
NORTH AYRSHIRE COUNCIL

17 November 2020

Audit and Scrutiny Committee

Title: Equal Pay Claims

Purpose: To inform the Committee of the findings of the Audit Report on Equal Pay in Scottish Councils and provide an update on North Ayrshire Council's position on historic and current equal pay claims.

Recommendation: That the Committee notes the content of the Accounts Commission report on Equal Pay in Scottish Councils and the Council's position in relation to equal pay claims.

1. Executive Summary

- 1.1 The Accounts Commission published a report at the end of June 2020 titled "Equal Pay in Councils – Impact Report". This report followed up on the Accounts Commission's previous performance report "Equal Pay in Councils" published September 2017.
- 1.2 This report provides the Committee with more detailed information on the historic and current position in relation to equal pay claims against North Ayrshire Council, and our approach to ensuring equal pay is maintained.
- 1.3 The key points to note are
 - Historic equal pay claims almost resolved (96%)
 - New equal pay claims submitted April 2019 are being defended by the Council, however these are still at a very early stage in relation to litigation.
- 1.4 The Council and its legal representatives continue work to settle historic claims and to resolve recent claims.

2. Background

- 2.1 The background to Equal Pay claims is substantial, however can mainly be considered in three "waves".
- 2.2 The first wave claims covered the period up to the 27th July 2007, before the new pay and grading structure was implemented. The majority of first wave claims were settled during 2007/08 and all first wave claims were concluded by 2013.

- 2.3 The second 'wave' claims related to pay preservation. On implementing the revised pay and grading structure employees who were downgraded in pay were 'red-circled' and their pay was preserved for a period of three years. This was believed to be a legitimate action with the aim of lessening the impact of the pay reduction. The Council received 517 valid claims in relation to this, on the basis that the pay preservation only served to perpetuate the unequal pay for a longer period. The Council worked with the Trade Unions to agree a settlement package which was detailed in a 'Memorandum of Understanding' signed off by the Council, the Trade Unions and their Solicitors on the 25 January 2018. As noted in Exhibit 2 of the Accounts Commission report, the Council has spent £1.5m on the equal pay since September 2016.
- 2.4 Of this second wave, there are 10 outstanding claims. All 10 claimants are now unrepresented, as Thompsons (the Trade Union solicitors) are no longer acting on their behalf. These claims will be progressed to Employment Tribunal and will either be struck out if not actively pursued, or progress to a preliminary hearing. The outstanding claims are valued at £20,000.
- 2.5 Exhibit 1 in the Account Commission report highlights that we have had a 37% reduction in equal pay claims since the 2017 report. We have concluded 96% of these second wave claims. Unfortunately, we now have a new further set of claims or a 'third' wave, and these claims are included in our current number of cases, demonstrating only a 37% overall reduction. A total of 381 third wave claims have been submitted from a variety of employee groups.
- 2.6 These third wave claims seek to challenge the SJC Job Evaluation Scheme as not being fit for purpose. These claims were submitted during April 2019. The Council has taken advice from an external Solicitors with significant experience in this field.
- 2.7 At this stage it is not possible to estimate the value or cost of these third wave claims as we do not have comparator posts. Once the claimants' solicitors provide this information, we will seek further legal advice and gain an understanding of the views of the Employment Tribunal before we can prepare any calculations.
- 2.8 Equality and Equal Pay are important to the Council continuing to be "Fair for All", to this end we:
- Publish our Equal Pay Statement on our website
 - Publish our Gender Pay Gap figures annually. Our gender pay gap for 2019/20 was 1.75%. The most recent (2019) national survey (ONS) of UK employers showed an average gender pay gap of 8.9%, and the average for Scottish Councils was 4%, so we are significantly below these benchmarks.
 - Have been part of a shadow group for 'Close the Gap' in relation to ensuring our policies and procedures work to address women's inequality.
 - Have implemented and use the most recent version of the SJC Job Evaluation Scheme (Version 3)
 - Have Equality Impact Assessed our Pay and grading structure to account for the implementation of the Living Wage hourly rate.

3. Proposals

- 3.1 That the Committee notes the content of the Accounts Commission report on Equal Pay in Scottish Councils and the Council's position on current equal pay claims.

