

## North Lanarkshire Council's Response to the Interest (Scotland) Bill Consultation

Q1 No comment.

Comments:

Q2 No.

Comments: There is a strong public policy argument to seek to ensure that late payment of rent does not unduly affect the financial resources available to the Council as Housing Authority. This view would apply, for the avoidance of doubt, to Housing Associations and other registered social landlords.

Q3 No comment.

Q4 No comment.

Q5(a) No.

Comments: There is a balancing of interests to be considered between employers and employees but the conclusion of the Council is that this is an area better left outwith this proposed regime.

Q5(b) No.

Comments:

Q6 Yes.

Comments: Statutory interest running from 30 days after the end of the period in respect of which the service under the contract is remunerated seems reasonable.

Q7 No.

Comments:

Q8(a) + (b) North Lanarkshire Council are of the view that simple interest should be applied as this is largely the current regime for the application of interest in damages claims and the process of quantifying interest is an easier process than that with compound interest particularly where the amount spans a number of years.

Q9(a) Yes.

Comments: That the courts should be able to take into account factors such as the conduct of the parties to any litigation.

Q9(b) No.

Comments: Complete judicial discretion is the preferred option.

Q10(a) No.

Comments: North Lanarkshire Council are firmly of the opinion that there should be no retrospective application of the Act. Parties should be aware of their obligations whether contractual or otherwise and the right or responsibility to meet any additional sums in respect of interest for debts prior to the commencement of the Act.

Q10(b) Not applicable as North Lanarkshire Council are of the view that there should be no retrospective effect in respect of the Bill.

Q11 No comment.

Q12 No comment.

Q13 No comment.

Q14 Potentially. The Council's rationale is commented upon in question 15.

Q15 Yes.

Comments: Often lengthy discussions can take place over pay negotiations particularly within the public sector. This is not necessarily as a consequence of any delay on the part of the employer but the requirement to balance a number of factors where agreement is required from a number of different unions and also taking into account the fact that unions may require to take their members views on matters.

Q16 Yes.

Comments: If employers in the public sector have limited or capped resources to deal with annual pay demands then a liability to pay interest will require to be factored into this and will affect the level of pay settlements.

Q17 Potentially. Please refer to the Council's response to question 15.

Q18 Yes.

Comments: See comments for Q19 and Q20.

Q19 If the statutory instrument regime were to apply to equal pay claims the financial implications to Local Government and to the public sector generally could be very significant. This is the aspect of the consultation paper which is of most concern to the Council as a local authority employer facing significant numbers and levels of equal pay claims which will have an abnormal effect on the public purse.

Q20 Yes.

Comments: Potential Forum Shopping

North Lanarkshire Council are of the opinion that, in the event that the provisions of the Bill were to apply to equal pay claims, there could be a disparity between the position in relation to equal pay claims within different jurisdictions in the UK, in particular where the claimants were in a position to pick a forum within the UK where the claimant may maximise the award. There should be parity across all UK jurisdictions in relation to equal pay claims in particular as employment law is a reserved matter. In addition there is a very small but real risk that employers concerned with the implications of the Bill and future equal pay claims may elect to use the choice of law and jurisdiction clause within employment contracts to pick a jurisdiction and law other than that of Scotland and the Scottish Courts.

#### Delay

North Lanarkshire Council are of the opinion that local authorities such as the Council should not be prejudiced by the application of interest as proposed by the Bill through the delay in claimants seeking redress in respect of equal pay claims. The Equal Pay Act 1970 came into force in 1975. For a considerable number of years the issue of perceived disparity in respect of equal pay has been a contentious issue and has been a matter of common knowledge and debate among local authorities and employees alike. The employees unions and legal advisors have only in the past two years commenced proceedings against North Lanarkshire Council. Due to the delay in commencing proceedings it is submitted that claimants should not be entitled to interest. In exercising discretion over interest to be awarded the Courts have previously taken into account delays in pursuing their claim for damages and restricted interest accordingly. There is authority for this in the case of *Nacap Limited -v- Moffat Plant Limited* 1986 SLT 326.

#### Public Interest

In the event that a local authority such as North Lanarkshire Council were required to meet the additional burden of interest on equal pay claims this would have a significant impact on Council services. Unlike the private sector local authorities have limited means of raising resources. Given the freeze on Council Tax any additional burden in terms of interest on the equal pay claims would require to be met directly from monies currently allocated to the provision of Council services. Accordingly not only would Councils require to review their financial planning and budgeting but in addition the users of Council services would be adversely affected as a consequence of the financial impact.

#### Government Assistance

On 5 February 2008 local authorities in England and Wales were told by the Government that it would continue to support them in meeting their equal pay obligations through a further equal pay capitalisation round in 2008/09. This builds on £500 million issued to 46 authorities on 28 September 2007 for the current financial year. It should be noted that authorities in Scotland have not been

provided with such support, nor does there appear to be a prospect of such resources being made available.

#### Distinction between a recognised known Obligation and Equal Pay Claims

Equal pay claims require to be distinguished from other types of claims. Whilst North Lanarkshire Council acknowledge that not all claims are known to a party at the time of the claim arising, most claims of a contractual nature will be known to a party. Equal pay claims were not known and could not be quantified until recently. In some respects this is akin to industrial disease claims. However employers have a legal requirement to have employers liability insurance in force and accordingly can manage the risk of claims by employees arising out of the accident, injury or disease. Equal pay claims are being met entirely within the existing finances of local authorities and the application of interest spanning over a number of years is not something which could have been easily foreseen or insured against.

#### Starting Date

North Lanarkshire Council note that clause 7(1) of the Bill states that where interest is due on a sum of money payable as damages the starting date is the date on which the loss in question is sustained.

Similarly sub-section 2 allows a Court to treat a loss in respect of which an award of damages is made as having been sustained over a period of time. It is likely a Court may regard an equal pay claim as “damages” as the claim arises not to any breach of the contract of employment but due to a potential failure by an employer to comply with discrimination legislation. It is noted that in paragraph 69 of the Consultation document there is a proposal that the legislation should apply to all claims for interest, except those in respect of which an action has been raised before the commencement date. Whilst North Lanarkshire Council's primary position is that equal pay claims should be excluded from the legislation, the Council is of the opinion that in the event that equal pay claims fall under the legislation, transitional provisions should be included. The purpose of these would be to exclude equal pay claims for a period of time to enable those authorities currently assessing and evaluating both claims and posts to ensure that they are compliant with any discrimination laws. This is a remarkably expensive and time consuming process and cannot expect to be completed shortly. Further the Council is of the view that there should be no discretion for a Court or Employment Tribunal to make any award of interest which would cover a period predating the commencement of the Act.