



“Getting Equal”

**UNISON submission on Equal Pay to
HM Treasury Comprehensive Spending Review**

September 2007

Preface

Equal pay is fundamental to everything UNISON does. It has a major affect on our members lives and livelihoods, it is a key issue across all areas of our union and for all our members.

That is why we are dedicating a submission to the Treasury on it, so that it features, we hope, in the governments spending priorities up to 2010. We know that this submission is compatible with the ambitions of the Women and Work Commission, the Equal Opportunities Commission (EOC) and the government's commitment to half child poverty by 2010 and end it by 2020.

Equal pay was first debated at the TUC Congress in 1888 and the TUC unanimously supported the principle of equal pay between men and women. Now, over a century later, women's hourly average pay scandalously, is still some 17 per cent less than men's pay for full time staff.

Our union has a proud record on equal pay and is second to none. For many years UNISON has fought a lone battle on equal pay when many of the others were unwilling to take up the issue. Most of the early ground breaking equal pay legal cases were UNISON cases.

UNISON took the landmark case for North Yorkshire schools meal staff - winning £5 million for largely women UNISON members.

UNISON also took and won an equally important case for the health and ancillary members in Northern Ireland. We also went to the European Court of Justice in an attempt to protect the equal pay rights of contracted out women cleaners and caterers.

Unlike no win no fee lawyers, UNISON has always been willing to take the risky cases, the speculative cases, the high costs cases. The cases that establish principles to benefit others in years to come.

However legal cases, especially equal pay cases, can run for years and years. Lawyers can string them out, as we have found out. That is why we need Government intervention now, especially to fund the Single Status agreement in Local Government. That is why we held a national lobby of the Westminster Parliament on 10th July 2007 calling for funding to make equal pay a reality in all local authorities.

In the NHS, UNISON led the negotiations which generated the largest ever job evaluation exercise in the world and the new equality proofed pay scheme known as Agenda for Change. Although this scheme has delivered equal pay for the future, there is still an unresolved issue, even in health, about past pay discrimination.

In some private and voluntary sector organisations providing public services equal pay is not really on the radar as yet. In higher and further education work continues in implementing national framework agreements to varying

degrees of success On the plus side in Higher Education as a result of national negotiations by the end of 2008/9 pay round staff on the lowest previous grades will have increased their basic pay by 40 per cent from 2002 and the lowest clerical grade will have increased their basic pay by 38 per cent. However at local institution level in both HE and FE it has been difficult to ensure equal pay is properly addressed, indeed persuading employers to even commit to equal pay reviews has been difficult.

We have made good bargaining progress in many areas, but lack of central government funding is a problem.

We are now stepping up our legal action against employers who either don't pay women what they are worth or will not pay back pay owed to them when new structures are put in place.

We now need Government to finish the job we started and fund equality proof pay systems throughout the public services and to require mandatory equal pay audits in all sectors.

Dave Prentis
General Secretary
UNISON

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1. UNISON

UNISON is the UK's largest public service union with 1.4 million members. Our members are people working in the public services, for private contractors providing public services and in the essential utilities. They include frontline staff and managers working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector.

We have one million women members and the achievement of equal pay for them has been one of the union's priorities since inception in 1993.

2. Introduction

This submission sets out the case for why the Treasury should find extra monies to fund equality proofed systems in the public services. Thirty two years after the 1970 Equal Pay Act came in to law (1975) the gender pay gap is still not closing fast enough. Reports from the Women and Work Commission and the Equal Opportunities Commission confirm this fact. Too many public authorities are being left without support in achieving the Governments goals. As a result too many are being subject to expensive litigation which brings little immediate benefit to women who are under valued and under paid at work.

Extra funds are need for three areas: firstly conducting pay reviews, secondly funding future pay structures and thirdly paying for past discrimination.

In Local Government, where 75% of the workforce are women, there is need for funds in all three areas whilst in health the lack of funds principally concerns past discrimination and in higher and further education funding is necessary for past discrimination and future pay structures.

The Local Government Employers (LGE) estimate the current identified back pay costs at £3 billion¹ in England and Wales, but we believe they could easily reach £5 billion. Both the LGE and the Local Government Association (LGA) are seeking a relaxation of the rules on capitalisation for authorities. Many private contractors and voluntary sector providers will have inherited liabilities in addition. There are also about 3,500 local schools that are self governing and directly employ the staff.

¹ "Unblocking the route to equal pay in local government" Local Government Employers report, November 2006

In addition to extra resources UNISON would like to see a change in the legal framework to allow representative, or group actions, for equal pay.