4. Implications/Socio-economic Duty

Financial

- 4.1 The Council has made provision for completion of the second wave claims, and legal costs associated with the new claims. There is currently £147K provision available for equal pay remaining payments and legal fees. No other provision has been made for any future liabilities in relation to the third wave claims at this time. There is a risk that further provision maybe required for the new claims should they result in a settlement. Currently there is no basis on which to make any further financial provision due to the lack of information currently. The situation will continue to be monitored.

Human Resources

- 4.2 Settlement of outstanding equal pay claims will resolve historic issues in respect of pay differentials. The new claims highlight the importance of ensuring a robust job evaluation process is in place in order to evidence equal pay is maintained.

Legal

- 4.3 The remaining second wave cases have been referred to the Employment Tribunal to ensure a resolution is reached. The third wave claims are currently in the early stages of the Employment Tribunal process. The cases have been submitted following the Glasgow City Council case, however, are not truly comparable as Glasgow City Council did not implement the SJC Job Evaluation Scheme.

Equality/Socio-economic

- 4.4 Ensuring equal pay for work of equal value is key for gender equality.

Environmental and Sustainability

- 4.5 None

Key Priorities

- 4.6 This report supports the Council Plan Priorities 2019-2024 by ensuring good procedures and governance arrangements are in place.

Community Wealth Building

- 4.7 None

5. Consultation

- 5.1 Consultation in relation to the settlement of equal pay claims has taken place with the Trade Unions.

Fiona Walker
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For further information please contact **Fiona Carlyle, Snr Adviser (HR)**, on **01294 324616**.

Background Papers

Appendix 1 - Accounts Commission Report – “Equal Pay in Scottish Councils”, June 2020

Equal pay in councils

Impact report

ACCOUNTS COMMISSION 

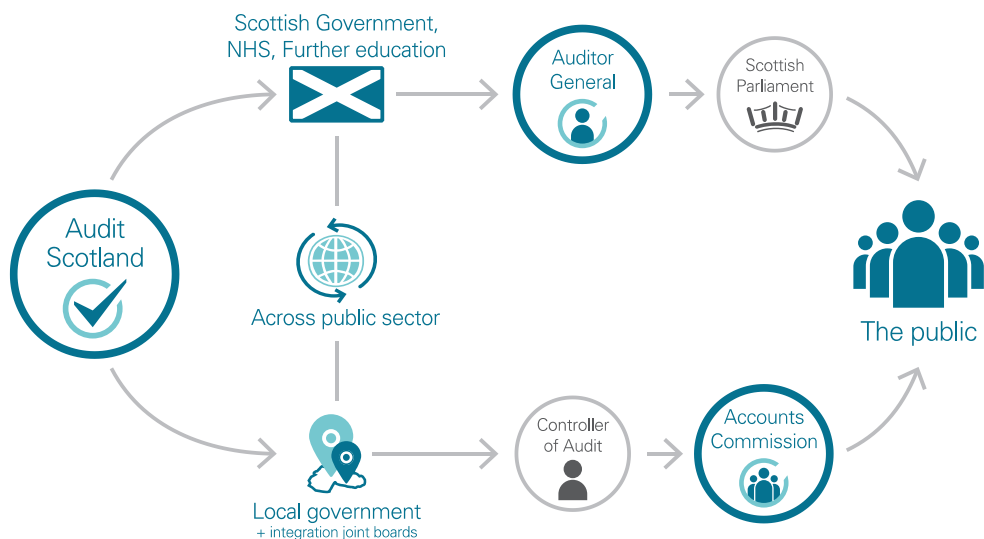
Prepared for the Accounts Commission

June 2020

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- The Auditor General is an independent crown appointment, made on the recommendation of the Scottish Parliament, to audit the Scottish Government, NHS and other bodies and report to Parliament on their financial health and performance.
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- Audit Scotland is governed by a board, consisting of the Auditor General, the chair of the Accounts Commission, a non-executive board chair, and two non-executive members appointed by the Scottish Commission for Public Audit, a commission of the Scottish Parliament.



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- reporting our findings and conclusions in public
- identifying risks, making clear and relevant recommendations.

