LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 22 April 2009

Session 3

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
11th Meeting 2009, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Alasdair Allan (Western Isles) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow) (SNP)
*Patricia Ferguson (Glasgow Maryhill) (Lab)
*David McLetchie (Edinburgh Pentlands) (Con)
*Mary Mulligan (Linlithgow) (Lab)
*Jim Tolson (Dunfermline West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Paul Martin (Glasgow Springburn) (Lab)
Alison McInnes (North East Scotland) (LD)
Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Councillor Michael Cook (Convention of Scottish Local Authorities)
Joe Di Paola (Convention of Scottish Local Authorities)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Local Government and Communities Committee

Wednesday 22 April 2009

[THE CONVENER *opened the meeting in private at 10:30*]

11:29

Meeting continued in public.

Decision on Taking Business in Private

The Convener (Duncan McNeil): We will now begin the public part of today's meeting.

I welcome representatives from the Convention of Scottish Local Authorities, who are here to give evidence on equal pay in local government.

The clerk has just reminded me that, before I introduce our witnesses, I should seek the committee's agreement to take agenda item 4 in private. Do we agree to do so?

Members *indicated agreement.*

Equal Pay

11:30

The Convener: I return to my script and continue my fulsome welcome of the representatives from COSLA. I know that they have already had a busy morning. We appreciate the efforts that they have made to attend our meeting.

Gentlemen, we have received your written submission. Would you like to speak about it, or are you happy to move straight to questions?

Councillor Michael Cook (Convention of Scottish Local Authorities): We are happy to move directly to questions.

Alasdair Allan (Western Isles) (SNP): Obviously, you do not need me to tell you how long the equal pay saga has been going on. Do you take the view that it would be in the interests of councils and everyone else to identify cases that you think are strong and simply settle them at this point? Would that be possible?

Councillor Cook: We expect that all councils will carry out risk assessments of all the cases that they face and make judgments about the relative merit of those cases. Obviously, if a case is strong and persuasive, there is likely to be a dynamic that would encourage that council to consider settlement of that case. Each council in the land will consider cases on a practical basis and make judgments about individual cases.

There is a sifting process with regard to the merit of cases. Obviously, councils need to watch the public pound, and that requires them to make shrewd judgments.

Alasdair Allan: Obviously, that sifting process—which you describe as being almost a policy—will differ from council to council. Is this area something that is effectively budgeted for? Are the associated costs in any way predictable?

Councillor Cook: It is important to recognise that there are various strands to the matter. As well as the equal pay claims, there are what are called residual claims, which fall into that hiatus between equal pay settlements and the implementation of single status. There are also single status claims and detriment claims. Each of those categories contains cases of varying degrees of complexity.

Councils must carry out risk assessments with regard to the relative cost of each of those areas of potential liability and work out how they will address them. Plainly, councils are engaged, annually and on a continuous basis throughout each year, in making judgments about their budget

and always seek to address issues of financial liability that might come down the track.

Alasdair Allan: Would the task be simpler if the Equality and Human Rights Commission and the unions were able to pursue cases through representative actions? Would you welcome that as a way of thinning down the massive in-tray?

Joe Di Paola (Convention of Scottish Local Authorities): Are you talking about class actions?

Alasdair Allan: Yes.

Joe Di Paola: Anything that could be done to reduce the thousands of individual cases that are in the system would be welcome. However, the committee will understand that each individual has a right for her case to be dealt with in a proper manner. You would need to get the agreement of each individual before embarking on a class action. It would be difficult to make any agreement that might be reached among us, the EHRC and the unions universally applicable.

Obviously, there are attractions in trying to reduce the number of cases and simply sweeping 1,000 or 2,000 of them away, but we have to remember that the individual has the right to have her or his case heard in a way that they deem appropriate.

Councillor Cook: We should also recognise that there is duplication in the system. For example, the committee has received evidence on the number of cases in the tribunal system, some of which are duplicate cases that relate to one claimant, and on the situation in Edinburgh, where 3,500 claims relate to 850 individuals.

The Convener: Even if we take that into account, your figures suggest that there are still more than 20,000 people involved.

Councillor Cook: There are still a lot of cases.

The Convener: So you reject any accusation that delaying tactics to deny low-paid workers their rights have been employed here.

Councillor Cook: Ultimately, we are the representative organisation for the 32 Scottish local councils, which, as the employers, will make judgments on the legal issues in the cases that they face. I cannot say exactly what those judgments will be, but it seems to me only common sense that if the cases are persuasive and have strong merit the local authorities will be under pressure to look at settling them.

The Convener: What do you say to those who have told us that some of those 22,000 cases are undoubtedly strong? In fact, one human resources director said:

"It is a no-brainer for most councils: we cannot win these cases in court."—[*Official Report*, *Local Government and Communities Committee*, 18 March 2009; c 1815.]

Does that not suggest that delaying tactics have been employed and that the issue is less about whether these people have rights than about how the bill will be paid?

Councillor Cook: I have looked at that evidence; it was from Philip Barr, who, I think, was dealing with a series of questions that you had put to him at that point. No matter whether it is Philip or anyone else, the fact is that the City of Edinburgh Council is making judgments about what is appropriate in a particular context, the merit of cases, affordability issues and so on. I have faith in Edinburgh's ability to make those judgments—as, indeed, I have in the other Scottish local authorities who are faced with similar scenarios.

Joe Di Paola: Just to make it absolutely clear, I have never heard COSLA or any individual authority articulate any policy of delaying cases. In my view, any delay has arisen as a result of a number of technical cases that have to be heard by the tribunals. For example, one case that came to tribunal and in which I was a witness involved North Lanarkshire Council's implementation of single status—and, by definition, equal pay—agreements; another case involving Highland Council has been dealt with only recently at the Court of Appeal of England and Wales. Before individual equal pay cases can be dealt with on their own merits, a whole series of judgments and legal matters has to be addressed and legal hurdles cleared on the implementation of single status agreements by authorities and on who can or cannot have their equal pay cases heard. I am not saying that that is the only reason for the delay; I am saying simply that the matter has to be set in context.

The Convener: I am giving you the opportunity to address and counter some of the evidence that we have received. It is perhaps understandable that the accusation that I highlighted has been made, given that the language that has been used has changed over the piece. When, for example, the Finance Committee looked at the issue, there was little mention of the complexity of cases and the difficulty of settling them; it was all about costs. We note that that has changed and that people are now talking about the difficulty of the situation and so on. I put to you what we have heard from others, which is that many of the 22,000 cases are about the value of retrospective payments rather than legal points. Is that correct?

Councillor Cook: It is difficult to generalise. Some such claims are protective. The representatives of such claimants might expect them to settle in aiming for their aspirations, but claims are lodged nonetheless to protect those claimants' interests as part of the legal process.

As a basic proposition, equal pay is perfectly simple and straightforward but, in recent years, complexity has been created, partly by developing case law and statute. For example, in the amendment regulations back in 2003 on the limitation period, in the Bainbridge and Surtees cases and in the GMB v Allen case, developments took place in European law or domestic law that added complication to the picture. Local authorities are striving to address that, and have addressed it actively for a considerable time.

