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20 March 2012

**Name of Cabinet Member:**

*(Policy, Leadership and Governance) – Councillor J. Mutton*

**Director Approving Submission of the report:**

*Director of Customer and Workforce Services and Director of Finance and Legal Services*

**Ward(s) affected:**

*All*

**Title:**

*Settlement of Equal Pay Claims*

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**Is this a key decision?**

No. In view of the extent of the proposals and actions contained within this report, a meeting of Full Council is required to consider this Report

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**Executive Summary:**

In July 2010, as a result of the commitment by the Council's new administration, negotiations began with the trade unions in an attempt to settle the equal pay claims lodged against the Council in the Birmingham Employment Tribunal.

As a result of this a report was put before full Council on 7 December 2010 (see Appendix 1). This report detailed the history of the introduction of Single Status in June 2005 and detailed the number of c894 equal pay claims lodged by claimants in the Employment Tribunal up to 9 August 2010 (i.e. claims in the 'Nicholls multiple'). The Nicholls multiple was closed after 9 August 2010 and therefore all claims lodged after that date are part of new multiples.

Council gave its approval for settlement offers to be made in respect of c740 claims that the Council determined as 'valid' equal pay claims and within a financial provision of up to £7.5 million. There were a further 154 claims that were deemed not to be valid at that time and no offers were made to these claimants.

As a result of negotiations, settlement offers to c740 of the c894 equal pay claimants were made in December 2010.

This report is to update Members on events since the last report to Council and to seek retrospective approval to cover changes as a result of developments.

**Recommendations:**

- (1) To approve retrospectively the changes to the strategy to resolve equal pay claims against the Council set out in Sections 1 and 2 of this report including the offers made to a wider number of claimants within the approved provision of £7.5 million.
- (2) Delegate authority to the Director of Customer and Workforce Services and the Director of Finance and Legal Services in liaison with the Leader of the Council to determine any outstanding litigation or claims whether by settlement if possible, defending at Employment Tribunal or otherwise.

**List of Appendices included:**

Appendix 1 - 'Proposed Settlement of Equal Pay Claims Report' to Council dated 7 December 2010.

**Other useful background papers:**

Report to Council 8 February 2005 – Implementing Single Status – Available from the Council's website via the following link

<http://cmis.coventry.gov.uk/CMISWebPublic/MeetingDocuments.aspx?meetingID=483>

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

Yes, 20 March 2012

## Report title:

### 1. Context (or background)

Equal pay legislation requires that men and women should receive equal pay for equal work (work rated as equivalent or work of equal value). To comply with this legislation, all councils were required by national agreement to review their terms and conditions for 'officers' and 'manual workers' and bring about a single set of terms and conditions which removed any inequality. This is known as Single Status and there was a requirement for all councils to do this by April 2007.

The City Council had been negotiating single status with the Trade Unions for a number of years. Negotiations broke down and the Council introduced its Single Status package in June 2005 to bring about equal pay across the Council's workforce. The system was based on a job evaluation scheme, which scored jobs and fitted them into a new grading system. Approximately 10,500 employees were affected by the introduction of single status. Employees were affected in three ways as either gainers, losers or simply assimilated into the new arrangements. The breakdown was as follows:

- Losers: 1637
- Assimilated: 5375
- Gainers: 3528

To mitigate any losses to employees upon implementation, a five year protection scheme had been previously negotiated with the Trade Unions and agreed by ballot to protect in cash terms for 5 years losses in pay suffered as a result of the introduction of Single Status.

In February 2006 the Birmingham Employment Tribunal began to receive equal pay claims from council employees, most of whom were 'gainers', who felt they had a claim for equal pay because they had been in receipt of lower pay levels than an equivalent comparator prior to 2005.

Claimants also claimed that because 'losers' received up to 5 years' protection, they should also receive such protection payments going forward from single status implementation in 2005, to bring their pay into line with comparators.

In July 2010, as a result of the Council's new administration's commitment, negotiations began with the trade unions in an attempt to settle the equal pay claims lodged against the Council in the Birmingham Employment Tribunal.