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Introduction

1. This report summarises the impact made by the Accounts Commission's performance audit '*Equal pay in councils*' published on 7 September 2017.
2. This audit examined equal pay in local government, focusing on five themes:
 - how councils implemented the Single Status Agreement (SSA)
 - how much councils had spent settling equal pay claims
 - how councils demonstrated that they were dealing effectively with equal pay claims and minimising future risks
 - how effective the governance and oversight arrangements of the SSA were
 - what lessons could be learned for the future.
3. The audit did not investigate councils' job evaluation systems or consider individual employee terms and conditions at councils. It also did not look at individual claims or make audit judgements on past litigation.
4. The audit found that implementing the SSA was a complex process that required all councils to undertake a large-scale job evaluation exercise. Councils underestimated the challenges involved and all but one missed the agreed implementation date of 2004. It was not until 2010 that all councils in Scotland had single status in place. This was 11 years after the agreement was signed, with implementation taking twice as long as initially planned.
5. There had been a lack of collective national leadership to overcome the challenges and address equal pay issues in a timely way. Councils initially worked on the basis that they could offset the costs of implementing single status with savings from changes to employee conditions and by improving employee productivity. Councils received no additional funding to implement their new pay and grading structures. In reality, single status brought significant costs and some councils and trade unions found themselves balancing the risk of industrial unrest with affordability. This meant that some of the approaches taken by councils, done in agreement with local trades unions, when implementing single status did not always prioritise pay equality and were later found to be discriminatory.
6. Councils sought to compensate workers who had historically been unfairly paid by offering payments if they signed compromise agreements. Councils paid around £232 million to approximately 50,000 workers in this way. Some people refused the payments, as the payments they were offered were often of a relatively low value compared with the difference in pay over time. Even while councils were implementing single status, they continued to receive thousands of equal pay claims for historical pay discrimination.
7. All councils received equal pay claims after implementing single status. There were many reasons for these claims, for example claims against pay and bonus protection given to predominately male workers and discrimination in job evaluation systems.
8. The audit found that between 2004 and 2016, around 70,000 equal pay claims had been lodged against councils. The cost of compensation agreements and settling claims, along with legal fees, amounted to around £750 million. The number of claims made against councils varied widely. Some of this variation could be explained by how actively 'no-win no-fee' lawyers had encouraged claims in different council areas.
9. At the time of completing the audit, there were almost 27,000 live equal pay claims, with the potential for individuals to still make new claims against councils. The audit stressed that councils needed to be confident that they have fair and

transparent pay arrangements and take necessary action, such as regular equal pay audits, to deliver pay equality in line with their public sector equality duty. The audit also stressed that elected members need to continue to oversee, scrutinise and challenge councils' approaches to delivering equal pay and reducing the gender pay gap.

Raising awareness and communication of key messages

Media coverage

10. At publication, the report achieved extensive media coverage across a mix of national and local print, television and radio. There were extensive articles in the *Herald*, *Express*, *Times* and *The National*, and features in the *Metro*, *i* and the *Record*. It was a lead story on BBC Online's Scotland page and the STV website and featured on news bulletins for both channels. Two local radio stations carried bulletins on the performances of councils in the North-East and Fife.

Downloads

11. The report has been downloaded around 4,359 times. The podcast has been downloaded 289 times.

Parliamentary consideration

12. Although the audit report was not formally presented to any of the Scottish Parliament's committees its content generated significant parliamentary interest.

13. In October 2018, we received correspondence from Linda Fabiani MSP (via the Public Audit and Post Legislative Scrutiny Committee) making reference to a *Sunday Herald* article on the 30 September 2018 that reported that many Scottish councils were settling equal pay cases by making compensation payments, which are not pensionable, rather than paying back pay. Linda Fabiani's concern was that this approach minimised the pension entitlement of claimants. On 5 December 2018, Graham Sharp, Chair of the Accounts Commission responded to Linda Fabiani giving a commitment that we would consider the extent to which future equal pay settlements are being made on a compensation or back pay basis in this impact report.

14. On 12 December 2018, the subject of equal pay was discussed at length with the Local Government and Communities Committee during the joint Accounts Commission and Audit Scotland briefing on the *Local government in Scotland: Financial overview 2017/18* report. The Committee's official report is available [here](#).

