

Gaining control of equal pay:

The Neath Port Talbot experience

Equal Pay Conference
Wednesday 11th March 2009



Close the Pay Gap is a partnership between the Welsh Assembly Government, the Equality and Human Rights Commission and the Wales TUC. The partnership campaigns to narrow the pay gap between women and men in Wales.

Introduction

As the recession deepens, public authorities are increasingly focussed on good governance. Background uncertainty requires all of us in the public sector to take stock of the risks we face. One key risk is that of litigation arising from employment practices and, more specifically, the risk of equal pay claims.

The situation faced by local authorities in the north-east of England - defending thousands of claims from no-win, no-fee lawyers - is a concern for us in Wales. None of us can afford our costs to be spiralling out of control and we need to make the most of every opportunity to safeguard the future of our services and workforces. This is especially true in the midst of economic downturn.

This short paper describes the experience of one Welsh local authority, Neath Port Talbot, in attempting to introduce a new fairer pay structure and to protect the authority from the risk of litigation. A research team has worked with NPT to draw out both the issues and the steps that contributed to their success in addressing equal pay issues. A summary is presented here so that we can learn from each other across the Welsh public sector.

The NPT equal pay story

NPT was the first Welsh local authority to settle the back pay element of its equal pay liabilities. In reflecting on why it decided to prioritise equal pay, NPT identified the following factors:

Good Governance

NPT is the 8th largest local authority in Wales employing 10,217 staff. Over 72% of these are women. The council is high performing, having won excellence awards in a number of areas.

The authority has many higher indicators than the rest of Wales in terms of poverty, including people receiving incapacity benefits and income support. Disposable income per head is less than elsewhere in Wales and 19% of NPT areas fall within the top 10% of most deprived areas in Wales according to the Welsh Index of Multiple Deprivation.

NPT residents are particularly dependent on council services. Many of these are delivered by low paid, part-time women workers who also live locally. The residents, staff, council tax payers and voters are all the same people. Decisions on council tax levels, service quality and staff remuneration are therefore subject to the closest scrutiny. Reputation is paramount.

So, in terms of good governance, the leadership and senior staff at the council agreed that the existing pay inequalities had to be dealt with effectively. The inequalities were not generated by the current leadership at the council. In fact, in common with other public authorities, they were the inherited results of flaws in previous pay systems. Nevertheless NPT decided to take responsibility and to take action.

The decision rested on the commitment to being a fair employer and the political will to devote the considerable resources required to deliver equal pay. Central to this was the trust established between elected members and the senior management team at NPT. In addition the leadership identified trade union engagement and involvement, from the outset, as an essential prerequisite for success.

Most of the staff working for the council also live within the local authority area. The people that work for them are also the people they serve so what's good for the staff is also good for residents. The leadership took this into account in addressing the broader issue of the benefits and well-being of NPT as a community.

The research identified the benefit to the community following the payment of equal pay compensation. The women interviewed spent their compensation within the local economy to renovate homes, repair cars and settle debts.

Risk

Despite thirty years of the Equal Pay Act many employers are yet to tackle pay inequality. The risk of litigation has been brought in to sharp focus by the volume of cases lodged at employment tribunals and the risk of no-win, no-fee activity. Between 2005 and 2007 over 245,000 equal pay claims were lodged with tribunals in England and Wales. NPT were concerned to avoid mass litigation and the accompanying financial disaster.

The leadership at the council decided to invest considerable, but managed, resources into settling equal pay rather than risk costs spiralling out of control as a result of processing claims and settling them or going to tribunal.

Funding and Capitalisation

In 2006 the Welsh Assembly Government confirmed that Capitalisation Directions could be considered for equal pay compensation claims. NPT applied for a direction to help them fund (via borrowing) their equal pay compensation claims. They were afforded the opportunity to borrow up to £10.6 million and pay it back over 20 years. Capitalisation remains an option for other authorities wanting to settle back pay.

The Welsh Assembly Government has set out the criteria for approval :

In addition to the usual information required to satisfy the affordability tests, all back pay capitalisation requests must include the following:

- *A statement to describe the basis for the calculation of the total cost of the back pay due to employees or former employees*
- *A statement to demonstrate the extent to which the authority is able to fund the cost of back pay by the use of reserves or other funding streams e.g. existing revenue budgets*
- *A statement to explain the extent to which the authority is able to fund the costs of back pay by the use of capital receipts (subject to a direction being issued)*
- *The effect on council tax levels if capitalisation is not forthcoming or is approved at less than required e.g. at say 50% of the total requested for capitalisation*
- *The financial year(s) in which expenditure requiring capitalisation is expected. Note a capitalisation direction will only be considered for expenditure within a particular year. However 2 separate requests can be made if expenditure on back pay occurs in different financial years.*

(Capitalisation Directions: A Guidance Note for Local Government in Wales, Local Government Finance Division, Welsh Assembly Government July 2008)

Industrial Relations

The Local Authorities National Agreement to introduce equality-proofed pay systems was due for implementation in April 2007. NPT were keen to meet the implementation date with an agreed settlement offering best use of money and resources.