The Convener: Can we return to the question? Perhaps Mr Di Paola can help us. Of your lower number of 22,000 cases, how many are about the value of the compensation offer—the retrospective payment?

Joe Di Paola: The fact of the matter is that we do not know. That is why it is difficult to provide a global figure.

The Convener: Do local authorities know the answer?

Joe Di Paola: Local authorities certainly know which cases they have settled and the figures for which they have settled the historical part of equal pay claims. Of course they know that. They will have shown that in accounts that have been audited.

The Convener: How difficult is addressing that part of the problem?

Joe Di Paola: Are you asking how difficult it is to identify the total costs?

The Convener: No. How difficult is addressing the issue that people who have a historical claim for retrospective payment have been offered 40 or 50 per cent, when offering them 60 or 70 per cent would resolve their claim?

Joe Di Paola: Those people were advised by whomsoever that they should settle and compromise that part of their claim at a figure. Having done that, they have compromised their claim for that time. That is done, finished and paid for at the agreed level. However, if a council has not implemented an equal-pay-proofed pay and grading system by the end of the compromise period, its liability will continue and a different negotiation that might be at a different level will take place about the woman's claim.

If a woman compromised and settled at 40 per cent for the years between 1992 and 1996 but the council still had not put in place an equal pay system, she could make a further claim for 1996 onwards. Nothing says that she would now settle for the original 40 per cent. She might have a different expectation, as might the local authority.

If the historical bit was for whatever reason compromised and settled at a figure, it is in a box—it is gone. The authority has a legal obligation from the end of that compromise agreement until it puts in place agreed and equal-pay proofed and assessed pay and grading structures.

Councillor Cook: I am thinking about the best way to answer. As local authority witnesses have said in giving evidence, the best approach is to make progress with single status. Once single status is in place, that will resolve equality issues. Such pay and grading schemes will be proofed against further claims and will treat individuals equally.

I agree with Philip Barr, who said in previous evidence that there appears to be a relative logjam of cases in the system and that we should allow some of those cases to be worked through. We need to allow each side of the legal process to work out how to address them and to resolve the issues that they throw up.

11:45

Some cases will drop out of the system as they are settled. Given the number of cases with which we are dealing, local authorities will have to confront the issues that they throw up and make judgments on the strength of cases; councils are still wrestling with those issues. As the committee has heard, the Tribunals Service Scotland has made additional provision to deal with some of the cases that are already in the system. However, no case has yet reached a conclusion, so it would be unwise for local authorities to pre-empt decisions. Plainly, they have a best-value duty and a responsibility to watch over the public pound; those considerations are influencing the judgments that they make on which claims to settle and not to settle at this juncture. There will be claims that they will not settle because they are confident, on the basis of the legal advice that they have received, that the claims are without merit.

David McLetchie (Edinburgh Pentlands) (Con): Good morning, gentlemen. The approach that you have described is intended to achieve a single status pay structure. I understand that that will, in a sense, put a cap on claims, because we will have dealt with the problem looking forward and will need to deal only with historical claims. However, have we not been striving for 10 years to achieve single status pay agreements for 32 authorities? So far, we have 26—some agreed with trade unions, others imposed—but six are still outstanding. Is that not correct?

Councillor Cook: Yes. Twenty-six authorities have single status job evaluated schemes in place; six are expected to deliver during the next year. However, I do not recognise the 10-year

timeframe that you suggest—the picture is more complicated than that.

At United Kingdom level, an agreement was reached in 1997 that employers would respond to the aspiration for single status. However, Scotland took its own view, culminating in an agreement in principle in 1999. There was then further progress on developing an agreed job evaluation scheme. It took until 2002 to develop a scheme that was considered satisfactory by the parties, which recognised that a timescale was needed to allow them to address the issues raised by the scheme. In retrospect, all of them accept that the deadline of 2004 that they set was unrealistic.

Earlier, I alluded to the additional developments in case law that have taken place, which have given rise to new areas of potential claim. Both the Bainbridge decision and the legislative changes of 2003, which extended the potential term for a claim from two years to five in Scotland and six in England, are relevant.

All the factors that I have listed have impacted at various times. Cases in relation to potential detriment and pay protection arise out of the Bainbridge decision. That is a new issue with which councils have been confronted only relatively recently, since the decision was crystallised in June 2008 and leave to appeal was refused in December. You can see the impact that the changes have had on councils' approach. There has been a continuum of activity to respond to the issues that have arisen.

David McLetchie: Is not the Bainbridge decision the result of the ham-fisted approach that was taken to single status in the first place? The objective is to achieve equal pay, and, as I understand it, Bainbridge simply says that pay protection as a transitional measure is discriminatory. It should not have taken a genius to work out that the preservation of a system that discriminated between different classes of workers, principally by reference to their sex, would cause a problem. The single status agreement with pay protection gave rise to Bainbridge, which in effect exploded the system. Is that correct?

Joe Di Paola: When the protection agreement was reached in 1999, I was one of the principal negotiators for the trade union side. It would have been impossible to reach an agreement with the local government employers in Scotland if the trade unions had not been able to negotiate pay protection for men, most of whom were in receipt of a bonus that they would have lost. A collective bargain was struck.

A three-year period was applied to the agreement specifically and deliberately in the hope that during that time councils would implement single status pay structures, and protection would wither on the vine as bonuses were lost and jobs were redesigned. I wrote the letter that said that councils could have an extension from 2002, when the period was due to end, to 2004. I also wrote the letter in 2004 that said that we would not agree to another extension to the protection period.

No one—but no one—on either side of the discussions realised the complexity or scale of the introduction of single status or what it would mean for nearly 300,000 local government employees in Scotland. I speak as someone who has seen the issue very much from both sides during the past 10 years.

Councillor Cook: The legal advice at the time was that the pay protection approach was legitimate. People can make judgments about that; lawyers and the rest of us are wise with hindsight.

It is important that we realise that Bainbridge does not say that pay protection is necessarily illegitimate; it says that it was illegitimate in particular circumstances, because the employer had failed to take account of other material factors. In essence, the employer had failed to work out the potential cost of providing the same level of protection to female employees. That was the deficiency and that was why the court found against the employer.

David McLetchie: I understand that, and I understand the pressures that motivated the conception of pay protection. I take it that people thought, "We will have pay protection for a relatively short period, because we will then have single status and everything will be sorted out and hunky-dory." Instead of a three-year period, we have had a 10-year period, and we are still counting.

How will we pay for single status? A variety of figures have been given for the anticipated costs. A figure of £340 million features regularly, but witnesses have given the committee much higher figures. It is clear from the evidence that we have about councils' reserves that there is not enough money in the piggy-bank to pay the anticipated costs of settling historical equal pay claims throughout local government. Is that correct?