Significant developments since September 2017

15. At the time of our last report Glasgow City Council had received 22,730 equal pay claims, with 11,065 of those still live as at 30 September 2016 (40 per cent of the total number of live equal pay cases in Scotland at that time). By March 2019 the number of live claims lodged against the council had increased to 16,270.

16. The determination of court cases against Glasgow City Council and the council's subsequent response in settling equal pay claims has been the most significant development around equal pay since publication of our 2017 audit report.

17. The background to these developments is that in 2006, when implementing the SSA, rather than adopting the 'red book' job evaluation system followed by most local authorities, Glasgow City Council opted for a more bespoke solution called the Workforce Pay and Benefits Review (WPBR) system.

18. The WPBR included a three-year payment protection arrangement for men who lost out on its introduction. While the provision was consistent with the SSA, when comparing jobs it applied more to predominately male-dominated jobs than to predominately female-dominated jobs.

19. Campaigners also claimed that workers in traditionally female-dominated roles, such as catering or home care, were paid up to £3 an hour less by the council than those in male-dominated jobs such as refuse workers or grave diggers.

20. In 2017, two judgements at the Court of Session found that the council's payment protection discriminated against women workers and that the council has failed to provide sufficient evidence to indicate that its WPBR Scheme was equal pay compliant.

21. On 6 February 2020, the Controller of Audit published an [update report](#) on the council's progress in managing and funding equal pay settlements.

22. The Controller of Audit reported that by the end of August 2019, over 98 per cent of the equal pay claims made against the council had been settled and payment made. The final settlement cost to Glasgow City Council was £505 million. At the end of November 2019, there were approximately 630 equal pay settlements still outstanding: 480 of these were with claimants whose representatives are not those with whom the council has reached a settlement agreement. An additional 150 claims have been difficult to finalise, for example, where claimants have not returned signed agreement forms or where the claimant is now deceased and the council is working with their estate/executor to finalise the settlement.

23. Glasgow City Council's equal pay settlement during 2019 does not fully extinguish its equal pay liability. There remains a potential ongoing risk of an equal pay claim from any employee during the period from 1 April 2018 up to the point at which the council implements a new pay and grading structure. It is working to implement its new pay and grading structure by April 2021.

