

Single Status and Equal Pay

Local Government Staff
Commision

4 December 2007

What is Equal Work

- Man & Woman do
 - Same work
 - Eg M toilet attendant & F cleaner
 - Work rated as equivalent
 - JES has analytically compared the work of the man & woman eg M refuse collector & F cleaner – both Grade 1
 - Work which is of equal value
 - M refuse collector & F clerical officer compared by a JE process by the tribunal expert

Definition of Pay

- What is Pay?
 - Basic pay
 - Holiday entitlement
 - Performance pay
 - Contractual bonuses
 - Fringe benefits
 - Overtime payments
 - Weekend enhancements
- Total package v each term
 - Hayward v Cammell Laird
 - each term

Purpose of Equal Pay Act 1970

- Rebuttable presumption of equal pay if men and women do equal work
- Eliminate SD not to achieve fair pay HL in Strathclyde Regional council v Wallace, Glasgow City Council v Marshall
- Employer must provide GMF not tainted by SD to explain difference men the man and the woman's pay

Genuine Material Factor Defence

- Elements of a GMF
 - Genuine ie not a sham
 - Material ie significant and relevant
 - Not tainted by sex discrimination
 - If no direct SD and no adverse impact no objective justification required
 - Accounts for the whole difference
 - Applicable at the time albeit only ascertained after the event
- Examples of GMF
 - Market forces
 - Productivity
 - Seniority/length of service
 - cost

Why is the Issue relevant to Councils

- National Agreement in Local Government (**Single Status**)
 - Introduce one JES to evaluate all employees
 - 1 pay spine for manual, clerical, craft, AP&T and management
 - Create harmonised T&Cs for all employees
 - Remove differential treatment of the groups of employees eg hours, pensions, bonuses etc

Single Status Agreement

31st March 2007 for implementation of Single Status Agreement: If deadline missed breach of contract claims?

- New Job evaluation schemes – outcomes have identified equal work.
- Treasury View – 46 English Authorities to be allowed to raise money to settle claims following capitalisation directions by SoS £500m
- Bonuses – Degnan v Redcar Council & Ryder & Others v Warwickshire Council Council & Redcar Council v Bainbridge (sham? Separate terms?)
- Settlement of claims by Unions scrutinised but not SD Allan & Others v GMB
- Local Government Auditor's views.

Redcar and Cleveland Borough Council v Bainbridge & Others (1)

- Female White Book Claimants comparing with male comparators.
 - Pre 27 January 2004 Claimants.
 - Post 27 January 2004 Claimant.
- Female Purple Book Claimants comparing with White Book male comparators.
- GMF defence:
 - bonus payments for productivity, attendance and wet weather payments all objectively justified
 - Implementation of single status/green book agreement provided for pay protection from 1st April 2004, ie pay frozen for employees suffering decrease.

Redcar and Cleveland Borough Council v Bainbridge & Others (2)

- **Key Issues on Appeal**
 - Could the bonuses/allowances be justified?
 - Can Claimants in higher grades compare to lower grade comparator?
 - Is the pay protection awarded to comparators objectively justified?

Bainbridge - Current Findings

- **Bonuses** - The tribunal wrongly found there was no objectively justified GMF having accepted that the productivity bonus genuinely brought savings to the Council because no productivity scheme had been developed for other workers. The employer was merely required to show that it had a GMF for the productivity scheme.
- Whether productivity schemes could be developed for other groups of staff was remitted back to the tribunal in view of some concessions made by the Council but emphasised employers do not have to construct productivity schemes for other employees in order to prove a GMF.
- **Attendance allowance** was not objectively justifiable.
- **Wet weather allowance** was objectively justifiable.
- **Comparators** - Claimants entitled to compare with lower grade comparators

Bainbridge - Current Findings – Pay Protection?

- Court of Appeal – still to decide this issue
 - Bainbridge – tainted by SD ie. women and men previously RAE but unequal pay
 - Surtees – Council could justify not extending pay protection to those groups who had not shown they were entitled to equal pay – ie not previously RAE

NB. Had a JES established previous equal work but not equal pay & was this because of SD?

Contrast manual workers already RAE and clerical/manual workers no JES, hence only prospective claims

Remedies – Equality Clause

- Application of equal pay principle immediate not progressive–
Smith v Avdel – 1991 ECJ
- Entitlement to same pay as comparator – Evesham v N. Herts. Health Authority

Time Limits and Qualifying dates for an IT claim

- **Standard case** – by 6 months from the end of the employment
- **Concealment case** – where employee did not know of unequal pay because employer concealed the fact within 6 months of the discovery or when she should reasonably have discovered the facts.
- **Disability case** – after termination of the employment within 6 months of the cessation of the disability
- **Stable employment relationship case** – within 6 months of the end of the SER
- **Concealment/disability case** – within 6 months of the latter of the two dates

Remedies - Back Pay

- **Standard case** up to 6 years back pay from date of IT claim if doing the equal work for the period.
 - From date of JES if no previous JES
 - Max of 6 years if equal work undertaken during that period eg if RAE but unequal pay

(Bainbridge)

- **Concealment or disability case** – back to the date of the contravention

Remedies

- No injury to feelings award – see Council of City of Newcastle v Allan [2005]IRLR 504 EAT
- Interest % of total award for half the period from date of lodgment to date of IT decision