

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 24 February 2009

Session 3

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EQUAL OPPORTUNITIES COMMITTEE

3rd Meeting 2009, Session 3

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

*Marlyn Glen (North East Scotland) (Lab)

*Bill Kidd (Glasgow) (SNP)

*Hugh O'Donnell (Central Scotland) (LD)

*Sandra White (Glasgow) (SNP)

*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Willie Coffey (Kilmarnock and Loudon) (SNP)

Johann Lamont (Glasgow Pollok) (Lab)

Mary Scanlon (Highlands and Islands) (Con)

Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

John Wilson (Central Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Lynn Bradley (Audit Scotland)

Joe Di Paola (Convention of Scottish Local Authorities)

Councillor Michael Cook (Convention of Scottish Local Authorities)

David Pia (Audit Scotland)

Gordon Smail (Audit Scotland)

CLERK TO THE COMMITTEE

Terry Shevlin

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 1

Scottish Parliament

Equal Opportunities Committee

Tuesday 24 February 2009

[THE CONVENER *opened the meeting at 10:00*]

Equal Pay in Local Government

The Convener (Margaret Mitchell): Good morning, everyone, and welcome to the third meeting of the Equal Opportunities Committee in 2009. I remind everyone present, including members, that mobile phones and BlackBerrys should be switched off completely because they interfere with the sound system even when they are switched to silent mode.

Our first item is evidence on equal pay in local government. By way of introduction, I say that it will probably be useful for the witnesses to know that, rather than take a scatter-gun approach to scrutiny of the Scottish budget, we decided to focus on equal pay for a more in-depth analysis of the subject. We took oral evidence from various organisations in a round-table discussion and then from John Swinney, the Cabinet Secretary for Finance and Sustainable Growth.

In our subsequent report to the Finance Committee on the draft budget, we highlighted the evidence surrounding the potential costs of securing equal pay and we committed to taking further evidence on the issue from Audit Scotland and the Convention of Scottish Local Authorities, given their relevant expertise and interest in the matter. Audit Scotland audits Scotland's local authorities and audits public bodies on whether they manage their finances to the highest standards and achieve the best possible value for public money. COSLA is the representative voice of Scottish local government and acts as the employers association on behalf of all Scottish councils. It has previously provided information on equal pay on behalf of Scotland's councils.

I have pleasure in welcoming our witnesses. From Audit Scotland, we have Lynn Bradley, who is the director of audit services; David Pia, who is the director of public reporting; and Gordon Smail, who is a senior manager. From COSLA, we have Councillor Michael Cook, who is the spokesman for strategic human resource management, and Joe Di Paola, who is head of employers. I also welcome John Wilson MSP to the meeting. He is here as the reporter from the Local Government and Communities Committee, which will also consider equal pay in the near future. Its focus will be primarily on the financial costs of securing equal pay.

I will set the context for this morning's evidence session. Both Audit Scotland and COSLA were invited to take part in the round-table session to which I referred but, unfortunately, neither was able to attend, so instead they sent written submissions, which the committee was pleased to receive. In its written submission, Audit Scotland stated:

"Compliance with the equal pay legislation is a matter for councils ... and Audit Scotland have no role in reviewing the budget proposals of councils or the Scottish Government."

COSLA's written submission stated that, due to "the sensitivities and confidentiality of this work"

around the negotiations on equal pay, some of the dialogue with, for example, the Local Government and Communities Committee has been conducted on a less formal basis.

In the light of those comments, I invite the witnesses to explain briefly what they consider to be their role in helping to ensure that equal pay in local government is secured most effectively for the taxpayer. I ask them to take into account the evidence that the committee took from Peter Hunter, the regional officer for equal pay at Unison, who stated that

"employers are still building highly expensive and discriminatory toxic pay systems into the public and private sectors."—[*Official Report, Equal Opportunities Committee*, 30 September 2008; c 592.]

In other words, equal pay has cost substantial amounts of money, but has still to be resolved.

I invite the witnesses to comment on their role. Does anyone want to volunteer to start, or shall I just pick on someone?

David Pia (Audit Scotland): I am happy to kick off. I hope that I will be able to help the committee by explaining the role that Audit Scotland plays in relation to equal pay matters, especially equal pay in local government. My colleagues, Lynn Bradley and Gordon Smail, have knowledge of specific aspects of our work and will be able to help me and the committee as we go along.

To summarise briefly, audit in effect covers everything that a council does. We scrutinise the work of councils, but it is not our business to take a view on policy matters or on the extent to which councils meet their statutory requirements. Such issues are the responsibility of councils themselves.

Our work covers several strands. Our appointed auditors, who work in every council, assess and report on risks and priorities within councils, and produce annual reports on their work. At present, each of those annual reports makes reference to single status and equal pay issues. Lynn Bradley can provide more detail on that.

We also produce an annual overview report that summarises the overall picture, as we see it, across the country. Our latest annual overview report will be published later this week, so we can give the committee some information from that. It describes our estimates of costs that local government is currently incurring and makes some general points about risks.

We also carry out best-value audits in particular councils. Each best-value audit comments on how councils have discharged their equalities responsibilities, and will generally refer to equal pay and single status issues as part of a broader view on how councils are addressing equalities issues.

Finally, we carry out national studies. In November, we published a national study on how councils discharge their race equality duty, which is a specific aspect of their equalities responsibilities. The national studies address particular themes and have covered a wide range of subjects. Plainly, they cannot cover everything, but we are committed to identifying key topics such as race equality.

That summarises in general terms the work that we do in this area.

The Convener: That is helpful. Do the other witnesses from Audit Scotland want to add to that statement, or are they happy to leave it at that?

Lynn Bradley (Audit Scotland): I am happy to leave it at that. As David Pia suggested, I am responsible for the financial audit of 21 local authorities, so I will wait to see whether members have specific questions on that issue.

The Convener: Does COSLA want to make an opening statement on its role?

Councillor Michael Cook (Convention of Scottish Local Authorities): Obviously, we are delighted at the opportunity to give evidence from a local government perspective, particularly in the light of the evidence that the committee received on 30 September last year. Allow me to say that we have the greatest respect for Peter Hunter, but his view on these matters is not entirely impartial. Clearly, as a solicitor for Unison he has an interest in litigation on issues surrounding single status and equal pay.

On how councils resolve the matter, councils plainly have legislative responsibilities on equal pay and discrimination. It is for individual councils to carry out their responsibilities to meet those legislative obligations. Councils are required to balance their budgets and to deliver best value. In doing so, they are subject to scrutiny by the likes of Audit Scotland.

COSLA's role is as a membership organisation for the 32 local authorities in Scotland. Specifically

on single status and equal pay issues, our role is to provide guidance, support and assistance to the local authorities that make up COSLA. It is fair to say—particularly in the light of the evidence that the committee received on 30 September—that there has been progress on single status, which is alluded to in the committee's briefing paper. We can expand on that in due time.

The Convener: That was helpful.

I am particularly interested in Audit Scotland's risk assessment, which is crucial. Can you provide any evidence to demonstrate that either COSLA or Audit Scotland is making equal pay and single status priorities and is helping to resolve the issue? In 2005, the estimated cost was £560 million. We heard from Peter Hunter and from members of the Tribunals Service that there are at least 30,000 tribunal cases outstanding. We are talking about a continuing and escalating debt. How are we addressing it?

Lynn Bradley: David Pia referred to the priorities in the framework. We produce a document each year that identifies the whole set of risks that we think will impact on local authorities. We use the document for audit planning purposes. It is published on our website and is available to the public. We use the document in discussions with chief executives and senior members of local authorities and we present the results to members of the authorities.

Equal pay and single status are among the topics that are included in the document. There are two dimensions to our approach. First, we come at the matter from a financial perspective, because it is undoubtedly a huge financial pressure for local authorities. We also come at it from a workforce-planning perspective. Local authorities have to discharge a legal responsibility in relation to equal pay and single status. The issue also has an impact on staff morale, so we have to consider the time and resources that are devoted to it at the expense of other issues.

We use the document in initial discussions with local authorities and it then features in our audit planning documents, where we do detailed work to find out what is being done on the topic, alongside a range of other issues. We make our final report on progress to the members of the authority and to the controller of audit.