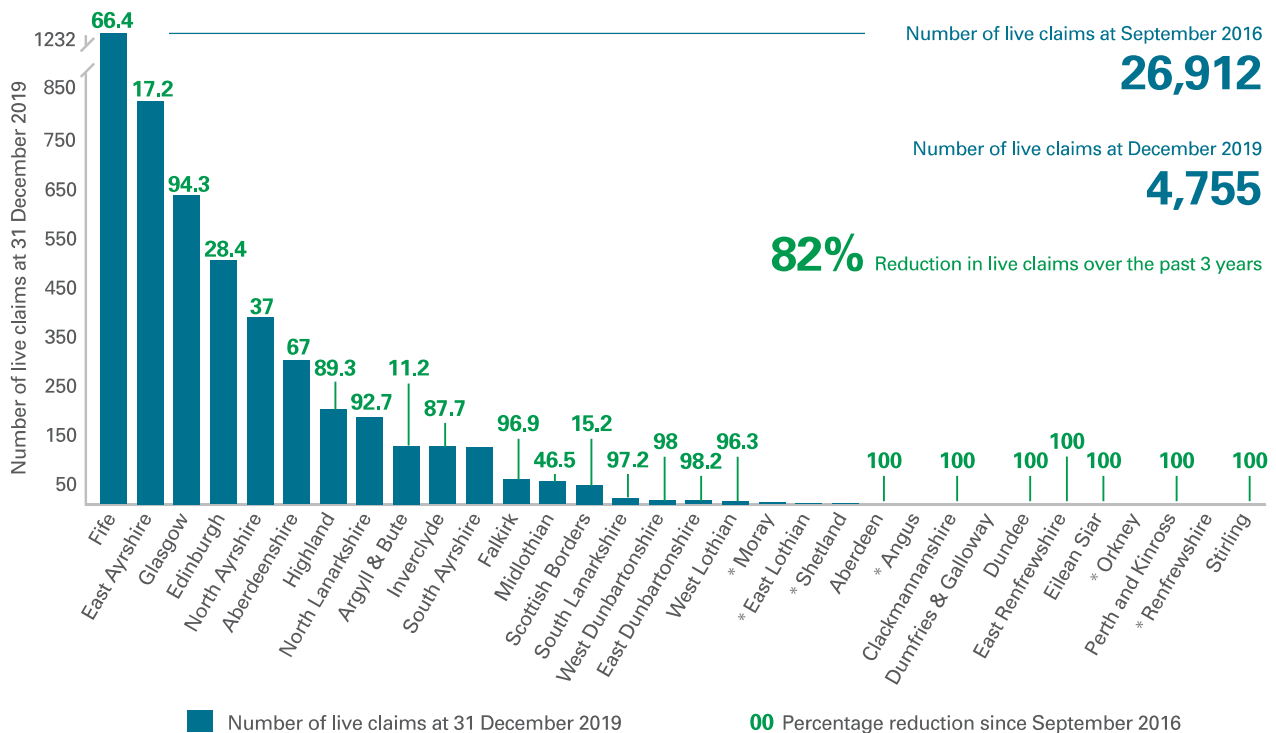
Number of live claims

24. The September 2017 *Equal pay in councils* audit reported on councils' performance as at September 2016. At that time around 70,000 equal pay claims had been lodged against Scottish councils, 26,912 of which were still live (around 40 per cent of all claims made to September 2016).

25. Between September 2016 and December 2019, the number of live equal pay claims in Scottish Councils had reduced by 82.5 per cent, from 26,912 to 4,755 ([Exhibit 1](#)). Thirteen councils have no live claims, and six have fewer than ten claims. Only ten councils now have more than 100 live claims, compared to 16 at the time of our last report.

Exhibit 1

Live equal pay claims by council at 31 December 2019 and changes since 30 September 2016



Note: *There were previously no live claims at September 2016 and therefore it was not possible to make a reduction

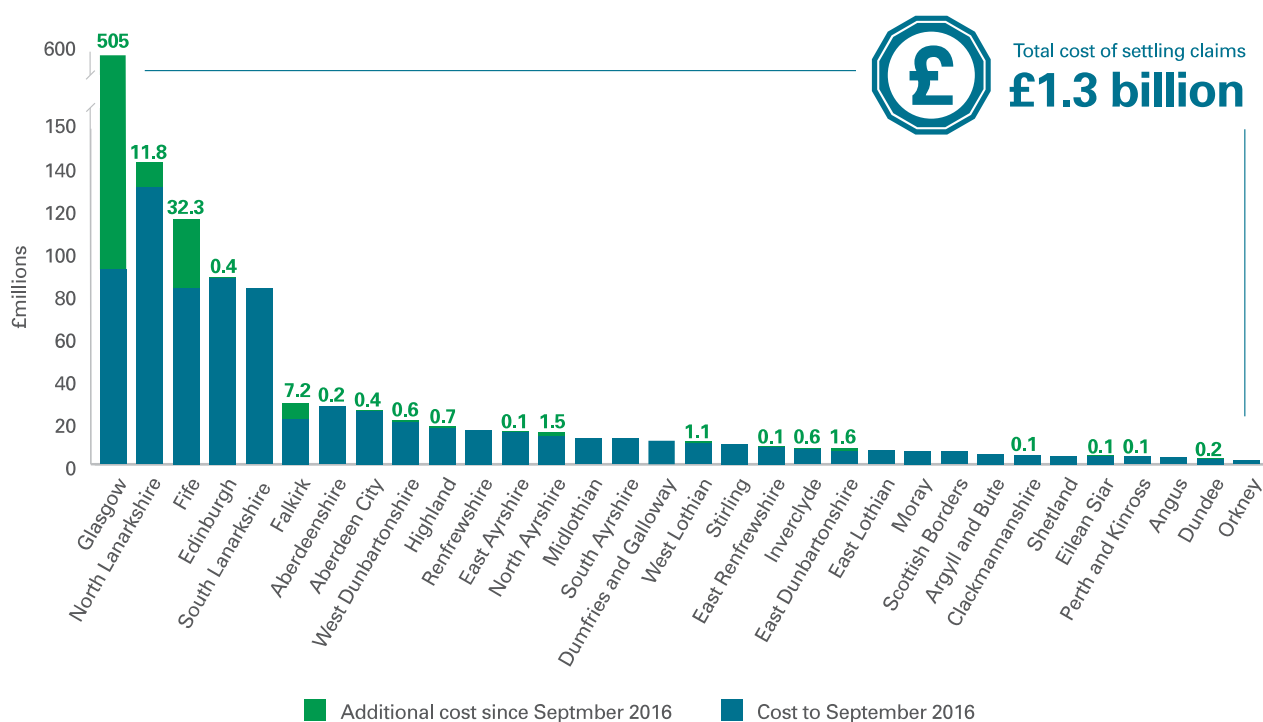
Source: Audit Scotland information request to Scottish councils, 2019

