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| DECISION-MAKER: | CABINET | | |
| SUBJECT: | WORKFORCE AND OTHER RELATED ISSUES | | |
| DATE OF DECISION: | 2 AUGUST 2010 | | |
| REPORT OF: | HEAD OF PAID SERVICE (CHIEF EXECUTIVE), MONITORING OFFICER (SOLICITOR TO THE COUNCIL) AND CHIEF FINANCIAL OFFICER (EXECUTIVE DIRECTOR OF RESOURCES) | | |
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STATEMENT OF CONFIDENTIALITY

None.

SUMMARY

The purpose of this report is to enable the Executive to authorise the Chief Executive (Head of Paid Service) to take appropriate action in respect of equal pay litigation currently being taken against the Council.

RECOMMENDATIONS:

- (i) That the Chief Executive (Head of Paid Service) be given delegated authority, following consultation with the Solicitor to the Council (Monitoring Officer), Executive Director of Resources (Chief Financial Officer) and the Cabinet Member for Resources to take any action necessary (including defend, settle or in any other way take action) in relation to any Equal Pay Claims or other linked or associated matters currently made or in future made against the Council;
- (ii) That the Chief Executive (Head of Paid Service), Solicitor to the Council (Monitoring Officer), Executive Director of Resources (Chief Financial Officer) and Head of Organisational Development be given delegated authority to take any further action necessary to give effect to the content of this report; and
- (iii) To approve an amount of up to £200,000 to fund further legal and other associated costs of defending the Equal Pay Claims, to be met from the Organisational Development Reserve.

REASONS FOR REPORT RECOMMENDATIONS

1. It is appropriate, given the size and nature of the equal pay litigation that Members are formally updated as to progress in relation to this matter and further that the future direction, management and strategy behind the Council's management of this litigation is clearly understood and appropriately authorised.

CONSULTATION

2. There has been internal consultation between Council officers, as well as informal briefings for the Executive, as well as relevant opposition spokespersons on the content of this report.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3. In relation to the litigation, the approach set out in this report is considered the only pragmatic approach, as the alternative would be that every claim is considered and individual decisions are determined by Members, and given the nature and size of the litigation, this is considered the appropriate approach and, therefore, whilst there are alternative options, they are not considered practicable.

DETAIL

4. Men and women carrying out equal work for the same employer are entitled to the same terms and conditions of employment. This right derives from both European Legislation (Article 141 of the EC Treaty and the Equal Pay Directive) and from the Domestic Equal Pay Act 1970
5. In general terms, the 1970 Act gives women and men the right to equal pay for equal work unless there is a genuine material reason for the inequality that is not related to sex. The 1970 Act achieves this by implying an “equality” clause into every contract of employment that enables the contract to be modified if a successful claim is made.
6. In order to establish the rights to equal pay under the 1970 Act, the employee must establish a “comparator” of the opposite sex who works in the “same employment” and then establish that s/he and the comparator are
 - i. employed on “like work”: or
 - ii. employed in jobs that are “equal value”; or
 - iii. employed in jobs that have been “rated as equivalent
7. Once the employee has established their claim to equal pay, then it falls upon the employer to show that the reason for the inequality is genuinely due to a “material factor” that is not the difference in sex. If the employer cannot show that, it will be liable to the employee
8. It is important to note that the 1970 Act applies to both men and women, it applies to anyone engaged under a contract personally to execute any work or labour. That is a wider definition than that of an employee found in the Employment Rights Act 1996, and extends the scope of the 1970 Act to the vast majority of workers, including the self employed.
9. It is also important to note that the Act is concerned with equal pay, not fair pay.

Activity taken to date

10. To date, the Council has received a number of claims that allege disparate pay between the claimant and their comparators. These cases have been managed on behalf of the Council by the Solicitor to the Council, who has instructed Counsel to advise and represent the Council.

The current situation of the litigation

11. The litigation has recently been the subject of a case management hearing and as a result of that it is now appropriate to formally update Members and get express authority to manage the litigation on behalf of the Council. The delegation, which is to the Chief Executive following consultation with the other two Statutory Officers as well as the relevant Cabinet Member (the

Cabinet Member for Resources) will ensure that an appropriate response can be made on a claim by claim basis. The Executive Director of Resources (in her capacity of Chair of the Board dealing with equal pay issues) has kept opposition Groups Spokespersons briefed as well as obviously the Cabinet Member, and will continue to do so.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

12. Any potential costs arising from successful litigation against the Council would be revenue in nature. However it is possible to apply for a capitalisation direction from the DCLG to help spread the cost of the payments over several years.

Revenue

13. A sum of £200,000 was approved in 2009/10 to fund legal and other associated costs of dealing with the equal pay claims. Only a small element of this remains in 2010/11 and therefore up to a further £200,000 is requested to take this work forward and will be met from the Organisational Development Fund.

Property

14. None.

Other

15. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

16. The Council has been addressing a number of equal pay claims for some time. Management of that litigation remains ongoing. It is appropriate to give delegated authority to the most senior Officers of the Council to take whatever action is necessary to manage those claims, following consultation with the Cabinet Member.

Other Legal Implications:

17. None.

POLICY FRAMEWORK IMPLICATIONS

18. None.

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

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| 1. | None |
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Documents In Members' Rooms

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| 1. | None |
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Background Documents

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| Title of Background Paper(s) | Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable) |
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| 1. | None | |
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Background documents available for inspection at: N/A

KEY DECISION? No

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| WARDS/COMMUNITIES AFFECTED: | All |
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