We also look at the impact on the financial statements of the authority and we check to ensure that adequate provision is included in the statements, if such provision is required. In some cases, a contingent liability is a more appropriate way of recording the commitment and obligation. The issue features throughout the whole audit process—it features highly as a risk. We keep it

visible by putting it in the annual report, which is then published on our website.

The Convener: Is there ever any comment that it is a particular risk? Have you noted in assessments that costs seem to be growing like Topsy and you are therefore concerned about how they will impact on future local government finance?

Lynn Bradley: That is a developing area and we have seen progress over the years. It has been a particular risk area for local authorities. The bulk of equal pay payments were made by local authorities in 2005-06, and they have continued to address the situation by making payments. Some authorities have largely settled the matter by agreeing their single status pay structures, but they still recognise that a potential liability exists.

Everyone has their eye on the Redcar and Cleveland Borough Council v Bainbridge case that is taking place down south, which has possible implications for Scottish local authorities. Even though a local authority might have dealt with single status and made its equal pay payments, the case law develops all the time, so authorities have an eye on wider developments and consider them as part of the risk.

The Convener: Will you give us a brief outline of the effects of that case?

Lynn Bradley: Colleagues in COSLA might be able to give you more information but, as I understand it, the case concerns a claim that certain groups of staff have been disadvantaged by agreed equal pay payments and so are now challenging some of the compromise agreements that the local authority made in good faith in order to discharge its equal pay responsibilities. I believe that the case is now at the Court of Appeal in England. If the court finds in favour of Bainbridge, rather than the local authority, that will have implications for our councils, which have also made compromise agreements as part of their equal pay negotiations.

10:15

Councillor Cook: Broadly speaking, this relates to pay protection. Two cases—the Bainbridge case and Surtees and others v Middlesbrough Council—both involve councils in the north-east of England. A Court of Appeal decision on the matter indicates that pay protection, in this instance, was unlawful, but in certain circumstances it may be something that local authorities can pursue, although they would need objectively to justify it. I have no doubt that the expert on those issues who is sitting to my left, Joe Di Paola, can expand on that.

Joe Di Paola (Convention of Scottish Local Authorities): The issue is that men's earnings were protected at a particular level. The judgments in the Bainbridge and Surtees cases say that women who were paid less should have had the same level of protection over the same period—up to five years, in Scotland. The implication for our local authorities is that a huge new cost is associated with that protection, which has never been put in place. We have said to our councils that they must, as a matter of urgency, attempt to calculate what the costs of that protection might be because, as Michael Cook says, the local authorities in the north-east of England were found wanting in that they had not calculated what the costs would be of protecting the women's salaries at the same level as the men's. It was mostly about men who were in receipt of bonus payments. That was a new gap that had not been accepted.

Over the 10 years of attempting to implement single status, a series of court judgments have materially affected the implementation process and the discussions. We think we are moving along nicely and getting stuff implemented, but then there is a judgment. It was the case of Allen and others v GMB some years ago and it is the Bainbridge case now. Those judgments will continue to happen because the matter is highly litigious; it is an area of industrial relations that has been bedevilled by the law in a way that we have never seen before. We have not been able to reach the kind of collective agreements that trade unions and local authorities—as employers—have reached in the past, because everybody is bound by looking at the last judgment and considering where the next case might come from. Sorry for the long answer, but that is the context.

The Convener: That is helpful, as it sets the scene.

Hugh O'Donnell (Central Scotland) (LD): You commented on Mr Hunter's partial view, but it could be argued that, as a membership organisation, your view is equally but differently partial.

Would any of the difficulties that arise as a result of the legal cases be solved if, at the outset, your members applied a gender impact assessment to proposed settlements? We understand that a number of local authorities have declined to do so, despite being pressured by the Equal Opportunities Commission at that point. Are you concerned that that is the case? Is it likely that we will continue to be like hamsters on a wheel until that is done as part of the process of arriving at a collective agreement?

Joe Di Paola: First, to my knowledge no agreement has been reached in Scotland with any council or its local trade unions without a gender

impact assessment having been done. Every single council will, when it brings forward a pay and grading proposal, have it gender impact assessed as a matter of course. Furthermore, none of the trade unions will accept a proposal unless it has been gender impact assessed. I am a bit surprised by that suggestion, because it is not something that we have come across. We would expect all our councils to carry out a gender impact assessment.

Hugh O'Donnell: That is interesting.

Councillor Cook: I will deal with the issue of partiality. Obviously, we represent local government and are giving a local government perspective on the issue. I was alluding to a slight anxiety about the briefing note that we received, which seemed to have accepted in an undigested way some of the propositions that were put forward at the committee meeting on 30 September. We would challenge elements of that evidence.

The Convener: Will you comment on the evidence of Muriel Robison, head of commission enforcement at the Equality and Human Rights Commission? She said:

"Over the years, we have asked councils to produce gender impact assessments of their proposals. Many say that they cannot do that because they have not fully implemented the job evaluation scheme. However, we have called for the assessments and we cannot let councils delay them indefinitely."—[*Official Report, Equal Opportunities Committee*, 30 September 2008; c 597.]

Councillor Cook: I am sorry, but that is completely inaccurate. The position is as Joe Di Paola described it—a job evaluation scheme is an absolute prerequisite to embarking on a single status scheme.

The Convener: That is something to be taken up with the EHRC.

Bill Wilson (West of Scotland) (SNP): We heard evidence from other organisations that not all the new pay and grading structures have been agreed with the trade unions. The implication was that some structures have been imposed and some have been agreed. Is that the case and, if it is, how can you be certain that the new pay structures are not discriminatory?

Councillor Cook: It is certainly the position that some of the schemes have been imposed. At the time of speaking, 26 of the 32 local authorities in Scotland have either implemented single status schemes or are on the cusp of doing so. Of those, six achieved the goal of single status by agreement. It is fair to say, as Joe Di Paola described, that there have been circumstances in which the efficacy of reaching agreements, certainly from the trade union perspective, has been dented by some of the case law decisions in

relation to equal pay and the case of Allen and others v GMB is the reason for that.

The result is that several local authorities have, in carrying out their equal pay duty, been obliged to move on the basis of imposition. As has been described by Audit Scotland, local government is required to assess the risk elements in such situations, as it does routinely in relation to a raft of issues. It has to assess the risk element in relation to proceeding with imposition of a single status scheme, as it has to do in many areas. That does not necessarily imply that such a scheme is in any sense more vulnerable than one that has been delivered by agreement.

Bill Wilson: In that case, I ask Audit Scotland, if a situation has been imposed, do you consider that there is no higher risk, or might there be a higher risk?

Councillor Cook: That is a legal question.

Lynn Bradley: I will speak from an audit risk perspective. The kind of risk approach that we are interested in is in considering what the impact will be on the figures that are recorded in the financial statement. At the end of the financial year, we look at the council's risk assessment, which will typically have been carried out by its legal officers. We make sure that that process has been carried out in order to arrive at the figure that will then appear in the accounts. We take a particular approach to risk that is probably different from the kind of risk to which Bill Wilson alludes.

Bill Wilson: So that I am absolutely clear, what if, for example, you made no check on a council's legal position as regards that kind of risk? Let us say that 10 councils give different legal reasons for why they think the imposed settlement is acceptable—there would be no Audit Scotland consideration of the legal aspects.

Lynn Bradley: I am sorry—I think I have misled you. We look at the number of cases, appeals and cases going to tribunal that have been received by a council and we assess the likelihood of those cases crystallising and costing the council money. We do not consider whether one scheme is inherently more risky than another. I could not say, for example, whether more claims are generated in a council where a system has been imposed than in one where the system has not been imposed. I do not have that kind of information.

Bill Wilson: So, there would be no attempt to guess future risk because you use only challenges that have been made to date. I imagine that some councils might find it useful if Audit Scotland could say, "Actually, we think there might be a future challenge." Are you saying that that would not be possible?

Lynn Bradley: We do consider future risk—it tends to appear in a note to the accounts: contingent liabilities is the technical name for it—when there is likelihood of a future claim being made, but which cannot be quantified.

This year, when we are talking to councils, we will ask them whether they have considered the potential impacts of the Bainbridge case. By the time we get to that discussion, the outcome of the case will be known. If the outcome is not in Redcar and Cleveland Borough Council's favour, we expect councils to make some reference to that in their annual accounts. That kind of risk assessment should feature in the financial statements.

