant will facilitate this process to be undertaken by the Pay Modernisation Joint Working Group in line with the national guidance issued jointly by the Trades Unions.

## Cost and Impact Modelling

- 3.6** The costs associated with any new pay model have to be considered in two aspects:-
- the basic costs to the Council encompassing only contractual elements of pay, i.e. the base pay, bonus, and contractual overtime comprising the individual employee's guaranteed earnings.
  - the additional costs to the Council arising from conditions of service through allowances, enhancements, and premium payments comprising the individual employee's variable earnings.
- 3.7** Bonus payments for Manual Workers which are considered as earnings have in effect been consolidated into base pay for calculation purposes in the development of the proposed grading and pay structure.
- 3.8** It is important to consider costs in both these ways as the Council has control over the extent to which variable elements of pay operate in the future, e.g. voluntary overtime. It will therefore be critical to ensure robust management of variables such as overtime calculators.
- 3.9** The total annual paybill for the 'single status' workforce is approximately £95m, including basic pay and other contractual pay such as bonus; non-contractual variable pay such as overtime; and employers' on-costs such as NI and superannuation. The estimated costs of the recommended model are as follows:-

- a 1<sup>st</sup> year increase (with effect from 1/4/06) on the base paybill of approximately 7% or approximately £5m.
  - an additional 2<sup>nd</sup> year increase (with effect from 1/4/07) on the base paybill of approximately 8% or approximately £6m.
  - an additional 3<sup>rd</sup> year increase (with effect from 1/4/08) on the base paybill of approximately 10% or approximately £7m.
- 3.10** These additional costs include the cost of the annual Cost-of-Living Award (estimated at an additional 2.5% with effect from 1/4/07 and 1/4/08) and also the increased cost of incremental progression for additional employees previously on fixed point salaries or those with additional headroom in the new pay scales. However, this is offset by the separate provision for incremental progression and cost of living increases that forms a standard part of annual budgets.
- 3.11** An estimated £2.5m would be released in the 4<sup>th</sup> year (with effect from 1/4/09) when ‘red-circled’ employees assimilate to the evaluated ‘rate for the job’ at the top point of the appropriate pay scale. However, commitments to mitigate detriment through job-redesign and re-training will have a cost implication that is likely to reduce this to a minimal amount.
- 3.12** These estimated costs are based on approximately 70% of the ‘single status’ job population and further extrapolated to cover 100% of the total job population. This includes matching assumptions which could be higher or lower and thus it would be prudent to assume a margin of variability on estimated costs.
- 3.13** The increase in Base Pay Cost of approx 7% falls just outwith the indicative 2-6% range predicted by the COSLA JE Consortium Guidance at the outset (N.B. a number of Councils are reporting implementation costs of between 8-11%). While this is a significant increase in costs, it provides a robust basis for the Council to demonstrate it has addressed pay equality in compliance with the statutory duties placed by the Equal Pay Act 1970.
- 3.14** In terms of the predicted impact on employees, across the job population as a whole it is anticipated that:
- 39%, 2,041 employees, whose current salary is below the new grade minimum will enjoy an increase in salary, referred to as ‘Green Circled’
  - 29%, 1,550 employees, whose current salary falls between the new grade minimum and maximum will be marginally affected on a positive basis, referred to as ‘White Circled’
  - 32%, 1,678 employees, whose current salary is above the new grade maximum will potentially suffer a decrease in salary, referred

to as 'Red Circled'. This figure is expected to reduce to approximately 27% at the end of the 3 year detriment period.

- 3.15** The implementation of job evaluation typically results in a normal distribution pattern of 20% green circled/60% white circled/20% red circled. However, the application of the Scottish Councils' JE Scheme is intended to address historical discrimination within the former Manual Worker job population, and potential discrimination between former Manual Worker and former APT&C. Accordingly, the relative proportions of red and green circles at initial implementation are likely to be higher, although these will better reflect the typical pattern when full implementation is completed.
- 3.16** The gender split of the WDC 'single status' job population is approximately 75% female 25% male. In terms of the equalities impact of the proposed structure, it is estimated of those for whom a predicted evaluation result is available, that:-
- 39%, 1,038 female employees, and 37%, 319 male employees, will be 'Green Circled'38%,
  - 34%, 946 female employees, and 14%, 121 male employees, will be 'White Circled',
  - 27%, 735 female employees, and 49%, 420 male employees, will be 'Red Circled'.
- 3.17** The majority of green circled female employees are in jobs within the 'caring' family and skilled manual posts in catering; and the majority of red circled female employees are in jobs within the 'clerical' family. The majority of green circled male employees are in skilled manual jobs, and the majority of red circled male employees are in traditional heavy manual occupations.
- 3.18** At the end of the detriment protection period, i.e. with effect from 1 April 2010 the final impact of the evaluation exercise is predicted as:-
- 39%, 1,083 female employees, and 37%, 322 male employees, will be 'Green Circled',
  - 38%, 1,038 female employees, and 26%, 226 male employees, will be 'White Circled',
  - 23%, 643 female employees, and 37%, 315 male employees, will remain 'Red Circled'.