On 7 December 2010 a report, 'Proposed Settlement of Equal Pay Claims', was considered at Council and is attached at Appendix One. This report explained the history of the introduction of Single Status in June 2005 and detailed the number of c894 equal pay claims lodged by claimants in the Employment Tribunal up to 9 August 2010 (i.e. claims in the 'Nicholls multiple'). The Nicholls multiple was closed after 9 August 2010 and therefore all claims lodged after that date are part of new multiples. The report also provided full details of the litigation in respect of the refuse bonus scheme and pay protection in 2006/7.

The December 2010 Council approved the recommendation to settle what the council determined as 'valid' equal pay claims on the basis set out in that report up to a maximum total of £7.5 million. As a result, settlement offers to c740 of the c894 equal pay claimants were made. 154 claims were deemed not to be valid and no offers were made to these claimants.

In the course of 2011 Employment Tribunal or Court decisions were made that impacted upon the Council's position. These were complex legal issues that related to some bonus schemes that the Council had operated prior to 2005, and to some comparator employees used by some claimants to try to establish their case. This led the Council to review its strategy. In response to these events Council Officers, in consultation with the Leader, made variances to some of the original offers for specific groups of claimants affected, the costs of which were still contained within the approved figure of £7.5 million.

By the autumn of 2011 a total of 587 claimants had accepted the Council's equal pay settlement offers at a cost of c£4.7 million.

## **2. Current Position**

Since December 2010, the Council has received a further 271 equal pay claims.

Litigation continued but it was becoming apparent that the preference of both sides in this matter was to settle outstanding claims wherever possible. In October 2011, as a result of additional forthcoming litigation including another pay protection hearing and defence of the remaining bonus schemes (the Council having already failed fully to defend the bonus scheme paid to refuse collectors), the Council re-opened negotiations with the trade unions' lawyers to try to bring to an end the protracted litigation which would incur the Council in additional significant legal costs and Council resource. This was fully in the spirit of the December 2010 report, the objective of which was to reach a settlement with as many claimants as possible within the approved cost limit.

As a result of the further negotiations, an agreement was reached in December 2011 with the lawyers for the trade unions that revised offers would be made in respect of any remaining live claims considered by the Council to be valid. Furthermore, it was agreed that a joint application would be made by the Council and the trade unions to postpone the outstanding litigation until April 2012. At this time all parties will review their position with regard to any outstanding litigation. A very small proportion of claimants are not represented by a trade union. However these employees have ACAS advice when considering any offer made to them by the Council to settle their claim.

Accordingly, a third set of offers has been made to those outstanding claimants whom the Council believe to have a valid claim. It is anticipated that even if all offers are accepted that the costs can be contained within the £7.5 million approved in December 2010.

By the end of February 2012 an overall total of 1165 employment tribunal claims had been received by the council of which 117 were subsequently withdrawn or struck out by the Tribunal. The number of claimants who did not receive settlement offers previously stood at 154. As a result of legal discussions and developments since then, the number now stands at 85.

Of the 963 offers made to claimants to date, 766 claimants have now accepted the Council's offer at an overall cost of c£5.65 million. Of the total of 963 offers made, this leaves 197 outstanding claims.

The number of accepted claims will, if necessary, be updated at the Council meeting on 20 March 2012.

This represents a very significant step forward in dealing with equal pay claims. While some claims are still to be resolved, the risks to the Council have been significantly reduced, and it is hoped that the need for further costly litigation can be minimised or ended completely.

### **3. Options considered and recommended proposal**

The proposal contained in this report is to settle any outstanding equal pay claims that the council considers to be valid. Offers are to be made on a reduced liability basis, taking into account the benefit of secured and accelerated receipt by claimants and removal of litigation risk to the claimants. The proposed offers include no payment in relation to any liability for Pay Protection going forward from June 2005 and employees will be expected to pay tax and national insurance. Advice from the West Midlands Pension Fund is that these payments are not pensionable. The report also seeks to delegate authority to officers in liaison with the Leader to determine any outstanding litigation or claims whether by settlement to defend in the employment tribunal, or otherwise.

The second option would be not to progress settlement negotiations or offers which would delay legitimate payments to claimants and to continue litigation further. This option is not recommended.