Bill Wilson: You said six agreements were reached and that, in the other cases, the schemes were imposed, for a variety of reasons. Is there any evidence of a greater level of legal challenges arising from the schemes that were imposed?

Joe Di Paola: To set that in context, the imposition of a single status scheme does not mean that there has been no discussion with the local trade unions. What you will find is that, in every case, there has been a lot of discussion all the way through to the final iteration of a pay and grading scheme, but that the trade unions feel unable to recommend it or agree to it in a formal sense. Partly, that is to do with the fact that, in the Allen case, it was held that the GMB had disadvantaged its own members because of the nature of the agreement that it had reached with a local authority. In many cases, the trade unions have said, for their own good reasons, that they are not prepared to sign up to single status agreements. The discussions take place over a period of time but, when we get to the end game, the trade unions say that they cannot sign up to the agreement, even though it has been gender impact assessed. At that point, the council, which has a general duty to bring in equality-based pay and grading systems, has to judge whether it should impose a single status scheme: most of our councils have chosen to do so because of that duty.

Bill Wilson: Are you saying that, in most cases, the trade unions are not opposed to the agreements but are merely covering themselves by not formally signing them off?

Councillor Cook: To put it another way, they are managing risk. From their perspective, that means that they will not agree to the schemes but will allow them to be imposed.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): Are there many cases, such as the Allen case, that involve trade unions being taken to court?

Joe Di Paola: In a number of cases in England and Wales, trade union members are suing their trade unions because of the agreements that they reached with local authorities. There are no such cases so far in Scotland.

The Convener: I want to press you a little on the use of the term "implementing". Does it entail an interim settlement or a full and final settlement?

Councillor Cook: Implementation could apply in respect of schemes that were garnered by agreement or by imposition. The key word is "imposition", which involves redundancy rules. Joe Di Paola can enlighten you about the technical aspects of the matter, but the imposition arrangements basically involve a mechanism whereby workers are given 90 days' notice of redundancy and are then re-engaged based on the new pay and grading structure.

The Convener: Does that involve interim payments?

Councillor Cook: No.

Joe Di Paola: There are two aspects to the matter. Looking backward, there are payments to cover the historical pay inequality to which women have been subject. Local authorities have made those payments. Looking forward, there is a single status pay and grading structure that does away with the pay inequalities. The interim payments that you asked about were made in respect of the historical pay inequalities. The problem is that, if there is a gap between the payment that was made to cover a period in history and the payments that are made as a result of the implementation of a new equality-based pay structure, that gap also requires to be paid for. Furthermore, as I said with regard to the Bainbridge case, we are now looking at the probability that the amount of protection that the women did not get, as it were, will also be required to be paid for.

The Convener: Has Audit Scotland delved into that matter in order to assess the risk?

Lynn Bradley: The approach is not so much one of risk assessment as one of verifying that the figures in the financial statements are correct and that legitimate payments have been made. That is the extent of our interest.

10:30

The Convener: In the light of evidence that we have heard, I suppose I am asking whether you think that you delve deeply enough into matters. Other witnesses have suggested that, rather than just note that the risk assessment factor has been covered, the issue of potential payments should be considered.

Gordon Smail (Audit Scotland): As David Pia said, we do an overview report each year, and we have flagged up the single status risk in that report for the past couple of years at least. The longer that a council leaves the settlement of single status, the more it leaves itself exposed to equal pay claims. We have made that key point in our overview report over the past couple of years and we will make it again in the report that we will publish later this week.

David Pia: I reiterate that every annual report by a local auditor refers to the single status issue. That was certainly done this year and it has been done for several years.

The Convener: The round-table discussion queried whether flagging up the issue was sufficient.

Sandra White (Glasgow) (SNP): The convener has covered some of what I wanted to ask, but I want to be clear about something. Audit Scotland states that it continually flags up to councils the issues of equal pay and single status agreements. The agreements were started in 1999 and were to be implemented in 2002 and continue until 2004, at a cost of £560 million. Are the Audit Scotland witnesses saying that Audit Scotland has no teeth to ensure that COSLA and the councils implement what is recommended? You can warn them, but you can take no action and the councils have taken no action. Is that what you are saying?

Lynn Bradley: When I say that we flag up single status, I mean that we highlight the issue as a risk and put it in an action plan. We ask the council what it will do in response to the risk and it says that it will take action. That is recorded in an action plan that goes to every council and to the controller of audit. Her findings on the issue are reported to the Accounts Commission and appear in the overview report. We do not therefore just leave the issue on the table; we ask councils what they will do to address it. We have seen progress in that regard, but if we felt that no progress was being made, we would escalate our treatment of the issue and make a much stronger statement that would ultimately go to the Accounts Commission for it to decide how to take it forward.

Sandra White: Can you expand on what you mean by "escalate"? I am trying to find out where the buck stops and who has the teeth to ensure that single status is implemented.

Lynn Bradley: The buck stops with the local authorities. We do not have control over what they do or how they do it. Our responsibility is to highlight the areas in our remit. Equal pay is clearly an important area because there is legislation behind it and there are implications for the accounts, so we take the appropriate audit action.

Gordon Smail: External audit can do a lot to support the equalities agenda through independent scrutiny and reporting on important issues, which involves a racking up. In fact, the overview report that we will publish later this week refers to single status as an urgent issue for councils that have yet to implement it fully, for all the reasons that we have discussed. All our reports, including the overview report, are public. We draw the profile and get discussion going. The Accounts Commission is behind us in that and makes similar statements.

Hugh O'Donnell: On the Cleveland case, Joe Di Paola said a couple of times that women employees were not afforded the same level of protection as men. Is that the case across councils in Scotland? If so, why is that? Why did COSLA's membership regard the protection of women's pay as a lower requirement? Why was women's pay considered to be of lower status than men's pay in the first place? I know that the Cleveland case is about an English situation, but perhaps if COSLA's members had not done what they did, the potential to take a hit on the issue would have been diminished. Why was that position taken?

Joe Di Paola: The initial discussions about single status that we had in 1999 were not about gender equality on pay; they were about harmonising the pay of blue-collar and white-collar workers, as they were then called. They were about putting the manual workers and the staff on the same set of terms and conditions.

One of the issues was that many male manual workers in local government in Scotland were in receipt of bonus. That flowed directly from the attempt to privatise a lot of catering and cleaning services in local government in 1988-89. The trade unions took a view that, to keep people in work, they would do certain things about conditions, which resulted in huge demographic differences between manual workers in local government in Scotland and manual workers in local government in England and Wales. A huge number of local government workers in Scotland were on low pay. Many of them were women, but a lot of the men were in receipt of bonus. Frankly, to reach the bargain that brought in single status in 1999, the earnings of male workers were protected for three years. The EOC knew about that and made no comment. It said that that could be done for no more than three years. The historical context is that male workers were protected for three years.

At the time, no one suggested that there was a problem with not protecting the female workers. That came out only in the Bainbridge and Surtees judgment last August. There is a continuum. Ten years on, a judgment has been made that affects everything that has happened in the past five years in Scotland. There was never any conscious

attempt to settle the earnings of male and female workers on any basis other than that of equal pay levels. The purpose of the three-year protection was to iron out the bonus payments that the men had received historically. It was hoped that women would go on to equal pay by 2002, but that did not happen, for all sorts of reasons, not least the huge complexity of introducing the new pay structures and all the law surrounding that process.

Hugh O'Donnell: That clarifies matters—thank you.

Bill Wilson: Has COSLA, or particular councils, sought guidance from the Equality and Human Rights Commission on how to ensure that job evaluation schemes are non-discriminatory?

Joe Di Paola: Yes. In 1999, when we agreed the job evaluation scheme—it was agreed by the authorities and the signatory trade unions—we asked the EOC, as it was then, in Manchester whether it would cast an eye over the scheme. It did that but said that as it would not endorse any single scheme, it had no comment to make. On that basis, employers and trade unions went ahead with the agreed scheme, which has been adopted by 29 of the 32 councils in Scotland.

Bill Wilson: Given that the EOC did not comment, is the idea being contemplated of approaching the new body and asking whether there are any potential problems with the scheme? As it often seems to be the case that, five years down the line, authorities are hit by something that did not occur to anyone at the time, might it be worth the Equality and Human Rights Commission having a second look at the scheme?