Councillor Cook: I hope that I can explain quite a lot about that. It is important that we recognise the different elements to the matter. For example, in evidence to the Parliament's Finance Committee in 2005, a figure of £560 million for retrospective equal pay claims was posited. That figure still has validity, although members will accept that we are inevitably talking about broad-brush figures.

In early 2008, the Society of Local Authority Chief Executives and Senior Managers carried out a key piece of work that sought to work out the

cost of single status across local authorities. It extrapolated a figure equivalent to 4.7 per cent of the Scottish joint council's pay bill, which put its estimate at that time at around £150 million to £200 million. Obviously, other areas of potential claim are less fully developed, but it is nonetheless possible to work out practically what the potential costs would be of, for example, the detriment issue flowing from Bainbridge. I cannot give the committee a figure for that at this juncture, but it should be possible to work such things out.

David McLetchie: For clarification, is the 4.7 per cent of the SJC's salary bill, which would lead to payments of £150 million to £200 million, an on-going revenue cost? Does that represent the impact of increasing salaries to reflect single status agreements, as opposed to the historical compensatory payments?

Councillor Cook: That is correct. It is not historical.

David McLetchie: Okay. On the historical compensatory payments that have still to be resolved, a figure of £560 million was mentioned in the 2005 report to which you alluded. What is the current estimate or range of estimates for the historical compensatory payments that have to be made?

Councillor Cook: The figure is essentially £560 million plus the implications of Bainbridge.

David McLetchie: I presume that quite a lot of claims and payments have been made in the four years since the figure of £560 million was quoted. Have those payments reduced that £560 million?

Councillor Cook: Yes. That is alluded to in our submission. Obviously, some of those claims have been met during that time.

David McLetchie: I am sorry, but I am trying to get a handle on what has still to be paid, not what has been paid. I accept that compensatory payments have been made. In 2005, the estimated bill for compensatory backpay was £560 million. Can we get a handle in round numbers on where we stand in 2009? If we started anew, what would be the best estimate across local government for what might still have to be paid?

Councillor Cook: I cannot give you a global figure for the 32 local authorities. The best thing to refer members to is probably the answer to question 3 in our submission, which explains that 22 councils provided an estimate of the costs of the outstanding equal pay claims that they still had to resolve. Members will see that a cumulative figure of £169 million was arrived at.

David McLetchie: Right—so there is a figure of £169 million for 22 councils. Ten councils did not comment. To the best of your knowledge, does that £169 million include the implications of Bainbridge?

Councillor Cook: It does not.

David McLetchie: So the figure is £169 million plus the implications of Bainbridge. Was a Court of Appeal case in England and Wales that was all about comparators alluded to? The decision seemed to be more of a procedural decision, but it seemed to have implications.

Joe Di Paola: I think that that was one of the cases that I alluded to. It involved Highland Council. Lady Smith made a judgment in a case that was heard in Scotland, but which has now been overturned by the Court of Appeal. The case involved people's ability to make an equal pay claim with or without a specified comparator; the judgment means that a specified comparator is not needed. It could be argued that it will therefore be easier to make a valid equal pay claim and that doing so will be less onerous on the claimant. More cases could therefore come into the system.

12:00

David McLetchie: I want to get this right. The figure of £169 million is for 22 councils and excludes Bainbridge, the Highland Council decision and any other decisions that may be in the pipeline. In addition, 10 councils have made no response and have given no estimate thus far. Is that a fair summary of the backpay implications?

Joe Di Paola: Yes.

Councillor Cook: Yes. That is correct.

The Convener: Mr Di Paola, you described the recent Court of Appeal judgment that overturned Lady Smith's decision in the Highland Council case. Will it reduce the ability of local authorities to stonewall and use technicalities in cases? What consequences will the judgment have for local authorities?

Joe Di Paola: With all due respect, convener, I do not accept that councils have stonewalled or tried to avoid their obligations. The judgment means that the onus on an individual to find another individual and name him—as is usually the case—has been reduced. Someone bringing a case against a council can now say, "A range of male employees are paid more than me, but my job has been evaluated as equivalent." The judgment frees up individual claimants. It makes it easier for them to bring valid equal pay claims. As I think I said to Mr McLetchie, the judgment means that authorities could face more cases.

The Convener: More cases? Will it not change the nature of authorities' legal defence? You are the expert, but my understanding is that councils used technicalities to slow the progress of claims.

Councils required a claimant to name an individual—to find a comparator.

Joe Di Paola: The case that we are discussing was brought by the GMB, which lodged claims on behalf of GMB members. The argument was whether claims could be lodged on the basis that X number of women had a claim against their council with X number of men as the comparators. Lady Smith took a view on the lengthy legal arguments that were made by both sides, and the Court of Appeal has now taken a view.

It is right to say that everyone wanted to test that point of law. As I said earlier, at least five or six points of law require to be tested in the process. The fact that that point has been resolved at Court of Appeal level frees things up to test the other points of law. That will have to happen before the logjam is broken.

The Convener: If we view the legal process over the piece—the most recent part of which is Bainbridge and the Court of Appeal decision on Lady Smith's judgment—how many cases have authorities won and how many have they lost? Is the process getting more expensive? Are more authorities losing cases in court?

The situation of local government can be compared with that of the national health service in Scotland. The NHS has been tested and it has some integrity, given the schemes that are in place. Compensation levels in the NHS have been reduced or made negligible, in contrast to local authorities, which seem to be entangled in the process. Speaking as a layperson, the situation for councils appears to be getting worse, not better.

Joe Di Paola: There are around 8,000 claims in the NHS under its single status agreement, agenda for change. Some trade union colleagues in the NHS might express a different view on agenda for change from the view that you take, convener. They do not see agenda for change as the answer to equal pay in the health service.

The Convener: Irrespective of what the trade unions think or what individuals who are caught up in the process say about it, surely recent decisions have upheld the integrity of agenda for change? In comparison, time after time, local authorities have seen their system fail to be endorsed by the legal process.

Joe Di Paola: I am sorry, but I do not agree. In the most recent case that I was involved in, the employment tribunal took the clear view that North Lanarkshire Council and other councils could implement single status based on part of the agreement. That major landmark case enabled local authorities to say that they proceeded in a proper manner. The Elias judgment, to which Mr McLetchie referred, went one way, but the case that I was involved with went the opposite way.

The Convener: You are not here to answer questions on the national health service, but you have commented on it. You move in the relevant circles, and my understanding is that the legal process has given a tick to agenda for change.

Joe Di Paola: To parts of it.

The Convener: Thank you for that—it has taken me a wee while to get that out in the open. We are comparing the national health service—which, in the legal process, seems to have come out clear and in a better position—with local government. We are trying to test whether the continued use of the courts has served local government, its employees or the public purse well. In my opinion, all the evidence that we have received suggests that that is not the case.

Councillor Cook: If there is evidence to suggest that local authority propositions have been routinely defeated in a series of cases, I would be keen to see it, because we would want to take a view on it.