## Proposed Terms and Conditions of Service

- 3.19** 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.
- 3.20** 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.
- 3.21** 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...” It also advises that the parties “...endeavour to minimise costs whilst ensuring service delivery standards are maintained.”
- 3.22** The guidance of the 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 gender gaps in total pay,
  - ensure pay policy, procedure and practice is free from gender bias.
- 3.23** Accordingly, revisions are proposed to the current terms and conditions of service as follows:-
- 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.

- 3.24** 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.
- 3.25** The current estimated cost of terms and conditions of service (over and above basic, bonus and contractual pay), based on the full year costs for 2005/2006 is in the region of £9m
- 3.26** Approximately £250,000 of allowances will be subsumed into the evaluated rates of pay since they relate to aspects of work now covered by the factors of the job evaluation scheme, these include frost firing, dirty money, new technology allowances, responsibility and lead-in payments. Bonus and chargehand allowances have been treated as contractual pay for costing purposes.
- 3.27** Assuming no change to terms and conditions and the same overall pattern of work, costs in addition to base pay would be expected to increase significantly as a result of:
- The greater number of employees eligible for enhancements
  - The 'consolidation' of MW bonus payments
  - The effect of current premium rate calculators applying to proposed higher base rates of pay
- 3.28** Detailed work on the overall costings associated with the revision of terms and conditions is on-going, but has been hampered by the limitation of current workforce reporting systems.
- 3.29** There has been extensive joint working with the Trades Unions over the equality and business case requirement to vary current terms and conditions of service. The Trade Unions have expressed concerns in relation to changing terms and conditions however in accordance with Equal Pay legislation and in light of ongoing risks it is critical to address pay inequality not just through application of the job evaluation scheme but also through the introduction of unified conditions of service as failure to do so may:-
- result in a failure to fully implement the results of the job evaluation exercise,
  - undermine the robustness of the new grading and pay structures,
  - help maintain current pay differentials despite evidence from the job evaluation exercise and pay review that these should be significantly altered,

- perpetuate aspects of pay inequality inherent in current remuneration arrangements,
  - make the Council, and in light of the recent tribunal judgement in Allan –v- GMB, potentially the Trades Unions, vulnerable to challenge under the Equal Pay Act and the Sex Discrimination Act.
- 3.30** The approach in developing revised terms and conditions has not been to reduce the overall amount of money spent on allowances but rather to ensure this is spread equitably across the organisation. Nonetheless there is a balance to be achieved in relation to affordability and we remain accountable for the provision of Best Value services therefore the proposals also seek to facilitate flexibility in service provision and reflect modern working practice.
- 3.31** The proposed revised Terms and Conditions of Service are summarised at Appendix 2 and will be subject to ongoing discussion with the Trade Unions through the formal consultation process. Securing Trade Union support in agreeing revisions to terms and conditions will be a key factor in ensuring the Council achieves the balance between delivery of its commitment to meeting the requirements of the Equal Pay Act and affordability in the provision of services.
- 3.32** The current bonus arrangements will be removed. The bonus currently constitutes earnings and staff currently in receipt of bonus will be protected for a period of three years in accordance with the national agreement.

#### Protection Period

- 3.33** Employment case law has established (supported by the Equal Opportunities Commission) and Senior Counsel has advised COSLA 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 protection which we should abide by.
- 3.34** In accordance with accepted good practice we have already agreed to put in place post-implementation arrangements to mitigate detriment for those individuals most adversely affected. A range of measures will require to be utilised including re-design of jobs, restructuring of services, retraining and/or redeployment of individual employees. A considerable amount of work will be required across all services to ensure this work is completed before the end of the detriment protection period. A Joint Working Group involving Corporate and Departmental Personnel, Service Managers, and Trades Union representatives will be established and a framework of principles will be agreed for application to all affected employees, to ensure equity and fairness and to avoid the perpetuation of discrimination. The Group



will also need to develop detailed proposals to take matters forward for specific services and job types.

#### Implementation Date

- 3.35** It was originally agreed to implement the new pay and conditions of service for the Single Status employee group with effect from 1 April 2006. Employees are expecting retrospective implementation.