Joe Di Paola: We are in contact with the EHRC on a number of issues, not least of which is the application of our job evaluation scheme. As recently as yesterday afternoon, we agreed with our signatory trade unions—Unison, the GMB and Unite—that, beginning in April, we will set up a small group to examine the scheme's operation because, 10 years on, it could do with being reviewed. We will review the scheme in its entirety this year.

Councillor Cook: All local authorities are absolutely committed to delivering single status as quickly as they can but, as is apparent from the committee's interest, the subject is one of huge complexity. The legal context has buffeted some of the decision-making processes that have taken place. For example, if we wind back the clock to 2003, a decision was taken that transformed the limitation period for making claims from two years to five years in Scotland and six years in England and Wales, in conformity with the statute of limitations in each of those countries. That invited a lot of interest from no-win, no-fee lawyers, which has stimulated a great deal of activity and has led

to a series of cases that, at various times, have had implications that could not necessarily have been foreseen, which have further buffeted the process.

Even the trade unions have found that the Allen case did that significantly. In Scotland, we have moved from a position in which it was possible that we would have broad agreements with the trade unions throughout the local government sector to a situation in which there is a natural reluctance on the part of trade unions to do things by agreement. That has resulted in a general imposition throughout the country.

It is worth remarking that, before the EOC was subsumed within the EHRC, the then chair of the EOC, Jenny Watson, argued for a moratorium in relation to equal pay claims because of anxieties about the amount of litigation that was buffeting the process in which we are engaged.

Bill Wilson: The situation almost starts to sound like the situation with toxic debt in the banks—we do not know what is going to come in, and it could be rather large.

Councillor Cook: As Audit Scotland has identified, there is an absolute obligation on local authorities to recognise the level of risk that is involved. We are constantly engaged in the process, not simply in relation to single status and equal pay but in relation to the raft of business to which we attend. Plainly, we are advised by lawyers throughout our engagement with processes. We have to work out the level of risk, and we are scrutinised by Audit Scotland in that regard. We make judgments within individual local authorities, as we do on a series of things.

Bill Wilson: Presumably, that means that the six councils that have still not met the agreements—the few councils from which people are not getting their fair pay—must be at considerable risk. Or is there another factor?

Joe Di Paola: It is a fact that six of our councils have not brought in agreed single status structures, but that does not mean that people are not being paid properly. What it means is that there are still inequalities in the structure of the pay that certain groups of employees get. Many of the women—it is women, remember—have already had payments in respect of the historical inequality. They will continue to receive the same pay as men, because we have had a single spinal column of hourly rates for some years now—since 1999, in fact.

The process is about ensuring that equality is built in to the pay structures as we go forward. Councils understand their liabilities. It is not as though there was a huge chunk of money out there that they do not know about. They know

what their liabilities will be because we know what the pay rates are. We still agree those nationally.

Lynn Bradley: Typically, we find that, where single status has not been agreed, the council makes equal pay payments to the groups that are known to be typically affected. The council makes such payments until it sorts out the pay structure with single status, at which point it no longer has to make payments under the equal pay heading.

Bill Wilson: So it is not the case that they just have not done anything.

Lynn Bradley: Yes.

The Convener: I suppose the real question is whether you are confident that you will not find yourselves in the situation that the previous Executive was in with slopping out. It was aware of a duty, but it did not do enough to meet that duty, so things were imposed on it. Are you confident that all local authorities have done enough to be covered in relation to the challenge?

Councillor Cook: It is for individual local authorities to make that judgment, but I am confident that they know what they are doing. As evidence of that, to some extent, I look to the level of scrutiny that is applied by the likes of Audit Scotland, which also makes judgments about the matter and reckons on whether local authorities are putting themselves in a position where they can deal with the risks that are out there.

Hugh O'Donnell: Out of curiosity, is managing risk a more important priority for local authorities than ensuring that people get the equal pay settlement? Also, when is this seemingly endless process likely to come to an end? We have waited a long time for things to be delivered. I know that the second question is probably harder to answer than the first.

10:45

Councillor Cook: Your second question is harder to answer, so I will take the first question first, if that is all right. There is no question but that councils are committed to the equal pay propositions in the Equal Pay Act 1970 and in article 141 of the treaty of Rome. That is at the heart of what we are trying to achieve.

The ambition in COSLA, which applies to all our local authorities, is to be an exemplar employer. However, we need to recognise the parameters to that. That is unquestionably our ambition, but what we can achieve is limited by what we can do practically. To be honest, the backstop is affordability. Audit Scotland has a clear sense of that, as do local authorities. Affordability influences the level of settlements and the legal advice that is offered on equal pay.

We must take a view of all the circumstances and make judgments about them while trying to achieve our aspiration to be an exemplar employer and to meet our unambiguous legislative obligations. The principles of equal pay for equal work and of equality between men and women in pay arrangements are unambiguous.

I did not answer your second question—do you want me to?

Hugh O'Donnell: We will just leave it floating in the ether.

Councillor Cook: That is fine.

John Wilson (Central Scotland) (SNP): I thank the convener for the opportunity to participate and I welcome the panel. I will ask a question for clarity. We have discussed and asked questions about equal pay and single status. I understand that the 30,000 outstanding tribunal cases relate to equal pay. Is that correct, or are they a mixture of single status and equal pay cases?

Joe Di Paola: The cases that are lodged and sisted with the tribunal system relate to equal pay. They involve a variety of legal bases, but they all concern equal pay.

John Wilson: I am trying to obtain clarification so that the committee understands the situation. Although 30,000 cases are outstanding for equal pay claims, we could face other claims to tribunals in relation to single status. Is that correct?

Councillor Cook: Such claims also concern equal pay. A failure to institute single status will give rise to equal pay claims.

John Wilson: I am trying to differentiate the historical equal pay issue from the single status issue. It is true that cases that relate to single status will be classified as equal pay claims, but they will be claims under single status agreements and not, as previously, on the basis of the historical equal pay issue with local authorities.

Lynn Bradley: Two categories exist. Some equal pay claims have arisen because single status agreements were not put in place and some claims to tribunals have emerged after single status agreements have been put in place because some individuals feel that their pay is insufficient.

Councillor Cook: I emphasise that all such cases are still equal pay claims.

Marlyn Glen (North East Scotland) (Lab): The discussion is fascinating. It is a pity that we did not have the witnesses' perspective when we held our round-table discussion. I am sure that the Equality and Human Rights Commission is listening to the evidence and will react to it, but having everybody together at the beginning would have helped us, although I recognise why that did not happen.

Your evidence makes me no less concerned about the situation. It is interesting to see your perspective close up. I am delighted that the topic is being racked up and treated with urgency, as such an approach has—sadly—been lacking for decades. In the round-table discussion, I said that we are not engaging in a blame game—if we were, there is no doubt that the trade unions would need to take their share of the blame, along with many other people.

In the previous discussion, I called the situation a time bomb. I am still worried, because I see nobody doing anything to defuse that. We seem to have a wait-and-see policy rather than a proactive policy. At the round table, we talked about the cost of obtaining advice from lawyers for all this long time. That cost is rising, as with everything else.

The committee's concern is about women workers not being paid fairly. I understand about the agreements and where you have put the trade unions; that is fine. However, there are still individual women workers who feel—rightly, as the judgments say—that they have not been treated fairly, historically. I am very glad that the job evaluation scheme will be reviewed, because it needs to be. Job evaluation is not just about equal pay for equal work, but about which types of work are equal.

We need to look at job segregation, which is a massive issue. I would not expect it to come under an audit, but it is part of the issue. The issue of new legal rulings was touched on at the beginning of the meeting, but I am concerned that, by waiting for those rulings, we seem to be being reactive rather than proactive. There is a massive cost that no one seems to be taking responsibility for.

Councillor Cook: I am slightly bemused, because the evidence runs counter to that. Twenty-six local authorities have either implemented single status arrangements or are about to do so, which is evidence of significant movement forward. In our view, that negates the possibility of further equal pay claims regarding those pay structures because the arrangements are based on job-evaluated schemes. We have sought to secure the position in individual local authorities.

Various types of claim are in existence. As Joe Di Paola explained very effectively, historically there were equal pay claims, with regard to which various settlement arrangements have been made. As you have heard, there are a substantial number of equal pay claims in the Scottish tribunal system; there are also residual claims that represent the gap between single status arrangements coming on tap and the position being resolved once and for all, leaving a gap from when the payments were made on historical equal pay claims. That claim area has to be dealt with.

