

**READING BOROUGH COUNCIL**  
**REPORT BY HEAD OF LEGAL & DEMOCRATIC SERVICES**

<b>TO:</b>	AUDIT & GOVERNANCE COMMITTEE		
<b>DATE:</b>	27 September 2018	<b>AGENDA ITEM:</b>	4
<b>TITLE:</b>	Equal Pay Update		
<b>SERVICE:</b>	ALL	<b>WARDS:</b>	Boroughwide
<b>LEAD COUNCILLOR</b>	Councillor Lovelock	<b>PORTFOLIO:</b>	Leadership
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**1. PURPOSE AND SUMMARY OF REPORT**

- 1.1. To inform the committee on the management of the equal pay claims and to give a current position on discussion, settlement of cases and future litigation.

**2. RECOMMENDED ACTION**

- 2.1. That the progress on the management of the equal pay claims and the programme of litigation be noted.

**3. POLICY CONTEXT**

- 3.1. The number of employees/ex-employees who have made an equal pay claim is approx. 180. This equates to approximately 258 claims, as some claimants are claiming in respect of more than one role - either because they had multiple part-time roles, or because they changed roles during the time in respect of which they are claiming.
- 3.2. Of the claims received, 56% were represented by Thompsons Solicitors (Unison) and 44% are being represented by Doran Law a no win no fee solicitor (formally worked for Stefan Cross, who led many of the equal pay claims across the country).
- 3.3. The main groups of female employees who have submitted claims are Care staff and teaching assistants/school based staff. These groups are using the full range of male comparators in their claims (where additional allowances and bonus payments were historically paid), including refuse loaders, tractor drivers, highways operative and street sweepers.
- 3.4. These claims have been lodged over a period of time, but most were lodged during 2008 and are claims relating to (alleged discriminatory) pay differences prior to the implementation of pay and grading in May 2011. There were an additional 73 claims lodged (by mostly existing claimants) by Doran Law/Stefan Cross following the implementation of pay and grading, alleging continuing pay discrimination.

- 3.5 These claims are part of a pattern of similar claims made against many local authorities nationwide arising out of historic inequalities in pay between predominantly male groups of workers and predominantly female groups of workers under pay arrangements which prevailed prior to the implantation by local authorities of job evaluations and pay arrangements under the Green Book. While no local authority had distinguished between men and women in their pay arrangements, equal pay claims can be brought not only on the basis of men and women being paid differently for doing the same job but also on the basis that they have done jobs rated as equivalent or of equal value (as assessed by job evaluation experts appointed by the tribunal). In a number of cases, local authorities were paying different groups of people who had been rated as equivalent under the White Book differently, owing to the introduction of productivity allowances and other bonus which could no longer be justified and which typically only applied in male-dominated areas of work, such as street cleansing and refuse collection. That was not the case in Reading, as such occupations had never been rated as equivalent, but through a long process of assessment the experts appointed by the tribunal concluded that a number of predominantly male occupations were in fact of equal value to a number of predominantly female occupations, despite this not having been the outcome of previous job evaluations carried out within the authority.
- 3.6 The Council sought to limit the risk of future equal pay claims through implementation of the Pay and Grading Scheme in May 2011.

#### 4. CURRENT POSITION

- 4.1 In July 2017 a Multi-Disciplinary Team was established to carry out calculations of each claimant's compensation. The Team extracted pay data for each claimant for each of the years within the claim period and calculated an offer to be put to all claimants individually.
- 4.2 It was hoped that we would achieve a collective agreement with the claimants' solicitors, Thompson's and Doran Law, but alternatively to settle individual claims. Any offers of settlement made by the Council were required to have a rational and legally-sound basis to ensure proper use of public money. This meant in practice the offers were to be based on legal advice that they are payable and/or are justifiable as leading to an overall saving of costs. In the initial period of offers during July and August 2017 82 offers were accepted.
- 4.3 The offers made were influenced principally by two factors: 1) de-risking future claim levels and total cost; and/or 2) the parties would save future legal/tribunal costs and receive earlier settlements than would otherwise be the case. The offers made were on the basis of the best the Council could offer on economic grounds. It was not considered in the Council's interest to divulge the calculations, or information behind how it determined the amounts offered.
- 4.4 Work has continued since the original offers were made to settle the remaining claims. Officers have attempted to move forward with further settlements and where possible avoid further attendance at hearings and limit additional costs.

