

LGE Update on Progress on Local Pay Reviews and Equal Pay, July 2009

This survey took place in May and June 2009, with the aim of getting an up to date picture of local progress around pay reviews and equal pay. This information is important because negotiations in many Councils have reached a delicate stage. Understanding the extent of continuing difficulties as well as finding out more about Councils that have succeeded in dealing with equal pay will inform local and national policy discussions.

Councils were asked to tick all applicable statements. The answers summarised below are from **325** Councils in England and Wales, which represents a response rate of some **87%**. Comments are given where necessary on what the replies tell us about the response to equal pay problems.

Headlines

- Two-thirds of Councils have wholly or largely completed pay reviews or do not need to conduct them
- Nearly 80% of pay reviews have been completed with Union agreement
- Nearly 85% of pay reviews include pay protection for staff who are losing out in re-grading
- Around 29% of Councils have active Employment Tribunal cases

Main findings

57.5% of respondents have either fully or largely completed pay reviews or decided a review was unnecessary after a risk assessment. In addition, **8.6%** of Councils are outside the Local Government Services ("Green book") national pay agreement and have chosen not to conduct pay reviews. Combining these responses and applying them to the total numbers of employees involved shows that around **57.4%** of staff by headcount have either been covered by a pay review or risk assessment or are outside the national agreement.

Another significant finding is that, despite all the difficulties involved, **77.9%** of respondents that have completed pay reviews have done so with Trade Union agreement. The specific issue of back pay compensation, which has been seen as the most intractable element of the problem is less likely to have been dealt with by agreement (**36.5%**) but in most cases, Councils have been able to reach some kind of understanding with the Unions that has allowed other aspects of the pay review to be agreed. This is important because although individuals are naturally entitled to some redress for past problems, it is regrettable when arguments about this prevent the introduction of properly risk-assessed pay structures for the future. That said, **80 authorities (24.6% of respondents)** have completed or proposed deals that do not involve any back pay.

63 Councils (19.4% of respondents) have either implemented reviews without agreement or reached a difficult phase in which there is a measure of local agreement but the national Unions have not signed-off a prospective deal.

It is also significant that **84.5%** of completed reviews have involved some form of pay protection for staff who will lose out when new grading structures are implemented following job evaluation. This is important because pay protection has been subject to considerable challenge due to its potential indirect discriminatory effects. It is clear however, that transitional protection is a vital aspect of getting this sort of deal done.

The survey also shows that **94 Councils (28.9% of respondents)** have active Employment Tribunal cases. This includes cases supported by the Trade Unions and contingency fee (“no-win, no-fee”) lawyers. The survey did not ask how many active cases each Council has. In practice this figure varies from just a handful to several hundred.

Summary of results

Pay review largely completed and implemented	Number	% of 325
<i>Have fully implemented a new pay structure for <u>all</u> Green Book staff</i>	150	46.2
<i>Have fully implemented a new pay structure for <u>most</u> Green Book staff</i>	31	9.5
<i>Comment: The “Green Book” is the name commonly given to the national pay agreement that applies to about 1.1 million mainstream local government employees. In 2004, Green Book negotiators agreed a three-year programme for the completion of local pay reviews, including dealing with equal pay issues. In practice a number of councils chose to adopt a phased review to pay reviews, dealing with staff in the lower half of the national pay range first, because risk assessments suggested that the highest risks of equal pay claims lay in these groups.</i>		
And of 181 reviews largely completed and implemented...	Number	% of 181
<i>School support staff excluded</i>	7	3.9
<i>Comment: Throughout the pay review process it has been understood that including school support staff presents special challenges, not least because of the role of school governors in agreeing terms and conditions. Most recently the Government has announced the development of separate negotiating machinery for these staff. This development means that the inclusion of support staff in pay reviews by the vast majority of councils has been a good thing, because their eventual move to new terms and conditions will be less disruptive, being based on very recently evaluated and graded posts.</i>		
<i>Implementation includes pay protection for some staff</i>	153	84.5
<i>Implemented by agreement with unions</i>	141	77.9
<i>Implemented without agreement (e.g. dismissal and re-engagement)</i>	36	19.9
<i>Comment: Where no agreement is reached, employers of course have the option of varying contracts unilaterally by dismissal and re-engagement, provided proper procedures are followed. In practice, most employees tend to accept the new contracts offered to them prior to any dismissal and unilateral variation does not often need to be used.</i>		
<i>Back pay dealt with mostly via individual COT3s</i>	36	19.9
<i>Comment: A COT3 is an individual compromise agreement brokered by ACAS. These agreements give individuals a payment that is likely to be less than they might achieve through a Tribunal case and also ask staff to waive their right to make certain additional claims. Such compromises have been tricky to work out in practice. After the so-called Allan case, it has been necessary to ensure that staff are given full information on their potential losses. The key advantage is that the involvement of ACAS brings some third-party impartiality to the situation.</i>		
<i>Back pay dealt with by agreement</i>	66	36.5
<i>No back pay element</i>	64	35.4
<i>Have active tribunal cases</i>	52	28.7

Pay review not completed (base = 325 responses)	Number	% of 325
<i>Council is outside the national agreement and chose not to conduct a review</i>	28	8.6
<i>Comment: 44 Councils are officially opted-out of the national pay agreement, mostly in the South East and East of England. In the event, some of these Councils decided to conduct pay reviews in any case as a matter of good practice.</i>		
<i>Decided following a risk assessment that existing pay structure did not need to be reviewed</i>	6	1.8
<i>Comment: The 2004 national agreement included provision for Councils to declare their pay systems fit for purpose following a risk assessment. Very few seem to have taken this route in practice.</i>		
<i>Review underway but stalled over processes such as Job Evaluation</i>	37	11.4
<i>Comment: At an early phase of the pay review process, many Councils had difficulties over Job Evaluation. There were problems for some in getting Union agreement to use a scheme other than the "Green Book" national scheme. Some Councils also found the whole process difficult and bureaucratic. It would appear that some Councils that began the pay review process late are still experiencing some difficulties.</i>		
<i>Review underway but not at a critical phase</i>	38	11.7
<i>Review has reached an advanced stage with a deal that is acceptable to local union officials but has encountered problems or delays at national union level</i>	27	8.3
<i>Comment: This is the most sensitive situation that a Council can find itself in with regard to equal pay. In response to various key bits of litigation, the Unions set up national processes for assessing and signing-off deals that are developed by local negotiators. Inevitably, this is a difficult and time-consuming process that can put a lot of goodwill at risk on both sides. A number of Councils are finding it difficult to plan their future resources in the absence of a new pay structure and are considering dismissal and re-engagement as an option.</i>		
<i>Council has completed a review and/or implemented the results for the workforce only up to a certain level of the old grading structure and has now begun or is soon to begin the second stage of a phased review.</i>	9	2.8
And of 111 reviews underway (where information given)...	Number	% of 111
<i>School support staff excluded</i>	4	3.6
<i>Back pay dealt with mostly via individual COT3s</i>	19	17.1
<i>Back pay dealt with by agreement</i>	5	4.5
<i>No back pay element</i>	16	14.4
<i>Have active tribunal cases</i>	42	37.8
<i>Other (mainly new unitary councils)</i>	5	1.5
<i>Comment: A number of new unitary councils came into being on 1st April 2009, inheriting pay structures and pay reviews in different phases of completion. This has naturally led to some delays in completing the process.</i>		