3. Background

The Treasury have delayed the second Comprehensive Spending Review (CSR) several times and it is now expected in the Autumn of 2007 and is expected to set the spending priorities and departmental allocations for the next three financial years (2008/9-2010/11) as well as address the long term challenges to be faced, such as climate change.

The timing of this CSR, therefore, is important in equal pay terms because all European Union (EU) governments are preparing for a review of the EU equal treatment directive by the European Commission in 2010. Any progress the Government can make between now and 2010 will obviously be timely.

So far between 1997 and 2006 the gender pay gap between women and men's average full time earnings reduced by 3.5% but the gap between men's full time average earnings and women's part time average earnings did not reduce at all in that time. The current Government can be lauded for the emphasis it has placed on tackling the causes and consequences of the gender pay gap – not since Barbara Castle introduced the Equal Pay Act in 1970 has so much attention been paid to tackling it – but the Government has shied away from taking the necessary action that could substantially reduce it, particularly in the public service under its direct control. While UNISON accepts that the causes of the gender pay gap are complex, we believe that this CSR provides the Government with an opportunity to take the necessary steps to meet the key objective of closing the gap.

In one of its last acts before Equal Opportunities Commission becomes part of the new Commission for Equality and Human Rights they published a report² showing that the pay gap for full time women is 17% and 38% for part time. Taking 20 and 25 years respectively to close at the current rates of progress.

4. Equal pay and the public services

UNISON believes that there is still an unacceptable gender pay gap which has to be eliminated in order to achieve the Government's stated policy objectives on equal pay. Although the new Gender Equality Duty stopped short of requiring mandatory pay reviews, the Equal Opportunities Commission's statutory Code of Practice on Equal Pay recommends that the most effective way of establishing whether a public authority's pay

² "The Gender Agenda", Equal Opportunities Commission, July 2007

policies and pay systems are discriminatory is to undertake an equal pay review.

UNISON believes that the Government should take two immediate steps: introduce mandatory pay reviews in the public and private sector so that sex discrimination in pay systems can be clearly identified, and fully fund the outcome of those reviews to ensure equal pay in the public sector. However, the Government's current message seems to be that in the context of the CSR, no extra money can be made available for such funding.

Local Government

It is clear that many local authorities are reluctant to conduct reviews of their pay systems because there is no extra money from central Government to fund any anomalies that are uncovered. Combined with Government pressure to make annual efficiencies and improve service delivery, lack of funding for equal pay is the single most important barrier to achieving it.

Additionally it is worth noting for the CSR that Efficiency Reviews (ERs) and targets are damaging service delivery in Local Government. Information from UNISON Local Government Branches for 2005/2006 was that the highest proportion of all ER savings came from corporate services (17%) and the second highest was adult social services (15%). Forty two percent of branches surveyed from this sector believe that savings are at the expense of quality service provision. Fifty nine percent of employers surveyed said that there will be redundancies or cuts in hours as a result of ERs.

The current equal pay situation in which local authorities, trade unions and the workforce finds themselves is divisive, damaging to employment relations and unfair to service users.

Shortage of money has meant that some employers try to implement Single Status in Local Government on the cheap or even on a no cost basis. Women who should gain are losing out because working patterns/unsocial hours are cut to pay for their pay increases on basic rates. Some employers bring down wages generally, cutting other employees' pay rates, in order to avoid their equal pay legal obligations.

The local authority employers in England and Wales have told the Government that the back pay liabilities alone will cost them at least £3 billion based on up to 6 years back pay due to staff who are entitled. UNISON estimate the figure could easily be nearer £5 billion. Payments are subject to occupational pension contributions (employee and employer), Income Tax and employee and employer National Insurance. Some of this is obviously extra income for the Treasury and could offset any extra expenditure under CSR.

The £3 billion back pay bill is on top of the 4–5% increase in the pay bill that implementation is costing local authorities on average. Again, raising women's wages increases Income Tax and National Insurance for the Treasury and reduces the outlay on in-work benefits such as Tax Credits.

Under the terms of the 2004–07 NJC Agreement for Local Government Services, Councils were required to implement the Single Status agreement and achieve equal pay by 31st March 2007. On the most optimistic interpretation of the current position, it seems that no more than half of all local authorities will have complied with this. This is likely to result in further litigation of the sort that is already widespread, which has significant implications for negotiated agreements.