To make a more general point, it has been intimated that local authorities wish to stonewall, obstruct or delay, but I want to dispel that idea: they have no desire whatsoever to do that. As I have said, we desire to make the best progress that we can. That is undoubtedly for practical reasons: dealing with the issues timeously will better assist the cause of the public whom we serve, resolve many issues for local authorities and resolve issues for our workforce, which is key. I am responsible for HR issues in COSLA, and I accept that our most important asset is the people we employ—there is no question about that.

We accept that those who are sitting around the table have political motivations—as I do—and that there is a moral proposition. I see that members are nodding. The moral proposition is that we will sort out the issue of equal pay and address gender difference in pay. The leadership of COSLA and individual local authorities are committed to that. In my experience of dealing with authorities on a practical level, they are—notwithstanding the complexity and difficulty of some of the issues—intent on trying to move the issue forward.

The Convener: We will return to some of those issues later.

Jim Tolson (Dunfermline West) (LD): To follow on from David McLetchie's point about finance, I remind Councillor Cook that COSLA's letter to the committee, which he jointly signed off with Councillor Watters, states:

"councils have to date dealt with the huge financial burdens imposed on them by the need to comply with Equal Pay legislation within the financial settlements negotiated with successive Scottish administrations."

In that context, has COSLA sought any further funding from the current Scottish Government to address equal pay and single status? Whether or not that has been done, and whether or not it has been successful, has COSLA thought about using financial flexibility from borrowing or from selling assets to meet the cost of equal pay claims?

Councillor Cook: In our discussions with central Government, we approach the issue with a global view. The funding pressures that we face—from demand-led services, the economic downturn, changes in the requirements of services, and local issues—are all part of the dialogue with central Government. However, we would not necessarily draw out a single issue and say to central Government, "Here is an item that we want to be addressed, and we want you specifically to provide us with assistance."

You referred to capital receipts in relation to sales of local authority assets. In working out their revenue and capital budgets, local authorities routinely sell capital assets and use the receipts to address all sorts of budgetary propositions.

Jim Tolson: You said that you take a global view. In that case, given that all local authorities face the difficulty of not knowing what the financial costs will end up being, would it be worth approaching the Government to discuss assets that might be made available?

Councillor Cook: Local authorities are already addressing settlement requirements in relation to some of the issues that David McLetchie raised—we have been paying out money in that regard. We accept that local authorities have an obligation to take forward the equal pay and single status agenda. Although we discuss funding pressures in the round with the Government, we accept that these matters are our responsibility and must be dealt with on that basis. That is not to say that capitalisation—the course of action that has been followed in England—has not been discussed from time to time. However, it appears that, if it were applied in Scotland, it would, in effect, work as a function of the Barnett formula, and would deliver only around £10 million, which would have a pretty negligible effect. That said, I understand that in recent discussions with the Government capitalisation was raised again as a proposition, although in the context of the general raft of issues, not just single status or another isolated issue.

Jim Tolson: I will keep a close eye on matters.

The Convener: To clarify, when did COSLA's position change with regard to its discussions with the Scottish Government? I am sure that you have apprised yourself of the evidence that Pat Watters, your president, gave to the Finance Committee in 2006, and will be aware that he made substantial representations on the cost of the process and how the Scottish Executive could help to meet it, even though it was not its responsibility to do so. Various ideas were floated at that meeting, such as writing off tax.

Councillor Cook: If I walk out of this room and someone offers me £100 for doing nothing, I might not decline the offer. In other words—

The Convener: Could you repeat that?

Councillor Cook: My point is that one never looks a gift horse in the mouth. Plainly, if resources are available, we are happy to discuss them, but the basic proposition is that we accept that the matter is our responsibility.

The Convener: There is a massive difference between your presentation of COSLA's position and the demands that were made in 2006 at the Finance Committee, which heard many ideas about how the burden could be addressed and how the Scottish Executive could help. Ironically, some of the questions were led by the person who is now the Cabinet Secretary for Finance and Sustainable Growth. When and why did COSLA's position change? Why are you not making representations about getting help with the serious burden that councils face?

Councillor Cook: There is an assertion that we do not make such representations. I think that I have already responded on that point. Obviously, we discuss funding pressures with central Government—

The Convener: Can you describe some of those discussions?

Councillor Cook: I cannot, because I am not party to them. I am saying to you that, plainly, discussions take place with central Government about the generality of funding pressures. Are those considerable? Absolutely. The funding pressures that local government has to deal with are immense, and every local authority in the country is aware of that. You are obviously drawing attention to the concordat.

The Convener: No—

Councillor Cook: I deduced that that was perhaps where your question was pointing.

As a consequence of the concordat, it is accepted that players will accept responsibility for their own spheres. That implication flows naturally from what I am saying.

12:15

The Convener: We will take evidence from the cabinet secretary next week. So that we do not ask him silly questions, it would be helpful to know whether that point was conceded. Was funding

discussed before the concordat was signed? Are the consequences of the Bainbridge decision a new burden? If so, will there be further discussions? We need to know whether people are serious about dealing with the issue and whether an evaluation has been carried out, a strategy is in place and the finance will be provided. I am certainly not convinced that a strategy is in place.

Councillor Cook: Plainly, as has been explained, local authorities' individual and global liabilities are assessed all the time. That forms part of the discussion with central Government on the broad range of funding pressures that local authorities face. However, I am not directly party to the discussions with John Swinney, so it would be presumptuous of me to say much more about them. That is the context.

Mary Mulligan (Linlithgow) (Lab): If you are not party to those discussions, who is?

Councillor Cook: The presidential team and the political group leaders in COSLA are the main representatives in those discussions.

Mary Mulligan: That is useful to know.

Some people have said that they cannot foresee the outstanding issues being resolved. However, you have attempted to give us a costing arrangement. I am concerned about the suggestion that pay and grading systems have not addressed the equal pay issues. Do you accept that, or do you believe that all councils that have introduced single status agreements have taken into account the gender issue?

Councillor Cook: No and yes. Our view is that the single status schemes address the issues. We do not accept that the schemes have further legal implications.

Mary Mulligan: So you reject the suggestion that we heard in evidence that, for example, Highland Council has not carried out a proper gender impact assessment.

Councillor Cook: Highland Council would have to account for its individual experience, but I do not accept the thrust of the general proposition.

Mary Mulligan: Would you be happy for an independent assessment to be carried out, to guarantee for us that councils are making progress in the right direction?

Joe Di Paola: We have said clearly to all our member councils that, in their discussions with their trade unions, they will not get an agreement unless their pay and grading structures are subject to equality impact assessment. To my knowledge, no council has said that it will not do such assessments. Councils know that grading structures must be equality impact assessed. Who is picked to carry out the assessment is, I hope, a matter to be agreed between the local trade unions and the authority, as the employer. There are several Advisory, Conciliation and Arbitration Service-accredited experts in the field. It should be possible to find someone who is acceptable to both sides.

Some authorities have amended their schemes based on such assessments. I am absolutely confident that no council in Scotland would attempt to introduce a scheme without carrying out an equality impact assessment. I am equally confident that our trade union colleagues would demand such an assessment. There are people whom we can go to. In the circumstances, I would always want a mutually agreed and acceptable expert.