### **4. Results of consultation undertaken**

Trade union negotiations in respect of the settlement of equal pay claims originally commenced in July 2010 and concluded on 23 November 2010. Further trade union negotiations commenced in October 2011.

### **4. Timetable for implementing this decision**

It is anticipated that revised offers will be made to outstanding claimants whom the Council considers to have valid equal pay claims as soon as possible.

### **6. Comments from Director of Finance and Legal Services**

#### **6.1 Financial implications**

The settlement payments made to claimants are revenue costs. However the Council carries a capitalisation direction from the department of Communities and Local Government that enables it to capitalise these costs up to a total of £30 million, which means that they can be funded by prudential borrowing to be repaid over 20 years.

If the full approved spend of £7.5 million is incurred, the annual debt repayment costs to the Council will be approximately £750k per annum, representing the repayment of debt and interest. In practice costs will build up to this level (assuming the full £7.5 million is needed) because settlement costs have been incurred in two financial years 201/11 and 2011/12, and are likely to spill over into 2012/13. In addition, the first debt repayment costs do not occur until the year after the settlement payment is made.

Provision for these payments has been built into the 2012/13 budget and will be incorporated into future iterations of the Medium Term Financial Strategy and future detailed budgets. Because some of the employees concerned were school employees for the relevant period of the settlement, an appropriate proportion of costs has been and will be charged to the Dedicated Schools budget the principle for which has been agreed previously by the Schools Forum. This is in line with School Funding Regulations.

It is likely that not all offers will be accepted and/or that some claimants to whom the Council has not made an offer will continue to pursue claims in the Tribunal. The Council therefore remains at risk of losing such claims and having to meet the costs that would arise. However, the scale of this risk has been very significantly reduced through the processes outlined in this report.

The need to retain any unused element of the £30 million capitalisation direction will be reviewed as part of the 2011/12 final accounts process, when the size of future risks can be more clearly assessed.

## 6.2 Legal implications

The domestic legislation that governs equal pay is the Equality Act 2010. This legal framework provides the statutory obligation to pay men and women equally for equal work (like work, work rated as equivalent or work of equal value). The law implies an equality clause into the contract of every employee which operates to modify and replace less favourable contractual terms found in a woman's (or man's) contract with more favourable terms found in the contract of a comparable employee of the opposite sex.

However, the equality clause does not operate if the employer is able to demonstrate that the difference in contractual terms is due to a material factor which is not the difference in sex and can be objectively justified. If therefore an employee can demonstrate a pay disparity with a member of the opposite sex and that they carry out equal work, then without an objectively justified material ground for the disparity, the employer is obliged to increase the employee's pay in line with the contractual terms of the comparator. This will mean that the employer will have to compensate the employee in relation to back pay for the difference in pay for up to 6 years from the date of claim, which is the maximum back pay period that can be claimed for. If the pay disparity has continued beyond the date of claim then the Employer will also be required to compensate the employee for the difference in pay going forward for the period from the date of claim until the pay disparity is removed.

The settlements are aimed at reducing the number of existing equal pay claims. Employees accepting the offer of settlement will be required to complete appropriate settlement documentation to waive all equal pay claims that they have or might have against the council as at the date of the settlement including any such claims for Pay Protection.

## 7. Other implications

*Any other specific implications*

### 7.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

These proposals will contribute to the delivery of the Medium Term Financial Strategy by reducing one of the key financial risks facing the authority in the form of its liability to equal pay claims.

### 7.2 How is risk being managed?

The proposed settlement of the remainder of the outstanding claims the Council considers to be valid will not remove all potential liability for future Equal Pay claims.

There are 85 claimants whom the Council does not believe have a valid claim and who have not received offers may continue to pursue their claims.

It is also unlikely that all of the offers proposed in this report will be accepted by the claimants and some may continue to pursue their claim through the Tribunal process.

It was agreed that a joint application would be made by the Council and the trade unions to postpone the outstanding litigation until April 2012. At this time all parties will review their position with regard to any outstanding litigation and so the position is not clear at this point in time.

Despite these caveats, the offers made and accepted by claimants, which represent a total of 766 out of 963 represent a very significant step forward in resolving equal pay claims and reducing substantially the very significant risk that they represent to the Council.