Another claim area, which relates to pay protection, flows from the Bainbridge and Surtees cases. Councils are aware of those areas of claim and they are developing mechanisms to deal with them.

I return to what I said earlier: assessing the level of risk is a matter of routine for local authorities. They are constantly engaged in assessing the level of risk for those issues. In no sense does that pretend that the issue is anything other than hugely significant for us, but it needs to be seen in the right perspective.

Marlyn Glen: Thank you for that. I understand your perspective much better now, but I am talking about women's low pay and the resulting poverty that it creates for the economy, for families and everybody. It is a massive problem and it concerns me when you talk about practicalities and affordability for the separate councils.

Councillor Cook: Single status is designed to put all workers on an equal basis in terms of their pay arrangements. That means that women who are embraced by those single status arrangements are treated on a like-for-like basis with men. If, as a result of that, there is an assertion regarding low pay, it will apply to workers across the spectrum in local government and not necessarily to one gender group as opposed to the other. That would be a different kind of assertion altogether.

Marlyn Glen: Yes, the one gender group issue arises as a result of job segregation.

I will move on. However, I feel as if we have very different perspectives on this and, although we can each understand what the other is saying, I am not clear that we are going to agree.

The Convener: May I just clarify one point? It has been suggested that local authorities should use independent experts to do job evaluations, which might bring the unions more on board and help to resolve the issue of temporary pay implementations. That might be a better use of local government finance than clocking up legal fees on the issue, which some feel is just stalling single status agreements. What is your view on that? Marilyn Glen mentioned legal costs, which have been estimated at £1.6 million

Joe Di Paola: No matter where we come from on the issue, I think that we would rather not have to go to law on it. However, the issue has been dragged into the courts almost since day one. Local authorities will defend their position in terms of their risk assessment and get the best legal opinion that they can. That is not to say that that is a preferred option—it is just a fact of life.

On the convener's point about independent experts, the single status schemes that have been

implemented were considered by a variety of independent experts, who did gender impact assessments. They are done not in-house, but by a number of individuals with knowledge of the field.

The Convener: It would be helpful if you could give us an example.

Joe Di Paola: One local authority has used an academic from the University of Strathclyde who is prominent in the field. She will consider the authority's pay and grading scheme and say whether, according to a gender impact assessment, it meets the equalities test.

The Convener: Have the unions agreed and signed up in that particular case?

Joe Di Paola: Yes.

The Convener: Does that not suggest that that might be the way forward? Or does it depend on our definition of who is independent?

Joe Di Paola: The trick is to get someone who both sides agree is an appropriate and independent expert.

Bill Wilson: If I understood Councillor Cook's helpful explanation correctly, there are 30,000 equal pay cases of various kinds, some of which have arisen from disagreements about the new single status agreements. Is that right?

Councillor Cook: No. Councils may have arranged to pay off historical equal pay claims to a date that falls short of a date when they intend to implement a single status arrangement, so they have a gap in time that they must fill in some way. That gives rise to what might be called the residual claim. However, the intention is that, once single status is implemented, it is equality proofed and therefore resistant to future equal pay claims.

Bill Wilson: So only residual and historical claims and not single status agreements have resulted in further claims.

Councillor Cook: There is no way of preventing an individual from making a claim. In principle and possibly in practice, although I have not checked the position, an individual worker in a local authority with a single status arrangement could still take the view that they can raise an equal pay claim.

Lynn Bradley: That is what we have found in some local authorities. I do not know whether the cases have gone through the full process and reached a legal judgment, but the situation is as Councillor Cook described.

Bill Wilson: There must be few such cases, because you are clearly not aware of many. Either no claims arise as a result of single status agreements, or they are rare.

Lynn Bradley: I know of more than 1,000 in a particular local authority, but I do not know what the picture is across Scotland.

Bill Wilson: So there are more than 1,000 claims because people are not happy with the single status agreement.

Lynn Bradley: Yes.

Bill Wilson: That strikes me as a lot and suggests that that single status agreement has a large flaw.

Lynn Bradley: It is probably more to do with the situation that Councillor Cook described, whereby people who are not happy about the outcome of the single status scheme might be looking for another route to redress.

11:00

Bill Kidd (Glasgow) (SNP): We are talking about the amount of money that is being wasted on no-win, no-fee lawyers who, of course, always win. You can correct me on this, but I am worried that councils might be defending cases that are indefensible, in that many are raised by people on exactly the same basis as cases that fellow workers have already won. Are councils defending cases that they have no chance of winning?

Councillor Cook: From a risk assessment point of view, councils would plainly not seek to defend the indefensible. That is at the core of what we are doing—we must evaluate risk. Frankly, it is not a sustainable proposition that councils would create paper schemes that were not resistant to future claims: they need to comply with their legislative obligations and limit any potential claims. Given that any action that they take must be consistent with those legislative obligations, we would not acknowledge the position that you describe.

I am sure that Joe Di Paola will have something to add, but I believe that it is necessary to appreciate that, when a new single status scheme is implemented, members of staff in particular areas of work benefit as a result. Basically, they see an increase in their wages. However, other members of staff—who usually account for a much smaller percentage of a council's workforce—see a reduction in their money, while another group of workers sees no change. It is possible that claims are being made to the tribunal system by people who fall into what are called the red circles—in other words, people who have lost out as a result of a council's implementation of an objectively verified job evaluation scheme. Naturally, they do not like losing out—none of us would—and that motivates them to make an application to a tribunal.

Bill Kidd: Are there any figures on how many cases the councils win compared with how many they lose?

Joe Di Paola: It is ironic that, although there are 30,000 cases in the system, no individual case has been heard, so we have not had a judgment. There have been a few cases in which points of law have been argued—I am thinking in particular of a case involving the Highland Council—but cases that could set a precedent have not gone through the system.

Many of the cases are sisted on the basis that the legal route that they follow is parallel to the route that has been followed in landmark cases such as Bainbridge, on which people are waiting for some indication to be given. No such case has been heard in a tribunal.

The Convener: Sandra White has a brief follow-up.

Sandra White: It is for Lynn—I hope that you do not mind me calling you that. In response to Bill Wilson's question, you said that 1,000 claims had been made against a particular council. How many of those cases, or claims about unequal pay in other council areas, have been made by men rather than women? Are they linked to jobs being re-evaluated as part of the single status process, which, as Mr Cook mentioned, has resulted in some people's jobs being re-evaluated downwards rather than upwards?

Bill Wilson: The red circles.

Sandra White: Yes. In how many cases are equal pay claims against councils being made by men rather than women?

Lynn Bradley: I am sorry; I do not know the detail of that. I do not know where those cases are in the system, either.

Councillor Cook: I cannot add anything to that. We do not have that information.

Sandra White: I have been contacted by council workers who have had their jobs re-evaluated, with the result that their grading has gone down and they have lost money. The majority of those workers have been men. How many such cases does COSLA deal with?

Councillor Cook: That issue is ultimately for individual local authorities rather than for COSLA; it is a consequence of the job evaluation scheme and the single status process. Equal pay for equal work means some adjustment, given that allegations of unequal pay have historically been made and have given rise to the claims that we have discussed.

Joe Di Paola: After any job evaluation scheme has been applied, roughly 60 per cent of people are liable to remain on the same grade, while the

grades of 20 per cent will go up and the other 20 per cent will go down. That process can be managed—authorities have done that throughout the single status discussion—but, as my colleagues have said, some people will think that their job's value has been reduced and will want to do something about that. Such people—men or women—can have recourse to the tribunal. We should remember that the men must find a bigger group of women as comparators, so fewer men than women can make claims, but we know that some men have made claims.

The 1,000 claims that Lynn Bradley mentioned were about the implementation of arrangements in one authority. Another point is that trade unions advise their members to make such claims to protect their claim in law.

Sandra White: Women have made claims for equal pay because they are perceived to do the same job as the men with whom they work. The point that I was trying to make is that, when single status and regrading activity has been undertaken, jobs have been downgraded. Instead of equalising women's pay upwards, schemes have put men's jobs down a grade. That is unequal. How many such cases are in the system? I know of examples, although I will not name the council that is involved. I do not want to accuse anybody of anything, but a balancing act is involved if some jobs are downgraded rather than upgraded. Women have complained that they are being paid less and that, instead of upgrading their jobs to the wages that the men received, schemes have downgraded the men's jobs, so the men are now saying that they are losing money. How prevalent is that among councils throughout Scotland?