Mary Mulligan: Do you know how many of the councils that have introduced single status have carried out equality impact assessments?

Joe Di Paola: Not off the top of my head. It would be imprudent for a council not to have done one.

An equality impact assessment is not a one-off exercise. The EHRC will tell you, if it has not already done so, that a grading structure must be continually equality impact assessed—it is a bit like car maintenance. We have to keep looking at the structure, to ensure that other impacts on it are not destabilising its gender neutrality. A council that put its scheme in place three or four years ago and was at the front end of the process will require to go through the process again.

Mary Mulligan: Will COSLA offer advice and support to councils on that?

Joe Di Paola: Absolutely.

The Convener: The committee heard that under Glasgow City Council's scheme, full-time employees get more points than do part-time employees. What is your view on that?

Joe Di Paola: I cannot comment on the Glasgow scheme, because Glasgow—as is its right—has not used the Scottish job evaluation scheme. The national agreement says only that an agreed scheme must be used, and the scheme that Glasgow used was agreed with local trade unions. I cannot comment on a scheme that is not ours.

The Convener: Enough said.

John Wilson (Central Scotland) (SNP): Mr Di Paola mentioned the Highland Council tribunal decision and the recent North Lanarkshire Council tribunal decision. Highland Council's defence was unsuccessful, whereas North Lanarkshire Council's defence was successful. What were the main differences between the cases?

Joe Di Paola: I am not a lawyer. The Highland Council case and subsequent appeal turned on a point of employment law, which was to do with whether the rules on comparators were too tight or too lax. The view was that they were far too tight and that women were being prevented from bringing equal pay cases because an unfair burden was being placed on them to find and name comparators. I think that that was the core of the case. Mr Justice Elias did not agree with Lady Smith's interpretation in Scotland. He thought that she had made too narrow a ruling about what women could do in relation to comparators, so he freed up the system.

In the North Lanarkshire Council case, Unison challenged the council's ability to bring in a pay and grading structure—I am not talking about terms and conditions—that used a particular clause in the national agreement, in what is known as the red book. The employment tribunal agreed unanimously that the council, which is not the only council to have taken such an approach, was entitled to use clause 12.2 of the implementation agreement to bring in a pay and grading scheme without agreement with its local trade unions. That is a major issue.

John Wilson: Thank you for your explanation.

What do the witnesses think about the EHRC's investigation into equal pay issues in relation to pupil support assistants who are employed by Glasgow City Council, which was announced recently? Do you envisage that, outwith the existing procedures, equal pay claims will be made that refer directly to the EHRC investigation?

Joe Di Paola: What the EHRC determines to do with its investigatory powers is entirely a matter for it. The EHRC has made it clear that it will consider the situation in Glasgow. The committee would not expect us to comment on what the EHRC will or will not do in those circumstances; that is not a matter for us. You will need to ask the EHRC about that. I do not know what will come out of its investigation. I understand that it has said that it will formally investigate the matter. It has not said that it will act against Glasgow City Council at this stage. The formal investigation will take some time.

John Wilson: I am aware of that. The EHRC has said that it will investigate the situation in Glasgow, but that investigation might—depending on its outcome—have implications for every local authority.

Joe Di Paola: We need to be careful, because it is important to differentiate the authorities that have used the Scottish job evaluation scheme from Glasgow City Council and the City of Edinburgh Council. It was open to any council to reach an agreement to use an agreed scheme. It happens that 29 of the 32 councils have gone with the Scottish job evaluation scheme, whereas Glasgow and Edinburgh have chosen not to use it. Whether the investigation will have implications for other councils remains to be seen, because Glasgow City Council has used a different evaluation methodology, which might not translate to other councils.

Bob Doris (Glasgow) (SNP): Good afternoon, gentlemen. David McLetchie got you to put on the record useful figures about the financial implications that underpin the situation. The key figure was £169 million for the continuing historical liabilities of 22 councils, plus funding for Bainbridge and other matters for which we do not have the figures—they will come out of the financial sausage machine. I am not surprised that such matters have not been settled. They are huge burdens on local authorities and on any Government that funds them.

In response to question 3, your submission states that for the 22 councils with outstanding historical liabilities that provided figures, costs range from £30,000 to £93 million. If a local authority were ready to settle, £93 million would be a big chunk out of its budget. If a former local authority employee settles for £20,000 or £30,000, is it understood that the local authority signs a cheque for that figure, or can it agree to sign cheques for £5,000 a year to spread the burden and the pain? If £93 million is a big figure for a local authority, can it spread the cost over several financial years to crack the nut of the overarching financial burden?

Councillor Cook: Ultimately, that is a matter for discussion and negotiation.

Bob Doris: Have local authorities that have settled used that approach?

Councillor Cook: I do not know.

Joe Di Paola: I say with respect that, by their nature, many such discussions are confidential and might involve compromise with the individual concerned. We do not know about it if an individual agrees with a council that she will be paid over a period, and the individual might want to keep that information confidential.

Bob Doris: If a union represented a group of workers, significant sums could be negotiated at one level without going to a tribunal. I am trying to find a way through the financial brick wall, which seems to be the biggest stumbling block. We keep hearing about legal hold-ups and legal avenues, but they seem just to be a way of slowing the onset of the inevitable pain from the huge financial burden on local authorities.

Councillor Cook: Negotiation could result in an agreement whereby people receive a settlement sooner rather than later. However, we cannot deny that individual claimants continue to have their right to pursue their claim. We can in no way override that. We must always be aware of that.

Bob Doris: I will ask a final question. I take the points about individual claimants and Action 4 Equality perhaps taking five workers here and five workers there and building up their cases, but local authorities are working directly with the unions, and large sums of money may be involved, and that could be the source of the reluctance. Does COSLA have a model that would allow it to use its expertise to help local authorities to find a way of spreading liabilities over several financial years?

12:30

Councillor Cook: Back in 2005, an effort was made to develop a national matrix that would have allowed compensatory payments to be worked out. That matrix would have been applied nationally but, unfortunately, agreement was not reached. The unions took a look at the matrix and did not like it. As a result, no progress was made, so there has been a retreat to the local proposition, with individual local authorities reconciling their own issues.

Joe Di Paola: Trade union colleagues are rightly cautious because of a judgment that was made some time ago in the case of Allen and others v GMB, involving Middlesbrough Council. The settlement that had been reached by the GMB was seen to be not in the best interests of its members. As a result, trade unions are now very cautious about reaching collective agreements on these issues. The level of caution is sky-high. Nobody wants to sign anything.

Councillor Cook: The problem was one of indirect sexual discrimination against the female members of the GMB.

The Convener: What, then, is the role for local authorities and COSLA? They are now imposing agreements because they are under a legal liability and have to take action. What would prevent local authorities from dealing directly with employees who are still in dispute with them?

Councillor Cook: In practice, that is how it works—although it may be done through the medium of the representatives of those individual employees.