#### **4. External Factors Affecting Ability to Negotiate**

##### Statutory Grievance / Employment Tribunal Activity Relating to Equal Pay

- 4.1** It is reported that over 8,000 Local Authority cases have been lodged within the Scottish Tribunal system in relation to Equal Pay. It is believed that the Trades Unions are preparing to lodge multiple cases in a bid to protect their position and evidence that they have given appropriate advice and representation to their membership.
- 4.2** The Council is the subject of a significant number of Statutory Grievances concerning equal pay and 166 cases have been lodged as Employment Tribunal applications. The majority are supported by the Trades Unions, and some are supported by an independent legal firm.
- 4.3** The reality of litigation is impacting negatively on the ability of both parties to negotiate the implementation of the Single Status Agreement.

##### Equal Pay Compensation

- 4.4** The Council addressed a significant proportion of its potential equal pay risk by offering compensation payments to ex-Manual Worker employees. 1,228 offers of compensation payments were accepted – totalling approximately £6m. Under these Compromise Agreements employees waived their rights to progress an equal pay claim pending the implementation of unified, non-discriminatory grading and pay structures within the Council. However, employees cannot be asked to waive their employment rights indefinitely and as a result the compromise agreements expired on 31 March 2006, the proposed effective date of implementation of the new structure.
- 4.5** The subsequent delay in reaching a negotiated settlement with the Trades Unions effective from 1 April 2006 may render the Council liable to secondary claims from these employees from 1 April 2006 onwards.
- 4.6** Pending the issue of National Guidance, Council will require to fully assess the ongoing risk and costs associated with Equal Pay compensation.

### Equal Opportunities Commission (EOC)

- 4.7** The EOC, on 30 August 2006, advised Scottish Local Authorities that 'closing the gender pay gap is a high level strategic priority for the Commission'. They have 'identified the implementation of job evaluation schemes free from sex bias as one important mechanism to achieve that goal'. Where the EOC believe this is not happening, they are prepared to use their enforcement powers, which range from supporting individuals with valid equal pay claims, to instigating formal investigations against organisations. The EOC make it clear that it sees complying with the Equal Pay Act as a statutory duty for local authority employers.

### Employers Statutory Duty

- 4.8** The Equal Pay Act 1970 and the Sex Discrimination Act 1975 place an 'equality' clause' into the contracts of employment of all employees. The effect of this in relation to pay and conditions of service is that all employees are entitled to equality, and equal opportunity of access to, all aspects of remuneration. Completion of the Job Evaluation exercise would result in the Council having the mechanism to implement a pay and grading structure which would meet in part the Council's statutory equal pay duties. Failure to implement the results of the Job Evaluation exercise would render the Council vulnerable, just as the GMB have been found in the Allan case, where pay inequality has been evidenced and not resolved by implementation. The Council therefore has no option but to progress to implement the new pay and grading proposals as soon as is practicable. As a signatory to the SJC Agreement the Council's objective is to achieve this by means of a collective agreement with the Trades Unions.

### Summary of Scottish Councils Position

- 4.9** Scotland's 32 unitary authorities are at varying stages of implementation of the Single Status Agreement. However, a recent COSLA survey indicates that 21 Councils are intent on implementing a package of revised pay and grading and terms and conditions. 24 Councils, if the objective of reaching a negotiated agreement failed or the package proposed failed to be endorsed by the Unions' experts, would consider imposition of their Council's proposals, a process which requires a minimum 6 month period to execute.

### Local Government Pressures

- 4.10** The context Councils are currently operating within is complex; the forthcoming national and local elections, the Scottish Executive's agenda for change and consideration of shared services, the Audit and Inspection regime now in place, the severe and growing budget pressures, the increased litigation in employment matters, the Equal Opportunities Commission's audit of Classroom Assistants etc, generates a period of significant and difficult organisational change.

Notwithstanding these pressures, status quo with regards to Single Status, workforce inequalities and discriminatory grading and pay arrangements is not an option.

## **5. Recommended Employer Proposal to Trades Unions**

### Completion of Negotiations

- 5.1** The officers participating in the local negotiations to implement the Single Status Agreement believe that after numerous meetings with the Joint Trades Unions, and in the context of the current external pressures affecting the parties to the negotiations, that the Council should now consider bringing this phase of negotiations to an end. This would entail the Council presenting the Employer's Proposals for the Implementation of the Single Status Agreement to the Trades Unions, for submission to their respective Technical Experts. It is understood that technical scrutiny may take up to 10 weeks.