### 7.3 What is the impact on the organisation?

The payment of the claims and the need to plan for future possible liability continues to place a very large strain on the Council's finances, at a time when it is facing the most difficult financial climate in many years. The continued defence of such large numbers of claims would also put a strain on HR services which could be better utilised on other council priorities.

### 7.4 Equalities / EIA

Equality Impacts Assessments have been undertaken on the impact of single status implementation. Prior to single status, the impact assessment showed that in certain grades, men received at least 8% more in terms of total earnings than women. The most recent assessment was undertaken using January 2010 payroll data (signed off in May 2010) and demonstrated that this pay gap was now with one exception well within the 3% level that experts have determined to be the acceptable level of variation.

The current proposal does not affect the single status implementation, but is intended to settle without further litigation outstanding equal pay claims which are considered to have merit. It is therefore considered that the proposal accords with the Council's wider public sector equality duty.

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[www.coventry.gov.uk/meetings](http://www.coventry.gov.uk/meetings)



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**7 December 2010**

**Name of Cabinet Member:**  
**Cabinet Member (Policy, Leadership and Governance) – Councillor J. Mutton**

**Director Approving Submission of the report:**  
**Director of Customer and Workforce Services and Director of Finance and Legal Services**

**Ward(s) affected:**  
**All**

**Title:**  
**Proposed Settlement of Equal Pay Claims**

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**Is this a key decision?**

No. In view of the extent of the proposals contained within this report a meeting of Full Council is required to consider these proposals.

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**Executive Summary:**

The Council's Single Status Terms and Conditions were imposed in June 2005. Single Status was introduced to eliminate traditional differences in pay and conditions between former officer and manual workers and introduce Equal Pay in the Council's workforce. Approximately 10,500 employees were affected by the introduction of single status. All councils had to implement similar schemes by April 2007, in accordance with the National Implementation Agreement of 2004.

The system was based on a job evaluation scheme, which scored jobs and fitted them into a new grading system. There was a 5 year protection scheme, negotiated previously with the Trade Unions, to protect, in cash terms, losses in pay suffered as a result of the introduction of Single Status.

In February 2006 the Birmingham Employment Tribunal began to receive equal pay claims from council employees, many of whom were gainers, (i.e were being paid more as a consequence of the introduction of single status than they had been previously) who felt they had a claim for equal pay because they had previously been in receipt of lower pay levels than an equivalent comparator. The majority of claims were brought by Trade Unions on behalf of employees, although some individual claims have been brought by non union members. The number of current equal pay claims in the case in question stands at approximately 894. This multiple claim was closed by the Tribunal to new claimants after 9 August 2010. Since this date the Council have received a further 15 equal pay claims. These will be determined separately and are not the subject of this report.

Between September and December 2007 an employment tribunal heard those equal pay claims

brought by female employees comparing themselves with refuse collectors and drivers who, prior to single status imposition, were in receipt of bonus payments. The council unsuccessfully defended these claims and appealed the tribunal's decision but subsequently lost its appeal.

The trade unions, on behalf of the claimants, also argued at the tribunal that the council's five year pay protection agreement for Losers continued the inequality in pay and argued that the claimant in addition to being entitled to up to 6 years back pay were also entitled to compensation equivalent to an additional 5 years' pay protection for the years we continued to protect the comparator Losers. This issue has now been considered twice by a tribunal and on each occasion the council has successfully defended this point. However, the trade unions have now lodged a further appeal against the tribunal's decision. This could take several months to be considered.

As a result of the commitment of the new administration of the Council in May, negotiations with the trade unions began in July 2010 in respect of the settlement of the current equal pay claims against the Council.

It is recognised that given their current vulnerability to litigation Trade Unions are not willing to recommend any negotiated settlements to their members of less than 100% of the claim for fear of being sued. However, at the close of the negotiations on 23 November 2010, the trade unions confirmed that the terms of the proposed offer were such that they would not recommend rejection of the offer to their members.