The Convener: One of the reasons why the matrix idea fell through was the value that was put on it. I suspect that, if that value were higher, progress could be made in strong cases.

Bob Doris: Precisely. Local authorities are trying to settle at 40 per cent of the liabilities that claimants perceive, rather than 100 per cent. If that could be spread over three or four financial years, the authorities could perhaps settle at 60 or 70 per cent, and therefore move a lot quicker. At some point, they will have to pay the money. The convener has made good points about local authorities' increasing liabilities and legal expenses. We have to find a way through this problem.

Councillor Cook: As I say, it comes down to negotiations between individual local authorities and individual claimants, or their representatives. In some cases, the representative will be the union; in other cases, it will be Action 4 Equality or other lawyers. It may be that a mechanism for payment is agreed, but that will be for individual local authorities to resolve with individual claimants. We can do nothing to override the basic proposition that a claimant is entitled to pursue their claim.

Bob Doris: If any individual local authority contacted COSLA to ask it to show some leadership and provide a model—perhaps going back to the 2005 matrix—would COSLA be interested?

Councillor Cook: We are always more than ready and willing to provide advice to local authorities. We do that as a matter of routine. Approaches on any of these issues certainly bring out a response that is intended to be helpful to the person making the inquiry.

The Convener: I want to return to a particular point, but I think that David McLetchie wants back in.

David McLetchie: I want to follow up some points on the national job evaluation scheme. How long did it take to devise the Scottish scheme?

Joe Di Paola: That happened between 2000 and 2002 approximately. The scheme was promulgated in October 2002, so it took just over a couple of years.

David McLetchie: Was it only after the scheme had been agreed at national level that Glasgow City Council, the City of Edinburgh Council and other councils said that they were not having anything to do with it and were going to start their own schemes?

Joe Di Paola: It was some time ago, but I recollect that it did not happen quite like that. Everyone, including Glasgow City Council and the City of Edinburgh Council, was involved in the discussions about the type of scheme that we would seek to introduce and get our trade unions to agree to. Things did not happen as you describe.

Thereafter, over the course of a number of years, Glasgow City Council and the City of Edinburgh Council decided that another, pretty well-known scheme, called the London provincial scheme, was more appropriate to their job populations. They were entitled to decide that, but they did not simply consider the Scottish scheme and conclude that it did not suit them; they were involved in the discussions at the start.

David McLetchie: I appreciate that those two councils were involved in discussions. However, there is a national single status agreement and there is a national job evaluation scheme, the details of which were all tortuously and carefully negotiated over a lengthy period. Then, having gone through all that over a number of years, we reach a stage where our two largest local authorities, Glasgow and Edinburgh, say, "No, we don't like this; we're going to have another scheme." Is it any wonder that people are frustrated at the way in which the whole thing has been conducted? We have been going through some elaborate national processes for years, but then some of the key components in the national team—two of our major authorities—just say, "No, we're not having that," and start another process for another scheme.

Joe Di Paola: The Scottish job evaluation scheme—the national scheme—was never mandatory for authorities. An agreement was reached between the trade unions and the councils, as employers, that the scheme would never be mandatory. It was open to every or any individual authority to pick up the scheme, or not, as it saw fit, as long as it reached an agreement with its local trade unions. That is what happened.

David McLetchie: But one thing followed the other. It was sequential. Once the national scheme was in place, Glasgow and Edinburgh said, "No, we're going to have our own scheme."

Joe Di Paola: It happened further down the line than that. They said that later on.

David McLetchie: Well, exactly. In other words, all that time was spent on the national scheme, and no progress was being made on the local schemes. After negotiating the national scheme—even further down the line, in fact—those authorities said, "We're not having that," and started work on another scheme. Is that right?

Councillor Cook: It is a matter for the judgment of individual authorities. As Joe Di Paola says, the Scottish scheme was not mandatory—it was a decision that authorities could adopt. There was agreement that a scheme should be used, and the local authorities, having made various judgments on the matter, decided that they preferred to use—in one particular instance—the London scheme. That was a decision that they could take.

Indeed, I know that other authorities will have examined each of the schemes, including the London scheme and the Scottish scheme, and made judgments about which one it has been appropriate to pursue. The Scottish scheme has not been an exercise in vain, as your question might seem to imply. Plainly, the majority of local authorities in Scotland have pursued the Scottish scheme and by far the majority of those councils have now implemented it.

David McLetchie: Absolutely, but this is my point. All this time has elapsed, and it is no wonder that people have been frustrated at the process and have turned to Action 4 Equality, the no-win, no-fee lawyers and so on, which has resulted in 35,000 tribunal claims—they realised that no substantial progress was being made. Is it any wonder that the lawyers stepped in?

Councillor Cook: There is a slightly different context to the situation. In particular, changes to the limitation period, which I referred to earlier, were an enticement to no-win, no-fee lawyers to become engaged in the process at the time, because they could see the potential quantum of claims growing significantly. There was a growth from a two-year time horizon to a five-year time horizon, potentially. That was a much more attractive prospect to the likes of Action 4 Equality.

David McLetchie: I think that you said at the outset that the strategy for dealing with the matter was to get single status agreed, which would put a ceiling on the period for which claims were eligible, and then to deal with issues of back pay. That may be the strategy now, but it clearly was not the strategy at the time. There was a leisurely progress towards a national job evaluation scheme, and then councils said that they would have nothing to do with the national scheme and negotiated their local schemes, so the length of time until those councils that have the cap got to that point expanded. In other words, they do not—or did not—have a cap at all.

Joe Di Paola: I assure you that it was no leisurely canter towards an agreement on the job evaluation scheme. The signatory trade unions and the local authorities as employers had to agree a 13-factor scheme in huge detail almost line by line. It was a major achievement to get that job evaluation scheme agreed and then used by, to date, 29 out of 32 authorities.

David McLetchie: You and I may have to differ about what is or is not leisurely. In my view, not having finalised the matter 10 years on is leisurely and many employees will think the same. Let us not forget that the Equal Pay Act 1970 came into force, if I recall rightly, in 1975. Do we really think that the legislators who passed that act expected that, 34 years later, public bodies with tens of thousands of employees would still be arguing

about the fundamentals of equal pay? That is an extraordinary outcome, is it not?

Councillor Cook: They are not arguing about the fundamentals. The time horizons that you present are not truly reflective of the position. The Equal Pay Act 1970 came into force on 29 December 1975—that much is true—but there have been repeated changes and developments, as well as ream upon ream of legal decisions, during the entire process. That needs to be recognised. It has meant that we have had a moving target throughout that period.

The decision to proceed with the Scottish scheme was taken only in 1999. That required a gestation period, which took us to 2002, when attempts to reconcile some of the issues were activated. Even at that stage, it was recognised that the issues were much more complex than had hitherto been realised. The deadline of 2004 that had been set was overreached but, since then, there has been a continuum of individual local authorities implementing single status and making it work. Some put together and implemented a single status scheme early doors in 2005 and councils have continued to do that right through to the present.