#### 4.5 Outstanding Claimants

##### Thompsons

There are no outstanding claimants from this group, all claims have been settled and monies paid.

##### DORAN

Doran claimants who previously accepted offers - 11

Doran claimants - 46 claimants paid following tribunal judgements

13 other claimants as set out below

Representative	Number of claimants	Current position
Doran	6	Claimants from mixed roles where further discussions are being entered into regarding schedules of loss.
Doran	7	Jurisdictional hearing where the Claims were struck out because of time issues.

#### 4.6 Jurisdictional Issues

At a hearing on 9 July 2018 the tribunal considered claims from 7 claimants that were thought to be out of time and with no valid jurisdiction. The tribunal found in favour of the Council. Doran Law has confirmed that he intends to lodge an appeal. This appeal would need to be lodged with the Employment Appeal Tribunal and depending on the listing it could be well into 2019 before the date is set, so the Council will need to defend its position at a date to be determined.

#### 4.7 Unrepresented Claimants

There are currently 2 ex-Doran claimants and 1 ex-Thompsons claimant who they no longer represent. The Tribunal service has written to the claimants who were given a deadline to respond to confirm whether or not they wish to proceed with their claims. If they don't, then they will be dismissed by the tribunal, if they do, we will need to liaise with them directly or through their new representative.

#### 4.8 Employment Appeals Tribunal ("EAT")

The outcome of the EAT hearing in respect of Coleman held on 17 April 2018 has been received, unfortunately the Council were unsuccessful in their appeal against the levels of comparator hourly rates being applied to claims from April 2006.

#### 4.9 John Madjeski Academy (JMA) have settled their claims with Doran Law at £134,144.61.

## **5. NEXT STEPS AND LEGAL TIMETABLE**

- 5.1 A hearing is scheduled for 15-17 October where the remaining claims will be determined if they haven't already been agreed beforehand. It may still take some time after this to receive the written judgement and to make final payments,
- 5.2 Any appeal by Doran Law against the jurisdictional claimant decision will be likely to be heard in 2019, as will any applications for costs from either side (which are likely to be within the tribunal costs limit of £20,000), and any further steps if Doran Law choose to pursue their remaining challenge to the 2011 pay and grading arrangements.

## **6. LEGAL IMPLICATIONS**

- 6.1 The Council continue to engage Boyes Turner Solicitors to advise the council on equal pay claims. We are also being supported by Leading Counsel (Richard Leiper QC, both Boyes Turner and Leading Counsel have considerable experience in dealing with equal pay claims.
- 6.2 At the beginning of 2018 the Council sought expressions of interest to gain a second legal opinion on the advice/work to date to defend the equal pay claims. Eversheds Sutherland were appointed to give this legal opinion which they have and we have retained them to work alongside the external solicitors Boyes Turner.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 The Council has been estimating the provision for equal pay claims for a number of years. The provision, now funded via capital receipts, set aside in the accounts as at the end of 2016/17 was £14m. As part of finalising the 2017-18 accounts the provision will be increased and additional capital receipts have been identified to cover this.
- 7.2 During 2017-18 £5.0m has been paid out to claims and a further £7.1m has been paid out so far in 2018-19 with another £1.0m committed to date. The remaining liability is forecast to be £2.3m.
- 7.3 Value for Money (VFM)  
Working towards settlement outside of the tribunal hearing process will reduce litigation costs.
- 7.4 Risk Assessment.  
Any opportunity to reach settlement with the remaining claimants will enable the Council to operate outside of the public domain and manage the settlement discussions without the Tribunal service issuing judgements and orders.
- 7.5 To date the Council has spent £1,935,443.19 on legal fees including disbursements excluding Vat. Officer time has not been recorded but it has been substantial.

Payments made to	2016-17	2017-18	2018-19 Actuals	2018-19 Committed	Forecast Outstanding	Total
Claimants	59,730.49	3,193,164.03	4,631,481.85		1,475,663.72	9,360,040.09
HMRC		1,730,867.75	2,475,047.24		773,667.20	4,979,582.19
RBWM Pension Costs (Employee Contributions Deducted)				301,655.34	26,160.84	327,816.18
RBWM Pension Costs (Employers contributions)				664,860.72	58,160.37	723,021.09
<b>TOTAL COSTS</b>	<b>59,730.49</b>	<b>4,924,031.78</b>	<b>7,106,529.09</b>	<b>966,516.06</b>	<b>2,333,652.13</b>	<b>15,390,459.55</b>