The proposed settlement offer is not made to all 894 claimants. There are a number of claimants, currently 154, that are excluded where the Council is not satisfied that the claims are valid – for example where claimants are on a lower grade than their comparator; where claims are brought out of time or claimants are employed at Voluntary Aided schools, or the claims do not involve bonus earning comparators and significant further evidence is needed to determine whether there is a valid case.

The cost of settlement with the 740 of the 894 total claims totals approximately £5.6 million. The settlement of claims will be accompanied by a waiver from employees to the current and any future claims in respect of equal pay including claims against the pay protection scheme.

Discussions between the council's and Trade Union legal advisors continue with regard to the legitimacy of the outstanding 154 claims and it is envisaged that a small number of these may be added to the settlement population at a later date.

### **Recommendations:**

1. To approve the proposed settlement offer set out in the report to the 740 claimants and within the estimated financial provision provided under section 7.
2. To delegate authority to the Director of Customer and Workforce Services and the Director of Finance and Legal Services in liaison with the Leader of the Council to accept any additional claims from those currently rejected and fund payments as outlined in the report and following recommendations from the Council's legal advisors. These additional claims are potentially drawn from the 154 rejected as referred to in section 2 of the report.
3. To allow payments to be made on the basis of the proposed settlement up to a maximum total of £7.5 million.

4. To reaffirm that this spending will be capitalised under the capitalisation direction that the Council has been granted, and will be resourced by prudential borrowing, as laid out in section 7 of this report.

**List of Appendices included:**

None

**Background papers:**

Report to Council 8 February 2005 – Implementing Single Status – Available from the Council's Website via the following link:

<http://cmis.coventry.gov.uk/CMISWebPublic/MeetingDocuments.aspx?meetingID=483>

**Has it or will it be considered by Scrutiny?**

No

**Has it, or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

Yes, 7 December 2010

**Report title:  
Equal Pay Claims' Settlement Proposals**

**1. Context (or background)**

Equal pay legislation requires that men and women should receive equal pay for equal work (work rated as equivalent or work of equal value). To meet this all councils were required by national agreement to review their terms and conditions for 'officers' and 'manual workers' and bring about a single set of terms and conditions which removed any inequality. This is known as Single Status and there was a requirement for all councils to do this by April 2007.

The City Council had been negotiating single status with the Trade Unions for a number of years. Negotiations broke down and the Council introduced its Single Status package in June 2005 to bring about equal pay across the Council's workforce. The system was based on a job evaluation scheme, which scored jobs and fitted them into a new grading system. Approximately 10,500 employees were affected by the introduction of single status. Employees were affected in three ways as either gainers, losers or simply assimilated into the new arrangements. The breakdown was as follows:

- Losers: 1637
- Assimilated: 5375
- Gainers: 3528

There was a 5 year protection scheme, negotiated previously with the Trade Unions and agreed by a ballot to protect in cash terms losses in pay suffered as a result of the introduction of Single Status.

In February 2006 the Birmingham Employment Tribunal began to receive equal pay claims from council employees, many of whom were gainers, who felt they had a claim for equal pay because they had previously been in receipt of lower pay levels than an equivalent comparator. The majority of claims were brought by Trade Unions on behalf of employees, although some individual claims have been brought by non union members. The number of current equal pay claims in the case in question stands at approximately 894. This multiple claim was closed by the Tribunal to new claimants after 9 August 2010. Since this date the Council have received a further 15 equal pay claims. These will be determined separately and are not the subject of this report.

Between September and December 2007 the Birmingham Employment Tribunal considered the Refuse Bonus Scheme that had been in place in Coventry City Council together with the 5 year Pay Protection arrangements that had been put in place to protect the pay of losers under Single Status. The Employment tribunal found that the Refuse Bonus was not objectively justified but that the 5 year Pay Protection arrangement was.

The Council appealed to the Employment Appeal Tribunal (EAT) in relation to the Refuse Bonus finding and the Trade Unions appealed to the EAT in relation to the Pay Protection finding. The EAT dismissed the Council's appeal and remitted the Pay Protection issue back to the original Employment Tribunal to review this, in light of the changes to case law. The Council sought leave to appeal to the Court of Appeal on the refuse bonus point, but was ultimately refused leave to appeal.