Cost of settling equal pay claims

26. In 2017 we reported that councils had spent £750 million settling equal pay claims. By the end of 2018/19 that figure had increased to £1.314 billion ([Exhibit 2](#)). Ninety per cent of the additional increase since September 2016 has been as a result of the claims settled by Glasgow City Council.

Exhibit 2

Councils have spent £1.3 billion settling equal pay claims (between 2004/05 and 2018/19)



Source: Audit Scotland information request to Scottish councils, 2019

Compensation and back pay

27. The [Local Government Pension Scheme \(Scotland\) Regulations 2014](#), which came in to force on 1 April 2015, sets out the meaning of pensionable pay. Section 20 (2) (h) of the regulations stipulates that an employee's pensionable pay does not include any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving equal pay in relation to other employees. In March 2016, the Scottish Public Pensions Agency (SPPA) ordered North Lanarkshire Council to treat back pay settlements to employees as pensionable. The SPPA did this after it was asked to review an appeal on behalf of members of the Local Government Pension Scheme (LGPS) who claimed correctly that the arrears of pay awarded to them by an employment tribunal should have been pensionable.

28. The SPPA's ruling led it to issue [Circular No.6/2016](#) (October 2016) to clarify the policy intention of Section 20 of the Regulations. The SPPA followed up that circular with a letter in May 2017, further clarifying the situation for councils and other affected bodies. This makes clear that where councils agree to settle equal pay claims on the basis of back pay, then claimants are entitled to have the pensionable element of this pay taken into account.

29. At the time of our original audit, several legal test cases in this area were passing through the courts. Because of this ongoing uncertainty, our 2017 report did not make reference to how councils should implement Section 20 of the pension regulations.

30. Each equal pay case that councils deal with needs to be considered on its own merits, with its specific circumstances taken into account when determining whether and how to settle (ie whether to settle on the basis of compensation (which is not pensionable) or back pay (which must have the pensionable element of this pay taken into account). Before signing agreements, individuals must have sought and received independent legal advice on the amount offered and the basis on which the offer is being made (ie back pay or compensation).

31. Data returns from appointed auditors in 2019 show that councils have settled around 16,960 claims with an element of pensionable back pay since 2015/16. This equates to around 54 per cent of all cases settled. Almost all of these relate to the recent settlements made by Glasgow City Council (around 15,640). Three other councils (East Dunbartonshire, Highland and West Dunbartonshire) **have settled around 1,320 equal pay claims with an element of pensionable back pay.** The remaining 14,440 cases settled by Scotland's other 28 councils since 2015/16 were settled on a compensation basis.

Gender pay gap

32. In our *Equal pay in councils* report we also **looked at the gender pay gap.** The gender pay gap is not the same as unequal pay. Unequal pay is giving women less than men for equal work. The gender pay gap is the difference between men's and women's average hourly pay. Unequal pay can be one of the range of factors underlying the gender pay gap, but it is not the only one. Other factors that can contribute to the gender pay gap can be occupational segregation, full-time workers sometimes qualifying for extra payments, women being underrepresented in senior management and leadership roles, women taking on the majority of care duties and inflexible working practices. Ensuring women and men receive equal pay for equal work should contribute to closing the gender pay gap.