I would certainly not want anyone to leave the conversation continuing to have the view that local authorities have no intent to take equal pay forward. They have an absolute commitment to doing that and trying to resolve the issues while acknowledging that many of those issues are massive and have become even more complex because it is a moving target. Joe Di Paola's explanation to John Wilson of some of the complex legal issues in only two cases demonstrates how problematic is the range of matters with which we are trying to deal under equal pay.

David McLetchie: I accept that the matters are complex—no one disputes that—but I question the timeframe for resolving them.

I return to answers that you gave to the convener's questions about how equal pay will be funded and its relationship with the concordat. Am I right in saying that COSLA accepts that all equal pay claims are covered by the financial agreement that was reached with the Scottish Government in the concordat and that the settlement of those claims does not represent a new funding pressure for the purposes of the concordat?

Councillor Cook: That is broadly the position—except, it has to be said, for Bainbridge. As far as the Scottish Government settlement is concerned, we are talking in excess of £11 billion. Equal pay is incorporated into that, but the Bainbridge decision itself throws up new implications and consequences.

12:45

David McLetchie: That is interesting. COSLA's position, which I presume has been communicated to the Government, is that the consequences of claims as a result of Bainbridge constitute a new funding pressure that is on the table for negotiation. Is that correct?

Councillor Cook: It is not a matter for negotiation. However, as I said earlier, there is a constant dialogue with central Government in which it is made aware of the general funding pressures across the board in local government. In that context, not only Bainbridge but other case law developments that might have liability implications would be identified and acknowledged.

David McLetchie: We need to focus a bit more on the specifics, because I think that you will find that the Scottish Government's position is that, as all equal pay claims are historical in origin and are taken into account in the financial settlements reached over the concordat period, they do not constitute new funding pressures.

Councillor Cook: That assumes that there is no on-going dialogue with the Scottish Government, which is not the case. Through that dialogue, there is a constant reappraisal of the funding pressures on us. If circumstances change, we need to be aware of what is happening, allude to that in our discussions and deal with it in the round of items that we discuss with central Government.

David McLetchie: In that case, if the president of COSLA is writing to those councils that are complaining about the cost of implementing free school meals, "All the money for that is in the settlement—you can't complain about it," is he also writing to all the councils saying, "All the money for equal pay is in the settlement—you can't complain about that either"?

Councillor Cook: My remit does not include issues related to free school meals, so I am not going to attempt to answer that.

David McLetchie: But you are talking about funding pressures in the round. The implementation of free school meals is one such pressure, but COSLA has said that it is all covered in the agreement. I am simply trying to establish from you whether all the costs for equal pay—some of which, I realise, are unquantified—are covered in the agreement that COSLA negotiated with the Government.

Councillor Cook: I think that I have explained that.

David McLetchie: I do not think that you have. Is equal pay in the agreement or is it not?

Councillor Cook: As has been explained to you, the position is that equal pay is contained in the settlement and any pressures that develop will be covered in the on-going discussion with central Government. I do not think that the matter is any more complicated than that.

David McLetchie: But I have just pointed out one example of a funding pressure on councils—namely, free school meals—that, according to the president of COSLA, is not part of the on-going discussion with the Government. Why are free school meals not part of the on-going discussion with central Government about funding pressures while, according to you, equal pay is? I do not see the logic of that.

Councillor Cook: I think that there has been a misunderstanding. You should recognise that I am not party to these discussions. Are you suggesting that some of the implications of free school meals will not feature in the discussion between COSLA representatives and central Government? My view is that they are almost certainly contained in those discussions and are acknowledged as a potential funding pressure in the round.

David McLetchie: I am not suggesting that; I am simply stating what the president of COSLA said when he wrote to all the council leaders who were complaining about the lack of funding to implement free school meals.

As far as I understand it—and no one has contradicted this interpretation—the concordat proceeds on the basis that certain things are included in the financial settlement and other things that might emerge as new funding pressures are the subject of the on-going discussion with central Government. In other words, there are certain things that have been taken into account and new factors that have not. Clearly, funding for free school meals has been taken into account; indeed, the president of COSLA has written to everyone to say as much. He has said, "It's not a new funding pressure, so you can't complain about it." I am simply trying to establish whether equal pay has been taken into account in the settlement and is therefore not a new funding pressure. I think that the question is quite simple.

Councillor Cook: I am sure that we could keep this up for some time. I think that we have given you the answer that equal pay is included. You have heard that—

David McLetchie: Exactly. That brings us back to the question that Mr Tolson asked. We have heard that all the implications of equal pay are included in the concordat. If that is the case, you are saying that when COSLA negotiated the agreement with the Government it accepted that it would pay all equal pay liabilities, notwithstanding that all the evidence that we have heard suggests that local authorities face substantial unquantified liabilities. Is that correct?

Councillor Cook: That is correct.

David McLetchie: Was that a pretty poor negotiation?

Councillor Cook: It is not for me to comment on that. As I said, I am not one of the negotiators.

The Convener: We might be able to pursue the issue with the cabinet secretary next week.

Members have a couple more questions, but I hope that we will not keep the witnesses too much longer.

Mary Mulligan: I will be brief. Which other council did not sign up to the Scottish job evaluation scheme? Did that council use the greater London provincial council job evaluation scheme, as Glasgow City Council and the City of Edinburgh Council did?

Joe Di Paola: No. South Lanarkshire Council used a derivative version of the Scottish scheme.

John Wilson: Councillor Cook said that local authorities have a "commitment" to deliver equal pay and single status. I put on record that local authorities have a legal obligation to do so. As David McLetchie said, it is taking an unreasonable amount of time to deliver equal pay. The timeframe that has been allowed to develop is partly why we are discussing, and will continue to discuss, the subject. The financial burden on local authorities will increase every year until local settlements are reached, and there is concern about whether local authorities will be able to deliver on the financial commitments that will be placed on them, within or outwith the concordat.

Councillor Cook: We absolutely accept that there is a legal obligation. We have also said that there is a matter of practical desirability, not least in the context of the financial issues that John Wilson mentioned. There is also a moral obligation. On each of those levels, we concur.

The Convener: We accept that standpoint. The cabinet secretary has said that there is a moral imperative to deliver equal pay and that the issue is women's low pay and poverty. You said that there is a moral obligation. The trade unions have also given evidence to the committee. John Swinney told me that the Government is engaged in the discussion and is working with local authorities to resolve the problem. What engagement and negotiations have taken place? When did you last meet the unions or the Government to try to make progress? What can be done?

It is frustrating that we have let the lawyers in. The situation has been likened to that of a

dysfunctional family in the process of a divorce. All the organisations from which we have taken evidence have good relationships and work together effectively. Trade unions work with local authority employers and COSLA, and the Government worked with COSLA and local authorities to reach a concordat. We have a duty and a moral imperative to solve the problem of low pay for women; however, our inability to do so suggests that there is a lack of will to make progress, or that trust has broken down and we cannot make progress.