The remitted hearing to decide the Pay Protection point was heard in the Birmingham Employment Tribunal during the week commencing 23 August 2010 and was determined in the Council's favour. However the Trade Unions have recently lodged a further appeal relating to Pay Protection with the Employment Appeal Tribunal against this decision.

Setting aside the protection issue, the back pay claims are by no means all concluded and other questions need to be determined by the Employment Tribunal before the claims can be resolved and this could take many years.

For example with regards to whether or not some of the claims demonstrate equal value with their comparators. This question is the subject of a hearing set by the Tribunal in a hearing scheduled from 23 to 27 July 2012. This involves over 700 claims.

55 claimants however are not reliant on equal value and can instead rely on being rated as equivalent with their comparators under the White Book Job Evaluation Scheme (JES). These claimants have essentially made out their equal pay claim against the Council in terms of the 6 year back pay period.

The litigation to date has only been in respect of 630 claims where claimants have used the refuse workers as comparators. Further claims are now being considered by the Employment Tribunal which are using other Coventry bonus schemes and the Tribunal has set down directions which culminate with a 42 day hearing in January and February 2012.

Unlike many other Councils who have received equal pay claims, Coventry is unusual in that a number of the claimants cited officers who previously were on the same terms and conditions of service (Admin, Professional, Technical and Clerical – known as the Purple Book) as comparators with no obvious gender disparity. These claims are different from the traditional equal pay claims widely brought against the council and other local authorities which tend to use comparators from service areas in receipt of bonus payments comprising of mainly male employees. It is harder to see how these claims would be successful in Tribunal given no gender disparity or comparison with bonus payments.

The current administration prior to taking control of the Council in May 2010 had committed to bring an end to the current litigation and to negotiate with the Trade Unions to settle legitimate claims. Since May the Leader has been taking advice from officers and legal advisors about how best to achieve this and has included discussion with the Trade Unions.

In addition, the current position on the Pay Protection point is in the Council's favour and the Council remains robust in its position in defending the further appeal made by the Trade Unions. This has provided a window of opportunity to begin affordable settlements with the current claimants who the council believes, on balance, are likely to make out a valid claim.

## **2. Current Position**

The number of current equal pay claims in the case in question stands at approximately 894. This multiple claim was closed by the Tribunal to new claimants after 9 August 2010. Since this date the Council have received a further 15 equal pay claims. These will be determined separately and are not the subject of this report.

Negotiations with the trade unions commenced in July 2010. Negotiations concluded on 23 November 2010 at which the Leader proposed an offer to settle 740 of the 894 claims. The settlement offer is not made to all 894 claimants. There are a number of claimants, currently 154, that are excluded where the Council believes the claims are not valid – for example where claimants are on a lower grade than their comparator; where claimants whose claims are brought out of time or claimants are employed at Voluntary Aided schools.

**It should be noted that as work on the detail of individual claims continues, the numbers**

**of claimants and the numbers of potential settlements will vary slightly on a daily basis.**

The calculation of the sum settled is complex and therefore we have had to take a pragmatic approach to the calculation of each claimant's potential entitlement. Backpay for each claimant goes back over their relevant employment history for up to 6 years from 1<sup>st</sup> June 2005 when single status was implemented. To calculate this accurately would involve detailed examination of individual monthly pay records for each of the 740 claimants. The approach that has been taken has been to estimate for each claimant an equivalent annual salary as at 31<sup>st</sup> May 2005 and to compare that with their equal pay comparator. This has provided an annual pay gap based on their individual service record; this has then been used to calculate each of the claimants settlement entitlement based on the timing of their claim up to a legal maximum of 6 years.

The offer to settle subject to approval by Council, is 70% of the estimated value of each actual claim as detailed above. The costs to the Council will include employers' National Insurance contributions where appropriate. Similarly, payments to individuals will be subject to tax and national insurance contributions where appropriate. The treatment of tax and national insurance is currently under discussion with HMRC. Advice from the West Midlands Pension Fund is that these payments are not pensionable.

The cost of the settlement with the 740 claimants is approximately £5.6 million. The cost will be met from a provision of £30m held by the City Council to meet the potential costs of equal pay claims. This provision is resourced by prudential borrowing based on a capitalisation direction from DCLG allowing the Council to treat these payments as capital.