In addition to making funding available from central government, local authority employers would be greatly assisted by a relaxation of the stringent rules on capitalisation to help them to negotiate pay and grading reviews which are “equal pay proofed” and thereby not subject to litigation. Capitalisation is the term used for Councils seeking to acquire funds from assets they own through borrowing. In this context UNISON welcomes the fact that the Government has now agreed to raise the threshold on capitalisation amounts, but it still needs to be raised higher. The problems are that the capitalisation bid process to central government is slow and authorities are often only getting half of what they have asked for. The Local Government employers have also argued for a relaxation of taxation and National Insurance claw back on locally agreed settlements, which would help to minimise the costs. UNISON supports this proposal. In addition with 30% of the Local Government workforce being school support staff there are options to open up school reserves to help fund equal pay.

In July 2004 trade unions affiliated to the Labour Party struck an accord known as the “Warwick Agreement” and this was incorporated in to the successful 2005 Labour general election manifesto. The agreement on equal pay in Local Government was “Labour recognises that too many women in local government still suffer unequal pay. Labour will take the lead on this issue by working with local government to ensure they implement the 1997 Single Status Agreement, complete local pay reviews and tackle the problem of unequal pay including occupational gender segregation.”³

Police

A survey by UNISON in 2007 has identified that a third of police forces in England and Wales have never undertaken job evaluation. This is despite encouragement from the Police Staff Council which, when it was created in 1996, recommended that forces should ensure that their pay and grading systems were free from discrimination by undertaking job evaluation. These forces are facing the same pressures that affect local

³ “Britain is working”, National Policy Forum report to Labour Party Conference, September 2004.

government, insofar as there is no new money available from the Home Office to enable forces to address potential pay discrimination.

Higher and Further Education

The modernising pay agreements in higher and further education were negotiated to deal with low and unequal pay and recruitment and retention problems in the sector. In further education a job evaluation scheme was developed jointly by the Association of Colleges and unions and guidelines for its introduction were agreed. However, less than 15% of colleges have adopted job evaluation. Cost and a lack of expertise are significant barriers. It is therefore fair to say that further education is still rife with discriminatory pay structures. There must be some form of incentive or ring-fenced funding to move the sector on. In higher education implementation of the national agreement has been adopted by nearly all local institutions. However whilst the national framework has delivered significant increases in pay for some staff, local implementation in many institutions has been flawed, favouring academic staff and paying scant regard to equal pay principles.

Health

In health despite central funding for Agenda for Change, an equality proofed pay system for NHS staff, NHS Organisations still have problems with the historic back pay liability for past pay discrimination. Although this liability has yet to be quantified there could be significant numbers of women in the NHS who have entitlements to equal pay back pay for up to 6 years (5 years in Scotland). UNISON would prefer to negotiate a settlement of these entitlements but to date the NHS and Department of Health has taken the view it would wish to resist the claims. Tens of thousands of claims have been lodged (or are in the process of being so) with tribunals and test cases arising from this are likely to determine the actual liability of the NHS.

The same is true of private contractors in England for NHS soft services, such as cleaning and catering, who are committed to offering Agenda for Change for their staff under a negotiated two tier workforce prevention agreement.

The legal system

UNISON believes that the numerous lengthy individual equal pay cases will also place further demands on the already overstretched tribunal and conciliation services and thus have an impact on these services. The resources of ACAS have been significantly reduced recently and are now stretched to the limit in helping to conciliate these cases. The Employment Tribunals are also severely stretched; one way to ease the pressure on the Employment Tribunals would be to allow representative actions.

The ACAS Annual Report for 2006/7 reports that 25,264 equal pay Employment Tribunal claims were referred to them by the Tribunal Service, more than double the 12,393 cases in 2005/6. The new figures mean that equal pay, 24% of cases referred, is second only to unfair dismissal (34%) as a category of complaint. Many NHS equal pay cases are not being referred to ACAS by the Tribunal Service currently because their conciliation services are not required.

We will be making many of the same points to the Discrimination Law Review and pressing for Public Service Agreements (PSAs) agreed by departments, as part of the CSR, to have specific equalities commitments.

There is a considerable cost, in legal fees and staff time, to public authorities of relying on litigation to settle these issues rather than negotiations. UNISON, for example, has so far spent about £450,000 in legal fees alone on a long running equal pay claim for our members employed by Cumbria County Council. These cases still continue. If similar legal spending is replicated by public authorities across the country then it is a considerable sum that could be made available to improving services by the pursuit of negotiated settlements not litigation.

5. Conclusion

The key outcome of CSR 2007 must be specific, ring fenced, funding from central government for equal pay settlements in the public sector.