Joe Di Paola: One issue for councils and for trade unions locally has been managing the number of red circles—particularly men whose jobs have been evaluated under the agreed system as being at a lower level. Much of the problem is historical, because many male manual jobs attracted bonus payments. We know that bonus payments can no longer exist because they clearly demonstrate inequality. Most women's jobs in Scottish local government could not attract bonuses, so bonuses had to go. However, when bonuses are stripped out of some male jobs, the salary drops considerably.

Jobs are evaluated with an agreed tool that is supposed to iron out inequalities. The factors are supposed to allow jobs to be judged on a common basis. If jobs—whether they are women's or men's—score the same number of points at the end of the process, we can assume with fair certainty that they are of equal value. That is what Councillor Cook talked about and is why we do not expect many claims once single status schemes have been adopted. If gender impact assessment

is done and an authority uses a scheme that we think is appropriate, there should be no inequality at the end of the process.

Councillor Cook: The impact of single status throughout the country is not cost neutral, so it is not a question of robbing Peter to pay Pauline. For the most part, people's wages have increased across the board, which is why the net cost of single status, even on the relatively conservative estimates from the Society of Local Authority Chief Executives and Senior Managers on which it worked in March and April last year, adds about 4.7 per cent to the local government wage bill. Sandra White's questions are partly about the management of that cost.

Malcolm Chisholm: I will pick up on what Joe Di Paola said about the 30,000 cases. Why is Scotland not where England is on judgments? Is that because of the tribunal system in Scotland, or do other factors explain the situation?

Joe Di Paola: Other factors explain it. There has been a general agreement in Scotland that cases will not go forward until we see whether many of the issues are ironed out in the course of reaching single status agreements. There have been several landmark judgments in England and Wales—they are further down the road in the process—and the tribunal system in Scotland is looking at those judgments before it embarks on a huge exercise in undertaking those claims. Given the number of claims in the system, we will require to agree a case management approach with the tribunal authorities because there is no way that the system can cope with 30,000-odd cases. We might be looking at class actions, if that is possible, so that if one case typifies a particular claim—

Malcolm Chisholm: Is that a decision of the tribunal system or is it made in agreement with the parties involved? I mean in relation to not proceeding with the cases in Scotland—is that something that the tribunal system decided on or was it agreed with local authorities and anyone who made a challenge?

Councillor Cook: I am sorry—I am not sure that I picked up the question correctly. Obviously, equal pay claims are dealt with on an individual basis, although there have been suggestions, certainly to the Government in its consideration of a single equalities bill, that it would be prudent to consider the possibility of representative actions. Effectively, that would be a class action in front of a tribunal or something of that nature. Unfortunately, that does not seem to be on the cards at present, which means that there is a substantial backlog of claims in the Scottish tribunal system.

Joe Di Paola: The decision whether to sist the cases that are sitting in the system would be made on the basis of an agreement between both sides. The lawyers would agree that, and the tribunal authorities would also have a view.

The Convener: Am I right that none of the cases in the tribunal system has come to a conclusion? If they did, would it form case law?

Councillor Cook: Yes.

Joe Di Paola: Yes.

The Convener: So that is part of the reason why we do not have Scottish case law at present.

Councillor Cook: Yes, but it is worth making the point that the legislation involved applies UK-wide.

The Convener: Absolutely. Is there anything that we can learn from how cases have been resolved in England? Could we bring into the equation here anything useful from that experience? For example, has mediation been looked at as opposed to always going to tribunals and using litigation?

Joe Di Paola: To my knowledge, mediation has not been tried. To be blunt, I am not sure that we have an awful lot to learn from the English cases. That is the sad fact of the matter.

The Convener: That is comforting.

Joe Di Paola: It is true from everybody's perspective because people on all sides have been damaged by those cases. *Allen v GMB* took a hammering, and several councils have also been badly affected by the English judgments. I do not think that anyone is winning by taking the legal track.

Hugh O'Donnell: Except the workers.

Joe Di Paola: To be honest, I am not sure that they are.

Councillor Cook: There is an interesting view about that. Jenny Watson's assertion that there should be a moratorium was based on a perception that there are advantages in allowing councils and trade unions to negotiate settlements rather than individual claimants pursuing their claims, sometimes to their long-term disadvantage. From a no-win, no-fee lawyer's perspective, there are obvious advantages to taking the legal course, but that is not necessarily the case in the wider picture.

The Convener: If we ever reached the stage where the situation became totally unmanageable, there would be an advantage in looking at mediation to see both perspectives and trying to reach an agreement that was fair and equitable to everyone.

Joe Di Paola: That is right, and in some ways that would take us full circle. Before we were frightened of the consequences of reaching collective bargaining agreements, we used to do just that—we reached agreements inside our own bargaining machinery. However, that has been forestalled by the difficulty that we all have now, which is the fear that we will be sued.

11:15

John Wilson: Mr Di Paola has answered a question that I wanted to ask about collective bargaining. Traditional pay negotiations in local government have been forestalled by the Allen v GMB case. Unions can take negotiations so far but are then reluctant to advise their members to accept a settlement because of that case.

Mr Di Paola said earlier that pay rates are negotiated nationally, but I understand that some of the single status agreements in local authorities have been reached locally and not nationally. Can that be clarified?

The Convener: I will bring in Marlyn Glen, as her question covers similar ground.

Marlyn Glen: In negotiations on the concordat with the Scottish Government, were the costs associated with meeting the equal pay obligations discussed?

Councillor Cook: In discussions between local authorities and central Government, individual items of expenditure are not discussed as isolated items. What is discussed is an overall funding package for local government.

Marlyn Glen: Did I pick you up correctly earlier, Councillor Cook? Did you say that the expected net cost was 4.7 per cent added to the local government wage bill?

Councillor Cook: That is correct.

Marlyn Glen: But even though you knew that, the issue was not discussed.

Councillor Cook: You are talking about £11 billion-plus of money from central Government. A huge range of issues are embodied in that. No one pretends that equal pay is not significant—it is very significant—but that is not how discussions on funding arrangements with central Government take place.

Marlyn Glen: My view would obviously be that that is a mistake.

Councillor Cook: Well, if you are in Government and we are discussing it with you, we can deal with that.

Marlyn Glen: Thanks very much. I will look forward to it.

Joe Di Paola: I will answer Mr Wilson's question. We set the pay rates nationally, and we recently negotiated a two-year pay deal for the biggest group of staff. The national rates are on a single spinal column of hourly rates, which have been uprated by 3 per cent from last April and will be uprated again by 2.5 per cent from this April. That does not mean that a local authority cannot reach a local agreement with its trade unions on pay structures and grading, but they must use our agreed national spinal column of hourly rates.

John Wilson: I accept that point, but there is an issue of equal pay. When you compare a male and a female worker, you can cross local authority boundaries and use a pay rate comparator from another local authority. If one local authority is paying a particular group of workers at a higher rate than a neighbouring authority, there could surely be an equal pay claim. The same rate should be paid for equivalent work.

Joe Di Paola: My understanding is that local authorities are not associated employers in that sense. You do not get cross-border claims—or, at least, I have not seen any. If we get to cross-border claims, we will all be in extreme difficulty. At the moment, the comparator has to be within the local authority; you cannot compare across authorities.

John Wilson: At the moment.

The Convener: A number of imponderables have been mentioned this morning—for example, council tax has been frozen and there is the 4.7 per cent wage bill increase. Can you envisage a situation in which you have to ask the Scottish Government for more money?

Councillor Cook: Clearly, discussions go on with the Scottish Government all the time—including discussions on funding pressures in the context of the current economic situation. Local authorities have been mindful of huge surges in inflation during the latter part of last year. I am not directly a party to the range of discussions that take place with central Government, but they do take place.

The Convener: I was thinking specifically about equal pay and single status.

Councillor Cook: Essentially, both local and central Government are at present reconciled to the fact that that is a local government responsibility for us to manage. We accept that responsibility, and that is the basis on which we intend to proceed.

The Convener: That is interesting. Thank you.

Hugh O'Donnell: We have, understandably, heard a lot of positive noises from COSLA about its commitment to equal pay, which Councillor Cook has just reiterated, but I am a little bit

concerned about actions. There is an on-going issue. Audit Scotland has said that some progress has been made, and in written evidence that COSLA previously provided to the committee—a representative could not attend our previous meeting on the issue—it said of the cost of retrospective equal pay:

“Although a major budgetary pressure Scottish councils have chosen not to seek further funding from the Scottish Government.”