33. Local government has taken a number of steps to combat the effects of occupational segregation. This includes combining multiples roles into one contract to provide individuals with easier access to enhanced overtime; providing flexibility in care and work responsibilities and extensive leave provisions for carers, parents etc; actively promoting women in leadership roles; and promoting flexible working options for any role in local government.

34. The gender pay gap figure is expressed as a percentage and where this is positive, it indicates that women are paid less than men. Different measures can be used to report the gender pay gap and it can be helpful to look at a suite of measures to better understand the complexities. In Scotland, the median or mid-point pay gap between all male and female employees (full-time and part-time workers in all sectors of the economy) fell from 16.1 per cent in 2017¹ to 14.3 per cent in 2019. This is below the UK-wide estimated gap of 17.3 per cent in 2019.²

35. Since 2013, Scottish public bodies have been required to publish information on their gender pay gap every two years as part of their Public Sector Equality Duty (PSED) under the Equality Act 2010.

36. For the past four years, alongside their individual statutory reporting, councils have also reported their performance on the gender pay gap through the Local Government Benchmarking Framework (LGBF). The LGBF reports on the average or mean difference (rather than the median) between men's and women's earnings within councils (for both full-time and part-time employees). Because the gender pay gap in the LGBF relates only to councils and uses an average difference, it is

Gender pay gap

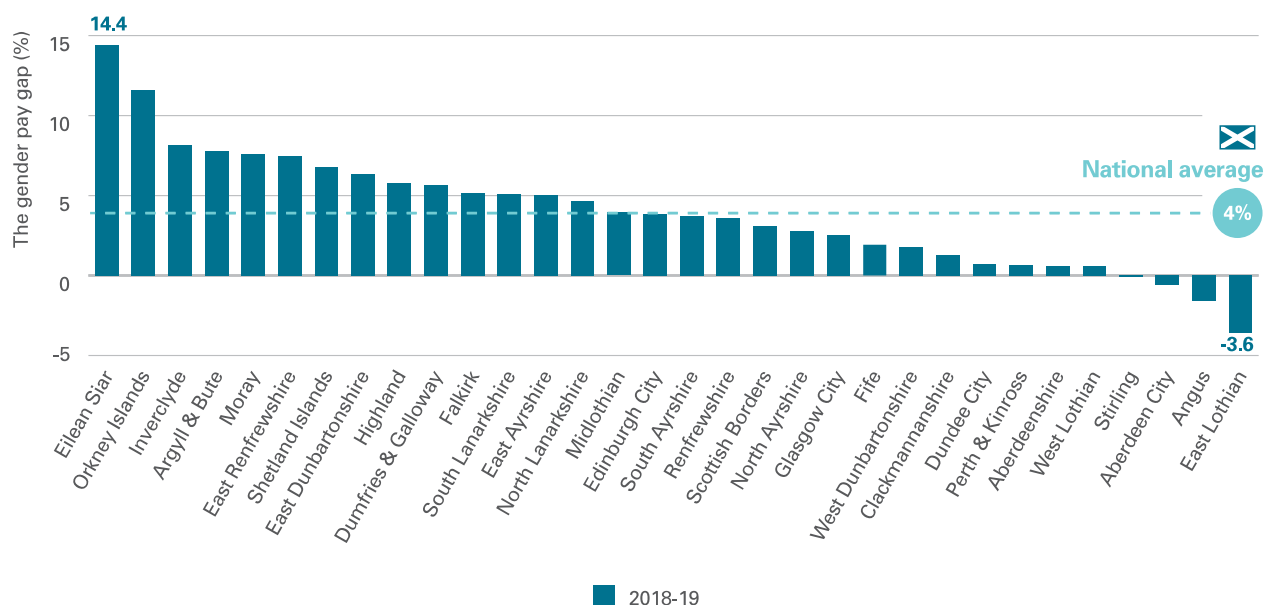
The gender pay gap is calculated as the difference between average hourly earnings (excluding overtime) of men and women as a proportion of average hourly earnings (excluding overtime) of men's earnings. It is a measure across all jobs in the UK, not of the difference in pay between men and women for doing the same job.