It is therefore proposed that Council approve a total spending on this settlement of up to £7.5 million, in order to allow the Director of Customer and Workforce Services and the Director of Finance and Legal Services in liaison with the Leader of the Council the ability to agree any subsequent claims for settlement following recommendations from the Council's legal advisors.

It is recognised that given the current vulnerability to litigation Trade Unions are not willing to recommend any negotiated settlements to their members of less than 100% of the claim for fear of being sued. However, at the close of the negotiations on 23 November 2010, the trade unions confirmed that the terms of the offer were such that they would not recommend rejection of the offer to their members.

It is important to note that claimants who are unwilling to accept the settlement may continue to pursue their equal pay claims via the Employment Tribunal and may be successful.

### **3. Recommendation**

Council is recommended to:

1. To approve the proposed settlement offer set out in the report to the 740 claimants and the approach to obtaining waivers from employees for current and future claims.
2. To delegate authority to the Director of Customer and Workforce Services and the Director of Finance and Legal Services in liaison with the Leader of the Council to accept any additional claims from those currently rejected and fund payments as outlined in the report and following recommendations from the Council's legal advisors. These additional claims are potentially drawn from the 154 rejected as referred to in section 2 of the report.
3. To allow payments to be made on the basis of the proposed settlement up to a maximum total of £7.5 million.

4. To reaffirm that this spending will be capitalised under the capitalisation direction that the Council has been granted, and will be resourced by prudential borrowing, as laid out in section 7 of this report.

#### **4. Results of Consultation Undertaken**

Trade union negotiations in respect of the settlement of equal pay claims commenced in July 2010 and concluded on 23 November 2010. The trade unions will not actively recommend the settlement proposal to their member claimants but it is expected that they will not recommend rejection of the offer when they advise their members.

#### **5. Options considered and recommended proposal**

The proposal contained in this report is to settle 740 equal pay claims, which is circa 83% of the total claims, having excluded certain categories of claim as detailed above. Offers are to be made on a reduced liability basis, i.e. 70% of actual claim entitlement, taking into account the benefit of secured and accelerated receipt by claimants and removal of litigation risk to the claimants. The proposed offers include no payment in relation to any liability for Pay Protection or interest and employees will be expected to pay tax and national insurance. Advice from the West Midlands Pension Fund is that these payments are not pensionable.

#### **6. Timetable for implementing this decision**

Offer letters will be sent to staff outlining the offer and the conditions of the offer by 10 December 2010. Trade Unions have indicated that between the issuing of the letter and Christmas they will meet with their members and take them through the offer. It is the Council's intention in the letter to arrange meetings for ACAS to provide advice to potential claimants and the signing of the COT3 agreements. The COT3 agreements are formal settlement agreements with potential claimants through ACAS.

#### **7. Comments from Director of Finance and Legal Services**

7.1 In May 2008 the City Council applied for a Capitalisation Direction to allow it to treat any costs arising from Equal pay claims as capital expenditure. It is proposed that the costs of the proposal in this report, estimated at up to £7.5m, be met from this provision. Without this facility, these costs would need to be met from revenue which could have a devastating effect on the Council's finance in any single year.

7.2 The City Council has drawn down a capitalisation facility of £30m which it has used to resource a provision for its potential equal pay liabilities. It is proposed that the costs of the proposal in this report, estimated at up to £7.5m be met from this provision.

7.3 The costs will be capitalised, and met from prudential borrowing.

7.4 This prudential borrowing will incur two streams of cost:

- repayment of the principal sum (the estimated costs of £7.5 million). The annual costs of this are called Minimum Revenue Provision or MRP in local government finance regulations
- interest on that sum.

7.5 The City Council's base budget includes full provision to meet the MRP on the £30 million capitalisation direction evenly over its 20 year life (£1.5 million per annum)

7.6 The additional cost of interest arising from these costs will be up to approximately £375,000 in a full year.

7.7 Because only part of the total Capitalisation Direction of £30 million is being used this additional interest cost can be funded from existing budgets identified in 7.5 above.