Relations with the unions were good and both sides agreed to take a collaborative approach, sharing data, expertise and legal advice as the process developed.

How NPT went about addressing equal pay

By 2005 NPT had reviewed their current pay system and concluded it did not meet their aspiration for a fair and lawful pay structure, particularly in relation to the bonus scheme. This had run throughout the last thirty years, almost exclusively benefitting men.

NPT calculated back pay using benchmark jobs and an average bonus figure, backdated over 6 years, as a basis for comparing women and men's pay and drawing up a payment matrix for settling back pay.

"We calculated that (the payment matrix) represented about 2/3 of what somebody would have had under their full entitlement if they had gone to a tribunal, but we also recognised that this represented a settling down in a lot of cases so what we said to staff was that we are going to give you this as an immediate payment, we are not going to go through tribunal and it represents a reasonable settlement. Not a full settlement."

Graham Jones, Head of Human Resources, NPT.

The maximum an employee could receive was £7,500 net following Income Tax and National Insurance deductions. NPT paid these deductions at source on behalf of the employees. A total of just over £6million net was paid in settlement to 2,388 employees.

The council encouraged take up of the settlement by making all entitled employees aware of the offer. All absent staff were contacted including staff on maternity leave, career breaks or on sick leave. This applied to staff who had left up to a year previously even though any claim could only have been made within six months of leaving.

Line managers received training in how to explain the offer, and employees were encouraged to consult their unions.

Ten 'signing days' were arranged for March 2007. This involved 200 staff per day attending a briefing by the employer, the trades unions, and ACAS. If employees decided to accept the settlement, they signed an ACAS waiver agreeing not to take a retrospective equal pay case, and subsequently collected an individual settlement cheque.

As a result of the process and measures designed to increase inclusion, 99.6% of those staff offered settlements, signed compensation agreements and received payments.

Subsequently NPT has negotiated and reached agreement with the unions on a new pay and grading structure for the future.

Success Factors

The researchers who carried out the NPT case study identified a number of success factors that could be replicated by any public authority wanting to effectively deal with equal pay. These include:

- Leadership and commitment - a shared commitment to resolve the issue between staff and board or executive leaders underpins a successful outcome on equal pay.
- Partnership working - allied to the leadership commitment, involvement of trade unions and ACAS as active partners increases engagement and keeps progress moving.
- Pragmatism and persistence - describes the approach required to see the process through to a solution at every stage.
- Capacity - equal pay reviews take time, money, staff resources and expertise but building capacity in these areas is essential. Expertise can be bought in or shared between organisations.
- Transparency and communications - sustaining the partnership approach takes effective communication at all levels.

Benefits

The case study of NPT has identified early benefits of the settlement in terms of the council's reputation, industrial relations and the financial impact on low paid employees.

The effect on reputation is perceived by stakeholders as a virtuous circle. The authorities taking a lead on equal pay issues earn a reputation for being good employers, investing in services and managing finances well.

"Our perception... of NPT at that time was that it was a well-led authority, a well respected Leader, who was in good control of the political agenda and it had a good strong Chief Executive... and good people underneath in management terms."

Welsh Assembly Government Representative

The process of working together to tackle pay inequality at the council has strengthened the good relationship between management and the unions. Involvement throughout the exercise has built expertise and trust that is now being deployed in developing and implementing a new pay and grading structure for the future.

"There's got to be trust on both sides. If either side is trying to put something over the other it will literally never work. We started with a blank piece of paper and there were legacy issues and we had to put them aside. We had to say look there's the prize and make sure we focussed on that."

Union Representative, NPT

The employees reported using their back pay settlements to pay off debts, or renovate homes, repair or buy cars etc spending their money within the local economy.

"I had £6,500. Thrilled to bits that I got so much... I had damp in the dining room so I got a builder to hack it off about a metre high... and a new kitchen."

Kitchen Assistant, NPT

"Low paid workers had been struggling for a number of years...many paid off outstanding credit cards and loans...and could be debt free for the first time in years...some were skipping down to the payment centres...it feels like we've really bridged the poverty gap in NPT."

Union Welfare Officer, NPT

Conclusion

In conclusion, public authorities in Wales can either opt for continued uncertainty and the risk of spiralling litigation and costs, or, for confidence in a fair pay system, enhanced reputation and resources that are secure from legal threat.

The Close the Pay Gap Campaign would like to thank everyone who participated in the Neath Port Talbot case study project, particularly staff at NPT. We would also like to thank the researchers Alison Parken and Adele Baumgardt.

For further information please contact:

Sue Dye, Equality and Human Rights Commission
sue.dye@equalityhumanrights.com

Derek Walker, Wales TUC
dwalker@tuc.org.uk

Steve Chamberlain, Welsh Assembly Government
stephen.chamberlain@wales.gsi.gov.uk