¹ [Annual Survey of Hours and Earnings](#), Office for National Statistics (ONS)

² The Gender Pay Gap Briefing Paper, House of Commons Library, March 2020

not directly comparable to the national gender pay gap measure. The LGBF measure shows that in 2018/19 the gender pay gap was 4.0 per cent – a reduction of a 0.5 percentage point from 2015/16. Looking across councils, the gap ranges from -3.6 to 14.4 per cent³ (Exhibit 3).

Exhibit 3 Gender pay gap in Scottish councils



Source: Local Government Benchmarking Framework report 2018/19

37. Exhibit 3 shows that rural councils tend to report wider gender pay gaps through the LGBF. [Gender pay gap research](#) by Scotland's Rural College (SRUC), that was commissioned by the Scottish Government in 2017, found that the gender pay gap in rural, island and remote areas has decreased over the last decade. It indicates that in 2017 women in remote parts of the country had the lowest annual income on average, however women in accessible rural areas had the highest income of all female employees in Scotland. A number of factors appear to be behind this, such as employment in low-paid sectors, higher levels of part-time working, reduced mobility and the dominance of micro businesses in rural, remote and island areas.

38. The Scottish Government published *A Fairer Scotland for Women: Gender Pay Gap Action Plan* in March 2019. The action plan encourages employers to carry out equal pay audits to be confident that their pay system delivers equal pay and protects them against the risk of an equal pay claim. It also sets out a list of actions for the public, private and third sector to address the various drivers of the gender pay gap. This includes tackling labour market inequalities faced by women particularly among disabled women, minority ethnic women, women from poorer socio-economic backgrounds and women with caring responsibilities. It is important that councils continue to take action to reduce their gender pay gap.

³ Negative values indicate that women are paid more than men

Governance and oversight to deliver equal pay

39. Councils should continue to ensure that their pay system delivers equal pay, particularly as they go through periods of organisational change.

40. Elected members have a corporate responsibility to ensure that the council is taking all the necessary steps to comply with equalities legislation. As part of that responsibility, elected members should ensure that the council has appropriate arrangements in place to manage outstanding equal pay claims. Elected members also have a broader duty to promote equality. As part of discharging their equality obligations, elected members should regularly receive monitoring information on the progress their councils and, where appropriate, integration authorities and arm's-length external organisations (ALEOs) that deliver services on their behalf, are making in reducing the gender pay gap. They should use this information to challenge officers on this progress. In *Equal pay in councils* we highlighted: actions for councils to ensure they are fulfilling their PSED in relation to equal pay; and questions for elected members in overseeing, challenging and scrutinising equal pay. We have included these again in Appendix 1 as they remain as relevant now as when we published our original audit report in 2017.

Appendix

Actions for councils and elected members

Councils must ensure they are fulfilling their public sector equality duties in relation to equal pay



This includes:

- publishing an equal pay statement and equal pay policy
- assessing the impact of any changes that may affect equal pay
- publishing gender pay gap information.

In complying with good practice, councils should:

- use EHRC guidance for example when undertaking equal pay audits and developing equal pay policies
- use Close the Gap's guidance on meeting the public sector equality duty
- ensure their risk registers are up to date.

For those councils using the SJC job evaluation scheme, they should ensure they implement the most recent edition.



Questions for elected members in overseeing, challenging and scrutinising equal pay

- Have I been updated on the number of ongoing equal pay claims at my council? Am I satisfied they are being dealt with effectively?
- Have I been updated on the potential cost of equal pay claims?
- Have I been updated on the steps my council is taking to mitigate against the risks of equal pay claims? For example:
 - Have I seen my council's equal pay audit? Did it meet EHRC good practice guidance? Are there any pay gaps? Can we sufficiently justify any differences in pay gaps?
 - Have I seen action plans and progress reports against my council's equal pay policy?
 - Have I been updated on changes in case law that might affect my council?
 - Have I seen equality impact assessments on any changes to my council's pay and grading system?
 - Has my council fully implemented the SJC third edition guidance and recommendations?
- Have I been informed about whether my council has allocated adequate resources to proactively carry out equality work around equal pay/gender pay gap beyond responding to equal pay claims?

Equal pay in councils

Impact report

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