### Formal Consultation

- 5.2** The submission of the Council's proposals to the Trades Unions constitutes the beginning of consultations on the 'offer' with a view to reaching collective agreement. As the Employer, the Council has a statutory obligation to engage in a 90 day period of meaningful consultations with the Trades Unions. That period would commence with the formal submission of the Council's offer early in January 2007. If issues arise during the technical scrutiny of the Council's proposals, further discussions and negotiations with the Trades Unions will be required through the forum of the Pay Modernisation Joint Working Party during that 90 day period.
- 5.3** Subject to the approval of the Unions' Technical Experts the Trades Unions will ballot their respective memberships during this period. A period of 6 weeks would be required for the Trades Unions to complete the ballot process. The Council will also consider simultaneously seeking the views of all employees within the scope of the agreement. The results of the TU ballots and of the Employee Consultation exercise would be reported back to Council at the same time.

### Role of Joint Secretaries

- 5.4** The 'Single Status' Agreement contains an agreed process to be followed in the event of local parties failing to agree a negotiated proposal for implementation. On reaching the 'failure to agree' stage of local negotiations, referral to the Joint Secretaries becomes a requirement. The Joint Secretaries are then obliged to aid parties to reach agreement, and a period of 3 months is allowed for this process. The outcome of the Joint Secretaries' conciliation is not binding on the parties. However, the Joint Secretaries may recommend external conciliation, mediation or binding ACAS arbitration. An indicative timetable for the consultation process is attached as Appendix 3.

## Proposals

- 5.5** It is recommended that the Council's 'offer' to the Trades Unions be made on the basis of:
- The proposed WDC Grading and Pay Structure – as at Appendix 1
  - The predicted impact on employees
  - The revised WDC Terms and Conditions of Service – as at Appendix 2.
  - Completing negotiations within the anticipated timetable set out at Appendix 3.
  - The effective date of Implementation remains as 1 April 2006 pending further negotiation
  - The Detriment Protection Period for Red Circled Employees to be 3 years cash conservation as per the national agreement
  - Provision of information to Employees, Managers and local Trades Union representatives through Bulletins and Briefings, and an Employee Consultation exercise to run concurrently with the TU ballot process
  - Continued negotiations with the Trades Unions within the statutory consultation period, and if necessary with referral to the SJC Joint Secretaries, in order to reach a collective agreement

## **6. Resource Implications**

### Financial

- 6.1** The estimate of the cost of the new grading structure is approximately 7% of base pay; estimated £5m exclusive of margin of variability. Costs associated with terms and conditions require to be more fully determined and will depend on the outcome of negotiation on revised arrangements. These costs are in excess of the provision made in the 2006/7 budget of £2.3m and would have to be met from the Council's revenue budget. The Head of Finance will require to lead on the development of proposals on managing the revenue budget including financing this increase in cost compared to the existing budget.
- 6.2** The Council has already made provision for Equal Pay Compensation payments. So far, more than £6m has been paid out (including tax and national insurance payments). Further consideration will require to be given to setting aside provision for additional claims, particularly in light of any risk associated with a failure to reach a collective agreement with the Trade Unions.

## Personnel

**6.3** Implementation of the Single Status Agreement at this time generates a widescale employee communication and consultation exercise, with the potential to impact negatively on employee morale and motivation, employee turnover and sickness absence levels.

## Other Risks

- 6.4** Employee Relations: The potential for employee relations unrest exists as is being evidenced in other authorities.
- 6.5** 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 services which is likely to have a detrimental effect on service levels and delivery. These financial implications would generate the need to review services, their achievement of Best Value, and if necessary, consideration be given to service reductions and possible consequential redundancy initiatives.
- 6.6** 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. However, case precedents of fundamental importance to the Council's approach to equal pay are being set in Tribunal on an almost monthly basis, as independent solicitors seek to increase the scope and size of awards for their clients. Council officers continue to liaise with colleagues at a national basis to keep apprised of developments and assess the impact on the Council in light of changing case law. 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.

## **7. Recommendations**

### **7.1 Council is asked to:-**

- (a) Approve the Draft of the Employer's Proposals (The Offer) for the Implementation of the Single Status Agreement as set out in Appendix 1;- grading structure and Appendix 2; terms & conditions;**
- (b) Authorise the Chief Executive to issue West Dunbartonshire's Proposals to the Trades Unions during January 2007 as the commencement of the formal consultation in accordance with statutory obligations; and**

**(c) Note that a report on progress will be made to the new Council.**

**David McMillan**  
**Chief Executive**  
**Date: 14 December 2006**

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**Wards Affected:** N/A

**Appendices:**

- 1 Recommended Grading and Pay Model and Parameters
- 2 Proposed Revisions to Terms and Conditions of Services
- 3 Consultation Timetable.

**Background Papers:** Council report 28 June 2006 "Implementation by West Dunbartonshire Council of the 'Single Status' Agreement of the SJC for Local Government Service April 2000"

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