What progress could be made? What discussions are taking place with the Scottish Government? When did you last formally meet the trade unions to try to resolve the issue, and how often does that happen?

Joe Di Paola: I will try to answer some of those questions. We meet the trade unions regularly. I certainly regularly meet—informally and formally—my colleague joint secretaries in the bargaining arena to discuss the industrial relations issues that lie between us, not least the one that we are discussing now. This is about single status and equal pay—the two are inextricably linked. The fact that authorities can reach agreement only individually on their pay and grading structures means that we cannot exercise anything other than support and encouragement from the centre. We cannot impose. We probably have 29 different models at present but, as long as a council's scheme is equality-impact assessed, we cannot say that it should not do it that way.

I will set out the approaches in descending order of importance. First, councils and trade unions have wanted to reach agreement locally. If they have not been able to do that, councils have said that they will either use clause 12.2 in the national agreement to impose pay and grading systems, or use the law to impose pay and grading schemes and terms and conditions—the 90 days and 90 days. In the hierarchy of desire, the first aim will always be to reach agreement locally. That has happened in several authorities, but the process is the slowest that I have known in 30-odd years as a negotiator. Never mind the no-win, no-fee lawyers, caution is being exercised on both sides. A series of judgments have meant that everybody takes every single part of an agreement back to their lawyers to have it checked out.

On what we can do, we can encourage and support, but it is ultimately for individual authorities to reach agreements with the trade unions, or to use the national agreement or the law to impose a settlement. We have a legal obligation to introduce equal pay. We will continue to do that as quickly as we can, but the negotiations have been the most difficult, protracted and complex that I have ever been involved in. Every time there are judgments such as those in Redcar and Cleveland Council v Bainbridge, or Allen v GMB, the process is set back. It is not a lack of will on any side that has let in the lawyers.

The Convener: So you cannot do it.

Joe Di Paola: We cannot.

The Convener: Who can, in that case? Who can break the logjam? There has been a collective failure as a result of a lack of trust and the fact that the lawyers are involved. We have just had an admission that COSLA cannot do it.

Councillor Cook: My respectful view is that "failure" is absolutely the wrong word. The evidence is that 26 local authorities have implemented single status agreements, so talk about failure does not stack up. However, no one disputes that there are issues to be resolved. There has been complexity overlaid with complexity, which has made the situation extremely difficult. I am reminded again of Philip Barr's evidence to the committee. It is always a wee bit of a glib phrase, but at one point he said that

"We are where we are".—[Official Report, Local Government and Communities Committee, 18 March 2009; c 1810.]

That sounds desperate in a way, but it is true. We must complete the rest of the single status agreements and then make progress on sieving out the issues in relation to equal pay and resolving the retrospective element. We are at the beginning of the process of sieving out those cases and trying to address them.

The Convener: Councillor Cook, you have given us no encouragement at all that there is the will, the capability or the authority to do anything about the retrospective and historical issues, even when we get the 32 local authorities linked up. I might be approaching the matter too simplistically, but if 20-odd councils have now signed agreements, why are they not starting to move on some of the other issues? It is almost a catch-22 situation—we cannot do anything until something happens or until a tribunal decision is announced. That situation has gone on for years. Three parliamentary committees have considered the issue, and the displeasure from all of them is apparent. Progress has not been good enough. How do we make progress?

13:00

Councillor Cook: My honest submission is that you must allow things to work through. I am simply one individual who has a role in this matter, but my attitude, from a local authority perspective, is that we need to make progress. We are not the only player, however: that must be acknowledged. The

tribunal system is a player, as are the unions. Collectively, people need to agree that progress will be made. That is what it is about.

This might sound like a rather curious observation but, in some ways, the number of cases in Scotland relative to the number of employees is a demonstration of the extent to which things here have moved forward compared with south of the border, where progress with single status has been altogether more patchy and more problematic. People there are in no sense whatever ahead of the curve. The fact that there are 48,000 cases south of the border is, in some ways, a manifestation of the fact that issues there have not quite begun to crystallise in the way that they have in Scotland. It is not good that there are 35,000 cases in the tribunals system in Scotland, but it is an indication that there has been some progress. We should recognise that. Now, we should work to resolve those cases. Local authorities will each consider the evidence that is before them and they will make practical judgments. In doing so, they will, when it comes to reaching solutions to deal with individual claims, seek to protect the interests of the taxpayer, the public whom they serve, the employee—the claimant—and their wider staff.

The Convener: I am not going back round the issue again, but I want to reassure you that we have asked hard questions of all those who have appeared before us publicly. We are not picking on anyone. We have met people privately, too. I was hopeful that COSLA, given its position, its relationship with Government, its experience and its capacity to give good advice, could have presented itself as an honest broker. COSLA has missed an opportunity.

I am convinced by the evidence that I have heard. People have told me that there are strong cases in the system, which are not being evaluated individually and appropriately. We need someone to grab the situation. Perhaps the cabinet secretary might be more helpful next week. As I said, COSLA has missed an opportunity to be an honest broker in the whole process. I am a bit disappointed with that.

Councillor Cook: That misrepresents our role. We are the representative organisation for local authorities. Ultimately, determination of individual issues is for local authorities, and they need to make the judgments. To be fair, I do not think that we can advance ourselves as honest brokers in this situation—we are representatives of one of the participants in a very complex discussion. The participants need collectively to move the matter forward. Without legislation that would in some way precipitate a particular scenario, it is difficult to see how matters might be advanced without working through them in the way that I have suggested.

John Wilson: Equal pay is not simply an interesting subject to discuss; the reality is that thousands of women who are employed as low-paid council workers have lost out because of the failure to settle on equal pay. On historic claims, some workers who might have been entitled to upgrading and backdating of their incomes have lost out because of the time it has taken to reach where we are now and, potentially, to settle. Workers who should have been entitled to make equal pay claims in 1999 have lost out because they have been time barred. There is a historical factor here: as I said, many low-paid workers—women in particular—have lost out in equal pay claims because of the time delay in reaching this stage.

Councillor Cook: These are sounding increasingly like political representations, rather than questions. What I have said to you—

John Wilson: I am sorry—it was a political representation on behalf of low-paid workers who have lost out because it has taken so long to get to where we are today. If it is a political representation, it is a political representation on behalf of people whose voices have not been listened to during the process.

Councillor Cook: Yes—and you have heard an explanation that there is an historical continuum and that local authorities have been working towards an end. You have also heard further personal assurances in relation to our commitment on the issue. On my commitment to achieving the goal that Mr Wilson has set out, there is no lack there. I am equally committed to that objective, but I accept that I must deal with practical issues, as does every elected member in every single local authority. Recognition is needed that, despite the apparent intractability of some issues and the difficulty of getting to where we are all trying to get, there is commitment.

The Convener: Thank you both, gentlemen, for your time here today. Your evidence is important and your views will be taken into account along with all the others that we have heard. Once again, I extend the committee's appreciation for your attendance and your evidence.

13:06

Meeting continued in private until 13:09.

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