

Equal Pay Update

Purpose of report

For information and direction.

Summary

This report updates members on latest developments in dealing with equal pay issues.

Recommendation

Members are asked to note this paper and to endorse the proposal to set up an Equal Pay Interest Group.

Action

Officers to receive members' views and continue with activity accordingly.

Contact officer: Sarah Messenger
Position: Head of Workforce
Phone no: 020 7187 7342
E-mail: sarah.messenger@local.gov.uk

Equal Pay Update

1. This paper includes a very brief history of equal pay in local government, brings members up to date on the latest developments and sets out recent LGA activity.
2. The peak of the equal pay “crisis” was in the years 2004-2008. During this period, a number of factors combined to bring considerable challenges for councils and an explosion in litigation:
 - 2.1 The National Joint Council (NJC) signed an implementation agreement in 2004 requiring councils to complete local pay reviews by April 2007. This aimed to bring to a conclusion the work started with the single status agreement in 1997. Relatively few councils had completed job evaluation exercises and the introduction of new pay structures by 2004. A number of high-profile tribunal cases had begun to demonstrate that councils were vulnerable to claims based mainly on the operation of discriminatory bonus schemes.
 - 2.2 There was a major expansion in the role of “no-win no-fee” lawyers, some of whom began to seek clients in councils. This was partly encouraged by the earlier decision of the European Court in the Levez case, which increased the amount of back pay that could be claimed from two to six years, meaning the potential value of claims also increased.
3. A succession of important judgments over the 2004-2008 period brought some significant reversals for councils who saw their ability to negotiate settlements with their own staff severely curtailed. Even so, the majority of councils were able to reach compromise agreements with most staff and avoid huge numbers of tribunal cases. At this time, the National Employers estimated that the total cost to local government was in the region of £3 billion but that if all potential cases had ended up at tribunals, the costs would have been nearer £6 billion. It should also be remembered that the overall gender pay gap in local government is now around 5 per cent which is much lower than the European average of 16 per cent and is an important achievement.
4. The other lasting legacy though is that the 2004 agreement was actually intended largely to prompt the development of modern reward structures in councils but the money had to be spent largely on dealing with historic problems.
5. Although this sense of crisis has now ended, there are a number of councils that have yet to really complete the process of reviewing their pay structures and deal with all liabilities. In addition, the Birmingham Abdulla case has resulted in potential new liabilities from staff that have left council employment.
6. This is because in Abdulla the UK Supreme Court has found that equal pay claims that would otherwise be outside the normal six month time limit for bringing a claim in the employment tribunals can be brought as breach of contract claims in the civil courts up to six years after the end of employment. However, it should be noted that awards are

still limited to the period six years before the claim was submitted so, for example, if a claim was submitted four years after employment ended, the ex-employer's liability would be limited to the two years prior to termination.

7. The LGA did in fact identify the potential for Abdulla style cases a few years ago and suggested to the current and previous Governments that this route for taking cases should be prevented, since tribunals are perfectly adequate. This suggestion has not, to date, been taken up though we have now joined in a renewed request with Birmingham.
8. Prompted by Abdulla, we have agreed with Birmingham to re-activate our equal pay interest group which was in operation for some years. A number of councils will be invited to join to help us consider appropriate new responses to equal pay issues
9. The longstanding LGA policy advice contains three main elements:
 - 2.3 Reduce the amount of back pay that can be claimed from six years to two, which is quite common in Europe and has seemed fair in many compromise agreements;
 - 2.4 Introduce a moratorium on tribunal claims whilst employers are going through genuine attempts to negotiate agreements; and
 - 2.5 Give a clearer right for employers to offer transitional pay protection to those who lose out in equal pay reviews, which has been a source of considerable tension.
10. The request to outlaw Abdulla style cases can of course be added to this list. All these proposals are clearly still valid although the majority of councils have largely completed pay reviews, although as equal pay law derives from European law, the proposals have to be considered in the light of what may be required at a European level to achieve the change. Continued highlighting of a package of proposals helps the LGA to remain at the forefront of thinking about equal pay and may help prevent future difficulties.
11. It will be useful to assess also whether there are any new recommendations or areas of activity to develop. For example, the Government has various proposals around encouraging the use of mediation which the LGA continues to examine.
12. The review of guidance and supporting documentation for the NJC Job Evaluation Scheme, the first phase of which has now been completed, will also help in the identification and management of equal pay risks.
13. Members are asked to note this report and to endorse the proposal to set up an Equal Pay Interest Group.