That is one element. Furthermore, 21 single outcome agreements make no reference whatsoever to equalities issues, so there is a contradiction between the two positions. Councillor Cook has stated a legitimate position in this evidence session, but there are two apparent gaps with respect to behaviour. What I am saying follows on Marilyn MacLaren’s point. A 4.75 per cent hit—

Marlyn Glen: You mean Marlyn Glen.

Hugh O’Donnell: I am sorry—I meant Marlyn Glen. Marilyn MacLaren is a name that haunts me. *[Laughter.]*

There seems to be an anomaly. We are saying very good things about the general position of COSLA’s membership, and there have been opportunities to do something in two different instances and in negotiations with the Scottish Government, but nothing appears to have been done. Will somebody explain why there is an anomaly?

Councillor Cook: I will certainly make the effort to do so.

It is important to recognise that single outcome agreements are documents that identify individual councils’ strategic priorities. There will be obvious statutory obligations on councils in respect of gender issues, equal pay and things of that nature, but they will not necessarily feature as strategic objectives in documents that are intended to be much more tailored and narrow statements of councils’ objectives in single outcome agreement timescales. That is the basic explanation. That does not mean that any statutory obligation has disappeared or that councils are less attentive to them; it simply means that they do not form part of statements.

It is fair to say that single outcome agreements are developing. Obviously, we have had the first year of them, and we are moving into year 2. I trust that there will be even greater rigour in them as we move into the second year.

Hugh O’Donnell: From memory, there were no references to equal pay in the first set of single outcome agreements either. Notwithstanding the warm words, I am getting the sense that the issue is being long-grassed and that people do not want

it on the radar—that seems to be indicated in the single outcome agreements. I am disappointed by that. I accept what you say about the structure of single outcome agreements, the concordat and such like, but it strikes me that—

Councillor Cook: I am happy to take back to COSLA and make known the view that has been expressed, but there is certainly no intention to long-grass the issue. The obligations on local authorities, even in relation to the promotion duty, are clear, and we take them seriously. The fact that they do not feature in single outcome agreement documents is simply not an indication of backsliding. We are absolutely committed to fulfilling our obligations—we have a statutory requirement to do so, and there will be no change in that—but I hear the point about highlighting equal pay in single outcome agreements, which we can take back to our organisation.

Hugh O’Donnell: Thank you very much for that.

The Convener: That is much appreciated.

Bill Kidd: Mr Pia said that Audit Scotland has no remit on policy matters in respect of local authorities. Audit Scotland’s submission states:

“Audit Scotland have no role in reviewing the budget proposals of councils”.

However, it also states that you recognise

“equal pay as a significant matter for local government”.

Its submission also says that its priorities and risk framework of November 2007 refers to

“equal pay in the section on financial planning ... the effect on employer/employee relations and the consequent impact on service delivery”.

You may be aware of Unison’s fairly severe criticism of Audit Scotland. Unison said that Audit Scotland had not

“taken on board the spirit and letter”

of the Local Government in Scotland Act 2003 and that

“The majority of councils eroded or completely wiped out their reserves in order to pay off ... their equal pay debts”

even though, at the same time,

“They were given credit for doing that ... by Audit Scotland”.

According to Unison, Audit Scotland did not recognise that those payments were made

“without the discrimination being cured”

and that in fact

“a second round of payments”—*[Official Report, Equal Opportunities Committee, 30 September 2008; c 591, 598.]*

was being made, which was damaging to delivery by local authorities.

Unison also used the phrase “systemic failure”. A number of other criticisms have been made, not only by Unison but significantly by it. How does Audit Scotland react to such criticism?

David Pia: I am glad to be able to answer that. I will ask Gordon Smail to comment on the reserves, but I hope that we have demonstrated that it is not accurate to say that we are not following the spirit of the Local Government in Scotland Act 2003. Unison’s evidence overlooked all the work that our appointed auditors do in councils every week throughout the year. We have described how, in every council annual report, auditors have drawn attention to the issue. Auditors are actively engaged with councils on the issue, so it is wrong to suggest that Audit Scotland has not looked at the matter.

Gordon Smail: As we have mentioned a couple of times this morning, we do an overview report each year. Over the years, one of the matters that we have tracked is the point about councils’ reserves. We have got behind the detail of that and we certainly know a lot more now, given the Accounts Commission’s interest in reserves, than we did five or six years ago. We know that an element of the general fund reserves that councils hold is earmarked. Going back to the most recent audited figures, from 31 March last year, we reckon that something of the order of £33 million is earmarked in reserves for equal pay in the future. That is over and above the type of accounting adjustment that Lynn Bradley mentioned in relation to the liabilities and contingent liabilities that are shown in accounts.

Bill Kidd: Given the nature of the local authority costs that are associated with discrimination, did Audit Scotland have to have the matter pointed out to it by the Parliament’s Finance Committee, or was it aware of it previously?

Gordon Smail: To repeat a phrase that was used earlier, the issue has been on our radar for quite a while. There is plenty of evidence of that. You can see it in our priorities and risk framework, which has been running for at least the last four years. Equal pay in particular—and, for that matter, the whole equalities issue—has featured in the framework, both as a financial issue and in respect of the wider consequences for workforce planning. That goes all the way through to the opportunity costs that arise for human resources departments as they wrestle with and put a lot of effort into dealing with equal pay claims and the like. Some of the other big issues for HR departments—around workforce planning, for example—do not get the attention that they require because HR departments have been drawn into equal pay. We have made that point.

As the committee has heard this morning, we produce a range of reports and we flag up the

matter in our press releases when our reports are issued. The issue has been on our radar for a while and we do not agree with the comments regarding our approach that were made in the previous evidence session. It is important to emphasise that we do the work through audit.

11:30

Lynn Bradley: Bill Kidd mentioned the assertion that reserves have been decimated. Gordon Smail has given the estimate of the amount that is included in reserves to cover potential equal pay costs. Perhaps, to put that in context, he could mention the total level of reserves, which I think is something in the order of £500 million.

Gordon Smail: That is right. The report that we publish on Thursday has the most up-to-date figures. It shows that general fund reserves across the 32 councils were £550 million at the end of March last year.

Lynn Bradley: So about 8 per cent or less of the reserves is set aside for equal pay costs. Some people may have had the view that all the reserves were going into equal pay, but that is not the case.

Hugh O’Donnell: Do Audit Scotland’s gender equality responsibilities fit into any of the auditing that it does on local authorities? In other words, does Audit Scotland have a responsibility to examine gender equality issues in a council as it goes through the audit process?

David Pia: The answer to that has two parts. One concerns the annual audit work—the routine or regular audit work—about which Lynn Bradley can say something, but we also examine equality issues within our best-value audits. We do a cycle of best-value audits in every council. That examines how well councils address their statutory equalities responsibility across the piece. Gender is just one aspect of that. Those reports do not typically consider gender equality matters specifically; they consider how a council approaches equality in the round.

We can also pick special themes for pieces of work. We did one on race equality. As well as identifying specific issues relating to race, it highlighted more general aspects—in particular, impact assessments. That report, which was published in November, indicated that councils were making good progress—I am talking generally now—on impact assessments but that those assessments were not working through well enough into their service planning and service delivery. That was a general point about councils’ approach to equality as a whole.

Lynn Bradley: We do not cover gender equality as part of the annual financial audit; it is covered as part of best value.

Hugh O'Donnell: I am just trying to be clear about this in my mind. Any given authority's application of funds to any of its activities obviously has wider social implications through its impact on inequalities within the authority's boundaries. Let us stick with the subject under discussion, which is equal pay. If, by not implementing equal pay, a local authority had a negative impact on a sector of its community—poor women and their families—would that feature anywhere in your audits? Do you have a wider social role that relates not only to what the local authority is doing financially but to the wider impact that it has on the community?

Am I making it clear where I am trying to go with my questions?

David Pia: Yes, I think so. In so far as we consider the value for money of public services, it is possible that a study could ask such questions. One of the conclusions of our study on race equality was that, although councils were developing processes for considering race equality, it was not evident how those processes were working through to have an impact on the local communities.