7.8 Because significant risks from equal pay claims remain, it is proposed to retain the full £30m provision at this point but to keep its future under review. It will be necessary to continue to make some low level MRP payments on this unused element to keep it in place. These, along with the interest costs can also be met by existing budgets, outlined in 7.5 above.

7.9 The legislation that governs equal pay is the Equal Pay Act 1970 and the Equality Act 2010. This legal framework provides the statutory obligation to pay men and women equally for equal work (like work, work rates as equivalent or work of equal value). The law implies an equality clause into contracts in order to replace less favourable contract terms for women, for example, those of more favourable terms found in contracts for men.

7.10 However, the equality clause does not operate if the employer shows that the difference in contractual terms is due to a material factor which is neither directly nor indirectly discriminatory and, in cases of indirect discrimination, cannot be objectively justified. If therefore an employee can demonstrate a pay disparity with a member of the opposite sex and that they carry out equal work, then without an objectively justified ground for the disparity, the employer is obliged to increase the employee's pay in line with the comparator and to pay the employee back pay for up to 6 years, which is the maximum back pay period that can be claimed for.

7.11 The proposed settlement is aimed at reducing the number of existing equal pay claims. Employees accepting the offer of settlement will be required to complete appropriate documentation to secure legal compliance and to end all and any claims against the Council.

## **8. How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / LAA (or Coventry SCS)?**

These proposals will contribute to the delivery of the Medium Term Financial Strategy by reducing one of the key financial risks facing the authority in the form of its liability to equal pay claims.

## **9. How is risk being managed?**

It is important to note that the proposal to settle a proportion of the claims does not remove all potential liability for future Equal Pay claims.

It is unlikely that all of the current offers proposed in this report will be accepted by the claimants and they will continue to pursue their claim through the Tribunal process. There are also ongoing risks to the Council of further claims being made against it both in terms of historic Equal Pay issues, and if there is a change to the existing judgement on pay protection which goes in favour of the Trade Unions, against the five year pay protection scheme introduced by the Council as part of Single Status. It is very difficult to quantify the overall potential outstanding liability. However, it will certainly be very significantly reduced if the Trade Union appeal on pay protection is unsuccessful.



As outlined above, the Trade Unions are appealing against a Tribunal decision that the Council's pay protection arrangements were appropriate. Despite this further appeal, the Council remains robust in its defence with regard to Pay Protection and the settlement proposals contain no payment for the pay protection claims. However, the settlement offers will be subject to entering into settlement agreements that contain a waiver of all equal pay claims, including in relation to pay protection, in order to settle that potential liability, as is prudent and customary in such circumstances.

Employees that agree to conclude their claims will be required to confirm as part of the arrangement that this will settle all and any claims the employee may have arising out of or in relation to the move onto Single Status terms and conditions. This removes the risk from this group of employees and provides some closure on a very long running dispute between them and the council. It does at least provide certainty in relation to claims already brought, which should not be underestimated in a legal landscape which is ever evolving.

Without settlement the litigation is set to run for at least another 20 months and the resultant cost to the council in terms of legal cost and staffing resource is significant. It is accepted that this litigation will run if not all offers are accepted, but at least this is likely to be for a significantly reduced number of claims. The case law developments in this area are making successful defence of bonus schemes very difficult even where the productivity gains of the schemes are evident and therefore settlement at this point is considered to be strategically and operationally the most practical solution.

In financial terms, as indication in Section 7, the Council will keep its full £30million provision, less any claims settled on the basis of this report to cover any future costs which may arise.

## **10 What is the impact on the organisation?**

The payment of the claims and the need to plan for future possible liability continues to place a very large strain on the Council's finances, at a time when it is facing the most difficult financial climate in many years. The continued defence of such large numbers of claims is also putting a strain on HR services which could be better utilised on other council priorities.

## **11 Equalities/ EIA**

Equality Impacts Assessments have been undertaken on the impact of single status implementation. Prior to single status, the impact assessment showed that in certain grades, men received at least 8% more in terms of total earnings than women. The most recent assessment was undertaken in January 2010 and demonstrated that this pay gap was now less than 1% and will continue to fall.

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## Appendices