You could apply that question to the issue of gender equality, but we have not done so. Obviously, we have to be selective in the subjects that we examine. We refresh our study programme every couple of years following a period of consultation and discussion with various interests. The Accounts Commission makes decisions about what subjects are studied in relation to local government. It chose to do a study on race equality. It has not chosen to do a study on gender equality, but it could consider doing so.

Sandra White: You mentioned that there are two audits—the annual audit, and the best-value audit. You mentioned race equality and gender equality, which are policy objectives for councils under the equalities legislation. Do you consider those when you audit councils' performance, or is your audit more to do with financial probity than policy objectives?

David Pia: With the range of our audit work, we seek to consider both. The annual audit examines the financial aspects, although it does not focus exclusively on those, because it also examines governance and performance management. Our best-value audit takes a wider look at how the council discharges its range of functions. We also do national studies on specific themes. When we do a national study, we typically visit a number of councils—but not every council—to collect

information. That allows us to draw more general conclusions.

Sandra White: Could you focus on even one of the policy objectives or outcomes and say, "This may cost you X, Y or Z?" Could you put that in your report as well?

David Pia: Yes. Typically, our reports include information on the amount that individual councils spend, and there is often some comparative analysis of the variations between councils and an attempt to consider what they get for the money. We try to answer the questions about value for money.

Sandra White: So, when you study a council, you consider best value not just in financial terms but in terms of policy objectives such as equal pay.

David Pia: Yes.

The Convener: Can I be clear on the question of reserves? What we have heard this morning contradicts some of the evidence that we heard during the round-table discussion on 30 September. At that time, it was clearly stated that some councils had either wiped out their reserves or significantly eroded them to pay off equal pay debts. Can I have a definition of what constitutes a council's reserve? Is the figure that you gave—so many millions—the figure for all the local authorities? Could any local authority be in the position that we heard described in evidence? In other words, does any council have no reserve because all the money has been used for equal pay?

Lynn Bradley: I ask Gordon Smail to answer that. The position varies between local authorities. We have a table that shows the pattern of reserves.

Gordon Smail: The short answer is that there is wide variation. The total value across the 32 local authorities is £550 million in general fund reserves alone, but there is wide variation in the reserves that the local authorities have. I talked earlier about the extent to which we know how much of those general fund reserves is earmarked—that is, that local authorities have plans for them in the future—and how much is available to meet any unforeseen circumstances that arise. As I said, the report that we will publish later this week makes the point that some councils have very small amounts left as contingency funds. However, there is a mixed and varied picture across the 32 local authorities.

The Convener: That helps to clarify the position. The statement that we heard during the round-table discussion is not wrong, but it needs to be put in context.

John Wilson: We heard from Ms Bradley that some local authorities have put in the equivalent of 8 per cent—I think she said that it was £30 million—for liabilities in relation to equal pay. Has that figure changed over the years? For every year that equal pay claims remain outstanding, the amount will increase proportionately.

I think that the figure of £540 million was mentioned in relation to equal pay claims and that £30 million is lying in reserves to meet those claims, but only in some local authorities—not in all of them. What happens when the 30,000 cases that are currently lying sisted with tribunals are dealt with and you find that there is a massive liability on the local authority to meet those awards? Does Audit Scotland not advise local authorities—as private sector companies would be advised—to set aside money for their liabilities? The liabilities at the moment seem to be minimal in comparison with the potential overall cost of settling equal pay claims that go back to 1999—or however far back they go.

The Convener: Is there a statutory minimum amount that any local authority has to retain in its reserves?

Lynn Bradley: That is a good question. There is not a statutory minimum, but all councils have a risk policy. Most of them try to maintain around 2 per cent of their revenue budget as a contingency reserve. That is a working target for most councils.

The funding of equal pay claims comes from a number of sources. The £33 million that is tucked away in reserves for local authorities as a whole is held by only 10 councils. Other councils have money already in provisions, which is another line in the accounts where people can put the commitment. It depends on the application of an accounting standard whether it goes into a provision or whether it is held elsewhere. We as auditors look at your liability, the likelihood that you will have to pay out on the claims and how you will fund it. For some councils, the funding is in provisions and for others, it is in reserves. Some councils might not put anything aside, because the risk is so low or it is impossible for them to calculate the likely amount that they will have to pay out.

John Wilson asked whether the figure had changed. It is £33 million as at the end of March 2008. In the previous year, it was just under £11 million. The year before that, it was just under £8 million. The figure has changed substantially over that three-year period. The provision that was in the accounts for last year was £110 million. Altogether, we are looking at something like £143 million, which was set aside last financial year to pay for equal pay claims.

Malcolm Chisholm: Audit Scotland's recently published "Programme of Performance Audits 2009 to 2010" does not specifically propose work on equal pay. Is there a case for carrying out a performance audit on equal pay across the relevant parts of the public sector?

David Pia: A case can certainly be made for that. It is not in our future programme at present. Our programme essentially sets out what we will do over the next two years or so. That is not to say that new subjects do not occasionally come along and get added. Before the programme is determined, we consult widely, including with parliamentary committees and so on, and we take account of the submissions that are made to us. The final decisions in relation to local government are made by the Accounts Commission. It certainly would be possible to address the issue in due course. When we draw up the next programme of studies, we go through an exercise whereby we take account of all the major issues arising and the priorities and risks that have been identified. When we went through the process for this year's programme, we would have looked at the subject of equal pay among others. It was decided that, on balance, other subjects were more likely to be useful in getting the right impact from a national study than this particular subject.

11:45

Malcolm Chisholm: So there is no objection in principle, and a performance audit is something that you might consider. I do not know whether this committee was included in the consultation to which you referred—I have not been on the committee for very long. You might have received representations from us. Speaking for myself and, I guess, for the committee, I think that such a performance audit on equal pay would be worth doing as soon as possible. In the normal course of things, when might you next consider such subjects?

David Pia: In the normal course of events, it would be in about two years—that is when we would draw up a new programme. We would start considering the matter some months before then.

Malcolm Chisholm: Moving on from issues purely concerning local authorities, is securing equal pay a major financial pressure for other bodies, too?

Lynn Bradley: Yes. As we are aware from auditing health bodies and central Government, it is a pressure in those other sectors, too. We are aware that there are about 12,500 equal pay cases for health alone sitting with the central legal office. It is very much a concern for all public sector bodies in Scotland.

The Convener: Does Bill Wilson wish to ask a final question?

Bill Wilson: No—I managed to sneak it in earlier.

The Convener: That is fine. I invite the panellists to add anything that they wish in conclusion.

David Pia: I hope that we have been able to help you. If there is anything else that we can do, we would be very glad to assist further.

Councillor Cook: I echo that.

The Convener: I thank you all very much for attending. It helps the committee tremendously to get your input on the record, and to have a rebuttal of some of the points that were made previously. In that respect, the session has been very worth while.

11:46

Meeting suspended.

11:55

On resuming—

Scots Language (Audit)

The Convener: Agenda item 2 is consideration of a paper on the Scottish Government's Scots language audit. Does any member have a comment on the paper from the clerks?

Members: No.

The Convener: Okay. The next question is whether any issue or issues in the paper should be referred to the Education, Lifelong Learning and Culture Committee.

Bill Kidd: As I am a member of that committee, no doubt I will see what happens.

Marlyn Glen: I suggest that we raise the fact that

"provision appears more frequent in primary than in secondary schools".

We should also highlight the linked issue of continuing professional development. Those are the main issues that I would like us to raise.

The Convener: Yes. Primary schools and further education seem to be well covered, but there is a gap in secondary school provision. We will raise that with the Education, Lifelong Learning and Culture Committee and suggest that it might like to look into the matter. It seems a shame for Scots language programmes to be started in primary school and not to be continued when pupils reach secondary school, particularly when the programmes seem to be going well.

Hugh O'Donnell: The paper talks of the possibility that the Scottish Government might

"consider commissioning further research to explore attitudes to the Scots language in teaching".

Perhaps we could run that past the Education, Lifelong Learning and Culture Committee. Given the extensive debate that we have had at committee on the need for research into the subject and the liability for doing that, it might be worth while for us to raise the matter.

The Convener: We will highlight the content of that paragraph to the Education, Lifelong Learning and Culture Committee—it neatly sums up the situation—and raise the issue of secondary school provision. Are we agreed?

Members *indicated agreement.*

Meeting closed at 11:58.

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